

Texas Register

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Texas Register

The *Texas Register* (ISSN0362-4781) is published semi-weekly 100 times a year except June 1, 1990, November 9 and 27, 1990, and December 28, 1990. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78711.

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

Governor-Appointments, executive orders, and proclamations

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

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

Proposed Sections-sections proposed for adoption

Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date

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

Open Meetings-notices of open meetings

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

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In Order that readers may cite material more easily page numbers are now written as citations. Example: on page 2 in the lower left-hand corner of the page, would be written: "14 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 14 TexReg 3"

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

Texas Administrative Code

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

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

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code*;

§27.15 is the section number of rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).



Texas Register Publications

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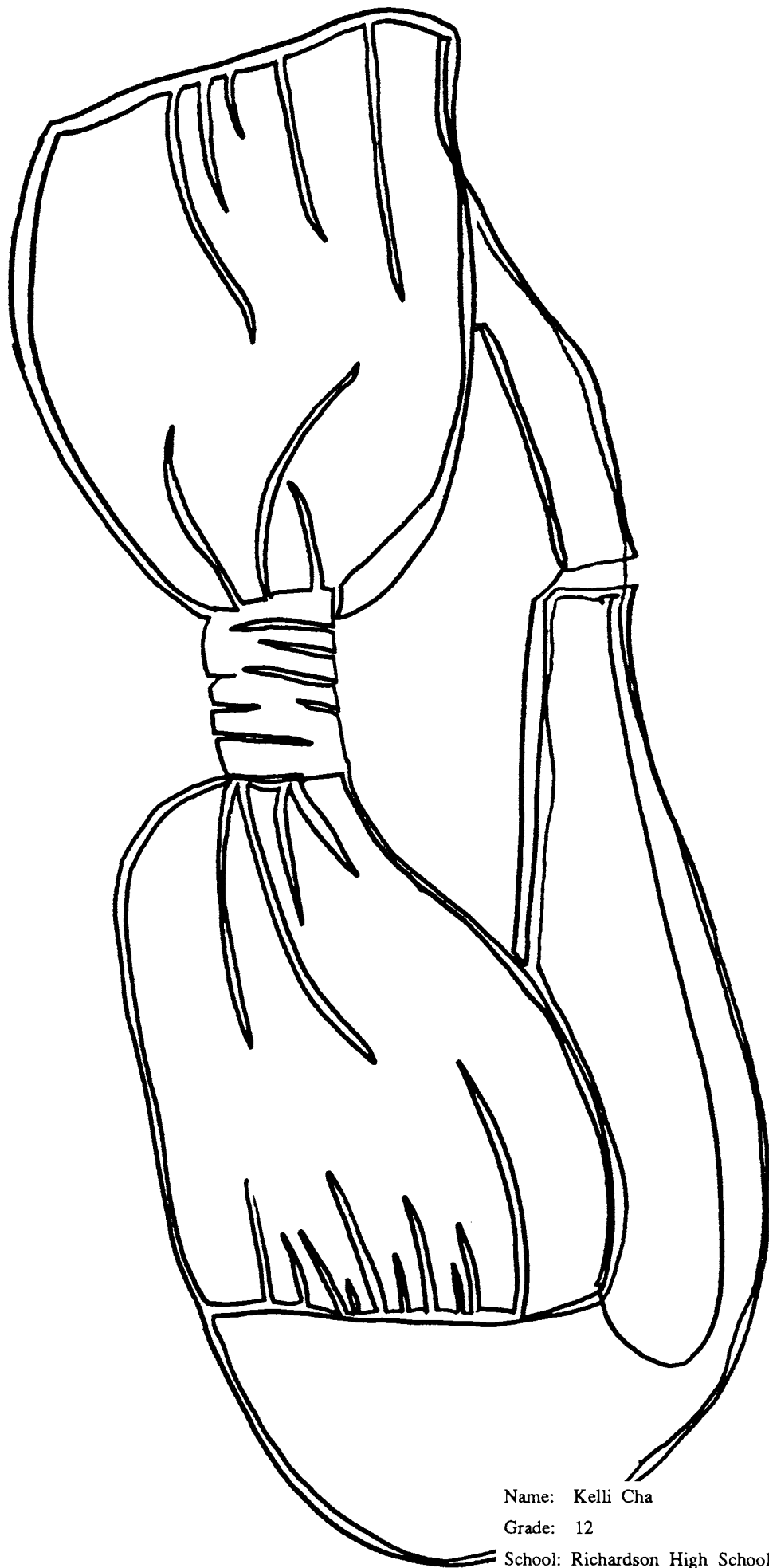
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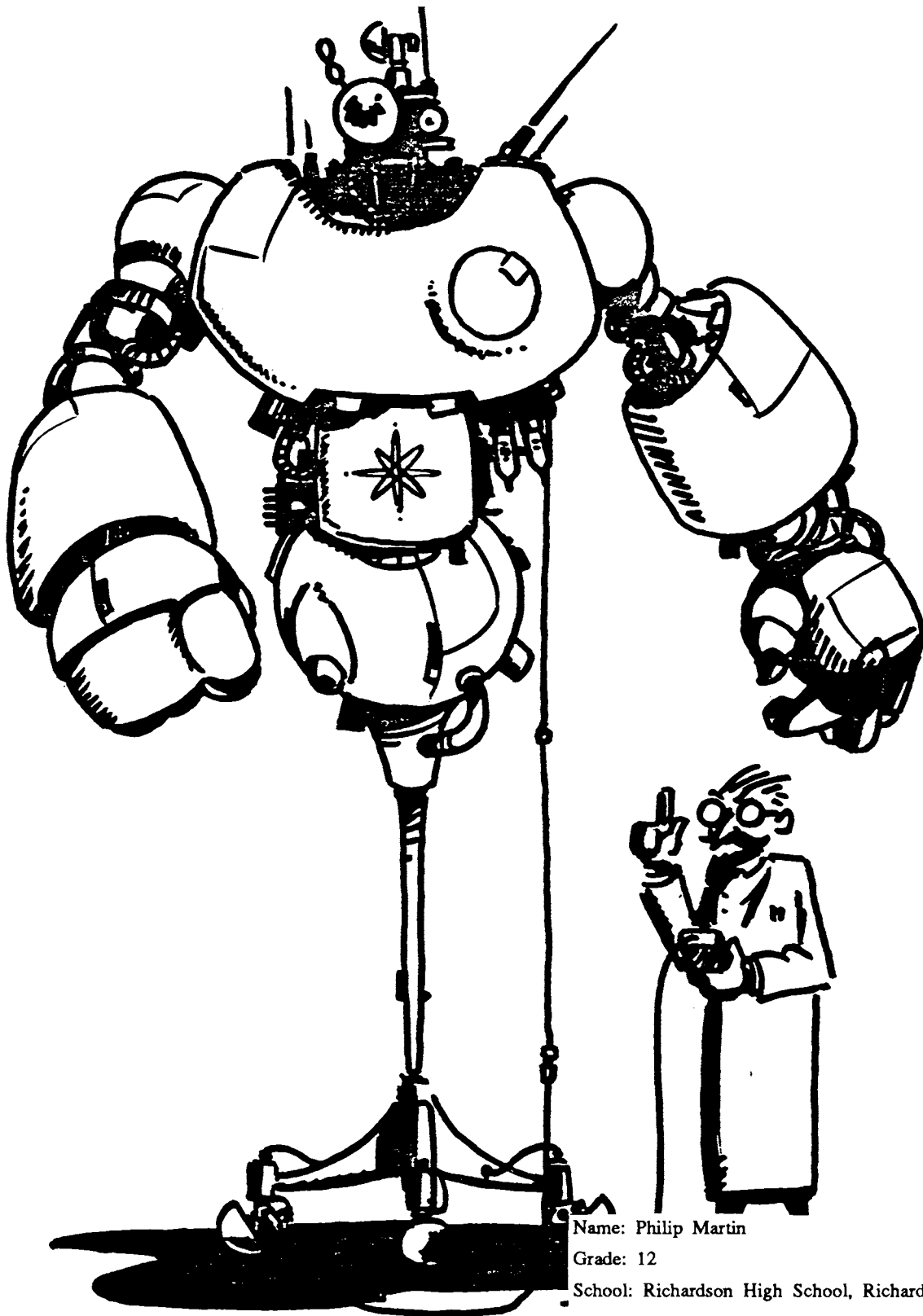
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venience and Necessity



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TAC Titles Affected

TAC Titles Affected—August

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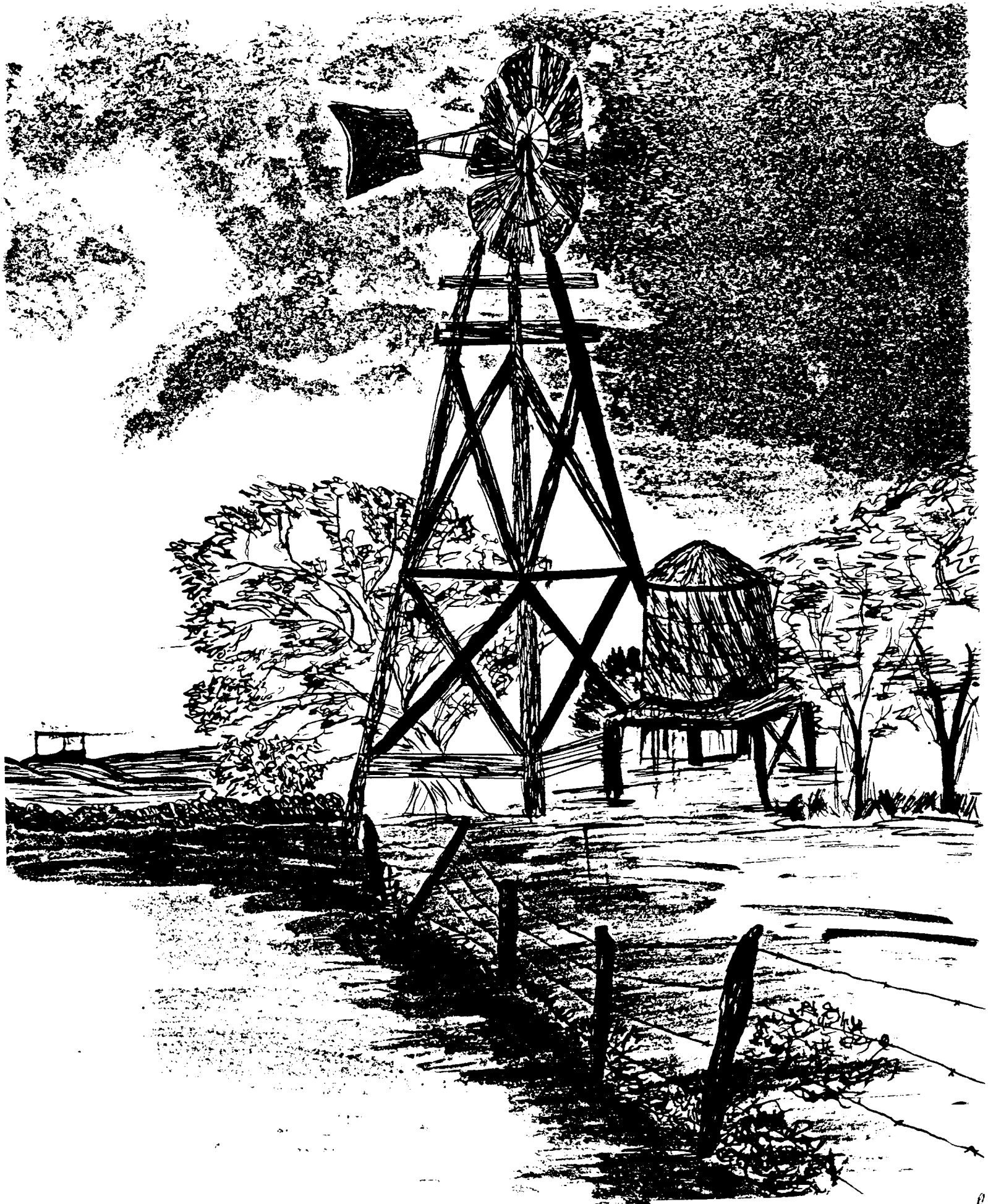
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◆ ◆ ◆



Name: Mark Young

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Emergency Sections

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

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

TITLE 34. PUBLIC

FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Deferred Compensation-Internal Revenue Code, §457 Plan

• 34 TAC §5.122

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §5.122, concerning transition. This section contains important transitional provisions regarding 34 TAC §§5.111-5.121.

The amendment is adopted on an emergency basis to delete the expiration date of the section, which would be September 1, 1990, without the emergency amendment.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 6252-3f, (Vernon Supplement 1990), which provide the comptroller with the authority to adopt and enforce rules concerning the state's deferred compensation programs.

§5.122. Transition.

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

[(c) This section expires September 1, 1990.]

Issued in Austin, Texas, on August 6, 1990.

TRD-9007903 Bob Bullock
 Comptroller of Public
 Accounts

Effective date: August 7, 1990

Expiration date: December 5, 1990

For further information, please call: (512)
463-4004

◆ ◆ ◆



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Proposed Sections

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

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

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 519. Practice and Procedure

Practice and Procedure

• 22 TAC §519.30

The Texas State Board of Public Accountancy proposes new §519.30, concerning service by mail. The new section adds three days to the time period required for service by mail.

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

Mr. Bradley, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the rules relating to the time period required for service by mail. 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 Cynthia Hairgrove, Attorney, Enforcement Coordinator, 1033 La Posada, Suite 340, Austin, Texas 78759.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to practice and procedure.

§519.30. Service by Mail. Whenever these rules prescribe a time period for the service of a notice or papers and the service is performed by mail, three days shall be added to the prescribed period.

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

Issued in Austin, Texas, on August 7, 1990.

TRD-9007931

Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: September 14, 1990

For further information, please call: (512) 450-7066

• 22 TAC §519.31

The Texas State Board of Public Accountancy proposes new §519.31, concerning certificate of service. The new section sets out the prescribed form for a certificate of service.

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

Mr. Bradley, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the substantive rules relating to procedures to be followed in disciplinary matters. 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 Cynthia Hairgrove, Attorney, 1033 La Posada, Suite 340, Austin, Texas 78759-3892.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to practice and procedure.

§519.31. Certificate of Service. A certificate of service shall be sufficient if it follows this form, though this form shall not be exclusive, and a certificate of service which substantially complies with this rules shall suffice.

"By my signature below, I certify that a true and correct copy of the above and foregoing instrument has been mailed via _____ to the following address:

_____ "

Signature

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 August 7, 1990.

TRD-9007932

Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Earliest possible date of adoption: September 14, 1990

For further information, please call: (512) 450-7066

TITLE 31. NATURAL RESOURCES AND CON- SERVATION

Part IX. Texas Water Commission

Chapter 334. Underground and Aboveground Storage Tanks

Subchapter I. Underground Storage Tank Contractor Registration and Installer Licensing

• 31 TAC §§334.412, 334.414-334.428

The Texas Water Commission (TWC) proposes amendments to existing §334.412 and proposes new §§334.414-334.428, concerning the licensing of installers and on-site supervisors. TWC is required in House Bill 183, 71st Legislature, 1989, to establish a program to license installers and on-site supervisors; to establish standards for the licensing renewal, denial, revocation, suspension, and reinstatement of an installer or on-site supervisor license; to develop procedures which provide hearings and types of hearings to installers and on-site supervisors contesting denial, revocation, or suspension of a license; and to promote a system of fee assessments to support the state's cost of administration of such a program. House Bill 183, 71st Legislature 1989, also provides that no underground storage tank (UST) may be installed, repaired, or removed except by a registered underground storage tank contractor who has a licensed installer or an on-site supervisor at the site at all times during the critical junctures of the UST installation, repair, or removal. The new sections are to be contained in Title 31 Texas Administrative Code, Chapter 334, Subchapter I.

The amendment to the definitions in §334.412 (relating to Definitions) is proposed to clarify what types of work are subject to the licensing requirements for installers under the new proposed rules which follow. This section defines installation. Section 334.414 (relating to License for Installers and On-site Supervisors) in turn requires that a license is required for installations.

The definition of "installation" is amended to list some of the types of work which would be included under that term. Among the activities which would require a license are the permanent installation of equipment or devices for the purpose of providing release detection or release monitoring. These devices include, but would not be limited to, automatic tank gaging equipment, permanent vapor and groundwater monitoring equipment, and any line leak detectors or similar flow restriction devices.

It should also be noted that the construction of observation or monitoring wells (not including equipment installed therein) by licensed water well drillers does not come under the heading of "installation" and thus would not require a license under this subchapter. Also, the temporary installation of tank tightness testing equipment for the duration of the test does not come under the heading of "installation" and would not require a license.

Section 334.414 (relating to License for Installers and On-Site Supervisors) requires that after December 1, 1990, an UST system may not be installed, repaired, or removed except by a licensed installer or on-site supervisor. Further, subsection (c) of §334.414 requires that even if a person possesses an installer or on-site supervisor license, his or she may not offer to undertake, represent himself or herself as being able to undertake, or undertake to install, remove, or repair an underground storage tank, unless he or she also is registered as a contractor or unless he or she is offering his or her services to a registered contractor. In other words, the person who actually performs or supervises the tank installation, removal, or repair must possess the appropriate license. The person or business entity which contracts with the public to perform such services must be registered as a contractor. If one person is acting in both roles, he must both be licensed as an installer or a supervisor and registered as a contractor. The provisions of this section do not apply if no license is required under §334.25 (relating to Exceptions to License A and License B Requirements).

Section 334.415 (relating to License A and License B) establishes a License A for applicants who intend to participate in or supervise the installation or repair of UST systems, and a License B for applicants who intend to participate in or supervise the removal of UST systems. This section does not prevent the applicant from obtaining both a License A and License B.

Section 334.416 (relating to Requirements for Issuance of License A and License B) concerns the requirements an applicant must meet before the issuance of a license. The following requirements must be met before the applicant is issued a license: the applicant shall submit a completed application, pay the initial license application fee, be at least 18 years of age, and have at least two years of experience in installation, repair, or removal of USTs, underground utilities, or other engineering construction; the executive director must approve the applicant's qualifications before the examination can be taken; and the applicant must successfully complete the appropriate examination(s). In addition, after December 1, 1991, an applicant shall be required to complete 28 hours of training and

education courses for a License A, 12 hours for a License B, and 40 hours for both a License A and License B. The training and education shall be approved by the executive director and sponsored by educational or governmental institutions or recognized organizations including, but not limited to, the following: Petroleum Equipment Institute, American Petroleum Institute, Steel Tank Institute, National Association of Corrosion Engineers, Fiberglass Petroleum Tank and Pipe Institute, and National Fire Protection Association. The training and education courses may include instructional courses, seminars, workshops, and conferences. The applicant is required to submit a certificate of completion for the appropriate training and education courses. The certificate of completion must be dated and signed by the designated sponsor to be valid.

Section 334.417 (relating to Application for License A and License B) concerns the application requirements which must be met for a License A and License B. All UST installers or on-site supervisors are required to provide their name, business address, birth date, and social security number on the application. The applicant must submit a list of other professional registrations and licenses obtained from a governmental body within or outside the State of Texas and if applicable, attach a statement of circumstances in which a license or registration was previously suspended, revoked, or subjected to disciplinary action resulting from UST related activities within or outside the State of Texas. A list and description of the training and education courses on USTs that the applicant has completed as required for each license, must also be submitted with the application. The application must include four sworn statements, three from clients not related by blood or marriage and one from a current or previous employer, that have engaged the applicant or applicant's employer to perform UST installations, repairs, or removals, underground utility construction or other engineering construction within the previous 12 months. These sworn statements must attest to the applicant's character, knowledge of construction, description of the type of construction performed, and ability to supervise construction activity. The application must be accompanied by a notarized sworn statement from the applicant attesting to the authenticity of the submitted information. The executive director shall provide all application forms in order to determine whether the requirements have been met for the issuance of a License A or License B, or both Licenses A and B. To efficiently administer an examination, the application must be received by the executive director at least 60 working days prior to the scheduled examination date. Failure of the applicant to take the licensing examination within 120 days after approval of the application by the executive director shall cause the examination fee to be forfeited and the application to be denied without prejudice. An applicant who has been denied without prejudice may re-apply for a license. The executive director may extend the 120-day examination period upon written request from the applicant and for good cause.

Section 334.418 (relating to Notification of Examination) provides notification to the applicant of the appropriate licensing exami-

nation. Within 30 days of receipt of a properly completed application and examination fee, the executive director must notify the applicant as to whether the application has been approved. Each applicant shall be notified by the executive director of the designated dates, times, and places of the appropriate examination.

Section 334.419 (relating to License A and License B Examination) states the composition, administration, and completion requirements for a license A and license B examination. The composition of a licensing examination shall consist of several categories comprising specific UST subjects as determined by the executive director. Questions used in the examination shall derive from the applicable commission rules within this chapter and from the standards, instructions, and recommended practices published by organizations with expertise in various aspects of the installation, repair, or removal of underground storage tanks. Should a conflict arise between the rules of this chapter and the standards, instructions and recommended practices of expert organizations, the rules of this chapter shall prevail as the definitive examination answer. The executive director shall offer, proctor, and designate a time and place for all examinations. An examination shall be offered with increased frequency whenever more than 10 persons petition the executive director in writing. An applicant may request the executive director in writing to substitute an oral examination in place of a written examination provided such request is received by the executive director 30 days prior to a scheduled examination. The substitution of an oral examination in place of a written examination is subject to approval by the executive director. An applicant requesting an oral examination must demonstrate to the executive director that the written examination would not provide a fair and equal test of the applicant's knowledge of underground storage tank installation, repair, or removal. The executive director must notify an applicant of the results of an examination within 30 days of the administration of the examination. An applicant may personally inspect the applicant's examination in the commission's office during normal business hours for the purpose of assessing the accuracy of the grading at any time within six months of the date the applicant is notified of the examination results. An applicant who does not successfully complete an examination may request in writing that the executive director furnish the applicant with an analysis of the applicant's performance provided the applicant makes such written request within six months of the applicant's examination results. To successfully complete an examination, an applicant must correctly answer 70% of the questions on each specific UST category of the examination.

Section 334.420 (relating to Issuance of License A or License B) concerns the issuance and processing of the installer and on-site supervisor license. The executive director shall issue the appropriate license to the applicant after the applicant meets the requirements of §334.416 (relating to Requirements for Issuance of License A and License B). The issued license shall not be transferable or assignable and shall be issued one time only. A wallet size card indi-

cating the license number and expiration date of the license shall be issued by the executive director. A lost or destroyed license shall be re-issued by the executive director upon payment of a duplicate license fee.

Section 334.421 (relating to Renewal of License) concerns the renewal process for a License A and License B. All licenses are valid for one year from the original date of issuance or last date of renewal. Renewal application forms are to be provided by the executive director. The executive director must notify each licensee of impending license expiration at least 60 days prior to the expiration of the license. An applicant for renewal of a license must submit a properly completed renewal application at least 30 days prior to the expiration of a license in order to avoid a lapse in licensing. A properly completed application must include evidence of compliance with the continuing education requirements of this section and payment of the renewal fee. A properly completed renewal application submitted 30 days prior to the expiration date of a license entitles the current license to remain valid and in effect until the executive director notifies the applicant of renewal or denial of the renewal application. A license which is not renewed earlier than one year after the expiration date of the license subjects the installer or on-site supervisor to the requirements contained in §334.416 (relating to Requirements for Issuance of License A and License B) and to a subsequent examination pursuant to §334.419 (relating to License A and License B Examination). Upon proper completion of the license renewal process, the executive director shall issue a wallet size card indicating the issuance date of the license. The renewal applicant for a License A shall complete at least eight hours of continuing training and education courses prior to renewal of the license. The renewal applicant for License B shall complete at least eight hours of continuing training and education courses prior to the renewal of the license. All training and educational courses required by this section must be approved by the executive director and be sponsored by educational or governmental institutions, or recognized organizations with expertise in various aspects of the installation, repair, or removal of underground storage tanks. A certificate of completion for each training and education course completed by the renewal applicant must be submitted with the renewal application. The certificate of completion must be signed and dated by the designated representative sponsoring the training and education course.

Section 334.422 (relating to Denial of License A or License B) concerns those factors which will cause a license to be denied by the executive director. These factors include, but are not limited to, failure to achieve a passing grade on the examination, submission of fraudulent or deceptive information within the registration application, an improperly completed application, failure of the applicant to pay the appropriate fee, or for any other good cause (or causes) which the executive director determines to constitute an adequate ground (or grounds) for denial.

Section 334.423 (relating to Fee Assessments for License A and License B) contains the fee schedule for the examination, application, renewal, and duplication of a

License A and License B. Each fee assessment is intended to apply per license. For example, the annual license renewal fee for either a License A, License B, or for both Licenses A and B is \$175. An applicant for a license shall not pay more than \$200 for the initial license application and initial examination fee. Any subsequent examination taken after the initial examination shall be assessed a \$50 fee per examination. A renewal application is subject to the \$25 late renewal fee whenever the application is received by the executive director within one year after the expiration date of the license.

Section 334.424 (relating to Other Requirements for a License A and License B) concerns additional requirements that all installers and on-site supervisors must comply with upon issuance of a license. These requirements include, but are not limited to, written notification to the executive director of a licensee's change in status during the validated licensed year, and compliance with all applicable technical standards of Chapter 313 (Relating to Edwards Aquifer), Subchapter C (Relating to Technical Standards), and all other federal, state and local regulations and laws. A licensed installer or on-site supervisor that, offers, represents, or does undertake the installation, repair, or removal of an underground storage tank is required to be either a registered UST contractor or be employed by a registered UST contractor.

Section 334.425 (relating to Exceptions to License A and License B Requirements) concerns those persons or companies which are completely exempt from regulation under §334.3(a) (relating to Statutory Exemptions), or completely excluded from regulation under §334.4(a) (Relating to Commission Exclusion). Installers or on-site supervisors that conduct installations, repairs, or removals of UST systems which are exempt from this chapter but are regulated under Chapter 313 (Relating to Edwards Aquifer) are required to comply with the licensing requirements of this subchapter.

Section 334.426 (relating to Revocation, Suspension, or Reinstatement of a License A and License B) concerns the procedures for the revocation, suspension, and reinstatement of a License A and License B. Upon a determination that good cause exists to suspend or revoke an installer or on-site supervisor license, the executive director shall request that the commission schedule a hearing before the hearing examiner or the commission. The license holder shall receive proper notice by the commission prior to the hearing. Factors which may constitute suspension or revocation of a license include, but are not limited to: failure by the holder of the license to follow the technical standards required for the installation, repair, or removal of tanks under this chapter; violations by the holder of the license of the provisions of this chapter; falsification of information or documents submitted to the executive director; disposal of contaminated soils or water in a manner which violates state or federal law; or, for other good cause as determined by the executive director. The suspension period of a license may be for one year depending on the seriousness of the offense (or offenses). A second suspension automatically revokes a license. The commission may indefinitely suspend a license at the request of the license holder or

for other good cause shown. When a license is revoked a second time, the revocation shall be permanent. After the expiration of the one-year revocation, an applicant may apply for reinstatement of a license pursuant to the requirements of §334.416 (relating to Requirements for Issuance of License A and License B). However, since the one-year revocation may negatively affect an applicant's ability to provide sworn statements and references which document performance within the previous 12 months as required under §334.417 (relating to Application for License A and License B), such documentation is not required to be submitted by an applicant seeking reinstatement.

Section 334.427 (relating to Notice of Hearings) concerns the notice of hearing relating to the revocation, suspension, or reinstatement of the license. The notice of hearing shall be issued not less than 20 days prior to the hearing and shall be transmitted by certified mail, return receipt requested. Persons to be notified include the applicant, or license holder, the complainant, and any person(s) affected by the outcome of the hearing as determined by the executive director.

Section 334.428 (relating to Type of Hearing) concerns the type of hearing relating to the suspension, revocation, or reinstatement of a license. This hearing is subject to the Administrative Procedure and Texas Register Act, Texas Civil Statutes Article 6252-13a.

Mr. Roger G. Bourdeau, chief fiscal officer, has determined that for the first five-year period the sections are in effect there will be fiscal implications as a result of compliance with or enforcement of the sections. The direct effect on state government will be an increase in cost of \$180,000 in fiscal year 1991 and \$285,000 in each of the fiscal years 1992-1995. Revenues are estimated to increase by \$400,000 in fiscal 1991 and \$350,000 in each fiscal year 1992-1995. There are no direct impacts to local government, except in cases where a representative of a local government would apply under provisions of this subchapter for a license as an installer or on-site supervisor. In this instance, the cost of the examination and license application would not exceed the maximum fee of \$200 for the first year. The renewal fee would be \$175 annually thereafter. The effect on small businesses would be essentially the same as that for local government or any other applicant for certification.

Mr. Bourdeau 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 administering and enforcing the sections will be improvements in: the regulation of underground storage tanks; the effective use of private funds to remove, repair, or install underground storage tanks in accordance with technical regulatory standards; protection of the state's water resources; and enforcement of the provisions of the Water Code and the regulations of the Texas Water Commission.

The anticipated cost to any person required to comply with the sections would be the same as for any registrant: \$200 for the first year and \$175 annually each year thereafter.

Mr. Randall G. Keeling, acting director economic research and analysis, Texas Employment Commission, has determined that although implementation of the sections is anticipated to affect employment to some degree in some areas of the state, it appears at this time that they would have little or no effect on the economy in general. Therefore, the Texas Employment Commission foresees no significant impact on overall employment in Texas cities and counties which would result from these proposed sections.

Comments on the proposal may be submitted to Carlos Celestino, Legal Division, P.O. Box 13087, Austin, Texas, 78711. For further information please call (512) 463-8069.

Comments will be accepted until 5 p.m., 30 days after the date of publication. To facilitate public comments on the proposed sections, the commission has scheduled a public hearing to receive such comments in Room 1-111 of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78711, on Tuesday, August 28, 1990, at 9 a.m. Persons participating in the public hearing are encouraged to summarize their testimony in written presentations.

The amendment and new sections are proposed under House Bill 183, 71st Legislature, 1989, which provides the Texas Water Commission with the authority to establish a program to register underground storage tank contractors and license underground storage tank installers and on-site supervisors; and the Texas Water Code §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to establish and approve all general policy of the commission.

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

Installation—The installation of underground storage tanks and ancillary equipment, including, but not limited to, the following activities:

(A) installation of new or previously used tanks at a new facility, and the addition or replacement of tanks at an existing facility;

(B) installation of new or replacement piping for new or existing tanks;

(C) addition of secondary containment equipment for new or existing tanks or piping;

(D) addition or replacement of the following types of equipment at a new or existing UST facility:

(i) spill and overfill prevention equipment, as required in

§334.51 of this title (relating to Spill and Overfill Prevention and Control);

(ii) equipment or devices which are permanently installed for the purpose of providing release detection or release monitoring as required for compliance with §334.50 of this title (relating to Release Detection), except:

(I) observation wells or monitoring wells (excluding equipment and devices therein) constructed by a well driller who possesses the appropriate license required by the Texas Water Well Drillers Board pursuant to the Water Well Drillers Act (Texas Civil Statutes, Article 7621e, Water Auxiliary Laws); or

(II) any equipment temporarily installed solely for the purpose of conducting a tank or piping tightness test, as defined in §334.2 of this title (relating to Definitions), except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal. Temporarily in this context means the reasonable amount of time required to attach the equipment, make the tests, and remove the equipment, under the given conditions at the site;

(E) installation or replacement of anchoring systems designed to prevent tank flotation;

(F) installation or replacement of vent lines at new or existing UST facilities;

(G) installation or replacement of submersible pumping systems at new or existing UST facilities; and

(H) installation or replacement of any underground Stage I or Stage II vapor recovery systems.

Removal—The process of removing and disposing of an underground storage tank that is no longer in service, or the process of abandoning an underground storage tank in place after purging the tank of vapors and filling the vessel of the tank with a solid inert material, or the change-in-service of an UST, as defined in §334.2 of this title (relating to Definitions).

§334.414. License for Installers and On-Site Supervisors.

(a) Any installer or on-site supervisor as defined in §334.412 of this title (relating to Definitions) shall hold a valid License A, License B, or both, pursuant to this subchapter.

(b) After December 1, 1990, no person shall participate in or supervise the

installation, removal, or repair of an underground storage tank system unless that person holds a valid license issued by the commission pursuant to this subchapter, enabling that person to participate in, or supervise the installation, repair, or removal of an underground storage tank as an installer.

(c) Notwithstanding the possession of an installer or on-site supervisor license issued pursuant to this subchapter, after December 1, 1990, no person shall offer to undertake, represent himself or herself as being able to undertake, or undertake to install, repair, or remove an underground storage tank system unless that person also:

(1) is registered as an underground storage tank contractor pursuant to this subchapter; or

(2) is offering to work for an underground storage tank (UST) contractor who is registered with the commission as a contractor pursuant to this subchapter.

(d) An underground storage tank system may not be installed, repaired, or removed except by a duly registered underground storage tank contractor who has an installer or an on-site supervisor who is licensed by the commission pursuant to this chapter at all times during the critical junctures of the installation, repair, or removal.

(e) This section does not apply to situations where no license is required pursuant to §334.425 of this title (relating to Exceptions to License A and License B Requirements).

§334.415. License A and License B.

(a) An applicant who intends to participate in or supervise the installation or repair of underground storage tank (UST) systems shall apply for a License A.

(b) An applicant who intends to participate in or supervise the removal of UST systems shall apply for a License B.

(c) This subsection shall not prevent the applicant from obtaining both a License A and License B.

§334.416. Requirements for Issuance of License A and License B.

(a) Each installer or on-site supervisor desiring to obtain a License A or License B shall submit a completed application to the commission pursuant to §334.417 of this title (relating to Application for License A and License B).

(b) Each applicant shall pay the initial license application fee as required by §334.423 of this title (relating to Fee Assessments for License A and License B) upon submission of the application. An application submitted without the required application fee shall not be accepted.

(c) Each applicant shall be at least 18 years of age.

(d) Each applicant shall have at least two years of active experience in installation, removal, or repair, of underground storage tanks, underground utilities, or other engineering construction.

(e) Each applicant's qualifications shall meet the minimum requirements of this section, and shall be approved by the executive director before the applicant can take the examination required under §334.419 of this title (relating to License A and License B Examination).

(f) Subsequent to the executive director's approval of an applicant's qualifications, an applicant shall successfully complete the appropriate licensing examination.

(g) After December 1, 1991, each applicant for License A shall have completed 28 hours of training and education courses in the installation and repair of underground storage tanks (UST).

(h) After December 1, 1991, each applicant for License B shall have completed 12 hours of training and education courses in the removal of USTs.

(i) The training and education courses prescribed in §334.415(g) and (h) of this title (relating to License A and License B) shall be approved by the executive director and sponsored by educational or governmental institutions, or recognized organizations including, but not limited to:

- (1) Petroleum Equipment Institute;
- (2) American Petroleum Institute;
- (3) Steel Tank Institute;
- (4) National Association of Corrosion Engineers;
- (5) Fiberglass Petroleum Tank and Pipe Institute;
- (6) National Fire Protection Association; or
- (7) other nationally recognized associations organizations approved by the executive director.

(j) The training and education courses may include instructional courses, seminars, workshops, and conferences.

(k) The applicant shall submit a certificate of completion for the appropriate training and education courses required in §334.415(g) and (h) of this title (relating to License A and License B). The certificate shall be dated and signed by the designated sponsor.

§334.417. Application for License A and License B.

(a) An applicant for Licenses A and B shall provide the following information:

(1) the applicant's name, business address and telephone number, and permanent mailing address and telephone number;

(2) the applicant's birth date, and social security number;

(3) a list of other professional registrations and licenses that the applicant holds from a governmental body within or outside of the State of Texas;

(4) a statement of circumstances in which a license or registration has been previously suspended, revoked, or any disciplinary action resulting from other underground storage tank (UST) related activities within or outside of the State of Texas;

(5) after December 1, 1991, a list and description of the training and education courses on USTs that the applicant has completed;

(6) sworn statements, on forms approved by the executive director, from at least four persons (three from clients not related by blood or marriage and one from a current or previous employer, or employer's representative), that have engaged the applicant or the applicant's employer within the previous 12-months to perform: UST installations, repairs, or removals; underground utilities or other engineering construction. These statements shall attest to the applicant's character, knowledge of construction, and ability to supervise the construction activity. Such statements shall also include a description of the type of construction performed by the applicant; and

(7) a sworn statement by the applicant as to the authenticity of the information provided on the application.

(b) The application must be received by the executive director at least 60 working days prior to the scheduled examination date.

(c) All applications for licensing shall be submitted on forms provided by the executive director.

(d) An application shall be denied without prejudice and the examination fee shall be forfeited, if the applicant fails to take the licensing examination within 120 days after the executive director approves the application. An applicant who has received a denial without prejudice may re-apply for a license. The executive director may extend the 120-day examination period upon written request by the applicant and for good cause.

§334.418. Notification of Examination. Upon receipt of a properly completed application as required by §334.417 of this title (relating to Application for License A or License B) and the examination fee required by §334.423 of this title (relating to Fee Assessments for License A

and License B), the executive director shall inform the applicant within 30 days of receipt of the application as to whether the application has been approved. The executive director shall notify each applicant of the designated dates, times, and places of the examinations as required by §334.419 of this title (relating to License A and License B Examination).

§334.419. License A and License B Examination.

(a) The License A and License B examinations shall each be divided into categories comprising specific underground storage tank (UST) subjects. The number of categories in the License A and License B examinations shall be determined by the executive director.

(b) Questions used in License A and License B examinations shall be derived from the applicable rules of this chapter and standards, instructions, and recommended practices published by organizations with expertise in various aspects of the installation, repair, or removal of underground storage tanks including, but not limited to:

- (1) Petroleum Equipment Institute;
- (2) American Petroleum Institute;
- (3) Steel Tank Institute;
- (4) National Association of Corrosion Engineers;
- (5) Fiberglass Petroleum Tank and Pipe Institute; and
- (6) National Fire Association.

(c) The rules contained in this chapter shall prevail as the definitive examination answer should a conflict arise between the rules of this chapter and the standards, instructions, and recommended practices of the organizations listed in subsection (b) of this section.

(d) The executive director shall offer and proctor the appropriate examination at a designated time and place. The examination shall be offered with increased frequency whenever more than 10 persons petition the executive director in writing.

(e) Within 30 days prior to a scheduled examination, an applicant may petition the executive director in writing requesting that an oral examination be administered. The executive director may consider substituting an oral examination for a written examination. An applicant petitioning for such examination must demonstrate to the executive director that the written examination would not provide a fair and equal test of the applicant's knowledge of underground storage tank installation, repair, and removal.

(f) The executive director shall notify an applicant of the results of the examination within 30 days of the administration of the examination.

(g) At any time within six months of the date the applicant is notified of the results of the examination, an applicant may personally inspect the examination in the commission's office during normal business hours for the purpose of assessing the accuracy of the grading.

(h) At any time within six months of the applicant's examination results, an applicant who does not successfully complete the examination may request in writing that the executive director furnish the applicant with an analysis of the applicant's performance.

(i) An examination shall be considered successfully completed when an applicant correctly answers 70% of the questions on each specific UST category of the examination as described in subsection (a) of this section.

§334.420. Issuance of License A or License B.

(a) After an applicant meets the requirements of §334.416 of this title (relating to Requirements for Issuance of License A or License B), the executive director shall issue the appropriate license to the applicant.

(b) The license shall not be transferable or assignable and shall be issued one time only.

(c) The executive director shall issue a wallet size card indicating the expiration date of the license.

(d) A duplicate license to replace a lost or destroyed license shall be issued by the executive director upon payment of the fee required by §334.423 of this title (relating to Fee Assessments for License A and License B).

§334.421. Renewal of License.

(a) All licenses will expire one year following issuance or renewal of the license.

(b) The executive director shall notify each licensee in writing of the impending license expiration at least 60 days before the expiration. The executive director shall furnish application forms for license renewal.

(c) A properly completed application for renewal shall be submitted to the executive director 30 days prior to expiration. The application must be accompanied by the following:

(1) evidence satisfactory to demonstrate compliance with the continuing education requirements of this section; and

(2) the renewal fee prescribed by §334.423 of this title (relating to Fee Assessments for License A and License B).

(d) The current license shall be valid until the executive director notifies the applicant of renewal or denial of the submitted renewal application provided a properly completed application for renewal was submitted at least 30 days prior to the expiration date of the license.

(e) If the license is not renewed within one year after the expiration date of the license, a new license shall not be issued until the person meets the requirements of §334.416 of this title (relating to Requirements for Issuance of License A and License B) and successfully completes a subsequent examination pursuant to §334.419 of this title (relating to License A and License B Examination).

(f) Upon proper completion of the license renewal process, the executive director shall issue a wallet size card indicating the expiration date of the license.

(g) The renewal applicant for License A shall complete at least eight hours of continuing training and education courses prior to renewal of the license.

(h) The renewal applicant for License B shall complete at least eight hours of continuing training and education courses prior to the renewal of the license.

(i) The training and educational courses required in subsections (g) and (h) of this section shall be approved by the executive director and sponsored by educational or governmental institutions or recognized associations including, but not limited to, the following:

- (1) Petroleum Equipment Institute,
- (2) American Petroleum Institute;
- (3) Steel Tank Institute;
- (4) National Association of Corrosion Engineers;
- (5) Fiberglass Petroleum Tank and Pipe Institute;
- (6) National Fire Protection Association; or
- (7) other recognized organizations.

(j) The renewal application shall submit a certificate of completion for the appropriate training and education courses required in subsections (g) and (h) of this section. The certificate shall be dated and signed by the designated sponsor's representative.

§334.422. Denial of License A or License B. The executive director shall deny the issuance of a license or request for renewal based on the following factors, including, but not limited to:

(1) when an applicant fails to achieve a passing grade on an examination as required in §334.419 of this title (relating to License A and License B Examination);

(2) when an applicant is found to have provided fraudulent or deceptive information;

(3) when an applicant fails to submit the required documentation as required by §334.417 of this title (relating to Application for License A and License B);

(4) when an applicant fails to pay the appropriate fee pursuant to §334.423 of this title (relating to Fee Assessments for License A and License B); or

(5) for other cause(s) which in the opinion of the executive director constitutes adequate ground(s) for denial.

§334.423. Fee Assessments for License A and License B.

(a) The following fee schedule for a License A and License B shall apply to installers and on-site supervisors:

- (1) examination fee—\$50;
- (2) initial license application fee—\$200;
- (3) annual license renewal fee—\$175;
- (4) late renewal fee—\$25;
- (5) duplicate license fee—\$10.

(b) The license applicant shall not pay more than \$200 for the initial license application fee and the examination fee.

(c) An applicant taking both the License A and License B examinations on the same day will be assessed a \$50 fee.

(d) A license renewal application shall be considered late when received by the executive director after the expiration date of the license and shall be subject to the \$25 late renewal fee.

§334.424. Other Requirements for a License A and License B.

(a) All License A and License B installers and on-site supervisors shall notify the executive director in writing within 30 days of any change to the application including, but not limited to:

- (1) change of employer;
- (2) change of employer's mailing and physical address, or telephone number; and
- (3) change of personal mailing and physical address or telephone number.

(b) A licensed installer or on-site supervisor subject to the provisions of this subchapter that is engaged in the installa-

tion, repair, or removal of underground storage tanks (USTs) shall be required to comply with applicable technical standards of Subchapter C of this chapter (relating to Technical Standards) and Chapter 313 of this title (relating to Edwards Aquifer).

(c) Compliance with the provisions of this subchapter by a licensed installer or on-site supervisor shall not relieve such licensee from the responsibility of compliance with all applicable regulations legally promulgated by the United States Environmental Protection Agency, United States Occupational Safety and Health Administration, United States Department of Transportation, Texas Air Control Board, Texas Department of Health, State Board of Insurance (including state fire marshal), Railroad Commission of Texas, Texas Department of Agriculture, State Comptroller, Texas Department of Public Safety, Texas Water Commission, and other federal, state, and local governmental agencies or entities having appropriate jurisdiction.

(d) A licensed installer or on-site supervisor who offers to undertake, represents to undertake, or does undertake the installation, repair, or removal of an underground storage tank shall either be registered as a UST contractor pursuant to this subchapter, or be employed by a registered UST contractor.

§334.425. Exceptions to License A and License B Requirements. A License A and License B shall not be required for an installer or on-site supervisor who conduct installations, removals, or repairs of UST systems when such systems are completely exempt from regulation under §334.3(a) of this title (relating to Statutory Exemptions), or completely excluded from regulation under §334.4(a) of this title (relating to Commission Exclusions). Installers or on-site supervisors who conduct installations, removals, or repairs of underground storage tank systems regulated under Chapter 313 of this title (relating to Edwards Aquifer) are not exempt from the licensing requirements of this subchapter.

§334.426. Revocation, Suspension, or Reinstatement of a License A and License B.

(a) If the executive director determines good cause exists to suspend or revoke the license of an installer or on-site supervisor the executive director shall request that the commission shall schedule a hearing before the hearing examiner or the commission. Such hearing shall be held only after proper notice has been provided to the license holder. Factors upon which a license may be suspended or revoked include, but are not limited to:

(1) failure by the holder of the license to follow the technical standards required for the installation, repair, or removal of tanks under this chapter;

(2) violations by the holder of the license of the provisions of this chapter;

(3) falsification of information or documents submitted to the executive director;

(4) disposal of contaminated soils or water in a manner which violates state or federal law; or

(5) for other good cause as determined by the executive director.

(b) A license may be suspended for a period of up to one year, depending upon the seriousness of the offense(s). A license is revoked automatically upon a second suspension. At the request of the license holder, or for other good cause shown, the license may be suspended indefinitely by the commission.

(c) A license shall be revoked for a period of one year, after which the holder of the revoked license may reapply for reinstatement pursuant to the requirements of §334.416 of this title (relating to Requirements for Issuance of License A and License B). The holder of license which has been revoked for a period of one year shall not have to meet the application requirements of §334.417(6) of this title (relating to Application for License A and License B) when applying for reinstatement. If a license is revoked a second time, the revocation shall be permanent.

§334.427. Notice of Hearings.

(a) Notice for any hearing required by §334.426 of this title (relating to Revocation, Suspension, or Reinstatement of a License A and License B) shall be issued not less than 20 days prior to the hearing.

(b) Transmittal of the notice shall be by certified mail, return receipt requested.

(c) Persons to be notified include, but are not limited to, the following:

(1) the applicant, or certificate holder;

(2) the complainant (if any); and

(3) any other person who may be affected by the outcome of the hearing, as determined by the executive director.

§334.428. Type of Hearing. Any hearing related to the suspension or revocation of a License A and License B is subject to the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

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 August 8, 1990.

TRD-9007929

Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: September 14, 1990

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

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 19. Breath Alcohol Testing Regulations

Breath Alcohol Testing Regulations

• 37 TAC §§19.1-19.7

The Texas Department of Public Safety proposes amendments to §§19.1-19.7, concerning breath alcohol testing regulations. Major amendments to these sections include deleting and adding language due to changes in instrumentation and statutory changes. Certified breath test instruments provide digital and hard copy results of an analysis to three decimal places in lieu of two decimal places. Certification of breath alcohol testing programs is based on testing for evidential purposes in driving while intoxicated cases and all statutorily related cases such as boating while intoxicated. The technical supervisor shall testify to all technical, administrative, and regulatory aspects of breath alcohol testing within a designated area and shall provide expert testimony by written affidavit or direct testimony in accordance with Texas Civil Statutes, Article 6687b-2, §27. Minor amendments include language clarification, additions, and deletions to avoid duplicity in the test of these regulations.

Melvin C. Peeples, assistant chief of fiscal affairs, 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.

George E. Browne, scientific director, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification in the state courts as to the interpretation of these regulations concerning contested cases of driving while intoxicated, other statutorily related cases, and compliance with legislative changes. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000. The amendments are proposed under Texas Civil Statutes, Article 67011-5, which provide the Texas Department of Public Safety with the authority to establish rules approving satisfactory techniques or methods to ascertain the qualifications and competence of individuals to conduct such analyses, and to

issue certificates certifying such fact. Breath specimens taken at the request of a peace officer must be taken and analysis made under such conditions as may be prescribed by the Texas Department of Public Safety and by such persons as the Texas Department of Public Safety has certified to be qualified.

§19.1. Instrument Certification.

(a) All breath testing instruments to be used for **evidential** [evidentiary] purposes must have the approval of and/or be certified by brand and/or model by the Office of the Scientific Director, Alcohol Testing Program, Texas Department of Public Safety (hereinafter referred to as the scientific director).

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

(b) In order to be certified each brand and/or model of breath testing instrument must meet the following criteria.

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

(3) The instrument shall analyze a reference sample, such as headspace gas from a mixture of water and a known weight of alcohol held at a constant temperature, the result of which must agree with the reference sample predicted value within + 0.01g/210L or such limits as set by the scientific director.

(4) The specificity of the procedure shall be adequate and appropriate for the analyses of breath specimens for the determination of alcohol concentration for [in traffic] law enforcement.

(5) (No change.)

(c) (No change.)

(d) The technical supervisor, as the field agent of the scientific director, shall determine if the individual instrument by serial number is the same brand and/or model that is shown on the scientific director's approved list and meets the criteria for certification as stated in subsection (b)(3) of this section and when required, shall provide direct testimony or written affidavit of this information in accordance with §19.7(x)(7) of this title (relating to Explanation of Terms and Actions).

(e) (No change.)

[(f) It is the intent of these regulations that the technical supervisor, when required, shall provide expert testimony concerning the certification and all other aspects of the breath testing instruments under his/her supervision.]

§19.2. Approval of Reference Sample Devices [Allied Equipment].

(a) All reference sample devices [allied equipment] as defined in §19.7(r)(b) of this title (relating to Explanation of Terms and Actions) used in con-

junction with **evidential** [evidentiary] breath alcohol testing must be approved by the scientific director.

(1) The scientific director will establish and maintain a list of approved **reference sample devices** [allied equipment] by type, brand, and/or model for use in the state.

(2) If application is made for approval of a **reference sample device** [allied equipment] by type, brand, and/or model not on the approved list, the scientific director shall examine the **reference sample device** [allied equipment] to determine if it meets the criteria for approval.

(b) In order to be approved, a **reference sample device** [allied equipment] must function properly for the purpose for which it was designed and be compatible with the certified instrumentation.

(c) Upon proof of compliance with subsection (b) of this section the **reference sample device** [allied equipment] by type, brand, and/or model will be approved and placed on the scientific director's approved list.

(1) Inclusion on the scientific director's list of approved **reference sample devices** [allied equipment] will verify that the equipment by type, brand, and/or model meets subsection (b) of this section.

(2) The scientific director may suspend or revoke the approval of a type, brand, and/or model of **reference sample device** [allied equipment] for cause.

(d) The technical supervisor, as the field agent of the scientific director, shall determine if the individual **reference sample device** [allied equipment] meets the requirements of subsection (b) of this section and when required, shall provide direct testimony or written affidavit in accordance with §19.7(x)(7) of this title (relating to Explanation of Terms and Actions).

(e) After approval if it is determined by the scientific director, or designated representative or technical supervisor, that a specific **reference sample device** [piece of allied equipment] is no longer compatible with existing instrumentation or does not perform the purpose and function intended, the specific **reference sample device** [piece of allied equipment] will be removed from service and approval may be withdrawn.

[(f) It is the intent of these regulations that, when required, the technical supervisors will provide expert testimony concerning the approval and all other aspects of the allied equipment under their supervision.]

§19.3. Certification of Techniques, Methods, and Programs.

(a) All breath alcohol testing techniques, methods, and programs to be used for **evidential** [evidentiary] purposes must have the approval of and be certified by the scientific director.

(b) Prior to initiating a breath alcohol testing program, an agency or laboratory shall submit an application to the scientific director for approval. The application shall show the brand and/or model of the instrument and **reference sample device** [allied equipment] to be used and contain a resume of the technique to be followed. An on-site inspection shall be made by the scientific director or a designated representative to assure compliance with the provisions of the application. An agency applying for certification of a breath alcohol testing program must agree to:

(1) conduct such analyses only for the purposes stated in subsection (c)(8) of this section;

(2) allow access for inspection under subsection (d) of this section; and

(3) comply with subsection (f) of this section.

(c) All breath alcohol testing techniques, in order to be approved, shall meet, but not be limited to, the following:

(1) a period of [continuous] observation of the subject as required by subsection (l) of this section [for a minimum period of time as set by the scientific director prior to collection of the breath specimen, during which time the subject must not have ingested alcoholic beverages or other fluids, regurgitated, vomited, eaten, smoked, or introduced any substances into the mouth];

(2) the breath alcohol testing instrument and **reference sample device** [allied equipment] must be operated by either a certified operator or technical supervisor and only certified personnel will have access to the instrument. [This provision will not apply to operators inactivated in accordance with §19.4(c)(2) of this title (relating to Operator Certification)];

(3) (No change.)

(4) the analysis of a reference sample, prepared by the technical supervisor or a designee of the scientific director, such as headspace gas from a mixture of water and a known weight of alcohol at a constant temperature, the results of which must agree with the reference sample predicted value within + 0.01g/210L, or such limits as set by the scientific director. This reference analysis shall be performed in conjunction with subject analyses [immediately precede or immediately follow the analysis of the breath of the subject as determined by the scientific director].

(5) all analytical results shall be expressed in grams of alcohol per 210

liters of breath (gms/210L) [terminology established by state statute and reported to two decimal places without rounding off]. [(For example, a result of 0.237g/210L shall be reported as "0.23," or as stated by the scientific director.)]

(6) -(7) (No change.)

(8) designation that the instrumentation will be used only:

(A) for testing subjects that are suspected of:

(i) driving while intoxicated;

(ii) involuntary manslaughter;

(iii) boating while intoxicated;

(iv) a violation of Texas Civil Statutes, Article 6687b-2 (Texas Commercial Driver's License Act);

(v) a violation of a rule or regulation adopted under the authority of Texas Civil Statutes, Article 6701d, §139; or

(vi) any other statute or rule that defines intoxication in terms of alcohol concentration; and

(B) In compliance with §19.4(b), (c), and (e) of this title (relating to Operator Certification).

[(8) designation that the instrumentation will be used only for testing subjects that are suspected of driving while intoxicated or in compliance with §19.4(b), (c), and (e) of this title (relating to Operator Certification).]

(d) (No change.)

(e) Upon proof of compliance with subsections (a)-(c) of this section, certification will be issued by the scientific director. Issuance of a certificate to the certified program shall be evidence that the program possesses certified instruments and approved reference sample devices [allied equipment] as stated in §19.7(d)[(e)] of this title (relating to Explanation of Terms and Actions).

(f) Certification of any breath alcohol testing program is contingent upon the applying agency's [agencies] agreement to conform and abide by any directives, orders, or policies issued or to be issued by the scientific director regarding any aspect of the breath alcohol testing program; this shall include, but not be limited to, the following:

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

(6) methods of operations and testing techniques;[.]

(7) instruments and reference sample devices;

(8) purposes for which testing is conducted;

(9) operators and technical supervision of operators.

(g) (No change.)

[(h) Certification of a breath alcohol testing program under provisions of Texas Civil Statutes, Article 67011-5, is based on breath alcohol testing for evidentiary purposes in driving while intoxicated or related cases. Therefore, any agency or laboratory applying for certification of a breath alcohol testing program must show that such analyses will be conducted only for the purposes stated in subsection (c)(8) of this section.]

(h)[(i)] Technical [It is the intent of these regulations that the technical] supervisors, when required, shall provide expert testimony verifying [concerning] the certification of [the] techniques, methods, and programs under their supervision in accordance with §19.7(x)(7) of this title (relating to Explanation of Terms and Actions).

(i) Subsection (c)(1) of this section requires an observation period as part of any approved technique. This observation period is no longer necessary to ensure the validity or accuracy of the test result. Its sole purpose is to protect the test instrument from damage, abuse, or misuse. The observation period should include at least 15 minutes before the test, during which the operator should remain in the presence of the subject and should exercise reasonable care to ensure that the subject does not place any substance in the mouth.

§19.4. Operator Certification.

(a) Initial certification.

(1) In order to apply for certification as an operator of a breath alcohol testing instrument, an applicant must successfully complete a course of instruction approved by the scientific director which must include as a minimum the following:

(A) three hours of instruction on the effects of alcohol on the human body;[.]

(B)-(G) (No change.)

(2) Prior to initial certification as an operator of a breath alcohol testing instrument, an applicant must satisfactorily complete examinations, to be prepared and given by the scientific director or a designated representative, which shall include the following:

(A) (No change.)

(B) a practical examination that shall encompass actual operation of the instrument and reference sample device [allied equipment] on which the operator is to be certified. The examination will consist of analyzing unknown reference samples and obtaining results on all samples within limits as set by the scientific director, plus proper completion of all required records and/or reports. If the correct value is not obtained within the prescribed limits on all of the samples and/or there is an error on any of the required records and/or reports, then the operator will be given a second set of test samples. If the correct value is not obtained on all of the second test samples within the prescribed limits and/or there is an error on any of the required records or reports the applicant has failed the examination;

(C) failure of the initial written and/or practical examination will cause the applicant to be ineligible for re-examination for a period of 30 [90] days. A subsequent failure will require that the candidate attend and satisfactorily complete the basic course of instruction for certification of a breath testing operator. [Subsequent failures will require a waiting period of six months between reexaminations.]

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

(b) Renewal of current certification. The operator is required to renew certification prior to its expiration date. The minimum requirement for renewal of operator certification will be:

(1) a demonstration by the operator of competence to perform satisfactory reference analyses as stated in §19.3(c) (4) of this title (relating to Certification of Techniques, Methods, and Programs). The practical examination as stated in subsection (a)(2)(B) of this section will be conducted under the [direct] supervision of a technical supervisor. The operator will be evaluated on the basis of ability to:

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

(C) follow established procedures including, but not limited to, the operation of the instrument and reference sample device [allied equipment] and the proper reporting procedures for analysis results.

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

(4) An operator who fails renewal will be given the reason for failure and is not eligible to be reexamined for a period of 30 [90] days. A subsequent failure will require that the candidate attend and satisfactorily complete the basic course of instruction for certification of a breath testing operator. [Subsequent failures will require six months to lapse between reexaminations;]

(5) (No change.)

(c) Proficiency requirements.

(1) The scientific director or a designated representative or the operator's technical supervisor[,] may at any time require an operator to demonstrate proficiency and ability to properly operate the breath alcohol testing instrument and reference sample device [allied equipment].

(2) (No change.)

(3) Failure to pass a proficiency test as defined in §19.7(m) [(n)] of this title (relating to Explanation of Terms and Actions) will result in the operator's certification being suspended for 30 [90] days.

(d) Certification Inactivation, suspension, and revocation [Inactivation, Suspension, and Revocation].

(1) Inactivation of certification will be utilized in conjunction with administrative program control pursuant to §19.7(h) [(i)] of this title (relating to Explanation of Terms and Actions).

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

(e) Recertification.

(1) Certification that has been inactivated, suspended, or revoked must be regained before evidential [evidentiary] analyses can be administered. It will be the responsibility of the inactivated, suspended, or revoked operator to notify the scientific director in writing of such intent. This notification shall be submitted in close proximity to the completion of any mandatory waiting period imposed under certification cancellation. Recertification shall take place pursuant to the following.

(A) Recertification after voluntary inactivation or for nonproficiency (and the period of inactivation is less than six months) will be pursuant to subsection (a)(2)(B) of this section or §19.7(m) [(n)] of this title (relating to Explanation of Terms and Actions).

(B)-(D) (No change.)

(2) (No change.)

(f) Certificate. [Intent.] The [It is the intent of these regulations that the] issuance of a certificate to the breath test operator shall be evidence that the operator has met the requirements for initial certification and/or renewal of certification. [It is further the intent of these regulations that the technical supervisors, when required, shall provide expert testimony concerning the current status of the breath test operators under their supervision.]

(g) Verification. The technical supervisor, when required, shall provide testimony in accordance with §19.7(x) (7)

of this title (relating to Explanation of Terms and Actions) verifying all aspects of certification of operators within an assigned area.

§19.5. Technical Supervisor Certification.

(a) The minimum qualifications for certification as a technical supervisor are:

(1) a baccalaureate degree from an accredited college or university with a major in chemistry, or as an alternative, a major in another scientific field with sufficient semester hours in chemistry or other qualifications as determined by the scientific director. (For the purposes of these regulations, sufficient hours in chemistry shall be defined as successful completion of the equivalent of a minimum of 18 semester hours of chemistry.);

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

(4) knowledge and understanding of the scientific theory and principles as to the operation of the instrument and reference sample device [allied equipment];

(5) (No change.)

(b) Certification.

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

(3) Technical supervisor certification may be suspended or revoked only by the scientific director for malfeasance, falsely or deceitfully obtaining certification, or failure to carry out the responsibilities set forth in these regulations [subsection (c) of this section].

(4) (No change.)

[(c) Responsibilities. Responsibilities of the technical supervisor shall be:

[(1) supervision of operators of breath alcohol testing instruments and allied equipment;

[(2) field inspection and supervision of the total breath alcohol testing program in assigned area including, but not limited to, operators, records, operations, and analyses;

[(3) maintenance and repair (when necessary) of breath alcohol testing instruments and approved allied equipment supervised by the technical supervisor;

[(4) training and periodic re-examination of operators;

[(5) preparation of chemicals, when necessary, such as the preparation of the reference sample solutions;

[(6) provide expert testimony concerning the calibration, certification, and maintenance of certified breath testing instruments, approved allied equipment, and analytical technique within assigned areas of responsibility as stated in §19.7(x)(1)-(6) of this title (relating to Explanation of Terms and Actions);

[(7) direct notification to the scientific director of any malfeasance, noncompliance with any provisions of these regulations, or unreliable actions by any certified operator, agency, or laboratory;

[(8) maintain and submit records and reports as stated by the scientific director;

[(9) inspect and investigate matters pertaining to the breath alcohol testing program or operators as directed by the scientific director.

[(10) comply with all directives concerning the breath alcohol testing program issued by the scientific director.]

(c) [(d)] Certificate. [Intent.] The [It is the intent of these regulations that the] issuance of a certificate to the technical supervisor shall be evidence that the technical supervisor has met the requirements for certification.

§19.6. Certification of Courses of Instruction.

(a) Prior to any agency, laboratory, institution, school, or college conducting a course of instruction for operators of breath alcohol testing instruments and reference sample devices [allied equipment] it shall submit a course resume and list of instructors to the scientific director for approval. The course of instruction must be approved by the scientific director if participants are to be eligible to apply for operator [operator's initial] certification.

(b)-(g) (No change.)

§19.7. Explanation of Terms and Actions.

(a) (No change.)

[(b) Approved allied equipment. All items, excluding expendable supplies as defined in subsection (h) of this section, and excluding reference sample solutions, needed for the performance of evidentiary breath alcohol determinations using certified instrumentation shall be considered as allied equipment. Approved allied equipment shall include, but not be limited to, such items that are necessary for the proper administration of a breath alcohol analysis as defined by the scientific director. In order to be approved the allied equipment need only to be functional and compatible with the instrumentation with which it is to be used. If the allied equipment is deemed functional and compatible with existing certified instrumentation, it will be included on the scientific director's list of approved allied equipment by type, brand, and/or model. The technical supervisor will be the scientific director's designated field agent to determine if allied equipment is in fact functional and compatible with the certified instrumentation under their direct technical supervision. If, in the course of routine supervision, the technical supervisor discovers that a piece of

approved allied equipment cannot be made functional for the purposes intended, notification will be made to the scientific director and the equipment will be taken out of service.]

(b)[(c)] **Breath alcohol test (breath alcohol analysis)** [(Breath Alcohol Analysis)]. Refers to the actual analysis of a specimen of the subject's breath to determine the alcohol concentrations thereof. **Analyses** [In order to be valid for evidential purposes, analyses] must be performed by certified individuals on certified instruments which are supervised by a certified technical supervisor in accordance with provisions stated in these regulations.

(c)[(d)] **Certification.**

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

(3) Certificates are issued to operators, technical supervisors, and breath alcohol test programs. Certificates are not issued for breath alcohol test instruments, reference sample devices [allied equipment], or courses of instruction.

(d)[(e)] **Certified breath alcohol testing program (techniques and methods).** Refers to any breath alcohol testing program meeting and maintaining the provisions stated in §19.3 of this title (relating to Certification of Techniques, Methods, and Programs). This certification is referred to as a total breath alcohol testing program, or total local program. Usually a total testing program refers to an agency or laboratory which meets the minimum requirements of having a certified breath alcohol testing instrument, approved reference sample device [allied equipment], certified technical supervisor, [and] certified operators, and techniques, methods, and programs which have been inspected and certified by the scientific director. In order to obtain certification as a total program, the applying agency or laboratory should first contact the office of the scientific director to determine the criteria and regulations regarding certification. After original contact, the applying agency, laboratory, or school will be given an application with instructions setting forth [which will be a guide to the acquisition of equipment and materials] the necessary requirements for certification. When all requirements for certification are met, including the acquisition of certified personnel, the scientific director will make an on-site inspection prior to the issuance of certification. Issuance of a certificate shall be evidence that the agency, laboratory, or school possesses certified instruments and approved reference sample devices [allied equipment].

(e)[(f)] **Certified operator.** Certified operator refers to an individual who has successfully completed the requirements stated in these regulations and has received certification from the scientific director to operate a specific instrument(s).

Operator certification is contingent upon compliance with all provisions stated in §19.4 of this title (relating to Operator Certification).

(f)[(g)] **Certified course of instruction.** Refers to any school, college, agency, institution, or laboratory which meets the requirements stated in §19.6 of this title (relating to Certification of Courses of Instructions) for certification of courses of training. Operator schools will be certified for instruction on specific instrument(s). Applications for school certification must be approved by the scientific director prior to the school's commencement. Certification of operators successfully completing a certified school can only be made by the office of the scientific director through the administration of appropriate examinations. The scientific director has the authority to limit enrollment of any school or deny individual enrollment if, in the opinion of the scientific director, such enrollment would not be in the best interest of the scientific integrity of the breath alcohol test program; for example, if enrollment in a certified operator school would produce more operators than could be supervised by the number of available technical supervisors.

(g)[(h)] **Expendable supplies.** Expendable supplies are those items that are used or consumed in the process of performing an analysis on the instrumentation and cannot be used again. Expendable supplies are supplies such as mouthpieces, test records, etc., that are used one time only in performing breath alcohol analyses.

(h)[(i)] **Inactivation.**

(1) Inactivation refers to the voluntary or temporary discontinuance of certification. Unless specifically stated otherwise, this loss of certification will be an administrative program control as opposed to suspension or revocation for violation of these regulations or for unreliability or incompetency. Inactivation may be initiated by anyone having authority to suspend or revoke, by the certified operator in case of voluntary surrender of certification, or by the technical supervisor in case of voluntary surrender of technical supervisor certification. In questionable cases, the decision to accept inactivation or invoke suspension or revocation will be determined by the scientific director. Recertification of an inactivated certificate will require a written request from the applicant to the scientific director and successful completion of the requirements outlined in §19.4(e) of this title (relating to Operator Certification) for recertification and/or other requirements determined by the scientific director. Inactivation will be used in, but not limited to, the following situations:

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

(D) an operator terminates employment under which certification was acquired and new employment does not require certification as an operator, or the new location of the operator cannot be ascertained; or

(E) (No change.)

(2) (No change.)

(i)[(j)] **Instruments.** Instruments are defined as the device(s) which measure or quantitate the breath alcohol concentration pursuant to §19.1 of this title (relating to Instrument Certification). Certification of instruments is only in conjunction with breath alcohol analysis for evidential purposes as stated in Texas Civil Statutes, Article 67011-5. Approval of breath alcohol test instruments will be made by brand and/or model by the scientific director.

(j)[(k)] **Office of the scientific director.** Refers to the scientific director or his staff.

(k)[(l)] **Practice test.** Practice test refers to a properly conducted reference analysis by the operator on a certified breath alcohol test instrument using an approved reference sample device [equipment]. Analyses must be conducted in accordance with provisions stated in §19.3(c)(4) of this title (relating to Certification of Techniques, Methods, and Programs).

(l)[(m)] **Predicted value.** The predicted value refers to the known value of the reference sample. It is the result, within tolerance, which should be obtained in analyzing the reference sample.

(m)[(n)] **Proficiency test.** A test administered by, and in the presence of, a technical supervisor to establish and/or ascertain the competency of an operator to obtain valid results on breath testing instrumentation.

(n)[(o)] **Public information and demonstration.** Public information and demonstration refers to public demonstrations of certified evidential breath testing equipment. Certified evidential instruments should not be used for public information programs and/or demonstrations. To utilize the equipment in this manner could violate the scientific integrity and validity of the analytical result in evidential subject analyses. Public information programs and demonstrations of equipment should only be performed on noncertified, nonevidential equipment and then only under the supervision of a technically qualified and/or certified individual. [Public information and demonstration. Public information and demonstration refers to all demonstrations(s) of certified breath alcohol test instruments and certain public information programs involving certain technical and administrative aspects of breath alcohol testing. Instruments are

approved and certified for the purpose of breath alcohol analyses at certain approved locations and should not be used for demonstration purposes, including police schools not certified as a breath alcohol course of instruction as stated in §19.6 of this title (relating to Certification of Courses of Instruction). Use of certified instruments in such cases would deprive their use for the purpose for which they were certified and could cause technical problems which would not be in the best interest of the scientific integrity of the breath alcohol testing program. Use of instruments for purposes of maintaining program regulations, such as recertification or annual renewal, or use in certified courses of instruction, or any other function approved by the scientific director will not be considered as a demonstration and/or public information program. Public information programs involving the technical aspects of breath alcohol testing should be conducted only by technical supervisors in order to ensure that only factual technical data is disseminated while inaccurate or misinformation of a technical nature is eliminated. Public information dealing with administration, enforcement, and implementation of these regulations should be conducted only by certified technical supervisors. All regulations involving demonstrations and/or public information apply only to certified instruments, operators, technical supervisors, techniques, and courses of instruction. Regulations imposed on demonstrations and/or public information programs in regards to breath alcohol analyses should not be construed to imply restrictions regarding public information programs concerned with enforcement of DWI or DWI-related cases where mention of breath alcohol analysis as a tool of enforcement is concerned, provided that the public information in this regard is limited to the enforcement aspect and not the technical or administrative aspect of breath alcohol analyses. Regulations involving demonstrations and public information are concerned with the source of information dissemination and are for the purpose of safeguarding the scientific integrity of breath alcohol analyses and are not intended to deprive the public of the right to know, to cover up, or withhold any information.]

(o)(p)] **Renewal of current certification.** Renewal of current certification is referred to as certification renewal. Renewal of certification refers to the continuance of active certification by meeting the requirements stated in §19.4(b) of this title (relating to Operator Certification). Operator certificates have an expiration date and in order to be kept current require renewal. Failure or inability to renew current certification will result in inactivation or suspension. It is the responsibility of the certificate holder to renew certification. The scientific director, through the technical supervisor, will make

available opportunities for certification renewal on a mass basis but cannot accept responsibility for individual renewal.

(p)(q)] **Reports and records.** Reports and records refer to all documents and reports required in breath alcohol testing. The scientific director, through the technical supervisor, supervises all reports and records of analyses conducted and/or documents relating to instruments and reference sample devices [allied equipment]. Each specific brand and/or model of instrument requires specific records and forms which are explained in detail in the basic course of instruction for the specific instrument and which should be approved by the scientific director. Certification of a breath alcohol test program requires the completion and proper filing of certain documents relating to arrest. The scientific director, through the technical supervisor, is responsible to see that such documents are completed and filed but does not supervise these documents in regard to content. In addition to any forms, records, or documents required in the breath alcohol test program, the scientific director may require additional specific reports from the technical supervisors or other reports and records in regard to certifications and compliance with program regulations.

(q)(r)] **Recertification.** Recertification refers to the renewal of lost certification; for example, certification loss by inactivation, suspension, or revocation. Unless provided for by specific provision in these regulations, application for recertification requires a written request from the applicant to the scientific director. Upon receipt of the request, the applicant will be advised of the necessary procedure to regain certification. Recertification requires the successful completion of requirements stated in §19.4(e) of this title (relating to Operator Certification) and/or additional requirements as stated by the scientific director.

(r) **Reference sample device (simulator).** A device that contains and delivers a temperature controlled headspace alcohol/water gas sample to a breath testing instrument, a device that artificially simulates the alveolar breath of a human being.

(s) -(u) (No change.)

(v) **Site location.** Refers to the physical site where the breath alcohol testing instrument and reference sample device [allied equipment] is located, and where testing is conducted pursuant to §19.3(b) of this title (relating to Certification of Techniques, Methods, and Programs). Relocation of certified breath alcohol test equipment requires the approval of the technical supervisor(s) and documentation of this fact. The technical supervisor has the authority to approve the site with regards to technical acceptability

for breath alcohol testing and pursuant to subsection (u) of this section.

(w) **Suspension.** Suspension refers to the immediate cancellation of certification. A suspension can be initiated by the scientific director, technical supervisor, or designated representative of the scientific director. Prior to appeal to the director of the Texas Department of Public Safety, suspensions may be set aside or sustained only after investigation by the scientific director. The minimum period of suspension as determined by the scientific director will be for a period of time not less than 30 [90] days. The technical supervisor or a designated representative of the scientific director may recommend a specific period of suspension to the scientific director. Usually, suspensions will be immediate action taken by the suspending authority when there is reason to believe that unreliable or incompetent operations have occurred or there has been some violation of these regulations. Due to the immediate nature and the procedure for appeal, the individual initiating the suspension shall not be required to confer, consult, or obtain permission or approval from anyone prior to the initiation of the suspension. However, all suspensions must be consistent with procedures outlined in these regulations. A suspension invalidates any certification issued to the suspended entity for a period of suspension until recertification. To regain certification after the period of suspension requires a written request from the applicant to the scientific director. Upon receipt of the written request, the applicant will be advised of the necessary steps to be taken in order to regain certification. Suspension will not be considered by the scientific director as a disciplinary action but shall be for the purpose of maintaining the scientific integrity of the breath alcohol test program and upholding these regulations.

(x) **Technical supervisor and technical supervision.** This term refers to an individual meeting the minimum requirements set forth in §19.5 of this title (relating to Technical Supervisor Certification) and certified by the scientific director. Technical supervisor certification, like operator certification, is limited to specific instrumentation. Technical supervisors have the responsibility [responsibilities as listed in §19.5(c) of this title (relating to Technical Supervisor Certification)] and the authority to inactivate, suspend, or recommend revocation of any certification under their supervision. Inactivation, suspension, or recommended revocation by the technical supervisor will not be considered a disciplinary action, but a means to enforce these regulations and safeguard the scientific integrity of the breath alcohol testing program. Certification as a technical supervisor does not in itself imply disciplinary control or administrative inline supervision over certified operators.

However, technical supervisors must exercise complete **technical** supervisory authority over all operators in their assigned areas in all matters pertaining to breath alcohol testing and in enforcement of all provisions stated in these regulations. Certification [as a technical supervisor does not imply disciplinary administrative supervision of the technical supervisor by the scientific director. However, certification] of the technical supervisor and the program in which the technical supervisor operates is contingent upon the technical supervisor's ability to **communicate directly with the office of the scientific director** [function] in accordance with the provisions stated in these regulations and by directives issued by the scientific director. [The technical supervisor must have open and direct lines of communication with the scientific director in all matters pertaining to the breath alcohol testing program, especially in areas of a technical, administrative, or enforcement nature.] The primary function of the technical supervisor[, in conjunction with the responsibilities listed in these regulations,] is to provide the technical, administrative, and supervisory expertise in safeguarding the scientific integrity of the breath alcohol testing program and to assure the breath alcohol testing program's acceptability for evidential purposes. [Toward this end, the free and open communication between the technical supervisor and the scientific director must be void of any administrative pressures or delays due to communication policies, approvals, or recommendations from any interim source. Any aforementioned administrative interference, either by accident or by design, would eventually be related in testimony and could cause a serious loss of scientific credibility; thus necessitating the suspension of certification of the certified breath alcohol test program in which the technical supervisor operates.] The technical supervisor, in matters pertaining to breath alcohol testing, is the field agent of the scientific director. Supervision by the technical supervisor in accordance with the provisions stated in these regulations shall include, but not be limited to:

(1) supervision of certified operators in performance of breath alcohol test operations, including the proper completion of forms and records, and operator's compliance with the provisions stated in these regulations [and the authority to testify to such];

(2) supervision of data gathered for initial certification and/or approval of individual instruments and [approval of] **reference sample devices** [allied equipment] in an assigned area [and the authority to testify to such];

(3) supervision of techniques of testing, maintaining scientific integrity and

upholding these regulations as they apply to the certification of a total testing program[, and the authority to testify to such];

(4) selection and supervision of a testing location as it applies to security and technical suitability for testing[, and the authority to testify to such];

(5) supervision of compliance with the policy of public information and/or demonstrations of breath alcohol testing instruments and equipment[, and the authority to testify to such]; [and]

(6) all [phases of] technical, [and] administrative, and regulatory aspects of breath alcohol testing **within a designated area**; and [, and the authority and to testify to such aspects.]

(7) **expert testimony by direct testimony or by written affidavit concerning all aspects of breath alcohol testing within an assigned area.**

(y) (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 August 1, 1990.

TRD-9007861

Joe E. Milner
Director
Texas Department of
Public Safety

Earliest possible date of adoption: September 14, 1990

For further information, please call: (512) 465-2000

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part II. Texas Rehabilitation Commission

Chapter 115. Memoranda of Understanding with Other State Agencies

• 40 TAC §115.9

The Texas Rehabilitation Commission proposes new §115.9, concerning an agreement whereby the Texas Commission for the Blind (TCB) and the Texas Rehabilitation Commission (TRC) will facilitate the provision of services to persons with visual handicaps in the most beneficial and effective manner.

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.

John Fenoglio, deputy commissioner for programs, 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 permit TCB and TRC to deliver services to clients quicker; to render more appropriate services by sharing expertise; to minimize delays; to improve service delivery to clients; and to thereby operate in a more efficient and economical manner all to the benefit of clients in need of services. 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 John Fenoglio, Deputy Commissioner for Programs, 4900 North Lamar Boulevard, Suite 7131, Austin, Texas 78751-2316.

The new section is proposed under the Texas Human Resources Code, Title 7, which provides 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 rehabilitation and other services, procedures for hearings, and other regulations necessary to carry out the purposes of this chapter."

§115.9. Provision of Services to Individuals with Visual Handicaps.

(a) The Texas Rehabilitation Commission proposes to adopt by reference a memorandum of understanding with the Texas Commission for the Blind. The purpose of this memorandum of understanding is to facilitate the provision of services to persons with visual handicaps in the most beneficial and effective manner, and to give the effect to the legislative intent relating to services for the visually handicapped.

(b) Copies of the memorandum of understanding are available from the Texas Rehabilitation Commission, Legal Services Division, 4900 North Lamar Boulevard, Austin, Texas 78751.

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

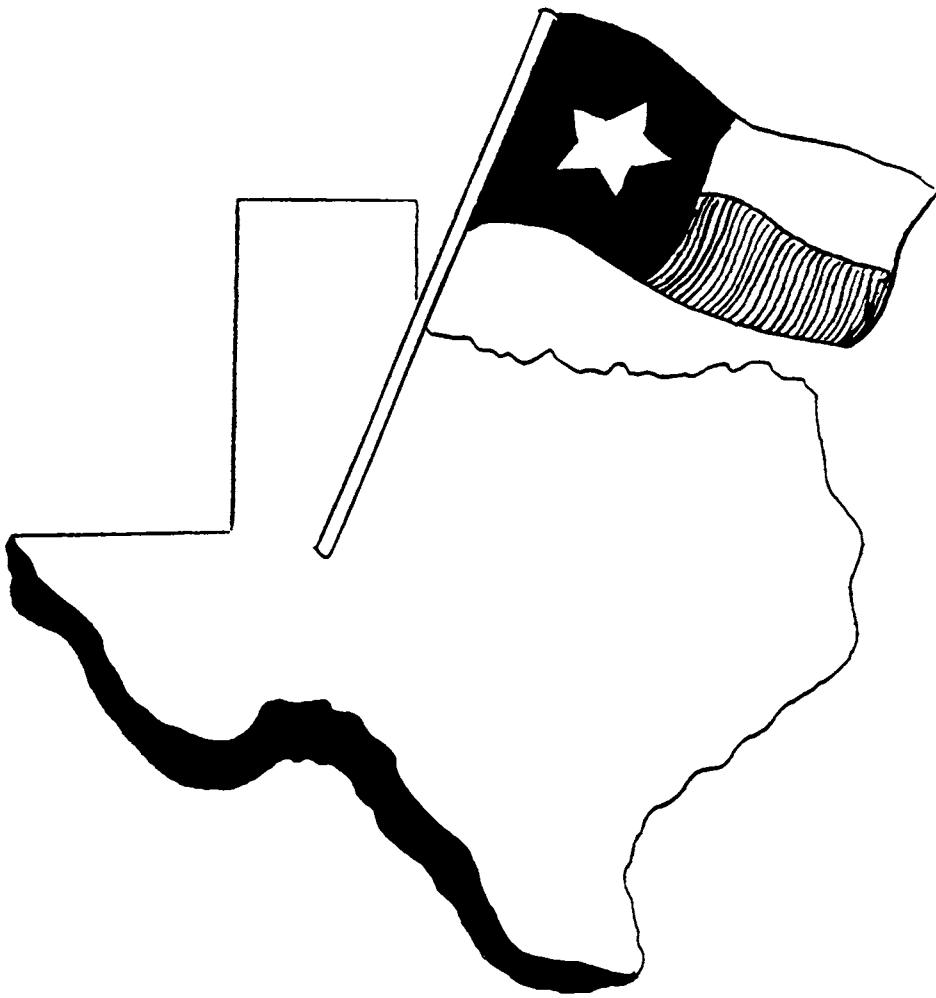
Issued in Austin, Texas, on August 6, 1990.

TRD-9007902

Charles W. Schiesser
Assistant Commissioner,
Legal Services
Texas Rehabilitation
Commission

Earliest possible date of adoption: September 14, 1990

For further information, please call: (512) 483-4051



Name Cindy Michelle Cozby

Grade: 12

School: Midland High School, Midland I.S.D.

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 28. INSURANCE

Part I. State Board of Insurance

Chapter 9. Title Insurance

Subchapter A. Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas

• 28 TAC §9.1

The State Board of Insurance has withdrawn from consideration for permanent adoption a proposed amendment to §9.1 which appeared in the June 26, 1990, of the *Texas Register* (15 TexReg 3689). The effective date of this withdrawal is August 7, 1990.

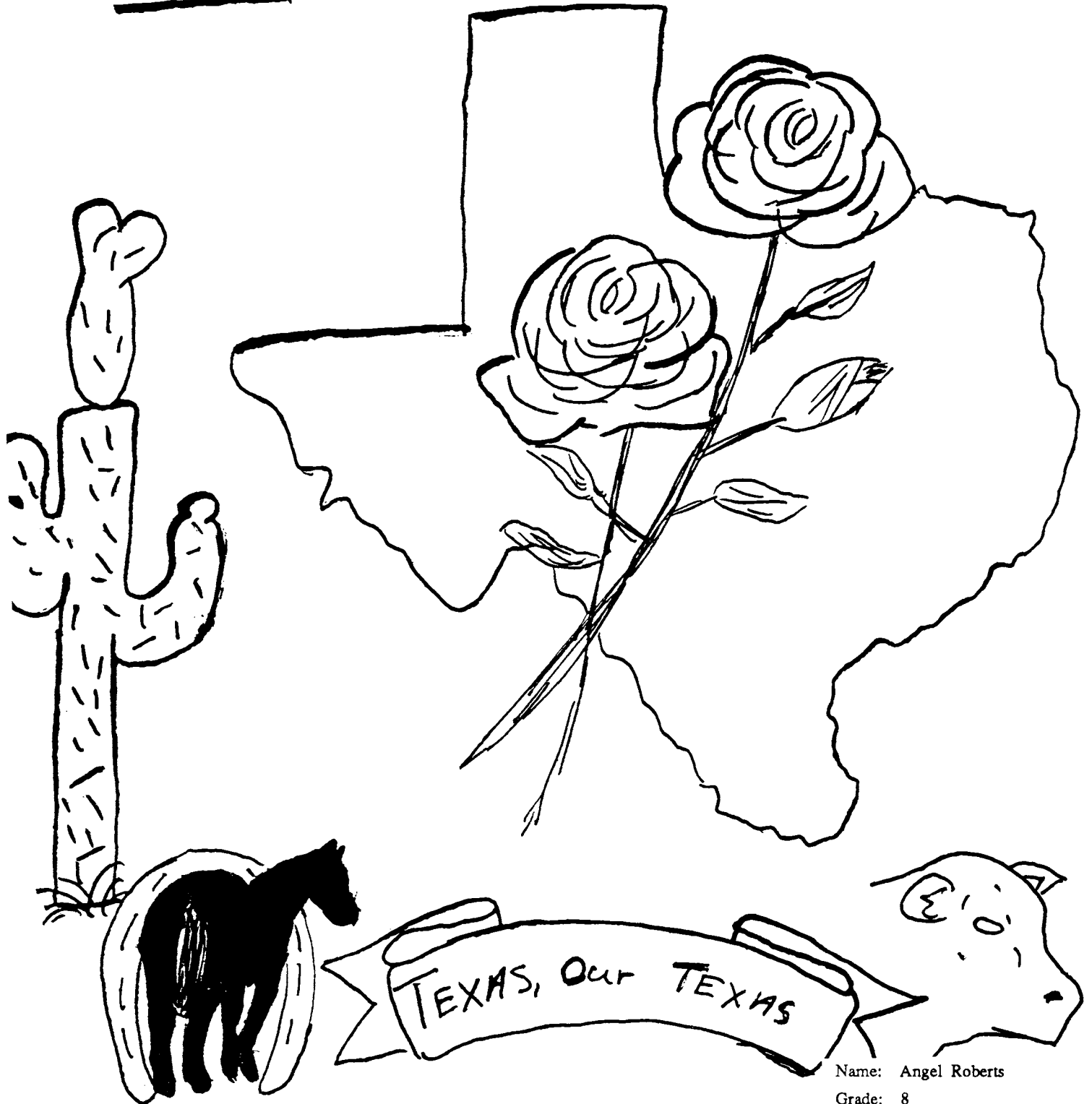
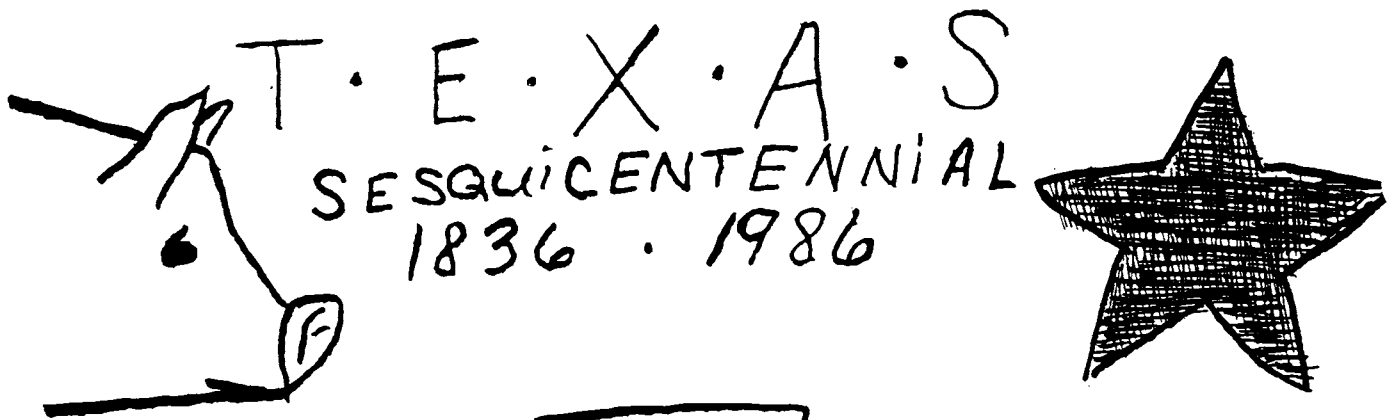
Issued in Austin, Texas, on August 7, 1990

TRD-9007901 Nicholas Murphy
 Chief Clerk
 State Board of Insurance

Effective date: August 7, 1990

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





Name: Angel Roberts
Grade: 8
School: Burnet Jr. High, Burnet C.I.S.D.

Adopted Sections

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

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

TITLE 1.

ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 252. Administration

• 1 TAC §252.2

The Advisory Commission on State Emergency Communications adopts new §252.2, with changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2201).

The Advisory Commission on State Emergency Communications, in compliance with the Health and Safety Code, Chapter 771, Subchapters C and D, authorizing the planning, implementation, and financing of 9-1-1 state emergency communications. The new section will provide for monitoring of the progress of the 9-1-1 Regional Plan and the financial impact on the 9-1-1 equalization surcharge of 9-1-1 service fee funds.

The new section will serve as an administrative and reporting mechanism for the progress of 9-1-1 Regional Plans and the financial impact on the 9-1-1 equalization surcharge and 9-1-1 service fee funds.

Comments received include: reduce monthly reporting frequency to quarterly for Councils of Governments not receiving surcharge funds; define official authorized to sign document to include COG Finance Director or Executive Director; and define "budget" in the Regional Plan Budget/Estimate column as the COG's annual approved budget for 9-1-1.

Houston-Galveston Area Council commented against the new section.

Due to the critical and dynamic nature of this statewide project, the commission deems the reporting data necessary for the timeliness of the implementation schedule. The regional plan budget is the budget used to measure financial impact and must reflect the most accurate estimates of revenue and expenses for the region's 9-1-1 system. The commission will accept the recommendation that the signature authority be the executive director or his or her designee.

The new section is adopted under the Health and Safety Code, Chapter 771, Subchapters C and D, which provides the Advisory Commission on State Emergency with the authority to administer and finance the provisions of 9-1-1 state emergency communications.

§252.2. Reporting Mechanism for 9-1-1 Planning and Implementation.

(a) The commission will use information provided by the Councils of Governments (COGs) to monitor the progress of the 9-1-1 regional plans, and the financial impact on the 9-1-1 equalization surcharge and the 9-1-1 service fee funds.

(b) The Councils of Governments will provide financial and performance information as requested in the Financial Status Report (Form 911-269a) and the Project Performance Report (Form 911-269a1) forms.

(c) The Financial Status Report (Form 911-269a) and the Project Performance Report (Form 911-269a1) forms are adopted by reference. Copies of the forms can be obtained from the Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South, Suite B-100, Austin, Texas 78746, (512) 327-1911.

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 July 27, 1990.

TRD-9007934

Mary A. Boyd
Executive Director
Advisory Commission on
State Emergency
Communications

Effective date: August 29, 1990

Proposal publication date: April 20, 1990

For further information, please call: (512) 327-1911

Chapter 255. Finance

• 1 TAC §255.5

The Advisory Commission on State Emergency Communications adopts new §255.5, with changes to the proposed text as published in the April 20, 1990, issue of the *Texas Register* (15 TexReg 2201).

The Advisory Commission on State Emergency Communications, in compliance with the Health and Safety Code, Chapter 771, Subchapter D, authorizes the establishment and collection of 9-1-1 surcharge funds and 9-1-1 service fees for the planning, implementation, and financing of 9-1-1 state emergency communications. Legal counsel has determined that the use of an uncollectible factor is lawful if the revenues

received from the 9-1-1 fees and surcharges reasonably approximate what would be received under actual collections. The commission found that the method in the rule does achieve the required result.

If applicable, the section clarifies and provides uniformity in the methodology concerning the calculation of the uncollectible factor in the remittance of the 9-1-1 revenues. The new section applies only to telecommunications companies utilizing an uncollectible factor in the calculating and remitting of 9-1-1 billed revenues.

Comments received were in support of the intent of the rule and the commission's recognition of an uncollectible factor in computing and remitting the 9-1-1 fees. A particular group requested discretion as to the specific method used to compute the uncollectible factor or in lieu of that flexibility, requested clarification. The majority of the comments were for clarification of the commission's position and policy regarding the utilization of an uncollectible factor and to whom the factor applies.

The Texas Telephone Association; and Texas Statewide Telephone Cooperative, Inc; support the new section, but request some changes.

The commission allows for optional use of this rule based on method of determining 9-1-1 revenues. Therefore, if a company chooses to use an uncollectible factor for their calculation purposes, then use of this rule applies. The commission has incorporated some of the recommended changes; however, the rules is proposed for consistency in the method of calculating the uncollectible factor rather than allowing each telephone company the leniency of its own calculation method. Basis for rejection of the request to allow for latitude in computing and reporting uncollectible 9-1-1 fees, is that a specific method was required to ensure the rule was lawful.

The new section is adopted under the Health and Safety Code, Chapter 771, §771.073 which provides the Advisory Commission on State Emergency Communications with the authority to collect the 9-1-1 fees and surcharges for the planning, implementation, and financing of 9-1-1 state emergency communications.

§255.5. Optional Use of an Uncollectible Factor.

(a) The procedure for telephone companies or interexchange carriers who wish to utilize an uncollectible factor in the remittance of 9-1-1 revenues follows. This policy should apply only in situations where a company is remitting 9-1-1 revenues

based on total billed 9-1-1 service fees or 9-1-1 equalization surcharges, less an uncollectible factor. The following should be used to compute the remittance of the 9-1-1 revenues:

(1) the amount of the customer's 9-1-1 emergency service fees actually billed by the company for the month;

(2) if applicable, less the amount of 9-1-1 emergency service fees adjusted due to error(s) in billing of 9-1-1 fees or surcharges; if any, and/or specific refusals by telephone subscribers to pay customer's 9-1-1 emergency service fees, if any;

(3) less an uncollectible factor, if any, as set forth in subsection (b) (1) and (2) of this section; and

(4) less the 2.0% administrative fee the company is entitled to retain by statute (Health and Safety Code, Chapter 771, §771.073).

(b) The uncollectible factor referred to in subsection (a)(3) of this section, shall be computed by the company using the following method.

(1) For a specified period each year (e.g., quarterly, semi-annually), the company will examine its local exchange access or interexchange billing uncollectible for the preceding months and determine the mean average percentage uncollectible for that period. The uncollectible amount used in this calculation is the current period's uncollectibles less amounts recovered from the previous period's uncollectibles.

(2) The company will begin using said mean average percentage uncollectible as the uncollectible factor to be applied in subsection (a)(3) of this section, as of the first month in the next succeeding specified time frame (e.g., quarterly, semi-annually).

(3) The company will provide the Advisory Commission on State Emergency Communications, within 60 days after the end of the calendar year, a listing of all subscribers who specifically have refused to pay 9-1-1 service fees or surcharges during the preceding fiscal 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 July 27, 1990.

TRD-9007935

Mary A. Boyd
Executive Director
Advisory Commission on
State Emergency
Communications

Effective date: August 29, 1990

Proposal publication date: April 20, 1990

For further information, please call: (512) 327-1911

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter P. Commercial Zones

• 16 TAC §5.294

The Railroad Commission of Texas adopts an amendment to §5.294, without changes to the proposed text as published in the March 6, 1990, issue of the *Texas Register* (15 TexReg 1223).

The amendment is adopted because the Cities of Cibolo, Converse, Garden Ridge, Grey Forest, Helotes, Schertz, Selma, Universal City, and the military establishment of Randolph Air Force Base are adjacent to, and commercially a part of, the City of San Antonio.

The amendment as adopted has the effect of adding to the San Antonio Commercial zone the Cities of Cibolo, Converse, Garden Ridge, Grey Forest, Helotes, Schertz, Selma, Universal City, and the military establishment of Randolph Air Force Base. This amendment will increase transportation availability in those areas, which will benefit the commercial establishments in those communities that regularly ship to and from the City of San Antonio.

Several comments were received in favor of the amendment. No comments were received in opposition. The comments generally related to the interests of local businesses; effects of commercial, residential and industrial development; the growth of the cities; and the commercial interdependence of the cities and the existing commercial zone.

Groups and associations commenting in favor of the amendment were Randolph Metrocom Chamber of Commerce, Greater San Antonio Chamber of Commerce, and the City of Universal City.

The commission agrees with the comments received in support of the amendment.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the commission to regulate motor carriers in all matters.

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 August 6, 1990.

TRD-9007917

Kent Hance
Chairman
Railroad Commission of
Texas

Effective date: August 28, 1990

Proposal publication date: March 6, 1990

For further information, please call: (512) 463-7095

TITLE 19. EDUCATION

Part II. Texas Education Agency

Chapter 89. Adaptations for Special Populations

Subchapter G. Special Education

Clarification of Provisions in Federal Regulations and State Law

• 19 TAC §89.246

The Texas Education Agency adopts new §89.246, with changes to the proposed text as published in the May 1, 1990, issue of the *Texas Register* (15 TexReg 2489). The new section concerns a memorandum of understanding on transition planning for students enrolled in special education. Senate Bill 417 of the 71st Texas Legislature requires the agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission to adopt a memorandum of understanding effective September 1, 1990, which defines the role of each agency for the provision of services needed to prepare students enrolled in special education to progress successfully from public school to adult life. As authorized by the legislation, the Texas Commission for the Blind, the Texas Department of Human Services, and the Texas Employment Commission have also agreed to participate in the memorandum of understanding. The legislation also requires that school districts coordinate with other agencies as proposed in the memorandum of understanding to develop and annually review an individual transition plan for every student enrolled in special education who is at least 16 years of age. In school year 1990-1991, this provision would apply to approximately 81,000 special education students. In subsequent school years, the districts would be required to review annually each of the original plans and develop initial plans only for the students without transition plans who are 16 years of age.

There are several changes to the adopted text compared to the proposed text. Subsection (b)(1) has been changed to include the guiding principles on upon which the memorandum was developed. These principles represent the fundamental framework upon which the agencies are basing all of their collaborative efforts. In subsection (c)(1)(B)(iii), the term "ongoing" has been replaced by the term "periodic or" because there was a concern that ongoing implied an expectation or intent to provide continuous support. In subsection (c)(2)(A)(ii), language has been added to clarify the term "support services" to sufficiently address the use of existing resources such as those of a student's family and community. In subsection (c)(3)(A)-(E), several revisions have been made which are editorial clean-up. There are, however, three substantive revisions. In subparagraph (A)(i) (V), the term "sheltered employment" has replaced the term "sheltered workshop". In subparagraph (B)(ii)(VI), the phrase "or its contractee" has been added to the reference to the Texas Department of

Mental Health and Mental Retardation. A new subsection (c)(3)(F) has been added which assures that the agencies will agree upon the components to be addressed in each individual transition plan. In subsection (e)(3)(D), Texas Education Agency has been replaced with Public Education because this subparagraph actually refers to local school districts rather than to the agency. In response to public comments, subsection (e)(3)(E) has been revised to expand the description of the role of the Department of Human Services.

Public comments on the memorandum of understanding have been summarized. A total of 48 school districts, regional education service centers, and educational organizations submitted comments. The responses from the service centers were developed in coordination with the school districts and represented the majority, if not all, of the school districts in those regions. Fifteen separate responses were received from parents and consumer/advocacy organizations.

Comment: Additional responsibility without funding. The majority of commentors from all local education agencies expressed serious concern regarding the responsibility for individual transition planning being mandated by law without additional funding being appropriated. While several commentors acknowledged the need for and benefit of individual transition planning, there are serious concerns about additional burdens placed on district staff. Commentors were generally concerned about districts' ability to meet the documentation requirements which accompany the development and review of the individual transition plan within existing resources.

Comment: Disproportionate responsibility for individual transition plan placed upon local school districts. Comments received from all school districts and several from other sources included the concern that school districts are the only local agencies required to implement fully the memorandum of understanding. The other agencies' responsibilities and level of participation in the development of the individual transition plan are limited to available resources.

Several school districts and the Texas Association of School Boards expressed concern that school district responsibilities for transition services were defined while the responsibilities of other agencies for transition services were not stated in the memorandum of understanding.

Agency response to comments concerning additional responsibility without funding and disproportionate responsibility placed upon local school districts. The agencies concur that the statute clearly places primary responsibility for individual transition planning upon the public schools. Additionally, the statute provides that local agencies may not be required under the memorandum to provide a service if that service is not being provided at the time the memorandum is adopted. Also, clarification of legislative intent by the Executive Director of the Sunset Advisory Commission verified that participation in individual transition planning can be limited to the sharing of written information where available resources do not permit the agencies to assign staff. It is the agencies'

collective intent, however, to encourage and support maximum participation by all agencies in the transition planning process. Expressions of this intent are also found throughout the memorandum.

The agencies' use of restrictive language relating to participation in individual transition planning is consistent with the provisions of the statute. Although the agencies understand the concerns expressed by the commentors, the memorandum of understanding is a legal document which must portray, as accurately as possible, the extent of the role of each agency within the constraints of what each agency is capable of providing. As stated above, if a service is not available in a particular area, the statute specifically indicates that local agencies may not be required to provide that service. It is clearly understood that the lack of staff to attend each transition planning meeting does not alone negate the agencies' responsibilities for participation in transition planning. However, the agencies could not in good faith execute a legal document which pledges services that are not currently available and for which resources do not exist.

Comment: Additional paperwork burden. The majority of school districts expressed serious concerns regarding the extensive amount of additional paperwork and related cost which will be incurred in order to prepare the individual transition plans such as sending notices to all parties and providing copies of the individual transition plan to all appropriate parties.

Comment: Procedural issues. There was a myriad of comments addressing specific procedures as set forth in the memorandum including requests for clarification and requests for more specificity. The majority of the comments requesting clarification pertain to issues such as staffing and prior notice which can be more appropriately addressed in training and technical assistance activities. Commentors recommending greater specificity most frequently indicated that the memorandum of understanding should designate the specific department, unit, division, and staff position in each agency responsible for implementing the memorandum and preparing individual transition plans.

On the part of school districts, parents, and consumer/advocacy organizations, the most frequently addressed procedural issue concerned the provision of 30 days prior notice to other agencies of the meeting to prepare the individual transition plan. School districts stated that a 30-day notice period is longer than the notice period afforded parents; that 30 days notice is not consistent with existing timelines for other notice requirements; that the notice requirement will be extremely difficult to comply with, because of the frequent schedule changes needed to accommodate parents and involved staff; and that if the provision is maintained, 30 days prior notice should be equally afforded school districts for meetings held by other agencies.

Parents and consumer/advocacy groups specifically expressed the concern that the provision of 30-day notice to other agencies was inconsistent with the 5-day prior notice requirement to parents for admission, review, and dismissal committee meetings.

The new section is proposed under the authority of the Texas Education Code, §13.354, which authorize the State Board of Education to adopt an appraisal process and criteria on which to appraise the performance of school administrators.

§89.246. Memorandum of Understanding on Transition Planning for Students Enrolled in Special Education.

(a) Purpose.

(1) Pursuant to Senate Bill 417, 71st Texas Legislature, the purpose of this memorandum of understanding is to establish the respective responsibility of each agency for the provision of the services necessary to prepare students enrolled in special education for a successful transition to life outside the public school system. As authorized by the statute and subject to revision by mutual agreement of the agencies named herein, the following state agencies are designated as participating agencies:

(A) Texas Commission for the Blind (TCB);

(B) Texas Department of Human Services (TDHS);

(C) Texas Department of Mental Health and Mental Retardation (TDMHMR);

(D) Texas Education Agency (TEA);

(E) Texas Employment Commission (TEC); and

(F) Texas Rehabilitation Commission (TRC).

(2) The memorandum of understanding sets forth the collaborative and individual responsibilities of the agencies for the development and annual review of an individual transition plan for each student enrolled in special education who is at least 16 years of age. The effective date of the memorandum of understanding is September 1, 1990.

(b) Preamble.

(1) This memorandum of understanding is a primary cornerstone of a dynamic process which will result in the future realization of a human service system in Texas which offers all citizens with disabilities choices and opportunities, in a comprehensive array of coordinated services, to achieve maximum independence and integration in the community. The memorandum was developed and based upon the following guiding principles:

(A) all people have the opportunity to choose where to live, work, and play;

(B) people should have opportunities to make informed choices and control over their lives;

(C) all people have values, preferences, abilities, responsibilities, and limitations;

(D) every person should have opportunities to access and participate in their community;

(E) people will continue to be influenced by and should be responsive to change. It is appropriate that such a momentous beginning focus upon one of the most important resources of this state's future-the children and young adults with disabilities. The agencies acknowledge that this focus is imperative if students with disabilities and their families are to be equipped with the knowledge and skills necessary to empower them to make more effective use of personal and public resources in achieving independence.

(2) This memorandum assures compliance with the law within the limits of existing resources and services. It is also the express desire of the agencies that the memorandum be recognized at the local, regional, and state level as:

(A) documentation of the agencies' commitment to effecting long term systems change which will require extensive interagency collaboration and sharing of resources;

(B) a document which authorizes and promotes maximum, rather than minimum, collaborative participation by local agencies in the provision of effective transition services for students enrolled in special education; and

(C) an acknowledgement of the need for parents, consumers, and advocates to support the implementation of the memorandum and to assist the participating agencies in acquiring the resources needed to transition students successfully to life outside the public school system.

(3) This memorandum of understanding provides direction for an evolving process of interagency coordination, communication, and cooperative fiscal planning, influenced significantly by the varied array of available local resources. Formal agreements among the local agencies are therefore strongly encouraged to facilitate the most effective use of the available resources.

(C) PROCESS

(1) Transition.

(A) For the purpose of this memorandum of understanding, transition is defined as movement from school to adult life. Transition for students enrolled in special education should be a process that is systematically planned, implemented, and continued until the student as an adult has made the transition to life outside the public school. As stated in the Report to the 71st Legislature from the Transition Services Task Force, February 1989, "Transition services are defined as those services, both of short and extended duration, that enable persons with disabilities to live in the community, participate in work and other meaningful activities, have access to appropriate medical, mental health and non-medical support services, and engage in satisfying social interactions."

(B) The memorandum incorporates the United States Department of Education's identified bridges in transition which include three levels of adult support services required for individuals with varying degrees of disability:

(i) students who have developed sufficient skills which allow them to make transition to work and independent living without additional support;

(ii) students who have developed some skills which will allow them to make the transition to work and independent living if they receive support from an adult service agency for a limited time; and

(iii) students who have developed skills, but cannot make the transition to work and community living without periodic or ongoing support from adult service agencies.

(2) Transition planning. Transition planning shall be initiated by the school district. Transition planning should always include the student and parent/guardian and to the extent appropriate, general education, special education, and vocational education personnel and representatives of participating agencies. Transition planning must begin at least at age 16 for each student enrolled in special education and will encompass:

(A) individual planning based upon current information regarding the individual's knowledge, skills, abilities, and preferences. These should include:

(i) identification of desired outcomes relating to education, employment, independent living, recreation/leisure, and other appropriate considerations;

(ii) identification of the support services, such as family, friends, co workers, agencies, and community

services available to the general public; and

(iii) identification of when and how support services will be provided, based upon current and planned resources.

(B) use of information derived from individual transition plans to assess local and regional transition service needs.

(C) use of local and regional needs assessment information to identify statewide transition service needs.

(3) Components of the individual transition plan. The individual transition plan will focus on those considerations which will have the most impact on the successful independence in the community for the student with disabilities. An individual transition plan for each student 16 years of age or above who is enrolled in special education will address the following.

(A) Anticipated outcomes in the following four areas: employment; education; independent living; and recreation, social, and leisure; and general considerations. The following components will be considered in the development of each individual transition plan:

(i) employment options. These will include, but not be limited to, the following:

(I) competitive employment-without support;

(II) competitive employment-with time limited support;

(III) competitive employment with long-term support;

(IV) sheltered community employment (individual placement, enclave, or mobile work crew);

(V) sheltered employment; and

(VI) other;

(ii) education options. These will include, but not be limited to, the following:

(I) additional vocational assessment;

(II) academic instruction;

instruction;

(III) vocational

ing skills instruction;

(IV) independent liv-

ing education;

(V) adult and continu-

(VI) post-secondary;

(VII) proprietary

schools;

(VIII) technical

education; and

(XI) other.

(iii) independent living
options. These will include, but not be lim-
ited to:

(I) supportive

services;

(II) adult responsibili-

ties; and

(III) housing.

(iv) recreation, social,
and leisure options. These will include but
not be limited to:

(I) independent recrea-

tion and leisure;

(II) family supported

recreation and leisure;

(III) specialized recre-

ation;

(IV) community sup-

ported and recreation programs;

(V) local clubs;

(VI) day programs;

and

(VII) other;

(v) general
considerations. These will include, but not
be limited to:

(I) income/resources;

(II) medical services;

and

(III) transportation.

(B) Person(s)/agencies
should be identified as possible resources
for supporting students for all outcomes a
follows: school (to be fully addressed in the
individual education plan); participating
agencies (to be fully addressed by each
agency in the Individualized Written
Rehabilitation Program (IWRP), individual
program plan (IPP), individual treatment
plan, or other service plan); community
service providers who are available to the
general public; and student/parent guardian
responsibilities.

(i) Student information to
be provided for each individual transition
plan will include, but not be limited to:

- (I) name;
- (II) date of birth;
- (III) social security
number;
- (IV) disabilities;
- (V) projected date of
graduation;
- (VI) name of the par-
ent/guardian; and
- (VII) district/campus.
- (ii) Adult service
agencies who may be identified for
provision of support services will include,
but not be limited to:
 - (I) community service
providers (available to the general public);
 - (II) Texas
Commission for the Blind (TCB);
 - (III) Texas
Commission for the Deaf (TCD);
 - (IV) Texas
Department of Human Services (TDHS);
 - (V) Texas Employment
Commission (TEC);
 - (VI) Texas
Department of Mental Health Mental Retar-
dation (TDMHMR) or its contractee;
 - (VII) Texas
Rehabilitation Commission (TRC); and
 - (VIII) other.

(C) Anticipated support
services required to sustain outcomes
during public school and after the student
leaves public school should be addressed.

(D) Timelines, beginning
and ending dates, should be identified for
each anticipated outcome.

(E) Reviews and updates
shall be made for each individual transition
plan on an annual basis.

(F) The participating
agencies will identify, mutually agree upon,
and disseminate the specific elements for
each approved component to be addressed
in the individual transition plan.

(4) Relationship of the
individual transition plan to the admission,
review, and dismissal committee process
and the individual education plan.

(A) For the purposes of this
memorandum, the admission, review, and
dismissal (ARD) committee will review and
determine the components of the individual
transition plan which are the responsibility
of the school district for incorporation into
the individual educational plan. The
individual transition plan will be used by
the ARD committee in determining
appropriate learner outcomes to prepare the
student for post-school life. The individual
transition plan will be included in the
information which the ARD committee is
required to consider in preparation and
annual review of the individual educational
plan pursuant to §89.221 of this title
(relating to the Admission, Review, and
Dismissal (ARD) Committee).

(B) The individual transition
plan will be reviewed and updated annually
based upon the progress the student has
made instructionally the goals and objec-
tives contained in the individual educational
plan. The student and parent will be invited
to participate in the annual review of the
individual transition plan. The school
district will invite the appropriate adult
service agencies to participate in the review
and update of the individual transition plan
at least every three years or whenever
conditions warrant, including but not lim-
ited to the need to modify the outcomes
based on changes in student achievement or
the availability of a new adult support
service. Adult service agencies may volun-
tarily attend each annual review meeting.

(C) To minimize the need for
separate meetings, the district may schedule
the development and annual review of the
individual transition plan in conjunction
with the admission, review, and dismissal
committee's development and review of the
individual education plan.

(5) Participation. It is the intent of the participating agencies to provide staff attendance at individual transition planning meetings when appropriate. For purposes of initial implementation of this memorandum however, participation by participating agencies may be limited based on local resources and may include one or more of the following:

(A) local interagency planning groups and agreements for transition implementation;

(B) information packets on local services (or audiovisual presentations(s));

(C) workshop/parent meetings to disseminate information;

(D) face-to-face meetings regarding students being jointly served at the time of individual transition plan development;

(E) parent-to-parent training sessions regarding adult services;

(F) information provided at varying times to accommodate families who cannot attend scheduled meetings;

(G) staff attendance at the individual transition planning meetings and subsequent reviews; and

(H) acceptance of referrals for consideration of services.

(d) Data collection and planning.

(1) By September 1, 1990, each school district will make available to all local adult service agencies a copy of the Superintendent's Annual Report, Part 3, for the 1989-1990 school year. The report will identify the number of handicapped students ages 16-21 years enrolled in special education by age, handicapping condition, and instructional arrangement. For the 1990-1991 and subsequent school years, each school district will provide this information by semester as it is reported through the Public Education Information Management System (PEIMS). School districts are encouraged to share additional data as available with local adult service providers such as the number of students enrolled in special education who are expected to exit the public school that year and the reason for exiting.

(2) By September 1, 1990, the Texas Education Agency will provide all state level adult service agencies with information for the 1989-1990 school year including the number of students ages 16-21 years enrolled in special education by

education service center region, age, handicapping condition, and instructional arrangement. For the 1990-1991 and subsequent school years, the Texas Educational Agency will provide this information by semester as it is reported through the Public Education Information Management System.

(3) For the purpose of coordinating the transition of students, all agencies will provide available data requested by other agencies in a timely manner while maintaining confidentiality of personally identifiable information.

(4) Adult service agencies will be available to receive for local community planning, the school district's data regarding the number of students in special education by age, disability, and campus that the district expects to refer.

(5) For the 1992-1993 biennium, based on the data available currently, the agencies will develop individual legislative appropriations requests to accommodate the projected need.

(e) Participation.

(1) Cooperative planning.

(A) Local representatives of participating agencies and/or their contracted provider will be available to meet with local school district staff to develop a process for implementing transition planning which may be documented within a local interagency agreement. Inclusion of community organizations which provide services to the general public is encouraged.

(B) Each participating agency will identify and review the services needed to facilitate transition for students with disabilities. Appropriations requests for participating agencies should be developed at a level which would allow the provision of the additional services if funds are provided.

(2) Information sharing.

(A) The school district will make available to all local adult service agencies written information describing the educational programs, services, and options relevant to transition planning which are available in general education, vocational education, and special education for handicapped students.

(B) Each local agency shall provide school districts within their local service areas with written information regarding:

(i) identification of services;

(ii) eligibility information for services;

(iii) availability of services locally;

(iv) cost of services as applicable;

(v) how the service may be accessed;

(vi) contact person;

(vii) phone number;

(viii) address; and

(ix) complaints

procedures.

(C) School districts or parents may make referrals to adult service agencies.

(D) The agencies will coordinate and share diagnostics with other agencies with the purpose of avoiding duplication, preventing a barrier to services, and enhancing transitional planning within boundary of existing law.

(E) The Texas Commission for the Blind will provide periodic training for parents, blind and visually impaired students, and regular classroom teachers in the area of planning for successful transition. This will include periodic workshops for all the above-named groups as well as summer work programs in selected areas for eligible blind and visually impaired students.

(3) Attendance at individual transition plan meeting.

(A) Texas Commission for the Blind.

(i) A TCB representative will participate in the individual transition plan planning meeting for all TCB eligible students when given 30 days advanced notice by the school district and/or parent regarding that meeting. Courtesy participation for those students not yet determined to be eligible for TCB services may occur based on the local representative's discretion. Students attending the Texas School for the Blind and Visually Impaired will be served by the TCB representative.

(ii) Appropriate elements of the individual transition plan will be included in TCB's plan of services for eligible students consistent with TCB's manual of services.

(iii) Students who have not been referred to TCB may be referred at the individual transition plan planning meeting or before that meeting. All students will receive information regarding TCB services.

(iv) The TCB representative will provide follow-up for eligible students upon graduation to complete vocational rehabilitation (VR) services.

(v) The local TCB staff will be available to present information about services to educational/administrative staff, parents, and blind and visually impaired children upon request.

(B) Texas Rehabilitation Commission.

(i) The Texas Rehabilitation Commission will participate in transition planning within the resources available by providing information to school districts regarding TRC services. The information will be provided through the local TRC offices in the form of brochures or printed material; audio/visual material; or individual or group meetings with a TRC counselor. TRC field staff will determine the level of participation.

(ii) When it is anticipated that participation will involve individual meetings which include a TRC counselor, the counselor should be given at least 30 days advance notice of the individual transition plan meeting by school district personnel.

(iii) Where available, specialized TRC transition counselors will participate in individual transition plan development and/or review meetings for students when requested by school district personnel as resources allow. The transition counselor may participate in individual transition planning for students who at the time of the individual transition plan meeting are 16 years of age or older and who may not have been determined eligible for TRC services.

(iv) In locations not served by a specialized transition counselor, due to limited staff, travel funds, and resources, vocational rehabilitation counselors may participate in the development of an individual transition plan for students who have been determined eligible for TRC services. It will be necessary for school districts to make a referral to TRC in sufficient time to allow for movement from any necessary waiting lists to an application for services status. TRC counselors will obtain necessary diagnostic evaluations and determine eligibility for services prior to attending the individual transition plan meeting.

(v) The Federal Rehabilitation Act requires that if a state vocational rehabilitation (VR) agency is unable to provide services to all eligible individuals who apply for such services, the VR agency must show the order to be followed in selecting individuals to whom vocational rehabilitation services will be provided. In the event it becomes necessary for the Texas Rehabilitation Commission to implement an order of selection due to an increasing demand for TRC services, specifications of priority will determine which individuals will receive commission services.

(vi) Appropriate elements of the individual transition plan will be coordinated with the Individualized Written Rehabilitation Program (IWRP) or other commission plan of services for eligible students.

(C) Texas Department of Mental Health and Mental Retardation. The following are minimum guidelines for local participation agreed upon at a state level; however, increased involvement is encouraged as local resources allow.

(i) For all students who are members of the priority population as defined by the TDMHMR board, who are being served directly or by contract by the MHA/MRA, and for whom an individual program plan or individual treatment plan has been developed, a representative of the MHA/MRA will attend the transition planning or review meeting given 30 days prior notice.

(ii) For students not in services within the priority population, the local MHA/MRA will provide written information to the district and parents regarding what services are available for adults, the eligibility criteria for services, the availability of services locally, cost of services, and how the services may be accessed. For individuals in this group, the local MHA/MRA will screen all referrals. Staff attendance at the transition planning meeting will occur as local resources allow.

(iii) A representative from the school district will be invited to the interdisciplinary team meeting in the development of the individual program plan or individual treatment plan for students in the priority population receiving services from the MHA/MRA.

(D) Texas Education Agency. Public education will participate in transition planning within the resources available. For the local districts, participation in transition planning will include, but not be limited to, the following:

(i) provision of staff time of at least one special education person and one additional person representing general, special, or vocational education instruction to participate in the development of the individual transition plan;

(ii) provision of resources required for scheduling, contacting, and convening individual transition plan meetings; and

(iii) contacting and meeting with local representatives from participating agencies to determine the type and extent of participation each agency will have in transition planning.

(E) Texas Department of Human Services. The Texas Department of

Human Services (TDHS) recognizes the need to work together with the Texas Education Agency (TEA) in assuring that individual transition plans are developed for students with disabilities. TDHS will participate in transition planning within the resources available.

(i) In general, TDHS will participate in transition planning by providing information to school districts and families regarding TDHS services. The information will be provided through the local TDHS offices in the form of printed material and/or individual or group meetings. The TDHS field staff will determine the level of participation for general information sharing. Whenever possible, TDHS will encourage the development of local task groups to address the issues of coordination of services for children with disabilities in their community.

(ii) For all students who are in special education and who are in the managing conservatorship of TDHS, a TDHS worker, guardian, or delegate will participate, as requested and as resources allow, in the development of annual individual transition plans. TDHS caseworkers should be given at least 30 days advance notice of the meeting.

(F) Texas Employment Commission.

(i) The Texas Employment Commission functions as an employment service for assisting job ready applicants in securing employment opportunities. Recognizing its potential role as a support agency for assisting in the transition of special education students, the Texas Employment Commission will extend these same services to job-ready students with disabilities for assistance in their job search. Service will vary on the local level as resources allow the Texas Employment Commission to serve job-ready students with disabilities as described herein.

(ii) The nature of the assistance to be offered to students with disabilities is such that the Texas Employment Commission's attendance is not required at individual transition plan meetings.

(f) Services provided by the school district in support of transition.

(1) The following are the services and activities supporting transition which will be provided as appropriate on an individual basis by the local district:

(A) identifying students enrolled in special education who have need for special instructional transition services listed in the individual education plan;

(B) counseling with parents about their expectations and transition service needs of their children;

(C) providing instruction focused on skills required for transition;

(D) notifying participants of convening the individual transition plan meeting for students enrolled in special education who are at least 16 years old;

(E) monitoring progress, notifying participants, and conducting annual reviews of the individual transition plan;

(F) developing community-based instructional alternatives focusing on independent living and employment;

(G) providing training for parents in reinforcing transition skills at home; and

(H) referring students and parents to participating agencies for service consideration.

(2) Only the failure to implement those components of a student's individual transition plan which are included in the individual education plan and designated by the admission, review, and dismissal committee to be the responsibility of the school district shall be subject to the due process hearing procedures or to the agency's complaint procedures as described in the publication Special Education Parent and Student Rights.

(g) Training and technical assistance.

(1) Cross-agency training at all levels on the elements of the memorandum of understanding will be provided by state level interagency teams prior to the effective date of the memorandum. Training for initial implementation of the memorandum will be coordinated through the regional education service centers. Additional, joint training will be developed jointly by the agencies to be used for further inservice, orientation for new employees, and update or clarification. All designated state, regional, and local level agencies will be requested to participate in the training to the extent appropriate.

(2) Ongoing technical assistance will be provided by all agencies on request. When a request will have regional or statewide impact, presentations will be provided by a team composed of members of agencies participating in this memorandum of understanding.

(3) Agencies may provide local inservice training to school personnel

regarding their services, eligibility criteria, and opportunities for employment in the community.

(h) Problem resolution.

(1) The failure of a district to develop and annually review an individual transition plan for a student shall be subject only to the Texas Education Agency's complaint procedures as described in the publication Special Education Parent and Student Rights.

(2) Student or parent complaints concerning the actions of an adult service agency in regard to transition planning and services shall be addressed according to that agency's established procedures. Each adult service agency shall provide written information for each student and parent advising them of those procedures.

(i) Ongoing communication.

(1) School district and adult service agency personnel shall cooperate as professional colleagues and peers in the development and provision of transition services and individual transition planning for students enrolled in special education who exit or are preparing to exit public education.

(2) Every effort will be made to resolve problems that may arise between local agency professional staff at the lowest possible administrative level. The local agencies may cooperatively develop and mutually agree upon formal procedures for resolving problems.

(3) Questions and concerns of professional staff from any of the local agencies regarding any aspect of the memorandum of understanding should be addressed to the appropriate state agency office. State agency staff will share and coordinate responses to questions and concerns received from local agency staff.

(j) Annual review. All parties acknowledge that this memorandum of understanding is a dynamic document intended to provide a direction for an evolving process of interagency coordination, communication, and joint fiscal planning. The agencies will conduct joint meetings at least annually for their central office staffs to evaluate the interagency efforts of the preceding year, current year, and plan for the following year. The Texas Education Agency will be responsible for coordinating the planning to address the need for revisions in the memorandum, staff training needs at the local/regional levels, and resolutions of identified problems/issues that will contribute to the accomplishment of effective transition services to special education students.

(k) Future directions. As discussed within the preamble, all of the agencies involved in preparing this memorandum acknowledge that, due to budget and resource constraints, many changes will be necessary to ensure successful transition for persons with disabilities. Recommendations on future directions regarding the memorandum of understanding are as follows.

(1) The state agencies will develop coordinated legislative requests for transition services.

(2) The Texas Education Agency will develop a plan for a data collection system for future interagency transition planning and coordinated legislative requests.

(3) A system will be developed for evaluating the effectiveness of interagency individual transition planning based on student outcomes achieved after leaving the public school system.

(4) The state agencies will support and assist the development and implementation of a comprehensive plan for integrated employment and independent living for all Texans with disabilities.

(5) The participating agencies will encourage the use of integrated services available to the general public.

(6) Coordinated grant requests will be developed for transition projects.

(7) The Texas Commission for the Blind will seek funding to expand the availability of technical aids and appliances for use in the home to support academic programs, as well as develop summer work experience programs for possible availability statewide.

(8) The Texas Education Agency will seek expansion of instructional environments for students 18 to 22 years of age enrolled in special education to include more age-appropriate adult settings.

(9) The participating agencies will develop and expand community integrated and support services to students exiting from public schools.

(l) Terms of the memorandum of understanding. This memorandum of understanding shall be adopted by rule by each participating agency and shall be effective September 1, 1990. The memorandum may be considered for expansion, modification, or amending at any time upon the mutual agreement of the executive officers of the named agencies. The undersigned agree to pursue collaboratively additional resources to fulfill the provisions of the memorandum.

Texas Commission for the Blind
Executive Director

Texas Education Agency
Commissioner

Texas Department of Human Services
Commissioner

Texas Employment Commission
Administrator

Texas Department of Health and
Mental Retardation
Commissioner

Texas Rehabilitation Commission
Commissioner

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 June 14, 1990.

TRD-9007863 W. N. Kirby
Commissioner of Education

Effective date: August 27, 1990

Proposal publication date: May 1, 1990

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

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**TITLE 22. EXAMINING
BOARDS**
**Part III. Texas Board of
Chiropractic Examiners**
**Chapter 73. Licenses and
Renewals**

• **22 TAC §73.4**

The Texas Board of Chiropractic Examiners adopts new §73.4, with changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 755).

The new section will provide guidelines for renewal of licenses of those doctors not currently practicing chiropractic in the State of Texas.

Doctors who hold a chiropractic license in the State of Texas but do not currently practice chiropractic in Texas will be able to retain their license without paying the fee required for renewal.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

§73.4. Inactive Status.

(a) Licenses which can be placed on inactive status category:

(1) all licenses granted (whether by examination or reciprocity) after October 1, 1990, to doctors who reside outside of Texas can be placed on the Inactive Status category;

(2) all licenses which were granted prior to October 1, 1990, and are held by doctors who reside outside of Texas can be moved to Inactive Status category at January 1, 1991, license renewal or January 1 of each year thereafter;

(3) when a doctor informs the Texas Board of Chiropractic Examiners of a change of address to an out of state residence, his/her license can be moved to the Inactive Status category at the next license renewal; and

(4) any licensee who is not currently practicing chiropractic in the State of Texas.

(b) The board may place a licensee's license in an inactive status category upon proper application by the licensee. Forms for inactive status category may be obtained from the board.

(c) A licensee on inactive status category is not required to pay license renewal fees or complete mandatory license renewal courses during any period of inactive status category.

(d) A licensee on inactive status category may not perform any activity regulated by the board.

(e) A licensee on inactive status category who desires to re-enter active status must notify the board in writing. The board will remove the licensee from Inactive Status category upon payment of a fee in the amount of \$120 and proof of completion of at least 15 hours of continuing chiropractic education within 90 days of such application. In addition, the licensee must obtain an affidavit, from all states in which he has practiced within the last five years, indicating whether or not disciplinary action has been taken against said licensee during that period. If the licensee's license has been inactive for a period of more than five years, the license may be re-activated upon successfully passing a competency exam given by the board.

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

Issued in Austin, Texas, on August 7, 1990.

TRD-9007928 Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Effective date: August 29, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 343-1895

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Chapter 79. Reciprocity

• 22 TAC §79.1

The Texas Board of Chiropractic Examiners adopts new §79.1 with changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 755).

The new section will stipulate the specific requirements for applicants applying for licensure in Texas by reciprocity.

The new section will insure that the most qualified individuals applying for licensure in Texas by reciprocity will be granted a license.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

§79.1. General Requirements of Applicants.

(a) At the discretion of the board, any disciplinary action taken against the applicant or against any clinic in which the applicant has a substantial ownership or managerial interest in, proof of which would constitute grounds for the revocation of a license in Texas, within the five years preceding application for and granting of Texas license, will be considered by the board.

(b) Applicant must prove that he/she has met requirements for annual license renewal which are equivalent to the requirements for Texas license renewal for at least the two years preceding the date of application.

(c) Applicant must provide three letters of recommendation which can not be a relative:

(1) one must be from the state or local association president (recognized group with 25 or more members), ACA or ICA delegate or hospital chief of staff;

(2) two must be from other doctors practicing in the reciprocating state.

(d) Applicant must be tested on Texas statute and must pass with a 75% or better. If he/she fails to achieve a score of 75% or better, he/she may retake the exam within one year. Failure of second exam disqualifies doctor for reciprocity license and doctor must apply for license by examination.

(e) The applicant must have practiced chiropractic for five continuous years prior to applying for Texas license.

(f) The application must be completed within one year of initial application date.

(g) The applicant must have been licensed by examination in the state from which he/she desires a reciprocal license.

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 August 7, 1990.

TRD-9007926

Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Effective date: August 29, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 343-1895

Chapter 80. Practice of Chiropractic

• 22 TAC §80.3

The Texas Board of Chiropractic Examiners adopts new §80.3, without changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 756).

The new section will specify what designations may be used by a licensed chiropractor in the State of Texas.

The public will clearly identify and differentiate a doctor of chiropractic and any specialization he/she may have.

The board received comments from the Texas Medical Association, Texas Osteopathic Association and the Texas State Board of Medical Examiners concerning the term "chiropractic medicine". These organizations requested the board delete the reference to "chiropractic medicine" from the rule.

The Texas Medical Association, Texas Osteopathic Medical Association, and Texas State Board of Medical Examiners commented against the new section.

The board disagreed with comments made by the organizations stating that with the prefix "chiropractic", the public would be able to differentiate between a doctor licensed by the Texas State Board of Medical Examiners and the Texas Board of Chiropractic Examiners. However, the board voted to delete the term "medicine" from the rule.

The new section is adopted under Texas Civil Statutes, Article 4512b, which provide the Texas Board of Chiropractic Examiners with the authority to promulgate procedural rules as deemed necessary.

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 August 7, 1990.

TRD-9007927

Jennie Smetana
Executive Director
Texas Board of
Chiropractic Examiners

Effective date: August 29, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 343-1895

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §§131.53-131.56

The Texas State Board of Registration for Professional Engineers adopts amendments to §§131.53-131.56. Sections 131.54 and 131.55 are adopted with changes to the proposed text as published in the June 22, 1990, issue of the *Texas Register* (15 TexReg 3616). Sections 131.53 and 131.56 are adopted without changes and will not be republished.

The amendments were necessary to clarify the requirements for submitting applications for registration and to correct the reference to the National Council of Examiners for Engineering and Surveying, previously the National Council of Engineering Examiners.

Section 131.53 specifies that incomplete applications received or applications received without the required fee will be returned to the applicant. Section 131.54(a) identifies the documents which must be included with the application for registration at the time it is submitted to the board for consideration. Section 131.54(c) exempts foreign students from the test of English as a foreign language (TOEFL) and the test of spoken English (TSE) if they have successfully completed at least six semesters of full-time academic work toward an advanced engineering degree in the United States. Section 131.55 requires that nonresident applicants furnish a copy of their pocket card or other verification that their licenses in the state of original registration or state of residency and other states are current and valid. Section 131.56 states the correct name of the National Council of Examiners for Engineering and Surveying.

No comments were received regarding adoption of the amendments; however, the Board made several minor changes to §131.54(c) and §131.55 to provide clearer interpretation of the sections.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.54. General Application Information.

(a) The executive director may accept an application prior to the receipt of supplemental documents such as transcripts of degrees over which the applicant has no control as to time of submission to the board. The board will not consider an application until the following are provided:

(1)-(4) (No change.)

(b) (No change.)

(c) Applicants must be able to speak and write the English language. An applicant who is a native of a country in

which the primary language is other than English, shall be required to include with his application evidence that the applicant has passed a TOEFL (test of English as a foreign language) with a score of 550 or above, and a TSE (test of spoken English) with a score of 200 or above. These tests shall have been taken within two years of the time the application is submitted if the applicant has lived in a non-English speaking country for more than two consecutive years after initially taking the test. An applicant who has received a four-year degree from an ABET-accredited course or who has successfully completed at least six semesters of full-time academic work toward an advanced engineering degree in the United States shall be exempted from this requirement.

(d) (No change.)

§131.55. Application for Registration from Nonresidents. In general, applicants not residents of Texas must apply under the provisions of the Texas Engineering Practice Act (the Act), §21. To be eligible under §21, the applicant must be registered and in good standing in the state in which he is practicing or formerly practiced, and the applicant must have met the requirements for registration under the Act, §12(a) or (b), at the time he was granted an original registration. In addition, the application shall include all documentation as described in §131.54 of this title (relating to General Application Information) to be considered complete. If the applicant is currently registered in the state of his residence or practice but registration was granted under requirements less than those specified in the Act, §12(a) or (b), he may apply under §12(a) or (b), whichever is appropriate, if he has acquired the minimum requirements subsequent to his original registration.

(1) Non-Texas residents who have accredited engineering degrees from Texas colleges or universities, or are employees of a company whose primary administrative office (not regional, division, or other subdivision offices) is located in Texas, or move from Texas after initiating an application for registration, may apply for an original registration in this state.

(2) (No change.)

(3) A non-resident applicant or others applying under the Act, §21, must furnish with the application a copy of the pocket card or other verification that the licenses in the state of original registration or state of residency and other states (no more than two pocket cards are required) are current and valid and, in addition, include with the application copies of proof or verification that the applicant has taken and passed the engineering examinations.

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 August 7, 1990.

TRD-9007913

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: June 22, 1990

For further information, please call: (512) 440-7723

References

• 22 TAC §131.71 §131.72

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.71 and §131.72 Section 131.71 is adopted with changes to the proposed text as published in the June 22, 1990, issue of the *Texas Register* (15 TexReg 3617). Section 131.72 is adopted without changes and will not be republished.

The amendments were necessary to incorporate the new procedures for submitting reference statements.

Section 131.71 requires the applicant to send a copy of the reference statement and a copy of the portion of the supplementary experience record (SER) that the reference is to verify to a minimum of five references. After the reference statement is completed and the copy of the SER is signed, both the SER and reference statement must be placed in an envelope, sealed, and the reference must sign his name across the back of the sealed flap and cover the signature with transparent tape. An application received without the references will be returned to the applicant. Section 131.72 specifies that a professional engineer who provides a reference statement and is registered in a state other than Texas must also include a copy of the pocket card or other verification to indicate that the license is valid.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.71. Reference Statements.

(a) The applicant, as a part of his application for registration, shall send a copy of the board's reference statement form and a copy of the portion of the applicant's supplementary experience record (SER) that the reference is to verify to a minimum of five references. The reference should complete the reference statement, sign the copy of the SER signifying that he agrees with the information written by the applicant, place the reference statement and signed SER in an envelope, seal and sign across the sealed flap of the envelope, and cover the signature with transparent tape. The reference should then return the sealed envelope back to the applicant. The applicant must enclose all of

the sealed reference envelopes with his application when he submits it to the office of the board. An application received without the references, or with envelopes that have evidence of tampering, shall be considered an incomplete application and returned to the applicant. At least one reference statement should be provided concerning the work done for each employer. References need not be provided for experience gained 15 or more years prior to the date of the application unless specifically requested by the board. The reference should have personal knowledge of the applicant's work for which he is providing a reference statement. Accurate statements of fact from responsible sources concerning the applicant's technical abilities and performance are necessary as are frank and candid appraisals of his character, reputation, and suitability for professional registration.

(b)-(c) (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 August 7, 1990.

TRD-9007912

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: June 22, 1990

For further information, please call: (512) 440-7723

Engineering Experience

• 22 TAC §131.81

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.81, with changes to the proposed text as published in the June 22, 1990, issue of the *Texas Register* (15 TexReg 3617).

The amendment was necessary to clarify the experience requirements and essential supporting documentation to enable the board to properly evaluate an applicant's engineering experience.

The amendment specifies that an applicant for registration must describe engineering experience in sufficient detail in the supplementary experience record so that it is apparent to the board that the applicant's experience is progressive and of an increasing standard of quality and responsibility; that in order for military experience to be acceptable, the applicant must submit a copy of his discharge papers (DD Form 214); that the board will no longer place an application on hold in order for the applicant to attain additional acceptable experience; and that applicants claiming foreign engineering experience must have at least two years of engineering experience in the United States and show that they have learned the use of United States standards, codes, and other engineering procedures in their practice.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a) which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.81. Experience Evaluation. The evaluation of the engineering experience claimed by an applicant for registration under the Texas engineering experience claimed by an applicant for registration under the Texas Engineering Practice Act (the Act), §12(a), (b), or §21, will include, but not be restricted to, the following.

(1) Experience must have been progressive and of an increasing standard of quality and responsibility and must be described in sufficient detail in the applicant's supplementary experience record that it will be apparent to the board that the applicant has met these parameters.

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

(5) Military experience, to be acceptable, must have been gained in engineering work of a character satisfactory to the board. A copy of discharge papers (DD Form 214) or other evidence of military service must be provided if the applicant served in any military unit after receiving an engineering degree and/or if any engineering is claimed during military service.

(6)-(11) (No change.)

(12) Applicants who claim foreign engineering experience must have, in addition to other experience, at least two years of engineering experience in the United States and show that they have learned to use the United States standards, codes, and other engineering procedures in their engineering practice.

(13)-(18) (No change.)

This agency hereby certifies that the section 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 August 7, 1990.

TRD-9007911 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: June 22, 1990

For further information, please call: (512) 440-7723

Education

• 22 TAC §131.93

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.93, without changes to the proposed text as published in the June

22, 1990, issue of the *Texas Register* (15 TexReg 3618).

The amendment was necessary to provide clear and concise requirements concerning the submission of transcripts.

The amendment requires an applicant for registration to submit an official transcript from each school from which a degree or 15 or more semester hours of credit are claimed on the application.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on August 7, 1990.

TRD-9007910 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: June 22, 1990

For further information, please call: (512) 440-7723

Examinations

• 22 TAC §131.101 §131.105

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.101 and §131.105, without changes to the proposed text as published in the June 22, 1990, issue of the *Texas Register* (15 TexReg 3618).

The amendments were necessary to establish the new guidelines for scheduling the national engineering examinations, and to correct the reference to the National Council of Examiners for Engineering and Surveying, previously the National Council of Engineering Examiners.

§131.101(5) requires an examinee to take and pass the examinations in accordance with the examination schedules outlined in §131.101(4)(A) and (B); otherwise, the application will not be approved. §131.105 states the correct name of the National Council of Examiners for Engineering and Surveying.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on August 7, 1990.

TRD-9007909

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: June 22, 1990

For further information, please call: (512) 440-7723

Board Review of Application

• 22 TAC §131.111, §131.112

The Texas State Board of Registration for Professional Engineers adopts amendments to §131.111 and §131.112, without changes to the proposed text as published in the June 22, 1990, issue of the *Texas Register* (15 TexReg 3619).

The amendments were necessary to provide the board with the ability to process and review the applications for registration in a more expeditious manner.

Section 131.111, as amended, deletes the reference to §131.81(12) which was concurrently amended and adopted. Section 131.112 permits the executive director or his designated representative to approve applications for registration under the Texas Engineering Practice Act, §21, which will expedite the board member's review of applications submitted under the Act, §12(a) or (b).

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on August 7, 1990.

TRD-9007908 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: June 22, 1990

For further information, please call: (512) 440-7723

Registration

• 22 TAC §131.133

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.133, with changes to the proposed text as published in the February 13, 1990, issue of the *Texas Register* (15 TexReg 756). Subsection (b) is being adopted without the proposed engineering branch entitled Control Systems.

The amendment was necessary because the National Council of Engineering Examiners

(NCEE) changed its name to the National Council of Examiners for Engineering and Surveying (NCEES), as referenced in subsections (b) and (c) of the section.

The amendment provides the correct name of the National Council of Examiners for Engineering and Surveying.

Written comments and oral testimony were received from members of the Instrument Society of America requesting that the board include control systems engineering in the final adoption of the section.

The board disagreed with the society's recommendation. Prior to final adoption of the section, the board received notification that the principles and practice examination in control systems engineering would no longer be available through the National Council of Examiners for Engineering and Surveying and adoption of the proposed item would be incongruous with the section.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.33. Certificates of Registration.

(a) (No change.)

(b) Effective December 1, 1988, applications for registration will be accepted only for the branches of engineering for which there is an available principles and practice examination from the National Council of Examiners for Engineering and Surveying (NCEES), and the board records annotated with the corresponding alphabetical code as follows:

(1)-(16) (No change.)

(c) Prior to December 1, 1988, the board recognized certain other branches of engineering practice for which there are no NCEES examinations, but board records were annotated with the corresponding alphabetical code as follows:

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

(d) (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 August 7, 1990.

TRD-9007907

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: February 13, 1990

For further information, please call: (512) 440-7723

◆ ◆ ◆ • 22 TAC §131.138

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.138, without changes to

the proposed text as published in the June 22, 1990, issue of the *Texas Register* (15 TexReg 3619).

The amendment was necessary to remove ambiguous language in the section regarding the use of a CADDSEAL and clarify that an authorization statement is required on any document bearing a CADDSEAL.

The amendment to §131.138(5), subparagraph (B), requires that a document bearing a CADDSEAL must either contain the registrant's original signature and date or a described notation that the document was authorized by the responsible engineer. The engineer must include his name, serial number, and the date of authorization in the notation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on August 7, 1990.

TRD-9007906

Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: August 28, 1990

Proposal publication date: June 22, 1990

For further information, please call: (512) 440-7723

◆ ◆ ◆ Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

Educational Requirements

• 22 TAC §511.57

The Texas State Board of Public Accountancy adopts an amendment to §511.57, without changes to the proposed text as published in the March 13, 1990, issue of the *Texas Register* (15 TexReg 1368).

The amendment excludes CPA review courses for credit in the category of required accounting courses.

The amendment sets forth types of classes the board will accept to meet the requirements for courses in related business subjects. This section deletes CPA review courses offered for college credit.

One individual submitted comments in opposition to the exclusion as he believes any review course offered by an accredited university should be treated as any other accounting class.

The board believes the review courses are acceptable credit in the related business

hours category; however, they do not cover enough to meet the accounting hours category.

The amendment is adopted under Texas Civil Statutes Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the definitions of accounting courses.

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 August 7, 1990.

TRD-9007930

Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: August 29, 1990

Proposal publication date: March 13, 1990

For further information, please call: (512) 450-7066

◆ ◆ ◆ • 22 TAC §511.58

The Texas State Board of Public Accountancy adopts an amendment to §511.58, without changes to the proposed text as published in the March 13, 1990, issue of the *Texas Register* (15 TexReg 1368).

The amended section sets out additional courses acceptable for credit to meet the required number of hours to sit for the exam in the area of related business subjects.

The amended section includes CPS exam review courses.

Two individuals submitted comments in opposition to permitting CPA coaching courses to count as credit toward business credit requirements as they could displace other business credit hours.

The board believes review courses offered by accredited universities possess sufficient substance to permit the hours to be credited to the related business requirement.

The amendment is adopted under Texas Civil Statutes Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to the definition of accounting courses.

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 August 7, 1990.

TRD-9007933

Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: August 29, 1990

Proposal publication date: March 13, 1990

For further information, please call: (512) 450-7066

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

Chapter 85. Flexible Benefits

- 34 TAC §§85.1, 85.3, 85.5, 85.7, 85.9, 85.13

The Employees Retirement System of Texas adopts amendments to §§85.1, 85.3, 85.5, 85.7, 85.9, and 85.13. Section 85.3 and §85.13 are adopted with changes to the proposed text as published in the May 25, 1990, issue of the *Texas Register* (15 TexReg 40). Sections 85.1, 85.5, 85.7, and 85.9, are adopted without changes and will not be republished.

Amendments to the Flexible Benefits (Cafeteria Plan) Program Rules are required to add a new family status change event to the Premium Conversion Plan; and implement plan design changes to minimize risk of losses resulting from compliance with proposed regulations governing health care reimbursement accounts established under an Internal Revenue Code, §125 Plan. The regulations are applicable to Flexible Benefits Programs beginning September 1, 1990.

Information on the rules will be furnished to all state employees to aid them in making the decision as to whether or not they wish to participate in the Flexible Benefits Program.

Two letters were received opposing the proposed amendment which reduces the amount that can be placed in a health care reimbursement account by an employee. The comments indicated that other methods, such as increased fees, could be used to offset possible losses.

The agency feels its approach is the best means to minimize risk of loss. It relied on advice from its actuary and staff as to approaches that were being taken nationwide as a result of new IRS regulations.

The amendments are adopted under the Texas Insurance Code, Article 3.50-2, §4(k), which provides the Board of Trustees of the Employees Retirement System of Texas with the authority to promulgate all rules and regulations necessary to implement and to administer a Flexible Benefits (Cafeteria Plan) Program for state employees.

§85.3. Eligibility and Participation.

- (a) Premium conversion.

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

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

(C) An employee who is otherwise eligible to participate in the Uniform Group Insurance Program but who declined participation in premium conversion prior to the beginning of a plan year, but who has a change in family status as defined in §85.7(c)(1)(A) of this title

(relating to Enrollment), after the beginning of the plan year, may elect to participate in premium conversion, if the change is consistent with the change in family status, by completing and submitting a TexFlex election form in a manner consistent with the Uniform Group Insurance Program rules.

- (D) (No change.)

- (3) Duration of participation.

- (A) (No change.)

(B) A terminated employee returning to state employment or an employee returning to active duty from an approved leave of absence without pay, or transferring from one state agency to another, within the same plan year, may not change and shall retain for the remainder of the plan year, the election in existence on the participant's last active duty date.

- (C)-(D) (No change.)

- (4) (No change.)

(b) Dependent care reimbursement plan.

(1) Eligibility. Any employee eligible to participate in the Uniform Group Insurance Program, except seasonal and temporary employees, may elect to participate in the dependent care reimbursement plan.

- (2) Participation.

- (A) (No change.)

(B) An employee who was otherwise eligible to participate in the Uniform Group Insurance Program but who declined participation in the dependent care reimbursement account prior to the beginning of a plan year, but who after the beginning of a plan year has a change in family status, as defined in §85.7(c)(1)(C) of this title (relating to Enrollment) may elect to participate in the dependent care reimbursement account if the change is consistent with the change in family status, by completing and submitting a TexFlex election form within 30 days from the date the change in family status event occurs. The effective date will be the first day of the following month, unless the change in family status event occurs on the first day of the month and the employee makes an election on the first day of the month and designates that day to be the effective date.

(C) A change in family status, as defined in §85.7(c)(1)(C) of this title (relating to Enrollment) will permit a change or revocation of participation during the plan year. A TexFlex election form must be submitted within 30 days from the

date the change in family status event occurs. The effective date will be the first day of the following month, unless the family status change event occurs on the first day of the month and the employee makes an election on the first day of the month and designates that to be the effective date.

- (D) (No change.)

- (3) Duration of participation.

(A) An employee's election to participate or to waive participation in the dependent care reimbursement plan shall be irrevocable during the plan year unless there is a change in family status as defined in §85.7(c)(1)(C) of this title (relating to Enrollment).

(B) A terminated employee returning to state employment or an employee returning to active duty from an approved leave of absence without pay, or transferring from one state agency to another, within the same plan year, may not change and shall retain for the remainder of the plan year, the election in existence on the participant's last active duty date.

(c) Health Care Reimbursement Plan.

- (1) Eligibility.

(A) Any employee eligible to participate in the Uniform Group Insurance Program, except seasonal and temporary employees, who has completed six continuous months of full-time State of Texas employment and who is classified as a full-time employee on September 1 of the plan year, may elect to participate in a health care reimbursement account. Those employees who are participants in a health care reimbursement account on August 31, 1990, are exempt from these eligibility rules for Plan Year 1991 enrollment only, and may elect to participate in a health care reimbursement account.

(B) An employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct), and who had a health care reimbursement account at the time of termination, must retain the health care reimbursement account for the applicable period of coverage. In addition, such a terminated employee may elect to enroll in a health care reimbursement account continuation coverage for the period as provided in the Public Health Service Act. A formal continuation coverage notification on a TexFlex election form provided by the Employees Retirement System of Texas must be completed and returned to the Employees Retirement System of Texas within 60 days from the date coverage is lost. Eligibility to participate is contingent

upon payment of the election amount, plus a 2.0% service charge on the elected amount, and the administrative fee on a monthly basis for the remainder of the plan year. Payments are due on the 1st of each month and must be received no later than the 30th of the month. Failure to pay will automatically cancel enrollment and future eligibility.

(C) An employee whose employment has been terminated, voluntarily or involuntarily (other than for gross misconduct) except for those persons not eligible pursuant to subparagraph (A) of this paragraph, and who has health insurance continuation coverage under the Public Health Services Act on September 1, may elect to participate in a health care reimbursement account during annual enrollment. A formal election must be made on a TexFlex election form prior to the beginning of a new plan year. Eligibility to participate is contingent upon payment of the elected amount, plus a 2.0% service charge on the elected amount, plus the administrative fee on a monthly basis for the plan year. Payments are due on the 1st of each month and must be received no later than the 30th of the month. Failure to pay will automatically cancel enrollment and future eligibility.

(2) Participation.

(A) An employee who is eligible under paragraph (1)(A) and (C) of this subsection may elect to participate by completing and submitting a TexFlex election form only during the annual enrollment period or prior to the beginning of a new plan year. The effective date of the election will be September 1 of the plan year.

(B) An employee who was eligible but who declined participation in the health care reimbursement account prior to the beginning of a plan year, but who after the beginning of a plan year has an eligible change in family status, as defined in §85.7(c)(1)(B) of this title (relating to Enrollment), may not elect to participate in a health care reimbursement account until the next annual enrollment period.

(C) A new hire after the start of a Plan Year, who meets the eligibility requirements under paragraph (1)(A) of this Subsection, may not elect to participate in a health care reimbursement account until the next annual enrollment period.

(D) A change in family status, as defined in §85.7(c)(1)(B) of this title (relating to Enrollment) will permit a change in the election amount or revocation of participation during the plan year. A TexFlex election form must be submitted within 30 days from the date the change in family status event occurs. The effective

date of change will be the first day of the following month, unless the change occurs on the first day of the month and the employee completes a TexFlex election form on the 1st of the month and designates that to be the effective date.

(E) Eligible active employees and terminated employees with continuation health coverage under the Public Health Service Act on September 1 and terminated employees with a health care reimbursement account on August 31 prior to the beginning of a new plan year will be eligible to enroll or to change benefit options during the annual enrollment period. The annual enrollment period will be prior to the beginning of a plan year. Employees on approved leave of absence without pay during the annual enrollment period and who return to work after the start of a new plan year may not enroll until the next annual enrollment period.

(3) Duration of participation.

(A) An active or terminated employee's election to waive participation in the health care reimbursement account shall be irrevocable for the plan year.

(B) An active or terminated employee's election to participate in the health care reimbursement account shall be irrevocable for the plan year, unless there is an eligible change in family status as defined in §85.7(c)(1)(B) of this title (relating to Enrollment).

(C) An employee returning to active duty from an approved leave of absence without pay or transferring from one state agency to another within the same plan year must retain the election in existence on the last active duty date or the date of transfer for the remainder of the plan year.

(D) An employee who is enrolled in a health care reimbursement account at the time of termination must retain the health care account for the remainder of the plan year by continuing to contribute after-tax dollars on a monthly basis, as described in paragraph (1)(B) of this subsection.

§85.13. Funding.

(a) (No change.)

(b) Contributions.

(1) Contributions to the flexible benefits plan by active duty employees may be made only through payroll redirection. An employee who elects to participate in the health care and dependent care reimbursement plans must authorize in writing, on a TexFlex election form, the exact

amount of reduction from his monthly compensation, in addition to the monthly administrative fee.

(2) Eligible health care reimbursement account participants on inactive employment status must continue to contribute to their health care reimbursement account with after-tax dollars paid directly to the Employees Retirement System of Texas in the exact amount of the election, plus 2.0% service charge on election amount and administrative fees. The amount of the monthly administrative fee for each reimbursement account is \$3.00.

(3) The minimum amount a participant may redirect monthly for each reimbursement account is \$15. The maximum amount a participant may redirect monthly for each reimbursement account is limited to the amount stipulated in §85.5(c) and (d) of this title (relating to Benefits). The administrative fee for each reimbursement account is in addition to these minimum and maximum amounts.

(4) When a participant receives no salary in a pay period, no redirection will be made for that pay period and no catch-up redirection will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursement Accounts) for health care reimbursement account participants.

(5) In situations where there are insufficient salary dollars to fund the amount of the salary redirections and fees, no salary redirection will be made, except as indicated in paragraph (6) of this subsection, for that pay period and no catch-up redirection will subsequently be permitted, except as described in §85.9(d)(2) of this title (relating to Payment of Claims from Reimbursement Accounts) for health care reimbursement account participants. The after-tax payment by the employee for insurance premiums may be permitted in accordance with Uniform Group Insurance Program rules.

(6) (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 August 6, 1990.

TRD-9007858

James A. Adkins
Acting Executive Director
Employees Retirement
System of Texas

Effective date: September 1, 1990

Proposal publication date: May 25, 1990

For further information, please call: (512) 476-6431 ext. 213

◆ ◆ ◆

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 15. Medicaid Eligibility

Subchapter E. Income

• 40 TAC §15.455

The Texas Department of Human Services adopts an amendment to §15.455, concerning augmented veterans benefits. The amendment is a result of a federal mandate that establishes policy covering the treatment of veterans benefits that are augmented or increased to provide for dependents.

The amendment is justified to comply with federal requirements.

The amendment will function by clearly specifying when a Medicaid client is allowed to count augmented income.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. To comply with federal requirements, the amendment is adopted effective May 18, 1990.

§15.455. Unearned Income.

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

(c) Fixed income. Sources of unearned, fixed income are as follows:

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

(3) VA compensation, pension, and DIC payments.

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

(C) When veterans benefits are augmented for a dependent, the dependent's portion is not countable income to the recipient (the veteran or veteran's surviving spouse) of the check. If the dependent is the client, his portion is countable income to him.

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

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

Issued in Austin, Texas, on August 6, 1990.

TRD-9007870

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: May 18, 1990

For further information, please call: (512) 450-3765

• 40 TAC §15.460

The Texas Department of Human Services adopts an amendment to §15.460, concerning agent orange settlement payments. The amendment is a result of a federal mandate that describes the treatment of agent orange settlement fund payments.

The amendment is justified to comply with federal requirements.

The amendment will function by excluding agent orange settlement fund payments from applied income and from countable income when determining eligibility for medical assistance.

The amendment is adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. To comply with federal requirements, the amendment is adopted effective January 1, 1989.

§15.460. Income Exemptions.

(a) (No change.)

(b) The department exempts income that a client receives from any of the following sources:

(1)-(29) (No change.)

(30) agent orange settlement fund or any other fund established in settlement of the agent orange product liability litigation. Public Law 101-239 excludes the payments from countable income and resources. The law covers both disability and death benefits and is retroactive as of January 1, 1989.

This agency hereby certifies that the section 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 August 6, 1990.

TRD-9007869

Cathy Rossberg
Agency liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: January 1, 1989

For further information, please call: (512) 450-3765

Chapter 29. Purchased Health Services

Subchapter G. Hospital Services

• 40 TAC §29.603, §29.606

The Texas Department of Human Services (DHS) adopts amendments to §29.603 and §29.606, concerning authorized inpatient hospital services, and reimbursement methodology for inpatient hospital services, in its Purchased Health Services chapter. The amendments are adopted effective July 1, 1990, to comply with interpretations of the Medicare Catastrophic Coverage Act of 1988,

§302 (Public Law 100-360), that DHS received from the Health Care Financing Administration (HCFA). Section 302 requires state Medicaid agencies to waive durational limits on inpatient hospital services provided to recipients less than age one in disproportionate share hospitals and to make outlier payment adjustments for long and/or expensive hospital stays involving such recipients.

In responding to §302, DHS chose to apply its policies to all Title XIX participating hospitals to ensure access to medically necessary care for all recipients less than age one. HCFA initially approved this approach.

HCFA is now directing DHS to apply its policies to disproportionate share hospitals only. Sections 29.603 and 29.606 are being amended to comply with HCFA's directive.

The justification of the amendments is to comply with HCFA's interpretations of §302.

The amendments will function by making DHS's policies consistent with HCFA's interpretations of §302.

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs. The amendments are adopted under federal requirements to be effective July 1, 1990.

§29.603. Authorized Inpatient Hospital Services. Inpatient hospital services include those items and services that are ordinarily furnished by the hospital for the care and treatment of inpatients and are provided under the direction of a physician in a Title XIX hospital or a Title XVIII or XIX out-of-state hospital approved for participation. Except as otherwise specified, and subject to the qualifications, limitations, and exclusions set forth, benefits are provided for hospital services set forth as follows when provided to eligible recipients.

(1) Duration of care. Except as otherwise specified in §29.1125 of this title (relating to Organ Transplants), when an eligible recipient is confined as an inpatient in a Title XIX hospital, or a Title XVIII or XIX out-of-state hospital approved for participation, the health insuring agent pays for medically necessary inpatient hospital services actually furnished to the recipient during the first 30 days of each Title XIX spell of illness. The Title XIX spell-of-illness limitations are waived for medically necessary inpatient services provided to recipients less than age one in disproportionate share hospitals as defined by the department. For purposes of this waiver, disproportionate share hospitals are defined as those hospitals identified by the department during the previous state fiscal year as disproportionate share hospitals. The services are subject to the utilization review requirements of the Texas Medical Assistance Program.

(2) (No change.)

§29.606. Reimbursement Methodology for Inpatient Hospital Services.

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

(f) Patient transfers. If a patient is transferred, the department or its designee establishes payment amounts as specified in paragraphs (1)-(4) of this subsection. If appropriate, the department or its designee manually reviews transfers for medical necessity and appropriate payment.

(1) (No change.)

(2) If the patient is transferred to another hospital, the department or its designee pays the receiving hospital the total payment amount of the patient's DRG. The department or its designee pays the transferring hospital a DRG per diem. The DRG per diem is based on the following formula: (DRG relative weight x standard dollar amount) X LOS DRG mean length of stay (LOS) The LOS is the lesser of the

DRG mean LOS, the claim LOS, or 30 days. The 30-day factor is not used in establishing a DRG per diem amount for a medically necessary stay of a recipient less than age one in a disproportionate share hospital as defined by the department.

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

(g)-(o) (No change.)

(p) Day and cost outliers. Effective for inpatient hospital services provided on or after July 1, 1990, the department or its designee pays day or cost outliers for medically necessary inpatient services provided to recipients less than age one in disproportionate share hospitals, as defined by the department, that are reimbursed under the prospective payment system. For purposes of outlier payment adjustments, disproportionate share hospitals are defined as those hospitals identified by the department during the previous state fiscal year as dis-

proportionate share hospitals. If an admission qualifies for both a day and a cost outlier, only the outlier resulting in the highest payment to the hospital is paid.

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

(q) (No change.)

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

Issued in Austin, Texas, on August 6, 1990.

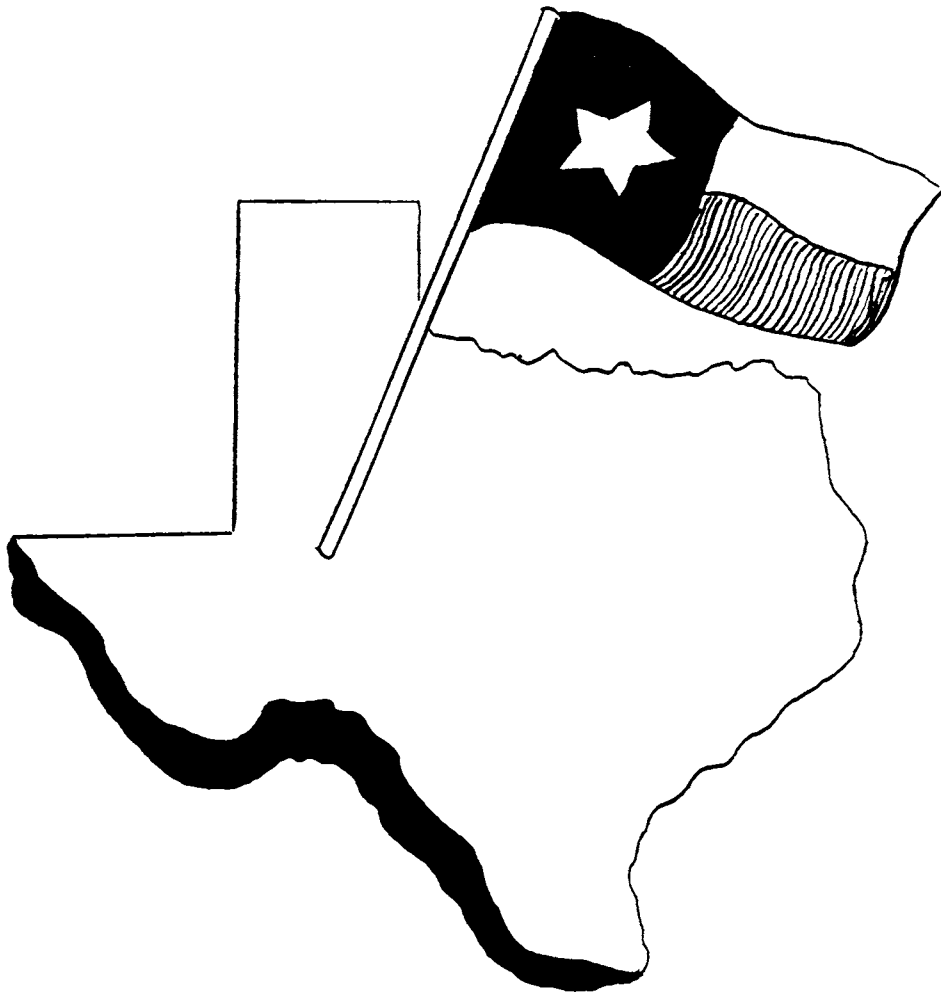
TRD-9007871

Cathy Rosenberg
Agency Liaison, Policy
Communication
Services
Texas Department of
Human Services

Effective date: July 1, 1990

For further information, please call: (512) 450-3765

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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 Commission on Alcohol and Drug Abuse

Tuesday, August 28, 1990, 8:30 a.m. The Board of Commissioners of the Texas Commission on Alcohol and Drug Abuse will meet at the Department of Human Services, Public Hearing Room, Austin. According to the complete agenda, the commissioners will approve May 8, 1990 minutes; hear public comments; report of Texas Summit Committee; action on Sky-line 24 Hour Club, Inc. licensure revocation; consideration and action on proposed licensure rules revisions; consideration and action on proposed complaint rules revisions; action on Dunbar Neighborhood Council, Inc. appeal of funding termination; action on proposed cost control standards pursuant to Senate Bill 911; executive director's report; and chairman's report.

Contact: Becky Davis or Larry Goodman, 1705 Guadalupe, Austin, Texas 78701, (512) 867-8700.

Filed: August 8, 1990, 3:35 p.m.

TRD-9007991

Texas Board of Architectural Examiners

Friday, August 24, 1990, 8 a.m. The Ad Hoc Committee of the Texas Board of Architectural Examiners will meet at 8213 Shoal Creek Boulevard, Suite 107, Austin. According to the complete agenda, the committee will meet with members of the Texas Board of Registration for Professional Engineers to discuss the related practices of architecture and professional engineering.

Contact: Robert H. Norris, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78758, (512) 458-1363.

Filed: August 8, 1990, 2:11 p.m.

TRD-9007970

State Bar of Texas

Thursday, August 16, 1990, 7:30 p.m.

The Board of Directors of the State Bar of Texas will meet at the Four Seasons Hotel, Austin. According to the agenda summary, the board will hear a report from the President, James N. Parsons III; and report from the General Counsel, Frank J. Douthitt/Steven L. Lee.

Contact: Pat Hiller, 1414 Colorado Street, Austin, Texas 78701, (512) 463-1451.

Filed: August 9, 1990, 9:26 a.m.

TRD-9007992

Texas Education Agency

Thursday, August 16, 1990, 9 a.m. The School Facilities Advisory Committee of the Texas Education Agency will meet at the William B. Travis Building, Room 8-101, 1701 North Congress Avenue, Austin. According to the complete agenda, the committee will approve minutes of July 16, 1990 meeting; and discuss financing options for the facilities funding program.

Contact: Joe Wisnoski, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9704.

Filed: August 8, 1990, 10:02 a.m.

TRD-9007944

Saturday, August 18, 1990, 9 a.m. The Texas Oral Proficiency Test Bias Review Committee for French and Spanish will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will make introductions and review items. Following introductions, all other portions of the meeting at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976).

Contact: Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: August 8, 1990, 10:03 a.m.

TRD-9007941

Sunday-Monday, August 19-20, 1990, 10:30 a.m. and 9 a.m. respectively. The

Texas Oral Proficiency Test Content Review Committee for Spanish will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will make introductions and item review on Sunday; and continue item review on Monday. Following introductions on Sunday, all other portions of the meeting on August 19 and August 20, at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976).

Contact: Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: August 8, 1990, 10:03 a.m.

TRD-9007942

Tuesday, August 21, 1990, 9 a.m. The Texas Oral Proficiency Test Content Review Committee for French will meet at the Guest Quarters Suite Hotel, 305 West 15th Street, Austin. According to the complete agenda, the committee will make introductions and item review. Following the introduction session, all other portions of the meeting at which actual test questions and items will be reviewed will be closed in accordance with Texas Attorney General Opinions H-484 (1974) and H-780 (1976).

Contact: Pamela Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: August 8, 1990, 10:03 a.m.

TRD-9007943

Governor's Division of Emergency Management/Department of Public Safety

Thursday, August 9, 1990, 9 a.m. The Governor's Division of Emergency Management and the Governor's Oil Spill Advisory Committee of the Texas Department of Public Safety met the Texas Water Commission, Stephen F. Austin

Building, 1700 North Congress Avenue, Austin. According to the complete emergency revised agenda, rescheduled from Room 119, the agency changed item three of the agenda to read: Preliminary review of activities involving the Mega Borg and Galveston Bay spill incident. The emergency revision was necessary due to the occurrence of new activities since the filing of the original agenda.

Contact: Robert A. Lansford, 55805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2138.

Filed: August 8, 1990, 1:19 p.m.

TRD-9007960

Texas Department of Health

Friday, August 17, 1990, 2:30 p.m. The Home Health Services Advisory Council of the Texas Department of Health will meet at the Texas Department of Health, Room T-507, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve minutes of previous meeting; consider proposed rules on home health aide training, test and registry; Senate Bill 46 and memorandum of understanding between the department, Board of Nurse Examiners and Board of Vocational Nurse Examiners for administration of medications by exempt persons; request to change home health licensing rules regarding branch offices; implementation of HIV education for home health agency employees; letter from Texas Association of Home Health Agencies; home health aide skills assessment test; announcements and comments.

Contact: Nance Kerrigan, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7245.

Filed: August 8, 1990, 4:16 p.m.

TRD-9007998

Wednesday, September 12, 1990, 10:39 a.m. The Advisory Committee on Mental Retardation of the Texas Department of Health will meet at the Texas Department of Health, Room T-607, 1100 West 49th Street, Austin. According to the agenda summary, the committee will consider updates on intermediate care facilities-related conditions (ICF-RC); architectural regulations for facilities serving persons with mental retardation; licensure regulations for facilities serving individuals with mental retardation and related conditions; preadmission screening and annual resident review.

Contact: Richard Butler, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7706.

Filed: August 8, 1990, 4:16 p.m.

TRD-9007999

Texas Housing Agency

Thursday, August 9, 1990, 9 a.m. The Finance and Planning Committee meeting of the Texas Housing Agency met at the Texas Housing Agency Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the emergency revised agenda summary, the committee considered and possibly acted on status, requested extension, cancellation, and/or re-bid of financial advisor to analyze the financial strength of the single family mortgage revenue bond trust indenture in light of the current economic conditions. The emergency status was necessary due to urgent public necessity to better manage and preserve state funds and property to provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: August 8, 1990, 3:01 p.m.

TRD-9007988

Thursday, August 9, 1990, 1 p.m. The Board of Directors' meeting of the Texas Housing Agency met at the Texas Housing Agency Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda summary, the board considered and possibly acted on status, requested extension, cancellation, and/or re-bid of financial advisor to analyze the financial strength of the single family mortgage revenue bond trust indenture in light of the current economic conditions. The emergency status was necessary due to urgent public necessity to better manage and preserve state funds and property to provide safe, decent, and sanitary housing for Texans of low and moderate income.

Contact: Tish Gonzalez, P.O. Box 13941, Austin, Texas 78711, (512) 474-2974.

Filed: August 8, 1990, 3:01 p.m.

TRD-9007989

Texas Health and Human Services Coordinating Council

Friday, August 17, 1990, 10:30 a.m. The Commission on Children, Youth, and Family Services of the Texas Health and Human Services Coordinating Council will meet at the Texas Department of Health, Room M652, 1100 West 49th Street, Austin. According to the complete agenda, the commission will review and approve minutes; hear reports from the following workgroups: prevention and intervention, policy coordination, child abuse program evaluation, treatment and care, community resources, and project child save; Sunset Commission process discussion; Texas Health and Human Services Coordinating

Council budget discussion; old business; and new business.

Contact: Louis Worley, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: August 9, 1990, 8:38 a.m.

TRD-9008002

Wednesday, August 22, 1990, 9 a.m. The Policy Coordination Workgroup of the Commission on Children, Youth, and Family Services of the Texas Health and Human Services Coordinating Council will meet at the State Bar of Texas, Room 202 and 203, 15th and Colorado Streets, Austin. According to the complete agenda, the commission will hear public hearing testimony to the workgroup; discussion of revised children's bill of rights; philosophy statement; status report on needs analysis; and discussion of coordination of services.

Contact: Louis Worley, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: August 9, 1990, 8:38 a.m.

TRD-9008001

State Board of Insurance

Thursday, August 16, 1990, 10 a.m. The State Board of Insurance will meet at the State Insurance Building, 1110 San Jacinto Street, Room 414, Austin. According to the agenda summary, the board will consider motions for rehearing by Joe Anthony Chapa and Janice Kaufman; filings by American Physicians Insurance Exchange and CNA under Omnibus Rural Healthcare Rescue Act (House Bill 18); consideration of final action on adoption of new TAC 28 §§5. 1301-5.1309, 5.1501-5.1503 and 5.1401-5.1402, final action on amendments to 28 TAC §15.27, repeal of 28 TAC 27.601-27.620; order to correct Order Number 56964; consideration of authorization for publication of amendments to 28 TAC §7.1414 and §15.101; consideration of designation of authorized agency representatives who may access examination information; rate renewal filings for Healthcare Specialties by the St. Paul Companies; consideration of final action on adoption of new 28 TAC §§27.601-27.607; consideration of NAIC participation; and consideration of promotion to associate commissioner for compliance.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: August 8, 1990, 4:12 p.m.

TRD-9007996

Board of Law Examiners

Thursday, August 16, 1990, 1 p.m. The Board of Law Examiners will meet at the Texas Law Center, 1414 Colorado Street, Austin. According to the complete agenda, the board will discuss litigation regarding Malloy case; and review responses to audit report.

Contact: Wayne E. Denton, 510 South Congress Avenue, Suite 116, Austin, Texas 78704, (512) 463-1621.

Filed: August 8, 1990, 10:59 a.m.

TRD-9007951

Texas Legislative Council

Friday, August 24, 1990, 9 a.m. The Texas Legislative Council will meet at the Old Supreme Court Room, Room 310, Capitol Building, Austin. According to the complete agenda, the council will call the meeting to order; adopt minutes; hear executive director's report; consider proposed council operating budget for fiscal year 1991; and discuss other business.

Contact: Dorothy Wells, P.O. Box 12128, Austin, Texas 78711, (512) 463-1151.

Filed: August 7, 1990, 3:11 p.m.

TRD-9007919

Texas State Board of Medical Examiners

Thursday, August 16, 1990, 1 p.m. The Reciprocity Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484; exam analysis; applicants; and applicants for permanent licensure.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 8, 1990, 12:30 p.m.

TRD-9007956

Thursday, August 16, 1990, 4 p.m. The Examination Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484; exam applicants; exam results; applicants complete for licensure; jurisprudence exam; evaluation form revisions; and letter review.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 8, 1990, 12:30 p.m.

TRD-9007957

Thursday, August 16, 1990, 5 p.m. The Standing Orders Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484; possible rule changes on emergency medical service.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 8, 1990, 12:30 p.m.

TRD-9007958

Thursday, August 16, 1990, 5:30 p.m. The Legislative and Finance Committees of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committees will meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484; discuss possible future legislative changes and budget matters.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 8, 1990, 12:30 p.m.

TRD-9007959

Friday, August 17, 1990, 8 a.m. The Disciplinary Process Review Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the committee will meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484; approve minutes; dealing with impaired physicians; enforcement reports; proposed disciplinary guidelines; possible rule change re: district review committees; ex parte communications; hearings process; report on meetings; and investigator vacancies and recruitment.

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 8, 1990, 12:30 p.m.

TRD-9007955

Friday-Saturday, August 17-18, 1990, 8 a.m. The Texas State Board of Medical Examiners will meet at 1101 Camino LaCosta, Austin. According to the agenda summary, the board will meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484; committees, meetings, reports, reorganization; minutes, including consideration of possible HB 18 rules; director's report (let-

ter agreement, lock box, space, computer, licensure, enforcement, meetings); board orders and agreed orders; proposals for decisions; probationers; duplicates; hotline; reinstatements; rule change (exam fee increase); suspension during incarceration; pending litigation (executive session under Article 6252-17, section 2(e)).

Contact: Jean Davis, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: August 8, 1990, 12:30 p.m.

TRD-9007954

Texas National Guard Armory Board

Friday, August 17, 1990, 9 a.m. The Texas National Guard Armory Board will meet at the Presidential Suite, Room 900, Holiday Inn, 10650 North Central Expressway, Dallas. According to the agenda summary, the board will approve minutes of previous meeting; discuss administrative matters; construction/renovation/maintenance update; property/leases; and establish date of next meeting.

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763-5218, (512) 451-6394/451-6143.

Filed: August 8, 1990, 10:47 a.m.

TRD-9007948

Public Utility Commission of Texas

Wednesday, August 15, 1990, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the commission will consider the following dockets: 9186, 8018, 9420, 9165, 9320, 8588, P9678, 9462, 9464, 9481, P9089, and P9436.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1990, 3:29 p.m.

TRD-9007923

Wednesday, August 15, 1990, 1 p.m. The Administrative Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N (HRoom A), Austin. According to the agenda summary, the division will discuss reports; discussion and action on budget and fiscal matters; progress report on dual-party relay service; report on earnings monitoring reports for calendar year 1989; adjournment for executive session to consider litigation and personnel matter; reconvene for discussions and decisions on matters considered in executive session; and set time and place for next meeting.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1990, 3:26 p.m.

TRD-9007920

Wednesday, August 22, 1990, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a joint evidentiary hearing in Docket Numbers 8425 and 8431-application of Houston Lighting and Power Company for authority to change rates; and application of Houston Lighting and Power Company for a final reconciliation of fuel costs through September 30, 1988.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1990, 3:28 p.m.

TRD-9007921

Wednesday, August 22, 1990, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will conduct a joint evidentiary hearing in Docket Numbers 6668 and 6753-inquiry of the Public Utility Commission of Texas into the prudence and efficiency of the planning and management of the construction of the South Texas Nuclear Project; and inquiry of the Public Utility Commission into treatment of the proceeds from the South Texas Project settlement.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 7, 1990, 3:28 p.m.

TRD-9007922

Railroad Commission of Texas

Thursday, August 16, 1990, 2 p.m. The Railroad Commission of Texas will meet at the William B. Travis Building, 12th Floor Conference Room, 1701 North Congress Avenue, Austin. According to the complete agenda, the commission will hear oral argument on gas utilities Docket Number 7604, considering appeal of Rio Grande Valley Gas Company from action by cities in its Rio Grande Valley service area and statements of intent for the environs of the cities and rural areas in Hidalgo, Willacy, Cameron, Starr, and Jim Hogg counties.

Contact: Sandra Boone, P.O. Box 12967, Austin, Texas 78711, (512) 463-7009.

Filed: August 7, 1990, 2:04 p.m.

TRD-9007916

Texas Rehabilitation Commission

Thursday-Friday, August 23-24, 1990, 12:30 p.m. and 9 a.m. respectively. The Texas Planning Council for Developmental Disabilities Quarterly Council meeting of the Texas Rehabilitation Commission will meet at the Stouffer Hotel at the Arboretum, 9721 Arboretum, Trinity Room, Austin. According to the complete agenda, on Thursday the council will introduce council members, staff, and guests; hear public comments; approve minutes of June 7-8, 1990 meeting; advocacy and public information committee report: draft position on case management, proposed disability coalition activities, draft legislation platform, review of state and federal legislation/policy, and other discussion items; planning and evaluation committee report: proposed FY 1991 funding activities, proposal to review supported living grant, and other discussion items; presentation by Colleen Wieck, Ph.D.; and executive committee report: consumer stipends, review of review of policy (bylaws) revision composition of committees, and other discussion items; chairman's report: signing of ADA, rotation of committee chair, and OSERS grant application; executive director's report: TPCDD planning calendar, NADDC report, and other discussion items. On Friday the council will introduce members, staff, and guests; hear public comments; continuation of unfinished business from first day agenda; and hear announcements.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Austin, Texas 78751-2316, (512) 483-4052.

Filed: August 8, 1990, 2:11 p.m.

TRD-9007969

Senate of the State of Texas

Saturday, August 25, 1990, 10 a.m. and 2 p.m. The Select Committee on Legislative Redistricting of the Senate of the State of Texas will meet at the Henry B. Gonzalez Convention Center, Fiesta Room A, San Antonio. According to the complete agenda, the committee will take written and oral testimony on congressional, legislative, and State Board of Education redistricting, with special emphasis on redistricting in the San Antonio area and surrounding counties. The hearing is one of a series of joint regional hearings being conducted by the Senate Select Committee on Legislative Redistricting and the House Redistricting Committee to gather information from around the state to assist the legislature in redistricting after publication of the 1990 census.

Contact: Doris Boedeker, P.O. Box 12128, Austin, Texas 78711, (512) 463-0964.

Filed: August 8, 1990, 2:23 p.m.

TRD-9007968

The Texas A&M University System

Monday-Tuesday, August 13-14, 1990, 3 p.m. and 8 a.m. respectively. The Board of Regents of the Texas A&M University System will meet at the Hyatt Regency Hotel, DFW Airport, International Parkway, Dallas. According to the complete agenda, the board will consider any and all things leading to the selection of the President of Corpus Christi State University.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843-1122, (409) 845-9603.

Filed: August 8, 1990, 9:57 a.m.

TRD-9007947

Texas State Treasury Department

Friday, August 17, 1990, 9:30 a.m. The Child Care Development Board of the Texas State Treasury Department will meet at the Sam Houston Building, Seventh Floor Conference Room, Austin. According to the complete agenda, the board will approve minutes of previous meeting; executive session; update on the request for information and the proposed request for a proposal for a day care provider; discussion of the proposed waiting list procedure; and new business.

Contact: Dorothy Browne, 111 East 17th Street, Austin, Texas 78701, (512) 463-5976.

Filed: August 8, 1990, 10:30 a.m.

TRD-9007946

Regional Meetings

Meetings Filed August 7, 1990

The Austin Transportation Study Policy Advisory Committee will meet at the Joe C. Thompson Conference Center, Room 2.102, 26th and Red River Street, Austin, August 14, 1990, at 6 p.m. Information may be obtained from Joseph P. Giselman, 811 Barton Springs Road, #700, Austin, Texas 78704, (512) 472-7483.

The Austin-Travis County Mental Health and Mental Retardation Center Executive Committee met in an emergency meeting at 4210 Spicewood Springs Road, #108, Austin, August 8, 1990, at 7:30 a.m. The emergency was necessary due to information needing to be discussed prior to next board meeting and informed today that August 8th was the only time members could finalize discussions. Information may

be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141.

The Community Justice Assistance Division Community Justice Council of Young County met in an emergency meeting at the Young County Courthouse, Third Floor, Jury Room, Graham, August 13, 1990, at 7:30 p.m. Information may be obtained from Darrell McGee, P.O. Box 794, Graham, Texas 76046, (817) 549-7960.

The Garza County Appraisal District Board of Directors will meet at the Appraisal Office, 124 East Main Street, Post, August 16, 1990, at 9 a.m. Information may be obtained from Billie Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518.

TRD-9007905

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Meetings Filed August 8, 1990

The Blanco County Appraisal District Board of Directors will meet at the Blanco County Courthouse Annex, Johnson City, August 14, 1990, at 6 p.m. Information may be obtained from Hollis Petri, P.O. Box 338, Johnson City, Texas 78636, (512) 868-4624.

The Brazos River Authority Board of Directors, Search Committee will meet at the Hyatt Regency DFW Hotel, Dallas Fort Worth Airport, West Tower, Dallas, August 27, 1990, at 10 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441.

The Cass County Appraisal District Board of Directors met at the Cass County Appraisal District Office, 502 North Main Street, Linden, August 13, 1990, at 7 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Colorado River Municipal Water District Board of Directors will meet in a revised agenda at 400 East 24th Street, Big Spring, August 16, 1990, at 10 a.m. Information may be obtained from O. H. Ivie, P.O. Box 869, Big Spring, Texas 79721, (915) 267-6341.

The Education Service Center, Region VI Board of Directors will meet at the Briarcrest Country Club, Bryan, August 16, 1990, at 5 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The Mason County Appraisal District will meet in a revised agenda at 206 Ft. McKavitt Street, Mason, August 16, 1990, at 7:30 p.m. Information may be obtained from Neal Little, P.O. Box 1119, Mason, Texas 76856, (915) 347-5989.

The Middle Rio Grande

Development Council Private Industry Council will meet at 1916 Main Street, Eagle Pass, August 15, 1990, at 1 p.m. Information may be obtained from Michael Patterson, P.O. Box 1199, Carrizo Springs, Texas 78834, (512) 876-3533.

The South East Texas Regional Planning Commission Executive Committee will meet at the City of Beaumont Council Chambers, Beaumont, August 15, 1990, at 7 p.m. Information may be obtained from Jackie Vice, 3800 Highway 365, P.O. Drawer 1387, Port Arthur, Texas 77642, (409) 727-2384.

The Trinity River Authority of Texas Utility Services Committee will meet at 5300 South Collins Street, Tarrant County, Arlington, August 14, 1990, at 10 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

The Fiftieth Judicial District Juvenile Board met in an emergency meeting at the Commissioners Courtroom, Knox County Courthouse, Benjamin, August 8, 1990, at 1:30 p.m. The emergency was necessary due to contemplated litigation. Information may be obtained from David W. Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 888-2852.

TRD-9007925

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Meetings Filed August 9, 1990

The Austin-Travis County Mental Health and Mental Retardation Center Board of Trustees, Personnel Committee will meet at 1430 Collier Street, Conference Room #1, Austin. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141.

The Liberty County Central Appraisal District Board of Directors will meet at 315 Main Street, Liberty, August 22, 1990, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-4722.

The Liberty County Central Appraisal District Appraisal Review Board will meet at 315 Main Street, Liberty, August 23, 1990, at 9:30 a.m. Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-4722.

The Limestone County Appraisal District Board of Directors will meet at the Limestone County Courthouse, Meeting Room, Groesbeck, August 15, 1990, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The Scurry County Appraisal District Board of Directors will meet at 2612 College Avenue, Snyder, August 14, 1990, at 8 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, August 14, 1990, at 9 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721.

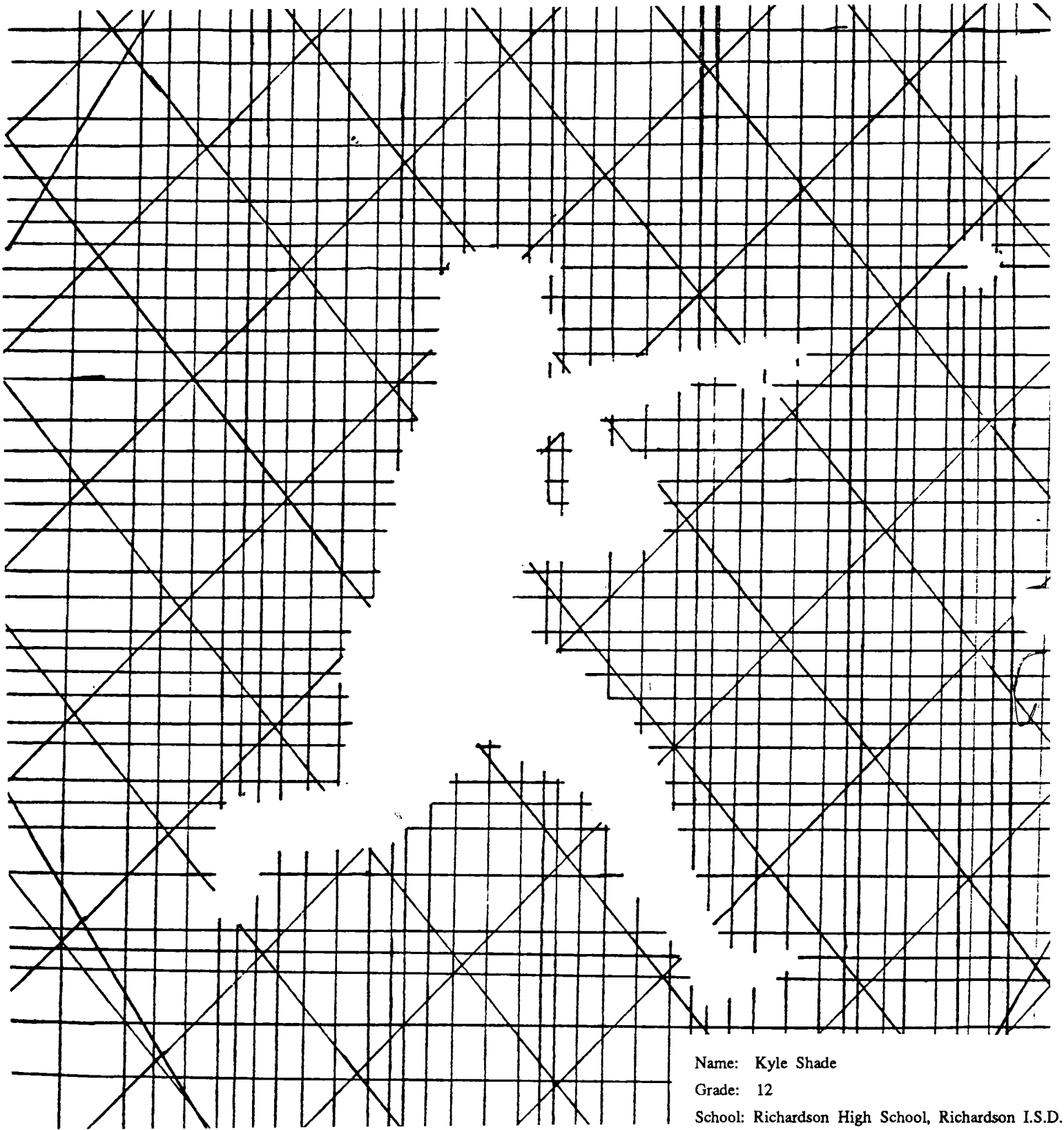
The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, August 14, 1990, at 10 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730, (806) 762-8721.

The Swisher County Appraisal District Board of Directors will meet at 130 North Armstrong Street, Tulia, August 16, 1990, at 8 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

The Trinity River Authority of Texas Legal Committee will meet at 5300 South Collins Street, Tarrant County, Arlington, August 15, 1990, at 10:30 a.m. Information may be obtained from Jack C. Worsham, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343.

The Wood County Appraisal District Board of Directors will meet at 217 North Main Street, Conference Room, Wood County Appraisal District Office, Quitman, August 16, 1990, at 1:30 p.m. Information may be obtained from W. Carson Wages, 217 North Main Street, Quitman, Texas 75783, (214) 763-4891.

TRD-9008000



Name: Kyle Shade

Grade: 12

School: Richardson High School, Richardson I.S.D.

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formu-

las and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, Title 79, Revised Civil Statutes of Texas 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 ⁽³⁾/Agricultural/ Commercial ⁽⁴⁾ thru \$250,000</u>	<u>Commercial ⁽⁴⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	08/13/90-08/19/90	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(1)	08/01/90-08/31/90	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	07/01/90-09/30/90	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	07/01/90-09/30/90	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	07/01/90-09/30/90	15.62%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	07/01/90-09/30/90	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11(3)	07/01/90-09/30/90	18.00%	N.A.
Annual Rate Applicable to Pre-July 1, 1983 Retail and Lender Credit Card Balances with Annual Implementation Dates from:	07/01/90-09/30/90	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	08/01/90-08/31/90	10.00%	10.00%

(1) For variable rate commercial transactions only. (2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S. (3) Credit for personal, family or household use. (4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on August 6, 1990.

TRD-9007914 Al Endsley
Consumer Credit Commissioner

Filed: August 7, 1990

For further information, please call: (512) 479-1280

Texas Education Agency

Notice of Contract Awards

This contract award is filed in accordance with Texas Civil Statutes, Article 6252-11c.

After publication of a consultant proposal request in the March 16, 1990, issue of the *Texas Register* (15 TexReg 1537) to provide planning assistance for the development of student assessment in science as part of the Texas Assessment of Academic Skills program, the Texas Education Agency has awarded contract to the Center for Instructional Development and Services, College of Education, Florida State University, 2003 Apalachee Park-

way, Tallahassee, Florida 32301. The contract is effective June 1, 1990-November 30, 1990, in the amount of \$123,750.

Tasks and products to be completed during this contract period and no later than November 30, 1990, are a search of literature in science education and assessment, arrangements for and documentation of a consultants' meeting, a Texas educator survey, and science test objectives and specifications.

Issued in Austin, Texas, on August 6, 1990.

TRD-9007865 W. N. Kirby
Commissioner of Education

Filed: August 6, 1990

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

This contract award is filed in accordance with Texas Civil Statutes, Article 6252-11c.

After publication of a consultant proposal request in the

March 16, 1990, issue of the *Texas Register* (15 TexReg 1537) to provide planning assistance for the development of student assessment in social studies as part of the Texas Assessment of Academic Skills program, the Texas Education Agency has awarded contract to Educational Testing Service, 700 Brazos Street, Suite 350, Austin, Texas 78701. The contract is effective June 1, 1990-November 30, 1990, in the amount of \$108,361.

Tasks and products to be completed during this contract period and no later than November 30, 1990, are a search of literature in social studies education and assessment, arrangements for and documentation of a consultants' meeting, a Texas educator survey, and social studies test objectives and specifications.

Issued in Austin, Texas, on August 6, 1990.

TRD-9007864 W. N. Kirby
Commissioner of Education

Filed: August 6, 1990

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

Office of the Governor Budget Execution Proposals

Pursuant to Texas Government Code, §317.002(c), relating to budget execution authority, I make the following budget execution proposal:

The Texas Water Commission was directed by the 71st Legislature in Rider 27, Article I, page 1-309, Senate Bill 222, 71st Legislature, 1989, Regular Session to expend \$395,326 for the Galveston Bay National Estuary Program for fiscal year 1990. Due to the June flooding in Northeast Texas and subsequent extreme fresh water inflow from the Trinity River, the necessary contracted field studies have not been completed. The Texas Water Commission requests that budget execution authority be granted to transfer \$183,000 remaining in the fiscal year 1990 appropriation to 1991 for the same purposes. Transfer of these funds will prevent the loss of approximately \$549,000 in federal matching funds for this program. I propose that \$183,000 in general revenue funds appropriated to the Texas Water Commission in Line Item 3.a. Water Quality be transferred for use in the same line item for fiscal year 1991. In addition, this transfer shall be reflected in the 1991 amount stipulated in Rider 27, Article 1, page 1-309, Senate Bill 222, 71st Legislature, 1989, Regular Session and all provisions for expenditure in Rider 27 shall apply.

Issued in Austin, Texas on August 8, 1990.

TRD-9008003 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(c), relating to budget execution authority, I make the following budget execution proposal:

The Texas Water Commission requests that funds appropriated for a new computer system in fiscal year 1990 be transferred for expenditure in fiscal year 1991. Due to unanticipated delays in the procurement approval process, the commission is unable to obligate the 1990 appropriations for this purpose by the end of the fiscal year. I propose to transfer \$1,089,000 appropriated in

Article VII Capital Outlay, item 2. Acquisition of Computer Equipment and Software, page VII-1 and detailed in Rider 1 for the Texas Water Commission, page I-305, Senate Bill 222, 71st Legislature, 1989, Regular Session from fiscal year 1990 to fiscal year 1991 for the same purposes.

Issued in Austin, Texas on August 8, 1990.

TRD-9008004 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(c) relating to budget execution authority, I make the following budget execution proposal:

The State Workers, Compensation Claim Fund, administered by the Office of the Attorney General, has exhausted its 1990 appropriations for medical and indemnity payments. The transfer of 1991 appropriations to 1990 will provide the necessary continuation of 1990 medical and indemnity payments for state employees. I propose to transfer \$6,000,000 from the fiscal year 1991 appropriation to Workers' Compensation Payments in Article I, page I-51, Senate Bill 222, 71st Legislature, 1989, Regular Session, to the fiscal year 1990 appropriation for Workers, Compensation Payments in Article I, page I-51, Senate Bill 222, 71st Legislature, 1989, Regular Session.

Issued in Austin, Texas on August 8, 1990.

TRD-9008005 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002, relating to budget execution authority and in accordance with Article V, Section 128, Page V-102 and Rider 22 to the Office of the Attorney General, Article I, Page I-49, Senate Bill 222, 71st Legislature, 1989, Regular Session, I make the following budget execution proposal:

Based on assessments from the Office of the Attorney General and the Texas College of Osteopathic Medicine, I propose that the forensic laboratory established within the Texas College of Osteopathic Medicine be certified as complete, operational, and capable of performing paternity testing services for the Office of the Attorney General as provided by Rider 22 to the Office of the Attorney General, Article I, Page I-49, Senate Bill 222, 71st Legislature, 1989, Regular Session. Further, because of the continuing development of accreditation standards relating to DNA testing for paternity establishment, the Texas College of Osteopathic Medicine should seek accreditation/approval from the American Association of Blood Banks and the Health Care Financing Administration. The status of accreditation/approval efforts should be reported, periodically, to the Governor's Office of Budget and Planning and the Legislative Budget Office.

Issued in Austin, Texas on August 8, 1990.

TRD-9008006 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(c) relating to budget execution authority, I make the following budget execution proposal:

The Health and Human Services Coordinating Council requests authority to use \$58,000 of remaining balances derived from Interagency Contracts from 1990 to provide for unanticipated moving and lease expenses in 1991. I propose that \$58,000 of Interagency Contract receipts appropriated to fiscal year 1990 in item 1. b. Other Coordination and Planning, Article II, page II-31, Senate Bill 222, 71st Legislature, 1989, Regular Session be transferred to the same item for fiscal year 1991.

Issued in Austin, Texas on August 8, 1990.

TRD-9008007 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002, relating to budget execution authority and in accordance with Article V, Section 128, page V-102 and Rider 45 to the appropriations for the Department of Human Services, Article II, Page II-49 of Senate Bill 222, 71st Legislature, 1989, Regular Session, I make the following budget execution proposal:

Rider provisions relating to the Department of Human Services in Senate Bill 222, 71st Legislature, 1989, Regular Session, authorize the department to use General Revenue Medical Assistance Funds for additional purposes, with approval of the Governor and the Legislative Budget Board through budget execution, should the Federal Medical Assistance Percentage be greater than 63.17% for federal fiscal year 1991. The fiscal year 1991 Federal Medical Assistance Percentage has been established at 63.53% which will make available \$12,000,000 in General Revenue Medical Assistance Funds to the department. I propose that \$12,000,000 in General Revenue Medical Assistance Funds appropriated to the Department of Human Services in rider 45, Article II, page II-49, Senate Bill 222, 71st Legislature, 1989, Regular Session for fiscal year 1991 be made available to the department to meet increased caseload and federal mandates adopted by the U.S. Congress since the last regular session.

Issued in Austin, Texas on August 8, 1990.

TRD-9008008 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002, relating to budget execution authority and in accordance with Article V, Section 128, page V-102, Senate Bill 222, 71st Legislature, 1989, Regular Session, I make the following budget execution proposal:

Rider provisions relating to the Department of Human Services require budget execution approval to expend funds appropriated in 1991 to implement the Nursing Home Reform provisions of the Omnibus Budget Reconciliation Act. I propose that funds appropriated to the Department of Human Services in Item 21., Implementation of Omnibus Budget Reconciliation Act of

1987 and Section 5 Special Provisions., Article II, Page II-93, Senate Bill 222, 71st Legislature, 1989, Regular Session be authorized for expenditure in 1991 as detailed in the implementation plans submitted by the Department of Human Services to the Governor's Office of Budget and Planning and the Legislative Budget Board.

Issued in Austin, Texas on August 8, 1990.

TRD-9008009 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002, relating to budget execution authority and in accordance with Article V, Section 128, page V-102 and Article I, Rider 2, Page I-269 of Senate Bill 222, 71st Legislature, 1989, Regular Session, I make the following budget execution proposal:

The 71st Legislature has authorized the Department of Public Safety to purchase property owned by the Austin Independent School District for expansion of their central office. The appropriation requires Legislative Budget Board approval prior to the issuance of bonds for this purpose: said requirement causes this appropriation to fall under the requirements of Article V, Section 128, Budget Execution Authority. Accordingly, I propose that the Department of Public Safety be authorized to issue bonds up to \$4,320,000 through the Texas Public Finance Authority to complete the financing of this purchase.

Issued in Austin, Texas on August 8, 1990.

TRD-9008010 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(c), relating to budget execution authority and in accordance with Article V, Section 128 and Article I, Riders 14 and 18 to the State Board of Insurance appropriations made by Senate Bill 222, 71st Legislature, 1989, Regular Session, I make the following budget execution proposal:

Of the unexpended balances reappropriated to the State Board of Insurance by Rider 18, Article I, page I-168, Senate Bill 222, 71st Legislature, 1989, Regular Session, I propose that the board may not expend more than \$4,500,000 for fiscal year 1991 in addition to the amount approved for fiscal year 1990 in the Contingent Order adopted by the Legislative Budget Board November 13, 1989. Any amounts expended pursuant to this approval may be for the purchase of hardware and software only, subject to the following restrictions and other applicable law.

It is further provided that the Department of Information Resources shall review all proposed hardware and software purchases of the State Board of Insurance that exceed the thresholds set by rule of the Department of Information Resources and inform the Office of the Governor and the Legislative Budget Board of any proposed hardware or software purchases which are not in compliance with the five-year plan of the State Board of Insurance as submitted to the Department of Information Resources. All expenditures made by the State Board of Insurance for hardware or software purchases falling below the thresholds set by the Department of Information Resources shall be reported

on a monthly basis to the Department of Information Resources. The review and approval required herein is in lieu of that required by Riders 14 and 18 and shall apply, regardless of the source of funds.

Issued in Austin, Texas on August 8, 1990.

TRD-9008011 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(c), relating to budget execution authority, I make the following budget execution proposal:

The State Purchasing and General Services Commission requests that unobligated funds appropriated for Asbestos Abatement in 1990 be made available in 1991 for the same purposes. I propose that \$1,750,000 in General Revenue be transferred from item 12. Asbestos Abatement, Article I, page I-246, Senate Bill 222, 71st Legislature, 1989, Regular Session for fiscal year 1990 to the same line item for fiscal year 1991 for identical purposes.

Issued in Austin, Texas on August 8, 1990.

TRD-9008012 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(c), relating to budget execution authority, I make the following budget execution proposal:

The Texas Department of Commerce requests authority to use unobligated 1990 funds in the Workforce Development Incentive Program to meet the increasing demands in 1991. I propose to transfer \$295,425 appropriated in rider 38 to the Department of Commerce, Article I, page I-66, Senate Bill 222, 71st Legislature, 1989, Regular Session from fiscal year 1990 to fiscal year 1991 for the same purpose.

Issued in Austin, Texas on August 8, 1990.

TRD-9008013 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(c), relating to budget execution authority, I make the following budget execution proposal:

The National Research Laboratory Commission requests authority to transfer funds freed up by bond proceeds to fund resources needed to fulfill its expanded obligations in regard to minority affairs and public information. I propose to authorize the National Research Laboratory Commission to transfer \$114,111 from item 2. Site Development and \$220,062 from item 3. Research and Development to item 1. Administration, appropriated for the fiscal year ending August 31, 1991, Article III, page III-53, Senate Bill 222, 71st Legislature, 1989, Regular Session.

Issued in Austin, Texas on August 8, 1990.

TRD-9008014 William P. Clements, Jr.
Governor

Filed: August 8, 1990

For further information, please call: (512) 463-1778

Pursuant to Texas Government Code, §317.002(b), relating to budget execution authority, I make the following budget execution proposal:

In order to implement the Computerized Criminal History Reporting System authorized in House Bill 2335, 71st Legislature, 1989, Regular Session, the Department of Public Safety has identified equipment cost savings of \$1,322,000 from the Automated Fingerprint Information System and \$350,000 of unexpended funds in Crime Records. I propose to transfer \$1,322,000 from Article VII Capital Outlay, item 2. Acquisition of Computer Equipment and Software, page VII-1 for the year ending August 31, 1991 and detailed in riders 1 and 3 to the Department of Public Safety, Article I, page I-269, Senate Bill 222, 71st Legislature, 1989, Regular Session to item 1. Support (i.e. Data Processing \$972,000 and 1.g. Crime Records \$350,000) Page I-266 for fiscal year 1991. In addition, I propose to transfer \$350,000 from item 1.g. Crime Records fiscal year 1990 to fiscal year 1991 for the same line item.

Issued in Austin, Texas, on August 9, 1990.

TRD-9008034 William P. Clements, Jr.
Governor

Filed: August 9, 1990

For further information, please call: (512) 463-1778

Governor's Budget and Planning Office

Consultant Contract Award

In compliance with the provisions of Texas Civil Statutes, Article 6252-11c, the Governor's Office of Budget and Planning furnishes this notice of a consultant contract award.

Publication Date. The consultant proposal request was published in the June 12, 1990, issue of the *Texas Register* (15 TexReg 3439).

Description of Services. The request was for a consultant to develop a cost allocation plan that enables eligible state agencies to recover the maximum indirect costs possible from federal programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw cost and statistical data, identifying allocable costs preparing and submitting the plan, and negotiating the final plan with the federal government for state agency use during the state fiscal year beginning September 1, 1990.

Name and Address. The contract for the fiscal year 1991 statewide cost allocation has been awarded to David M. Griffith and Associates, 8100 Springwood Drive, Suite 200, Irving, Texas 75063.

Value and Dates of Contract. The total contract award will not exceed \$25,000. The contract period begins upon execution of the contract by all parties or August 1, 1990, whichever is earlier. The target completion date is December 31, 1990, but all billings associated with this contract must be received by August 31, 1991.

Issued in Austin, Texas, on July 31, 1990.

Filed: August 7, 1990

For further information, please call: (512) 463-1778

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Houston-Galveston Area Council

Major Employment Centers Cordon Study and Travel Surveys

The purpose of this project is to conduct cordon counts and travel surveys of persons entering three major employment centers in Harris County, Texas. A copy of the detailed scope of work will be furnished upon request. Anyone wishing to submit a proposal must do so by 5 p.m., on September 4, 1990, at the address listed below.

The proposed professional services contract would involve five data collection activities in each of three employment centers. The data collection activities would include: estimate of vehicles by type (cars, vans, trucks, etc.) entering each employment center and vehicle occupancy; estimates of through trips versus trips destined to each employment center; and estimates of trip origin and purpose for those trips destined to employment centers.

Funding for this project will be provided through the Urban Mass Transportation Administration and the Federal Highway Administration.

The proposals will be evaluated on the following criteria: comprehension of project requirements and methodologies; qualifications of personnel assigned; demonstrated knowledge of the study areas; management plan; and previous related work experience.

Further inquiries as to the Scope of Work should be directed to: Veronica Baxter, Senior Transportation Planner, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227.

Issued in Houston, Texas, on August 7, 1990.

TRD-9007924 Jack Steele
Executive Director
Houston-Galveston Area Council

Filed: August 7, 1990

For further information, please call: (713) 627-3200

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State Board of Insurance

Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

1. Application for name change by The Western Casualty and Surety Company, a foreign casualty insurance company. The home office is in Topeka, Kansas. The proposed new name is Lincoln National Specialty Insurance Company.
2. Application for name change by La Interamericana S.A. Compania De Seguros, a Mexican casualty insurance company. The home office is in Col. Del Valle, Mexico. The proposed new name is Seguros Interamericana Independencia, S. A.
3. Application for name change by Czech Catholic Union of Texas (K. J. T.), a domestic life insurance company. The home office is in LaGrange. The proposed new name is Catholic Union of Texas, The K.J.T.

4. Application for incorporation in Texas by NACOLAH Life Insurance Company of Texas, a domestic life insurance company. The home office is in Dallas.

5. Application for admission to do business in Texas of Union Life Services Corporation, a foreign third party administrator. The home office is in Little Rock, Arkansas.

6. Application for admission to do business in Texas of ABI Administrative Services, Inc. of Florida, a foreign third party administrator. The home office is in Tampa, Florida.

Issued in Austin, Texas, on August 6, 1990.

TRD-9007899 Nicholas Murphy
Chief Clerk
State Board of Insurance

Filed: August 7, 1990

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

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Texas Department of Public Safety

Notice of Amended Consultant Contract

The Texas Department of Public Safety (DPS), in accordance with provisions of Texas Civil Statutes, Article 6252-11c, files this notice of an amended consultant contract.

On January 31, 1989, Roland R. Sutfin, Information Systems Engineering, 9250 Wagner Creek Road, Talent, Oregon 97540, entered into a contract with the DPS to support the acquisition and implementation of an automated fingerprint identification system (AFIS), for both central repository and latent applications within the DPS, and a network of fingerprint access terminals in other law enforcement agencies throughout the state. The consultant contract award was published in the February 14, 1989, issue of the *Texas Register* (14 TexReg 877).

On July 21, 1989, the original contract was amended by providing for the requirement that the consultant provide additional services with regard to 10 print remote terminals and amendments to the request for proposals. The amendment was based upon determinations made by members of the 71st Legislature to include those items. The total contract price was increased by \$7,700. The notice of amended consultant contract was published in the August 8, 1989, issue of the *Texas Register* (14 TexReg 3948).

Notice is given that the contract has been amended a second time by extending the expiration date to October 31, 1990, and by increasing the total contract price by \$13,720. The amendment is based upon the determination by DPS that it would be in its best interest to require the consultant to prepare the general system design document.

Issued in Austin, Texas, on August 2, 1990.

TRD-9007874 Joe E. Milner
Director
Texas Department of Public Safety

Filed: August 6, 1990

For further information, please call: (512) 465-2000

Public Utility Commission of Texas

Notice of Applications to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 20, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Southwestern Bell Telephone Company to amend the boundary between Southwestern Bell Telephone Company's San Antonio Metropolitan Exchange-Elm Creek Zone and the Bulverde Exchange of Guadalupe Valley Telephone Cooperative, Inc., Docket Number 9669 before the Public Utility Commission of Texas.

The Application. In Docket Number 9669, Southwestern Bell Telephone Company requests approval of its application to amend the boundary of its San Antonio Metropolitan Exchange (Elm Creek Zone) and Guadalupe Valley Telephone Company's Bulverde Exchange to reflect service as it is currently being provided.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on August 3, 1990.

TRD-9007879

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

Filed: August 6, 1990

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

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 23, 1990, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number. Application of Southwestern Bell Telephone Company to amend the boundary between Southwestern Bell Telephone Company's Corrigan Exchange to include an area of uncertified territory, Docket Number 9674 before the Public Utility Commission of Texas.

The Application. In Docket Number 9674, Southwestern Bell Telephone Company requests approval of its application to amend the boundary of its San Corrigan Exchange to provide service to a residential customer in Polk County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Division at (512) 458-0223, or (512) 458-0227 within 15 days of this notice.

Issued in Austin, Texas, on August 3, 1990.

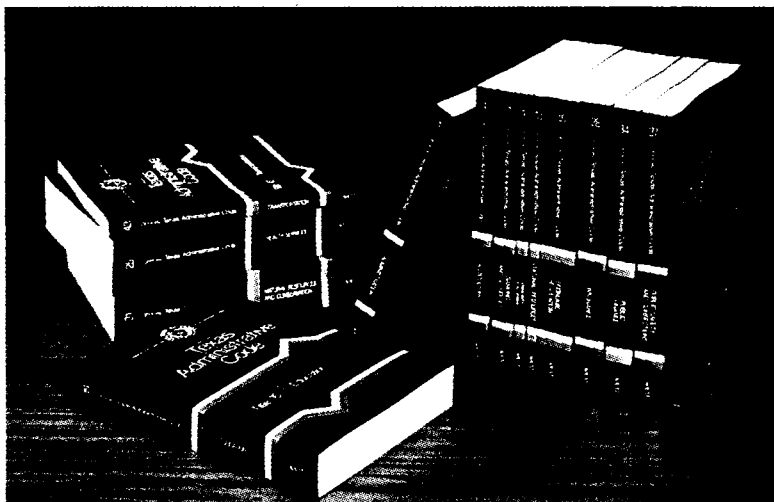
TRD-9007880

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

Filed: August 6, 1990

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