

Texas Register

Volume 16, Number 73, October 1, 1991

Pages 5357-5421

In This Issue...

Emergency Sections

Texas Department of Insurance

5367-Property and Casualty Insurance

General Land Office

5368-Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land

Proposed Sections

Advisory Commission on State
Emergency Communications

5375-Regional Plans

5375-Finance

Credit Union Department

5376-Chartering, Operations, Mergers, Liquidations
Railroad Commission of Texas

5376-Transportation Division

Texas State Board of Examiners of
Psychologists

5377-Applications

5378-Rules of Practice

5379-Renewals

Structure Pest Control Board

5379-Licenses

State Board of Insurance

5384-Corporate and Financial Regulation

5387-Surplus Lines Insurance

Texas Workers' Compensation
Commission

5387-Arbitration

General Land Office

5391-Hearing Procedures for Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land

Texas Water Commission

5391-Water Districts

Texas Department of Human Services

5392-Purchased Health Services

5393-Community Care for Aged and Disabled

Withdrawn Sections

State Board of Insurance

5395-Guaranty Acts

Employees Retirement System of Texas

5395-Deferred Compensation

CONTENTS CONTINUED INSIDE

Texas Register

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Withdrawn Sections-sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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



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Adopted Sections

Credit Union Department

5397—Chartering, Operations, Mergers, Liquidations
Railroad Commission of Texas

5398—Transportation Division
Texas Motor Vehicle Commission

5399—Practice and Procedure

5399—Warranty Performance Obligations
Texas Parks and Wildlife Department

5404—Fisheries and Wildlife
Texas Department of Human Services

5406—Community Care for Aged and Disabled

Open Meetings

5407—Texas State Board of Public Accountancy

5407—Texas Department of Agriculture

5407—State Aircraft Pooling Board

5407—State Board of Barber Examiners

5407—Texas Commission for the Deaf and Hearing Impaired

5407—Educational Economic Policy Center

5408—Advisory Commission on State Emergency Communications

5408—Texas Commission on Fire Protection

5408—Texas Department of Insurance

5408—Texas Board of Professional Land Surveying

5409—Texas Department of Licensing and Regulation

5409—Texas State Board of Medical Examiners

5410—Midwifery Board

5410—Public Utility Commission of Texas

5410—Texas Rehabilitation Commission

5410—Interagency Council on Sex Offender Treatment

5411—The Texas A&M University System

5411—Texas Tech University

5412—Texas Tech University Health Sciences Center

5412—The University of Texas at Austin

5412—Texas Water Commission

5413—Regional Meetings

In Addition

Texas Department of Criminal Justice

5415—Notice of Contract Award

Texas Department of Health

5415—Correction of Errors

Texas Department of Housing and
Community Affairs

5415—Public Notice

Texas Department of Human Services

5416—Consultant Proposal Request

5416—Request for Proposal

Public Utility Commission of Texas

5417—Notice of Intent To File Pursuant to PUC Substantive Rule 23.27

State Committee of Examiners for
Speech-Language Pathology and
Audiology

5417—Correction of Error

Texas Engineering Experiment Station

5418—Consultant Proposal Request

Veterans Land Board

5418—Request for Proposal

Texas Water Commission

5418—Enforcement Orders

5418—Meeting Notice

5419—Notice of Application For Waste Disposal Permit

5419—Public Notices

Texas Workers' Compensation
Commission

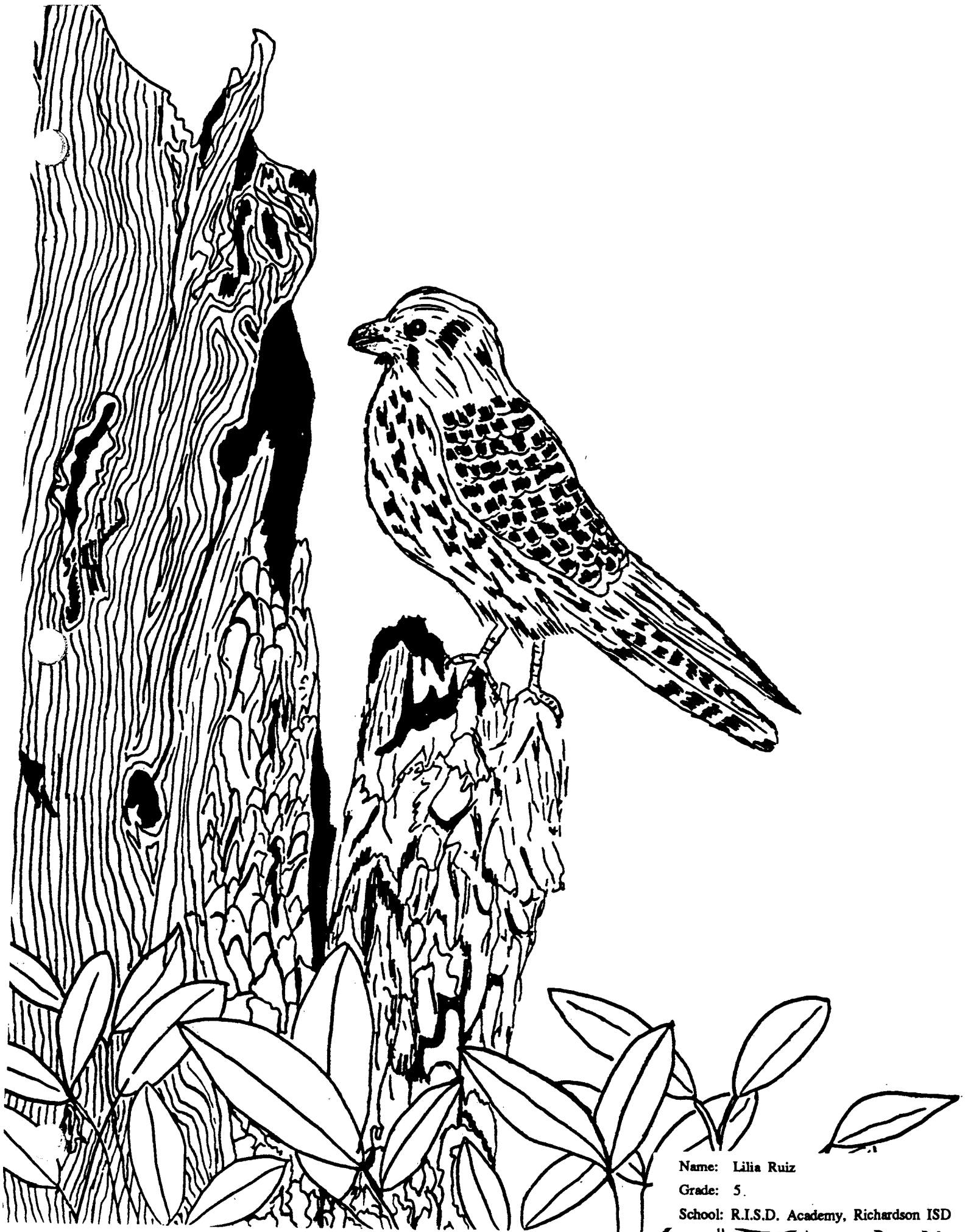
5421—Correction of Error



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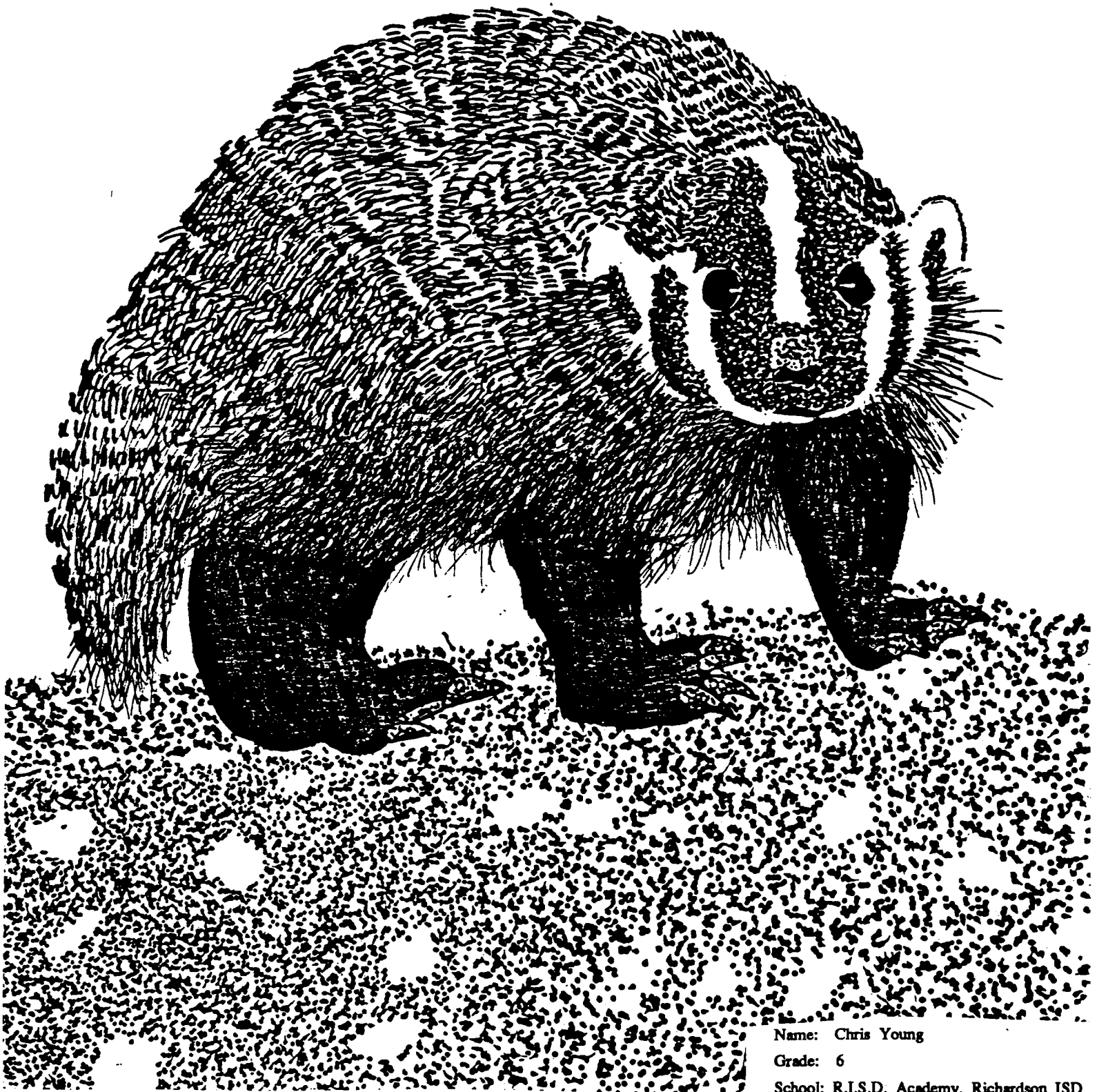
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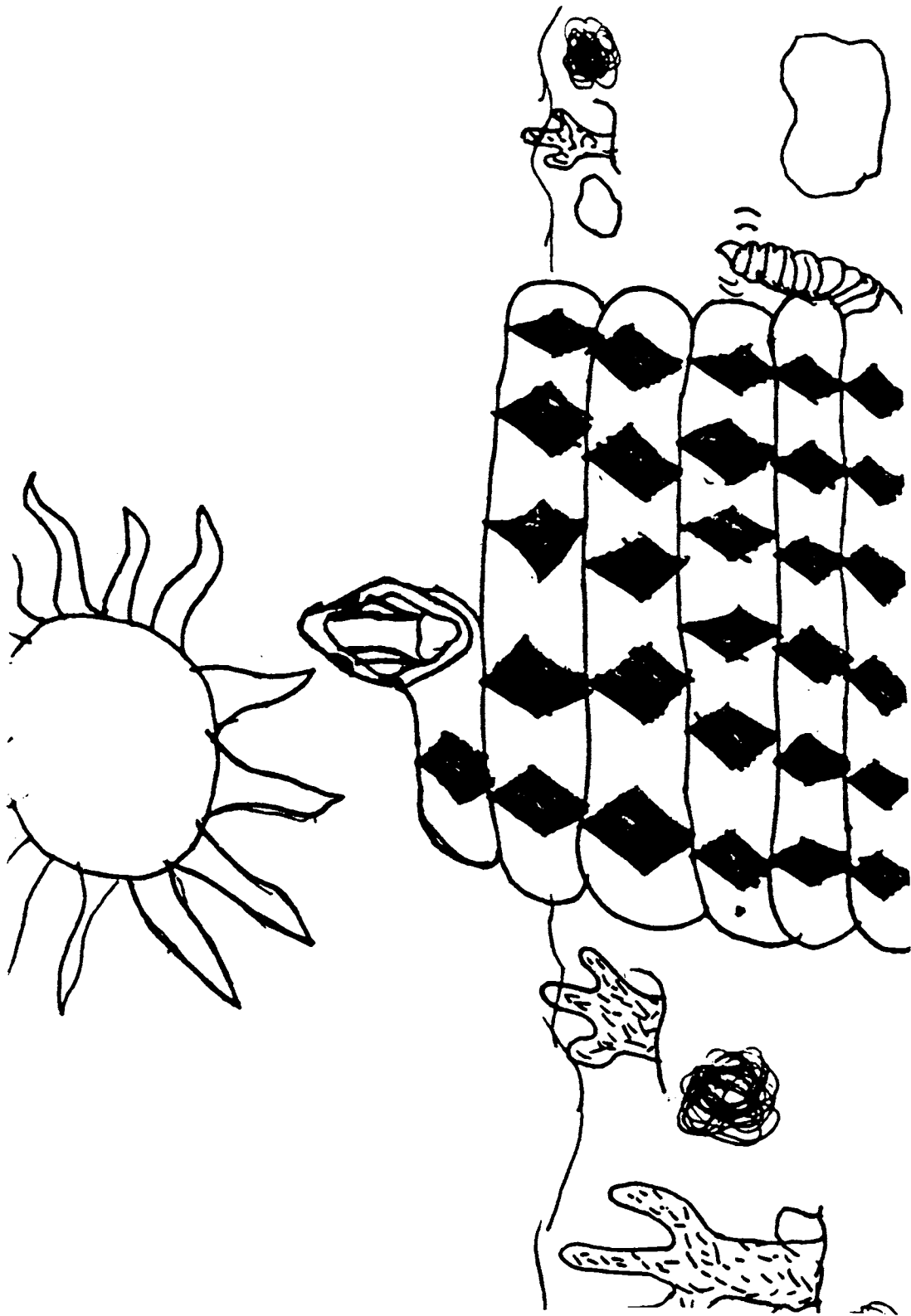
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TAC Titles Affected

TAC Titles Affected—October

The following is a list of the administrative rules that have been published this month.

TITLE 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

1 TAC §251.1—5375

1 TAC §255.1—5375

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

7 TAC §91.211—5376

7 TAC §91.506—5397

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §5.116—5376

16 TAC §5.133—5377

16 TAC §5.181—5398

Part VI. Texas Motor Vehicle Commission

16 TAC §101.63, §101.64—5399

16 TAC §107.2, 107.6, 107.8, 107.9, 107.10, 107.11—5399

16 TAC §107.9—5404

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

22 TAC §463.6—5377

22 TAC §463.20—5378

22 TAC §465.25—5378

22 TAC §465.27—5378

22 TAC §471.6—5379

Part XXV. Structural Pest Control Board

22 TAC §§593.1-593.7, 593.9, 593.310, 593.21-593.24—5379

22 TAC §593.22, §593.23—5384

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §5.2002—5367

28 TAC §7.82—5384

28 TAC §7.615—5384

28 TAC §15.24—5387

28 TAC §29.701—5395

28 TAC §§144.1-144.16—5387

Part II. Texas Workers' Compensation Commission

28 TAC §144.1-144.16—5367

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

31 TAC §17.1-17.50—5368, 5391

Part II. Parks and Wildlife Department

31 TAC §§57.377-57.386—5404

Part IX. Texas Water Commission

31 TAC §293.60—5391

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System of Texas

34 TAC §87.3—5395

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §29.606—5392

40 TAC §48.2904, §48.2924—5406

40 TAC §48.4101—5393





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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 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter C. Texas Medical Liability Insurance Underwriting Association

• 28 TAC §5.2002

The State Board of Insurance adopts on an emergency basis an amendment to §5.2002, concerning the Texas Medical Liability Underwriting Association. Section 5.2002(d) addresses the selection of members to the board of directors of the Texas Medical Liability Underwriting Association. The amendment is needed to conform the procedures for selecting directors to recent legislation which amended the Insurance Code, Article 21.49-3 §6, and to otherwise appropriately revise the procedure for selecting directors. This emergency rule amendment was proposed and published in the September 20, 1991, issue of the *Texas Register* (16 TexReg 5197). The Insurance Code, Article 21.49-3 §6, was amended in §9.11 of House Bill 2 by the 72nd Legislature to require that the board of directors consist of nine directors to be selected annually as follows: five directors are to be representatives of insurers required to be members of the Texas Medical Liability Underwriting Association and are elected by members of the Association; one director is to be a physician selected by the Texas Medical Association or its successor; one director is to be representative of hospitals and appointed by the Texas Hospital Association or its successor; and two directors are to be members of the public and appointed by the State Board of Insurance. Heretofore, all nine directors have been selected by the membership of the association. The board's members are required to take office on October 1 of each year. In order to have a duly constituted board of directors, the board must be selected and properly operating by October 1. The need for a properly functioning board of directors for the Texas Medical Liability Association to properly conduct the affairs of the association on and after October 1 creates an imminent peril to the public welfare requiring the adoption of the amendment to Section 5.2002(d) on an emergency basis.

The amendment is adopted on an emergency basis under the Insurance Code, Article 21.49-3 §3(c), which authorizes the State Board of Insurance to promulgate a plan of operation for the Texas Medical Liability Insurance Underwriting Association.

§5.2002. *Operation of the Texas Medical Liability Insurance Underwriting Association.*

(a)-(c) (No change)

(d) Directors.

(1) **Selection.** [Election]. At a special [the first annual] meeting of members to be held prior to October 1, 1991, and at each annual meeting [thereafter], the members shall elect five directors from among member companies for the categories set forth in paragraph (2)(B) and (C) of this subsection [to hold office until the next succeeding annual meeting]. Four directors shall be selected in the manner set forth in paragraph (2)(D)-(F) of this subsection. Members of the board of directors take office on October 1 of each year. [Such an elected director shall designate at least two individuals to act as primary and alternate representatives on its behalf.]

(2) **Membership.**

(A) The number of the directors of the association [to be elected at annual meetings] shall be nine.

(B) Three [Five] directors to be [so] elected in accordance with paragraph (1) of this subsection shall be elected by the members and shall be separate members of the association representing each of the following:

(i) National Association of Independent Insurers;

(ii) American Insurance Association; and

(iii) Alliance of American Insurers [; Association of Fire and Casualty Companies in Texas; an insurer organized under the laws of and domiciled in the State of Texas.]

(C) Two directors shall be elected by the members and shall be:

(i) a member insurer organized under the laws of and domiciled in the State of Texas; and [.]

(ii) a member insurer that is not a member of those associations described in subparagraph (B) of this paragraph.

(D) One director shall be a physician who is appointed by the Texas Medical Association or its successor.

(E) One director shall be a representative of hospitals appointed by the Texas Hospital Association or its successor.

(F) Two directors shall be members of the public to be appointed by the board.

(G) [The remaining four directors shall be any members elected by the members at the annual meeting.] No member of the board of directors shall fill more than one seat on the board of directors, and no member affiliated by ownership, management, or control shall simultaneously occupy seats on the board of directors. No later than 60 days prior to the annual meeting, the board of directors shall select a nominating committee of three [five] member companies.

(H) The three [five] directors representing the organizations set forth in subparagraph (B) of this paragraph [previously listed categories] shall be nominated by the nominating committee. The two [remaining four] directors described in subparagraph (C) of this paragraph may be nominated by any member of the association by submitting such nominee's name to the nominating committee. In order to be eligible for selection [election] to the board of directors by the members, a member must be nominated at least 30 days prior to the annual meeting at which such directors are selected [elected].

(3) **Term of office.** Unless removed in accordance with this subchapter [these sections], each director shall hold office for the term of one year [from the date of election] or until a successor shall have been selected [elected] and qualified.

(4)-(15). (No change.)

(e)-(j) (No change.)

Issued in Austin, Texas, on September 24, 1991.

TRD-9111729

Angelia Johnson
Assistant Chief Clerk
Texas Department of
Insurance

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Expiration date: January 22, 1992

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

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

**Part I. General Land
Office**

**Chapter 17. Hearing
Procedures for
Administrative Penalties and
Removal of Unauthorized or
Dangerous Structures on
State Land**

• **31 TAC §§17.1-17.50**

The General Land Office adopts on an emergency basis new §§17.1-17.50, concerning notice and hearings required by the land commissioner before imposing administrative penalties and removing unauthorized or dangerous structures from state land. The new chapter is adopted on an emergency basis to bring the agency into compliance with the Act of June 11, 1991, House Bill 478, Chapter 465, 72nd Legislature (to be codified at Texas Natural Resources Code, §51.302 and §51.3021), relating to the removal of certain unauthorized or imminently dangerous structures from state land.

The new sections are adopted on an emergency basis under House Bill 478, Chapter 465, 72nd Legislature (to be codified at Texas Natural Resources Code, §51.302 and §51.3021), which authorizes the commissioner to promulgate rules necessary and convenient to the administration of hearings under House Bill 478.

§17.1. Purpose and Scope.

(a) These sections are intended to provide orderly and efficient procedures for the General Land Office (GLO) to assess administrative penalties and pursue the removal of unauthorized facilities or structures on state land and for the appeal of administrative penalties and removal of unauthorized facilities or structures on state land in accordance with the Texas Natural Resources Code, §51.302 and §51.3021.

(b) These procedures shall apply to the initiation, conduct, and determination of hearings on administrative penalties for unauthorized facilities or structures and for the removal of unauthorized facilities or structures on state land pursuant to the Texas Natural Resources Code, §51.302 and §51.3021, where notice and hearing are required.

(c) These sections shall supplement the provisions of Texas Civil Statutes, Article 6252-13a (Supplement 1991), hereinafter referred to as APTRA. All practices and

procedures provided for by APTRA, even though not specifically included herein, shall be applicable to practice before the General Land Office.

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

Agency—The General Land Office of the State of Texas.

Chief clerk—The chief clerk of the General Land Office. The chief clerk may perform any of the duties of the commissioner if the commissioner is sick, absent, dies, or resigns.

Commissioner—The commissioner of the General Land Office.

Interested party—Person having a vested property interest in an unauthorized structure or facility.

Lienholder—Person having a security interest in an unauthorized structure or facility and whose interest is recorded in the county in which the property is located.

Owner or operator—Any person:

(A) owning, operating, constructing, possessing, or exercising control over an unauthorized structure or facility; or

(B) operating an unauthorized structure or facility by lease, contract, or other form of agreement.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

Petitioner—In a contested case, the person or persons filing a statement of grounds contesting an agency action or assessment.

Proceeding—Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint.

State land—Any land set apart to the permanent school fund under the constitution and laws of this state.

Structure or facility—Includes, without limitation, any structure, work, or improvement constructed on or affixed to or worked on state land, including fixed or floating piers, wharves, docks, ramps, booms, weirs, jetties, groins, backwaters, bulkheads, artificial reefs or islands, permanent mooring structures, retaining walls, levies, pilings, permanently moored floating vessels, abandoned vessels, cabins, houses, shelters, power transmission lines, pipelines, equipment for production, storage, or treatment of oil, gas, or other minerals, roads, fences, or posts. A work or improvement includes, without limitation, any dredging or disposal of dredged material, excavation, filling, land canals, channels, or propwashing.

Unauthorized structure or facility—Any facility or structure on state land

not authorized by a proper easement or lease from the state.

Uncontested proceeding or case—Any proceeding other than a contested case.

§17.3. Filing of Documents.

(a) All documents shall be filed with the administrative hearings clerk at the following address: Administrative Hearings Clerk, General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.

(b) The administrative hearings clerk shall deliver a copy of all documents submitted under this section to the assigned agency hearings attorney at the following address: Legal Services Division: Environment Law Section, General Land Office, 1700 North Congress Avenue, Room 630, Austin, Texas 78701-1495.

(c) Except as provided in subsection (d) of this section, all documents relating to an administrative hearing before the agency shall be deemed filed only when actually received and accepted by the administrative hearings clerk.

(d) A document required to be filed under this chapter which is properly addressed to the administrative hearings clerk, which is properly stamped, and which is postmarked at least one day prior to the last day for filing the document, shall be deemed to have been filed timely if it is received not more than 10 days after the filing deadline.

(e) Where the time period for filing any responsive documents (replies to exceptions, replies to motions, etc.) is initiated by the filing of another document, the initiating document shall be deemed filed when it is actually received and accepted for filing by the administrative hearings clerk, if filed on or after the filing deadline. Documents filed before the filing deadline shall be deemed filed on the day of the filing deadline.

§17.4. Computation and Extension of Time Periods.

(a) Counting days. In computing any relevant period of time, the period shall begin on the day after the act, event, or default in question and shall conclude on the last day of that designated period, unless such last day falls on a Saturday, Sunday, or legal holiday. In that case, the period shall be extended until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions.

(1) Unless otherwise provided by statute, the time for filing any documents covered by this title may be extended. A written motion must be filed prior to the expiration of the applicable period of time asserting that there is good cause for the extension of time and that the need for the

extension is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all parties of record concurrently with its filing with the administrative hearings clerk.

(2) Upon a showing of good cause by petitioner, the hearing examiner may extend the time for submission of a statement of grounds.

§17.5. All Agreements Must Be In Writing. No stipulation or agreement between the parties, their attorneys, or representatives shall be enforceable unless it has been reduced to writing and signed by the parties or their authorized representatives, or unless dictated into the record during the course of a hearing, or incorporated into an order bearing written approval of all parties. This section shall not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless otherwise precluded by law.

§17.6. Conduct and Decorum.

(a) **Comportment.** All parties, witnesses, attorneys, and other representatives shall conduct themselves during all agency proceedings with dignity, courtesy, and respect for the agency, its hearing examiner, and all other parties and participants. Attorneys shall observe all rules of professional and ethical behavior prescribed for the profession by the Code of Professional Responsibility.

(b) **Compliance.** Any party, witness, attorney, or other representative who violates subsection (a) of this section may be excluded by the agency from any proceeding or may be subject to such other reasonable and lawful disciplinary action as the agency may prescribe.

§17.7. Initiation of General Land Office Action.

(a) The commissioner may recover a penalty of not less than \$50 or more than \$1,000 for each day that a person constructs, owns, operates, possesses, or exercises control over an unauthorized structure or facility on state land.

(b) The commissioner may remove and dispose of a facility or structure on state land if the commissioner finds the facility or structure to be:

(1) not authorized by a proper easement or lease from the state; or

(2) an imminent and unreasonable threat to public health, safety, or welfare.

(c) An owner or operator of an abandoned facility or structure includes, for purposes of this chapter, the person who last owned, possessed, constructed, operated, or exercised control over the facility or structure.

(d) Before the commissioner imposes a penalty and/or removes a structure under the Texas Natural Resources Code (the code) §51.302 and §51.3021, the commissioner shall give written notice to the owner or operator of the structure or facility and any lienholders stating:

(1) the specific facility or structure that is not authorized by a proper easement or lease from the state or that threatens public health, safety, or welfare;

(2) the nature of the threat, if alleged, to public health, safety, or welfare;

(3) that the owner or operator of the facility or structure shall remove the facility or structure:

(A) not later than the 30th day after the date on which the notice is served, if the facility or structure is on state land and not authorized by a proper lease or easement; or

(B) within a reasonable time specified by the commissioner if the facility or structure is an imminent and unreasonable threat to public health, safety, or welfare;

(4) that failure to remove the facility or structure may result in liability for a penalty under the Code, §51.302(b) in an amount specified, removal by the commissioner, and liability for the costs of removal, or both; and

(5) that the owner or operator, lienholder, or interested party of the facility or structure may submit, not later than the 30th day after the date on which the notice is served, written request for a hearing.

(e) The notice required by subsection (d) of this section must be given:

(1) to the owner or operator:

(A) by service in person or by registered or certified mail, return receipt requested; or

(B) if personal service cannot be obtained or the address of the owner or operator responsible is unknown, by posting a copy of the notice on the facility or structure and by publishing notice in a newspaper with general circulation in the county in which the facility or structure is located two times within 10 consecutive days;

(2) to the lienholders by registered or certified mail, return receipt requested.

§17.8. Request for Hearing.

(a) An owner or operator, lienholder, or interested party who disagrees with the proposed removal, disposal, and/or

penalty, and who wishes to request a hearing for reconsideration or redetermination by the agency of the proposed action and/or penalty, shall file with the agency a request for hearing and a statement of grounds as described in §17.3 of this title (relating to filing of documents) and §17.9 of this title (relating to statement of grounds).

(b) If the owner or operator charged consents to the commissioner's recommendation, or if the owner or operator, lienholder, or interested party fails to request a hearing within 30 days after receipt of notice of the proposed action and/or penalty, the commissioner, by order, shall take the recommended action or order a hearing to be held on the findings and recommendations in the notice as described by §17.7 of this title (relating to initiation of General Land Office action). If the commissioner takes the recommended action, the commissioner shall serve written notice of the decision to the owner or operator and lienholders. The owner or operator charged must comply with the order and pay any penalty assessed.

(c) A request for hearing must be filed in a timely manner regardless of any extension of time granted for the filing of a statement of grounds.

§17.9. Statement of Grounds.

(a) A statement of grounds must set out in detail the reasons for disagreement with the proposed action and/or penalty assessed and shall include the factual and legal basis for the dispute.

(b) To the extent practicable, a statement of grounds shall be accompanied by the following documents:

(1) documentary evidence, if any, in support of petitioner's claim;

(2) a list of all other parties whom petitioner claims are liable under the charges of the notice as described by §17.7 of this title (relating to Initiation of General Land Office Action).

(c) A statement of grounds or a letter requesting an extension of time to file a statement of grounds must be filed within 20 days after receipt of the notice of the proposed action and/or penalty.

(d) Upon a showing of good cause by petitioner, the hearing examiner may extend the time for submission of a statement of grounds.

(e) The time for submission of a statement of grounds will be automatically extended 15 days if the petitioner, having requested a hearing, requests an informal conference with the hearing examiner prior to the original date set for submission of the statement of grounds. In order to receive the automatic 15-day extension, the petitioner must file a letter with the administrative hearing clerk before the original date the statement of grounds is due which sets out

the date and place of the informal conference, as agreed upon by the petitioner and the hearing examiner.

§17.10. Docketing and Notice. When the administrative hearings clerk of the General Land Office receives a request for hearing or other pleading intended to initiate a hearing, the clerk shall determine whether the request for hearing or other pleading complies with these sections in form and content. If the request for hearing or other pleading complies with these sections in form and content, the clerk shall docket it as a pending proceeding, and shall number it in accordance with the established docket numbering system of the agency. Notice of such action shall be served on all parties of record. If the request for hearing or other pleading does not comply with these sections in form and content, the clerk shall return the request for hearing or other pleading to the sender to be amended in accordance with §17.12(d) of this title (relating to Pleadings).

§17.11. Notice.

(a) Notice of proceeding. In any administrative hearing, the clerk shall send a notice of hearing to each party of record at least 10 days prior to the hearing date.

(b) Contents of notice. All notices required by these sections shall be sent by certified mail, return receipt requested, and shall contain the following:

- (1) a statement of the time, place, and nature of the hearing;
- (2) a statement citing the legal authority under which the hearing is to be held;
- (3) a short and plain statement of the matters asserted;
- (4) a statement citing the specific statute(s) or rule(s) involved; and
- (5) in the case of administrative penalties, the amount of penalties alleged to be due.

§17.12. Pleadings.

(a) Classification of pleadings.

(1) A pleading is any written document filed by a party alleging its claim, its response to a claim, or its request for specific relief or action.

(2) All pleadings must be in writing, must be filed as required in §17.3 of this title (relating to Filing of Documents), and must be served on all parties of record.

(3) Pleadings shall be classified as applications or petitions, statement of grounds, pre-hearing and post-hearing briefs, protests, responses, complaints, exceptions, replies, motions, or answers. Any error in the designation of a pleading shall

not prevent it from being accorded its true status in the proceeding in which it is filed.

(b) Service of pleadings. A copy of each pleading must be sent or delivered to each party of record or to the designated representative of such party of record at the time the pleading is filed with the agency.

(c) Form and content of pleadings. All pleadings shall have the following:

(1) the name, address, and telephone number of the party filing the document and the name, business address, telephone number, and fax number of its representative, if applicable;

(2) a concise statement of the facts relied upon and the legal basis for the relief sought;

(3) a prayer stating the specific relief, action, or order sought by the pleader; and

(4) a certificate of service stating that a copy of the pleading has been sent or delivered to each party of record.

(d) Amended pleadings. A pleading may be amended at any time unless the amendment would operate as a surprise to another party or delay a hearing, unless a delay is necessary to prevent injustice or to protect the public interest. An amended pleading which operates as a surprise to another party may be allowed upon a written motion and a showing that no harm will result from such pleading.

(e) Incorporation of agency records by reference. Any pleading may adopt and incorporate by specific reference any document or entry, or any part thereof, in the official files and records of the General Land Office. This section shall not act to relieve any party from the necessity of alleging and providing those facts necessary to sustain its burden of proof as imposed by law or by agency rule.

§17.13. Motions Before the Examiner and Responses to Motions Before the Examiner.

(a) Any motion in any proceeding, unless made on the record during a hearing, shall be in writing, shall be filed in accordance with §17.3 of this title (relating to Filing of Documents), shall be served on all parties of record, and shall set forth the relief sought and the specific reasons and grounds for such relief. If based upon matters which do not appear of record, it shall be supported by written affidavit or certificate. If the movant desires an oral argument on the motion before the examiner, the motion shall so state.

(b) If the party filing a response to a motion desires an oral argument on the motion before the examiner, the response to the motion shall so state.

§17.14. Pre-filed Testimony and Exhibits. The hearing examiner may require that

prepared testimony and exhibits be pre-filed and served on all other parties of record prior to the date set for hearing on any pleading.

§17.15. Motions to Retract. A party may, at any time in the administrative process, indicate acceptance of the opposing position on any of the issues presented by filing a motion to retract. The motion to retract shall concisely state which issue or issues are no longer in controversy and need not be considered in a hearing.

§17.16. Dismissal Without Hearing. The hearing examiner may dismiss a proceeding without a hearing, with or without prejudice, for any of the following reasons:

(1) failure to comply in a timely manner with any requirement of this chapter or to respond to any directive of the hearing examiner with regard to the matter in issue;

(2) unnecessary duplication of proceedings or res judicata;

(3) withdrawal of petition or upon submission of a motion to retract;

(4) moot questions or obsolete petitions;

(5) lack of agency jurisdiction; or

(6) withdrawal of a preliminary report.

§17.17. Pre-hearing Conference.

(a) The hearing examiner may, by written notice, either on his own initiative or in response to a request by one of the parties, direct the parties or their representatives to appear before him at a specified time and place for a conference with the examiner to consider any of the following:

(1) formulation or simplification of issues;

(2) admissions, stipulations of fact or stipulations concerning the use of public records, or other evidence;

(3) hearing procedures;

(4) limitation, where possible, of the number of witnesses; or

(5) any other matters which may aid in shortening or simplifying the proceedings, or in the disposition of matters in controversy.

(b) Action taken at a pre-hearing conference shall be recorded by the examiner, or by an official or licensed court reporter, or reduced to writing by the parties and filed as a part of the record of the proceeding.

§17.18. Motion for Consolidation. Two or more proceedings may be consolidated upon written notice by the hearing examiner or upon written motion of a party filed as provided in §17.3 of this title (relating to Filing of Documents) and served on all parties of record prior to the hearing date. Protest to such motion and to the examiner's ruling shall be made as provided in §17.12 of this title (relating to Pleadings). No proceedings shall be consolidated or heard jointly without either consent of all parties involved or a finding by the examiner that the proceedings to be consolidated or heard jointly involve common questions of law or fact, or both, and that separate hearings would result in unwarranted expense, delay, or injustice. Separate hearings on specific issues may be allowed by the examiner after consolidation of proceedings.

§17.19. Motion for Postponement or Continuance. A motion for postponement or continuance shall be in writing, shall be filed in accordance with §17.3 of this title (relating to Filing of Documents), and shall be served on all parties of record prior to the hearing date. The motion shall set forth the specific grounds upon which it is sought. Protest to such motion and to the examiner's ruling shall be made as provided in §17.12 of this title (relating to Pleadings). Within 10 days prior to a hearing, or during a hearing, a postponement may be granted by an examiner only if good cause is shown upon either oral (by conference call if a hearing is not in progress) or written motion.

§17.20. Time and Place of Hearings.

(a) A hearing shall be held, unless otherwise provided by the commissioner, within 30 days of receipt of the request for hearing.

(b) All administrative proceedings shall be conducted in Austin, unless for good cause the examiner designates another place for the hearing.

§17.21. Hearing Examiner.

(a) Hearings shall be held by a hearing examiner designated by the commissioner. The hearing examiner shall make findings of fact and promptly issue to the commissioner a written decision as to the unauthorized nature of the structure, the imposition of penalties, and the need for removal of the structure and make a recommendation as to the removal requirements, the amount of any proposed penalty and costs, or both.

(b) A hearing examiner assigned to a particular proceeding or case shall have the authority to:

- (1) convene a hearing;

- (2) administer oaths to all persons presenting testimony;

- (3) rule on motions;

- (4) rule on the admissibility of evidence;

- (5) designate and align parties and establish the order for presentation of evidence;

- (6) examine witnesses;

- (7) set hearing dates;

- (8) set pre-hearing conferences;

- (9) when required, issue subpoenas to compel the attendance of witnesses or the production of papers and documents related to a hearing;

- (10) commission and require the taking of depositions;

- (11) define the jurisdiction of the General Land Office concerning the matter under consideration;

- (12) limit testimony to matters within the jurisdiction of the General Land Office;

- (13) ensure that information and testimony are introduced as conveniently and expeditiously as possible without prejudicing the rights of any party to the proceeding;

- (14) recess, continue, or reschedule any hearing; and

- (15) exercise any other appropriate powers necessary or convenient to carry out the examiner's responsibilities.

(c) If a hearing examiner fails for any reason to complete an assigned case before a proposal for decision is prepared, the commissioner may designate another examiner to complete the assigned case without the necessity for duplicating any duty or function performed by the previous examiner.

§17.22. Parties to the Hearings. The General Land Office and all persons named in the hearing notice are parties to the hearing. Except for good cause, no person shall be admitted as a party unless the written request is received by the administrative hearings clerk of the General Land Office in Austin by the time set in the notice. The examiner shall notify, in writing or by telephone, if necessary, the persons admitted and the other parties. At the hearing, only those persons admitted as parties will be permitted to present evidence and argument and to cross-examine witnesses. The commissioner or his designee shall determine by whom and in what manner the agency will be represented at a hearing.

§17.23. Order of Procedure.

(a) The examiner shall open the hearing and make a concise statement of its

scope and purposes. A record of all proceedings during such hearing shall be made. Once the hearing has begun, parties or their representatives may be off the record only when permitted by the examiner. If a discussion off the record is determined by the examiner to be pertinent to the issues to be decided in the hearing, the examiner may summarize such discussion for the record. Appearances by all parties or their representatives, and any witnesses who may testify during their proceeding are to be entered in the record. All witnesses present, who may testify, will then be placed under oath. Thereafter, parties may present motions or opening statements.

(b) Following opening statements, if any, the party with the burden of proof may be directed to proceed with its direct case.

(c) Where the proceeding is initiated by the General Land Office, or where several proceedings are heard on a consolidated record, the examiner shall designate which party shall open and close and the stage at which other parties shall be permitted to offer evidence. The party with the burden of proof shall be entitled to open and to close.

(d) Opportunity for cross-examination of witnesses and presentation of a direct case shall be afforded all parties of record. After all parties have completed the presentation of their evidence and have been afforded the opportunity to ask clarifying questions and to cross-examine opposition witnesses, closing statements may be allowed.

(e) The parties may, by agreement, alter the order of these proceedings with the consent of the hearing examiner.

§17.24. Reporters and Transcripts

(a) All contested cases shall be recorded on audio tape, cassette, or by an official or licensed court reporter. Upon written request by any party, a transcript shall be made of the hearing. The cost of such transcript shall be borne by the requesting party. As many copies of the transcript as may be required for the purposes of the General Land Office shall be made by such requesting party and filed with the hearing examiner. No copies of the transcript will be furnished to the parties by the General Land Office, but copies may be purchased from the official reporter upon payment of applicable charges.

(b) Errors claimed in any transcription shall be noted in writing and suggested corrections may be offered within 10 days after the transcript is filed with the examiner. Such time for suggested corrections may be extended by the examiner. Suggested corrections shall be served in writing upon each party of record and upon the examiner. If not objected to within 10 days after being offered, the examiner shall direct that such

suggested corrections be made and shall stipulate the manner of making such corrections. In the event that parties disagree on suggested corrections, the examiner, with the aid of argument and testimony from the parties, shall then determine the manner in which the record shall be changed.

§17.25. Formal Exceptions. Formal exceptions to rulings of the examiner during a hearing shall not be necessary in order to preserve an objection until a later stage of the proceeding.

§17.26. Offer of Proof. When testimony is excluded by ruling of the examiner, a party shall be permitted to offer such testimony by dictating it into the record or by submitting the substance of the proposed testimony, in writing, prior to the conclusion of the hearing. Such an offer of proof shall be sufficient to preserve such offer for review by the commissioner. The examiner may ask such questions of a witness as are necessary to determine that the witness would, if allowed, testify as represented in the offer of proof.

§17.27. Interim Order. Prior to any final order of the commissioner, a party may seek, upon motion submitted to the hearing examiner, approval of a written interim order on any substantive issue where the facts are not disputed. An interim order shall not be subject to exceptions or application for rehearing until the close of the hearing and the proposal for decision is filed, but any party who would be aggrieved by such an interim order shall be provided an opportunity to file a motion to set aside, or to modify such interim order within three days before such order is entered.

§17.28. Witnesses to be Sworn. Oral testimony shall be presented under oath administered by the examiner.

§17.29. Rules of Evidence. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence may be excluded. When necessary to ascertain facts not reasonably susceptible to proof under those rules, evidence not admissible under them may be admitted (except where precluded by statute) if it is of a type commonly relied upon by reasonably prudent people in the conduct of their affairs. The rules of privilege recognized by law shall be effective in agency proceedings. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in writing.

§17.30. Official Notice. Official notice may be taken of judicially cognizable facts and of generally recognized facts within an area of General Land Office specialized knowledge or expertise, and the special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence. Parties shall be notified of the material noticed, including any staff memoranda or data, and shall be afforded an opportunity to contest the material so noticed.

§17.31. Documentary Evidence.

(a) Documentary evidence may be received in the form of copies or excerpts where an original document is not readily available. On request, however, parties shall be given an opportunity to compare the copy with the original.

(b) Where a large number of similar documents is offered, the examiner may limit those admitted to a representative sample and may require the abstracting of relevant data from the documents and presentation of the abstracts in the form of an exhibit. The examiner shall allow all parties of record, or their representatives, an opportunity to examine the documents from which such abstracts are made.

§17.32. Admissibility of Prepared Testimony and Exhibits. Where a proceeding will be expedited and the interests of the parties will not be substantially prejudiced, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question-and-answer form, may be incorporated into the record as if read or received as an exhibit. A witness upon direct examination shall be sworn and shall identify the prepared testimony as a true and accurate reflection of what the testimony would be if given orally. The witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike either in whole or in part.

§17.33. Introduction of Exhibits. Exhibits of documentary character shall not unduly encumber the files and records of the General Land Office.

(1) Tender and service. Where practical, the original of each exhibit offered shall be tendered to the examiner for identification. At the discretion of the examiner, a copy of an original exhibit may be accepted in lieu of the original. One copy shall be furnished to the examiner and one copy shall be furnished to each party of record or its representative. Written or printed documents and maps received in evidence may not be withdrawn except with the approval of the examiner.

(2) Excluded exhibits. If an exhibit is identified, objected to, and excluded, the party offering the exhibit may

withdraw the exhibit and the examiner may permit its return. If the excluded exhibit is not withdrawn, it shall be identified, endorsed with the examiner's ruling, and included in the record for the limited purpose of preserving an exception to the examiner's ruling.

§17.34. Testimony Limited. The examiner shall have the right in any proceeding to limit testimony which is merely cumulative.

§17.35. Post-hearing Briefs.

(a) Post-hearing briefs may be requested by the examiner prior to and after the filing of the examiner's proposal for decision.

(b) Briefs shall conform, where practicable, to the requirements set out in §17.12 of this title (relating to Pleadings). The issues involved shall be concisely stated, the evidence adduced in the hearing in support of each contention shall be summarized, and the arguments and authorities shall be organized and directed to each contention in a concise and logical manner.

§17.36. The Record.

(a) Contents of record. The record in a contested case includes:

(1) all pleadings, motions, briefs, and interim orders;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

(4) questions and offers of proof, objections, and rulings on objections;

(5) any decision, opinion, or report by the examiner presiding at the hearing;

(6) all staff memoranda or data submitted to or considered by the hearing examiner or members of the agency who are involved in making the decision;

(7) proposed findings and exceptions;

(8) any findings of fact or conclusions of law;

(9) the final order of the commissioner.

(b) Findings of fact. Findings of fact shall be based exclusively on the evidence presented and on matters officially noticed.

§17.37. Proposal for Decision. In either a contested or an uncontested case, if the commissioner has not personally heard the evidence in the case or read the entire record, a decision adverse to a party other than the agency shall not be issued until after a proposal for decision has been pre-

pared by the hearing examiner, served on all parties, and each party has been afforded the opportunity to file exceptions and present briefs to the commissioner. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs. A proposal for decision must contain a statement of the issues in dispute, the reasons for the proposed decision, and findings of fact and conclusions of law necessary to support the proposed decision. Such examiner's proposal for decision shall be prepared by the hearing examiner and served on all parties of record within 30 days after conclusion of the evidence in the case, unless the hearing examiner, at that time, specifies a longer period of time within which the proposal for decision may be issued.

§17.38. Filing of Exceptions and Replies.

(a) Any party of record may, within 10 days after service of the examiner's proposal for decision, file with the commissioner exceptions to the proposal for decision. Replies to such exceptions shall be filed within seven days after the date of the filing of exceptions. The examiner may extend the time for filing of exceptions and replies. A request for extension of time within which to file exceptions or replies shall be filed with the examiner and shall be served on all parties of record prior to the expiration of the relevant filing period. The examiner shall rule promptly on requests for extension of time and notify all parties of such ruling.

(b) Exceptions and replies to exceptions shall concisely state, with particularity, the relied upon evidence, arguments, and legal authority.

(c) Upon the expiration of the time for filing exceptions or replies to exceptions, or after such replies and exceptions have been filed and considered, the examiner's proposal for decision shall be considered by the commissioner, who shall render a decision and issue an order.

§17.39. Commissioners Orders.

(a) Based on the findings of fact and the recommendations of the hearing examiner, the commissioner, by order, may find that a violation has occurred and assess a penalty and costs and/or order the removal and disposal of an unauthorized structure or facility, or may find that no violation occurred.

(b) If the commissioner finds that a violation has occurred and assesses a penalty or orders the removal and disposal of an unauthorized structure or facility, the commissioner shall give the owner or operator charged, lienholders, and any party to the administrative hearing written notice of:

- (1) the commissioner's findings;

- (2) the amount of the penalty and costs and/or the terms of the order for removal and disposal of the structure or facility; and

- (3) the right of the owner or operator, lienholder, and any party to the administrative hearing to judicial review of the commissioner's order.

(c) Not later than the 20th day after the date on which the notice is served in accordance with subsection (b) of this section, the owner or operator charged may consent in writing to the report, including the commissioner's recommendations, or the owner or operator charged or any party to the administrative hearing may file a motion for rehearing in accordance with Texas Civil Statutes, Article 6252-13(a), §16.

(d) All final orders shall be in writing and shall be signed and dated by the commissioner. A final decision must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by first class mail of any decision or order. When an agency issues a final decision or order ruling on a motion for rehearing, the agency shall send a copy of that final decision or order by first class mail to the attorneys of record and shall keep an appropriate record of that mailing. If a party is not represented by an attorney of record, then the agency shall send a copy of a final decision or order ruling on a motion for rehearing by first class mail to that party, and the agency shall keep an appropriate record of that mailing. A party or attorney of record notified by mail of a final decision or order, as required by this section, shall be presumed to have been notified on the date such notice is mailed.

(e) The final decision or order of the commissioner must be rendered within 60 days from the last date for filing of exceptions and replies to exceptions to the examiner's proposal for decision, unless the hearing examiner, at the conclusion of the hearing, specifies a longer period of time within which the order may be issued.

(f) The parties may by agreement, with the approval of the agency, provide for a modification of the times provided in this section.

§17.40. Rehearing. Except as provided in §17.44 of this title (relating to Emergency Orders), a motion for rehearing is a prerequisite to an appeal. A motion for rehearing must be filed by a party within 20 days after the date the party or the attorney of record is notified of the final decision or

order as required by §17.39 of this title (relating to Commissioner's Orders). Replies to a motion for rehearing must be filed with the agency within 30 days after the date that the party or the attorney of record is notified of the final decision or order as required by §17.39. If agency action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law 45 days after the date the party or the attorney of record is notified of the final decision or order required by §17.39. The commissioner may, by written order, extend the period of time for filing motions for rehearing and replies and for agency action on a motion for rehearing except that an extension may not extend the period for agency action beyond 90 days after the date that the parties of record are notified of the commissioner's order as required by §17.39. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order or in the absence of a fixed date, 90 days after the date the party or the attorney of record is notified of the final decision or order as required by §17.39.

§17.41. Compliance or Petition for Judicial Review.

(a) Not later than the 30th day after the date on which the commissioner's order is final, the order shall be complied with or a petition for judicial review shall be filed.

(b) Judicial review of the order or decision of the commissioner shall be under the Administrative Procedure and Texas Register Act, §19 (Texas Civil Statutes, Article 6252-13a).

§17.42. Administrative Finality. Administrative action shall become final upon the occurrence of any of the following:

- (1) failure to submit a written request for a hearing not later than the 30th day after the date on which the notice is served in accordance with §17.7(d) of this title (relating to Initiation of General Land Office Action).

- (2) issuance by the commissioner of an order and failure to file a motion for rehearing in accordance with §17.40 of this title (relating to Rehearing); or

- (3) issuance by the commissioner of an order and denial of a motion for rehearing, either expressly or by operation of law; or

- (4) issuance by the commissioner of an order which includes a statement that no motion for rehearing will be entertained because the threat of imminent peril to the public health, safety, or welfare requires immediate effect be given to such order.

§17.43. Effective Date of Order. The effective date of an order, unless otherwise stated, is the date of its signing by the commissioner. That date shall be incorporated into the body of the order.

§17.44. Emergency Order. If the commissioner finds that an imminent peril to public health, safety, or welfare requires immediate effect of an order, such finding shall be stated in the order. The commissioner shall also state that such order is final and effective from and after the date signed. Such an order shall be final and appealable from and after the date signed and no motion for rehearing shall be required as a prerequisite for appeal.

§17.45. Show Cause Orders and Complaints. The commissioner may, at any time after notice to all interested parties, cite any person or agency under his jurisdiction to appear at a public hearing and require such person or agency to show cause why it should not comply with any applicable statute, rule, regulation, or general order of the General Land Office relating to the Texas Natural Resources Code, §51.302, with which it is allegedly in non-compliance or why the agency should not take a particular action permitted by law. All such show cause hearings shall be conducted in accordance with the provisions of these sections.

§17.46. Ex Parte Communications. Unless otherwise authorized by law, a hearing examiner in a contested case may not communicate, directly or indirectly, with any agency, person, party, or its representative regarding any issue of fact or law relating to such case, except on notice and opportunity for all parties to participate. Pursuant to the authority provided in Administrative Procedure and Texas Register Act, §14(q), however, the commissioner, chief clerk, or an employee of the General Land Office who is assigned to render a decision or to make findings of fact and conclusions of law in a contested case may communicate ex parte with employees of the General

Land Office who have not participated in any way in preparation for or as a participant or witness in such contested case in order to utilize the special skills of the agency and its staff in evaluating the evidence.

§17.47. Subpoenas.

(a) The issuance of subpoenas in any proceeding shall be governed by Administrative Procedure and Texas Register Act (APTRA), §14. The General Land Office may issue subpoenas addressed to any sheriff or constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding. A subpoena may be issued by the commissioner, the chief clerk, or during the course of a hearing, by a hearing examiner.

(b) Motions for subpoenas to compel the production of books, records, papers, or other objects shall be addressed to the hearing examiner, shall be verified, and shall specify as specifically as possible the books, records, papers, or other objects desired.

(c) Subpoenas shall be issued only after a showing of good cause and after the deposit of sufficient funds to ensure payment of expenses incident to the issuance of such subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in APTRA, §14.

(d) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to give a deposition or to produce books, records, papers, or other objects that may be necessary and proper for the purposes of the proceeding under the authority of this section is entitled to receive:

(1) mileage of \$.10 a mile, or a greater amount as prescribed by agency rule, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and

(2) a fee of \$10 a day, or a greater amount as prescribed by agency rule, for each day or part of a day the person is necessarily present as a witness or deponent.

(e) Mileage and fees to which a witness is entitled under this section shall be paid by the party or agency at whose request the witness appears or the deposition is taken, on presentation of proper vouchers sworn by the witness and approved by the agency.

§17.48. Depositions. The taking and use of depositions in any proceeding shall be governed by the Administrative Procedure and Texas Register Act, §14 and §14a.

§17.49. Appeals. Appeals from any final judgment of the district court may be taken by any party in the manner provided for in civil actions generally, but no appeal bond may be required of an agency.

§17.50. Remedies Not Exclusive. The remedies under the Texas Natural Resources Code, amended §51.302 and new §51.3021 are cumulative and not exclusive. The Texas Natural Resources Code does not require exhaustion of administrative remedies as a condition precedent to any other remedy, nor does it prohibit any person from bringing an action at common law or under any other law consistent with the Texas Natural Resources Code, amended §51.302 and new §51.3021. No such action shall collaterally estop or bar the commissioner in any proceeding under this chapter or under the Texas Natural Resources Code.

Issued in Austin, Texas, on September 23, 1991.

TRD-9111726

Garry Mauro
Chairman
General Land Office

Effective date: September 24, 1991

Expiration date: January 22, 1992

For further information, please call: (512) 463-5394

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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 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans

• 1 TAC §251.1

The Advisory Commission on State Emergency Communications proposes an amendment to §251.1, concerning the standards for developing the regional plans for 9-1-1 service within the 24 regional councils of government regions. Health and Safety Code, Chapter 771 requires the commission to develop minimum performance standards for equipment and operations of 9-1-1 service which are to be followed in establishing a 9-1-1 regional plan as outlined. The section defines for the councils of governments the minimum standards for 9-1-1.

Mary A. Boyd, executive director, has determined that there will be fiscal implications as a result of enforcing or administering the section. There will be no effect on state government for the first five-year period the section is in effect. The commission has no historical data and is unable to estimate the exact fiscal impact on local government. The 9-1-1 services are to be funded by a service fee on local access and a 9-1-1 surcharge established in Chapter 255.

A 9-1-1 service fee of a maximum of 50 cents per access line and a 9-1-1 surcharge on intrastate long distance telephone service will be assessed as specified in Chapter 255. The commission has no historical data and is unable to estimate an exact fiscal impact.

Businesses will be charged based upon the number of telephone access lines used and the amount of intrastate long distance service used. The commission has no historical data and is unable to estimate the exact fiscal impact.

Ms. Boyd also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ease and expedite the reporting of police, fire, or medical emergencies by the implementation of the single 9-1-1 emergency number. The anticipated economic cost to persons who are required to comply with the section as proposed will be persons in areas implementing 9-1-1 under this statute will be charged a 9-1-1 service fee of a maximum of 50 cents per month and a charge on intrastate long distance service as required in Chapter 255.

Comments on the proposal may be submitted to Mary A. Boyd, Executive Director, Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

The amendment is proposed under the Health and Safety Code, Chapter 711, which provides the Advisory Commission on Emergency Communications with the authority to administer the implementation of statewide 9-1-1 emergency telephone service.

§251.1. Regional Plans for 9-1-1 Service.

(a) All 9-1-1 service plans must be submitted to the Advisory Commission on State Emergency Communications (the commission) by a regional council of government (RCOG) as specified by Health and Safety Code, Chapter 771.056 [Texas Civil Statutes, Article 1432f, §5(a) and §5(e)].

(b) All 9-1-1 service plans submitted for approval must address the entire geographic area within the boundaries of an RCOG. The plan must identify all public safety agencies as participating or non-participating. All counties with a population greater than 120,000, according to the latest federal census, must have 9-1-1 service by September 1, 1995. In counties with less than 120,000 in population, resolutions supporting the plan must be included for all participating cities and counties. Because the definition of public agency in Health and Safety Code, Chapter 771.001(6) [Texas Civil Statutes, Article 1432f] creates a possibility of overlapping jurisdictions, the city or county government of that area should submit the resolution to support the plan.

(c) A regional plan may be amended according to procedure outlined in §251.2 of this title (relating to Guidelines for Regional Plan Amendments) [Initial plans for 9-1-1 service must be submitted by all RCOGs before September 1, 1989, as required by Texas Civil Statutes, Article 1432f, §9].

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

(f) The plan must include a description of how the service is to be administered as required by Health and Safety Code, Chapter 771.055(b) [Texas Civil Statutes, Article 1432f, §5(b)].

(g) The plan must include a description of how money allocated to the RCOG under Health and Safety Code, Chapter 771 [Texas Civil Statutes, Article 1432f] is to be allocated within the region as required by Health and Safety Code, Chapter 771.055(c) [Texas Civil Statutes, Article 1432f, §5(c)].

(h) The plan must include detailed descriptions of the cost of equipment and the operating expenses for the proposed 9-1-1 service that are to be funded by fees or surcharges collected in accordance with Health and Safety Code, Chapter 771 Subchapter D [Texas Civil Statutes, Article 1432f, §6].

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 September 24, 1991.

TRD-9111752

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

Earliest possible date of adoption: November 1, 1991

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

Chapter 255. Finance

• 1 TAC §255.1

The Advisory Commission on State Emergency Communications proposes an amendment to §255.1, concerning the establishment of a statewide 9-1-1 equalization surcharge. The amendment reflects appropriate statute reference in the language that establishes the statewide 9-1-1 equalization surcharge.

Mary A. Boyd, executive director, has determined that there will be fiscal implications as a result of enforcing or administering the rule. There will be no effect on state government for the first five-year period the section is in effect. The commission has no historical data and is unable to estimate an exact fiscal impact on local government other than, the 9-1-1 surcharge will be assessed at a rate of 2/10 of 1.090 to each customer receiving intrastate long-distance service.

Small businesses will be assessed a 9-1-1 surcharge at a rate of 2/10 of 1.0% to each customer receiving intrastate long-distance service in counties having a population of

120,000 or more. The commission has no historical data and is unable to estimate an exact fiscal impact.

Small and large businesses will be impacted the same at a rate of 2/10 of 1.0% to each customer receiving intrastate long-distance service in counties having a population of 120,000 or more.

Ms. Boyd 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 sections will be to ease and expedite the reporting of police, fire, or medical emergencies by implementation of the single three-digit 9-1-1 emergency number which allows for faster access and response of emergency vehicles. The commission has no historical data and is unable to estimate an exact fiscal impact on the public other than a 9-1-1 surcharge will be assessed at a rate of 2/10 of 1.0% to each customer receiving intrastate long-distance service.

Comments on the proposal may be submitted to Mary A. Boyd, Executive Director, Advisory Commission on State Emergency Communications, 1101 Capital of Texas Highway, South B-100, Austin, Texas 78746, (512) 327-1911.

The amendment is proposed under the Health and Safety Code, Chapter 771, which provides the Advisory Commission on State Emergency Communications with the authority to administer the implementation of statewide 9-1-1 emergency telephone service.

§255.1. Statewide 9-1-1 Equalization Surcharge. An equalization surcharge is hereby established in the amount of 2/10 of 1.0% (0.20%), the amount to be rounded up to the next whole \$.01 in the case of fractions. This surcharge will be assessed to each customer receiving intrastate long distance service, except those exempted by Health and Safety Code, Chapter 771.001, or commission rule [Texas Civil Statutes, Article 1432f]. The surcharge shall be applied to the total amount for intrastate long-distance service charged by the customer's long-distance service provider, but such amount shall not include taxes charged by local, state, and federal authorities, nor shall local, state, or federal taxes be applied to this surcharge unless otherwise required by law.

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

Issued in Austin, Texas, on September 24, 1991.

TRD-9111751

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

Earliest possible date of adoption: November 11, 1991

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

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Organization Procedures

• 7 TAC §91.211

The Credit Union Commission proposes amendment to §91.211, concerning foreign credit unions having branch offices in Texas. The principal change will require deposit accounts to be federally insured by the National Credit Union Share Insurance Fund.

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

Mr. Hale 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 all credit unions operating in Texas will have federal deposit insurance. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be comparable to, perhaps even less, than the cost of private deposit insurance.

Comments on the proposals will be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

The amendment is proposed under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.211. Foreign State Credit Union Branch Offices.

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

(c) In order to protect the interest of the citizens of the State of Texas, the commissioner shall approve the application if he finds that the applicant:

(1)-(8) (No change.)

(9) has proven that the shares and deposits of its members in the State of Texas are insured by the National Credit Union Insurance Fund or its successor by no later than 30, 1993. Any credit union subject to this rule and unable to qualify for federal share deposit by June 30, 1993, may be granted one or more six-month extensions by the commissioner to qualify for federal insurance, if the commissioner finds that the credit union is making substantial progress in qualifying for federal insurance with the NCUA; [or guaranteed comparable to credit unions chartered pursuant to the Act;]

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

(d)-(g) (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 September 20, 1991.

TRD-9111681

John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 837-9236

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter G. C.O.D. Shipments

• 16 TAC §5.116

The Railroad Commission of Texas proposes an amendment to §5.116, concerning remittance of C.O.D. charges, pursuant to a petition from Kerville Bus Company, Inc. The section establishes the requirements for remittance of C.O.D. charges by carriers to consignors. The proposed amendment would differentiate between motor carriers and motor bus companies, and would increase the period within which motor bus companies must remit C.O.D. charges to consignors from 10 days to 30 days, while retaining the 10-day remittance requirement for motor carriers.

Jackye Greenlee, assistant director-central operations, 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.

Kenneth W. Mills, hearings examiner, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that a motor bus company will have sufficient time to have its agents in small communities collect C.O.D. charges, send those collected charges to its main office, and then remit the charges to the appropriate consignor. 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 Kenneth W. Mills, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Motor Bus Act, Texas Civil Statutes, Article 911a, and the Texas Motor Carrier Act, Texas

Civil Statutes, Article 911b, which authorize the commission to regulate motor bus companies and motor carriers, respectively, in all matters.

§5.116. Remittance.

(a) The delivering motor carrier shall remit the C.O.D. charges to the consignor or designated payee within 10 days from date of delivery, Sundays and legal holidays excepted. The charge or fee for collecting and remitting C.O.D. amounts shall be by separate remittance. A transmittal instrument shall accompany and identify the remittance.

(b) The delivering motor bus company shall remit the C.O.D. charges to the consignor or designated payee within 30 days from date of delivery, Sundays or legal holidays excepted. The charge or fee for collecting and remitting C.O.D. amounts shall be by separate remittance. A transmittal instrument shall accompany and identify the remittance.

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 September 23, 1991.

TRD-9111773

Martha V. Swanger
Hearings Examiner, Gas
Utilities/LP-Gas Section,
Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 463-7094

Subchapter H. Allowances Prohibited

• 16 TAC §5.133

Pursuant to a petition filed by J. & H. Truck Service, Inc., the Railroad Commission of Texas proposes an amendment to §5.133, concerning prohibited allowances. The amendment will add provisions prohibiting allowances given by specialized motor carriers and affiliated shippers, producers, or distributors as defined in the amendment, of sand, gravel, and other similar type road building and construction commodities. The amendment will prevent manipulations of the commission's rates and tariffs, and deter business practices that have developed in the sand and gravel industry which interfere with the public's right to select a carrier of its choice.

Jackye Greenlee, assistant director-central operations, 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.

Linda G. Sorrells, hearing examiner, 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 sec-

tion will be the promotion of fair business practices that protect the public's right to select carriers of their choice. 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 Linda G. Sorrells, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, which authorize the commission to prescribe rules and regulations for the operations of motor carriers.

§5.133. Allowances Prohibited.

(a) No motor carrier or motor bus company shall grant, pay, give, or make any allowance to the owner, shipper, consignor, or consignee of any property or shipment, for any service or instrumentality furnished by the owner, shipper, consignor, or consignee, unless such allowance is prescribed or permitted in a lawfully applicable tariff, schedule, or specific order of the commission.

(b) No motor carrier authorized to transport sand, gravel, aggregate, and other construction materials or road building materials, in bulk, nor any affiliated producer, shipper, or other distributor of sand, gravel, aggregate, and other construction materials or road building materials, in bulk, shall directly or indirectly offer to provide any regulated motor carrier service pursuant to certificates issued by this commission on the basis of a combination bid, quote, invoice, or by any other means whatever which includes both material and transportation at a single delivered price, unless there is also clearly shown and set forth in the bid, quote, invoice, or other writing the exact and true selling price of the material and a statement for freight charges for not less than the minimum tariff charge for the involved transportation. The term "Affiliated" as used in the context of this provision shall mean the association or combination of two or more companies, corporation, individuals, joint stock companies, or partnerships who control or have the power to control both the motor carrier and the said producer, shipper, or other distributor of the previously enumerated commodities regardless of how such control or power to control is reached or achieved.

(c) No producer, shipper, or other distributor of sand, gravel, aggregate, and other construction materials or road building materials, in bulk, which is affiliated by ownership, control, or otherwise with a carrier certificated by this commission to transport said commodi-

ties, as described in subsection (b) of this section, shall refuse to sell materials to any customer to whom a combination bid or quote for material and transportation has been made or given by such affiliated companies, or to load any other carrier authorized by this commission to transport said commodities when such customer elected to use another carrier or transport the commodities in the customer's own equipment.

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 September 23, 1991.

TRD-9111774

Martha V. Swanger
Hearings Examiner, Gas
Utilities/LP-Gas Section,
Legal Division
Railroad Commission of
Texas

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 463-7096

TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 463. Applications

• 22 TAC §463.6

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.6, concerning experience. To clarify to applicants that even though they may be employed in an "exempt agency" if they want their supervised experience to count toward the certification or licensure requirement, the supervision guidelines must be followed.

Patricia S. Bizzell Tweedy, 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.

Ms. Bizzell (Tweedy) also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to clarify the board's requirements for licensure so that potential applicants will place themselves in appropriate work settings to obtain experience that will be acceptable to the board. 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 Patricia S. Bizzell Tweedy, M.P. A., 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psy-

chologists with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.6. Experience. Supervision may be obtained only in a full-time or half-time setting.

(1)-(11) (No change.)

(12) All applicants obtaining experience for the purpose of certification and licensure must adhere to the board's supervision guidelines currently in effect in §465.18 of this title (relating to Time Period for Appealing a Decision) regardless of employment setting.

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 September 20, 1991.

TRD-9111712

Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 835-2036

◆ ◆ ◆
• 22 TAC §463.20

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.20, concerning regionally accredited institutions. The board requires that applicants graduate from a school that is accredited at the time of graduation.

Patricia S. Bizzell Tweedy, 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.

Ms. Bizzell Tweedy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that the school must be accredited at the time of graduation which ensures that specific educational requirements have been met. 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 Patricia S. Bizzell Tweedy, M.P. A., 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§463.20. Regionally Accredited Institutions.

[(a)] A regionally accredited educational institution stated in the Act, §§11a, 19, and 22a(3) is defined as an educational institution which satisfied the standards of the accrediting association in one of the following six regions throughout the United States:

- (1) Southern Association of Colleges and Schools;
- (2) Western Association of Schools and Colleges;
- (3) Northwest Association of Schools and Colleges;
- (4) North Central Association of Colleges and Schools;
- (5) New England Association of Schools and Colleges;
- (6) Middle States Association of Colleges and Schools.

[(b)] A degree from a newly regionally accredited educational institution will be accepted retroactively to January of the same calendar year that the school is accredited.]

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 September 20, 1991.

TRD-9111713

Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 835-2036

◆ ◆ ◆
Chapter 465. Rules of Practice

• 22 TAC §465.25

The Texas State Board of Examiners of Psychologists proposes an amendment to §465.25, concerning complaints regarding authorization for psychological services to minors. The board needs a rule to accept only complaints that deal with potential complaints against a psychologist's professional activities.

Patricia S. Bizzell Tweedy, 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.

Ms. Bizzell Tweedy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that funds will not be expended to determine if a court violation has occurred. That determination will be given back to the courts to decide.

This will reduce the amount of money the board spends on its investigation of complaints. 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 Patricia S. Bizzell Tweedy, M.P. A., 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.25. Complaints Regarding Authorization for Psychological Services to Minors. No complaint will be processed against a person if such complaint is predicated upon a violation of a court order unless such complaint includes certified court documents which show that the court has decided that the psychologist did violate the specific court order and the court's action in response to such violation. [Any complaint concerning the authorization of psychological services for minor children and/or parent/child relationship will not be considered by the board.] The board retains the prerogative to act in accordance with the Psychologists' Certification and Licensing Act to protect the health, safety, or welfare of the general public.

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 September 20, 1991.

TRD-9111714

Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 835-2036

◆ ◆ ◆
• 22 TAC §465.27

The Texas State Board of Examiners of Psychologists proposes new §465.27, concerning projective techniques. The board determined that psychologists receive an extensive amount of training in their doctoral programs to learn projective techniques. These techniques are the practice of psychology.

Patricia S. Bizzell Tweedy, 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.

Ms. Bizzell Tweedy 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 put public on notice that projective techniques are the practice of psychology and require licensure as a psychologist to use. 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 Patricia S. Bizzell Tweedy, M.P. A., 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The new section is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§465.27. Projective Techniques. Projective techniques are the practice of psychology. These techniques include, but are not limited to, Rorschach, thematic apperception text, sentence completion tests, and Holtzman Ink Blot.

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 September 20, 1991.

TRD-9111715 Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 835-2036

Chapter 471. Renewals

• 22 TAC §471.6

The Texas State Board of Examiners of Psychologists proposes an amendment to §471.6, concerning staggered renewals. The board is proposing a rule to stagger renewals throughout the year rather than having them come due all at one time in December.

Patricia S. Bizzell Tweedy, 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.

Ms. Bizzell Tweedy also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that renewals will be processed more timely because the work load of the board's staff will be distributed more evenly throughout the year. Consequently, the public will receive more current information about the status of a psychologist's license. 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 Patricia S. Bizzell Tweedy, M.P. A., 9101 Burnet Road, Suite 212, Austin, Texas 78758.

The new section is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this state, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

§471.6. Staggered Renewals. Annual renewals for psychologist certification, licensure, and psychological associate certification are due on the last day of each person's birth month. For fiscal 1992 prorated adjustments will be made in the required fee in order to implement the staggered renewal system.

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 September 20, 1991.

TRD-9111718 Patricia S. Bizzell Tweedy
Executive Director
Texas State Board of
Examiners of
Psychologists

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 835-2036

Part XXV. Structural Pest Control Board

Chapter 593. Licenses

• 22 TAC §§593.1-593.7, 593.9, 593.10, 593.21-593.24

The Structural Pest Control Board proposes amendments to §§593.1-593.7, 593.9, 593.21, and new §§593.10, 593.22, 593.23, and 593.24, concerning persons required to secure license; license application; insurance requirement; resident agent; examinations; license expiration and renewal; fees; licensing of persons with criminal backgrounds; and technician license standards. These amendments and new sections create new requirements for obtaining a technician license and create a new class of licensing, technician-apprentice. The amendments and new sections also create a certified noncommercial applicator license. Insurance requirements are increased to reflect new statutory minimum requirements and to create insurance requirements for certified non-commercial applicators. The amendments and new sections create a new licensure category in commodity fumigation. The amendments and new sections also change the fee structure to reflect increases in the costs of operation and the new licensure categories. Licensing of technicians is changed to require testing in order to obtain a license.

New §593.10 establishes licensure requirements for persons with delinquent student

loans and requires that persons in default on student loans not have their licenses renewed until they have repaid the loan or entered a repayment agreement. New §593.22 establishes testing procedures and fees for the technician license. New §593.23 establishes continuing education requirements which are proposed in order to make education and increased proficiency mandatory among certified applicators. The new rule allows proration of credits for newly licensed applicators. The rule requires prior approval of speakers and courses by a special committee of the board. It also allows reevaluation of a course at the request of a committee member. Under the new rule, the board may enter into agreements to recognize continuing education requirements of related professional organizations. New §593.24 establishes criteria for evaluating continuing education programs for approval. It details the materials which must be supplied to the board, and the fee which must be paid. It also exempts personnel of the board from any fee which might be imposed to attend the course.

Benny M. Mathis, Jr., executive director, has determined that for the first five-year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated additional cost of \$349,220 for fiscal year (fy) 1992 and \$247,643 for fy 1993-1996; and an estimated increase in revenue of \$410,550 for fy 1992 and \$437,550 for fy 193-1996. The effect on local government for the first five-year period the sections are in effect will be an estimated additional cost of \$31,500 for fy 1992 and \$48,000 for fy 1993-1996; and an estimated loss in revenue of \$31,500 for fy 1992 and \$48,000 for fy 1993-1996.

Mr. Mathis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to strengthen education and training for the persons involved in performing actual pest control service. An increase in public protection will be created through the increase in insurance requirements. The certified noncommercial applicator license will also ensure that all pest control services in sensitive institutions are performed by someone with adequate training and testing. The effect on small businesses will be \$42 per year. The cost of liability insurance will increase approximately 4.0% but the rules were changed because of the increase in minimum requirements. The effect on small businesses compared to the effect on the largest businesses affected by the sections, based on cost per employee, will be as follows: business license holder-\$18 per year; certified applicator-\$18 per year; technician license-\$30.00 per year; training manual-\$7.50 as needed; technician-apprentice-\$18 per year. The anticipated economic cost to persons who are required to comply with the sections as proposed will be business license-\$18 for fy 1992-1996; certified applicator license-\$18 for fy 1992-1996; technician license-\$30 for fy 1992-1996; technician-apprentice-\$18 for fy 1992-1996.

Comments on the proposal may be submitted to Roger Borgelt, 9101 Burnet Road, Suite 201, Austin, Texas 78758.

The amendments and new sections are proposed under Texas Civil Statutes, Article 135b-6, which provides the Structural Pest Control Board with the authority to establish standards for testing, licensing, and regulating persons engaged in the structural pest control business.

§593.1. Persons Required to Secure License.

(a) Business license. Any person engaged in the structural pest control business must secure a business license from the board for each business location, including branch offices, in accordance with the Act and the regulations. Each business license holder shall designate a responsible certified applicator who is not also serving as a certified applicator for any other business licensee[.] or any other business license location. No person shall advertise in any manner to render services or solicit business within the meaning of the Act without first obtaining a business license and having an applicator certified in each license category in which business is conducted.

(b) Certified commercial applicator. The person responsible to provide training and direct supervision for pest inspections, identifications, and control measures of a licensed business must be a certified commercial applicator. A person shall be a certified commercial applicator for only one business license location.

(c) Certified noncommercial applicator. The person who as an employee is responsible for providing pest control services to a governmental entity, apartment building, day-care center, hospital, nursing home, hotel, motel, lodge, warehouse, food-processing establishment, school, or educational institution. The person performing the actual inspection and/or application must be a licensed certified noncommercial applicator.

(d)[(c)] Technician. Individuals who perform pest control services under the direct supervision of a certified applicator must obtain a technician license by meeting the standards prescribed by the board in §593.21 of this title (relating to Technician License Standards). A technician must be licensed for every business for which he is employed.

§593.2. License Application.

(a) The application for a business license, a certified applicator license, [and] technician license, and technician-apprentice license shall be submitted on a regular form furnished by the board.

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

§593.3. Insurance Requirement.

(a) Each business license applicant and certified noncommercial applicator

license applicant must submit with the application an insurance policy or certificate of coverage in the amount of not less than \$200,000 [100,000] for bodily injury and property damage coverage with a minimum total annual aggregate of \$300,000 for all occurrences insuring him against liability for damage to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under his care, custody, or control. No new business license or certified noncommercial applicator license will be issued until insurance requirements are met. Policies shall contain a cancellation provision whereby notification of cancellation is received by the board not less than 30 days prior to cancellation. Certified noncommercial applicators employed by governmental entities are exempt from this provision.

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

§593.4. Resident Agent.

(a) Licensed [license] applicators [applicants] who reside outside the state shall designate in writing a resident agent for service of process in actions taken in the administration and enforcement of the Act.

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

§593.5. Examinations.

(a) (No change.)

(b) In order to qualify to take the Structural Pest Control Board test for obtaining a certified commercial applicators license, the applicant must have verifiable employment in the pest control industry under the supervision of a licensed certified commercial applicator for at least 12 months out of the past 24 months and must have possessed a technician license for at least six months.

(1) The proof of previous employment or experience in the industry or technical field experience from a previous occupation shall be furnished by the applicant in the form of a notarized statement.

(2) (No change.)

(c) The testing procedure will be as follows.

(1)-(12) (No change.)

(13) Categories in which examinations are to be given for which licenses will be issued are as follows.

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

(D) Structural fumigation [Fumigation]—This category includes persons engaged in wood destroying pest inspection and/or control through fumigation of structures[food stuffs, warehouses, ships, railroad cars, etc].

(E) Commodity fumigation—This category includes persons engaged in pest inspection and/or control through fumigation of commodities.

(F)[(E)] Weed control—This category includes persons engaged in the inspection and/or control of weeds around homes and industrial environs.

(G)[(F)] Wood preservation—That phase of pest control that involves the addition of preservatives to wood to extend the life of wood products by protecting them from damage caused by insects, fungi, and marine borers. Such wood products will include, but not be limited to, crossties, poles, and posts. This category is intended only for use by those persons using wood preservatives that may be classified as restricted use.

(14) (No change.)

(d) A certified noncommercial applicator may not perform commercial pest control services or perform any structural pest control services for a person other than the employer for whom he/she is certified as a certified noncommercial applicator. A certified noncommercial applicator shall not be associated with a licensed structural pest control business.

§593.6. License Expiration and Renewal.

(a) (No change.)

(b) Businesses and certified noncommercial applicators that change insurance coverage during a licensed period may have the license expiration extended to the new policy date, if there has not been a lapse in coverage, by paying prorated license fees for each license to the new expiration date. Certified commercial applicators and technicians who change employers may also pay prorated license fees to the new expiration date of the business under which they are operating. The minimum prorated license fee is \$5.00 for each license.

(c) Businesses and certified noncommercial applicators that allow insurance coverage to lapse or who fail to provide continuous proof of coverage to the board as a result of insurance changes will be required to reapply for a license and pay annual fees without receiving credit for any license period between the date of the lapse in coverage and the original license expiration date.

(d) The license fees for [certified applicators and] licensed technician-apprentices [technicians] who change employers will not be prorated, and the new licenses will expire on the license expiration date of their new employer.

(e) Licenses must be renewed by submitting an application to the board, paying the required fee, and meeting any additional requirements of the board under §593.3 of this title (relating to Insurance Requirement) and subsection (h) of this section, 30 days prior to the license expiration date. Renewals submitted after the license expiration date are subject to the late fees prescribed in the Texas Structural Pest Control Act, §7(c). An application is not considered to be submitted unless it is in substantially correct form with the correct fees.

(f) (No change.)

(g) Whenever a licensee changes his/her mailing address or business location, he/she shall notify the board in writing within 10 [30] days of the effective date of the change and submit the required fee for the license change.

(h) (No change.)

(i) Beginning with the 1990 license renewals, all certified applicators will be required to certify to the board the number and category(ies) of continuing education credits they have accumulated during the previous year pursuant to §593.23 [593.22] of this title (relating to Continuing Education Requirements for Certified Applicators).

(j) Certified noncommercial applicators who have been licensed for a minimum of one year may become certified commercial applicators by paying a name change fee plus the prorated license fee to the expiration date of the business license under which they will operate. Certified commercial applicators may become certified noncommercial applicators by paying the name change fee, listing the name and address of the entity employing them and providing proof of liability insurance coverage as required by §593.3 of this title (relating to Insurance Requirement).

§593.7. Fees. Applicants and licensees will be charged the following fees for board services:

(1) \$132 [108] for an original or renewal of a business license;

(2) \$66 [48] for an original or renewal of a certified applicators license;

(3) \$48 [18] for an original, renewal, or duplicate technician license;

(4) \$18 for a technician-apprentice license.

(5) [(4)] \$20 for duplicate business license or certified applicators license when the original has been lost or destroyed;

(6)[(5)] \$20 for reissuing a business license, [or] certified applicators license, or technician license due to a name change in the license or a change of address;

(7)[(6)] \$30 for administering exams in each category;

(8)[(7)] \$37.50 for late renewal fee for up to 30 days late;

(9)[(8)] \$75 for late renewal fee for 31-60 days late;

(10) \$7.50 for a technician training course.

§593.9. Licensing of Persons With Criminal Backgrounds.

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

(c) In making a determination in a particular case, the crimes which the board considers as likely to be directly related to the performance of the licensed occupation or activity include, but are not limited to:

(1)-(8) (No change.)

(9) theft; [and]

(10) child molesting; and [.]

(11) possession of controlled substances.

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

§593.10. Licensing of Persons with Delinquent Student Loans.

(a) The board shall not renew a license of a person who is on the list of those who have defaulted on a loan guaranteed by the Texas Guaranteed Student Loan Corporation or a person who has defaulted on a repayment agreement unless:

(1) the renewal is the first renewal following September 1, 1991; or

(2) the licensee presents a certificate from the Texas Guaranteed Student Loan Corporation that the licensee has entered a repayment agreement or is not in default.

(b) Actions taken by the board under this provision shall be preceded by notice and opportunity for a hearing as mandated by the Administrative Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a).

§593.21. Technician License Standards.

(a) The business licensee hiring an applicant for a technician-apprentice license must furnish the board with a technician-apprentice application and a fee of \$18 on the applicant's date of employment. The application must contain the following information:

(1) applicant's full name;

(2) applicant's home address;

(3) applicant's date of employment;

(4) applicant's social security number;

(5) applicant's driver's license number;

(6) applicant's birthdate.

(b) Employees who have not received a technician-apprentice license may not perform unsupervised pest control work. Supervision of these employees requires the physical presence of a licensed technician or certified commercial applicator.

(c)[(a)] In order to qualify for a technician-apprentice [technician's] license, an applicant [a trainee] must:

(1) file a technician-apprentice application with the board;

(2) [(1)] be at least 16 years of age; [(2)] receive general training of at least 20 hours of verifiable classroom training that shall include at least two hours in each of the following subject areas:]

[(A) federal and state laws regulating structural pest control and pesticide application;

[(B) recognition of pest and pest damage;

[(C) pesticide labels and label comprehension;

[(D) pesticide safety;

[(E) environmental protection;

[(F) application equipment and techniques;

[(G) pesticide formulations and actions;

[(H) emergency procedures and pesticide cleanup;]

(3) be able to read and write the English language;

(4) complete the board-approved technician training course for the category of licensing desired and verify such completion in the manner prescribed by the board;

(5) [(3)] In each category in which the technician-apprentice is to provide supervised pest control services, receive 60 hours of verifiable on the job training and 10 hours of classroom training [in each category in which the technician is to operate as a licensed technician]. The on the job training means work performed that includes [for] education and training in the general category and each category for which the technician-apprentice is to become licensed [and should include but not be limited to the subject areas listed in subsection (a)(2)(A)-(H) of this section].

(d)[(b)] The business license holder and certified commercial applicator shall certify to the board in writing [on each technician license application submitted] that the applicant has [satisfactorily] completed the required training and has demonstrated competency in each of the subject areas in subsection (c)(4) [(a)(2)] and (5) [(3)] of this section. A technician-apprentice license will then be issued.

(e)[(c)] The business licensee shall maintain the training records for each technician-apprentice [trainee] in the company files for at least one year after termination of employment. The training records shall be kept on a form prescribed by the board and shall include, but not be limited to, the following: date [of] training [,] is received, number of hours of training, subject of training, name and license number of trainer, designation [type] of [training as to whether] on the job [training] or classroom training, and competency evaluation by the certified commercial applicator.

(f) [(d)] When a [licensed] technician-apprentice changes employers the employer who provided the verifiable training shall make the training record available to the technician-apprentice or the new employer upon written request.

(g)[(e)] It is [shall be] a violation of this section for a business licensee to allow a technician-apprentice [or trainee] to perform unsupervised work in a category in which he has not been properly trained. Adequate supervision means personal contact with the certified commercial applicator at least three days per week.

[(f)] Persons who have continuous employment and who have been properly registered with the Texas Structural Pest Control Board for the entire 1987 license year shall be eligible for a technician license if they can furnish proof that they have received the 20 hours of required general training.]

(h) Upon receiving a technician-apprentice license, a technician-apprentice may become a licensed technician by passing the technician examination. An application for the technician examination must be completed and accompanied by a fee of \$30 per category. Technicians who were licensed on or before September 1, 1991 must verify that they have completed the board-approved technician training course before September 1, 1996. Failure of a licensed technician to complete the Technician Training Course shall be a violation of this section. A person shall maintain a technician-apprentice license for a maximum of six months out of any 12-month period.

(i) The technician training course for each category may be obtained from the board for a fee of \$7.50 per course.

§593.22. Technician Examinations and Fees.

(a) An individual must pass the subject area examination for each category of structural pest control in which the individual wishes to become licensed. Re-examination is not necessary if the license is renewed annually by the technician.

(b) Examinations shall be given at dates and at locations to be at the discretion of the board. A fee of \$30 per examination category shall be paid by the applicant.

(c) All other testing procedures shall be governed by §593.5(d)(3)-(11), and (13)-(14) of this title (relating to Examinations).

(d) Persons who make a passing grade and qualify for a technician license must obtain a license within 12 months of the exam date or be retested.

(e) Each technician-apprentice application shall be accompanied by a fee of \$18.

(f) Each technician license application shall be accompanied by a fee of \$48.

§593.23. Continuing Education Requirements for Certified Applicators.

(a) On or after January 1, 1991, the board shall require as a condition to the renewal of each certified applicator license granted pursuant to the provisions of this section, that the holder thereof certify to the board that he or she has completed courses of continuing education approved by the board that cover the applicator's category(ies) of certification.

(b) Each certified applicator is required to gain a certain number of continuing education points during a three-year recertification period, beginning January 1, 1990, and for each three-year period thereafter. Applicators who are certified and licensed after January 1, 1990, will be permitted to obtain a prorated number of points for each year remaining in the existing three-year recertification period.

(c) No more than one-half of the total continuing education points required for the three-year period may be acquired for credit in any one year, and no courses may be repeated for credit during the same recertification period.

(d) The number of continuing education points required each three years is six points in general training and three points in each category in which the applicator is certified. Applicators who become certified in additional categories during their three-year recertification period will be permitted to obtain a prorated number of points in those categories for each year remaining in the period.

(e) a standing training and evaluation committee is hereby created to evaluate continuing education programs, and assign

the number of category points for each one. No more than one point will be assigned for any hour of net actual instruction time. The committee will present the board with criteria to be used in evaluating continuing education programs and instructors. These criteria will become the subject of board rulemaking. The criteria shall be made available to the public upon request. The committee will consider, inter alia, the technical information given, the qualifications of the instructor, and the amount of actual training time devoted to each program in the process of evaluation. The committee will report its recommendation regarding the number of category points, if any, to be assigned to each program to the executive director of the Structural Pest Control Board. The executive director will then decide whether to accept, reject, or modify the committee's recommendation. The executive director's decision shall be part of his regular report to the board.

(f) The members of the evaluation committee will consist of a representative of the head of the Entomology Department at Texas A & M University, a representative of the dean of agriculture at Texas Tech University, a representative from the commissioner of health, a representative from the pest control industry, a representative of a pest control supplier or manufacturer, an appointed member of the Structural Pest Control Board, and the executive director of the Structural Pest Control Board. The representatives designated will be authorized to confer with appropriate specialists for assistance in program evaluations.

(g) The last four members designated will be appointed on January 1 of each year by the chairman of the board. In the event of a vacancy on the committee, the chairman shall appoint a replacement within 30 days.

(h) Any person seeking approval of a training program must submit the information required at least 120 days prior to the first day of presentation. The executive director may waive this requirement due to special circumstances. The training and evaluation committee must evaluate and recommend credits within 60 days from the date submitted. Each submission shall include:

- (1) the course outline;
- (2) the names and qualifications of the instructors;
- (3) the categories and number of points which are requested;
- (4) the means of verifying attendance;
- (5) an agreement to maintain attendance records for three years and to submit a list of participants to the board within 14 days after completion of the course;

(6) a facsimile of the certificate of completion that will be given to attendees; and

(7) additional information requested to assist in the evaluation.

(i) Parts of courses which focus on promotion of products, policies, or procedures of a company cannot be included for points. Programs and instructors must be evaluated each year or more frequently at the board's discretion. Annual renewals shall be submitted to the board 30 days prior to the beginning of the next calendar year and shall include all changes to the previous year's submission.

(j) Each certified applicator shall keep a certificate of completion for each course he or she attends for a period of three years, and submit such records to the board on request.

(k) Upon written request to the executive director from any two members of the Training and Evaluation Committee, the committee shall reevaluate its approval of a course under the provisions of subsection (h) of this section. The date submitted shall be considered to be the date the second written request is received.

(l) The general category is defined to include the topics included in the Structural Pest Control Act, §4A(e). Effective January 1, 1993, of the six general category points required for recertification, at least one must be in federal and state laws, one must be in pesticide safety or environmental protection, and one must be in integrated pest management. Credit for these topics must be assigned by the Training and Evaluation Committee under the provisions of subsection (e) of this section.

(m) The Structural Pest Control Board may enter into a memorandum of agreement with a state or nonprofit professional society or association to recognize the state's pesticide applicator recertification of the society's professional recertification for satisfaction of the requirements of this section for commercial and noncommercial applicator recertification only if:

(1) the standards for recertification meet or exceed the standards for the three-year recertification period as set out in this section;

(2) the licensed commercial or noncommercial applicator also acquires at least two points in the general category during each recertification period; and

(3) the agreement reduces duplication of effort and does not increase the recordkeeping burden of the board.

§593.24. Criteria and Evaluation of Continuing Education.

(a) Each continuing education program submitted for approval shall contain the following:

(1) a brief statement giving the course objective(s), information to be gained, or teaching points;

(2) the procedure to be used in verifying the participant's comprehension of subject matter presented. These methods may include, but are not limited to, examination and post-activity questionnaires, practical applications, field demonstrations, in-class workbooks, or any other recognized educational technique that would assure mastery of subject matter;

(3) a copy of handout materials, if any, which will be distributed to participants during the course;

(4) inclusive length of time of the course stated in hours, and minutes;

(5) first date of presentation or if unknown, agreement to provide two weeks' notice of the first date of presentation to the executive director;

(6) category(ies) and number of points in which continuing education units are requested; and

(7) a detailed course outline which will indicate the scope of the course.

(b) The minimum requirements to qualify as a speaker or course presenter are:

(1) a degree from a recognized institution of higher learning which pertains to the course being taught; or

(2) five years' experience as an applicator certified by the Structural Pest Control Board with a current license in the specialty to be taught; and

(3) verifiable proof of training and teaching experience within the preceding three years; or

(4) a combination of education, work related training, and teaching experience which, in the opinion of the board, would be equivalent to two of the three requirements as previously stated.

(c) Each continuing education program submitted for approval shall be accompanied by the following information on each speaker or course presenter:

(1) speaker name, address, telephone number and company, organization, or institution of higher learning affiliation;

(2) a resume which includes, but is not limited to, the following information:

(A) formal education-degrees held and granting institutions;

(B) industry-related technical experience which relates to the subject matter to be taught;

(C) industry-related teaching experience which relates to the subject matter to be taught;

(D) address and telephone number of at least three references;

(E) membership in trade associations and/or professional organizations; and

(F) publications as sole or junior author.

(d) Each continuing education program submitted for approval will be accompanied by:

(1) a means or system which verifies that participants attended the training program throughout its stated length. These systems may include, but are not limited to, sign-in-sign-out rosters, course completion certificates, or the system may be incorporated into the means to verify the participant's comprehension of a subject matter presented;

(2) a certificate of completion. This document must include at least the following information:

(A) certified applicator name and certified applicator's assigned number;

(B) name of sponsor or sponsoring agency, company, or organizations;

(C) number and category of continuing education points awarded;

(D) date and location of training event;

(3) a statement that the sponsor agrees to maintain attendance records for three years and that a list of participants will be forwarded to the board within 14 days of completion of the training course.

(4) a nonrefundable annual fee of \$60 for consideration of the course for approval.

(e) For purposes of this section, a course is defined as any number of points of instruction presented by any one sponsor, company, or organization in any one category of license recertification.

(f) Effective upon its adoption by the board, an evaluation form must be completed by each participant and submitted by the course sponsor for each participant for whom course credit is claimed.

(g) Video tapes, slides, or other media presentations shall not be approved by the board unless accompanied by a qualified speaker and course outline, as required by Subsections (a) and (c) of this section.

(h) Personnel of the Texas Structural Pest Control Board are exempt from any fee charged for a continuing education program if they are monitoring the program as a part of the duties of their employment.

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 September 23, 1991.

TRD-9111744

Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 835-4066

◆ ◆ ◆
• 22 TAC §593.22, §593.23

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

The Structural Pest Control Board proposes the repeal of §593.22 and §593.23, concerning continuing education requirements and criteria and evaluation of continuing education. The sections are being repropounded under new numbers to allow for expanding the technician licensure requirements.

Benny M. Mathis, Jr., executive director, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Mathis also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the regulations will be more readable and the efficiency of the continuing education system will be increased. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Roger Borgelt, 9101 Burnet Road, Suite 201, Austin, Texas 78758.

The repeals are proposed under Texas Civil Statutes, Article 135b-6, which provide the Structural Pest Control Board, with the authority to establish standards for testing, licensing, and regulating persons engaged in the structural pest control business.

§593.22. Continuing Education Requirements For Certified Applicators.

§593.23. Criteria and Evaluation of Continuing Education.

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 September 23, 1991.

TRD-9111745

Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 835-4066

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

Chapter 7. Corporate and
Financial Regulations

Subchapter A. Examination
and Corporate Custodian and
Tax

◆ ◆ ◆
• 28 TAC §7.82

The State Board of Insurance proposes new §7.82, concerning corporate and financial regulation. Section 7.82 concerns forms and instructions for the preparation and filing of tax returns by surplus lines insurance agents for the 1991 calendar year. The new section provides forms and instructions to facilitate compliance with statutory requirements for reporting and payment of taxes by surplus lines agents to the State Board of Insurance. The proposed section includes adoption by reference of forms and instructions as the new section adopts by reference a Form SL-7 and instructions for preparation and filing by surplus lines agents of semiannual tax report of insurance placed with unauthorized insurers. This proposed rule is virtually the same as the new rule §7.82 which was adopted by the State Board of Insurance on June 7, 1991.

Phil Ballinger, director of Tax Administration, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new section.

Mr. Ballinger also has determined that for each year of the first five years the new section is in effect, the public benefit anticipated as a result of enforcing the section is efficient administration in the collection of state tax revenues. There will be no effect on small businesses. There will be no anticipated economic cost to persons required to comply with the section as proposed.

Comments on this section may be submitted to Phil Ballinger, Director of Tax Administration, Texas Department of Insurance, Mail Code 018-2A, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104; (512) 322-4233.

The new section is proposed under the Insurance Code, Article 1.04 and Article 1.14-2. The Insurance Code, Article 1.04, authorizes the State Board of Insurance to determine rules in accordance with the laws of this state. The Insurance Code, Article 1.14-2, 12, requires surplus lines agents to collect, report, and pay gross premium tax on premium collected by those agents on policies of insurance, and Article 1.14-2, 3A, authorizes the State Board of Insurance to promulgate rules to enforce the article.

§7.82. Preparation of 1991 Tax Returns by Surplus Lines Agents. The State Board of Insurance hereby adopts and incorporates herein by reference forms and instructions for the preparation of tax returns by surplus lines insurance agents for the 1991 calendar year. These instructions and forms are published by the State Board of Insurance and may be obtained from the Tax Administration Division of the Texas Department of Insurance, William P. Hobby State Office Tower One, Room 808, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104; (512) 322-4233. The instructions and forms are more particularly identified as follows:

(1) a form identified as the 1991 surplus lines agent's semiannual tax report of insurance placed with unauthorized insurers (Form SL-7); and

(2) a form identified as the instructions for filing the 1991 surplus lines agents' semiannual tax report of insurance placed with unauthorized insurers (Form SL-7).

Issued in Austin, Texas, on September 24, 1991.

TRD-9111730

Angelia Johnson
Assistant Chief Clerk
Texas Department of
Insurance

Proposed date of adoption: November 1, 1991

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

◆ ◆ ◆
Subchapter F. Reinsurance
Credit for Reinsurance

◆ ◆ ◆
• 28 TAC §7.615

The Texas Department of Insurance proposes to adopt new 28 TAC §7.615, concerning the accounting of reinsurance agreements by property and casualty insurers. The new section is necessary to regulate the accounting of agreements represented to be reinsurance when such arrangements, despite their legal form, are in substance and effect financing arrangements, which have the principal purpose of producing increased surplus for the ceding insurer, typically on a temporary basis, but which provide little or no indemnification of insurance risks by the reinsurer. The new section prevents a ceding insurer from improperly reducing liabilities or establishing assets, resulting in distorted financial statements, by using a financing arrangement represented to be a reinsurance agreement. The section defines terms commonly used in reinsurance accounting and financing arrangements. The section establishes certain general provisions which are acceptable in a reinsurance agreement. The section also sets forth those contract provisions that are not permitted and will result in disallowance of credit for reinsurance.

Stephen S. Durish, associate commissioner, financial, has determined that for the first five-year period the new section is in effect there will be no fiscal implication for state or local

government as a result of enforcing or administering the section, and there will be no effect on local employment or local economy.

Mr. Durish also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more effective administrative regulation of the financial statement and condition of insurers under the Insurance Code, Articles 1.32 and 5.75-1. There is no expected cost for small businesses required to comply with this section other than incidental mailing costs for correspondence with the department. On the basis of cost per hour of labor there is no anticipated difference in cost of compliance between small and large business. There is no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Kevin Brady, Acting Director of the Reinsurance Activity, Mail Code 303-2A, Texas Department of Insurance, William P. Hobby State Office Building, 333 Guadalupe Street, P.O. Box 149099, Austin, Texas 78714-9099.

The new section is proposed under the Insurance Code, Articles 1.32 and 5.75-1. Article 1.32 authorizes the Texas Department of Insurance to promulgate rules and regulations which evaluate the financial condition of insurers. Article 5.75-1 authorizes rules relating to accounting and financial statement requirements and the treatment of reinsurance agreements between insurers.

§7.615. Regulation of Accounting for Reinsurance Agreements by Property and Casualty Insurers.

(a) Purpose.

(1) The Texas Department of Insurance recognizes that licensed insurers routinely enter into reinsurance agreements that yield legitimate relief to the ceding insurer from strain to surplus.

(2) The Texas Department of Insurance, however, has become aware that some insurers, in the capacity of ceding insurer, have at times entered into reinsurance agreements primarily as financing arrangements which have the principal purpose of producing increased surplus for the ceding insurer, typically on a temporary basis, but which provide little or no indemnification of insurance risks by the reinsurer. The purpose of this section is to provide for the regulation of the accounting for agreements represented to be, or styled as, reinsurance, when such arrangements, despite their legal form, are in substance and effect financing arrangements. The terms of such agreements do not comply in essence with the requirements of subsection (d) of this section and violate one or more of the following:

(A) the Insurance Code, Articles 1.10, 1.32, 6.04, 6.05, 6.11, 6.12, 8.07, 15.13, 15.15, 16.18, 16.20, 17.11, 17.25, 18.08, 18.12, 19.06, 19.08, 20.02, and 21.21 relating to the financial condition

of insurers, thus resulting in distorted financial statements which do not properly reflect the financial condition of the ceding insurers;

(B) the Insurance Code, Article 5.75-1, relating to reinsurance reserve credits, thus, resulting in a ceding insurer improperly reducing liabilities or establishing assets for reinsurance ceded; and

(C) the Insurance Code, Articles 1.32 and 21.28-A, relating to creating a situation that may be hazardous to policyholders of this state.

(b) Scope. This section applies to all insurers writing all forms of insurance regulated by the Insurance Code, Chapter 5, including, but not limited to, property and casualty insurance, fire insurance, auto insurance, fidelity, guaranty and surety bonds, and workers' compensation insurance in this state, including all insurers authorized to do the business of insurance in this state under the Insurance Code, Chapters 2, 5, 6, 8, 15-19, and 21. The provisions of this section shall not apply to ceding insurers domiciled in another state that regulates the accounting for reinsurance agreements by property and casualty insurers under law, rule, or bulletin substantially similar in substance and effect to Texas law and rules. To pursue this exception the ceding insurer shall provide, upon request, to the commissioner of insurance evidence of similarity in the form of statutes, regulations, and interpretation of the standards utilized by the state of domicile. The provisions of this section are supplementary to and cumulative of existing statutes and rules of the Texas Department of Insurance. In the case of an ambiguity or contradiction between any of the provisions in this section and any statute, the provisions of the statute controls.

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

(1) Anniversary—The annual recurrence of the date of inception of the reinsurance agreement.

(2) Assuming insurer (Reinsurer)—The insurer who, under a reinsurance agreement (contract of reinsurance), incurs an obligation to the ceding insurer which is contingent upon the incurring of liability of loss by the ceding insurer under its contracts of insurance or reinsurance.

(3) Ceding insurer—The insurer or reinsurer which has transferred an insurance risk to a reinsurer pursuant to a reinsurance agreement.

(4) Commutation—A transaction which results in the recapture by the ceding insurer of risks previously reinsured with an assuming insurer which provides payment and complete discharge of all present and

future obligations between the parties arising from the reinsurance agreement.

(5) Insurance risk—Uncertainty as to the ultimate amount of any claim payments (underwriting risk) and the timing of those payments (timing risk).

(6) Insurer—A person or business entity legally organized in and authorized by its domiciliary jurisdiction to do the business of insurance.

(7) Obligations—As pertains to reinsurance agreements:

(A) losses and loss adjustment expenses paid by the ceding insurer, but not recovered from the assuming insurer;

(B) reserves for losses reported and outstanding;

(C) reserves for losses incurred but not reported;

(D) reserves for loss adjustment expenses related to losses reported and outstanding and to losses incurred but not reported;

(E) reserves for unearned premiums; and

(F) any other balances due under the reinsurance agreement.

(8) Reinsurance—A written contract which transfers an insurance risk of loss between insurers for a consideration commensurate with the risk transferred and indemnifies a ceding insurer against all or part of the loss which the latter may sustain under the insurance policy or policies it has issued or assumed.

(d) Accounting and other requirements.

(1) A reinsurance agreement shall disclose the reinsurer's maximum liability for assumed obligations under the agreement, if such liability is capped or limited. The credit taken by an insurer for reinsurance ceded to an assuming insurer under an agreement shall be exclusive of all deductibles and retentions and may not exceed the reinsurer's liability for obligations as capped or limited actually transferred under the agreement.

(2) Reinsurance agreements shall be in a form which reflects the intent of the parties to the agreement and shall not contain language and/or terminology such that the intent of the parties is rendered unclear. For purposes of determining whether credit for reinsurance will be allowed under an agreement, the ceding insurer has the responsibility to satisfactorily explain all provisions of an agreement to

the Texas Department of Insurance. The Texas Department of Insurance may require such explanations to be in writing and include both cash flow projections and mathematical models using various interest rate and other assumptions. The Texas Department of Insurance may also require the ceding insurer to obtain the assuming insurer's verification of such explanation.

(3) Credit for unearned premiums ceded shall not be allowed a ceding insurer under reinsurance agreements written on a pro-rata or proportional basis which provide for the settlement of premiums as earned or for the automatic recapture of premiums as earned. Credit for unearned premiums ceded shall not be allowed a ceding insurer under a series of reinsurance agreements written on a pro-rata or proportional basis which provide for initial settlement of premiums as written and the subsequent retrocession by the original insurer of premiums as earned.

(4) Credit for reinsurance agreements written on an excess or non-proportional basis shall not be computed in a manner similar to reinsurance agreements written on a pro-rata or proportional basis.

(5) Reinsurance agreements must contain both components of insurance risk (underwriting and timing) for credit for reinsurance to be allowed in financial statements filed with the Texas Department of Insurance.

(6) A ceding insurer shall not reflect reinsurance recoverable on paid losses and loss adjustment expenses which is more than 90 days overdue as an admitted asset in financial statements filed with the Texas Department of Insurance.

(7) In addition to the requirements of paragraphs (1)-(6) of this subsection, no insurer subject to this section shall, for reinsurance ceded, reduce any liability or establish any asset in any financial statement filed with the Texas Department of Insurance if the contract, agreement, or circumstances include, in substance or effect, any of the following conditions:

(A) the reserve credit taken by the ceding insurer is not in compliance with the Insurance Code, or with the rules or regulations, including actuarial interpretations or standards, adopted by the State Board of Insurance;

(B) the reserve credit taken by the ceding insurer is greater than the underlying reserve of the ceding insurer supporting the policy obligations transferred under the contract;

(C) the ceding insurer is required to reimburse the reinsurer for negative experience under the contract, except that:

(i) any provision for subsequent adjustment on the basis of actual experience is allowable so long as there is full reserving for those adjustable features based upon the experience of the agreement until such times as those provisional or contingent amounts are subsequently realized and due, pursuant to the terms of the agreement; and

(ii) offsetting experience refunds against prior year's losses will not be considered a reimbursement to the reinsurer for negative experience; or

(D) the agreement provides for adjustments that allow the assuming insurer's gain or loss to be determinable in advance;

(E) the ceding insurer must, at specific points in time, terminate or automatically recapture all or part of the reinsurance ceded in a manner which deprives the ceding insurer of surplus;

(F) the ceding insurer can be deprived of surplus at the reinsurer's option or automatically upon the occurrence of some event, such as the insolvency of the ceding insurer; except that termination of the contract for non-payment of reinsurance premiums shall not be considered to be such a deprivation of surplus;

(G) the entry of an order of rehabilitation including the appointment of a supervisor, conservator, or receiver of the ceding insurer shall constitute either an anticipatory breach of any contracts of the ceding insurer; grounds for retroactive commutation or retroactive cancellation; or grounds for retroactive revocation of any contracts of the ceding insurer. This paragraph is not intended to limit the actions of the supervisor, conservator, rehabilitator, liquidator, or receiver of the ceding company; or

(H) any language which allows cancellation regarding obligations reinsured prior to the date of termination of the agreement in a manner which deprives the ceding insurer of surplus, except that nothing contained herein would preclude a subsequent commutation of in-force reinsurance coverage upon terms mutually agreeable to the parties to the agreement. This paragraph is not intended to limit the actions of the supervisor, conservator, rehabilitator, liquidator, or receiver of the ceding company; or,

(I) any language which allows termination of the agreement automatically or at the sole option of the reinsurer on less than 60 days prior written notice;

(J) any language that specifies the amounts to be reimbursed to the ceding insurer at fixed or determinable

future dates, or includes predetermined payment schedules, delayed payment clauses, or formulas that, in substance, delay reimbursement to the ceding insurer;

(K) no cash payment is due from the reinsurer throughout the lifetime of the contract with all settlements prior to the termination date of the agreement made only in a reinsurance account;

(L) the consideration to be paid by the ceding insurer is not reasonable in relation to the amount of insurance risk transferred under the agreement; or

(M) the possible payment by the ceding insurer to the reinsurer of amounts from sources other than from income reasonably expected from the reinsured policies.

(8) Notwithstanding paragraphs (1)-(7) inclusive, of this subsection, a ceding insurer subject to this section may, with the prior written approval of the commissioner of the Texas Department of Insurance, reduce its liability or establish an asset in an amount as the commissioner may allow. All its financial statements thereafter shall, by footnote, identify such reduced liability or increased asset established on the financial statement and shall reference the commissioner's prior written approval.

(e) Written contracts. No reinsurance contract or amendment to any such contract may be used to reduce liability or to establish any asset in any financial statement filed with the Texas Department of Insurance, unless the contract or amendment thereto has been duly executed by both parties no later than the "as of" date of the financial statement.

(f) Existing contracts. Insurers subject to this section may continue to reduce liabilities or establish assets in financial statements filed with the State Board of Insurance for reinsurance ceded under the types of reinsurance contracts described in subsection (a)(2) of this section and in subsection (d) of this section, provided:

(1) the reinsurance contracts were executed and in force prior to September 30, 1991;

(2) no new business is ceded under the contract after the effective date of this section;

(3) the reduction of the liability or the asset established for the reinsurance ceded is reduced to zero by December 31, 1993, or such later date approved by the commissioner of the Texas Department of Insurance as a result of an application made by the ceding insurer within 120 days of the adoption date of this section;

(4) the reduction of the liability or the establishment of the asset is other-

wise permissible under all other applicable provisions of the Insurance Code or rules or regulations, including actuarial interpretations or standards, adopted by the Texas Department of Insurance; and

(5) the Reinsurance Activity of the Texas Department of Insurance is notified, within 90 days following the effective date of this section, of the existence of such contracts and all corresponding credit for reinsurance taken in the ceding insurer's September 30, 1991 interim financial statement and all subsequent financial statements.

(g) Effective date. This section becomes effective September 30, 1991.

(h) Severability. If any provision of this section or the application thereof for any reason, the invalidity shall not effect the other provisions of this section which can be given effect without the invalid provisions or application. To this end, all provisions of this section are declared to be severable.

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

Issued in Austin, Texas, on September 24, 1991.

TRD-9111755

Angelia Johnson
Assistant Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: November 1, 1991

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

Chapter 15. Surplus Lines Insurance

Subchapter A. General Regulation of Surplus Lines Insurance

• 28 TAC §15.24

The Texas Department of Insurance proposes an amendment to 28 TAC §15.24, concerning premium tax on surplus lines insurance coverage. The amendment updates the tax rate from 3.85% to 4.85% to comport with the current Article 1. 14-2, §12(a).

Phil Ballinger, director of Tax Administration, has determined that for the first five-year period the proposed amendment will be in effect, there will be no fiscal implications for state or local government.

Mr. Ballinger also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated will be more efficient administration of state tax revenues. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the rule since the section is simply conformed to the statute.

Comments on this amendment may be submitted to Phil Ballinger, Director of Tax Administration, Texas Department of Insurance, Mail Code 108-2A, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104; (512) 322-4233.

The amendment is proposed under the Texas Insurance Code, Articles 1.04 and 1. 14-2. Article 1.04 authorizes the Texas Department of Insurance to determine rules in accordance with the laws of this state. Article 1.14-2, 3A, provides that the Texas Department of Insurance may promulgate rules to enforce Article 1. 14-2, and provides that the Texas Department of Insurance shall monitor the activities of surplus lines to the extent necessary to protect the public interest.

§15.24. Collection of Taxes.

(a) The premium charged for surplus lines insurance coverage is subject to a 4.85% [3.85%] tax of all gross premiums charged for such insurance.

(b) (No change.)

(c) All surplus lines insurance premium taxes shall be computed on the total gross premium due on the policy as of the date that coverage under the policy becomes effective, except in respect to the following specific situations:

(1) A policy issued for a term in excess of one year, with a fixed premium being payable annually, shall be taxed on the first year's premium at the rate of 4.85% [3.85%] as of the date of policy issuance. The tax on premiums payable for subsequent years shall be computed and collected as of the date such subsequent premiums become due and payable, which date shall be deemed for taxation purposes to be the policy anniversary date.

(2) -(3) (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 September 24, 1991.

TRD-9111731

Angelia Johnson
Assistant Chief Clerk
Texas Department of
Insurance

Earliest possible date of adoption: November 1, 1991

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

Part II. Texas Workers' Compensation Commission

Chapter 144. Arbitration

• 28 TAC §§144.1-144.16

The Texas Workers' Compensation Commission proposes new §§144.1-144.16, comprising Subchapter A of Chapter 144,

concerning arbitration. The new sections establish procedures for parties seeking to resolve workers' compensation disputes by binding arbitration, as an alternative to the benefit contested case hearing. Arbitration becomes an alternative under the Texas Workers' Compensation Act beginning January 1, 1992.

Proposed §144.1 summarizes the duties and authority that an arbitrator will have during a proceeding. The section authorizes the arbitrator to set the time and date of the arbitration, to require parties to exchange any information having to do with the dispute, to keep persons other than the parties and the employer out of the arbitration session, to swear persons to give true testimony, to hold preliminary conferences as needed, to take judicial notice of facts and law, to use his/her own judgment, rather than the rules of evidence, to determine if evidence is relevant to the arbitration, and to accept agreements of the parties if there is no dispute. The section further states that the arbitrator shall have the duty to disclose any conflicts of interest, to protect the rights of the parties to arbitration, to keep the proceedings secret, to encourage parties to disclose all important facts, to encourage the parties to be complete but brief in their presentations, to render a lawful award based upon the laws and rules that bind the commission, to arrange for necessary interpreters, and to be ethical and professional in his/her conduct of the sessions.

Proposed §144.2 prohibits the arbitrator from making verbal contacts about substantive issues with either party outside the actual proceeding. The section does allow written contact to be made so long as a copy is delivered to all parties to the arbitration. However, the arbitrator may communicate with parties on matters of procedure only. An administrative violation is cited in the section.

Proposed §144.3 includes a statement of the certification of delivery of copies that a party is required to include with any documents mailed to the commission or the arbitrator.

Proposed §144.4 states that the date of delivery for documents required in an arbitration is considered to be the date a party receives the document. However, the section includes a "fall back" presumption that a document was received by the fifth day after it was mailed.

Proposed §144.5 tells a party how an election for arbitration can be made. The section states that the parties have to agree after a benefit review conference to submit their case to arbitration, instead of the hearings officer, within 20 days after the last day of that conference. The section indicates that if this is done, a party may also respond in writing to the benefit review officer's report, in order to make statements about his/her position on matters that couldn't be resolved. The section emphasizes that this election may not be taken back once the request for arbitration is filed.

Proposed §144.6 defines what the sections refer to as a "statement of disputes". Essentially, the section provides that such a "statement" will include the benefit review officer's report, any party's response, and any additional disputes that the parties agree that the arbitrator should consider. The section allows the arbitrator to hear disputes that only one, but not the other, party may want considered

in the arbitration. To summarize, the parties may agree about what the arbitration will cover, or either one may ask the arbitrator to consider some additional disputes that weren't included in the benefit review conference. The section allows, but doesn't require, the arbitrator to consider issues that weren't considered in the benefit review conference.

Proposed §144.7 tells how the director of the Division of Hearings and Review will randomly assign an arbitrator. The section allows each party to have one opportunity to reject the chosen arbitrator, so long as the rejection is done within three days after the party finds out who the arbitrator will be. A rejection must be written, signed, and delivered to the commission and other parties. If a rejection is sent in, the next arbitrator at the top of the list will be assigned to the proceeding.

Proposed §144.8 states that the arbitration will be held within 75 miles of the claimant's residence at the time of his/her injury, and requires the arbitrator to send a notice to the parties telling them when and where the arbitration will take place.

Proposed §144.9 tells the ways that an arbitrator may use to speed the arbitration along, so long as they are consistent with fairness and completeness. According to the section, an arbitrator may accept affidavits or summaries of evidence in the place of actual testimony. The section indicates, however, that a party may object to this, and the arbitrator can go along with the objection if he/she determines that there is good cause for not allowing other evidence to be substituted for testimony.

Proposed §144.10 requires parties to exchange pertinent documentary evidence with each other not later than seven days before the arbitration, if it hasn't already been given to the other party, and to file written proposals for solving the dispute between the parties. The section requires that these same documents and proposals should be filed with the arbitrator. The section sets out an administrative penalty that can be assessed against a party who doesn't do what this section requires.

Proposed §144.11 provides that if parties have agreed to certain facts that the arbitrator doesn't need to decide, or have decided to resolve the case or certain issues in the case, that they can file written and signed "stipulations" about undisputed facts, or can make signed agreements, or can resolve issues by settlement. The section refers the reader back to the requirements for agreements and settlements that are included in Chapter 147 of this title (relating to Agreements, Settlements, and Commutation).

Proposed §144.12 tells a party how a request to postpone the arbitration may be made. A postponement is called a "continuance", and a party is entitled to only one continuance of up to 30 days.

Proposed §144.13 describes the administrative penalty that can be assessed if a party doesn't attend the arbitration, and has not requested a continuance. The section provides that a person can be fined an amount up to \$500 unless the arbitrator determines that the party has good cause.

Proposed §144.14 lists the rights of the parties to an arbitration. These states that either party has the right to be represented by

someone else, is entitled to be present personally at the arbitration and have a full and impartial hearing of his/her case, may call witnesses and ask questions of any witness who testifies at the arbitration, and to arrange, at his/her own expense, for making a record of the case by a stenographer. The section requires a stenographic record to be provided to the commission at no charge, and to be available to other parties if requested.

Proposed §144.15 tells what will happen during an arbitration proceeding, in the order that certain steps will be taken. An arbitration will be recorded by the arbitrator; certain preliminary introductions will be made, and, after certain statements for the record, each party may briefly state his/her position about what is in dispute. The section allows the claimant to go first and present evidence and witnesses, followed by other parties. After the parties finish, the arbitrator may request additional evidence if necessary to proper resolution of the case. Each party then can present a closing statement and summary of his/her case.

Proposed §144.16 requires the arbitrator to make a written award and decision no later than seven days after the last day of the arbitration, which is sent to the parties by first class mail and included in the claim file. The section recites the statutory requirement that the arbitration is binding and final, and there is not appeal. However, if there is a clerical error only in the award, an arbitrator may correct it within 20 days after the date of the award.

Andrew Thigpen, associate director, Financial Management, has determined that for each year of the first five-year period the new sections are in effect, there will be fiscal implications for the State as a result of enforcing or administering §144.7 and §144.15, which require the commission to send set notices and awards to the parties by certified mail, return receipt requested. The commission estimates the costs of administering both rules to be as follows: in 1992-\$230; in 1993-\$458; 1994-\$916; in 1995-\$1832; in 1996-\$3664.

There are no fiscal implications for local government as a result of enforcing or administering the new sections as proposed. There is no anticipated impact on employment, locally or statewide, as a result of implementing the new sections.

Mr. Thigpen has also determined that for each of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be implementation of the arbitration provisions of the Texas Workers' Compensation Act, for injuries that occurred on or after January 1, 1991. There will be no effect on small businesses. There will be anticipated economic cost to persons who are required to comply with certain of the new sections as proposed. Sections 144.3, 144.4, 144.5, 144.6, and 144.11 require parties to deliver documents relating to the arbitration proceeding to the commission and to one another by personal delivery, by certified mail, return receipt requested, or by telephonic transmission. For those persons electing to deliver documents by certified mail, the cost of compliance will be \$2.29 per letter; for delivery by telephonic transmission, the cost of compliance will be approximately \$2.00 per page. Section 144.13 requires a party who elects to

have an arbitration proceeding recorded by a court reporter to provide the commission with a copy of the transcription. If such election is made, the cost of compliance will be based upon the court reporter's charge, as well as the length of the proceeding, and an exact cost projection is therefore undeterminable.

Comments on the proposal may be submitted to Susan M. Kelley, General Counsel, Texas Workers' Compensation Commission, 4000 South IH-35, Austin, Texas 78704. Comments will be accepted for 30 days after publication of this proposal in the *Texas Register*.

The new sections are proposed under Texas Civil Statutes, Articles 8308-2.09(a), which authorize the commission to adopt rules necessary to administer the Texas Workers' Compensation Act, and Articles 8308-6.24(c), which mandates adoption of rules for arbitration consistent with generally recognized arbitration principles and procedures.

§144.1. Authority and Duties of Arbitrators.

(a) The arbitrator is authorized but not limited to:

(1) set the time and location of the arbitration proceeding within the provisions of the Act, Articles 8308-6.03 and Article 8308-6.24;

(2) compel the parties to exchange all pertinent medical reports and other documentary evidence, and proposals for resolving the issues in dispute;

(3) conduct, at his/her discretion, preliminary conferences to identify issues to resolve questions concerning evidence and witnesses, and to otherwise expedite the arbitration proceeding;

(4) exclude individuals other than the parties and the employer from the arbitration proceeding;

(5) administer oaths;

(6) take official notice of the law of Texas and other jurisdictions, Texas city and county ordinances, the content of the *Texas Register*, the rules of state agencies, facts that are judicially cognizable, and generally recognized facts within the commission's specialized knowledge;

(7) determine the relevancy and materiality of the evidence offered, without a requirement to conform to legal rules of evidence; and

(8) accept stipulations by the parties on uncontested issues.

(b) The arbitrator has a duty to:

(1) disclose to all parties and the commission any potential conflicts with his/her position as arbitrator and other personal or business interests. Further, to disclose any circumstances that may affect impartiality, including past or present relationships, either personal or business, to any party;

(2) protect the interests of all parties, including the advisement of the claimant's rights if not represented;

(3) maintain the confidentiality of the arbitration proceeding;

(4) encourage brevity, consistent with completeness, at all stages of the arbitration proceeding;

(5) ensure that all relevant evidence has been disclosed to him/her and to all parties;

(6) render an award based upon the evidence and consistent with the terms of the Workers' Compensation Act, and the rules and policies of the commission;

(7) ensure an electronic recording is made of the proceedings;

(8) arrange for the provision of interpreter services if necessary; and

(9) comply with standards of conduct and ethical principles of his/her professional group, those set forth in the Act, commission rules, and the codes of professional responsibility promulgated by the arbitrator's professional association.

§144.2. Ex Parte Communications.

(a) On any substantive matter regarding facts, issues, law, or rules, an arbitrator may not communicate with any party outside the arbitration unless the communication is:

(1) in writing; and

(2) a copy is delivered to all parties to the arbitration.

(b) Notwithstanding subsection (a) of this section, any party may communicate with the arbitrator concerning any procedural matter.

(c) Failure to comply with this rule is an administrative violation, with a sanction to be established by the commission, pursuant to the Texas Workers' Compensation Act, Article 8308-10.21.

§144.3. Delivery of Copies of Documents. A party who sends a document relating to the arbitration proceeding to the commission or the arbitrator shall also deliver copies of the document to all other parties, or their representatives or attorneys. Delivery shall be accomplished by presenting in person, mailing by certified mail, return receipt requested, or transmitting by telephonic transmission. The document sent to the commission or the arbitrator shall contain a statement certifying delivery using the following format: "I hereby certify that I have on the _____ day of _____, 19____, delivered a copy of the attached document to _____ by _____ (state manner of delivery)."

§144.4. Election to Engage in Arbitration.

(a) Following a benefit review conference where one or more disputed benefit

issue(s) remain unresolved, the parties may mutually agree to engage in arbitration on those issues.

(b) Parties agreeing to engage in arbitration must complete and sign a commission-prescribed form, and file it with the Arbitration Section of the Division of Hearings not later than the 20th-day after the last day of the benefit review conference.

(c) A party may submit a response to the disputes identified as unresolved in the benefit review officer's report. The response shall:

(1) be in writing;

(2) describe and explain the party's position on the unresolved dispute or disputes;

(3) be sent to the commission no later than 20 days after receiving the benefit review officer's report; and

(4) be delivered to all other parties, as provided by §144.3 of this title (relating to Delivery of Copies of Documents).

(d) The election to engage in arbitration, once filed with the commission, is binding and irrevocable, except as provided by §144.10 of this title (relating to Stipulations, Agreements, and Settlements).

§144.5. Statement of Disputes.

(a) Statement of disputes. The statement of disputes is a written description of the benefit dispute or disputes to be considered by the arbitrator. A dispute not expressly included in the statement of disputes will not be considered by the arbitrator.

(b) Statement of disputes after a benefit review conference. The statement of disputes for an arbitration proceeding conducted after a benefit review conference includes:

(1) the benefit review officer's report, identifying the disputes remaining unresolved at the close of the benefit review conference;

(2) the parties' responses to the benefit review officer's report, if any;

(3) additional disputes by unanimous consent, as provided by subsection (c) of this section; and

(4) additional disputes by permission of the arbitrator, as provided by subsection (d) of this section, if the arbitrator determines that the party has good cause.

(c) Additional disputes by unanimous consent. Parties may, by unanimous consent, submit for inclusion in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. Additional disputes

submitted by consent shall:

(1) be made in writing;

(2) identify the dispute, and explain each party's position on it;

(3) be signed by all parties;

(4) be sent to the commission no later than 10 days before the arbitration proceeding; and

(5) explain why the issue was not raised earlier.

(d) Additional disputes by permission of the arbitrator. At any time before or during the arbitration proceeding, a party may request the arbitrator to include in the statement of disputes one or more disputes not identified as unresolved in the benefit review officer's report. The arbitrator will allow such amendment only upon a determination of good cause.

§144.6. Assignment of Arbitrator.

(a) The director of the division of hearings will maintain, in random name order, lists of qualified arbitrators established by the commission. Not later than the 30th-day after an election to engage in arbitration is filed, an arbitrator will be assigned from the appropriate list. Each party will be notified immediately either personally or by certified mail, return receipt requested.

(b) Assignment from the list of arbitrators shall be from the top of the list. When the list has been exhausted by assignment of each arbitrator to a case, the list will be randomly reordered.

(c) Each party to the arbitration proceeding is entitled to one rejection of an assigned arbitrator and must exercise such rejection not later than the third day following receipt of notification of an arbitrator's assignment. Once a rejection is exercised, the next arbitrator from the top of the list will be assigned.

(d) A rejection exercised by a party must be:

(1) in writing;

(2) signed by the party or authorized representative;

(3) personally delivered or sent by certified mail, return receipt requested, or telephonic transmission, not later than the third day following receipt of notice of an arbitrator's assignment, to the commission with a copy to all parties.

§144.7. Setting the Arbitration Proceeding.

(a) Following any rejections as set forth in §144.6 of this title (relating to Assignment of Arbitrator), the arbitrator shall schedule arbitration to be held not later than the 30th-day following his/her assignment.

(b) The arbitrator shall notify, in writing, all parties and the employer of the time and place scheduled for the arbitration. The notification shall be by personal delivery or certified mail, return receipt requested.

(c) Unless the assigned arbitrator determines that good cause exists for the selection of a different location, arbitration proceedings may not be conducted at a site more than 75 miles from the claimant's residence at the time of injury.

§144.8. Expediting Procedures.

(a) In addition to the use of affidavits, medical reports, stipulations, and agreements, the arbitrator may allow, to the maximum extent possible and with due consideration to completeness and fairness, expediting procedures, including, but not limited to, the use of:

- (1) unsworn witness statements; and
- (2) summaries of evidence.

(b) The arbitrator may allow use of expediting procedures unless objected to by a party, and the arbitrator determines that there is good cause for sustaining the objection.

§144.9. Exchange of Evidence and Proposed Resolution.

(a) Not later than the seventh day preceding the arbitration proceeding, each party is required to exchange with the other party, and file with the arbitrator:

- (1) all pertinent medical reports and other documentary evidence in the party's possession not previously exchanged or filed; and
- (2) written proposals for resolving the issues in dispute.

(b) A party failing to comply with this requirement without good cause, as determined by the arbitrator, commits a Class D administrative violation, with a penalty not to exceed \$500.

§144.10. Stipulations, Agreements, and Settlements.

(a) At any time before or during the arbitration proceeding, parties may:

(1) enter into stipulations, defined as a voluntary accord between parties to an arbitration regarding any matter relating to the arbitration that does not constitute an agreement, as defined by the Workers' Compensation Act, Article 8308-1.02(3), or a settlement, as defined by the Act, Article 8308-1.02(43);

(2) resolve one or more benefit disputes by agreement; or

(3) resolve all benefit disputes by settlement.

(b) Stipulations shall be made as follows:

- (1) in writing; and
- (2) signed by all parties to the stipulation, or their representatives.

(c) Agreements and settlements shall be made as provided by Chapter 147 of this title (relating to Agreements, Settlements, Commutation).

§144.11. Continuance.

(a) Any request for a continuance by a party must be directed to the Arbitration Section of the Division of Hearings, and served personally, by certified mail, return receipt requested, or by telephonic transmission, on all other parties.

(b) A continuance may be granted for up to 30 days only upon a determination of good cause. Notwithstanding the existence of good cause, not more than one continuance will be granted to each party.

§144.12. Failure to Attend Arbitration. A party who fails to attend any session of the arbitration proceeding after electing arbitration commits a Class D administrative violation, with a penalty not to exceed \$500, unless the arbitrator determines that the party had good cause not to attend.

§144.13. Rights of Parties.

(a) Each party to the arbitration proceeding is entitled to be present, to have a full, fair, and impartial hearing of all relevant evidence, and to present the party's respective position on the issue(s) in dispute.

(b) Parties to the arbitration are entitled to be represented by counsel or other representative authorized under and in accordance with the Workers' Compensation Act and commission rules.

(c) Each party, and the arbitrator, is permitted to call witnesses who have relevant information to testify (under oath if required by the arbitrator or requested by a party), and to ask questions of any witnesses called.

(d) A party desiring to have a record made of the arbitration proceeding by stenographic means may do so and is responsible for arranging for and the expense of making a record by such means. A copy of the stenographic report shall be provided to the commission at no charge and may be made available to the other parties.

§144.14. Usual Order of Proceedings.

(a) The arbitration proceeding will begin with preliminary matters including the introduction of copies of the election of arbitration and the assignment of the arbitrator, the introduction of all parties and representatives, statements for the record of

the date, time and place of the proceedings, and a concise statement of the disputed issue(s).

(b) An electronic recording of the proceeding will be made by the arbitrator.

(c) The arbitrator will allow, and may assist each party to make a brief opening statement setting forth its position on unresolved issues, and the issues with respect to which it is prepared to stipulate.

(d) The claimant shall be the first party to present all relevant evidence desired in support of the claim including the testimony of witnesses.

(e) Following the claimant's presentation of evidence, the other party to the proceeding may present evidence desired to be considered by the arbitrator, including the calling of witnesses.

(f) After each party has presented the evidence desired, the arbitrator may call for additional evidence that he/she considers necessary for a proper understanding and determination of the issues.

(g) Each party may present closing statements as desired, but the record may not remain open for written briefs unless requested by the arbitrator.

§144.15. Award of the Arbitrator.

(a) Not later than the seventh day after the last day of arbitration, the arbitrator shall enter the final award which must:

- (1) be in writing;
- (2) be signed and dated by the arbitrator; and
- (3) include a statement of his/her decision on the contested issues and the parties' stipulations on uncontested issues;
- (4) be sent to the parties by certified mail, return receipt requested, or personal delivery; and
- (5) be filed as a part of the permanent claim file.

(b) The award entered is final and binding on all parties. Except as provided by the Act, Article 8308-6.28, there is no right of appeal.

(c) The arbitrator's award is a final order of the commission.

(d) For the purposes of correcting a clerical error, an arbitrator retains jurisdiction of the award for 20 days after the date of the award.

§144.16. Requesting a Copy of the Record. A party or the employer may request a copy of the electronic recording of the arbitration proceeding from the commission. The requester shall pay the cost of the duplication, as established by the commission.

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

Issued in Austin, Texas, on September 25, 1991.

TRD-9111784

Susan M. Kelley
General Counsel
Texas Workers'
Compensation
Commission

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 440-3972

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 17. Hearing Procedures for

Administrative Penalties and Removal of Unauthorized or Dangerous Structures on State Land

• 31 TAC §17.1-17.50

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

The General Land Office proposes new §§17.1-17.50, concerning notice and hearings required by the land commissioner before imposing administrative penalties and removing unauthorized or dangerous structures from state land. These sections will bring the agency into compliance with the Act of June 11, 1991, House Bill 478, Chapter 465, 72nd Legislature and (to be codified at Texas Natural Resources Code, §51.302, and §51.3021) relating to the removal of certain unauthorized or imminently dangerous structures from state land. An emergency adoption is being simultaneously submitted.

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

Mr. Phillips also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be providing due process to owners of unauthorized or dangerous structures on state land before a penalty is imposed or removal of the structure is ordered by the commissioner. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be those associated with preparing for and attending an administrative hearing if the person requests one.

Comments on the proposal may be submitted to Jim Phillips, General Counsel, General Land Office, 1700 North Congress Avenue, Austin, Texas 78701.

The new sections are proposed under Act of June 11, 1991, House Bill 478, Chapter 465, 72nd Legislature (to be codified at Texas Natural Resources Code, §51.302 and §51.3021) which authorizes the land commissioner to promulgate rules necessary and convenient to the administration of hearings under House Bill 478.

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 September 23, 1991.

TRD-9111725

Garry Mauro
Chairman
General Land Office

Earliest possible date of adoption: November 1, 1991

For further information, please call: (512) 463-5394

Part IX. Texas Water Commission

Chapter 293. Water Districts

Conditional Approval

• 31 TAC §293.60

The Texas Water Commission proposes new §293.60, concerning conditional approval of reimbursements to developers. The new section is proposed in order to inform developers that reimbursement by a district for a developer project may be conditioned on the actions of the developer or related or affiliated entities of the developer in the district applying for approval or in any other district in which the developer or related or affiliated entities of the developer have been involved.

Section 293.60(a) specifies that the commission may condition reimbursement of construction funds to a developer on certain actions of the developer or related or affiliated entities. Section 293.60(a)(1) specifies the issues which the commission may consider in evaluating the performance of the developer and includes the past history of the developer or related or affiliated entities with respect to payment of financial obligations to districts, devaluation of property values through claiming special exemptions within districts, compliance with commission rules and orders, and performance under agreements with districts. Section 293.60(a)(2) specifies the conditions on which the commission may condition the approval of reimbursement and includes the payment of financial obligations, the withdrawal of a claim of a special exemption for property valuation, compliance with commission rules and orders, and performance under agreements with districts. Section 293.60(b) provides a definition of "developer" and §293.60(c) provides a definition of related or affiliated entities. Section 293.60(d) requires a district to submit information regarding the developer or affiliated or related entities upon the request of the executive director.

Karen Phillips, chief fiscal officer, has determined that for the first five-year period the proposed section will be in effect, there will be no direct fiscal implications as a result of enforcing or administering the sections. There will be no direct effect on state or local government for the first five-year period the section is in effect.

Ms. Phillips also has determined that for each year of the first five years the section as proposed are in effect the public benefit anticipated will not be affected as a result of enforcing the section as proposed. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed.

Comments on this proposal may be submitted to Alan P. Petrov, Senior Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087. For further information, please call Mr. Petrov at (512) 463-8069.

The new section is proposed under the Texas Water Code, §§5.013, 5.015, and 12.081, which provide 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.

§293.60. Conditional Approval Based on Performance of a Developer in Other District Projects.

(a) The commission, in evaluating an application by a district for approval to reimburse construction funds to a developer, may consider the performance of the developer or related or affiliated entities in other district projects and may condition reimbursement on certain actions of the developer or related or affiliated entities.

(1) Issues which may be considered in evaluating the performance of a developer may include the past history of the developer and related or affiliated entities with respect to:

(A) payment of financial obligations including taxes, standby fees and other user fees to any district;

(B) devaluation of property values by claiming special exemptions within any district after the commission's approval of bonds in said district without compensating agreements with the district;

(C) compliance with commission rules and orders; and

(D) performance under agreements with any district including, but not limited to, cost sharing and maintenance agreements, street and road construction agreements, 30% cost participation agreements, and financial guarantees.

(2) Actions of a developer or related or affiliated entity on which reim-

bursement of construction funds to a developer may be conditioned include:

(A) payment of financial obligations including taxes, standby fees, and other user fees to any district to which they are owed;

(B) withdrawal of a claim of special exemption which resulted in the devaluation of property in any district after the commission's approval of bonds for said district or the execution of compensating agreements for the district;

(C) compliance with commission rules and orders; and

(D) performance under existing agreements with any district including, but not limited to, cost sharing and maintenance agreements, street and road construction agreements, thirty percent cost participation agreements, and financial guarantees.

(b) For the purposes of this section "developer" means "developer of property in the district" as defined by The Water Code, §50.026(d) and its lienholder if it is in default.

(c) For the purposes of this section "related or affiliated entities" means any entity owned in whole or majority part by the developer but does not include development lenders unless they are joint venture partners with the developer in such districts.

(d) In response to a written request, the district shall submit to the executive director information regarding the developer or related or affiliated entities, including, but not limited to, the names of principals, individuals, affiliated entities and lienholders to aid the commission's evaluation of the past history of the developer.

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 September 25, 1991.

TRD-9111778 Jim Haley
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: November 1, 1991

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter G. Hospital Services

• 40 TAC §29.606

The Texas Department of Human Services (DHS) proposes an amendment to §29.606, concerning reimbursement methodology for inpatient hospital services, in its Purchased Health Services chapter. The purpose of the amendment is to comply with the intent of the 72nd Texas Legislature as expressed during the appropriations process. The proposal eliminates the 5.5% budgetary reduction factor which is applied to inpatient hospital admissions. (The budgetary reduction factor is also being eliminated from payments to physicians and other providers who are reimbursed on a reasonable charge basis. However, rule amendments are not necessary to eliminate the budgetary reduction factor in payments to these providers.)

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the proposed section will be in effect there will be fiscal implications for state and local government as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect is an estimated additional cost of \$40,673,180 in fiscal year (FY) 1992; \$51,573,546 in FY 1993; \$52,134,128 in FY 1994; \$52,364,111 in FY 1995; and \$52,292,241 in FY 1996. The effect on local government for the first five-year period the section will be in effect is an estimated increase in revenue of \$12,201,954 in fiscal year (FY) 1992; \$15,472,064 in FY 1993; \$15,640,238 in FY 1994; \$15,709,233 in FY 1995; and \$15,687,672 in FY 1996.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that providers of services to Medicaid recipients will receive a higher reimbursement rate, resulting in continued provider enrollment and access to care. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Questions about the content of this proposal may be directed to Joseph B. Branton at (512) 338-6505 in DHS's Purchased Health Services Section. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support Services-237, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§29.606. Reimbursement Methodology for Inpatient Hospital Services.

(a) Introduction. Except as otherwise specified in subsection (q) of this section, the Texas Medical Assistance Program reimburses hospitals, except in-state children's hospitals, for covered inpatient hospital services using a prospective payment system. In-state children's hospitals are reimbursed for covered inpatient hospital services using the methodology described in subsection (o) of this section. For hospitals other than in-state children's hospitals, the department or its designee groups hospitals into payment divisions using the average base year payment per case in each hospital after adjusting each hospital's base year payment per case by a case mix index, a cost-of-living index, and a budgetary reduction factor of 10%. The budgetary reduction factor for admissions occurring in state fiscal year 1990 (September 1, 1989-August 31, 1990) is 7.0% and the budgetary reduction factor for admissions occurring in state fiscal year 1991 (September 1, 1990-August 31, 1991) is 5.5%. For admissions occurring in state fiscal year 1992 (September 1, 1991 through August 31, 1992) and subsequent state fiscal years, a budgetary reduction factor is not applied. The payment divisions are separated into \$100 increments. If a payment division has less than 10 observations for Medicaid data, the department or its designee considers that payment division to be statistically invalid. Hospitals within that payment division are placed into the nearest valid payment division.

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

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

(4) Standard dollar amount-The weighted mean base year payment for all hospitals in a payment division after adjusting each hospital's base year payment per case by a case mix index, a cost-of-living index, and a budgetary reduction factor of 10%. The budgetary reduction factor for admissions occurring in state fiscal year 1990 (September 1, 1989-August 31, 1990) is 7.0% and the budgetary reduction factor for admissions occurring in state fiscal year 1991 (September 1, 1990-August 31, 1991) is 5.5%. For admissions occurring in state fiscal year 1992 (September 1, 1991 through August 31, 1992) and subsequent state fiscal years, a budgetary reduction factor is not applied. The department or its designee establishes a minimum standard dollar amount of \$1,600 and applies it to those hospitals whose standard dollar amount is less than the minimum. The department or its designee applies cost-of-living indexes to the standard dollar amounts established for the base year to calculate standard dollar amounts for prospective years. A cost-of-living index is not

applied to the minimum standard dollar amount.

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

(c)-(q) (No change.)

(r) Reimbursement to out-of-state children's hospitals. For admissions on or after September 1, 1991, the standard dollar amount for out-of-state children's hospitals is calculated as specified in this subsection. The department or its designee calculates the overall average cost per discharge for in-state children's hospitals based on tentative or final settlement of cost reporting periods ending in calendar year 1990. The overall average cost per discharge is adjusted for intensity of service by dividing it by the average relative weight for all admissions from in-state children's hospitals during state fiscal year 1990 (September 1, 1989-August 31, 1990). The adjusted cost per discharge is updated each year by applying the cost-of-living index described in subsection (n) of this section [and the budgetary reduction factor described in subsection (b) of this section]. The resulting product is the standard dollar amount to be used for payment of claims as described in subsection (e) of this section. The department or its designee selects a new cost reporting period and admissions period from the in-state children's hospitals at least every three years for the purpose of calculating the standard dollar amount for out-of-state children's hospitals.

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 September 24, 1991.

TRD-9111763

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

Proposed date of adoption: December 1, 1991

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

Chapter 48. Community Care for Aged and Disabled

Release Hearings

• 40 TAC §48.4101

The Texas Department of Human Services (DHS) proposes a new undesignated head, Release Hearings, and new §48.4101, concerning Adult Protective Services release hearings, in its Community Care for Aged and Disabled chapter. The purpose of the new section is to provide protection for aged and disabled adults by permitting the department to notify an employer or other entity of Adult Protective Services findings of abuse, neglect, or exploitation, and to provide the perpetrator with the right of due process.

Burton F. Raiford, interim commissioner, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be protection for aged or disabled clients and protection of the perpetrator's right to due process. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Lois Clark at (512) 450-3183 in DHS's Adult Protective Services Section. Comments on the proposal may be submitted to Nancy Murphy, Policy and Document Support-222, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The new section is proposed under the Human Resources Code, Title 2, Chapters 22 and 48, which authorizes the department to administer public and protective services for the aged and disabled.

§48.4101. Adult Protective Services Release Hearings.

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

(1) Release—The release of data outside the department without the perpetrator's consent, except for data released to the perpetrator himself, to the client or an individual legally responsible for the client, to a court of law, or to a law enforcement agency.

(2) Emergency—Abuse, neglect, or exploitation which, without immediate intervention, would result in an aged or disabled adult being in a state of or at risk of serious harm.

(b) Right to appeal. When the Texas Department of Human Services (DHS) Adult Protective Services (APS) staff validates an allegation of abuse, neglect, or exploitation of an aged or disabled adult and an entity such as a provider agency, home health agency, senior center or other employer allows the perpetrator to have access to aged or disabled adults, the APS caseworker may notify the entity of the findings. If the findings are to be released to the entity, the perpetrator must be given prior written notification and an opportunity to appeal, except in emergencies.

(c) Notification of intent to release.

(1) The caseworker must give written notification of the findings to each person designated as a perpetrator if:

(A) allegations of abuse, neglect, or exploitation by the perpetrator are found to be valid;

(B) the findings are to be released outside the department to an entity which allows the perpetrator to have access to aged or disabled adults; and

(C) the perpetrator, as a result of the release, may be denied a right or privilege, such as employment or benefits.

(2) Written notification must include:

(A) the findings to be released;

(B) the entity to which the findings will be released;

(C) the perpetrator's right to request a copy of the investigation documentation, from which the reporter's name has been removed, and the cost to the perpetrator for a copy of the information, if appropriate;

(D) a warning that the request for a copy of the investigation documentation may be denied if release of the investigation documentation would jeopardize an ongoing criminal investigation, or if the attorney representing the department in a lawsuit has determined that the information should be withheld;

(E) DHS's decision that an emergency exists and that the findings have already been released, if applicable;

(F) the perpetrator's right to an administrative review and a release hearing to appeal the findings, and a warning that the findings will be released without the perpetrator's consent if the perpetrator does not request an appeal and the findings have not already been released in an emergency; and

(G) the requirement that the perpetrator must request the appeal in writing and that the request must be postmarked within 20 days after the official notice is mailed by the department.

(d) The perpetrator's role during administrative review.

(1) The perpetrator may:

(A) appear in person at the administrative review and may be accompanied by a representative;

(B) submit written material that is relevant to the case; and/or

(C) have a certified interpreter provided by DHS if he does not speak English or is deaf, or may provide his own interpreter.

(2) The perpetrator is responsible for any costs he may incur for the review, except for interpreter services provided by DHS.

(e) Notification of decision. If the final outcome of the appeal or any subse-

quent litigation alters or reverses the APS findings, everyone notified of the original findings must be notified of the final decision. Notification may be in the same form as the original notification.

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 September 24, 1991.

TRD-9111764

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

Proposed date of adoption: December 1, 1991

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

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Withdrawn Sections

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

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 29. Guaranty Acts

Subchapter E. Agents' Distri- bution of Guaranty Associa- tion Information

- 28 TAC §29.701

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed new §29.701, submitted by the State Board of Insurance has been automatically withdrawn, effective September 24, 1991. The withdrawal as proposed appeared in the March 22, 1991, issue of the *Texas Register* (16 TexReg 1743).

TRD-9111743



TITLE 34. PUBLIC FI- NANCE

Part IV. Employees Retirement System of Texas

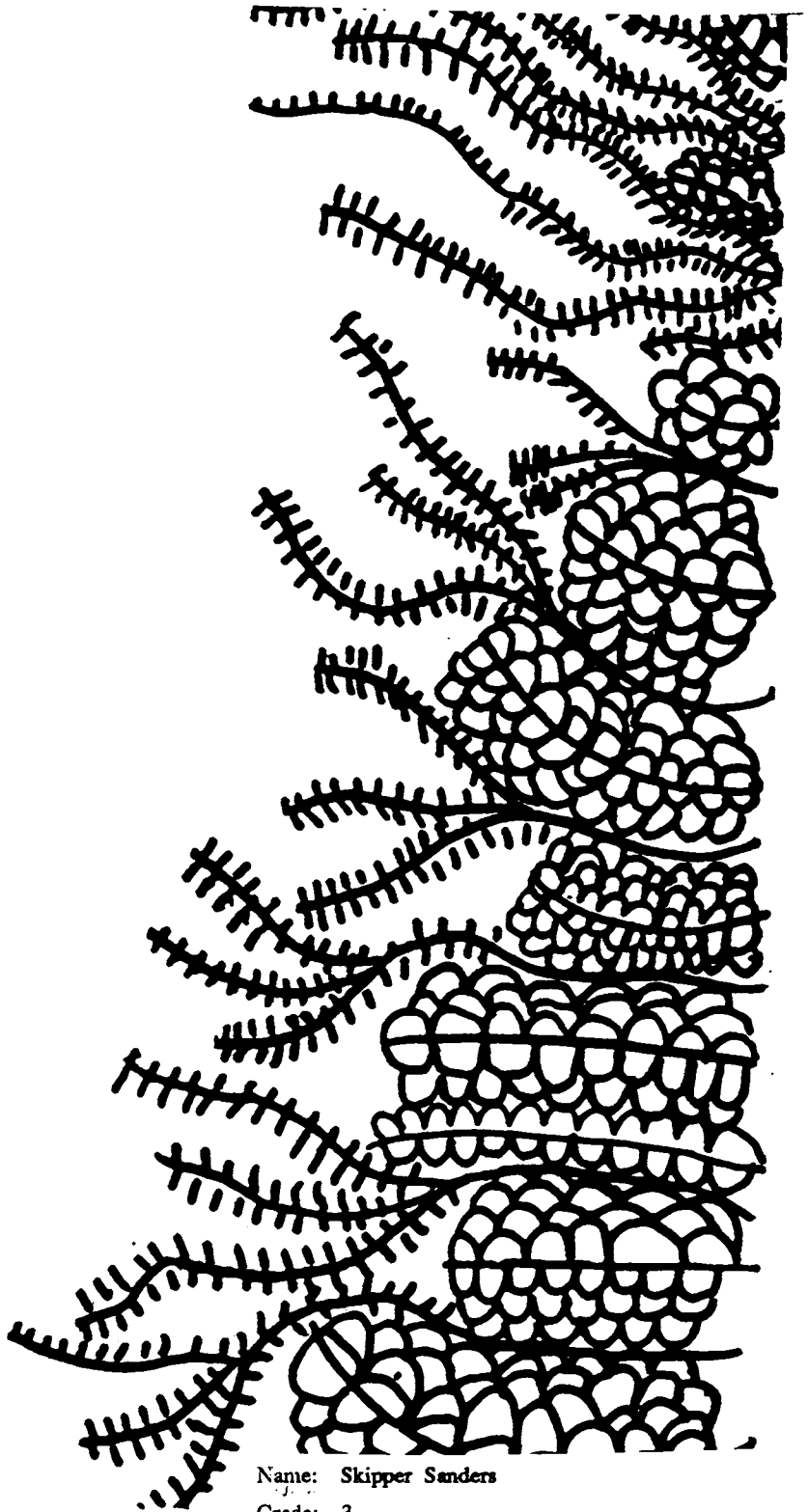
Chapter 87. Deferred Compensation

- 34 TAC §87.3

Pursuant to Texas Civil Statutes, Article 6252-13, §5(b), and 1 TAC §91. 24(b), the proposed amendment to §87.3, submitted by the Employees Retirement System of Texas has been automatically withdrawn, effective September 24, 1991. The withdrawal as proposed appeared in the March 22, 1991, issue of the *Texas Register* (16 TexReg 1754).

TRD-9111746





Name: Skipper Sanders

Grade: 3

School: Lake Highlands Elementary, Richardson ISD

Adopted Sections

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

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

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Direction of Affairs

• 7 TAC §91.506

The Credit Union Commission adopts an amendment to §91.506, with changes to the proposed text as published in the May 7, 1991, issue of the *Texas Register* (16 TexReg 2504). The following changes were made in subsection (b), "bond requirements" was changed to the proposed catch line "fidelity bond and insurance requirements." Narrative changes made in this subsection clarified who the fidelity bond covered and the protection provided.

The section was amended to coincide with the bonding requirements established by the National Credit Union Administration (NCUA) for federal credit unions. Since all of the state chartered credit unions of Texas will have federal deposit insurance, this rule was amended to make the state's bonding requirement the same as NCUA's.

When a credit union renews its bond, or a new credit union applies for a bond, the credit union will use this rule to determine its minimum, permissible coverage.

There was one comment received on this rule. The Texas Credit Union League (TCUL) recommended the revision of some of the language in the first paragraph of subsection (b) for clarification; however, this revision was considered insignificant since it did not materially change the rule.

The amendment is adopted under Texas Civil Statutes, Article 2461-11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

(b) Fidelity bond and insurance requirements. Each credit union shall purchase and maintain a fidelity bond for employees and officials and general insurance coverage for losses caused by persons outside of the credit union (protection for losses due to theft, hold-up, vandalism, etc.). Fidelity bonds must provide coverage for the fraud or dishonesty of all employees, directors, officers, and audit and credit committee members. The board of directors of each credit union shall, at least annually, carefully review the bond and insurance coverage in force in order to ascertain its adequacy in relation to risk exposure and to the minimum requirements. Each bond shall include a provision requiring written notification by the surety to the commissioner prior to cancellation of any or all converges set out in the bond, and include a brief statement of cause for termination. The bond and the insurance coverage must be issued by a company authorized to do such business in this state and approved by the commissioner.

(1) The following schedule sets forth the minimum requirements for bonds:

§91.506. Director Meeting Fees and Bond Requirements.

(a) (No change.)

| <u>Assets</u> | | <u>Basic Minimum Coverage</u> |
|---------------|-----------------------------|---|
| \$ | 0 to \$ 10,000 | Coverage equal to the credit union's assets. |
| \$ | 10,001 to \$ 1,000,000 | \$10,000 for each \$100,000 or fraction thereof. |
| \$ | 1,000,001 to \$ 50,000,000 | \$100,000 plus \$50,000 for each million or fraction over \$1,000,000. |
| \$ | 50,000,001 to \$295,000,000 | \$2,550,000 plus \$10,000 for each million or fraction thereof over \$50,000,000. |
| \$ | Over \$295,000,000 | \$5,000,000 |

(2) The maximum amount of deductibles allowed are based on the credit union's total assets. The following table sets out the maximum deductibles:

| <u>Assets</u> | <u>Maximum Deductible</u> |
|---------------------------|---|
| \$ 0 to \$ 100,000 | No deductibles allowed |
| \$ 100,001 to \$ 250,000 | \$1,000 |
| \$ 250,001 to \$1,000,000 | \$2,000 |
| Over \$1,000,000 | \$2,000 plus 1/1000 of total assets up to a maximum deductible of \$200,000 |

A deductible may be applied separately to one of more insuring clauses in a blanket bond. No deductible will exceed ten percent of a credit union's unencumbered reserves and undivided earnings unless the credit union creates a segregated Contingency Reserve for the amount of the excess. Valuation allowance accounts, e.g., allowance for loan losses, may not be considered part of the unencumbered reserves and undivided earnings when determining the maximum deductible.

(3) Special riders shall be provided where change funds are kept in excess of \$1,000, if change funds are not covered in the bond.

(4)-(6) (No change.)

(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 September 20, 1991.

TRD-9111880

John R. Hale
Commissioner
Credit Union Department

Effective date: October 14, 1991

Proposal publication date: May 7, 1991

For further information, please call: (512) 837-9236



TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter L. Insurance Requirements

• 16 TAC §5.181

The Railroad Commission of Texas adopts an amendment to §5.181, concerning evidence of insurance required, with changes to the proposed text as published in the July 2, 1991, issue of the *Texas Register* (16 TexReg 3667).

The new subsection is adopted in response to the provisions of Senate Bill 691 of the 72nd Legislature. Changes were made to clarify what losses are to be covered under the required coverage, and to remove the provision for a \$25 filing fee.

The amendment sets the required limits for accidental insurance coverage which may be carried in lieu of workers' compensation insurance. The amendment as adopted also sets out the specific types of coverage which will be required if a carrier opts to carry accidental insurance coverage in lieu of workers' compensation insurance.

Various comments were received concerning the amendment. Because the rule is in response to a statutory change, the comments were generally in support of the proposal. However, many of the commenters suggested changes in the rule. Some commenters suggested that the required limit was too high, while others suggested that it was too low. Several of the commenters expressed uncertainty regarding the type of coverage which was foreseen by the rule; that provision has been clarified to specify what types of coverage are required. Other comments regarded the type of insurance company from which coverage must be obtained; commenters requested that proof be accepted from surplus lines carriers or risk retention groups, or that self-insurance be

allowed. Several commenters suggested that any provision regarding benefits for loss of income should include a maximum weekly benefit. Other commenters inquired about what deductible levels were allowed, if any. Most other comments were more in the nature of inquiries regarding the rule's details.

Groups and associations commenting in favor of the proposed rule, but suggesting changes, were the Texas Motor Transportation Association, Inc.; the Sand and Gravel Motor Carrier Association, Inc.; the Southwest Warehouse and Transfer Association, Inc.; and the Texas Towing and Storage Association, Inc. No groups or associations commented in opposition to the proposed rule.

The commission disagrees with many of the comments submitted. However, higher limits must be traded off against higher insurance premiums. The commission believes that an equitable balance between the two competing interests must be achieved. Accordingly, as adopted the rules require a limit of \$150,000 on medical coverage, \$100,000 on accidental death and dismemberment coverage, and a \$400 maximum weekly benefit for loss of income. The \$400 maximum weekly benefit will be reviewed annually by the commission to ensure that it remains consistent with prevailing wage conditions. Regarding the type of insurance company which may file the coverage, it is the commission's position that the terms of the statute require that the insurance company must be authorized to do business in Texas (in other words, an admitted carrier, but not a surplus lines carrier or a risk retention group). This is consistent with the terminology used by the State Board of Insurance, and should accurately reflect legislative intent. The Motor Carrier Act, §13aa, was amended by Senate Bill 691, and specifically disallows self-insurance for this type of insurance. Since self-insurance is not allowed, the policy must provide for first-dollar coverage to the employee from the insurance company; separate reimbursement or subrogation agreements between the motor carrier and the insurance company would be permissible. It should also be noted that neither Senate Bill 691 nor these rules exempt a motor carrier from any requirements of the Workers' Compensation laws, from the procedures for becoming a non-subscriber, or from any legal responsibilities to the carrier's employees.

The amendment is adopted under the Texas Motor Carrier Act, Texas Civil Statutes, Article 911b, §13, which authorize the commission to set the limits for accidental insurance in lieu of workers' compensation coverage.

§5.181. Evidence of Insurance Required.

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

(c) Notwithstanding the provisions of subsection (a)(3) of this section, a motor carrier may protect its employees by obtaining accidental insurance coverage from a reliable insurance company authorized to write such policies in this state. The accidental insurance coverage shall cover medical expenses in the principal amount of \$150,000, accidental death benefits in the principal amount of \$100,000, loss of limb or sight on a scale based on the principal amount of \$100,000, and loss of income based on no less than 60% of the employee's pre-injury income for no less than 52 weeks, subject to a maximum weekly benefit of no less than \$400. Proof of insurance shall be on a form prescribed by the commission, and shall be filed with the commission. A motor carrier may not be self-insured for the coverage required in this subsection.

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 September 24, 1991.

TRD-9111775

Martha V. Swanger, Gas
Utilities/LP-Gas Section,
Legal Division
Hearings Examiner
Railroad Commission of
Texas

Effective date: October 16, 1991

Proposal publication date: July 2, 1991

For further information, please call: (512) 463-7094

**Part VI. Texas Motor
Vehicle Commission**

**Chapter 101. Practice and
Procedure**

**Adjudicative Proceedings and
Hearings**

• 16 TAC §101.63, §101.64

The Texas Motor Vehicle Commission adopts the repeal of §101.63 and §101.64, concerning final decisions of the commission and concerning petitions for reconsideration, without changes to the proposed text as published in the May 3, 1991, issue of the *Texas Register* (16 TexReg 2459).

Existing §101.63 is repealed for renumbering purposes concurrently with the separate adoption of the section as §101.64 with an amendment to the existing text. Existing §101.64 is repealed because it is in conflict with the motion for rehearing provisions of the

Texas Motor Vehicle Commission Code and the Administrative Procedure and Texas Register Act.

Existing §101.63 is repealed concurrently with the adoption of a new §101.63 which will contain more comprehensive provisions relating to the filing of documents with the commission.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Texas Motor Vehicle Commission Code, §3.06, which provides the commission with the authority to adopt, amend, and repeal rules as may be necessary or convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

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 September 25, 1991.

TRD-9111782

Russell Harding
Executive Director
Texas Motor Vehicle
Commission

Effective date: October 16, 1991

Proposal publication date: May 3, 1991

For further information, please call: (512) 476-3587

General Rules

• 16 TAC §101.63, §101.64

The Texas Motor Vehicle Commission adopts new §101.63 and §101.64, concerning practice and procedure, with changes to the proposed text as published in the May 3, 1991, issue of the *Texas Register* (16 TexReg 2459).

Section 101.63 is a new section providing that all documents in contested cases must be filed with the commission at least 15 days prior to the date of the commission meeting at which the case is scheduled for consideration and decision and any document not filed within such time will not be considered by the members of the commission at that meeting. New §101.64 is the former §101.63 renumbered and is proposed for adoption with a change to make the section consistent with existing law pertaining to motions for rehearing of agency orders and to specify that the section does not apply to cases brought under the Texas Motor Vehicle Commission Code, §6.07.

Comments on the proposed new sections were received from an attorney-at-law. The individual requested that the proposed §101.63 be modified to clarify that cases would not be scheduled for commission decision to preclude the filing of documents otherwise required or permitted to be filed in contested cases, and to provide the commission with the authority to waive or shorten the filing time requirement upon a showing of good cause. The commission agreed with the comments and these suggestions have been incorporated in §101.63 as finally adopted. The commission also changed the proposed §101.64 to exclude cases brought under the

Code, §6.07, which have a separate motion for rehearing procedure.

The new sections are adopted under Texas Civil Statutes, Article 4413(36), §3.06, which provide the commission with the authority to adopt rules necessary and convenient to effectuate the provisions of the Act and to govern practice and procedure before the agency.

§101.63. Filing of Documents for Consideration by Commission Members. Any document filed by a party to a contested case for consideration by the members of the commission in their decision of the case must be filed with the commission at least 15 days prior to the date of the commission meeting at which the case is scheduled for consideration and decision. Any document not filed within such time will not be considered by the members of the commission at that meeting. No contested case will be scheduled for consideration and decision so as to preclude any party from filing any document required or permitted to be filed in a contested case by law or under the commission's rules, in compliance with the previous filing requirement. For good cause shown, the commission may waive or shorten the requirement for the filing of all documents prior to any commission meeting.

§101.64. Final Decision. In all contested cases except those brought under the Texas Motor Vehicle Code, after a matter has been heard and submitted to the commission for decision, and the commission has considered all exceptions and replies thereto, if any, and has issued its order in connection therewith, such order shall be deemed final and binding on all parties thereto and all administrative remedies are deemed to be exhausted as of the effective date stated therein, unless a motion for rehearing be filed as provided by law.

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 September 25, 1991.

TRD-9111783

Russell Harding
Executive Director
Texas Motor Vehicle
Commission

Effective date: October 16, 1991

Proposal publication date: May 3, 1991

For further information, please call: (512) 476-3587

**Chapter 107. Warranty
Performance Obligations**

**• 16 TAC §§107.2, 107.6, 107.8,
107.9, 107.10, 107.11**

The Texas Motor Vehicle Commission adopts amendments to §§107.2, 107.6, and 107.8

and new §§107.9, 107.10, and 107.11, concerning warranty performance obligations. Sections 107.2, 107.6, 107.8, 107.9, and 107.10 are adopted with changes to the proposed text as published in the July 19, 1991, issue of the *Texas Register* (16 TexReg 3987). Section 107.11 is adopted without changes and will not be republished.

The amendments and new sections are adopted to bring the agency's lemon law rules into conformity with amendments to the Texas Motor Vehicle Commission Code, Texas Civil Statutes, Article 4413(36), enacted during the 72nd Legislature. The amendment to §107.2 simply provides that the lemon law filing fee is increased to \$75, and that failure to remit the fee with a complaint will toll the running of the 150-day resolution period that the legislature imposed on commission staff. Section 107.6 is amended by the addition of new paragraph (11); which explains the consequences of the commission's failure to meet the 150-day resolution period; i.e., if the targeted period is not met, commission staff is required to notify the parties of the complainant's right to pursue his lemon law rights in state district court. The notice will also inform complainant that he may continue his lemon law complaint at the agency level, if he so chooses.

The amendment to §107.8 conforms the section to the new statutory language. Specifically, the statute changed the prior requirement that the defect which is the subject of the lemon law complaint must "substantially impair the use and market value of the vehicle" to "any defect or condition which creates a serious safety hazard or substantially impairs the use or market value of the motor vehicle." In addition, the section is amended to clarify what constitutes a reasonable number of repair attempts when a safety-related defect is involved, as well as, what constitutes a defect that creates a serious safety hazard.

The amendment to §107.8(6) was made to conform the section's language to that enacted by the legislature concerning the extent of a dealer's liability in a successful lemon law case. It was changed to provide that a dealer is only responsible for reimbursing the cost of any items or options added to the vehicle to the extent that one or more such items or options contributed to the defect that served as the basis of the repurchase or replacement order. A number of manufacturers commented that this change could be interpreted to mean that a manufacturer would be required to repurchase a vehicle whose defect was caused by a dealer add-on item or option. A sentence was added to the section, providing that a manufacturer would not be required to repurchase a vehicle in such a situation.

New §107.9 was adopted to comply with the legislative mandate in §6.07(c), as amended, that the "Commission by rule shall define the incidental costs that are eligible for reimbursement...." This new section sets out when reimbursement of incidental expenses is warranted and the verification required to recover such expenses. In addition, it lists the specific costs that are reimbursable to successful lemon law complainants. The section was changed from the proposal which identified four specific types of reimbursable costs, but did not limit the list to only those four. As adopted, the section limits reimbursable costs

to only those four types of expenses listed under §107.9(a).

Section 107.10 was amended to implement new amendments to the lemon law by adding new paragraph (4) which details new responsibilities of manufacturers, distributors, or converters (hereafter "manufacturers" will also refer to distributors and converters) when they repurchase or replace a vehicle pursuant to a commission order. Manufacturers are now required to disclose to a prospective retail purchaser of the repurchased vehicle that the vehicle was repurchased pursuant to the Texas lemon law. In addition, manufacturers are required to repair the defect(s) in the vehicle and to issue a supplemental warranty to the first retail purchaser of the vehicle after the commission order. The section provides a specific disclosure statement that must accompany the vehicle upon resale to a retail purchaser. In response to numerous comments from manufacturer representatives, the commission changed the section to allow manufacturers to use existing manufacturer disclosure notices so long as they were approved by commission staff in advance.

Comments on the proposed amendments and new section were received from General Motors Corporation, Ford Motor Company, Chrysler Motors Corporation, Mazda Motor America, Gulf Region, Texas Public Citizen, Consumers Union, Southern Regional Office, and from commission staff. In general, the comments focused on the proposed amendments to §107.8(1)(B), §107.10(4), and on proposed new §107.9.

First, General Motors, Chrysler Motors Corporation, and Ford Motor Company argued against the listing of the specific defects that would be deemed to create a serious safety hazard, as found in proposed §107.8(1)(B). At the center of their complaint was the argument that the examples listed were too broad and would be used by complainants in almost every case to claim that the defect in their vehicle was one that created a serious safety hazard. They suggested instead of attempting to provide a list of such defects, that the section should include the statutory definition of what constitutes a serious safety hazard, which would in turn be used by hearings officers to determine whether the alleged defect fit the statutory definition. Representatives for Consumers Union and Public Citizen argued that the section should provide a list, albeit non-exclusive, of defects that would be considered defects creating serious safety hazards. While they agreed with the list in (1)(B), they also urged that several other specific defects or conditions be added. After considering all of the comments received, as well as staff comments which agreed with the approach proffered by the manufacturers, the commission voted to change the section by deleting the listing of specific defects and substituting the statutory definition of serious safety hazard which will be the benchmark for determining whether a particular defect creates a serious safety hazard.

Second, Chrysler Motors Corporation argued that the new section on incidental expenses was too open-ended as proposed; by providing that reimbursable expenses "include, but are not limited to" certain itemized expenses, Chrysler noted that the provision could be

abused to allow complainants punitive damages or other costs that the legislature had not intended. A \$250 cap was urged to avoid such possibility. General Motors Corporation simply argued that their limited warranty excluded reimbursement for incidental expenses and that therefore the section should provide reimbursement of such expenses strictly as a customer relations matter between the complainant and the manufacturer. Representatives of Public Citizen and Consumers Union, at the public hearing, countered that the section should be adopted as proposed inasmuch as the legislature had given the commission authority to define reimbursable costs, "as necessary to promote the public interest." They argued against a cap, either in the form of a set amount or as a closed-end category. They supported the "include, but are not limited to" language and suggested that commission staff track the types and amounts of expenses reimbursed complainants over a one to two-year period, and that after compiling such data, the section could be amended to reflect categories or amounts of expenses that would be reimbursable. However, they urged no such limits should be imposed without supporting data. After considering all of the comments, the commission voted to delete the "but are not limited to" language from the section and thus defined reimbursable expenses as those listed under (1)-(4). The commission also changed the language qualifying the incidental expenses that would be reimbursable to track the language found in §6.07(c), as amended.

The third source of major commentary was §107.10(4) dealing with the requirement that manufacturers insure that a proper disclosure statement accompanied a repurchased or replaced vehicle pursuant to the lemon law when sold to the first retail purchaser after the commission order. The gist of the comments was a request from manufacturers that they be allowed to use forms that they have already prepared for the same type of purpose. Ford Motor Company and Chrysler Motors Corporation urged the commission to allow use of their existing forms since they contain, in large part, the required information that is found in Attachment 1 of the proposed section. Representatives from Public Citizen and Consumers Union, as well as staff members, urged the commission to require the notice or statement to clearly and conspicuously indicate that it was a lemon law disclosure notice. In response to those comments, the commission voted that the title of the form should be "Lemon Law Disclosure Statement in 20-point print. Concerning the specific form to be used, the commission voted that manufacturers may use their own forms so long as the forms are submitted for prior approval by the commission.

In addition, Chrysler Motors Corporation and Public Citizen urged that the proposed section require manufacturers to supply the first retail purchaser after the commission order with a supplemental warranty statement which warranted the repurchased vehicle for a minimum of 12 months or 12,000 miles from the date of the subsequent retail purchase. The commission agreed with the recommendation and added a requirement in the section to that effect. The form of the supplemental warranty must be approved by the commission also.

A fourth section that drew a number of comments from manufacturers was proposed §107.8(6). This section merely restated the statutory change in the Code. However, several manufacturers expressed concern that the change would be read to mean that a manufacturer could be required to replace or repurchase a vehicle due to a defect that was caused by a dealer add-on item or option. After considering the manufacturers' comments, the commission added a final sentence to the proposed section, specifically providing that a manufacturer would not be obligated to repurchase a vehicle in such a situation.

Comments urging minor changes to §107.8(4) and §107.11 were received from Consumers Union and Public Citizen, respectively; however, the commission, after consideration and oral comment, voted to adopt the sections as proposed.

The sections are adopted under Texas Civil Statutes, Article 4413(36), §6.07(e), which provide that the commission shall adopt rules for the enforcement and implementation of the Texas Motor Vehicle Commission Code, §6.07.

§107.2. Filing of Complaints.

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

(e) The lemon law complaint filing fee of \$75 should be remitted with the complaint by check or money order payable to the Texas Motor Vehicle Commission. The filing fee is nonrefundable, but a complainant who prevails in a lemon law case is entitled to reimbursement of the amount of the filing fee. Failure to remit the filing fee with the complaint will result in delaying the commencement of the 150-day requirement provided in §107.6(11) of this title (relating to Hearings).

§107.6. Hearings. Complaints which satisfy the jurisdictional requirements of the Texas Motor Vehicle Commission Code, §6.07, will be set for hearing and notification of the date, time, and place the hearing will be given to all parties by certified mail.

(1)-(10) (No change.)

(11) All hearings will be conducted expeditiously. However, if a commission hearings officer has not issued a proposal for decision within 150 days after the complaint and filing fee were received, commission staff shall notify the parties by certified mail that complainant has a right to file a civil action in state district court to pursue his rights under the lemon law. The 150-day period shall be extended upon request of the complainant or if a delay in the proceeding is caused by the complainant. The notice will inform complainant of his right to continue his lemon law complaint through the commission if he chooses.

§107.8. Decisions. Any decisions by the commission and recommended decision by a hearing officer shall give effect to the presumptions provided in the Texas Motor

Vehicle Commission Code, §6.07(d), where applicable.

(1) If it is found that the manufacturer, distributor, or converter is not able to conform the vehicle to an applicable express warranty by repairing or correcting a defect in the complainant's vehicle which substantially impairs the use, market value, or safety of the vehicle after a reasonable number of attempts, and that the affirmative defenses provided under the Texas Motor Vehicle Commission Code, §6.07(c), are not applicable, the commission shall order the manufacturer, distributor, or converter to replace the vehicle with a comparable vehicle, or accept the return of the vehicle from the owner and refund to the owner the full purchase price of the vehicle, less a reasonable allowance for the owner's use of the vehicle.

(A) In a complaint involving a defect or condition that creates a serious safety hazard in the vehicle, an owner shall be deemed to have given the manufacturer, distributor, or converter a reasonable number of attempts to repair the vehicle if he reported and allowed an opportunity to repair the defect or condition at least once during the period of 12 months or 12,000 miles, whichever occurs first, immediately following the date of delivery and at least once more in the period of 12 months or 12,000 miles, whichever occurs first, following the first repair attempt.

(B) A defect or condition that creates a serious safety hazard is one that results in a life-threatening malfunction or nonconformity that substantially impedes a person's ability to control or operate a motor vehicle for ordinary use or intended purposes or that creates a substantial risk of fire or explosion.

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

(4) Except in cases where clear and convincing evidence shows that the vehicle has a longer or shorter expected useful life than 100,000 miles, the reasonable allowance for the owner's use of the vehicle shall be that amount obtained by adding the following:

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

(5) (No change.)

(6) In any award in favor of a complainant, the executive director may require the dealer involved to reimburse the complainant, manufacturer, distributor, or converter for the cost of any items or options added to the vehicle but only to the extent that one or more of such items or options contributed to the defect that served as the basis for the order of repurchase or replacement. In no event shall this paragraph be interpreted to mean that a manufacturer, distributor, or converter will be required to repurchase a vehicle due to a

defect or condition that was solely caused by a dealer add-on item or option.

(7)-(9) (No change.)

§107.9. Incidental Expenses.

(a) When a refund of the purchase price of a vehicle is ordered, the complainant shall be reimbursed for certain incidental expenses incurred by the complainant from loss of use of the motor vehicle because of the defect or nonconformity which is the basis of the complaint. The expenses must be verifiable through receipts or similar written documents. Reimbursable incidental expenses include:

(1) reasonable cost of alternate transportation;

(2) charges for towing;

(3) costs of telephone calls or mail charges directly attributable to contacting the manufacturer, distributor, converter, or dealer regarding the vehicle; and

(4) reasonable costs of meals and lodging necessitated by the vehicle's failure during out-of-town trips.

(b) Only reasonable incidental expenses shall be reimbursed to a complainant. Incidental expenses shall be included in the final repurchase price required to be paid by a manufacturer, distributor, or converter to a prevailing complainant or in the case of a vehicle replacement, shall be tendered to the complainant at the time of replacement.

§107.10. Compliance. Compliance with the commission's order will be monitored by the commission.

(1) A complainant is not bound by the commission's decision and order and may either accept or reject the decision.

(2) If a complainant does not accept the commission's final decision, the proceeding before the commission will be deemed concluded and the complaint file closed.

(3) If the complainant accepts the commission's decision, then the manufacturer, distributor, or converter and the dealer to the extent of the dealer's responsibility, if any, shall immediately take such action as is necessary to implement the commission's decision and order.

(4) If complainant's vehicle is replaced or repurchased pursuant to a commission order, the manufacturer, distributor, or converter shall, through its representative dealer, issue a disclosure statement in the format of Attachment 1 or on a form approved by the commission, which must accompany the vehicle through the first retail purchase after the commission order. In addition, the manufacturer, distributor, or converter must repair the defect or condition in the vehicle that resulted in the repurchase

and issue, at a minimum, a basic warranty (12 months/12,000 mile, whichever comes first) on a form approved by the commission, which warranty shall be provided to the first retail purchaser of the vehicle following the commission order.

LEMON LAW DISCLOSURE STATEMENT

THIS VEHICLE, MAKE _____, MODEL _____, YEAR _____
VIN # _____, MILEAGE _____

TO: PROSPECTIVE RETAIL PURCHASER(S)

PURSUANT TO SECTION 6.07(j) OF THE TEXAS LEMON LAW YOU ARE HEREBY NOTIFIED THAT THE ABOVE DESCRIBED VEHICLE WAS REPURCHASED/REPLACED BY THE UNDERSIGNED MANUFACTURER/DISTRIBUTOR/CONVERTER ON _____ DATE

BECAUSE _____ DESCRIBE REASON(S)

WHICH HAS/HAVE BEEN REPAIRED.

AS REQUIRED BY THE LEMON LAW, THE ORIGINAL BASIC WARRANTY ON THE VEHICLE IS EXTENDED 12 MONTHS/12,000 MILES, WHICHEVER COMES FIRST, FROM THE DATE AND MILEAGE AT THE TIME OF DELIVERY TO THE RETAIL BUYER. FOR MORE INFORMATION CONCERNING THE REPURCHASE/REPLACEMENT OF THIS VEHICLE, PLEASE CALL THE TEXAS MOTOR VEHICLE COMMISSION AT 1-800-622-8682.

SIGNATURE OF REPRESENTATIVE OF MANUFACTURER/DISTRIBUTOR/CONVERTER DATE

PRINTED NAME OF REPRESENTATIVE, TITLE & COMPANY

THE UNDERSIGNED DEALER CERTIFIES THAT A COPY OF THIS DISCLOSURE STATEMENT HAS BEEN PROVIDED TO THE PURCHASER OF THIS VEHICLE.

SIGNATURE OF DEALER REPRESENTATIVE, TITLE DATE

NAME OF DEALERSHIP/COMPANY

I ACKNOWLEDGE THAT I WAS INFORMED OF THE PREVIOUS REPURCHASE OF THIS VEHICLE UNDER THE LEMON LAW AND THAT A COPY OF THIS DISCLOSURE STATEMENT WAS GIVEN TO ME AT THE TIME OF PURCHASE.

ACKNOWLEDGEMENT OF RETAIL BUYER DATE OF DELIVERY

(5) The failure of any manufacturer, distributor, converter, or dealer to comply with a decision and order of the commission within the time period prescribed in the order, may subject the manufacturer, distributor, converter, or dealer to formal action by the commission and the assessment of civil penalties or other sanctions prescribed by the Texas Motor Vehicle Commission Code for failure to comply with an order of the commission.

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 September 25, 1991.

TRD-9111781

Ruth Casarez
Assistant Director-
Consumer Affairs
Texas Motor Vehicle
Commission

Effective date: October 16, 1991

Proposal publication date: July 19, 1991

For further information, please call: (512) 476-3618

◆ ◆ ◆
• 16 TAC §107.9

The Texas Motor Vehicle Commission adopts the repeal of §107.9, concerning compliance with commission orders in lemon law cases, without changes to the proposed text as published in the July 19, 1991, issue of the *Texas Register* (16 TexReg 3990).

The repeal is adopted in conjunction with a separate proposal which is a comprehensive revision of the commission's lemon law rules to implement changes made by the 72nd Legislature. The section is renumbered and readopted as §107. 10 in a concurrent submission.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4413(36) §6.07(e), which provide the commission with authority to adopt rules necessary and convenient to effectuate the provisions of the Texas Motor Vehicle Commission Code, §6.07.

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 September 25, 1991. *

TRD-9111780

Ruth Casarez
Assistant Director-
Consumer Affairs
Texas Motor Vehicle
Commission

Effective date: October 16, 1991

Proposal publication date: July 19, 1991

For further information, please call: (512) 476-3618

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

**Part II. Texas Parks and
Wildlife Department**

**Chapter 57. Fisheries and
Wildlife**

**Permits to Sell Non-game Fish
Taken From Public Fresh
Water**

• 31 TAC §§57.377-57.386

The Texas Parks and Wildlife Commission in a regularly scheduled public hearing held August 29, 1991, adopts new rules, 31 TAC §§57.377-57.386, concerning the sale of non-game fish taken from public fresh water with changes to the proposed text as published in the July 26, 1991, issue of the *Texas Register* (16 TexReg 4056).

The change was made to the title and to §57.378 to clarify the intent of the rules by including the phrase "taken from public fresh water."

The adopted new rules establish procedures and conditions under which permits are issued to sell nongame fish taken from public fresh water.

Effective September 1, 1991, Senate Bill (SB) 726, passed by the 72nd Legislature prohibits the sale of any fish taken from public fresh waters of the state, with several exceptions.

One of the exceptions is for those nongame fish regulated under the Texas Parks and Wildlife Code, Chapter 67. However, rules for issuing a permit under that chapter had not been developed. The new rules are needed to permit the sale of nongame fish if the Parks and Wildlife Department feels that sale is necessary to properly manage the species. These adopted new rules establish the procedure for permit issuance.

The new rules will enable the department to issue permits for the sale of nongame fish taken from public fresh water.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Parks and Wildlife Code, Chapter 67, §67.0041, which provides the Texas Parks and Wildlife Commission with authority to issue permits for the taking, possession, transportation, sale, or exportation of nongame species and to charge a permit fee for commercial activities.

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

Department—The Texas Parks and Wildlife Department or any authorized employee thereof.

Game fish—All fish included in the definition of game fish in §65.3 of 31 TAC Subchapter A of this title (relating to State-wide Hunting and Fishing definitions).

Non-game fish (rough fish and bait fish)—All fish included in the definition for non-game fish in §65.3 of 31 TAC Subchapter A of this title (relating to State-wide Hunting and Fishing definitions).

Public water—Bays, estuaries, the Gulf of Mexico within the jurisdiction of the State, rivers, streams, creeks, bayous, reservoirs, lakes, and portions of those waters where public access is available without discrimination.

§57.378. *Non-game Fishes Covered By These Rules.* A permit to sell the following species of nongame fish taken from public fresh water may be issued if the department determines that the sale is necessary to properly manage the species.

| <u>Common Name</u> | <u>Scientific Name</u> |
|--------------------|---------------------------------|
| Alligator gar | <i>Lepisosteus spatula</i> |
| Shortnose gar | <i>Lepisosteus platostomus</i> |
| Spotted gar | <i>Lepisosteus oculatus</i> |
| Longnose gar | <i>Lepisosteus osseus</i> |
| | |
| Bowfin | <i>Amia calva</i> |
| | |
| Gizzard shad | <i>Dorosoma cepedianum</i> |
| Threadfin shad | <i>Dorosoma petenense</i> |
| | |
| Common carp | <i>Cyprinus carpio</i> |
| Goldfish | <i>Carassius auratus</i> |
| Grass carp | <i>Ctenopharyngodon idella</i> |
| Bighead carp | <i>Aristichthys nobilis</i> |
| | |
| Bigmouth buffalo | <i>Ictiobus cyprinellus</i> |
| Black buffalo | <i>Ictiobus niger</i> |
| Smallmouth buffalo | <i>Ictiobus bubalus</i> |
| River carpsucker | <i>Carpiodes carpio</i> |
| | |
| Black bullhead | <i>Ictalurus melas</i> |
| Yellow bullhead | <i>Ictalurus natalis</i> |
| | |
| Mozambique tilapia | <i>Tilapia mossambica</i> |
| Blue tilapia | <i>Tilapia aurea</i> |
| Redbelly tilapia | <i>Tilapia zilli</i> |
| | |
| Rio Grande cichlid | <i>Cichlasoma cyanoguttatum</i> |
| | |
| Silversides | <i>Menidia spp.</i> |
| Mullet | <i>Mugil spp.</i> |
| Shiners | <i>Notropis spp.</i> |
| Minnnows | <i>Hybognathus spp.</i> |

§57.379. Prohibited Acts. Except as exempted by these rules it is unlawful for:

(1) any person to sell or offer for sale non-game fish taken from the public fresh water of the state without a valid permit issued by the department authorizing that activity;

(2) any person to engage in activities authorized by the permit who does not show on demand to a Game Warden or other peace officer a copy of the permit authorizing that activity;

(3) any person to possess any game fish while engaged in activities authorized by the permit;

(4) Any person to violate any provision of the permit.

§57.380. Permit Exemptions. No permit under the authority of this subchapter is required for sale of non-game fish, the sale of which is authorized by Chapter 66 of the Texas Parks and Wildlife Code.

§57.381. Permit Application.

(a) An applicant for a permit to sell non-game fish taken from public fresh waters of this state shall submit a completed application to the department on a form supplied by the department.

(b) To be considered the application must be received by the department at least 30 days before the proposed activity.

§57.382. Permit Specifications.

(a) A permit issued by the department to sell non-game fish taken from public fresh water shall specify:

(1) the name and address of the permittee;

(2) the location where the activity is permitted;

(3) the non-game fish species for which sale is allowed;

(4) number of non-game fish for which sale is allowed;

(5) the devices, means and methods which may be used to capture fish; and

(6) the period of time the permit is valid.

(b) A permit issued under these rules is not transferable or assignable.

§57.383. Permit Fee.

(a) As authorized by Parks and Wildlife Code, §67.0041, a fee of 50 dollars will be submitted for each permit application.

(b) The department will refund the permit fee if the permit is denied.

§57.384. Permit Denial. A permit to sell non-game fish may not be granted without findings that the following criteria have been satisfied:

(1) the applicant(s) have not been finally convicted of a violation of the Texas Parks and Wildlife Code or any rule, regulation, or proclamation issued by the Texas Parks and Wildlife Commission within the previous 12 months;

(2) there are no pending or unresolved citations filed against the applicant(s) for violation of the Texas Parks and Wildlife Code or any rule, regulation, or proclamation issued by the Texas Parks and Wildlife Commission, and no pending or unresolved claims against the applicant(s) for civil restitution for illegally taken or possessed wildlife resources;

(3) the taking of non-game fish for sale will not be detrimental to the target species, species listed as endangered or threatened, or any other non-game or game fish;

(4) the taking of non-game fish for sale can be accomplished in a manner consistent with the management goals and objectives of the department.

§57.385. Appeal. An opportunity for hearing shall be provided to the applicant for any denial of a permit or issuance of a permit where the conditions of issuance are different from those requested by the applicant.

(1) Request for hearing for appeal must be made in writing no more than 30 days from receipt of the denial notification.

(2) All hearings shall be conducted in accordance with the rules of Practice and Procedure of the Texas Parks and Wildlife Department and the Administrative Procedures and Texas Register Act.

§57.386. Penalties. A person who violates this subchapter or a permit issued pursuant to this subchapter commits an offense punishable by the penalty prescribed by the Texas Parks and Wildlife Code, §67.005.

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 September 23, 1991.

TRD-9111697

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

Effective date: October 14, 1991

Proposal publication date: July 26, 1991

For further information, please call: 1-800-792-1112, ext. 4643 or (512) 389-4643

◆ ◆ ◆
TITLE 40. SOCIAL SERVICES AND ASSISTANCE

**Part I. Texas Department of Human Services
Chapter 48. Community Care for Aged and Disabled**

Eligibility

• 40 TAC §48.2904, §48.2924

The Texas Department of Human Services (DHS) adopts amendments to §48.2904 and §48.2924, concerning eligibility, without changes to the proposed text as published in the July 12, 1991, issue of the *Texas Register* (16 Tex Reg 3862).

Justification for the amendments is that clients are not penalized for receiving radiation exposure compensation or in-home and family support funds.

The amendments will function by excluding payments received under the Radiation Exposure Compensation Act and funds from the In-home and Family Support Program from both income and resources in the community care for aged and disabled program.

No comments were received regarding adoption of the amendments.

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.

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 September 24, 1991.

TRD-9111765

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

Effective date: December 1, 1991

Proposal publication date: July 12, 1991

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

Case Management

The Texas Department of Human Services (DHS) adopts amendments to §48.3904 and §48.8901, without changes to the proposed text as published in the August 20, 1991, issue of the *Texas Register* (16 TexReg 4537).

Justification for the amendments is clearer understanding of adult foster care policies.

The amendments will function by clarifying existing policies on bedhold charges, complaints, supervision, reporting emergencies, and fire inspection.

The department received no comments regarding the adoption of the amendments.

• 40 TAC §48.3904

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.

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 September 24, 1991.

TRD-9111766

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

Effective date: November 1, 1991

Proposal publication date: August 20, 1991

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

◆ ◆ ◆
Minimum Standards

• 40 TAC §48.8901

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.

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 September 24, 1991.

TRD-9111767

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

Effective date: November 1, 1991

Proposal publication date: August 20, 1991

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

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 State Board of Public Accountancy

Thursday, October 3, 1991, 9 a.m. The Texas State Board of Public Accountancy will meet at 1033 La Posada, Suite 340, Austin. According to the agenda summary, the board will approve the August 29, 1991, board meeting minutes; hear committee reports (executive, technical standards review, behavioral enforcement committee, examination, quality review); consideration of requests for reinstatement; ratification of board orders; consent orders and proposals for decision; review of certain board communications; and review of future meeting/hearing schedules.

Contact: William Treacy, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: September 25, 1991, 10:54 a.m.

TRD-9111793

Texas Department of Agriculture

Tuesday, October 22, 1991, 11 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas Agriculture Code Annotated §103.001, et seq by Four Seasons Fruit and Vegetable as petitioned by J.A.V. Ag Inc., doing business as Van De Walle Vegetable.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: September 25, 1991, 10:55 a.m.

TRD-9111796

Tuesday, October 22, 1991, 10 a.m. The Texas Department of Agriculture will meet at the Texas Department of Agriculture, 2626 South Loop West, Suite 130, Houston. According to the complete agenda, the department will hold an administrative hearing to review alleged violation of Texas

Agriculture Code §103.001, et seq by Golden Triangle Produce Company as petitioned by Golden Valley Distributors, Inc.

Contact: Barbara B. Deane, P.O. Box 12847, Austin, Texas 78711, (512) 463-7448.

Filed: September 25, 1991, 10:55 a.m.

TRD-9111797

State Aircraft Pooling Board

Wednesday, October 2, 1991, 4 p.m. The State Aircraft Pooling Board will meet at 4900 Old Manor Road, Austin. According to the complete agenda, the board will call the meeting to order; make introductions; discuss approval of minutes of board meeting, July 17, 1991; hear Department of Public Safety Request; discuss FY 1992 operating budget; hear executive director's report; elect board chairman; setting of time and place for next meeting; and final adjournment.

Contact: Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

Filed: September 24, 1991, 11:15 a.m.

TRD-9111741

State Board of Barber Examiners

Monday, October 7, 1991, 3 p.m. The State Board of Barber Examiners will meet at 9101 Burnet Road, Suite 103, Austin. According to the complete agenda, the board will discuss approval of the minutes of previous meeting; sign teacher and school certificates; hear reports by the executive director; read letters to the board; consider proposed rule changes; consider request by Stewart Smith, school owner, of combining the barber technician and manicurist courses; sign 1992-1993 inter-agency contract with the Texas Cosmetology Commission, meet in executive session; and adjourn.

Contact: Jo King McCrorey, 9101 Burnet Road, Suite 103, Austin, Texas 78758, (512) 835-2040.

Filed: September 24, 1991, 11:04 a.m.

TRD-9111739

Texas Commission for the Deaf and Hearing Impaired

Friday, October 4, 1991, 9:30 a.m. The Board of Commissioners of the Texas Commission for the Deaf and Hearing Impaired will meet at the Texas Rehabilitation Commission, Commissioners Planning Facility, Room 7231, 4900 North Lamar Boulevard, Austin. According to the complete agenda, the board will call the meeting to order; hear public comment; discuss approval of minutes from August 2, 1991 and September 18, 1991; hear chairperson's report; executive director's report; BEI report; discuss old and new business; and adjourn.

Contact: Larry D. Evans, 1524 South IH-35, #200, Austin, Texas 78704, (512) 444-3323.

Filed: September 25, 1991, 2:19 p.m.

TRD-9111803

Educational Economic Policy Center

Thursday, October 3, 1991, 1 p.m. The Subcommittee on Director Search of the Educational Economic Policy Center will meet at the Joe C. Thompson Conference Center, Room 3.110, Austin. According to the complete agenda, the subcommittee will review prior search; and discuss future search process.

Contact: Mary Ward, SRH 3.310, UT-Austin, Austin, Texas 78712, (512) 471-7561.

Filed: September 25, 1991, 3:31 p.m.

TRD-9111812

Thursday, October 3, 1991, 1 p.m. The Subcommittee on Innovative Education Grants of the Educational Economic Policy Center will meet at the Sid Richardson Hall, Room 3.115, 2315 Red River Street, Austin. According to the complete agenda, the subcommittee will discuss development of 1992 request for proposal; and monitoring and evaluation of 1991 funded projects.

Contact: Mary Ward, SRH 3.310, UT-Austin, Austin, Texas 78712, (512) 471-7561.

Filed: September 25, 1991, 3:31 p.m.

TRD-9111811

Thursday, October 3, 1991, 2:30 p.m. The Policy Center Committee of the Educational Economic Policy Center will meet at the Joe C. Thompson Conference Center, Room 3.110, 2313 Red River Street, Austin. According to the complete agenda, the committee will approve minutes; discussion with Chairman Carolyn Crawford, State Board of Education, Commissioner Skip Meno, Texas Education Agency; review of study of accountability in the public school system; report from director search subcommittee; and report from Innovative Education Grants Subcommittee.

Contact: Mary Ward, SRH 3.310, UT-Austin, Austin, Texas 78712, (512) 471-7561.

Filed: September 25, 1991, 3:32 p.m.

TRD-9111813

◆ ◆ ◆ Advisory Commission on State Emergency Commu- nications

Wednesday, October 9, 1991, 9:30 a.m. The Executive Committee of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway, South, B-100, Austin. According to the complete agenda, the committee will call the meeting to order; recognize guests; hear public comment; general discussion on commission work session related to plan amendments and any other business; review regional plan amendment guidelines; consider any new business; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway, South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 24, 1991, 12:40 p.m.

TRD-9111749

Wednesday, October 9, 1991, 10 a.m. The Planning and Implementation Committee of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway, South, B-100, Austin. According to the complete agenda, the committee will call the meeting to order; recognize guests; hear public comment; discuss consideration and approval of pro-

posed plan amendment for Concho Valley Council of Governments; consider any new business; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway, South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 24, 1991, 2:39 p.m.

TRD-9111747

Wednesday, October 9, 1991, 10:30 a.m. The Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway, South, B-100, Austin. According to the complete agenda, the commission will call the meeting to order; recognize guests; hear public comment; planning and implementation committee report; consideration and approval of proposed plan amendment for Concho Valley Council of Governments; consider any new business; consider approval of September meeting minutes; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway, South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 24, 1991, 2:39 p.m.

TRD-9111748

Wednesday, October 9, 1991, 11 a.m. The Commission Work Session of the Advisory Commission on State Emergency Communications will meet at 1101 Capital of Texas Highway, South, B-100, Austin. According to the complete agenda, the commission will call the meeting to order; recognize guests; commission work session to discuss and review regional plan amendment guidelines related to ancillary equipment; and adjourn.

Contact: Glenn Roach, 1101 Capital of Texas Highway, South, B-100, Austin, Texas 78746, (512) 327-1911.

Filed: September 24, 1991, 2:40 p.m.

TRD-9111750

◆ ◆ ◆ Texas Commission on Fire Protection

Wednesday-Friday, October 2-4, 1991, 8:30 a.m. The Texas Commission on Fire Protection will meet at the John H. Reagan Building, 105 West 15th Street, Room 105, Austin. According to the agenda summary, the commission will have election of officers; hear remarks by guest speakers; workshops including discussion of division operations; meet in executive session relating to interim personnel and posting for permanent executive director; and discuss assignment of responsibilities of interim personnel.

Contact: Jack Woods, 333 Guadalupe Street, Austin, Texas 78714-9104, (512) 322-3550.

Filed: September 24, 1991, 2:56 p.m.

TRD-9111754

◆ ◆ ◆ Texas Department of Insur- ance

Wednesday, October 2, 1991, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will review and discuss pending board orders on personnel; litigation; commissioner's orders; and solvency matters.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 24, 1991, 4:05 p.m.

TRD-9111762

Thursday, October 3, 1991, 8:30 a.m. The State Board of Insurance of the Texas Department of Insurance will meet at the William P. Hobby Building, 333 Guadalupe Street, Room 100, Austin. According to the agenda summary, the board will consider proposed amendment to 28 TAC §5.4501 to revise rules in the TCPIA Manual to reflect the maximum limits of liability established under House Bill 2; consider and review proposed board hearing schedule as a result of House Bill 2 implementation; consider motion to withdraw in the matter of a request for hearing by Charles J. George, Inc., on the calculation of an experience rating modifier applicable to workers' compensation insurance.

Contact: Angelia Johnson, 333 Guadalupe Street, Mail Code 113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: September 25, 1991, 4:02 p.m.

TRD-9111830

◆ ◆ ◆ Texas Board of Professional Land Surveying

Friday, October 11, 1991, 8:30 a.m. The Texas Board of Professional Land Surveying will meet at the Plaza San Antonio Hotel, Conference Room F, 555 South Alamo Street, San Antonio. According to the complete agenda, the board will discuss approval of the minutes of the previous meeting; revoke license number 4479 (Complaint 91-24); discuss correspondence; reconsider applications; hear committee reports; and consider new business.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: September 24, 1991, 11:03 a.m.

TRD-9111738

Texas Department of Licensing and Regulation

Tuesday, October 8, 1991, 9 a.m. The Business and Occupational Programs, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Jesus Garza for violation of Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: September 25, 1991, 1:38 p.m.

TRD-9111801

Tuesday, October 8, 1991, 10:30 a.m. The Business and Occupational Programs, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Big State Auto Salvage for violation of Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: September 25, 1991, 1:39 p.m.

TRD-9111802

Wednesday, October 9, 1991, 9 a.m. The Business and Occupational Programs, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Fidel Gustavo Mendez for violation of Statutes, Articles 6687-9b and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: September 25, 1991, 1:38 p.m.

TRD-9111800

Thursday, October 10, 1991, 9 a.m. (rescheduled from September 12, 1991). The Manufactured Housing of the Texas Department of Licensing and Regulation will meet at 920 Colorado Street, E. O. Thompson Building, Room 1012, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, sus-

pension or revocation of the license for Spring Homes, Inc. for violation of Statutes, Articles 5221f and 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 475-2899.

Filed: September 25, 1991, 1:38 p.m.

TRD-9111799

Texas State Board of Medical Examiners

Friday, October 4, 1991, 8:30 a.m. The Reciprocity Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the committee will review reciprocity applicants and consider proposed rule changes; and 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.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:29 a.m.

TRD-9111840

Friday, October 4, 1991, 8:30 a.m. The Disciplinary Process Review Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the committee will approve minutes from the August meeting; review August and September 1991 enforcement reports and review files; meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 4.05(d), 5.06(s)(1), and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:29 a.m.

TRD-9111841

Friday, October 4, 1991, 9:30 a.m. The Examination Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the committee will review examination applicants and the new Texas Medical Jurisprudence examination; and meet in executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 4.05(d), 5.06(s)(1), and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:30 a.m.

TRD-9111842

Friday, October 4, 1991, 11:30 a.m. The Public Information Committee of the Texas

State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the committee will receive a report of public information activities for 1991.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:31 a.m.

TRD-9111843

Friday, October 4, 1991, 1 p.m. The Standing Orders Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the committee will consider a request for waiver of board rules Chapter 185.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:31 a.m.

TRD-9111844

Friday, October 4, 1991, 1 p.m. The Medical School Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the committee will consider a request for approval of exchange fellowship.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:32 a.m.

TRD-9111845

Friday, October 4, 1991, 1:30 p.m. The Finance Committee of the Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the committee will review financial statements and budget.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:32 a.m.

TRD-9111846

Friday-Saturday, October 4-5, 1991, 2 p.m. The Texas State Board of Medical Examiners will meet at 1101 Camino La Costa, Suite 201, Austin. According to the agenda summary, the board will review and discuss proposed rule changes; proposals for decisions; approval of agreed orders; minutes; request for permission to practice in Texas; licensure hearing; probationary appearances; termination suspension; and request for reinstatement. The board will also hear a presentation on USMLE by Kate Hill, Federation of State Medical Boards; and discuss acceptance of national board examination for licensure by reciprocity; and 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.

Contact: Pat Wood, P.O. Box 13562, Austin, Texas 78711, (512) 452-1078.

Filed: September 26, 1991, 9:28 a.m.

TRD-9111839

Midwifery Board

Friday, October 4, 1991, 10 a.m. The Midwifery Board will meet at the Texas Department of Health, 1100 West 49th Street, Room M-618, Austin. According to the complete agenda, the board will introduce new board members; adopt minutes of July and August, 1991 meetings; consider and possibly act on: rules and forms for midwifery program; rules for Bureau of Vital Statistics, Texas Department of Health; discuss transportation issue; disclosure form/informed choice agreement; implementation time frame next four months; and midwife 1990 data.

Contact: Joceline Alexander, CNM, 1100 West 49th Street, Texas Department of Health, Austin, Texas 78756, (512) 458-7700.

Filed: September 24, 1991, 4:03 p.m.

TRD-9111757

Public Utility Commission of Texas

Wednesday, October 2, 1991, 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: 10266, 9879, 9926, 10032, P-9547, and P-10629.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 24, 1991, 4:04 p.m.

TRD-9111758

Wednesday, October 2, 1991, 9:05 a.m. The Administrative Committee of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the agenda summary, the committee will discuss reports; discussion and action on budget and fiscal matters; monthly financial statements; adjournment for executive session to consider: litigation matters; discussion and decision regarding pending or threatened litigation; personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 24, 1991, 4:04 p.m.

TRD-9111760

Monday, October 14, 1991, 1 p.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will consider Docket Number 9230-Houston Lighting and Power Company's standard avoided cost calculation for purchase of capacity and energy from qualifying facilities pursuant to PUC Substantive Rule 23.66 (h)(3); and Docket Number 9850-application of Houston Lighting and Power Company for authority to change rates.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 24, 1991, 4:04 p.m.

TRD-9111759

Monday, October 28, 1991, 1 p.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10417-application of GTE Southwest, Inc. for approval of new service.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 25, 1991, 3 p.m.

TRD-9111808

Wednesday, November 13, 1991, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number 10432-San Bernard Electric Cooperative, Inc. application for approval of report concerning refund of net benefits of Lower Colorado River Authority's transmission lease payment.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 24, 1991, 4:05 p.m.

TRD-9111761

Monday, January 13, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10440-Pedernales Electric Cooperative Inc. 's report to the Public Utility Commission of Texas concerning refund of net benefits of Lower Colorado River Authority's transmission lease payment.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 25, 1991, 3:01 p.m.

TRD-9111810

Tuesday, January 14, 1992, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450N, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 10440-Pedernales Electric Cooperative Inc. 's report to the Public Utility Commission of Texas concerning refund of net benefits of Lower Colorado River Authority's transmission lease payment.

Contact: Mary Ross McDonald, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 25, 1991, 3:01 p.m.

TRD-9111809

Texas Rehabilitation Commission

Thursday, October 3, 1991, 9 a.m. The Texas Planning Council for Developmental Disabilities Planning and Evaluation Committee of the Texas Rehabilitation Commission will meet at 4900 North Lamar Boulevard, Room 5501-02, Austin. According to the complete agenda, the committee will call the meeting to order; approval of minutes; hear public comments; review of planning calendar; designation of representative to nominating committee; discussion of funding activities: information and referral project; proposed inclusive education project; break for lunch from 11:45 a.m.-1 p.m.; hear annual project summary reports; executive director's report; and adjourn.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4081.

Filed: September 25, 1991, 10:54 a.m.

TRD-9111795

Interagency Council on Sex Offender Treatment

Friday, October 18, 1991, 9:30 a.m. The Board of the Interagency Council on Sex Offender Treatment will meet at 1100 West 49th Street, Fifth Floor, Austin. According to the complete agenda, the board will discuss and approve council by-laws; personnel policies; and meet in closed session to discuss personnel matters.

Contact: Bill W. Bownds, 9111 Jollyville Road, #202, Austin, Texas 78759, (512) 343-8520.

Filed: September 25, 1991, 11 a.m.

TRD-9111798

The Texas A&M University System

Saturday, September 28, 1991, 11 a.m. The Strategic Objectives and Long Range Planning Committee of the Board of Regents of the Texas A&M University System will meet at the Board of Regents Meeting Room, College Station. According to the complete agenda, the committee will discuss the Texas A&M University System's strategic planning project.

Contact: Vicki Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: September 24, 1991, 11:03 a.m.

TRD-9111737

Texas Tech University

Thursday, October 3, 1991, 10:30 a.m. The Committee of the Whole of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will consider designating Board of Regents Policy 01.01 as by-laws of the Board of Regents; meet in executive session, Vernon's Annotated Civil Statutes, Article 6252-17, consultation with president and general counsel regarding pending and contemplated litigation, settlement offers, settlement negotiations and matters confidential pursuant to Code of Professional Responsibility of State Bar of Texas; discussion of prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussion concerning evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; and conference with various employees for the purpose of receiving information and asking questions of employees.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:38 p.m.

TRD-9111821

Thursday, October 3, 1991, 10:30 a.m. The Governmental Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:39 p.m.

TRD-9111822

Thursday, October 3, 1991, 10:30 a.m. The Development and Public Relations

Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve the August 1, 1991 committee meeting minutes; consider acceptance of gift-in-kind with value in excess of \$25,000; appointment of members to Board of Directors of Texas Tech University Foundation; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:39 p.m.

TRD-9111823

Thursday, October 3, 1991, 10:30 a.m. The Academic, Student and Administrative Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve the August 1, 1991 committee meeting minutes; consider finding of facts regarding the appointment of an employee to another position of honor, trust, or profit; granting of academic tenure with appointment; ratification of leave of absence; combining classical and romance languages and Germanic and Slavic languages departments and renaming; deletion of department and degree programs in agricultural engineering; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:39 p.m.

TRD-9111824

Thursday, October 3, 1991, 10:30 a.m. The Finance Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve August 1, 1991 committee meeting minutes; consider budget adjustments for June 1 to August 31, 1991; discuss operating budget FY 1992; arts and sciences ambassadors Quasi endowment; new supplemental retirement plan for football coaches; increase the general use fee; assess and collect an international education fee; increase law school application fee; ratify delegation of officers and/or employees to approve official travel reimbursements from appropriated funds; delegation of officers and/or employees to authorize and approve expenditures from appropriated funds; ratify renewal of following employee group benefits contract: medical claims administration; term life, stop loss and accidental death dismemberment; dental and long term disability; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:39 p.m.

TRD-9111825

Thursday, October 3, 1991, 10:30 a.m. The Research Affairs Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve the August 1, 1991 committee meeting minutes; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:39 p.m.

TRD-9111826

Thursday, October 3, 1991, 10:30 a.m. The Campus and Building Committee of the Board of Regents of Texas Tech University will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve August 1, 1991 committee meeting minutes; consider authorizing president to proceed with planning, establish a project budget, and appoint project architect for library addition to law school; approve campus master plan and authorize president to forward to Texas Higher Education Coordinating Board as approved and updated campus master plan for university; authorize president to proceed with planning, establish project budget, and appoint project architect for addition to grandstand facilities at Dan Law Field; authorize president to proceed with planning, establish project budget, and appoint project architect for construction of locker rooms at Dan Law Field; name portion of recreational sports complex the Elo J. Urbanovsky Park; ratify acceptance dates and award contract for physical plant, phase II; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:39 p.m.

TRD-9111827

Friday, October 4, 1991, 9 a.m. The Board of Regents of Texas Tech University will meet at the Administration Building, Campus, Board Suite, Lubbock. According to the agenda summary, the board will hear reports and act on minutes; president's report; academic, student and administrative affairs; finance; campus and building; development and public relations; and committee of the whole.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:40 p.m.

TRD-9111829

Texas Tech University Health Sciences Center

Thursday, October 3, 1991, 10:30 a.m.
The Research Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve the August 1, 1991 meeting; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:37 p.m.

TRD-9111814

Thursday, October 3, 1991, 10:30 a.m.
The Finance Committee of the Board of Regents of Texas Tech University Health Sciences Center Health Sciences Center will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve August 1, 1991 committee meeting minutes; consider budget adjustments for July 1 to August 31, 1991; operating budget for FY 1992; increase of general use fee; assess and collect international education fee; ratify delegation of officers and/or employees to authorize and approve expenditures from appropriated funds; specify officers and/or employees to sign checks; ratify renewal of employee group benefit contracts for medical claims administration; term life, stop loss, and accidental death and dismemberment; dental; long term disability; and reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:38 p.m.

TRD-9111815

Thursday, October 3, 1991, 10:30 a.m.
The Development and Public Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve the August 1, 1991, committee meeting minutes; consider acceptance of gift-in-kind with value in excess of \$25,000; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:38 p.m.

TRD-9111816

Thursday, October 3, 1991, 10:30 a.m.
The Governmental Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to

the complete agenda, the committee will hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:38 p.m.

TRD-9111817

Thursday, October 3, 1991, 10:30 a.m.
The Academic, Student, Clinical and Administrative Affairs Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will approve the August 1, 1991 committee meeting minutes; consider revision of board policies 02.04, 02.05, 02.06, and 4.05; grant emeritus status; eight affiliation agreements for clinical education training facilities for schools of Allied Health and Nursing and Socorro Independent School District; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:38 p.m.

TRD-9111818

Thursday, October 3, 1991, 10:30 a.m.
The Committee of the Whole of the Board of Regents of Texas Tech University Health Sciences Center will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will consider designating board of regents policy 01.01 as by-laws of the board of regents; meet in executive session, Vernon's Annotated Civil Statutes, Article 6252-17, consultation with president and general counsel regarding pending and contemplated litigation; settlement offers; settlement negotiations and matters confidential pursuant to code of professional responsibility of State Bar of Texas; discussion of prospective gifts to the University and Health Sciences Center and contractual negotiations contemplated and those in progress; discussion concerning evaluation and duties of Texas Tech University and Texas Tech University Health Sciences Center officers and employees; conference with various employees for the purpose of receiving information and asking questions of employees.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:38 p.m.

TRD-9111819

Thursday, October 3, 1991, 10:30 a.m.
The Campus and Building Committee of the Board of Regents of Texas Tech University Health Sciences Center will meet at the Health Sciences Center Building, Campus, Room 2B152, Lubbock. According to the complete agenda, the committee will

approve the August 1, 1991 committee meeting minutes; consider approval of campus master plan for Health Sciences Center; authorize president to submit plan to Texas Higher Education Coordinating Board as required by §17.23(6) of revised campus planning rules; ratify acceptance dates; and hear reports.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:38 p.m.

TRD-9111820

Friday, October 4, 1991, 10:05 a.m.
The Board of Regents of Texas Tech University Health Sciences Center will meet at the Administration Building, Board Suite, Campus, Lubbock. According to the agenda summary, the board will hear reports and act on minutes; academic, student, clinical and administrative affairs; finance; campus and building; development and public affairs; and committee of the whole.

Contact: Anne Davis, P.O. Box 42011, Lubbock, Texas 79409-2011, (806) 742-2161.

Filed: September 25, 1991, 3:39 p.m.

TRD-9111828

The University of Texas at Austin

Thursday, October 3, 1991, 2 p.m.
The Council for Intercollegiate Athletics for Women of the University of Texas at Austin will meet at the Ex-Students' Association, Moffett Library, 21st and San Jacinto Streets, University of Texas, Austin. According to the agenda summary, the council will call the meeting to order; discuss approval of the minutes of the previous meetings of April 18, and May 16, 1991; review and discuss old and new business; meet in executive session; make announcements; hear information reports; and adjourn.

Contact: Dr. Donna A. Lopiano, University of Texas, BEL 718, Austin, Texas 78712, (512) 471-7693.

Filed: September 24, 1991, 10:43 a.m.

TRD-9111735

Texas Water Commission

Wednesday, September 25, 1991, 9 a.m.
The Texas Water Commission met at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the emergency revised agenda summary, the commission will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meet-

ing verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in the entirety or for particular action at a future date or time. The emergency status was necessary due to reasonably unforeseeable circumstances and the potential threat to public health and safety.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 24, 1991, 3:51 p.m.

TRD-9111756

Wednesday, October 23, 1991, 3 p.m. The Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North Congress Avenue, Room 118, Austin. According to the agenda summary, the commission will consider an application by Northwest Harris County Municipal Utility District Number 15 for adoption of standby fees. (corrected notice).

Contact: Gloria Vasquez, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: September 25, 1991, 10:53 a.m.

TRD-9111789

Tuesday, November 5, 1991, 9 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Cameron County Fresh Water Supply District Number One, Board Room, 105 Port Road, Port Isabel. According to the agenda summary, the office will consider an application by Cameron County Fresh Water Supply District Number One for an amendment to Permit Number 10757-01 authorizing an increase in the discharge of treated domestic wastewater effluent into the Laguna Madre in Segment Number 2491 of the Bays and Estuaries.

Contact: Bill Zukauckas, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1991, 10:53 a.m.

TRD-9111790

Wednesday, November 13, 1991, 3 p.m. The Office of Hearings Examiner of the Texas Water Commission will meet at the Stephen F. Austin Building, 1700 North

Congress Avenue, Room 118, Austin. According to the agenda summary, the office will consider whether to affirm, modify, or set aside Emergency Order Number 91-13E issued September 18, 1991 to Dow Chemical Company which is located in Brazoria County. The order authorizes Dow Chemical Company to handle and dispose of a distressed three-pound can of diisopropyl ether via controlled detonation on a remote, secure area of its facility.

Contact: Bob Warneke, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: September 25, 1991, 10:53 a.m.

TRD-9111791

Regional Meetings

Meetings Filed September 24, 1991

The Central Texas Mental Health and Mental Retardation Center Board of Trustees met at 408 Mulberry Drive, Brownwood, September 30, 1991, at 5 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, ext. 102. TRD-9111771.

The Red River Authority of Texas Board of Directors will meet at the Wichita Falls Activity Center, 607 Tenth Street, Room 214, Wichita Falls, October 16, 1991, at 9:30 a.m. Information may be obtained from Ronald J. Glenn, 900 Eighth Street, Suite 520, Wichita Falls, Texas 76301, (817) 723-8697. TRD-9111736.

The West Central Texas Council of Governments Executive Committee met at 1025 E.N. 10th Street, Abilene, September 30, 1991, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 E.N. 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9111753.

Meetings Filed September 25, 1991

The Dawson County Central Appraisal District Board of Directors will meet at 920 North Dallas Avenue, Lamesa, October 2,

1991, at 7 p.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9111792.

Meetings Filed September 26, 1991

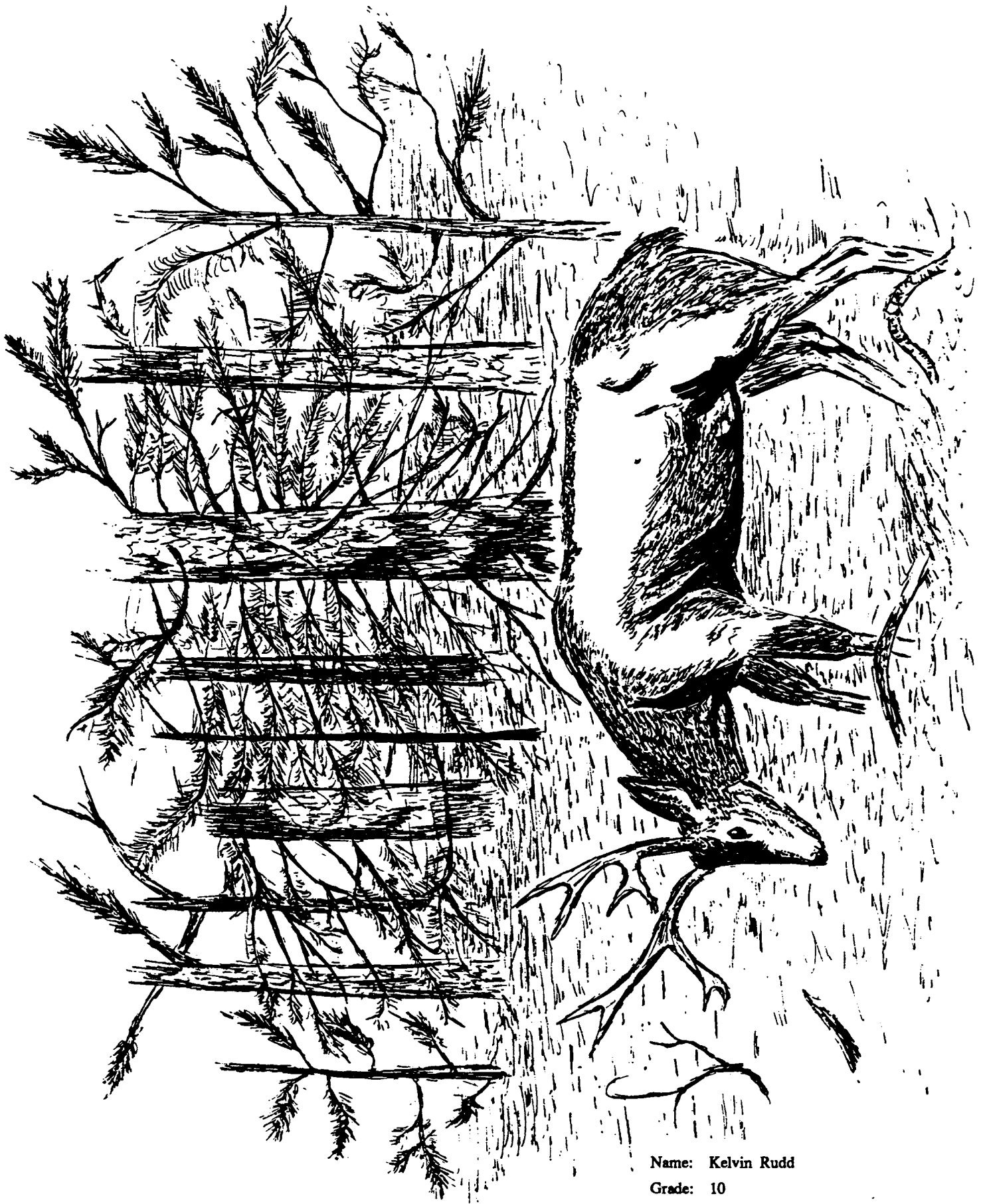
The Coastal Bend Council of Governments Executive Board will meet at the Radisson Marina Hotel, Boardwalk Room, Top Floor, 300 North Shoreline Boulevard, Corpus Christi, October 4, 1991, at 11:30 a.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9111836.

The Coastal Bend Council of Governments Membership Committee will meet at 901 Leopard Street, Commissioners Courtroom, Nueces County Courthouse, Third Floor, Corpus Christi, October 4, 1991, at 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9111837.

The Education Service Center-Region 17 Board of Directors will meet at the Board Room, ESC Region 17, 1111 West Loop 289, Lubbock, October 10, 1991, at 9 a.m. Information may be obtained from Weldon E. Day, 1111 West Loop 289, Lubbock, Texas 79416, (806) 793-4802. TRD-9111834.

The Hunt County Tax Appraisal Tax Appraisal District Appraisal Review Board will meet at the Hunt County Tax Appraisal District, Board Room, 4801 King Street, Greenville, October 7, 1991, at 8:45 a.m. Information may be obtained from Melda Hart or Shirley Smith, P.O. Box 1339, Greenville, Texas 75401, (903) 454-3510. TRD-9111838.

The Scurry County Appraisal District Board of Directors will meet at 2612 College Avenue, Snyder, October 1, 1991, at 8 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9111835.



Name: Kelvin Rudd

Grade: 10

School: Marshall High School, Marshall ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Criminal Justice Notice of Contract Award

The award of this contract for construction management services is filed under Texas Civil Statutes, Article 6252-11c. The Texas Department of Criminal Justice published a request for proposals in the March 22, 1991, issue of the *Texas Register* (16 TexReg 1771), to obtain Construction Management Services for construction of additional capacity prison facilities. The services will consist of oversight and management of Texas Department of Criminal Justice's construction of additional capacity prison facilities.

The due dates of reports of construction progress will be on an ongoing basis during the term of the contract period. The proposal selected was that the Mays Companies, Inc., 2777 Stemmons Freeway, Suite 820, Dallas, Texas 75207.

The beginning date of the contract is September 1, 1991, the contract will end upon completion of construction. The total value of the contract is not to exceed (NTE) \$1,448,144.

For further information, please call (409) 294-6778.

Issued in Austin, Texas, on September 23, 1991.

TRD-9111708 Jackie Cox
General Counsel
Texas Department of Criminal Justice

Filed: September 23, 1991

For further information, please call: (512) 463-9988

Texas Department of Health Correction of Errors

The Texas Department of Health submitted emergency amendments to 25 TAC §229.253, concerning the registration of wholesale distributors of drugs. The section was published in the September 3, 1991, *Texas Register* (16 TexReg 4921).

Due to a proofreading error by the *Texas Register*, subsection (a) was divided into a subsection (a) and (b). The subsection should read as follows.

"(a) Minimum standards. All wholesale distributors of drugs [in Texas] shall comply with the minimum standards specified in subsection (b) of this section in addition to the existing statutory standards contained in the *Texas Health and Safety Code, Chapter 431* [the Texas Food, Drug and Cosmetic Act, Texas Civil Statutes, Article 4476-5]."

Due to an error in the agency's submission, subsection (d) shows new and deleted language which is inaccurate. Subsection (d) should read as follows.

"(d) Drug labeling. If a person, firm or corporation labels an article of drug, the label shall meet the requirements of

the *Texas Health and Safety Code, Chapter 431* [the Texas Food, Drug, and Cosmetic Act, Texas Civil Statutes, Article 4476-5]."

The Texas Department of Health submitted proposed amendments to 25 TAC §157.2 and new §§157.121-157.129, concerning emergency medical care. The rules were published September 19, 1991, (16 TexReg) 4921.

The proposed date of adoption is January 15, 1992, and not November 27, 1991, as originally submitted.

The Texas Department of Health submitted a notice of HIV Health and Social Services Project Public Hearings for publication September 10, 1991, (16 TexReg 4984).

Due to an error in the agency's submission, the fifth paragraph omitted the name of an applicant. The paragraph should read as follows.

"In Public Health Region 8, the applicants are Coastal Bend Family Planning, Inc., and Victoria City/County Health Department. The hearing will be held on September 27, 1991, at the Victoria College Library, 2200 East Red River, Victoria, Texas 77901, beginning at 1:30 p.m. For more information call David Cavazos at (512) 423-0130."

Texas Department of Housing and Community Affairs Public Notice

The Texas Department of Housing and Community Affairs announces that its annual Community Development Block Grant performance and evaluation report is available for review at the Community Development Block Grant Division, 410 East Fifth Street, Austin, during regular business hours. The report includes the department's use of Community Development Block Grant funds for the year ending June 30, 1991; the nature of and reasons for changes in the program's objectives; indications of how the department would change its programs as a result of its experiences; and an evaluation of the extent to which its funds were used for activities that benefited low and moderate-income persons.

Written comments may be submitted through October 10, 1991 to: Ruth Cedillo, Interim Director, Community Development Block Grant Division, Texas Department of Housing and Community Affairs, P.O. Box 12026, Austin, Texas 78711-2026.

Issued in Austin, Texas, on September 25, 1991.

TRD-9111779 Anne O. Paddock
Interim Assistant General Counsel
Texas Department of Housing and
Community Affairs

Filed: September 25, 1991

For further information, please call: (512) 320-9401

◆ ◆ ◆
Texas Department of Human Services*
Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Department of Human Services is inviting consultant proposal request to provide the following consultant services.

Description of Services. A consultant proposal has been developed to solicit consulting services in nursing facility case mix research, demonstration and evaluation techniques, case mix classification and reimbursement systems, quality of care indicator development, and multivariate statistical methods.

Contact Person. To obtain a proposal package, please contact Sue Wilson, Texas Department of Human Services, P.O. Box 149030, MC E-601, Austin, Texas 78714-9030, (512) 450-3744.

Closing Date. The closing date for receiving offers is October 14, 1991.

Evaluation and Selection. Evaluation criteria will include offerer's familiarity with methods for developing, demonstrating, and evaluating case mix classification systems; offerer's skill in the development and application of research design techniques and multivariate statistical techniques; offerer's familiarity with methods for developing and applying quality of care indicators for tracking and evaluating nursing facility resident care; and reasonableness of proposed cost of service in relation to the work described. Preference will be given, all other considerations being equal, to a consultant whose principal place of business is within the state or who will manage the contracted project entirely from its office within the state.

Issued in Austin, Texas, on September 24, 1991.

TRD-9111770 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: September 24, 1991

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

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Request for Proposal

The Texas Department of Human Services (DHS) is inviting proposals for the provision of home and community-based services provided under the authority of the Community Living Assistance and Support Services Program (CLASS). Under this waiver, home and community-based services are provided as an alternative to institutionalization to Medicaid eligible individuals with related conditions who would otherwise require the level of care of an intermediate care facility for the mentally retarded with related conditions. DHS intends to serve persons living in one to six geographic areas. Individual contracts will be written to serve a minimum of 30 persons, depending on the number of qualifying proposals received.

Description of services. The direct services agency is responsible for delivering home and community-based services to eligible waiver participants in accordance with individual plans of care. Services provided by the direct service agency include: habilitation, respite, nursing, physical therapy, psychological, occupational therapy, speech

pathology services, adaptive aids and minor home modifications. Direct services agencies also participate on interdisciplinary teams and work in cooperative relationship with case management providers who serve as the focal point for service planning, coordination, and monitoring.

Contract effective dates. Contracts will be effective February 1, 1992 through June 30, 1993, or upon certification by the department as a CLASS provider, whichever is later.

To request and RFP package. To request and RFP package, please contact Barbara Stegall, Program Coordinator, P.O. Box 149030 (MC W-521), Austin, Texas 78714-9030, (512) 450-3228 or FAX (512) 450-4176, John H. Winters Humans Services Center, 701 West 51st Street, Austin. RFP packages will be available on October 15, 1991.

Closing date and time. The closing date for receiving proposals will be 5 p.m. on November 20, 1991.

Offeror's conference. An offeror's conference will be held at 9 a.m. on November 1, 1991, at the Joe T. Thompson Conference Center, University of Texas, 2405 East Campus Drive, Austin, Texas 78713, Room 2.120.

Criteria for award. The department intends to award the contracts to direct services agency providers in one or more of the following service areas listed in order of priority: Dallas County; Hidalgo/Cameron/Starr/Willacy counties; El Paso County; Nueces County; Lubbock County; and Potter/Randal Counties. The department awards contracts to all providers whose proposals receive qualifying scores, by service areas in order of priority, and who desire to contract with the department until all available slots are awarded.

Restrictions. The award of a contract is contingent on there being a one-to-one or two-to-one ratio of qualifying proposals from case management and direct services agencies in a service area. If three or more of one type of agency (case management or direct services) qualify and desire to contract with the department to deliver services in a single catchment area, contracts cannot be awarded in that area.

Issued in Austin, Texas, on September 24, 1991.

TRD-9111769 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: September 24, 1991

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

◆ ◆ ◆
The Texas Department of Human Services (DHS) is inviting proposals for the delivery of case management services under the authority of the Community Living Assistance and Support Services Program (CLASS) Waiver Program. Under this waiver, home and community-based services are provided as an alternative to institutionalization to Medicaid eligible individuals with related conditions who would otherwise require the level of care of an intermediate care facility for the mentally retarded with related conditions. DHS intends to serve persons living in one to six geographic areas. Individual contracts will be written to serve a minimum of 30 persons, depending on the number of qualifying proposals received.

Description of services. The case manager enrolls participants in the CLASS program and is the focal point for service planning, coordination, and monitoring. The case manager convenes the interdisciplinary team responsible

for developing the plan of care and assures that services are aligned with the aims of the individual participant. Case managers further assist in the identification and development of appropriate community resources, review of service delivery, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct service agency which delivers home and community-based services.

Contract effective dates. Contracts will be effective February 1, 1992 through June 30, 1993, or upon certification by the department as a CLASS provider, whichever is later.

To request and RFP package. To request and RFP package, please contact Barbara Stegall, Program Coordinator, P.O. Box 149030 (MC W-521), Austin, Texas 78714-9030, (512) 450-3228 or FAX (512) 450-4176, John H. Winters Humans Services Center, 701 West 51st Street, Austin. RFP packages will be available on October 15, 1991.

Closing date and time. The closing date for receiving proposals will be 5 p.m. on November 20, 1991.

Offeror's conference. An offeror's conference will be held at 9 a.m. on November 1, 1991, at the Joe T. Thompson Conference Center, University of Texas, 2405 East Campus Drive, Austin, Texas 78713, Room 2.120.

Criteria for award. The department intends to award the contracts to case management services agency providers in one or more of the following service areas listed in order of priority: Dallas County; Hidalgo/Cameron/Starr/Willacy counties; El Paso County; Nueces County, Lubbock County; and Potter/Randal Counties. The department awards contracts to all providers whose proposals receive qualifying scores, by service areas in order of priority, and who desire to contract with the department until all available slots are awarded.

Restrictions. The award of a contract is contingent on there being a one-to-one or two-to-one ratio of qualifying proposals from case management and direct services agencies in a service area. If three or more of one type of agency (case management or direct services) qualify and desire to contract with the department to deliver services in a single catchment area, contracts cannot be awarded in that area.

Issued in Austin, Texas, on September 24, 1991.

TRD-9111788 Nancy Murphy
Agency liaison, Policy and Document
Support
Texas Department of Human Services

Filed: September 24, 1991

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

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Public Utility Commission of Texas
Notice of Intent To File Pursuant To
Public Utility Commission Substantive
Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific CentraNet service Integrated Services Digital Network (ISDN) for Associates Bancorp, Inc., Irving.

Tariff Title and Number. Application of GTE Southwest, Inc. for Approval of CentraNet service ISDN for Associates Bancorp, Inc. pursuant to Public Utility Commission Substantive Rule 23.27(K). Tariff Control Number 10608.

The Application. GTE Southwest, Inc. is requesting approval of CentraNet Service for Associates Bancorp, Inc. The geographic service market for this specific service is the Irving, Texas area.

Persons who wish to comment upon action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on September 23, 1991.

TRD-9111740 Mary Ross McDonald
Secretary of the Commission
Public Utility Commission of Texas

Filed: September 24, 1991

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

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State Committee of Examiners for
Speech-Language Pathology and
Audiology
Correction of Error

The State Committee of Examiners for Speech-Language Pathology and Audiology submitted proposed amendments to 22 TAC §741.64 and §741.162 for publication in the September 3, 1991, *Texas Register* (16 TexReg 4803).

Due to errors in the agencies submission the following corrections should be made.

Concerning §741.64(i)(4) and (j), brackets indicating the beginning and ending of deleted language are inappropriately placed. Subsections (i)(4) and (j) should appear as follows:

"[(4) Applicants, meeting the criteria of this subsection, who do not succeed in acquiring a license as an associate by August 31, 1988, shall not be eligible for licensure under this time-limited waiver.]

(j) The requirements and duties of a communication helper are as follows:

(1)-(2) (No Change.)

(3) a communication helper may work under direction of an associate if the associate is [approved and] supervised as required by subsection (g) of this section [by a licensed professional];

(4)-(5) (No Change.)"

Concerning §741.162(g)(2)(A)(iii), some new language is not shown in bold print and some language is inaccurately shown in bold print as being new language. The clause should read as follows:

(iii) must furnish proof of having earned, during the inactive period, at least 10 continuing education hours. Dual licensees must submit proof of having earned, during the inactive period, at least 15 hours of continuing education. [Proof is to be furnished at the time of reactivation.] A person who has at least 10 [accrued sufficient] continuing education hours, or at least 15 continuing education hours for holders of dual licenses, accrued under

§741.163(5) of this title (relating to Requirements for Continuing Professional Education) for renewal shall be deemed to have met this requirement.

◆ ◆ ◆
**Texas Engineering Experiment Station
Consultant Proposal Request**

This request is filed under the provisions of Texas Civil Statutes, Article 6252-11c.

The consultant must: establish a working relationship between INDAR and technology-related trade associations to facilitate private sector participation in INDAR's research programs; provide liaison with the Office of National Drug Control Policy; assist in preparation and management of state proposals to federal agencies; furnish the Executive Branch information on INDAR's drug abatement research activities upon request; have experience in managing multi-state and multi-national projects; possess an existing, substantial, professional relationship with one or more technology-related trade associations; be located in Washington, DC.

Interested consultants should contact Carol J. Cantrell, 301 Wisenbaker, Texas Engineering Experiment Station, College Station, Texas 77843, (409) 845-1324.

Closing date for receipt of offers of consultant services is September 15, 1991.

The contract will be awarded following normal contract procedures.

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

Issued in College Station, Texas, on September 1, 1991.

TRD-9111728 Carol J. Cantrell
Assistant Director of TEES
Texas Engineering Experiment Station

Filed: September 24, 1991

For further information, please call: (409) 845-3124

◆ ◆ ◆
**Veterans Land Board
Request for Proposal**

In accordance with Texas Civil Statutes, Article 6252-11c, the Veterans Land Board (the board) expects to sell its Veterans' Land Refunding Bonds, Series 1991, in the original par amount of \$33,685,000. Of this amount, approximately, \$6,000,000 will be designated College Savings Bonds. The College Savings Bonds will be tax-exempt, registered, general obligation bonds of the State of Texas, and will be dated on the initial date of delivery. The maturity schedule of the College Savings Bonds will consist of serial capital appreciation bonds maturing each year from 2004 to 2011. The principal and interest on the College Savings Bond is payable at maturity.

Proposals concerning the provision of paying agent/registrar services for the \$6,000,000 of College Savings Bonds only, will be accepted by the board until 5 p.m., central standard time on October 29, 1991. The board will select a paying agent/registrar at its meeting on or about October 30, 1991.

For a detailed copy of the request for proposals, call or write: Tom Hazelton, Stephen F. Austin Building, 1700 North Congress Avenue, Room 810, Austin, Texas 78701-1495, (512) 463-5120.

The board will determine in its sole discretion which bid constitutes the lowest and best bid. The right is reserved for the board to waive irregularities and to reject any and all proposals.

Issued in Austin, Texas, on September 23, 1991.

TRD-9111727 Garry Mauro
Chairman
Veterans Land Board

Filed: September 24, 1991

For further information, please call: (512) 463-5394

◆ ◆ ◆
**Texas Water Commission
Enforcement Orders**

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to HCH Utility Company (Permit 11974-01) on September 19, 1991, assessing \$3,000 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Margaret Ligarde, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-9111689 Laurie J. Lancaster
Notices Coordinator
Texas Water Commission

Filed: September 23, 1991

For further information, please call: (512) 463-7898.

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Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Bush & Bailey Oil Company (Permit 11578-01) on September 19, 1991, assessing \$3,620 in administrative penalties. Stipulated penalties were also imposed.

Information concerning any aspect of this order may be obtained by contacting Robert Martinez, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

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

TRD-9111688 Laurie J. Lancaster
Notices Coordinator
Texas Water Commission

Filed: September 23, 1991

For further information, please call: (512) 463-7898.

◆ ◆ ◆
Meeting Notice

A meeting of the Scientific/Technical Advisory Committee of the Galveston Bay National Estuary Program is Sched-

uled for: Thursday, October 3, 1991, 10 a.m., Forest Room-Bayou Building, University of Houston-Clear Lake, 2700 Bay Area Boulevard, Houston.

During this month's meeting, STAC will review and approve Project Work Plans and Quality Assurance Plans for a variety of FY92 Characterization Studies. Additionally, STAC will discuss the need for any additional characterization studies. Finally, the Monitoring sub-committee will update the STAC on the results of their last meeting.

Issued in Houston, Texas, on September 20, 1991.

TRD-9111687 Frank S. Shipley, Ph.D.
Program Manager, Galveston Bay National
Estuary Program
Texas Water Commission

Filed: September 23, 1991

For further information, please call: (713) 332-9937

◆ ◆ ◆
**Notice of Application For Waste
Disposal Permit**

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of September 16-September 20, 1991.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7906.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number, and type of application—new permit, amendment, or renewal.

Henk & Roelie Post; Mt. Vernon; a dairy; approximately 3.5 miles south of the intersection of Interstate Highway 30 and State Highway 37 in Franklin County; 03126; amendment.

Northwoods Management, Inc.; Houston; wastewater treatment facilities; approximately 3,000 feet south and 4,500 feet east of the intersection of FM Road 529 and Addicks-Fairbanks Road in Harris County; 13484-01; amendment.

Pennzoil Products Company doing business as Perreco; Dickinson; a plant that produces purified mineral oil and sulfinated hydrocarbons; approximately 700 feet southeast of the intersection of FM Road 517 and Nichols Street in the City of Dickinson, Galveston County; 00377; amendment.

Timberwood Nursing Home, Inc.; Austin; wastewater treatment facilities; approximately 3 1/2 miles northeast of the City of Livingston and just south of the Town of Marston in Polk County; 13388-01; renewal.

Trinity River Authority of Texas, Southern Region; Huntsville; wastewater treatment facilities; approximately 5,000 feet southwest of the intersection of U.S. Highway 190 and FM Road 3186, 1,500 feet east of the City of Onalaska in Polk County; 11298-01; renewal.

United States Air Force-Dyess Air Force Base; Abilene; an industrial solid waste storage and disposal facility; approximately 1.3 mile west of the intersection of Highway 277 and Highway 83/83 (Winters Freeway) in Taylor County; HW-50250; new; 45-days.

Jon Williamson; Garrison; a dairy; approximately four miles southwest of the intersection of FM Road 138 and FM Road 95 in Nacogdoches; 03374; new.

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

TRD-9111690 Laurie J. Lancaster
Deputy Chief Clerk
Texas Water Commission

Filed: September 23, 1991

For further information, please call: (512) 463-7906

◆ ◆ ◆
Public Notices

The Texas Water Commission (the commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the Act), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The Double R Plating facility was identified as a site proposed for listing on the state registry, and notice thereof was published in the September 10, 1991, *Texas Register* (16 TexReg 4989). Pursuant to the Act, §361.184(c), if a public meeting is requested regarding the proposed listing of a facility on the state registry, the commission must publish in the *Texas Register* the date, time, and location of a public meeting not later than 31 days before the date of the meeting.

A public meeting has been requested and scheduled regarding the proposed listing of the Double R Plating Site. The time and place for this public meeting is as follows: November 7, 1991, at 7 p.m. in the cafeteria of the Queen City High School at 1013 Houston Street, Queen City, Cass County.

The general nature of the potential endangerment to public health and safety or the environment posed by the Double R Site, as determined by information currently available to the executive director, is as follows.

The Double R Plating Company (aka R & R Plating Company, BBC) site (the site) is located off FM 96 approximately three miles west of Queen City, Cass County, on the west side of Cass County Road 3544 (CCR 3544) approximately 0.5 mile north of the FM 96 and CCR 3544 intersection. The site is an abandoned zinc/chromate metal plating facility. A total of approximately 260 cubic yards of plating waste remain on-site, including 17 55-gallon drums, two shallow unlined sumps, and a large unlined, concrete-reinforced cinderblock wastewater basin. The contaminants of concern are chromium, copper, and zinc. Hazards presented by this site are release of contaminants to surface soils, as documented by sample analyses, and potential ground water and surface water contamination due to the release of hazardous substances from the site.

The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative

Procedure and Texas Register Act (Texas Civil Statutes, Article 6252-13a). Persons desiring to comment on the proposed listing of the site may do so in the context of the public meeting either orally or in writing. Written comments may also be submitted to the attention of James A. Feeley, Superfund and Emergency Response Section, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087; (512) 463-7785.

The executive director of the Texas Water Commission has prepared a brief summary of the commission's public records regarding the site. This summary, as well as the public records themselves, are available for inspection and copying during regular commission business hours. Such information may be obtained by contacting David Kopp, Central Records Center, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087; (512) 463-8562. Copying of file information is subject to payment of a fee. Other information may also be obtained from Stephen Dickman, Staff Attorney, Texas Water Commission, at the same address; (512) 463-8069.

Issued in Austin, Texas, on September 25, 1991.

TRD-9111777 Jim F. Haley
Director, Legal Division
Texas Water Commission

Filed: September 25, 1991

For further information, please call: (512) 463-7785



The Texas Water Commission (the commission) is required under the Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the act), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The first registry of such sites was published in the *Texas Register* on January 16, 1987 (12 TexReg 205). The last registry was published on April 18, 1989 (14 TexReg 1882). Since the 1989 registry two sites, Rio Grande Refinery I & II were de-listed as published in the August 9, 1991, *Texas Register* (16 TexReg 4377), and "sites have been proposed for listing. Pursuant to §361.181 the updated registry identifying those facilities that may constitute an imminent and substantial endangerment in Texas are listed in relative priority of need of action as follows: Houston Scrap, 3799 Jensen Drive, Houston, Harris County: scrap metal and battery recycling; Houston Lead, 300 Holmes Road, Houston, Harris County: battery recycling; State Marine, Yacht Club Road, Port Arthur, Jefferson County: barge cleaning; Precision Machine, 500 West Olive Street, Odessa, Ector County: machine and chrome plating; Sonics International, Inc., two miles west of Ranger on the north side of FM Road 101, Eastland County: two hazardous waste injection wells; Maintech International, 8300 Old Ferry Road, Port Arthur, Jefferson County: chemical cleaning service; Federated Metals, 9200 Market Street, Houston, Harris County: Metal smelting and reclamation plant; Gulf Metals/ northwest corner of the intersection of Mykawa and Almeda-Genoa, Houston, Harris County: metal slag and organic waste disposal; Wortham Lead Salvage, on the north side of Highway 175 approximately 2.5 miles southeast of Mabank, Henderson County; battery recycling; Texas American Oil, approximately three miles north of Midlothian on State Highway 67, Ellis County: oil refining; Niagara Chemical, 421 North C Street, Harlingen, Cameron County: pesticide formulation plant; International Creosoting, 1110 Pine Street, Beaumont, Jefferson County: wood creosoting; McBay Oil & Gas, three miles

northwest of Grapeland on FM 1272, Houston County: waste oil recycling and refinery. Aztec Mercury, 401 Callaway Drive, Alvin, Brazoria County: mercury recycling; Solvent Recovery Services, 5502 Highway 521 approximately 0.2 mile south of Highway 521 and Highway 6, Arcola, Fort Bend County: solvent recovery; Harris Sand Pits, 23340 South Highway 16, 10.5 miles south of San Antonio city limits, Bexar County: industrial waste disposal; Butler Ranch, 11.8 miles west of Falls City on FM 791, Kames County: industrial waste disposal; Pip Minerals, 3303 1/2 Beaumont Avenue, Liberty, Liberty County: Chromium, ignitable wastes, and drilling chemicals; Hayes-Sammons Warehouse, East 8th Street and Moller Avenue, Mission, Hidalgo County: pesticide storage; Baldwin Waste Oil Company, on County Road 44 approximately 0.1 mile west of Highway 77, Robstown, Nueces County: waste oil recycling; Waste Oil Tank Service, 2010 Hartwick Road off Highway 59 N, Houston, Harris County: waste oil recycling; Hall Street, north of intersection of California Street and 20th Street East, north of Dickinson, Galveston County: industrial waste disposal; Un-Named Plating Site, 6816-6824 Industrial Boulevard, El Paso, El Paso County: metal plating waste ponds; La Pata Oil/S.W. Oil, 1403 Ennis Street, Houston, Harris County: waste oil recycling; Munoz Borrow Pits, 0.1 mile south of Highway 83 on FM 1016, Mission, Hidalgo County: pesticide contaminated fill area; South Texas Solvents, approximately four miles south of Banquete at the intersection of FM 666 and County Road 32, Nueces County: solvent recycling and oil refinery; Bestplate, 1095 South I-45, south of Hutchins, Dallas County: chromium plating.

Pursuant to §361.184(a) those facilities which have been determined to be eligible and have been proposed for listing on the state superfund registry are listed in relative priority of need of action as follows: Double R Plating Company, on CR 3544 north of Highway 96 three miles west of Queen City, Cass County: Zinc and chromium plating; Pioneer Oil and Refining Company, adjacent to 20280 South Payne Road, outside of Somerset, Bexar County: oil refinery; Higgins Wood Preserving, intersection of Paul Avenue and Warren Street, Lufkin, Angelina County: wood creosoting; Marshall Wood Preserving, 2700 West Houston Street, Marshall, Harrison County: Wood creosoting; Thompson-Hayward Chemical, on the east side of Highway 277 between Eden and Houston Streets, Munday, Knox County: pesticide formulating; Old Lufkin Creosoting, 1411 East Lufkin Avenue, Lufkin, Angelia County: wood creosoting; Hagerson Road Drum, east of 1221 Hagerson Road, DeWalt, Fort Bend County: drummed industrial waste; JCS, Company, on County Road 2410 one and three quarter miles north of Highway 98 east of Phalba, Vandt County: battery recycling; Jerrell B. Thompson Battery, on County Road 2410 one-half mile north of Highway 98 east of Phalba, Van Zandt County: battery recycling; Jenson Drive Scrap, 3603 Jenson Drive, Houston, Harris County: scrap salvage; Tricon American, Inc., 101 East Hampton Road, Crowley, Tarrant County: Industrial waste pile.

Interested parties may submit written comments to the commission relative to any of the sites listed above to the attention of James A. Feeley, Superfund and Emergency Response Section, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087; (512) 463-7785. The public records for each of the sites are available for inspection and copying during regular commission business hours. Such information may be obtained by contacting David Kopp, Central Records Center, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087; (512) 463-8562. Copying of file information is subject to payment of a fee. Other information may also be obtained

from Chuck Epperson, Superfund Section, Texas Water Commission, at the same address; (512) 463-7785.

Issued in Austin, Texas, on September 25, 1991.

TRD-9111778 Jim F. Haley
Director, Legal Division
Texas Water Commission

Filed: September 25, 1991

For further information, please call: (512) 463-7785

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Texas Workers' Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission submitted adopted new 28 TAC §134.1, concerning the various medical fee guidelines that are adopted by the commission. The rule was published September 20, 1991 (16 TexReg 5210).

Due to an error in the agency's submission, on page 5211 in subsection (c), the word "dentistry" was omitted. It should be inserted between "osteopathy" and "chiropractic".

In subsection (f) "services" should be plural as follows. "(f) Reimbursement for services not identified..."

◆ ◆ ◆

Texas Register

P.O. Box 13824

Austin, TX 78711-3824

(512)463-5561

The *Texas Register* encourages schools in all of Texas' school districts to participate in the Student Art project. Since its inception in 1987, the project has enjoyed success. More than 24 of Texas' schools districts have participated and artwork has been published in more than 400 issues of the *Texas Register*. The program is sponsored by the *Texas Register* to promote the artistic abilities of Texas students and to help students gain an insight into Texas government.

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- ✓ Artwork should be no smaller than 3" x 5" and no larger than 8 1/2" x 11".
- ✓ Each project submitted must be clearly labeled and legibly identified with the artist's name, grade, school, school district, and city.
- ✓ Artwork will be printed in groupings by school district. Each school will receive a free copy of the *Texas Register* when submitted artwork is printed. Schools are limited to three submissions per year.
- ✓ Artwork will not be returned.

The artwork is used to fill what would otherwise be blank pages in the *Texas Register*. The blank pages are a result of the production process used to create the *Texas Register*. The artwork does not add additional pages to each issue and in no way increases the cost of the *Texas Register*.

For more information about the student art project, please contact Roberta Knight at (512) 463-5561.



YES, I am interested in submitting artwork from my school. Please send me more information about the Student Art project.

Name

School

District

Address

City, ST Zip

Are you a school official, art teacher, parent, or student?

Please return this form to: Texas Register, P.O. Box 13824, Austin, TX 78711-3824. For more information contact Roberta Knight at (512) 463-5561.

★★★★★ATTENTION★★★★★
TEXAS REGISTER READERS

On the following page is an example of the new *Texas Register* Table of Contents.

By combining our present Contents with the Table of Texas Administrative Code (TAC) Titles Affected, readers will be able to scan a single table for agency name, chapter name, and section number.

This new Table of Contents also will help readers who subscribe to the *Register* on floppy diskette to cite page numbers in the printed edition of the *Texas Register*.

Please take a few minutes to preview our new Table of Contents. Address your approval, criticism, or suggestions to:

Texas Register Contents
P. O. Box 13824
1019 Brazos, Room 245
Austin, Texas 78711-3824
(512) 463-5561

We are planning to change the Table of Contents format beginning in the November 1, 1991 issue. The blue-cover *Texas Register* quarterly indexes will continue to publish the cumulative Table of TAC Titles Affected and the Cumulative Agency Guide.

Texas Register

Volume 16, Number 67, September 10, 1991

Pages 4875-4990

In This Issue...

Office of the Governor

Appointments Made August 21, 1991

4885-Interstate Oil Compact Commission

Appointments Made August 28, 1991

4885-State Job Training Coordinating Council

Emergency Sections

Texas Department of Commerce

Texas Community Development Program

4887-10 TAC §178.10, §178.13

4889-10 TAC §178.19

Texas Alcoholic Beverage Commission

Bingo Regulations

4891-16 TAC §55.545

4892-16 TAC §55.547

4892-16 TAC §55.550

4893-16 TAC §55.555

State Board of Registration for
Professional Engineers

Practice and Procedure

4893-22 TAC §131.134

Texas Department of Health

Communicable Diseases

4894-25 TAC §97.16

Emergency Medical Care

4894-25 TAC §157.45

Solid Waste Management

4894-25 TAC §325.5

4895-25 TAC §325.93

4895-25 TAC §§325.1101-325.1109

State Board of Insurance

Property and Casualty Insurance

4896-28 TAC §5.204

Texas Parks and Wildlife Department

Fisheries and Wildlife

4901-31 TAC §§57.371-57.376

4903-31 TAC §57.374, §57.375

Texas Department of Human Services

Early and Periodic Screening, Diagnosis, and Treatment

4904-40 TAC §33.13

4904-40 TAC §33.122

4904-40 TAC §33.124

4904-40 TAC §§33.306, 33.318, 33.320

Veterans Land Board

General Rules

4905-40 TAC §175.17

State Department of Highways and
Public Transportation

Construction and Contract Administration Division

4905-43 TAC §§9.20-9.22

Division of Motor Vehicles

4906-43 TAC §17.69

Right of Way Division

4907-43 TAC §21.149

4907-43 TAC §21.150

State Board of Insurance

4909-Notification Pursuant to the Texas Insurance Code,
Chapter 5, Subchapter L

1991 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1991 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. A bullet beside a publication date indicates that the deadlines have been moved because of state holidays.

| FOR ISSUE PUBLISHED ON | ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M. | ALL NOTICES OF OPEN MEETINGS BY 10 A.M. |
|-------------------------|---|---|
| 1 *Tuesday, January 1 | Friday, December 21 | Thursday, December 27 |
| Friday, January 4 | NO ISSUE PUBLISHED | |
| 2 Tuesday, January 8 | Wednesday, January 2 | Thursday, January 3 |
| 3 Friday, January 11 | Monday, January 7 | Tuesday, January |
| 4 Tuesday, January 15 | Wednesday, January 9 | Thursday, January 10 |
| 5 Friday, January 18 | Monday, January 14 | Tuesday, January 15 |
| 6 Tuesday, January 22 | Wednesday, January 16 | Thursday, January 17 |
| Friday, January 25 | 1990 ANNUAL INDEX | |
| 7 Tuesday, January 29 | Wednesday, January 23 | Thursday, January 24 |
| 8 Friday, February 1 | Monday, January 28 | Tuesday, January 29 |
| 9 Tuesday, February 5 | Wednesday, January 30 | Thursday, January 31 |
| 10 Friday, February 8 | Monday, February 4 | Tuesday, February 5 |
| 11 Tuesday, February 12 | Wednesday, February 6 | Thursday, February 7 |
| 12 Friday, February 15 | Monday, February 11 | Tuesday, February 12 |
| 13 Tuesday, February 19 | Wednesday, February 13 | Thursday, February 14 |
| 14 *Friday, February 22 | Friday, February 15 | Tuesday, February 19 |
| 15 Tuesday, February 26 | Wednesday, February 20 | Thursday, February 21 |
| 16 Friday, March 1 | Monday, February 25 | Tuesday, February 26 |
| 17 Tuesday, March 5 | Wednesday, February 27 | Thursday, February 28 |
| 18 Friday, March 8 | Monday, March 4 | Tuesday, March 5 |
| 19 Tuesday, March 12 | Wednesday, March 6 | Thursday, March 7 |
| 20 Friday, March 15 | Monday, March 11 | Tuesday, March 12 |
| 21 Tuesday, March 19 | Wednesday, March 13 | Thursday, March 14 |
| 22 Friday, March 22 | Monday, March 18 | Tuesday, March 19 |
| 23 Tuesday, March 26 | Wednesday, March 20 | Thursday, March 21 |
| 24 Friday, March 29 | Monday, March 25 | Tuesday, March 26 |
| 25 Tuesday, April 2 | Wednesday, March 27 | Thursday, March 28 |
| 26 Friday, April 5 | Monday, April 1 | Tuesday, April 2 |
| 27 Tuesday, April 9 | Wednesday, April 3 | Thursday, April 4 |
| 28 Friday, April 12 | Monday, April 8 | Tuesday, April 9 |
| 29 Tuesday, April 16 | Wednesday, April 10 | Thursday, April 11 |
| *Friday, April 19 | FIRST QUARTERLY INDEX | |

| | | |
|-------------------------|-----------------------------|---------------------|
| 30 Tuesday, April 23 | Wednesday, April 17 | Thursday, April 18 |
| 31 Friday, April 26 | Monday, April 22 | Tuesday, April 23 |
| 32 Tuesday, April 30 | Wednesday, April 24 | Thursday, April 25 |
| 33 Friday, May 3 | Monday, April 29 | Tuesday, April 30 |
| 34 Tuesday, May 7 | Wednesday, May 1 | Thursday, May 2 |
| 35 Friday, May 10 | Monday, May 6 | Tuesday, May 7 |
| 36 Tuesday, May 14 | Wednesday, May 8 | Thursday, May 9 |
| 37 Friday, May 17 | Monday, May 13 | Tuesday, May 14 |
| 38 Tuesday, May 21 | Wednesday, May 15 | Thursday, May 16 |
| 39 Friday, May 24 | Monday, May 20 | Tuesday, May 21 |
| 40 Tuesday, May 28 | Wednesday, May 22 | Thursday, May 23 |
| 41 *Friday, May 31 | Friday, May 24 | Tuesday, May 28 |
| 42 Tuesday, June 4 | Wednesday, May 29 | Thursday, May 30 |
| 43 Friday, June 7 | Monday, June 3 | Tuesday, June 4 |
| 44 Tuesday, June 11 | Wednesday, June 5 | Thursday, June 6 |
| 45 Friday, June 14 | Monday, June 10 | Tuesday, June 11 |
| 46 Tuesday, June 18 | Wednesday, June 12 | Thursday, June 13 |
| 47 Friday, June 21 | Monday, June 17 | Tuesday, June 18 |
| 48 Tuesday, June 25 | Wednesday, June 19 | Thursday, June 20 |
| 49 Friday, June 28 | Monday, June 24 | Tuesday, June 25 |
| 50 Tuesday, July 2 | Wednesday, June 26 | Thursday, June 27 |
| 51 Friday, July 5 | Monday, July 1 | Tuesday, July 2 |
| Tuesday, July 9 | NO ISSUE PUBLISHED | |
| 52 Friday, July 12 | Monday, July 8 | Tuesday, July 9 |
| 53 Tuesday, July 16 | Wednesday, July 10 | Thursday, July 11 |
| 54 Friday, July 19 | Monday, July 15 | Tuesday, July 16 |
| Tuesday, July 23 | SECOND QUARTERLY IN- DEX | |
| 55 Friday, July 26 | Monday, July 22 | Tuesday, July 23 |
| 56 Tuesday, July 30 | Wednesday, July 24 | Thursday, July 25 |
| 57 Friday, August 2 | Monday, July 29 | Tuesday, July 30 |
| 58 Tuesday, August 6 | Wednesday, July 31 | Thursday, August 1 |
| 59 Friday, August 9 | Monday, August 5 | Tuesday, August 6 |
| 60 Tuesday, August 13 | Wednesday, August 7 | Thursday, August 8 |
| 61 Friday, August 16 | Monday, August 12 | Tuesday, August 13 |
| 62 Tuesday, August 20 | Wednesday, August 14 | Thursday, August 15 |
| 63 Friday, August 23 | Monday, August 19 | Tuesday, August 20 |
| 64 Tuesday, August 27 | Wednesday, August 21 | Thursday, August 22 |
| 65 Friday, August 30 | Monday, August 26 | Tuesday, August 27 |
| 66 Tuesday, September 3 | Wednesday, August 28 | Thursday, August 29 |
| Friday, September 6 | NO ISSUE PUBLISHED | |

| | | |
|--------------------------|-------------------------|------------------------|
| 67 Tuesday, September 10 | Wednesday, September 4 | Thursday, September 5 |
| 68 Friday, September 13 | Monday, September 9 | Tuesday, September 10 |
| 69 Tuesday, September 17 | Wednesday, September 11 | Thursday, September 12 |
| 70 Friday, September 20 | Monday, September 16 | Tuesday, September 17 |
| 71 Tuesday, September 24 | Wednesday, September 18 | Thursday, September 19 |
| 72 Friday, September 27 | Monday, September 23 | Tuesday, September 24 |
| 73 Tuesday, October 1 | Wednesday, September 25 | Thursday, September 26 |
| 74 Friday, October 4 | Monday, September 30 | Tuesday, October 1 |
| 75 Tuesday, October 8 | Wednesday, October 2 | Thursday, October 3 |
| 76 Friday, October 11 | Monday, October 7 | Tuesday, October 8 |
| Tuesday, October 15 | THIRD QUARTERLY INDEX | |
| 77 Friday, October 18 | Monday, October 14 | Tuesday, October 15 |
| 78 Tuesday, October 22 | Wednesday, October 16 | Thursday, October 17 |
| 79 Friday, October 25 | Monday, October 21 | Tuesday, October 22 |
| 80 Tuesday, October 29 | Wednesday, October 23 | Thursday, October 24 |
| 81 Friday, November 1 | Monday, October 28 | Tuesday, October 29 |
| 82 Tuesday, November 5 | Wednesday, October 30 | Thursday, October 31 |
| 83 Friday, November 8 | Monday, November 4 | Tuesday, November 5 |
| 84 Tuesday, November 12 | Wednesday, November 6 | Thursday, November 7 |
| 85 *Friday, November 15 | Friday, November 8 | Tuesday, November 12 |
| 86 Tuesday, November 19 | Wednesday, November 13 | Thursday, November 14 |
| 87 Friday, November 22 | Monday, November 18 | Tuesday, November 19 |
| 88 Tuesday, November 26 | Wednesday, November 20 | Thursday, November 21 |
| 89 Friday, November 29 | Monday, November 25 | Tuesday, November 26 |
| Tuesday, December 3 | NO ISSUE PUBLISHED | |
| 90 Friday, December 6 | Monday, December 2 | Tuesday, December 3 |
| 91 Tuesday, December 10 | Wednesday, December 4 | Thursday, December 5 |
| 92 Friday, December 13 | Monday, December 9 | Tuesday, December 10 |
| 93 Tuesday, December 17 | Wednesday, December 11 | Thursday, December 12 |
| 94 Friday, December 20 | Monday, December 16 | Tuesday, December 17 |
| 95 Tuesday, December 24 | Wednesday, December 18 | Thursday, December 19 |
| 96 *Friday, December 27 | Friday, December 20 | Monday, December 23 |
| Tuesday, December 31 | NO ISSUE PUBLISHED | |
| 1 *Friday, January 3 | Friday, December 27 | Tuesday, December 31 |
| 2 *Tuesday, January 7 | Tuesday, December 31 | Thursday, January 2 |
| 3 Friday, January 10 | Monday, January 6 | Tuesday, January 7 |
| 4 Tuesday, January 14 | Wednesday, January 8 | Thursday, January 9 |
| 5 Friday, January 17 | Monday, January 13 | Tuesday, January 14 |

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