



Texas Register



a section of the Office of the Secretary of State P.O. Box 13824 Austin, TX 78711-3824 (512) 463-5561 FAX (512) 463-5569

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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 7, November 10, November 28, and December 29, 1995. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy. Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register Director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director. The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the Texas Register, P.O. Box 13824, Austin, TX 78711-3824.

How to Use the Texas Register

Information Available: The 11 sections of the Texas Register represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

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 cumulative 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 the 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 20 (1995) is cited as follows: 20 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 "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 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, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

The Texas Administrative Code (TAC) is the official compilation of all final state agency rules published in the Texas Register. Following its effective date, a rule is entered into the Texas Administrative Code. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the TAC. West Publishing Company, the official publisher of the TAC, publishes on an annual basis.

The TAC volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals).

The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The Official TAC also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the TAC or to inquire about WESTLAW access to the TAC call West: 1-800-328-9352.

The Titles of the TAC, and their respective Title numbers are:

- 1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the TAC scheme, each 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 the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the Texas Administrative Code, please look at the Table of TAC Titles Affected. The table is published cumulatively in the blue-cover quarterly indexes to the Texas Register (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the Texas Register contains a cumulative Table of TAC Titles Affected for the preceding month. If a rule has changed during the time period covered by the table, the rule's TAC number will be printed with one or more Texas Register page numbers, as shown in the following example.

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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

Update by FAX: An up-to-date Table of TAC Titles Affected is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to Texas Register subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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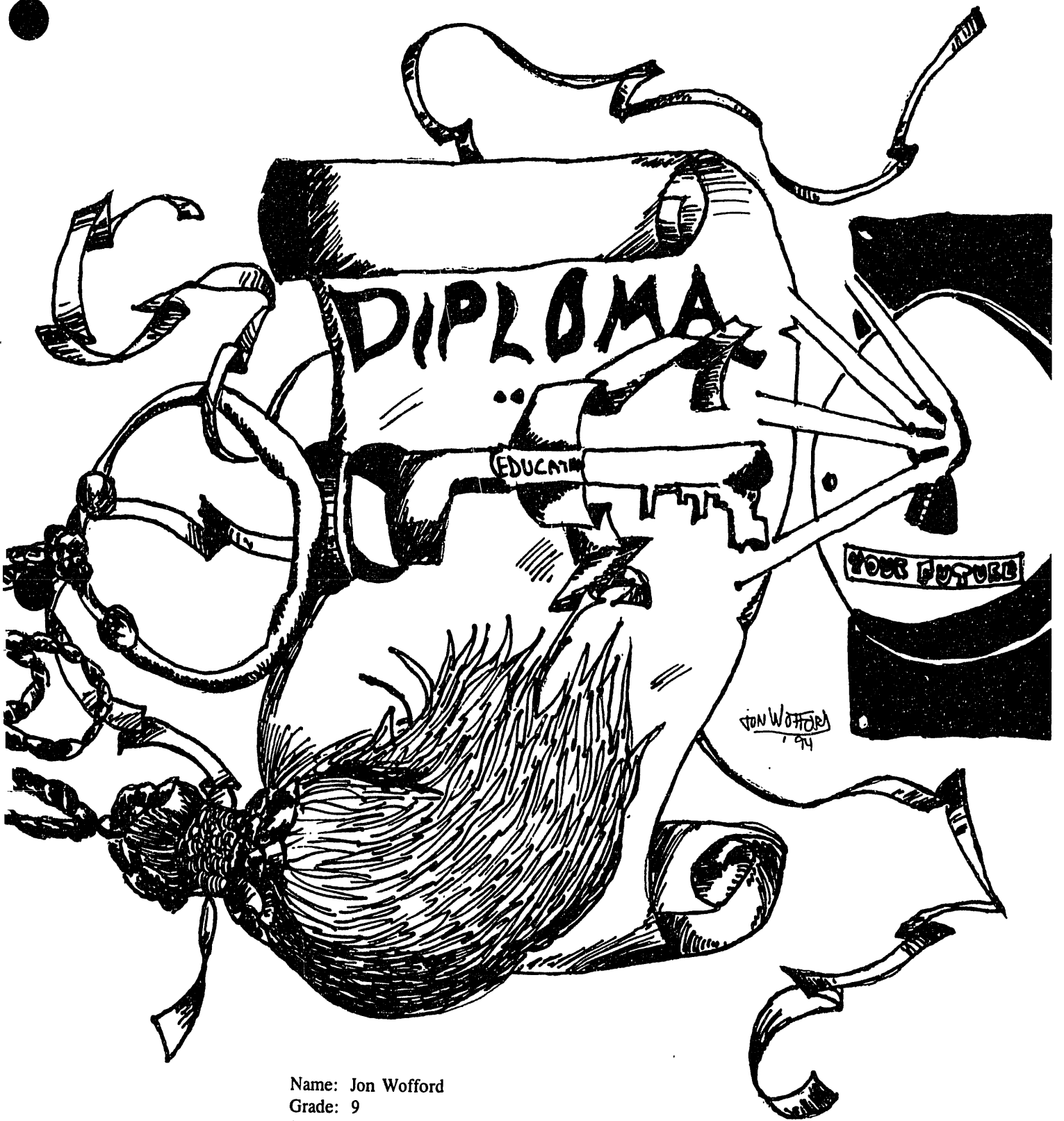
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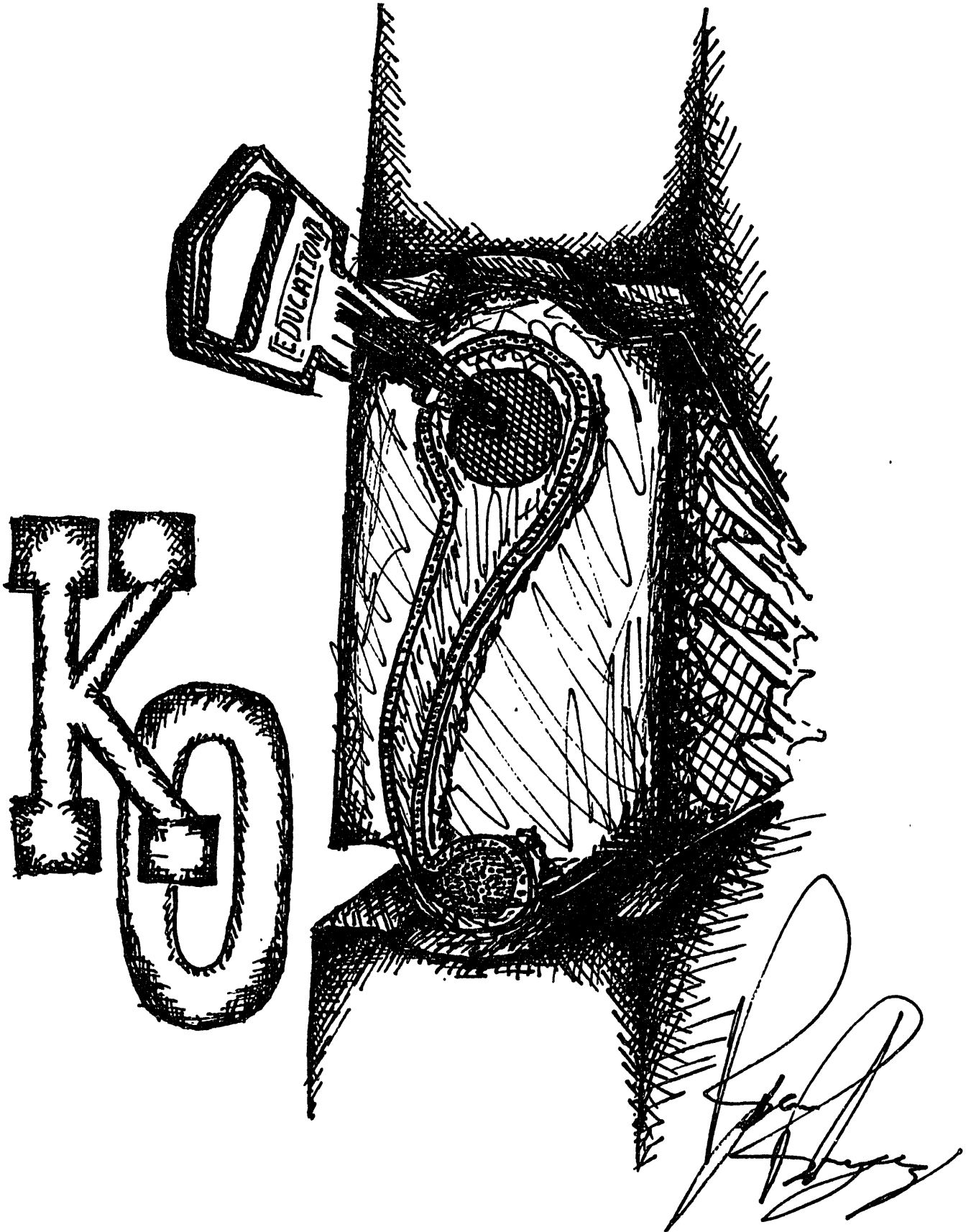
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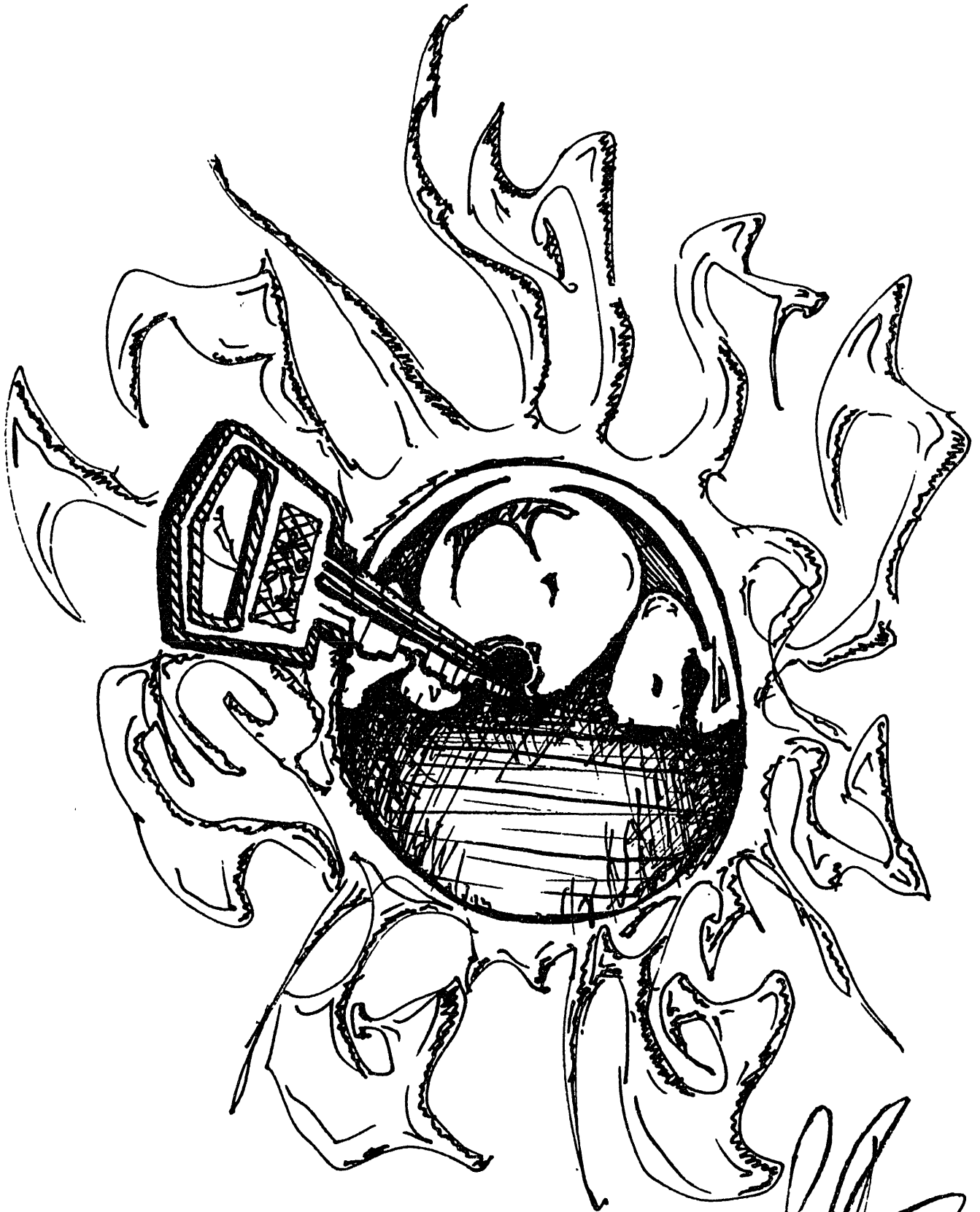
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Name: Jon Wofford  
Grade: 9  
School: Klein Oak High School, Klein ISD

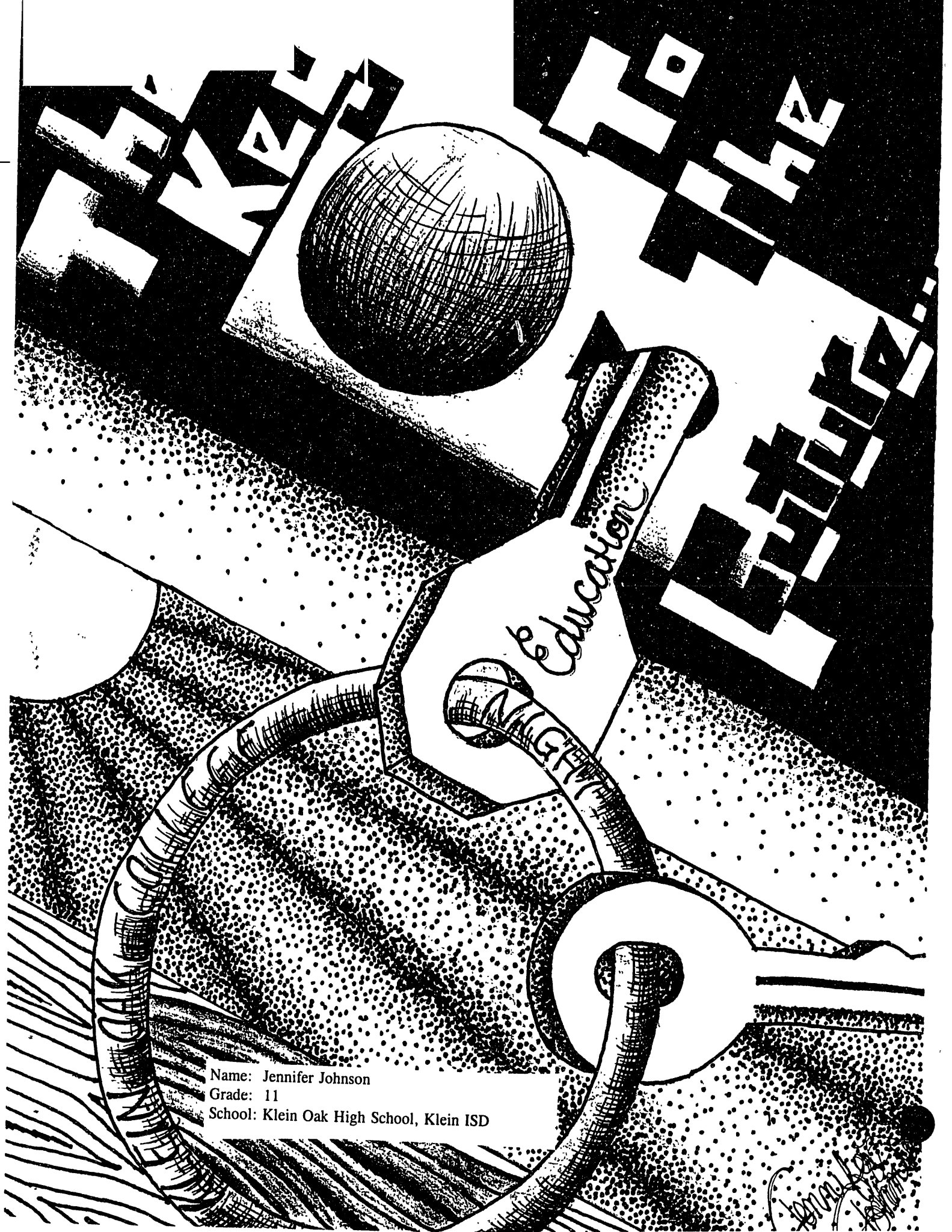
Name: Ryan Rodriguez  
Grade: 10  
School: Klein Oak High School, Klein ISD





Name: Ryan Rodriguez  
Grade: 10  
School: Klein Oak High School, Klein ISD

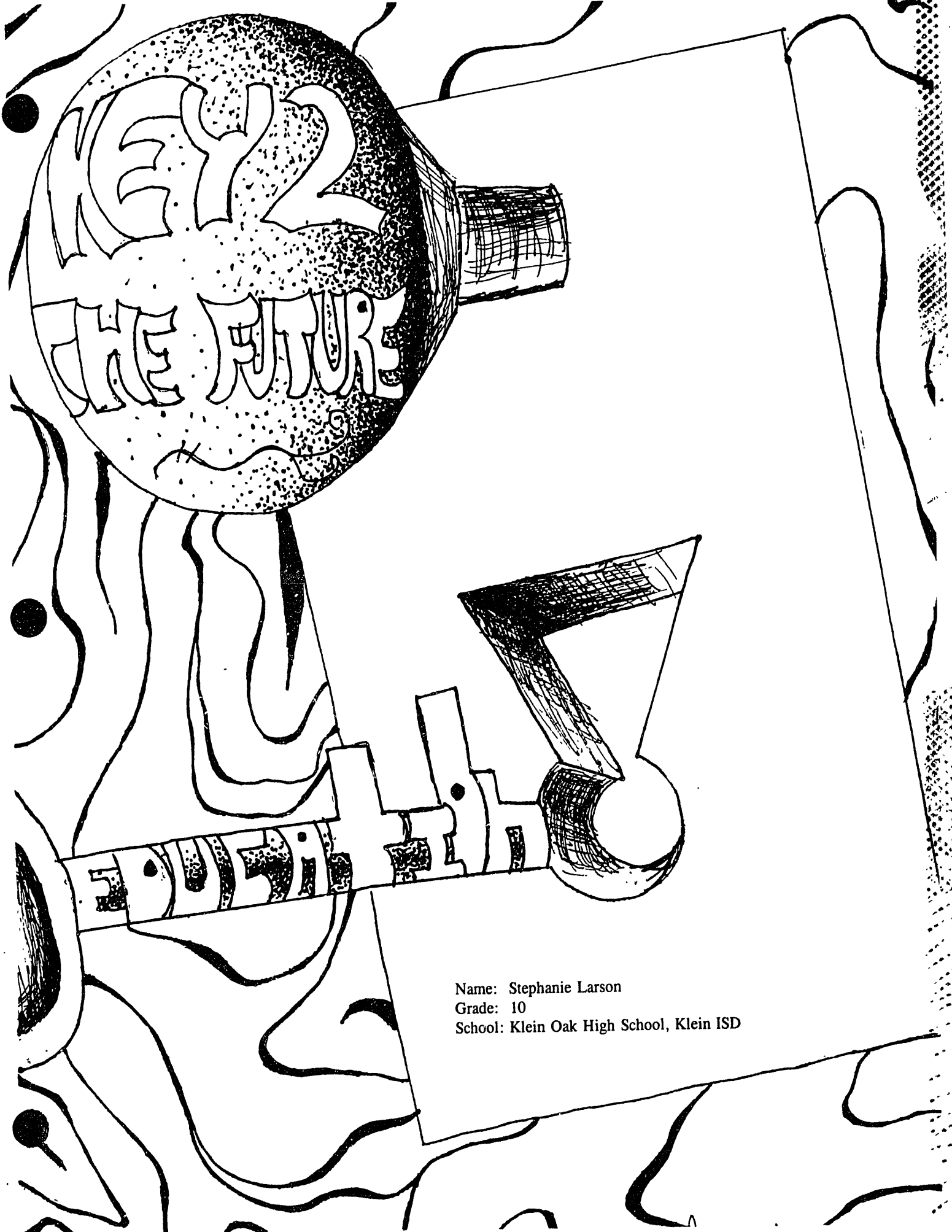




Name: Jennifer Johnson  
Grade: 11  
School: Klein Oak High School, Klein ISD

*Jennifer Johnson*  
*2008*





Name: Stephanie Larson  
Grade: 10  
School: Klein Oak High School, Klein ISD

THE KEY TO THE FUTURE



THE KEY IS

*Class  
of*

Name: Chris Gosnell  
Grade: 10  
School: Klein Oak High School, Klein ISD

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EDUCATION

# TEXAS ETHICS COMMISSION

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The Texas Ethics Commission is authorized by Government Code, §571.091, to issue advisory opinions in regard to the following statutes: the Government Code, Chapter 302; the Government Code, Chapter 305; the Government Code, Chapter 572; the Election Code, Title 15; the Penal Code, Chapter 36; and the Penal Code, Chapter 39.

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

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## Texas Ethics Commission

### Advisory Opinion Request

AOR-284. File closed. No opinion issued, answered by letter.

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

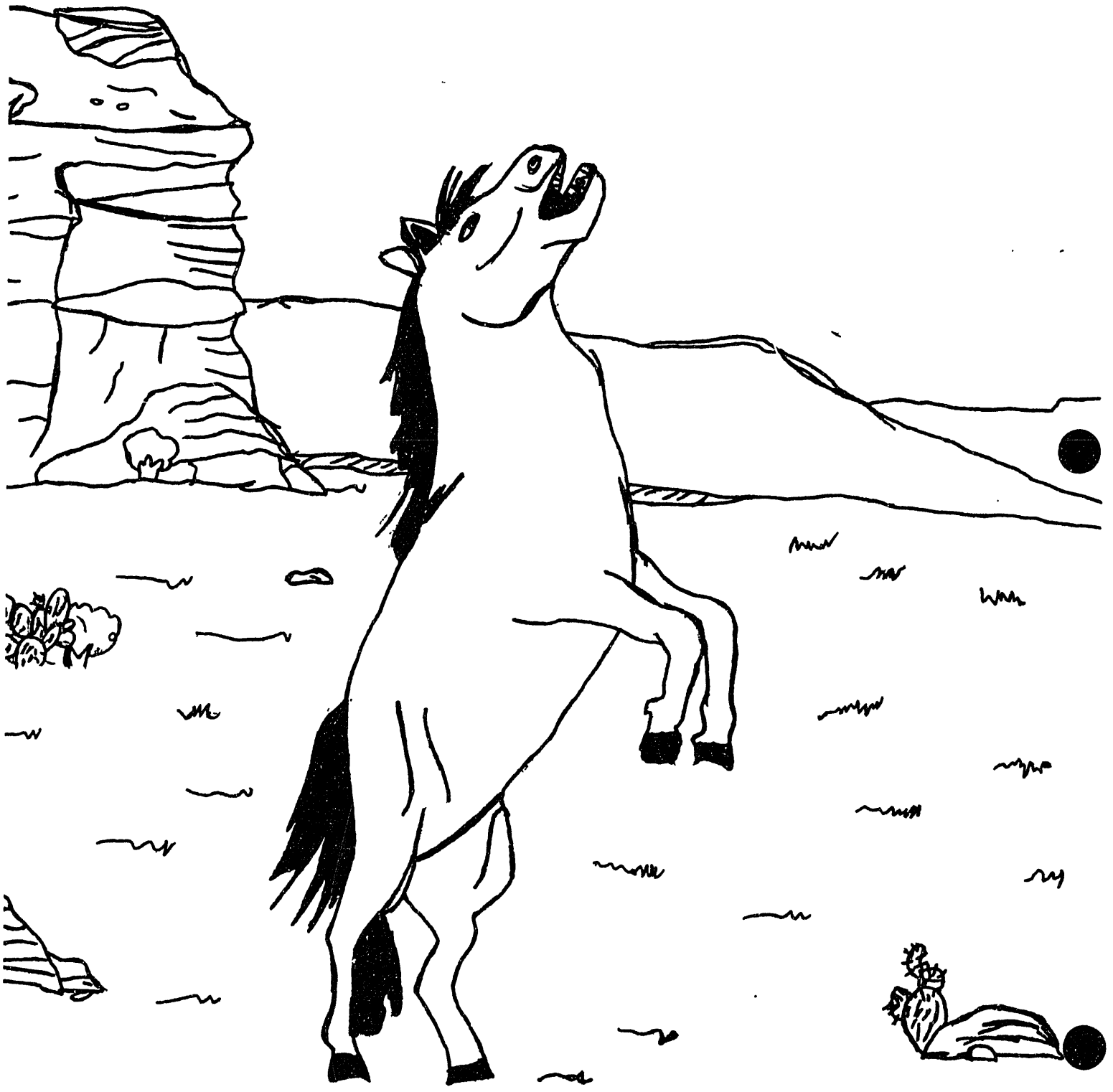
Issued in Austin, Texas, on March 7, 1995.

TRD-9502971 Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed: March 9, 1995



Name: Christopher Lieng  
Grade: 5  
School: Barrington Place Elementary, Ft. Bend ISD



# PROPOSED RULES

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 action is 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 action, 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 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules Customer Service and Protec- tion

##### • 16 TAC §23.56

The Public Utility Commission of Texas proposes an amendment to §23.56, concerning the statewide dual-party relay service. The section establishes a statewide telecommunications dual-party relay service for the hearing-impaired and speech-impaired using special communications equipment such as telecommunications devices for the deaf (TDD). The commission is advised by the Relay Texas Advisory Committee, which monitors the statewide dual-party relay service or Relay Texas. This amendment is required for compliance with Senate Bill 383 passed by the 73rd legislature, which relates to the existence, composition, and expenses of state agency advisory committees. The amendment clarifies the manner in which the committee shall report to the commission, requires an annual evaluation of the committee's work, usefulness, and costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities; and sets a date certain for the committee to be automatically abolished unless the commission votes affirmatively to continue its existence.

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

Mr. Sapperstein also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that the commission will have substantive and timely information from the Relay Texas Advisory Committee, thereby ensuring that the dual-party relay service is providing the highest quality service to hearing-impaired and speech-impaired telephone customers. Furthermore, there will be no effect on small businesses as a result of enforcing this sec-

tion. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed amendments (13 copies) may be submitted to John M. Renfrow, Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. All comments should refer to Project Number 13863.

This amendment is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and by §96A(g), which require that the commission appoint an advisory committee to assist the commission in administering the section. This amendment specifically is proposed under Texas Civil Statutes, Article 6252-33, which require agencies that are advised by an advisory committee to promulgate rules meeting certain statutory requirements.

Cross Index to Statutes: Texas Civil Statutes Article 1446c, Texas Civil Statutes, Article 6252-3.

§23.56. *Statewide Dual-Party Relay Service.*

(a)-(b) (No Change)

(c) Advisory committee. The commission shall appoint an Advisory Committee to assist the commission in administering the provisions of Texas Civil Statutes, Article 1446c, §96A. The term of office of each member of the Advisory Committee shall be two years. A member whose term has expired shall continue to serve until a qualified replacement is appointed. In the event a member cannot complete his or her term, the commission shall appoint a qualified replacement to serve the remainder of the term. The Relay Texas Administrator shall serve as a liaison between the committee and the commission.

The liaison shall be responsible for advising the commission as required by paragraph (2) of this subsection. The members of the Advisory Committee shall serve without compensation but shall be entitled to reimbursement at rates established for state employees for travel and per diem incurred in the performance of their official duties. The commission shall reimburse members of the Advisory Committee in accordance with the applicable regulations and shall provide clerical and staff support to the Advisory Committee, including a secretary to record the Committee meetings

(1) (No change)

(2) Role of the advisory committee. The Advisory Committee shall monitor the establishment, administration, and promotion of the dual-party relay service, and assist in ensuring that the terms of the contract between the relay service carrier and the commission are fulfilled. The committee shall advise the commission on issues related to the contract, including any subsequent amendments to such contract, and on ways the relay service may be enhanced to better meet the communication needs of the hearing-impaired and speech-impaired as described in subparagraphs (A) and (B) of this paragraph, [and assist in assuring that the terms of the contract between the relay service carrier and the commission are fulfilled].

(A) Contract amendments.

All recommendations for amendments to the contract shall be filed with the Executive Director of the commission on June 1 of each year. The Executive Director is authorized to approve or deny all amendments to the contract between the relay service carrier and the commission.

(B) Committee activities

report. After each formal meeting of the committee, the commission liaison or the presiding officer of the committee shall report to the commission as described in clauses (i)-(iii) of this subparagraph.

(i) The commission liaison, or presiding officer of the committee, shall file in Central Records under Project Number 13928:

(I) the minutes of the meeting;

(II) a memo regarding the meeting highlights; and

(III) a list of recommended items for the committee to discuss with the relay service carrier regarding issues related to the provisioning of the service that do not require amendments to the contract.

(ii) At the same time that the committee activities report is filed pursuant to clause (i) of this subparagraph, the commission liaison, or the presiding officer of the committee, shall provide copies of the memo and list described in clause (i) (II) and (III) of this subparagraph to each commissioner's office.

(iii) Within 20 days from the date that the memo and list described in clause (i)(II) and (III) of this subparagraph are provided to the commissioners' offices, any commissioner may request that the list required by clause (i)(III) of this subparagraph be placed on an agenda to be discussed during an open meeting of the commission. If no commissioner requests that the list be placed on an agenda for an open meeting, the list of discussion points is deemed approved by the commission.

(3) Evaluation of advisory committee costs and effectiveness. The commission shall evaluate the advisory committee annually. The evaluation shall be conducted by an evaluation team appointed by the Executive Director of the commission. The commission liaison, members of the advisory committee, and any other commission employee that works either directly or indirectly with the advisory committee or the dual-party relay service program shall not be eligible to serve on the evaluation team. The evaluation team will report to the commission in open meeting each August of its findings regarding:

(A) the committee's work;

(B) the committee's usefulness; and

(C) the costs related to the committee's existence, including the cost

of agency staff time spent in support of the committee's activities.

(4) Duration of the advisory committee. The Advisory Committee shall be abolished automatically on August 31, 1999 unless the Commission votes affirmatively to continue its existence for another four year period. Thereafter, each time the Commission votes to continue the existence of the Committee, it shall continue for a period of four years, but will be abolished on August 31st of the fourth year unless the Commission again votes affirmatively to continue its existence.

(d)-(m) (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 March 9, 1995.

TRD-9502965

John M. Renfrow  
Secretary of the  
Commission  
Public Utility Commission

Earliest possible date of adoption: April 17, 1995

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

## TITLE 22. EXAMINING BOARDS

### Part XV. Texas State Board of Pharmacy

#### Chapter 291. Pharmacies

##### All Classes of Pharmacy

##### • 22 TAC §291.5

The Texas State Board of Pharmacy proposes an amendment to §291.5, concerning closing a pharmacy. The amendment, if adopted, will clearly outline the requirements which must be followed when closing of a pharmacy, including a requirement to notify the public of the closing at least 14 days prior to the closing.

Fred S. Brinkley, Jr., R.Ph., M.B.A., has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Brinkley also has determined that for each year of the first five-year period the rule will be in effect the public benefit anticipated as a result of enforcing the rule will be the protection of the health and safety of the public through the specification of procedures for closing a pharmacy. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted to Gay Dodson, R.Ph., Director of Compli-

ance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754.

The amendment is proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; and §17(b)(2) and (3) which gives the Board the authority to specify minimum standards for drug storage, maintenance of prescription drug records and procedures for the delivery, dispensing in a suitable container appropriately labeled, providing of prescription drugs or devices, monitoring of drug therapy, and counseling of patients on proper use of prescription drugs and devices within the practice of pharmacy.

The statute affected by this rule: Texas Civil Statutes, Article 4542a-1.

#### §291.5. Closing a Pharmacy. [Closed Pharmacies.]

(a) Prior to closing. At least 14 days prior to the closing of a pharmacy the pharmacist-in charge shall comply with the following.

(1) If the pharmacy is registered to possess controlled substances, send a written notification to the appropriate divisional office of the Drug Enforcement Administration (DEA) containing the following information:

(A) the name, address, and DEA registration number of the pharmacy;

(B) the anticipated date of closing;

(C) the name, address, and DEA registration number of the pharmacy acquiring the controlled substances; and

(D) the date on which the transfer of controlled substances will occur.

(2) If the pharmacy dispenses prescription drug orders, post a closing notice sign in a conspicuous place in the front of the prescription department and at all public entrance doors to the pharmacy. Such closing notice sign shall contain the following information:

(A) the date of closing; and

(B) the name, address, and telephone number of the pharmacy acquiring the prescription drug orders, including refill information and patient medication records of the pharmacy.

(b) Closing day. On the date of closing, the pharmacist-in-charge shall comply with the following:

(1) take an inventory as specified in §291.17 of this title (relating to Inventory Requirements);

(2) remove all prescription drugs from the pharmacy by one or a combination of the following methods:

(A) return prescription drugs to manufacturer or supplier (for credit/disposal);

(B) transfer (sell or give away) prescription drugs to a person who is legally entitled to possess drugs, such as a hospital, or another pharmacy;

(C) destroy the prescription drugs following procedures specified in §303.2 of this title (relating to Disposal of Stock Prescription Drugs);

(3) if the pharmacy dispenses prescription drug orders:

(A) transfer the prescription drug order files, including refill information, and patient medication records to a licensed pharmacy within a reasonable distance of the closing pharmacy; and

(B) move all signs or notify the landlord or owner of the property that it is unlawful to use the word "pharmacy" either in English or any other language, or any other word or combination of words of the same or similar meaning, or any graphic representation that would mislead or tend to mislead the public that a pharmacy is located at the address.

(c) After closing.

(1) Within ten days after the closing of the pharmacy, the pharmacist-in-charge [of a pharmacy that ceases to operate as a pharmacy,] shall forward to the board a written notice of the closing which includes the following information:

(A)[(1)] the actual date of closing;

(B)[(2)] the license issued to the pharmacy;

(C)[(3)] a statement attesting;

(i) that an inventory as specified in §291.17 of this title (relating to Inventory Requirements) has been conducted; and [(4) a statement attesting to]

(ii) the manner by which the dangerous drugs and controlled substances possessed by the pharmacy were transferred or disposed; and

(D) if the pharmacy dispenses prescription drug orders, the name and address of the pharmacy to which the prescription drug orders, including refill information, and patient medication records were transferred.

(2) If the pharmacy is registered to possess controlled substances, send a letter to the:

(A) appropriate DEA divisional office explaining that the pharmacy has closed. Include the following items with the letter:

(i) DEA registration certificate;

(ii) all unused DEA order forms (222) with the word VOID written on the face of each order form; and

(iii) copy 2 of any DEA order forms (222) used to transfer Schedule II controlled from the closed pharmacy.

(B) the Texas Department of Public Safety (DPS) explaining that the pharmacy has closed and include the DPS registration certificate.

(d) Emergency closing. If pharmacy is closed suddenly due to fire, destruction, natural disaster, death, property seizure, eviction, bankruptcy, or other emergency circumstances and the pharmacist-in-charge cannot provide notification 14 days prior to the closing, the pharmacist-in-charge shall comply with the provisions of subsection (a) of this section as far in advance of the closing as allowed by the circumstances.

(e) Joint Responsibility. If the pharmacist-in-charge is not available to comply with the requirements of this section, the owner shall be responsible for compliance with the provisions of this section.

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

Issued in Austin, Texas, on March 1, 1995

TRD-9502942 Fred S. Brinkley, Jr.,  
R Ph., M B A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Proposed date of adoption: May 23, 1995

For further information, please call: (512) 832-0661

## Community Pharmacy (Class A)

### • 22 TAC §291.34, §291.36

The Texas State Board of Pharmacy proposes amendments to §291.34 and §291.36, concerning Records in a Community Pharmacy (Class A) and Class A Pharmacies Compounding Sterile Pharmaceuticals. The amendments, if adopted, will specify the procedures for pharmacists to follow when dispensing an emergency refill of a prescription and specify that a pharmacist may not refuse to transfer a prescription to another pharmacy when requested to do so by the patient.

Fred S. Brinkley, Jr., R Ph., M B A., has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Brinkley also has determined that for each year of the first five-year period the rules will be in effect the public benefit anticipated as a result of enforcing the rules will be the protection of the health and safety of the public through the specifications of procedures for pharmacists to follow when dispensing an emergency refill and transferring prescriptions. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Gay Dodson, R.Ph., Director of Compliance, 8505 Cross Park Drive, Suite 110, Austin, Texas 78754

The amendments are proposed under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act, §17(b)(2) and (3) which gives the Board the authority to specify minimum standards for drug storage, maintenance of prescription drug records and procedures for the delivery, dispensing in a suitable container appropriately labeled, providing of prescription drugs or devices, monitoring of drug therapy, and counseling of patients on proper use of prescription drugs and devices within the practice of pharmacy, and §40B which establishes the emergency refill.

The statute affected by this rule Texas Civil Statutes, Article 4542a-1

#### §291.34. Records.

(a) (No change.)

(b) Prescriptions.

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

(8) Refills.

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

(E) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

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

(iv) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills, [and]

(v) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(vi) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this subsection;

(vii) the pharmacist affixes a label to the dispensing container as specified in §291.33(c)(4) of this title (relating to Operational Standards); and

(viii) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(I) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(II) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(III) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of clauses (i)-(ii) of this subparagraph; and

(IV) the pharmacist complies with the requirements of clauses (iii)-(v) of this subparagraph.

(c)-(k) (No change.)

§291.36. Class A Pharmacies Compounding Sterile Pharmaceuticals.

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

(e) Records.

(1) (No change.)

(2) Prescriptions.

(A)-(H) (No change.)

(I) Refills.

(i)-(iv) (No change.)

(v) A pharmacist may exercise his professional judgment in refilling a prescription drug order for a drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner, provided:

(I)-(III) (No change.)

(IV) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the practitioner is required for future refills; [and]

(V) the pharmacist informs the practitioner of the emergency refill at the earliest reasonable time;

(VI) the pharmacist maintains a record of the emergency refill containing the information required to be maintained on a prescription as specified in this paragraph;

(VII) the pharmacist affixes a label to the dispensing container as specified in this paragraph; and

(VIII) if the prescription was initially filled at another pharmacy, the pharmacist may exercise his professional judgment in refilling the prescription provided:

(-a-) the patient has the prescription container, label, receipt or other documentation from the other pharmacy which contains the essential information;

(-b-) after a reasonable effort, the pharmacist is unable to contact the other pharmacy to transfer the remaining prescription refills or there are no refills remaining on the prescription;

(-c-) the pharmacist, in his professional judgment, determines that such a request for an emergency refill is appropriate and meets the requirements of subclauses (I)-(II) of this clause; and

(IX) the pharmacist complies with the requirements of subclauses (III)-(V) of this clause.

(3) Prescription drug order records maintained in a manual system.

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

(D) Transfer of prescription drug order information. For the purpose of refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements:

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

(iii) the transfer is communicated directly between [two licensed] pharmacists and/or pharmacist interns;

(iv) (No change.)

(v) the pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) (No change.)

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) (No change.)

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) (No change.)

(vi) the pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) (No change.)

(II) record on the transferred prescription drug order, the following information:

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

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(E) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.



(4) Prescription drug order records maintained in a data processing system.

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

(D) Transfer of prescription drug order information. For the purpose of refill dispensing, the transfer of original prescription drug order information is permissible between pharmacies, subject to the following requirements.

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

(iii) The transfer is communicated directly between [two licensed] pharmacists and/or pharmacist interns or as authorized in paragraph (3)(D) of this subsection.

(iv) (No change.)

(v) The pharmacist or pharmacist intern transferring the prescription drug order information shall:

(I) (No change.)

(II) record on the reverse of the invalidated prescription drug order the following information:

(-a-) (No change.)

(-b-) the name of the pharmacist or pharmacist intern receiving the prescription drug order information;

(-c-) the name of the pharmacist or pharmacist intern transferring the prescription drug order information; and

(-d-) (No change.)

(vi) The pharmacist or pharmacist intern receiving the transferred prescription drug order information shall:

(I) (No change.)

(II) record on the transferred prescription drug order, the following information:

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

(-e-) name of the pharmacist or pharmacist intern transferring the prescription drug order information.

(vii) Prescription drug orders may not be transferred by non-electronic means during periods of downtime except on consultation with and authorization by a prescribing practitioner; provided however, during downtime, a hard-copy of a prescription drug order may be made available for informational purposes only, to the patient, a [or another] pharmacist or pharmacist intern, and the prescription may be read to a [another] pharmacist or pharmacist intern by telephone.

(viii)-(x) (No change.)

(E) (No change.)

(F) A pharmacist or pharmacist intern may not refuse to transfer original prescription information to another pharmacist or pharmacist intern who is acting on behalf of a patient and who is making a request for this information as specified in subparagraph (D) of this paragraph.

(5)-(11) (No change.)

(f) (No change.)

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502943

Fred S. Brinkley, Jr.,  
R.Ph., M.B.A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Proposed date of adoption: May 23, 1995

For further information, please call: (512) 832-0661

## Part XXII. Texas State Board of Public Accountancy

### Chapter 501. Professional Conduct

#### General Provisions

##### • 22 TAC §501.2

The Texas State Board of Public Accountancy proposes an amendment to §501.2, concerning Definitions.

The proposed amendment defines the practice of public accountancy and separates client practice from industry or government practice. It also clarifies that preparation of reports exclusively for internal use in industry and government is not the practice of public accountancy.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be clearer definitions of the terms used in this rule. There is no effect on small businesses.

There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §2 which defines the practice of public accountancy.

The rule implements Texas Civil Statutes, Article 41a-1, §2 and §6.

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

Practice of public accountancy—The practice of public accountancy includes the client practice of public accountancy and the industry or government practice of public accountancy.

(A) Client Practice. Client practice of public accountancy is the offer to perform or the performance by a certificate or registration holder for a client or a potential client (other than the certificate or registration holder's employer or an entity affiliated with the employer) of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

(i) the issuance of reports on, or the preparation of, financial statements—including historical or prospective financial statements or any element thereof;

(ii) the furnishing of management or financial advisory or consulting services;

(iii) the preparation of tax returns or the furnishing of advice or consultation on tax matters; and/or

(iv) the advice or recommendations in connection with the sale or offer for sale of products (including the design and implementation of computer software), when the advice or recommendations require or imply the possession of accounting or auditing skills or expert knowledge in auditing or accounting.

(B) Industry or government practice. Industry or government practice of public accountancy is:

(i) the preparation of, or reporting on, financial statements (including historical or prospective financial

statements or any element thereof) by an individual licensed under the Act, of the individual's employer or an entity affiliated with the employer, when the financial statement or report is to be used by an investor, a third party, or a financial institution;

(ii) the preparation of a tax return of the individual's employer or an entity affiliated with the employer, if the tax return is filed with a taxing authority; or

(iii) the supervision of those activities described in clause (i) and (ii).

(C) A certificate or registration holder not engaged or employed to any extent in either the client practice of public accountancy or the industry or government practice of public accountancy is not engaged in the practice of public accountancy. Furthermore, the preparation of reports by an individual licensed under the Act exclusively for internal use by the management and/or board of directors of the individual's employer or an entity affiliated with the employer is not the practice of public accountancy.

(D) For purposes of the foregoing provisions of this section defining the practice of public accountancy, an entity shall be deemed "affiliated with" a licensee's employer only if, and so long as, the employer (directly or indirectly through another entity affiliated with the employer) possesses the power to direct the management of the entity through ownership of a majority of the voting securities or other applicable voting equity interests of the entity.

(E) The requirements for the registration of the client practice of public accountancy are found in §501.40 of this title (relating to Registration Requirements). The provisions of §501.40 do not apply to certificate or registration holders employed exclusively in the industry or government practice of public accountancy and do not apply to certificate or registration holders not engaged in the practice of public accountancy.

[Practice of public accountancy—The offer to perform or performance by a person holding himself out to the public as a certificate or registration holder for a client or potential client, or the performance by a certificate or registration holder for a client of a service involving the use of accounting, attesting, or auditing skills. The phrase "service involving the use of accounting, attesting, or auditing skills" includes:

[(A) the issuance of reports on, or the preparation of, financial statements;

[(B) the furnishing of management or financial advisory or consulting services; and

[(C) the preparation of tax returns or the furnishing of advice or consultation on tax matters; or

[(D) when performed by a person or practice unit licensed under this Act, the preparation of, or reporting on, a financial statement when the financial statement or report is to be used by an investor, except for a report prepared for internal use by the management of an organization, a third party, or a financial institution, or the preparation of a tax return if the tax return is filed with a taxing authority, as well as the supervision of those activities.]

**Report—**When used with reference to financial statements, an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and/or includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any assurance as to the reliability of the financial statements to which reference is made and/or special competence on the part of the person or firm issuing such language; and it includes any form of language conventionally used with respect to a compilation or review of financial statements, and any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

[**Report—**When used with reference to financial statements, an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term

"report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements to which reference is made and/or special competence on the part of the firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.]

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9503060

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 505-5566

◆ ◆ ◆  
• 22 TAC §501.3

The Texas State Board of Public Accountancy proposes an amendment to §501.3, concerning Applicability.

The proposed amendment reorganizes the existing rule to distinguish between types of CPA practices and entities.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a clear distinction regarding which rules do not apply to CPAs involved in industry or government practice and those not involved in the practice of public accountancy. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§501.3. *Applicability.*

(a) Licensee in the client practice of public accountancy as defined in §501.2 of this chapter (relating to Definitions). All of the rules of professional

conduct shall apply to and be observed by a certificate or registration holder engaged in the client practice of public accountancy.

(b) Licensee in industry or government practice of public accountancy as defined in §501.2 of this chapter (relating to Definitions). A licensee employed exclusively in the industry or government practice of public accountancy shall not issue, nor otherwise be associated with, financial statements that do not conform to the accounting principles described in §501.23 of this title (relating to Accounting Principles).

(c) The following rules of professional conduct shall apply to and be required to be observed by a certificate or registration holder employed exclusively in the industry or government practice of public accountancy, and to certificate or registration holders not engaged in the practice of public accountancy:

(1) §501.12 of this title (relating to Integrity and Objectivity) ;

(2) §501.21 of this title (relating to Competence);

(3) §501.25 of this title (relating to Mandatory Continuing Education Reporting);

(4) §501.39 of this title (relating to Frivolous Complaints);

(5) §501.41 of this title (relating to Discreditable Acts);

(6) §501.42 of this title (relating to Acting through Others); and

(7) §501.48 of this title (relating to Responses).

[All of the rules of professional conduct shall apply to and be observed by certificate, registration, and permit holders engaged in the practice of public accountancy. Notwithstanding anything herein to the contrary, only § 501.11 of this title (relating to Independence), §501. 25(b) of this title (relating to Mandatory Continuing Education Reporting), §501.41 of this title (relating to Discreditable Acts), §501.42 of this title (relating to Acting through Others), and §501.48 of this title (relating to Responses), shall apply to and be required to be observed by certificate or registration holders not in public practice, except that a certificate or registration holder who is not in public practice shall not issue, or otherwise be associated with, financial statements that do not conform to the accounting principles described in §501.23 of this title (relating to Accounting Principles) or the standards described in §501.24 of this title (relating to Other Professional Standards).]

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9503061

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 505-5566

◆ ◆ ◆  
• 22 TAC §501.4

The Texas State Board of Public Accountancy proposes an amendment to §501.4, concerning Practice of Public Accountancy.

The proposed amendment is necessary to comply with the United States Supreme Court's Ibanez vs. Florida Board of Accountancy decision. Any licensee of the Board in good standing as a CPA may use the CPA designation whether or not the licensee is in the "practice of public accountancy."

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be compliance with a Supreme Court decision. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§501.4. Practice of Public Accountancy

(a) A certificate or registration holder may not engage in the practice of public accountancy (as defined in §501.2 of this title (relating to Definitions)) unless he or she holds a valid license issued by the board. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the period for which it is issued.

(b) Any licensee of this board in good standing as a certified public accountant or public accountant may use such designation whether or not the licensee is in the client practice of public

accountancy as defined in §501.2 of this title (relating to Definitions). However, a licensee not in the client practice of public accountancy may not in any manner, through use of the CPA designation, or otherwise, claim or imply independence from his or her employer or that the licensee is in the client practice of public accountancy.

[A certificate or registration holder may not practice public accountancy (as defined in §501.2 of this title (relating to Definitions)) unless he or she holds a valid license issued by the board. A license is not valid for any date or for any period prior to the date it is issued by the board and it automatically expires and is no longer valid after the end of the calendar year for which it is issued ]

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9503062

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 505-5566

◆ ◆ ◆  
Professional Practices

• 22 TAC §501.11

The Texas State Board of Public Accountancy proposes an amendment to §501.11, concerning Independence.

The proposed amendment makes it clear that during the preparation of Financial Statements independence is not impaired when a contingent fee is a result of a court or public or governmental authority's determination or associated with the preparation of tax returns.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be to clarify the exceptions to contingent fees. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as

may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6

*§501.11. Independence.*

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

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

(4) had a commitment from the client for a contingent fee unless the contingent fee was clearly immaterial in relation to the aggregate, normally-recurring fees charged annually to the client for reports on financial statements[ ], or unless the fee is fixed by courts or other public authorities, or, in tax matters if determined on the results of judicial proceedings or the findings of governmental agencies. This does not cover the preparation of tax returns.

(d)-(f) (No change.)

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502983

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 505-5566



• 22 TAC §501.40

Other Responsibilities and Practices

The Texas State Board of Public Accountancy proposes an amendment to §501.40 concerning Licensing/Registration Requirements.

The proposed amendment recognizes there is a client practice and an industry or government practice, recognizes that there are two types of entities in client practice, resumes the attestation and compilation functions to a specific entity in client practice, recognizes the long-standing exception for attorneys from entity registration, and requires a disclaimer in certain circumstances.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a public that is better informed about the type of client practice CPAs available to the public, a clear understanding about the attestation function, and a written rule regarding attor-

ney/CPAs. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

*§501.40. Registration Requirements.*

(a) A certificate or registration holder engaged in the client practice of public accountancy as defined in §501.2 of this title (relating to Definitions) must practice through an entity meeting the ownership requirements of the Public Accountancy Act and registered with the board pursuant to the Public Accountancy Act, §10, if:

(1) the certificate or registration holder engages in the client practice of public accountancy as a sole proprietorship or as an employee, partner, shareholder, member or independent contractor of a firm or person that is eligible for registration, or is required to register, under §§10, 17, 19 and/or 20 of the Act; or

(2) the services offered or performed include the performance of attest or compilation services, or issuance of reports on financial statements-including historical or prospective financial statements or any element thereof.

(b) A certificate or registration holder engaged in the client practice of public accountancy as defined in §501.2 of this title (relating to Definitions) who is not required to practice through an entity registered with the board pursuant to subsection (a) of this section must, in each advertisement or other printed statement by the certificate or registration holder and/or by his or her employer or principal, in which reference is made to certificate or registration holders or his or her association with the employer or principal, whether or not the specific certificate or registration holder is named, include an asterisk by both the name of the employer or principal and the name of the certificate or registration holder, which asterisk shall refer to a notation included within conspicuous proximity and with reasonable prominence that says "Not authorized by the Texas State Board of Public Accountancy to practice public accountancy in Texas." The notation must be printed in type not

less bold than that contained in the body of the advertisement or other printed statement.

(c) Notwithstanding the foregoing, the requirements of this section do not apply with regard to a certificate or registration holder performing services:

(1) as a licensed attorney at law of this state while in the practice of law; or

(2) as an employee, officer, or director of a federally-insured depository institution, when lawfully acting within the scope of the institution's legally permitted fiduciary capacity.

[A certificate or registration holder must perform accounting functions through an entity registered with the board pursuant to the Public Accountancy Act, §10. Accounting functions include, but are not limited to, the preparation of tax returns or the furnishing of advice on tax matters, bookkeeping services, the issuance of reports on financial statements, the furnishing of management advisory or consulting services, and the sale, advice, or management of computer software which includes or implies an expertise in accounting. Not included, however, is a certificate holder performing accounting services as an employee, partner, or shareholder of, and exclusively for:

[(1) federal, state, or local governmental entities; or

[(2) an employer or firm not offering accounting services to the 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 February 24, 1995.

TRD-9503063

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 505-5566



Other Responsibilities and Practices

• 22 TAC §501.41

The Texas State Board of Public Accountancy proposes an amendment to §501.41 concerning Discreditable Acts.

The proposed amendment clarifies which acts are considered to be discreditable.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect, the anticipated public benefit as a result of enforcing or administering the rule will be a rule that is clearer and more understandable. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3942.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §21(c)(4) which authorize the Board to take disciplinary action against licensees for violation of a Board rule.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §21.

**§501.41. Discreditable Acts.** A certificate or registration holder shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy. A discreditable act includes but is not limited to:

(1) fraud or deceit in obtaining a certificate as a certified public accountant or in obtaining registration under the Act or in obtaining a license to practice public accounting;

(2) dishonesty, fraud or gross negligence in the practice of public accountancy;

(3) violation of any of the provisions of §8 or 20A of the Act applicable to a person certified or registered by the board;

(4) final conviction of a felony or imposition of deferred adjudication in connection with a criminal prosecution of a felony under the laws of any state or the United States;

(5) final conviction of any crime or imposition of deferred adjudication in connection with a criminal prosecution, an element of which is dishonesty or fraud under the laws of any state or the United States;

(6) cancellation, revocation, suspension or refusal to renew authority to practice as a certified public accountant or a public accountant by any other state for any cause other than failure to pay the appropriate registration fee in such other state;

(7) suspension or revocation of or a voluntary consent decree concerning the right to practice before any state or federal agency for a cause which in the opinion of the board warrants its action;

(8) knowingly participating in the preparation of a false or misleading financial statement or tax return;

(9) fiscal dishonesty or breach of fiduciary responsibility of any type;

(10) failure to comply with an order of any state or federal court;

(11) failure to comply with any board rule on independence;

(12) failure to respond to a client's inquiry within a reasonable time without good cause;

(13) misrepresenting facts or making a misleading or deceitful statement to a client;

(14) false swearing or perjury in any communication to the board;

(15) threats of bodily harm or retribution to a client;

(16) public allegations of a lack of mental capacity of a client which can not be supported in fact; and

(17) causing a breach in the security of the CPA examination.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502982

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: April 17, 1995

For further information, please call (512) 506-5566

## Part XXIII. Texas Real Estate Commission

### Chapter 535. Provisions of the Real Estate License Act

#### Suspension and Revocation of Licensure

##### • 22 TAC §535.164

The Texas Real Estate Commission proposes an amendment to §535.164, concerning disclosure of agency. The amendment would adopt by reference a revised form, known as TREC Agency Disclosure Form 4, which Texas real estate licensees would generally be required to provide to a prospective buyer, seller, landlord or tenant at the time of the first face-to-face meeting with the licensee or written communication from the licensee regarding a real estate transaction. The form provides information about the services real estate brokers provide and explains

how licensees may represent one or both parties to the transaction. The form also contains a space for the broker or salesman to disclose any existing agency relationship with any party. The form would be revised to be a tri-fold brochure with added language to clarify that the form is not a listing contract or a buyer representation agreement. The disclosure portion of the form would be modified to permit the licensee to show more clearly when no separate agency agreement exists. The mailing address and telephone number of the Texas Real Estate Commission also would be added to the form.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of agency relationships in real estate transactions. 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 other than the expense of copies of the form, generally available for about \$5 for 50 copies.

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

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

The proposed amendment does not affect any other statutes, articles, or codes.

#### §535.164. Disclosure of Agency.

(a) The Texas Real Estate Commission adopts by reference Agency Disclosure Form 4 [3], approved by the Texas Real Estate Commission in 1995 [1993]. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

(b) Except as provided by subsection (e) of this section, a real estate licensee shall furnish a prospective buyer, seller, landlord or tenant with a copy of TREC Agency Disclosure Form 4 [3] at the time of the first of the following events regarding a real estate transaction:

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

(c)-(h) (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 March 7, 1995.

Earliest possible date of adoption. April 17, 1995

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

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Licensed Real Estate Inspectors

• 22 TAC §535.222

The Texas Real Estate Commission proposes an amendment to §535.222, concerning standards of practice. The section provides minimum inspection guidelines for inspectors licensed by the commission when inspecting the parts, components and systems typically found in residential property. The proposed amendment was developed by the Texas Real Estate Inspector Committee, an advisory committee of nine professional inspectors appointed by the commission

The proposed amendment primarily reorganizes the section, combining related components into the same subsection for clarity and ease of reading. For example, proposed §535.222(f)(2)(A)(iv) would address both electric and gas ranges, and §535.222(f)(2)(A)(x) covers all water heaters regardless of their energy source. Related items would be grouped into the same provision; for example, windows and door glazing would be found at §535.222(e)(2)(C), along with their related components, exterior walls and doors.

The amendment also would delete as unnecessary a number of specific limitations which generally list what inspectors are not required to do in the course of an inspection. Since the standards provide the minimum inspection service a licensed inspector must provide, it is unnecessary to state actions which are not required. For example, it is unnecessary to provide a specific limitation not requiring an inspector to inspect cooling system equipment which is inaccessible, since the scope provision of §535.222(b) clearly indicates that the inspection is limited to accessible parts, components and systems. Recognized hazards specifically listed in the section as such would continue to be required to be reported as in need of repair. Wherever possible, language has been added for precise identification of the parts or components being inspected. In proposed §535.222(g)(2)(A)(i)(1), for example, the inspector would be required to observe the service entrance cables for integrity of insulation, the drip loop, separation of conductors at the weatherhead and clearances; the existing section only calls for the inspector to observe the service drop generally. A number of nonsubstantive language changes are proposed for clarity.

Mark A. Moseley, general counsel, has determined that for the first five-year period the section as proposed is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. There is no anticipated impact on

local or state employment as a result of implementing the section

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the minimum levels of inspection practice required for licensed inspectors. 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.

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

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

The proposed amendment does not affect other statutes, articles, or codes.

§535.222. *Standards of Practice.*

(a) Definition of terms. 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) Identify-To determine and report [or establish] as a particular item, condition or thing.

(5)-(11) (No change.)

(b) Scope. The standards of inspection practice established by this section are the minimum levels of inspection practice required of inspectors for the accessible parts, components and systems typically found in improvements to real property, excluding detached structures, decks, docks [outbuildings] and fences. The inspection is of conditions which are present and visible at the time of the inspection. All mechanical and electrical equipment, systems, and appliances are operated in normal modes and operating range at the time of the inspection. The inspector shall observe, render an opinion and report which of the parts, components, and systems present in the property and required for inspection by subsections (e)-(g) of this section have or have not been inspected and if the parts, components, and systems are not functioning at the time of the inspection or are in need of repair and report on visible existing or recognized hazards. The inspector shall report as in need of repair any recognized hazard specifically listed in this section [water heater temperature and/or pressure relief valve drain or discharge lines smaller than the outlet fitting of the valve, gas-fired water heaters installed in a garage where the burners or burner ignition sources are less than 18 inches above the floor, or the absence, improper installation, or improper

operation of ground fault circuit interrupter devices in bathrooms, exterior, kitchens (within six feet of a sink) or in swimming pool locations]. All written inspection reports must contain the name and license number of the inspector who performed the inspection. The inspector may provide a higher level of inspection performance than required by this section and may inspect parts, components and systems in addition to those described by this section. In the event of conflict between a specific provision and a general provision, the specific provision shall control. These standards do not apply to the following:

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

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

(e) Structural systems.

(1) (No change.)

(2) Components for inspection.

(A) Foundations.

(i) Inspection guidelines.

The inspector shall do the following:

(I)-(II) (No change.)

(III) inspect the crawl space area to determine the general condition of foundation components and report the method used to observe the crawl space when an area is not entered due to inaccessibility or hazardous conditions or when access or visibility is limited;

(IV)-(VII) (No

change.)

(ii) Specific limitations.

The inspector is not required to [do the following:

(I) enter a crawl space or any areas where headroom is less than two feet, or where the inspector reasonably determines conditions or materials are hazardous to health or safety of the inspector[;]

[(II) remove stored items or debris to gain access to crawl space areas; or

[(III) move house furnishings, carpeting, personal belongings or other materials that may limit visual observation of structurally related components] .

(B) Interior walls, doors, ceilings and floors.

(i) Inspection guidelines

The inspector shall do the following:

(I) observe the deficiencies [condition] of the surfaces of walls, ceilings and floors as related to structural performance or water penetration;

(II) inspect operation of accessible doors [for proper operation];

(III) inspect [condition of] steps, stairways, balconies and railings.

(ii) (No change.)

(C) Exterior walls and doors, windows and door glazing.

(i) Inspection guidelines. The inspector shall do the following:

(I) observe deficiencies of exterior walls related to structural performance and water penetration; [and]

(II) (No change.)

(III) inspect the condition of windows and exterior doors to determine whether glazing is present and undamaged;

(IV) inspect insulated glass windows for fogging or other evidence of broken seals;

(V) observe the presence and condition of window and door screens;

(VI) inspect burglar bars for functional egress in appropriate areas; and

(VII) operate windows at burglar bar locations of sleeping rooms or egress areas and a random sampling of others which are accessible.

(ii) Specific limitations. The inspector is not required to do the following:

(I) (No change.)

(II) determine the condition of paints stains or other surface coatings; [or]

(III) determine the presence of, or extent or type of, insulation or vapor barriers in exterior walls; or

(IV) check for the presence of safety glass.

(D) Fireplace and chimney.

(i) Inspection guidelines. The inspector shall do the following:

(I) inspect the visible components and structure of the chimney [structure] and fireplace;

(II) inspect the interior of the firebox and the visible flue area, excepting the adequacy of the draft or performance of a chimney smoke test;

(III)-(V) (No change.)

(VI) observe attic penetration of chimney flue, where accessible, for [proper] firestopping;

(VII) inspect gas log lighter valves for [proper] function and for gas leaks;

(VIII) inspect operation of circulating fan, if present; [and]

(IX) observe for deficiencies in [proper installation of] combustion air vent, if present and[.]

(X) observe chimney coping or crown, caps or spark arrestor (from ground level at a minimum).

(ii) Specific limitations. There are no specific limitations for fireplace and chimney. [The inspector is not required to do the following:]

[(I) remove logs, ashes, fixed screens, hardware or other attachments to gain access to the fireplace;

[(II) inspect screens or glass doors;

[(III) determine the adequacy of the draft or perform a chimney smoke test;

[(IV) determine the clearance of any components of the fireplace from combustibles in concealed areas or adequacy of installation in areas concealed or inaccessible;

[(V) observe the top of the chimney coping, chimney caps or spark arrestors, except from ground level;

[(VI) ignite the gas log lighter or decorative gas logs; or

[(VII) inspect wood-burning stoves or fireplace inserts.]

(E) Roof, roof structure and attic.

(i) Inspection guidelines. The inspector shall do the following:

(I) identify the type of roof covering and inspect its visible components and their condition (excepting the life expectancy of the roof covering;

(II)-(IV) (No change.)

(V) enter attic space(s) except when there is inadequate access or hazardous conditions exist as reasonably determined by the inspector (observation from attic access opening only must be reported as such [report when attic observations are made from attic access opening only; and]

(VI) report the method used to inspect roofing if the inspection is performed from other than roof level (if the inspector reasonably determines that conditions are unsafe or that damage to the roof or roof covering material may result from walking on the roof, the inspector shall report the method used to inspect the roof);

(VII) observe the presence and approximate depth of insulation where visible; and

(VIII) observe the general condition of visible installed gutter and downspout systems.

(ii) Specific limitations. There are no specific limitations for roof, roof structure and attic. [The inspector is not required to do the following:

[(I) walk on or access a roof when the inspector reasonably determines that conditions are unsafe or when damage to the roof or materials may result;

[(II) remove snow, ice, debris or other materials which prohibit visual inspection of roof surfaces;

[(III) inspect or determine the condition or adequacy of antennae, lightning rods or similar attachments;

[(IV) enter attic spaces which are not accessible, including those where headroom is less than five feet, or

where physical damage to framework, ceilings or insulation could result;

[(V) enter spaces which present a hazard to the inspector, as reasonably determined by the inspector;

[(VI) determine the remaining life expectancy of the roof covering or determine the suitability of roofing materials or applications; or

[(VII) determine the adequacy of roofing fastening systems, such as nail lengths, spacing and type.]

(F) Porches and Decks [Window and Door glazing].

[(i) ]Inspection guidelines. The inspector shall inspect porches, decks, steps, balconies and carports for structural performance as to visible footings, joists, deckings, railings and attachment points, where applicable [do the following:].

[(I) inspect the condition of windows and exterior doors to determine whether glazing is present and undamaged;

[(II) inspect insulated glass for fogging or other evidence of broken seals;

[(III) observe the presence and condition of window and door screens;

[(IV) inspect burglar bars for functional egress in appropriate areas; and

[(V) operate windows when at burglar bar locations of sleeping rooms or egress areas and a random sampling of others which are accessible.]

[(ii) Specific limitations. The inspector is not required to inspect detached structures or waterfront structures and equipment, such as docks or piers check for the presence of safety glass].

[(G) Porches and decks.

[(i) Inspection guidelines. The inspector shall inspect porches, decks, steps, balconies and carports for structural performance as to visible footings, joists, deckings, railings and attachment points, where applicable.

[(ii) Limitations. The inspector is not required to inspect detached structures or waterfront structures and equipment, such as docks or piers.

[(H) Insulation.

[(i) Inspection guidelines. The inspector shall observe the presence and approximate depth of insulation where visible.

[(ii) Specific limitations. The inspector is not required to determine the U-factor of insulation in walls or ceilings.

[(I) Gutters and downspouts.

[(i) Inspection guidelines. The inspector shall observe the general condition of installed gutter and downspout systems.

[(ii) Specific limitations. The inspector is not required to inspect internal gutters, downspouts, or drainage piping.]

(f) Mechanical systems.

(1) (No change.)

(2) Components for inspection.

(A) Inspection guidelines for appliances.

(i) Dishwasher. The inspector shall do the following:

(I)-(III) (No change.)

(IV) observe the discharge hose or piping for condition and presence of back flow prevention [proper routing];

(V)-(VI) (No change.)

(VII) operate the unit in normal mode with the soap dispenser [door] closed; and

(VIII) inspect [for proper] operation, noting that the spray arms turn, the soap dispenser [door] opens and the drying element operates.

(ii)-(iii) (No change.)

(iv) Electric or gas ranges [range]. The inspector shall do the following:

(I) inspect for broken or missing knobs, elements, drip pans or other parts; [and]

(II) inspect for operation of the signal lights and elements or burners at low and high settings;

(III) observe and report materials used for the gas branch line and the connection to the appliance; and

(IV) inspect for presence, location and accessibility of gas shut-off valve and for leaks at the valve.

(v) Electric or gas ovens [Gas range]. The inspector shall do the following:

(I) inspect for broken or missing knobs, handles, glass panels, lights or light covers [burners] or other parts;

(II) inspect the door for gasket condition, tightness of closure and operation of the latch [inspect the burners for proper lighting and operation at low and high settings];

(III) inspect the oven for secure mounting [inspect for proper materials used for the gas branch line and the connection to the appliance; and]

(IV) inspect the heating elements and thermostat sensing element for proper support; [inspect for presence and location of gas shut-off valve and for leaks at the valve.]

(V) observe the operation of the heating elements or the lighting, operation and condition of the flame;

(VI) inspect the operation of the clock and timer, thermostat and door springs; and

(VII) observe the accuracy of the thermostat with a thermometer for a 25 degree range plus or minus of a 350 degree setting.

(vi) Microwave oven [Electric oven]. The inspector shall do the following:

(I) inspect for broken or missing knobs, handles, glass panels, [lights or light covers.] or other parts;

(II) inspect the condition of the door and seal [door for seal gasket condition, tightness of closure, and operation of the latch];

(III) observe the oven operation by heating a container of water or with other test equipment, as reason-



ably determined by the inspector; and  
[inspect the oven for secure mounting];

(IV) observe the operation of the light [inspect the heating elements and thermostat sensing element for proper support;]

[(V) observe the operation of the heating elements;

[(VI) inspect the operation of the clock and timer, thermostat, and door springs; and

[(VII) observe the accuracy of the thermostat with a thermometer for a 25 degree range plus or minus of a 350 degree setting.]

(vii) **Trash compactor** [Gas oven]. The inspector shall do the following:

(I) inspect the overall condition of the unit [inspect for broken or missing knobs, handles, glass panels, lights or light covers or other parts];

(II) operate the unit, observing noise and vibration level; and [inspect the door for seal condition, tightness of closure, and operation of the latch]

(III) check the unit for secure mounting in place. [inspect the oven for secure mounting;]

[(IV) observe the lighting operation and condition of the flame;

[(V) inspect for proper materials for the gas branch line and the connection to the appliance;

[(VI) inspect for presence and location of gas shut-off valve and for leaks at the valve;

[(VII) observe the accuracy of the thermostat with a thermometer for a 25 degree range plus or minus of a 350 degree setting; and

[(VIII) inspect the operation of the clock and timer, thermostat, and door springs.]

(viii) **Other built-in appliances** [Microwave oven]. The inspector shall inspect overall condition, operate the appliance as practicable or note otherwise in his report. [do the following:]

[(I) inspect for broken or missing knobs, handles, glass panels, or other parts;

[(II) inspect the condition of the door and seal;

[(III) observe the oven operation by heating a container of water or with other test equipment, as reasonably determined by the inspector; and

[(IV) observe the operation of the light.]

(ix) **Bathroom exhaust vents and electric heaters** [Trash compactor]. The inspector shall operate the unit, observing sound, speed and vibration level [do the following:]

(I) inspect the overall condition of the unit;

[(II) operate the unit, observing noise and vibration level; and

[(III) check the unit for secure mounting in place.]

(x) **Whole house vacuum system** [Other installed kitchen appliances]. The inspector shall do the following [inspect overall condition, operate the appliance as practicable, or note otherwise in his report.]

(I) inspect the condition of the main unit;

(II) operate the unit if possible; and

(III) inspect the systems from all accessible outlets throughout the house.

(xi) **Water heaters** [Bathroom exhaust vents and electric heaters]. The inspector shall do the following: [operate the unit, observing sound, speed, and vibration level.]

(I) identify the energy source;

(II) inspect the tank and fittings for leaks and corrosion;

(III) observe temperature and pressure relief valve piping for gravity drainage, size of drain pipe (no smaller than the outlet fittings), material,

and termination (which conditions are recognized hazards);

(IV) operate the temperature and pressure relief valve when of an operable type and operation will not cause damage to persons or property as reasonably determined by the inspector;

(V) inspect for broken or missing parts, covers or controls;

(VI) observe the condition of burner, flame and burner compartment or the operation of heating elements and the condition of wiring;

(VII) observe and report materials used for the gas branch line and the connection to the appliance, and inspect presence, location and accessibility of gas shut-off valve and for leaks at the valve;

(VIII) if applicable, inspect the type of vent pipe and its condition, draft, proximity to combustibles and its termination point, observing for adequate combustion and draft air;

(IX) observe for presence of safety pan and drain when applicable;

(X) observe for safe location and installation; and

(XI) inspect garage units or units which are located in rooms opening into a garage for the following:

(-a-) protection for physical damage to the unit; and

(-b-) minimum clearance of 18 inches above the garage floor, the absence of which is a recognized hazard.

(xii) **Doorbell and chimes** [Whole house vacuum system]. The inspector shall do the following:

(I) inspect the condition and operation of the [main] unit;

(II) inspect installation of all visible and accessible parts [operate the unit if possible; and]

[(III) inspect the system from all accessible outlets throughout the house].

(xiii) Attic power vents [Gas water heater]. The inspector shall do the following.

(I) inspect the operation of the thermostat control, if so equipped and accessible; and [tank and fittings for leaks and corrosion;]

(II) observe the sound, speed and vibration level [temperature and pressure relief valve piping for proper routing, size (reporting as an existing or recognized hazard drain lines smaller than the outlet fittings), material, and termination;]

[(III) operate the temperature and pressure relief valve when of an operable type and operation will not cause damage to persons or property as reasonably determined by the inspector,

[(IV) inspect for broken or missing parts, covers, or controls;

[(V) inspect for adequate support,

[(VI) observe the condition of burner, flame and burner compartment;

[(VII) inspect for proper materials used for the gas branch line and the connection to the appliance;

[(VIII) inspect for presence and location of gas shut-off valve and for leaks at the valve;

[(IX) inspect the type of vent pipe and its condition, draft, proximity to combustibles and termination point;

[(X) observe for adequate combustion and draft air,

[(XI) observe for presence of safety pan and drain when applicable;

[(XII) observe for proper location and installation; and

[(XIII) inspect garage units for the following:

[(a-) protection for physical damage to the unit; and

[(b-) minimum clearance of 18 inches above the garage

floor, the absence of which shall be reported as an existing or recognized hazard].

(xiv) Garage door operator [Electric water heater]. The inspector shall do the following:

(I) inspect the condition and operation of the garage door operator [tank and fittings for leaks and corrosion;]

(II) operate the door manually or by an installed automatic door control; and [observe the temperature and pressure relief piping for proper routing, size (reporting as an existing or recognized hazard drain lines smaller than the outlet fittings), material, and termination;]

(III) test whether the door automatically reverses during closing cycle [operate temperature and pressure relief valve, when of an operable type and operation will not cause damage to persons or property, as reasonably determined by the inspector;]

[(IV) inspect for presence of safety pan and drain when applicable; and]

[(V) inspect for the operation of heating elements and proper wiring.]

(xv) Hydrotherapy or whirlpool equipment [Doorbell]. The inspector shall do the following:

(I) observe operation; [inspect the condition and operation of the unit; and];

(II) inspect for the presence and operation of ground fault circuit interrupter; [inspect for proper installation of all visible and accessible parts.]

(III) inspect for safe location and operation of switches;

(IV) observe under the tub for evidence of leaks if the access cover is available and accessible; and

(V) inspect the movement of the discharge ports and the operation of air intake valves.

[(xvi) Attic power vents. The inspector shall do the following:

(I) inspect the operation of the thermostat control, if so equipped and accessible; and

[(II) observe the sound, speed and vibration level.

[(xvii) Garage door operator. The inspector shall do the following:

(I) inspect the condition and operation of the garage door operator;

(II) operate the door manually or by an installed automatic door control; and

(III) test whether the door automatically reverses during closing cycle.

[(xviii) Hydrotherapy or whirlpool equipment. The inspector shall do the following:

(I) inspect for proper operation;

(II) operate the equipment using normal controls;

(III) inspect for the presence and proper operation of ground fault circuit interrupter;

(IV) inspect for proper location and operation of the switches and air intake valves;

(V) observe under the tub for evidence of leaks if the access cover is available and accessible; and

(VI) inspect the movement of the discharge ports.]

(B) Specific limitations for appliances. The inspector is not required to do the following:

(i) inspect or operate compactors or other devices which require use of special keys, codes, or combinations to operate, when not available;]

(ii)(i) operate or determine the condition of other auxiliary components of inspected items; or

(iii)(ii) inspect self-cleaning functions[.];

(iv) remove an insulation blanket to gain access to water heater components;

(v) operate remote controls for garage door operators;

(vi) operate equipment beyond its normal operating range; or

[(vii) operate programmable features or devices, or equipment or appliance hoses, attachments or other accessories.]

(C) Inspection guidelines for cooling systems.

(I) (No change.)

[(i) Cooling systems other than evaporative coolers. The inspector shall do the following:

(II) operate the system using normal control devices except when the outdoor temperature is less than 60 degrees Fahrenheit;

(III)-(VI) (No change.)

(ii) (No change.)

(D) Specific limitations for cooling systems. The inspector is not required to do the following:

[(i) operate a cooling system when the outdoor temperature is less than 60 degrees Fahrenheit;

[(ii) determine the proper operation of condensate systems;

[(iii) inspect gas-fired refrigeration systems;

(i) [(iv)] inspect for the pressure of the system coolant or determine the presence of leaks,

[(v) determine the efficiency of a system;

[(vi) inspect any equipment which is not in an accessible area or dismantle any equipment, controls or gauges;

[(vii) determine the electrical current draw of the system;

(ii) [(viii)] program digital-type thermostats or controls; or

(iii) [(ix)] operate setback features on thermostats or controls; or

[(x) inspect interior components of an evaporative cooler when the unit has been drained or shut down].

(E) Inspection guidelines for heating systems. The inspector shall do the following:

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

(iv) observe in gas units the burner, the condition of the burner compartment; the type, condition, draft and ter-

mination of the vent pipe and proximity to combustibles; the availability of combustion and draft air and the presence of forced air in the burner compartment (full evaluation of the integrity of a heat exchanger requires dismantling of the furnace and is beyond the scope of a visual inspection);

(v)-(viii) (No change.)

(F) Specific limitations for heating systems:

[(i) activate or operate heating systems which have been shut down or which do not respond to normal control devices;

[(ii) determine fully the performance of heat exchangers;

[(iii) inspect any equipment unless the equipment is located in an accessible area;

[(iv) dismantle any equipment, controls or gauges;]

(i) [(v)] inspect accessories such as humidifiers, air purifiers, motorized dampers, heat reclaimers, electronic air filters or wood-burning stoves;

(ii) [(vi)] determine the efficiency or adequacy of a system;

[(vii) inspect solar heating systems;]

[(viii) activate heating or heat pump systems if ambient temperatures or other circumstances are, in the reasonable opinion of the inspector, not conducive to safe operation without damage to the controls;]

(iii) [(ix)] program digital-type thermostats or controls; or

(iv) [(x)] operate radiant heaters, stem heat systems or unvented gas-fired heating appliances.

(G) Inspection guidelines for ducts, vents and flues. The inspector shall do the following:

(i) (No change.)

(ii) inspect for air flow at all accessible supply registers in the habitable areas of the structure (except for determining the adequacy of the balance of conditioned air);

(iii)-(vii) (No change.)

(H) (No change.)

(I) Inspection guidelines for plumbing systems. The inspector shall do the following:

(i) inspect for the type and condition of all accessible and visible

water supply and waste-water and vent pipes;

(ii)-(v) (No change.)

(vi) observe and report deficiencies in [inspect for proper] installation and identification of hot and cold faucets;

(vii)-(xii) (No change.)

(J) (No change.)

(g) Electrical systems.

(1) (No change.)

(2) Components for inspection.

(A) Service entrance and panels.

(i) Inspection guidelines. The inspector shall do the following:

(I) observe [the general condition of the] service entrance cables for integrity of insulation, drip loop, separation of conductors at weatherheads and clearances [drop];

(II) (No change.)

(III) inspect for the presence of a grounding electrode conductor in the service where visible, secure [proper] connection to the grounding electrode or grounding system;

(IV) inspect all accessible main and subpanels to ensure they are [adequately] secured to the structure and appropriate for their location (weather-tight if exposed to weather, appropriate clearances and accessibility), with inside covers (dead fronts) in place and knock-outs filled;

(V) inspect the condition of the wiring in the panels, its type (for example, copper or aluminum) [copper or aluminum] and the compatibility of overcurrent protectors for the size of conductor being used and for proper sizing of listed equipment of overcurrent protection and conductors, when power requirements for listed equipment are readily available;

(VI) report [(if aluminum branch circuit wire is observed in the main or subpanels)] the presence or absence of appropriate connections, such as copper/aluminum approved devices, pig-tailed connections or crimp connections; and

(VII) observe the presence of [proper] main disconnect(s).

(ii) Specific limitations.  
The inspector is not required to do the following:

[(I) determine the ability of the system to comply with current codes;]

(II) determine service capacity amperage or voltage or the capacity of the electrical system relative to present or future use;

[(III) dismantle any electrical device or control other than those required by this section;

[(IV) insert any tool, probe or testing device into main or subpanels;

[(V) activate electrical systems or branch circuits which are not energized;

[(VI) operate overload protection devices;

(I)[(VII)] determine the adequacy of the ground conductor(s);

[(VIII) determine the capacity of the electrical system relative to present or future use;]

(III)[(IX)] determine the insurability of the property; or

(IV)[(X)] conduct voltage drop calculations; [or

[(XI) move furniture, stored items or appliances to inspect panels, wiring or connections.]

(B) Branch circuits, connected devices and fixtures.

(i) Inspection guidelines.  
The inspector shall do the following:

(I) inspect all accessible receptacles to determine whether:

(-a-) (No change.)

(-b-) polarity is correct [proper];

(-c-) (No change.)

(-d-) evidence of arcing or [heat is] excessive heat;

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

(II) operate all accessible wall and appliance switches to determine if:

(-a-) they [the switches] are operational [and functioning properly];

(-b-) there is evidence of arcing or excessive heat; and

(-c-) they [the switches] are fastened securely with covers in place.

(III) (No change.)

(IV) report inoperable or missing fixtures;

(V) observe and report deficiencies [inspect the general condition] of exposed wiring and junction boxes;

(VI) observe and report deficiencies or absences [inspect for the presence] of conduit in appropriate locations and for secure [proper] termination of conduit;

(VII) inspect appliances and electrical gutters for proper bonding [grounding];

(VIII) observe subpanels for [proper] bonding and grounding;

(IX)-(X) (No change.)

(ii) Specific limitations.  
There are no specific limitations for branch circuits, connected devices and fixtures [The inspector is not required to do the following:

[(I) move any objects, furniture or appliances to gain access to any electrical component;

[(II) remove switch or outlet cover plates, except where aluminum wiring is observed in the main or subpanels;

[(III) inspect any electrical equipment which is not in an accessible area;

[(IV) dismantle any electrical device or control;

[(V) inspect ancillary systems, such as burglar and smoke or fire

systems, lightning protection, low voltage systems, antennae, electrical deicing tapes, sprinkler wiring, swimming pool or spa wiring, intercom systems, any systems which area controlled by timers or photo voltaic cells, landscape lighting, cable TV wiring, telephone wiring, load or voltage regulators; or

[(VI) trace wiring origins or wiring destination.]

(h) (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 March 8, 1995.

TRD-9502963

Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption: April 17, 1995

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

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**Part XXXI. Texas State  
Board of Examiners of  
Dietitians**

**Chapter 711. Dietitians**

• 22 TAC §§711.1-711.3,  
711.5-711.9, 711.13-711.15, 711.  
17-711.19

The Texas State Board of Examiners of Dietitians (board) proposes amendments to §§711.1-711.3, 711.5-711.9, 711.13-711.15, and 711.17- 711. 19, concerning licensed dietitians and provisional licensed dietitians. Specifically, the sections cover definitions; the board's operation; the profession of dietetics; experience requirements for examination; examinations for dietitian licensure; application procedures; determination of eligibility; provisional licensed dietitians; licensing of persons with criminal backgrounds to be dietitians and provisional dietitians; violations, complaints, and subsequent board actions; formal hearings; continuing education requirements; temporary license; and informal disposition.

The amendments will update existing sections relating to the regulation of dietitians. Specifically, the amendments add a new definition; update legal citations; add code of ethics provisions for applicants; clarify examination procedures; add requirements for provisional licensed dietitians who fail the examination; expand acceptable continuing education experiences; and various minor changes which clarify meaning without substantial change, improve grammar and style, and clarify inconsistencies in the rules.

Becky Berryhill, Executive Secretary, has determined that for the first five-year period the sections will be in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the rules.

Ms. Berryhill also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to assure the regulation of dietitians continues to identify competent practitioners and that licensees are increasing their knowledge and abilities through continuing education. There will be no cost to small businesses as a result of enforcing or administering the rules. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. There will be no impact on local employment.

Comments on the proposal may be submitted in writing to Becky Berryhill, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, (512) 834-6601. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4512h, §6, which provide the Texas State Board of Examiners of Dietitians Board with the authority to adopt rules concerning the regulation and licensure of dietitians.

The sections affect Texas Civil Statutes, Article 4512h.

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

**APA—The Administrative Procedure Act, Government Code, Chapter 2001.**

**[APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a].**

**Contested case—A proceeding in accordance with APA[APTRA] and this chapter, including, but not restricted to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.**

**§711.2. The Board's Operation.**

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

(c) Meetings.

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

(3) Meetings shall be announced and conducted under the provisions of the Open Meetings Act, Texas Government Code, Chapter 551[Texas Civil Statutes, Article 6252-17].

(d)-(h) (No change.)

(i) Reimbursement for expense.

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

(4) Board-approved requests for board staff for out-of-state travel for board activities shall be approved by the associate

commissioner for health care quality and standards [deputy commissioner for management and administration] of the department on appropriate forms.

(5) (No change.)

(j) (No change.)

(k) Agendas.

(1) (No change.)

(2) The official agenda of a meeting shall be filed with the Texas secretary of state in accordance with the Texas Open Meetings Act, Texas Government Code, Chapter 551 [Texas Civil Statutes, Article 6252-17].

(l) (No change.)

(m) Official records.

(1) All official records of the board including application materials, except files containing information considered confidential under the provisions of the Texas Open Records Act, Texas Government Code, Chapter 552 [Texas Civil Statutes, Article 6252-17a], and the Family Educational Rights and Privacy Act of 1974, 20 United States Code §1232g, shall be open for inspection during regular office hours.

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

(n)-(s) (No change.)

(t) Petition for adoption of a rule.

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

(3) Consideration and disposition of the petition.

(A) (No change.)

(B) Within 60 days after receipt of the petition by the executive secretary, or within 60 days after receipt of a resubmitted petition in accordance with paragraph (2)(B)(i)-(iv) of this subsection, the board shall either:

(i) deny the petition; [or]

(ii) initiate rule-making procedures; or [by referring the petition to the rules committee for its recommendation. The committee shall report its recommendations to the board at its next regular meeting.]

(iii) deny the petition, but refer the petition to the rules committee for its recommendation. The committee shall report its recommendations to the board at its next regular meeting.

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

(E) If the board initiates rule-making procedures [in accordance with the Administrative Procedure Act (APA), §5],

the version of the rule which the board proposes may differ from the version proposed by the petitioner.

(4) (No change.)

**§711.3. The Profession of Dietetics.**

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

(d) Code of ethics. These rules shall constitute a code of ethics as authorized by the Licensed Dietitian Act (the Act), §6(b)(1).

(1) Professional representation and responsibilities.

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

(E) A licensee shall disclose [not use his or her professional relationship with] a client, a person supervised by the licensee, or an associate any [to promote for] personal gain or profit from any item, procedure, or service used by the licensee with the client, supervisee, or associate [unless the licensee has disclosed to the client, a person supervised by the licensee, or an associate the nature of the licensee's personal gain or profit].

(F)-(O) (No change.)

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

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

(g) Applicants. A violation of any provision of subsection (d) of this section by a person who is an applicant or who subsequently applies for a license (even though the person was not a licensee at the time of the violation) may be a basis for disapproval of the application under §711.8(e) (7) of this title (relating to Determination of Eligibility).

**§711.5. Experience Requirements for Examination.**

(a) (No change.)

(b) General. Applicants for examination must have satisfactorily completed an approved preplanned, documented professional experience program or internship in dietetics practice under the supervision of a licensed dietitian or a registered dietitian. The program or internship and the supervisor must be approved by the board or the association.

(1) (No change.)

(2) A pre-planned professional experience program shall:

(A) be completed within three [five] years after commencement of the program, and shall be:

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

(B) (No change.)

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

(c)-(g) (No change.)

*§711.6. Examinations for Dietitian Licensure.*

(a) (No change.)

[(b) Frequency. The board shall offer licensing examinations at least twice a year or as often as deemed necessary by the board.]

(b)[(c)] Forms of examination. The examination for licensure is the examination given by the commission or its designee. [may be any of the following as prescribed by the board:]

[(1) a written examination prepared by the board or its designee;

[(2) an examination given by the commission or its designee; or

[(3) any other form of examination prescribed by the board.]

(c)[(d)] Applications for examination.

(1) The board shall notify an applicant whose application has been approved [at least 30 days prior to the next scheduled examination]. The board or its designee shall forward an examination registration form to each approved applicant.

(2) An applicant who wishes to take a scheduled examination must complete the registration form and return it with the appropriate fee to the board or its designee by the established deadline [An examination registration form for a scheduled board-prepared examination must be completed and returned to the board by the applicant with the required fee (unless otherwise instructed by the board) at least 15 days prior to the date of examination].

[(3) A form indicating intent to take an examination given by the commission or its designee must be completed and returned to the board by the applicant at least 60 days prior to the date of examination.]

(3)[(4)] Any applicant who fails to apply for and take the licensure examination within a period of three years after an examination approval notice is mailed to him by the executive secretary may have such approval withdrawn by action of the board.

(d)[(e)] Locations.

[(1) Written examinations administered by the board will be in Austin, Texas, unless otherwise announced.

[(2)] Examinations administered by the commission or its designee will be held in locations to be announced by the commission.

(e)[(f)] Grading.

[(1) Licensure examinations administered by the board shall be graded by the board or its designee.

[(2) Written examinations administered by the board shall be identified by number and graded anonymously in order to insure impartiality.

[(3)] Examinations administered by the commission shall be graded by the commission or its designee.

(f)[(g)] Results.

[(1) The executive secretary shall notify each examinee of the results of the board-prepared examination within 30 days of the date of the examination.]

(1)[(2)] If the examination is graded or reviewed by a national or state testing service, the board shall notify each examinee of the examination results within 14 days of the date the board [department] receives the results from the testing service.

(2)[(3)] If examination results will be delayed for more than 90 days after the examination, the board [department] shall notify each applicant of the reason for the delay before the 90th day.

(3) [(4)] No matter what numerical or other scoring system the national or state testing service [board] may use in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail."

(g)[(h)] Failures.

(1) An applicant who fails the examination prescribed by the board may take a subsequent examination after paying the examination fee.

(2) If requested in writing, the board shall furnish an applicant who fails an examination an analysis of performance.

(3) An applicant who fails the examination three times shall have his application denied unless the applicant furnished the board an official transcript from an accredited college or university indicating completed course work taken for credit with a passing grade in the area(s) of weakness determined by analysis of the previous examination(s). The applicant must submit an official transcript within six months of the date of the notice from the board which specifies the course work [to be] completed.

(4) An applicant who completes course work as described in paragraph (3) of this subsection must file an updated application for examination with the application fee.

(h)[(i)] Registered dietitians. The board shall waive the examination requirement for applicants who are registered in active status by the commission at the time of making application to the board.

*§711.7. Application Procedures.*

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

(d) Required application materials.

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

[(8) An applicant applying for licensing by reciprocity shall submit a copy of the license or certificate by which the reciprocal license is requested and the name and address of the licensing or certifying agency.]

(8)[(9)] A provisional licensed dietitian applicant must submit a completed supervision contract.

*§711.8. Determination of Eligibility.*

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

(e) The board may disapprove the application if the person has:

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

(6) been in violation of the Licensed Dietitian Act (Act)[, the Code of Ethics, or any other provision of this title];

(7) violated a provision of the code of ethics in §711.3(d) and (g) of this title (relating to The Profession of Dietetics);

(8) [(7)] been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a licensee as set out in §711.13 [§711.14] of this title (relating to Licensing of Persons with Criminal Backgrounds to be Dietitians and Provisional Licensed Dietitians); or

(9)[(8)] had a license, registration, or certificate to practice dietetics in another state or jurisdiction which has been suspended, revoked, or otherwise restricted by the licensing entity or commission.

(f)-(h) (No change.)

*§711.9. Provisional Licensed Dietitians.*

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

(e) Examination failures. An individual who fails the commission's examination three times prior to application or after licensure as a provisional licensed dietitian must meet one of the following requirements:

(1) meet with his or her supervising licensed dietitian no less than two hours per week for regularly scheduled face-to-face supervision; or

(2) complete course work taken for credit with a passing grade in the area(s) of weakness as determined by the board and within the time period established by the board.

*§711.13. Licensing of Persons with Criminal Backgrounds to Be Dietitians and Provisional Dietitians.*

(a) (No change.)

(b) Criminal convictions which directly relate to the profession of dietetics.

(1) (No change.)

(2) In considering whether a criminal conviction directly relates to the occupation of a licensed dietitian or provisional licensed dietitian, the board shall consider:

(A) (No change.)

(B) the relationship of the crime to the purposes for licensure as a dietitian or provisional dietitian. The following felonies and misdemeanors relate to the license of a dietitian or provisional dietitian because these criminal offenses indicate an inability or a tendency to be unable to perform as a licensed dietitian or a provisional licensed dietitian.

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

(iv) a misdemeanor or felony offense under various titles of the Texas Penal Code:

(I)-(III) (No change.)

(IV) offenses against public health, safety, and morals (Title 10); and

(V) offenses of attempting or conspiring to commit any of the offenses in this subsection (Title 4); [and]

[(VI) insurance claim fraud under the Penal Code, §32.55;]

(v) (No change.)

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

[(c) Procedures for revoking, suspending, or denying a license to persons with criminal backgrounds.

[(1) The board's executive secretary will give written notice to the person that the board intends to deny, suspend, or revoke the license in accordance with the provisions of the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, and the board's for-

mal hearing procedures, §711.15 of this title (relating to Formal Hearings).

[(2) If the board denies, suspends, or revokes an application or a license under this section, the executive secretary will give the person written notice:

[(A) of the reasons for the decision;

[(B) that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to the board and its decision;

[(C) that the person must begin the judicial review by filing a petition with the court within 30 days after the board's action is final and appealable; and

[(D) of the earliest date that the person may appeal.]

*§711.14. Violations, Complaints, and Subsequent Board Actions.*

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

(c) Filing of complaints.

(1) (No change.)

(2) A person wishing to complain about a prohibited act or alleged violation against a licensee or other person shall notify the executive secretary. The initial notification of a complaint may be in writing, by telephone, or by personal visit to the executive secretary's office. The mailing address is Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, 1-800-942-5540 [(512)459-2945].

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

(d) (No change.)

(e) Actions by executive secretary.

(1) The executive secretary alone or with the concurrence of the complaint committee may take one or more of the following actions:

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

(C) determine that a licensee has violated the Act or a board rule and propose denial of renewal, revocation, or suspension of the license, reprimand, or probation of the license suspension; or[.]

(D) determine that a licensee has violated the Act or a board rule and that the violation did not affect the health, safety or welfare of any pa-

tient or person and therefore the complaint may be resolved informally by such means as compliance with a cease and desist letter or a settlement agreement with the committee.

(2) (No change.)

(f)-(j) (No change.)

*§711.15. Formal Hearings.*

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

(d) Parties to the hearing.

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

[(3) A party may appear personally or be represented by counsel or both.]

(e) Subpoena requirements.

(1) On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner shall issue a subpoena addressed to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents [at the hearing].

[(2) All procedures relating to subpoenas shall be in accordance with APA.]

[(2)][(3)] A party or witness may seek to quash the subpoena or move for a protective order as provided in Texas Rules of Civil Procedures.

[(4) Witnesses may be subpoenaed from any place in the State of Texas.

[(5) Documents include books, papers, accounts, and similar materials or objects.]

[(3)][(6)] A witness or deponent described in APA[, §14(d)(1).] will be paid for mileage, transportation, meals, and lodging expenses and a fee of \$10 a day.

[(f) Depositions. The taking and use of depositions in any contested case proceeding shall be governed by APA, §14.]

(f)[(g)] Prehearing conferences.

(1) The [In a contested case, the] hearing examiner, on his own motion or the motion of a party, may direct the parties to appear at a specified time and place for a conference prior to the hearing for the purpose of:

(A) the formulation and simplification of issues;

(B) the necessity or desirability of amending the pleadings;

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing;

(E) specifying the number of witnesses;

(F) the mutual exchange of prepared testimony and exhibits;

(G) the designation of parties; and

(H) other matters which may expedite the hearing.

(2) The hearing examiner will conduct the prehearing conference in such manner and with the necessary authority to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(3) The hearing examiner shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(4) Any action taken at the prehearing conference may be reduced to writing, signed by the parties, and made a part of the record.

(g)[(h)] The hearing procedures.

(1) The hearing examiner's duties. The hearing examiner shall preside over and conduct the hearing. On the day and time designated for the hearing, the hearing examiner shall:

(A) convene and call the hearing to order;

(B) state the purpose of and the legal authority for the hearing;

(C) announce that a record of the hearing will be made;

(D) outline the procedure and order of presentation that will be followed;

(E) administer oaths to those who intend to testify; and

(F) take any and all other actions as authorized by applicable law and these sections to provide for a fair, just, and proper hearing.

(2) Order of presentation.

(A) After making the necessary introductory and explanatory remarks,

the hearing examiner will begin receiving testimony and evidence from the witnesses.

[(B)] Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.]

[(B)][(C)] The [In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving entitlement to the same; provided, however, that the] order of proceeding may be altered or modified by the hearing examiner either upon agreement of the parties or upon the hearing examiner's own order when such action will expedite the hearing without prejudice to any party.

[(D)] When the party first proceeding finishes the case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by other participants to the proceedings.]

(C) [(E)] The hearing examiner may limit the number of witnesses whose testimony will be repetitious and the hearing examiner may also establish time limits for testimony so as all viewpoints are given a reasonable opportunity to be expressed.

[(D)][(F)] The hearing examiner, at the hearing examiner's discretion, may allow final arguments or take the case under advisement, note the time, and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(3) Consolidation. The hearing examiner, upon the hearing examiner's own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the board shall not be consolidated without consent of all parties to such proceedings, unless the hearing examiner finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(4) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the hearing examiner and all other persons participating in or observing the hearing. The hearing examiner is authorized to take whatever action the hearing examiner deems necessary and appropriate to maintain the proper level of decorum and

conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the hearing examiner deems fair and just.

[(5)] The hearing record. The hearing record will include:]

[(A)] all pleadings, motions, and intermediate rulings;

[(B)] evidence received or considered;

[(C)] a statement of matters officially noticed;

[(D)] questions and offers of proof, objections, and rulings of them;

[(E)] proposed findings and exceptions;

[(F)] any decision, opinion, or report by the hearing examiner; and

[(G)] all staff memoranda or data submitted to or considered by the hearing examiner or members of the board who are involved in making the decision.]

(5) [(6)] Recording the hearing.

(A) The hearing examiner shall keep either a stenographic or magnetic tape record of the hearing proceeding. A court reporter may be present to record the hearing.

(B) In those cases when a magnetic tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to duplicate.

[(6)][(7)] Assessing the cost of a court reporter and the record of the hearing.

(A) In the event a court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter.

[(B)] The board shall prepare, or order the preparation of, a transcript (statement of facts) of the hearing upon the written request of any party. The board may pay the cost of the transcript or assess the cost to one or more parties.]



(B)[(C)] In the event a final decision of the board is appealed to the district court wherein the board is required to transmit to the reviewing court a copy of the record of the hearing proceeding, or any part thereof, the board may require the appealing party to pay all or part of the cost of preparation of the original or a certified copy of the record of the board proceedings that is required to be transmitted to the reviewing court.

(7)[(8)] Rules of evidence. The hearing examiner will apply the rules of evidence under APA, §14(a), and also the following rules.

(A) The hearing examiner may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the hearing examiner should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidating by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

[(B)] Documentary evidence should be presented in its original form but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which are typical and representative, and may, at the hearing examiner's discretion, require the abstracting of the relevant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirement, the hearing examiner shall require that all parties of record be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by a hearing examiner's decision to remove only typical or representative documents.]

(B)[(C)] Exhibits shall be as follows.

(i) The [Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the] parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the board. The

hearing examiner may require that exhibits of a documentary character not exceed 8 1/2 by 14 inches unless they are folded to the required size. [Maps and drawings which are offered as exhibits shall be folded so as not excluded.]

(ii) The original of each exhibit offered should be tendered to the hearing examiner or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(iii) In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record under seal.

(iv) Unless specifically directed by the hearing examiner, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing.

(C)[(D)] When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, 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 in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what the testimony would be if the witness were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and the prepared testimony shall be subject to a motion to strike either in whole or in part.

(D)[(E)] When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review. The hearing examiner may ask such questions of the witness as the hearing examiner deems necessary to satisfy the hearing examiner that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

[(F)] Official notice by the hearing examiner or the board shall be governed by APA, §14(q). Further, official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The hearing examiner shall indicate during the course of a hearing that information of

which the hearing examiner will take official notice. When a hearing examiner's findings are based upon official notice as a material fact not appearing in the evidence of record, the hearing examiner shall set forth in the proposal for decision those items with sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show to the contrary through the filing of exceptions to the hearing examiner's proposal for decision.]

[(9)] Disposition of case. Unless precluded by law, informal disposition may be made of any contested case by agreed settlement order or default order.]

(8)[(10)] Agreements in writing. No stipulation or agreement between the parties with regard to any matter involved in any proceeding shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, dictated into the record during the course of a hearing, or incorporated in an order bearing their written approval. This rule does not limit a party's ability to waive, modify, or stipulate away any right or privilege afforded by these sections.

(h)[(i)] Action after the hearing.

(1) Reopening of hearing for new evidence.

(A) The hearing examiner, on behalf of the board, may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(B) The hearing examiner, on behalf of the board, will reopen a hearing to include such new evidence as part of the record if the hearing examiner, on behalf of the board, deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(C) Notice of any reopened hearing shall be sufficient by notifying all parties of same, by certified mail, return receipt requested.

(2) Proposal for decision.

(A) The [If a proposal for decision to the board is necessary under APTRA, §15, the] hearing examiner shall prepare the proposal for decision and provide copies of the same to all parties.

(B) Each party having the right and desire to file exceptions and briefs shall file them with the hearing examiner within the time designated by the hearing examiner.

(C) Parties desiring to do so shall file written replies to these exceptions and briefs within the time designated by the hearing examiner. Failure to reply or except may be construed as agreement with the exceptions and briefs.

(D) All exceptions and replies to them shall be succinctly stated.

(3) Filing. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the hearing examiner. [The party filing such instrument shall provide copies of the same to all other parties of record by first class United States mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.]

(4) Final orders or decisions.

(A) The final order or decision will be rendered by the board. The board is not required to adopt the recommendation of a hearing examiner and may take action as it deems appropriate and lawful.

[(B) All final orders or decisions shall be in writing and shall set forth the findings of fact and conclusions required by law.]

(B) [(C)] All final orders shall be signed by the executive secretary and the chairman of the board; however, interim orders may be issued by the hearing examiner in accordance with the order of appointment.

[(D) A copy of all final orders and decisions shall be timely provided to all parties as required by law.]

[(5) Motion for rehearing. A motion for rehearing shall be governed by APTRA, §16 or other pertinent statute and shall be addressed to the board and filed with the hearing examiner.

[(6) Appeals. All appeals from final board orders or decisions shall be governed by APTRA, §19 and §20, or other pertinent statute and communications re-

garding any appeal shall be to the executive secretary.]

#### §711.17. Continuing Education Requirements.

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

(g) Continuing education undertaken by a licensee for renewal shall be acceptable if the experience falls in one or more of the following categories:

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

(4) self-study modules; [or]

(5) instructing or presenting continuing education programs or activities that were offered or approved by the Commission on Dietetic Registration or its agents. Multiple presentations of the same programs only count once;[.]

(6) acceptance and participation in a poster session offered by a nationally recognized professional organization in the dietetics field or its state equivalent organization. Participation will be credited a maximum of two clock hours;

(7) books or articles published by the licensee in relevant professional books and referred journals. Three clock hours will be credited for the publication; or

(8) self-study of professional materials that include self-assessment examinations. Three hours maximum will be credited for self study.

(h) Activities unacceptable as continuing education for which the board may not grant continuing education credit are:

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

[(4) self-assessment questionnaire or activities;]

(4)[(5)] activities described in subsection (g) [(i)] of this section which have been completed more than once during the continuing education period; or

(5)[(6)] performance of duties that are routine job duties or requirements.

(i) (No change.)

(j) The continuing education committee may determine whether continuing education activities fit within the descriptions of this section.

(k) Any licensee attaining the age of 60 years who is not in the active practice of dietetics shall have the continuing education requirements waived upon the licensee's request.

(l) The continuing education requirement will begin upon first renewal. Each subsequent renewal will require documentation of the continuing education experience.

#### §711.18. Temporary License.

(a) (No change.)

(b) Requirements. An applicant for a temporary license shall submit:

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

(4) verification that the licensee is or will be supervised by a licensed dietitian in the same manner as set out in §711.9 of the title (relating to Provisional Licensed Dietitians); and[.]

(5) a copy of the applicant's dietitian's license or certificate in the other state, District of Columbia, or territory of the United States and the name, address and telephone number of the licensing or certifying agency.

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

#### §711.19. Informal Disposition.

(a)-(j) (No change.)

(k) Access to the board's investigative file may be prohibited or limited in accordance with the [Government Code, Article 200] and the] Administrative Procedure Act (APA).

(l)-(u) (No change.)

(v) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with APA, §2001.144[§18(c)].

(w) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the [Government Code, Chapter 200] and] APA, §2001.054(c)[§18(c)].

(1)-(2) (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 March 13, 1995.

TRD-9503095

Patty Greer  
Chairman  
Texas State Board of  
Examiners of Dietitians

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 834-6601

## TITLE 25. HEALTH SERVICES

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

#### Chapter 402. Client Assignment and Continuity of Services

##### Subchapter E. Preadmission Screening and Annual Resident Review (PASARR)

###### • 25 TAC §§402.151-402.161

*(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 Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes the repeal of §§402.151-402.161 of Chapter 402, Subchapter E, concerning preadmission screening and annual resident review (PASARR). New §§402.151-409.158 of the same subchapter concerning the same matters are proposed for public comment contemporaneously in this issue of the *Texas Register*.

The purpose of the repeals are to permit the adoption of new sections which comply with recently implemented federal regulations concerning the PASARR process and to reflect changes in agency responsibilities for the PASARR process.

Leilani Rose, director, Financial Services Department, has determined that for each year of the first five-year period the repeals are in effect there will be no fiscal implications as a result of implementing the repeals as proposed. There is no anticipated local economic impact.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, has determined that for each year of the first five years the repeals are in effect the public benefit anticipated is having rules which are consistent with federal regulations. There is no anticipated economic cost to persons who are required to comply with the proposed repeals. There will be no effect on small businesses.

Questions about the content of this proposal may be directed to Beverly Sawyer in the TDMHMR OBRA/PASARR Office at (512) 323-3281. Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held at 1:30 p.m. on Tuesday, April 11, 1995, in the TDMHMR Central Office auditorium at 909 West 45th Street in Austin to accept oral and written testimony concerning the proposed repeal. If

interpreters for the hearing impaired are required, please notify Ms. Logan at least 72 hours prior to the hearing by calling (512) 206-4516.

The repeals are proposed for repeal under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under Texas Civil Statutes, Article 4413(502), §15 which provides the Texas Health and Human Services Commission with the authority to review all proposed rules of health and human service agencies.

The repeals implement Texas Human Resources Code, §22.002, §§32.001-32.040, and Texas Civil Statutes, Article 4413(502), §16.

###### §402.151. Purpose.

###### §402.152. Application.

###### §402.153. Definitions.

###### §402.154. Preadmission Screening and Annual Resident Review Determination Process.

###### §402.155. Criteria for the Preadmission Screening and Annual Resident Review Determination That a Person with Mental Illness or with Mental Retardation and/or a Related Condition Needs Nursing Facility Services But Not Specialized Services for Mental Illness or for Mental Retardation and/or a Related Condition.

###### §402.156. Criteria for the Preadmission Screening and Annual Resident Review Determination that a Person with Mental Illness or with Mental Retardation and/or a Related Condition Needs Nursing Facility Services and Specialized Services for Mental Illness or for Mental Retardation and/or a Related Condition.

###### §402.157. Criteria for the Preadmission Screening and Annual Resident Review Determination that a Person with Mental Illness or with Mental Retardation and/or a Related Condition Does Not Need Nursing Facility Services But Does Need Specialized Services for Mental Illness or for Mental Retardation and/or a Related Condition.

###### §402.158. Roles of Nursing Facility and MHMRA in Seeking Alternate Placement for Applicants and Residents.

###### §402.159. Services and Documentation Provided by the MHMRA and Nursing Facility for Nursing Facility Residents Seeking Alternate Placement.

###### §402.160. References.

###### §402.161. Distribution.

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

Issued in Austin, Texas, on March 13, 1995.

TRD-9503083

Ann Utley  
Chair  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 206-4516

###### • 25 TAC §§402.151-402.158

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§402.151-402.158 of Chapter 402, Subchapter E, concerning preadmission screening and annual resident review (PASARR). Existing §§402.151-409.161 of the same subchapter concerning the same matters are proposed for repeal contemporaneously in this issue of the *Texas Register*.

The purpose of the new sections is to comply with recently implemented federal regulations concerning the PASARR process and to reflect changes in agency responsibilities for the PASARR process.

Leilani Rose, director, Financial Services Department, has determined that for each year of the first five-year period the sections are in effect there will be no fiscal implications as a result of the transfer of the determinations function from TDMHMR to the Texas Department of Human Services. The revised definition of mental illness will result in fewer assessments but should not effect the number of persons now receiving services. There will be no anticipated local economic impact.

Jaylon Fincannon, deputy commissioner, Mental Retardation Services, 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 provisions as proposed is this compliance with federal regulations. There will be no effect on small businesses. There are no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Beverly Sawyer in the TDMHMR OBRA/PASARR Office, (512) 323-3281. Written comments on the proposal may be sent to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A public hearing will be held at 1:30 p.m. on Tuesday, April 11, 1995, in the TDMHMR Central Office auditorium at 909 West 45th Street in Austin to accept oral and written testimony concerning the proposed new sec-

tions and the repeal of the existing sections. If interpreters for the hearing impaired are required, please notify Ms. Logan at least 72 hours prior to the hearing by calling (512) 206-4516.

The new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under Texas Civil Statutes, Article 4413(502), §15 which provide the Texas Health and Human Services Commission with the authority to review all proposed rules of health and human service agencies.

The new sections implement Texas Human Resources Code, §22.002, §§32.001-32.040, and Texas Civil Statutes, Article 4413(502), §16

*§402.151. Purpose.* The purpose of this subchapter is to define the responsibilities of the Texas Department of Mental Health and Mental Retardation (TDMHMR) for providing specialized services and/or alternate placement services for nursing facility applicants and residents who have been identified through the Preadmission Screening and Annual Resident Review (PASARR) process as needing specialized services for mental illness and/or for mental retardation or a related condition.

*§402.152 Application.* The provisions of this subchapter apply to.

(1) all persons who are applicants to or residents of nursing facilities who are identified through the PASARR process to need specialized services and;

(2) to all mental health and mental retardation authorities (MHMRAs).

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

**Alternate Placement Services**—Assistance provided by an MHMRA case manager at the request of a nursing facility resident or the resident's legal representative/surrogate decision maker to locate and secure services which meet the resident's basic needs and preferences in a setting other than a nursing facility. The services include the identification of specific alternate service resources for which the resident may be eligible, treatment services available through the resources and the possible consequences of selecting a specific resource.

**Basic needs**—The provision or acquisition of adequate food, clothing, safe and sanitary shelter, support services, and medical services to sustain life.

**Case manager**—Staff member designated by the MHMRA to ensure that a

person receives needed resources and services.

**Consensus**—A negotiated agreement that all interdisciplinary team (IDT) members can and will support in implementation. The negotiation process involves the open discussion of ideas with all parties encouraged to express opinions.

**Dementia**—A degenerative disease of the central nervous system as diagnosed by a physician in accordance with the International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

**Legally adequate consent**—As determined by the IDT, the ability of a nursing facility resident to give consent when each of the following conditions has been met:

(A) legal capacity: The individual giving the consent is of the minimum legal age and has not been adjudicated incompetent to manage personal affairs by an appropriate court of law;

(B) comprehension of information: The resident has been informed of and comprehends the nature, purpose, consequences, risks, and benefits of accepting or rejecting the specific alternative placement; and

(C) voluntariness: The consent has been given voluntarily and free from coercion and undue influence. A determination that the resident is inappropriately placed in a nursing facility and must be alternately placed as required by Federal OBRA PASARR legislation and HCFA regulations does not constitute coercion or undue influence.

**Legal representative**—The parent of a minor child or legal guardian of the applicant to or the resident of a nursing facility.

**Mental health and mental retardation authority (MHMRA)**—A local services provider selected by the Texas Department of Mental Health and Mental Retardation to plan, facilitate, coordinate, or provide services in a local services area to persons with mental illness, and/or mental retardation, or a related condition; this includes designated providers and departmental facility community services programs.

**Mental illness**—A current primary or secondary diagnosis of a major mental disorder (as defined in the Diagnostic and Statistical Manual of Mental Disorders, Third edition, revised in 1987 (DSM-III-R). This mental disorder is a schizophrenic, mood, paranoid, panic, or other severe anxiety disorder; personality disorder; other psychotic disorder; or another mental disorder that may lead to a chronic disability and is not accompanied by a primary diagnosis of dementia (including Alzheimer's disease or a related disorder). The disorder results in functional limitations in major life activities

within the past three to six months that would be appropriate to the individual's developmental stage. The individual typically has at least one of the following characteristics on a continuing or intermittent basis: serious difficulties in the areas of interpersonal functioning; and/or concentration, persistence, and/or pace; and/or adaptation. Within the past two years, the disorder has required psychiatric treatment more intensive than outpatient care and/or the individual has experienced an episode of significant disruption to the normal living situation for which supportive services were required to maintain functioning at home or in a residential treatment environment or which resulted in intervention by housing or law enforcement officials.

**Mental retardation**—A diagnosis of mental retardation (mild, moderate, severe, or profound) as described in Classification in Mental Retardation, American Association on Mental Deficiency, 1983 Revision, i.e., mental retardation is significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

**Nursing facility**—A Texas Medicaid-certified institution providing nursing services. It does not include a non-Medicaid certified facility, or non-Medicaid certified distinct part of a facility, or a facility certified as an intermediate care facility for the mentally retarded or for people with related conditions.

**Preadmission Screening and Annual Resident Review (PASARR)**—The process of evaluating, reviewing, and establishing a person's need for nursing facility services and for specialized services for mental illness and/or for mental retardation or a related condition. This process is conducted by the Texas Department of Human Services (TDHS) in accordance with 40 TAC §19.604.

**Related condition**—A severe, chronic disability as defined in 42 CFR 43.1009, that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition including autism, but excluding mental illness, found to be closely related to mental retardation because this condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for these persons.

(B) is manifested before the person reaches age 22;

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitations in three or more of the following areas of major life activity:

- (i) self-care;
- (ii) understanding and use of language;
- (iii) learning;
- (iv) mobility;
- (v) self-direction; or
- (vi) capacity for independent living.

Responsible party—A person as defined in rules of TDHS in 40 TAC §19.101 (relating to Definitions for Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification).

Specialized services—

(A) For individuals with mental illness, the implementation of an individualized plan of care developed under and supervised by a physician or other qualified mental health professionals that prescribes specific therapies and activities for a person who is experiencing an acute episode of severe mental illness which necessitates supervision by trained mental health personnel.

(B) For individuals with mental retardation and/or a related condition, the implementation of an aggressive, continuous, and individualized program of specialized and generic training, treatment, health services, and related services that is directed toward the behaviors necessary for the person to function with as much self-determination and independence as possible and the prevention or deceleration of regression or loss of current optimal functional status. It does not include services to maintain generally independent people who are able to function with little supervision or in the absence of a continuous program of specialized services.

Support services—Services which may include social, psychological, habilitative, rehabilitative, or other assistance appropriate to the person's needs as determined by the IDT.

Surrogate decision maker (SDM)—A person designated in accordance with the Health and Safety Code, Chapter 313, Consent to Medical Treatment, who may consent to treatment on behalf of an individual who is comatose, incapacitated, or otherwise mentally or physically incapable of communication.

§402.154. *PASARR Determination Process.* The PASARR determination is a

professional decision based upon written criteria and objective information made in accordance with the rules of the Texas Department of Human Services at 40 TAC §19.604. The MHMRAs will provide specialized services to those residents determined through this process to need specialized services for mental illness, and/or mental retardation or a related condition.

§402.155. *Provision of Specialized Services and Alternate Placement Services*

(a) The MHMRA will provide specialized services and alternate placement services as delineated in the OBRA PASARR Policy and Procedure Manual for Specialized Services and Alternate Placement Services and in 40 TAC 19.604(e-f), relating to specialized services and alternate placement.

(b) The MHMRA case manager will invite the resident, the resident's legal representative/surrogate decision maker/responsible party, family members, nursing facility representative(s) and attending physician to participate in an interdisciplinary team (IDT) meeting to develop a specialized service plan for the resident. If the resident or the resident's legal representative/SDM requests alternate placement services, the service plan will outline team member responsibilities for securing an alternate placement.

(1) Communication techniques and devices should be utilized as appropriate to facilitate the resident's participation in all aspects of service planning.

(2) The resident or the resident's legal representative/SDM may identify individuals to be invited to the meeting and indicate that certain members may not attend. However, written information will be received and reviewed from all IDT members.

(c) The MHMRA case manager will document the results and decisions of all service planning meetings and provide a copy to the resident's nursing facility as specified in 40 TAC §19.604(e)(9).

(d) The MHMRA case manager will provide a monthly report to the nursing facility and attending physician regarding the delivery of specialized services and alternate placement services as specified in 40 TAC 19.604(e)(6).

(e) Upon receipt of a written request from the resident or legal representative/SDM, the case manager shall provide a copy of the monthly written report to the resident or the resident's legal representative/SDM. The copies shall be provided monthly until the request is withdrawn in writing.

(f) When the resident or the resident's legal representative selects an alternate placement located by the MHMRA case manager, the MHMRA case manager shall obtain written agreement for the specific alternate placement from the resident or the resident's legal representative. If the resident does not have a legal representative and the IDT determines by consensus that the resident is not capable of providing legally adequate consent to alternate placement activities, then the case manager will provide information to the family or other interested parties, as appropriate, regarding processes for securing a legal guardianship. When the issue of legally adequate consent has been resolved and, if necessary, a legal guardian has been named, alternate placement activities shall continue.

(g) Staff of the MHMRA must comply with:

(1) TDMHMR OBRA PASARR Policy & Procedure Manual;

(2) TDMHMR Operating Instruction (OI) 401-2 concerning Case Management; and

(3) Chapter 409, Subchapter I of this title (relating to Rehabilitative Services for Persons with Mental Illness).

§402.156. *Assistance for Applicants Denied Nursing Facility Admission.* Applicants denied nursing facility admission as determined by PASARR.

(1) The applicant or other interested parties may request that the MHMRA provide assistance to the applicant in locating other service alternatives.

(2) The MHMRA shall provide the same assistance to the applicant as it would to any other person seeking such services.

§402.157. *References.* Reference is made in this subchapter to the following laws and standards:

(1) Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, Title IV, Subtitle C, Nursing Home Reform, Part C, Medicaid.

(2) Omnibus Budget Reconciliation Act of 1990, Public Law 101-508, Title IV, Part E, Section 4801b.

(3) 42 CFR 43.1009.

(4) International Classification of Diseases, 9th Revision, Clinical Modification (ICD-9-CM).

(5) Diagnostic and Statistical Manual of Mental Disorders, Third Edition, (DSM-III-R).

(6) Classification in Mental Retardation, American Association on Mental Deficiency, 1983 Revision.

(7) 40 Texas Administrative Code (TAC), §§19.101, §§19.218- 19.219, and §19.604 (rules of the Texas Department of Human Services).

(8) TDMHMR Operating Instruction (OI) 401-2 concerning Case Management.

(9) TDMHMR OBRA PASARR Determination Program Policy & Procedure Manual for Specialized Services & Alternate Placement.

(10) Chapter 409, Subchapter I, of this title (relating to Rehabilitative Services for Persons with Mental Illness).

(11) 42 CFR 483.100-.138, Subpart C, and 42 CFR 483.200-483.206, Subpart E, relating to Preadmission Screening and Annual Review of Mentally Ill and Mentally Retarded Individuals.

(12) Texas Health and Safety Code, Chapter 313, Consent to Medical Treatment Act.

§402.158. *Distribution.* This subchapter shall be distributed to:

(1) members, Texas Board of Mental Health and Mental Retardation;

(2) commissioner, medical director, deputy commissioners, associate deputy commissioners, assistant deputy commissioners, and directors of Central Office;

(3) superintendents/directors, state facilities;

(4) executive directors, community mental health and mental retardation centers;

(5) Texas Department of Human Services; and

(6) Texas Department of Health.

(7) Health and Human Services 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 March 13, 1995.

TRD-9503084 Ann Utley  
Chair  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 206-4516

## Chapter 409. Medicaid Programs

### Subchapter B. Contract Appeals

#### • 25 TAC §§409.31-409.44

*(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 Texas Department of Mental Health and Mental Retardation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes the repeal of §§409.31-409.44 of Chapter 409, Subchapter B, concerning contract appeals. The repeal is proposed contemporaneously with the proposal of new sections of Chapter 409, Subchapter B, concerning Adverse Actions, in this issue of the *Texas Register*. The proposal implements the Texas Human Resources Code, §22.002 and §32.001-32.040, and Texas Civil Statutes, Article 4413(502), §16, and the Administrative Procedure Act, Texas Government Code, Chapter 2001.

The proposed repeals would allow for the proposal of new sections relating to adverse actions and eliminate duplicative procedures governing administrative hearings. Procedures for conducting administrative hearings are contained in Title 25, Part II, Chapter 403, Subchapter O, concerning Administrative Hearings of the Department in Contested Cases.

Leilani Rose, director, Financial Services, has determined that for the first five-year period the repeals will be in effect there will be no additional fiscal cost to state or local government. There will be no significant local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined that the public benefit is the clarification of procedures concerning adverse actions and their appeals. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed

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

The repeals are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposal implements the Texas Human Resources Code §22.002 and §32.001-.040 and Texas Civil Statutes, Article 4413(502), §16, and the Administrative Procedure Act, Texas Government Code, Chapter 2001.

§409.31. *Application.*

§409.32. *Definitions.*

§409.33. *Right to a Hearing.*

§409.34. *Notice of Adverse Action.*

§409.35. *Request for a Hearing.*

§409.36. *Effective Dates of Adverse Actions.*

§409.37. *Administrative Law Judge.*

§409.38. *Hearing Guidelines.*

§409.39. *Withdrawal of Hearing Request and Informal Disposition.*

§409.40. *Conduct of Hearings-General Requirements.*

§409.41. *Prehearing Procedure.*

§409.42. *Evidence and Depositions.*

§409.43. *Deliberation.*

§409.44. *Decisions.*

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 March 13, 1995.

TRD-9503082 Ann Utley  
Chairman  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 206-4516

### Subchapter B. Adverse Action

#### • 25 TAC §§409.31-409.35

The Texas Department of Mental Health and Mental Retardation (TXMHMR) proposes new §§409.31-409.35 of Chapter 409, Subchapter B, concerning Adverse Actions. The new sections are proposed contemporaneously with the proposed repeal of the existing subchapter, concerning Contract Appeals, in this issue of the *Texas Register*. This action affects the Texas Human Resources Code, §22.002 and §32.001-.040 and Texas Civil Statutes, Article 4413(502), §16.

The proposed new sections would modify definitions, update references, delete unne-

essary language, and provide clarification.

Leilani Rose, director, Financial Services, has determined that for the first five-year period the rules would be in effect there would be no additional fiscal cost to state or local government. There will be no significant local economic impact.

Ernest McKenney, director, Medicaid Administration, has determined that the public benefit is the clarification of procedures concerning adverse actions and their appeals. There will be no effect on small businesses. There will be no anticipated economic costs to persons who are required to comply with the sections as proposed.

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

The new sections are proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers; and under the provisions of Texas Civil Statutes, Article 4413(502) §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The proposal implements the Texas Human Resources Code §22.002 and §32.001-32.040 and Texas Civil Statutes, Article 4413(502), §16.

**§409.031. Application.** This subchapter applies to all Medicaid programs administered by the Texas Department of Mental Health and Mental Retardation.

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

**Administrative law judge**—The attorney designated or appointed by the commissioner to conduct and preside over the administrative hearing.

**Adverse action**—Any action taken or proposed by the department against a person in which the person may request an administrative hearing under Chapter 406 of this title, concerning ICF/MR Programs, or Chapter 409 of this title, concerning Medicaid Programs.

**Commissioner**—The commissioner of the Texas Department of Mental Health and Mental Retardation.

**Contract**—Any written agreement that obligates the department to pay money to a person for goods and services under the Title XIX Medical Assistance Program.

**Contractor**—Any person with whom the department has a contract.

**Days**—Calendar days, unless otherwise specified.

**Department**—The Texas Department of Mental Health and Mental Retardation (TXMHMR) or its designee.

**Person**—An individual, partnership, corporation, association, governmental subdivision or agency, or a public or private organization of any character.

**§409.033. Notice of Adverse Action.**

(a) The commissioner or designee is authorized to make decisions concerning adverse action.

(b) The commissioner or designee sends a person a notice advising the person of any adverse action. The notice is sent by certified mail, return receipt requested unless the department determines that a more immediate form of notice is required. The notice includes a description of the basis for the adverse action and informs the person of the person's right to an administrative hearing to contest the adverse action. If the adverse action proposed by the department is contract termination, the notice must also specify the date that the department intends to terminate the contract and begin withholding payments in accordance with §409.035 of this title, (relating to Withholding Contract Payments).

(c) The department does not have to give a notice of adverse action with each billing transaction for areas of the department that have a large volume of bills or which routinely post debit and credit entries. The department must give a contractor a notice of appeal rights any time the contractor informs the department in writing of the contractor's dissatisfaction with a claim transaction which is an adverse action.

**§409.034. Request for an Administrative Hearing.**

(a) A person must send to the department a written request for an administrative hearing within 15 days after receiving the department's official notice of adverse action. The request for an administrative hearing:

(1) may be in the form of a petition or a letter;

(2) must state the reasons the person considers he or she is not subject to the adverse action; and

(3) must be addressed to: Hearings Office, TXMHMR, P.O. Box 12668, Austin, Texas 78911-2668.

(b) After the department receives the written request for an administrative hearing, the matter shall be referred to an administrative law judge for disposition according to Chapter 403, Subchapter O, concerning Administrative Hearings of the Department in Contested Cases.

**§409.035. Withholding Contract Payments.** If the department intends to termi-

nate a contract, payments to the contractor may be withheld by the department pending an administrative hearing appealing the proposed contract termination. If the final decision of the administrative hearing is favorable to the department, payments withheld will not be made by the department to the contractor; if the final decision is favorable to the contractor, payments withheld will be made by the department to the contractor and contract payments will be resumed by the department.

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 March 13, 1995.

TRD-9503081

Ann Utley  
Chair  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: April 17, 1995

For further information, please call: (512) 206-4516

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

**Chapter 21. Trade Practices**

**Subchapter J. Prohibited Trade Practices**

• **28 TAC §§21.1002, 21.1004, 21.1005**

The Texas Department of Insurance proposes amendments to §§21.1002, 21.1004, and 21.1005, concerning the use of unfair underwriting guidelines for private passenger automobile and residential property insurance, discrimination in the sale of insurance, and the use of underwriting guidelines by private passenger automobile insurers based on the purchase of types or amounts of coverage in excess of the minimum automobile liability coverage required by law. The amendments are necessary to change the implementation date of the sections from June 1, 1995 to September 1, 1995 to allow the commissioner sufficient time to review the impact of these sections on consumers and industry. The amendments will also provide the department time to make any changes to the sections which may be necessary based on changes in statutory requirements made during this Legislative Session. There are currently several bills pending in the Legislature that affect affordability and availability of insurance. Therefore, it is impractical to implement these sections on June 1, 1995.

Mary F. Keller, senior associate commissioner for the legal and compliance division, has determined that for each year of the first five years the proposed sections are in effect, there will be no fiscal impact on state or local

government as a result of enforcing or administering the sections. Ms. Keller also has determined that there will be no effect on local employment or the local economy as a result of the amendments.

Ms. Keller also has determined that a September 1, 1995, implementation date in anticipation of statutory change removes the unnecessary costs to the agency and to the insurance industry of implementing and complying with rules which may be unnecessary or in conflict with new legislation. These costs would ultimately be borne by consumers. Therefore, moving the implementation date from June 1, 1995 to September 1, 1995 eliminates unnecessary costs and benefits the public. There is no anticipated economic cost of compliance to persons to whom the proposed sections will apply.

Comments on the proposal must be submitted within 30 days after publication of the proposed sections in the Texas Register, to the Chief Clerk, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104. An additional copy of the comment must be submitted to Mary Keller, Senior Associate Commissioner, Legal and Compliance, Texas Department of Insurance, P.O. Box 149104, MC 110-1A, Austin, Texas 78714-9104. A request for a public hearing on the proposed sections should be submitted separately to the Office of the Chief Clerk.

The amendments are proposed under the Insurance Code, Articles 21.21, 21.20, 5.98 and 1.03A. Article 21.21 §13 authorizes the department to promulgate rules and regulations to accomplish the purposes of the Insurance Code, Articles 21.20 and 21.21. Article 5.98 authorizes the Department to adopt reasonable rules that are appropriate to accomplish the purposes of the Insurance Code, Chapter 5. Article 1.03A authorizes the commissioner of insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions of the department.

The following articles are affected by this proposal. Rule Number Statute §21.1002 Insurance Code, Articles 5.09 and 21.21. §21.1004 Insurance Code, Article 21.21. §21.1005 Insurance Code, Articles 5.09 and 21.21.

#### §21.1002. Unfair Underwriting Guidelines.

(a) Prohibition. Effective September [After June] 1, 1995, an insurer or agent shall not use an unfair underwriting guideline for private passenger automobile or residential property insurance in making a decision to cancel, non-renew, limit the coverages made available to, or refuse to issue a policy to a consumer. The failure to comply with this subsection constitutes an unfair practice in the business of insurance in violation of the Insurance Code, Article 21.21, and shall be subject to the provisions thereof.

(b)-(i) (No change.)

#### §21.1004. Discrimination in the sale of insurance.

(a) Prohibition. The failure to comply with this subsection constitutes an unfair trade practice in the business of insurance in violation of the Insurance Code, Article 21.21, and shall be subject to the provisions thereof. Effective September [After June] 1, 1995, an insurer, agent, or other person licensed to engage in the business of insurance shall not intentionally discriminate in making a decision whether to bind, accept, reject, renew, nonrenew, cancel or limit coverages made available to a consumer, in whole or in part, on the basis of:

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

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

#### §21.1005. Prohibition Of Underwriting Guidelines Based On The Purchase Of Types Or Amounts Of Coverage In Excess Of Minimum Limits Liability Coverage.

(a) Prohibition. Effective September [After June] 1, 1995, an insurer or agent shall not use an underwriting guideline for private passenger automobile insurance based, in whole or in part, on whether an insured or applicant purchases types or amounts of coverage in excess of the minimum automobile liability coverage required to show proof of financial responsibility under the Texas Safety Responsibility Law, Texas Civil Statutes, Article 6701h. The failure to comply with this section constitutes an unfair trade practice in the business of insurance in violation of the Insurance Code, Article 21.21, and shall be subject to the provisions thereof.

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

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

Issued in Austin, Texas, on March 10, 1995.

TRD-9503035 Alicia M. Fachtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Earliest possible date of adoption: April 17, 1995

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



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 3. Income Assistance Services

##### Subchapter NN. Electronic Benefit Transfer

###### • 40 TAC §3.4005

The Texas Department of Human Services (DHS) proposes an amendment to §3.4005, concerning benefit availability dates, in its Income Assistance Services rule chapter. The purpose of the proposal is to modify the Food Stamp availability dates for benefits to ensure that no participating household has more than a 40-day lapse between issuances during the transition to the Electronic Benefit Transfer (EBT) system.

Burton F. Raiford, commissioner, 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 amendment.

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be compliance with federal requirements that specify the 40-day limit. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Rita King at (512) 450-4148 in DHS's Client Self-Support Services. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Support-224, Texas Department of Human Services E-205, 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 33, which provides the department with the authority to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §22.001 and §33.002.

§3.4005. Benefit Availability Dates. After certification, the Texas Department of Human Services (DHS) makes Aid to Families with Dependent Children (AFDC) and Food Stamp monthly benefits available to recipients via their Electronic Benefit Transfer (EBT) accounts on a staggered cycle over the first few calendar days of the month. The cycle is based on the last digit in the case number as follows:

Figure 1: 40 TAC §3.4005



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 March 10, 1995.

TRD-9503014      Section Manager, Media  
and Policy Services  
Nancy Murphy  
Texas Department of  
Human Services

Proposed date of adoption: June 1, 1995

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

◆      ◆      ◆  
**Chapter 90. Intermediate Care  
Facilities Serving Persons  
with Mental Retardation or  
a Related Condition**

**Subchapter C. Standards for  
Licensure**

• **40 TAC §90.42**

The Texas Department of Human Services (DHS) proposes an amendment to §90.42, concerning standards for facilities serving persons with mental retardation or related conditions, in its intermediate care facilities serving persons with mental retardation or a related condition chapter. The purpose of the amendment is to ensure the safety of all individuals who participate in facility-sponsored events. The amendment defines water activities, specifies the number of staff with pertinent training required to be on duty to meet safety requirements, and specifies the content of the individual program plan as it relates to needs and precautions utilized to meet needs.

Burton F. Raiford, 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 increased safety of individuals who participate in facility-sponsored water events. 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 the proposal may be directed to Maxcine Tomlinson at (512) 450-3169 in DHS's Long-Term Care Policy section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-229, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Health and Safety Code, Chapter 242, which provides the department with the authority to license intermediate care facilities serving

persons with mental retardation or a related condition; under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer its programs; and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§242.001-242.186, and the Human Resources Code, §§22.001-22.024.

*§90.42. Standards for Facilities Serving Persons with Mental Retardation or Related Conditions.*

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

(e) Additional requirements.

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

(8) In the area of water activities, the facility must assure the safety of all individuals who participate in facility-sponsored events. For the purpose of this section, a water activity is defined as an activity which occurs in or on water that is knee deep or deeper on the majority of individuals participating in the event. To assure the safety of all individuals who participate, the requirements in subparagraphs (A)-(F) apply. [The facility must develop and implement written procedures pertaining to recreational water activities for all sites accessed by the facility. These procedures must minimally include the following provisions.]

(A) The facility must develop a policy statement regarding the water sites utilized by the facility. Water sites include, but are not limited to, lakes, amusement parks, and pools. [A minimum of one individual with demonstrable proficiency in water safety skills must be on duty at all times when residents are utilizing a swimming pool, lake, or other aquatic environment which could pose a risk of drowning. The individual must be familiar with basic water survival skills, and must maintain supervision of the water activity for the duration of the activity.]

(B) A minimum of one person with demonstrated proficiency in cardiopulmonary resuscitation (CPR) must be on duty and at the site when individuals are involved in water activities. [A description of each aquatic environment must be accessed by the facility that includes identification of those aquatic environments which could pose a risk of drowning. The determination of risk for each aquatic environment identified must be based on a documented functional assessment of each resident's knowledge of basic water safety survival skills and ability to

swim, and a documented review for each resident who chooses or may choose to attend recreational water activities must be available in the resident record. The review must identify any medical conditions or physical disabilities which could increase the risk of drowning in the identified aquatic environments.]

(C) A minimum of one person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities take place in or on water that is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration. [Based on individual resident characteristics and the aquatic environment to be utilized, the facility must determine the minimum staff to resident ratio necessary to assure the safety and supervision of all residents in circumstances which pose a risk of drowning. (Parents and volunteers may be counted in the staff ratios if they have been trained in the facility's water activity procedures.) Staff to resident ratios must be sufficient to assure constant visual supervision of all residents who are not independent swimmers and/or who have a history of seizures within the previous 12 months. The individual with a demonstrable proficiency in water skills required in subparagraph (A) of this paragraph may not be counted in staff to resident ratios.]

(D) A sufficient number of staff or a combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals. [All personal flotation devices utilized must be approved by the United States Coast Guard or be a specialized therapy flotation device utilized for a resident's individual therapy program.]

(E) Each individual's program plan must address each person's needs for safety when participating in water activities including, but not necessarily limited to, medical conditions; physical disabilities and/or behavioral needs which could pose a threat to safety; the ability to follow directions and instructions pertaining to water safety; the ability to swim independently; and, when called for, special precautions. [Each resident's individual program plan must include information with regards to the resident's water safety skills, the staff to resident ratio needed to provide adequate supervision in circumstances which pose a risk of drowning and designate when a personal or specialized therapy flotation device is to be utilized.]



# WITHDRAWN RULES

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

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## TITLE 22. EXAMINING BOARDS

### Part XIV. Texas Board of Veterinary Medical Examiners

#### Chapter 573. Rules of Professional Conduct

##### Supervision of Personnel

###### • 22 TAC §573.10

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §573.10, submitted by the Texas Board of Veterinary Medical Examiners, has been automatically withdrawn, effective March 10, 1995. The new section as proposed appeared in the September 9, 1994, issue of the *Texas Register* (19 TexReg 7057).

TRD-9503134

## TITLE 34. PUBLIC FI- NANCE

### Part II. Texas State Treasury

#### Chapter 11. Cigarette and Tobacco Products Tax

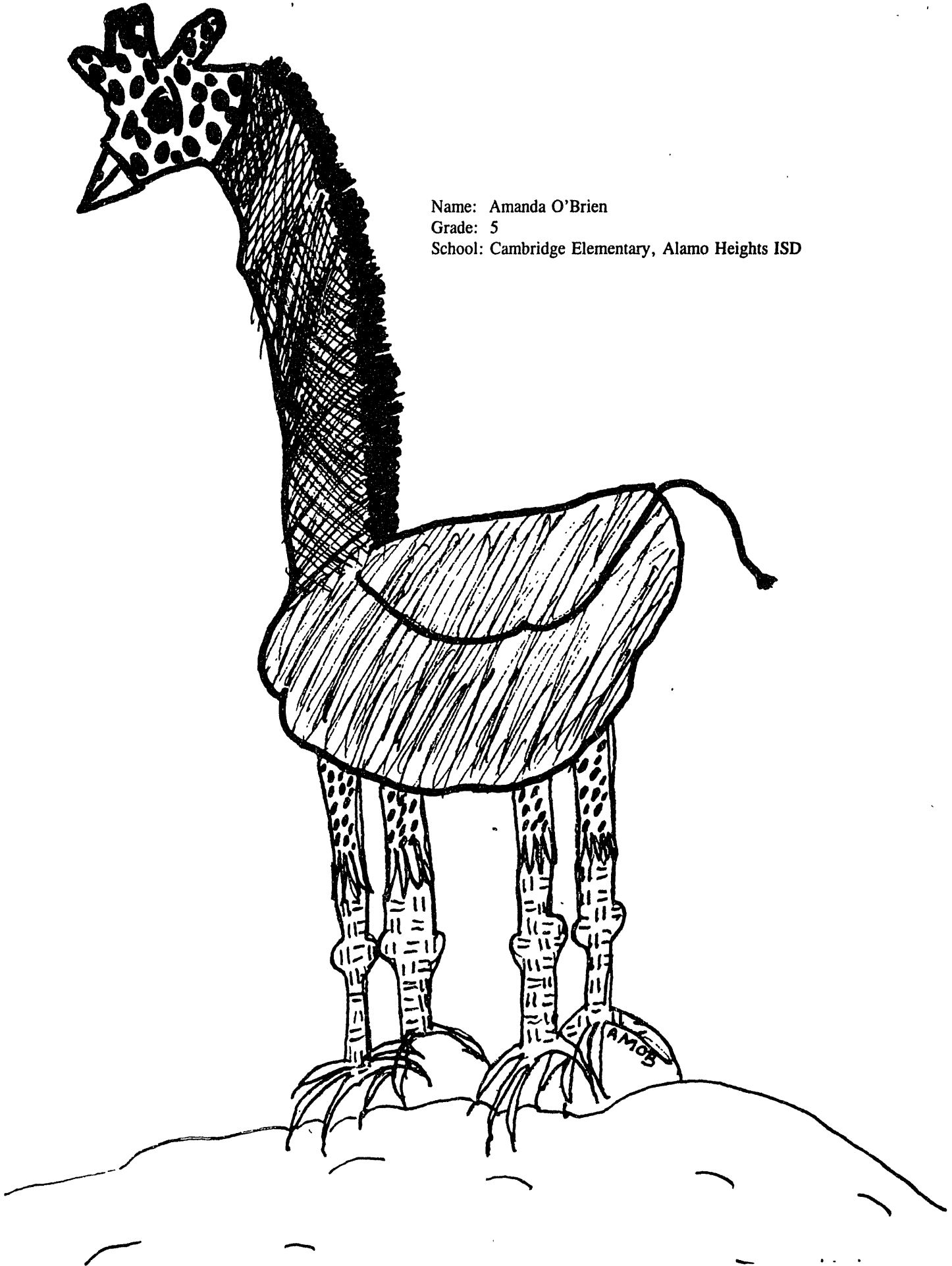
##### Subchapter B. Cigarette Tax

###### • 34 TAC §§11.53-11.55

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §§11.53-11.55, submitted by the Texas State Treasury, have been automatically withdrawn, effective March 10, 1995. The new sections as proposed appeared in the September 9, 1994, issue of the *Texas Register* (19 TexReg 7062).

TRD-9503133





Name: Amanda O'Brien  
Grade: 5  
School: Cambridge Elementary, Alamo Heights ISD

# ADOPTED RULES

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 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Records and Reports

###### • 16 TAC §23.11, §23.12

The Public Utility Commission of Texas adopts amendments to Substantive Rule §23.11, General Reports, and Substantive Rule §23.12, Financial Records and Reports. These sections are adopted with changes to the proposed text as published in the January 27, 1995, issue of the *Texas Register* (20 TexReg 419). However, the changes are exclusively grammatical or stylistic in nature and no substantive changes have been made to either §23.11 or §23.12.

The amendments to Substantive Rule §23.11 and Substantive Rule §23.12 make three changes to the current reporting requirements, as follows: (1) eliminate the requirement of a semi-annual earnings report for investor-owned electric and telephone utilities, (2) extend the due date for the annual filing, and (3) permit a utility to submit an abbreviated earnings report during a Public Utility Regulatory Act §42 or §43 proceeding where a rate filing package is required. These changes will reduce the regulatory burden on utilities without impairing the Commission's ability to monitor jurisdictional utility earnings on an annual basis or to maintain a historical database of utility financial information.

The following twelve parties filed comments in response to the January 27, 1995 *Texas Register* publication of the proposed amendments to Substantive Rules §23.11 and §23.12: Central and South West Corporation (CSW); Curtis Blakely and Company, P.C. (CBandCO); El Paso Electric Company (EPEC); Gulf States Utilities Company (GSU); Houston Lighting and Power Company (HLandP); John Staurulakis, Inc. (JSI); the Office of Public Utility Counsel (OPC); Southwestern Bell Telephone Company (SWBT); Southwestern Public Service Company (SPS); Texas Statewide Telephone Cooperative, Inc. (TSTCI); Texas Telephone Association (TTA); and Texas Utilities Electric Company (TUEC). With the exception of OPC, all of the parties supported the proposed elimination of the mid-year Earnings

Report and the proposed change to the calendar year reporting deadline. With regard to the proposal to require the filing of abbreviated Earnings Reports for utilities with rate cases pending before the Commission, six parties filed comments supporting this proposed revision, while five other parties filed comments supporting a complete waiver of the reporting requirement. OPC filed comments that would allow for an abbreviated filing only if discovery were still open during a pending rate case. In the alternative, OPC argued that waivers could continue to be handled on a case by case basis as they are currently.

With regard to the proposed elimination of the mid-year Earnings Report, five of the parties submitting supporting comments cited anticipated cost savings as a factor to be considered by the Commission. The comments of CBandCO, JSI, and TSTCI state that the mid-year reporting requirements are particularly burdensome for small local exchange carriers. EPEC and TUEC also cite cost savings as a benefit to be obtained through elimination of the mid-year report. These comments are consistent with the responses received to the Notice Seeking Public Comment on Changes to the Annual and Semi-annual Earnings Reports published in the *Texas Register* on November 15, 1994.

Two of the parties supporting elimination of the mid-year report commented on the lower quality of accounting information presented in the mid-year report as another factor to consider. Specifically, SWBT commented that because the reporting period involves data from two different years, the reliability of the results is questionable. Likewise, CBandCO states that the June 30 report requires the utility to create a fiscal year trial balance that is difficult to compile and often inaccurate. These comments are also consistent with the responses received to the Notice Seeking Public Comment on Changes to the Annual and Semi-annual Earnings Reports published in the *Texas Register* on November 15, 1994.

OPC objected strongly to the proposed elimination of the mid-year Earnings Report. OPC states that the effect of this proposal, when combined with the other proposed changes, would be to diminish severely the ability of affected parties to effectively evaluate the earnings of the state's utilities, and would severely prejudice several parties' rights to monitor utility financial information on an ongoing basis. Instead of reducing reporting re-

quirements, OPC recommends that the Commission require the filing of Earnings Reports on a quarterly basis. OPC argues that since utility shareholders already receive financial reports on a quarterly basis, the filing of Earnings Reports on a quarterly basis would achieve a proper balancing of shareholder and ratepayer interests. OPC also points out that due to its legal standing, the Commission staff enjoys access to utility information that may not be available to other parties. In light of this, OPC argues that even if Staff decides it cannot analyze both EMRs (annual and semi-annual Earnings Reports), that is no basis for discontinuing the mid-year EMR altogether. Other parties rely heavily on the mid-year report, and it must be continued for their benefit. Finally, OPC claims that elimination of the mid-year EMRs is nothing more than an attempt by the state's utilities to take the teeth out of Section 42 of the Public Utility Regulatory Act, and cites two examples of how the mid-year reports were relied upon by OPC in advancing the Section 42 rate investigations involving Houston Lighting and Power Company (Docket Number 12065) and Central Power and Light Company (Docket Number 12820).

With regard to the mid-year reporting requirement, the Commission agrees with OPC that access to timely information on utility earnings is important. That is precisely the reason the earnings monitoring program was established in the first place. However, the Commission also recognizes that preparation of the mid-year Earnings Reports entails a cost to regulated utilities that cannot be ignored, particularly for smaller utilities that must rely upon outside consultants for purposes of preparing these reports. Likewise, the Commission recognizes that the quality of information presented in the mid-year Earnings Reports may be questionable due to the lack of audited financial statements for most utilities for the reporting period in question. Finally, despite the benefits obtained from having a second look at utility earnings during any given year, no party has argued that utility earnings are so unstable as to render the calendar year reports invalid for purposes of filing a petition under §42 of the Public Utility Regulatory Act. The Commission does not concur with OPC's portrayal of this rulemaking as an attempt by the state's utilities to take the teeth out of §42, and would point out that this rulemaking was initiated by General Counsel, a party well versed in the filing of §42 petitions on behalf of the public interest. Based

on a consideration of the comments received, the Commission finds that the mid-year reporting requirement should be eliminated

Of the eleven parties filing comments in support of the proposed change to the calendar year reporting deadline, CBandCO and EPEC provided the most compelling arguments in favor of the change. CBandCO stated that the current due date (100 days after the end of the reporting period) often does not allow enough time for audited results to be reported, and that this later due date (May 15) would produce more accurate reporting and reduce the cost of reporting in cases where revised reports have to be filed due to a large variance between unaudited and audited results. Likewise, EPEC states that an extension of the due date lessens the difficulty of complying with calendar year reporting requirements for both the utilities and the Commission and insures that a utility's earnings reports are based on its Form 1 and Form 10K reports as audited and filed with the FERC and SEC, respectively.

OPC objected to an extension of the calendar year reporting deadline on the basis that the reported information would be even less timely than it is currently. Specifically, OPC states that in order for the information contained in the EMRs to be considered valid for earnings monitoring purposes, it must have three qualities. The necessary qualities identified by OPC are accuracy, reliability, and timeliness. Since OPC claims that the first two qualities are unaffected by this rulemaking, it opposes any extension that would adversely affect timeliness. OPC provides further support for its position by claiming that the Commission, in Project 13538, removed the requirement that information contained in the EMR be audited, and that if anything, since there is less now being required of the reports as a result of Project 13538, less time would seem to be called for rather than more.

The Commission finds persuasive the comments filed in support of the May 15 deadline for calendar year reports. Although the timeliness of information certainly affects the usefulness of the Earnings Report, the Commission does not concur with OPC's conclusion that a change in the reporting deadline will not affect the accuracy of the information presented. By allowing utilities additional time for report preparation, greater consistency should be achieved between the information presented in the Earnings Report and the reports submitted to the Securities and Exchange Commission, the Federal Energy Regulatory Commission, the Federal Communications Commission, and the Rural Utility Service. As to the issue raised by OPC related to audited financial statements, the Commission would point out that the actions it took in Project Number 13538 (Revision of PUC Earnings Reports) merely resulted in a change in a column heading on Schedule Ia of the Telephone Utility Earnings Report. The instructions to the Earnings Reports still specify that audited financial statements shall be relied upon for purposes of report preparation whenever audited financial are available for the reporting period.

With regard to the proposal that would allow utilities with pending rate cases to file an

abbreviated Earnings Report, six parties (GSU, JSI, SPS, SWBT, TSTCI, and TTA) filed comments in support of the proposal. In its comments, GSU further recommended that such a report should be limited in scope to provide only information that is not included as part of the extensive Texas minimum filing requirements in the Commission's rate filing package. Five parties (CBandCO, CSW, EPEC, HLandP, and TUEC) filed comments supporting a complete waiver of the reporting requirement during the pendency of a rate case before the Commission. As pointed out by several parties, such a waiver would be justified since the Commission is already required to consider the earnings and financial condition of a utility in the process of setting new rates. Two of these parties, HLandP and TUEC, further recommended that the waiver be extended beyond the pendency of a rate case. HLandP supports the granting of a waiver until the full effect of a utility's recent rate change are reflected in its earnings, generally one year after the final order. Likewise, TUEC recommended that utilities not be required to file Earnings Reports until the calendar year that reflects a full twelve months of earnings under the rates established by the commission in such rate proceeding. OPC filed comments that would allow for an abbreviated filing only if discovery were still open during a pending rate case. In the alternative, OPC argued that waivers could continue to be handled on a case by case basis as they are currently.

In light of the need to maintain a reliable and consistent database of financial information on the industries it regulates, the Commission finds that certain basic information should be required of all jurisdictional utilities in the calendar year Earnings Report. The extent of this minimum reporting requirement can be determined at a later date through the process described in Procedural Rule §22.80 pertaining to Commission Prescribed Forms. Although reporting waivers may currently be granted on a case by case basis, this approach is time consuming and burdensome to the Commission and the utilities it regulates. A rule formalizing the conditions under which a reduced reporting requirement is appropriate is therefore warranted. In light of the decision of the Commission to eliminate the mid-year reporting requirement, and the concerns voiced by OPC regarding the timeliness of reported information, the Commission finds that abbreviated filing requirements should only apply during the pendency of a general rate proceeding initiated under either §42 or §43 of the Public Utility Regulatory Act, and should not extend beyond the date of a Final Order in either type of proceeding.

All comments, including any not specifically referenced herein, were fully considered by the Commission.

The amendments are adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

#### §23.11. General Reports.

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

(d) Due dates of reports. All periodic reports must be received by the commission on or before the following due dates unless otherwise specified in this section.

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

(3) Annual earnings report: May 15 of each year.

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

(e)-(n) (No change.)

(o) Annual earnings report. Each utility shall report its annual earnings on forms prescribed by the commission as set out in §23.12 of this title, (relating to Financial Records and Reports).

(p) (No change.)

#### §23.12. Financial Records and Reports.

(a) (No change.)

(b) Financial and operating reports. The following financial and operating reports shall be filed with the commission.

(1) (No change.)

(2) Annual earnings report. Each utility shall file with the commission an earnings report providing the information required by the commission to enable it to properly monitor telephone and electric utilities within the state.

(A) Each utility shall report information related to the most recent calendar year as specified in the instructions to the report.

(B) Each utility shall file three copies of the commission-prescribed earnings report and shall electronically transmit one copy of the report no later than the date prescribed in §23.11 of this title (relating to General Reports).

(C) On the due date of the annual earnings report, each utility with a rate proceeding pending before the Commission, pursuant to §42 or §43 of the Public Utility Regulatory Act in which a rate filing package is required, may submit an abbreviated earnings report. Specifications for the abbreviated filing will be included in the General Filing Instructions for the annual earnings report.

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

(c)-(e) (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 March 9, 1995.

TRD-9502995

John M. Renfrow  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Effective date: March 30, 1995

Proposal publication date: January 27, 1995

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

## Chapter 24. Policy Statements

The Public Utility Commission of Texas adopts new §24.10 and §§24.31-24.33 with changes to the proposed text as published in the October 18, 1994, issue of the *Texas Register* (19 TexReg 8278). The new sections are included in new Chapter 24 which contains policy statements adopted by the commission.

Subchapter A states the statutory duty of the commission to protect the public interest and encourages all public utilities to consider in their actions the policy goals contained in this chapter. The purpose of Subchapter B is to establish the commission's broad policy goals regarding telecommunications utilities. Where applicable, these policy goals will be considered by the commission in each contested case or rulemaking proceeding presented to it for decision.

New §24.10 establishes the policy goals that the commission will consider in discharging its statutory duties. New §24.31 states that the commission will seek to protect the public interest in having telecommunications service available at just, fair, and reasonable rates and in providing equal opportunity to all telecommunications utilities. New §24.32 sets forth the commission's universal service policy, defines basic telecommunications service to be included in universal service, and indicates the commission's policy for funding universal service. New §24.33 establishes the commission's goals for the development of an advanced telecommunications infrastructure. It also indicates the manner in which the commission will balance competitive and regulatory incentives in bringing about the deployment of an advanced telecommunications infrastructure.

The following parties filed initial comments in response to the October 18, 1994, *Texas Register* publication of the proposed policy statements: AT&T Communications of the Southwest (AT&T); GTE Southwest Incorporated and Contel of Texas, Inc. (GTE), Joint Comments; MCI Telecommunication Corporation (MCI); Office of the Public Utility Counsel (OPUC); Southwestern Bell Telephone Company (SWBT); Texas Association of Long Distance Companies (TEXALTEL); Texas Exchange Carrier Association (TECA); and Texas Statewide Telephone Cooperative, Inc. (TSTCI). The following parties filed reply comments: AT&T, MCI, and SWBT.

The commission staff filed an initial recommendation on January 26, 1995. Comments in response to the initial recommendation

were filed by AT&T, MCI, OPUC, SWBT, and TECA.

All of the parties filing comments generally agree with and support the proposed policy statements, but the parties offer certain modifications.

AT&T "applauds the commission's efforts to determine the broad policy principles which should apply to both Universal Service and Advanced Telecommunications Infrastructure Development for the State of Texas." MCI comments that the "Staff should be commended for their work" on the proposed rules. OPUC "applauds the Commission for initiating formal policies for universal service and infrastructure development for telecommunications utilities." SWBT comments that the "Commission Staff has spent a great deal of time and energy working with the parties to develop policies to promote the availability of universal access to the telecommunications capabilities necessary in a modern society." SWBT further comments that "Staff has made an appropriate distinction between a universal service policy and an overall policy objective to encourage infrastructure development in the State of Texas." TEXALTEL appreciates "the workshops held by the Staff and the many efforts that have already been contributed to this project."

SWBT comments that in the *Texas Register* publication of the proposed policy sections, the commission's Assistant General Counsel stated that there is no anticipated economic cost to persons who are required to comply with the sections as proposed. SWBT believes that this is true to the extent that compliance technically requires only that public utilities consider these policy goals in planning and effectuating their public duties. However, SWBT notes its belief that actually effectuating a plan for universal service is a very costly proposition. SWBT comments that there is an important distinction between a policy that articulates support for universal service and one that purports to describe the appropriate mechanisms to achieve and support universal service. SWBT interprets the proposed sections as the former, and therefore does not address the issues surrounding support mechanisms in this filing.

The commission agrees with SWBT that these policy statements set forth the broad goals of the commission which should be considered by each public utility in planning and effectuating its public duties. These policy statements do not set forth the specific mechanism to achieve and support universal service.

Section 24.10, Purpose and Scope of Policy Statements, establishes that the commission will consider certain policy goals in discharging its statutory duties and states that all public utilities should consider these policy goals in planning and effectuating their public duties.

MCI believes that proposed §24.10 could be read to conclude that the commission's charge set forth in the Public Utility Regulatory Act (PURA) §18(a), Texas Civil Statutes, Article 1446c, may be somehow diminished. MCI suggests modifying proposed §24.10 to include a reference to PURA §18(a). SWBT and OPUC comment that §24.10 should en-

courage all "telecommunications providers" rather than all "public utilities" to consider the policy goals in planning and effectuating their public duties. SWBT believes that the general policy statements should address the broad spectrum of telecommunications issues that the State faces both now and in the future.

Section 24.10 sets forth the purpose and scope of the policy statements and applies to both the telecommunications industry and the electric industry. The commission believes that the section should not be limited to the telecommunications industry by including references to PURA §18(a) or "telecommunications providers." Therefore, the commission declines to revise §24.10 as suggested by MCI, SWBT, and OPUC.

TSTCI believes that §24.10 appears to simply restate what the commission sees as its "statutory duty" rather than addressing any policy direction of the commission. TSTCI recommends the following language:

Commission Public Policy--It shall be the policy of this Commission to ensure a regulatory environment, consistent with the public interest, that promotes and encourages innovative, reliable and efficient provision and use of utility services.

The commission discerns little difference in the language suggested by TSTCI and the language of §24.10; therefore, no revision is made in response to TSTCI's comments. In addition, to avoid any possible confusion or conflict between PURA and the new policy statements, the commission believes it is best to utilize language that is closer to the statutory language.

In its comments in response to the initial recommendation, OPUC requests that the preamble be amended to state exactly what impact or authority, if any, these policy statements will have and that the preamble specify how the policies will be implemented and/or enforced. The commission does not amend the section in response to OPUC's comments. The commission believes that §24.10 sets forth the manner in which these policies will be implemented and/or enforced. The section requires public utilities to consider these policy goals in planning and effectuating their public duties. The section also states that the commission, where applicable, will consider these goals in each contested case or rulemaking proceeding presented to it for decision. The impact, if any, of these policy statements will depend upon the facts present in particular contested cases and rulemaking proceedings.

Section 24.31, General Policy Regarding Telecommunications Utilities, states that the commission will seek to protect the public interest in having telecommunications service available at just, fair, and reasonable rates and in providing equal opportunity to all telecommunications utilities. TSTCI comments that proposed §24.31 appears to address primarily the commission's statutory duties rather than a policy toward telecommunication utilities and/or providers and that it appears to address an issue that will be considered during the upcoming legislative session. For these reasons, TSTCI recommends that this paragraph be omitted.

The commission believes that §24.31 is a general statement with respect to telecommunications utilities and, as such, the commission believes that it is appropriate to follow statutory language. Other sections of the policy statements address the discharge of the commission's duties. If the legislature addresses issues contained in the policy statements, the policy statements can, if necessary, be amended to reflect any changes made by the legislature. The commission declines to omit this section as proposed by TSTCI.

Section 24.32(a) sets forth the commission's universal service policy

GTE contends that the policy set forth in proposed §24.32(a) is expressed too broadly and that there has been no evidence submitted which supports the conclusion that all existing and future telecommunications services should be ubiquitously and simultaneously deployed throughout the state. GTE feels that demand for services must justify their deployment and urges the commission to adopt a demand driven deployment policy such as that approved in GTE's Integrated Services Digital Network (ISDN) cases. GTE believes that mandated deployment of non-basic services should be pursued only if the competitive model fails and that there has been no indication that the market forces have failed or will fail in Texas. SWBT supports the concept that non-basic telecommunications services should be available to all Texans, but believes that it should be made clear that this statement represents an aspirational policy objective above and beyond the concept of universal service and does not mandate the wholesale deployment of services without market demand or other specific public interest objectives. SWBT suggests adding "where justified by demand and economic provisioning" to the end of the last sentence of the paragraph. In its reply comments, AT&T notes SWBT's modification which is intended to avoid the prospect of uneconomic investments and proposes to add "when this goal can be achieved on an economically supportable basis."

The commission disagrees with the comments of GTE that the policy set forth in §24.32(a) is expressed too broadly. The commission agrees with the comments of SWBT that the subsection represents an aspirational policy objective that non-basic telecommunications services should be available to all Texans. The goals set forth in these policy statements will be considered by the commission, where applicable, in each contested case or rulemaking proceeding presented to it for decision. The commission believes that it is appropriate on a case-by-case basis to consider market demand and other specific public interest objectives when deploying telecommunications services. The commission is concerned that the language proposed in the comments would have the effect of implying that the commission will only consider market demand and economics to the exclusion of other public interest considerations. Accordingly, the commission does not revise the section in response to the comments of GTE, SWBT, or AT&T.

AT&T recommends that the language "priced to allow accessibility by consumers" in §24.32(a) be replaced with "should be finan-

cially accessible to consumers." AT&T comments that the intent of this modification is to support the fact that prices should be based upon cost because this sends the proper economic signals to both suppliers and consumers in the marketplace. Further, AT&T believes that targeted universal service funds should be used to ensure that basic service is indeed financially within reach of all customers. In its comments to the initial recommendation, AT&T states that this section may be read to limit the commission's options to manipulating the "price" of the service and that the commission may choose instead to employ non-price solutions. For example, AT&T notes that the commission might choose to set cost-based rates and provide subsidies directly to targeted end users. OPUC supports the policy that basic telecommunications services should be provided ubiquitously and at affordable rates. OPUC also agrees that non-basic telecommunications services should be made available to all Texans.

The commission agrees with OPUC that telecommunications services should be provided ubiquitously at affordable rates. The commission believes that the section as proposed allows flexibility with respect to policies for pricing of basic telecommunications service. The commission believes that the language of §24.32(a) does not limit its options as suggested by AT&T and that the language allows for targeted support mechanisms as discussed by AT&T. The commission believes that these policy statements will be considered in future rulemakings and contested cases and that the decisions regarding the need for support mechanisms and the types of support mechanisms for basic local service should be made in those future proceedings. The commission, therefore, does not revise the section in response to AT&T's comments.

TSTCI states that it is one of the strongest supporters of universal service. It recommends that §24.32(a) read as follows:

It is the policy of this Commission to protect and promote the public interest in having adequate and efficient telecommunications service available to all citizens of this state at just, fair and reasonable rates.

The commission believes that no revision to §24.32(a) is necessary in response to TSTCI's comments because the concepts reflected in the language as recommended by TSTCI are already incorporated in the language of §24.32(a).

Section 24.32(b) defines basic telecommunications service to be included in universal service.

SWBT believes that universal service is a concept rather than a static list of services; however, it supports this list of basic services as a practical way to address the concept of universal service. TSTCI supports the need for a definition of basic telecommunications service but believes that the policy statements are not the proper venue for defining basic telecommunications service. TSTCI believes that this would more properly be defined in Substantive Rule §23.61. Rather than trying to define basic telecommunication ser-

vice in the policy statement, TSTCI believes that the commission could include language that indicates decisions and policy may be impacted by changes in technology and customer's needs and expectations to the extent those changes impact adequate, efficient and basic telecommunications service.

The commission disagrees with the comments of TSTCI that basic telecommunications service is more appropriately defined in Substantive Rule §23.61. The commission agrees with SWBT that the definition included in §24.32(b) is a practical way to address the concept of universal service. The commission feels that the definition of basic telecommunications service is important to an understanding of universal service so that it is appropriate to have the definition in the policy statements rather than in mandatory rules governing technical quality of service. The commission declines to make revisions to the section as requested by TSTCI.

OPUC recommends that §24.32(b)(1), "voice grade dial tone service," be clarified to specifically state whether it includes basic residential and/or business service and/or their equivalents. The commission agrees with OPUC, but §24.32(b) rather than §24.32(b)(1), is clarified to include basic business and residential service.

AT&T recommends that §24.32(b)(2) be struck and that the last sentence in the first paragraph of §24.32(b) be modified to read "It is the Commission's policy that, at a minimum, 'basic telecommunications service' should meet the Commission's minimum service quality standards as set forth in §23.61 of this title (relating to Telephone Utilities) and should include the following: ". AT&T comments that the purpose of the proposed modification is to require that services qualifying as "basic telecommunications services" do meet the minimum service quality standards while allowing the commission the flexibility to adopt quality of service standards for services which do not yet qualify as "basic telecommunications services" today. The commission agrees with the suggestions of AT&T and revises the subsection accordingly. As a result of this revision, proposed subsections §24.32(b)(3)-(13) are renumbered to subsections §24.32(b)(2)-(12).

SWBT interprets proposed §24.32(b)(8), "repair service accessible seven days a week," to mean that a customer will have access to report trouble seven days a week and that if an emergency exists, repairs will be made outside of normal business hours. SWBT comments that if this interpretation is not correct, that it should be rewritten to express that meaning. The commission agrees with SWBT's interpretation of proposed §24.32(b)(8), now §24.32(b)(7), and revises it to express that intent more clearly.

OPUC also suggests that proposed §24.32(b)(11), "access to Enhanced 911 service, where requested by local authorities" be revised to include 911 service as well because all citizens are entitled to a minimum of access to 911 service, and enhanced 911 service if requested by local authorities. In response to OPUC's suggestion, the commission revises the subsection to include access to 911 service. The commission notes, how-



ever, that customers should have access to whichever type of service (911 or Enhanced 911) is requested by the customers' local authorities.

GTE contends that proposed §24.32(b)(13), "equal access to interLATA interexchange carriers serving the area," should not be specifically listed as a component of basic telecommunications service because GTE believes that the commission should avoid the use of legal definitions which are not capable of predicting what future basic telecommunications service will look like. MCI believes that GTE's recommendation is specious at best. MCI notes in its reply comments that the use of legal terms in commission rules is the norm, not the exception. AT&T opposes GTE's contention that equal access should not be included as a component of basic telecommunications service. AT&T contends that the local exchange carriers (LECs) are seeking to eliminate aspects of the existing LATA restrictions and to account for that possibility, AT&T recommends replacing the reference to "interLATA IXCs" with reference to "IXCs."

The commission agrees with the comments of MCI that it is appropriate to use legal definitions in rules and agrees with AT&T that equal access should be included as a component of basic telecommunications service. The commission rejects GTE's request that proposed §24.32(b)(13) be deleted from the policy statement. The commission declines to revise the subsection in response to AT&T's suggestion to delete "interLATA" because this language is appropriate given the current policies with respect to intraLATA long distance service. The commission notes that if these policies change, then §24.32(b)(13) may be amended.

TSTCI interprets §24.32(b) to intend that the 13 services/standards would need to be available from the LECs as of the effective date of the section. TSTCI further interprets that adoption of these services as part of basic service will not in and of itself affect the rates and charges, if any, for the individual services. TSTCI does not support including a definition of basic service in this proceeding; however, if the commission elects to include a definition and if TSTCI's interpretation is valid, TSTCI notes its objections to proposed §24.32(b)(13), "equal access to interlata interexchange carriers serving the area." TSTCI states that for a few of its member companies, an equal access conversion would not be economically feasible and little or no interest has been expressed by carriers in the serving area(s). Therefore, TSTCI suggests that in those few instances, member companies would prefer to convert to equal access upon receiving a bona fide request from an interexchange carrier.

The commission disagrees with TSTCI's interpretation that §24.32(b) intends that the 13 services/standards would need to be available from the LECs as of the effective date of the section. This policy statement represents the goals of the commission regarding basic telecommunications service and does not include a specific date for compliance. Rather, where applicable, these policies will be considered by the commission in each contested

case or rulemaking proceeding presented to it for decision. In these proceedings, the commission may decide to require equal access conversions as a means of implementing the policy goals. The commission declines to make revisions to the section as requested by TSTCI.

AT&T suggests that proposed §24.32(b)(13) be modified to add equal access to "intraLATA carriers serving the area, when implemented." Given the recent activity with respect to fostering competitive provisioning of telecommunications services, AT&T believes that it is inevitable that intraLATA equal access will be ordered. AT&T believes that its proposed language would ensure the automatic inclusion of intraLATA equal access within basic telecommunications services, when implemented, without the necessity of further proceedings. In its reply comments, SWBT states that AT&T's suggested change and its underlying assumptions should be rejected because it is SWBT's opinion that not all parties agree that intraLATA equal access is a foregone conclusion and whether the commission orders intraLATA equal access remains to be seen.

The commission agrees with the comments of SWBT that whether the commission orders intraLATA equal access remains to be seen. As indicated in the policy statements, the concept of "basic telecommunications service" may evolve over time. If the commission orders the provision of intraLATA equal access in another proceeding, the policy statement may need to be amended at that time to reflect that change. However, it is premature to include the intraLATA equal access at this time. The commission declines to modify the subsection based upon the comments of AT&T.

Section 24.32(c) indicates the commission's policy regarding financial support and universal service.

MCI comments that the purpose of any financial support for basic telephone service is to ensure the universal availability of basic local telephone service. MCI believes that the purpose is not to ensure revenue neutrality for the LEC and the purpose is not to ensure a constant revenue source for the LEC. Therefore, MCI suggests that proposed §24.32(c) be modified to ensure that whatever financial support may be needed be based on the difference between costs and price. In its reply comments, AT&T notes its agreement with MCI's comments.

While the commission agrees with MCI that the purpose of universal service is not to ensure a constant revenue source for the LEC, the modifications suggested by MCI are not made to the subsection because, at this time, the commission does not have all of the information necessary to determine the scope of the needed financial support.

GTE believes that subsection §24.32(c) should be clarified to succinctly identify what subsidies will continue and who or what entity should be a recipient of these defined subsidies. GTE contends that it is important to formulate universal service programs which will provide assistance for low income individuals as well as provide assistance to carriers

of last resort and carriers in high cost areas. AT&T notes in its reply comments that while it agrees with GTE that the commission will need to address the specific mechanisms, administration and eligibility criteria needed to support universal service objectives in the future, it does not agree that it is necessary to do so now. AT&T believes that the purpose of this rule is to define broad commission policy goals which can be used to guide commission decisions as it addresses the fundamental changes needed in the transition toward competition in the local exchange.

The commission does not revise the subsection in response to GTE's comments. While the commission agrees with GTE that the specifics of universal support mechanisms may need to be addressed, the commission agrees with the comments of AT&T that it is not necessary to do so in this rulemaking proceeding.

SWBT believes that it is imperative that financial support flow only to facilities-based carriers of last resort who provide a universally available network. SWBT comments that to do otherwise would simply provide uneconomic funding for providers that do not contribute to universal service and want to compete on their own terms for selected groups of customers. SWBT recommends that the third sentence in §24.32(c) be modified to read as follows: "Subject to standards and obligations established to protect the public interest, including full compliance with FCC Part 32, Part 36, and Part 69 Rules and Regulations, all providers of telecommunications services accepting facilities-based carrier of last resort obligations should be eligible to benefit from financial support."

MCI notes in its reply comments that it disagrees with GTE and SWBT that financial support should be available only to telecommunications providers with carrier of last resort responsibilities. MCI believes that such a limitation would inhibit the development of a competitive local exchange market. MCI comments that universal service represents a public policy objective of making basic local exchange service available to end users at affordable rates and that it is tied neither to the existence of a single universally available network nor to a single provider. AT&T disagrees with SWBT's recommendation to add "accepting facilities-based carrier of last resort obligations." AT&T comments that it has been the sole bearer of the carrier of last resort obligations in the interexchange carrier (IXC) marketplace, and has still done quite well. AT&T believes that eligibility for support should be based on whether the provider is actually providing the subsidized service to specific customers, not based on whether the provider may be obliged to provide service to other customers.

Further, MCI comments that SWBT's suggestion to include a reference to certain FCC rules pertaining to dominant, regulated LECs is a thinly veiled attempt on SWBT's part to limit the availability of financial support to incumbent providers of basic service. AT&T also believes that there is no reason to require new entrants to follow FCC Part 32, Part 36, and Part 69 Rules and Regulations because these rules are designed to regulate

a monopolistic company with market power AT&T believes that to require a new entrant to adopt these practices would create a barrier to entry and maintain the monopoly as it currently exists

The commission believes that, in the above comments, the parties are seeking to include specific standards and obligations regarding the providers who would be eligible to benefit from financial support. The commission declines to make the requested changes because the commission believes that this is not the appropriate proceeding in which to include the specific standards and obligations regarding the providers who would be eligible to benefit from financial support. The commission believes that these policy statements will be considered in future rulemakings and contested cases and that the decisions about specific standards and obligations regarding the providers who would be eligible to benefit from financial support should be made in those future proceedings.

SWBT believes that the statements in §24.32(c) regarding financial support mechanisms could be read to disapprove of the use of existing subsidy mechanisms that are integrated into the rate structures and billing systems of the LECs. AT&T disagrees with SWBT's interpretation because the proposed policy does not refer to the existing integrated subsidy mechanism, rather it refers to a proposed USF policy that does not currently exist. The commission agrees with the comments of AT&T that the policy statements do not refer to the existing integrated subsidy mechanism. The commission, therefore, does not change the section in response to SWBT's comments.

Consistent with its comments regarding §24.32(a), AT&T recommends that the words "and price" in the first sentence of §24.32(c) be struck. As noted previously, the commission rejects AT&T's recommendation concerning §24.32(a). Consistent with that response, the commission does not strike the words "and price" in the first sentence of §24.32(c).

TEXALTEL believes that providers of basic telecommunications services should be the only parties eligible for financial support from a state universal service fund. Therefore, TEXALTEL recommends that the word "basic" should be inserted so that the third sentence of §24.32(c) reads "Subject to standards and obligations established to protect the public interest, all providers of basic telecommunications services should be eligible to benefit from financial support." In its reply comments, AT&T notes its belief that the intent of the rule is to limit eligibility for financial assistance only to those who provide basic telecommunications service. Therefore, AT&T agrees with TEXALTEL's comment that the word "basic" be added to the third sentence of §24.32(c).

The commission agrees that the word "basic" should be added to the third sentence of §24.32(c). The commission notes that the first sentence of §24.32(c) states that financial support may be needed in order to provide and price basic telecommunications services in accordance with the goals set forth in subsection (a). The first sentence of §24.32(c)

thus sets forth the commission policy that financial support should be available only for basic telecommunications services. The commission makes the requested change to the third sentence of §24.32(c) for clarification and consistency with the first sentence.

In its comments regarding §24.32(c), OPUC states that rather than allowing telecommunications providers to "benefit" from the financial support, the policy should state that those providers should be eligible to "receive" financial support to "ultimately benefit consumers." While OPUC supports targeted subsidies for certain individuals, OPUC does not believe that such subsidies should act as a substitute for a comprehensive universal service mechanism. Also, OPUC believes that only in the event that an individual cannot pay the affordable rate should targeted subsidies be considered. AT&T believes that OPUC's proposed change should be rejected because the proposed language could be interpreted to provide only for a system of payments directly to service providers. AT&T believes that the language in the rule as proposed allows for a system of vouchers paid to end users that ultimately benefit the service provider. Further, AT&T believes that OPUC's comment that "Only in the event that an individual cannot pay the affordable rate should targeted subsidies be considered" could be interpreted to mean that pricing below cost to all Texans is acceptable. AT&T believes that the focus should be on ensuring that those who can afford local service are able to subscribe, not arbitrarily keeping all local rates at uneconomic levels.

The commission believes that proposed §24.32(c) allows targeted support mechanisms as well as a comprehensive universal service mechanism. Therefore, the commission does not revise the section as suggested by OPUC. While the commission agrees with AT&T that the focus should not be on keeping all local rates at uneconomic levels, the commission believes that decisions regarding the amount of and type of support mechanisms for basic local service should be made in future proceedings implementing these policy statements. No modifications are made to the subsection because at this time, the commission does not have all of the information necessary to determine the scope of the needed financial support.

SWBT believes that the commission should retain its role as the independent administrator of the Universal Service Fund (USF) in accordance with PURA and that potential changes to the operations of the USF should be addressed only after careful review of existing substantive rules.

TECA believes that the rule's proposed language on the administration of the USF financial support mechanisms is unclear and possibly diminishes rather than clarifies the commission's role in the administration of the USF. TECA contends that PURA §98 and Substantive Rule §23.53 clearly establish the commission as the official administrative agency over the USF with exclusive power to establish and revise rules related to the operation and administration of the USF. TECA comments that the present procedure provides that the commission may delegate the

ministerial functions to another agency under a contractual agreement, and that since 1988, the commission has contracted with TECA to perform the ministerial functions for the commission. According to TECA, these functions are limited to the receipt and disbursing of USF funds as directed by the commission, and all operating procedures are reviewed for comments by representatives of AT&T, MCI, Sprint and TEXALTEL and then approved by the commission staff. TECA believes that the language proposed in §24.23(c) is unclear as to the commission's desired role in the administration of the USF and is inconsistent with existing commission rules. TECA believes that it is more appropriate for the commission to reinforce its role as the official administrator of the USF and recommends that §24.32(c) be modified to state that the financial support mechanisms will be administered by the commission.

In its replies, MCI comments that it does not oppose the commission functioning as the official USF administrator. However, MCI opposes the delegation of ministerial duties associated with the fund to any entity that is in any way affiliated with or controlled by another telecommunications provider or providers. Therefore, MCI opposes the delegation of such duties to TECA, since it is affiliated with and controlled by the Texas LECs.

In its replies, AT&T notes that it is critical in a competitive environment that the entity which administers the fund not have any stake in how the funds are distributed. AT&T believes that the ministerial duties should not be contracted out to TECA and that the ministerial duties should be performed by a neutral third party administrator. AT&T believes that TECA is an appropriate administrator now because it represents all entities (LECs) that receive funds from the USF. AT&T notes that under the new USF, TECA may not represent all recipients. Also, AT&T comments that TECA's activities may have the potential for adverse impact on non-represented recipients, i.e. where TECA gathers revenues, minutes of use (MOU) or other competitively sensitive information to determine assessments or disbursements.

TECA, in its comments in response to the initial recommendation, states that it disagrees with AT&T and MCI that TECA would be precluded from performing even the ministerial functions upon adoption of this section. TECA recommends that the last sentence in §24.32(c) be replaced with:

The Commission is the official administrator of the Universal Service Fund. The Commission may delegate the ministerial functions of administering the Universal Service Fund to another agency or organization (the Administrator) through contractual agreement.

The commission believes the statement as proposed, that financial support mechanisms should be administered by an independent entity that is not affiliated with or controlled by any telecommunications provider, is appropriate as the industry moves into a more competitive environment. This seems to be consistent with the comments of AT&T and MCI. Because this chapter does not purport to implement the policies it sets forth, this section does not immediately affect TECA's

administration of the current Universal Service Fund as it exists today.

OPUC notes that the term "telecommunications provider" is used in the policy statements, but that there is no definition of the term. OPUC suggests that the term be defined so as to clarify any ambiguity as to which entities are included within that term. The commission believes that no definition of "telecommunications provider" is needed for the use of these policy statements. The policy statements are intended to be broad guidelines and are not intended to require or prohibit conduct by defined classes of entities. Therefore, no change is made in response to OPUC's comments.

Section 24.33(a) establishes the commission's goals for the development of an advanced telecommunications infrastructure.

SWBT states that seeking provision of an advanced telecommunications infrastructure that provides two-way, full-motion switched video and mobile communications to every Texan regardless of cost, demand or location is unreasonable and overbroad. SWBT suggests that the last sentence in §24.33(a) be qualified by adding "where public interest, technological and market conditions warrant."

The commission disagrees with the comments of SWBT that the policy set forth in §24.33(a) is expressed too broadly. The commission believes that this subsection represents an aspirational policy objective of the capabilities that an advanced telecommunications infrastructure should provide to all Texans. The goals set forth in these policy statements will be considered by the commission, where applicable, in each contested case or rulemaking proceeding presented to it for decision. Because this goal is forward-looking and must be flexible to respond to changes, it is appropriate that the policy objectives be broad. The commission believes that it is appropriate on a case-by-case basis to consider market demand and other specific public interest objectives when deploying an advanced telecommunications infrastructure, but does not want to limit its consideration to enumerated factors as suggested by SWBT. The commission does not revise the section in response to the comments of SWBT.

TEXALTEL notes the statement in §24.33(a) that "An advanced telecommunications infrastructure will provide economic and social benefits that will enhance the living standards of all Texans." TEXALTEL comments that the concern is the appearance of an unconditional statement that advanced infrastructure will always bring the listed benefits. They suggest the following revision: "An advanced telecommunications infrastructure that provides services needed by Texans can provide economic and social benefits that will enhance the living standards of all Texans." AT&T supports TEXALTEL's recommended change. The commission agrees with the recommendation of TEXALTEL and revises §24.33(a) accordingly.

TSTCI recommends that §24.33(a) be revised to state:

The Commission encourages the development and deployment, consistent with the

public interest and in response to public need, of an advanced telecommunications infrastructure within the state of Texas.

The commission believes that no revision to §24.33(a) is necessary in response to TSTCI's comments because the concepts reflected in the language as recommended by TSTCI are already incorporated in the subsection.

OPUC supports an advanced infrastructure policy which requires single party service for all customers, data transmission capability that is necessary for computer and facsimile communication, and availability of basic telecommunications service and custom calling features to all customers. OPUC suggests the proposed policy statement be revised to include these specific infrastructure improvements which will benefit all Texas consumers. The commission believes that this subsection defines broad commission policy goals which will guide commission decisions. The specificity requested by OPUC may be added as the result of future proceedings implementing these policy statements, but they are not appropriate for the broad policy goals announced by these policy statements; therefore, the commission does not revise the section as requested by OPUC.

OPUC agrees with the statement in §24.33(a) that an advanced telecommunications infrastructure will provide economic and social benefits that will enhance the living standards of all Texans. OPUC believes that the enhancement of the telecommunications infrastructure will greatly increase small businesses' ability to perform business activities which could serve as a significant catalyst for economic development for the state of Texas. Therefore, OPUC proposes that the preamble be modified to account for these potential benefits to small businesses. Having been published, the preamble cannot be modified. Since OPUC is not proposing any change to the text of the section, no action by the commission is required in response to these comments. In response to OPUC's comments regarding the potential benefits to small businesses, the commission believes such benefits are included within the broad language of the section.

Section 24.33(b) sets forth the commission's belief that the deployment of an advanced telecommunications infrastructure should, whenever and wherever possible, be driven by competitive market forces.

The third sentence of §24.33(b), as published, stated "Factors such as compatibility standards, interconnection, unbundling of telecommunications networks, and removal of resale prohibitions should be considered as a means to encourage such competition."

MCI recommends that the following factors should be added to proposed §24.33(b): eliminating monopoly franchises; ensuring access to conduits, rights of way and entrance facilities; local number portability; co-carrier status for alternative providers of local service; and establishing costing and pricing safeguards.

AT&T believes the following factors should be added to §24.33(b): elimination of franchise

restrictions, provision of equal access to conduits and right of way, non-discriminatory control and distribution of phone numbers, non-discriminatory dialing patterns, and non-discriminatory cost-based pricing.

In its replies, SWBT comments that by suggesting additional factors, both AT&T and MCI are merely using this forum to present their wish list or agenda for matters beyond the scope of the policy statements under consideration in this project. SWBT also believes that several of the items are undefined, unclear, and subject to multiple interpretations and are, therefore, not useful.

TEXALTEL believes that the issues of unbundling and removal of resale restrictions are issues that are more commonly referred to as "competitive safeguards" and suggests revising §24.33(b) to reflect this belief. TEXALTEL also encourages the addition of the following factors: imputation, co-location, and interconnection.

GTE is concerned with §24.33(b) because it believes that removal of resale prohibitions is only appropriate for basic services which are not presently subsidized by other services. GTE believes that such a prohibition should not be removed if the basic services are subsidized. GTE suggests revising §24.33(b) to add that resale prohibitions should be removed on non-subsidized basic services because that will benefit competition rather than benefiting particular competitors.

In its reply comments, MCI states that it would not oppose a resale prohibition between customer classes pending the completion of the commission's costing/pricing rules. MCI believes that such restriction would, for example, prevent the concern expressed by GTE that a competitor could purchase residential local service from the LEC and then resell such service to a business customer. However, MCI believes that elimination of resale restrictions in general is necessary for a competitive marketplace to develop. In response to GTE's comments, AT&T notes that the commission should not limit its options with respect to the services for which resale restrictions are removed.

SWBT comments that §24.33(b) must include "regulatory parity among providers" in the list of factors to be considered because regulatory parity is integral to the development of true competition. In the alternative, SWBT believes the last sentence in §24.33(b) be eliminated as it purports to address the goal of developing competition rather than a goal specifically related to advanced infrastructure development.

MCI replies that regulatory parity itself will not further the development of competition so long as LECs possess monopoly control over local bottleneck facilities. If the commission is inclined to expand the factors to be considered for encouraging competition, MCI recommends that regulatory flexibility be commensurate with demonstrable competition on a service-by-service basis.

AT&T believes that SWBT's suggested language should be modified to read "regulatory parity among providers with equivalent market power" or should be rejected because the

incumbent LEC is the only provider with market power at this time, and this is the only provider that needs to be closely regulated. In addition, AT&T does not believe that the last sentence of §24.33(b) should be stricken as SWBT recommends because these factors should be considered as means to encourage competition.

In response to the comments, the commission deletes the last sentence of proposed §24.33(b). The comments indicate that there is disagreement as to which factors should be included and the commission believes that is unnecessary to delineate the factors in the section.

In their comments to the initial recommendation, AT&T, MCI, and OPUC express concern about the deletion of the last sentence of proposed §24.33(b). AT&T believes that the commission should, at a minimum, incorporate into its general statement of telecommunications policy a statement reflecting its commitment to consider at least a core group of issues in its statutorily directed efforts to foster competitive local exchange markets. AT&T suggests that it would be more appropriate to set out the commission's intention in the commission's broad statement of telecommunications policy in §24.31 rather than in §24.33(b) regarding deployment of advanced infrastructure. MCI believes that listing the factors does not bind the commission's hands and that consideration of these factors are instructive of the matters the commission must confront in order to encourage the development of both competition and investment in an advanced telecommunications infrastructure. OPUC states that, in comments filed in FCC Docket Number 9409955-4255, in the Matter of Inquiry on Universal Service and Open Access Issues, Notice of Inquiry and Request for Comments, the commission has established policy regarding the factors listed. Therefore, OPUC believes that these should be included in these policy statements.

The commission declines to make revisions to the section in response to the comments regarding the initial recommendation in which the last sentence of proposed §24.33(b) was deleted. Due to the diversity of the comments received regarding this matter, the commission believes that this proceeding to adopt policy statements addressing universal service and advanced infrastructure development is not the appropriate forum in which to address factors to be considered for encouraging competition. Also, the commission's comments to the FCC referenced by OPUC stated that the commission's comments in that proceeding did not prejudice any issues pending in rulemakings or contested proceedings at the commission.

Section 24.33(c) sets forth the commission's policy regarding when regulatory incentives should be considered.

SWBT opines that regulatory incentives can not be considered merely as a "supplement" to competitive market forces in bringing about the deployment of an advanced infrastructure. SWBT believes that LEC pricing flexibility should be open for commission consideration and included in the commission's policies.

AT&T comments that SWBT's comments do not address the intended effect of this policy statement. AT&T believes that the intent of the language is to recognize that effective competition may not ever be achieved in some or all parts of the local exchange, and if that is the case, regulatory incentives should only be granted to providers with equal market power.

In its comments to the initial recommendation, MCI suggests that §24.33(c) be eliminated because the rule presupposes that market forces alone cannot be relied upon to bring about the deployment of advanced telecommunications infrastructure and recent studies have clearly demonstrated that regulatory flexibility has not led to more infrastructure investment on the part of LECs. Further, MCI comments that there is no link between incentive regulation and infrastructure development; therefore, the reference to the use of incentive regulation as a means of encouraging LECs to do what is in their best interest should be eliminated from the rule.

The commission declines to revise the §24.33(c) in accordance with the comments of SWBT, AT&T, or MCI. The commission believes that the proposed section gives the commission the discretion to consider pricing flexibility. Further, the commission believes that it is inappropriate at this time to limit its discretion regarding regulatory incentives. The commission also believes that regulatory flexibility may, in certain circumstances, lead to more infrastructure investment on the part of LECs. Therefore, the commission believes that regulatory incentives should be considered in these circumstances.

All comments, including any not specifically referenced herein, were fully considered by the commission.

## Subchapter A. General

### • 16 TAC §24.10

The new section is adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

*§24.10. Purpose and Scope of Policy Statements.* This chapter contains the policy goals established by the commission in order to discharge its statutory duty of protecting the public interest inherent in the rates and services of public utilities by assuring that such rates and services are just and reasonable to consumers and utilities. Where applicable, the commission will consider these policy goals in each contested case or rulemaking proceeding presented to it for decision. All public utilities should consider these policy goals in planning and effectuating their public duties.

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

Issued in Austin, Texas, on March 10, 1995.

TRD-9503005

John M. Renfrow  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Effective date: March 31, 1995

Proposal publication date: October 18, 1994

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

## Subchapter B. Telecommunications Utilities

### • 16 TAC §§24.31-24.33

The new section is adopted under Texas Civil Statutes, Article 1446c, §16, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

*§24.31. General Policy Regarding Telecommunications Utilities.* The commission will seek to protect the public interest both in having adequate and efficient telecommunications service available to all citizens of the state at just, fair, and reasonable rates and in providing equal opportunity to all telecommunications utilities in a competitive marketplace. When the two principles inherent in the public interest are in conflict, the commission will seek to attain an appropriate balance between them.

### *§24.32. Universal Service.*

(a) It is the commission's policy to promote universal service. All citizens of the state should be able to obtain the basic telecommunications services needed to communicate with other citizens, businesses, and governmental entities. Basic telecommunications services, as defined by the commission, should be provided ubiquitously and priced to allow accessibility by consumers. Non-basic telecommunications services should be available to all Texans.

(b) The concept of "basic telecommunications service" may evolve over time and in response to changes in consumer expectations as well as to changes in technology. It is the commission's policy that, at a minimum, "basic telecommunications service" for business and residential customers should meet the commission's minimum service quality standards as set forth in §23.61 of this title (concerning Telephone Utilities) and should include the following:

- (1) Voice grade dial tone service;
- (2) Access to dual party relay service;

- (3) Access to local calling areas;
- (4) Tone dialing service;
- (5) Access to operator services;
- (6) Access to directory assistance services;
- (7) Ability to make repair service requests seven days a week;
- (8) Annual local directories;
- (9) Listing in local directory;
- (10) Access to 911 or Enhanced 911 service as requested by local authorities;
- (11) Access to toll services; and
- (12) Equal access to interlata interexchange carriers serving the area.

(c) In order to provide and price basic telecommunications services in accordance with the goals set forth in subsection (a) of this section, financial support may be needed. If so, all providers of telecommunications services should be required to contribute to the financial support. Subject to standards and obligations established to protect the public interest, all providers of basic telecommunications services should be eligible to benefit from financial support. Individuals meeting a needs test should be eligible to benefit from targeted financial support. Financial support mechanisms should be administered by an independent entity that is not affiliated with or controlled by any telecommunications provider.

*§24.33. Advanced Telecommunications Infrastructure.*

(a) An advanced telecommunications infrastructure that provides services needed by Texans can provide economic and social benefits that will enhance the living standards of all Texans. The commission, therefore, encourages the development, consistent with the public interest, of an advanced infrastructure throughout Texas. In the short term, the commission believes that an advanced telecommunications infrastructure should provide each Texan an opportunity to have end-to-end digital connectivity (basic digital access). In the longer term, the commission envisions an advanced telecommunications infrastructure that will provide two-way, full-motion switched video and mobile communications capabilities to each Texan.

(b) The deployment of an advanced telecommunications infrastructure should, whenever and wherever possible, be driven by competitive market forces. Therefore, the commission encourages the development of competition that is consistent with the public interest.

(c) Regulatory incentives, including regulatory flexibility, should be considered

as a supplement to reliance upon competitive market forces to bring about the deployment of an advanced infrastructure in a timely manner.

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 March 10, 1995.

TRD-9503006      John M. Renfrow  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Effective date: March 31, 1995

Proposal publication date: October 18, 1994

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

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

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

• 16 TAC §75.100

The Texas Department of Licensing and Regulation adopts an amendment to §75.100 concerning licensing for air conditioning and refrigeration contractors without changes to the proposed text as published in the January 27, 1995, issue of the *Texas Register* (20 TexReg 420).

The amendment clarifies the types of duct work that require a license under the Act.

The amendment will function by clarifying what tasks performed by duct cleaners and companies that perform indoor air quality management require a license under the Act.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 8861, which authorize the department to license and regulate air conditioning and refrigeration contractors.

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 March 9, 1995.

TRD-9502966      Jack W. Garrison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Effective date: March 9, 1995

Proposal publication date: January 27, 1995

For further information, please call: (512) 463-7357

**TITLE 22. EXAMINING  
BOARDS**

**Part XV. Texas State  
Board of Pharmacy**

**Chapter 281. General  
Provisions**

• 22 TAC §281.24, §281.25

The Texas State Board of Pharmacy adopts amendments to §281.24 and §281.25, concerning Grounds for Discipline for a Pharmacist's License and Grounds for Discipline for a Pharmacy License, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9440).

The amendment to §281.24 expands the grounds for discipline of a pharmacist's licenses to include various violations of exam security and the failure of a licensee to respond to a continuing education audit. The amendment also clarifies the grounds for discipline regarding diversion of prescription drugs/samples and violation of the Pharmacy Act, Controlled Substances Act and Dangerous Act. The amendment to 281.25 clarifies the paragraph concerning the diversion of prescription drugs/samples.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; and §26(a)(2) which states that the Board shall define "unprofessional conduct" in the rules.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502944      Fred S. Brinkley, Jr.,  
R.Ph., M.B.A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Effective date: March 29, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 832-0661

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**Chapter 283. Licensing  
Requirements for  
Pharmacists**

• 22 TAC §283.9

The Texas State Board of Pharmacy adopts an amendment to §283.9, concerning Fee Requirements for Licensure by Examination

and Reciprocity, without changes to the proposed text as published in the November 18, 1994, issue of the *Texas Register* (19 TexReg 9093).

The amendment increases the exam fee for the National Association of Boards of Pharmacy Licensing Exam (NABPLEX) \$100 to \$300. This increase passes through to the examinee the increase in the cost of the Exam to the Agency.

No comments were received regarding the adoption of the amendment.

The amendment is proposed under Texas Pharmacy Act (Texas Civil Statutes, Article 4542-1) §21(a), which states that to qualify for a license to practice pharmacy, an applicant for licensing by examination must submit to the Board a license fee as determined by the Board and a completed application on a form prescribed by the Board; §24(d) which states if a person's license has been expired for 90 days or less, the person may renew the license by paying to the Board the required renewal fee and a fee that is one-half of the examination fee for the license; §24(e) which states if a person's license has been expired for more than 90 days but less than one year, the person may renew the license by paying to the Board all unpaid renewal fees and a fee that is equal to the examination fee for the license; and §16(a) which gives the Board the authority to adopt rules for proper administration and enforcement of the Act.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502947 Fred S. Brinkley, Jr.,  
R.Ph., M.B.A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Effective date: March 29, 1995

Proposal publication date: November 18, 1994

For further information, please call: (512) 832-0661

## Chapter 291. Pharmacies

### All Classes of Pharmacy

#### • 22 TAC §291.14

The Texas State Board of Pharmacy adopts an amendment to §291.14, concerning Pharmacy License Renewal, without changes to the proposed text as published in the November 18, 1994, issue of the *Texas Register* (19 TexReg 9094).

The amendment requires that to avoid paying a delinquent fee a pharmacy renewal application and fee be received on or before the last day of the assigned expiration month. The agency has specified that the effective date of this rule will be May 31, 1995 to allow time to educate licensees about the change.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, §31 (c), which states that on timely receipt of the completed application and renewal fee, the Board shall issue a license renewal certificate bearing the pharmacy license number, the year for which it is renewed, and other information the Board determines necessary; and §16 (a) which gives the Board the authority to adopt rules necessary for the proper administration and enforcement of the Act.

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

Issued in Austin, Texas, on March 1, 1995.

TRD-9502945 Fred S. Brinkley, Jr.,  
R.Ph., M.B.A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Effective date: May 31, 1995

Proposal publication date: November 18, 1994

For further information, please call: (512) 832-0661

## Community Pharmacy (Class A)

#### • 22 TAC §291.34

The Texas State Board of Pharmacy adopts an amendment to §291.34, concerning transfer of prescriptions, without changes to the proposed text as published in the November 18, 1994, issue of the *Texas Register* (19 TexReg 2094).

The amendment specifies that a pharmacist may not refuse to transfer a prescription to another pharmacist if a patient request the prescription to be transferred.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; and §17(b)(3) which gives the Board the authority to specify minimum standards for drug storage, maintenance of prescription drug records and procedures for the delivery, dispensing in a suitable container appropriately labeled, providing of prescription drugs or devices, monitoring of drug therapy, and counseling of patients on proper use of prescription drugs and devices within the practice of pharmacy.

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 authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502946 Fred S. Brinkley, Jr.,  
R.Ph., M.B.A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Effective date: March 29, 1995

Proposal publication date: November 18, 1994

For further information, please call: (512) 832-0661

## Chapter 295. Pharmacists

#### • 22 TAC §295.7

The Texas State Board of Pharmacy adopts an amendment to §295.7, concerning Pharmacists License Renewal, without changes to the proposed text as published in the November 18, 1994 issue of the *Texas Register* (19 TexReg 9096).

The amendment requires that a pharmacist renewal application and fee be received on or before the last day of the assigned expiration month. The agency is setting the effective date of this rule for May 31, 1995 to allow time to educate licensees about the rule amendment.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; §24 (c) which states that on timely receipt of the completed application, the renewal fee and continuing education requirements, the Board shall issue a license renewal certificate; and § 24A(e) and (g) which gives the Board the authority to conduct CE audits and to adopt rules to evaluate the effectiveness of CE programs and a licensee's participation and performance in the 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 authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502948 Fred S. Brinkley, Jr.,  
R.Ph., M.B.A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Effective date: May 31, 1995

Proposal publication date: November 18, 1994

For further information, please call: (512) 832-0661

• 22 TAC §295.8

The Texas State Board of Pharmacy adopts an amendment to §295.8, concerning Continuing Education Requirements, with changes to the proposed text as published in the November 18, 1994, issue of the *Texas Register* (19 TexReg 9096).

The only change to the rule language as proposed is the deletion of the word "random" from paragraph (2) of subsection (f).

The amendment will amend the audit procedures for continuing education records regarding disallowed hours, as well as clarify audit procedures.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Pharmacy Act (Texas Civil Statutes, Article 4542a-1) §4, which specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; §16(a) which gives the Board the authority to adopt rules for the proper administration and enforcement of the Act; §24 (c) which states that on timely receipt of the completed application, the renewal fee and continuing education requirements, the Board shall issue a license renewal certificate; and § 24A(e) and (g) which gives the Board the authority to conduct CE audits and to adopt rules to evaluate the effectiveness of CE programs and a licensee's participation and performance in the programs.

§295.8. *Continuing Education Requirements.*

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

(f) Retention of continuing education records and audit of records by the board.

(1) (No change.)

(2) Audit of records by the board. The board shall audit the records of pharmacists for verification of reported continuing education credit. The following is applicable for such audits.

(A) Upon written request, a pharmacist shall provide to the board, copies of certificates of completion for all continuing education contact hours reported during a specified license year(s). Failure to provide all requested records during the specified time period, constitutes prima facie evidence of failure to keep and maintain records and shall subject the pharmacist to disciplinary action by the board.

(B) Credit for continuing education contact hours shall only be allowed for approved programs for which the pharmacist submits copies of certificates of completion reflecting that the hours were completed during the specified license year(s). Any other reported hours shall be disallowed. A pharmacist who has received

credit for continuing education contact hours disallowed during an audit shall be subject to disciplinary action.

(C) (No change.)

(g) (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 authority.

Issued in Austin, Texas, on March 1, 1995.

TRD-9502949 Fred S. Brinkley, Jr.,  
R.Ph., M.B.A.  
Executive  
Director/Secretary  
Texas State Board of  
Pharmacy

Effective date: March 29, 1995

Proposal publication date: November 18, 1994

For further information, please call: (512) 832-0661

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**Part XXII. Texas State Board of Public Accountancy**  
**Chapter 501. Professional Conduct**

**Other Responsibilities and Practices**

• 22 TAC §501.47

The Texas State Board of Public Accountancy adopts an amendment to §501.47, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9442).

The amendment allows the closure of a potential loophole which might be used to deceive or mislead the public.

The amendment will function by strictly defining the circumstances under which a firm may state to the public that it has more than one licensee in the firm.

No comments were received concerning adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §21(c)(2) which prohibits fraud or dishonesty in the practice of accountancy.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502981 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 30, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 505-5566

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**Chapter 511. Certification as CPA**

**Certification**

• 22 TAC §511.168

The Texas State Board of Public Accountancy adopts an amendment to §511.168, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9442).

The amendment allows this rule to comply with new rule 515.9 regarding Collection of License Fees Following Disciplinary Action.

The amendment will function by clarifying that individuals seeking reinstatement of a certificate must pay applicable fees and penalties and demonstrate completion of continuing professional education.

No comments were received concerning adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the 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 February 24, 1995.

TRD-9502980 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 30, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 505-5566

◆ ◆ ◆  
• 22 TAC §511.169

The Texas State Board of Public Accountancy adopts an amendment to §511.169, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9443).

The amendment allows the rule to comply with new rule 515.9 regarding Collection of License Fees Following Disciplinary Action.

The amendment will function by requiring reinstatement applicants to satisfy all fee and continuing professional education requirements before being reinstated.

No comments were received concerning adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the

Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §15A which requires continuing professional education.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502979 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 30, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 506-5566

## Chapter 515. Licenses

### • 22 TAC §515.3

The Texas State Board of Public Accountancy adopts an amendment to §515.3, without changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9443).

The amendment requires a practice unit to notify the Board of the quality review date assigned by a sponsor before the practice unit's license may be renewed.

The amendment will function by requiring practice unit renewal applicants to inform the Board of any of their scheduled quality reviews.

No comments were received concerning adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; §15B which authorizes the Board to promulgate rules regarding quality review.

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

Issued in Austin, Texas, on February 24, 1995.

TRD-9502978 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 30, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 505-5566

### • 22 TAC §515.9

The Texas State Board of Public Accountancy adopts new §515.9, without changes to

the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9443).

The new rule makes it clear that license fees are not assessed for license years during which a certificate or license was revoked or suspended.

The new rule will function by not requiring the assessment or collection of license fees under these conditions of non-licensure.

No comments were received concerning adoption of the rule.

The new section is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the 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 February 24, 1995.

TRD-9502977 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: March 30, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 505-5566

## Part XXIII. Texas Real Estate Commission

### Chapter 539. Provisions of the Residential Service Company Act

#### Subchapter N. Hazardous Financial Condition

##### • 22 TAC §539.137

The Texas Real Estate Commission adopts an amendment to §539.137, without changes to the proposed text as published in the December 23, 1994, issue of the *Texas Register* (19 TexReg 10171). The amendment establishes filing dates for semiannual reports filed by residential service companies licensed by the commission and specifies the periods of time the reports must cover. Adoption of the amendment ensures that the business activities of the companies are reported to the commission in a timely fashion.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of the Residential Service Company Act

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

Issued in Austin, Texas, on March 8, 1995.

TRD-9502962 Mark A Moseley  
General Counsel  
Texas Real Estate  
Commission

Effective date: March 9, 1995

Proposal publication date: December 23, 1994

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

## TITLE 25. HEALTH SERVICES

### Part I. Texas Department of Health

#### Chapter 115. Home and Community Support Services Agencies

##### Subchapter A. General Provisions

##### • 25 TAC §115.6

The Texas Department of Health (department) adopts new §115.6, concerning the Home and Community Support Services Advisory Committee, with changes to the proposed text as published in the December 2, 1994, issue of the *Texas Register* (19 TexReg 9450).

The new section implements Texas Civil Statutes, Article 6252-33 (Senate Bill 383, Acts of the 73rd Legislature, Regular Session, 1993) which requires the department to adopt rules relating to the purpose and tasks of each advisory committee and the manner in which committees will report to the department.

The new section establishes rule language which describes the tasks of the advisory committees, member composition, members' terms of office, election of officers, meeting times, meeting minutes, meeting attendance requirements, meeting procedures, departmental staff support, establishment of subcommittees, statements made by members, reports to the board, and reimbursement for expenses.

The following comments were received concerning the final rule.

Comment: Concerning §115.6(a), one commenter suggested changing the references from the Health and Safety Code, §142.015 to Health and Safety Code, §11.016 to assure uniformity.

Response: The department agrees and has made the changes.

Comment: One commenter suggested that new language be added to clarify that the Home and Community Support Services Advisory Committee is the same as the Home and Community Support Services Advisory



Council referenced in other sections in Chapter 115.

Response: The department agrees and has added the language in §115.6(q).

Minor editorial changes were made for clarification purposes.

The new section is adopted under the Texas Civil Statutes, Article 6252-33 relating to agency review of advisory committees; the Health and Safety Code, §11.016, which provides the Texas Board of Health (board) with the authority to establish advisory committees; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law upon the board, the department and the commissioner of health.

*§115.6. Home and Community Support Services Advisory Committee.*

(a) The committee. The Home and Community Support Services Advisory Committee shall be governed by this section. The committee is established under the Health and Safety Code, §11.016.

(b) Applicable law. The committee is subject to Texas Civil Statutes, Article 6252-33 relating to state agency advisory committees.

(c) Purpose. The purpose of the committee is to provide advice to the Texas Board of Health (board) in the area of home and community support services agencies.

(d) Tasks

(1) The committee shall advise the board concerning rules relating to the licensing of home and community support services agencies.

(2) The committee shall make recommendations relating to the memoranda of understanding required by the Health and Safety Code, §142.009(k).

(3) The committee shall carry out any other tasks given to the committee by the board.

(e) Review and duration. By July 1, 1999, the board will initiate and complete a review of the committee to determine whether the committee should be continued, consolidated with another committee, or abolished. If the committee is not continued or consolidated, the committee shall be abolished on that date.

(f) Composition. The committee shall be composed of 13 members.

(1) The composition of the committee shall include three consumer representatives and ten nonconsumer representatives.

(2) The members of the committee are appointed by the governor as follows:

(A) three consumer representatives;

(B) two representatives of agencies that are licensed to provide certified home health services;

(C) two representatives of agencies that are licensed to provide home health services but are not certified home health services;

(D) three representatives of agencies that are licensed to provide hospice services with one representative appointed from:

(i) a community-based non-profit provider of hospice services;

(ii) a community-based proprietary provider of hospice services; and

(iii) a hospital-based provider of hospice services; and

(E) three representatives of agencies that are licensed to provide personal assistance services.

(g) Terms of office. The term of office of each member shall be two years.

(1) Members shall be appointed for staggered terms so that the terms of seven members will expire on January 31 of each even-numbered year and the terms of six members will expire on January 31 of each odd-numbered year.

(2) If a vacancy occurs, a person shall be appointed to serve the unexpired portion of that term.

(h) Officers. The committee shall elect a presiding officer and an assistant presiding officer at its first meeting after August 31 of each year.

(1) Each officer shall serve until the next regular election of officers.

(2) The presiding officer shall preside at all committee meetings at which he or she is in attendance, call meetings in accordance with this section, appoint subcommittees of the committee as necessary, and cause proper reports to be made to the board. The presiding officer may serve as an ex-officio member of any subcommittee of the committee.

(3) The assistant presiding officer shall perform the duties of the presiding officer in case of the absence or disability of the presiding officer. In case the office of presiding officer becomes vacant, the assistant presiding officer will serve until a successor is elected to complete the unexpired

portion of the term of the office of presiding officer

(4) A vacancy which occurs in the offices of presiding officer or assistant presiding officer may be filled at the next committee meeting.

(5) A member shall serve no more than two consecutive terms as presiding officer and/or assistant presiding officer.

(6) The committee may reference its officers by other terms, such as chairperson and vice-chairperson.

(i) Meetings. The committee shall meet only as necessary to conduct committee business.

(1) A meeting may be called by agreement of Texas Department of Health (department) staff and either the presiding officer or any three members of the committee.

(2) Meeting arrangements shall be made by department staff. Department staff shall contact committee members to determine availability for a meeting date and place.

(3) Each meeting of the committee shall be announced and conducted in accordance with the Open Meetings Act, Texas Government Code, Chapter 551.

(4) Each member of the committee shall be informed of a committee meeting at least five working days before the meeting.

(5) A simple majority of the members of the committee shall constitute a quorum for the purpose of transacting official business.

(6) The committee is authorized to transact official business only when in a legally constituted meeting with quorum present.

(7) The agenda for each committee meeting shall include an item entitled public comment under which any person will be allowed to address the committee on matters relating to committee business. The presiding officer may establish procedures for public comment, including a time limit on each comment.

(j) Attendance. Members shall attend committee meetings as scheduled. Members shall attend meetings of subcommittees to which the member is assigned.

(1) A member shall notify the presiding officer or appropriate department staff if he or she is unable to attend a scheduled meeting.

(2) It is grounds for removal from the committee if a member cannot discharge the members' duties for a substantial part of the term for which the member is appointed because of illness or dis-

ability, is absent from more than half of the committee and subcommittee meetings during a calendar year, or is absent from at least three consecutive committee meetings.

(3) The validity of an action of the committee is not affected by the fact that it is taken when a ground for removal of a member exists.

(4) The attendance records of the members shall be reported to the board. The report shall include attendance at committee and subcommittee meetings.

(k) Staff. Staff support for the committee shall be provided by the department.

(l) Procedures. Roberts Rules of Order, Newly Revised, shall be the basis of parliamentary decisions except where otherwise provided by law or rule.

(1) Any action taken by the committee must be approved by a majority vote of the members present once quorum is established.

(2) Each member shall have one vote

(3) A member may not authorize another individual to represent the member by proxy.

(4) The committee shall make decisions in the discharge of its duties without discrimination based on any person's race, creed, gender, religion, national origin, age, physical condition, or economic status.

(5) Minutes of each committee meeting shall be taken by department staff.

(A) A draft of the minutes approved by the presiding officer shall be provided to the board and each member of the committee within 30 days of each meeting.

(B) After approval by the committee, the minutes shall be signed by the presiding officer.

(m) Subcommittees. The committee may establish subcommittees as necessary to assist the committee in carrying out its duties.

(1) The presiding officer shall appoint members of the committee to serve on subcommittees and to act as subcommittee chairpersons. The presiding officer may also appoint nonmembers of the committee to serve on subcommittees.

(2) Subcommittees shall meet when called by the subcommittee chairperson or when so directed by the committee.

(3) A subcommittee chairperson shall make regular reports to the advisory committee at each committee meeting or in interim written reports as needed. The re-

ports shall include an executive summary or minutes of each subcommittee meeting.

(n) Statement by members. The board, the department, and the committee shall not be bound in anyway by any statement or action on the part of any committee member except when a statement or action is in pursuit of specific instructions from the board, department, or committee.

(o) Reports to board. The committee shall file an annual written report with the board.

(1) The report shall list the meeting dates of the committee and any subcommittees, the attendance records of its members, a brief description of actions taken by the committee, a description of how the committee has accomplished the tasks given to the committee by the board, the status of any rules which were recommended by the committee to the board, anticipated activities of the committee for the next year, and any amendments to this section requested by the committee.

(2) The report shall identify the costs related to the committee's existence, including the cost of agency staff time spent in support of the committee's activities.

(3) The report shall cover the meetings and activities in the immediate preceding 12 months and shall be filed with the board each January. It shall be signed by the presiding officer and appropriate department staff.

(p) Reimbursement for expenses. In accordance with the requirements set forth in Texas Civil Statutes, Article 6252-33, a committee member may receive reimbursement for the member's expenses incurred for each day the member engages in official business.

(1) No compensatory per diem shall be paid to committee members unless required by law.

(2) A committee member who is an employee of a state agency, other than the department, may not receive reimbursement for expenses from the department.

(3) A nonmember of the committee who is appointed to serve on a subcommittee may not receive reimbursement for expenses from the department.

(4) Each member who is to be reimbursed for expenses shall submit to staff the member's receipts for expenses and any required official forms no later than 14 days after each committee meeting.

(5) Requests for reimbursement of expenses shall be made on official state travel vouchers prepared by department staff.

(q) All references to the Home and Community Support Services Agency Advi-

sory Council in this chapter are references to the Home and Community Support Services Advisory Committee.

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 March 10, 1995.

TRD-9503093

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Effective date: April 3, 1995

Proposal publication date: December 2, 1994

For further information, please call: (512) 458-7236

## TITLE 30. ENVIRONMENTAL QUALITY

### Part I. Texas Natural Resource Conservation Commission

#### Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (TNRCC) adopts the repeal of §330.857, amendments to §330.824 and §330.839, and new §§330.857, 330.858, 330.875, 330.879-330.883, concerning the waste tire recycling fund program. Section 330.875 is adopted with changes to the proposed text as published in the October 25, 1994, issue of the *Texas Register* (19 TexReg 8521). Sections 330.824, 330.839, 330.857, 330.858, and 330.879-330.883 are adopted without changes and will not be republished.

No comments on the proposed rules were received from the regulated community, from any groups, associations, businesses, or industries, or from concerned citizens.

Pursuant to Senate Bill 1340, the Waste Tire Recycling Fund was created. The intent of the fund was to clean up existing illegal waste tire dumps throughout the state and to insure no new illegal dumps were created by collecting new waste tires free of charge at the point of generation. The issue and concerns associated with the elimination of illegal tire dumps across the state have existed for many years because tire dumps pose an imminent peril to the public health, safety, and welfare of citizens and the environment in the State of Texas. The repealed, new and amended rules will ensure the TNRCC's ability to adequately administer the Waste Tire Recycling Fund Program and facilitate clean up of illegal waste tire dumps. The rules will also improve management and oversight of the regulated community operating under the fund and seeking reimbursement from the fund. In addition to changes mandated by Senate Bill 1051, the rules will clarify existing confusion regarding program guidance and will incorporate modifications that have been made in program operation since program implementation occurred on April 1, 1992.

As indicated during the hearing on the proposed rules on November 16, 1994, the TNRCC identified one error in a citation that would be corrected when the rules were republished. The section that contains the error is stated below with a brief description of the error and the correction made to the rules.

In §330.875 the citation for the Texas Health and Safety Code is incorrect. Also, the citation is incorrect in its reference to the 73rd legislative session and the Government Code. The correct citation is Texas Health and Safety Code, §361.493 and the Texas Open Records Act (Government Code, §552.001 et seq).

### Subchapter R. Management of Whole Used or Scrap Tires

- 30 TAC §§330.824, 330.839, 330.857, 330.858, 330.875, 330.879-330.883

The amendments and new sections are adopted under the Health and Safety Code, Chapter 361, as amended by Senate Bill 1051, Acts of the 73rd Legislature, 1993, which provides the Texas Natural Resource Conservation Commission with the authority to establish the rules necessary to adequately administer the Waste Tire Recycling Fund, to implement the activities necessary to insure prompt and accurate pay-out from the fund, and to register and monitor the activities of waste tire generators, transporters, fixed and mobile processors, waste tire balers, and storage facility owners or operators, and under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission the powers, duties and responsibilities to adopt any rules necessary to implement the laws of this state.

The amendments and new sections implement the Administrative Procedure Act, Texas Government Code, Chapter 2002.

#### §330.875. Confidentiality.

(a) Information submitted by mobile tire processors, waste tire facilities, waste tire baling facilities, waste tire energy recovery facilities, waste tire recycling facilities or waste tire storage facilities owners or operators, to the executive director in accordance with §§330.931-330.939 of this title (relating to Allocation Restrictions; Applicability and Responsibility for Recyclers of Whole Used or Scrap Tires or Scrap Tire Pieces or Shredded Waste Pieces; Waste Tire Facility Registration; Requirements for Registration for a Waste Tire Recycling Facility; Waste Tire Energy Recovery Facility

Registration; Requirements for a Waste Tire Energy Recovery Facility; Registration as a Waste Tire Transfer Station or Recycling Collection Center; Requirements for a Waste Tire Transfer Station or Recycling Collection Center; Requirements for a Transportation Facility; and Penalties for Owners or Operators of Waste Tire Recycling Facilities, Waste Tire Energy Recovery Facilities, Waste Tire Transfer Stations or Recycling Collection Centers, and Transportation Facilities), any information submitted in accordance with Subchapter X, §§330.900-330.909 of this title (relating to Useful Product Reimbursement Program; Useful Product Reimbursement Program Registration; Request for Reimbursement; Useful Product Reimbursement Program Restrictions; Public Notice of Intent to Operate; Useful Product Reimbursement Program Policies; Definition of a Useful Product; Useful Product Reimbursement Schedule; and Nonpayment of Requests for Reimbursement under the Useful Product Reimbursement Program) and any report generated by the executive director based on that or other information is confidential pursuant to the Texas Health and Safety Code, §361.493, the Texas Open Records Act (Government Code, §552.001 et seq) and is not subject to disclosure.

(b) In order to protect such information, the mobile tire processor, waste tire facility, waste tire baling facility, waste tire storage facility, waste tire recycling facility, or waste tire energy recovery facility owner or operator shall identify that such information is subject to nondisclosure under subsection (a) of this section by labeling the information or report, "confidential".

(c) The executive director shall, upon receipt, protect such information by ensuring that appropriate measures are taken to prevent the disclosure or review of the information by the general public, regulated community or other interested parties.

(d) The cover letter shall indicate that the information is confidential and if the confidential information is contained in a single document every page should be labelled, if the confidential information is contained in multiple documents then the first page of each document.

This agency hereby certifies that the rules 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 March 10, 1995.

TRD-9503091

Lydia Gonzalez  
Gronmatzky  
Director, Legal Services  
Division  
Texas Natural Resource  
Conservation  
Commission

Effective Date: April 3, 1995

Proposed publication date: October 25, 1994

For further information, please call: (512) 239-6087

### • 30 TAC §330.857

The repeal is adopted under the Health and Safety Code, Chapter 361, as amended by Senate Bill 1051, Acts of the 73rd Legislature, 1993, which provides the Texas Natural Resource Conservation Commission with the authority to establish the rules necessary to adequately administer the Waste Tire Recycling Fund, to implement the activities necessary to insure prompt and accurate pay-out from the fund, and to register and monitor the activities of waste tire generators, transporters, fixed and mobile processors, waste tire balers, and storage facility owners or operators, and under the Texas Water Code, §5.103, which gives the Texas Natural Resource Conservation Commission the powers, duties and responsibilities to adopt any rules necessary to implement the laws of this state.

The repeal implements the Administrative Procedure Act, Texas Government Code, Chapter 2002.

This agency hereby certifies that the rules 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 March 10, 1995.

TRD-9503090

Lydia Gonzalez  
Gronmatzky  
Director, Legal Services  
Division  
Texas Natural Resource  
Conservation  
Commission

Effective Date: April 3, 1995

Proposed publication date: October 25, 1994

For further information, please call: (512) 239-6087

Name: Andrew Grover  
Grade: 5  
School: Barrington Place Elementary, Ft. Bend ISD



11.1.16

# TABLES AND GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

See Figure 1 for 40 TAC 3.4005

AFDC - Last Digit of Case Number:  
0,1,2,3  
4,5,6  
7,8,9

Availability Date:  
1  
2  
3

Food Stamps (effective February 1, 1995) -  
Last Digit of Case Number:

0  
1  
2  
3  
4  
5  
6  
7  
8  
9

Availability Date:  
1  
2  
3  
4  
5  
6  
7  
8  
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10

Food Stamps (effective June 1, 1995) -  
Last Two Digits of Case Number:

0  
1  
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8  
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[00-06  
[17-13  
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[88-93  
[94-99]

Availability Date:  
1  
3  
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# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before 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 listed 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. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department of Agriculture

Tuesday, March 21, 1995, 1:30 p.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Texas-Israel Exchange Fund Board

### AGENDA

Discussion of grant program; discussion and action on grant proposals, discussion of TIE Program funding; and discussion of possible future programs and activities

Contact: V. A. Stephens, P.O. Box 12847, Austin, Texas 78711, (512) 463-7519

Filed: March 10, 1995, 3:38 p.m.

TRD-9503071

Thursday-Friday, March 23-24, 1995, 2:00 p.m. and 8:30 a.m., respectively.

Howard Johnson Plaza Hotel, 7800 North IH-35

Austin

Texas Peanut Producers Board

### AGENDA

Working Session—March 23, 1995

Presentation by Thacker Group

Presentation by Gayle Stephenson

Review of research projects

March 24, 1995

Roll call

Introduction of guests

Discussion and action. Minutes of last meeting, fiscal year 1995-1996 budget

Discussion. Activities, other business

Executive session: In accordance with Texas Government Code, Annotated, §551.074, to discuss personnel matters. Adjourn executive session

Action on executive session

Adjourn

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853

Filed: March 14, 1995, 9:36 a.m.

TRD-9503140

Tuesday, March 28, 1995, 11:45 a.m.

Executive Inn at Love Field

Dallas

Texas Soybean Producers Board

### AGENDA

Call to order

Discussion and action: Minutes of last meeting

Financial report

New Board member

Funding requests

USB report

ASA report

Blacketer memorial

Discussion: Redistricting of areas

Adjourn

Contact: Trent Roberts, 1501 North Pierce, Suite 100, Little Rock, Arkansas 72207, 1-800-247-8691.

Filed: March 14, 1995, 9:36 a.m.

TRD-9503141

## Texas Commission on Alcohol and Drug Abuse

Friday, March 10, 1995, 8:30 a.m.

710 Brazos, Eighth Floor Conference Room  
Austin

Emergency Revised Agenda

Board of Commissioners

### AGENDA

Introduction of new staff; update on Youth Initiative; report on key findings from Women in Prison Survey, Texas School Survey, and TYC Youth Survey; report on audit activities; Texas Performance Review CORE cost analysis; update on agency reorganization; legislative activities.

Reason for emergency: Unavoidable scheduling conflicts attributed to the agenda and scheduling of the Senate Finance Committee hearings.

Contact: Otis E. Williams, 710 Brazos, Austin, Texas 78701, (512) 867-8720.

Filed: March 9, 1995, 3:27 p.m.

TRD-9502990

Friday, March 10, 1995, 1:00 p.m. (Rescheduled from March 9, 1995.)

710 Brazos, Suite 800

Austin

Emergency Meeting

Revised Agenda

Program Development and Initiatives Committee

AGENDA:

Call to order; approval of minutes; approval of budget negotiations for the Winnsboro Substance Abuse Felony Punishment Facility (SAFP) Unit treatment vendor; approval of to start bid process for training video for therapeutic community start-up; new business; old business; adjourn.

Reason for emergency: Unavoidable scheduling conflicts attributed to the scheduling of the House Appropriations Committee hearings. One agenda item wording changed to provide better explanation of process.

Contact: Ted Sellers, 710 Brazos, Austin, Texas 78701, (512) 867-8137.

Filed: March 10, 1995, 10:38 a.m.

TRD-9503023

Friday, March 10, 1995, 2:30 p.m. (Rescheduled from March 9, 1995, 4:00 p.m.)

710 Brazos, Eighth Floor Conference Room

Austin

Emergency Meeting

Joint Grants and Contracts Review Committee and Program Development and Initiatives Committee

AGENDA:

Call to order; approval of meeting minutes from January 23, 1995; new business; fiscal year 1995 transitional treatment center (TTC) and treatment alternatives to incarceration (TAIP) programs; information items; and adjourn.

Reason for emergency: Unavoidable scheduling conflicts attributed to the scheduling of the House Appropriations Committee hearings.

Contact: Pam Salinas, 710 Brazos, Suite 428, Austin, Texas 78701, (512) 867-8121.

Filed: March 10, 1995, 10:38 a.m.

TRD-9503022

Sunday, March 12, 1995, 4:00 p.m. (Rescheduled from Friday, March 10, 1995, 1:30 p.m.)

710 Brazos, Eighth Floor Conference Room

Austin

Emergency Meeting

Grants and Contracts Review Committee

AGENDA:

Call to order; approval of meeting minutes from February 15, 1995; new business; prevention services; treatment services; unsolicited proposals; information items; and adjourn.

Reason for Emergency: Unavoidable scheduling conflict attributed to Board of Commissioners' meeting and legislative activity.

Contact: Pam Salinas, 710 Brazos, Suite 428, Austin, Texas 78701, (512) 867-8121.

Filed: March 10, 1995, 4:15 p.m.

TRD-95030373

Sunday, March 12, 1995, 5:00 p.m. (Rescheduled from Friday, March 10, 1995, 1:00 p.m.)

710 Brazos, Suite 800

Austin

Emergency Meeting

Emergency Revised Agenda

Program Development and Initiatives Committee

AGENDA:

Call to order; approval of minutes; approval of budget negotiations for the Winnsboro Substance Abuse Felony Punishment Facility (SAFP) Unit treatment vendor; approval of to start bid process for training video for therapeutic community start-up; new business; old business; and adjourn.

Reason for emergency: Unavoidable scheduling conflicts attributed to the scheduling of the House Appropriations Committee hearings. One agenda item wording changed to provide better explanation of process.

Contact: Ted Sellers, 710 Brazos, Austin, Texas 78701, (512) 867-8137

Filed: March 10, 1995, 4:12 p.m.

TRD-9503072

Sunday, March 12, 1995, 5:00 p.m. (Rescheduled from Friday, March 10, 1995, 2:30 p.m.)

710 Brazos, Eighth Floor Conference Room

Austin

Emergency Meeting

Joint Grants and Contracts Review Committee and Program Development and Initiatives Committee

AGENDA:

Call to order; approval of meeting minutes from January 23, 1995; new business; fiscal

year 1995 transitional treatment center (TTC) and treatment alternatives to incarceration (TAIP) programs; information items; and adjourn.

Reason for emergency: Unavoidable scheduling conflicts attributed to Board of Commissioners' meeting and legislative activity.

Contact: Pam Salinas, 710 Brazos, Suite 428, Austin, Texas 78701, (512) 867-8121.

Filed: March 10, 1995, 4:26 p.m.

TRD-9503075

## Texas Planning Council for Developmental Disabilities

Wednesday-Thursday, March 22-23, 1995, 1:30 p.m. and 9:00 a.m., respectively.

4900 North Lamar Boulevard, Room 4501

Austin

Advocacy and Public Information Committee Meeting

AGENDA:

Wednesday, March 22, 1995

1:30 p.m. -

1. Call to order/introductions

2. Public comments

3. Approval of minutes

4. Review and discussion of state policy/legislation

5. Review and discussion of federal policy/legislation

6. Public information report

Thursday, March 23, 1995

9:00 a.m. -

Reconvene

1. Continuation of unfinished business from March 22, 1995

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Michelle Kuempel at (512) 483-4087.

Contact: Roger Webb, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 483-4080.

Filed: March 13, 1995, 2:37 p.m.

TRD-9503121



## Texas Employment Commission

Tuesday, March 21, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

### AGENDA:

Prior meeting notes; staff reports; internal procedures of Commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 12; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: March 13, 1995, 4:04 p.m.

TRD-9503131

## Texas General Land Office

Tuesday, March 21, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

### AGENDA:

Approval of previous board meeting minutes; pooling agreement amendment, East Matagorda Bay Unit, Matagorda County; pooling applications, Prewit Gas Unit #1, Goliad County; Slick-Estate Number 175 Unit, Starr County; applications to lease highway rights of way for oil and gas, Lee County; Brazos County; Freestone County; and Wilson County; drainage easement application by City of Austin across Texas State Library lands, Travis County; coastal public lands, easement applications and renewals, Offatts Bayou, Galveston County; Carancahua Bay, Calhoun County; Corpus Christi Bay, Nueces County; structure (cabin) permit renewals, amendments, terminations and requests, Laguna Madre, Kleberg County; Laguna Madre, Kenedy County; commercial lease applications and renewals, Laguna Madre, Cameron County; Offatts Bayou, Galveston County; and Cedar Bayou, Chambers County; executive session-pending and proposed litigation.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: March 10, 1995, 4:40 p.m.

TRD-9503077

Tuesday, March 21, 1995, 11:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room #833

Austin

Veterans Land Board

### AGENDA:

88. Approval of the January 30, 1995, minutes of VLB meeting.

89. Consideration of and action on resolution authorizing the issuance and sale of State of Texas Veterans' Land Bonds.

90. Consideration of and action on resolution awarding sale of bonds.

91. Consideration of and action on resolution authorizing, ratifying and approving Official Note of Sale.

92. Take such action regarding the sale of bonds as shall be considered by the Board to be appropriate and/or necessary.

93. Determination of winning proposal to enter into an interest rate swap agreement (the Swap Agreement).

94. Consideration of reinstatement for Henry Wire (Account #702430).

95. Consideration of reinstatement for Delmer G. Dopp.

96. Consideration of action on delinquent accounts for forfeiture.

97. Consideration of action on accounts with pending tax suits.

98. Consideration of setting the Veteran (and non-Veteran) interest rates under the Veterans Land Program for loans in excess of \$20,000.

99. Consideration of a proposed issuance of new money bonds for Housing Program.

100. Consideration of the selection of underwriter(s).

101. Consideration of amending loan rates in the Housing Assistance Program.

102. Consideration of and amendment of VLB and Coastal Protection Fund.

Contact: Karen Pratt, 1700 North Congress Avenue, Room 700, Austin, Texas 78701, (512) 463-5171.

Filed: March 10, 8:56 a.m.

TRD-9503011

## Texas Department of Health

Saturday, March 18, 1995, 10:00 a.m.

Odessa Holiday Inn Centre, Rooms 1 and 2, 6201 East Highway 80

Odessa

Texas Board of Health, Human Resources Committee

### AGENDA:

The committee will discuss approval of the minutes of the February 16, 1995; discuss

and possibly act on: final adoption of rules concerning the Opticians' Registry Advisory Committee; final adoption of rules concerning the Code Enforcement Registry Advisory Committee; final adoption of rules concerning the Advisory Council on Massage Therapy; and final adoption of rules concerning the Wholesale Drug Distributors Advisory Committee.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 1:51 p.m.

TRD-9503051

Saturday, March 18, 1995, 1:30 p.m.

Odessa Holiday Inn Centre, Rooms 1 and 2, 6201 East Highway 80

Odessa

Texas Board of Health Regulatory Committee

### AGENDA:

The committee will discuss approval of the minutes of the February 17, 1995, meeting; discuss and possibly act on: emergency and proposed rules concerning recertification of emergency medical services personnel; proposed rules concerning the regulation of foods, dietary supplements, and drugs containing Ephedrine; discussion of proposed rules concerning Texas molluscan shellfish rules; and announcements and comments not requiring committee action.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 1:51 p.m.

TRD-9503052

Saturday, March 18, 1995, 2:30 p.m.

Odessa Holiday Inn Centre, Rooms 1 and 2, 6201 East Highway 80

Odessa

Texas Board of Health, Health Financing Committee

### AGENDA:

The committee will discuss approval of the minutes of the February 16, 1995 meeting; discuss and possibly act on recommendations concerning Medicaid vendor drug program dispensing fee.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D.

(512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 1:51 p.m.

TRD-9503053

**Saturday, March 18, 1995, 3:00 p.m.**

Odessa Holiday Inn Centre, Rooms 1 and 2, 6201 East Highway 80

Odessa

Texas Board of Health, Health and Clinical Services Committee

**AGENDA:**

The committee will discuss approval of the minutes of the February 16, 1995 meeting; discuss and possibly act on final adoption of rules concerning the statewide immunization of children.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 1:51 p.m.

TRD-9503054

**Saturday, March 18, 1995, 3:30 p.m.**

Odessa Holiday Inn Centre, Rooms 1 and 2, 6201 East Highway 80

Odessa

Texas Board of Health, Strategic Management Committee

**AGENDA:**

The committee will discuss approval of the minutes of the February 16, 1995 meeting; discuss and possibly act on: approval of fiscal year 1995 operating budget transfers; monthly financial report; historical underutilized business program update; border health update; federal congressional update; and state legislative update.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 2:11 p.m.

TRD-9503057

**Sunday, March 19, 1995, 8:30 a.m.**

Odessa Holiday Inn Centre, Rooms 1 and 2, 6201 East Highway 80

Odessa

Texas Board of Health, Board Briefings

**AGENDA:**

The board will be briefed by the Commissioner on current activities of the Texas Department of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 1:50 p.m.

TRD-9503049

**Sunday, March 19, 1995, 10:00 a.m.**

Odessa Holiday Inn Centre, Room 1 & 2, 6201 East Highway 80

Odessa

Texas Board of Health

**AGENDA:**

The board will meet to discuss approval of the minutes of the February 17, 1995 meeting; and discuss and possibly act on: commissioner's report; Board of Health resolution in support of poison prevention week, March 19-25, 1995; presentation of secretary's community health promotion awards, Department of Health and Human Services; update on the activities of Texas Department of Health, Public Health Regions 9 and 10; Strategic Management Committee report (approval of fiscal year 1995 operating budget transfers); Health Financing Committee report (recommendation concerning Medicaid vendor drug program dispensing fee); Health and Clinical Services Committee report (final adoption of rules concerning the statewide immunization of children); Human Resources Committee Report (final adoption of rules concerning the Opticians' Registry Advisory Committee; final adoption of rules concerning Code Enforcement Registry Advisory Committee; final adoption of rules concerning the Advisory Council on Massage Therapy; and final adoption of rules concerning the Wholesale Drug Distributors Advisory Committee); Regulatory Committee report (emergency and proposed rules concerning recertification of emergency medical services personnel; and proposed rules concerning the regulation of foods, dietary supplements, and drugs containing Ephedrine); announcements and comments not requiring board action; and meeting date for April, 1995.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, contact Richard Butler at (512) 458-7695 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 1:51 p.m.

TRD-9503050

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**Texas Department of Insurance**

**Wednesday, March 22, 1995, 2:00 p.m.**  
State Office of Administrative Hearings,

300 West 15th Street, Suite 502

Austin

**AGENDA:**

454-95-0214.F

Prehearing conference on a filing by Allstate Indemnity Company of an application for approval of a proposed revision to the Texas Automobile Rules and Rating Manual pursuant to Article 5.101, §3(g).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 13, 1995, 4:03 p.m.

TRD-9503126

**Monday, March 27, 1995, 9:00 a.m.**

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

**AGENDA:**

454-95-0158

Request by Aetna Insurance Company for a hearing regarding reimbursement of legal costs-facility appeal.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 13, 1995, 4:03 p.m.

TRD-9503127

**Thursday, March 30, 1995, 9:00 a.m.**

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

**AGENDA:**

454-95-0141.H

Prehearing conference in reference to the Texas Department of Insurance vs. Lafayette Jack Prater doing business as The All Saints Program, and Patsy Prater.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: March 13, 1995, 4:03 p.m.

TRD-9503128

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**Commission on Jail Standards**

**Friday, March 24, 1995, 8:30 a.m.**

William P. Clements Building, Hearing Room 509, 300 West 15th Street

Austin

**AGENDA:**

Education Committee. Review staff's training efforts.

**Contact:** Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**Filed:** March 10, 1995, 8:35 a.m.

TRD-9503010

**Friday, March 24, 1995, 8:30 a.m.**

William P. Clements Building, Room 509, 300 West 15th Street

Austin

**AGENDA:**

Internal Audit Committee report-update on status of audit.

**Contact:** Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**Filed:** March 10, 1995, 8:35 a.m.

TRD-9503009

**Friday, March 24, 1995, 9:00 a.m.**

William P. Clements Building, Room 509, 300 West 15th Street

Austin

**AGENDA:**

Call to order. Roll call of members. Reading and approval of minutes of last meeting of January 27, 1995. Executive session. Election of vice-chair. Old business: Angelina County, Harris County, Calhoun County, Hidalgo County, Potter County, Wharton County. Status of felony backlog/payment to counties/jail population report/state jails, completed jail projects, active remedial orders/cancel/changes, change to standards (adopt), TB Program, new business: smoking policy in jails, medical record exchange process, Education Committee report and internal audit report. Applications for variances: Foard County and Cottle County. Directors report. Other business. Adjourn.

**Contact:** Jack E. Crump, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

**Filed:** March 10, 1995, 8:34 a.m.

TRD-9503008



## **Texas Department of Licensing and Regulation**

**Tuesday, March 21, 1995, 9:00 a.m.**

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations: Staff Leasing

**AGENDA:**

According to the complete agenda, the Department will hold an administrative hearing

to consider the application of C. Richard Bartolini doing business as Texas Professional Employers, Inc. for a Staff Leasing Services License in accordance with the Statutes, Articles 9104, §3 and §16, and 9100, 16 Texas Administrative Code (TAC), §72.21, and the Texas Government Code, Chapter 2001.

**Contact:** Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

**Filed:** March 10, 1995, 8:27 a.m.

TRD-9503003

**Wednesday, March 22, 1995, 1:00 p.m.**

T.E.C. Building, 101 East 15th Street, Room 501

Austin

Revised Agenda

Elevator Advisory Board

**AGENDA:**

The incorrect time was posted in previous transmittal of this agenda

All facilities are accessible to persons with disabilities. Under the Americans With Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at (512) 463-7348 two working days prior to the meeting so that appropriate arrangements can be made.

**Contact:** Jimmy Martin, 920 Colorado, Austin, Texas 78711, (512) 463-7348.

**Filed:** March 10, 1995, 10:39 a.m.

TRD-9503025

**Thursday, March 30, 1995, 9:00 a.m.**

920 Colorado, E.O. Thompson Building, Third Floor

Austin

Inspections and Investigations, Air Conditioning

**AGENDA:**

According to the complete agenda, the Department will hold an administrative hearing to consider the application of Paul Theron Alotto for issuance of an air conditioning license in accordance with the Statutes, Articles 8861, and 9100; 16 Texas Administrative Code (TAC), §75.91, and the Texas Government Code, Chapter 2001.

**Contact:** Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

**Filed:** March 10, 1995, 8:27 a.m.

TRD-9503004



## **Texas Natural Resource Conservation Commission**

**Wednesday, March 22, 1995, 9:30 a.m.**

12118 North Interstate 35, Building E, Room 201S

Austin

**AGENDA:**

The Commission will consider approving the following matters. District matters; water utility matters, settled hearings; municipal waste discharge enforcement; petroleum storage tank enforcement; air quality enforcements; rule, proposal for decisions; executive session; in addition, the Commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the Commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time.

(Registration begins at 8:45 a.m. until 9:30 a.m.)

**Contact:** Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

**Filed:** March 9, 1995, 3:26 p.m.

TRD-9502989

**Tuesday, March 28, 1995, 9:00 a.m.**

Building A, Room 110, 12124 Park 35 Circle, TNRCC Park 35 Office Complex, Off North IH-35 Between Parmer Lane and Yager Lane

Austin

Office of Hearings Examiners

**AGENDA:**

TNRCC Docket Number 95-0452-WR

For a hearing before a hearings examiner on Application Number 14-2472A (TNRCC Docket Number 95-0452-WR) to amend Certificate of Adjudication 14-2472 submitted by Colorado River Municipal Water District, and Obie P. and Nancy A. Leonard, in care of Tim Brown, Attorney at Law, Brown and Potts, L.L.P., 401 West 15th Street, Suite 850, Austin, Texas 78701-1665. The applicant requests an amendment to this water right to change the place of use to (1) irrigate 365 acres out of two tracts totalling 3089.46 acres, in Mills County and San Saba County, approximately 10.5 miles southwest of Goldthwaite, and 11 miles north of San Saba; and (2) delete the two existing diversion points and establish 11 new diversion points. The proposed new diversion points are approximately 60 miles downstream from the existing points (which are to be deleted). The maximum combined diversion rate will remain unchanged at 4.46 cfs (2,000 gpm).

Contact: Leslie Limes, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100

Filed: March 10, 1995, 8:33 a.m.

TRD-9503007

Friday, March 31, 1995, 9:00 a.m.

Building E, Room 201S, 12118 North IH-35, Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of adjudicative hearing for administrative action to be taken against Ted Kneten, WWD License Number 2569-W.

Contact: Kerry Sullivan, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 13, 1995, 9:47 a.m.

TRD-9503098

Friday, March 31, 1995, 9:00 a.m.

Building E, Room 201S, 12218 North IH-35, Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of adjudicative hearing for administrative action to be taken against Steven Gerald Biffle, WWD License Number 2771-W.

Contact: Kerry Sullivan, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 13, 1995, 9:47 a.m.

TRD-9503099

Friday, March 31, 1995, 9:00 a.m.

Building E, Room 201S, 12118 North IH-35, Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of adjudicative hearing for administrative action to be taken against Mike Coles, WWD License Number 2956-W.

Contact: Kerry Sullivan, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 13, 1995, 9:54 a.m.

TRD-9503100

Friday, March 31, 1995, 9:00 a.m.

Building E, Room 201S, 12118 North IH-35, Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of adjudicative hearing for administrative action to be taken against Mike Opry, Docket Number WWD-95-05.

Contact: Kerry Sullivan, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 13, 1995, 11:41 a.m.

TRD-9503106

Friday, March 31, 1995, 9:00 a.m.

Building E, Room 201S, 12118 North IH-35, Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of adjudicative hearing for administrative action to be taken against Murray Walker, WWD License Number 2202-W.

Contact: Kerry Sullivan, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 13, 1995, 11:41 a.m.

TRD-9503107

Thursday, April 6, 1995, 10:00 a.m.

Texas Natural Resource Conservation Commission, Building A, Room 310-D, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Big Lakes Utilities, Inc. doing business as Twin Oaks Trailer Park/Six Mile Marina Wastewater Treatment Facilities for a sewer rate increase effective January 1, 1995, in Sabine County, Texas. TNRCC Docket Number 95-0294-UCR.

Contact: Bill Zukauckas, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 10, 1995, 11:04 a.m.

TRD-9503036

Tuesday, April 11, 1995, 9:00 a.m.

Texas Natural Resource Conservation Commission, Building C, Room 131-E, 12124 Park 35 Circle, North IH-35

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Barton Creek West Water Supply Corporation for renewal of Permit Number 12786-01 which authorizes the disposal of treated domestic sewage effluent

by irrigation on 44 acres of perennial coastal bermuda. The disposal volume is not to exceed 150,000 gallons per day average. Application rates for the irrigated land are not to exceed 2.97 acre-feet/acre/year. No discharge of pollutants into the waters of the State is authorized by this permit. The wastewater treatment facility and irrigation site are adjacent to and south of FM Road 2244, approximately two miles east of the intersection of FM Road 2244 and State Highway 71 in Travis County, Texas. TNRCC Docket Number 95-0355-MWD.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 10, 1995, 11:04 a.m.

TRD-9503037

Wednesday, April 26, 1995, 2:00 p.m.

McMullen County School Auditorium, located on Highway 16, two blocks South of Highway 72

Tilden

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by Hallco Texas, Inc. (Hallco) for an industrial solid waste permit (Proposed Permit Number SW39090) to authorize operation of a commercial storage and disposal facility for the management of Class I, II, and III nonhazardous industrial solid wastes and for a waste discharge permit (Proposed Permit Number 03665) to authorize treatment and disposal of stormwater from this facility. Permit Number SW39090 will authorize the following facility units (1) a secure landfill with a total waste fill capacity not to exceed 5,300,000 cubic yards; (2) a sampling and laboratory building with a storage capacity of 50 cubic yards; (3) two storage tanks with a combined capacity of 50,000 gallons; (4) one stormwater pond with a maximum capacity of 2.05 million gallons. Permit Number 03665 will authorize the discharge of stormwater through Outfall 001 and 002 at a flow-variable, intermittent volume depending on rainfall. The waste management facility is to be on a 128-acre tract of land adjoining County Road, approximately 1.6 miles south of State Highway 72 between the Towns of Tilden (McMullen County) and Three Rivers (Live Oak County) and approximately 2.6 miles south-southeast of the Town of Calliham (McMullen County) in McMullen County, Texas. TNRCC Docket Numbers 95-0245-ISW, 95-0246-IWD.

Contact: Tommy Broyles, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: March 10, 1995, 11:05 a.m.

TRD-9503038

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## Texas Parks and Wildlife Department

**Tuesday, March 21, 1995, 7:00 p.m.**

Ruth's Chris Steakhouse, 3010 Guadalupe  
Austin

Parks and Wildlife Commission

### AGENDA:

Members of the Texas Parks and Wildlife Commission plan to have dinner at 7:00 p.m., March 21, 1995. Although this function is primarily a social event and no formal action is planned, the Commission may discuss items on the public hearing scheduled for 9:00 a.m., Thursday, March 23, 1995.

**Contact:** Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

**Filed:** March 13, 1995, 1:51 p.m.

TRD-9503111

**Wednesday, March 22, 1995, 1:00 p.m.**

Parks and Wildlife HQ, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission/Finance Committee and Capital Projects Committee (Joint Meeting)

### AGENDA:

Approval of committee minutes of the previous meetings; briefing-funding needs and license fee proposal; briefing-review of appropriation process; briefing-sale of obsolete nongame and endangered species stamps; briefing-land exchange-Jeff Davis County; briefing-land exchange-Andrews County; briefing-land exchange-Tom Green County; briefing-potential land donation-Erath County; other business.

**Contact:** Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

**Filed:** March 13, 1995, 1:51 p.m.

TRD-9503112

**Wednesday, March 22, 1995, 2:30 p.m.**

Parks and Wildlife HQ, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission/Policy and Planning Committee and Regulations Committee (Joint Meeting)

### AGENDA:

Approval of committee minutes of the previous meetings; action-1995-1996 State-wide Hunting and Fishing Proclamation; action-1995-1996 Public Hunting Lands Hunting and Fishing Proclamation; approval

of amendments to Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants Proclamation; action-proposed regulations concerning the use of sand pumps for the taking of aquatic organisms; action-classification of public land unit; other business.

**Contact:** Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

**Filed:** March 13, 1995, 1:51 p.m.

TRD-9503113

**Wednesday, March 22, 1995, 6:30 p.m.**

Bright Leaf, 4400 Crestway Drive

Austin

Parks and Wildlife Commission

### AGENDA:

Members of the Texas Parks and Wildlife Commission plan to have dinner at 6:30 p.m., March 22, 1995. Although this function is primarily a social event and no formal action is planned, the Commission may discuss items on the public hearing scheduled for 9:00 a.m., Thursday, March 23, 1995.

**Contact:** Andrew Sansom, 4200, Smith School Road, Austin, Texas 78744, (512) 389-4642.

**Filed:** March 13, 1995, 1:52 p.m.

TRD-9503114

**Thursday, March 23, 1995, 9:00 a.m.**

Parks and Wildlife HQ, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission

### AGENDA:

Approval of the Commission minutes from the January 19, 1995 meeting; presentation of service awards; action-1995-1996 State-wide Hunting and Fishing Proclamation; action-1995-1996 Public Hunting Lands Hunting and Fishing Proclamation; action-approval of amendments to Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants Proclamation; action-petition for rulemaking regarding the designation of a sand pump as a legal device for taking aquatic organisms; action-classification of public land units; action-naming of parks and wildlife management areas; action-nomination for oil and gas lease Washington-on-the-Brazos State Park; action-land exchange-Jeff Davis County; action-land exchange-Anderson County; action-land acquisition-Jeff Davis County; action-land acquisition-Washington County.

**Contact:** Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

**Filed:** March 13, 1995, 1:52 p.m.

TRD-9503115

**Thursday, March 23, 1995, 9:00 a.m.**

Parks and Wildlife HQ, Commission Hearing Room, 4200 Smith School Road

Austin

Parks and Wildlife Commission

### AGENDA:

#### NOTICE OF CLOSED MEETING

Approval of the minutes from the November 3, 1995 executive session; action-land exchange-Jeff Davis County; action-land exchange-Anderson County; action-land acquisition-Jeff Davis County; action-land acquisition-Washington County; briefing-potential litigation-Bastrop State Park.

**Contact:** Andrew Sansom, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4642.

**Filed:** March 13, 1995, 1:53 p.m.

TRD-9503117

## State Pension Review Board

**Tuesday, March 14, 1995, 9:00 a.m.**

State Pension Review Board Conference Room, 300 West 15th Street, Clements Building, Fourth Floor, Room 406

Austin

Emergency Revised Agenda

Legislative Advisory Committee

### AGENDA:

Location of meeting is the only change.

Preparation of actuarial impact statements on bills from which actuarial information is available by meeting time, and for which requests have been received from legislative committees.

Reason for emergency: Location only change.

**Contact:** Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

**Filed:** March 10, 1995, 10:28 a.m.

TRD-9503021

**Tuesday, March 21, 1995, 9:00 a.m.**

State Capitol Building, Third Floor, Room 3A.4

Austin

Legislative Advisory Committee

### AGENDA:

Preparation of actuarial impact statements on bills from which actuarial information is available by meeting time, and for which

requests have been received from legislative committees

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736

Filed: March 9, 1995, 3:29 p.m.

TRD-9502993

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**Texas State Board of Perfusionists**

Thursday, March 23, 1995, 8:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Application Committee

AGENDA:

The committee will discuss and possibly act on: action of applications; and setting of next meeting date.

Contact: Jo Whittenberg, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6751. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 2:12 p.m.

TRD-9503059

Thursday-Friday, March 23-24, 1995, 12:30 p.m. and 8:30 a.m., respectively.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

AGENDA:

The board will discuss and possibly act on: approval of minutes from the December 13, 1994 meeting; report from the Application Committee; adoption of final rules; election of officers; and setting of the next meeting date.

The board will meet on Friday, March 24, 1995 if the agenda items are not completed on Thursday, March 23, 1995.

Contact: Jo Whittenberg, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6751. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: March 10, 1995, 2:11 p.m.

TRD-9503058

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**Public Utility Commission of Texas**

Tuesday, March 21, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A prehearing conference has been scheduled in Docket Number 13534-application of Southwestern Bell Telephone Company to offer Digiline service via link extension service arrangement pursuant to Public Utility Commission Substantive Rule 23.26.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 9, 1995, 10:51 a.m.

TRD-9502973

Tuesday, June 20, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been scheduled in Docket Number 13520-petition of Lufkin-Conroe Telephone, Inc. for authority to recover lost revenues and cost of implementing expanded local calling service between GTE's New Waverly exchange and LCTX's Montgomery, Grangerland, Riverbrook, Conroe, Cut-N-Shoot, Lake Conroe and Waiden exchanges.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: March 13, 1995, 9:54 a.m.

TRD-9503101

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**Railroad Commission of Texas**

Tuesday, March 21, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Office of Information Services Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: March 10, 1995, 10:46 a.m.

TRD-9503077

Tuesday, March 21, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Meivin B. Hodgkiss, P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: March 10, 1995, 10:46 a.m.

TRD-9503028

Tuesday, March 21, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on agency administration, budget, policy and procedures, and personnel matters for all divisions. The commission may meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: March 10, 1995, 10:46 a.m.

TRD-9503029

Tuesday, March 21, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions and personnel matters. The Commission will consider and act on the Information Resource Manager's report on information resource planning documents.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251

Filed: March 10, 1995, 10:47 a.m.

TRD-9503030

Tuesday, March 21, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures and personnel matters.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: March 10, 1995, 10:47 a.m.

TRD-9503031

Tuesday, March 21, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

1. Division director's report and commission action on AFRED administration, procedures, budget, personnel and policy matters, and contract awards relating to alternative fuels research, marketing and public education programs.

2. Technical training. The Commission will consider an interagency contract with Texas State Technical College to train alternative fuels technicians.

3. Risk analysis. The commission will consider whether to conduct a risk analysis study of propane storage tanks.

4. Training engine and equipment. The Commission will consider a proposal to purchase a training engine and training-related equipment.

5. The Commission will receive a report and recommendations on residential markets from members of the propane and natural gas industries.

Contact: Dan Kelly, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7110.

Filed: March 10, 1995, 10:48 a.m.

TRD-9503032

Tuesday, March 21, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: March 10, 1995, 10:48 a.m.

TRD-9503033

Thursday, March 23, 1995, 9:00 a.m.

1701 North Congress Avenue, 12th Floor Conference Room 12-126

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with the Secretary of State's office.

Contact: Paula Middleton, P.O. Box 12967, Austin, Texas 78711, (512) 463-6729.

Filed: March 10, 1995, 10:46 a.m.

TRD-9503026

### Texas Rehabilitation Commission

Thursday, March 23, 1995, 9:30 a.m.

4900 North Lamar Boulevard, Brown-Heatly Building, Public Hearing Room, First Floor

Austin

Board of the Texas Rehabilitation Commission

AGENDA:

Roll call-introduction of guests-invocation

Approval of minutes: December 8, 1994 Board meeting-Commissioner's comments

Legislative update

Update on re-engineering of the rehabilitation process

Disability determination services update

Management audit update

Texas Rehabilitation Advisory Council annual report recommendations

Executive session:

Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, disability determination services and management audit. These subjects will be discussed in executive session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code §551).

Adjournment

If all agenda items have been completed, the Board will adjourn. If all agenda items have not been complete, the Board will recess until 9:30 a.m., Friday, March 24, 1995, to reconvene in the Planning Facility, Room 7230, Brown-Heatly Building, 4900 North Lamar Boulevard, Austin, Texas.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4051 or T.D.D. (512) 483-4045. For ADA assistance, call Sarah Hallum, (512) 483-4004.

Filed: March 13, 1995, 2:03 p.m.

TRD-9503119

Friday, March 24, 1995, 9:30 a.m.

4900 North Lamar Boulevard, Brown-Heatly Building, Planning Facility, Room 7230

Austin

Board of the Texas Rehabilitation Commission

AGENDA:

Roll call

Introduction of guests

Continuation of Board agenda from March 23, 1995

Executive session:

Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, disability determination services and management audit. These subjects will be discussed in executive session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code §551).

Adjournment

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 483-4051 or T.D.D. (512) 483-4045. For ADA assistance, call Sarah Hallum, (512) 483-4004.

Filed: March 13, 1995, 2:03 p.m.

TRD-9503118

### State Securities Board

Tuesday, May 2, 1995, 9:00 a.m. (Rescheduled from March 14, 1995.)

William P. Clements Building, 300 West 15th Street, Room 502

Austin

Administrative Hearing

AGENDA:

A hearing will be held at the State Office of Administrative Hearings, Austin, Texas for the purpose of determining whether the application for registration of Kenneth Randall Ward as an agent of Lehwald, Orosey and Pepe, Inc., should be prohibited.

Contact: David Grauer, 200 East Tenth Street, Fifth Floor, Austin, Texas 78701, (512) 305-8392.

Filed: March 9, 1995, 2:40 p.m.

TRD-9502984

Thursday, May 11, 1995, 9:00 a.m.

William P. Clements Building, 300 West 15th Street, Room 502

Austin

Administrative Hearing

AGENDA

A hearing will be held at the State Office of Administrative Hearings, Austin, Texas before an Administrative Law Judge for the purpose of determining whether the registration of Questron Securities, Inc. as a securities dealer should be revoked and whether the registration of Sam Ernest Harris as an agent and designated officer of Questron Securities, Inc. should be revoked.

Contact: David Grauer, 200 East Tenth Street, Fifth Floor, Austin, Texas 78701, (512) 305-8392.

Filed: March 9, 1995, 2.40 p.m.

TRD-9502985

State Preservation Board

Tuesday, March 21, 1995, 4:00 p.m.

John H Reagan Building, Room 104, 105 West 15th Street

Austin

Permanent Advisory Committee

AGENDA:

- 1.0 Call to order
- 2.0 Approval of minutes
- 2.1 Approval of minutes from March 1, 1994, meeting
- 3.0 Old or unfinished business
- None
- 4.0 New business
- 4.1 Approval of historical capitol grounds master plan
- 4.2 Site selection for Korean War monument
- 4.3 Collections Review Committee appointments

Contact: Dealey Herndon, 201 East 14th Street, Room 503, Austin, Texas 78701, (512) 463-5495.

Filed: March 13, 1995, 2:37 p.m.

TRD-9503122

Teacher Retirement System of Texas

Tuesday, March 21, 1995, Noon.

Anatole Hotel, Presidential Boardroom, 2201 Stemmons Freeway

Dallas

Board of Trustees Search Committee

AGENDA:

Approval of minutes of February 17, 1995, meeting; review and consideration of search firm proposals; and recommendation of search firms for consideration by the Board.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411.

Filed: March 13, 1995, 11:50 a.m.

TRD-9503108

Texas Department of Transportation

Thursday, March 23, 1995, 9:00 a.m.

815 Brazos, Suite 302, Brazos Building

Austin

Motor Vehicle Board

AGENDA:

Call to order; roll call. Approval of minutes of Motor Vehicle Board meeting on January 26, 1995. Proposal for decision. Agreed orders. Orders of dismissal. Other: a. Review of litigation status report; b. Review of Consumer Complaint Recap Report including decisions made by examiners, division director and Board members; d. Review of Article 6686 (P-number) contested cases; e. Division budget status. Adjournment.

Contact: Betty Bray, 815 Brazos, #300, Austin, Texas 78701, (512) 476-3587.

Filed: March 10, 1995, 2:58 p.m.

TRD-9503066

University of Texas M. D. Anderson Cancer Center

Tuesday, March 14, 1995, 9:00 a.m.

1515 Holcombe Boulevard, Room AW7.707

Houston

Institutional Animal Care and Use Committee

AGENDA:

Review of protocols for animal care and use and modifications thereof.

Contact: Anthony Mastromarino, Ph.D., 1515 Holcombe Boulevard, Box 101, Houston, Texas 77030, (713) 792-3220.

Filed: March 9, 1995, 2:12 p.m.

TRD-9502975

Regional Meetings

Meetings Filed March 9, 1995

The Bi-County WSC met at FM 2254, Bi-County WSC, Pittsburg, March 14, 1995, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9502992.

The Burnet County Appraisal District Board of Directors met at 110 Avenue H, Suite 106, Marble Falls, March 16, 1995, at Noon. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291. TRD-9502991.

The Cass County Appraisal District Board of Directors met at 502 North Main Street, Linden, March 14, 1995, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9503002.

The El Oso Water Supply Corporation Board of Directors met at FM 99 at their office, Karnes City, March 14, 1995, at 7:00 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9502988.

The Gonzales County Appraisal District Board of Directors met at 928 St. Paul, Gonzales, March 16, 1995, at 6:00 p.m. Information may be obtained from Denise Windwehen or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879, Fax (210) 672-8345. TRD-9502986.

The Houston-Galveston Area Council Transportation Department will meet at 3555 Timmons Lane, Houston, March 28, 1995, at 1:30 p.m. Information may be obtained from Susan Nicosia, 3555 Timmons Lane, Suite 500, Houston, Texas 77227, (713) 993-4553. TRD-9503001.

The Hunt County Appraisal District (Rescheduled from Thursday, March 9, 1995, at 6:30 p.m.) met at 4801 King Street, Greenville, March 16, 1995, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9502994.

The Lampasas County Appraisal District Board of Directors met at 109 East Fifth Street, Lampasas, March 16, 1995, at 7:00 p.m. Information may be obtained from Tommy L. Watson, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9502972.



The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Conference Room, Austin, March 14, 1995, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9502999.

The Lower Colorado River Authority Board of Trustees Investment Subcommittee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, March 14, 1995, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-4043. TRD-9503000.

The North Texas Regional Library System Board of Directors will meet at the Southwest Regional Branch, Fort Worth Public Library, 4001 Library Lane, Fort Worth, March 23, 1995, at 1:30 p.m. Information may be obtained from Cheryl Smith, 1111 Foch Street, Suite 100, Fort Worth, Texas 76107, (817) 335-6076. TRD-9502998.

The Parmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, April 13, 1995, at 7:00 p.m. Information may be obtained from Ronald E. Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9502987.

The Riceland Regional Mental Health Authority Joint Hospital Committee met at 6410 Airport, Rosenberg, March 16, 1995, at 10:30 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9502996.

The Riceland Regional Mental Health Authority Board of Trustees met at 6410 Airport, Rosenberg, March 16, 1995, at Noon. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9502997.

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**Meetings Filed March 10,  
1995**

The Alamo Area Council of Governments Bexar County Council of Mayors met at 118 Broadway, Suite 400, San Antonio, March 15, 1995, at 2:00 p.m. Information may be obtained from Ai J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9503076.

The Ark-Tex Council of Governments met at State Line Avenue, Texarkana, March 16, 1995, at 5:30 p.m. Information may be obtained from Becky Borgeson, P.O. Box 5307, Texarkana, Texas 75505, (903) 832-8636. TRD-9503067.

The Atascosa County Appraisal District Board of Directors met at Fourth and Ave-

nue J. Poteet, March 16, 1995, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9503024.

The Dallas Area Rapid Transit Committee-of-the-Whole met in DART Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, March 14, 1995, at 1:00 p.m. Information may be obtained from Vanessa Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9503047.

The Dallas Area Rapid Transit Committee-of-the-Whole met in DART Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, March 14, 1995, at 1:00 p.m. Information may be obtained from Vanessa Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9503068.

The Dallas Area Rapid Transit Board of Directors met in the DART Board Room, First Floor, 1401 Pacific Avenue, Dallas, March 14, 1995, at 6:30 p.m. Information may be obtained from Vanessa Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9503046.

The Dallas Area Rapid Transit Board of Directors met in the DART Board Room, First Floor, 1401 Pacific Avenue, Dallas, March 14, 1995, at 6:30 p.m. Information may be obtained from Vanessa Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9503069.

The Deep East Texas Council of Governments Nominating Committee met at 118 South First Street, Lufkin, March 14, 1995, at 10:30 a.m. Information may be obtained from Walter G. Diggles, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9503012.

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, March 23, 1995, at 4:00 p.m. Information may be obtained from Kathy Pierson, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9503042.

The East Texas Council of Governments Board of Directors met at Rains Elementary School, Highway 69, Emory, March 16, 1995, at 7:30 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9503041.

The Golden Crescent Private Industry Council (Revised Agenda. Rescheduled from Monday, March 13, 1995, at 6:30 p.m.) Executive Committee met at 2401 Houston Highway, Victoria, March 13, 1995, at 5:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9503064.

The Golden Crescent Private Industry Council Executive Committee met at 2401

Houston Highway, Victoria, March 13, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9503043.

The Golden Crescent Private Industry Council Oversight Committee met at 2401 Houston Highway, Victoria, March 13, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9503044.

The Golden Crescent Private Industry Council Executive Committee met at 2401 Houston Highway, Victoria, March 15, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9503045.

The Grayson Appraisal District Board of Directors will meet at 205 North Travis, Sherman, March 22, 1995, at Noon. Information may be obtained from Angie Keeton, 205 North Travis, Sherman, Texas 75090, (903) 893-9673. TRD-9503013.

The Guadalupe-Blanco River Authority Legal Committee met at 933 East Court Street, Seguin, March 14, 1995, at 10:30 a.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9503055.

The Kempner Water Supply Corporation Board of Directors met at Highway 190, Kempner, March 16, 1995, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9503048.

The Lampasas County Appraisal District (Revised Agenda.) Board of Directors met at 109 East Fifth Street, Lampasas, March 16, 1995, at 7:00 p.m. Information may be obtained from Tommy L. Watson, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9503039.

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main Street, Lometa, March 13, 1995, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9503019.

The North Texas Municipal Water District Board of Directors will meet at 505 East Brown Street, Wylie, March 23, 1995, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (214) 442-5405. TRD-9503040.

The Shackelford Water Supply Corporation Membership (Annual Meeting) met at County Road 109, at new office and warehouse, Albany, March 14, 1995, at 7:00 p.m. Information may be obtained from

Gaynell Perkins, P.O. Box 11, Albany, Texas 76430, (817) 345-6868, or (915) 792-2575. TRD-9503020.

**The Swisher County Appraisal District Board of Directors** met at the Conestoga Restaurant, North Highway 87, Tulia, March 16, 1995, at 7:30 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9503070.

**The Tarrant Appraisal District Board of Directors** will meet at 2301 Gravel Road, Fort Worth, March 17, 1995, at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76126, (817) 284-0024. TRD-9503018.

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**Meetings Filed March 13,  
1995**

**The Austin-Travis County MHMR Center Planning and Operations Committee** will meet at 1430 Collier Street, Board Room, Austin, March 17, 1995, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704 (512) 447-4141. TRD-9503125.

**The Brazos Valley Development Council (Planning Meeting)** will meet at Events, Etc., 800 South Bryan, Bryan, March 20, 1995, at 11:00 a.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9503123.

**The Central Texas MHMR Board of Trustees** will meet at 201 South Nueces, Coleman, March 20, 1995, at 5:00 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, Ext. 102. TRD-9503080.

**The Dewitt County Appraisal District Board of Directors** will meet at 103 Bailey Street, Cuero, March 21, 1995, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9503132.

**The 50th Judicial District Juvenile Board** will meet in the District Courtroom, Baylor County Courthouse, Seymour, March 21, 1995, at 11:30 a.m. Information may be obtained from David W. Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 888-2852. TRD-9503116.

**The Liberty County Central Appraisal District (Emergency Meeting.) Ag Advisory Board** met at 315 Main Street, Liberty, March 15, 1995, at 9:45 a.m. (Reason for emergency: To discuss 1995 ag and timber values.) Information may be obtained from Sherry Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722. TRD-9503105.

**The Mills County Appraisal District Board of Directors** will meet at the Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, March 21, 1995, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9503109.

**The North Central Texas Council of Governments (Emergency Meeting.) North Central Texas Job Training Consortium Private Industry Council** met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, March 16, 1995, at 10:00 a.m. (Reason for emergency. Consideration of One-Stop Career Center System and short time frame.) Information may be obtained from Grant Whittenberg, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9179. TRD-9503110.

**The Nueces River Authority Board of Directors** will meet at Plaza San Antonio Hotel, 555 South Alamo Street, San Antonio, March 17, 1995, at 10:00 a.m. Information may be obtained from Con Mims, P.O. Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9503092.

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**Meetings Filed March 14,  
1995**

**The Central Counties Center for MHMR Services Board of Trustees** will meet at 304 South 22nd Street, Temple, March 23, 1995, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9503137.

**The Dallas Central Appraisal District Appraisal Review Board** will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, March 29, 1995, at 8:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9503135.

**The Education Service Center, Region VII Board of Directors** will meet at 2344 Old Longview Road, Henderson, March 23, 1995, at Noon. Information may be obtained from Eddie J. Little, 818 East Main Street, Kilgore, Texas 75662, (903) 984-3071. TRD-9503136.

**The Limestone County Appraisal District Board of Directors** will meet at 200 State Street, LCAD Office, Ground Floor, County Courthouse, Groesbeck, March 21, 1995, at 1:30 p.m. Information may be obtained from Karen Wietzikoski, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009. TRD-9503139.

# 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 Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

### List of Suitable Products

The purpose of the Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons is to further the state's policy of encouraging and assisting disabled citizens to achieve maximum personal independence. This purpose is carried out by employing disabled persons in activities which provide products and services to state and local governments. As required by Title 40, Texas Administrative Code, §189.14, the committee has published a list of suitable products selected by the committee for placement in a catalog. This listing contains information regarding the products, delivery schedules, freight, and packaging.

The listing is available for public inspection at the Texas Commission for the Blind, 4800 North Lamar Boulevard, Administrative Building, Suite 320, Austin, Texas (Attention: Jim Johnson) and at the General Services Commission, Central Services Building, 1711 San Jacinto, Third Floor, Austin, Texas (Attention: Pat Martin).

Issued in Austin, Texas on February 21, 1995.

TRD-9503056

Hollis F Pinyan  
Chairman  
Texas Committee on Purchases of  
Products and Services of Blind and  
Severely Disabled Persons

Filed: March 10, 1995

## Texas Cancer Council Notice of Invitation

### Cancer Prevention Services for Under-served Minorities

The Texas Cancer Council announces the availability of state funds for the provision of cancer prevention services to under-served minority Texans. This initiative has a dual objective of promoting cancer prevention and control among under-served and/or high-risk adults and reinforcing cancer risk reduction behaviors for children through increased family awareness and practice of cancer prevention. For purposes of this initiative, "minorities" includes African-Americans, Hispanics, and Asian-Americans.

Inquiries regarding this announcement should be directed to Emily Untermeyer, Executive Director, Texas Cancer Council, (512) 463-3190. The Council's mailing address is P.O. Box 12097, Austin, Texas 78711.

Local community-based organizations, governmental agencies, health departments, clinics, hospitals, or schools; state agencies; regional councils of government; universities; and state-level non-profit organizations. Non-governmental institutions must submit documentation of tax-exempt status under Section 501(c)(3) of the Internal Revenue Code.

To be considered for funding, letters of intent must be received in the Council office by 5:00 p.m. on April 14, 1995. Receipt of letters of intent will be acknowledged in writing by the Council. Letters of intent may be sent by facsimile machine: (512) 475-2563. Applicants are encouraged to contact the Council office immediately upon sending a letter of intent to ensure that the letter is received. The deadline for applications is June 1, 1995.

Approximately seven contracts will be awarded in FY 1996 for a maximum of \$80,000 each. Subject to each project's accomplishments and progress in achieving Year One objectives and the merits of each contractor's FY 1997 application, up to \$80,000 for FY 1997 will be awarded to each contractor. Funding for Year One is for September 1, 1995-August 31, 1996.

Applicants must:

- (1) demonstrate previous experience in providing cancer prevention education to the selected population
- (2) propose innovative projects that address unmet needs, do not duplicate existing resources, and have the capability of being sustained within the community after termination of Council funding.
- (3) use American Cancer Society screening guidelines and existing education materials, wherever appropriate.
- (4) document an in-kind contribution of at least ten percent. In-kind contributions may include actual dollars, services, or other in-kind contributions. The Council reserves the right to waive this requirement, on a case-by-case basis.
- (5) document strong community support for this initiative.
- (6) document collaboration, where appropriate, with the Regional Tobacco Education Specialist (Texas Department of Health), Regional School Health Specialist (Texas Department of Health), and American Cancer Society unit or field office and volunteers, if such personnel are located within or assigned to the project's geographic area.
- (7) provide assurances that the project does not duplicate existing services in the community.

Funded projects must provide:

- (1) family-focused, culturally relevant cancer prevention programs to minorities who have limited access to cancer

prevention information or services in their local community.

(2) access to cancer screening services, or referrals for such services.

(3) follow-up services for patients with known or suspected abnormalities (e.g., referrals for diagnostic, treatment, or social support services, etc.)

(4) ongoing assessment and documentation of the project's effectiveness

The Texas Cancer Council anticipates funding awards will be made on August 2, 1995. Written notification of approval can be expected by August 10, 1995. All applicants will receive written notification of the Council's decisions regarding their applications.

In making funding decisions, the Council will consider:

- (1) completeness of the application;
- (2) degree to which the application addresses the purposes and requirements of the funding announcement;
- (3) innovative aspects of the proposed project;
- (4) the scope of the project, including the anticipated number of people served;
- (5) applicant's qualifications to conduct the proposed project.
- (6) interagency coordination and cooperation;
- (7) comprehensiveness, clarity, and appropriateness of the project work-plan,
- (8) reasonableness of budgeted amounts and appropriateness of budget justifications; and
- (9) evidence of a sound plan for continuity of the project beyond Council funding.

Priority will be given to applications that:

- (1) focus on residents of Mexico border counties, other than El Paso (where Council initiatives exist); rural counties with minority populations greater than 25%; or inner-city Houston, Dallas, or San Antonio.
- (2) demonstrate community collaboration through the use of resources (equipment, personnel, volunteers, educational resources) from a variety of community organizations/agencies.
- (3) focus on low-income families

Applications will be reviewed for completeness and technical merit by Council staff. Applications that are complete and reflect adequate technical merit will be forwarded to an Advisory Committee for professional review

and recommendations. Applications that are grossly incomplete and/or do not clearly provide for the performance of all funding requirements will not be forwarded to the Advisory Committee. After considering staff and Advisory Committee recommendations, final funding decisions will be made by the Council.

Since this is a new initiative, the Texas Cancer Council reserves the right to take geographic location into consideration when selecting the award recipients. The Texas Cancer Council has sole discretion and reserves the right to reject any or all applications received in response to this funding announcement. This announcement does not constitute a commitment by the Council to award a contract or to pay costs incurred in the preparation of an application.

Funds are intended for start-up expenses and operational costs, such as staff salaries and basic benefits, education materials, and other administrative expenses.

Funds may not be used for indirect costs, remodeling of buildings to accommodate health services, purchase of clinic equipment, or to reduce deficits from pre-existing operations. Further, funds may not be used to supplant existing funds or services, to provide services already accessible to the selected population, or to pay for services for which there is an existing and adequate funding source. Further, funds may not be used for clinical services, such as mammograms, Pap smears, or other cancer screening tests. Projects are to provide such services through other funding sources or donations.

Application instructions provide further information about disallowable expenses, reimbursement policies, and reporting requirements. Applications must be submitted according to the Texas Cancer Council's application instructions and forms. Applications can be obtained by calling (512) 463-3190.

Issued in Austin, Texas on March 10, 1995.

TRD-9503034      Emily F. Untermeyer, M.P.H.  
Executive Director  
Texas Cancer Council

Filed: March 10, 1995

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### Office of Consumer Credit Commissioner

#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer <sup>(1)</sup>/Agricultural/ Commercial <sup>(2)</sup> thru \$250,000</u>	<u>Commercial<sup>(2)</sup> over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	03/13/95-03/19/95	18.00%	18.00%

<sup>(1)</sup>Credit for personal, family or household use. <sup>(2)</sup>Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on March 6, 1995.

TRD-9502976

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner

Filed: March 9, 1995

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**Texas Interagency Council on Early  
Childhood Intervention**

**Public Notice for Milestone Providers**

The Texas Interagency Council on Early Childhood Intervention (ECI) announces availability of an application for continuation funding for the current Milestones providers. All applications to be considered for funding must be received at the ECI administrative office by 5:00 p.m. on April 28, 1995, or be postmarked by April 27, 1995. Applications should be mailed to: Texas Interagency Council on Early Childhood Intervention, 1100 West 49th Street, Austin, Texas 78756-3199. Inquiries regarding this application should be directed to the ECI administrative office at (512) 502-4930. Funding is available contingent upon continued state and federal legislative appropriations. Funding will be effective September 1, 1995.

Issued in Austin, Texas, on March 10, 1995

TRD-9503017 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Interagency Council on Early  
Childhood Intervention

Filed: March 10, 1995

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**Texas Employment Commission**

**Announcement of Available Funds and  
Request for Proposals**

Summary. The Texas Employment Commission is pleased to announce the availability of One-Stop Career Center System funds from the U.S. Department of Labor (DOL). The purpose of the funds is to assist local areas in establishing a system that organizes DOL and other employment and training programs into settings that provide universal access, integrate program functions, offer choices to job seekers as well as employers and use outcome-based performance measures. The minimum services that must be available through the system include labor market information, common intake and eligibility determination, independent assessment, case management and counseling, referral for services, supportive services and extensive services for employers. At the end of the first year of operation, the following programs must be included within the one-stop system: Employment Service, Veterans Employment Service, Job Training Partnership Act (JTPA), Senior Community Service Employment Program, Unemployment Insurance Program, Food Stamp Employment and Training, JOBS, Adult Education, Literacy, Perkins Act post-secondary programs, Trade Adjustment Assistance and School-to-Work.

Funds will be awarded on a competitive basis to public or private agencies which can demonstrate the capability to administer federal funds and perform services and which meet the criteria established by the Texas Council on Workforce and Economic Competitiveness (TCWEC). Minimum criteria include developing a three year plan for the workforce development area, demonstrating community support, separating the role of administrative entity and/or center operator from the role of education and training provider, securing partnership agreements be-

tween the Texas Employment Commission and the Service Delivery Area of the JTPA, demonstrating support of the chief elected officials, submitting plans that reflect integration of service and information that goes beyond collocation, being reviewed at the local level by local workforce advisory bodies, having a direct or in-kind funding base for multiple sources, include employer services and being submitted from a designated workforce development area or, if the area is undesignated, being submitted by a JTPA Service Delivery Area or a consortium of Service Delivery Areas.

**Application Deadline:** Proposals must be received by Thursday, April 13, 1995 at 5:00 p.m. or postmarked not later than Tuesday, April 11, 1995. Proposals may be mailed to: One-Stop Systems, Room 458-T, Texas Employment Commission, 101 East 15th Street, Austin, Texas 78778-0001 or may be hand delivered to Kevin Faulkner, or One-Stop Systems Designee, 1117 Trinity Street, Room 458-T, Austin, Texas, (512) 463-7750. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

**Proposal Funding Awards:** It is anticipated that awards will be in the range of \$150,000 to \$250,000 and that up to seven areas of the state will be funded. Complete applications from eligible entities will be evaluated by a team of inter-agency state staff members utilizing criteria established by TCWEC. Additional funding may be provided for two subsequent years contingent upon satisfactory performance and availability of funds from the federal level.

Issued in Austin, Texas on March 7, 1995.

TRD-9502932 C. Ed Davis  
Deputy Administrator for Legal Affairs  
Texas Employment Commission

Filed: March 8, 1995

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**Notice of Change**

The Texas Employment Commission (TEC) published in the February 10, 1995, *Texas Register* (20 TexReg 981) an Announcement of Available Funds and Request for Proposals. Several potential respondents have requested that additional time be allowed for submission of proposal. The TEC has agreed to extend the deadline for submission of proposal applications and submits the following change.

**Application Deadline:** Proposals must be received by Thursday, April 13, 1995 at 5:00 p.m. or postmarked not later than Tuesday, April 11, 1995. Proposals may be mailed to: One-Stop Systems, Room 458-T, Texas Employment Commission, 101 East 15th Street, Austin, Texas 78778-0001 or may be hand delivered to: Kevin Faulkner, or One-Stop Systems Designee, 1117 Trinity Street, Room 458-T, Austin, Texas (512) 463-7750. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date.

Issued in Austin, Texas, on March 7, 1995.

TRD-9502931 C. Ed Davis  
Deputy Administrator for Legal Affairs \*  
Texas Employment Commission

Filed: March 8, 1995

## Texas Department of Health Correction of Errors

The Texas Department of Health adopted repealed §§39.41-39.50 and new §39.41. The rules appeared in the March 3, 1995, issue of the *Texas Register* (20 TexReg 1557).

Due to a department error, the undesignated head for new §39.41 was erroneously submitted as "State Primary Care Program Advisory Committee." The new undesignated head should be "Advisory Committee."

The Texas Department of Health adopted new §181.23. The rule appeared in the March 3, 1995, issue of the *Texas Register* (20 TexReg 1559).

Due to a department error, the undesignated head for §181.28 was erroneously submitted as "Miscellaneous Provisions." The correct undesignated head should be "Vital Records."

The Texas Department of Health adopted new §§221.11-221.13. The rules appeared in the February 28, 1995, issue of the *Texas Register* (20 TexReg 1417).

Due to a department error, §221.12(b)(3) was submitted as adopted without change. Due to the need to clarify language within that paragraph, a correction notice should be published to show that the section is actually adopted with changes. The introductory paragraph of the adoption preamble, the comment and response for the change, and definition should read as follows.

The Texas Department of Health (department) adopts new §§221.1, 221.2, and 221.11-221.13, concerning transportation of dead animals and meat and poultry inspection. Sections 221.11 and 221.12 are adopted with changes to the proposed text as published in the February 28, 1995 issue of the *Texas Register* (19 TexReg 7225). Section 221.1, 221.2, and 221.13 are adopted without changes and will not be republished.

Comment: Concerning §221.12(b)(3), staff noted that the language "selling of inspected carcasses, or parts to be slaughtered" was confusing because the inspection of carcasses and parts comes after the slaughtering process.

Response: The department agrees and has deleted the referenced language. The definition should read as follows:

Custom operations—The slaughtering of an animal or the processing of an inspected and/or uninspected carcass or parts thereof for the owner of that animal, carcass, or parts of the selling of livestock to be slaughtered and/or processed by the purchase on premises owned or operated by the seller for the exclusive use of the owner.

## Notice of Rescission of Order

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following order: Emergency Cease and Desist Order issued January 4, 1995, to Central Diagnostic Center, 122 West Colorado, Suite 100, Dallas, Texas 75208, holder of Certification of Mammography System Number M00605.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange

Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on March 10, 1995.

TRD-9503094

Susan K Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: March 13, 1995

## Texas Department of Housing and Community Affairs Emergency Shelter Grants Program

The Texas Department of Housing and Community Affairs (TDHCA) will conduct a training session for the Fiscal Year 1995 Texas Emergency Shelter Grants Program (ESGP) on March 28, 1995 at the Red Lion Inn located at 6121 IH35 North, Austin, Texas at the corner of IH35 and Highway 290, from 9:00 a.m. to 4:00 p.m. TDHCA has received \$4,572,000 from the U.S. Department of Housing and Urban Development and will distribute these funds through a statewide competitive Request for Proposal (RFP). The ESGP funds are authorized under the Stewart B. McKinney Homeless Assistance Act of 1987 (Title IV of Public Law 100-77) et seq.

TDHCA will award funds to units of general local government and private nonprofit organizations through a competitive statewide request for proposal process. ESGP funds may be used for the rehabilitation or conversion of facilities which are to be used as emergency shelter for the homeless, for the payment of certain operating and support service expenses in connection with emergency shelter for the homeless, and for homelessness prevention activities.

Proposals for the Fiscal Year 1995 ESG Program are due to TDHCA on or before April 24, 1995 by the close of business. If any government entity or private nonprofit organization has not received an RFP and wishes to do so, please contact the Department at the following address or contact the Community Services Section by telephone at (512) 475-3950 or fax at (512) 475-3539:

Community Services Section ATTN: ESGP Texas Department of Housing and Community Affairs P.O. Box 13941, Capitol Station, Austin, Texas 78711-3941.

The previously mentioned training will be preceded by a Consolidated Plan public hearing on March 27, 1995, from 1:00 p.m. to 4:00 p.m. The U.S. Department of Housing and Urban Development (HUD) has amended existing regulations to completely replace the Comprehensive Housing Affordability Strategies (CHAS). The regulations at 24 CFR Part 91 consolidate the four Community Planning and Development (CPD) formula programs: Community Development Block Grant (CDBG); HOME Investment Partnership (HOME); Emergency Shelter Grants (ESG); and Housing Opportunities for Persons with AIDS (HOPWA). TDHCA will have representatives from the four formula programs present at this public hearing. This is the first scheduled public hearing and will provide advocates for homeless persons the opportunity to provide input which may determine how the ESGP funds are utilized and distributed in Fiscal Year 1995 and in future program years.

Issued in Austin, Texas, on March 13, 1995.

TRD-9503096

Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: March 13, 1995

## Notice of Funding Availability-Extension

The Texas Department of Housing and Community Affairs (TDHCA) through its Housing Trust Fund announces that the 1995 funding cycle has been extended. The revised deadlines for the Letter of Intent and Final Application are listed as follows. Approximately \$4,500,000 is available in loan funds to finance, acquire, rehabilitate, and develop safe, decent, and affordable housing for low and very low income persons and families. If additional funds are made available within 180 days of the application submission deadline for this NOFA, the funds may be included in the funding cycle for the Housing Trust Fund program at the discretion of the Department. Funds will be made available for multi-family and single family homes. Eligible applicants include local units of government, nonprofit organizations, public housing authorities, TDHCA, and community housing development organizations.

The Housing Trust Fund will seek to select a diverse group of projects that will serve various populations in a broad geographic dispersion in need of low and very low income housing. Eligible applicants from the same geographic area (CHAS Region) will compete with each other for funding. Top applications will then compete on a statewide basis. The Department's Board reserves the right to limit the award amount, and to award less than the requested amount.

Although the Trust Fund is an ongoing program, the Letter of Intent (pages 24-27 of the application) for this funding cycle must be received in our offices before 5:00 p.m. April 14, 1995. The Letter of Intent is a mandatory prerequisite to the final application, and will not be accepted by facsimile. Final Applications are due in our offices by 5:00 p.m. May 19, 1995.

All interested parties are encouraged to participate in this program. Applications are currently available. For additional information or to request an application package please call the Housing Trust Fund Office at (512) 475-1458. Please direct your Letters of Intent and Final Applications to: Judith Rhedin-The Housing Trust Fund, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 700, Austin, Texas 78704

Issued in Austin, Texas, on March 6, 1995.

TRD-9502974

Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: March 9, 1995

## Notice of Public Hearing, TDHCA, Consolidated Plan

The U.S. Department of Housing and Urban Development (HUD) has amended existing regulations to completely replace the Comprehensive Housing Affordability Strategies (CHAS). The regulations at 24 CFR Part 91 amend the four Community Planning and Development (CPD)

formula programs: Community Development Block Grant (CDBG); HOME Investment Partnership (HOME); Emergency Shelter Grants (ESG); and Housing Opportunities for Persons with AIDS (HOPWA). Consolidating the planning for the four formula programs will encourage cooperation among state and local governments, improve management capacity and practices, reduce paperwork, coordinate efforts in resolving housing and community development problems, and remove some duplicative provisions.

The Texas Department of Housing and Community Affairs (TDHCA) currently is developing the Consolidated Plan for Fiscal Year 1996, and will submit the final version of the Plan to HUD by November 17, 1995. The Consolidated Plan will establish a program year of January 1 through December 31 for each of the four programs included in the Plan.

As part of this process, TDHCA will offer the public numerous opportunities to provide input. The first such public hearing is scheduled for March 27, 1995, at 1:30 p.m. in Austin, Texas. Individuals wishing to make public comment regarding the Consolidated Plan or any of the programs included in the Plan are invited to the public hearing, which will be held at the Red Lion Inn, located at 6121 IH35 North, at the corner of IH35 and Highway 290. Representatives from each of the four programs listed above will attend the hearing.

This first Consolidated Plan Public Hearing has been scheduled to precede the Fiscal Year 1995 Emergency Shelter Grants Program (ESGP) Request for Proposal Training Workshop, which will be held at the Red Lion Inn on March 28, 1995, from 9:00 a.m. until 4:00 p.m. This public hearing will provide advocates for homeless persons the opportunity to provide input which may determine how the ESGP funds are utilized and distributed in Fiscal Year 1995 and in future program years. If you attend the public hearing and wish to provide written comments in response to the public hearing of March 27, 1995, they may be submitted to TDHCA no later than April 13, 1995, and should be submitted to: TDHCA Christina Jackson, Housing Resource Center, P.O. Box 13941, Austin, Texas 78711-3941

Issued in Austin, Texas, on March 13, 1995.

TRD-9503097

Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: March 13, 1995

## Texas Department of Insurance Third Party Administration Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas for MedImpact Pharmaceutical Management, Inc., a foreign third party administrator. The home office is in San Diego, California.

Application for admission to Texas for CNR Health, Inc., a foreign third party administrator. The home office is in Milwaukee, Wisconsin.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to

the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas on March 10, 1995.

TRD-9503074

Alicia M. Fecthel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: March 10, 1995

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**Texas Natural Resource Conservation  
Commission**

**Applications for Waste Disposal Permits**

Attached are Notices of Applications for waste disposal permits issued during the period of March 3rd to March 10, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state: your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

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.

**BANK OF ALMEDA**; the Pine Colony Utilities Wastewater Treatment Facilities; the facilities are approximately 3.2 miles north-northwest of the intersection of State Highway 6 and State Highway 35, adjacent to Brazoria County Road 144 to the west and to the east of the Atchison, Topeka and Santa Fe Railroad tracks in Brazoria County, Texas; renewal; 12935-01.

**CHARTERWOOD MUNICIPAL UTILITY DISTRICT**; the wastewater treatment plant is approximately 3.5 miles northwest of the intersection of FM Road 149 (West Montgomery Road) and FM Road 1960, on the south bank of Pillot Gully, at 15820 Quill Drive in the City of Houston in Harris County, Texas; renewal; 11410-02.

**FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT** Number 81; the wastewater treatment facilities are approximately ten miles northwest of Rosenberg, Texas and three miles south-southwest of Fulshear in Fort Bend County, Texas; renewal; 13051-02.

**CITY OF DAINGERFIELD**; the wastewater treatment facilities are approximately 5,000 feet southeast of the intersection of U.S. Highway 259, FM Road 11 and FM Road 49 in Morris County, Texas; renewal; 10499-01.

**DARLING INTERNATIONAL, INC.**; the company's rendering plant and hide processing facility; the plant site is on the north side of FM 380 approximately 7.5 miles east of the City of San Angelo, Tom Green County, Texas; renewal; 01594.

**HARRIS COUNTY FRESH WATER SUPPLY DISTRICT** Number 6; the wastewater treatment plant is at the intersection of DeZavalla Road and Elsbeth Road in the City of Channelview in Harris County, Texas; amendment; 10184-01.

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT** Number 249; the wastewater treatment facility is approximately 1,500 feet south-southwest of the confluence of Wunsche Gully and Lemm Gully, approximately 3,000 feet east of Interstate Highway 45 and approximately 3,800 feet west of the Hardy Toll Road in the northern portion of Harris County, Texas; new; 13765-01.

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT** Number 285; the wastewater treatment plant is approximately 500 feet north of the intersection of Wickhamford Way and Crosshaven Drive, approximately 3/4 mile west of Carpenters Bayou in Harris County, Texas; renewal; 12928-01.

**CITY OF HOOSK**; wastewater treatment plant is approximately 2,000 feet northeast of the intersection of Interstate Highway 30 and FM Road 1398 in Bowie County, Texas; renewal; 10507-01.

**INTERCONTINENTAL TERMINALS COMPANY**; a bulk liquids storage terminal; the plant site is at 2627 Tidal Road, approximately 1,700 feet west of the intersection of Tidal Road and Highway 134 in the City of Deer Park, Harris County, Texas; amendment; 01984.

**CITY OF MAYPEARL**; the wastewater treatment facilities are approximately 0.5 mile south of the intersection of FM Road 66 and FM Road 157 in Ellis County, Texas; amendment; 10431-01.

**MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT** Number 56; the San Jacinto Heights Wastewater Treatment Facilities are approximately 4 1/2 miles along FM Road 1314, northwest of the intersection of U.S. Highway 59 and FM Road 1314 in Montgomery County, Texas; new; 13760-01.

**NORTH TEXAS MUNICIPAL WATER DISTRICT**; the Rush Creek Wastewater Treatment Facilities; the facilities are south of the intersection of Yankee Creek Road and Yacht Club Road, approximately 1.5 miles southwest of the City of Heath, in Rockwall County, Texas; renewal; 11259-01.



**NORTH TEXAS MUNICIPAL WATER DISTRICT**; the Buffalo Creek Wastewater Treatment Facilities are on the west side of the Buffalo Creek and on the south side of FM Road 3097 approximately 1.5 miles northwest of the intersection of FM Roads 3097 and 549 in the City or Rockwall in Rockwall County, Texas; amendment; 12047-01.

**POLK COUNTY**; the Southland Park Wastewater Treatment Facilities; the facilities are on the east bank of the Trinity River, approximately one mile downstream from the Lake Livingston Dam and approximately 6.5 miles southwest of the City of Livingston in Polk County, Texas; renewal; 11223-01.

**PROLER INTERNATIONAL CORPORATION**; a metals reclamation and shredding plant; the plant site is at 7501 Liberty Road, approximately 1250 feet southwest of the intersection of Liberty Road and Wayside Drive, in the City of Houston, Harris County, Texas; amendment; 01809.

**ANDY ROGERS**; a cattle feedlot operation; the feedlot operation is on the east side of FM Road 1055 approximately four and one half miles south of the intersection of FM Road 1055 and State Highway 86 and four miles southwest of the City of Dimmitt in Castro County, Texas; new; 03783.

**SAN JACINTO RIVER AUTHORITY**; the Woodlands Wastewater Treatment Plant Number 1, the plant site is north of Sawdust Road, approximately two miles west of I.H. 45 and 12 miles south of the City of Conroe in Montgomery County, Texas; renewal; 11401-01.

**U.S. ARMY CORPS OF ENGINEERS**; the Little Ridge Park Wastewater Treatment Facilities; the wastewater treatment facilities are in Little Ridge Park on the east side of Lake Lavon approximately 1.7 miles west of the intersection of State Highway 78 and State Highway Spur 509 in Collin County, Texas; renewal; 12057-01.

**U.S. ARMY CORPS OF ENGINEERS**; the Whitney Powerhouse Wastewater Treatment Facilities; the wastewater treatment facilities are at the Whitney Lake Dam Powerhouse approximately 1.0 mile east of the intersection of State Highway 22 and FM Road 56 in Bosque County, Texas; renewal; 12087-01.

**US DEPARTMENT OF INTERIOR**; Big Thicket National Preserve; the National Preserve Maintenance facility and irrigation site are located in the area of the Big Thicket National Preserve bounded by U.S. Route 69/287 and FM Road 420, Hardin County, Texas; new; 03775.

**CITY OF WELLMAN**; the wastewater treatment facilities are approximately 0.25 mile north and 1.2 miles east of the City of Wellman in Terry County, Texas; amendment; 13642-01.

**WOODCREEK MUNICIPAL UTILITY DISTRICT**; the wastewater treatment plant is approximately 3,400 feet southeast of the intersection of Aldine-Westfield Road and FM Road 1960, on the south side of Turkey Creek in Harris County, Texas; renewal; 11933-01.

**RED RIVER ARMY DEPOT**; authorizes operation of an industrial solid waste storage and processing facility for the management of Class I hazardous waste; the facility manages hazardous wastes which are classified as ignitable, toxic, corrosive, acutely hazardous, toxicity characteristic, and reactive; the wastes are generated on-site from

military maintenance and supply operations; the facility is located on a 14,000-acre tract of land, a quarter mile south of exit #206 on U.S. Interstate Highway 30 near Hooks, approximately 18 miles west of Texarkana, Bowie County, Texas; amendment; HW- 50178; 45-day no ice.

Issued in Austin, Texas, on March 10, 1995.

TRD-9503086

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 13, 1995

### Enforcement Orders

An agreed enforcement order was entered regarding **BOLTON OIL COMPANY**, Docket Number 95-0288-PST-E, Enforcement ID E10896 (TNRCC Facility I.D. 05842) on March 6, 1995, assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2175.

An agreed enforcement order was entered regarding **C.L. THOMAS PETROLEUM INC**, Docket Number 95-0289-PST-E, Enforcement I.D. E10538 (TNRCC Facility I.D. 56865) on March 6, 1995, assessing \$600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Craig Carson, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2175.

An agreed enforcement order was entered regarding **WES-LACO CITY OF**, Docket Number 95-0238-MWD (Expired Permit Number 10619-02) on March 6, 1995, assessing \$1,200 in administrative penalties with \$300 deferred

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4495.

An agreed enforcement order was entered regarding **G. B. SELF-SERVE, INC.**, Docket Number 94-0712-PST-E (TNRCC Facility I.D. Number 27371; Enforcement I.D. Number E10525) on March 1, 1995, assessing \$4,000 in administrative penalties with \$800 deferred.

Information concerning any aspect of this order may be obtained by contacting Mick Wilson, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4495.

Issued in Austin, Texas, on March 10, 1995.

TRD-9503087

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 13, 1995

Notice of Application—for the Week  
Ending March 10, 1995

APPLICATION BY RALSTON ROAD LANDFILL, L.P., Proposed Permit Number MSW2240, authorizing a Type IV (landfill) municipal solid waste facility. The proposed site covers approximately 50 acres of land and is located at 6612 John Ralston Road in Houston, Harris County, Texas.

This application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within ten days of the date of *Texas Register* publication.

If you wish to request a public hearing, you must submit your request in writing. You must state: your name, mailing address and daytime phone number; the application number, TNRCC docket number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing."; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application, and a description of the location of your property relative to the applicant's operations

If one or more protests and/or requests for hearing are filed on an application, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where an evidentiary hearing may be held. If no protests and/or requests for hearing are filed on an application, the Executive Director will approve the application. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on March 10, 1995.

TRD-9503088 Gloria A Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 13, 1995

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Notice of Opportunity to Comment on  
Permitting Actions—For the Week  
Ending March 10, 1995

APPLICATION Number 23-116B BY DOS REPUBLICAS RESOURCES COMPANY, INC. TO AMEND CERTIFICATE OF ADJUDICATION Number 23-116, AS AMENDED. FOR EXECUTIVE DIRECTOR CONSIDERATION. Applicant seeks authorization to combine a portion of the water rights authorized by Certificate Number 23-835 (250 acre-feet of Class "A" Irrigation Rio Grande water rights) with the 51.12 acre-foot Industrial Rio Grande water right authorized by Certificate Number

23-116, as amended, under Certificate Number 23-116, as amended, and to amend Certificate Number 23-116, as amended and combined, by changing 125 acre-feet of the irrigation right to wildlife and livestock watering use; changing the remainder of the irrigation right to industrial use; establishing the place of use of the industrial water to their Eagle Pass Mine Project in Maverick County and the place of use of the wildlife and livestock water to Maverick County and to establish the diversion point on the Rio Grande for diversion of all of the water to the diversion point owned by Maverick County Water Control and Improvement District Number One.

KINGSLAND MUNICIPAL UTILITY DISTRICT for a minor amendment to Permit Number 11549-01 to allow the permittee to participate in the Lower Colorado River Authority's Highland Lakes Regional Biosolids Composting Project. This proposed amendment would also enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The current permit authorizes a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 750,000 gallons per day, which will remain the same. The wastewater treatment facilities are north of the Southern Pacific Railroad approximately 2,000 feet west of the confluence of the Colorado River and Llano River arms of Lake Lyndon B. Johnson at the intersection of Rock Street and Reynolds Street in the City of Kingsland in Llano County, Texas.

Issued in Austin, Texas, on March 10, 1995.

TRD-9503085 Gloria A Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 13, 1995

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Provisionally-Issued Temporary permits to  
Appropriate State Water

The following permits listed were issued during the period of March 1-2, 1995

Application Number TA-7405 by E. E. Hood & Sons, Inc., for diversion of four acre-feet of water in a one year period for industrial purposes. Water may be diverted from the stream crossing at Cypress Creek Road, approximately 11 miles east of Kerrville, Kerr County, Texas, Guadalupe River Basin

Application Number TA-7409 by Union Pacific Resources Company, for diversion of nine acre-feet of water in a one year period for mining purposes (oil and gas well drilling). Water may be diverted from the west bank of the Brazos River, 3.5 miles north of Highway 21 Bridge, approximately nine miles northeast of Caldwell, Burleson County, Texas, Brazos River Basin.

Provisionally-Issued Temporary permits to appropriate state water are issued for a period of not more than one year and authorize the use of not more than ten acre-feet of water. The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under

the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in 30 TAC §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on March 10, 1995.

TRD-9503089 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: March 13, 1995

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**Texas Department of Protective and  
Regulatory Services**

**Notice of Intent to Contract**

The Texas Department of Protective and Regulatory Services intends to solicit Request for Proposals (RFP) to purchase Broker services for evaluation and treatment services in Region 04, Tyler.

**Geographic Area:** The geographic areas to be served includes: West Service Area: Anderson, Cherokee, Delta, Franklin, Henderson, Hopkins, Lamar, Rains, Red River, Smith, Van Zandt, and Wood counties. East Service Area: Bowie, Camp, Cass, Gregg, Harrison, Marion, Morris, Panola, Rusk, Titus, and Upshur counties.

**Funding:** Funding limitations are 10% of billed amounts. Method of payment is by submittal of appropriate agency forms.

**Term:** Contract period is September 1, 1995 through August 31, 1996, with an option to renew.

**Contact Person:** To obtain a copy of the procurement information/package, contact Ted Benson or Jim David Perritt, 502 East Main, Mt. Vernon, Texas 75457, (903) 537-4541, on March 22, 1995 through April 11, 1995. Deadline for completed proposals to be submitted is May 8, 1995, 4:30 p. m. at the office on 502 East Main, Mt. Vernon.

Issued in Austin, Texas, on March 13, 1995.

TRD-9503102 Nancy Murphy  
Section Manager, Media and Policy  
Services

Filed: March 13, 1995

**Request for Proposals**

The Texas Department of Protective and Regulatory Services, Child Protective Division, is requesting proposals (RFP) for evaluation/treatment services for 19 counties in Region 03, Arlington, Texas.

**Description of Services:** Providers must be willing to provide services in the county of application and must hold a license recognized by the State of Texas to provide the services.

Awards to individuals and/or partnerships maybe limited based on needs of county and number of awards to be made.

**Funding:** Funding is initially identified at \$2.3 million for the region using a combination of unit rate and cost reimbursement methods of payment.

**Term:** The initial contract period will be September 1, 1995 through August 31, 1996.

**Contact Person:** The RFP will be available Friday, March 24, 1995, from Bennie Sorrels, P.O. Box 5128, Arlington, Texas 76005-5128; 631 106th Street, Arlington, Texas 76015; phone number is (817) 640-5090, Extension 2231, and FAX number is (817) 695-4595. Proposals must be returned by Thursday, April 30, 1995, by 4:00 p.m. in the Child Protective Services Division

Issued in Austin, Texas, on March 10, 1995

TRD-9503016 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Protective and  
Regulatory Services

Filed: March 10, 1995

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**Texas State Board of Examiners of  
Psychologists**

**Correction of Errors**

Texas State Board of Examiners of Psychologists proposed new §461.22, concerning temporary suspension of a license/certificate. The rule appeared in the March 3, 1995 issue of the *Texas Register* (20 TexReg 1504).

Under §461.22(d), line 9, the words "14-day" should read "14th day"; and line 12, the words "60-day should read "60th day".

The Texas State Board of Examiners of Psychologists proposed amended §473.5. The rule appeared in the March 3, 1995, issue of the *Texas Register* (20 TexReg 1506).

Under §473.5(k), the "\$10" should go at the end of the line after the word "permits".

◆ ◆ ◆  
The Texas State Board of Examiners of Psychologists proposed amended §463.6. The rule appeared in the March 7, 1995, issue of the *Texas Register* (20 TexReg 1608).

Under §463.6(12)[11](B)(xiii), line 3, the word psychological should be capitalized.

**Public Utility Commission**  
**Notice of Application to Amend**  
**Certificate of Convenience and**  
**Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 24, 1995, to amend a Certificate of Convenience and Necessity pursuant to the Public Utility Regulatory Act, §§16(a), 17(e), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Lower Colorado River Authority for Certificate of Convenience and Necessity for Proposed Transmission Line in Comal and Guadalupe Counties, Docket Number 13976 before the Public Utility Commission of Texas.

The Application: In Docket Number 13976, Lower Colorado River Authority requests approval of its application to construct approximately 5.57 miles of 138-kV transmission line within Comal and Guadalupe Counties.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on March 8, 1995.

TRD-9502954      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: March 8, 1995



Notice is given to the public of the filing with the Public Utility Commission of Texas an application on March 3, 1995, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§16(a), 18(b), 50, 52, and 54. A summary of the application follows.

Docket Title and Number: Application of Southwestern Bell Telephone Company to amend Certificate of Convenience and Necessity within Hardin County, Docket Number 13986, before the Public Utility Commission of Texas.

The Application: In Docket Number 13986, Southwestern Bell Telephone Company seeks approval to amend the exchange area boundary between its Kountze and Lumberton exchanges in order for SWB to provide Lumberton exchange service to all of a new subdivision.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas, 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before April 17, 1995.

Issued in Austin, Texas, on March 8, 1995.

TRD-9502955      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: March 8, 1995



**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 Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for the County of Hale, Plainview, Texas

Docket Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for the County of Hale pursuant to Public Utility Substantive Rule 23.27. Docket Number 13985.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for the County of Hale. The geographic service market for this specific service is the Plainview, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on March 8, 1995.

TRD-9502953      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: March 8, 1995



**Texas Department of Transportation**  
**Public Hearing Notice**

Pursuant to Texas Civil Statutes, Article 46c-6, Subdivision 10, and Title 43, Texas Administrative Code, §65.9, the Texas Transportation Commission will conduct a public hearing to receive comments from interested parties concerning an aviation facilities development project and financial assistance for emergency replacement of a rotating beacon at the Winkler County Airport.

The public hearing will be held at 1:30 p.m. on Thursday, March 30, 1995 at 200 East Riverside Drive, Room 101, Austin, Texas. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time or repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Persons with disabilities who have special communication or accommodation needs and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise



