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TEXAS REGISTER

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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

Secretary of State
Antonio O. Garza, Jr.

Director
Dan Procter

Assistant Director
Dee Wright

Circulation/Marketing
Tamara Joiner
Jill S. Ledbetter

TAC Editor
Dana Blanton

TAC Typographer
Madeline Christer

Documents Section
Supervisor
Patty Webster

Document Editors
Roberta Knight

Open Meetings/Editor
Jamie Alworth

Production Section
Supervisor
Ann Franklin

Production Editors/
Typographers
Carla Carter
Roy Felps
Mimi Sanchez

Receptionist
Daneane Jarzombek

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after the proposal publication date.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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 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 *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:

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. *Texas Department of Human Services*
40 TAC §3.704. . . . 950, 1820

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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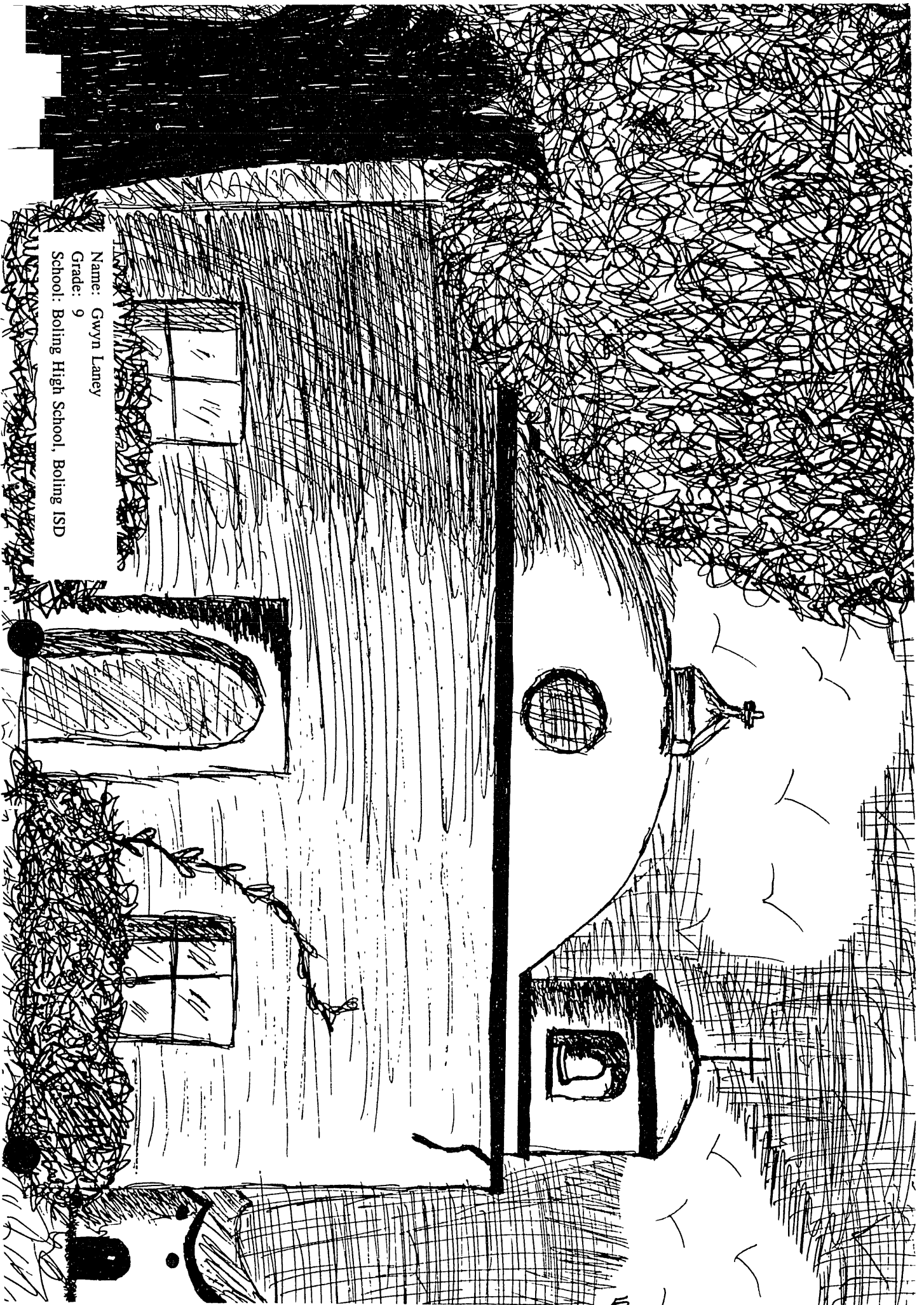
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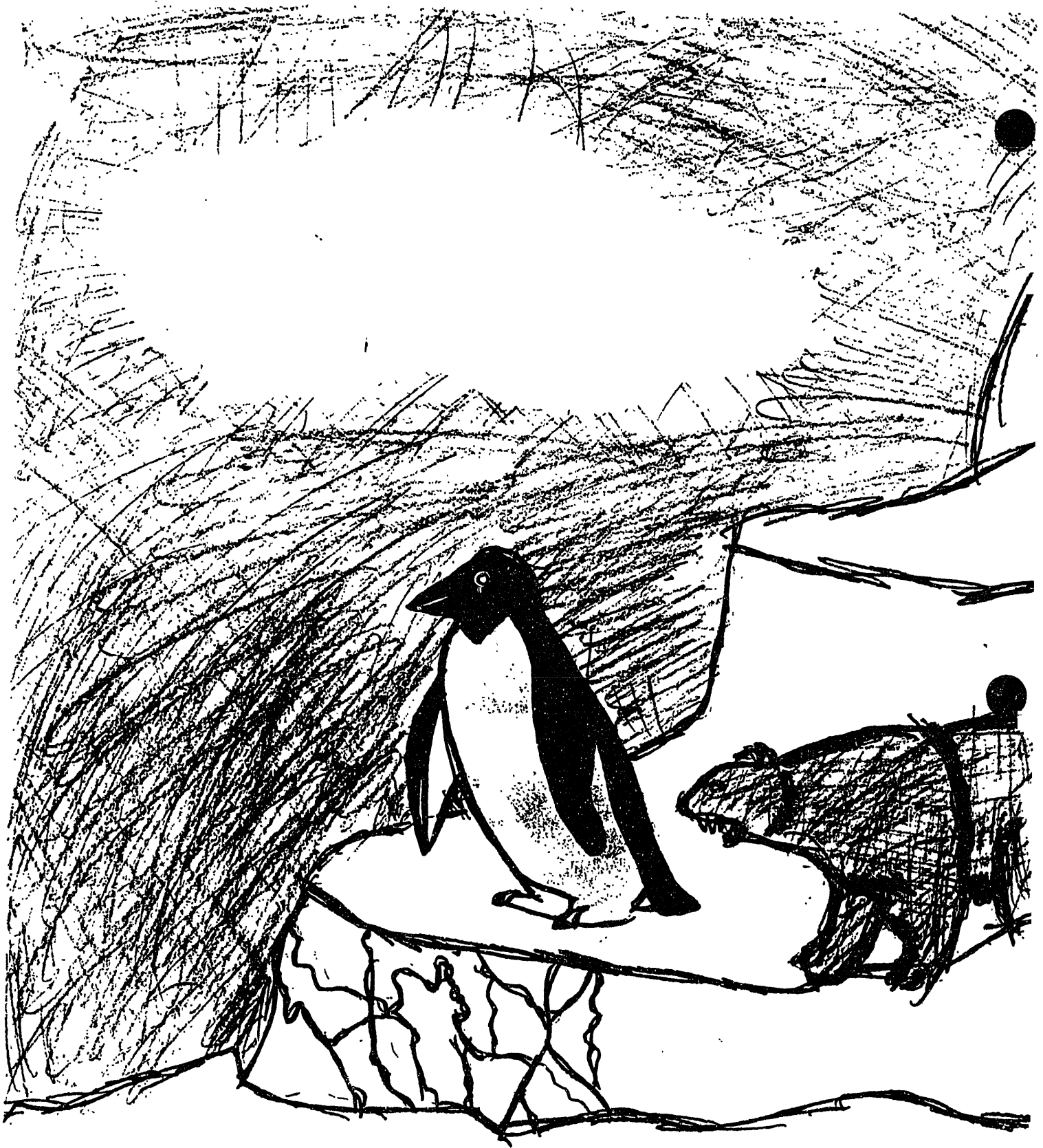
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Grade: 9

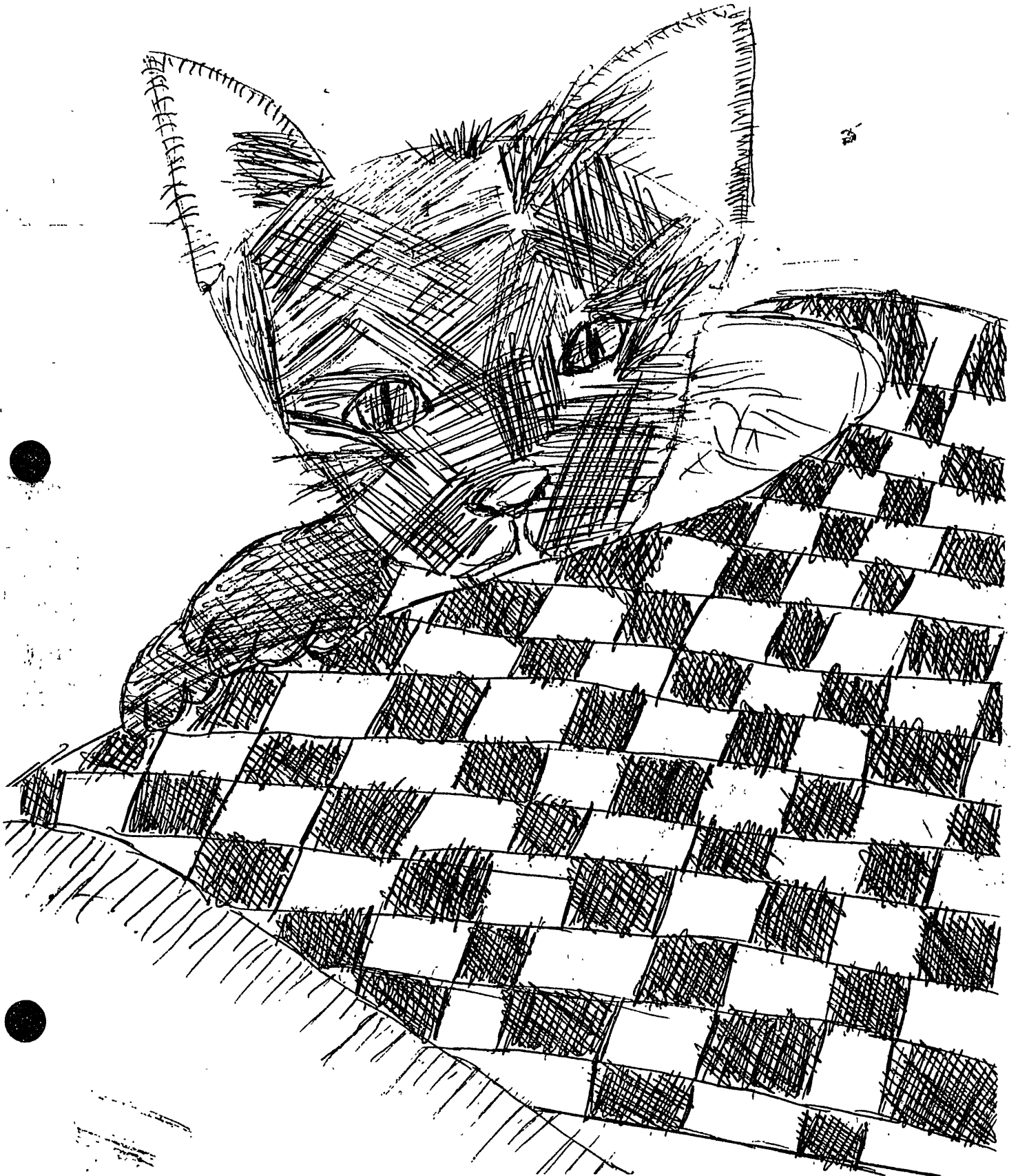
School: Boiling High School, Boiling ISD



Name: Lupe Torres
Grade: 9
School: Boling High School, Boling ISD



Name: Melissa Fojtek
Grade: 9
School: Boling High School, Boling ISD

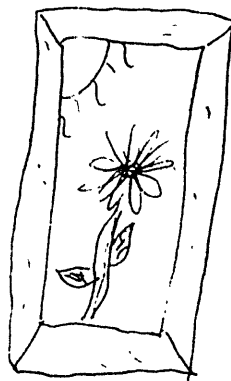
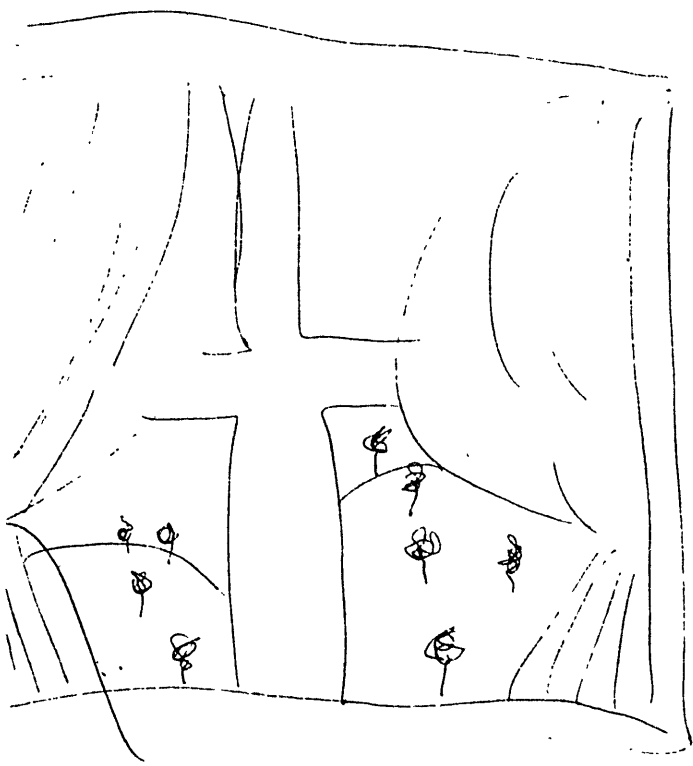


Name: Rhonda Wine Brenner
Grade: 10
School: Boling High School, Boling ISD

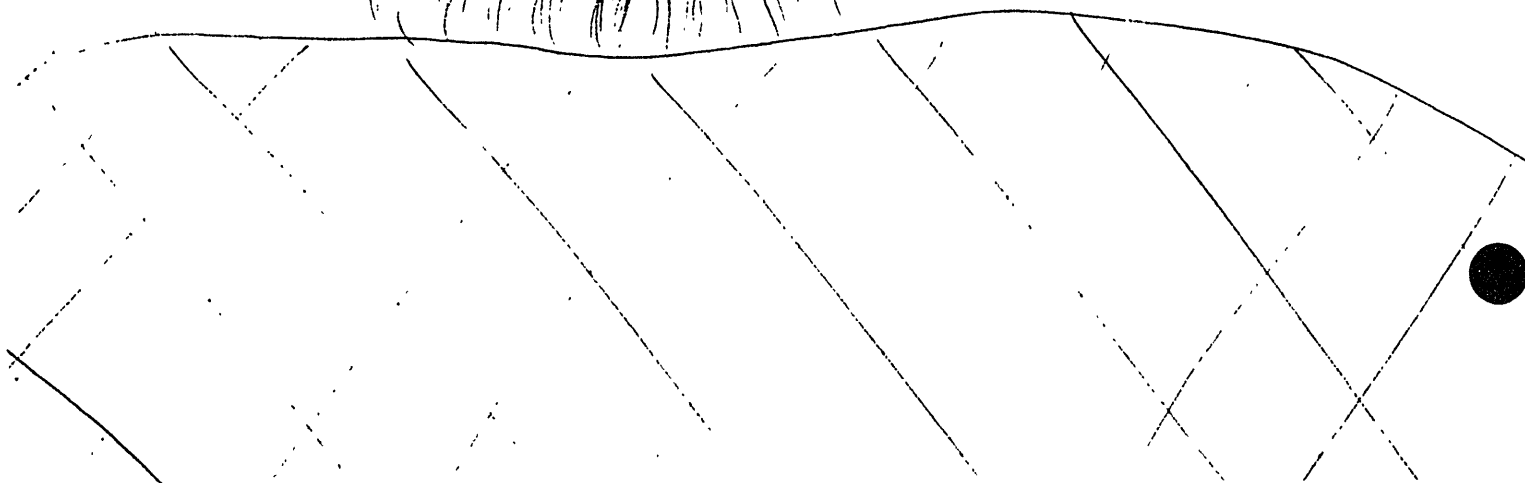
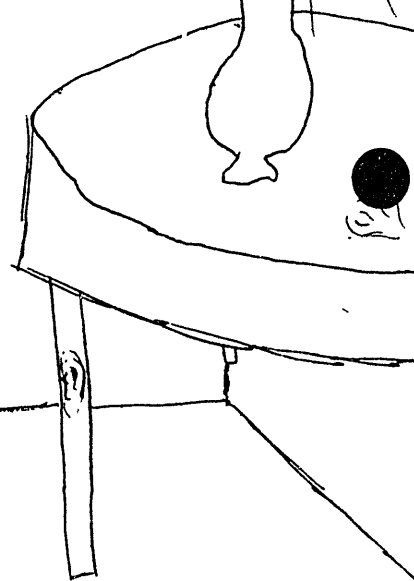
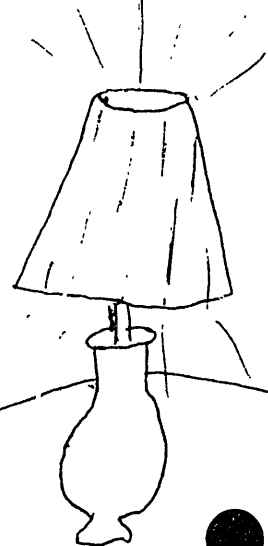


Name: Austin Waters
Grade: 9
School: Boling High School, Boling ISD





Name: Kristen Womack
Grade: 12
School: Boling High School, Boling ISD



TEXAS ETHICS COMMISSION

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.

Advisory Opinion Request

AOR-295. File closed. Withdrawn by requestor.

Issued in Austin, Texas, on May 12, 1995.

TRD-9505913

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Ethics Advisory Opinions

EAO-259 (AOR-288). Application of the reporting requirements and restrictions in the lobby law to a lobbyist who makes expenditures for a spouse or friend who is a member of the legislative or executive branch of state government.

Summary of Opinion. Expenditures for food and beverages are required to be reported under the Government Code, Chapter 305 only if the expenditures are made to communicate directly with a member of the legislative or executive branch to influence legislation or administrative action. A lobby registrant may confer a gift in the form of transportation or lodging to his or her spouse, even if the spouse is a member of the legislative or executive branch. A lobby registrant may not confer a gift in the form of transportation or lodging to a personal friend who is a member of the legislative or executive branch unless one of the exceptions in Government Code, §305.025 is applicable.

EAO-260 (AOR-290). Whether a legislator may use for personal purposes a laptop computer owned by the state.

Summary of Opinion. It is a matter for the legislature, subject to constitutional limitations, to determine the appropriate uses for legislative resources. It is also up to the legislature to determine whether there are circumstances in which a member of the legislature may use for personal purposes computers owned by the state and reimburse the state for any costs to the state.

EAO-261 (AOR-291). Whether county officials would violate Penal Code, §36.08 by accepting food, transportation, and lodging in connection with a demonstration of computer equipment by a computer equipment vendor.

Summary of Opinion. County officials may accept transportation and lodging necessary for attendance at a vendor's demonstration of equipment even though the vendor's representatives are not in the vehicles or hotels, if the vendor's representatives are present at the demonstration. For acceptance of meals to be permissible, the donor's representatives must be present at the meals.

EAO-262 (AOR-292). Whether a corporation's extension of credit to a candidate for the purchase of goods and services violates the Election Code, Chapter 253.

Summary of Opinion. A corporation that extends credit to a candidate does not make an illegal political contribution, provided that the extension of credit is motivated by normal business practice rather than an intent to aid the candidate's campaign. Whether a corporation extended credit to a candidate with the intent to aid the candidate's campaign is a fact question.

EAO-263 (AOR-294). Whether a corporation owned by a legislator's spouse may sell a tract of land to a purchaser who intends to

construct improvements on the tract and lease them to the state.

Summary of Opinion. None of the provisions subject to interpretation by the Ethics Commission prohibit a corporation owned by a legislator's spouse from selling a tract of land that the purchaser intends to develop for lease to the state, provided that neither the corporation nor the legislator retains any interest in the property.

EAO-264 (AOR-296). Whether a master appointed under the Family Code, §14.82 is required to file a financial disclosure statement under the Government Code, Chapter 572.

Summary of Opinion. Masters appointed under §14.82 of the Family Code are not required to file annual financial disclosure statements under chapter 572 of the Government Code.

EAO-265 (SP-4). Whether a state employee who is statutorily authorized to act in a state officer's absence is required to file a financial disclosure statement under the Government Code, Chapter 572.

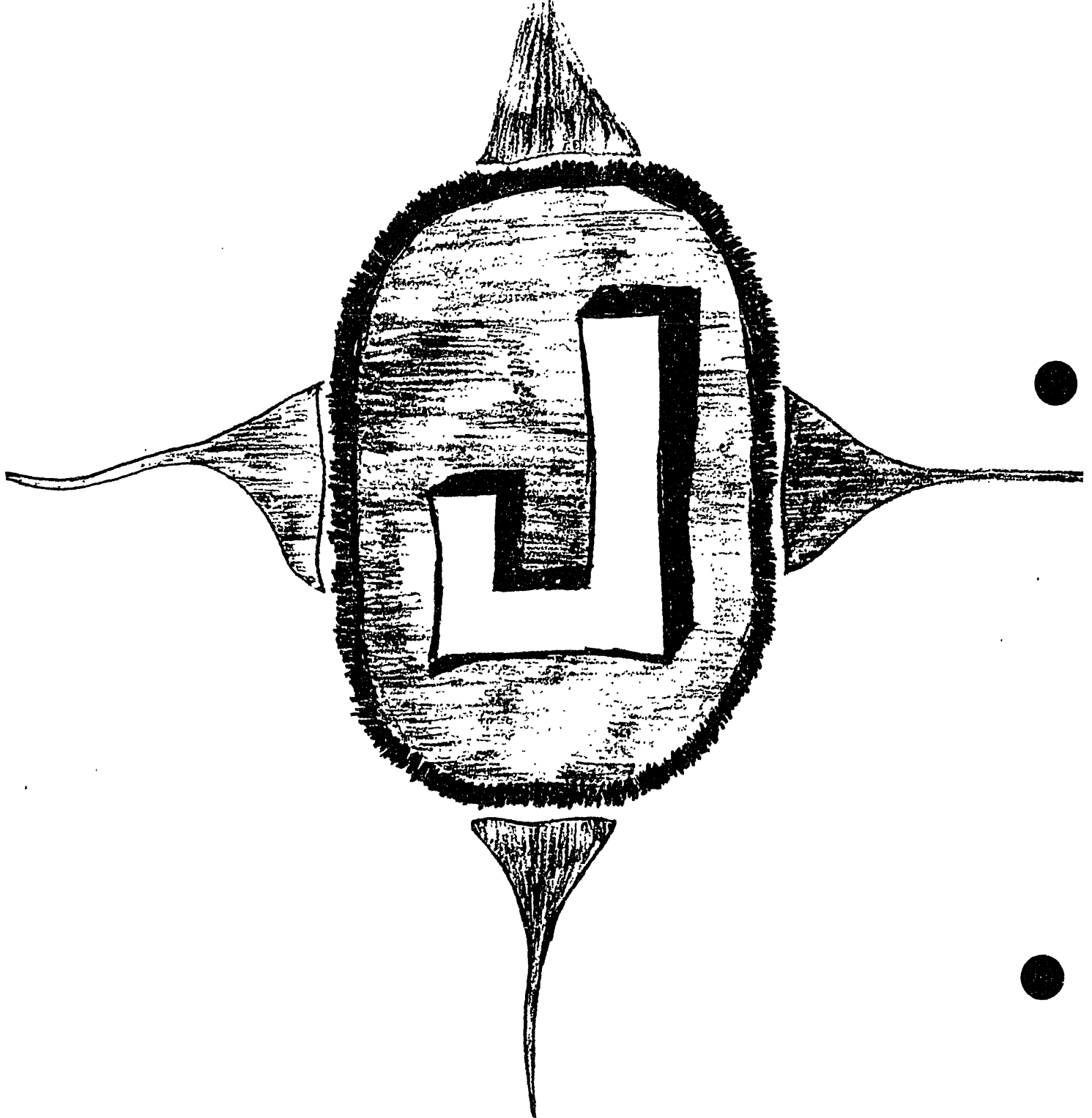
Summary of Opinion. The Government Code, Chapter 572 does not require a person who is authorized to act in a state officer's absence to file a personal financial statement.

Issued in Austin, Texas, on May 15, 1995.

TRD-9505912

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Name: James Vela
Grade: 12
School: Boling High School, Boling ISD



EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 523. Continuing Professional Education

Continuing Professional Edu- cation Standards

• 22 TAC §523.32

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §523.32, concerning Ethics Course.

The amendment is adopted on an emergency basis under the Government Code, Chapter 2001, §2001.034, which provides the Board with the authority to adopt a rule on an emergency basis with an abbreviated notice and hearing if the Board finds as it has found here that an imminent peril to the public health, safety or welfare requires adoption of a rule on fewer than 30 days notice. Licensees need to know which required Ethics courses are acceptable to the Board, Ethics course spon-

sors need to know whether the content of their Ethics courses are acceptable to the Board, the public needs to be assured that Certified Public Accountants are completing appropriate Ethics courses, and the public needs to have their Certified Public Accountants current on the Board's rules of professional conduct.

This emergency rule adoption is required to prevent an imminent peril to the public welfare which necessitates the immediate adoption of a revision to §523.32 (Ethics Course) because CPAs may currently receive the required credit for ethics course which do not meet Board standards.

The amendment to §523.32 adopted on an emergency basis was proposed for public comment in the April 28, 1995, issue of the *Texas Register* (20 TexReg 3129).

The amendment is adopted on an emergency basis 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 to effect the purposes of the law; §15A, which requires Certified Public Accountants to participate in continuing professional education courses; and §2001.034, Government Code, which states emergency adopted rules are effective for not longer than 120 days from the date of their adoption.

§523.32. Ethics Course. Effective January 1, 1995, each certificate or registration holder, unless granted retired or permanent disability status or other exemption, is required every three years to successfully complete [a minimum of our hours of ethics course a part of which shall include] a four-hour course of comprehensive study on the Rules of Professional Conduct of the Board, offered through a Board-registered provider of continuing professional education. Before a provider of continuing professional education can offer this course, the contents of the course must be submitted to the continuing professional education committee of the board for approval. The course [may] must be claimed as a non-technical course when reporting continuing professional education hours.

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

TRD-9505973

William Treacy
Executive Director
Texas State Board of
Public Accountancy

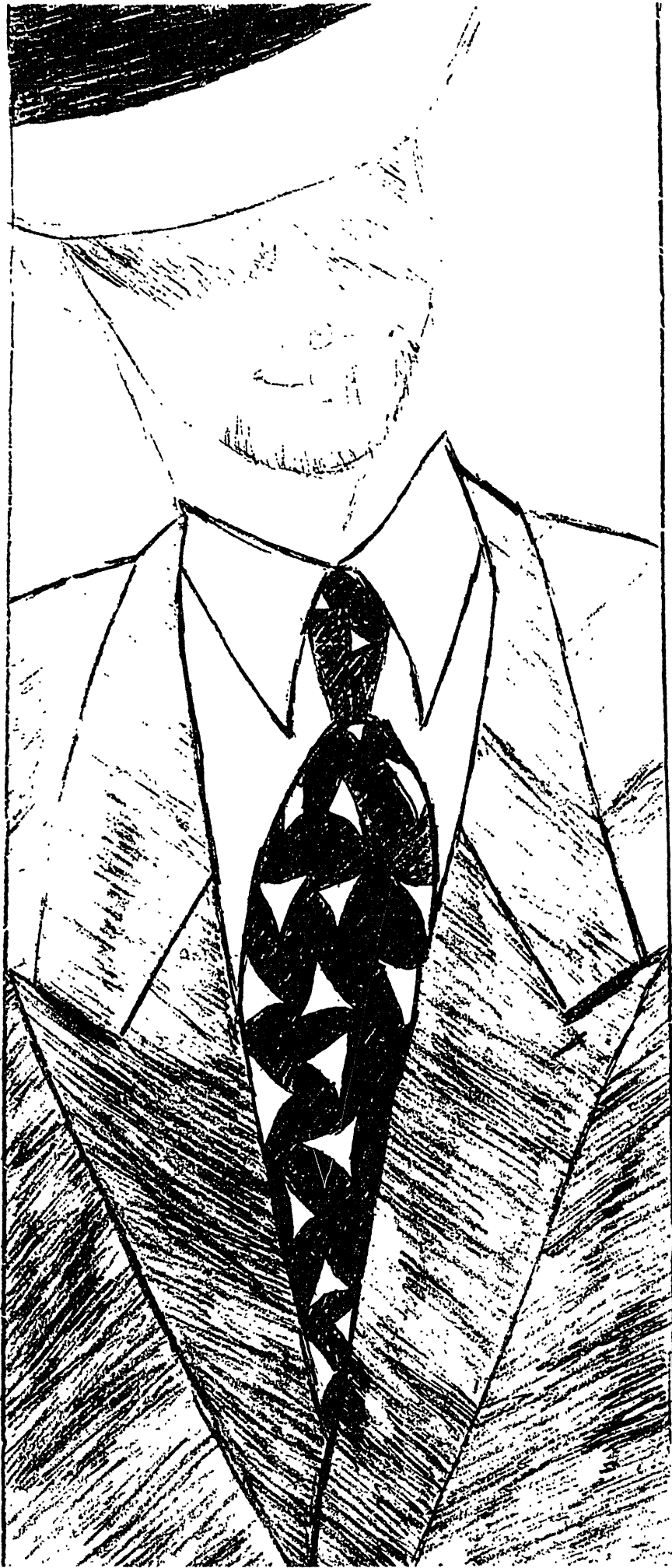
Effective date: May 17, 1995

Expiration date: September 14, 1995

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

◆ ◆ ◆

Name: James Vela
Grade: 12
School: Boling High School, Boling 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 4. AGRICULTURE Part I. Texas Department of Agriculture

Chapter 7. Pesticides

• 4 TAC §7.25, §7.26

The Texas Department of Agriculture (the department) proposes amendments to §7.25 and §7.26, concerning the scope of pesticide application standards and notification requirements. The amendments are proposed in order to establish prior notification requirements for areawide government-sponsored spray programs such as the Texas Boll Weevil Eradication Foundation's (the foundation) eradication program. The amendment to §7.25 clarifies that the exemption for regulatory pest control does not include the foundation or other similar entity in respect to the providing of prior notification. The amendment to §7.26 gives responsibility to the foundation or other similar program for the providing of prior notification to eligible persons, upon request.

Steve Bearden, assistant commissioner for pesticide programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Any additional costs of providing notification will be borne by the foundation, and not the state or local government.

Mr. Bearden also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved health and safety of residents and certain entities of farming communities located in areas where areawide governmental pest control programs are being conducted. There will be no effect on small businesses. There will be an anticipated minimal decrease in economic cost to farm operators who are required to comply with the section as proposed. Under current regulations, the farm operator would be responsible for notification, while under the proposal, the farm operator would only be responsible for forwarding requests to the foundation or other entity responsible for providing notification under the proposal.

Comments on the proposal may be submitted to Steve Bearden, Assistant Commissioner

for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*. The department intends to conduct five regional hearings to receive public comment on the proposal. Notice of these hearings will be published in the *Texas Register*.

The amendments are proposed under the Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture with the authority to adopt rules for carrying out the provisions of Chapter 76; and §76.104, which authorizes the department to adopt rules for application of pesticides.

The Code section that will be affected by the proposal is the Texas Agriculture Code, Chapter 76

§7.25 Scope of Pesticide Application Standards.

- (a) (No change.)
- (b) Exemption from regulations. Except as provided in §7.26(o) of this title (relating to Notification Requirements), these [These] regulations do not apply to:

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

§7.26. Notification Requirements.

- (a) Responsibility. Except as provided in subsection (o) of this section, the [The] farm operator shall be responsible for meeting prior notification requirements.

- (b)-(n) (No change.)

- (o) Applications by the Texas Boll Weevil Eradication Foundation or other areawide pest control program sponsored by a governmental entity.

(1) Responsibility. For applications made by the foundation as part of its boll weevil eradication program or other areawide pest control program sponsored by a governmental entity, the entity making the application or causing the application to be made is responsible for meeting prior notification requirements of this subsection. The farm opera-

tor is responsible for accepting requests for and providing prior notification in accordance with this section for applications made by the farm operator.

(2) Who may request. A request for notification of an application made by an entity covered by this subsection may be made by all of those persons listed in subsection (c) of this section. No request is necessary for prior notification of farm labor camps owned, managed or controlled by a farm operator and located on or within 1/4 mile of a field on which pesticides are to be applied by the foundation or other entity; provided that the farm operator is responsible for notifying the foundation or other entity of the presence of such labor camps.

(3) Filing and content of request. Requests made under this section shall be made in writing to the foundation or other entity or the farm operator and shall include all of the information required by subsection (d) of this section.

(4) Notification by farm operator. The farm operator is responsible for notifying the foundation or other entity covered by this subsection of any requests for prior notification received by the farm operator relating to an application that will be made or caused to be made by the foundation or other entity. The information must be provided to the foundation or other entity within 24 hours of its receipt by the farm operator. The information may be provided:

(A) by telephone at a telephone number obtained from the department;

(B) by forwarding the written request to the foundation or other entity in the U. S. mail at a mailing address obtained from the department; or

(C) by any other reasonable means, as long as the information is forwarded within 24 hours of its receipt.

(5) Request for notification by the foundation or other entity. Prior to the making of the first application in each calendar year, the foundation or other entity shall request that the farm operator notify it of any requests for prior notification already in effect for property on which the foundation or other entity will be making applications and of any future requests for prior notification on that property.

(6) Effective date and length of effectiveness of request. A request for prior notification under this subsection shall be in effect through December 31 of the year that the request is received. The foundation or other entity shall begin notifying the requesting party of scheduled pesticide applications within ten days of receipt of a request for notification.

(7) Methods of notification and content of notice.

(A) Notification shall be provided as follows.

(i) Notification may be given in writing, in person, by telephone in English or, when appropriate, Spanish, or by other means mutually agreed upon by the requesting party and the foundation or other entity. This agreement must be in writing and a copy filed with the department. For purposes of providing notice to medically affected persons or to licensed day care centers, primary and secondary schools, hospitals, inpatient clinics and nursing homes, "notification in writing" means other than by mail such as by posting a written notice on the requester's front door or at the requester's place of business.

(ii) If the foundation or other entity is unable to reach a person entitled to notification under this section after making reasonable efforts, the foundation or other entity may immediately notify the department by telephone of the following information:

(I) the name and telephone number(s) of the foundation or other entity;

(II) the name and telephone number(s) of the requesting party;

(III) the location of the field scheduled to be treated;

(IV) the intended date and approximate time of the pesticide application; and

(V) the trade and common chemical name of the pesticide.

(iii) The department shall maintain a record of the information provided by the foundation or other entity.

(iv) If the foundation or other entity telephones the department between 8:00 a.m. and 5:00 p.m., Monday-Friday, the department shall immediately attempt to telephone the requesting party and give notification of the scheduled application. A record showing the date and time of all such attempt shall be maintained by the department.

(v) In addition to the methods of notification provided at this subparagraph, notification to farm labor camps may be provided in writing by placing a written notice on an on-site bulletin board or other central, on-site posting place which is readily accessible to labor camp residents.

(B) The notice shall include:

(i) the location of the field on which the application is to be made;

(ii) the intended date and approximate time of application;

(iii) the trade and common chemical name of the pesticide to be applied; and

(iv) who to contact for additional information.

(C) Notice shall be given no later than the day prior to a scheduled pesticide application.

(8) Emergency provision. Advance notice need not be given on the day before an application when an immediate application is required and time does not reasonably allow the giving of notice on the day before the pesticide application. Notice of an emergency application shall be given:

(A) by the method selected in accordance with paragraph (7)(A) of this subsection as soon as reasonably possible before the application; or

(B) by telephone or in person to a medically-affected person as soon as reasonably possible, but not less than one hour before the application. However, an emergency application need not be postponed if after reasonable ef-

forts by the foundation or other entity actual notice cannot be given.

(9) Duty to notify of address change. A person who has requested notice of a pesticide application under this section shall notify the foundation or other entity promptly and in writing of any change of address or telephone number.

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 May 17, 1995.

TRD-9505990

Dolores Alvarado Hibbs
Chief Administrative Law
Judge
Texas Department of
Agriculture

Earliest possible date of adoption: June 23, 1995

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 9. Liquefied Petroleum Gas Division

Subchapter A. General Appli- cability and Requirements

• 16 TAC §9.2

The Railroad Commission of Texas proposes an amendment to §9.2, relating to definitions. Section 9.2 defines terms relating to liquefied petroleum gas equipment and installations, acronyms of associations or societies, and commission licensing procedures.

The commission proposes this action to add definitions for some frequently used terms, including acronyms, and to clarify some definitions. Other proposed nonsubstantive amendments include some changes in wording, punctuation, and organization to provide clearer language.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Petru also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increase in compliance due to more clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §113.051, which authorizes the commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed amendment: Texas Natural Resources Code, §113.051.

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

Aggregate water capacity (AWC)—The sum of all individual container capacities measured by weight or volume of water in a battery at an installation.

ANSI—American National Standards Institute.

Approved—Authorized by the commission or the Railroad Commission.

ASME—American Society of Mechanical Engineers.

ASME Code—ASME Boiler and Pressure Vessel Code.

ASME container—Any LP-gas container manufactured to the specifications of the ASME Code, [American Society of Mechanical Engineers.] Division 1, Section VIII, in effect at the time of fabrication.

Auxiliary engine—An engine which is[,] mounted on a vehicle but[, which is] used for purposes other than propelling the vehicle.

Camping trailer—A portable vehicular [vehicular portable] unit mounted on wheels and constructed with collapsible partial side walls which fold for towing by another vehicle and unfold at the camp site to provide temporary living quarters for recreational, camping, or travel use. (See also "recreational vehicle" [Also see definition of recreational vehicle] in this section).

Certified—Authorized to perform LP-gas [related] work as set forth in the Texas Natural Resources Code. Employee certification alone does not allow an individual to perform those activities which require licensing.

Commercial installation—Any LP-gas installation located on premises other than a single family dwelling used as a residence, including[,] but not limited to[,] a retail business establishment, school, bulk storage facility, convalescent home, hospital, retail LP-gas cylinder filling/exchange operation, service station, forklift refueling facility, or private motor/mobile fuel cylinder filling operation.

Connector, gas supply—The tubing or piping [Tubing or pipe] connecting a recreational vehicle to a gas supply source.

Container—Any receptacle, such as ASME or DOT containers, [(i.e., American Society of Mechanical Engineers (ASME) container or Department of Transportation (DOT) container)] designed for the transportation or storage of LP-gas, or any receptacle designed for the purpose of receiving injections of LP-gas for use or consumption by or through an LP-gas system.

Dispensing system—That combination of valves, meters, hoses, piping, electrical connections, and [and/or] fuel connections at a stationary installation used to distribute LP-gas to portable DOT containers or DOT/ASME mobile or motor fuel containers.

DOT—United States Department of Transportation.

DOT container—Any LP-gas container manufactured to DOT or ICC [the] specifications [of the United States Department of Transportation and/or the United States Interstate Commerce Commission], regardless of whether those standards are still in effect or whether those agencies assert jurisdiction over a particular container.

Employee—Any individual who renders or performs any services [service] or labor for compensation, including [and includes] individuals hired on a part-time or temporary basis, [or] on a full-time or permanent basis, or [including] an owner-employee.

Farm cart—A single-axle trailer upon which is mounted a container with a capacity of 1,000 gallons or less used to transport fuel for farm or ranch use.

Final approval—The authority issued by the commission or the Railroad Commission allowing the introduction of LP-gas into a container and system.

ICC—Interstate Commerce Commission.

Interim approval—The authority issued by the Railroad Commission of Texas[,] following a public hearing[,] allowing construction of an LP-gas installation.

Licensed—Authorized to perform LP-gas activities through the issuance of a valid license.

Material handling equipment—Pumps, [Includes, but is not limited to, pumps,] meters, filling connections, compressors, emergency shut-off valves, and bulkheads, [excluding]. Material handling equipment does not include any) automatic or manual dispensers, used to facilitate the flow of LP-gas [dispenser or manual dispenser (i.e., pipe riser)].

Motor home—A vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of

the completed vehicle. (See also "recreational vehicle" [Also see the definition of] in this section).

Nonspecification unit—An LP-gas transport not constructed to DOT MC-330 and MC-331 specifications. (See also "Specification unit" in this section).

Outlet—A site operated by an LP-gas licensee at which the business conducted materially duplicates the operations for which the licensee is initially granted a license. [A final determination as to what constitutes an outlet will be made by the director as per §9.8(a) of this title (relating to Designation of Operations Supervisor).]

Property line—The [That intangible] boundary which designates the point at which one real property interest ends and another begins.

PSI—Pounds per square inch.

PSIA—Pounds per square inch absolute.

PSIG—Pounds per square inch gauge.

[PSI, PSIG, and PSIA—Pounds per square inch, pounds per square inch gauge, and pounds per square inch absolute, respectively.]

Public transportation vehicle—A vehicle for hire to transport persons, including [Includes,] but [is] not limited to[,] taxis, buses (excluding school buses and mass transit or special transit vehicles), or airport courtesy cars[, and any other vehicles for hire to transport persons].

Pullaway—The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a pullaway device.

Recreational vehicle—A vehicular [type] unit primarily designed as temporary living quarters for recreational, camping, or travel use, which either has its own motor power or is mounted on or towed by another vehicle, including[,] but not limited to[,] a travel trailer, camping trailer, truck camper, or [and] motor home.

Repair to container—The correction damage or deterioration to an LP-gas container, [or] the alteration of the structure of such a container, or the welding on such container in a manner which causes the temperature of the container to rise above 400 degrees Fahrenheit.

Representative—The individual [person] designated by an [a license] applicant or licensee as the principal individual [person] in authority who is responsible for actively supervising the licensee's LP-gas activities.

Special transit vehicle—A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons. [This type of vehicle is normally a smaller

version of the standard designed school bus or mass transit vehicle.]

Specification unit—An LP-gas transport constructed to DOT MC-330 and MC-331 specifications. (See also "Nonspecification unit" in this section.)

Subframing—The attachment of supporting structural members to the pads of a container, excluding [but does not include] welding directly to or on the container.

Travel trailer—A vehicular unit, mounted on wheels, designed to provide temporary living quarters for recreational, camping, or travel use, and of such size or weight as not to require special highway movement permits when towed by a motorized vehicle, and of gross trailer area less than 320 square feet. (See also "recreational vehicle" [Also see the definition of] in this section.)

Truck camper—A portable unit constructed to provide temporary living quarters for recreational, travel, or camping use, consisting of roof, floor, and sides, designed to be loaded onto and unloaded from the bed of a pick-up truck. (See also "recreational vehicle" [Also see the definition of] in this section.)

Ultimate consumer—The individual controlling LP-gas immediately prior to its ignition.

Water capacity—The amount of water, in pounds or gallons, at 60 degrees Fahrenheit (15.6 degrees Centigrade) required to fill a container [liquid full of water].

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 May 17, 1995.

TRD-9505964 Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP-Gas Section
Railroad Commission of
Texas

Earliest possible date of adoption: June 23, 1995

For further information, please call: (512) 463-7008

Chapter 13. Regulations for Compressed Natural Gas (CNG) Fuel Systems

Subchapter A. Scope and Definitions

• 16 TAC §13.3

The Railroad Commission of Texas proposes an amendment to §13.3, (relating to definitions). Section 13.3 defines terms relating to compressed natural gas equipment and installations, acronyms of associations or societies, and commission licensing procedures.

The commission proposes this action to add definitions for some frequently used terms, including acronyms, and to clarify some definitions. Other proposed nonsubstantive amendments include some changes in wording, punctuation, and organization to provide clearer language.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Petru also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be an increase in compliance due to more clearly understandable rules and an increase in safety afforded to the general public due to the updated and revised safety requirements. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Thomas D. Petru, director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

The amendment is proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to compressed natural gas work and operations to protect the health, safety and welfare of the general public.

The following is the statute, article, or code affected by the proposed amendment: Texas Natural Resources Code, §116.012.

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

ANSI—American National Standards Institute.

ASME—American Society of Mechanical Engineers.

ASME Code—ASME Boiler and Pressure Vessel Code.

ASTM—American Standard Testing Material.

Auxiliary engine—An engine which is[,] mounted on a vehicle but[,] which is] used for purposes other than propelling the [a] vehicle.

CNG—See "Compressed natural gas" in this section.

CNG system—A system of safety devices, cylinders, piping, fittings, valves, compressors, regulators, gauges, relief devices, vents, installation fixtures, and other CNG equipment intended for use or used in any building or commercial installation, or used in conjunction with a motor vehicle or mobile fuel system fueled by CNG, or [and] any system or facilities designed to be used or used in the compression, sale, stor-

age, transportation for delivery, or distribution of CNG in portable CNG cylinders, [but does] not including [include] natural gas facilities, equipment, or pipelines located upstream of the inlet of a compressor devoted entirely to CNG [compressed natural gas].

Commercial installation—Any CNG installation located on premises other than a single family dwelling used as a residence, including[,] but not limited to[,] a retail business establishment, school, convalescent home, hospital, retail CNG cylinder filling/exchange operation, service station, forklift refueling facility, or private motor/mobile fuel cylinder filling operation.

Compressed natural gas—Natural gas which is a mixture of hydrocarbon gases and vapors[,] consisting principally of methane (CH₄) in gaseous form that is compressed and used, stored, sold, transported, or distributed for use by or through a CNG system.

CNG cargo tank—A container which complies [in accordance] with ASME or DOT [American Society of Mechanical Engineers (ASME) or Department of Transportation (DOT)] specifications [and] used to transport CNG for delivery.

DOT—United States Department of Transportation.

Final approval—The authority issued by the commission or the Railroad Commission allowing the installation to be placed into CNG service.

Flexible metal hose—Metal hose made from continuous tubing that is corrugated for flexibility and, if used for pressurized applications, has an external wire braid.

Location—A site operated by a CNG licensee at which the licensee carries on an essential element of its CNG[related] activities, but where the activities of the site alone do not [are not enough to] qualify the [such] site as an outlet.

Manifold—The assembly of piping and fittings used to connect [for interconnecting] cylinders.

Mass transit vehicle—Any vehicle which is owned or operated by a political subdivision [division] of a state, city, or county and [which is] primarily used in the conveyance of the general public.

Metallic hose—Hose in which the strength of the hose depends primarily on the strength of metallic parts, including liners or covers.

Mobile fuel system—A CNG system which supplies [to supply] natural gas fuel to an auxiliary engine other than the engine used to propel the vehicle or for other uses on the vehicle.

Motor fuel system—A CNG system[,] excluding the container[,] which supplies CNG to an engine used to propel the vehicle.

Outlet—A site operated by a CNG licensee at which the business conducted

materially duplicates the operations for which the licensee is initially granted a license. [Elements to be considered in determining the existence of an outlet include, but are not limited to, the following

[(A) storage of CNG on the site;

[(B) sale or distribution of CNG from the site;

[(C) licensee supervision of employees at the site;

[(D) proximity of the site to other outlets;

[(E) communication between the site and other outlets; and

[(F) nature of licensee activities.]

Person—An individual, sole proprietor, partnership, firm, joint venture, association, corporation, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision, or licensee.

Pressure [and] relief valve—A device designed to prevent rupture of a normally charged cylinder.

Public transportation vehicle—A vehicle for hire to transport persons, including [Includes,] but [is] not limited to[,] taxis, buses (excluding school buses, mass transit, or special transit vehicles), or airport courtesy cars[, and any other vehicle for hire to transport persons].

Pullaway—The accidental separation of a hose from a cylinder, container, transfer equipment, or dispensing equipment, which could occur on a cylinder, container, transfer equipment, or dispensing equipment whether or not they are protected by a pullaway device.

Representative—The individual [person] designated by an [a licensed] applicant or licensee as the principal individual [person] in authority who is responsible for actively supervising the licensee's CNG activities.

Residential fueling facility—An assembly and its associated equipment and piping at a residence used for the compression and delivery of natural gas into vehicles [with its associated equipment and piping].

Special transit vehicle—A vehicle designed with limited passenger capacity which is used by a school or mass transit authority for special transit purposes, such as transport of mobility impaired persons. [This type of vehicle is normally a smaller version of the standard designed school bus or mass transit vehicle.]

Transport—Any vehicle or combination of vehicles and CNG cylinders designed or adapted for use or used principally as a means of moving or delivering CNG from one place to another, including[. This shall include,] but not [be] limited to[,] any truck, trailer, semitrailer, cargo tank, or other vehicle used in the distribution of CNG.

Ultimate consumer—The person controlling CNG immediately prior to its ignition.

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 May 17, 1995

TRD-9505963

Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP-Gas Section
Railroad Commission of
Texas

Earliest possible date of adoption. June 23, 1995

For further information, please call: (512) 463-7008

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The Railroad Commission of Texas proposes amendments to §13.32, relating to hose and hose connections; §13.132, relating to system component qualification; and §13.135, relating to installation of piping. Section 13.32 lists the requirements for hoses to be used with compressed natural gas (CNG). Section 13.132 describes the requirements for components in the engine compartment, including fuel-carrying components. Section 13.135 explains the installation of piping and supply lines. The proposed amendment to §13.32 adds specifications for the use of hose, metallic hose, and flexible metal hose; the proposed amendments to §13.132 and §13.135 include exceptions for hose, metallic hose, and flexible metal hose when installed as permitted by §13.32. Another amendment to §13.135 allows supply lines to be supported at least every 21 to 27 inches, instead of the current 24 inches. Other proposed nonsubstantive amendments include some changes in wording or punctuation to provide clearer language.

Thomas D. Petru, director, Liquefied Petroleum Gas Division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Petru also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the ability to use hose, metallic hose, or flexible metal hose in fuel lines where installation of other types of hose is difficult. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed. In fact, costs may be reduced for small businesses and individuals involved in the manufacture or repair of vehicles or fuel

systems in which these types of hoses were previously prohibited, or where fuel line supports every 24 inches were difficult to achieve.

Comments on the proposal may be submitted to Thomas D. Petru, Director, Liquefied Petroleum Gas Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days after publication in the *Texas Register*.

Subchapter B. General Rules for Compressed Natural Gas (CNG) Equipment Qualifications

• 16 TAC §13.32

The amendment is proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to compressed natural gas work and operations to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed amendment: Texas Natural Resources Code, §116.012.

§13.32. *Hose and Hose Connections.*

(a) Hose and metallic hose shall be of or lined with materials that are resistant to corrosion and the actions of CNG [compressed natural gas (CNG)].

(b) (No change.)

(c) Hose assemblies shall be tested by the manufacturer or its designated representative prior to use at pressure at least [equal to not less than] twice the service pressure.

(d) Hose shall be continuously and distinctly marked with[, indicating] the manufacturer's name or trademark, the words "CNG service," [CNG service,] and the working pressure. Metallic hose shall have a manufacturer's permanently attached tag marked with the manufacturer's name or trademark, the words "CNG service," [CNG service,] and the working pressure. This subsection does not apply to the hose installed from the regulator to the mixer on a motor vehicle.

(e) Hose, metallic hose, or flexible metal hose used in CNG vehicle fuel system areas where a high degree of flexibility is required for vehicle safety shall comply with the requirements of subsections (a)-(d) of this section.

(f) Hose, metallic hose, or flexible metal hose may be used in fuel lines provided it meets the following requirements.

(1) The hose shall be capable of conducting an electrical current from one end of the hose to the other end without the necessity of connecting a jumper wire from end to end.

(2) The length of the hose including the swaged fittings on each end shall not exceed 48 inches.

(3) The hose shall be protected from fretting and sources of extremely high heat.

(4) The hose shall have fittings or connectors on each end made of Type 304 or better stainless steel with a minimum design pressure of at least 5,000 psig.

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 May 17, 1995.

TRD-9505961

Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP-Gas Section
Railroad Commission of
Texas

Earliest possible date of adoption: June 23, 1995

For further information, please call: (512) 463-7008

Subchapter E. Engine Fuel Systems

• 16 TAC §13.132, §13.135

The amendments are proposed under the Texas Natural Resources Code, §116.012, which authorizes the commission to adopt rules and standards relating to compressed natural gas work and operations to protect the health, welfare, and safety of the general public.

The following is the statute, article, or code affected by the proposed amendments: Texas Natural Resources Code, §116.012.

§13.132. System Component Qualification.

(a) System components shall comply with the appropriate provisions in Subchapter B of this chapter (relating to general rules for compressed natural gas (CNG) [and] equipment qualifications [qualification]).

(b) Components in the engine compartment shall be suitable for service over a range of temperatures from [of] -40 degrees Fahrenheit to 250 degrees Fahrenheit. All other components shall be suitable for service over a range from [of] -40 degrees Fahrenheit to 180 degrees Fahrenheit.

(c) Fuel-carrying components shall be labeled or stamped with the following:

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

(4) the direction of fuel flow when necessary for correct installation; and

(5) the capacity or electrical rating [as applicable].

(d) Subsection (c) of this section shall [Exception: This subsection does] not

apply to service valves, tubing, and fittings, or to hose, metallic hose, or flexible metal hose used as specified in §13.32(e) and (f) of this title (relating to hose and hose connections).

§13.135. Installation of Piping.

(a) (No change.)

(b) Pipe [A pipe] thread jointing material impervious to the action of CNG [the compressed natural gas (CNG) used in the system] shall be applied to all male pipe threads prior to assembly.

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

(e) Supply lines shall either have at least eight inches' clearance [a minimum clearance of eight inches] from the engine exhaust system or shall be shielded against direct heat.

(f) Supply lines shall be mounted, braced, and supported to minimize vibration, and shall be protected against damage, corrosion, or breakage due to strain or wear. Supply lines [A supply line] shall be supported at least every 21 to 27 [24] inches.

(g) Bends in piping or tubing are prohibited if such bends will weaken the pipe or tubing. Bends shall be made only with tools designed for this purpose.

[(g) A bend in piping or tubing is prohibited where such a bend weakens the pipe or tubing. Bends shall be made by bending tools designed for this purpose.]

(h) Joints or connections [A joint or connection] shall be located only in [an] accessible locations [location].

(i) Hose, metallic hose, or flexible metal hose may be used in place of piping as specified in §13.32(e) and (f) of this title (relating to hose and hose connections).

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 May 17, 1995.

TRD-9505962

Mary Ross McDonald
Assistant Director, Legal
Division, Gas
Utilities/LP-Gas Section
Railroad Commission of
Texas

Earliest possible date of adoption: June 23, 1995

For further information, please call: (512) 463-7008

Part IV. Texas Department of Licensing and Regulation

Chapter 60. Texas Commission of Licensing and Regulation

Subchapter B. Organization of the Commission of Licensing and Regulation

• 16 TAC §60.22

The Texas Department of Licensing and Regulation proposes an amendment to §60.22, concerning the general powers and duties of the Commission of Licensing and Regulation. The amendment updates the address for the department's El Paso field office.

James D. Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Brush also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be more accurate information about the location of the department's field offices. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to James D. Brush, II, Director, Policies and Standards Division, Texas Department of Licensing and Regulation, P.O. Box 12157, 920 Colorado, Eighth Floor, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 9100, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The Article that is affected by the amendment is Article 9100, §15.

§60.22. Offices.

(a) (No change.)

(b) Regional and field offices for the department are established at the following locations:

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

(7) 1200 Golden Key Circle, Suite 144 [661 Mesa Hills, Suite 104], El Paso, Texas 79925 [79912];

(8)-(9) (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 May 16, 1995.

TRD-9505945

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: June 23, 1995

For further information, please call: (512) 463-7357

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office

Chapter 9. Exploration and Leasing of Oil and Gas

• 31 TAC §9.3, §9.4

The General Land Office (GLO), with the approval of the School Land Board (SLB), proposes amendments to §9.3 and §9.4, concerning exploration and leasing of oil and gas. The proposed amendments add §9.3(g), concerning consistency with the Coastal Management Program (CMP) goals and policies, delete §9.4(b)(3), concerning the definition of "coastal wetlands", revise the definition of "oyster reef" in §9.4(b)(10), change the defined term "public beach" in §9.4(b)(13) to "recreational beach", revise §9.4(e)(2)(C), concerning the location of staging areas in certain locations, and make minor editorial changes in both §9.3 and §9.4.

Section 9.3(g) is added in accordance with §501.10 of this title (relating to Compliance with Goals and Policies), which requires state agencies to comply with CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area (CNRA). The GLO is proposing new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with CMP goals and policies. Rather than refer to the actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §9.3(g) refers to the actions listed in §16.1 of this title (relating to Definitions and Scope) because §16.1 sets out the actions listed in §505.11. Because Chapter 9 already addresses certain actions that could also affect CNRAs, the addition of §9.3(g) is necessary to ensure that GLO and SLB rules are consistent with CMP goals and policies. Proposed §9.3(g) specifies that the rules in Chapter 9 will be read in harmony with the GLO's goals and policies set out in the proposed new Chapter 16 of this title (relating to Coastal Protection).

The term "coastal wetlands" is defined in §9.4(b)(3), and used only in §9.4(e)(2)(C). However, the definition of "coastal wetlands" in §9.4(b)(3) does not conform to the CMP definition of this term in §501.3(b)(5) of this title (relating to Definitions and Abbreviations). Further, the GLO believes that the

concept represented by the term as currently defined could be expressed more clearly. The GLO proposes replacing the term "coastal wetlands" in §9.4(e)(2)(C) with the phrase "areas of tidal sand or mud flats, submerged aquatic vegetation, or coastal wetlands, as those terms are defined in §501.3(b) of this title (relating to Definitions and Abbreviations)." The terms "tidal sand or mud flats", "submerged aquatic vegetation", and "coastal wetlands" are defined in the CMP. The GLO believes that the identification in §9.4(e)(2)(C) of specific areas using terms defined in the CMP will make the rule clearer and, therefore, more effective to protect the sensitive areas the rule is intended to protect. As a result of the proposed revision to §9.4(e)(2)(C), the definition of "coastal wetlands" in §9.4(b)(3) is unnecessary, and the GLO proposes that it be deleted. The deletion will require the renumbering of subsequent definitions.

The definition of "oyster reef" in §9.4(b)(10) does not conform to the definition of that term in the CMP in §501.3(b)(10) of this title (relating to Definitions and Abbreviations). The GLO believes that for purposes of clarity and administrative efficiency it would be better for the same defined term to be used in both Chapter 9 and the CMP. Therefore, the GLO proposes revising the definition of "oyster reef" in §9.4(b)(10) to conform to the CMP definition of that term.

The term "public beach" is defined in §9.4(b)(13) in a way that does not conform to current usage of that term in both law and literature. However, the GLO believes that the concept defined by that term is still a useful concept for purposes of the rules in Chapter 9. Therefore, the GLO proposes using the term "recreational beach" rather than "public beach." This revision will maintain an important concept in existing rules while avoiding confusion with the term "public beach," which has acquired another meaning since the time §9.4 was adopted. The term "public beach," as it appears in §9.4(e)(1)(G), will be changed to "recreational beach."

Minor editorial or grammatical changes were made in §9.3(b), §9.3(e), and §9.4(b)(9).

Caryn K. Cosper, Deputy Commissioner of Resource Management, Texas General Land Office, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government resulting from administration of the chapter. No additional administrative costs will be incurred as a result of these amendments.

Ms. Cosper also has determined that for each of the first five years the rules are in effect the anticipated public benefits will be consistency with CMP goals and policies, efficient resolution of any conflicting rules and statutes, consistency in term definitions, clarification and correction of rule language, and protection of state coastal natural resources. Ms. Cosper has determined that there will be no economic cost to persons required to comply with the rules. Ms. Cosper has determined that there will be no effect on small business resulting from adoption of the proposed amended rules.

Comments on the proposed amendments may be submitted to Debbie Schilling, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax: (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on June 30, 1995.

The amendments are proposed under the Texas Natural Resources Code, §31.051 and §33.064, which authorize the GLO and SLB to adopt necessary rules and procedures, consistent with CMP goals and policies.

The Texas Natural Resources Code, Chapter 31, Subchapter E, Chapter 32, Subchapters D-F, and Chapter 52 are affected by the proposed amendments.

§9.3. General Provisions.

(a) (No change.)

(b) Conflict between this chapter and other rules and statutes. Operations on state lands are subject to all applicable state and federal regulatory authorities. It is not the intent of this chapter to usurp the regulatory powers of such authorities. If the provisions of this chapter conflict with and cannot be harmonized with applicable state or federal statutes, federal rules, or state rules (e.g., the applicable rules of RRC, Texas Natural Resource Conservation [Water] Commission, [Air Control Board.] or TPWD), such other regulatory statutes or rules shall control.

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

(e) Exceptions to this chapter. The commissioner may, if authorized by law and upon proper written request, grant exceptions to the provisions of this chapter if the commissioner deems the exceptions to be in the best interest of the state. No such exception shall be effective until a written request by the lessee and a written explanation, signed by the commissioner, is placed in [by] the appropriate mineral file or other GLO file.

(f) (No change.)

(g) Consistency with Coastal Management Program. Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) of this title (relating to Definitions and Scope) taken or authorized by the GLO or SLB pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 of this title (relating to Definitions and Scope), is subject to and must be consistent with the goals and policies identified in Chapter 16 of this title (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with

certain provisions of Chapter 16 of this title (relating to Coastal Protection), such conflicting provisions of Chapter 16 of this title (relating to Coastal Protection) will control.

§9.4. Geophysical and Geochemical Exploration Permits.

(a) General rule of application. The rules in this section shall apply to lands described in §9.2(1)-(4) of this title (relating to Leasing Guide).

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

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

(3) Coastal wetlands—Emergent, periodically emergent, or submerged coastal areas of high biologic productivity where sea water is typically present during normal weather conditions and tidal ranges.]

(3) [(4)] Geochemical exploration—A survey or investigation conducted to discover or locate oil and gas prospects using techniques involving soil sampling and analysis.

(4) [(5)] Geophysical exploration—A survey or investigation conducted to discover or locate oil and gas prospects using magnetic, gravity, seismic, and/or electric techniques.

(5) [(6)] High velocity energy source—Energy sources which generate a sharp-peaked energy pulse including, but not limited to, dynamite, detonating cord, seismogel, and ammonium nitrate.

(6) [(7)] Low velocity energy source—Energy sources which generate a bell shaped energy pulse including, but not limited to, pneumatic, acoustic, and vibrating devices.

(7) [(8)] Operator—One who directs, supervises, controls, and/or performs the exploration operations, together with all employees and sub-operators.

(8) [(9)] Oyster lease—An area leased from the state for the production of oysters and marked according to [the] the requirements of TPWD.

(9) [(10)] Oyster reef—Natural or artificial formations in intertidal or subtidal areas that are composed of oyster shell, live oysters, and other organisms that are discrete, contiguous, and clearly distinguishable from scattered oysters [Naturally occurring beds of oysters and oyster shells as defined by TPWD].

(10) [(11)] Permit—License issued by the commissioner authorizing geophysical and/or geochemical exploration on public school land.

(11) [(12)] Permittee—The holder of a permit.

(12) [(13)] Recreational [Public] beaches—Any shoreline frequently utilized by the general public for recreational activities.

(13) [(14)] Resource management codes—Abbreviations for environmental restrictions adopted by state and federal resource agencies and applicable to state-owned tracts.

(14) [(15)] Shot—Any action resulting in the generation of an energy pulse from which geophysical data is obtained.

(15) [(16)] Shrimping fleet—A group of five or more boats trawling for shrimp in an area not more than one mile in diameter.

(16) [(17)] Structure—Any man-made improvement placed on or affixed to state-owned lands.

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

(e) Geophysical or geochemical operational guidelines.

(1) The following provisions shall apply to all geophysical or geochemical operations conducted on state-owned lands.

(A)-(F) (No change.)

(G) No shots shall be detonated within three miles of a recreational [public] beach between May 1st and September 10th.

(H)-(N) (No change.)

(2) In addition to the provisions of paragraph (1) of this subsection, the following provisions shall apply to geophysical operations conducted on submerged lands.

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

(C) Staging [and work] areas shall not be established in vegetated areas of tidal sand or mud flats, submerged aquatic vegetation, or coastal wetlands, as those terms are defined in §16.1 of this title (relating to Definitions and Scope), or vegetated dune areas.

(D)-(L) (No change.)

(3) (No change.)

(f)-(j) (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 May 16, 1995.

TRD-9505989

Garry Mauro
Commissioner
General Land Office

Proposed date of adoption: August 15, 1995

For further information, please call: (512) 305-9129

Chapter 10. Exploration and Development of State Minerals Other Than Oil and Gas

• 31 TAC §10.10

The General Land Office (GLO), with the approval of the School Land Board (SLB), proposes new §10.10, concerning consistency with the Coastal Management Program (CMP) goals and policies.

Section 10.10 is added in accordance with §501.10 of this title (relating to Compliance with Goals and Policies), which requires state agencies to comply with CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. The GLO is proposing new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with CMP goals and policies. Rather than refer to the actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §10.10 refers to the actions listed in §16.1 of this title (relating to Definitions and Scope) because §16.1 sets out the actions listed in §505.11. Because Chapter 10 already addresses certain actions that could also affect coastal natural resource areas, proposed §10.10 is necessary to ensure that GLO and SLB rules are consistent with CMP goals and policies. Proposed §10.10 specifies that the rules in Chapter 10 will be read in harmony with the GLO's goals and policies set out in the proposed new Chapter 16 of this title (relating to Coastal Protection).

Caryn K. Cosper, Deputy Commissioner of Resource Management, Texas General Land Office, 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 resulting from administration of the rule. No additional administrative costs will be incurred as a result of this proposal.

Ms. Cosper also has determined that for each of the first five years the rule is in effect the anticipated public benefit will be consistency with CMP goals and policies, efficient resolution of any conflicting rules and statutes, and protection of state coastal natural resources. Ms. Cosper has determined that there will be no economic cost to persons required to comply with the rule. Ms. Cosper has determined

that there will be no effect on small business resulting from adoption of the proposed rule.

Comments on the proposed rule may be submitted to Debbie Schilling, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax. (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on June 30, 1995

The new rule is proposed under the Texas Natural Resources Code, §31.051 and §33.064, which authorize the GLO and the SLB to adopt and enforce necessary rules, consistent with CMP goals and policies.

The Texas Natural Resources Code, Chapter 31, Subchapter E, and Chapter 32, Subchapters C-F, is affected by the new rule.

§10.10. Consistency with Coastal Management Program. Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) of this title (relating to Definitions and Scope) taken or authorized by the GLO or SLB pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 of this title (relating to Definitions and Scope), is subject to and must be consistent with the goals and policies identified in Chapter 16 of this title (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16 of this title (relating to Coastal Protection), such conflicting provisions of Chapter 16 of this title (relating to Coastal Protection) will control

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 May 16, 1995.

TRD-9505988 Garry Mauro
Commissioner
General Land Office

Proposed date of adoption: August 15, 1995

For further information, please call: (512) 305-9129

Chapter 13. Land Resources

Administration and Management of Public Free School Lands and Coastal Public Lands

• 31 TAC §13.54

The General Land Office (GLO), with the approval of the School Land Board (SLB), proposes §13.54, concerning consistency with the Coastal Management Program (CMP) goals and policies.

New §13.54 is proposed in accordance with §501.10 of this title (relating to Compliance with Goals and Policies), which requires state agencies to comply with CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. The GLO is proposing new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with CMP goals and policies. Rather than refer to the actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §13.54 refers to the actions listed in §16.1 of this title (relating to Definitions and Scope) because §16.1 sets out the actions listed in §505.11. Because Chapter 13 already addresses certain actions that could also affect coastal natural resource areas, the addition of §13.54 is necessary to ensure that GLO and SLB rules are consistent with CMP goals and policies. Proposed §13.54 specifies that the rules in Chapter 13 will be read in harmony with the GLO's goals and policies set out in the proposed new Chapter 16 of this title (relating to Coastal Protection).

Caryn K Cosper, Deputy Commissioner of Resource Management, Texas General Land Office, 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 resulting from administration of the rule. No additional administrative costs will be incurred as a result of this proposal.

Ms. Cosper also has determined that for each of the first five years the rule is in effect the anticipated public benefit will be consistency with CMP goals and policies, efficient resolution of any conflicting rules and statutes, and protection of state coastal natural resources. Ms. Cosper has determined that there will be no economic cost to persons required to comply with the rule. Ms. Cosper has determined that there will be no effect on small business resulting from adoption of the proposed rule.

Comments on the proposed rule may be submitted to Debbie Schilling, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax. (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on June 30, 1995.

The new rule is proposed under the Texas Natural Resources Code, §§31.051, 33.064, and 51.014, which authorize the GLO and/or the SLB to perform duties and adopt rules necessary for the adoption of the CMP goals and policies.

The Texas Natural Resources Code, Chapter 33 and Chapter 51, Subchapters D-I, is affected by the proposed new rule.

§13.54. Consistency with Coastal Management Program. Except as otherwise provided in §16.1(c) of this title (relating to

Definitions and Scope), an action listed in §16.1(b) of this title (relating to Definitions and Scope) taken or authorized by the GLO or SLB pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 of this title (relating to Definitions and Scope), is subject to and must be consistent with the goals and policies identified in Chapter 16 of this title (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16 of this title (relating to Coastal Protection), such conflicting provisions of Chapter 16 of this title (relating to Coastal Protection) will control.

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 May 16, 1995.

TRD-9505987 Garry Mauro
Commissioner
General Land Office

Proposed date of adoption August 15, 1995

For further information, please call: (512) 305-9129

Part IV. School Land Board

Chapter 153. Exploration and Development

Oil, Gas, and Mineral Lease Sales

• 31 TAC §153.4

The School Land Board (SLB) proposes new §153.4, concerning consistency with the Coastal Management Program (CMP) goals and policies.

Section 153.4 is added in accordance with §501.10 of this title (relating to Compliance with Goals and Policies), which requires state agencies to comply with CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. The General Land Office (GLO), with the approval of the SLB, is proposing new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with CMP goals and policies. Rather than refer to the actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §153.4 refers to the actions listed in §16.1 of this title (relating to Definitions and Scope) because §16.1 sets out the actions

listed in §505.11. Because Chapter 153 already addresses certain actions that could also affect coastal natural resource areas, the addition of §153.4 is necessary to ensure that SLB rules are consistent with CMP goals and policies. Proposed §153.4 specifies that the rules in Chapter 153 will be read in harmony with the GLO's goals and policies set out in the proposed new Chapter 16 of this title (relating to Coastal Protection).

Caryn K. Cosper, Deputy Commissioner of Resource Management, Texas General Land Office, 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 resulting from administration of the rule. No additional administrative costs will be incurred as a result of this proposal.

Ms. Cosper also has determined that for each of the first five years the rule is in effect the public benefits anticipated as a result of adding this proposed section will be consistency with CMP goals and policies, efficient resolution of any conflicting rules and statutes, and protection of state coastal natural resources. Ms. Cosper has determined that there will be no economic cost to persons required to comply with the rule. Mr. Cosper has determined that there will be no effect on small business resulting from adoption of the proposed rule.

Comments on the proposed rule may be submitted to Debbie Schilling, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax: (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on June 30, 1995

The new rule is proposed under the Texas Natural Resources Code, §33.064, which authorizes the SLB to adopt rules necessary to administer Texas Natural Resources Code, Chapter 33.

The Texas Natural Resources Code, Chapter 32, Subchapters D-F, and Chapter 33, Subchapter D, is affected by the proposed new rule.

§153.4. Consistency with Coastal Management Program. Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) of this title (relating to Definitions and Scope) taken or authorized by the GLO or SLB pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 of this title (relating to Definitions and Scope), is subject to and must be consistent with the goals and policies identified in Chapter 16 of this title (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16 of this title (relating to Coastal Protection), such conflicting provisions of Chapter 16 of this title (relating to Coastal Protection) will control.

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 May 16, 1995.

TRD-9505985

Garry Mauro
Commissioner
General Land Office

Proposed date of adoption: August 15, 1995

For further information, please call: (512) 305-9129

Chapter 155. Land Resources

Coastal Public Lands

• 31 TAC §155.1

The School Land Board (SLB) proposes an amendment to §155.1, concerning general provisions governing coastal public lands. The amendment is proposed to add subsection (d) concerning consistency with the Coastal Management Program (CMP) goals and policies, and to make minor editorial changes in §155.1(c)(10) and (20).

Section 155.1(d) is added in accordance with §501.10 of this title (relating to Compliance with Goals and Policies), which requires state agencies to comply with CMP goals and policies as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. The General Land Office (GLO), with the approval of the SLB, is proposing new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with CMP goals and policies. Rather than refer to the actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program), §155.1(d) refers to the actions listed in §16.1 of this title (relating to Definitions and Scope) because §16.1 sets out the actions listed in §505.11. Because Chapter 155 already addresses certain actions that could also affect coastal natural resource areas, §155.1(d) is necessary to ensure that SLB rules are consistent with CMP goals and policies. Proposed §155.1(d) specifies that the rules in Chapter 155 will be read in harmony with the GLO's goals and policies set out in the proposed new Chapter 16 of this title (relating to Coastal Protection).

Section 155.1(c)(10) and (20) are amended to reflect editorial changes only. In §155.1(c)(10), an extra, repeated word ("other") is being deleted. In §155.1(c)(20), the words "degradable" and "non-degradable" are being spelled correctly.

Caryn K. Cosper, Deputy Commissioner of Resource Management, Texas General Land Office, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local govern-

ment resulting from administration of the rule. No additional administrative costs will be incurred as a result of this proposal.

Ms. Cosper also has determined that for each of the first five years the rule is in effect the public benefits anticipated as a result of the proposed amendment will be consistency with CMP goals and policies, efficient resolution of any conflicting rules and statutes, correction of errors, elimination of duplicate rules, and protection of state coastal natural resources. Ms. Cosper has determined that there will be no economic cost to persons required to comply with the rule. Mr. Price has determined that there will be no effect on small business resulting from adoption of the proposed amended rule.

Comments on the proposed amendment may be submitted to Debbie Schilling, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax: (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on June 30, 1995.

The amendment is proposed under the Texas Natural Resources Code, §33.064, which authorizes the SLB to adopt rules necessary to administer Texas Natural Resources Code, Chapter 33.

The Texas Natural Resources Code, Chapter 33, is affected by the proposed amendment.

§155.1. General Provisions.

(a) (No change.)

(b) Scope of rules. These rules set forth the practice and procedure for administration by the board in granting a lease, easement, permit, and the registration of a structure on coastal public lands. All grants of interest are subject to these rules and regulations. The board may grant the following interest in coastal public lands for the indicated purposes:

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

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

(1)-(9) (No change.)

(10) Island—Any body of land surrounded by the waters of a salt water lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging of other [other] operations.

(11)-(19) (No change.)

(20) Waste and/or garbage—Includes discarded food, refuse, and unwanted man-made degradable [degradeable] and non-degradable [nondegradeable] items such as containers, equipment, and other rubbish.

(21) (No change.)

(d) Consistency with Coastal Management Program. Except as otherwise provided in §16.1(c) of this title (relating to Definitions and Scope), an action listed in §16.1(b) of this title (relating to Definitions and Scope) taken or authorized by the GLO or SLB pursuant to this chapter that may adversely affect a coastal natural resource area, as defined in §16.1 of this title (relating to Definitions and Scope), is subject to and must be consistent with the goals and policies identified in Chapter 16 of this title (relating to Coastal Protection) in addition to any goals, policies, and procedures applicable under this chapter. If the provisions of this chapter conflict with and can not be harmonized with certain provisions of Chapter 16 of this title, such conflicting provisions of Chapter 16 of this title (relating to Coastal Protection) will control.

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 May 16, 1995.

TRD-9505984 Garry Mauro
Chairman
School Land Board

Proposed date of adoption: August 15, 1995

For further information, please call: (512) 305-9129

• 31 TAC §155.3

The School Land Board (SLB) proposes an amendment to §155.3, concerning criteria for decisions regarding the granting of easements on coastal public lands. Section 155.3(g) is being deleted and subsequent subsections are renumbered accordingly. The General Land Office (GLO), with the approval of the SLB, is proposing Chapter 16 of this title (relating to Coastal Protection), which will include essentially all of the substantive provisions of the deleted subsection. Section 155.3(f)(4) is being amended to correct an earlier inadvertent word omission.

Section 155.3(g) lists the criteria for SLB decisions regarding applications for coastal easements. The proposed new Chapter 16 of this title (relating to Coastal Protection) adopts goals and policies consistent with the Texas Coastal Management Program, in accordance with §501.10 of this title (relating to Compliance with Goals and Policies), including goals and policies regarding applications for coastal easements. Section 155.3(g) is deleted to prevent duplication of rules governing coastal easements.

Garyn K. Cospers, Deputy Commissioner of Resource Management, Texas General Land Office, 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 amended rule.

Ms. Cospers also has determined that for each year of the first five years the rule is in effect the public benefits anticipated as a result of this amendment will be avoidance of any conflicting rules and statutes and protection of state coastal natural resources. Ms. Cospers also has determined that there will be no economic cost to persons required to comply with the rule, and that there will be no effect on small business resulting from adoption of the proposed amendment.

Comments on the proposal may be submitted to Debbie Schilling, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax: (512) 463-6311. In order to be considered, comments must be received by 5:00 p.m. on June 30, 1995.

The amendment is proposed under the Texas Natural Resources Code, Chapter 33, §33.064, which authorizes the SLB to adopt procedural and substantive rules necessary for the management of coastal public land.

The Texas Natural Resources Code, Chapters 32 and 33, is affected by the proposed amendment.

§155.3. Easements.

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

[(g) Criteria for decision. The board will review and consider an application for an easement on coastal public lands to insure conformity with the policies, practices, and procedures in these rules and regulations and will evaluate a project proposal in accordance with the following project activity guidelines:

[(1) Dock, pier, and wharf.

[(A) A dock, pier, or wharf should be constructed in a manner which does not constrict water flow and circulation.

[(B) The size and extension of the structure should be limited to that required for the intended use.

[(C) A dock, pier, or wharf should not unduly restrict navigation or public use of the waters.

[(D) A subdivision, motel, or multiple dwelling is encouraged to develop a single joint use moorage facility.

[(E) A project proposal should include facilities for the proper handling of waste, refuse, and petroleum products where applicable, as required by the Texas Water Quality Board.

[(F) The use of a pier, dock, or wharf in preference to a channel will be encouraged wherever practical.

[(G) The use of a pier or catwalk will be encouraged in preference to solid fills to provide needed access across biologically productive shallows and marshes to navigable water.

(2) Channel, boat, or ship basin.

[(A) To the extent feasible, project plans should utilize piers or catwalks to reach deeper water areas rather than channels or canals.

[(B) A channel or basin should be designed to insure adequate flushing and to prevent the creation of pockets or other hydraulic condition which would cause stagnant water pockets.

[(C) Dredging for navigational access should be well planned to prevent an unnecessary channel. Where several land owners are to be served by a project, peripheral canals leading to a central navigational channel should be considered rather than separate access channels for each waterfront landowner.

[(D) The alignment of a channel or canal should make maximum use of a natural or existing channel. Design and alignment should minimize disruption of natural sheetflow, water flow, and drainage systems.

[(E) Alignment of a channel or canal should avoid oyster reefs and highly productive wetland areas.

[(F) A channel proposed to be dredged through highly productive coastal public lands is discouraged and will be approved only in unusual circumstances.

[(G) Dredging should be conducted in a manner that minimizes turbidity and dispersal of dredged material.

[(3) Dredged material disposal area.

[(A) To the extent possible, all dredged material should be placed on suitable uplands above mean high water.

[(B) A disposal area should be located in a relatively low production area above the mean high water line.

[(C) Any toxic material should be disposed of in an upland area behind impervious dikes unless detoxification is undertaken.

[(D) Open water and deep water disposal should be considered as an alternative only if upland alternatives are not feasible. Open and deep water disposal sites, however, should be seriously considered only after careful consultation with concerned agencies.

[(E) Consideration of habitat creation and improvement should be made when only minor environmental damage results.

[(4) Jetty, groin, and breakwater.

[(A) A plan for construction of a jetty, groin, or breakwater should be analyzed to insure that the structure does not create adverse sediment transportation patterns that induce erosion or undesirable shoaling in adjacent areas.

[(B) In addition to adverse physical effects, care must be taken that a jetty or groin does not unduly interfere with public use.

[(5) Bulkhead and seawall.

[(A) Except in special circumstances, a bulkhead or seawall should be located no further seaward than the mean of the high water line, and designed so that reflected wave energy does not destroy stable marine bottom or constitute a safety hazard.

[(B) Where possible, sloping riprapping should be used rather than a vertical seawall or bulkhead.

[(C) Bulkhead construction should avoid hard angle turns that may collect trash or cause a shoaling or flushing problem.

[(D) An application for the construction of a bulkhead on a significant coastal public marsh or grassflat, where such will lead to the destruction of this resource, will normally be denied. To avoid this, extreme care should be taken as to the location and type of construction planned for bulkheads in a wetland area.

[(6) Marina.

[(A) A marina should be located in an area where maximum physical advantages exist and where least dredging and maintenance will be required.

[(B) Plans for a marina should minimize the disruption of currents and the need for excavation of the shore area.

[(C) Open dockage extending to deep water should be considered as an alternative to dredging for navigational access where feasible.

[(D) A turning basin or navigation channel should be designed to prevent long-term degradation of water quality. A dead end or deep canal without adequate flushing should be avoided.

[(E) Each marina shall provide adequate facilities to its users for the reception of waste and/or garbage. Failure to insure that the users of a marina have access to facilities necessary for the proper and lawful disposal of waste and/or garbage on an ongoing basis shall subject both the easement to termination and the easement holder to any applicable civil and criminal penalties.

[(7) Landfill.

[(A) A landfill proposed in marshes and submerged grass bed areas normally will be denied. Consideration will only be given to a landfill proposal for a water dependent use or public use on relatively unproductive coastal public lands.

[(B) A shoreline fill should be designed and located so that significant damage to existing ecological values or natural resources, or alternation of natural currents will not occur.

[(C) The perimeter of fills should be provided with vegetation, retaining walls, riprap, or other mechanisms for erosion prevention.

[(D) Fill material should be of such quality that it will not cause water quality degradation. Submerged land should not be considered for a sanitary landfill or the disposal of solid waste.]

[(g) [(h)] Consideration of application. The board will review and consider an application for a channel easement to a mineral interest holder on coastal public lands to insure conformity with the policies, practices, and procedures in these rules and regulations. Environmental recommendations for certain development and production activities will be provided to the mineral interest holder on bay tracts and certain other tracts in the notice of bids booklet published by the General Land Office. Updates of these recommendations

will be furnished on request. Development activities conforming with these environmental recommendations normally will receive favorable consideration by the General Land Office.

[(h) [(i)] Application criteria. An easement, if granted by the board, will be subject to these rules and regulations in addition to those as may be prescribed in the contractual agreement. The board may waive a rule at its discretion. All structures on coastal public lands will be subject to inspection at any time by the board or their authorized representatives. Any easement contract will be for a specific purpose. If a change in the contractual agreement is desired, an amendment application should be filed with the board. An applicant by accepting an easement to occupy or otherwise place a structure on coastal public lands or water surface areas agrees and consents to comply with and be bound by the following additional terms and conditions:

(1) to keep the commissioner informed at all times of his or her address, and if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice;

(2) that the allowance of the easement will be subject to the express condition that the rights granted will not unduly prevent or interfere in any way with the management, administration of, or the granting, either prior or subsequent to the easement, of other rights by the board of any part of the area included in the easement;

(3) that the structure authorized under contract will be maintained in proper order and will not be allowed to deteriorate to such a degree as to become a hazard or public nuisance;

(4) that all of the surface estate of coastal public lands shall be worked, dredged, filled, or used in such a manner as to prevent pollution, and in the event of pollution, the easement holder shall use all reasonable means to recapture all pollutants which have escaped. The easement holder shall be responsible for all damage to public and private property which is the result of pollution arising from any use of the easement or failure to provide adequate facilities for the reception of waste and/or garbage;

(5) that the disposal or discharge of any waste or garbage into state waters from any marina, pier, dock, wharf, or any other structure located on coastal public lands is strictly prohibited;

(6) that the applicant, at its own expense, shall post at least one sign for each structure located on coastal public lands, at a location with the highest apparent pedestrian traffic, with letters at least one inch in

size, which shall read "Any dumping or discharge of waste or garbage into state waters is strictly prohibited and will subject any violator to the full penalty provided by law."

(i)[(j)] Renewals. A request for renewal of an easement shall utilize the contract form, rate schedule, and adhere to rules and regulations in effect at the time the renewal is made. Any person requesting a renewal must submit an application form as required in this rule and should include the easement number and date of expiration of the existing easement.

(j)[(k)] Assignment. Assignment may be made of any interest rights granted in whole or in part subject to the written approval of the commissioner. Any such assignment must be filed in triplicate accompanied by a written request for approval in which the assignee agrees to comply with all rules and regulations contained herein and in the contractual agreement. A fee of \$50 payable to the General Land Office must accompany the application for approval of an assignment. No assignment is effective to transfer any rights until approved by the commissioner, the grantee, and the assignee.

(k)[(l)] Termination. Failure to comply with these rules and regulations subjects the easement to termination by the board.

(1) Upon termination of any easement, the grantee will, at the option of the board, within 120 days from said termination, remove all of its personal property and all structures and manmade improvements authorized in the easement contract, provided all monies due have been paid. The grantee shall take whatever measures as are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any structures thereon, except as otherwise approved in writing by the commissioner.

(2) The board may consent to premature termination of all or part of any contractual agreement

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 May 16, 1995.

TRD-9505982

Garry Mauro
Commissioner
General Land Office

Proposed date of adoption: August 15, 1995

For further information, please call: (512) 305-9129

• 31 TAC §155.8

The School Land Board (SLB) proposes an amendment to §155.8(c), concerning certain permits required from the Texas Parks and Wildlife Commission (commission). The

amendment will not change the substance of the section but will harmonize the section with the language of the relevant statute, correctly identify the commission and certain statutes, and acknowledge and incorporate the interpretation of Texas Parks and Wildlife Code, §86.02 announced in Open Texas Attorney General Number JM-1190 (1990). The amendment will also revise §155.8(e) to change the reference to the Texas Water Quality Board to a reference to the agencies that currently have requirements regarding waste discharge permits, the Texas Natural Resource Conservation Commission and the Railroad Commission of Texas.

Texas Parks and Wildlife Code, §86.002, is the codification of previous Texas Civil Statutes, Article 4051. Section 86.002(a) provides that no person may disturb or take marl, sand, gravel, shell, or mudshell from land managed by the commission without first obtaining a permit from the commission, other than as necessary or incidental to navigation or dredging under state or federal authority. Pursuant to §86.001, the lands managed by the commission are those located within the tidewater limits of the state, and on islands within those limits, and within the freshwater areas of the state not embraced by a survey of private land, and on islands within those areas. (Section 155.8(c) erroneously refers to the Texas Parks and Wildlife Department, rather than the commission.) The amendment to §155.8(c) will correctly identify the commission, will refer to the Texas Parks and Wildlife Code, §86.002 rather than to Article 4051, and will specify the lands managed by the commission.

On July 25, 1990, after the original promulgation of §155.8(c), the Attorney General issued Open Texas Attorney General Number JM-1190 (1990), which clarified that certain easements issued by the SLB, including those for dredging, are actions taken "under state or federal authority" as that phrase is used in Texas Parks and Wildlife Code, §86.002. Actions taken under state or federal authority that result in a disturbance or taking of the listed materials are not subject to the permitting authority of the commission. Section 155.8(c) is amended to incorporate the opinion in JM-1190. The rule now states that a permit is required from the commission for the disturbance or taking of marl, sand, gravel, shell, or mudshell unless the disturbance or taking is necessary or incidental to navigation or dredging under a lease, easement, permit, or other authority issued by the SLB.

Christopher K. Price, Deputy Commissioner, Asset Management Division, Texas General Land Office, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications to state or local government resulting from enforcing or administering the amended section

Mr. Price also has determined that for each of the first five years the amendment is in effect the anticipated public benefit will be correction and clarification of the permitting requirements described in the rule. Mr. Price has determined that there will be no economic cost to persons required to comply with the rule. Mr. Price has determined that there will

be no effect on small business resulting from adoption of the proposed amended rule.

Comments on the proposed amendment may be submitted by 5:00 p.m. on June 30, 1995, to Debbie Schilling, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 630, Austin, Texas, 78701-1495, Fax: (512) 463-6311.

The amendment is proposed under Texas Natural Resources Code, §32.061, which provides that the SLB shall perform any duties that may be required by law, and §32.062, which provides that the SLB shall adopt rules of procedure and rules for the sale and lease of land.

Texas Natural Resources Code, Chapter 33, will be affected by the proposed amendment.

§155.8. Federal, State, and Local Laws and Regulations.

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

(c) An applicant must obtain a permit [Permits are required] from the Parks and Wildlife Commission (commission) [Department] for the disturbance or taking of marl, sand, gravel, shell, or mudshell from land located within the tidewater limits of the state, and on islands within those limits, and within the freshwater areas of the state not embraced by a survey of private land, and on islands within those areas, as provided in Texas Parks and Wildlife Code, §86.002, unless the disturbance or taking is necessary or incidental to navigation or dredging under a lease, easement, permit, or other authority issued by the board [removal of sand, shell, gravel, and/or marl from state-owned lands as provided in Texas Civil Statutes, Article 4051]. Compliance with the commission's requirements [of the department] does not obviate the necessity to comply [of compliance] with the board's rules [of the board] when the board determines [it is determined by the board] that the disturbance or taking of marl, sand, gravel, shell, or mudshell from lands managed and protected by the commission [removal of sand, shell, gravel, or other material from coastal public lands] is for channel, ship, or basin purposes or a structure within the meaning of Texas Natural Resources Code, Chapter 33 [the Act].

(d) (No change.)

(e) Compliance with rules of the board does not obviate the necessity of compliance with requirements of the Texas Natural Resource Conservation Commission or the Railroad Commission of Texas [Water Quality Board] with respect to waste discharge permits or certification of dredging operations, or with requirements of any other federal, state, or local government having jurisdiction over activities on coastal public lands and waters.

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 May 16, 1995.

TRD-9505983

Garry Mauro
Commissioner
General Land Office

Proposed date of adoption: August 15, 1995

For further information, please call: (512) 305-9129

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

• 37 TAC §81.2

The Texas Youth Commission (TYC) proposes new §81.2, concerning public and media. The new rule provides guidelines for TYC employee to communication with the general public and media. Specific limitations on media access to TYC youth and youth to media. Limitations are based on youth confidentiality requirements.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clear rules governing communication between TYC youth and employees and the general public and media. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§81.2. Public and Media.

(a) Policy. The Texas Youth Commission (TYC) supports open communication with the general public. TYC employees discussing agency business must do so from an informed position. Release of

records or divulgence of information which is confidential by law or which identifies individual youth is prohibited. Communications with the general public should follow rules set forth by the agency.

(b) Rules.

(1) Employee Communication.

(A) Communication with special interest groups and other professional organizations is encouraged.

(B) Employees asked to speak to an organization obtain approval to do so from their immediate supervisors.

(C) When an employee accepts a speaking engagement representing TYC, he will ensure that the presentation accurately reflects agency policy and procedures. Personal opinion will be identified as such.

(D) Questions from news media or general public must be answered from an informed position or referred to knowledgeable staff.

(i) Questions about controversial or sensitive agencywide policies, programs or issues should be referred to the central office administrative assistant.

(ii) Questions about controversial or sensitive local matters should be referred to the program administrator or volunteer coordinator.

(iii) Expression of personal opinion should be identified as such.

(E) All news media interviews and radio and television coverage must be reported by the local program administrator to the central office administrative assistant to the executive director by the end of the same day they are scheduled or held.

(F) All related newspaper articles must be mailed by the local program administrator to the administrative assistant to the executive director the day they appear. When inaccurate or questionable articles appear, the administrative assistant must be notified immediately by telephone or telex in addition to mailing the articles.

(G) Program administrators who plan to release a news release, feature article or public service announcement on local programs, first consult the administrative assistant to the executive director.

(2) Youth Contact.

(A) TYC fosters media contact which serves the interest of public awareness and to encourage the youth to give back to the community.

(B) The news media is granted access to TYC facilities as is any visitor consistent with the preservation of a youth's privacy and the maintenance of order and security in the facility.

(C) Youth are provided access to members of the news media as they are to any other person in accordance with Basic Youth Rights, GOP.61.01.

(D) General news media visits do not require parental consent.

(E) Non-TYC personnel are not permitted to make audio or visual recordings of any treatment session(s) addressing personal or confidential information.

(F) Requests by news media to interview or film specific youth shall be referred to a local review committee consisting of the following staff, where applicable: program director/supervisor of the program to be involved in the interview, director of psychology, the youth's PSW, youth rights specialist, and youth's TYC therapists.

(i) The review committee makes a recommendation to the superintendent or regional director regarding the advisability of granting the interview. The superintendent/regional director decides whether to advise the youth to grant the interview or to advise him/her not to grant the interview. He/she then directs the youth's primary therapist/PSW to advise the youth accordingly.

(ii) The PSW/therapist explains the recommendation to the youth and the youth's parent or guardian, if the youth is under 18 years of age. When the recommendation is against granting an interview, the request will be denied unless the youth and the youth's parent or guardian, if the youth is under 18 years of age, signs a written statement acknowledging the recommendation and electing to go forward with the interview (or filming) despite the recommendation.

(iii) The PSW will ensure all interviews or filming of individual youth are subject to the following conditions:

(I) Prior to each interview or filming, The Publicity Release form, shall be explained to the youth and the youth shall sign form CCF-025.

(II) Prior to each interview or filming, the youth shall be informed that the interview is voluntary that he/she may refuse to answer any questions during the interview, and that he/she may stop the interview at any time.

(III) Prior to each interview or filming, the youth shall indicate, on the form whether he/she wants the primary therapist/designee to be present during formal or on-camera interviews.

(3) Other Communication. Communications by volunteers, consultants and others shall be governed by paragraph (1)(A)-(G) of this subsection for employee communications as if the volunteers, consultants or others are employees.

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 May 16, 1995.

TRD-9505942 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption. June 23, 1995

For further information, please call: (512) 483-5244

Chapter 91. Discipline and Control

Control

• 37 TAC §91.59, §91.63

The Texas Youth Commission (TYC) proposes amendments to §91.59, concerning use of force and §91.63, concerning mechanical restraint equipment. The amendments will require TYC staff to place youth in approved ankle cuffs during transportation to a high or maximum restriction program, and allow TYC staff to place youth in approved equipment to restrict movement during transportation when the behavior of the youth prior to or during transportation leads staff to believe the youth will attempt to escape or engage in violent behavior or self harm.

John Franks, Director of Finance, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Franks also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased safety for the driver, passengers, and the public when TYC youth are being transported. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendments are proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions

The proposed rules implement the Human Resource Code, §61.034.

§91.59. Use of Force.

(a) (No change.)

(b) Rules.

(1) (No change.)

(2) Criteria for Use. The use of physical force (to restrain or compel movement) is limited to instances of:

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

(E) prevention of escapes or attempted [; including] escapes. [, attempts, and use during transportation when:

(i) the youth has a history of escape or violent behavior; or

(ii) behavior of the youth prior to or during transportation lead staff to believe the youth will attempt to escape and/or engage in violent behavior; and]

(F) (No change.)

(G) transportation, when circumstances create a risk of escape or harm.

(i) Mechanical ankle restraints shall be used when a youth is being transported to a high or maximum restriction program.

(ii) Mechanical ankle and/or hand restraints may be used when a youth's behavior prior to or during transportation leads staff to believe the youth is likely to attempt to escape, engage in violent behavior, or harm himself if not restrained.

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

§91.63. Mechanical Restraint Equipment.

(a) (No change.)

(b) Rules.

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

(3) Approved Equipment. The following restraint devices are approved for use by TYC staff. All other devices are specifically disapproved.

(A)-(E) (No change)

(F) Locked Waist Band [Belts]-A cloth [or] leather, or metal band fastened around the waist. The belt is used to secure the arms to the sides or front of the body.

(G)-(J) (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 May 16, 1995

TRD-9505944 Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: June 23, 1995

For further information, please call: (512) 483-5244

• 37 TAC §91.65

The Texas Youth Commission (TYC) proposes an amendment to §91.65, concerning security unit. The amendment will clarify that a Youth Activity Supervisor III or IV position employee who has been designated by the superintendent and trained in security unit placement policy, may be responsible for admitting a youth to the security unit in a TYC training school.

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

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient system of admitting youth to the security unit in TYC facilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765

The amendment is proposed under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034.

§91.65. Security Unit.

(a) Policy. The Texas Youth Commission (TYC) refers to security as the in-

stitutional unit or building, which is designed and operated for the segregation of youth from the general population and which is controlled exclusively by staff. Placement in security is a serious and extreme measure which may be imposed only in specific situations. Security shall not be used for retribution at any time. Also see GOP.67.19, §91.69 of this title relating to Detention.

(b) Rules.

(1) Admission to Security.

(A) (No change.)

(B) A youth may be admitted to security only with the approval of the superintendent, acting superintendent, the youth's caseworker, [his substitute], or a designated YAS III or IV trained in security policy and procedure to admit youth to the security unit. [a child care professional designated by the superintendent.]

(C) Within 50 minutes of the referral the responsible staff shall determine whether the youth meets admission criteria and whether to admit the youth to the security unit. [The superintendent or his substitute may extend the 50-minute time limit up to one additional hour if requested and necessary.]

(D) The superintendent or his substitute may extend the 50-minute time limit up to one additional hour if requested and necessary.

(2)-(6) (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 May 16, 1995.

TRD-9505943

Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: June 23, 1995

For further information, please call: (512) 483-5244

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 11. Food Distribution and Processing

Food Distribution Program

• 40 TAC §11.123

The Texas Department of Human Services (DHS) proposes new §11.123, concerning soup kitchens, food banks, and institutions, in its Food Distribution and Processing chapter. The purpose of the new section is to document the regulatory basis for distributing §110 commodities

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

Mr. 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 to provide public access to correct information. There

will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Questions about the content of the proposal may be directed to Johnny Adams at (512) 467-5822 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-312, 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 new section 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 new section implements the Human Resources Code, §§22.001-22.024 and §§33.001-33.024.

§11.123. Soup Kitchens, Food Banks, and Institutions. The Texas Department of Human Services distributes food donated to Texas under §110 of the Hunger Prevention Act of 1988 to eligible soup kitchens, food banks, and institutions in quantities, values, and types according to 7 Code of Federal Regulations, §250.52.

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 May 16, 1995.

TRD-9505920

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Proposed date of adoption: August 1, 1995

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

WITHDRAWN RULES

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**.

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 409. Medicaid Programs

Subchapter J. Reimbursement for Services in Institutions for Mental Diseases (IMD)

- 25 TAC §§409.371-409.380

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §§409.371-409.380, submitted by the Texas Department of Mental Health and Mental Retardation, has been automatically withdrawn, effective May 16, 1995. The new sections as proposed appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8928).

TRD-9506029

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 21. Trade Practice

Subchapter J. Prohibited Trade Practices

- 28 TAC §21.1006

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §21.1006, submitted by the Texas Department of Insurance, has been automatically withdrawn, effective May 16, 1995. The new section as proposed appeared in the November 15, 1994, issue of the *Texas Register* (19 TexReg 8938).

TRD-9506030

◆ ◆ ◆

Name: Chris (Heidi) Medrano
Grade: 11
School: Boling High School, Boling 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 1. ADMINISTRATION

Part VII. State Office of Administrative Hearings

Chapter 155. Rules of Procedure

- 1 TAC §§155.3, 155.5, 155.11, 155.15, 155.22, 155.23, 155.25, 155.27, 155.33, 155.45

The State Office of Administrative Hearings adopts amendments to §§155.3, 155.5, 155.11, 155.15, 155.22, 155.23, 155.25, 155.27, 155.33, and 155.45, concerning the rules of practice and procedure before the Office, without changes to the proposed text as published in the April 11, 1995, issue of the *Texas Register* (20 TexReg 2689).

The amendment to §155.25, concerning prehearing conferences, are adopted to streamline procedures in contested case hearings. The amendments add five matters to the list of prehearing topics, rearrange the topics in probable order of occurrence in a contested case proceeding, and move all other topics in the prehearing conference rule to §155.27. The amendment to §155.27, concerning orders, change the references in the rule to orders instead of prehearing orders because judges issue many orders at other than the prehearing stage of a case, and delete specific requirements (e.g., a 14-day deadline and required supplementation of prehearing statements) so that judges can tailor orders to the specific needs of each case.

The amendment to §155.33, concerning motion practice, are adopted to streamline procedures and reflect more closely the needs and practices of participants in contested case hearings. The amendments treat motions for continuance separately from other motions, creating a five-day filing deadline except for good cause shown, requiring service on the same date filed for motions for continuance filed five days or less prior to hearing, changing the deadline for responses to motions for continuance from seven to three days after receipt, and requiring parties asserting "good cause" to be prepared to prove the assertion. The amendments concerning other motions change the filing dead-

line from 15 to seven days prior to hearing, change the deadline for responses to motions from seven to five days after receipt, and require parties asserting "good cause" to be prepared to prove the assertion.

The amendments to §§155.3, 155.5, 155.11, 155.15, 155.22, 155.23, and 155.45 are adopted to change the statutory citations in the rules, because the statutes referenced, the Administrative Procedure and Texas Register Act (APTRA), Texas Civil Statutes, Article 6252-13a, and Texas Civil Statutes, Article 6252-13f, were repealed and reenacted as Chapters 2001 and 2003 in Title 10 of the Texas Government Code, effective September 1, 1993.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings; and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

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 May 12, 1995.

TRD-9505915 Shelia A. Bailey
Deputy Chief Administrative
Law Judge
State Office of
Administrative Hearings

Effective date: June 6, 1995

Proposal publication date: April 11, 1995

For further information, please call: (512) 475-4993

Chapter 157. Temporary Administrative Law Judges

- 1 TAC §157.1

The State Office of Administrative Hearings adopts an amendment to §157.1, concerning the employment of temporary administrative law judges, without changes to the proposed

text as published in the April 11, 1995, issue of the *Texas Register* (20 TexReg 2692).

The amendment is adopted because the Administrative Procedure and Texas Register Act (APTRA) was repealed and reenacted as the Administrative Procedure Act (APA) in Title 10 of the Texas Government Code, effective September 1, 1993, necessitating the changing of references to the repealed statute's short title to reflect the statute's new short title.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 2003, which authorizes the State Office of Administrative Hearings to conduct contested case hearings; and Government Code, Chapter 2001, §2001.004, which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

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 May 12, 1995.

TRD-9505914 Shelia A. Bailey
Deputy Chief Administrative
Law Judge
State Office of
Administrative Hearings

Effective date: June 6, 1995

Proposal publication date: April 11, 1995

For further information, please call: (512) 475-4993

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 404. Protection of Clients and Staff

Subchapter A. Abuse, Neglect, and Exploitation in TDMHMR Facilities

• 25 TAC §§404.1-404.17

The Texas Department of Mental Health and Mental Retardation (TDMHMR) adopts new §§404.1-404.17, concerning abuse, neglect, and exploitation in TDMHMR facilities. Sections 404.3-404.11 and 404.14-404.16 are adopted with changes to the text as published in the February 24, 1995, issue of the *Texas Register* (20 TexReg 1320). Sections 404.1-404.2, 404.12-404.13, and 404.17 are adopted without changes and will not be republished.

The new sections outline the department's responsibilities relating to reporting and responding to allegations of abuse, neglect, and exploitation in TDMHMR facilities to the Texas Department of Protective and Regulatory Services (TDPRS). In accordance with House Bill 7 (72nd Legislature), responsibility for investigations of allegations of abuse, neglect, and exploitation of persons served by TDMHMR facilities transferred to TDPRS in September 1992. The proposal of companion sections represents the clear delineation of each agency's responsibilities relating to reporting allegations of abuse, neglect, and exploitation; investigation of the allegations; and action taken as a result of the allegation and investigation.

A definition of "child" is added to §404.3. Also in §404.3 (and throughout the subchapter), the term "clinical issues" is changed to "clinical practice," and an explanation of what the phrase includes is added. The definition of "Office of Facility Investigations, TDPRS," is deleted because it is not used in the subchapter. The definition of "head of the facility" is revised to include the designee of the superintendent or director of the facility. The term "or designee" is deleted throughout the subchapter since it is now included in the term "head of the facility." The definition of "sexual abuse" is revised to clarify that the term "with sexual intent" applies equally to each of the terms listed ("kissing, hugging, stroking, and fondling. . ."). The definition of sexual exploitation is revised to clarify that it does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

The definition of "neglect" in §404.4(a)(3) is revised to incorporate language included in the Protection and Advocacy for Mentally Ill Individuals Act (42 CFR §10801 et seq). It is clarified that, in accordance with current procedure, complaints relating to staffing ratios or treatment plan issues which do not relate to a specific incident of abuse or neglect will

continue to be referred to the head of the facility for administrative investigation and action. The term "abuse" is replaced with "abuse, neglect, or exploitation" in §404.4(c). In addition, §404.4(c)(4) is revised to include additional examples of items that may be referred back to TDMHMR for administrative investigation and action.

It is clarified in section 404.5(c) that pregnancy of a person served must be reported for investigation as abuse, neglect, or exploitation if there is medical verification that there is "a reasonable expectation" that conception could have occurred while the person was a resident of the facility or contractor. Section 404.5(e) is revised to clarify that employees found to have made false statements of fact during an abuse investigation are also subject to disciplinary action. Paragraph (f) is added to the section to clarify that in addition to reporting to TDPRS, employees are required to take appropriate steps to safeguard evidence, if any. Similar language was formerly cited as §404.6(b).

The title of §404.6 is changed to "Reporting of Aggressive Actions by Persons Served Other Than Sexual Abuse" to better reflect the section's content. Section 404.6(a) is revised to reference Chapter 404, Subchapter G (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities). Section 404.6(b) is deleted; its content is moved to §404.5(f).

Section 404.7(b)(1) has been revised to clarify that the head of the facility may take immediate action concerning an employee even if the employee is a physician, nurse, or dentist, and the allegation has been referred to peer review. It is also clarified that employees may be terminated pending investigation in accordance with procedures outlined in §3.112 of the Human Resources Operating Instruction (relating to Separations, Suspensions, and Demotions). Section 404.7(b)(2) is revised to clarify that persons served who are involved in aggressive action, whether reported to TDPRS (if sexual abuse) or investigated according to Chapter 404, Subchapter G (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities) should be reported to their treatment team or interdisciplinary team.

Section 404.7(b)(4) is revised to clarify that the parents, spouse, or other appropriate relative of the alleged victim are only notified of the allegation with the consent of the person served or his or her guardian. Similar clarifications are made to §404.9(i) and §404.10(a)(6).

New §404.8(c) is added to clarify requirements for reporting allegations of abuse, neglect, or exploitation by physicians, nurses, or dentists to the TDMHMR Medical, Nursing, or Dental Director, as appropriate. Old 404.8(c) is renumbered as (d).

It is clarified throughout §404.9 that the finding of TDPRS is only a recommendation, and that TDMHMR makes the final determination of the outcome of the investigation. This clarification appropriately reflects TDPRS' advisory relationship with TDMHMR. Language in §404.9(b)(2) is revised to parallel language in Chapter 710, Subchapter A (relating to Abuse

and Neglect of Persons Served by TDMHMR Facilities).

In §404.10(2)(D), the definition of neglect is revised to correspond with the definition of neglect found in the Protection and Advocacy for Mentally Ill Individuals Act (42 CFR §§10801 et seq).

It is clarified that the employee's work record is the record referred to in §404.10(1)(C). Section 404.10(4) is revised to clarify the documentary evidence the employee who has been disciplined is entitled to review. Section 404.10(5) is revised to reflect that, pending investigation, the head of the facility may terminate an employee in accordance with procedures outlined in §3.112 of the Human Resources Operating Instruction. Section 404.10(6) is revised to reflect that the grievance is with the disciplinary action taken, not the findings of the investigation.

It is clarified throughout §404.11 that the finding of TDPRS is only a recommendation, and that TDMHMR makes the final determination of the outcome of the investigation. This clarification appropriately reflects TDPRS' advisory relationship with TDMHMR.

Section 404.14(a)(2) is revised to delete reference to training on definitions and instead focus training on acts and signs of possible abuse, neglect or exploitation. It is also clarified that training includes methods of preventing abuse, neglect, or exploitation. The term "accused" is deleted from §404.15(b)(3) and replaced with "alleged perpetrator"; information that may be provided to the alleged perpetrator is clarified. Section 404.16 is revised to reflect updated references.

A public hearing to accept oral testimony relating to the proposed subchapter was held on March 7, 1995, in Austin, where testimony was received from five individuals or organizations, including: RAJ Court Monitor, Austin; Advocacy, Inc., Austin; Texas Mental Health Consumers, Austin; Mary Dees, Austin; and Dian Cox, Austin. In addition, written comments were received during the public comment period from: Advocacy, Inc, Austin; TEXAMI, Austin; and Clyde Preddy, Bryan. All commenters offered recommendations for changes.

A commenter asked that TDMHMR and TDPRS work together to develop procedures that determine and remedy deficiencies and conflicts that impair objective and true findings in abuse and neglect cases. The department responds that the process of contemporaneously proposing companion rules for public comment has provided both agencies with significant opportunity to identify and attempt to remedy a variety of issues relating to the abuse and neglect process. It is our hope that the adoption of these subchapters represents a step in the right direction toward improving the quality of investigations. The agencies will continue to work together in identifying and remedying difficulties as they arise.

A commenter noted that although prevention is listed in the purpose, the subchapter does not actually address the issue. The department responds that prevention of abuse, neglect, and exploitation is an essential part of

training required for all employees; preventive skills, including identifying burnout and managing anger are included. Language has been added to §404.14(a)(2) to reflect this.

A commenter requested that the decision to have TDPRS notify law enforcement be reconsidered. The commenter noted that MHMR staff should be responsible for reporting allegations that should be reported to law enforcement. The department responds that the decision to have TDPRS report crimes to law enforcement was determined to be the most efficient means of accomplishing this very important responsibility. TDPRS is familiar with the types of allegations that need to be reported to law enforcement. Language in §404.7(a) requires the APS investigator, when notifying the head of the facility of the allegation, to inform the head of the facility at that time whether or not the allegation will be reported to law enforcement. If the APS investigator indicates that he or she will not be making a report to law enforcement, the head of the facility may always elect to do so if he or she believes it is appropriate. Similarly, staff members are not precluded from contacting law enforcement if they wish to do so.

One commenter noted that it is somewhat difficult to follow the abuse and neglect process since it is spread over two rules. Both agencies agree, and a flow chart has been created and will be distributed with the subchapters.

A commenter addressed the need for extensive training for investigators and mental health workers, so they are aware of the potential impact of their words. The commenter noted that it's important for workers to hear from people in the area or locale of the state they work in and take in the ethnic and cultural issues. The department agrees, and considers sensitivity and cultural awareness training essential. The creation of a new "workforce diversity" office within Central Office may help to further enhance the quality of diversity training in the agency.

Another commenter observed that the system as created appears to be bifurcated, and does not lend itself to full disclosure of information regarding the process and results of the investigation. The commenter asked several questions relating to how the information relating to TDPRS recommendation and the facility's finding would be communicated to interested parties and data maintained. The department responds that §404.9(h) and (i) have been revised to reflect that notifications will include both TDPRS' recommended finding and the head of the facility's final determination. Data concerning both the recommendation and the finding is maintained on the AN-1-A.

Several commenters recommended that a process be established for appealing the determination of whether abuse is confirmed or unconfirmed by the head of the facility. The department agrees with this recommendation, and a process has been incorporated in §404.9(j).

A commenter noted that the rules give the head of the facility a great deal of authority. The commenter noted that not only can he or she overturn the TDPRS ruling, but he or she

has unlimited judgment in how he or she will protect the victim. The commenter suggested adding more guidance. The department responds that the head of the facility isn't actually overturning TDPRS' ruling; rather, he or she is acting on a recommendation of TDPRS. Because TDPRS is only in an advisory role to TDMHMR, the head of the facility must have the ability to review the case and make the final determination. With regard to how to protect the victim, each situation is different, and it would not be feasible to offer a set of guidelines outlining actions to be taken in each situation. The head of the facility must make judgments concerning the most effective means of protecting the victim.

Several commenters expressed concern about the inclusion of the definitions for "abuse of a child" and "neglect of a child," noting that certain aspects of these definitions did not seem appropriate for facilities. Other commenters noted that the definitions rested on observable and material impairment in the child's growth, development, or psychological functioning as opposed to the mere act of abuse. Several commenters offered specific recommendations concerning language that might be added to improve the definitions.

The department agrees that the definitions are somewhat confusing, but is required by the Health and Human Services Commission to use them. The definitions are taken directly from the Family Code and cannot be revised except statutorily. Section 404.9 has been revised to delete reference to training on the specific definitions found in this subchapter; in its place, we have noted that training will instead focus on specific acts and signs of abuse, neglect, or exploitation that should be reported. In practice, TDPRS will have responsibility for reviewing all allegations after completing an investigation to determine whether or not the incident would fall into the categories of abuse or neglect of a child and statistics reported to HHSC.

Concerning the definition of "neglect," several commenters requested that the definition of neglect found in the Protection and Advocacy for Mentally Ill Individuals Act (42 CFR §10801 et seq.) be used. The department agrees, and the definition has been added to §404.4 and §404.10. As is currently the case, however, complaints related to staffing ratios and treatment planning issues which are not related to a specific incident of abuse or neglect will continue to be referred back to TDMHMR for administrative investigation and action.

With regard to §404.5(a), a commenter expressed concern about the hour timeframe for reporting abuse. The commenter noted that many things can happen to evidence in one hour. The department responds that one hour is provided as the maximum timeframe in which abuse or neglect should be reported. Generally, it will not take this long, although dealing with the immediate situation (e.g., taking care of the victim) may preclude immediate reporting. Section 404.5(f) requires employees to take appropriate steps to safeguard evidence, if any.

Relating to §404.5(e), a commenter noted that the department should take disciplinary action against employees who give false in-

formation, deny, or withhold information through the investigatory process. The TDMHMR Human Resources Operating Instruction states that employees may be subject to disciplinary action for making false statements of fact during investigations. Similar language has been added to this section.

Concerning the same section, the commenter also recommended that disciplinary action include, at minimum, leave without pay for a specified number of days. The commenter also noted that a record should be kept of individuals who fail to report and appropriate action taken if a pattern occurs with a particular individual. The commenter noted that failure to report constitutes failure to provide a safe environment, and should be treated as neglect.

The department responds that the head of the facility must be permitted the ability to judge the most appropriate means of disciplining an employee for an action, including failure to provide information in an investigation. All disciplinary actions are documented, and it is reasonable to expect that disciplinary action would be more severe for those individuals who showed a pattern of such action.

Also concerning §404.5(a), a commenter suggested that more emphasis should be placed on immediate reporting, and that only a few excuses, including inoperable phones, inability to release a patient from hold, or no client or staff within voice range physically free to make a call, should be considered significant enough to overlook failure to report within one hour. The commenter expressed concerns that evidence can be destroyed or lost and accounts can be compared and adjusted within one hour. The department responds that it takes the one-hour reporting mandate very seriously, and requires that sufficient justification exist if the mandate is not met. However, it would not be feasible to identify every situation in which it would or would not be acceptable and list them. As previously noted, §404.5(f) requires employees to take appropriate steps to safeguard evidence, if any.

With regard to §404.7(a), a commenter expressed concern that the APS investigator might not have sufficient information to respond to the questions of law enforcement when reporting allegations of criminal action to them. The department responds that APS investigators are aware of the information law enforcement officials need to have, and would attempt to obtain this information from the reporter prior to calling law enforcement.

Concerning the same section, a commenter noted that the requirement that TDPRS report to law enforcement should not preclude TDMHMR employees from also doing so. The department responds that nothing in the subchapter currently precludes such action.

Relating to §404.7(b), a commenter suggested that the one-hour timeframe for ensuring appropriate medical care was too long. The commenter noted that a person could bleed to death in 15 minutes or less. The department responds that the one-hour timeframe is intended to allow some assessment of the severity of the incident. If someone were bleeding to death, medical care

would be sought immediately, medical care for a very minor injury, on the other hand, might be delayed for a short amount of time (no more than one hour) to allow staff to take care of other responsibilities (including securing evidence).

A commenter noted that §404.7(b)(1) allowed an accused employee to continue in his or her position pending the investigation. The commenter suggested that the person served has a legal right to protection from harm during the investigation, and should not be subjected to the fear and intimidation of having the employee remain on staff during an investigation. The commenter also noted that if the allegation involves medical or nursing staff, the person receiving services should be reassigned immediately to a different doctor or nurse until the investigation is completed.

The department responds that employees may not actually be in direct care positions or have regular contact with the person they are alleged to have abused or neglected. As such, some employees may be able to remain in their positions until completion of the investigation. The head of the facility must make a decision which ensures the safety of persons served. Language has been added to §404.7(b)(1) clarifying that these provisions also apply to physician, dentists, or nurses who are referred for peer review.

With regard to §404.7(b)(5)(B), a commenter objected to limiting the investigation of unknown injuries to those determined by a physician to be the result of abuse or neglect. The department responds that the referenced section addresses the need for the physician to document all medical treatment provided in response to an allegation involving verbal abuse, physical abuse, or sexual abuse. The commenter's concern actually relates to language found in Chapter 404, Subchapter G (relating to Unusual Incidents Involving Persons Served by TDMHMR Facilities). Because the physician may be one of the only people actually examining the injury, it is appropriate that he or she should make a determination of whether or not the injury is the result of abuse or neglect. If other staff members have reason to believe that the injury is the result of abuse or neglect, however, they have an obligation to report the information to TDPRS.

A commenter noted that §404.8 does not include criteria to delineate when allegations are or are not referred to peer review to ensure objectivity and consistency. The commenter noted that the criteria were expected to be included. The department responds that the term "clinical issues" has been replaced with "clinical practice," and language has been added to the definition of clinical practice in §404.3 to attempt to establish some parameters.

The same commenter noted that peer review has now been extended to dentists, and observed that it is conceivable that some allegations against psychologists and social workers might also be appropriate for referral to peer review. The department responds that physicians, nurses (LVNs and RNs), and dentists actively engage in peer review as a part of their profession; psychologists and social workers do not. As a result, peer review

within this subchapter is only extended to physicians, nurses, and dentists.

With regard to §404.9(b), a commenter objected to language allowing the head of the facility to determine when the review authority will review unfounded allegations. The commenter recommended that review of unfounded allegations be mandatory. The department responds that making review of the cases mandatory would be an ineffective use of resources in many situations. Instead, the head of the facility should be able to review the reports, determine which cases appear to need a second look, and utilize the review authority in this fashion.

Concerning §404.9(d), a commenter suggested that in all cases where there is a disagreement between the TDPRS investigation and the head of the facility's review, it should be examined by both TDMHMR and TDPRS CO in such a manner as to understand the reasons for the discrepancies between the findings. The department responds that the "request for review of finding," which may be submitted by the head of the facility to the Central Office of TDPRS, serves this purpose. If the head of the facility has reason to believe that TDPRS' recommendation concerning the investigation should have been different, he or she may request that the Central Office of TDPRS review the head of the facility's reasons for making a different determination, and TDPRS may revise its recommendation accordingly.

With regard to §404.9(i), a commenter suggested that a specific timeframe for providing notification should be added. The department agrees, and appropriate language has been added to both §404.9(h) and (i).

Concerning §404.10, several commenters recommended establishing a set of procedures which permit the head of the facility to appeal the findings of the APS investigator but which makes the appeal decision final. An appeal process (request for review of finding) exists, but TDPRS relationship with TDMHMR is advisory, not regulatory. As such, the appeal decision cannot be final.

Another commenter recommended creating an automatic review within the TDMHMR system to review findings by the head of the facility if different from TDPRS findings. The department responds that a process of appealing the head of the facility's finding through the Office of Consumer Services and Rights Protection has been established, and may be accessed by the reporter or the person served or his or her legal guardian. Although the department gave serious consideration to an automatic appeal, it determined that limiting the process to those cases in which it was requested would be a more effective use of resources.

Also concerning §404.10, a commenter expressed a belief that the elimination of abuse at TDMHMR facilities requires modification of the grievance process for those who commit abuse. The department responds that agency employees have a property right to their jobs, and elimination of this right is not within the department's authority. As such, the grievance process must continue to exist.

With regard to 404.10(6), a commenter recommended that family members should be notified immediately when an employee who has been disciplined because of an abuse, neglect, or exploitation investigation files a grievance. The department responds that notification is sent as soon as is feasibly possible.

The same commenter recommended that 404.10(7) be revised to read, "The head of the facility shall notify the APS investigator who conducted the investigation and request his attendance at the hearing should the employee that committed the abuse and/or neglect violation request a grievance hearing." Although the head of the facility will, more often than not, ask the investigator to attend the hearing, there may be situations in which it is not necessary. As such, the more permissive language currently found in the subchapter is a more accurate reflection of procedure.

With regard to §404.14, a commenter noted that emphasis on training should include not only abuse and neglect rules but also prevention. The department agrees, and indeed prevention has historically been an important part of the abuse and neglect training. Language in §404.14(a)(2) has been revised to reflect its inclusion.

Concerning §404.15, a commenter suggested that it is not enough to inform the person served of the grievance hearing. The commenter noted that the person served has a vested interest and therefore should have an opportunity to actively participate in the hearing. The commenter recommended adding language requiring the department to inform the person served of "the name of the hearing officer and the procedures to follow to participate in that grievance to the extent allowed by law." The commenter also expressed a belief that the State Hearings Examiners Office should be responsible for conducting grievance hearings for TDMHMR employees.

The department responds that the purpose of a grievance hearing is to address any disciplinary action taken against the alleged perpetrator. It is not a hearing to determine whether or not abuse, neglect, or exploitation occurred. If the person served, his or her legal guardian, or the reporter is not satisfied that an appropriate determination of whether or not abuse, neglect, or exploitation has occurred, he or she may appeal the finding through either TDPRS or TDMHMR's Office of Consumer Services and Rights Protection. Concerning the commenter's belief that the State Hearing Examiners Office should be responsible for conducting TDMHMR employee grievance hearings, a legislative amendment to the Government Code would be required before any such change could take place.

The new sections are adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Department of Mental Health and Mental Retardation with broad rulemaking powers.

§404.3. Definitions. The following words and terms, when used in this subchapter,

shall have the following meanings, unless the context clearly indicates otherwise.

Adult Protective Services (APS) investigator—An employee of the Texas Department of Protective and Regulatory Services (TDPRS) with expertise and demonstrated competence in conducting investigations.

Agent—Any individual not employed by the facility but working under the auspices of the facility, such as a volunteer, a student, etc.

Allegation—A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, exploitation, or neglect as defined in this subchapter.

Child—A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Clinical practice—Relates to issues of potentially or allegedly unsafe nursing, dental, or medical practice or violations of the Nursing Practice Act, Licensed Vocational Nurse Title Act, Dental Practice Act, or Medical Practice Act. These include acts or omissions of the physician, dentist, or nurse which result from a lack of competence in their profession, impaired status, or failure to provide adequate medical, nursing, or dental care to an individual served.

Confirmed—Term used to describe an allegation of abuse, neglect, or exploitation which is supported by the preponderance of the evidence.

Contractor—Any organization, entity, or individual associated by contract in a working alliance with a facility.

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

Designee—A staff member immediately available who is temporarily or permanently appointed to assume designated responsibilities of the head of the facility.

Facility—Any institution, program, or service operated by the department.

Head of the facility—The superintendent or director of a facility or his or her designee.

Incitement—To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Inconclusive—Term used to describe an allegation leading to no conclusion or definite result due to lack of witnesses or other relevant evidence.

Mental health services provider—An individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Section 50.001, Human Resources Code;

(B) chemical dependency counselor as defined by Section 1, Chapter

635, Acts of the 72nd Legislature, Regular Session, 1991 (Article 4512o, Vernon's Texas Civil Statutes);

(C) licensed professional counselor as defined by Section 2, Licensed Professional Counselor Act (Article 4512g, Vernon's Texas Civil Statutes);

(D) licensed marriage and family therapist as defined by Section 2, Licensed Marriage and Family Therapist Act (Article 4512c-1, Vernon's Texas Civil Statutes);

(E) member of the clergy;

(F) physician who is "practicing medicine" as defined by Section 1.03, Medical Practice Act (Article 4495b, Vernon's Texas Civil Statutes);

(G) psychologist offering "psychological services" as defined by Section 2, Psychologists' Certification and Licensing Act (Article 4512c, Vernon's Texas Civil Statutes);

(H) registered nurse as defined by law.

Nonserious physical injury—Any injury determined not to be serious by the examining physician. Examples of nonserious injury may include the following: superficial laceration, contusion, abrasion.

Office of Consumer Services and Rights Protection—The office located at the Texas Department of Mental Health and Mental Retardation.

Peer review—A review of clinical and/or medical practice(s) by peer physicians and/or dentists, or a review of clinical nursing practices by nurses.

Perpetrator—The person who has committed an act of abuse, neglect, or exploitation.

Perpetrator unknown—Term used to describe instances in which abuse, neglect, or exploitation is confirmed but positive identification of the responsible person cannot be made, and in which self-injury has been eliminated as the cause.

Person served—Any person receiving services from the department, including those persons who are physically away from the facility but who are still carried on the rolls of the facility.

Preponderance of evidence—The greater weight of evidence, or evidence which is more credible and convincing to the mind.

Prevention and Management of Aggressive Behavior (PMAB)—The department's proprietary risk management program which uses the least intrusive, most effective options to reduce the risk of

injury for persons receiving services and for staff from acts or potential acts of aggression.

Reporter—The person filing a report of alleged abuse, neglect, or exploitation, whether the victim of alleged abuse, neglect, or exploitation, a third party filing a report on behalf of the alleged victim, or both.

Retaliatory action—Any action intended to inflict emotional or physical harm or inconvenience on an employee or person served that is taken because he or she has reported abuse, neglect, or exploitation. This includes, but is not limited to, harassment, disciplinary measures, discrimination, reprimand, threat, and criticism.

Review authority—An individual or panel of individuals who, at the discretion and request of the head of the facility, reviews selected cases of alleged abuse, neglect, or exploitation, including those that are confirmed, unconfirmed, unfounded, or inconclusive. The review authority may include a member of the facility's public responsibility committee.

Serious physical injury—An injury determined to be serious by the examining physician. Examples of serious injury may include the following: fracture; dislocation of any joint; internal injury; any contusion larger than two and one half inches in diameter; concussion; second or third degree burn.

Sexual abuse—Any sexual activity, including sexual exploitation as defined in this subchapter or sexual assault as defined in §22.011 of the Texas Penal Code, involving an employee, agent, or contractor and a person served. Sexual activity includes, but is not limited to, kissing with sexual intent, hugging with sexual intent, stroking with sexual intent, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee him/herself or with another person served.

Sexual exploitation—A coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can reasonably be construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted clinical practice.

Sexually transmitted disease—Any infection of a person served, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another as a result of sexual contact between persons.

Unconfirmed—Term used to describe an allegation of abuse, neglect, or exploitation which is not supported by the preponderance of the evidence.

Unfounded—A finding that an allegation of abuse, neglect, or exploitation is spurious or patently without factual basis.

§404.4. Abuse, Neglect, and Exploitation Defined.

(a) When the alleged perpetrator is an employee, contractor, or agent of the Texas Department of Mental Health and Mental Retardation, or the perpetrator is unknown, abuse, neglect, and exploitation shall be defined as follows.

(1) Abuse includes:

(A) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused physical injury or death to a person served;

(B) any act of inappropriate or excessive force or corporal punishment, regardless of whether the act results in an injury to a person served;

(C) any use of chemical or bodily restraints not in compliance with federal and state laws and regulations;

(D) sexual abuse as defined in §404.3 of this title (relating to Definitions); and

(E) any act or use of verbal or other communication including gestures to curse, vilify, or degrade a person served or threaten a person served with physical or emotional harm.

(2) Abuse of a child includes the following acts or omissions by any person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by §43.01, Penal Code, sexual penetration with a foreign object, incest, sexual assault, or sodomy inflicted on, shown to, or intentionally practiced in the presence of a child by another person if the child is present only to arouse or gratify the sexual desires of any person;

(F) failure to make a reasonable effort to prevent sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by §43.01, Penal Code, sexual penetration with a foreign object, incest, sexual assault, or sodomy inflicted on, shown to, or intentionally practiced in the presence of a child by another person if the child is present only to arouse or gratify the sexual desires of any person;

(G) compelling or encouraging the child to engage in sexual conduct as defined by §43.01, Penal Code; or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Penal Code) or pornographic.

(3) Neglect means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused physical or emotional injury or death to an individual with mental illness or mental retardation which placed an individual with mental illness or mental retardation at risk of physical or emotional injury or death, and includes an act or omission such as the failure to establish or carry out an appropriate individual program plan or treatment plan for a person served, the failure to provide adequate nutrition, clothing, or health care to a person served, or the failure to provide a safe environment for a person served, including the failure to maintain adequate numbers of appropriately trained staff.

(A) Complaints concerning failure to carry out an appropriate individual program plan or treatment plan or involving the failure to maintain adequate numbers of appropriately trained staff which do not relate to a specific allegation of abuse or neglect will be investigated administratively by TDMHMR.

(B) Within 24 hours of receipt of such an allegation, the APS investigator will refer the allegation to the head of the facility using the Adult Protective Services Referral Form.

(4) Neglect of a child includes:

(A) the leaving of a child in a situation where the child would be exposed to a substantial risk of harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of a child;

(B) the following acts or omissions by any person:

(i) placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(5) Exploitation means the illegal or improper act or process of using a person served or the resources of a person served for monetary or personal benefit, profit, or gain.

(b) For purposes of this subchapter, the terms "abuse" and "neglect" are understood to incorporate "abuse of a child" and "neglect of a child."

(c) Abuse, neglect, or exploitation does not include:

(1) the proper use of restraints or seclusion, including PMAB, and the approved application of behavior modification techniques as described in Chapter 405,

Subchapter F of this title (relating to Restraint and Seclusion-Mental Health Facilities); Chapter 405, Subchapter G of this title (relating to Behavior Therapy Programs (MH)); and Chapter 405, Subchapter H of this title (relating to Behavior Management-Facilities Serving Persons With Mental Retardation);

(2) other actions taken in accordance with the rules of the department;

(3) such actions as an employee may reasonably believe to be immediately necessary to avoid imminent harm to self, persons served, or other individuals if such actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. Such actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, including PMAB; or

(4) complaints related to rights violations, theft of property, or daily administrative operations of a facility. Such complaints shall be referred to the head of the facility for administrative action by the head of the facility, the facility rights protection officer, or other appropriate parties.

§404.5. Reporting Responsibilities of All TDMHMR Employees: Reports to Texas Department of Protective and Regulatory Services (TDPRS).

(a) Each employee who suspects or has knowledge of, or who is involved in an allegation of, abuse, neglect, or exploitation, shall make a verbal report to the TDPRS immediately, if possible, but in no case more than one hour after the incident.

(1) Employees who become aware of a situation at any time after the fact shall make a verbal report to the TDPRS immediately, if possible, but in no case more than one hour after learning of the incident.

(2) If the person making the allegation is not an employee, e.g., a person receiving services, a guest, etc., staff shall assist the individual in making the report, if necessary.

(b) Without regard to the identity of the alleged perpetrator, suspected sexual abuse shall be reported to the TDPRS immediately, if possible, but in no case more than one hour later by the person making the allegation. An allegation that sexual abuse has been committed by a person receiving services shall be reported following the procedures outlined in this subchapter with the understanding that negligence on the part of staff may have made it possible for the assault to have occurred.

(c) Any pregnancy of a person served, provided there is medical verification that there is reasonable expectation that

conception could have occurred while the person was a resident of the facility or contractor, or any diagnosis of a sexually transmitted disease in a person served which could have occurred while the person was a resident of the facility shall be reported in keeping with the provisions of this subchapter as possible abuse or neglect. Additional reporting requirements for the head of the facility are described in Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities).

(d) If there is reason to suspect that a person served was abused, neglected, or exploited prior to admission or during an absence from the facility, the employee shall immediately, if possible, but in no case more than one hour later contact the local Adult Protective Services (APS) investigator or the Abuse Hotline of the TDPRS (1-800-252-5400) and the head of the facility.

(e) Failure to make such reports within the allotted time period without sufficient justification shall be considered a violation of this subsection and make the employee subject to disciplinary action and possible criminal prosecution. An employee found to have made a false statement of fact during an abuse investigation is also subject to disciplinary action.

(f) In addition to reporting to TDPRS, employees shall take appropriate steps to safeguard evidence, if any, consistent with the procedures described in TDPRS' "Procedures and Techniques for Investigation of Abuse and Neglect."

§404.6. Reporting of Aggressive Action by Persons Served Other Than Sexual Abuse. With the exception of allegations of sexual abuse by a person served (which shall be reported in keeping with provisions outlined in §404.5 of this title (relating to Reporting Responsibilities of All TDMHMR Employees: Reports to Texas Department of Protective and Regulatory Services (TDPRS))), aggressive behaviors by persons receiving services shall be reported and investigated according to procedures outlined in Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities).

§404.7. Responsibilities of the Head of the Facility.

(a) Upon receiving a report of an allegation of abuse, neglect, or exploitation, the APS investigator will immediately notify the head of the facility of the allegation and whether or not the allegation will be reported to a law enforcement agency.

(b) Immediately upon notification of an allegation of abuse, neglect, or exploitation, if possible, but in no case more than one hour later, the head of the facility shall ensure that adequate medical care has been provided to the victim, and shall take measures to ensure the safety of the person served, including the following actions:

(1) If the accused is an employee, including a physician, dentist, or nurse whose case has been referred to a peer review committee, the head of the facility will determine whether action should be taken regarding the employee, which may include terminating employment in accordance with procedures outlined in §3.112 of the Human Resources Operating Instruction (relating to Separations, Suspensions, and Demotions), reassigning the employee to a non-direct care area, allowing the employee to remain in his or her current position pending investigation, or granting the employee emergency leave.

(2) If a person receiving services has been involved in an aggressive action, the head of the facility will take immediate appropriate action to protect the victim, e.g., one-on-one observation of the accused and/or the victim, separation, etc. The head of the facility shall refer the allegation to treatment team or interdisciplinary team of the involved persons no later than the next working day. Additional appropriate actions shall be taken in accordance with procedures outlined in Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities).

(3) If the accused is another person who is known but who is neither a staff member nor a person receiving services, e.g., family member, friend, etc., the head of the facility will effect a restriction on that person's access to the victim pending investigation. The restriction should be documented in the record of the person served.

(4) Unless specifically prohibited by Chapter 403, Subchapter K of this title (relating to Client-Identifying Information), Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), or Chapter 405, Subchapter Y of this title (relating to Client Rights-Mental Retardation Services), the head of the facility, with the consent of the alleged victim or his or her guardian, shall immediately, but in no case later than 24 hours after notification of an allegation of abuse, neglect, or exploitation, notify the parents, spouse, or other appropriate relative of the alleged victim. If contact cannot be made by telephone, the head of the facility will provide notification by certified mail, return receipt requested.

(5) If the allegation involves verbal abuse, physical abuse, or sexual abuse, the head of the facility will ensure necessary immediate and ongoing medical and/or psychological attention is obtained for the victim, and, as needed, for the alleged perpetrator, if a person receiving services.

(A) Such attention may include treatment for injuries, physician's exam, screening and treatment for sexually transmitted diseases, psychological counseling and support, etc., consistent with the procedures described in TDPRS' "Procedures and Techniques for Investigation of Abuse and Neglect."

(B) The physician's exam and treatment of abuse-related injuries shall be documented on the Client Injury/Incident Report form, with a copy submitted to the APS investigator. The physician's documentation during or following the examination should address the injury's cause, age, and treatment, to the extent that the information can be determined, as well as the timing of the medical exam with regard to the date the injury was received. All issues relating to clinical practice will be referred to the medical/clinical director or designee for consultation.

(c) The head of the facility shall ensure that APS investigators are afforded immediate access to all records and provided keys as are necessary to carry out an investigation. The head of the facility will assist in whatever way possible to make staff who are relevant to the investigation available in an expeditious manner.

(d) The head of the facility shall report allegations of sexual exploitation by a mental health services provider not later than the 30th day after the date the person became aware of the conduct or the allegations to the prosecuting attorney in the county in which the alleged sexual exploitation occurred and any state licensing board that has responsibility for the mental health services provider's licensing. The report shall include:

- (1) the reporter's name;
- (2) the alleged victim's name, except that prior to reporting the incident the reporter shall determine whether or not the alleged victim wishes to remain anonymous; and
- (3) the reasons for suspicion that sexual exploitation has occurred.

§404.8. Peer Review.

(a) If the allegation involves the actions of a physician, dentist, registered nurse, or licensed vocational nurse, the head

of the facility, in coordination with the APS investigator and the facility medical or nursing director, as appropriate to the discipline involved, will determine whether the allegation involves the clinical practice of a physician, dentist, registered nurse, or licensed vocational nurse.

(1) If the allegation does not involve clinical practice the APS investigator will pursue an investigation.

(2) If a determination is made that the allegation involves the clinical practice of a physician, dentist, registered nurse, or licensed vocational nurse, the APS investigator shall turn the allegation over to the head of the facility, who shall immediately refer the allegation to the medical director or nursing director, as appropriate to the discipline involved, for review for possible peer review as follows:

(A) for allegations involving physicians or dentists, Operating Instruction 408-2, relating to Investigative Medical Peer Review; and

(B) for allegations involving registered nurses and licensed vocational nurses, Operating Instruction 408-1, relating to Investigative Nursing Peer Review.

(b) If the allegation is against the medical director, dental director, or nursing director of a facility, it shall be referred to the TDMHMR medical director, TDMHMR dental director, or the TDMHMR nursing director, as appropriate to the discipline involved.

(c) All allegations against physicians, nurses (RN or LVN), and dentists, regardless of type or clinical/nonclinical handling, will be reported to the TDMHMR Medical, Nursing, or Dental Director, as appropriate to the discipline, within five working days of the allegation. This report may be brief, but will include the date of the alleged behavior, names of the alleged perpetrator, victims, and reporters, if known; a brief description of the alleged incident; and a brief description of the investigation planned.

(d) The TDMHMR medical director, TDMHMR dental director, or the TDMHMR nursing director, as appropriate to the discipline involved shall ensure that reports of allegations of abuse or neglect are made as required by law to the licensing authority for the discipline under review, e.g., to the Board of Medical Examiners for physicians, the Board of Dental Examiners for dentists, the Board of Nurse Examiners for registered nurses, and the Board of Licensed Vocational Nurses for licensed vocational nurses.

§404.9. Completion of the Investigation.

(a) Upon completion of the investigation, the APS investigator shall submit a complete investigative report, including a statement of the allegation(s), a summary of the investigation, an analysis of the evidence, the investigator's determination as to whether or not abuse, neglect, or exploitation occurred, recommendations resulting from the investigation, and an opinion as to how the allegation(s) might be classified in accordance with the classification system outlined in §404.10 of this title (relating to Disciplinary Action). If the allegation involves a minor, the APS investigator shall also include a determination as to whether the incident (whether confirmed or not confirmed) would be classified as abuse of a child or neglect of a child, as appropriate, as defined in this subchapter. The APS investigator shall indicate recommended findings on the "Client Abuse/Neglect Report" (AN-1-A), and submit the signed copy as part of the investigative report.

(b) Upon receiving the written investigative report from the APS investigator, the head of the facility may submit the report and concerns articulated by the APS investigator to a review authority of one or more persons.

(1) The authority may call witnesses in the course of the review.

(2) If the authority is reviewing a case determined by the APS investigator to be "unfounded," it shall consult with the APS investigator as appropriate. If the review authority finds that there is good cause to reopen the investigation (e. g., new evidence or information that was not previously available during the investigation), the head of the facility may contact the local APS supervisor to request that the case be re-opened.

(c) Upon completion of the investigation of any allegation, the head of the facility shall take the following actions:

- (1) review the APS investigator's report;
- (2) review the authority's report, if applicable; and
- (3) interview witnesses, if necessary.

(d) If, after review, the head of the facility disagrees with the recommended finding of the APS investigator, the head of the facility may request a review of the recommended finding in writing by submitting the "Request for Review of Finding" form to the Deputy Director of APS, TDPRS, P.O. Box 149030, E-561, Austin, TX 78714-9030. The request for review must be filed within 14 calendar days after receiving the investigative report.

(1) When filing the request for review, the head of the facility shall include a copy of the report of the review authority, if applicable.

(2) TDPRS' recommended finding shall be reviewed by the Deputy Director of APS, TDPRS, and a final recommendation made within 14 calendar days of receipt.

(e) The head of the facility shall complete the AN-1-A within 30 days of receipt of the investigative report or final decision of a request for review of the recommended finding by TDPRS and shall ensure that:

(1) the information is entered into the Client Abuse and Neglect Reporting System (CANRS); and

(2) a copy of the completed AN-1-A is forwarded to the APS investigator for data entry.

(f) The head of the facility shall establish a mechanism for evaluating any recommendations concerning problematic patterns or trends identified during the investigation by the APS investigator and the review authority, if applicable.

(g) The rights of employees summoned to appear before the review authority or the head of the facility are outlined in the memo titled "Procedures in Abuse and Neglect Investigations and Thurston Rebuttal Proceedings."

(h) The APS investigator shall ensure that the reporter is promptly notified in writing of TDPRS' recommended finding, the head of the facility's final determination, and the method of appealing either TDPRS' recommendation or the head of the facility's final determination, if different from TDPRS' recommendation.

(i) Unless specifically prohibited by Chapter 403, Subchapter K of this title (relating to Client-Identifying Information), Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services), or Chapter 405, Subchapter Y of this title (relating to Client Rights-Mental Retardation Services), the head of the facility shall ensure that the alleged victim and his or her guardian and, with the consent of the person served or guardian, the parents or other appropriate relatives who were notified of the allegation are promptly notified of TDPRS' recommended finding, the head of the facility's final determination, and the method of appealing either TDPRS' recommendation or the head of the facility's final determination, if different from TDPRS' recommendation.

(j) The reporter, person served, or legal guardian of the person served may request an appeal of the head of the facility's

determination, if different from TDPRS' recommendation, by notifying the Office of Consumer Services and Rights Protection, TDMHMR, P.O. Box 12668, Austin, TX 78711-2668.

§404.10. Disciplinary Action. The head of the facility shall be responsible for taking prompt and proper disciplinary action when a charge of abuse, neglect, or exploitation is confirmed by the head of the facility.

(1) Disciplinary action shall be based on criteria including, but not limited to:

(A) the seriousness of the abuse and/or neglect;

(B) the circumstances surrounding the event;

(C) the employee's work record;

(D) repeat offenses; and

(E) if a repeat violation, the length of time between violations.

(2) When the head of the facility determines that abuse, neglect, or exploitation has occurred, the incident shall be classified according to the following system:

(A) Class I abuse means:

(i) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused serious physical injury to a person served; or

(ii) any sexual abuse involving an employee, agent, or contractor and a person served, without regard to injury.

(B) Class II abuse means:

(i) any act or failure to act performed knowingly, recklessly, or intentionally, including incitement to act, which caused or may have caused nonserious physical injury to a person served;

(ii) any act of force or corporal punishment, including striking or pushing a person served, regardless of whether the act results in nonserious injury to a person served; or

(iii) exploitation.

(C) Class III abuse means any use of verbal or other communication to curse, vilify, or degrade a person served, or to threaten a person served with physical or

emotional harm, or any act which vilifies, degrades, or threatens a person served with physical or emotional harm.

(D) Neglect means a negligent act or omission by any individual responsible for providing services in a facility rendering care or treatment which caused or may have caused physical or emotional injury or death to an individual with mental illness or mental retardation or which placed an individual with mental illness or mental retardation at risk of physical or emotional injury or death.

(3) When the head of the facility determines that abuse, neglect, or exploitation has occurred, the following disciplinary action shall be taken:

(A) Class I abuse. The employee shall be dismissed from employment.

(B) Class II abuse. The employee shall be placed on suspension for up to ten days, demoted, or dismissed. If the employee is exempt under the provisions of the Fair Labor Standards Act (FLSA), the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

(C) Class III abuse, neglect. The employee may receive a written reprimand which shall become a part of the employee's personnel file, or may be placed on suspension for up to ten days, demoted, or dismissed. If the employee is exempt under the provisions of the FLSA the suspension shall be in compliance with relevant provisions of the FLSA and current TDMHMR personnel policies.

(4) When disciplinary action is taken against an employee based on abuse, neglect, or exploitation, the head of a facility shall notify the disciplined employee in writing of the disciplinary action and any right to a grievance hearing the employee may have under the department's internal policies and procedures relating to employee grievances. The head of the facility will also provide the employee with a copy of the investigative report. Additional documentary evidence, if any, may be accessed by the employee in accordance with procedures outlined in §3.116 of the Human Resources Operating Instruction (relating to Employee Grievances).

(5) Nothing in this subchapter shall preclude the head of the facility from taking immediate disciplinary action, including termination of employment in accordance with procedures outlined in §3.112 of the Human Resources Operating Instruction (relating to Separations, Suspen-

sions, and Demotions). In such cases, the head of the facility will notify the APS investigator that disciplinary action has been taken and the investigation should proceed.

(6) The head of the facility shall ensure that, if requested, the victim and his or her guardian, and with the consent of the person served or guardian, the parents, spouse, or other appropriate relatives are notified in a timely manner if a grievance is filed by the employee regarding the disciplinary action.

(7) If requested by the head of the facility, the APS investigator who conducted the investigation shall attend the grievance hearing

§404.11. Abuse, Neglect, and Exploitation Investigative Procedures for Facility Contractors, Agents and Independent School District (ISD) Employees. For purposes of reporting, investigating, and preventing abuse, neglect, and exploitation by contractors of state facilities, the procedures described in this subchapter for employees of facilities shall be followed. Each contractor, agent, or independent school district employee who suspects or has knowledge of, or who is involved in an allegation of, abuse, neglect, or exploitation, shall make a verbal report to the TDPRS immediately, if possible, but in no case more than one hour after the incident.

(1) An allegation that an employee of a contractor has committed abuse, neglect, or exploitation shall be reported to the TDPRS immediately, if possible, but in no case more than one hour later. Upon notification of such an allegation of abuse, neglect, or exploitation, the APS investigator will immediately notify the administrator of the contract provider and the head of the facility.

(2) The investigation of an allegation that an employee of a contractor has committed abuse, neglect, or exploitation shall be handled in accordance with procedures outlined in Chapter 710, Subchapter A, Title 40 (relating to Abuse, Neglect, and Exploitation of Persons Served by TDMHMR Facilities). Allegations involving the clinical practice of a physician, dentist, registered nurse, or licensed vocational nurse shall be referred to the contract provider's medical, dental, or nursing director, as appropriate to the discipline involved, for review for possible peer review and reporting to disciplinary boards in accordance with procedures outlined in §404.8 (relating to Peer Review) of this subchapter.

(3) Upon completion of an investigation by the APS investigator, the APS investigator shall submit a written report and supporting documents to the administrator of the contract provider and the

head of the facility regarding whether there is cause to believe that abuse, neglect, or exploitation has occurred in the incident investigated. If there is any disagreement over the recommended findings, the administrator of the contract provider within 14 calendar days may request a review of the recommended finding in writing by submitting the "Request for Review of Finding" form to the Deputy Director of APS, TDPRS, P.O. Box 149030, E-561, Austin, Texas 78714-9030

(4) The administrator of the contract facility shall notify the head of the facility of any action taken against the accused contract employee.

§404.14. Staff Training in Identifying and Reporting Abuse, Neglect, and Exploitation.

(a) This subchapter shall be thoroughly and periodically explained to all employees, contractors, and agents of each facility as follows:

(1) All new employees, contractors, and agents (including physicians) shall receive instruction on the content of this subchapter during their orientation training and prior to beginning work that involves direct contact with any person served.

(2) Instruction shall include a thorough explanation of the acts and signs of possible abuse, neglect, or exploitation, the disciplinary consequences of abuse, neglect, or exploitation, the procedures for reporting incidents of abuse, neglect, or exploitation, and methods of preventing abuse, neglect, or exploitation.

(3) Within 90 days after the effective date of this subchapter, the head of the facility shall inform all current employees, contractors, and agents (including physicians) of changes to policies and procedures as a result of this subchapter.

(b) Those employees, contractors, and agents in frequent contact with persons served shall receive additional instruction on the prevention and therapeutic management of aggressive, combative behavior or similar volatile situations as a unit of instruction within the employee's six months probationary period of employment. Instruction shall comply with standards promulgated by the department.

(c) All supervisory personnel shall have a continuing responsibility to keep employees, contractors, and agents (including physicians) currently informed on rules governing abuse, neglect, and exploitation and shall ensure that each employee receives instruction on identifying and reporting abuse, neglect, and exploitation not less than once each calendar year.

(d) Instructional materials, audio-visual, and/or other training aids concerning

this subchapter shall be developed by the Human Resource Development office, Central Office, in concurrence with the Office of Legal Services and the Office of Consumer Services and Rights Protection.

(e) A record shall be kept by the facility office for staff development on each employee receiving instruction or training in compliance with this section, including the date training was provided, content of the training, and the name of the individual conducting the training.

§404.15. Confidentiality of Investigative Process and Report.

(a) The reports, records, and working papers used by or developed in the investigative process and the resulting final report regarding abuse, neglect, and exploitation are confidential and may be disclosed only as provided under law. Information discussed during deliberations of abuse, neglect, and exploitation investigations may not be discussed outside the purview of those deliberations with the exception of the concerns and recommendations which are to be addressed by the appropriate person(s) or as otherwise allowed in §404.09 of this title (relating to Completion of the Investigation).

(b) Some information may be released as follows:

(1) If the allegation is confirmed, the victim and legal guardian or parent (if the person served is a minor) shall be informed in writing of the disciplinary action, if any, taken against the perpetrator, and of the perpetrator's right to request a grievance hearing to dispute the disciplinary action. The notice shall include an offer to inform the person served, legal guardian, or parent (if the person served is a minor) of the occurrence of a grievance hearing upon request.

(2) When an allegation is determined to involve the clinical practice of a physician, registered nurse, vocational nurse, or dentist, the person served, legal guardian, or parent (if the person served is a minor) shall be informed that the allegation has/has not been sent to peer review. If sent to peer review, the person served, legal guardian, or parent shall be informed concerning whether or not a report was sent by the peer review committee to the Board of Medical Examiners, Board of Dental Examiners, Board of Nurse Examiners, or Board of Vocational Nurse Examiners.

(3) The alleged perpetrator shall be informed of the outcome of the investigation. If disciplinary action is taken, documentary evidence (including the investigative report) will be provided to the employee as outlined in §404.10(4) of this title (relating to Disciplinary Action).

§404.16. *References.* Reference is made to the following statutes, rules of the department, and attorney general opinions:

(1) Texas Family Code, §11.01, §34.01 et seq;

(2) Title 7, Chapter 532, §532.011, Texas Health and Safety Code (formerly Texas Civil Statutes, Article 5547-202, §2.12);

(3) Title 7, Chapter 576, §576.005, Texas Health and Safety Code (formerly Texas Civil Statutes, Article 5547-87);

(4) Title 7, Subtitle D, Texas Health and Safety Code;

(5) Whistleblower Act, Texas Civil Statutes, Article 6252-16a;

(6) Texas Penal Code, Chapters 19 and 21, §§22.01, 22.02, 22.04, 22.05, 22.07, 22.08, 22.10;

(7) Human Resources Code, Chapter 48;

(8) Chapter 403, Subchapter K of this title (relating to Client-Identifying Information);

(9) Chapter 404, Subchapter E of this title (relating to Rights of Persons Receiving Mental Health Services);

(10) Chapter 404, Subchapter G of this title (relating to Unusual Incidents Involving Persons Served by TXMHMR Facilities);

(11) Chapter 405, Subchapter F of this title (relating to Restraint and Seclusion-Mental Health);

(12) Chapter 405, Subchapter H of this title (relating to Behavior Management-Facilities Serving Persons With Mental Retardation);

(13) Chapter 405, Subchapter Y of this title (relating to Client Rights-Mental Retardation Services);

(14) Chapter 710, Subchapter A, Title 40 (relating to Abuse, Neglect, and Exploitation of Persons Served by TDMHMR Facilities).

(15) TDMHMR Human Resources Operating Instruction (OI 406-3), sections relating to:

(A) time and attendance;

(B) suspension, demotion, and reduction in salary; and

(C) employee grievances;

(16) Attorney General Opinions H-237 (1974), H-986 (1977), and H-494 (1975); and

(17) Attorney General Open Records Decision OR 90-562.

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 May 17, 1995.

TRD-9505975

Ann Utley
Chair
Texas Department of
Mental Health and
Mental Retardation

Effective date: June 15, 1995

Proposal publication date: February 24, 1995

For further information, please call: (512) 206-4516

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.319

The Comptroller of Public Accounts adopts an amendment to §3.319, concerning prior contracts, without changes to the proposed text as published in the February 14, 1995, issue of the *Texas Register* (20 *TexReg* 1009).

One amendment in subsection (a)(2) deletes the requirement that both parties sign the contract. The second amendment in subsection (b)(1) excludes two-party contracts from the prior contract exemption when the exemption is enacted under enabling legislation that allows the exemption when the items are used for or in the performance of a contract. The comptroller is required to make this change in order to comply with the Texas Supreme Court decision in *Calvert v British-American Oil Producing Company*, 397 S.W.2d 839. This position applies retroactively to ensure continuity in the comptroller's application of this decision. The third amendment in subsection (c)(4) allows the prior contract exemption for contracts with "open price terms."

A comment was received pointing out that the wording in the preamble to the proposed version, citing a change in subsection (d), was in conflict with subsection (d) in the body of the rule, which did not reflect a change. The language in the body of the rule is correct; notice of prior contract or bids do not need to be submitted to the comptroller.

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

The amendment implements the Tax Code, §151.0101 and §151.051.

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 May 16, 1995.

TRD-9505948

Martin Cherry
Chief, General Law
Comptroller of Public
Accounts

Effective date: June 6, 1995

Proposal publication date: February 14, 1995

For further information, please call: (512) 463-4062

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Personnel and Employment Policies

• 37 TAC §1.27, §1.30

The Texas Department of Public Safety adopts amendments to §1.27 and §1.30, concerning personnel and employment policies, without changes to the proposed text as published in the March 28, 1995, issue of the *Texas Register* (20 *TexReg* 2283).

The justification for the amendments will be clarification of existing policy and to alleviate any problems that might be caused due to strict interpretation of this section as it was previously adopted and to ensure the public is aware of the current organizational names of the various bureaus of the department.

The department adopts these amendments which add direct appointments to make the sections more clear and to harmonize with the direct appointment provision, which provides that certain positions are not subject to entrance examinations or procedures for selection to serve at Headquarters complex. The amendments also rename the Personnel and Training Bureau to Personnel Bureau in order to be appropriately identified in the department's organization.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Government Code, §411.006(4), which provides the director with the authority to adopt rules, subject to commission approval, considered necessary for the control of the department.

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 May 2, 1995.

TRD-9505911

James R. Wilson
Director
Texas Department of
Public Safety

Effective date: June 6, 1995

Proposal publication date: March 28, 1995

For further information, please call: (512)
465-2890

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part XIX. Texas Department of Protective and Regulatory Services Chapter 710. Protection of Clients and Staff

The Texas Department of Protective and Regulatory Services (TDPRS) adopts amendments to §710.1 and §710.2; the repeal of §§710.3-710.20; and new §§710.3-710.15, in its Protection of Clients and Staff chapter. New §§710. 3-710.5, 710.7, and 710.8 are adopted with changes to the proposed text as published in the February 24, 1995, issue of the *Texas Register* (20 TexReg 1329). The amendments to §710.1 and §710.2; the repeal of §§710. 3-710.20, and new §§710.6 and 710.9-710.15 are adopted without changes to the proposed text and will not be republished.

The justification for the amendments, repeals, and new sections is to describe TDPRS's responsibilities in conducting investigations of abuse and neglect in TDMHMR facilities. The adoptions also update the rules to reflect changes in policy since the function was absorbed into Adult Protective Services. These rules are companion rules to TDMHMR rules, which were also subject to public comment.

The amendments, repeals, and new sections will function by providing accurate information about the state's procedures conducting investigations of abuse and neglect in TDMHMR facilities.

A public hearing to accept oral testimony concerning the proposed subchapter was held on March 7, 1995, in Austin, where testimony was received from five individuals or organizations, including: RAJ Court Monitor, Austin; Advocacy, Inc., Austin; Texas Mental Health Consumers, Austin; and several individuals. In addition, written comments were received during the public comment period from: Advocacy, Inc., Austin; an individual; and various TDMHMR staff. Commenters were not specifically in favor or against adoption of these sections. A summary of the comments and TDPRS's responses follow.

Comment: A commenter asked that TDMHMR and TDPRS work together to develop procedures that determine and remedy deficiencies and conflicts that impair objective and true findings in abuse and neglect cases.

Response: The department agrees and believes that the process of contemporaneously proposing companion sections for public comment has provided both agencies with significant opportunity to identify and attempt to remedy a variety of issues relating to the abuse and neglect process. It is our belief that the adoption of these subchapters represents a step in the right direction toward improving the abuse and neglect process. The agencies will continue to work together in identifying and remedying issues as they arise.

Comment: Commenters noted that investigations should begin as soon as possible after an allegation is reported, before evidence deteriorates, and that investigations should be completed in a timely manner. The commenters further noted that statements should be gathered from all witnesses and that evidence should be gathered in an objective manner.

Response: The department agrees that ideally all investigations should begin as soon as possible after an allegation is reported. Due to the increase in the number of allegations being reported and the limited resources of the department, language in §710.7(d)(1)(A) requires that an investigation begin within 24 hours of the time it is received, by interviewing either the victim, alleged perpetrator, or any collateral witness. Language in §710.8(a) requires an investigation be completed within 14 calendar days after an allegation is received and submitted to the head of the facility. Language in §710.8(a)(4) requires that the investigative reports include all witness statements and supporting documents.

Comment: A commenter stated that it is important to recognize that investigations in psychiatric hospitals are made more difficult by the conditions of the client population. Individuals with mental illness are vulnerable to being discredited.

Response: The department agrees that individuals with mental illness and/or mental retardation are vulnerable to being discredited. Being sensitive to the special needs of these populations when gathering witness statements and giving due consideration to their testimony are issues that will continue to be emphasized in staff training.

Comment: A commenter questioned the relevance of attaching parts of the psychiatric case record as an appendix to the abuse/neglect investigation. The commenter further stated that instead of using such case information, the investigator should judge the credibility of all people giving testimony based upon a here-and-now judgment.

Response: The department agrees that relying on information from a psychiatric case record could be misleading and affect the credibility of the testimony of a person served. As a result of the comment, language has been added to the procedures and techniques for investigation of abuse and neglect to clarify that the credibility of information provided by a person served should be based upon the individual's ability to provide information at the time of the interview. It is further clarified that relying on information contained in a psychiatric case record is inappropriate

and such information should not be included as an attachment to an investigative report.

Comment: A commenter expressed concern that the language of the sections does not clarify what is to be done when there is not agreement between adult protective services (APS) and the head of the facility on the outcome of an investigation. The commenter further states that if the head of the facility appeals the outcome of an investigation back to APS, the APS appeal decision should be final. If the head of a facility chooses to take actions that are not supported by the appeal finding, the head of the facility must take that responsibility upon him or herself.

Response: The department disagrees and believes that the sections as written clarify that the role of TDPRS is to provide a thorough and timely investigation to the head of a facility. Language in §710.8(d) allows the head of the facility to appeal the finding of an investigation to the deputy director of Adult Protective Services. Since TDPRS does not have hiring and firing authority over individuals who work in TDMHMR facilities, TDPRS cannot and should not dictate specific personnel action to the state agency which does.

Comment concerning §710.4(a)(2): Commenters stated that the definition of "neglect" for adults should be revised to incorporate language included in the Protection and Advocacy for Mentally Ill Individuals Act (42 CFR §§10801 et seq).

Response: The department agrees. As a result of comments, the definition of "neglect" has been revised to reflect the language in the Protection and Advocacy for Mentally Ill Individuals Act. The definition has been extended to apply to persons with mental retardation, as well as persons with mental illness. It is clarified that complaints relating to staffing ratios or treatment plan issues which do not relate to a specific incident of abuse or neglect will be referred to the head of the facility for administrative investigation and action. TDPRS has also revised §710.4(b)(4) and §710.5(b)(4) to be consistent with this change.

Comment concerning §710.7(c)(3): One commenter expressed concern about the one-hour limit for notifying law enforcement of allegations of physical assault and sexual assault. The commenter stated that TDMHMR staff should be responsible for reporting such allegations to law enforcement.

Response: The department disagrees. The decision to have TDPRS report alleged crimes to law enforcement was determined to be the most appropriate method. APS staff are familiar with the types of allegations that need to be reported to law enforcement. Language in §710.7(c)(3) requires that APS staff immediately, if possible, but in no case more than one hour later, report allegations involving physical abuse or sexual assault to the appropriate local or state law enforcement agency. Language in §710.7(c)(2) requires that APS staff immediately notify the head of the facility or designee as to whether the allegation will be reported to a law enforcement agency. If the APS investigator indicates that he or she will not be making a report to law enforcement, the head of the

facility may always elect to do so if he or she believes it is appropriate. Similarly, staff members are not precluded from contacting law enforcement if they wish to do so. TDPRS is adopting this section without change.

Comment: One commenter expressed concern that a TDPRS investigator may not be available at all times to receive allegations and notify law enforcement when appropriate.

Response: The department disagrees. Reporting systems are in place across Texas where an investigator or intake worker is available 24 hours a day to receive allegations of abuse, neglect, and exploitation. Eventually, all intakes will be phoned into a centralized statewide intake system.

Comment: One commenter stated that it is important that photographs of injuries be taken immediately, and sometimes at a later point in time, because sometimes it takes a while for a bruise to become visible.

Response: The department agrees and is adopting this section without change. Language in §710.8(a)(3) requires that the APS investigator submit photographs depicting the existence of injuries (taken within 24 hours after receiving the report) or the non-existence of injuries, when appropriate, to the head of the facility as part of the investigative report.

Comment: Another commenter observed that the system as created appears to be bifurcated, and does not lend itself to full disclosure of information regarding the process and results of the investigation. The commenter asked several questions relating to how the information relating to the TDPRS finding and the facility's agreement or disagreement with the finding would be communicated to interested parties.

Response: The department agrees and as a result of comment, the department has revised §710.8(g) to indicate that the investigator will notify the reporter in writing of the outcome of an investigation and whether or not the head of the facility concurs with the finding.

Comment: A commenter requested that language be added to clarify that an investigation is initiated by face-to-face contact.

Response: The department agrees that a face-to-face contact is preferable when initiating an investigation. However, due to growing caseloads, large geographic areas to cover, and the fact that some allegations are reported long after they occur, language was not added to require a face-to-face contact within 24 hours. As a result of comment, language has been added in §710.7(d)(1)(B) which requires a face-to-face contact within 24 hours if the allegations involve sexual abuse or physical injury of a person served.

Comment: A commenter noted that dental services have been added under what should be referred to clinical peer review. The commenter further notes that it is conceivable that some allegations against psychologists and social workers might also be appropriate for referral to peer review.

Response: The department disagrees. Physicians, nurses, and dentists actively engage in peer review as a part of their profession. Psychologists and social workers do not. As a result, peer review within this subchapter, is only extended to physicians, nurses, and dentists.

Comment: Another commenter noted that if the person served or family of the person served disagrees with the TDPRS finding, the appeal goes to TDPRS. The commenter further notes that this may be a conflict of interest in that the same agency who conducted the investigation is reviewing its own decisions.

Response: The department disagrees. TDPRS is the state agency which is mandated by statute to investigate allegations of abuse, neglect, and exploitation in TDMHMR facilities. The goal of TDPRS is to conduct a thorough and timely investigation as a means of protecting the individuals served in TDMHMR facilities. No other state agency is vested with the responsibility to review appealed cases.

Comment: Commenters expressed concern about the inclusion of the definitions for "abuse of a child" and "neglect of a child," noting that certain aspects of these definitions did not seem appropriate for facilities. Other commenters noted that the definitions rested on observable and material impairment in the child's growth, development, or psychological functioning as opposed to the mere act of abuse.

Response: The department disagrees. The adoption of these definitions has been mandated by the Health and Human Services Commission. The definitions are taken directly from Chapter 34 of the Texas Family Code and cannot be revised except statutorily.

Comment: One commenter noted that it is somewhat difficult to follow the abuse and neglect process since it is spread over two sections.

Response: The department disagrees and believes the sections set forth the process by which investigations will be conducted. However, a flow chart has been developed which summarizes the process and will be available upon request.

Comment: A commenter addressed the need for training for investigators so they are aware of the potential impact of their words. The commenter noted that it's important for workers to hear from people in the area of the state they work in and take in the ethnic and cultural issues.

Response: The department agrees and will review its training curricula to determine if these issues are adequately addressed.

Comment: A commenter expressed concern about investigative reports being completed in a timely manner and the process of awarding extensions when they cannot be completed within the specified timeframe.

Response: The department disagrees. Language in §710.8(a) specifies that an investigation is to be completed within 14 calendar days after receipt of the allegation and sub-

mitted to the head of the facility. Language in §710.8(c) authorizes the investigator to request an extension if additional time is required to complete an investigation, clarifies that extensions must be approved by the local supervisor, and states that the head of the facility is to be notified of extensions as they are granted.

Comment: A commenter notes that §710.8 sets forth what should be included in an investigative report, but does not specify what is to be included in an analysis of the evidence.

Response: The department agrees and as a result of comment, language has been added to §710.8(a)(1)(C) to clarify what information is to be included in an analysis of the evidence.

Comment: A commenter notes that in §710.8(f) it is not clear what agency the Office of Facility Investigations is affiliated with.

Response: The department disagrees and is adopting the subsection without change. Language in §710.3, Definitions, specifies that the Office of Facility Investigations is an office within the Texas Department of Protective and Regulatory Services.

Comment: A commenter notes that §710.8(g) requires the investigator to notify the reporter in writing of the outcome of an investigation. This was formerly the responsibility of the facility.

Response: The department agrees. Since the department will no longer identify the reporter of an allegation except in certain situations, it will be necessary for the investigator to notify the reporter of the outcome of an investigation.

Comment: A commenter notes that in §710.12(d), the meaning of "de-identified" is unclear.

Response: The department agrees. As a result of comment, TDPRS has changed the term "de-identified" to "concealed" in subsections (b)-(e).

In addition to changes resulting from public comments, TDPRS is adopting §710.3 with changes to several definitions. The name "clinical issues" is changed to "clinical practice" and the definition is clarified. The definition of "peer review" is revised for clarification. The definition of "sexual exploitation" is revised as a result of anticipated changes in state legislation. The definition of "sexually transmitted disease" is revised to agree with TDMHMR rules. In §710.7(d)(1)(A), TDPRS is revising the language to be consistent with another section. In §710.8(a)(1) and §710.8(b), TDPRS is deleting the phrase "blacked-out or de-identified" and inserting the word "concealed." Also, in §710.8(a)(1)(F), TDPRS is revising the section number and title to agree with changes TDMHMR is making on their rule adoption.

**Subchapter A. Abuse, Neglect,
and Exploitation of Persons
Served by TDMHMR Facili-
ties**

• 40 TAC §710.1, §710.2

The amendments are adopted under the Human Resources Code, Title 2, Chapter 48, which provides the department with the right to investigate reports of abuse, exploitation, or neglect of an elderly or disabled person; and under Texas Civil Statutes, Article 4413(503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to investigations of abuse and neglect from TDMHMR to TDPHS.

The amendments implement §1.06 of Acts 1991, 72nd Legislature, First Called Session, Chapter 15, as amended by Acts 1993, 73rd Legislature, Chapter 747, §1. The amendments also implement Texas Civil Statutes, Article 4413(503), §12(c).

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 May 16, 1995.

TRD-9505921 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: June 15, 1995

Proposal publication date: February 24, 1995

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

• 40 TAC §§710.3-710.20

The repeals are adopted under the Human Resources Code, Title 2, Chapter 48, which provides the department with the right to investigate reports of abuse, exploitation, or neglect of an elderly or disabled person; and under Texas Civil Statutes, Article 4413(503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to investigations of abuse and neglect from TDMHMR to TDPHS.

The repeals implement §1.06 of Acts 1991, 72nd Legislature, First Called Session, Chapter 15, as amended by Acts 1993, 73rd Legislature, Chapter 747, §1. The repeals also implement Texas Civil Statutes, Article 4413(503), §12(c).

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 May 16, 1995.

TRD-9505922 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: June 15, 1995

Proposal publication date: February 24, 1995

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

• 40 TAC §§710.3-710.15

The new sections are adopted under the Human Resources Code, Title 2, Chapter 48, which provides the department with the right to investigate reports of abuse, exploitation, or neglect of an elderly or disabled person; and under Texas Civil Statutes, Article 4413(503), historical note (Vernon Supplement 1993), 72nd Legislature, which transferred all functions, programs, and activities related to investigations of abuse and neglect from TDMHMR to TDPHS.

The new sections implement §1.06 of Acts 1991, 72nd Legislature, First Called Session, Chapter 15, as amended by Acts 1993, 73rd Legislature, Chapter 747, §1. The new sections also implement Texas Civil Statutes, Article 4413(503), §12(c).

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

Adult—A person 18 years of age or older.

Adult Protective Services (APS) investigator—An employee of the Texas Department of Protective and Regulatory Services with expertise and demonstrated competence in conducting investigations.

Agent—Any individual not employed by a Texas Department of Mental Health and Mental Retardation (TDMHMR) facility but working under the auspices of the facility, such as a volunteer, a student, etc.

Allegation—A report by a person believing or having knowledge that a person receiving services has been or is in a state of abuse, exploitation, or neglect as defined in this subchapter.

Child—A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

Clinical practice—Relates to issues of potentially or allegedly unsafe nursing, dental, or medical practice or violations of the Nursing Practice Act, Licensed Vocational Nurse Title Act, Dental Practice Act, or Medical Practice Act. These include acts of omissions of the physician, dentist, or nurse which result from lack of competence in their profession, impaired status, or failure to provide adequate medical, nursing, or dental care to a person served.

Confirmed—A finding that an allegation of abuse or neglect is supported by the preponderance of the evidence.

Contractor—Any organization, entity, or individual associated by contract in a working alliance with a facility.

Designee—A staff member immedi-

ately available who is temporarily or permanently appointed to assume designated responsibilities of the head of the facility.

Facility—Any institution, program, or service operated by the Texas Department of Mental Health and Mental Retardation.

Head of the facility—The superintendent or director of a facility.

Incitement—To spur to action or instigate into activity; implies responsibility for initiating another's actions.

Inconclusive—A finding that an allegation of abuse, neglect, or exploitation leads to no conclusion or definite result due to lack of witnesses or other relevant evidence.

Mental health services provider—An individual, licensed or unlicensed, who performs or purports to perform mental health services, including a:

(A) licensed social worker as defined by Human Resources Code, §50.001;

(B) chemical dependency counselor as defined by §1, Chapter 635, Acts of the 72nd Legislature, Regular Session, 1991 (Texas Civil Statutes, Article 4512o);

(C) licensed professional counselor as defined by §2, Licensed Professional Counselor Act (Texas Civil Statutes, Article 4512g);

(D) licensed marriage and family therapist as defined by §2, Licensed Marriage and Family Therapist Act (Texas Civil Statutes, Article 4512c-1);

(E) member of the clergy;

(F) physician who is "practicing medicine" as defined by Medical Practice Act, §1.03 (Texas Civil Statutes, Article 4495b);

(G) psychologist offering "psychological services" as defined by Psychologists' Certification and Licensing Act, §2 (Texas Civil Statutes, Article 4512c); or

(H) registered nurse or licensed vocational nurse as defined by law.

Office of Facility Investigations—The office located at the Texas Department of Protective and Regulatory Services which has administrative and policy development responsibilities for investigations of abuse, neglect, and exploitation conducted in Texas Department of Mental Health and Mental Retardation facilities.

Peer review—A review of clinical and/or medical practice(s) by peer physi-

cians and/or dentists, or a review of clinical nursing practices by nurses.

Perpetrator—The person who has committed an act of abuse, neglect, or exploitation.

Perpetrator unknown—Term used to describe instances in which abuse or neglect is confirmed but positive identification of the responsible person(s) cannot be made, and in which self-injury has been eliminated as the cause.

Person served—Any person receiving services from the Texas Department of Mental Health and Mental Retardation, including those persons who are absent who are still carried on the rolls of the facility.

Preponderance of evidence—The greater weight of evidence, or evidence which is more credible and convincing to the mind.

Prevention and Management of Aggressive Behavior (PMAB)—The Texas Department of Mental Health and Mental Retardation's proprietary risk management program, which uses the least intrusive, most effective options to reduce the risk of injury for persons receiving services and for staff from acts or potential acts of aggression.

Reporter—The person filing a report of abuse, neglect, or exploitation, whether the victim of alleged abuse, neglect, or exploitation, or a third party filing a report on behalf of the alleged victim, or both.

Sexual abuse—Any sexual activity, including sexual exploitation as defined in the Texas Health and Safety Code, §161.131 and sexual assault as defined in the Texas Penal Code, §22.011, involving an employee, agent, or contractor and a person served. Sexual activity includes, but is not limited to, kissing, hugging, stroking, or fondling with sexual intent; oral sex or sexual intercourse; request or suggestion or encouragement by staff for performance of sex with the employee or with another person served.

Sexual exploitation—A coercive, manipulative, or otherwise exploitative pattern, practice, or scheme of conduct, which may include sexual contact, that can be reasonably construed as being for the purposes of sexual arousal or gratification or sexual abuse of any person. The term does not include obtaining information about a patient's sexual history within standard accepted practice.

Sexually transmitted disease—Any infection of a person served, with or without symptoms or clinical manifestations, that is or may be transmitted from one person to another as a result of sexual contact between persons.

Unconfirmed—A finding that an allegation of abuse, neglect, or exploitation is not supported by the preponderance of the evidence.

Unfounded—A finding that an allegation of abuse or neglect is spurious or patently without factual basis.

§710.5. Abuse, Neglect, and Exploitation of a Child Defined.

(a) When the perpetrator is an employee, contractor, or agent of the Texas Department of Mental Health and Mental Retardation (TDMHMR), or the perpetrator is unknown, abuse, neglect, or exploitation of a child shall be defined as follows.

(1) Abuse of a child includes the following acts or omissions by any person:

(A) mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(B) causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(C) physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(D) failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(E) sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by the Texas Penal Code, §43.01; sexual penetration with a foreign object; incest; sexual assault; or sodomy inflicted on, shown to, or intentionally practiced in the presence of a child by another person if the child is present only to arouse or gratify the sexual desires of any person;

(F) failure to make a reasonable effort to prevent sexual contact, sexual intercourse, or sexual conduct, as those terms are defined by the Texas Penal Code, §43.01; sexual penetration with a foreign object; incest; sexual assault; or sodomy being inflicted on or shown to a child by another person, or intentionally practiced in the presence of a child by another person if the child is present only to arouse or gratify the sexual desires of any person;

(G) compelling or encouraging the child to engage in sexual conduct as defined by the Texas Penal Code, §43.01; or

(H) causing, permitting, encouraging, engaging in, or allowing the photographing, filming, or depicting of the child if the person knew or should have known that the resulting photograph, film, or depiction of the child is obscene (as defined by the Texas Penal Code) or pornographic.

(2) Neglect of a child includes:

(A) leaving a child in a situation where the child would be exposed to a substantial risk of harm, without arranging for necessary care for the child, and a demonstration of an intent not to return by a parent, guardian, or managing or possessory conservator of the child;

(B) the following acts or omissions by any person:

(i) placing the child in or failing to remove the child from a situation that a reasonable person would realize requires judgment or actions beyond the child's level of maturity, physical condition, or mental abilities and that results in bodily injury or a substantial risk of immediate harm to the child;

(ii) the failure to seek, obtain, or follow through with medical care for the child, with the failure resulting in or presenting a substantial risk of death, disfigurement, or bodily injury or with the failure resulting in an observable and material impairment to the growth, development, or functioning of the child;

(iii) the failure to provide the child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused; or

(iv) the failure by the person responsible for a child's care, custody, or welfare to permit the child to return to the child's home without arranging for the necessary care for the child after the child has been absent from the home for any reason, including having been in residential placement or having run away.

(3) Exploitation means the illegal or improper act or process of using a person or the resources of a person served for monetary or personal benefit, profit, or gain.

(b) Abuse does not include:

(1) the proper use of restraints or seclusion, including TDMHMR's prevention and management of aggressive behavior (PMAB), and the approved application of behavior modification techniques as described in 25 Texas Administrative

Code (TAC), Chapter 405, Subchapter F, concerning Restraint and Seclusion-Mental Health Facilities, 25 TAC Chapter 405, Subchapter G, concerning Behavior Therapy Programs (MH), and 25 TAC Chapter 405, Subchapter H, concerning Behavior Management-Facilities Serving Persons with Mental Retardation;

(2) other actions taken in accordance with the rules of TDMHMR;

(3) actions an employee reasonably believes to be immediately necessary to avoid imminent harm to self, persons served, or other individuals, if the actions are limited only to those actions reasonably believed to be necessary under the existing circumstances. The actions do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, or PMAB; or

(4) complaints related to rights violations, theft of property, or daily administrative operations of a facility. Such complaints will be referred to the head of the facility for administrative action by the head of the facility, the facility rights protection officer, or other appropriate parties.

§710.7. Adult Protective Services (APS) Investigator.

(a) APS investigator. An APS investigator conducts all investigations of abuse, neglect, and exploitation.

(b) Training. APS investigators receive appropriate training in issues related to the efficient and effective investigation of allegations of abuse, neglect, and exploitation. Investigators are oriented to issues pertaining to individuals with disabilities, how to communicate effectively with them, and the nature of an inpatient environment.

(c) Notifications. Upon receiving a report of an allegation of abuse, neglect, or exploitation, the person receiving the intake or the APS investigator will:

(1) immediately notify the head of the facility or designee of the allegation without revealing the identity of the reporter. If the allegation involves sexual exploitation of a person served by a mental health services provider as defined in the Texas Civil Practices and Remedies Code, §81, the name of the reporter shall be released to the head of the facility or designee;

(2) immediately notify the head of the facility or designee as to whether the allegation will be reported to a law enforcement agency; and

(3) immediately, if possible, but in no case more than one hour later, report allegations involving physical abuse or sexual assault to the appropriate local or state law enforcement agency.

(d) Responsibilities.

(1) The APS investigator must fully investigate alleged incidents of abuse, neglect, or exploitation.

(A) The APS investigator must begin an investigation within 24 hours of receiving an allegation. An investigation begins when the investigator interviews either the person served, alleged perpetrator, or any collateral witness.

(B) When an allegation involves sexual abuse or serious physical injury of a person served, the investigator must make a face-to-face contact with either the person served, alleged perpetrator, or a collateral witness within 24 hours.

(C) Anonymous allegations must be received and investigated following the same procedures that are used when the reporter is known.

(D) An allegation that sexual abuse has been committed by a person receiving services must be reported and investigated following the procedures outlined in this subchapter to determine whether negligence on the part of staff may have made it possible for the sexual abuse to have occurred.

(E) Injuries of unknown origin must be investigated if the attending physician, after examining the person served, suspects that the injury is the result of abuse or neglect.

(F) Any pregnancy of a person served, provided there is medical verification that the conception could have occurred while the person was a resident of the facility, or any diagnosis of a sexually transmitted disease in a person served which could have occurred while the person was a resident of the facility, must be reported as possible abuse or neglect in keeping with the provisions of this subchapter.

(G) If the allegation involves the actions of a physician, dentist, registered nurse, or licensed vocational nurse, the head of the facility or designee, in coordination with the APS investigator and the facility medical or nursing director, as appropriate to the discipline involved, will determine whether the allegation involves the clinical practice of the physician, dentist, registered nurse, or licensed vocational nurse. If the abuse or neglect allegation does not involve clinical practice, the APS investigator pursues an investigation. If a determination is made that the allegation involves the clinical practice of a phy-

sician, dentist, registered nurse, or licensed vocational nurse, the APS investigator refers the allegation in writing to the head of the facility or designee for peer review.

(H) Allegations determined by the APS investigator to involve rights issues must be reported in writing, using the Adult Protective Services Referral form, to the facility rights officer within 24 hours of the time the investigator becomes aware of the rights violations or the next working day.

(I) Allegations determined by the APS investigator to involve the daily administrative operations of a facility and which have not resulted in a specific case of neglect or exploitation, such as the failure to maintain an adequate number of staff on a unit or dorm, will be referred to the head of the facility for administrative review and action using the Adult Protective Services Referral Form.

(2) Investigative procedures outlined in the Texas Department of Protective and Regulatory Services' "Procedures and Techniques for Investigation of Abuse and Neglect," must be followed in all investigations.

(3) If at any point during the course of the investigation it becomes apparent (via written witness statements and other evidence gathered) that the allegation is spurious or patently without factual basis, the investigation may be closed as unfounded, with supervisory approval. The reason for this determination, based on specific evidence, will be included in the report. A copy of all such investigations must be sent to the head of the facility. If there is disagreement with the determination of unfounded, the head of the facility may contact the local APS supervisor to request that the case be re-opened.

(4) If there is not a preponderance of evidence to indicate that an allegation should or should not be confirmed due to lack of witnesses or other available evidence, a finding of inconclusive may be used with supervisory approval.

(5) The APS investigator must indicate "perpetrator unknown" in those instances in which the preponderance of evidence exists to confirm abuse or neglect, but positive identification of the person(s) responsible cannot be determined and self-injury has been eliminated as the cause. Evidence must exist that abuse or neglect has been committed for the term "perpetrator unknown" to be used.

§710.8. Responsibilities of the Adult Protective Services (APS) Investigator; Completion of Investigation.

(a) The APS investigator shall complete the investigation within 14 calendar days after receiving an allegation and submit a copy of the items listed in paragraphs (1)-(5) of this subsection to the head of the facility:

(1) the investigative report, with any information that would reveal the identity of the reporter concealed including:

(A) a statement of the allegation(s);

(B) a summary of the investigation;

(C) an analysis of the evidence, including factual information related to what occurred, how the evidence was weighed, and what testimony was considered credible;

(D) the investigator's determination as to whether or not abuse, neglect, or exploitation occurred;

(E) recommendations resulting from the investigation;

(F) an opinion as to how the allegation(s) might be classified in accordance with 25 Texas Administrative Code Chapter 404, Subchapter A, §404.10 (relating to Disciplinary Action); and

(G) a determination as to how the incident should be classified in accordance with the Texas Family Code, §34.012, if the incident involves a minor;

(2) the physician's examination and treatment of abuse-related injuries (Texas Department of Mental Health and Mental Retardation (TDMHMR) Client Injury/Incident Report);

(3) photographs relevant to the investigation, including photographs depicting the existence of injuries (taken within 24 hours after the report of the allegation) or the non-existence of injuries, when appropriate;

(4) all witness statements and supporting documents; and

(5) a "Client Abuse/Neglect Report" (AN-1-A) reflecting the finding of the investigation, classification of the incident, and the alleged source of the abuse, neglect, or exploitation.

(b) If the incident involved sexual exploitation of a person served by a mental health services provider as defined in the Texas Civil Practices and Remedies Code, Chapter 81, the name of the reporter shall not be concealed in the report provided to the head of the facility.

(c) If additional time is required to complete the investigation, the APS investigator may request an extension by submitting an Extension Request form to the local supervisor. Extensions in increments of 14 calendar days may be authorized by the local supervisor. The head of the facility will be notified of extensions as they are granted.

(d) If the head of the facility or designee disagrees with the finding of the investigation, the head of the facility may, within 14 calendar days after receiving the investigative report, request in writing a review of the finding by filing the Request for Review of Finding form with the Deputy Director of Adult Protective Services, Texas Department of Protective and Regulatory Services, P.O. Box 149030, E-561, Austin, Texas 78714-9030. The review will be completed by Adult Protective Services within 14 calendar days.

(e) In cases of abuse, neglect, or exploitation previously reported to a law

enforcement agency, the APS investigator will submit a copy of the investigative report to the appropriate law enforcement agency.

(f) In cases of abuse, neglect, or exploitation involving a physician, dentist, registered nurse, or licensed vocational nurse, the APS investigator will forward a copy of the completed investigative report to Texas Department of Protective and Regulatory Services' Office of Facility Investigations in state office. The reports will then be forwarded to the licensing authority for the discipline under review, as required by law.

(g) The investigator will notify the reporter in writing of the outcome of the investigation, whether the head of the facility concurs with the finding, and the method or appealing either the outcome of the Texas Department of Protective and Regulatory Services' (TDPRS's) investigation or the determination of the head of the facility, if different from the TDPRS outcome.

(h) Upon request, APS investigators will attend TDMHMR grievance hearings and provide consultation to review authorities related to investigations they have conducted.

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 May 16, 1995.

TRD-9505923

Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Protective and
Regulatory Services

Effective date: June 15, 1995

Proposal publication date: February 24, 1995

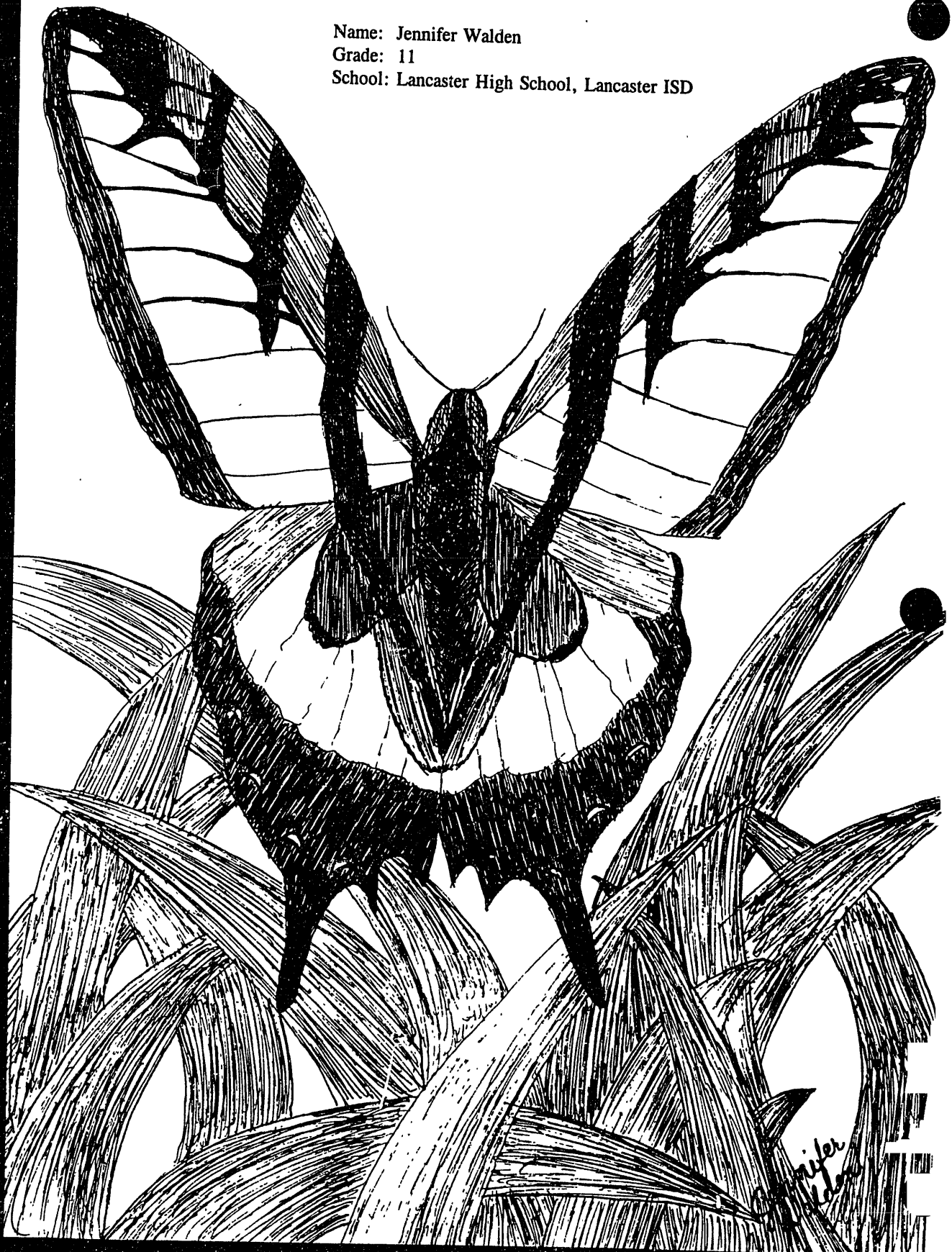
For further information, please call: (512) 450-3765

◆ ◆ ◆

Name: Jennifer Walden

Grade: 11

School: Lancaster High School, Lancaster ISD



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 Board of Architectural Examiners

Thursday, May 25, 1995, 11:00 a.m.

Holiday Inn, Northwest Plaza, 8901 Business Park Drive

Austin

Revised Agenda

Personnel/Resource Committee

AGENDA:

Call to order; roll call; recognition of guests; chairman's opening remarks; consider/act on approval of minutes; consider/act on Personnel/Resource Committee matters; executive session to deliberate the evaluation of the executive director per Texas Open Meetings Act, §551.074, Texas Government Code; public comment; and adjournment.

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 Carolyn Lewis at (512) 458-1363 two working days prior to the meeting so that appropriate arrangement can be made.

Contact: Cathy Hendricks, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78757, (512) 458-1363.

Filed: May 17, 1995, 2:10 p.m.

TRD-9506010

Thursday, May 25, 1995, 1:00 p.m.

Holiday Inn, Northwest Plaza, 8901 Business Park Drive

Austin

Revised Agenda

Education/Qualification and Examination Committee

AGENDA:

Call to order; roll call; recognition of guests; chairman's opening remarks; consider/act on approval of minutes; consider/act on Education/Qualification and Examination Committee matters; public comment; and adjournment.

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 Carolyn Lewis at (512) 458-1363 two working days prior to the meeting so that appropriate arrangement can be made.

Contact: Cathy Hendricks, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78757, (512) 458-1363.

Filed: May 17, 1995, 2:11 p.m.

TRD-9506011

Thursday, May 25, 1995, 2:00 p.m.

Holiday Inn, Northwest Plaza, 8901 Business Park Drive

Austin

Revised Agenda

Rules/Enforcement Committee

AGENDA:

Call to order; roll call; recognition of guests; chairman's opening remarks; consider/act on approval of minutes; consider/act on rules/enforcement matters; public comment; and adjournment.

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 Carolyn Lewis at (512) 458-1363 two working days prior to the meeting so that appropriate arrangement can be made.

Contact: Cathy Hendricks, 8213 Shoal Creek Boulevard, #107, Austin, Texas 78757, (512) 458-1363.

Filed: May 17, 1995, 2:11 p.m.

TRD-9506012

Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Friday, May 26, 1995, 9:00 a.m.

General Services Commission, Central Services Building, 1711 San Jacinto, Room 402

Austin

Pricing Subcommittee

AGENDA:

Call to order and introduction of subcommittee members and guests

Acceptance of minutes from March 3, 1995 meeting

Discussion and recommendation for action on new services; renewal services; new products; pricing procedure on spices; and product changes and revisions

Adjournment

Contact: Pat Martin, P.O. Box 13047, Austin, Texas 78711, (512) 463-3443.

Filed: May 16, 1995, 11:19 a.m.

TRD-9505935

Texas Interagency Council on Early Childhood Inter- vention

Thursday, May 25, 1995, 9:00 a.m.

TDMHMR, 909 West 45th Street, Auditorium

Austin

Interagency Council on Early Childhood Intervention

AGENDA:

Public comment. Discussion and approval of minutes from April 23, 1995, meeting. Discussion and approval of advisory committee and director's forum report. Presentation of internal audit report. Discussion and approval of staff recommendation to fund a new milestones project in Lubbock. Discussion and approval to extend the deadline for submission of the fiscal year 1996 funding application for CEDEN Family Resource Center. Discussion and update on funding Early Childhood Intervention services in the next biennium. Discussion and approval to adopt revisions to 25 TAC §621.24 of the Early Childhood Intervention rules related to early intervention specialists. Discussion and update on the status of legislative activities and revisions to Chapter 73, Human Resources Code. Executive session: Discussion and evaluation of the performance of the Early Childhood Intervention executive director. FYI.

Contact: Linda Hill, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

Filed: May 17, 1995, 9:59 a.m.

TRD-9505995

State Employee Charitable Campaign

Friday, May 26, 1995, Noon.

2820 San Bernardo, Suite 3

Laredo

Local Employee Committee-Laredo

AGENDA:

Selection of local campaign manager

Selection of agencies to be listed under the local section of the brochure

Request representative from the SECC to attend the state training

Contact: Peggy Duncan, 2820 San Bernardo, Suite 1, Laredo, Texas 78040, (210) 723-9113, Fax: (210) 723-4759.

Filed: May 18, 1995, 9:53 a.m.

TRD-9506065

Office of the Governor

Thursday, May 25, 1995, 9:30 a.m.

6595 North IH-35

Austin

Revised Agenda

Board Meeting

AGENDA:

I. Call to order II. Report on Statewide HEAT Program III. Committee reports IV. Director/staff reports V. Discussion of proposed education curriculum development VI. Review/adoption of posted ATPA amended Rule 4.36 VII. Review/adoption of proposed Rule 4.47 VIII. Discussion/approval of proposed Rule 4.48 IX. Discussion/approval for vehicle theft prevention council of the state of Maryland to purchase ATPA's public service announcements X. Adjourn

Contact: Linda Young, 4000 Jackson Avenue, Austin, Texas 78731, (512) 467-3999.

Filed: May 17, 1995, 4:08 p.m.

TRD-9506037

Office of the Governor, Criminal Justice Division

Tuesday-Wednesday, May 30-31, 1995, 9:00 a.m.

Marriot Hotel, 701 East 11th Street, Bickler Room

Austin

Governor's Juvenile Justice and Delinquency Prevention Board Orientation Meeting

AGENDA:

I. Call to order and introductions, II. Approval of the minutes, III. History of JJDP Act and the Office of Juvenile Justice and Delinquency Prevention, IV. Role of the Criminal Justice Division, V. Review of Family Code changes, VI. Overview of the JJDP Act, VII. Overview of the JJDP fund-

ing programs, VIII. Staff roles and responsibilities, IX. Board roles and responsibilities, X. Report on coalition for juvenile justice meeting and reauthorization of the Act, XI. Board action, XII. Adjourn

Contact: Glenn Brooks, P.O. Box 12428, Austin, Texas 78711, (512) 463-1919.

Filed: May 17, 1995, 11:41 a.m.

TRD-9506006

Texas Department of Health

Thursday, May 25, 1995, 10:00 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Human Resources Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 20, 1995 meeting; appointments to the Indigent Health Care Advisory Committee; proposed Radiation Advisory Board Rules; proposed rules concerning the Poison Control Coordinating Committee; final adoption of rules concerning the Texas Hazard Communication Act Advisory Committee; final adoption of rules concerning the Asbestos Advisory Committee; and final adoption of rules concerning the Sanitarian/Code Enforcement Officers' 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: May 17, 1995, 3:03 p.m.

TRD-9506023

Thursday, May 25, 1995, 1:15 p.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

Texas Board of Health, Health and Clinical Services Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 20, 1995 meeting; report on Statewide CPR Resuscitation Educational Campaign; proposed rules concerning investigations of abuse, neglect, and exploitation of children and elderly or disabled persons; final adoption of rules concerning the immunization requirements for children and students; and briefing on Cholera.

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: May 17, 1995, 3:03 p.m.

TRD-9506024

Thursday, May 25, 1995, 3:00 p.m.

Room M-739, Texas Department of Health,
1100 West 49th Street

Austin

Texas Board of Health, Health Financing
Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 21, 1995 meeting; recommendation to the State Medicaid Director concerning proposed rules relating to reimbursement for school health and related services; recommendation to the State Medicaid Director concerning proposed rules relating to Medicaid disproportionate share state-owned hospitals; and recommendation to the State Medicaid Director concerning proposed Medicaid vendor drug reimbursement rules.

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: May 17, 1995, 3:04 p.m.

TRD-9506025

Thursday, May 25, 1995, 4:30 p.m.

Room M-739, Texas Department of Health,
1100 West 49th Street

Austin

Texas Board of Health, Strategic Management Committee

AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the April 20, 1995 meeting; management audit by the State Auditor's office; presentation of summary findings from the report, "Texas Health People 2000 Health Status Indicators by Race and Ethnicity, 1980-1993"; progress report for building conditions; strategic planning update; historically underutilized business program update; 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: May 17, 1995, 3:04 p.m.

TRD-9506026

Texas Department of Housing and Community Affairs

Thursday, May 25, 1995, 9:30 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 118

Austin

Programs Committee Meeting

AGENDA:

The Programs Committee will meet to consider and possibly act on the following: HOME Program funding recommendations for rental project assistance and Housing Innovation Fund; and adjourn.

Supporting materials and staff recommendations on these agenda items are available for review at Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704 or copies may be obtained on specific items by calling (512) 475-2124 (copies are subject to open records request copying charge per page).

Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: May 17, 1995, 2:44 p.m.

TRD-9506018

Thursday, May 25, 1995, 11:30 a.m.

1700 North Congress Avenue, Room 118,
Stephen F. Austin State Office Building

Austin

Board Meeting

AGENDA:

The Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on: Minutes of meeting of April 27, 1995; election of officers and appointment of committee members; repeal of Low Income Housing Tax Credit Plan 1995A; approval to publish the Low Income Housing Tax Credit 1995B Qualified Allocation Plan in the *Texas Register*; HOME Program funding recommendations—rental project assistance and Housing Innovation Fund; executive session—pending litigation (report on litigation under §551.071 and §551.103, Texas Government Code litigation exception). Re-

structure of Residential Mortgage Revenue Bonds, grievances, personnel and other related matters; action in open session on executive session items; executive director's report—legislative session, banks outside of the U.S., homeless survey, Low Income State Housing Plan, oversight of bonds, restructuring of bonds for Oxford development; commercial paper and other items deemed necessary by the executive director; and adjourn.

Supporting materials and staff recommendations on these agenda items are available for review at Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704 or copies may be obtained on specific items by calling (512) 475-2124 (copies are subject to Open Records Request copying charge per page). Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78704, (512) 475-3934.

Filed: May 17, 1995, 2:43 p.m.

TRD-9506017

Department of Information Resources

Thursday, May 25, 1995, 8:30 a.m.

300 West 15th Street, Fifth Floor, Committee Room 5

Austin

Open Board Meeting

AGENDA:

1. Adoption of January meeting minutes
2. Consideration of final adoption of 1 TAC §201.17, relating to Advisory Committees
3. Consideration of proposed new 1 TAC §201.7, relating to Interagency Contracts
4. Consideration of proposed amendments to 1 TAC §201.13(d), relating to Standards for Data Transport Networks for Computers
5. Presentation of proposed revisions to agency biennial operating plan instructions
6. Technology update
7. Executive director's report
8. Other business

Contact: John Hawkins, 300 West 15th Street, Suite 1300, Austin, Texas 78711, (512) 475-4714.

Filed: May 17, 1995, 3:05 p.m.

TRD-9506027

◆ ◆ ◆
Texas Department of Insurance

Thursday, June 1, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0647

To consider whether disciplinary action should be taken against Myrna Kay Hernandez, Galveston, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 16, 1995, 10:59 a.m.

TRD-9505932

Thursday, June 1, 1995, 1:00 p.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0654

To consider whether disciplinary action should be taken against David A. Donovan, Arlington, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License issued by the Texas Department of Insurance.

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 16, 1995, 10:58 a.m.

TRD-9505931

Friday, June 2, 1995, 10:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-93-0712

Prehearing conference to consider whether disciplinary action should be taken against Hugh Maxwell Roth, Plano, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and Group II, Insurance Agent's License (continued from April 4, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 16, 1995, 10:58 a.m.

TRD-9505930

Monday, June 5, 1995, 9:00 a.m.

State Office of Administrative Hearings,
300 West 15th Street, Suite 502

Austin

AGENDA:

454-95-0368.C

Hearing to consider the application of Jeffrey Mark Sacks (prehearing conference to be held Friday, June 2, 1995, 1:00 p.m.)

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: May 16, 1995, 10:58 a.m.

TRD-9505929

◆ ◆ ◆
Texas Mental Health and Mental Retardation Board

Thursday, May 25, 1995, 11:30 a.m.

909 West 45th Street, Room 295

Austin

Ad Hoc Work Group on ICF-MR Medicaid Rates

AGENDA:

I. Discussion of ICF-MR rate setting methodology

If ADA assistance or deaf interpreters are required, notify TXMHMR, (512) 206-4506 (voice or RELAY TEXAS), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: May 17, 1995, 10:37 a.m.

TRD-9505999

◆ ◆ ◆
Texas Council on Offenders with Mental Impairments

Thursday, May 25, 1995, 1:00 p.m.

8610 Shoal Creek Boulevard

Austin

Finance Committee

AGENDA:

I. Introductions

II. Public comments

III. Discussion of fiscal year 1996 funding requests

IV. Schedule for next meeting

Adjournment

Each item above includes discussion and action as necessary.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406.

Filed: May 16, 1995, 1:05 p.m.

TRD-9505940

Thursday, May 25, 1995, 1:30 p.m.

8610 Shoal Creek Boulevard

Austin

AGENDA:

Program/Research Committee Agenda

I. Introductions

II. Approval of minutes

III. Overview of memorandums of understanding and action plans

IV. Special skills training conference update

V. Mid-year program report

VI. Update on Senate Bill 1067/Austin-Travis County MH/MR Center

VII. Director's report

Each item above includes discussion and action as necessary.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 405-5406.

Filed: May 16, 1995, 1:05 p.m.

TRD-9505941

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Wednesday, June 7, 1995, 10:00 a.m. (Rescheduled from May 18, 1995.)

Building F, Room 31034, TNRCC, 12015 Park 35 Circle, IH-35 North at Yager Lane

Austin

Office of Hearings Examiners

AGENDA:

For a hearing before a hearings examiner on an application by the City of Sherman to amend Certificate of Convenience and Necessity (CCN) Number 10203 to expand the area to which it provides water utility service in Grayson County, Texas and to request dual certification with WSWWS Water System (CCN Number 11752) and Robert J. Tate doing business as The Oaks Water System (CCN Number 12610). The proposed utility service area is located approximately 2.5 miles northwest of downtown Sherman, Texas and is generally bounded on the north by U.S. Highway 82, on the east by FM Road 1417 and on the south by Sand Creek. The proposed utility area includes the Carriage House Estates, Lamberth Road Estates and Shady Oaks Subdivisions. The total area being requested includes approximately 216 acres and zero

current customers of the City of Sherman. This matter has been designated as TNRCC Docket Number 95-0615-UCR.

Contact: Leslie Craven, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: May 17, 1995, 2:44 p.m.

TRD-9506019

Monday, June 12, 1995, 10:00 a.m.

Building A, Room 315H, 12124 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Pursuant to the provisions of 30 TAC §116.412, notice is hereby given that the executive director of the Texas Natural Resource Conservation Commission (TNRCC) issued an emergency order to Phibro Energy USA, Inc. on May 16, 1995, and that an examiner for the TNRCC will conduct a contested case hearing to consider whether the emergency order to authorize the associated emissions of a package boiler at the Phibro Energy USA Inc. facility located at Loop 197 South at 14 Street, Texas City, Galveston County, Texas should be affirmed, modified, or denied and set aside.

The hearing will be a contested case hearing under the Texas Administrative Procedure Act, Texas Government Code Annotated, §2001.051 et seq (Vernon 1994 Supplement), and will be held under the authority of §§382.029, 382.0291 and 382.063 or the Texas Health and Safety Code, the Rules of Procedure of the TNRCC, and 30 TAC Chapter 116.

Contact: Bill Ehret, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: May 17, 1995, 10:37 a.m.

TRD-9506001

Monday, June 19, 1995, 5:00 p.m.

Chambers County Courthouse, County Courtroom, Second Floor, 404 Washington Anahuac

AGENDA:

On an application by Chambers County Resource Recovery and Recycling Center, Proposed Permit Number MSW2239, to authorize a Type 5RR municipal solid waste facility to receive medical solid waste. The proposed site covers approximately ten acres of land and is to receive approximately 40 tons of solid waste per day for processing. The proposed facility will be located at 7505 Highway 65, approximately ten miles east of Anahuac in Chambers County, Texas.

Contact: Charles Stavley or Ann Scudday, P.O. Box 130, Austin, Texas 78711, (512) 239-6687 or (512) 239-4755.

Filed: May 17, 1995, 2:11 p.m.

TRD-9506013

Texas Board of Nursing Facility Administrators

Thursday, May 25, 1995, 1:00 p.m.

Bowie Room, St. Anthony Hotel, 300 East Travis Street

San Antonio

Revised Agenda

Education Committee

AGENDA:

The committee will discuss and possibly act on the equivalency request of Donald Henry.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6628. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: May 16, 1995, 4:11 p.m.

TRD-9505950

Public Utility Commission of Texas

Tuesday, May 30, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Hearings Division

AGENDA:

A prehearing conference will be held on the above date and time in Docket Number 14197-complaint of Marc Singer against Pedernales Electric Cooperative Incorporated.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 16, 1995, 11:19 a.m.

TRD-9505934

Friday, June 9, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A joint prehearing conference will be held on the above date and time in Docket Numbers 12820, 13126, and 13650: Docket

Number 12820-petition of the General Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company; petition of Office of Public Utility Counsel for an inquiry into the reasonableness of the rates and services of Central Power and Light Company; appeal and petition of Central Power and Light Company from the ratemaking decisions of the cities of Pharr, Edinburg, Mission Weslaco, McAllen, and Alton, Texas.

Docket Number 13126-inquiry by the General Counsel into the operation and management of the South Texas Nuclear Project.

Docket Number 13650-application of Central Power and Light Company to reconcile fuel costs.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 18, 1995, 8:29 a.m.

TRD-9506045

Tuesday, October 10, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits is scheduled for the above date and time in Docket Number 14147: complaint of Concierge Management Corporation against GTE Southwest, Inc.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: May 18, 1995, 8:25 a.m.

TRD-9506044

Structural Pest Control Board

Thursday, June 1, 1995, 9:00 a.m.

Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 2.120

Austin

Regular Board Meeting

AGENDA:

I. Approval of board minutes of April 18, 1995.

II. Public comment.

Contact: Benny Mathis, 9101 FM 1325, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: May 17, 1995, 11:13 a.m.

TRD-9506004

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Texas State Technical College System

Friday, May 19, 1995, 1:00 p.m.

TSTC Harlingen Campus, Conference Center Board Room

Harlingen

Revised Agenda

Board of Regents

AGENDA:

Discussion and review of the following TSTC Policy Committee minute orders and reports:

Committee of the Whole-1:00 p.m.

Policy Committee for Instruction and Student Services-2:00 p.m.

Policy Committee for Human Resources and Development-2:30 p.m.

Policy Committee for Facilities-3:15 p.m.

Policy Committee for Fiscal Affairs-3:45 p.m.

Committee of the Whole-4:45 p.m.

Add items:

Declaration of financial exigency at Texas State Technical College System administration and Waco/Marshall Master Equipment Lease Purchase Plan (MELPP)

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: May 16, 1995, 11:56 a.m.

TRD-9505937

Saturday, May 20, 1995, 8:00 a.m.

TSTC Harlingen Campus, Conference Center Board Room

Harlingen

Revised Agenda

Board of Regents

AGENDA:

Add items:

Declaration of financial exigency at Texas State Technical College System administration and Waco/Marshall Master Equipment Lease Purchase Plan (MELPP)

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: May 16, 1995, 11:56 a.m.

TRD-9505938

Saturday, May 20, 1995, 8:00 a.m.

TSTC Harlingen Campus, Conference Center Board Room

Harlingen

Revised Agenda

Board of Regents

AGENDA:

Add items:

Declaration of financial exigency at Texas State Technical College System administration, Waco/Marshall, and Brownwood Extension Center

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: May 16, 1995, 2:34 p.m.

TRD-9505946

Saturday, May 20, 1995, 8:00 a.m.

TSTC Harlingen Campus, Conference Center Board Room

Harlingen

Revised Agenda

Board of Regents

AGENDA:

Add items:

Amendment to ground lease agreement with CTAS minute order 11-95, approved January 24, 1995

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-4890.

Filed: May 16, 1995, 4:42 p.m.

TRD-9505955

◆ ◆ ◆
Texas Department of Transportation

Thursday, May 25, 1995, 9:00 a.m.

200 East Riverside Drive, Room 101

Austin

Texas Transportation Commission

AGENDA:

Delegations: Potter, Randall, Williamson, Tarrant, Johnson, San Patricio, and various southeastern counties. Approve minutes. Recognitions/presentations. Contract awards/rejections/defaults. Programs. Routine minute orders. District/division/special office reports. Transportation planning. Multimodal transportation. Rulemaking: 43 TAC Chapters 1, 2, 4, 7, 11, 15, 17, and 19. Executive session for legal counsel and land acquisition matters. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: May 17, 1995, 9:49 a.m.

TRD-9505992

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University of Houston System

Monday, May 22, 1995, 8:00 a.m.

Shamrock Room, Conrad Hilton College Building, University of Houston

Houston

Board of Regents

AGENDA:

To discuss and/or approve the following: executive session: appointment, evaluation, or dismissal of personnel, and informational reports from employees; contract for a new financial reporting system; and contract for a new student information system.

Contact: Peggy Cervenka, 1400 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: May 16, 1995, 3:23 p.m.

TRD-9505949

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Texas Workers' Compensation Insurance Fund

Thursday, May 25, 1995, 8:30 a.m.

100 Congress Avenue, Suite 600

Austin

Board of Directors

AGENDA:

Call to order; roll call; swearing in of new board member(s); review and approval of the minutes of the May 12-13, 1995, board meeting; action items; financial report; fund status report and legislative update on certain legislation affecting the Fund; informational items; report of the Finance Committee; public participation; executive session(s); consideration of appointment of president/CEO; action items resulting from executive session deliberations; announcements; and adjourn.

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: May 17, 1995, 3:31 p.m.

TRD-9506031

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Regional Meetings

Meetings Filed May 16, 1995

The Atascosa County Appraisal District Board of Directors met in the Atascosa County Commissioners Courtroom, Atascosa County Courthouse, Jourdanton, May 22, 1995, at 9:00 a.m. Information may be obtained from Vernon A. Warren,

P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9505956.

The Atascosa County Appraisal District Board of Directors met in the Atascosa County Commissioners Courtroom, Atascosa County Courthouse, Jourdanton, May 22, 1995, at 9:00 a.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9505957.

The Comal Appraisal District (Revised Agenda.) Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, June 12-15, 1995, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9505952.

The Education Service Center, Region VIII Board of Directors will meet at the Hot Biscuit Restaurant, 2502 Ferguson Road, Mt. Pleasant, May 25, 1995, at 6:30 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, (903) 572-8551. TRD-9505936.

The Guadalupe-Blanco River Authority (Emergency Revised Agenda.) Board of Directors met at 933 East Court Street, Seguin, May 17, 1995, at 10:00 a.m. (Reason for emergency: Information not received in time for regular posting.) Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9505928.

The Palo Pinto Appraisal District Appraisal Review Board met at the Court House, Highway 180, Palo Pinto, May 19, 1995, at 1:30 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD-9505951.

The Central Appraisal District of Rockwall County Appraisal Review Board will meet at 106 North San Jacinto, Rockwall, May 19, 1995, at 9:00 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9505939.

The Southwest Milam Water Supply Corporation Board met at 114 East Cameron, Rockdale, May 22, 1995, at 7:00 p.m. Information may be obtained from Dwayne Jekel, P.O. Box 232, Rockdale, Texas 76567, (512) 446-2604. TRD-9505947.

♦ ♦ ♦ Meetings Filed May 17, 1995

The Atascosa County Appraisal District Appraisal Review Board will meet at Fourth and Avenue J, Poteet, May 23, 1995, at 8:00 a.m. Information may be obtained

from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591. TRD-9506033.

The Cash Water Supply Corporation Board of Directors met at the Corporation Office, FM 1564 at Highway 34, Greenville, May 22, 1995, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9506041.

The Central Counties Center for MHMR Services Board of Trustees will meet at 304 South 22nd Street, Temple, May 25, 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-9506042.

The Central Texas Council of Governments Word Force Development Board of Central Texas will meet at 321 North Penelope, Belton, May 25, 1995, at 10:00 a.m. Information may be obtained from Susan Kamas, P.O. Box 729, Belton, Texas 76513, (817) 939-3771. TRD-9506043.

The Coastal Bend Council of Governments Membership will meet at 2910 Leopard, Corpus Christi, May 26, 1995, at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78649, (512) 883-5743. TRD-9506039.

The Deep East Texas Council of Governments Grants Application Review Committee will meet at the Lufkin Civic Center, 601 North Second Street, Lufkin, May 25, 1995, at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704. TRD-9506000.

The Deep East Texas MHMR (Burke Center) (Revised Agenda.) Board of Trustees will meet at 4101 South Medford Drive, Lufkin, May 23, 1995, at 1:00 p.m. Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9506036.

The Hays County Appraisal District Appraisal Review Board will meet at 21001 North IH-35, Kyle, May 23, 1995, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9506002.

The Johnson County Central Appraisal District Board of Directors will meet at 109 North Main, Suite 201, Room 202, Cleburne, May 24, 1995, at 4:30 p.m. Information may be obtained from Priscilla A. Bunch, 109 North Main, Cleburne, Texas 76031, (817) 558-8100. TRD-9505968.

The Leon County Appraisal District Board of Directors met at 103 North Com-

merce, corner of Highway 7 and 75, Leon County Central Appraisal District Office, Centerville, May 22, 1995, at 7:30 p.m. Information may be obtained from Jeff Beshears, P.O. Box 536, Centerville, Texas 75833-0536, (903) 536-2252. TRD-9506005.

The Lower Rio Grande Valley Development Council Board of Directors and Membership will meet at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, May 25, 1995, at 1:30 p.m. Information may be obtained from Kenneth J. Jones, Jr. or Anna M. Hernandez, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9506032.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization will meet at the TxDOT District Office, 600 West Expressway US 83, Pharr, May 25, 1995, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9506038.

The North Central Texas Council of Governments Executive Board will meet at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, May 25, 1995, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9506035.

The North Texas Private Industry Council Nortex Regional Planning Commission will meet at 4309 Jacksboro Highway, Suite 200, Wichita Falls, May 31, 1995, at 12:15 p.m. Information may be obtained from Earl Nunneley, P.O. Box 59, Nocona, Texas 76255, (817) 322-5281. TRD-9505978.

The Panhandle Regional Planning Commission Board of Directors will meet at 415 West Eighth Avenue, Amarillo, May 25, 1995, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105, (806) 372-3381. TRD-9506034.

The Texas Political Subdivisions Joint Self Insurance Funds (Emergency Meeting.) Board of Trustees met at the Sheraton Fiesta, 37 Northeast Loop 410, San Antonio, May 18, 1995, at 4:00 p.m. (Reason for emergency: The availability of information on management information system, audited financials, and a discussion of fees in light of current revenue.) Information may be obtained from James Gresham, 14135 Midway Road, Dallas, Texas 75244, (214) 392-9430. TRD-9506040.

The Rusk County Appraisal District Board of Directors will meet at 107 North Van Buren, Henderson, May 25, 1995, at 1:30 p.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-9697. TRD-9505969.

The West Central Texas Council of Governments Executive Committee will meet at 1025 East North Tenth Street, Abilene, May 24, 1995, at 12:45 p.m. Information may be obtained from Brad Helbert, 1025 East North Tenth Street, Abilene, Texas 79601, (915) 672-8544 TRD-9506028

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Meetings Filed May 18, 1995

The Golden Crescent Regional Planning Commission Executive Committee will meet at the Regional Airport, Building 102, Victoria, May 24, 1995, at 4:00 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587 TRD-9506063

The Golden Crescent Regional Planning Commission Board of Directors will meet at the Regional Airport, Building 102, Victoria, May 24, 1995, at 5:00 p.m. Information may be obtained from Rhonda Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587 TRD-9506062

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IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Notice of Public Hearings

The Texas Department of Agriculture (the department) will hold public hearings to take public comment regarding the department's proposed amendment to the imported fire ant quarantine as published in the May 5, 1995, issue of the *Texas Register* (20 TexReg 3289).

Hearings will be held as follows.

(1) Tuesday, May 30, 1995, at the Lamar County Courthouse, 119 North Main, Paris, Texas, beginning at 11:00 a.m. for Lamar and Delta counties.

For more information, please contact E. W. Wesley, Regional Director, Texas Department of Agriculture, North Texas Regional Office, 1720 Regal Row, Suite 118, Dallas, Texas 75235, (214) 641-0265.

(2) Wednesday, May 31, 1995, at the Jack County Fairgrounds, One Mile North of Jacksboro on Highway 59, Jacksboro, Texas, beginning at 11:00 a.m. for Montague, Jack, and Young counties.

For more information, please contact E. W. Wesley, Regional Director, Texas Department of Agriculture, North Texas Regional Office, 1720 Regal Row, Suite 118, Dallas, Texas 75235, (214) 641-0265.

(3) Tuesday, May 30, 1995, at the McCulloch County Farm Bureau Office, 1200 North Bridge, Brady, Texas, beginning at 10:00 a.m. for McCulloch, Mason, and San Saba counties.

For more information, please contact Jo Anne Noble, Regional Director, Texas Department of Agriculture, South Central Regional Office, 8918 Tesoro Drive, Suite 120, San Antonio, Texas 78217, (210) 820-0288.

(4) Wednesday, May 31, 1995, at the Dimmit County 4-H Ag Building, 303 South Fifth, Carrizo Springs, Texas, beginning at 10:00 a.m. for Kinney, Zavala, Dimmit, Webb, and Duval counties.

For more information, please contact Jo Anne Noble, Regional Director, Texas Department of Agriculture, South Central Regional Office, 8918 Tesoro Drive, Suite 120, San Antonio, Texas 78217, (210) 820-0288.

(5) Wednesday, May 31, 1995, at the Texas State Technical College Conference Center, Room A, 2424 Boxwood, Harlingen, Texas, beginning at 10:00 a.m. for Brooks, Cameron, and Kenedy counties.

For more information, please contact Hector Flores, Regional Director, Texas Department of Agriculture, Valley Regional Office, 900-B East Expressway 83, San Juan, Texas 78589, (210) 787-8866.

Issued in Austin, Texas, on May 17, 1995.

TRD-9505991

Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: May 17, 1995

Texas Commission on Alcohol and Drug Abuse

Notice of Request for Proposals

Pursuant to Texas Health and Safety Code, Chapter 461, Title 6, Subtitle B, the Texas Commission on Alcohol and Drug Abuse (TCADA) invites proposals to conduct a scientific face-to-face survey of the incidence and prevalence of substance use among Texas adults residing along the Texas-Mexico border. Data will be collected from the three largest metropolitan statistical areas along the border: Far West Texas (El Paso), Laredo, and the Lower Rio Grande Valley (McAllen-Edinburg-Mission). The overall project will include validation of the survey instrument on this population, derivation of the sample, as well as collecting, coding, and entering the data.

To obtain a complete copy of this RFP, contact Ronny D. Washington, Texas Commission on Alcohol and Drug Abuse, 710 Brazos, Austin, Texas 78701, (512) 867-6376.

All proposals in response to the RFP must be received by 4:00 p.m. on July 21, 1995.

A panel from TCADA will score and rank proposals based on criteria described in the Request for Proposals (RFP).

Issued in Austin, Texas, on May 16, 1995.

TRD-9505994

Otis E. Williams
Interim Executive Director
Texas Commission on Alcohol and Drug Abuse

Filed: May 17, 1995

Central Texas Council of Governments Request for Proposal

The Central Texas Council of Governments (CTCOG), serving as the Metropolitan Planning Organization (MPO) for the Killeen-Temple Urban Transportation Study (KTUTS), is seeking professional transportation planning services to conduct a Traffic Analysis and develop a Thoroughfare Plan to the City of Belton. A budget of \$11,500 has been established for the study.

The consultant will make recommendations for short-and-

long term improvements in supporting safe transportation flow in the area. Recommendations may include transportation systems management strategies as well as long term alternatives.

A copy of the Request for Proposals (RFP) may be requested by calling the Central Texas Council of Governments at (817) 939-1801. Anyone wishing to submit a proposal must submit four copies of the bid to Jim Reed, Central Texas Council of Governments, 100 South East Street, P.O. Box 729, Belton, Texas 76513 by 1:00 p.m., June 9, 1995. Proposals submitted after that time will not be considered and will be returned to the proposer unopened.

All proposals should contain the consultant's technical proposal, statement of qualifications, compliance requirements and Affirmative Action Plan (based on the criteria listed in paragraph six in the RFP). The Consultant Selection Committee will review the proposals and select a firm it considers qualified to undertake the project. The Central Texas Council of Governments reserves the right to reject any or all proposals and to contract for any portions of the project with the selected consultant.

The purpose in soliciting proposals is to determine and select the best qualified planning firm with whom to negotiate a contract. The Evaluation Committee shall evaluate all proposals according to the proposal criteria listed in the RFP. Instructions for Proposals for Planning Services, item four of the RFP, in-person presentation of proposals by highly ranked candidates may or may not be required. Contract negotiations will then commence with the first choice. If a mutually satisfactory agreement cannot be reached with the first consultant selected, this consultant will then be advised that negotiations have been terminated and negotiations will then begin with the second ranked consultant.

The Evaluation Committee consists of Jeff Holberg, City of Belton; Mike Morgan and Jim Reed, CTCOG.

Issued in Belton, Texas, on May 11, 1995.

TRD-9505736
A. C. Johnson
Executive Director
Central Texas Council of Governments

Filed: May 11, 1995

Comptroller of Public Accounts

Notice of Consultant Contract Amendment

In accordance with the provisions of the Texas Government Code, Chapter 2254, Subchapter B, the Comptroller of Public Accounts announces this notice of amendment to a previously executed consultant contract.

The consultant proposal request was published in the February 14, 1995, issue of the *Texas Register* (20 TexReg 1035).

The consultant will assist the Comptroller in conducting a comprehensive management and performance review of the Texas Department of Mental Health and Mental Retardation (TXMHMR) to identify opportunities for more effective and efficient agency operations and cost savings. The successful proposer began performance of the contract on or about April 10, 1995.

The contract was awarded to Tucker Alan Inc., 135 South LaSalle Street, Suite 2135, Chicago, Illinois 60603. The total dollar value of the contract as amended is not to exceed \$884,132 in the aggregate. The contract was executed April 7, 1995 and extends through December 31, 1995. The amendment was executed on May 16, 1995. Tucker Alan Inc., is to assist the Comptroller in preparing a final report to be made public on or about October 2, 1995 on conclusions reached from the services performed under said contract.

Issued in Austin, Texas, on May 17, 1995.

TRD-9505993
Arthur F. Lorton
Senior Legal Counsel
Comptroller of Public Accounts

Filed: May 17, 1995

Texas Department of Health

Designation of a Site Serving a Medically Underserved Population

The Department of Health (department) is required under Texas Civil Statutes, Article 4495b, §3.06, to designate sites serving medically underserved populations. In addition, the department is required to publish notice of its designations in the *Texas Register* and to provide an opportunity for public comment on the designations.

Accordingly, the department has designated the following as sites serving medically underserved populations: Grand Medical Clinic, located at 1103 South Grand, Suite A, Amarillo (Potter County), Texas; Parkland Memorial Hospital Day Surgery Unit, located at 5201 Harry Hines Boulevard, Dallas (Dallas County), Texas; Nathaniel J. Neal Women's Prison Unit, located at 9055 Spur 591, Amarillo (Potter County), Texas; University of Texas WIC Children's Clinic-Spring Branch Site, located at 9403 Kempwood, Houston (Harris County), Texas; University of Texas WIC Children's Clinic, located at 2525 Murworth, #220, Houston (Harris County), Texas; and Dallas Kidney Specialists at Elmbrook Kidney Center, located at 7920 Elmbrook, Suite 108, Dallas (Dallas County), Texas. Designations are based on proven eligibility as sites serving a disproportionate number of clients eligible for federal, state or locally funded health care programs.

Oral and written comments on this designation may be directed to Demetria Montgomery, M.D., Chief, Bureau of Community Oriented Primary Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756; (512) 458-7771. Comments will be accepted for 30 days from the date of this notice.

Issued in Austin, Texas, on May 17, 1995.

TRD-9505981
Susan K. Steeg
General Counsel
Texas Department of Health

Filed: May 17, 1995

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioac-

tive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location -----	Name -----	License# -----	City -----	Amend- ment # -----	Date of Action -----
Dallas	Highland Park Medical Imaging	L04847	Dallas	0	04/28/95
Throughout Texas	Clark Construction Company	L04855	San Antonio	0	05/02/95
Throughout Texas	CCE, Inc.	L04866	Hacogdoches	0	05/05/95
Throughout Texas	Lightning Environmental	L04863	Houston	0	05/04/95
Throughout Texas	Mas-Tek Engineering and Associates, Inc.	L04864	Dallas	0	05/04/95

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location -----	Name -----	License# -----	City -----	Amend- ment # -----	Date of Action -----
Abilene	Abilene Cardiology Consultants, P.A.	L04315	Abilene	12	05/09/95
Austin	Texas Instruments, Inc.	L03838	Austin	8	05/02/95
Bryan	St. Joseph Regional Health Center	L00573	Bryan	39	05/05/95
Carrollton	SGS-Thompson Microelectronics	L03930	Carrollton	7	05/12/95
Dallas	St. Paul Medical Center	L01065	Dallas	36	05/05/95
Dallas	Medical City Hospital Dallas	L01976	Dallas	85	05/10/95
Dallas	Texas Instruments, Inc.	L00946	Dallas	68	05/12/95
Denison	Texoma Medical Center	L01624	Denison	39	04/28/95
El Paso	Sierra Medical Center	L02365	El Paso	26	05/10/95
Fort Worth	All Saints Episcopal Hospital	L02212	Fort Worth	36	04/27/95
Hereford	Hereford Regional Medical Center	L03111	Hereford	5	05/09/95
Houston	Parkway MRI/Parkway Imaging	L04111	Houston	5	05/05/95
Ingleside	E. I. du Pont de Nemours & Company, Inc.	L01753	Ingleside	28	05/09/95
Irving	MetWest Inc.	L01253	Irving	14	05/11/95
Killeen	Metroplex Hospital	L03185	Killeen	11	05/11/95
Longview	Good Shepherd Medical Center	L02411	Longview	45	05/15/95
Longview	Texas Eastman Division	L00301	Longview	76	05/12/95
Lubbock	University Medical Center	L04719	Lubbock	5	04/28/95
Lufkin	Memorial Medical Center of East Texas	L01346	Lufkin	51	05/05/95
Midland	Associates of Midland Cardiovascular & I.M., P.C.	L04729	Midland	1	05/05/95
Mission	Mission Hospital	L02802	Mission	24	05/02/95
Mount Pleasant	Titus County Memorial Hospital	L02921	Mount Pleasant	10	05/11/95
Pittsburg	East Texas Medical Center - Pittsburg	L03106	Pittsburg	11	05/09/95

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Richardson	Baylor/Richardson Medical Center	L02336	Richardson	21	05/05/95
San Antonio	Southwest Texas Methodist Hospital	L00594	San Antonio	112	05/02/95
San Antonio	Santa Rosa Health Care Corporation	L02237	San Antonio	33	04/25/95
San Antonio	Santa Rosa Health Care Corporation	L02237	San Antonio	34	05/12/95
Throughout Texas	MLA Labs Inc.	L01820	Austin	24	04/28/95
Throughout Texas	American Wireline, Inc.	L04675	Brenham	5	04/28/95
Throughout Texas	Corpus Christi Inspection and Engineering, Inc.	L04379	Corpus Christi	38	05/03/95
Throughout Texas	Desert Industrial X-Ray	L04590	Odessa	6	05/02/95
Throughout Texas	MQS Inspection Incorporated	L00087	Houston	63	05/02/95
Throughout Texas	Conam Inspection, Inc.	L00478	Houston	70	05/02/95
Throughout Texas	ATL Laboratories, Inc.	L03924	Arlington	8	05/02/95
Throughout Texas	Sperry-Sun Drilling Services, Inc.	L02603	Houston	38	05/03/95
Throughout Texas	Blazer Inspection	L04619	Texas City	8	05/03/95
Throughout Texas	Texas Department of Health	L01155	Austin	72	05/02/95
Throughout Texas	Medical Health Physics	L04092	South Padre Island	12	04/28/95
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	98	05/08/95
Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	44	05/12/95
Throughout Texas	Littleton Inspection Services	L04835	Dallas	1	05/12/95
Throughout Texas	Professional Service Industries, Inc.	L00931	Lombard, IL	103	05/12/95
Throughout Texas	Qualitest X-Ray, L.L.C.	L03326	Corpus Christi	32	05/12/95
Throughout Texas	Longview Inspection	L01774	Houston	93	05/12/95
Throughout Texas	TN Technologies Inc.	L03524	Round Rock	35	05/12/95
Throughout Texas	Goolsby Testing Laboratories Inc.	L03115	Humble	47	05/11/95

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Duncanville	The Center	L03717	Duncanville	12	05/08/95
San Antonio	Medical Center Ophthalmology	L01343	San Antonio	13	05/02/95

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Dallas	Highland Park Diagnostic Center, L.C.	L04715	Dallas	1	04/28/95
Duncanville	Central Diagnostic Center	L03868	Duncanville	9	05/08/95
Houston	Ledbetter Clinic Association	L01173	Houston	19	05/02/95
Lubbock	Southwest Clinical Laboratories	L04144	Lubbock	2	05/02/95

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

Issued in Austin, Texas, on May 15, 1995.

TRD-9505979 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: May 17, 1995

Notice of Rescission of Orders

Notice is hereby given that the Bureau of Radiation Control, Texas Department of Health, rescinded the following orders: Emergency Cease and Desist Order issued January 4, 1995, to Rosedale Radiology, 1015 South Henderson, Fort Worth, Texas 76104, holder of Certification of Mammography Systems Number M00611; and Emergency Cease and Desist Order issued March 30, 1995, to Memorial Health Center, 1211 Highway 6, Sugar Land, Texas 77478, holder of Certification of Mammography Systems Number M00267.

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 May 17, 1995.

TRD-9505970 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: May 17, 1995

Notice of Revocation of Certificates of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificates of registration: John Y. Robnett, D.D.S., Inc., Dallas, R10482, May 9, 1995; Guy K. Rowland, D.V.M., Round Rock, R12658, May 9, 1995; Thomas S. Padgett, M.D., Houston, R18359, May 9, 1995; Universal Diagnostic, LTD, Baytown, R18409, May 9, 1995; Medical Systems, San Antonio, R18438, May 9, 1995; Dave E. Nichols, D.D.S., Houston, R19126, May 9, 1995; Vernon M. Puckett, Houston, R19667, May 9, 1995; Delmar Bone and Joint, Houston, R19917, May 9, 1995; Diagnostic Consultants, Inc., Hurst, R20662, May 9, 1995; Allen Higgs, Tempe, Arizona, R20691, May 9, 1995.

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 May 17, 1995.

TRD-9505972 Susan K. Steeg
General Counsel
Texas Department of Health.

Filed: May 17, 1995

Notice of Revocation of a Radioactive Material License

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following radioactive material license: Kay-Ray/Sensall, Inc., Stafford, L04091, May 9, 1995.

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 May 17, 1995.

TRD-9505971 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: May 17, 1995

Schedule for Development and Review of Block Grant Funds

Under the of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), the State of Texas became the recipient of the Preventive Health and Health Services (PHHS) Block Grant. The Texas Department of Health (TDH) is the agency designated to administer this block grant. Provisions in the Act require the Chief Executive

Officer of each State to annually furnish the Secretary of Health and Human Services a description of the intended use of block grant funds in advance of each federal fiscal year (FFY). This description is to be made public within each State in such a manner as to facilitate comments and/or any complaints regarding the quality of services funded by the block grant.

The PHHS Block Grant previously funded five departmental program areas: public health promotion, emergency medical services systems, sexual assault prevention and crisis services, fluoridation, and preventive health and health incentive. The grant can now be used to support additional public health activity as a result of the passage and signing of the *Preventive Health Amendments of 1992*. New federal regulations specify that block grant monies can be expended for "activities consistent with making progress toward achieving the objectives established by the year 2000 health objectives." The PHHS Block Grant currently provides support for the following 16 programs: Border Environmental Health; Texas Drinking Water Fluoridation; Local Health Departments; Trauma Registry; Anti-Tobacco Media Campaign; Put Prevention into Practice; Adult Health Program; Behavioral Risk Factor Surveillance System; Regionalized Emergency Health Care System; Sexual Assault Prevention and Crisis Services; Public Information; Texas Health Information Resource Center; Outreach and Community-based Initiatives; Minority Health Education; Public Health Nutrition; and Continuing Nursing Education.

The PHHS Block Grant award for FFY 1994 was \$6,421,210. Of this amount, \$470,007 was required to be used for sexual assault prevention and crisis services. Funding for FFY 1995 increased to \$6,451,552 and, of this amount, \$470,007 is the required set-aside for funding sexual assault prevention and crisis services.

TDH developed the following schedule for the development and review of the FFY 1996 State Plan for the PHHS Block Grant: In June of 1995, TDH will hold public hearings in four public health regions (PHR): Tuesday, June 6, 1995, Public Health Region 1, 1109 Kemper, Lubbock, Texas, from 4:00-6:00 p.m.; Wednesday, June 7, 1995, Public Health Region 2 & 3, 2561 Matlock Road, Arlington, Texas, at 1:00 p.m.; Friday, June 9, 1995, Public Health Region 6 & 5, 10500 Forum Place, Suite 200, Houston, Texas, at 1:00 p.m.; and Thursday, June 15, 1995, Public Health Region 7, 1100 West 49th Street, Austin, Texas, from 4:00-6:00 p.m.

Following these hearings, TDH will summarize and consider the impact of the public comments received. TDH will then notify the public of the availability of published summaries of these hearings. In August of 1995, TDH will prepare the final 1996 State Plan for the PHHS Block Grant and forward it to the Governor and federal government.

Please note that TDH will continuously conduct activities to inform recipients of the availability of services/benefits, the rules and eligibility requirements, and complaint procedures. Written comments regarding the PHHS Block Grant may be submitted through June 30, 1995, to Philip Huang, M.D., Chief, Bureau of Chronic Disease Prevention and Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199. For further information, call (512) 458-7200.

Issued in Austin, Texas, on May 15, 1995.

TRD-9505886

Susan K. Steeg
General Counsel
Texas Department of Health

Filed: May 15, 1995

Texas Department of Housing and Community Affairs Announcements of Contract Awards

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for Community Development Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.098.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Alpine-\$400,000, Alto-\$145,900, Ames-\$350,000, Angleton-\$350,000, Aubrey-\$243,500, Bardwell-\$250,000, Beckville-\$250,000, Bee County-\$300,000, Belton-\$174,163, Benavides-\$300,000, Big Sandy-\$250,000, Big Spring-\$300,000, Big Wells-\$310,680, Bonham-\$250,000, Bovina-\$250,000, Bowie-\$105,345, Bowie County-\$168,075, Brackettville-\$103,686, Brady-\$149,900, Bridge City-\$239,400, Bridgeport-\$250,000, Broadus-\$250,000, Bronte-\$99,500, Brooks County-\$254,000, Buda-\$250,000, Burkburnett-\$100,000, Burnet-\$250,000, Bynum-\$250,000, Caddo Mills-\$250,000, Caldwell County-\$250,000, Cameron County-\$369,802, Carrizo Springs-\$316,680, Cass County-\$155,804, Center-\$250,000, Chico-\$232,965, Chillocothe-\$99,400, Christine-\$250,000, Clarendon-\$228,260, Cleveland-\$350,000, Colorado City-\$249,300, Columbus-\$257,300, Cottonwood Shores-\$250,000, Crosby County-\$204,285, Crowell-\$110,000, Crystal City-\$369,532, DeKalb-\$250,000, Del Rio-\$446,999, Deport-\$250,000, Detroit-\$250,000, Dickens-\$121,640, Dickinson-\$350,000, Dublin-\$250,000, Duval County-\$300,000, East Mountain-\$242,000, Eden-\$190,600, Edna-\$239,000, Electra-\$109,000, Elgin-\$250,000, El Paso County-\$340,525, Emhouse-\$250,000, Emory-\$250,000, Falfurrias-\$300,000, Falls City-\$250,000, Fate-\$250,000, Floydada-\$234,780, Fort Stockton-\$350,000, Frankston-\$213,000, Freeport-\$350,000, Frio County-\$250,000, Friona-\$213,690, Frost-\$250,000, Ganado-\$250,000, Gilmer-\$250,000, Godley-\$250,000, Goliad-\$166,650, Groveton-\$250,000, Hale Center-\$250,000, Happy-\$250,000, Harrison County-\$250,000, Hemphill-\$230,240, Hempstead-\$350,000, Hitchcock-\$350,000, Hondo-\$250,000, Hooks-\$224,300, Huntington-\$250,000, Jacksboro-\$97,400, Jefferson-\$250,000, Jim Hogg County-\$568,006, Joaquin-\$250,000, Karnes City-\$250,000, Kenedy-\$250,000, Kermit-\$322,250, Kingsville-\$300,000, Kirbyville-\$221,773, Knox City-\$250,000, La Feria-\$375,000, Lampasas-\$250,000, Lawn-\$250,000, Leakey-\$117,337, Leonard-\$250,000, Log Cabin-\$250,000, Lometa-\$250,000, Los Fresnos-\$375,000, Lott-\$250,000, Lytle-\$250,000, Madison County-\$250,000, Marlin-\$250,000, Marquez-\$250,000, Martindale-\$250,000, Matagorda County-\$350,000, Megargel-\$100,550, Menard-\$199,991, Mexia-\$250,000, Milford-\$250,000, Mineral Wells-\$230,000, Montgomery

County-\$350,000, Morgan-\$250,000, Mount Vernon-\$250,000, Nacogdoches County-\$250,000, Naples-\$238,200, Navasota-\$188,370, Newark-\$250,000, Newcastle-\$107,000, Newton County-\$250,000, Nocona-\$102,980, Oakwood-\$238,740, O'Brien-\$177,100, Olton-\$250,000, Omaha-\$182,100, Palo Pinto County-\$250,000, Panola County-\$239,000, Pearsall-\$250,000, Pilot Point-\$250,000, Pinehurst-\$242,396, Port Lavaca-\$250,000, Post-\$250,000, Poteet-\$250,000, Prairie View-\$350,000, Premont-\$300,000, Presidio-\$400,000, Primera-\$375,000, Princeton-\$250,000, Pyote-\$350,000, Raymondville-\$375,000, Rio Vista-\$232,000, Robert Lee-\$149,000, Robstown-\$300,000, Rochester-\$245,800, Rockdale-\$250,000, Rocksprings-\$291,118, Rogers-\$250,000, Rule-\$160,909, Rusk County-\$250,000, Sabinal-\$307,328, San Augustine County-\$250,000, Sanford-\$250,000, San Saba-\$250,000, Schulenburg-\$162,633, Seadrift-\$250,000, Seminole-\$335,000, Seymour-\$150,000, Silsbee-\$250,000, Smithville-\$250,000, Socorro-\$400,000, Somerville-\$246,956, Sour Lake-\$250,000, Spofford-\$103,686, Springlake-\$231,140, Stamford-\$250,000, Starr County-\$568,007, Stunnett-\$204,125, Strawn-\$250,000, Tahoka-\$169,130, Timpson-\$246,000, Travis County-\$250,000, Trenton-\$90,000, Trinidad-\$250,000, Van Horn-\$400,000, Vidor-\$250,000, Webb County-\$568,006, Wellington-\$250,000, Wells-\$250,000, West Orange-\$247,600, Wharton County-\$350,000, Willacy County-\$375,000, Willis-\$350,000, Windom-\$250,000, Winters-\$250,000, Wolfe City-\$250,000, Wortham-\$250,000, Zapata County-\$568,006.

Issued in Austin, Texas, on May 15, 1995.

TRD-9505974 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed May 17, 1995

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for Planning and Capacity Building Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.098.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Ames-\$22,500, Bonham-\$50,000, Celina-\$37,100, Charlotte-\$34,350, Daisetta-\$21,727, Freeport-\$50,000, Ganado-\$30,500, Honey Grove-\$23,400, Hudson Oaks-\$21,600, Kemah-\$34,150, Kenedy-\$40,085, Leonard-\$38,500, Marquez-\$16,952, Montgomery-\$18,190, Oakwood-\$19,800, Orange Grove-\$26,775, Pecan Gap-\$14,750, Pineland-\$21,727, Poteet-\$42,260, Rio Grande City-\$41,500, Rockport-\$50,000, Royce City-\$19,950, Seymour-\$24,650, Sour Lake-\$32,700, Trinidad-\$22,450, Van Horn-\$19,300.

Issued in Austin, Texas, on May 15, 1995.

TRD-9506014 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed May 17, 1995

The Texas Department of Housing and Community Affairs announces that the units of general local government listed as follows have been selected as contract recipients for Colonia Funds under the Texas Community Development Program established pursuant to Texas Government Code, Chapter 2306, §2306.098.

A contract is not effective until executed by the unit of general local government and the Executive Director of the Texas Department of Housing and Community Affairs.

Cameron County-\$391,255, Dimmit County-\$297,825, Dimmit County-\$19,750, Ector County-\$27,500, El Paso County-\$500,000, Frio County-\$300,000, Glasscock County-\$500,000, Hidalgo County-\$498,523, Hidalgo County-\$61,550, Karnes County-\$36,500, La Salle County-\$475,000, La Salle County-\$31,500, Maverick County-\$500,000, Maverick County-\$100,000, Nueces County-\$335,000, San Patricio County-\$439,500, Starr County-\$500,000, Webb County-\$49,900, Zapata County-\$500,000, Zavala County-\$450,000, Zavala County-\$40,250.

Issued in Austin, Texas, on May 15, 1995.

TRD-9503015 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed May 17, 1995

Texas Department of Insurance Company License

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Seguros Probursa, S.A., a Mexican fire and casualty company. The home office is in Mexico City, Mexico.

Application for a name change in Texas for Seguros La Comercial, S.A., a Mexican fire and casualty company. The proposed new name is Seguros Comercial America, S.A. de C.V. The home office is in Mexico City, Mexico.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, Mail Code 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on May 16, 1995.

TRD-9505953 Alicia M. Fecthel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed May 16, 1995

Notice

The Commissioner of Insurance will consider approval of a filing made by the Texas Automobile Insurance Plan Association (Association) pursuant to Texas Insurance Code, Article 21.81 proposing amendments to §6 and §11 of the Plan of Operation for the Association. A copy of the filing is available for review in the office of the Chief

Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701. For further information or to request a copy of the filing, please contact Angie Arizpe at (512) 463-6326, (reference number A-0295-6).

This filing is subject to Commissioner approval without a hearing. Comments and objections must be filed with Alicia Fechtel, General Counsel and Chief Clerk, Texas Department of Insurance, Mail Code 113-1C, P.O. Box 149104, Austin Texas 78714-9104 within 15 days after publication of this notice in the *Texas Register*.

Issued in Austin, Texas, on May 16, 1995.

TRD-9505954 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: May 16, 1995

Texas Natural Resource Conservation Commission

Notice of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code Annotated, §382.017 (Vernon's 1992); Texas Government Code Annotated, Subchapter B, Chapter 2001 (Vernon's 1993); and 40 Code of Federal Regulations §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC) will conduct a public hearing to receive testimony regarding revisions to 30 TAC Chapter 115, concerning Water Separation, and to the SIP.

The proposed changes have been developed in response to receipt of petitions for rulemaking. The petitioners seek relief from the current volatile organic compound water separator rules which require that separators in the Beaumont/Port Arthur, Dallas/Fort Worth, El Paso, and Houston/Galveston ozone nonattainment areas that are used in conjunction with the production of crude oil or condensate be controlled by sealing or venting them to a vapor recovery system by May 31, 1995.

A public hearing on the proposal will be held on June 22, 1995 at 11:00 a.m. at the Houston Galveston Area Council, Conference Room B, 3555 Timmons Lane, Houston. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin through July 7, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the Commission prior to any final action on the proposal. Copies of the proposal are available at the central office of the TNRCC located at 12118 North IH-35, Building E, Austin and at all TNRCC Air Program regional offices. Please mail written comments to Heather Evans, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 and reference Rule Log Number 95113-115-AI. For further information contact Mr. Eddie Mack at

(512) 239-1488 or Randy Hamilton at (512) 239-1512.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on May 10, 1995.

TRD-9505980 Lydia Gonzales-Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: May 17, 1995

Public Utility Commission of Texas

Notice of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract for Billing and Collection Services with AmeriVision Communications Inc.

Docket Title and Number. Application of Southwestern Bell Telephone for Approval of a Customer-Specific Contract for Billing and Collections Services with AmeriVision Communications, Inc. pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Number 14217.

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for billing and collections services with AmeriVision Communications, Inc. The geographic service market for this specific service is anywhere within the state of Texas where AmeriVision Communications, Inc. provides services to Southwestern Bell end user customers.

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 May 15, 1995.

TRD-9505891 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 15, 1995

Public Notices

On April 28, 1995, GTE Southwest Incorporated (GTE) filed notice to file a LRIC study pursuant to Substantive Rule 23.91 for the following basic network functions (BNF's): (1) 3-Way Calling BNF; and (2) 3-Way Calling Service in Project Numbers 12475 and 12481. Application of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Studies Workplans Pursuant to Public Utility Commission Substantive Rule 23.91. GTE expects to file these studies on May 8, 1995.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by June 22, 1995. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on May 15, 1995.

TRD-9505893

John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 15, 1995

On May 3, 1995, GTE Southwest Incorporated (GTE) filed notice to file a LRIC study pursuant to Substantive Rule 23.91 for End-User Billing in Project Numbers 12475 and 12481, Application of Southwestern Bell Telephone Company and GTE Southwest, Inc. for Approval of LRIC Studies Workplans Pursuant to Public Utility Commission Substantive Rule 23.91. GTE expects to file this cost study on May 15, 1995.

Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by June 29, 1995. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0256. The telecommunications device for the deaf (TDD) is (512) 458-0221.

Issued in Austin, Texas, on May 15, 1995.

TRD-9505892

John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: May 15, 1995

Railroad Commission of Texas

Notice of LP-Gas Advisory Committee Meeting

The Railroad Commission of Texas will hold a meeting of the LP-Gas Advisory Committee on May 30, 1995, in the William B. Travis Building, Room 9-147, 1701 North Congress Avenue, Austin, Texas, from 9:00 a.m. to 2:30 p.m. to consider the following matters:

9:00 a.m. to 10:15 a.m.—Introduction, call to order, opening remarks, review of meeting minutes, old business

10:15 a.m. to 11:30 a.m.—Discussion of possible or pending rulemakings (in no particular order):

1. Increase the size of a single LP-gas container from water capacity of 30,000 gallons to 90,000 gallons. Refer to §9.186, page B-38; §9.185 Table 1, pages B-33 and 34; §9.20(a), page A-40; §9.21, page A-44.

2. Consider adoption of National Fire Protection Association (NFPA) 54 and 58.

3. Allow Railroad Commission stainless steel nameplates to identify older LP-gas containers manufactured by companies no longer in business where a replacement or duplicate name-plate cannot be issued. Refer to §9.160, page B-6.

4. Eliminate the existing requalification seminars and implement a mandatory training program. Refer to §9.6 Table 1, Number 16, page A-26.

5. Review non-specification LP-gas units.

6. Allow the use of single tag or decal for all identification requirements (proposal submitted by J. R. Anderson, Modern Butane Gas Company) Refer to §9.184(a)(17), page B-29; §9.771(b), page G-16; §9.952(b), page I-1; §9.231(b), page J-1.

7. Eliminate strictly welding construction and allowing welding or bolting by cartridge bolts. Refer to §9.183(e), page B-24.

8. Revise the definition of automatic dispenser to allow automatic dispenser at private LP-gas refueling facilities. Refer to §9.2, p. A-4.

9. Increase the insurance coverage for motor vehicles (LP-gas transports and/or bobtails). Refer to §9.19 Table, page A-39.

11:30 a.m. to 1:00 p.m.—Lunch

1:00 p.m. to 2:30 p.m.—Continuation of rulemaking discussion, if necessary; future projects; open discussion; establish date of next (quarterly) meeting.

2:30 p.m.—Approximate time of adjournment

Issued in Austin, Texas, on May 17, 1995.

TRD-9505965

Mary Ross McDonald
Assistant Director, Legal Division, Gas
Utilities/LP-Gas Section
Railroad Commission of Texas

Filed: May 17, 1995

Texas Savings and Loan Department

Notices of Application to Establish Remote Service Units

Notice is hereby given that application has been filed with the Savings and Loan Commissioner of Texas by: Horizon Bank & Trust, SSB, Austin, Texas, for approval to establish and operate a remote service unit at the following location:

Whole Foods Market, 9607 Research, Austin, Travis County.

The applicant savings bank asserts that: the security of the savings bank's funds and that of its account holders will be maintained and the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the above application must file a written protest with the Commissioner within ten days following publication. The Commissioner may dispense with a hearing on this application.

This application is filed pursuant to rules 7 TAC §75.37 and §75.41 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commis-

sion Building, 2601 North Lamar Boulevard, Suite 201,
Austin, Texas.

Issued in Austin, Texas, on May 16, 1995.

TRD-9505966 James L. Pledger
Commissioner
Texas Savings and Loan Department

Filed: May 17, 1995

Notice is hereby given that application has been filed with the Savings and Loan Commissioner of Texas by: Horizon Bank & Trust, SSB, Austin, Texas, for approval to establish and operate a remote service unit at the following location:

Whole Foods Market, 601 North Lamar Boulevard,
Austin, Travis County.

The applicant savings bank asserts that: the security of the savings bank's funds and that of its account holders will be maintained and the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the above application must file a written protest with the Commissioner within ten days following publication. The Commissioner may dispense with a hearing on this application.

This application is filed pursuant to rules 7 TAC §75.37 and §75.41 of the Rules and Regulations Applicable to Texas Savings Banks. These rules are on file with the Secretary of State, Texas Register Division, or may be seen at the Department's offices in the Finance Commission Building, 2601 North Lamar Boulevard, Suite 201, Austin, Texas.

Issued in Austin, Texas, on May 16, 1995.

TRD-9505967 James L. Pledger
Commissioner
Texas Savings and Loan Department

Filed: May 17, 1995

Texas Department of Transportation Request for Proposals

The Texas Department of Transportation hereby publishes this revised request for proposal for an architectural consultant in accordance with the Texas Government Code, Chapter 2254, Subchapter A, to provide various services in the Laredo, Pharr, San Antonio, Corpus Christi, and Yoakum district offices. The original request for proposal notice appeared in the May 12, 1995, issue of the *Texas Register* (20 TexReg 3609). The pre-proposal meeting originally scheduled for May 25, 1995 is hereby cancelled. The deadlines for letters of interest and proposal submittal have been extended. The following information replaces the original notice.

Contract(s) #13-545P8001 will be for a two year period with a maximum dollar amount of \$100,000. The architect selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered to TxDOT, Yoakum District Office, 403 Huck Street, Yoakum, Texas or mailed to P.O. Box 757, Yoakum, Texas 77995. Letters of interest will be received until 5:00 p.m. on Friday, June 16, 1995. The letter of interest must include the engineer's name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

Proposal Submittal Deadline: Proposals for contract #13-545P8001 will be accepted until 5:00 p.m. on Friday, July 7, 1995 at the previously-mentioned addresses.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Billy Goodrich at (512) 293-4381 or Fax (512) 293-4372.

Issued in Austin, Texas, on May 16, 1995.

TRD-9505924 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: May 16, 1995

