

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

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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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.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 the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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

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

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

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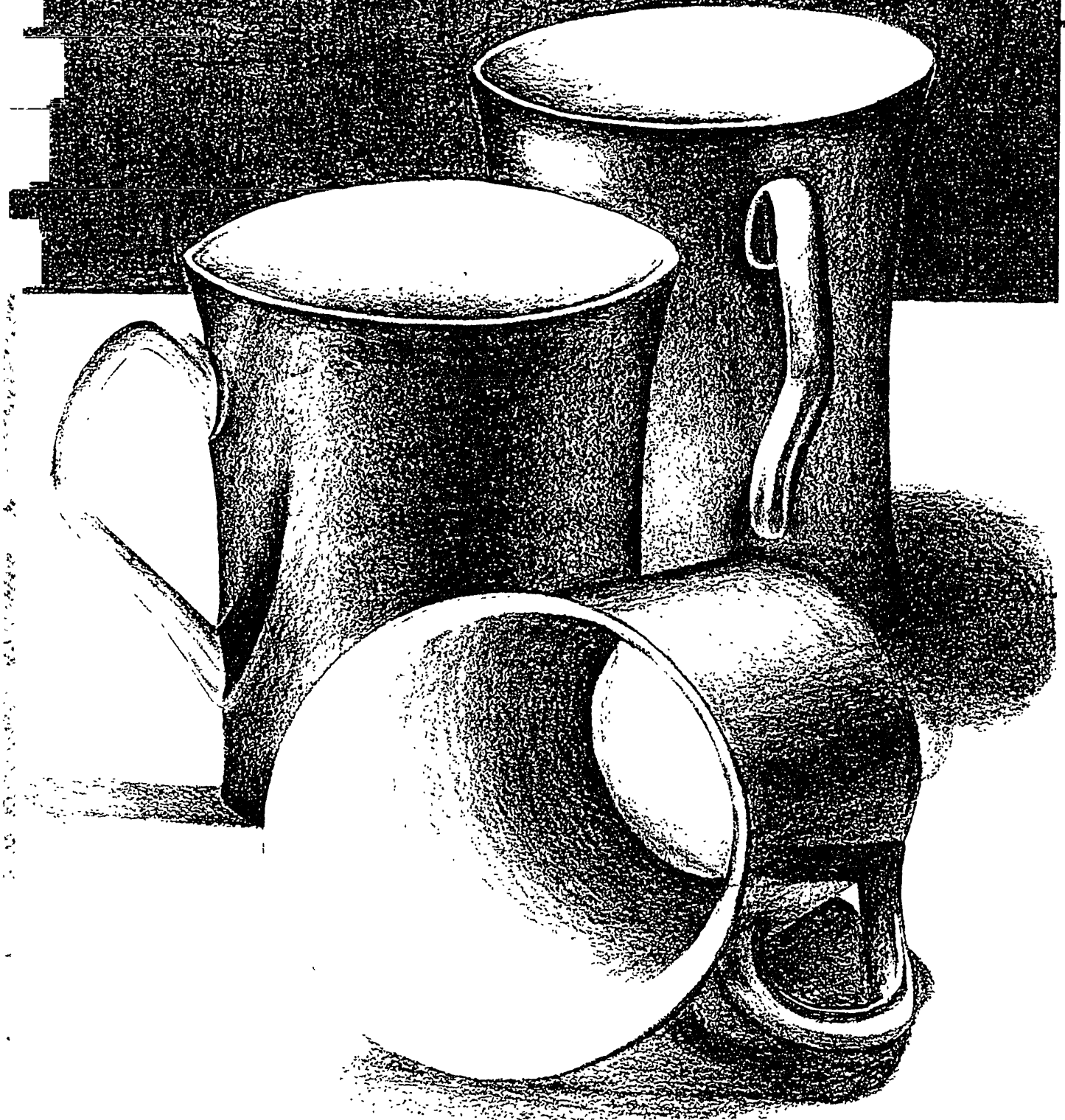
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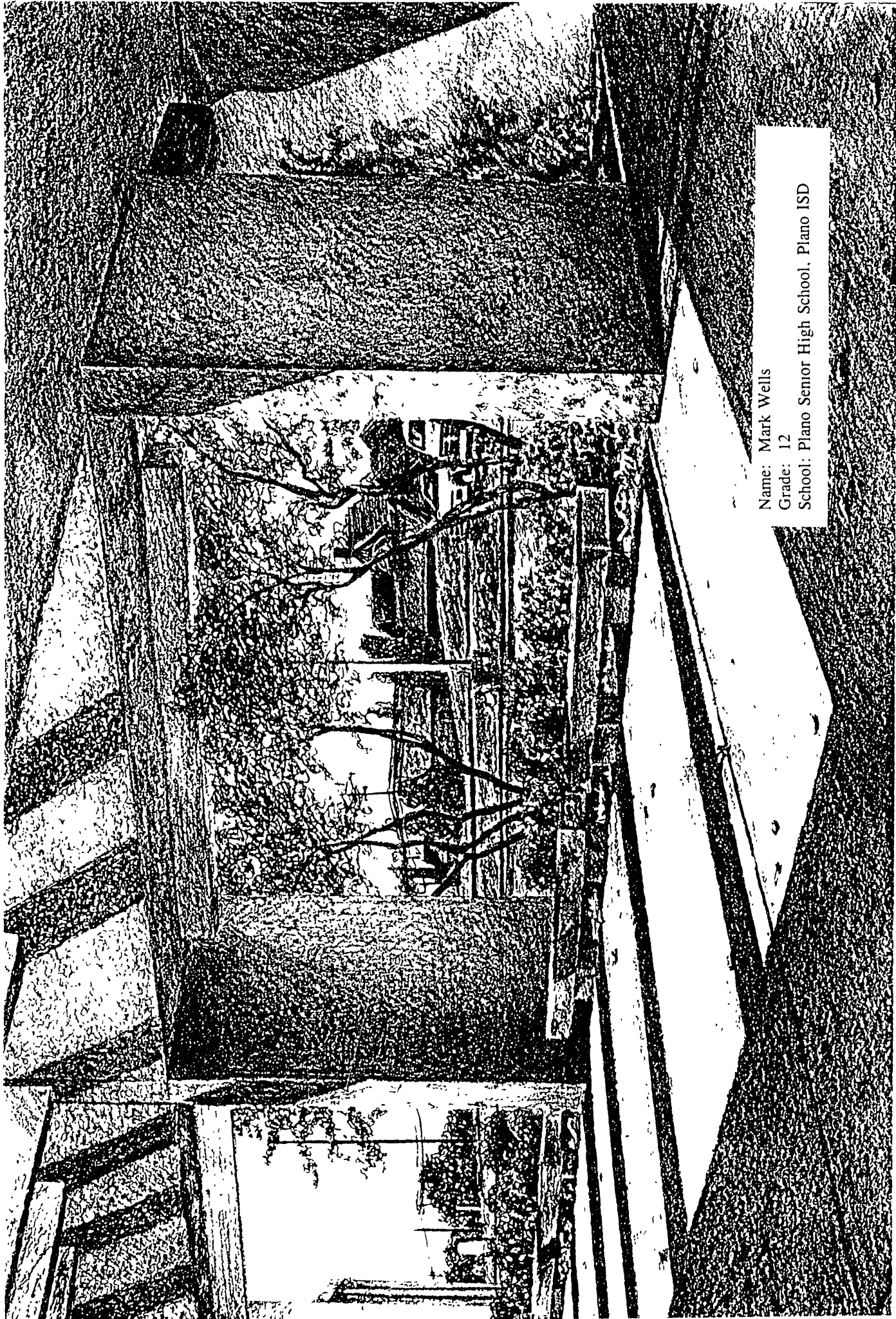
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Name: Lauren Levine
Grade: 12
School: Plano Senior High School, Plano ISD

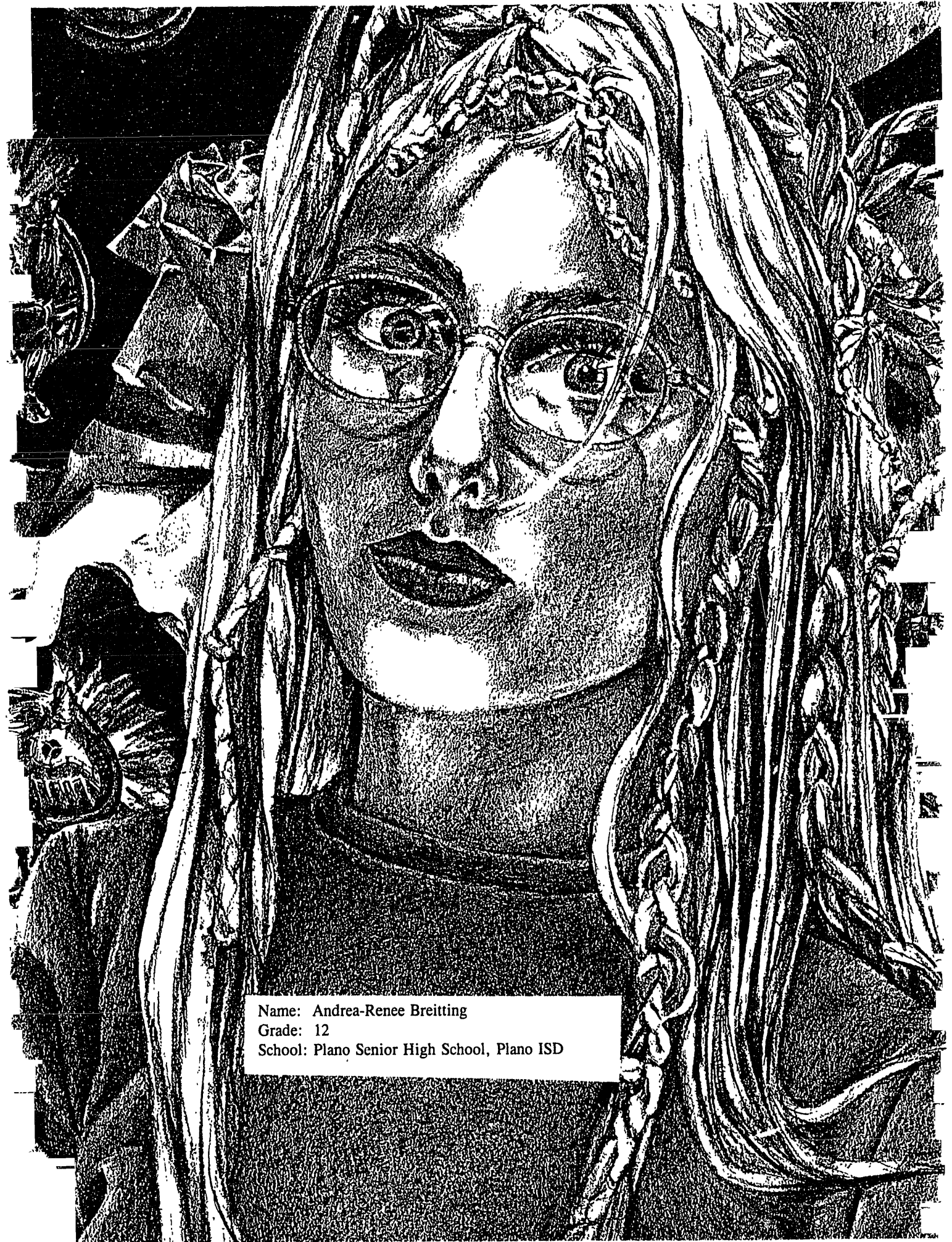




Name: Patricia Robinson
Grade: 12
School: Plano Senior High School, Plano ISD



Name: Mark Wells
Grade: 12
School: Plano Senior High School, Plano ISD



Name: Andrea-Renee Breitting
Grade: 12
School: Plano Senior High School, Plano ISD



Name: Mary Janacek
Grade: 11
School: Plano Senior High School, Plano ISD

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the **Texas Register** publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made June 22, 1995

To be a member of the **Education Commission of the States** for terms at the pleasure of the Governor: Dr. Michael A. Moses, State Commissioner of Education, 1701 North Congress Avenue, Austin, Texas 78701-1494, (Replacing Dr. Lionel R. Meno); Dr. Kenneth H. Ashworth, Commissioner of Higher Education, P.O. Box 12788, Austin, Texas 78711, (Reappointment); Dr. Sarah J. Ashburn, Superintendent, Bryan Independent School District, 101 North Texas Avenue, Bryan, Texas 77803, (Replacing Dr. Carolyn H. Crawford); Dr. R. Jan LeCroy, President, Dallas Citizens Council, 1201 Main Street, Suite 2444, Dallas, Texas 75202, (Replacing Dr. Manuel J. Justiz); Thomas W. Luce, III, Hughes and Luce, LLP, 1717 Main Street, Suite 2800, Dallas, Texas 75201, (Replacing Carl Parkeer); Linda Guerra Matthews, Area Manager-Education, Southwestern Bell Telephone, 7159 San Pedro B-7, San Antonio, Texas 78216, (Replacing Wilhelmino Delco).

I plan to serve on the commission and have named Margaret La Montagne as the contact person from my office. Mrs. La Montagne will be attending the July 12-14 forum in Denver, Colorado.

To be a member of the **Southern Regional Education Board**: The Honorable Kent Grusendorf, Texas House of Representatives, State Capitol, GN. 12, Austin, Texas 78768, (Filling unexpired term of Carl Parker), term expires June 30, 1996. The Honorable Bill Ratliff, Texas Senate, Capitol Building, 1E. 3, Austin, Texas 78711, (Filling unexpired term of Libby Linebarger), term expires June 30, 1997. Carol J. Spencer, Ph.D., President, Dallas County Community College District, 701 Elm Street, Dallas, Texas 75202, (Replacing Dr. Joann Horton whose term expired), term expires June 30, 1999.

To be a member of the **Texas Employment Commission** for a term to expire August 31, 1995 pursuant to House Bill 1863, 74th Legislature: Jo Betsy Norton, 611

Westbrook Drive, Austin, Texas 78746. Mrs. Norton will be replacing Eddie Cavazos of Austin whose term expired.

To be a member of the **University of North Texas Board of Regents** for a term to expire May 22, 2001: Bobby Ray, 2404 Wing Point, Plano, Texas 75093. Mr. Ray will be replacing E. L. (Buddy) Langley of Irving whose term expired.

To be a member of the **University of North Texas Board of Regents** for a term to expire May 22, 2001: Burle Pettit, 5512 78th Street, Lubbock, Texas 79424. Mr. Pettit will be replacing R. L. Crawford, Jr. of Lewisville whose term expired.

To be a member of the **University of North Texas Board of Regents** for a term to expire May 22, 2001: Joe Kirven, 5916 St. Marks Circle, Dallas, Texas 75230. Mr. Kirven is being reappointed

Appointments Made June 26, 1995

To be a member of the **Texas Funeral Service Commission** for a term to expire January 31, 2001: Patricia Gail Keegan, 127 Woodcreek Drive, Rockwall, Texas 75087. Mrs. Keegan will be replacing Scott Kurth of Cedar Hill whose term expired.

To be a member of the **Texas Funeral Service Commission** for a term to expire January 31, 2001: Leo T. Metcalf, III, P.O. Box 2925, Conroe, Texas 77305. Mr. Metcalf will be replacing Russell Wayne Allen of Benbrook whose term expired.

To be a member of the **Texas Funeral Service Commission** for a term to expire January 31, 2001: Charles Richard "Dick" McNeil, 7500 Camelot Road, Fort Worth, Texas 76134. Mr. McNeil will be replacing Lois Villasenor of Austin whose term expired.

To be a member of the **Texas Funeral Service Commission** for a term to expire January 31, 1999: Evelyn S. Collins, 1309 West 40th Street, Texarkana, Texas 75503. Mrs. Collins will be filling the unexpired term of Rosa P. Foster of Nacogdoches who was not confirmed by the Senate.

Appointments Made June 27, 1995

Please be advised that I am designating Walter D. Wilkerson, Jr., M.D., of Conroe as chairman of the **Texas Board of Health** for a term at the pleasure of the Governor. Dr. Wilkinson will be replacing Ruth F. Stewart as chairman. Ms. Stewart will continue to serve on the board.

Please be advised that I am designating Mary Churchhill Ceverha as vice-chairman of the **Texas Board of Health** for a term at the pleasure of the Governor. Mrs. Ceverha will be replacing Dr. Ramiro R. Casso as vice-chairman. Dr. Casso will continue to serve on the board.

Appointments Made June 28, 1995

To be a member of the **Coastal Coordination Council** for a term to expire May 31, 1996. The Honorable Ed Stuart, Galveston County Commissioner, 2001 Pine Drive, Friendswood, Texas 77546. Commissioner Stuart will be filling the unexpired term of Mayor Barbara K. Crews of Galveston whose name was not submitted to the Senate for confirmation.

To be a member of the **Coastal Coordination Council** for a term to expire May 31, 1997. Geoffrey Scott Connor, 2 Mile River Road, Ballinger, Texas 76821. Mr. Connor is being appointed to a new position pursuant to House Bill 3226, 74th Legislature, Regular Session.

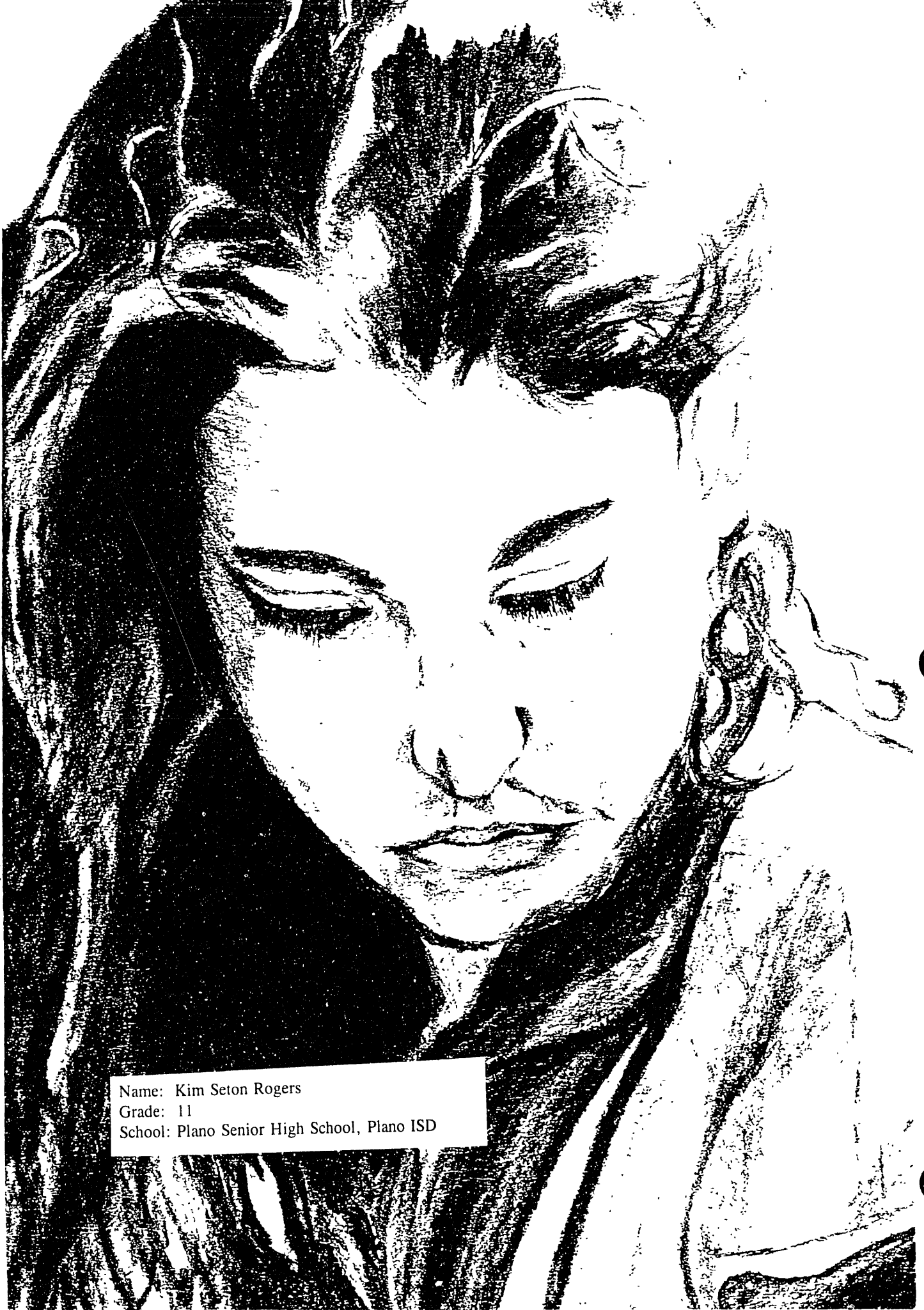
To be Judge of the **139th Judicial District Court, Hidalgo County**, until the next General Election and until her successor shall be duly elected and qualified: Micaela Alvarez, 6100 North 28th Street, McAllen, Texas 78504. Ms. Alvarez will be replacing Judge Raul L. Longoria who retired.

Issued in Austin, Texas, on June 29, 1995.

TRD-9508018

George W Bush
Governor of Texas

◆ ◆ ◆



Name: Kim Seton Rogers
Grade: 11
School: Plano Senior High School, Plano 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-304. The Texas Ethics Commission has been asked to consider whether a county political party may use corporate contributions to pay the cost of printing and distributing a brochure that describes the county party's functions and encourages membership. The requestor also asks whether the county party may use corporate contributions for voter registration drives.

Issued in Austin, Texas, on June 27, 1995.

TRD-9507957

Lucia Dodson
Executive Assistant
Texas Ethics Commission



AOR-305. The Texas Ethics Commission has been asked to consider the following questions about Senate Bill Number 94, the judicial campaign finance act adopted by the 1995 Legislature: 1. Lawyer John Doe, with the firm Jones & Jones makes a \$1,000 contribution to Judge Dread. That contribution counts against Mr. Doe's personal contributions limit as well as Jones & Jones' limit. 2. Lawyer John Doe has a spouse,

Lawyer Jane Doe. Jane Doe is with the firm of Smith & Smith. Does John Doe's contribution count against Lawyer Jane Doe's personal contribution limit? And, more importantly, does John Doe's contribution count against Smith & Smith's contribution limit?

The Texas Ethics Commission is authorized by §1.29 of Subchapter D of Chapter 571 of the Government Code, to issue advisory opinions in regard to the following statutes: (1) Subchapter D of Chapter 572 of the Government Code; (2) Chapter 302, Government Code; (3) Chapter 305, Government Code; (4) Title 15, Election Code; (5) Chapter 36, Penal Code; and (6) Chapter 39, Penal Code.

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

Issued in Austin, Texas, on June 27, 1995

TRD-9508028

Lucia Dodson
Executive Assistant
Texas Ethics Commission



Name: Kathryn Potts
Grade: 11
School: Plano Senior High School, Plano 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 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 176. Enterprise Zone Program Rules

• 10 TAC §§176.1-176.12

The Texas Department of Commerce (Commerce) proposes amendments to §§176.1-176.12, implementing the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303. The changes are necessary to bring the rules into compliance with statutory changes to the Enterprise Zone Act made by the 74th Legislature.

Sections 176.1(a)(c)(1), (c)(4), (c)(12), (c)(13), (c)(19), and 176.2(b)(4) are being amended to correct the legal citation to the Enterprise Zone Act, which is now at Chapter 2303, Government Code.

Section 176.1(a)(6) is being amended to accurately reflect the name of the governing board of Commerce as the policy board.

Section 176.1(c)(9)(A) is being amended to comply with statutory changes made in House Bill 2065, §2, which require enterprise zones to be enterprise project eligible enterprise zones.

Section 176.1(c)(9)(B)(i) is being amended to specify that the area is a low-income area.

Section 176.1(c)(9)(B)(iii) is being amended to more clearly reflect the percentage required for the secondary criterion of median income to be used for obtaining enterprise zone designation.

Section 176.1(c)(9)(B)(iv) is being amended to eliminate the section and renumber each subsection to clarify that all criteria are secondary criteria for zone designation and only one must be met, along with one primary criterion, to be eligible for zone designation.

Section 176.1(c)(9)(B)(iv)(V) is being added to reflect a change made by the Seventy-fourth Legislature, House Bill 2065, to add youth arrests as a new secondary zone designation criterion.

Sections 176.1(c)(10)(D) and 176.1(c)(10)(H) are being amended due to an amendment to the United States Code.

Section 176.1(c)(10)(E) is being amended by separating two definitions of economically disadvantaged that were previously in one definition. This leaves the definition of an inmate in this subsection and creates §176.1(c)(10)(F) which is a person formerly incarcerated by a state penal institution.

Section 176.1(c)(10)(G) is being amended to reflect changes made by the Seventy-fourth Legislature, House Bill 2065, which now includes persons released by the Texas Youth Commission and on parole as a new definition of economically disadvantaged.

Section 176.1(c)(16) is being amended to provide a legal citation to the relevant statutes source for the definition of extraterritorial jurisdiction and to transfer certain language pertinent to county applications to new Subsection 176.3(d).

Section 176.1(c)(20) is being amended to reflect changes made by the Seventy-fourth Legislature, House Bill 2065, §6, which increases from 1,040 to 1,820 the number of hours that must be worked by a person or persons in a new job before being eligible to be certified. This change will eliminate confusion about part-time versus full-time jobs and conform the definition to that of a retained job under §176.1(c)(26).

Section 176.1(c)(21)(B) is being amended to more accurately reflect the percentage of persons that need to be hired by qualified businesses to meet hiring standards.

Section 176.1(c)(21)(D) is being amended to change "chapter" to "title" to conform with other sections of the enterprise zone rules.

Section 176.1(c)(21)(E) is being amended to provide the correct the legal citation to the Texas Transportation Act.

Section 176.1(c)(22) is being amended to more accurately reflect the percentage of time that a person must work with a qualified business to be a qualified employee.

Section 176.1(c)(23) is being amended to reflect that qualified property may be from a company that is already located in, or that may be locating to, an enterprise zone.

Sections 176.1(d) and 176.1(f) are being amended to correct the legal citation to the Administrative Procedure Act.

Section 176.1(f) is also being amended to provide the citation to the applicable open record charges rules of Commerce.

Section 176.1(g) is being amended to add the correct Zip Code to the Commerce's mailing address.

Section 176.2(a)(1) is being amended to eliminate language describing the need to submit an enterprise zone and enterprise project application in a format strictly prescribed by the rules. Staff is revising the applications to make them simpler and more user friendly. This may require they not follow the outline prescribed by the rules. The modifications to the applications will also require the applicant to submit a typed application on a form supplied by Commerce, rather than using forms duplicated by the applicant. The proposed changes will allow Commerce to operate more efficiently. This section is also being amended to require that applications for recycling market development zones meet the same application standards as applications for enterprise zones, enterprise zone boundary amendments, and enterprise projects.

Section 176.2(b)(1)(B) is being amended to clarify the circumstances under which Commerce may deny redesignation of an enterprise zone.

Section 176.2(b)(4) is being amended to modify the enterprise project deadline from bi-monthly to quarterly. The reason for this change is to allow the Commerce staff more preparation time between application deadlines. Businesses will not be adversely affected by this change due to other provisions in law allowing for the accrual of benefits 90 working days back from the designation date, which is typically end of the month following the published deadline. This section is also amended to clarify that project applications received after a deadline will not be reviewed by staff until after the next published deadline.

Section 176.2(b)(5) is being amended clarify the application requirements for hotel projects and to conform the rule to §2303.003(8) of the Enterprise Zone Act.

Section 176.2(b)(6)(A)(i) is being amended to comply with amendments to the Tax Code, §171.1015 and 151.429 which prohibit the taking of tax refunds and tax deductions before September 1, 1997 by qualified businesses receiving enterprise project designation after August 31, 1995.

New Section 176.2(b)(6)(A)(iii) is being proposed to direct enterprise projects to file their refund and reduction claims directly with the Comptroller of Public Accounts. This will elim-

inate a step in the process of getting the refund to the qualified business and will decrease the administration of the Program at Commerce. Section 176.2(b)(6)(B)(ii) is being moved to §176.2(b)(6)(B)(iii). The new §176.2(b)(6)(B)(ii) allows the same filing requirements for qualified businesses. Section 176.2(b)(6)(B)(iii), formerly 176.2(b)(6)(B)(ii) is being amended to correct the legal citation to the Enterprise Zone Act.

Section 176.2(b)(6)(C) is being amended to reduce the application requirements for zones. It is being amended to require the submission of one original form instead of two when applying for certification of jobs or refund of state taxes.

Section 176.2(d)(4) is being amended to correct the citation to the applicable section of references to the Enterprise Zone rules as a result of new provisions being proposed and the subsequent renumbering of sections.

Section 176.2(e) is being amended to include requirements for job certifications with other zone and project application requirements. The proposed change will require that company records still be subject to on-site inspection but that certifications can be performed by desk-top reviews with subsequent on-site review of company records. This change will reduce Commerce staff travel expenses allowing for better travel coordination and allow for site visits at a date after the certification is complete. Language is also amended to standardize terminology for certifying jobs to be a certification instead of a claim.

Section 176.2(e)(2) is being amended to eliminate language stating that staff will review enterprise project applications prior to a published deadline. This change is being proposed because it is unnecessary and will enable Commerce staff to more efficiently manage time and the administration of the Enterprise Zone Program. Also, House Bill 2065 restricts the number of project designations to 65 for the next fiscal biennium, which effectively creates a true competition. The reviews of applications before a deadline may give an advantage to one application over another.

Section 176.3(a)(3) is being amended to eliminate duplicative language in the rules. This section now references the same definition set forth in Section 176.1(c)(9) of the rules, rather than repeating it.

Section 176.3(c) is renumbered §176.3(e). The new §176.3(c) reflects changes made by the Seventy-fourth Legislature, House Bill 2065, §3, which specifies that communities with areas designated as federal empowerment zones and enterprise communities are automatically state enterprise zones. House Bill 2065, §5 also specifies that the automatic designation of the federal empowerment zones and enterprise communities as state zones does not count against the number of zones a community may have. Communities currently may have three zones. New §176.3(d) is language moved from §176.1(c)(16) for defining eligibility of certain counties to enter the extra-territorial jurisdiction of a municipality for establishing an enterprise zone.

The new §176.3(e), formerly §176.3(c), is being amended to specify the sources of data

that will be accepted by Commerce for designation of an enterprise zone. The State Data Center, which generates population estimates based upon the United States Census, is the authorized data source for population statistics. The Texas Workforce Commission, which replaces the Texas Employment Commission September 1, 1995, under the statutory changes made in House Bill 1863 by the 74th Legislature, is the authorized data source for labor force information. This section is also being amended to reflect changes made by the Seventy-fourth Legislature, in House Bill 2065, §2, updating language relating to the use of population and labor force data. Both the Texas Workforce Commission and the State Data Center update their statistics annually. This change will allow data to be considered valid for the entire period it is current, and will allow communities to submit it to qualify for zone designation for 60 working days after the Texas Workforce Commission or State Data Center publish new estimates. This will ensure that communities have ample time to submit their data after new data is generated. This section is also being amended to discontinue the use of optional local surveys and the time period that the data generated from these surveys is considered current.

Section 176.3(e)(1) is being amended to conform with changes made by the Seventy-fourth Legislature, in House Bills 1863 and 2065 including the new requirement that all enterprise zones be enterprise project eligible enterprise zones. This requires all new zones, or amended zones, to have an unemployment rate of one-and one half times the state unemployment rate to nominate businesses for enterprise project designation. This section also discontinues the use of local surveys.

Section 176.3(e)(2) is being amended to conform with changes made by the enactment of House Bill 2065 by the Seventy-fourth Legislature. It requires all new zones, or amended zones, to be enterprise project eligible with a population loss of 12% for the most recent six year period or 4.0% for the most recent 3-year period. It also removes the term "average annual" from the 4.0% rate calculation. This term is being removed because the rate is not annualized, but derived over a three year period.

Section 176.3(e)(3) is being amended to more clearly reflect the percentage required for the secondary criteria of median income and poverty rates that are used for obtaining enterprise zone designation. This section is also being amended to eliminate the reference to enumeration districts which are census areas no longer used by the federal Bureau of the Census.

Section 176.3(e)(4) is being added to clarify the use of urban development action grants as a secondary criterion for zone designation. This federal program is no longer active. However, some enterprise zones have been previously designated using this criterion, and certain cities may still have notices from the federal government regarding their eligibility for the grants. The proposed change specifies that the certification of the eligibility must be valid from within 90 days of applica-

tion to Commerce for enterprise zone designation.

Section 176.3(e)(5), formerly §176.3(e)(4), is being amended to more clearly reflect the percentage required for the secondary criteria of chronic abandonment.

Section 176.3(e)(6), formerly §176.3(e)(5), is being amended to more clearly reflect the percentage required for the secondary criteria of tax arrearages and to eliminate confusing language.

Section 176.3(e)(7), formerly §176.3(e)(6), is being amended to more clearly define what is required for an enterprise zone area to qualify using the loss of businesses or jobs as a secondary criterion, instead of on a case by case basis. The qualifying percentages being proposed reflect potential chronic or acute distress of the proposed enterprise zone area. The 20% acute factor accounts for sudden change in a proposed enterprise zone area's job or business base. The 30% chronic factor will account for longer term enterprise zone distress caused by business or job loss.

Section 176.3(e)(7) is renumbered §176.3(e)(8). New §176.3(e)(9) is being added to reflect changes made by the Seventy-fourth Legislature, in House Bill 2065, which adds youth arrests as a new secondary zone designation criterion. Because youth arrests are typically inversely related to adult arrests and because the number of arrests varies depending upon the size of the community, a percentage is being used instead of a nominal threshold.

Section 176.3(f)(1) is being amended to correct the legal citation to the Enterprise Zone Act.

Section 176.3(g) is renumbered. Under the current rules it is §176.3(f).

Section 176.4(a) amends this section to conform with language changes made in 176.2(a)(1) of the rules. This requires enterprise zone applicants to complete the forms provided by Commerce.

Section 176.4(a)(1) amends the section to provide more concise, but general, wording about requirements about the entities participating in establish the enterprise zone and eliminates redundancies. The items required in the applications will not be changed as a result of this amendment.

Section 176.4(a)(2)(B) amends the section to be more specific about statutory requirements of Chapter 2303, Government Code. Section 2303.104 states that all incentives offered in the enterprise zone be summarized in the ordinance or order. Since many communities are not offering a large number of incentives, Commerce proposes that communities be required to offer three incentives, only one of which is financial in nature. This will increase the viability and character of each enterprise zone. Commerce also proposes modifying the designation of a liaison by name to the liaison's job title or position, in case the individual serving as the liaison leaves the position at some point during the enterprise zone designation period. The section is also amended to clarify the need for a community or communities nominating more than one area as an enterprise zone by one ordinance

or order to file a separate application for each zone.

Section 176.4(a)(3)(C) is being amended to correct the legal citation to the Enterprise Zone Act.

Section 176.4(a)(5)(C) is being amended to clarify requirements regarding the information needed to determine if a zone meets the statutory size limitations set forth in the Enterprise Zone Act, §2303.101, Government Code. This requires the applicant to calculate the size of the enterprise zone, instead of just providing the area in the jurisdiction, extraterritorial jurisdiction, and the size of the enterprise zone.

Section 176.4(a)(5)(D) is being amended to clarify and simplify the requirement regarding the tabular summary required to show the proposed area qualifies for enterprise zone designation.

Section 176.4(a)(5)(E) is being amended to clarify and simplify the requirements regarding the economic objectives for the proposed enterprise zone. Commerce is also proposing that applicants describe the marketing strategy for the enterprise zone to ensure that zone administrators have a method of making businesses aware of enterprise zone opportunities.

Section 176.4(a)(6) is amended to clarify what must be included in enterprise zone applications with regard to incentives. Section 176.4(a)(6)(A) will require applicants to provide additional information about the incentives being offered than what is specified in the ordinance or order nominating the area. Section 176.4(a)(6)(B) contains new language allowing taxing units to offer different terms of abatement to property owners in enterprise zones. This language conforms with changes made by House Bill 2065, §13 and §14, adopted by the Seventy-fourth Legislature. Section 176.4(a)(6)(11) is amended by including language moved from §176.11(c). This section specifies the conditions through which land may be sold at less than fair market value. Standards for offering this incentive must be adopted by ordinance or order.

Section 176.7(a)(1) is amended to the legal citation to the Enterprise Zone Act.

Section 176.7(a)(2) is amended to eliminate excess verbiage and to refer to terminology used throughout the rules.

Section 176.8(a) is amended to clarify existing language about filing enterprise project applications. Each governing body nominating the business must provide information.

Section 176.8(a)(2)(B) and §176.8(a)(C) are amended to correct the legal citation to the Enterprise Zone Act. Section 176.8(a)(C) is also amended to provide more detailed information that is needed to show that the enterprise zone is an enterprise project eligible zone, where it is located, and the census area where the business is located.

Section 176.8(a)(C) is amended to the correct legal citation to the Enterprise Zone Act. Section 176.8(a)(C) is also amended to provide more detailed information that is needed to show that the enterprise zone is an enter-

prise project eligible zone, where the business is located, and the census area where the business is located. This language was moved from §176. 8(a)(4)(A), which was eliminated to reduce redundancy in the application requirements.

Section 176.8(a)(2)(D) is amended by adding subsection (iii) which contains the language, with some clarifications, formerly in §176.8(a)(4)(A) which has been eliminated. This clarification will eliminate redundancy in the application.

Section 176.8(a)(2)(E) is amended to correct the legal citation to the Enterprise Zone Act and to consolidate language formerly in §176.8(a)(4)(B) which has been eliminated.

Section 176.8(a)(3) is amended to better organize information that must be submitted by businesses seeking to be designated as enterprise projects and to eliminate redundancy.

Section 176.8(a)(4) is being eliminated since all the elements were amended into §176.8(a)(2) and §176.8(a)(3).

Section 176.8(b) is being amended to eliminate unnecessary and redundant language.

New §176.8(c) is being added containing the language formerly in §176. 10(c)(2)(B) which has been eliminated. This amendment allows for all application requirements, name changes, and assumptions relating to enterprise projects to be in same section of the rules. Language is also amended correct the legal citation to the Enterprise Zone Act.

Sections 176.9(a) and 176.10(a) are amended to correct the legal citations to the Enterprise Zone Act.

Section 176.10(b) is amended to change the application deadlines from bi-monthly to quarterly, as previously stated and explained in §176.2(b)(4).

Section 176.10(a)(1) is amended to change the application deadlines from bi-monthly to quarterly, as previously stated and explained in §176.2(b)(4) and §176.10(b) and to establish the application deadline as 5:00 p.m. of the first business-day of every third month beginning September 1, 1995. This section also is being amended to reflect the change made by the Seventy-fourth Legislature, House Bill 2065, §5, which allows Commerce to designate 65 businesses as enterprise projects during each fiscal biennium.

Section 176.10(b)(2) is amended to establish the guidelines for evaluating applications for the 65 enterprise project designations submitted on the quarterly deadlines. Each enterprise project eligible enterprise zone may have no more than two regular projects designated in the fiscal biennium. The enterprise project designations will be granted on a first-come, first-served basis until all 65 designations have been made. Applications will be scored against all other applications received that deadline. Enterprise zones that have enterprise project applications that score within the top quartile (the top 25%) of all the other applications received for that deadline, will be eligible to have an additional project designation during the biennium, assuming additional project designations are available. The additional project applications will be scored

against all other applications received for that deadline and will be scored for consideration for additional project designations. If an enterprise zone governing body submits two applications on one deadline and each application scores within the top quartile of all other applications received, the enterprise zone may have two additional project designations during the biennium, assuming project availability. The additional applications, if submitted, will also be scored against other project applications received that round for additional designations, assuming project availability. There will be no limit to the number of designations additional project designations an enterprise project eligible enterprise zone may have as long as they continue to score within the top quartile of the applications received. This system is more appropriate than distributing the enterprise project designations evenly among the quarterly application deadlines because a measure of assurance to administrators of enterprise project eligible enterprise zones that they can offer the designations as an incentive to businesses seeking to locate or expand in their enterprise zones.

Section 176.10(a)(3) is being amended to reflect the change made by the Seventy-fourth Legislature, House Bill 2065, §5, regarding the elements and weighting Commerce must consider when evaluating enterprise project applications. The department has included as a component of §176.10(a) (3)(C) the amount of capital investment and jobs created or retained as elements to be evaluated under the type and wage levels of jobs committed by the business that is seeking enterprise project designation.

Section 176.10(c)(1)(B)(i) is being amended to correct the legal citation to the Enterprise Zone Act.

Section 176.10(c)(1)(B)(ii) is being amended to refer to ordinances, rather than resolutions passed by a community or communities for nominating an area as an enterprise zone to conform with §2303.103 and §2303.104, Texas Government Code and other sections of the rules.

Section 176.10(c)(2)(B) is being amended by eliminating language regarding an assumption of an enterprise project designation. This language was moved to

Section 176.8(c) so that all application requirements, name changes, and assumptions relating to enterprise projects are in same section of the rules. The remaining language in this section states that any assumption does not affect the duration of an enterprise project designation.

Section 176.10(e) is being amended to add new subsections (1), (2), and (3) to provide additional explanation and guidelines regarding the certification of jobs, sales taxes, and franchise taxes for the purposes of state and local benefits for qualified businesses and enterprise projects. It also clarifies that qualified businesses apply to a local governing body for certification as qualified businesses local benefits and to Commerce for state benefits. Section 176.10(e)(5), formerly §176.7(e)(2) is being amended to conform to statutory changes made by the Seventy-fourth Legislature, House Bill 2065. Section 176.10(e)(6), formerly §176.10(e)(3) is being

amended to clarify that only qualified businesses certified by Commerce to the Comptroller and the Legislative Budget Board are eligible for franchise tax reductions.

Section 176.10(f)(1) is being amended to provide additional explanation on the requirements that builders must meet to gain benefits for building single or multi-family residences in an enterprise zone.

Section 176.10(f)(2) is being amended to provide clarifying language. A statement is also added that specifies that a qualified builder does not have to meet the hiring requirements mandated for other qualified businesses.

Section 176.10(g)(1) is being amended to correct the legal citation to the Enterprise Zone Act.

Section 176.11(a)(1) is being amended to correct the legal citation to the Enterprise Zone Act. It also adds a statement that the information supplied by enterprise zone governing bodies will be used to produce a cost benefit analysis.

Section 176.11(a)(1) is being amended to provide clarity and eliminate redundancy.

Section 176.11(b) and §176.11(c) are being eliminated since they have been moved to §176.10(e)(2) and §176.4(a)(6), respectively.

New §176.11(b)(2), formerly §176.11(d)(2), is being amended to conform with changes made by the Seventy-fourth Legislature, House Bill 2065, §1, which changed the production of the mandated cost benefit study from annually to bi-annually.

Section 176.11(b)(3) is being eliminated because it is no longer applicable. Section 176.11(b)(4) has been renumbered to §176.11(b)(3) as a result of the deletion.

Section 176.12(b) is amended to provide clarity to language stating that the governing body must have a public hearing before amending the boundaries of an enterprise zone.

Dan Wattles, Coordinator, Enterprise Zone Program, has determined there will be fiscal implications as a result of enforcing or administering the rules. These costs are not increased costs, but ongoing costs associated with administering the program at the state and local level.

Mr. Wattles estimates that for the first five years the rules are in effect, the effect on state government will be the administrative costs Commerce incurs in administering Program. These cost should remain the same or decrease since fewer enterprise projects will be designated due to legislative restrictions.

Mr. Wattles has determined there will not be any increased additional costs to other state agencies that assist Commerce in administering the program. These agencies include the Texas Natural Resources Information System, the Texas Workforce Commission, and the Comptroller of Public Accounts. Costs to these agencies should remain the same as in previous fiscal years due to the stabilizing of the number of enterprise zones and fewer businesses being designated as enterprise projects.

Mr. Wattles believes that local administrative costs will not increase or decrease significantly due to the changes in the rules. Costs may increase as more zones are designated. However, the overall number of zones should stabilize as enterprise zones designated in state fiscal year 1988 and earlier years expire and new zones are designated. Moreover, a third fewer enterprise projects will be designated by Commerce each year due to legislative changes. This means possibly less cost to local government for filing applications and overall marketing and administration. In addition, local government costs associated with reporting enterprise zone activity annually should be reduced due to legislative changes and associated rule modifications.

Mr. Wattles also has determined there will be a public benefit for each of the first five years that the rules are in effect. The benefit is that local communities which participate in the Enterprise Zone Program may realize the creation and retention of jobs within the community, investment in the community by businesses, and new residential construction projects. The enterprise projects submitted by communities must hire at least 25% of their employees from the enterprise zone or targeted employment groups that may have been unemployed, under employed, or on public assistance. These jobs and corresponding investment help communities and the state by generating more revenue and relieving the state and local governments from providing assistance.

Two copies of written comments on the proposed rules should be submitted to Renee Mauzy, Assistant General Counsel, Texas Department of Commerce, P.O. Box 12728, Austin, Texas, 78711-2728, within 30 days of the publication of the proposed rules.

The amendments are proposed under the Texas Government Code, §2303.051(c) and §481.0044(a), which gives Commerce authority to adopt rules for the Texas Enterprise Zone Program and the Administrative Procedure and Texas Register Act, Chapter 2001, Texas Government Code, Subchapter B, Rulemaking, which gives agencies the authority to promulgate rules.

Chapter 2303, Texas Government Code is affected by this proposed amendment.

§176.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303, [Texas Civil Statutes, Article 5190.7.] as amended, and the Administrative Procedure Act, Chapter 2001, Subchapter B, Rulemaking, Texas Government Code, as amended, the Texas Department of Commerce prescribes the following sections regarding practice and procedure before the department in the administration and implementation of the Enterprise Zone Program.

(b) (No change.)

(c) Definition of terms. The following words and terms, when used in this chapter, shall have the following meanings,

unless the context clearly indicates otherwise.

(1) Act-The Texas Enterprise Zone Act, Texas Government Code, Chapter 2303 [(Vernon's Session Laws 1993) and Texas Civil Statutes, Article 5190.7], as amended.

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

(4) Applicant-The municipality, county, or combination of municipalities or counties filing an application with the department for designation of an enterprise zone or enterprise project or affected entity filing with the department for certification under the Act, §2303.105 or §2303.405, [§3(a)(9) or (11).] and this chapter.

(5) (No change.)

(6) Board-The Policy Board [of Directors] of the Texas Department of Commerce.

(7)-(8) (No change.)

(9) Depressed area-An area within the jurisdiction of a county or municipality designated by ordinance or order that is an area with pervasive poverty, unemployment, and economic distress. An area is an area of pervasive poverty, unemployment, and economic distress if:

(A) the average rate of unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the [local.] state[,] [or national] average for that period or if the area has had at least a 12.0% [9.0%] population loss during the most recent six-year period or a population loss of at least 4.0% [3.0%] for the most recent three-year period; and

(B) the area meets one or more of the following criteria:

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

(iii) at least 70.0% [70%] of the residents or households of the area have an income below 80.0% [80%] of the median income of the residents or households of the locality or state, whichever is lower;

(iv) chronic abandonment or demolition of commercial or residential structures exists in the area;

(v) substantial tax arrearages for commercial or residential structures exist in the area;

(vi) substantial losses of businesses or jobs have occurred in the area;

(vii) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period; or

(viii) the area has had a substantial increase in the number of individuals younger than 18 years of age arrested due to criminal activity.

[(iv) the nominating government establishes to the satisfaction of the department that:

[(I) chronic abandonment or demolition of commercial or residential structures exists in the area;

[(II) substantial tax arrearages for commercial or residential structures exist in the area;

[(III) substantial losses of businesses or jobs exist in the area; or

[(IV) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period.]

(10) Economically disadvantaged individual—An individual who:

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

(C) is [an] economically disadvantaged [individual,] as defined by the Job Training Partnership Act, §4(8) (29 United States Code, §1503(8));

(D) is an individual with a disability [handicaps], as defined by 29 United States Code §706(8);

(E) is an inmate as defined by the Government Code, §498.001; or [is an individual who is an inmate, as defined by the Government Code §498.001, or who is entering the workplace after being confined in a unit of the institutional division of the Texas Department of Criminal Justice or a correctional facility authorized by the Government Code, Chapter 494; or]

(F) is entering the workplace after being confined in a facility operated by the institutional division of the Texas Department of Criminal Justice or under contract with the Texas Department of Criminal Justice; or

(G) has been released by the Texas Youth Commission and is on parole, if state law provides for such a person to be on parole; or

(H)[(F)] [is an individual who] meets the current low income or moderate income limits developed under the

United States Housing Act of 1937, §8 (42 United States Code §1437f et seq.).

(11) (No change.)

(12) Enterprise project—A qualified business designated by the department as an enterprise project under the Act, §2303.405 [§10] , and §176.8 [§176.5] of this title (relating to Requirements for Designation of Enterprise Projects) that is eligible for the state tax incentives provided by law for an enterprise project.

(13) Enterprise zone—An area of the state designated by the department as an enterprise zone under the Act, Subchapter C [§9] and §176.3 of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone).

(14) Enterprise project eligible enterprise zone—A state-designated enterprise zone that meets economic distress levels set forth in the Act, §2303.102. [§10(a.)]

(15) (No change.)

(16) Extraterritorial jurisdiction—Territory in the extraterritorial jurisdiction of a municipality that is considered to be in the jurisdiction of the municipality, as defined by Chapter 42, Local Government Code. [Except in a county with a population of 750,000 or more, according to the most recent federal census, the governing body of a county may not nominate territory in a municipality or in the extraterritorial jurisdiction of a municipality to be included in an enterprise zone unless the governing body of the municipality also nominates the territory pursuant to a joint application made with the county.]

(17)-(18) (No change.)

(19) Neighborhood enterprise association—A private sector neighborhood organization within an enterprise zone that meets the criteria set forth in the Act, §2303.301 [§21.] and §176.9 [§176.7] of this title (relating to Certification of Neighborhood Enterprise Associations).

(20) New permanent job—A new employment position created by a qualified business that has provided employment to a qualified employee of at least 1,820 [1,040] hours annually and intended to be an employment position that exists [retained] during the period the business is designated as an enterprise project.

(21) Qualified business—A person, including a corporation or other entity that the department, for purposes of state benefits under the Act, and a governing body, for purposes of local benefits, certifies to have met the following criteria:

(A) (No change.)

(B) at least 25.0% [25%] of the business's new employees in the zone

are residents of any zone within the governing body's or bodies' jurisdiction or economically disadvantaged individuals, and

(C) a franchise or subsidiary of a new or existing business may be certified by the governing body of [or] an enterprise zone as a qualified business if the franchise or subsidiary is located entirely in the zone and maintains separate books and records of the business activity conducted in the zone; or

(D)-(E) (No change.)

(22) Qualified employee—An employee who works for a qualified business and who performs at least 50.0% [50%] of his service for the business within the enterprise zone.

(23) Qualified property—Any one or more of the following:

(A) tangible personal property located in the zone that was acquired by a taxpayer not earlier than the 90th day before the date of designation of the area as an enterprise zone or enterprise project, as applicable, and was or will be used predominantly by the taxpayer in the active conduct of a trade or business;

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

(24)-(25) (No change.)

(26) Retained job—A job that existed with a business prior to designation as an enterprise project or certification as a qualified business that has provided employment to a qualified employee of at least 1,820 hours annually and that is intended to be an employment position retained during the period the business is designated as an enterprise project or certified as a qualified business in accordance with Texas Tax Code, Chapter 151.

(27) (No change.)

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

(g) Written communication with the department. Applications and other written communications to the department should be addressed to the attention of the Texas Enterprise Zone Program, Business Development Division, Texas Department of Commerce, P. O. Box 12728, Austin, Texas 78711-2728.

§176.2. Filing Requirements for Applications and Claims.

(a) Form.

(1) Enterprise Zones and Enterprise Projects. An application must be filed on letter-sized paper and must contain all information and documentation required under the Act and this chapter, as applicable.

The application must be submitted in a three-ring loose-leaf binder. [with the information tabbed according to §176.4 of this title (relating to Application Contents for Designation of Enterprise Zones) or to amend the boundaries of a designated enterprise zone.] Each application for designation as an enterprise zone, for enterprise zone boundary amendments, recycling market development zone, and for enterprise project designation must be typed directly on the form provided by the department and must include all applicable attachments as specified in the application. [include an application/review guide as provided by the department.]

(2) **Certifications or refunds.** An application to request refunds, tax reductions [deductions], or certification of new permanent jobs created or jobs that have been retained, or certification as a qualified business to qualify for refunds or deductions of state sales, use, franchise taxes, or other state benefits encouraged under the Act, as appropriate, or an application to request certification by the department of a neighborhood enterprise association, must be made to the department in writing on the appropriate forms provided by the department or the Comptroller of Public Accounts.

(b) **Filing.**

(1) **Enterprise zones.**

(A) **(No change.)**

(B) During the six-month period preceding the expiration of designation as an enterprise zone, an application may be filed for a new zone designation for the area or portions of the area, to become effective upon the designation expiration date or no later than the 90th day after the day of receipt of the application. An application that includes land area previously designated as an enterprise zone will be subject to review by the department for evaluation of past performance to promote and develop the zone in accordance with the applicant's or applicants' attempts to meet the original zone objectives and to fulfill commitments outlined in the zone application from which zone designation was previously approved. In the event that the department determines from the evaluation of prior zone performance that the applicant or applicants have made insufficient use of the zone designation to advance the purposes of the Act as represented in its original enterprise zone application and its agreement with the department to designate the area as an enterprise zone, the department may deny approval of an area or portions of areas as authorized by the Act, §2303.111. [previously designated as an enterprise zone under the seven-year limita-

tion for an area to be designated as a zone under the Act, §4(c), as an exception to the Act, §7(c), that the department may reject an application only if the department determines that the nominated area does not satisfy the criteria established by the Act, §4. Eligibility requirements for designation of an enterprise zone as set forth in the Act and §176.3 of this title (relating to Eligibility Requirements for Designation of an Enterprise Zone) will apply in any case.]

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

(4) **Enterprise projects.** Applications for enterprise project designation may be filed on or before, but no later than, quarterly [bimonthly] deadlines published by the department in §176.10(b)(1) [§176.8(b)(1)] of this title, (relating to Application Contents for an Enterprise Project) for consideration. Applications received after a published deadline will not be reviewed and considered for designation until after the next published deadline. The applicant shall file with the department an original [and one copy] of an application for designation as an enterprise project.

(5) **Qualified hotel project.** A hotel must apply to the department in the form provided by the department to be designated a qualified hotel project. [Application to the department in the form prescribed by the department is required for enterprise project designation, but a] However, a qualified hotel project that meets the conditions under the Act, §2303.003(8), shall be deemed to have met the employment, income, and other criteria of a qualified business and an enterprise project and the enterprise zone in which the qualified hotel project is located shall be deemed to have met all qualifications of the Act to permit the department to designate the qualified hotel project as an enterprise project. The enterprise project designation or new [New] permanent jobs created by a qualified hotel project shall not be considered in determining the number of enterprise projects that the department may approve pursuant to the other provisions of this Act.

(6) **Certifications.**

(A) **Enterprise projects.**

(i) Requests for job certifications [and refunds] for designated enterprise projects may be filed on any day with the department annually or semiannually at the discretion of the entity holding designated project status. Requests for job certifications for enterprise projects may be filed with the department on any day after the last day following the state fiscal biennium in which the project was designated.

(ii) **(No change.)**

(iii) **Requests for refunds for designated enterprise projects should be filed directly with the Comptroller in accordance with the applicable Comptroller rules.**

(B) **Qualified business.**

(i) Requests for job certifications [and refunds] for qualified businesses, other than designated enterprise projects, may be filed with the department on any day within 12 months after the last day of the nomination period as a qualified business in the applicable governing body or bodies nominating resolution.

(ii) **Requests for refunds of state sales and use taxes and franchise taxes available to businesses nominated for one-time incentives for designated qualified businesses should be filed directly with the Comptroller in accordance with the applicable Comptroller rules.**

(iii)(ii) Through the applicable governing body or bodies to the department, a residential builder may request certification as a qualified business to construct single or multifamily housing in the governing body's or bodies' enterprise zone even though the builder's principle office or headquarters is located in the state of Texas outside the zone. The governing body or bodies shall adopt criteria and guidelines to advance the Act and zone objectives including establishing a minimum commitment of the number of housing units that are to be constructed in an enterprise zone within its jurisdiction(s) within a specific period of time by a builder or group of builders before requesting state qualified business status. A builder or group of builders that form a consortium for the purpose of constructing housing in an enterprise zone that has met requirements established by the local governing body or bodies may be nominated for enterprise project designation by the local governing body or bodies. In considering such nominations the governing body or bodies shall give preference to projects that address affordable housing as set forth in the criteria established by the governing body or bodies. The application for certification as a qualified business for state benefits may be submitted to the department on any day in a form prescribed by the department. The applicable governing body or bodies may certify a residential builder as a qualified business to receive local benefits in connection with housing construction activity in an enterprise zone within its or their jurisdiction without making an application to the department to assure compliance with the Act, §2303.401 [§3(a)(11) (B)].

(C) **Forms.** One [Two] original form must be submitted to the depart-

ment to request certification as a qualified business, [or] to request certification of new permanent jobs created or to request certification of retained jobs. One original form as provided by the Comptroller should be submitted to the Comptroller to request refunds of state sales and use taxes. [Two original forms as provided by the comptroller must also be submitted to the department to request refunds. One original will be retained by the department and one original will be forwarded to the comptroller.] The rules promulgated by the comptroller must also be followed to file a claim for tax refunds or reductions.

(D) (No change.)

(c) (No change.)

(d) Fees. A nonrefundable fee to recover the department's cost of providing direct technical assistance relating to the enterprise zone program must accompany an application to the department in the amount of:

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

(4) \$300 for application to change/assume enterprise project designation as defined in §176.8(b) and §176.8(c) [§176.10(c)(2) (B)] of this title (relating to Approval Standards);

(5)-(7) (No change.)

(e) Staff consideration of applications or job certification [claim] requests. [The] Staff shall review the application or job certification [claim] request to determine if the application or job certification request meets the eligibility criteria under the Act and this title. A job certification request submitted by an enterprise project may cover multiple years. Businesses applying for designation and job certifications are subject to on-site inspection. [An application for designation or request for certification will initiate a site visit by the department, written, or telephone instruction for a desk-top review as appropriate.] Following staff review, the application will be submitted to the executive director for consideration. Written notification will be given to applicants of the final status of an application or job certification [claim].

(1) Not later than 15 days after the receipt of the application for enterprise zone designation or for zone boundary amendment, the department shall notify the applicant that it has received the application and note any omissions or clerical errors that exist in the application. The applicant has at least 10 days after the date it receives notice of application omissions or clerical errors or 45 days from the date the application is received by the department to correct any deficiencies and to submit corrections to the application to the department.

(2) Not later than five days after the deadline for accepting applications for enterprise project designation, the department shall notify the applicant that it has received the application. [A preliminary review of an enterprise project application will be conducted to determine eligibility and completeness if the application is received at least 15 days prior to the application deadline. If a preliminary review is conducted of an enterprise project application by the department, the enterprise project applicant or applicants will be notified of application omissions or clerical errors at least seven days before the application deadline and application deficiencies must be corrected and returned to the department by the enterprise project deadline for consideration.]

(f) Consideration of enterprise zone and enterprise project applications.

(1) Complete or corrected applications for enterprise zone designation that staff determines [to] meet the eligibility criteria set forth in the Act and this chapter will be considered by the executive director. The executive director may approve the application or remand it to the applicant for further action. If the executive director approves the application for enterprise zone designation, a negotiated agreement to designate the enterprise zone will be initiated by the department and must be fully executed no later than the 90th day after the day of receipt of the application. If the agreement is not executed before the 90th day after the day of the receipt of the application by the department the application is considered to be denied. The department shall inform the governing body or bodies of the specific reasons for the denial.

(2) (No change.)

(g) (No change.)

§176.3. Eligibility Requirements for Designation of an Enterprise Zone.

(a) An applicant may make written application to the department for designation of an area within the applicant's jurisdiction as an enterprise zone if such area meets the following eligibility criteria:

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

(3) the area is a depressed area as defined under §176.1(c)(9) of this title. [an area with pervasive poverty, unemployment, and economic distress which meets the following criteria:

[(A) the average unemployment in the area during the most recent 12-month period for which data is available was at least one and one-half times the local, state or national average for that period or if the area has had at least a 9.0% population loss during the most recent six-

year period or a population loss of at least 3.0% for the most recent three-year period; and

[(B) the area meets one or more of the following criteria:

[(i) the area was a low-income poverty area;

[(ii) the area is in a jurisdiction or pocket of poverty and is certified by the United States Department of Housing and Urban Development as eligible at the time of enterprise zone or enterprise project application for urban development action grants under federal law. Such certification must be current within 90 days of the date application is received by the department.

[(iii) at least 70% of the residents or households of the area have an income below 80% of the median income of the residents or households of the locality or state, whichever is lower;

[(iv) the governing body the applicant establishes to the satisfaction of the department that:

[(I) chronic abandonment or demolition of commercial or residential structures exists in the area;

[(II) substantial tax arrearages for commercial or residential structures exist in the area;

[(III) substantial losses of businesses or jobs exist in the area; or

[(IV) the area is part of a disaster area declared by the state or federal government during the most recent 18-month period.]

(b) (No change.)

(c) Areas receiving designation from the federal government as federal empowerment zones, federal enterprise communities, or federal enterprise zones are automatically state enterprise zones without further qualification and are valid for the term permitted by federal law, as authorized by the Act, §2303.109(b). Designation of these areas as state enterprise zones does not affect the number of state enterprise zones a governing body may have as authorized by the Act, §2303.112.

(d) The governing body of a county may not nominate area in a municipality or a municipality's extraterritorial jurisdiction to be included in a zone unless the municipality is a joint applicant with the county. However, a county with a population of 750,000 or more, according to the most recent federal census, may nominate area in a mu-

municipality's extraterritorial jurisdiction to be included in a zone without the consent of municipality, as authorized by the Act, §2303.103(e).

(e)[(c)] Documentation. For the purpose of showing that an area is qualified to be designated as an enterprise zone, the applicant must submit documentation, including the source, methodology and certification of the data. The authorized data source for population estimates is the State Data Center. The authorized data source for labor force data is the Texas Workforce Commission. [data source by the person or persons responsible for its preparation. The applicant may, subject to the prior approval of the department, submit data, analysis, or other information which is generated locally by the applicant or on behalf of the applicant.] Data will be considered current from the State Data Center and the Texas Workforce Commission if they are the most recently published estimates or if the enterprise zone application containing the data is received by the department before the 61st day after the date revised estimates of that data are published. [The department will consider current any documentation, if at the time an application is received by the department, such documentation was the most current data that was available not more than 90 days preceding the date the application was received by the department. The department will consider current, at the time of application to amend an enterprise zone boundary or nominate an enterprise project, any documentation generated by local survey that is allowed by the Act and this chapter, within three years of the date the survey was conducted.]

(1) Unemployment data. The average rate of unemployment for the area nominated during the most recent 12-month period for which data is available from the Texas Workforce [Employment] Commission must be at least one and one-half times the [local,] state[, or national] average for that period. Computation of the average unemployment rate for the proposed enterprise zone area will require choosing the smallest area that contains the zone for which unemployment data is available from the Texas Workforce [Employment] Commission [or by local survey. Unemployment data obtained by local survey may be used to meet unemployment criteria only if the area to be surveyed represents no more than 25% of the proposed zone and the Texas Employment Commission certifies that it cannot provide data for that area. An applicant must use the survey instruments provided by the department. A 100% effort with an 80% response rate is required. Local survey data for 25% of the nominated land area must be averaged with data provided by the Texas Employment Commission for the remainder (at least 75%) of the nominated land area].

(2) Loss of Population. Loss of population may be calculated using population estimates for the applicant's jurisdiction produced by the Texas State Data Center [or by other methods approved by the department in advance of submitting the application to the department]. The 12.0% [total] loss of population is the accumulated population loss experienced during the most recent six-year period for which data is available. The alternative 4.0% [annual 3.0%] population loss is the [average annual] loss of population experienced during the most recent three-year period for which data is available.

(3) Income data. If a proposed zone includes portions of more than one city or county, the median income should be calculated using figures for each city or county which includes part of the zone. In order to meet the low-income criteria, the smallest number of census areas that entirely contain the zone must reflect that at least 70.0% [70%] of the residents or households in that zone have below 80.0% [80%] of the median residents or household income for the locality or state, whichever is lower. To determine a low-income poverty area, at least 20.0% [20%] of the residents of the zone must have an income below the national poverty level as determined by the most recent available census data that contains the zone area. Census tracts, block groups, [enumeration districts] or other official census [comparable] areas may be used to show poverty rates.

(4) Urban Development Action Grants. The applicant must provide certification from the United States Department of Housing and Urban Development that the area is within a jurisdiction that is eligible for urban development action grants under federal law. Such certification must be current within 90 days of the date the enterprise zone application is received by the department.

(5)[(4)] Chronic abandonment or demolition. To qualify, the applicant must demonstrate to the department that 25.0% [25%] or more of the structures in such area are found by the governing body to constitute substandard, slum, deteriorated, or deteriorating structures as defined by local law. If local law does not define what constitutes a substandard, slum, deteriorated, or deteriorating structure, the governing body of the applicant may consider as substandard a structure which:

(A) is abandoned;

(B) does not have plumbing;

(C) has been condemned or cited for building or fire code violations by the appropriate city authority;

(D) is in an inadequate state of repair under applicable public health, safety, fire, or building codes;

(E) is the subject of a tax or special assessment delinquency stated as a percentage of total taxes assessed, which exceeds the fair market value of the land involved and the improvements thereon; or

(F) is functionally or economically obsolete as determined by a qualified appraiser.

(6) [(5)] Substantial tax arrearages. The applicant must certify and submit evidence that within the proposed zone area, at least 25.0% of the commercial or residential taxes have gone unpaid [are at least 25% in arrears] and [that such tax arrearages] have been delinquent for at least one year. For purposes of determining substantial tax arrearages, the tax rolls of the applicable city or county nominating an area as an enterprise zone must be used.

(7)[(6)] Substantial loss [losses] of businesses or jobs [in the area]. A substantial loss of businesses or jobs is defined as a loss of at least 20.0% over the most recent one year period or a loss of 30.0% over the most recent three-year period in the proposed zone area. The applicant must seek advance approval of documentation to be provided to the department. [Such evidence of loss will be evaluated on a case by case basis for eligibility with consideration to be given to the critical impact of the jobs lost to the area nominated.]

(8)[(7)] Declaration of an area as a state or federal disaster area. The applicant must provide documentation by the applicable state or federal government that the area has been declared a state or federal disaster area within the most recent 18-month period.

(9) Substantial increase in individuals under the age of 18 arrested for criminal activity. The applicant must provide data from the appropriate law enforcement authority or authorities that the proposed zone area has had a substantial increase in the number of individuals younger than 18 years of age arrested due to criminal activity. A substantial increase in arrests is defined as at least a 20.0% increase over the most recent three-year period.

(f)[(d)] Citizen participation. The department will not approve the designation of an area as an enterprise zone unless:

(1) the governing body of the applicant shall first notify the department of the date it will hold a public hearing as required under the Act, §2303.103, [(b).]

and these rules for the purpose of nominating an area as an enterprise zone or to amend the boundaries of a designated enterprise zone by encompassing additional land area into the zone. The notice to the department shall be given in writing not less than seven days prior to the date of the public hearing; and

(2) notice of such hearing is given to the public by publishing once in a newspaper of general circulation in the municipality or county or combination of municipalities or counties and posting a copy of the same at the city hall or county courthouse not later than seven days prior to the date of the hearing. Such notice shall contain a description of the area proposed by the municipality or county or combination of municipalities or counties to be designated as an enterprise zone, and the date, time, and location of such hearing. The description of the area should be worded so that residents of the area and other interested parties may reasonably identify the area to be discussed at the public hearing. The notice shall also encourage all interested parties, including residents of the proposed zone to present their views at the hearing. The hearing must include a presentation on the proposed location of the zone and the provisions for any tax or other incentives applicable to business enterprises in the zone. A municipality or county or combination of municipalities or counties must adopt the enterprise zone nominating ordinance or order within 180 calendar days of the date the last public hearing was held.

(g)[(e)] An application for enterprise zone designation may simultaneously be an application to the department for the area to be designated as a recycling market development zone. A previously designated enterprise zone may be designated a recycling market development zone by separate application to the department in the form prescribed by the department.

§176.4. Application Contents for Designation of Enterprise Zones.

(a) Each application for designation of an enterprise zone, application to amend the boundaries of a designated enterprise zone, or for designation of a recycling market development zone must be typed directly on the form provided by the department and must include all applicable attachments as specified in the application. [contain the following information and documentation, as applicable, and numerically tabbed in the order listed in paragraphs (1)-(7) of this subsection. If a certain tab is not applicable, please state.]

(1) The participants. The application must provide information about the applicant governing body or bodies,

their designated representative and their liaison to communicate and negotiate with the department, the administrative authority and its representative, if applicable, the recycling market development zone liaison, if applicable, and the neighborhood enterprise association and its representative, if applicable. [The application must list the name, street, mailing address, and telephone numbers, including the telecommunication devices for the deaf (TDD) number, if available, and facsimile number, if available, of each of the following:

[(A) the applicant governing body or bodies, applicant governing body or bodies' representative;

[(B) the applicant governing body's or bodies' designated liaison to communicate and negotiate with the department, the administrative authority, if any, of an enterprise project, and other entities in or affected by an enterprise zone.

[(C) if any, the administrative authority, the administrative authority's representative; and

[(D) if any, the neighborhood enterprise association, neighborhood enterprise association's representative.]

(2) The applicant. If a joint application is being submitted by a municipality and county, or a combination of municipalities and/or counties, the information must be provided for each entity. The application must contain the following information and documentation concerning the applicant:

(A) (No change.)

(B) a certified copy of the ordinance or order as appropriate of the governing body of the applicant nominating the area within its jurisdiction as an enterprise zone under the Act, containing the information set forth in the Act, §2303.104, [§6.] and identifying by job title the liaison, liaisons, representative or representatives [designating a liaison or liaisons] in accordance with paragraph (a)(1) [paragraph (1)(B)] of this subsection. The ordinance or order must specify any incentives to be provided by the municipality or county to business enterprises in the zone, including the conditions and circumstances governing the sale of surplus public buildings or vacant public lands at less than fair market value and the public purpose that will be achieved by the sale. At least three incentives must be offered in the zone which are not

offered elsewhere throughout the jurisdiction. At least one incentive must be financial in nature. The ordinance or order may nominate more than one zone, but separate applications must be submitted for each zone [The ordinance or order may include nomination of more than one zone area within the limits of the Act and within the jurisdiction of the applicant governing body to be filed with separate zone applications];

(C) (No change.)

(3) Zone Administration. The application must contain the following information and documentation concerning administration of the zone:

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

(C) a description of the administrative authority, if any, including a list of members with representation as set forth in the Act, §2303.202, [§22, including the street address, mailing address, and telephone number of each member]; and

(D) (No change.)

(4) (No change.)

(5) The zone. The application must contain the following information and documentation concerning the proposed zone:

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

(C) certification of the geographic makeup of the proposed zone including the total square miles in the proposed enterprise zone, the total square miles of each applicant's jurisdiction, and the percentage of the jurisdiction in the zone[, including the total square miles of proposed zone area inside each applicant's city limits, each applicant's extraterritorial jurisdiction, and if applicable, the total square miles outside a city's extraterritorial jurisdiction in the county];

(D) a summary, in tabular form, of the data qualifying the area for an enterprise zone and supporting data as required by the Act and this Chapter [an analysis and any supporting documents and statistics demonstrating that the proposed zone area qualifies for designation as an enterprise zone under the Act];

(E) a statement setting forth the economic objectives, the current business and labor conditions, and the marketing strategy [economic development and planning objectives] for the zone;

(F) an annualized seven-year estimate of the economic impact of the zone that reflects at least the number of jobs and capital investment expected as a result of the designation of the zone, considering all of the tax incentives, financial benefits, and programs contemplated, on the revenues of the municipality or county. The estimate must be provided in tabular form and must describe the basis [bases] and assumptions used.

(6) The local business incentives.

(A) The application must contain additional information about the incentives specified in the ordinance or order.

(B) For the purposes of tax abatement under the Property Redevelopment and Tax Abatement Act (Tax Code, Chapter 312), an enterprise zone designated after August 28, 1989 is considered to be a reinvestment zone without further designation and the reinvestment zone is effective for the term of the enterprise zone. In accordance with Chapter 312.204 and 312.206 of the Tax Code, property tax abatement agreements between the governing body of each taxing unit and property owners in an enterprise zone, may, but are not required to, contain terms that are identical to those contained in the agreement with the municipality, county or both. The terms of the agreement that may vary are the portion of the property that is to be exempt from taxation under the agreement and the duration of the agreement.

(C) Land sold at less than fair market value. A municipality or county may sell a surplus building or vacant land in the zone at less than fair market value if the governing body of the municipality by ordinance or the governing body of the county by order adopts criteria specifying the conditions and circumstances under which the sale may occur and the public purpose that will be achieved. The surplus building or vacant land may be sold to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order are satisfied. A copy of the ordinance or order must be filed with the department not later than the day the sale occurs. Factors to be considered in evaluating the local effort on the part of public entity include provisions of publicly owned land for development purposes including residential, commercial or industrial development.

[(6) The local business incentives. For the purposes of tax abatement

under the Property Redevelopment and Tax Abatement Act (the Tax Code, Chapter 312), an enterprise zone designated after August 28, 1989 is considered to be a reinvestment zone without further designation a listing of the incentives the following information and documentation concerning any incentives to be provided by the local government:

[(A) a narrative detailing any tax, or other incentives to be provided in the zone, as described in the ordinance or order nominating the area as an enterprise zone; and

[(B) a statement detailing any incentives or benefits and any programs to be provided by the municipality or county to business enterprises in the zone, that are not to be provided throughout the municipality or county, at least one tax or other incentive must be applicable to business enterprises in the zone that is not applicable throughout the municipality or county and any applicable incentive should be specifically noted in the ordinance or order to nominate the enterprise zone or zone boundary amendment as appropriate. At least one of the three local incentives offered exclusively in the zone must be financial in nature.]

(7) (No change.)

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

§176.5. Requirements for Designation as a Recycling Market Development Zone and Respective Loans or Grants.

(a) (No change.)

(b) Recycling market development zones will be eligible for recycling-related low-interest loans and grants from the department as funds become available from grants or other allowable sources. The purpose of the grants or loans [loan] to the governing body of an enterprise zone designated as a recycling market development zone is to fund an activity that initiates, sustains or increases recycling efforts. Administration costs related to the recycling market development loans will be reimbursed from applicable recycling market development loan funding sources including a percentage of grants and/or fees. Loans may be a minimum of \$10,000, and a maximum of \$500,000, the most any zone could have outstanding at any time. Pursuant to Government Code, §481.374, under this section:

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

§176.6. Application Contents for Designation as a Recycling Market Development Zone.

(a) An application for designation as a recycling market development zone must include:

(1) (No change.)

(2) the application must also contain:

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

(C) summaries of the waste-stream analysis and the survey of markets for recyclable materials and sources for post-industrial/post-consumer secondary materials including the periods covered, dates completed, and names and affiliations of persons conducting the analysis and survey and the name of the entity or person that authorized the analysis or survey;

(D)-(E) (No change.)

(b) (No change.)

(c) To receive a recycling market development loan, each governing body or bodies must:

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

(5) administer the loan funds and implement the incentives agreed upon in the enterprise zone application, including the recycling market development [marketing developing] zone option; and

(6) (No change.)

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

§176.7. Requirements for Designation of Enterprise Projects.

(a) The department may not designate a nominated qualified business as an enterprise project unless it determines that:

(1) the business meets the requirements set forth in the Act, §2303.401 [§3(a)(11)] and this chapter;

(2) the qualified business is located in or has made substantial commitment to locate in an enterprise project eligible enterprise zone [having an unemployment rate at the time of enterprise zone designation, or enterprise project application, whichever is the higher, of not less than one and one-half times the average state unemployment rate or a population loss of at least 12% during the most recent six-year period or a population loss of at least 4.0% for the most recent three-year period at the time of project application];

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

(b) (No change.)

§176.8. Application Contents for Designation of an Enterprise Project.

(a) The application for designation of an enterprise project must contain the following information and documentation, as applicable. If an enterprise project application is being filed on behalf of a business to be located in an enterprise zone that was nominated by more than one governing body [a joint application is being filed by one or more municipalities and/or counties], the information must be included for each applicant governing body.

(1) (No change.)

(2) The applicant. The application must contain the following information and documentation concerning the applicant:

(A) (No change.)

(B) a certified copy of a resolution from the applicant governing body or bodies nominating the qualified business for designation as an enterprise project and containing the findings required by the Act, §2303.404 [§10(c)>];

(C) a complete description of the conditions in the zone that constitute pervasive poverty, unemployment, and economic distress for purposes of the Act, §2303.102 [§4(b);] including:

(i) the tabular summary from the appropriate enterprise zone application, or most recent enterprise zone amendment application, that demonstrates the project is located in an enterprise project eligible enterprise zone. Enterprise zones that were not enterprise project eligible enterprise zones at the time of designation must provide appropriate supporting data showing they are now an enterprise project eligible enterprise zone; and

(ii) a city street map which clearly identifies the enterprise zone area and the location of the proposed project; and

(iii) a copy, or an excerpt from a copy of the census map from the enterprise zone application submitted to nominate the area for zone designation, which clearly identifies the location of the proposed project and the census area where it is located.

(D) a description of each municipality's or county's procedures and efforts to facilitate and encourage participation by and negotiation between all affected entities in the zone in which the qualified business is located including:

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

(iii) a description of the business activity that has occurred within

the last year of designation of the zone or within the last year prior to designation of the zone, if the zone has been designated for less than one year. This description must demonstrate the cooperation among the public and private sectors and information on the number of jobs created and retained and capital investment made as a result of the business activity.

(E) a description of the local effort made by the municipality or county, the administrative authority, if any, [the qualified business,] and other affected entities to achieve development and revitalization of the zone as described in the Act, §2303.405(c) [§10(h)]. This includes a brief historical description of the trade and business conducted in the zone and a brief historical description of the qualified business' activities in other locations with respect to its location in the zone.

(3) The project. The application must contain the following information and documentation concerning the proposed project:

(A) A description and introduction of the business applying for the project designation, which includes:

(i) a copy of the articles of incorporation filed with the Secretary of State of the State of Texas or the dba statement under which the business operates. The name under which the business is applying for designation must be the same as the business paying state taxes and creating and or retaining jobs to obtain program benefits.

(ii) the principal owners and history of the business;

(iii) a corporate resolution that provides signatory authority to a person or persons to sign any contracts or forms on behalf of the business for the enterprise project application;

(iv) the number of business locations, total sales, and number of employees in the State of Texas, the United States, and outside the United States; and

(v) a description of the business' products and services;

(B) The plans of the business for expansion, revitalization, and other activity in the zone for the five-year designation period of the project including:

(i) a description of the project location and intended use;

(ii) a summary of short and long-term plans for expansion in the zone;

(iii) the amount of capital investment to be made in the zone and the source of funding for the investment;

(iv) the status of any required local, state, or federal permits or licenses that must be obtained to enable the project to be initiated and completed as represented in the enterprise project application;

(v) a tabular summary of the classification titles and salary ranges of full-time, part-time, and seasonal jobs to be maintained, new jobs to be created, and jobs to be retained, if applying for retained job benefits; and

(vi) the total projected annual payroll for the jobs that are being considered for benefit.

(C) Commitments from the business that include:

(i) a completed form, to be provided by the department, certifying the business as a qualified business;

(ii) a statement that the business is located entirely in the enterprise zone and that it will maintain separate payroll and tax records of the business activity conducted in the zone;

(iii) the percentage of new or additional employees hired to occupy the jobs being claimed for benefit that are residents of any zone within the governing body's or bodies' jurisdiction or that are economically disadvantaged; and

(iv) a description of the efforts of the business to develop and revitalize the enterprise zone as described in the Act, §2303.405(e).

[(3) The project. The application must contain the following information and documentation concerning the proposed project. Any analysis or breakdown, where applicable, should show benefits to economically disadvantaged individuals:

[(A) A brief description of the project, location and intended use:

[(B) an economic analysis of the plans of the qualified business for expansion, revitalization, or other activity in the zone for at least the first two years of the project, including:

[(i) the anticipated number of new permanent jobs it will create, including a statement indicating the number of full-time employees working for the business and the number of new or additional employees that the qualified business commits to hire and the percentage of new or additional employees expected to be residents of any zone within the governing

body's or bodies' jurisdiction or employees that are economically disadvantaged individuals;

[(ii) the number of permanent jobs to be retained;

[(iii) types of permanent jobs created or retained;

[(iv) estimated total annual payroll of new and retained jobs and new jobs by job types or classifications;

[(v) the number and types of part-time or seasonal employees currently on payroll;

[(vi) the anticipated number of part-time or seasonal jobs to be created;

[(vii) the number, types, and period of job training currently being provided;

[(viii) the anticipated number, types and period of job training to be provided jobs to be created during the project designation;

[(ix) the status of any required local, state, or federal permits or licenses that must be obtained to enable the project to go forward as represented in the application;

[(x) the amount of investment to be made in the zone including estimated project costs and sources of payment;

[(xi) approximate date of commencement and completion of the project; and

[(xii) a description of the qualified business including the following:

[(I) description and introduction of the business, including the name and location, legal structure, principal owners, nature of the business, and history of the business. If the business is a franchise, the department will require a certified copy of the document from the applicable governing unit(s) certifying the franchisee or subsidiary of a new or existing business as a qualified business. The department will also require a certified statement from an authorized representative of the franchisee or subsidiary that it is located entirely in the zone and that it maintains separate books and record of the business activity conducted in the zone;

[(II) summary of future plans, including short and long-range plans to include any expansions in the zone; and

[(C) an analysis of the social impact that the designation of the qualified

business as an enterprise project would have on the zone.

[(4) The zone. The application must contain the following information concerning the zone:

[(A) an analysis and any supporting documents demonstrating that the project is located in a zone with an unemployment rate of not less than one and one-half times the average state unemployment rate or a population loss of at least 12% during the most recent six-year period or a population loss of at least 4.0% for the most recent three-year period at the time the enterprise project application is submitted to the department;

[(B) a brief historical description of the trade or business conducted in the zone and its function or, if a qualified business making substantial commitment to locate in a zone, a brief historical description of its business in other locations with respect to its location in the zone and its functions; and

[(C) a description which includes the types of projects that have been completed within the last year of designation of the zone or within the last year prior to designation of the zone; if the zone has been designated for less than one year, the description must demonstrate the cooperation among the public and private sectors; and information on the number of jobs created and revenue generated as a result of the projects.]

(b) A designated enterprise project may apply to the department for a name change [for the project different from the name under which the project made application and was granted project designation]. To receive department approval for a name change, the project must submit through the applicant governing body or bodies:

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

(c) A lessee or purchaser of a qualified business which has been designated as an enterprise project may apply to the department to assume the enterprise project designation of the business leased or purchased. The request must be made through the appropriate enterprise zone governing body or bodies which must take official action, in the form of a resolution, approving of the assumption of the enterprise project designation by the lessee or purchaser. The resolution should be submitted along with the following information to the department:

(1) a written commitment from the qualified business that is the designated project to the governing body or bodies of the enterprise zone where

the project is located and to the department to release all claim to the project designation and any benefits represented thereunder and agreeing to the assumption of the designation as of a specific date by the lessee or purchaser seeking to assume the designation; and

(2) a written certification from the lessee or purchaser on a form to be provided by the department that the lessee or purchaser will be a qualified business under the Act, §2303.401; and

(3) a letter of commitment from the lessee or purchaser addressed to the enterprise zone governing body or bodies and to the department like the letter of commitment filed in the original application for project designation by the initial qualified business. The letter should outline any modifications proposed by the lessee or purchaser to the original commitments made by the qualified business holding the project designation, including capital investment and jobs to be created, or retained, as applicable, and a statement as to why the assumption is essential to their operations in the enterprise zone; and

(4) a copy of the lessee's or purchasers' articles of incorporation filed with the Secretary of State of the State of Texas or the dba statement under which the business operates and financial statements to satisfy concerns about the ability of the lessee or purchaser to fulfill its commitments.

§176.9. Certification of Neighborhood Enterprise Associations.

(a) Individuals residing in an enterprise zone may establish, under the Act, §2303.301 [§21], a neighborhood enterprise association. Following organization of the association, its board of directors must apply to the governing body or the department for certification as a neighborhood enterprise association.

(b) (No change.)

§176.10. Approval Standards.

(a) Final approval standards for designation of enterprise zones and recycling market development zones. Within 10 business days of final approval of the designation of a zone by the executive director, the staff shall present the form of the negotiated agreements to the governing body or bodies of the applicant. Such agreements must include designation of the zone and the administrative authority, if any, and its function and duties and any other information required under the Act and this chapter. The department shall complete the negotiations and sign the agreements in accordance with the Act, §2303.107 [§9(c)].

(b) Approval standards for designation of enterprise projects. The department shall designate qualified businesses as enterprise projects on a competitive basis. Applications for designation of enterprise projects will be accepted on a quarterly [bimonthly] basis on or before the following application deadlines:

(1) During the state fiscal biennium beginning September 1, 1995 [1993], the application deadlines for receipt of enterprise project applications by the department is [are] 5:00 p.m., Austin, Texas time, on the first business day of every third [other] month beginning with September 1995 [1993]. The department may designate no more than 65 enterprise projects during any fiscal biennium, as specified by the Act, §2303.403. [For projects designated after August 31, 1993, the department may not certify more than 8,000 new permanent jobs or retained jobs during the state fiscal biennium beginning September 1, 1993. A state designated project may request certification of its jobs created or retained, as appropriate, by the department on an annual or semiannual basis during the applicable five-year designation period within the limits of the number of jobs allocated at the time of its project designation in accordance with the Act, §10(f)].

(2) The department will designate qualified businesses as enterprise projects under the following conditions:

(A) Each enterprise project eligible enterprise zone may not have more than two qualified businesses designated as enterprise projects in the state fiscal biennium beginning September 1, 1995. The enterprise project designations will be granted by the department on a first-come, first-served basis, subject to the limitations in this section and based upon the availability of enterprise project designations. Although enterprise project designations will be awarded on a first-come, first-served basis, applications will be scored for the purpose of awarding bonus enterprise project designations.

(B) Each enterprise project application will be scored against all other enterprise project applications received each quarterly deadline, as specified in §176.10(b)(1) of this Chapter. If an enterprise project application scores within the top quartile (25.0%) of all the other applications submitted on a quarterly deadline, the nominating enterprise zone may nominate a qualified business for a bonus enterprise project designation on any subsequent quarterly deadline within the state fiscal biennium. Designations will be awarded only if enterprise project designations are avail-

able. The bonus enterprise project applications will be scored in the same manner as all other enterprise project applications received on each quarterly deadline. If a bonus project application scores within the top quartile (25.0%) of all the bonus and regular applications received on a quarterly deadline, the nominating enterprise zone may nominate an additional bonus enterprise project for designation on any subsequent quarterly deadline within the same fiscal biennium. The bonus enterprise project designations may only be located in the enterprise zone from which the bonus enterprise project designation was earned, subject to enterprise project availability. Each application submitted to the department will be evaluated on the commitments made by the community and qualified business as specified under the Act, §2303.405. [The department will not designate a qualified business as an enterprise project if there were six enterprise projects designated during the current fiscal year in the enterprise zone in which the business is located. A governing body may make written request to the department for approval to exceed the number of projects in one zone within its jurisdiction by reducing the number of projects it will nominate for designation in another zone within its jurisdiction, if the governing body can satisfy the department that there is just cause for the need to nominate more projects in one zone than in another within its jurisdiction and that equal effort to develop all of the enterprise zones within its jurisdiction are being made to help the governing body reach the objectives of the zones represented to the department in each zone application.]

(3) The criteria for evaluating enterprise project applications will be based on weighting as specified by the Act, §2303.406(b). The department will make its decision on a weighted scale in which:

(A) 50.0% of the evaluation weight will be evenly divided between the economic distress of:

(i) the enterprise zone in which a proposed enterprise project is or will be located; and

(ii) the area within the enterprise zone where the project is or will be located. In the event the zone was designated using primary or secondary distress criteria that are not available on a sub-community or sub-enterprise zone level, the economic distress of the zone will be evaluated using the data at the most discrete level available;

(B) 25.0% of the evaluation depends on the local effort to achieve

development and revitalization of the enterprise zone. This evaluation criteria is designed to measure the level of local support on the part of the community or communities nominating the qualified business and the qualified business applying for enterprise project designation. This includes, but is not limited to, such factors as set forth in the Act, §2303.405(c), §2303.405(d), and §2303.405(e); and

(C) 25.0% of the evaluation depends on the evaluation criteria as determined by the department, which will be evenly divided between:

(i) the amount of capital investment and the number of jobs to be created or retained by the qualified business, as applicable; and

(ii) the type and wage level of the jobs to be created and retained by the qualified business. The wage level of the jobs will be evaluated on how they compare to the regional average salary of a high wage/high skill job. [In determining which qualified businesses will be designated enterprise projects, based on relative factors as determined by the department, the department shall base its decision on a weighted scale with 60% dependent on the economic distress of the enterprise zone in which a proposed project is located and 40% dependent on the local effort to achieve development and revitalization of the enterprise zone.

[(A) Economic Distress. This evaluation is designed to measure the level of documented economic distress as indicated by such things as high levels of poverty, unemployment, job and population loss, and general distress. In addition, the evaluation criteria is designed to assess the overall potential impact that the project is likely to have on the distress factors identified within the zone, as well as the impact within the applicant's jurisdiction at large.

[(B) Local Effort. This evaluation criteria is designed to measure the level of local support on the part of a public entity and a private entity and includes, but is not limited to, such factor as set forth in the Act, §§10(h)-(j), 12-14 and 20].

(c) Period for which designation is in effect.

(1) An area may be designated as an enterprise zone for a maximum period of seven years. Designation of an enterprise zone as a recycling market development zone will run concurrently to begin with the date the recycling market development zone is designated and to end with the date the applicable enterprise zone designation ex-

pires. However, if an area is designated as a federal enterprise zone, the area may be designated for a longer period not to exceed that permitted by federal law. Any designation of an area as an enterprise zone and a recycling market development zone, if applicable, shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) (No change.)

(B) following a public hearing, the date the department removes the designation of zone for the following reason:

(i) the area no longer qualifies for designation as an enterprise zone as forth in the Act, §2303.102 [§4] or this chapter; or

(ii) (No change.)

(2) A qualified business may be designated as an enterprise project for a maximum period of five years. The designation of a qualified business as an enterprise project shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) (No change.)

(B) the last day that completes the original project designation period of a qualified business that has assumed the designation of the enterprise project through a lease or purchase of a designated qualified business for the purpose of continuing its operations in the applicable enterprise zone under a name or legal structure other than that of the qualified business originally receiving the designation and that has met the requirements of the department to qualify for the assumption, as specified under §176.8(c) of this title [Title]. [Assumption by a lessee or purchaser of an existing enterprise project designation may be accomplished by:

[(i) the qualified business that is the project designee providing a written commitment to the governing body or bodies of the enterprise zone where the project is located and to the department, to release all claim to the project designation and any benefits represented thereunder and agreeing to the assumption of the designation as of a specific date by the qualified business seeking to assume the designation;

[(ii) the proposed assumee of the designation must provide the governing body or bodies with written certification, on a form to be provided by the department, that it will be a qualified business under the Act, §3(a)(11); a letter of commitment addressed to the enterprise

zone governing body or bodies and to the department such as the letter of commitment filed in the original application for project designation that outlines investment and jobs relative to the designation to be assumed and a statement as to why the assumption is essential to the continuing operations of the designated project in the enterprise zone. A copy of the articles of incorporation filed with the secretary of state of the State of Texas or the dba statement under which the business operates and financial statements must accompany the commitment letter to satisfy concerns about the ability of the assumee to fulfill its commitments. Before submitting to the department the assumpor's written release of the designation, and the information specifically required of the assumee, the applicable enterprise zone governing body or bodies must take official action by resolution to request the department to approve the assumption of the project designation.] The assumption of a project designation or a name change by a qualified business does not extend the original designation period, which is applicable to the original and subsequent designee, and which will end on the earliest of the last day of the original five-year designation; or

(C) (No change.)

(d) Approval standards for certification of a recycling market development zone.

(1) (No change.)

(2) Recycling market development zone loans will be made to applicants on a first-come, first served basis. Recycling market development zones having outstanding loans of the maximum allowed will not be eligible for new loans until retirement of their existing loans. Each recycling marketing development zone governing body or bodies will receive no more than the maximum amount allowed each year to ensure equal distribution of funds.

(e) Approval standards for certification of a qualified business. Qualified business [Such standards will be determined and final] certification and the certification of new or retained jobs may be granted by the local governing body or bodies for purposes of local benefits, if applicable, or the department, for purposes of state benefits, as applicable, in accordance with the Act. [To receive a refund or reduction of taxable capital in a designated state or federal enterprise zone under applicable sections of Tax Code, Chapters 151 or 171, the certified qualified business must apply to the Comptroller of Public Accounts for the refund or the reduction of taxable capital and to department or local governing body or bodies for certification of retained jobs or new permanent jobs created as applicable.]

The department shall provide the [comptroller with the] assistance [that] the Comptroller requires in administering this section.

(1) Once certified by the local governing body, a qualified business must apply to the local governing body for local tax benefits.

(2) The governing body or bodies must provide written notification to the department of each commitment made to a qualified business for a one-time state sales tax refund, authorized under the Tax Code, §151.431, or state franchise tax refund, under the Tax Code, §171.501. Once certified a qualified business by the department, the business must apply to the Comptroller for state sales tax refunds, under the Tax Code, §151.431, or state franchise tax refunds, under the Tax Code, §171.501, as applicable. The written notification to the department must include:

(A) a copy of the request for the incentive sent to the governing body or bodies by the business;

(B) an original or a certified copy of the resolution adopted to nominate the qualified business and setting the nomination period during which the qualified business will create or retain the required jobs to receive the intended benefit; and

(C) a letter to the department from the governing body or bodies to the department forwarding the resolution and officially nominating the business.

(3) A business that is an enterprise project that is certified a qualified business must also apply to the Comptroller for state sales tax refunds, under §151.429, Tax Code or state franchise tax reductions, under §171.1015, Tax Code, as applicable.

(4)[(1)] Refunds of state sales or use taxes provided to an enterprise project under the Tax Code, §151.429, are conditioned on the enterprise project maintaining at least the same level of employment of qualified employees as existed on the date it was certified as eligible for a refund for a period of three years from that date. The department shall annually certify to the comptroller and the Legislative Budget Board whether that level of employment of qualified employees has been maintained. In the event that the department certifies that such a level has not been maintained, the comptroller shall assess that portion of the refund attributable to any such decrease in employment, including penalty and interest from the date of refund.

(5)(2) A state-designated project may request certification of its jobs created or retained, as specified in §176.2(b)(6) of this title, by the department on an annual or semi annual basis during the applicable five year designation period within the limits of the number of jobs allocated at the time of its project designation in accordance with the Act, §2303.407. An enterprise project designated after August 31, 1995 [1993.] may not receive a tax refund under the Tax Code, §151.429, or a tax reduction under the Tax Code, §171.1015, before September 1, 1997 [1995].

(6) [(3)] Only qualified businesses that have been certified by the department to the comptroller and the Legislative Budget Board are [as] eligible for a franchise tax reduction [deduction] under the Tax Code, §171.1015 [are entitled to a tax deduction].

(f) Approval standards for certification of a builder as a qualified business.

(1) A builder must complete the enterprise project application form and other information as stipulated in this subsection to be eligible to be designated an enterprise project. A builder that meets the criteria in this chapter is eligible for the benefits allowed a qualified business under the Act. To be eligible to apply for enterprise project designation, the builder or consortium of builders that is certified as a qualified business must have permanent offices located in Texas. In addition to the information required of a business applying for enterprise project designation under §176.8 of this Chapter, the applicant must provide: [A builder must apply to the department through the applicable applicant governing body or bodies in whose jurisdiction a housing construction project will occur in such form as provided by the department. Housing construction by a builder that meets the requirements of the Act and this chapter meet the requirements for certification as a qualified business and eligibility for benefits allowed a qualified business under the Act. To be eligible to apply for enterprise project designation, the builder or consortium of builders that is certified as a qualified business must have permanent offices located in Texas. The application for certification as a qualified business will include:]

(A) -(E) (No change.)

(2) A [If the builder is a] builder proposing a housing project in an enterprise zone, must provide a complete description of the new residential housing to be constructed, including a statement concerning whether the housing constitutes affordable housing under the governing body's or

bodies' [body or bodies] criteria, [including] preliminary building plans, the location(s) of planned construction, number of units to be constructed, estimated sales price of homes, statement of affirmative action participation in employment practices, a statement regarding the coordinated [coordinate] use of other federal, state, or local funds, [to enhance the project] and other enhancements to the project. The applicant builder(s) must meet all requirements other than physical headquarters location in the zone and hiring requirements required of other enterprise projects.

(g) Approval standards for certification of neighborhood enterprise associations.

(1) Such standards will be determined and final certification may be granted by local governing body or bodies or the department as applicable in accordance with the Act, §2303.302 [§21].

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

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

(h)-(i) (No change.)

§176.11. Reporting Requirements.

(a) Annual reports.

(1) Each municipality, county, or combination of municipalities and/or counties that authorized the creation of an enterprise zone shall submit an annual report to the department on or before October 1 of each year. The report must be in a form prescribed by the department and contain the information listed in the Act, §2303.205(c) [§23]. The information in the report will be used by the department to compile an annual report to the governor, legislature, and the Legislative Budget Board by December 1 as required by the Act. The information will also be used to compile a bi-annual cost benefit analysis, as required by the Act, §2303.0525. If such report is not received by the deadline, the department may, following a public hearing, consider termination of the designation of the enterprise zone.

(2) Each [State agency rules may provide encouragements and incentives to increase rehabilitation, renovation, restoration, improvement, or new construction of housing and to increase the economic viability and profitability of business and commerce in enterprise zones. In addition, each] state agency [annually] shall annually review the rules it administers that may negatively impact the rehabilitation, renovation, restoration, improvement, or new construction of housing or the economic viability and profitability of business and commerce in enterprise zones, or that may otherwise affect the implementation of the Act, and shall report the results of each review to the

department no later than October 1 of each year. The department shall disseminate the results to enterprise zone governing bodies and others as necessary to advance the purposes of the Act.

[(b) Governing body or bodies must provide notification to the department of each commitment made to a qualified business for one-time state sales tax refund or franchise tax refund. The notification shall be in letter form accompanied by an original copy of the resolution adopted to nominate the qualified business and setting the nomination period during which the qualified business will create or retain the required jobs to receive the intended benefit. A copy of the application by the business to the governing body or bodies must be filed with the notice and the resolution.

(c) Land sold at less than fair market value. A municipality or county may sell a surplus building or vacant land in the zone at less than fair market value if the governing body of the municipality by ordinance or the governing body of the county by order adopts criteria specifying the conditions and circumstances under which the sale may occur and the public purposes that will be achieved. The surplus building or vacant land may be sold to a buyer who is not the highest bidder if the criteria and public purpose specified in the ordinance or order are satisfied. A copy of the ordinance or order must be filed with the department not later than the day the sale occurs. Factors to be considered in evaluating the local effort on the part of public entity include provisions of publicly owned land for development purposes including residential, commercial or industrial development.]

[(b)[(d)] Other reports or [of] documents.

(1) The applicant shall furnish additional information, reports, or statements as the department may from time to time request in connection with the Act and this chapter.

(2) Bi-annual [Annual] cost-benefit analysis of program. Not later than December 1 of each even-numbered year, the department shall prepare a [an annual] cost-benefit analysis of the program and submit it to the state auditor for review and comment on the methodology and conclusions of the analysis [study]. Before each regular legislative session convenes, the state auditor shall submit the analysis [analyses] and the state auditor's comments on the analysis [analyses] to the governor, the lieutenant governor, and the speaker of the house of representatives.

[(3) The department, the comptroller, and the Texas Employment Commission shall provide the state auditor with data and assistance as necessary to complete a study to review the impact of the program

created under the Act since its implementation. The state auditor shall complete the study required and submit a report of its findings to the governor, lieutenant governor, and the speaker of the house of representatives not later than October 1, 1994. The study, at a minimum, shall include:

(A) an examination of the impact of the program on the state as a whole as well as the impact on individual communities with enterprise zones, including the program's effect on state and local:

- (i) tax revenues;
- (ii) tax bases;
- (iii) socio-economic conditions; and
- (iv) unemployment rates;

(B) a review of the incentives offered by local communities and the relative impact of the incentives on company location, expansion, and retention; and

(C) a survey of companies to determine the role of the state enterprise zone incentives on decisions of companies to locate, expand, or retain jobs in the zone.]

(3)[(4)] No later than September 1 of each year, a neighborhood enterprise association shall furnish an annual statement to the applicable governing body or bodies on the programmatic and financial status of any approved project and an audited financial statement of the project. The governing body or bodies shall include information about all reports filed by the neighborhood enterprise association in its annual report on the applicable enterprise zone due the department by each October 1 during the zone designation period.

§176.12. Boundary Amendments.

(a) If an enterprise zone has been lawfully designated, the original nominating governing body or bodies, by ordinance or order adopted following a public hearing, may apply to the department to amend the original boundaries subject to the following limitations.

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

(b) The governing body or bodies must provide certifications and evidence of public hearing and notices with respect to the boundary changes in the same form as required to make application for enterprise zone designation. As a result of a public hearing or other reasonable considerations necessary to meeting zone qualifications, zone boundaries proposed in the public hearing may be amended to delete land area before zone designation is approved. If the

hearing is for a zone boundary amendment, no land previously designated as part of the enterprise zone may be deleted. Area may not be added to a proposed enterprise zone unless a public notice is posted and a public hearing is held pursuant to §176.3(f) of this title relating to (Eligibility Requirements for Designation of an Enterprise Zone). [No area may be added to the proposed enterprise zone after a public hearing unless that area is first held out to the public in a subsequent public hearing for inclusion into the enterprise zone.]

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 July 5, 1995.

TRD-9508199 Michael Regan
Chief Administrative Officer
Texas Department of
Commerce

Earliest possible date of adoption: August 11, 1995

For further information, please call: (512) 936-0178

◆ ◆ ◆
**TITLE 16. ECONOMIC
REGULATION**
**Part II. Public Utility
Commission of Texas**
**Chapter 22. Practice and
Procedure**

The Public Utility Commission of Texas proposes amendments to §§22.1-22. 4, 22.21, 22.31-22.33, 22.51, 22.52, 22.54, 22.71-22.73, 22.75, 22.78, 22.80, 22.103, 22.104, 22.123, 22.125, 22.126, 22.144, 22.145, 22.181, 22.202, 22.204, 22.222, 22.225, 22.226, 22.242-22.245, 22.261, 22.262, 22.264, 22.282, and 22. 283, and new sections §§22.35, 22.127, 22.206, and 22.207, concerning practice and procedure. The proposed amendments are occasioned by recent legislation, as well as a need to update certain other sections. The changes made in response to legislation include recognizing the transfer of commission's hearings division to the State Office of Administrative Hearings (SOAH), addressing the requirement to have a settlement rule, authorizing sanctions by Administrative Law Judges, recognizing that the chairman of the commission is named by the Governor, and updating the references to statutes. The amendments also include a process for the certification of questions by SOAH to the commission. Some changes proposed were not occasioned by legislation. In order to give the commission greater flexibility in rulemaking, the commission's rulemaking process is modified. The deadline for the filing of documents to be considered by the commission is changed to five days prior to the meeting at which the document is to be considered. The requirement that official commission forms be published for comment is made discretionary.

Bret J. Slocum, deputy general counsel, has determined that for each year of the first five-year period the proposed 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. Slocum also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be more effective and efficient procedures before the commission. There will be no effect on small businesses as result of enforcing this sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

Comments on the proposed amendments (13 copies) may be submitted to Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, by July 25, 1995. All comments should refer to Project Number 14320. The commission staff will hold a public hearing on this proposal on July 21, 1995.

Subchapter A. General Provisions and Definitions

• 16 TAC §§22.1-22.4

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.1. Purpose and Scope.

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

(1) This chapter shall govern the initiation, conduct, and determination of [commission] proceedings required or permitted by law, including proceedings referred to SOAH, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.

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

§22.2. Definitions. The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise.

Administrative Law Judge—The person designated by SOAH to preside over a hearing.

Administrative Review-Process under which an application may be approved without a formal hearing., [by a hearings officer without a hearing and without formal action by the commission.]

Affected Person-The definition of affected person is that definition given in the Public Utility Regulatory Act, §1.003(1) [§3(h)]

Chairman-The commissioner designated by the Governor [elected by the commissioners] to serve as chairman.

Contested Case-A proceeding, including a ratemaking or licensing proceeding, in which the legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.

Control Number-Number assigned by the secretary [director of hearings] to a docket, project, or tariff.

Director of Hearings-The individual employed by the commission and charged with the duties of director of hearings as specified under PURA and the commission rules as they may be amended from time to time. The director of hearings may designate individuals to perform his or her duties as necessary.]

General Counsel-The individual employed by the commission and charged with the duties of the general counsel under PURA. The general counsel duties may be delegated [may designate individuals to perform his or her duties] as necessary.

Hearing-Any [commission] proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

Hearing Day-A day of hearing when the merits of a proceeding are considered at the hearing on the merits, a final order meeting, or a regional hearing. [on the merits under PURA, §43(d).]

Hearings Officer-When used in this chapter, the term hearings officer includes an administrative law judge.]

Licensing Proceeding-Any proceeding [The commission process] respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, including a proceeding regarding a notice of intent to build a new electric generating unit.

Major Rate Proceeding-Any proceeding filed pursuant to PURA, §2.212 or §3.211 [§43] involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2.5%. In addition, a major rate proceeding is any rate proceeding initiated pursuant to PURA, §2.211 or §3.210 [§42] in which the respondent utility is directed to file a rate filing package.

Party-A party under §22.72 or §22.73 of this title (relating to Formal Requisites of Pleadings To Be Filed with the commission [Commission]; General Requirements for Applications).

Pleading-A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a [commission] proceeding.

Presiding Officer-The commission, any commissioner, the commission secretary in an unopposed case, [director of hearings] or any administrative law judge presiding over a [or hearings officer assigned by the director of hearings to preside over a commission] proceeding or any portion thereof.

Proceeding-Any hearing, investigation, inquiry or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint conducted by the commission or the utility division of SOAH.

Protested Case-A contested case subject to hearing.

PURA-The Public Utility Regulatory Act, [Texas Civil Statutes, Article 1446c.] as it may be amended from time to time.

Rulemaking-A proceeding pursuant to APA, §2001.021 §2001.038 [§5] conducted to adopt, amend, or repeal a commission rule.

Secretary-The individual employed by the commission and charged with the duties of the secretary under this chapter. The secretary duties may be delegated as necessary.

SOAH-The State Office of Administrative Hearings.

Tariff Filing-A proceeding initiated by an application filed pursuant to §§23.24-23.28 of this title (relating to Form & Filing of Tariff and Rates), or PURA, §3.212 and §3.213, [§§24-28, or PURA, §43A and §43B] which is not handled as a docket or a rulemaking.

§22.3. Standards of Conduct.

(a) Standards of Conduct for Parties.

(1) Every person appearing in any [commission] proceeding shall comport himself or herself with dignity, courtesy, and respect for the commission, the presiding officer and all other persons participating in the proceeding. Professional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions.

(2) (No change.)

(b) Communications.

(1) Personal Communications. Communications in person by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission shall be governed by Texas Government Code, §2001.061 [Civil Statutes, Article 6252-23, §§2, 3, 3A, and 4.] Records shall be kept of

all such communications and shall be available to the public on a monthly basis. The records of communications shall contain the following information:

(A)-(G) (No change.)

(2) Ex Parte Communications.

Unless required for the disposition of ex parte matters authorized by law, members [or employees] of the commission or administrative law judges assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. Members [or employees] of the commission or administrative law judges assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence. Communications between administrative law judges and employees of the commission who have not participated in any hearing in the case shall be either recorded or in writing, and all such communication submitted to or considered by the administrative law judge shall be made available as public records when the proposal for decision is issued. Number running procedures conducted pursuant to written commission policy by employees of the commission who have participated in any hearing in the case do not constitute impermissible ex parte communications, provided memoranda memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate.

(c) Standards for Recusal of Administrative Law Judges. An administrative law judge shall disqualify himself or herself or shall recuse himself or herself on the same grounds and under the same circumstances as specified in Rule 18b of the Texas Rules of Civil Procedure.

(d) Standards for Recusal of Commissioners. A commissioner shall recuse himself or herself [Presiding Officers. A presiding officer] from sitting in a proceeding, or from deciding one or more issues in a proceeding, in which any one or more of the following circumstances exist:

(1) the commissioner [presiding officer] in fact lacks impartiality, or the commissioner's [presiding officer's] impartiality has been reasonably questioned;

(2) the commissioner, [presiding officer], or any relative of the commissioner, [presiding officer], is a party or has

a financial interest in the subject matter of the issue or in one of the parties, or the commissioner [presiding officer] has any other interest that could be substantially affected by the determination of the issue; or

(3) the commissioner [presiding officer] or a relative of the commissioner [presiding officer] has participated as counsel, advisor, or witness in the proceeding or matter in controversy.

(e)[(d)] Motions for Disqualification or Recusal of an Administrative Law Judge [a Hearings Officer].

(1) Any party may move for disqualification or recusal of an administrative law judge [a hearings officer] stating with particularity the grounds why the administrative law judge [hearings officer] should not sit. The grounds may include any disability or matter, not limited to those set forth in subsection (c) of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

(2) The motion shall be filed within ten working days after the facts that are the basis of the motion become known to the party, or within 15 working days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmittal, or overnight courier delivery.

(3) Written responses to motions for disqualification or recusal shall be filed within three working days after the receipt of the motion. The administrative law judge [hearings officer] may require that responses be made orally at a prehearing conference or hearing.

(4) The administrative law judge [hearings officer] shall rule on the motion for disqualification or recusal within six working days of the filing of the motion.

(5) The administrative law judge [hearings officer] shall not rule on any issues that are the subject of a pending motion for recusal or disqualification. SOAH [The director of hearings] shall appoint another administrative law judge [hearings officer] to preside on all matters that are the subject of the motion for recusal until the issue of disqualification is resolved.

(6) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

(7) If the administrative law judge [commission] determines that a motion for disqualification or recusal was frivolous or capricious, or filed for purposes of delaying the proceeding, the movant may be

sanctioned in accordance with §22.161 of this title (relating to Sanctions).

(8) Disqualification or recusal of an administrative law judge [hearings officer], in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.

(f)[(e)] Motion for Disqualification or Recusal of a Commissioner.

(1) Any party may move for disqualification or recusal of a commissioner stating with particularity grounds why the commissioner should not sit. Such a motion must be filed prior to the date the commission is scheduled to consider the matter unless the information upon which the motion is based was not known or discoverable with reasonable effort prior to that time. The grounds may include any disability or matter not limited to those set forth in subsection (d) [(c)] of this section. The motion shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall be verified by affidavit.

(2) Subject to the provisions of paragraph (1) of this subsection the motion shall be filed within ten working days after the facts that are the basis of the motion become known to the party or within 15 days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmission, or overnight courier delivery.

(3) Parties may file written responses to the motion within seven working days from the date of filing the motion. The commission may require that responses be made orally at an open meeting.

(4) The commissioner sought to be disqualified shall issue a decision as to whether he or she agrees that recusal or disqualification is appropriate or required before the commission is scheduled to act on the matter for which recusal is sought, or within 15 days after filing of the motion, whichever occurs first.

(5) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

(6) Recusal or disqualification of a commissioner in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.

§22.4. Computation of Time.

(a) Counting Days. In computing any period of time prescribed or allowed by this chapter, by order of the commission or any administrative law judge [presiding officer], or by any applicable statute, the period shall begin on the day after the act,

event, or default in question. The period shall conclude on the last day of the designated period unless that day is a day the commission is not open for business, in which event the designated period runs until the end of the next day on which the commission is open for business.

(b) (No change.)

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

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John M. Renfrow
Secretary of the
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of Texas

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Subchapter B. The Organization of the Commission

• 16 TAC §22.21

The amendment is proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by the amendment.

§22.21. Meetings.

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

(c) Notice of all commission meetings shall be provided in accordance with the Open Meetings Act, Texas Government Code, Chapter 551 [Civil Statutes, Article 6252-17], as amended, and the Administrative Procedure Act.

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

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Subchapter C. Classification of Applications or Other Documents Initiating a Proceeding
• 16 TAC §§22.31-22.33

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.31. Classification in General.

(a) Classification and Assignment of Control Number. The secretary [director of hearings] shall determine whether an application or other document initiating a proceeding should be designated as a docket, tariff, or project. The secretary [director of hearings] shall assign an appropriate control number to each docket, tariff, or project.

(b) Control Numbering System. The secretary [director of hearings] shall establish and maintain a control numbering system.

(c) Control Number Log. The secretary [director of hearings] shall maintain a record or log of all applications or other documents assigned a control number, which shall include the style, the date the application or other document was filed or the proceeding initiated, the nature of the proceeding, and the presiding officer assigned to the proceeding, if any. The log shall be accessible to the public.

§22.32. Administrative Review.

(a) Applications Qualified for Administrative Review. An application, other than a major rate proceeding, may be approved by an administrative law judge [a hearings officer] without a hearing or action by the commission, under the following conditions:

(1) the commission has referred the application to SOAH for processing; [At]

(2) at least 30 days have passed since the completion of all notice requirements;

[(2) the commission has received no motion to intervene or notice of intervention, or]

(3) the matter has been fully stipulated so that there are no issues of fact or law disputed by any party; and

(4) the administrative law judge

[(3) the hearings officer] finds that no hearing or commission action is necessary and that administrative review is warranted.

(b) Administrative Law Judge's [Hearings Officer's] Order. If an application qualifies for administrative review, the administrative law judge [hearings officer] shall issue an order with proposed findings of fact and conclusions of law as soon as is reasonably practicable. The order [shall be countersigned by the director of hearings and] shall be served upon each commissioner and all parties.

(c) Finality of Order. At the request of any commissioner, [a majority of the commissioners] the order shall be placed on the agenda to be considered [by the commission] in open meeting. The commission may approve the order of the administrative law judge, [hearings officer] vacate the order of the administrative law judge, [hearings officer] and remand the docket for hearing or [other] additional proceedings, or modify the order with the agreement of the [all] parties. If, within 20 days after issuance of the administrative law judge's [hearings officer's] order, the commission has not scheduled the application to be considered in [at an] open meeting, the order is deemed approved and becomes final.

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

(f) Exceptions to Administrative Law Judge's [Presiding Officer's] Order. Nothing in this section shall be construed to preclude any party from filing exceptions to the administrative law judge's [presiding officer's] order, provided such exceptions are filed with the commission within 15 days after the issuance of the administrative law judge's [presiding officer's] order.

§22.33. Tariff Filings.

(a) Applicability and Classification. This section shall apply to undocketed applications by utilities to change their tariffs. Such tariff filings shall be classified as "electric tariff filings," "regular telephone tariff filings," or "special telephone tariff filings." Electric tariff filings and regular telephone tariff filings shall be those applications filed pursuant to §23.24 of this title (relating to Form and Filing of Tariffs). Special telephone tariff filings shall be those applications filed by telecommunications utilities pursuant to §§23.25-23.28 of this title (relating to Rates) or PURA, §3.212 [§43A] or §3.213. [§43B] This section shall apply unless it is inconsistent with Chapter 23 of this title, or PURA.

(b) Standards for Docketing. Tariff filings, other than a tariff filing made in compliance with a rule or final order of the commission, shall be docketed under the following circumstances:

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

(5) if the commission's staff recommends [docketing, or if the commission's staff recommends] disapproval or approval with modification and the utility requests a hearing; or

(6) if the commission receives a request to intervene. [.]

[(7) if the fairness of the tariff filing or its compliance with law or a Commission policy adopted in an open meeting is questionable; or

[(8) if the tariff filing poses a difficult or unusual policy question or a controversial topic of significant public interest.]

(c) (No change.)

(d) Commission Action [Duties of Presiding Officer]. The presiding officer may establish reasonable deadlines for comments or recommendations, may issue other orders as necessary to facilitate the processing of the tariff filing, and shall issue a notice of approval, approval with modification, denial, or docketing.

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

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

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◆ ◆ ◆
• 16 TAC §22.35

The new section is proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by the new section.

§22.35. Informal Disposition.

(a) Applications Qualified for Informal Disposition. An application, other than a major rate proceeding, may be approved by the commission without a hearing under the following conditions:

(1) at least 30 days have passed since the completion of all notice requirements;

(2) the decision is not adverse to any party other than the general counsel; and

(3) the commission finds that no hearing is necessary.

(b) Proposed Order. The commission secretary shall prepare a proposed order which shall be served on all parties no less than 20 days before the commission is scheduled to consider the application in open meeting.

(c) Notice Requirements. Nothing in this section shall be construed to alter any notice requirement imposed on any proceeding by statute, rule, or order.

(d) Time Limits. Nothing in this section shall be construed to alter any time limit imposed on any proceeding by a statute, rule, or order.

(e) Exceptions to Proposed Order. Parties may file exceptions or suggested corrections to the proposed order, provided such exceptions or corrections are filed with the commission no less than seven days before the commission is scheduled to consider the application in an open meeting.

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

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◆ ◆ ◆
• 16 TAC §§22.51, 22.52, 22.54

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Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by the amendments.

§22.51. Notice for Public Utility Regulatory Act §2.211, §2.212, §3.210, and §3.211, [§43 and §42] Proceedings.

(a) Notice in a [PURA §43] Proceeding Seeking a Rate Increase. In proceedings under PURA, §2.212 or §3.211 [§43] involving the commission's original jurisdiction over a utility's proposed increase in rates, the applicant shall give notice in the following manner:

(1) Publication of Notice. The applicant shall publish notice of its statement of intent to change rates in conspicuous form and place at least once a week for four consecutive weeks prior to the effective date of the proposed rate change, in a newspaper having general circulation in each county containing territory affected by the proposed rate change. The published notice shall contain the following information:

(A)-(E) (No change.)

(F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the commission as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission's Consumer Affairs [Public Information] Office at (512) 458-0256, or (512) 458-0221 for text telephone. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

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

(b) Notice in a PURA §2.212 or §3.211 [§43] Proceeding Seeking a Rate Decrease. In proceedings initiated pursuant to PURA, §2.212 or §3.211 [§43] in which a rate reduction that does not involve a rate increase for any customer is sought, the applicant shall give notice in the following manner:

(1) (No change.)

(2) Notice by Mail to Affected Customers. The applicant shall mail notice of the proposed rate decrease to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed in prominent lettering: "Notice of Rate Decrease Request." The notice shall contain the following information:

(A)-(E) (No change.)

(F) the following language: "Persons who wish to intervene or comment upon these proceedings should notify the commission as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission's Consumer

Affairs [Public Information] Office at (512) 458-0256, or (512) 458-0221 for text telephone. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

(3) (No change.)

(c) Notice in a PURA §2.211 or §3.210 [§42] Rate Investigation. In an investigation into a utility's rates pursuant to PURA, §2.211 or §3.210 [§42], the presiding officer may require the utility under investigation to provide reasonable notice to its customers and affected municipalities. Reasonable notice may include notice of the type set forth in subsection (a) of this section.

(d) (No change.)

§22.52. Notice in Licensing Proceedings.

(a) Notice in Electric Licensing Proceedings. In all electric licensing proceedings except minor boundary changes and notice of intent and certification proceedings for new electric generating plants, the applicant shall give notice in the following ways:

(1) Applicant shall publish notice of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the application is filed with the commission. This notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall further describe in clear, precise language the geographic area for which the certificate is being requested and the location of all preferred and alternative routes of the proposed facility. This description should refer to area landmarks, including but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs [Public Information] Office at (512) 458-0256 or (512) 458-0221 for the text telephone. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the

petitions to declare a market subject to significant competition, and applications for licensing of new generating plant, except for testimony and rate filing packages, no pleading shall exceed 100 pages in length, including attachments. In all other dockets, no pleading shall exceed 50 pages in length, including attachments. The page limitation shall not apply to courtesy copies of legal authorities cited in the pleading. A presiding officer may establish a larger or smaller page limit. In establishing larger or smaller page limits, the presiding officer shall consider such factors as which party bears the burden of proof and the extent of opposition to a party's position that would need to be addressed in the pleading.

(f) (No change.)

§22.73. General Requirements for Applications. In addition to the requirements of form specified in §22.72 of this title (relating to Formal Requisites of Pleadings To Be Filed with the commission [Commission]), all applications shall contain the following, unless otherwise required by statute or commission rule:

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

§22.75. Examination and Correction of Pleadings.

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

(c) Notice of Material Deficiencies in Rate Change Applications. This subsection applies to applications for rate changes filed pursuant to PURA, §2.212 or §3.211. [§43]

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

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

§22.78. Responsive Pleadings and Emergency Action.

(a) (No change.)

(b) Responses to Complaints. Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, responsive pleadings to complaints filed to initiate a proceeding need not be filed by the respondent. This subsection does not apply to complaints filed pursuant to PURA, §2.211 or §3.210. [§42]

(c) (No change.)

(d) Section 2.211 or 3.210 [42] Investigations or Complaints. In a complaint proceeding filed pursuant to PURA, 2.211 or 3.210 [§42] the presiding officer shall determine the scope of the response that the utility shall be required to file, up to and including the filing of a full rate filing package. The presiding officer shall also set an appropriate deadline for the utility's response. In no event shall the deadline for

filing a response be less than 120 days if a full rate filing package is required, or less than 30 days if a full rate filing package is not required.

§22.80. Commission Prescribed Forms. The commission may require that certain reports and applications be submitted on standard forms. The commission filing clerk shall maintain a complete index to and set of all commission forms. All pleadings that are the subject of an official form shall contain all matters designated in the official form and shall conform substantially to the official form. Prior to the implementation of any new solicit public comment on the change or new form through publication of a notice in the "In Addition" section of the *Texas Register*. [change or new form shall be referenced in the In Addition Sections of the *Texas Register* for public comment. For good cause, new forms or significant changes to existing forms may be implemented on an interim basis without publication for a period not to exceed 180 days.]

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

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◆ ◆ ◆
• 16 TAC §22.103, §22.104

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.103. Standing to Intervene.

(a) General Counsel. The general counsel shall have standing in all proceedings before the commission, and need not file a motion to intervene [notice of intervention].

[(b) Standing to Intervene of Certain Persons. A person specified in this subsection has standing to intervene in certain commission proceedings as set forth in this section. In proceedings in which such

person has standing and wishes to participate, the person shall file a notice of intervention within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule or order of the presiding officer. A person that has standing to intervene but fails to timely file a notice of intervention may move to intervene pursuant to §22.104(d) of this title (relating to Motions to Intervene).

[(1) Municipalities. A municipality shall have standing in all cases before the commission regarding utilities that provide service within the municipality's corporate limits or in any other case in which a statute confers a right to participate upon a municipality, subject to the right of the commission to determine standing in cases involving retail service area disputes involving two or more utilities and, as set forth in §22.105 of this title (relating to Alignment of Parties), to align municipalities for participation in hearings. In any such proceeding, a municipality desiring to intervene must file a notice of intervention as specified in §22.103(b) of this title (relating to Standing to Intervene). In any other proceeding, a municipality desiring to intervene must file a motion to intervene as set forth in §22.104 of this title (relating to Motions to Intervene).

[(2) Office of Public Utility Counsel. The Office of Public Utility Counsel may appear or intervene in commission proceedings as provided in PURA, §15A.]

(b)[(c)] Standing to Intervene [of Other Persons]. [persons] Persons desiring to intervene must file a motion to intervene and be recognized as a party under §22.104 of this title (relating to Motions to Intervene) in order to participate as a party in a [Commission] proceeding. Any association or organized group must include in its motion to intervene a list of the members of the association or group that are persons other than individuals that will be represented by the association or organized group in the proceedings. The group or association shall supplement the list of members represented in the motion at any time a member is added or deleted from the list of members represented. A person [Any person not mentioned in subsection (b) of this section] has standing to intervene if that person:

(1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or

(2) has or represents persons with a justiciable interest which may be adversely affected by the outcome of the proceeding.

§22.104. Motions to Intervene.

(a) Necessity for Filing Motion to Intervene. Applicants, complainants, and respondents, as defined in §22.2 of this title (relating to Definitions), are necessary parties to proceedings which they have initiated or which have been initiated against them, and need not file motions to intervene [or notices of intervention] in order to participate as parties in such proceedings.

(b)-(d) (No change.)

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

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Subchapter G. Prehearing Proceedings

• 16 TAC §§22.123, 22.125, 22.126

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.123. Appeal of an Interim Order.

(a) (No change.)

(b) Procedure for Appeal. If the presiding officer intends to reduce an oral ruling to a written order, the presiding officer shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. Any appeal to the commission from an interim order shall be filed within five working [ten] days of the issuance of the written order or the appealable oral ruling. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

(c)-(e) (No change.)

(f) Agenda Ballot. Upon filing of an appeal, the secretary [director of hearings] shall send separate ballots to each commissioner to determine whether they will consider the appeal at an open meeting. The presiding officer shall notify the parties by telephone and letter that a majority of the commission by individual ballot has

added the appeal to a final order meeting agenda.

(g)-(h) (No change.)

§22.125. Interim [Rate] Relief.

(a) Availability. Interim [rate] relief is not available for tariff filings.

(b) Requests for Interim Relief [Rates]. A request for interim relief [rates] shall be filed no later than 30 days before the interim relief is [rates are] proposed to take effect, unless all parties agree to a later filing date.

(c) Consideration of Request for Interim Relief. [Rates.] Interim [rate] relief may be granted based on the agreement of all parties. The presiding officer may, after notice and opportunity for hearing, grant a contested request for interim [rate] relief only on a showing of good cause. In determining whether good cause exists, the presiding officer shall take into account:

(1) the utility's ability to anticipate the need for and obtain final approval of [rate] relief prior to the time relief is reasonably needed;

(2) other remedies, [such as bonded rates,] available under law;

(3) changed circumstances;

[(3) changed circumstances indicating that the utility's current rates may no longer be just and reasonable];

(4) (No change.)

(5) whether interim relief is [rates are] necessary to effect uniform system-wide rates; and

(6) (No change.)

(d) Standard and Burden of Proof. Pursuant to PURA, §2.204 or §3.204 [§40], in any proceeding involving a proposed interim change in rates, the burden of proof to show that the change proposed by the utility or existing rate is just and reasonable shall be on the utility.

(e) (No change.)

§22.126. Bonded Rates. During the pendency of its rate proceeding, a utility seeking to implement rates under bond pursuant to PURA, §2.212(e) or §3.211(e) [§43(e)] shall file an original and ten copies of its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective. The application shall conform to the requirements of Subchapter E, of this title (relating to Pleadings), [regarding Pleadings] The bond shall be in an amount equal to or greater than one-sixth of the annual difference between the utility's current rates and the bonded rates. The bond must be approved by the secretary

[director of hearings] as to sufficiency based on the commission staff's review of the utility's application. Any decision by the secretary [director of hearings] either approving or disapproving a bond is appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order).

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

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John M. Renfrow
Secretary of Commission
Public Utility Commission

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• 16 TAC §22.127

The new section is proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by the new section.

§22.127. Certification of an Issue to the Commission.

(a) Certification. The presiding officer may certify to the commission an issue that involves an ultimate finding of compliance with or satisfaction of a statutory standard the determination of which is committed to the discretion or judgment of the commission by law.

(b) Issues Eligible for Certification. The following types of issues are appropriate for certification:

(1) the commission's interpretation of its rules and applicable statutes;

(2) which rules or statutes are applicable to a proceeding; and,

(3) whether commission policy should be established or clarified as to a substantive or procedural issue of significance to the proceeding.

(c) Procedure for Certification. The presiding officer shall submit the certified issue to the secretary. The secretary shall place the certified issue on the commission's agenda to be considered within 20 days of its submission. Parties may file briefs on the certified issue no less than seven days before it is scheduled to be

considered by the commission. The presiding officer may abate the proceeding while a certified issue is pending.

(d) Commission Action. The commission shall issue a written decision on the certified issue within 30 days of its submission. A commission decision on a certified issue is not subject to motion for rehearing.

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

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Subchapter H. Discovery Procedures

• 16 TAC §22.144, §22.145

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.144. *Requests for Information and Requests for Admission of Facts.*

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

(g) In Camera Inspection. If an objection is founded on a claim of privilege or an exemption under Rule 166(b)(3) of the Texas Rules of Civil Procedure, the burden is on the objecting party to request an in camera inspection and to provide the documents for review. Any request shall be filed within three working days of the receipt of the motion to compel. The request shall contain the factual and legal basis to support the claimed exemption or privilege. The objecting party shall review the documents and note with specificity any portions to which the claimed privilege or exemption claim does not apply. The objecting party shall provide the documents to the presiding officer, under seal, no later than one working day after it requests an in camera inspection. Documents submitted for in camera review shall not be filed with the commission filing clerk. Documents submitted for in camera review shall be submitted to the presiding examiner and enclosed in a sealed and labeled container

accompanied by an explanatory cover letter. The cover letter shall identify the control number and style of the proceeding and explain the nature of the sealed materials. The container shall identify the control number, style of the case, name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged." [The objecting party shall review the documents and note with specificity any portions to which the claimed privilege or exemption claim does not apply.]

(h)-(j) (No change.)

§22.145. *Subpoenas.*

(a) Issuance. Pursuant to APA, §2001.089, [§14] the presiding officer may issue a subpoena for the attendance of a witness or for the production of books, records, papers, or other objects. Motions for subpoenas to compel the production of books, records, papers, or other objects shall describe with reasonable particularity the objects desired and the material and relevant facts sought to be proved by them.

(b) (No change.)

(c) Fees. Subpoenas shall be issued by the presiding officer only after sums have been deposited to ensure payment of expense fees incident to the subpoenas. Payment of any such fees or expenses shall be made in the manner prescribed in APA, §2001.089 and §2001.103. [§14]

(d) (No change.)

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

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Subchapter J. Summary Proceedings

• 16 TAC §22.181

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Cross Index to Statutes: Public Utility Regula-

tory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by this amendment.

§22.181. *Dismissal of a Proceeding.*

(a) (No change.)

(b) Withdrawal of Application. A party that initiated a proceeding may withdraw its application, petition, or complaint, without prejudice to refiling of same, for good cause, upon approval of the presiding officer [at any time] prior to the signing of a final order thereon by the commission. If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal without prejudice.

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

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Subchapter K. Hearings

• 16 TAC §22.202, §22.204

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.202. *Presiding Officer.*

(a) Presiding Officer to Conduct Hearings. Hearings in contested cases shall be conducted by one or more presiding officers. The presiding officer has the decision making authority set out in the commission rules, Government Code, APA, and PURA.

(b) (No change.)

(c) Authority of Presiding Officer. The presiding officer has broad discretion in conducting the course, conduct, and scope of the hearing. The presiding officer's authority includes, but is not limited to, the power to administer oaths and affirmations; call and examine witnesses; receive evidence and testimony; rule upon the admissibility of evidence and amendments to pleadings; issue subpoenas; issue discovery,

procedural, and scheduling orders; impose sanctions; compel the attendance of witnesses and the production of documents; authorize the taking of depositions; re-open the record, prior to the issuance of a proposal for decision, for additional evidence where it is necessary to make the record correct, accurate, and complete; make proposed findings of fact and conclusions of law; make proposed orders; issue interim orders; recess any hearing from time-to-time; abate a proceeding, and take any other action not prohibited by law or by commission rule which is necessary for an efficient and fair hearing.

(d) (No change.)

(e) Replacement. If at any time an administrative law judge [a presiding officer] is unable to continue presiding over a case, SOAH [the director of hearings] may appoint a substitute administrative law judge [presiding officer] who shall perform any function remaining to be performed without the necessity of repeating any previous proceedings. The substitute administrative law judge [presiding officer] shall read the record of the proceedings that occurred prior to his or her appointment before issuing a Proposal for Decision or recommended findings of fact and conclusions of law.

§22.204. Transcript and Record.

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

(d) Filing of Transcript and Exhibits. The court reporter shall serve the transcript and exhibits in a proceeding on the presiding officer at the time the transcript is provided to the requesting party. The presiding officer shall maintain the transcript and exhibits until they are filed with the commission filing clerk. If no court reporter is requested by a party, the presiding officer shall maintain the official record and exhibits until they are filed with the commission filing clerk. The original record and exhibits shall be filed with the commission filing clerk promptly after issuance of a proposal for decision.

(e) [(d)] Contents of Record. The record in a contested case comprises those items specified in APA.

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

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• 16 TAC §22.206, §22.207

The new sections are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by the new sections.

§22.206. Consideration of Contested Settlements. Where some of the parties have reached a settlement of some or all of the issues, each party in the proceeding shall have the right to have a full hearing before a presiding officer on issues that remain in dispute and judicial review of issues that remain in dispute. An issue of fact raised by a nonsettling party cannot be waived by a settlement or stipulation of the other parties, and the nonsettling party may use the issue of fact raised by that party as the basis for judicial review.

§22.207. Referral to State Office of Administrative Hearings. The utility division of the State of Office of Administrative Hearings shall conduct hearings related to contested cases before the commission, other than a hearing conducted by one or more commissioners. At the time SOAH receives jurisdiction of a proceeding, the commission shall provide to the administrative law judge a list of issues or areas that must be addressed. In addition, the commission may identify and provide to the administrative law judge at any time additional issues or areas that must be addressed. The commission shall send a request for setting or hearing, or request for assignment of administrative law judge to SOAH in sufficient time to allow resolution of the proceeding prior to the expiration of any jurisdictional deadline. In order to give the commission sufficient time to consider a proposal for decision, the commission may specify the length of time prior to the expiration of a jurisdictional deadline by which the administrative law judge shall issue a proposal for decision.

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Subchapter L. Evidence and Exhibits in Contested Cases

• 16 TAC §22.222

The amendment is proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by the amendment.

§22.222. Official Notice.

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

(c) Notification of Materials Proposed to be Noticed. The presiding officer may propose to take official notice of facts, material, records or documents authorized by APA, §2001.090 [§14(q)]. The parties shall be notified in advance of the facts, material, records or documents proposed to be officially noticed and shall be given the opportunity to contest the proposed action.

(d) Judicial and Administrative Decisions, Commission Orders, Proposals for Decision, and Hearings Officer's Orders. Official notice shall not be taken of judicial and administrative decisions, commission orders, proposals for decision, and presiding [hearings] officer's orders for the purpose of citing such documents as precedent or as legal support for a position. A party may cite any part of such decisions, orders and reports in its pleadings. Official notice may be taken of judicial and administrative decisions, commission orders, proposals for decision, and presiding [hearings] officer's orders for evidentiary purposes.

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• 16 TAC §22.225, §22.226

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, includ-

ing rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.225. Written Testimony and Accompanying Exhibits.

(a) Pre-filing of testimony, exhibits, and objections.

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

(6) The testimony pre-filing schedule in a major PURA, §2.212 or §3.211 [§43] rate proceeding shall be established as set out in this subsection.

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

(7) The presiding officer shall establish a pre-filing schedule for PURA, §2.211 or §3.210 [§42] rate cases and for cases other than major rate proceedings. In proceedings that are not major rate proceedings, [market dominance proceedings filed pursuant to PURA, §100(f),] notice of intent proceedings, applications for certificates of convenience and necessity for new generating plant, or applications for fuel reconciliations, the applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

(8)-(9) (No change.)

(b)-(e) (No change.)

§22.226. Exhibits.

(a) Form. Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size requirements established by §22.72 of this title (relating to Formal Requisites of Pleadings To Be Filed with the commission [Commission]). The pages of each exhibit shall be consecutively numbered.

(b)-(d) (No change.)

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

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Subchapter M. Procedures and Filing Requirements in Particular Commission Proceedings

• 16 TAC §§22.242-22.245

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.242. Complaints.

(a) Records of Complaints. Any affected person may complain to the commission in writing setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation of any law which the commission has jurisdiction to administer or of any order, ordinance, rule, or regulation of the commission. The commission shall keep information about each complaint filed with the commission. The commission shall retain the information for a reasonable period. The information shall include:

- (1) the date the complaint is received;
- (2) the name of the complainant;
- (3) the subject matter of the complaint;
- (4) a record of all persons contacted in relation to the complaint;
- (5) a summary of the results of the review or investigation of the complaint; and
- (6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.

(b) Access to Complaint Records. The commission shall keep a file about each written complaint filed with the commission that the commission has the authority to resolve. The commission shall provide to the person filing the complaint and to the persons or entities complained about the commission's policies and procedures pertaining to complaint investigation and resolution. The commission, at least quarterly and until final disposition of the complaint, shall notify the person filing the complaint and each person or entity complained of about the status of the complaint unless the notice

would jeopardize an undercover investigation.

(c)[(a)] Requirement to Present Complaint Concerning Electric Utility to a City. If a person receives electric utility service or has applied to receive such utility service within the limits of a city that has original jurisdiction over the electric utility providing service or requested to provide service, the person must present any complaint concerning the electric utility to the city before presenting the complaint to the commission. The person may present the complaint to the commission after:

(1) the city issues a decision on the complaint; or

(2) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.

(d)[(b)] Informal Resolution Required in Certain Cases. A person who is aggrieved by the conduct of a utility or other person must present a complaint to the Consumer Affairs Office [public information division] for informal resolution before presenting the complaint to the commission, except in the following situations:

(1) A complainant may present a formal complaint to the commission, without first referring the matters to the public information division for informal resolution, if:

(A) the complainant is the general counsel, the office of public utility counsel, or any city;

(B) the complaint is filed by a qualifying facility and concerns rates paid by a utility for power provided by the qualifying facility, the terms and conditions for the purchase of such power, or any other matter that affects the relations between a utility and a qualifying facility;

(C) the complaint is filed by a person alleging that a utility has engaged in anti-competitive practices; or

(D) the complaint has been the subject of a complaint proceeding conducted by a city.

(2) For any complaint that is not listed in paragraph (1) of this subsection, the complainant may submit to the secretary [director of hearings] a written request for waiver of the requirement for attempted informal resolution. The complainant shall clearly state the reasons informal resolution is not appropriate. The secretary [director of hearings] may grant the request for good cause.

(e)[(c)] Termination of Informal Resolution. The Consumer Affairs Office [public information division] shall attempt to informally resolve all complaints within 45 days of the date of receipt of the complaint. The Consumer Affairs Office [public information division] shall notify, in writing, the complainant and the person against whom the complainant is seeking relief of the status of the dispute at the end of the 45-day period. If the dispute has not been resolved to the complainant's satisfaction within 45 days, the complainant may present the complaint to the commission. The public information division shall notify the complainant of the procedures for formally presenting a complaint to the commission.

(f)[(d)] Information Required. The secretary [director of hearings] may permit a complainant to cure any deficiencies under this subsection and may waive any of the requirements of this subsection for good cause, if the waiver [waive] will not materially affect the rights of any other party. A complaint shall include the following information:

(1) the name of the complainant or complainants;

(2) the name of the complainant's representative, if any;

(3) the address, telephone number, and facsimile transmission number, if available, of the complainant or the complainant's representative;

(4) the name of the utility or other person against whom the complainant is seeking relief;

(5) if the complainant is seeking relief against an electric utility, a statement of whether the complaint relates to service that the complainant is receiving within the limits of a city;

(6) if the complainant is seeking relief against an electric utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;

(7) a statement of whether the complainant has attempted informal resolution through the public information division and the date on which the informal resolution was completed or the time for attempting the informal resolution elapsed;

(8) a description of the facts that gave rise to the complaint; and

(9) a statement of the relief that the complainant is seeking.

(g)[(e)] Copies to be Provided. A complainant shall file eight copies of the complaint. A complainant shall provide a copy of the complaint to the person from whom relief is sought.

(h) [(f)] Docketing of Complaints. The secretary [director of hearings] shall docket any complaint that substantially complies with the requirements of this section.

(i)[(g)] Continuation of Service During Processing of Complaint. In any case in which a formal complaint has been filed and an allegation is made that a utility or other person is threatening to discontinue a customer's service, the presiding officer may, after notice and opportunity for hearing, issue an order requiring the utility or other person to continue to provide service during the processing of the complaint. The presiding officer may issue such an order for good cause, on such terms as may be reasonable to preserve the rights of the parties during the processing of the complaint.

(j)[(h)] List of Cities Without Regulatory Authority. The Consumer Affairs Office [public information division] shall maintain and make available to the public a list of the municipalities that do not have exclusive original jurisdiction over all electric rates, operations, and services provided by an electric utility within its city or town limits.

§22.243. Rate Change Proceedings.

(a) (No change.)

(b) Rate Filing Package. Any utility filing a statement of intent to change its rates in a major rate proceeding under PURA, §2.212 or §3.211 [§43] shall file a rate filing package and supporting workpapers as required by the commission's current rate filing package at the same time it files a statement of intent. The rate filing package shall be securely bound under cover, and shall include all information required by the commission's rate filing package form in the format specified. Examination for sufficiency and correction of deficiencies in rate filing packages are governed by §22.75 of this title (relating to Examination and Correction of Pleadings).

(c) (No change.)

§22.244. Review of Municipal Rate Actions.

(a) Contents of Petitions. In addition to any information required by statute, petitions for review of municipal rate actions filed pursuant to PURA, §2.108(b) [§26(b)] or (c) shall contain the original petition for review with the required signatures and following additional information.

(1) (No change.)

(2) The printed or typed name, telephone number, street or rural route address, and facsimile transmission number, if available, of each signatory shall be provided. Post office box numbers are not suf-

ficient. In appeals relating to PURA, §2.108(c), [§26(c)] the petition shall list the address of the location where service is received if the address differs from the residential address of the signatory.

(b) Signatures. A signature shall be counted only once, regardless of the number of bills the signatory receives. The signature shall be of the person in whose name service is provided or such person's spouse. The signature shall be accompanied by a statement indicating whether the signatory is appealing the municipal rate action as a qualified voter of that municipality under PURA, §2.108(b) [§26(b)], or as a customer of the municipality served outside the municipal limits under PURA, §2.108(c) [§26(c)].

(c) (No change.)

(d) Verification of Petition. Unless otherwise provided by order of the presiding officer, the following procedures shall be followed to verify petitions appealing municipal rate actions filed pursuant to PURA, §2.108(b) [§26(b)] and (c).

(1) Within 15 days of the filing of an appeal of a municipal rate action, the secretary [director of hearings] shall send a copy of the petition to the respondent municipality with a directive that the municipality verify the signatures on the petition.

(2) Within 30 days after receipt of the petition from the secretary [director of hearings], the municipality shall file with the commission a statement of review, together with a supporting written affidavit sworn to by a municipal official.

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

(e) (No change.)

§22.245. Notice of Intent Petitions.

(a) Filing Requirements. This section applies only to utilities filing a notice of intent to file an application for a certificate of convenience and necessity for a new generating plant. Utilities filing a notice of intent shall use the commission prescribed form. At the time of filing the notice of intent, in addition to the requirements of the form, the utility shall file its entire direct case, including testimony and exhibits, that the utility intends to offer to support the notice of intent. The utility shall address the issues under PURA, §2.255(d) [§54(d)] and Chapter 23 of this title (relating to Substantive Rules) and provide the information necessary to allow the commission to make the required determinations and to either approve or disapprove the notice of intent.

(b) Procedural Schedule. The presiding officer shall establish a procedural schedule that allows for commission action on the application within the 180-day statutory deadline set forth in PURA,

§2.255(d)(2) [§54(d)(2)]. The 180-day statutory time period shall be established based on the [date of] filing of a sufficient application, and shall not run during any delay in providing the required notice.

(c) (No change.)

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Subchapter N. Decisions and Orders

• 16 TAC §§22.261, 22.262, 22.264

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995 which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.261. Proposals for Decision.

(a) Requirement and Contents of Proposal for Decision. In [If in] a contested case, if a majority of the commissioners has not heard the case or read the record, the commission may not issue a final order, if adverse to a party other than the commission, until a proposal for decision is served on all parties. The proposal for decision shall be prepared by the presiding [hearings] officer(s) who conducted the hearing or who have read the record. The proposal for decision shall include a proposed final order, a statement of the reasons for the proposed decision, and proposed findings of fact and conclusions of law in support of the proposed final order. Any party may file exceptions to the proposed decision in accordance with subsection (d) of this section. The presiding officer may supplement or amend a proposal for decision in response to the exceptions or replies submitted by the parties or upon the presiding officer's own motion. Making corrections or minor revisions of a proposal for decision is not considered issuance of an amended or supplemental proposal for decision.

(b)-(d) (No change.)

§22.262. Commission Action After a Proposal for Decision.

(a) Commission Action. The commission may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the commission: [adopt, or decline to adopt, the recommended decision in the proposal for decision or proposed order in whole or in part. The commission is not restricted by the recommendations made by the presiding officer.]

(1) determines that the administrative law judge:

(A) did not properly apply or interpret applicable law, commission rules or policies, or prior administrative decisions; or

(B) issued a finding of fact that is not supported by a preponderance of the evidence; or

(2) determines that a commission policy or a prior administrative decision on which the administrative law judge relied is incorrect or should be changed.

(b) Reasons to be in Writing. The commission shall state in writing the specific reason and legal basis for its determination under subsection (a) of this section.

(c)[(b)] Remand. The commission may remand the proceeding for further consideration.

(1) The commission may direct that further consideration by an administrative law judge [a hearings officer] be accomplished with or without reopening the hearing and may limit the issues to be considered.

(2) If, on remand, additional evidence is admitted that results in a substantial revision of the proposed decision or the underlying facts, an amended or supplemental proposal for decision or proposed order shall be prepared. If an amended or supplemental proposal for decision is prepared, the provisions of §22.261(d) of this title (relating to Proposal for Decision) apply. Exceptions and replies shall be limited to discussions, proposals, and recommendations in the supplemental proposal for decision.

(d) [(c)] Oral Argument Before the Commission.

(1) Any party may request oral argument before the commission prior to the final disposition of any proceeding.

(2) Oral argument shall be al-

lowed at the discretion of the commission. The commission may limit the scope and duration of oral argument. The party bearing the burden of proof has the right to open and close oral argument.

(3) A request for oral argument shall be made in a separate written pleading, filed with the commission's filing clerk. The request shall be filed no later than 3:00 p.m. on the seventh working day preceding the date upon which the commission is scheduled to consider the case. Not more than two days before the commission is scheduled to consider the application, the parties may contact the secretary [hearings division] to determine whether a request for oral argument has been granted.

(4) Upon the filing of a motion for oral argument, the secretary [director of hearings] shall send separate ballots to each commissioner to determine whether the commission will hear oral argument at an open meeting.

(5) The absence or denial of a request for oral argument shall not preclude the commissioners from asking questions of any party present at the open meeting.

(e)[(d)] Commission Not Limited. This section does not limit the commission in the conduct of its meetings to the specific types of action outlined in this section.

§22.263. Final Orders.

(a) Form and Content.

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

(4) The final order shall comply with the requirements of §22.262(b) of this title (relating to Commission Action After a Proposal for Decision).

(b)-(d) (No change.)

§22.264. Rehearing.

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

(c) Upon the filing of a motion for rehearing, the secretary [director of hearings] shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting.

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Subchapter O. Rulemaking

• 16 TAC §22.282, §22.283

The amendments are proposed under the Public Utility Regulatory Act of 1995, §1.101, Senate Bill 319, 74th Legislature, Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995, is affected by these amendments.

§22.282. Notice and Public Participation in Rulemaking Procedures.

(a) Initial Comments. Prior to publishing a proposed rule or initiating a major amendment to an existing rule, the commission may solicit comments on the need for a rule and potential scope of the rule by publication of a notice of rulemaking project in the miscellaneous documents section of the Texas Register. A notice filed pursuant to this section shall contain a brief description and statement of the intended objective of the proposed rule and indicate if a draft of the proposed rule is available for review by interested persons. Unless otherwise prescribed by the commission, any comments concerning the rulemaking project shall be due within 30 days from the date of publication of the notice. The commission may hold workshops and/or public hearings on the rulemaking project commencing at least 45 days but no later than 90 days from the date of publication of the notice. The notice of rulemaking project and time period for initial comments is not required for emergency rules adopted pursuant to §22.283 of this title (relating to emergency adoption); minor amendments of existing rules; or other rulemaking projects for which good cause exists to act immediately.]

(a)(b) Notice. The commission may initiate a rulemaking project by publishing notice of the proposed rule in accordance with APA, §2001.012-2.001.038. [§5] [After consideration of initial comments or comments on a petition for rulemaking, if comments are solicited, the.]

(b)(c) Public Comments. Prior to the adoption of any rule, the commission shall afford all interested persons reasonable opportunity to submit data, views, or arguments in writing. Written comments must be filed within 30 days of the date the proposed rule is published in the Texas Register unless the commission establishes a later date for submission of comments. The commission may also establish a schedule for reply comments if it determines that additional comments would be appropriate or helpful in reaching a decision on the proposed rule.

(c)(d) Public Hearing. [If the commission determines from comments received that disputes remain as to the effect of the proposed rule or that additional information is needed, the commission may schedule workshops or public hearings on the proposed rule.] In the case of substantive rules, opportunity for public hearing shall be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members. [Any workshops and/or public hearings shall be initiated at least 60 days and no later than 90 days from the date of publication of the proposed rule.]

(e) Staff Recommendation. After reviewing written comments and/or testimony presented at a workshop or public hearing, staff shall submit an initial recommendation for commission action on the proposed rule within 120 days after the publication of the proposed rule. The initial staff recommendation shall be filed in central records at the same time it is submitted to the commission. Any interested person may file written comments in response to the initial staff recommendation within 15 days after the filing of the initial staff recommendation. Staff's final recommendation shall be submitted to the commission and filed in central records at least ten days prior to the date on which the commission is scheduled to consider the matter and not later than 150 days after the publication of the proposed rule. Staff will notify all persons who have filed comments concerning the proposed rule of the filing staff's initial and final recommendation.

(f) Contact With Commissioners. After staff submits its final recommendation to the commissioners, contact with commissioners shall follow the policy developed by individual commissioners.

(g) Final Adoption. During the Final Order Meeting at which the commission considers the proposed rule for final action, the commission shall allow interested persons to present oral comments in response to the staff's final recommendation.]

(d) Final Adoption. Following consideration of comments, the commission will issue an order adopting, adopting as amended, or withdrawing the rule within six months after the date of publication of the proposed rule or the rule is automatically withdrawn.

§22.283. Emergency Adoption. Notwithstanding any other provision of these rules, if the commission finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30-days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any

abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The commission shall set forth the requisite finding in the preamble to the rule. An emergency rule adopted under the provisions of this section, and the commission's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the Texas Register. All of the requirements of APA, §2001.034 [§5(d)] apply to this section.

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

Issued in Austin, Texas, on June 30, 1995.

TRD-9508143

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: August 11, 1995

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

TITLE 22. EXAMINING BOARDS

Part XXV. Structural Pest Control Board

Chapter 591. General Provisions

• 22 TAC §591.7

The Structural Pest Control Board proposes an amendment to §591.7, concerning Board Records. The amendment clarifies that all copy changes will be set according to General Services Commission guidelines.

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

Roger B. Borgelt, general counsel, 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 greater certainty with respect to charges made for copies by the agency. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be no different than the current agency practice.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Texas Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§591.7. Board Records.

(a) (No change.)

(b) Copies of official records may be made and certified by the Chairman, Vice-Chairman, or the Executive Director, the expense thereof to be borne by the person or party requesting same. The cost of all such copies to be set according to the General Services Commission.

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

Issued in Austin, Texas, on June 30, 1995.

TRD-9508077 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 22 TAC §591.8

The Structural Pest Control Board proposes an amendment to §591.8, concerning Board acceptance of Documents. The amendment allows for documents received to be stamped.

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

Roger B. Borgelt, general counsel, 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 better records of when documents are received by the Board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. The amendment is purely administrative.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§591.8. Board Acceptance of Documents.

(a) All instruments, correspondence, and materials delivered to the Board will be stamped or marked as Received and the date thereof clearly indicated. On any

application or petition requiring Board action for acceptance or filing, a preliminary examination will be conducted by the staff to determine if the application or petition is in proper form and accompanied by the necessary fee.

(b) (No change.)

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

Issued in Austin, Texas, on June 30, 1995.

TRD-9508078 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 22 TAC §591.9

The Structural Pest Control Board proposes an amendment to §591.9, concerning Board Hearings. The amendment reflects the State Office of Administrative Hearings procedures for conducting administrative hearings and sets time limits for exceptions and replies to proposals for decision.

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

Roger B. Borgelt, general counsel, 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 greater consistency among judges in how administrative hearings for the Structural Pest Control Board are conducted. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be no additional cost to the licensees.

Comments on the proposals may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate pest control services.

The following article is affected by this amendment: Article 135b-6.

§591.9. Board Hearings.

(a) The Board may order a public hearing in any pending matter other than a contested case where the public interest would be best served thereby.

(b) (No change.)

(c) Notice of meetings and hearings

will be in accord with the the Open Meetings Act and Administrative Procedure Act [Administrative Procedure and Texas Register Act].

(d) In computing any period of time prescribed or allowed by this chapter, by order of the agency, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. [In the event anyone should desire to protest or oppose any matter pending before the Board, a written protest shall be filed with the Board on or before the date and time of hearing. Protests should be filed at least five days before the hearing date in order to receive adequate consideration, and comply in a substantial manner with the following requirements]:

(1) each protest shall show the name and address of the protestant;

(2) there shall be an allegation of injury to protestant which could result from the proposed action on the matter to be considered by the Board;

(3) there shall be an allegation of interference with some present right of protestant's claim of right. A protest may be dismissed as insufficient if it fails to comply in a substantial manner with the Board's requirements].

(e) No stipulation or agreement between parties or their representatives regarding any matter involved in a proceeding before the Board may be enforced unless it is in writing and signed by the parties or their representatives or unless it is dictated into the record during the course of a hearing. [Hearings will be conducted in such a manner as the Board deems most suitable to the particular case. The technical rules of legal and court procedure need not be applied to the extent that the procedure used does not conflict with the Administrative Procedure Act [Administrative Procedure and Texas Register Act]. It is the purpose of this Board to obtain all relevant information and testimony pertaining to the issue before it as conveniently, inexpensively, and expeditiously as possible without prejudicing the rights of the protestant].

(f) Any party may appear before the agency and be represented by an attorney at law. Any person may appear on his own behalf, or be represented by a bona fide full-time employee. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full time employee authorized to bind the corporation, part-

nership, or association to a legal contract. [Applications, motions, exceptions, communications, requests, briefs, or other papers or documents required or permitted to be filed under these rules or by law must be received at the Board's office in Austin, Texas, within the time limit, if any, for such filing].

(g) In a contested case, all motions for consideration must be filed with the hearings officer or administrative law judge no less than five days prior to the date on which the matter is scheduled to be heard. Exceptions to a hearing officer's or administrative law judge's proposal for decision, if any, must be filed with the hearing officer or administrative law judge no later than 20 days after the date the proposal for decision is issued. Replies to exceptions, if any, must be filed within ten days of the date the exceptions are filed. [Any person whose interest is affected in a proceeding may appear at such proceeding. At the discretion of the Board, anyone not such a party may also appear. An appearance may be made individually, by an attorney, or by authorized agents].

(h) A party who appeals a final decision in a contested disciplinary case shall pay all cost of preparation of any original or certified copy of the record of the agency proceedings that is required to be transmitted to the reviewing court. [Except for unusual and extenuating circumstances, the protestant, his attorney, or his duly authorized agent shall be present at the public hearing. Failure to so appear will be grounds for withholding consideration of protest].

(i) The commission will reimburse a non-party witness in a formal disciplinary hearing for travel expenses at the rates established by the Administrative Procedure Act. [Evidence will be admitted pursuant to the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a].

(j) The testimony shall be confined to the subject matter contained in the application or pleadings. In the event a party at a hearing shall pursue a line of interrogation of a witness which is clearly irrelevant, incompetent, or immaterial, such interrogation will be terminated.

(k) The Board reserves the right to limit the number of witnesses appearing at any proceeding where it appears that their testimony may be merely cumulative and repetitious of evidence previously received.

(l) Any matter of official record in the Board files may be incorporated by reference by the Board or interested parties to the proceeding provided that:

[(1) it is identified sufficiently to put all parties on notice;

[(2) it is material and relevant; and

[(3) no party at interest is deprived of the right of cross-examination.

[(m) Official records may be entered in evidence; provided, however, that the Board may waive all requirements for certification when it appears that is no valid reason to doubt the authenticity of the documents presented.

[(n) When documents are numerous, the Board may elect to receive in evidence only those which are typical and representative; and it may require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however that before making such requirements, the Board shall see that all interested persons are given the right to examine the documents from which such abstracts are made.

[(o) In the event the exhibit has been identified, objected to, and excluded, the presiding Board member shall determine whether or not the party offering the exhibit withdraws the offer. If withdrawn, the exhibit will be returned. If the excluded exhibit is not withdrawn, it shall be identified and included in the record for the purpose of preserving the objection to the exclusion.

[(p) Unless specifically directed by the Board, no exhibit will be permitted to be filed as part of the proceeding in any matter before the Board after the conclusion of the public hearing held thereon. The Board may hold the record open for the purpose of receiving additional written evidence.

[(q) Oral arguments may be allowed by the Board upon request, but a reasonable time limit shall be fixed.

[(r) Prior to the closing of the hearing, the Board may allow the presentation of briefs at a later date. The order and time for filing briefs shall be determined by the Board following consultation with Counsel.

[(s) The procedure for appeal from any ruling, order, decision, or act of the Board is controlled by the provisions of the Structural Pest Control Act, §9(d), and the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

[(t) All testimony given at any public hearing shall be recorded by some person appointed by the Board. In those instances where any proper party at such hearing requests it, the testimony will be reduced to writing. Copies of any hearing thus transcribed may be obtained from the Structural Pest Control Board and paid for at the rate set by state law].

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

Issued in Austin, Texas, on June 30, 1995.

TRD-9508079

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

Earliest possible date of adoption: August 11, 1995

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

Chapter 593: Licensing

• 22 TAC §593.6

The Structural Pest Control Board proposes an amendment to §593.6, concerning License Expiration and Renewal. The amendment deletes the required fee for address changes and the requirement that old licenses be returned when changes are made.

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

Roger B. Borgelt, general Counsel, 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 reduced cost to licensees in changing locations and reduced effort in making any licensing changes. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be a reduced cost of compliance.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Texas Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§593.6. License Expiration and Renewal.

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

(g) Whenever a licensee changes his/her mailing address or business location, he/she shall notify the Board in writing within ten days of the effective date of the change [and submit the required fee for the license change. The licensee shall also submit the license which is being changed or a written statement that it is not available.]

(h)-(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 June 30, 1995.

TRD-9508081 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 22 TAC §593.8

The Structural Pest Control Board proposes an amendment to §593.8, concerning Loss of Certified Applicator or business owner.

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

Roger B. Borgelt, general counsel, 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 equal access to hardship decisions for the licensed noncommercial community. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the rule as proposed will be no increased cost.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Texas Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§593.8. Loss of Certified Applicator or Business Owner. In the event of a disability, incapacity, or death of the business owner or certified applicator, if they are the same person, upon application of heir or license holder wishing to continue the business or noncommercial operation, the Board may require their presence at the next scheduled Board meeting for the purpose of allowing the prospective licensee the opportunity to show that the policies and services will continue substantially as before with due protection to the public and the environment and state or federal regulations. The Board may issue a temporary hardship license to be valid for a period not to exceed six months. If a certified applicator [for a business licensee] leaves the employment of the business licensee, the business licensee or non-commercial entity may request the Board to allow the operation [company] to continue until the next state

examination date. The [business] licensee must notify the Board on the date of the loss of his or her certified applicator.

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 June 30, 1995.

TRD-9508083 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
Chapter 595. Compliance and Enforcement

• 22 TAC §595.2

The Structural Pest Control Board proposes an amendment to §595.2, concerning employee registration. The amendment reflects proposed changes in terminology for technician licensing, increases the time period for notification to ten days and deletes the requirement that old licenses be returned.

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

Roger B. Borgelt, general counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased compliance with employee registration standards. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section as proposed will be a reduced cost of compliance for licensee.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§595.2. Employee Registration.

(a) It shall be the duty of the business licensee or certified noncommercial applicator to inform the Board in writing of the employment of all technicians and [technician] apprentices.

(b) Such notice shall be furnished within ten days of [on] the date of employment and shall include the full name and home address of the technician or [techni-

cian] apprentice, the date of employment, and, if applicable, the branch office at which he will be employed, and other information as may be required.

(c) When employing a technician, the business licensee or certified noncommercial applicator shall obtain from the Board a license for such technician. [It shall be the responsibility of every business licensee or certified noncommercial applicator to collect all licenses from terminated technicians and technician-apprentices and mail them to the Structural Pest Control Board within ten days after termination of employment. If, for any reason, such documents cannot be collected, the Structural Pest Control Board shall be notified in writing]. Any registration of license fees paid for technicians and [technician] apprentices shall not be refundable or transferred to another technician or [technician] apprentice.

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 June 30, 1995.

TRD-9508086 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control
Board

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 22 TAC §595.3

The Structural Pest Control Board proposes an amendment to §595.3, concerning Employee Supervision. The amendment reflects proposed changes in terminology in the technician licensing requirements.

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

Roger B. Borgelt, general counsel, 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 greater understanding and compliance with the technician licensing 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 proposed rule may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§595.3. Employee Supervision.

(a) (No change.)

(b) In order to provide adequate supervision, the certified applicator must have personal contact at least three days per week with the technicians or [technician] apprentices being supervised. The technician or [technician] apprentices must reside within the normally accepted commuting area of the licensed business office or work location and must personally report to a certified applicator at least three days per week to receive instructions.

(c) (No change.)

(d) [Technician] Apprentices shall not perform pest control services without physical supervision until they have completed all classroom training, on-the-job training required and verified such completion, in their records [with the Board].

(e) (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 June 30, 1995.

TRD-9508087

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

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 22 TAC §595.7

The Structural Pest Control Board proposes an amendment to §595.7, concerning Consumer Information Sheet. The amendment allows licensees in the lawn and ornamental or weed categories to use a specialized consumer information sheet.

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

Roger B. Borgelt, general counsel, 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 greater understanding of the pest control services provided by lawn care companies. There will be no effect on small businesses. There is no additional mandatory cost anticipated to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325,

Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate pest control services.

The following article is affected by this amendment: Article 135b-6.

§595.7. Consumer Information Sheet.

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

(e) Licensees holding the lawn and ornamental or weed categories may use the following text in place of that required in subsection (c) of this section: **CONSUMER INFORMATION SHEET (REQUIRED BY THE TEXAS STRUCTURAL PEST CONTROL BOARD)** Pesticides must be registered with the United States Environmental Protection Agency and the Texas Department of Agriculture before they may be used in Texas. EPA registration is not a finding of product safety. Pesticides are designed to control or repel pests. Your risk of harm depends upon the degree of your exposure to a particular pesticide. Specific health and safety information varies between pesticides and types of exposures and is available on the label information or MSDS sheet (usually only refers to the undiluted products) which can be supplied to you upon request from the licensed applicator. Take normal precautions when a treatment has been performed. Pesticides may be harmful if swallowed, inhaled, or absorbed through the skin. Avoid breathing dust or spray mist and any unnecessary contact with treated surfaces. If you desire specific information on precautions, refer to the pesticide label. The law requires that the application procedures specified on the label be followed. In order to minimize the reliance on pesticides and reduce pest populations, you may wish to consider Integrated Pest Management (IPM). IPM methods to control pests (including weeds) take advantage of all pest management options, including but not limited to the judicious use of pesticides and non-chemical methods. An IPM program is one designed to create a healthy lawn and/or landscape with sufficient plant strength and density to survive weed, insect, and disease attacks with minimum pesticide use. An IPM program must consider your lawn or landscape's specific needs and overall condition. An IPM program requires the support of proper cultural practices. IPM uses the best mix of techniques, which can include cultural methods, the use of beneficial insects, biological and discreet use of control products. Your lawn and landscape operator may offer these services upon request. A proper inspection should provide the necessary information to choose the method

of pest control which best suits your situation. If you have questions about the applications, contact the certified applicator. If you suspect a violation of the law regarding structural pest control, contact the Structural Pest Control Board. The structural pest control industry is regulated by the Structural Pest Control Board located at 9101 FM 1325, Suite 201, Austin, Texas 78758. The Board licenses the businesses, certified applicator and technicians who perform structural pest control work, including lawn and landscape. If a commercial service is used, all work is supervised by a licensed certified commercial applicator. Otherwise a certified noncommercial applicator must perform the service. Certified applicators and technicians must pass a written examination in order to receive their licenses. If you are contracting for pest control services due to a home solicitation, you have the right to cancel the contract within 72 hours. You may exercise this right by notifying the pest control company, prior to receiving service, that you do not wish to receive their service. For general information on the chemical or health properties of pesticides, you may contact the National Pesticide Telecommunications Network at 1-800-858-7378. This hotline is a national service supported by funding from the U.S. Environmental Protection Agency. For information concerning structural pest control laws, contact the Structural Pest Control Board at (512) 835-4066. For information concerning the formulation and registration of pesticides, contact the Texas Department of Agriculture at (512) 463-7476. For non-emergency health information relating to pesticides, contact the Texas Department of Health at (512) 458-7111. In case of a health emergency, seek immediate medical attention.

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 June 30, 1995.

TRD-9508088

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

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 22 TAC §595.14

The Structural Pest Control Board proposes an amendment to §595.14, concerning Reduced Impact Pest Control Service. The amendment will allow lawn care companies providing a reduced impact service to use

specialized consumer information sheet.

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

Roger B. Borgelt, general counsel, 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 greater understanding of the services provided by a reduced impact lawn care service. There will be no effect on small businesses. There is no additional mandatory cost anticipated to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§595.14. *Reduced Impact Pest Control Service.*

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

(g) Licensees holding the Reduced Impact authorization and licensed in the lawn and ornamental or weed categories may use the following text in place of that required in subsection (d) of this section. **CONSUMER INFORMATION SHEET REDUCED IMPACT SERVICE (RIS) (REQUIRED BY THE TEXAS STRUCTURAL PEST CONTROL BOARD)** Your lawn care pest control operator is designated as a Reduced Impact Pest Control operator by the Texas Structural Pest Control Board and has completed training required to qualify for this designation. The goal of Reduced Impact Service is to manage your pest problems while reducing pesticide exposure to people, property and the environment. This service encourages the use of Integrated Pest Management (IPM) methods to control pests (weeds) and take advantage of all pest management options, including but not limited to the judicious use of pesticides and non-chemical methods. An IPM program is one designed to create a healthy lawn and/or landscape with sufficient plant strength and density to survive weed, insect and disease attacks with minimum pesticide use. An IPM program must consider your lawn or landscape needs and overall condition. An IPM program requires the support of proper cultural practices including consideration of the following: Proper mowing practices Regular watering at a rate that ensures re-

tained moisture levels throughout the root zone. Core aeration to promote root development and reduced soil compaction. Programmed seeding, sodding, plugging, or sprigging to enhance lawn density and to enhance appearance by controlling incursions of undesirable grasses and weeds. Soil testing Fertilization to provide essential nutrients which may be deficient in your lawn. PH balancing treatments (lime or sulfur) to achieve proper soil acidity levels and improve nutrient absorption. Regular inspection of lawn areas for early detection of pest presence. Integrated Pest Management (IPM) is using the best mix of cultural techniques, use of beneficial insects, biological controls, and discreet use of control products. A customer's cooperation in mowing, watering, and regular inspections for early detection between our service visits is important to the success of the IPM care of your property. To minimize the reliance on pesticides and reduce pest populations, your Reduced Impact Pest Control operator may recommend that you consider cultural practices like changing the varieties of your turf and/or ornamentals. Proper mowing, aeration, watering, or pruning can effect the health of the turf or plant. Your lawn and ornamental operator may offer these services upon request. A proper inspection will provide the information necessary for you to choose the method of pest control which best suits your situation. Your acceptance of a certain percentage of weed or insect damage can effect to what degree most pesticides are used. This Reduced Impact Service will include an inspection report and treatment recommendations. You should review these before authorizing treatment, and keep a copy for your records. Your cooperation in following the recommendations made by your service provider is essential to an effective reduced impact service program. Pesticides may be used in a responsible and professional manner in a Reduced Impact Service. If you do not want a specific pesticide used or any pesticides used, you must note this in writing prior to the initiation of the service. **THE FOLLOWING INFORMATION APPLIES TO YOU--WHETHER OR NOT YOU SELECT REDUCED IMPACT SERVICE:** Pesticides must be registered with the United States Environmental Protection Agency and the Texas Department of Agriculture before they may be used in Texas. If you have any questions about the application, contact the certified applicator. If you suspect a violation of the law regarding structural pest control, contact the Structural Pest Control Board. If your are contracting for pest control services due to a home solicitation, you have the right to cancel the contract within 72 hours.

You may exercise this right by notifying the pest control company, prior to receiving service, that you do not wish to receive their service. For general information on the chemical or health properties of pesticides you may contact the National Pesticide Telecommunications Network at 1-800-858-7378. This hotline is a national service supported by funding from the U.S. Environmental Protection Agency. For information concerning structural pest control laws, contact the Structural Pest Control Board at (512) 835-4066. For information concerning the formulation and registration of pesticides, contact the Texas Department of Agriculture at (512) 463-7476. For non-emergency health information relating to pesticides, contact the Texas Department of Health at (512) 458-7111. In case of a health emergency, seek immediate medical attention.

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 June 30, 1995.

TRD-9508089

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

Earliest possible date of adoption: August 11, 1995

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

Chapter 599. Treatment Standards

• 22 TAC §599.2

The Structural Pest Control Board proposes an amendment to §599.2, concerning Subterranean Termite Post-Construction Treatments. The amendment exempts termiticide baits from the treatment standards.

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

Roger B. Borgelt, general counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to use termiticide baits in Texas as this technology does not conform to conventional treatment standards. There will be no effect on small businesses. There is no additional cost anticipated to those persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§599.2. Subterranean Termite Post Construction Treatments.

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

(e) This section does not apply to termiticides applied as baits.

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 June 30, 1995.

TRD-9508090 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 22 TAC §599.3

The Structural Pest Control Board proposes an amendment to §599.3, concerning Subterranean Termite Pre-Construction Treatments. The amendment exempts termiticide baits from the treatment standards.

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

Roger B. Borgelt, general counsel, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the ability to use termiticide baits in Texas as this technology does not conform to conventional treatment standards. There will be no effect on small businesses. There is no additional cost anticipated to those persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM 1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Article 135b-6, which provides the Structural Pest Control Board with the authority to license and regulate structural pest control services.

The following article is affected by this amendment: Article 135b-6.

§599.3. Subterranean Termite Pre-Construction Treatments.

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

(d) This section does not apply to termiticides applied as bait.

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 June 30, 1995.

TRD-9508091 Benny M. Mathis, Jr.
Executive Director
Structural Pest Control Board

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
Part XXX. Texas State Board of Examiners of Professional Counselors
Chapter 681. Professional Counselors

The Texas State Board of Examiners of Professional Counselors (the board) proposes amendments to existing §§681.15, 681.17, 681.26, 681.51, 681.52, 681.81, 681.82, 681.84, 681.91-681.96, 681.112, 681.178, and 681.220, concerning the licensing of professional counselors. Specifically, the amendments cover license certificates, fees, counseling methods and practices, application procedures and materials, temporary licenses, post-graduate experience requirements and other conditions of supervision, examination and procedures, endorsement, reporting continuing education, and actions after administrative hearings. The amendments will allow the board's executive secretary to sign provisional license letters without having the board chair's signature; delete the application materials fee and raise the initial licensing fee, examination fee, and the license renewal fees; revise the acceptable fee payments; clarify language concerning expressive therapies; delete language relating to examination application deadlines; clarify language concerning temporary licenses and the maintenance of same; clarify language concerning the submission of documents to qualify for a temporary license; clarify language concerning the submission of documents to qualify for licensure by endorsement; establish further licensure requirements for supervisors; establish procedures for the licensing examination to be electronically administered and administered by a national testing company; revise requirements for persons who fail to take the exam or fail the exam; allow the board to collect a fee equal to the annual renewal fee from a person who is returning his or her license to active status from inactive status; clarify language relating to submission of official graduate transcripts to document continuing education; and establish procedures the board may take concerning the results of an administrative hearing.

Kathy Craft, executive secretary of the board, has determined that for the first five-year period the sections are in effect, there will be fiscal implications for state government as a

result of enforcing or administering the sections. The effect on state government will be an increased revenue of an estimated \$80,000 per year. There will be no effect on local government.

Ms. Craft 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 a quicker processing time for mailing provisional license letters; to expedite the request and mailing of application packets; to provide LPC interns with approval and disapproval information concerning additional supervisors after the temporary license is issued; to provide temporary license applicants with additional options for obtaining references; to allow staff to apply excess practicum hours to post-graduate supervised experience requirements with or without a written request from applicant; to establish procedures for electronic administration of examination; to set out requirements for obtaining a regular license after the issuance of a provisional license; to clarify to licensees the proper documentation concerning transcripts to document continuing education; and that licensed professional counselors who have engaged in unethical behavior are appropriately disciplined. There will be no effect on small or large businesses. The anticipated economic cost to persons who are required to comply with the sections as proposed will be \$10 to \$30 per licensee. There is no anticipated effect on local employment.

Comments on the proposal may be submitted to Kathy Craft, Executive Secretary, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658 and must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

Subchapter A. The Board

• 22 TAC §681.15, §681.17

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.15. License Certificate.

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

(c) Temporary [and provisional] licenses shall be signed by the board chair and the executive secretary.

(d) Provisional licenses shall be signed by the executive secretary.

(e)[(d)] Any license certificate or renewal card issued by the board remains the property of the board and must be sur-

rendered to the board on demand.

§681.17. Fees.

(a) Fees are as follows:

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

(4) license examination fee-\$110 [\$80];

(5) regular license fee-\$48 [\$36];

(6) annual renewal fee-\$50 [\$40];

(7) late renewal fee (when renewed after expiration date but on or within 90 days of expiration)-\$105 [\$80];

(8) license renewal penalty fee (must be paid along with renewal fee when license is renewed more than 90 days but within one year of the expiration date)-\$110 [\$80];

(9) (No change.)

(10) license certificate or renewal card duplication or replacement fee-\$10; and

(11) returned check fee-\$25[.];

[(12) application materials fee-\$5; and

[(13) examination review fee-\$25].

(b) (No change.)

(c) Remittances submitted to the board in payment of fees must [may] be in the form of a [personal check,] cashier's check[,] or money order[; however, a returned check fee must be in the form of a cashier's check or money order].

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 June 28, 1995.

TRD-9507992

James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Earliest possible date of adoption: August 11, 1995

For further information, please call: (512) 458-7236

Subchapter B. Authorized Counseling Methods and Practices

• 22 TAC §681.26

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of

Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendment affects the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.26. Counseling Methods and Practices. Authorized counseling methods and practices may include but are not restricted to the following:

(1)-(13) (No change.)

(14) expressive therapies which utilize therapeutic modalities in the treatment of interpersonal, emotional or mental health issues, chemical dependency, or human developmental issues [shall be considered a part of the practice of counseling and shall be administered, directed, or supervised by a licensed counselor]. These modalities may include music therapy, art therapy, dance or movement therapy, hippotherapy, or the use of other techniques employing animals in providing therapy as described previously;

(15)-(17) (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.

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James O. Mathis, Ed.D.
Chair
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For further information, please call: (512) 458-7236

Subchapter D. Application Procedures

• 22 TAC §681.51, §681.52

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.51. General.

(a) (No change.)

[(b) The application form and application fee must be postmarked at least 60 days prior to the date the applicant wishes to take the examination.

[(c) Submission of all other required application materials must be postmarked at least 45 days prior to the date the applicant wishes to take the examination.]

(b)[(d)] The board will send a notice to an applicant with an incomplete application. An application not completed within 30 days after the date of the board's notice may be voided; however, an applicant may request in writing that the application be kept active for an additional year. Following each additional year another annual notice will be sent to the applicant and the applicant may again request that the application be kept active for an additional one year. After an application is voided, an applicant will be required to submit a new application and all required materials in addition to paying a new application fee.

§681.52. Required Application Materials.

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

(d) Supervisory agreement form if applying for a temporary license. The supervisory agreement form must be completed and signed by both the supervisor and the applicant before a notary public. A supervisory agreement must also be submitted for subsequent supervisors and settings [Supervisory contract if applying for a temporary license. An applicant for a temporary license must submit a copy of the board's supervisory contract signed by both the supervisor and applicant].

(e) (No change.)

(f) References.

(1) An applicant for a regular license must have board reference forms submitted by three persons who can attest to the applicant's character, counseling skills and professional standards of practice, including at least one licensed professional counselor. The remaining two references must be from persons licensed or certified in the counseling profession or a mental health related profession.

(2) An applicant for a temporary license must have board reference forms submitted by two persons who can attest to the applicant's character, counseling skills and professional standards of practice. These references may be from persons licensed or certified in the counseling or mental health related professions or may be faculty members involved in the graduate counseling preparation program of an accredited college or university.

(3)[(A)] The references shall be

persons who are not named elsewhere in the applicant's application and are not current members of the board.

[(B) References must include at least one licensed professional counselor. All references must be from persons licensed or certified in the counseling profession or appropriately related professions.

[(C) Applicants for a license shall not use current members of the board as references.

[(2) An applicant for a temporary license must have a board reference form submitted by one faculty member who can attest to the applicant character, counseling skills, and professional standards of practice.]

(g) (No change.)

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

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Chair
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For further information, please call: (512) 458-7236

Subchapter F. Experience Requirements for Examination and Licensure

• 22 TAC §§681.81, 681.82, 681.84

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.81. Temporary License.

(a) (No change.)

(b) In Texas, a person must obtain a temporary license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting shall not count toward the supervised experience requirements except as follows.

(1) If a person filed a complete application [applied] for a temporary license prior to January 1, 1994, the hours from January 1, 1994, to the issuance of the temporary license shall be counted for supervised experience if all other requirements are met.

(2) (No change.)

(c) An LPC intern [A temporary licensee] may practice only as part of his or her internship.

(d)-(g) (No change.)

§681.82. Experience Requirements (Internship).

(a)-(g) (No change.)

(h) On a case-by-case basis, the board may count hours toward the experience requirements of this subchapter if:

(1) (No change.)

(2) the hours are in excess of the 300-hour practicum required by §681.64(c) of this title (relating to Academic Course Content); and

(3) the hours to be counted are not more than 400 hours; and

[(4) the applicant requests this consideration in writing].

§681.84. Other Conditions for Supervised Experience.

(a) (No change.)

(b) In Texas, a person must obtain a temporary license before the person begins an internship or continues an internship. Hours obtained by an unlicensed person in any setting shall not count toward the supervised experience requirements except as follows.

(1) If a person filed a complete application [applied] for a temporary license prior to January 1, 1994, the hours from January 1, 1994, to the issuance of the temporary license shall be counted for supervised experience if all other requirements are met.

(2)* (No change.)

(c)-(l) (No change.)

(m) A supervisor whose license expires or is revoked or suspended is no longer a valid supervisor and hours accumulated under that person's supervision after expiration, revocation or suspension will not count as acceptable hours.

(n) Experience received under a supervisor who is a licensee while the licensee is subject to a board order shall not under any circumstances, qualify as supervised experience for licensure purposes regardless of the setting in which it

was received. Licensees who become subject to a board order shall inform all supervisees of the board order and assist all supervisees in finding appropriate alternate supervision.

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

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Chair
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Professional Counselors

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For further information, please call: (512) 458-7236

Subchapter G. Licensure Examinations

• 22 TAC §§681.91-681.96

The amendments are proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendments affect the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.91. Examination.

(a) The Texas State Board of Examiners of Professional Counselors (board) shall develop a [administer] licensure examination [examinations at least three times a year or as often as deemed necessary].

(b) The administration of the examination may be contracted to a national testing company [The examination for licensure shall be a written examination prescribed by the board].

(c) Examinations will be administered at testing centers located in various cities throughout the state [in Austin unless otherwise announced by the board].

§681.92. Applying for Licensure Examination.

(a) Before taking an examination, a person must apply for licensure in accordance with §681.51 of this title (relating to General) and §681.52 of this title (relating to Required Application Materials). The Texas State Board of Examiners of Professional Counselors (board) shall notify an

applicant whose application has been approved in writing [or by telephone] and forward an approval confirmation [examination registration] form to each approved applicant as soon as the application for examination has been approved.

(b) Approved applicants must take an examination within 90 days following notification of approval or must reapply for a later examination. [An applicant who wishes to take a scheduled examination must complete an examination registration form and return it to the board with the required fee postmarked at least 30 days prior to the date of the examination. In cases where the date of approval of an application for examination necessitates that the applicant be notified by telephone, the applicant must forward the required fee with a postmark of at least 30 days prior to the date of the examination; however, the registration form can be submitted following the 30-day deadline.]

§681.93. Grading.

(a) Electronically administered licensure [Licensure] examinations shall be graded at the testing center upon completion of the examination [direction of the Texas State Board of Examiners of Professional Counselors (board)].

(b) Written examinations may [shall] be requested under certain circumstances; however, grading will not be provided immediately upon completion of the examination [identified by number and graded anonymously in order to insure impartiality].

§681.94. Failures.

(a) An applicant who fails the licensure examination may schedule a second examination by submitting a copy of a failing score report and a written request for the second examination. The applicant must wait at least 14 days to reschedule the examination and must reschedule within 90 days [reapply for examination and take either of the next two scheduled examinations. If, without documented medical or other reasons acceptable to the Texas State Board of Examiners of Professional Counselors (board), the applicant does not take either of the next two examinations, his or her approval to take the examination will be voided and the applicant will be required to submit another application for examination].

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

(d) The temporary license of an applicant who fails any two successive examinations shall be voided [Each applicant who fails the examination may request, in writing, within 21 days from the date of the notification of failure, an examination

review. An examination review fee is required in accordance with §681.17 of this title (relating to Fees) and must be submitted with the written request].

[(1) All reviews are subject to Texas Department of Health (department) security requirements.

[(2) Textbooks and other references may not be used and persons other than the applicant and department representatives may not be present during the review.

[(3) The department will set a date and hour within a reasonable time when the examination will be available for review. The appointment will be scheduled in the board office during regular business hours.]

§681.95. Notice of Results.

(a) Each [The Texas State Board of Examiners of Professional Counselors (board)] shall notify each examinee shall receive [of] the examination results on site at the time of examination, if taken electronically [within 30 days of the date of the examination].

(b) No matter what numerical or other scoring system is used [the board may use] in arriving at examination results, the official notice of results to applicants shall be stated in terms of "pass" or "fail".

[(c) If the notice of examination results graded or reviewed by the national testing service will be delayed for more than 90 days after the date of the examination, the board shall notify the applicant before the 90th day.]

§681.96. Failure to Take Examination.

(a) An applicant may be excused from a scheduled examination for illness, death in the immediate family, disabling traffic accident, court appearance or jury duty, or military duty. Written verification and supporting documentation of the situation must be submitted to the testing company within 14 days of the original examination date. Documentation for medical absences must have the original signature of the medical practitioner. Stamped signatures will not be accepted [If an applicant fails to appear for a scheduled examination because of illness, he or she must submit medical documentation within 30 days following the scheduled examination and the applicant will be rescheduled for the next examination].

(b) The application of a person who fails to schedule and take an examination within 90 days following the date of the approval shall be voided and the applicant shall be so notified [If an applicant fails to appear for a scheduled exami-

nation for reasons other than documented illness or other cause beyond the applicant's control after having agreed to do so by applying to take a particular examination, the applicant must reapply and pay another examination fee before being admitted to a subsequent examination].

[(c) The application of a person who fails to select and take one of the first two examinations scheduled after the applicant has been notified in writing of his approval for examination shall be voided and the applicant shall be so notified].

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 June 28, 1995.

TRD-9507896

James O. Mathis, Ed.D.

Chair

Texas State Board of

Examiners of

Professional Counselors

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For further information, please call: (512) 458-7236

Subchapter H. Licensing

• 22 TAC §681.112

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §8, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendment affects the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.112. Endorsement.

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

(c) The board must complete the processing of a provisional licensee's application for a license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later. The person holding a provisional license must file all evidence of his or her academic and experience requirements within the 180 days [this time period]. The board office shall evaluate the information received and may issue a deficiency letter during the 180 days [this period]. If the documentation received during the 180 days [this period] does not show that the person meets the academic and experience requirements set out in this chapter, the application shall be proposed

for denial.

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

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

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James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

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For further information, please call: (512) 458-7236

Subchapter K. Continuing Education Requirements

• 22 TAC §681.178

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendment affects the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.178. Reporting of Continuing Education. The requirements for reporting continuing education shall be as follows.

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

(3) Each report must be accompanied by appropriate documentation of the continuing education claimed on the report as follows:

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

(C) for completion of academic work from accredited schools, an official graduate transcript showing course credit with at least a "B" or pass grade sent directly to the board from the school(s) where the coursework was obtained; or

(D) (No change.)

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

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Chair
Texas State Board of
Examiners of
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For further information, please call: (512) 458-7236

Subchapter M. Formal Hearings

• 22 TAC §681.220

The amendment is proposed under the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g, §6, which provide the Texas State Board of Examiners of Professional Counselors with the authority to adopt and revise rules that are necessary to administer the Licensed Professional Counselor Act; §14(p) relating to rules concerning temporary licenses; and §19(b) relating to rules on fees.

The amendment affects the Licensed Professional Counselor Act, Texas Civil Statutes, Article 4512g.

§681.220. Action After the Hearing.

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

(d) Final orders or decisions.

(1) (No change.)

(2) To protect the public interest and to ensure that appropriate principles govern the decisions of the board, it is the policy of the board to change a finding of fact or conclusion of law or to modify the proposed order of an administrative law judge when the board determines that the proposed order is:

(A) erroneous;

(B) against the weight of the evidence;

(C) based on misapplication or misinterpretation of laws, rules, or standards;

(D) based on insufficient review of the evidence;

(E) not sufficient to protect the public interest; or

(F) not appropriate recognition of whether or not rehabilitation of the licensee or applicant has occurred.

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

(4)[(3)] All final orders shall be signed by the chairperson of the board;

however, interim orders may be issued by the ALJ.

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

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

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

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James O. Mathis, Ed.D.
Chair
Texas State Board of
Examiners of
Professional Counselors

Earliest possible date of adoption: August 11, 1995

For further information, please call: (512) 458-7236

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 101. General Rules

• 30 TAC §101.29

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §101.29, concerning Emissions Banking. The Emissions Banking rule, effective March 15, 1993, provides a mechanism for certifying and recording ownership of emission reduction credits (ERCs) which can be used for offsets and other regulatory requirements for volatile organic compounds and nitrogen oxides emissions in the state's ozone nonattainment areas. Separate banks are maintained for ERCs of each pollutant in a given ozone nonattainment area.

The proposed rule amendment consists of three main revisions to §101.29. The first revision involves deletion of the 3.0% per year depreciation factor for banked ERCs. Under the current rule, 3.0% of the initial value of a banked ERC is deducted annually on the anniversary of the date the reduction occurred, as a demonstration of reasonable further progress toward ozone attainment. However, since it is possible to conduct external offset transactions without using the bank and incurring the 3.0% depreciation, industries find it difficult to justify using the bank.

The second revision would extend the life of banked ERCs from five years from the date of the emission reduction (current rule) to ten years from the date of the emission reduction. Current TNRCC Air Permitting Division New Source Review policy gives unlimited life to emissions reductions, used for netting purposes, for sources greater than 250 tons per year. However, if these same reductions were used as offsets, they would have a life of only five years. Extending ERC life to ten years

would help improve marketability of these ERCs. The five-year life of emissions reductions used for netting, currently applicable to sources with the potential to emit less than 250 tons per year, is not affected by the proposed rule changes.

The repeal of the 3.0% per year depreciation factor and the extension of the useful life of an emission reduction credit from five years to ten years applies to all eligible emission reductions, including previously certified credits which have not been used or which may have expired prior to the effective date of this rule.

The third revision would give the Executive Director the discretionary authority to suspend the certification process if the Air Permitting Division workload requires it, compared to the current rule which suspends the certification process when 1,000 tons of credits have been certified for a given bank. The rule's original intent, to help maintain a balanced agency workload in the certification of ERC applications, is preserved in the proposed revision without unnecessarily restricting the amount of ERCs present in the bank at any given time.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the proposed section is in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Minick also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be progress towards attainment of the ozone standard as a result of emissions reductions and more flexible, cost-effective regulation of emissions sources. Adoption of the section as proposed is anticipated to result in a reduction of costs for affected businesses. The positive fiscal implications that would result from removing the 3.0% annual depreciation of emission reduction credits and the extension of the life of the credits to ten years will vary with each specific company potentially affected and have not been estimated. There are no significant direct implications anticipated for small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

A public hearing on the proposal will be held August 8, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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. The deadline for submission of written comments will be 30 days after the

date of publication in the *Texas Register*. 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. Please mail written comments to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95118-101-AI. Please fax written comments to (512) 239-5687. Copies of the proposed rule are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Mike Magee at (512) 239-1511.

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.

The amendment is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Health and Safety Code, §382.017.

§101.29. Emissions Banking.

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

(d) Length of time available. A certified Emissions Reduction Credit (ERC), generated by a stationary source, is available for use [to fulfill an offset requirement] during the ten-year [five-year] period after the reduction was actually achieved. The banking applicant shall identify the date the reduction was actually achieved. The ERC certificate shall indicate the expiration date for the certified reduction. If an ERC is withdrawn from the bank prior to the ten-year [five-year] expiration and submitted with a complete permit application for use as an offset, the ERC remains usable for the lifetime of the new facility or modification proposed for offset. The length of time a certified Mobile Source Emission Reduction Credit (MERC) is available for use is a function of the remaining vehicle miles of the mobile source, as determined in the Accelerated Vehicle Retirement program and Alternative Fuel Requirements for Motor Vehicle Fleets. The Bank expiration date and useful life of the credit is calculated from the date the MERCs are certified.

(e) ERC and MERC certification or registration.

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

(3) The Executive Director shall have the discretion to temporarily suspend the certification of applications for emission reduction credits if neces-

sary to efficiently manage workloads in accordance with agency priorities. Registered credits need not be certified in order to be transferable. [When each Bank has a minimum balance of 1,000 tpy of certified ERCs of a given pollutant in a given nonattainment area, the remaining emissions reductions applications will be registered, but not certified. Whenever any Bank balance drops below 700 tpy, registered emissions reductions will be certified in the order they were received, with consideration to the priority provided in paragraph (1) of this subsection, to return the Bank balance to a minimum of 1,000 tpy. This limitation does not apply to MERCs.]

(4) Emission reduction amounts shall be determined and certified based on actual monitoring results, when available, or otherwise calculated using good engineering practices. The MERCs will be determined and certified using the methodologies provided in the Accelerated Vehicle Retirement program and Alternative Fuel Requirements for Motor Vehicle Fleets. An ERC certificate will be issued by the Executive Director which indicates the amount of certified emissions reduction which is available for use [as offsets] and the length of time the reduction is eligible for use. A MERC certificate will be issued by the Executive Director which indicates the total amount of certified emission reduction credits, the quantity available on an annual basis, and the date upon which the last annualized emission reduction expires.

(f)-(i) (No change.)

(j) Depreciation. The Executive Director is prohibited from depreciating any ERC or MERC, except under the following circumstances:

(1) an ERC, not a MERC, will incur an annual 3.0% depreciation on the anniversary of the date the reduction occurred based on the initial ERC value as a demonstration of reasonable further progress toward ozone attainment;

(2) the ERC or MERC certificate has expired; or

(3) regulatory changes were promulgated after the ERC or MERC certificate has been issued, which would have required reductions from the source that created the qualifying reduction. The credit shall be reduced by the amount affected by the regulatory change.

(k) The ERC and MERC use. The use of ERCs and MERCs will be accomplished either through transfers or withdrawals.

(1) (No change.)

(2) Withdrawal. Only the owner of the certificate is eligible to withdraw deposits from the Bank. Once a certificate

has been issued, the ERC or MERC shall be valid for the time period indicated on the certificate, unless the certificate has been depreciated in accordance with subsection (j) of this section. Certified emission reduction credits may be withdrawn from the Bank by the original applicant at any time prior to the expiration of the credit and may be held by the original applicant to be used for netting purposes. The ERCs held by the original applicant may not be used for off-sets after the expiration of the ten-year [five-year] period following the date of the emission reduction, but may continue to be used for netting to the extent allowed under applicable state and federal regulations. The ERCs will be depreciated under subsection (j)(2) of this section if applicable [during the time they are in the Bank].

(l)-(m) (No change.)

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

Issued in Austin, Texas, on June 29, 1995.

TRD-9508117 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: November 1, 1995

For further information, please call: (512) 239-1966

Chapter 261. Introductory Provisions

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §§261.1-261.13 and proposes new §§261.1-261.19 and 261.30, concerning the TNRCC procedural rules. The proposed changes to the commission's procedural rules would implement recent legislation in Senate Bills (SB) 12, 741, and 1546. SB 12 directs the State Office of Administrative Hearings (SOAH) to conduct contested case hearings for the commission (other than hearings before one or more commissioners). SB 741 authorizes the commission to delegate to the executive director the authority to act on uncontested applications. SB 1546 requires the commission to adopt rules concerning whether a person is an "affected person" and is entitled to standing in a contested case hearing. The commission limited the scope of this review of the procedural rules so that the new rules may be finally adopted by September 1, 1995, which is the effective date of SB 12 and 1546.

In proposing this rule package, the TNRCC is attempting to limit any rule changes to those necessitated by recent legislation. Additionally, an attempt has been made to recodify the current TNRCC practices and reorganize the procedural rules into a more logical for-

mat. No substantive change is intended by this recodification. Comment is specifically solicited on any changes in the recodification that appear to be substantive in nature. Comment is also solicited upon those sections that enact recent legislative changes in the agency's authority, and how these rules comport with the new legislation.

The TNRCC is continuing to review the procedural rules of the agency, with an eye towards providing efficient and understandable application review procedures. Additional changes to streamline and improve upon these rules are contemplated that current time limits do not allow to be incorporated into this rule package. Therefore, another review of these rules will begin after the final promulgation of this package (TNRCC Rule Log Number 95124-263-AD). The second review will focus upon general agency procedures and will allow broad discussion of all agency procedures and application processes. To provide a firm time frame for the next review, the current rule package, as proposed, will expire on May 31, 1996.

Before publication, the TNRCC sought informal comment on the proposed rules from approximately 60 people representing agency advisory groups, various interest groups, and regular practitioners before the agency. Due to the complexities of transferring contested cases to the purview of another state agency and the short time prior to the effective date of the legislation, the TNRCC sought this early, informal review of the proposed rules to ensure that no large issues or problems were overlooked or created. Many thorough and detailed comments were received. These comments helped the staff clarify some rules and correct many errors that crept into the first draft. The TNRCC would like to thank those who reviewed this draft package and submitted the many helpful comments. Comments received, but not addressed in this proposal, will be considered either in the response to comments in this rulemaking, or in the subsequent rule package.

The only significant change made in response to the early comments involved re-drafting Chapter 263, Subchapter A, regarding delegation of uncontested applications and approvals to the executive director. The TNRCC had attempted to draft a delegation section that codified existing TNRCC practice, which distinguishes between media. This approach necessitated maintaining procedural differences between actions on air permit applications, and all other types of actions. Due to the informal comments received, the TNRCC became convinced that there was a need to clarify the delegation of actions on air permit applications, as well as a need to create additional procedural similarity between the actions on air applications and actions on applications in other media. These changes are incorporated into this proposal.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections. The transfer of responsibilities from the

commission to SOAH is not anticipated to significantly affect the costs of the transferred hearing functions; therefore, no net impact to state government will result.

Mr. Minick 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 improvement in the hearings process for contested matters before the commission and enhanced consistency in the conduct of administrative proceedings for state agencies. There will be no effect on small businesses. There is no anticipated economic cost for persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held August 10, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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 August 11, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on August 11, 1995, will be considered by the commission prior to any final action on the proposal. Please mail written comments to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95124-263-AD. Please fax comments to (512) 239-5687. Copies of the proposed rules are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Randall Terrell at (512) 239-0577.

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.

Subchapter A. General Provisions

• 30 TAC §§261.1-261.13

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorizes the TNRCC to adopt any

rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The repeals implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§261.1. *Purpose of Rules.*

§261.2. *Construction of Rules.*

§261.3. *Business Office and Mailing Address of the Commission.*

§261.4. *Seal of Commission.*

§261.5. *Commission Meetings.*

§261.6. *Minutes of Commission Meetings.*

§261.7. *Designation of Executive Director.*

§261.8. *Official Records are Public.*

§261.9. *Classified Data and Confidential Information.*

§261.10. *Copies and Certificates.*

§261.11. *Lost Records and Papers.*

§261.12. *Definitions.*

§261.13. *Inscriptions on TNRCC Vehicles.*

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 July 5, 1995.

TRD-9508166 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

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• 30 TAC §§261.1-261.19

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

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

Applicant or petitioner—A party seeking a license, permit, order, or rule from the commission.

Chief clerk—The chief clerk of the Texas Natural Resource Conservation Commission or any authorized individual designated by the executive director to act in his or her place.

Commission—The Texas Natural Resource Conservation Commission.

Commissioners' meeting—A public meeting or hearing at which a quorum of the commissioners consider matters scheduled for deliberation, such as rulemaking proceedings, applications, or judges' proposals for decision.

Executive director—The executive director of the commission, or any authorized individual designated by the executive director to act in his or her place.

General counsel—The general counsel of the commission, or any authorized individual designated by the general counsel to act in his or her place.

Judge—An administrative law judge employed by SOAH.

Party—Each person or agency named or admitted as a party to a proceeding.

Person—An individual, corporation, organization, government or governmental subdivision or agency, business trust, partnership, association, or any other legal entity.

Protestant—Any party opposing, in whole or in part, an application or petition filed with the commission.

SOAH—State Office of Administrative Hearings.

§261.2. *Purposes of Rules.* The purposes of these sections are to implement the powers and duties assigned to the commission under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, and other laws of this state, to establish the general policies of the commission, and to set forth the procedures to be followed in commission proceedings. To further these ends, these sections are adopted to simplify procedure, avoid delay, save expense, and facilitate the administration and enforcement of state law by the commission. These sections shall be given a fair and impartial construction to achieve their intended purposes.

§261.3. *Construction of Rules.* Unless otherwise expressly provided for in these rules,

the past, present, and future tense shall each include the other; the masculine, feminine, and neutral gender shall each include the other; and the singular and plural number shall each include the other.

§261.4. *Business Office and Mailing Address of the Commission.*

(a) Commission offices. The commission's offices are located at Park 35, 12015 North Interstate 35, Austin. The commission's mailing address is P.O. Box 13087, Austin, Texas 78711-3087.

(b) Chief clerk's address. The chief clerk's mailing address is: Office of Chief Clerk, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. The Chief Clerk's office is located in Austin, Texas, Park 35, Building F, 12015 North Interstate 35.

§261.5. *Seal of the Commission.* The seal of the commission will bear the words "Texas Natural Resource Conservation Commission" encircling the oak and olive branches common to other official state seals.

§261.6. *Commissioners' Meetings.*

(a) The commissioners shall meet as necessary for the conduct of the commission's business, at times specified by the commissioners and entered in the minutes, including special meetings at times and places in the state necessary for the performance of the commission's duties. The commission is subject to the Open Meetings Act, Texas Government Code, Chapter 551, and the Texas Water Code, §5.058, including any existing or future exceptions that may be provided by law.

(b) The chairman of the commission, or in his absence, the acting chairman, shall preside at all meetings and hearings of the commissioners.

§261.7. *Minutes of Commissioners' Meetings.* The minutes of commissioners' meetings are kept by the chief clerk of the commission in a form and manner as the commissioners may prescribe from time to time in accordance with existing laws. They shall be signed by the chairman and attested to by the chief clerk.

§261.8. *Designation of Executive Director.* All functions, duties, and responsibilities of the commission arising from the appointment or designation of the Texas Water Rights Commission, the Texas Water Quality Board, the Texas Water Development Board, or the Texas Water Commission by the Governor prior to September 1,

1985, relating to any federal program shall be performed by the executive director, subject to the provisions of the Texas Water Code and the right of the commissioners to require prior commission approval of any action relating thereto to be taken by the executive director.

§261.9. Official Records are Public. Subject to the limitations provided in the acts administered by the commission and the Open Records Act, Texas Government Code, Chapter 552, information collected, assembled, or maintained by the commission is public record open to inspection and copying during regular business hours.

§261.10. Classified Data and Confidential Information.

(a) Neither the commission nor any applicant by virtue of his application to or transaction with the commission may be required to disclose any classified data of the federal government or any confidential information relating to trade secrets, secret processes, or economics of operation; provided, however, that the composition of any defined waste subject to the jurisdiction of the commission may not be regarded as confidential information. Further, the commission may not be required to disclose to any person any information that, if released as requested, would give any advantage to competitors or bidders.

(b) In accordance with subsection (a) of this section, a person submitting data or information may request that the data or information be designated as classified or confidential. If the commission or executive director agrees with the designation, the data or information is not open for public inspection, shall be kept in confidence by the agency, and may, upon request, be returned to the person submitting the data or information after it has served the purpose for which it was submitted.

§261.11. Copies and Certificates.

(a) Except as provided in the Copyright Revision Act of 1976, Title 17, United States Code, §261.10 of this title (relating to Designation of Executive Director) and the Open Records Act, Texas Government Code, Chapter 552, upon the application of any person, accompanied by appropriate fees, the commission will furnish copies, certified or otherwise, as requested, of any of its proceedings or other official acts of record or of any map, paper, or document filed with the commission, or other official record, or of any information collected, assembled, or maintained by the commission in its files. Certified copies will be made as appropriate, under the hand of one of the following officials: the chairman of the commission, the executive director, or the

chief clerk of the commission. Certified copies will be affixed with the seal of the commission as appropriate.

(b) The commission may furnish copies at the rates published in its operating procedures, or will contract for the copies to be made at the expense of the person requesting them. In no event shall such fees for copies exceed those permitted by Texas Revised Civil Statutes, Article 3913.

§261.12. Lost Records and Papers. When any papers or records in the custody and control of the commission are lost or destroyed, the parties, with the approval of the commission, may agree in writing on a brief statement of the matters contained therein or any person may at any time supply such lost records or papers as follows.

(1) Any person may make a written sworn motion before the commission stating the loss or destruction of such record or papers, accompanied by certified copies of the originals, if obtainable, or by substantial copies thereof.

(2) If, upon hearing, the commission is satisfied that they are substantial copies of the original, an order will be entered substituting such copies for the missing originals.

(3) Such substituted copies will be filed with and constitute a part of the record and have the force and effect of the originals.

§261.13. Inscriptions on Commission Vehicles. Vehicles assigned to or used by the Special Investigations Unit of the Enforcement Policy Division of the commission are exempt from bearing the inscription required in Texas Civil Statutes, Article 6701m-1. These vehicles are to be used primarily in the detection and investigation of criminal violations of state and federal environmental laws. The purpose of exempting these vehicles from the inscription requirements of Article 6701m-1 is to increase the effectiveness of commission investigators in detecting and investigating criminal violations of state and federal environmental laws, thereby allowing investigative personnel to accomplish their tasks undetected and to provide a greater degree of safety for these investigators, the state property being used in the investigation, and a greater degree of case integrity.

§261.14. Conduct and Decorum in Commissioners' Meetings.

(a) Participants shall not approach the commissioners bench without first obtaining leave from the chairman, and must never lean on or go behind the bench.

(b) Participants should anticipate

any need to set up or move furniture, appliances, or easels, and shall make advance arrangements with the chief clerk.

(c) Participants should remain seated except to address the commissioners or to appropriately handle documents, exhibits, or physical evidence.

(d) Participants, except commission personnel, shall address the commissioners from the podium.

(e) Participants shall not ask argumentative questions, but may ask questions for informational or clarification purposes only.

§261.15. Rulings in Commission Evidentiary Hearings. In evidentiary hearings before the commission, the presiding officer or his designee shall make all procedural and evidentiary rulings.

§261.16. Docket System. The chief clerk shall assign a docket number to each matter scheduled for consideration during a commissioners' meeting or SOAH proceeding.

§261.17. Document Filing Procedures.

(a) All documents to be considered in a commissioners' meeting or by judges in contested cases shall be filed with the chief clerk. Hearing requests and responses shall also be filed with the chief clerk.

(b) If a docket number has been assigned, it should appear on the first page of all filed documents.

(c) Documents shall be filed by mail, facsimile, or hand delivery. If a person files a document by facsimile, he or she must file with the chief clerk the appropriate number of copies by mail or hand delivery within two days.

(d) The original or one copy of a document shall be filed, except for documents to be considered at a commissioners' meeting. For documents to be considered at a commissioners' meeting, 11 copies shall be filed.

(e) The time of filing is upon receipt by the chief clerk.

(f) The chief clerk shall accept all documents presented for filing. The chief clerk's acceptance is not a determination that the document meets filing deadlines or other requirements.

(g) If the requirements of this section are not followed, the commissioners may choose not to consider the documents. In the absence of a waiver under subsection (h) of this section, the commissioners may choose not to consider documents filed within two days of a commissioners' meeting.

(h) The judge may waive one or more of the requirements of this section, or impose additional filing requirements in the SOAH proceedings. The commissioners or general counsel may waive one or more of the requirements of this section, or impose additional filing requirements for commissioners' meetings.

(i) This section does not apply to offers of evidence during a hearing.

§261.18. Service on Judge, Parties, and Interested Persons.

(a) For responses to requests for hearing, copies of all documents filed with the chief clerk shall be served on the same day to the executive director, the public interest counsel, the applicant, and any persons filing hearing requests.

(b) For contested case hearings, copies of all documents filed with the chief clerk shall be served on the same day to the judge and all parties.

(c) All documents filed and served under this section shall include a certificate of service, certifying compliance with this section, and signed by the person or attorney filing the document. Failure to timely furnish copies may be grounds for withholding consideration of the document.

(d) Service by mail is complete upon deposit in the mail, properly addressed, with postage prepaid. Service by facsimile is complete when sent to the recipient's current facsimile number. Service by facsimile after 5:00 p.m. local time of the recipient shall be deemed served on the following day. Judges may impose different service requirements for SOAH proceedings.

§261.19. Computation of Time. In computing any period of time prescribed or allowed by regulations of the commission, by order of the commission, or by any applicable statute, the period shall begin on the day after the act, event, or default in question and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday on which the Office of the Chief Clerk is closed, in which event the period runs until the end of the next day that is neither a Saturday, Sunday, nor a legal holiday.

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 July 5, 1995.

TRD-9508167 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512)
239-1966

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Subchapter B. Expiration

• **30 TAC §261.30**

The new section is proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new section implements the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§261.30. Expiration. This chapter will expire on May 31, 1996.

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 July 5, 1995.

TRD-9508168 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512)
239-1966

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Chapter 263. General Rules

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §§263.1-263.37 and proposes new §§263.1-263.12, 263.21-263.28, and 263.40, concerning the TNRCC procedural rules. The proposed changes to the commission's procedural rules would implement recent legislation in Senate Bills (SB) 12, 741, and 1546. SB 12 directs the State Office of Administrative Hearings (SOAH) to conduct contested case hearings for the commission (other than hearings before one or more commissioners). SB 741 authorizes the commission to delegate to the executive director the authority to act on uncontested applications. SB 1546 requires the commission to adopt rules concerning whether a person is an "affected person" and is entitled to standing in a contested case hearing. The commission limited the scope of this review of the procedural rules so that the new rules may be finally adopted by September 1, 1995, which is the effective date of SB 12 and 1546.

In proposing this rule package, the TNRCC is attempting to limit any rule changes to those necessitated by recent legislation. Additionally, an attempt has been made to recodify

the current TNRCC practices and reorganize the procedural rules into a more logical format. No substantive change is intended by this recodification. Comment is specifically solicited on any changes in the recodification that appear to be substantive in nature. Comment is also solicited upon those sections that enact recent legislative changes in the agency's authority, and how these rules comport with the new legislation.

The TNRCC is continuing to review the procedural rules of the agency, with an eye towards providing efficient and understandable application review procedures. Additional changes to streamline and improve upon these rules are contemplated that current time limits do not allow to be incorporated into this rule package. Therefore, another review of these rules will begin after the final promulgation of this package (TNRCC Rule Log Number 95124-263-AD). The second review will focus upon general agency procedures and will allow broad discussion of all agency procedures and application processes. To provide a firm time frame for the next review, the current rule package, as proposed, will expire on May 31, 1996.

Before publication, the TNRCC sought informal comment on the proposed rules from approximately 60 people representing agency advisory groups, various interest groups, and regular practitioners before the agency. Due to the complexities of transferring contested cases to the purview of another state agency and the short time prior to the effective date of the legislation, the TNRCC sought this early, informal review of the proposed rules to ensure that no large issues or problems were overlooked or created. Many thorough and detailed comments were received. These comments helped the staff clarify some rules and correct many errors that crept into the first draft. The TNRCC would like to thank those who reviewed this draft package and submitted the many helpful comments: Comments received, but not addressed in this proposal, will be considered either in the response to comments in this rulemaking, or in the subsequent rule package.

The only significant change made in response to the early comments involved re-drafting this chapter, Subchapter A, regarding delegation of uncontested applications and approvals to the executive director. The TNRCC had attempted to draft a delegation section that codified existing TNRCC practice, which distinguishes between media. This approach necessitated maintaining procedural differences between actions on air permit applications, and all other types of actions. Due to the informal comments received, the TNRCC became convinced that there was a need to clarify the delegation of actions on air permit applications, as well as a need to create additional procedural similarity between the actions on air applications and actions on applications in other media. These changes are incorporated into this proposal.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a

result of enforcing or administering the sections. The transfer of responsibilities from the commission to SOAH is not anticipated to significantly affect the costs of the transferred hearing functions; therefore, no net impact to state government will result.

Mr. Minick 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 improvement in the hearings process for contested matters before the commission and enhanced consistency in the conduct of administrative proceedings for state agencies. There will be no effect on small businesses. There is no anticipated economic cost for persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held August 10, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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 August 11, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on August 11, 1995, will be considered by the commission prior to any final action on the proposal. Please mail written comments to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95124-263-AD. Please fax comments to (512) 239-5687. Copies of the proposed rules are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Randall Terrell at (512) 239-0577.

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.

• 30 TAC §§263.1-263.37

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and

duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The repeals implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

- §263.1. *Examiners.*
- §263.2. *Powers of the Examiner.*
- §263.3. *Substitution of Examiners.*
- §263.4. *Oath.*
- §263.5. *Appearance.*
- §263.6. *Failure to Appear.*
- §263.7. *Affidavit by Representative.*
- §263.8. *Attorney of Record.*
- §263.9. *Number of Counsel Heard.*
- §263.10. *Conduct and Decorum Generally.*
- §263.11. *Conduct of Counsel.*
- §263.12. *Conduct and Decorum in Commission Meetings and Hearings.*
- §263.13. *Disorderly Conduct.*
- §263.14. *Computation of Time.*
- §263.15. *Filing of Documents.*
- §263.16. *Extensions for Filing of Documents.*
- §263.17. *Amended and Supplemental Pleadings.*
- §263.18. *Motions.*
- §263.19. *Service by Mail or by Telephonic Document Transfer.*
- §263.20. *Consolidated Hearing.*
- §263.21. *Severance.*
- §263.22. *No Ex Parte Communications.*
- §263.23. *Utilizing Special Skills of the*

Commission.

- §263.24. *Official Hearings Reporter.*
- §263.25. *Requests for Hearings Reporter Services.*
- §263.26. *Cancellation of Hearings Reporter Services.*
- §263.27. *Assessment of Reporting and Transcription Costs.*
- §263.28. *Payment of Reporting or Transcription Assessment.*
- §263.29. *Transcript Correction.*
- §263.30. *Sale of Transcript Copies.*
- §263.31. *Audio Recording of Proceedings.*
- §263.32. *Informal Proceedings.*
- §263.33. *Burden of Proof.*
- §263.34. *Witness Fees.*
- §263.35. *Withdrawing the Application.*
- §263.36. *Appeal of Air Quality Permits.*
- §263.37. *Factors for Consideration in Calling Air Quality Hearings Prior to Issuance of Permit.*

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

Issued in Austin, Texas, on July 5, 1995.

TRD-9508169 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966



Chapter 263. Processing of Application, Evaluation of Request for Contested Case Hearing

Subchapter A. Final Approval by Executive Director

• 30 TAC §§263.1-263.12

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§263.1. Applicability.

(a) Sections 263.1-263.7 of this title (relating to Applicability; Executive Director Shall Review Application; Notice that Executive Director Will Issue Final Approval; Executive Director's Final Approval; Remand for Consideration by Executive Director; Motion for Reconsideration; and Eligibility of Executive Director) applies to applications for permits or other approvals listed in subsection (b) of this section, including applications for a new permit, or to renew, modify, amend, or transfer a permit. The subchapter also applies to applications which seek an order that has the effect of issuing, renewing, modifying, amending, or transferring a permit.

(b) The following applications shall be included:

- (1) water rights permits or certificates of adjudication;
- (2) wastewater discharge permits;
- (3) municipal solid waste and industrial and hazardous waste permits;
- (4) on-site waste water disposal system permits;
- (5) underground injection control permits;
- (6) radioactive waste or radioactive material permits or licenses;
- (7) weather modification measures permits;
- (8) certificates of convenience and necessity;
- (9) requests for extensions of time to commence or complete construction of a dam;

(10) water and wastewater utility rate matters under Texas Water Code, Chapters 12 or 13; and

(11) the creation of a district, or the issuance of bonds by a district, under the Texas Water Code, Chapters 50-63.

(c) Sections 263.1-263.7 of this title (relating to Applicability; Executive Director Shall Review Application; Notice that Executive Director Will Issue Final Approval; Executive Director's Final Approval; Remand for Consideration by Executive Director; Motion for Reconsideration; and Eligibility of Executive Director) do apply to:

- (1) applications for emergency or temporary orders;
- (2) applications for temporary permits;
- (3) applications that are part of a consolidated proceeding covering additional matters to which this subchapter does not apply; or
- (4) air quality permits.

§263.2. Executive Director Shall Review Application.

(a) The executive director shall review an application that is subject to §§263.1-263.7 of this title (relating to Applicability; Executive Director Shall Review Application; Notice that Executive Director Will Issue Final Approval; Executive Director's Final Approval; Remand for Consideration by Executive Director; Motion for Reconsideration; and Eligibility of Executive Director) and determine whether it meets the following requirements:

- (1) public notice of the application has been issued as required by law and commission rules, and the notice explained that the executive director will issue final approval of the application unless there is a protest or request for hearing filed with the chief clerk;
- (2) the application meets all relevant statutory and administrative criteria;
- (3) the application does not raise new issues that require the interpretation of commission policy;
- (4) the commission staff and public interest counsel do not raise objections; and
- (5) no timely protests or requests for hearing are filed with the chief clerk, or the application has become uncontested because the applicant and the persons who filed the protests or requests have agreed in writing to the action to be taken by the executive director. If parties have been named for a hearing, only the written agreement of the parties is needed.

(b) The executive director shall not issue final approval of an application if a timely protest or request for hearing is filed even though the commission has denied the protest or request under the procedure set forth in Subchapter B of this chapter. The executive director shall refer the application to the commission for final action. The executive director may issue final approval if the applicant and all persons who filed the protests or requests have agreed in writing to the action to be taken by the executive director.

§263.3. Notice that Executive Director Will Issue Final Approval. The chief clerk shall publish notice in the *Texas Register* that, under §§263.1-263.7 of this title (relating to Applicability; Executive Director Shall Review Application; Notice that Executive Director Will Issue Final Approval; Executive Director's Final Approval; Remand for Consideration by Executive Director; Motion for Reconsideration; and Eligibility of Executive Director), the executive director will issue final approval of the permit or other approval. The notice shall describe the deadline to file a motion for reconsideration. The notice may be published at the same time as other public notice required by law or commission rules.

§263.4. Executive Director's Final Approval.

(a) The executive director may issue final approval of an application if it meets the requirements of §263.2 and §263.3 of this title (relating to Executive Director Shall Review Application and Notice that Executive Director Will Issue Final Approval).

(b) The permit or other approval shall be effective when signed by the executive director.

§263.5. Remand for Consideration by Executive Director. At any time during the processing of an application, if all protests, objections, and requests for hearing concerning the application are withdrawn, the commissioners, or the judge if SOAH holds jurisdiction over the application, may remand the application for the executive director's consideration under §§263.1-263.7 of this title (relating to Applicability; Executive Director Shall Review Application; Notice that Executive Director Will Issue Final Approval; Executive Director's Final Approval; Remand for Consideration by Executive Director; Motion for Reconsideration; and Eligibility of Executive Director).

§263.6. Motion for Reconsideration.

(a) The applicant, public interest counsel, or other person may file with the

chief clerk a motion for reconsideration of the executive director's final approval of an application.

(b) A motion for reconsideration must be filed with the chief clerk not later than the 20th day after the date on which the chief clerk mailed to the applicant the signed permit or other approval. In addition to a specific motion for reconsideration, the commissioners shall consider as a motion for reconsideration any objection, protest, or request for hearing filed with the chief clerk not later than the 20th day.

(c) If the applicant is the only person who files a motion for reconsideration, the executive director shall evaluate the motion and may revise and reissue the permit or other approval. Before reissuance, the executive director must republish notice in the *Texas Register* under §263.3 of this title (relating to Notice that Executive Director Will Issue Final Approval), with a description of the revisions to the permit.

(d) If a motion for reconsideration is not acted on by the commissioners within 45 days after the permit or approval is signed, the motion shall be deemed overruled.

§263.7. Eligibility of Executive Director. Effective upon National Pollutant Discharge Elimination System (NPDES) delegation, the executive director may issue NPDES permits or other approvals under §§263.1-263.7 of this title (relating to Applicability; Executive Director Shall Review Application; Notice that Executive Director Will Issue Final Approval; Executive Director's Final Approval; Remand for Consideration by Executive Director; Motion for Reconsideration; and Eligibility of Executive Director) only if he or she complies with the eligibility requirements in 33 United States Code, §§1251-1387, as amended.

§263.8. Air Quality Permits.

(a) This section and §§263.9-263.12 of this title (relating to Air Quality Permits-Executive Director Shall Review Application; Permits-Executive Director's Final Approval; Air Quality Permits-Remand for Consideration by Executive Director; and Air Quality Permits-Motion for Reconsideration) apply to applications for air quality permits or other approvals under the Texas Health and Safety Code, §§382.051-382.055, including applications for a new permit, or to renew, modify, amend, or transfer a permit. This subchapter also applies to applications which seek an order which has the effect of issuing, renewing, modifying, amending, or transferring a permit.

(b) This section and §§263.8-263.12 of this title (relating to Air Quality Permits; Air Quality Permits-Executive Director Shall Review Application; Permits-Executive Director's Final Approval; Air Quality Permits-Remand for Consideration by Executive Director; and Air Quality Permits-Motion for Reconsideration) do not apply to:

- (1) applications for emergency orders;
- (2) applications that are part of a consolidated proceeding covering additional matters and to which this subchapter does not apply;
- (3) registrations for standard exemptions under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

§263.9. Air Quality Permits-Executive Director Shall Review Application.

(a) The executive director shall review an application which is subject to §§263.8-263.12 of this title (relating to Air Quality Permits; Air Quality Permits-Executive Director Shall Review Application; Permits-Executive Director's Final Approval; Air Quality Permits-Remand for Consideration by Executive Director; and Air Quality Permits-Motion for Reconsideration) and determine whether it meets the following requirements:

- (1) public notice of the application has been issued as required by law and commission rules;
- (2) the application meets all relevant statutory and administrative criteria;
- (3) the commission staff does not raise objections;
- (4) no timely requests for hearing are filed with the chief clerk, or the application has become uncontested because the applicant and the persons who filed the requests have agreed in writing to the action to be taken by the executive director.

(b) The executive director shall not issue final approval of an application if a timely request for hearing is filed even though the commission has denied the request pursuant to the procedures set forth in Subchapter B of this chapter (relating to Evaluation of Request for Contested Case Hearing, Referral of Application to State Office of Administration Hearings). The executive director shall refer the application to the commission for final action. The executive director may issue final approval if the applicant and all persons who filed the requests have agreed in writing to the action to be taken by the executive director.

§263.10. Air Quality Permits-Executive Director's Final Approval.

(a) The executive director may issue final approval of an application if it meets the requirements of §263.8 and §263.9 of this title (relating to Air Quality Permits and Air Quality Permits-Executive Director Shall Review Application).

(b) The permit or other approval is effective when signed by the executive director.

§263.11. Air Quality Permits-Remand for Consideration by Executive Director. At any time during the processing of an application, if all protests, objections, and requests for hearing concerning the application are withdrawn, the commission, or the judge if SOAH holds jurisdiction over the application, may remand the application for the executive director's consideration under §§263.8-263.12 of this title (relating to Air Quality Permits; Air Quality Permits-Executive Director Shall Review Application; Air Quality Permits-Executive Director's Final Approval; Air Quality Permits-Remand for Consideration by Executive Director; and Air Quality Permits-Motion for Reconsideration).

§263.12. Air Quality Permits-Motion for Reconsideration.

(a) An applicant or a person affected by a decision of the executive director, with the exception of a decision regarding a federal operating permit, may file with the chief clerk a motion for reconsideration of the executive director's final approval of an application. Any person filing a motion for reconsideration under this section must identify with specificity the issues that form the basis of the appeal.

(b) A motion for reconsideration must be filed with the chief clerk not later than the 30th day after the date the chief clerk mailed the signed permit or other approval to the applicant.

(c) If the applicant is the only person who files a motion for reconsideration, the executive director shall evaluate the motion and may revise and reissue the permit or other approval.

(d) If a motion for reconsideration is not acted on by the commission within 45 days after the permit or approval is signed, the motion shall be deemed overruled.

(e) A decision made by the executive director, including a permit issued by the executive director, is not affected by the filing of a motion for rehearing under this section unless expressly so ordered by the commissioners. A final order by the commission reversing or modifying the executive director's decision takes effect when it becomes final and appealable.

(f) Notwithstanding the provisions of this section, a person affected by a decision of the executive director regarding a federal operating permit under the Texas Clean Air Act, Health and Safety Code, §§382.051-382.055, may not appeal the decision to the commission. The person may:

(1) petition the administrator of the United States Environmental Protection Agency in accordance with rules adopted under the Health and Safety Code, §382.0563; or

(2) file a petition for judicial review under the Health and Safety Code, §382.032.

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 July 5, 1995.

TRD-9508170

Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

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**Subchapter B. Evaluation of
Request for Contested Case
Hearing, Referral of Appli-
cation to State Office of
Administrative Hearings**

• **30 TAC §§263.21-263.28**

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§263.21. Contested Case Hearing Required. If the executive director, a commissioner, the applicant, or, in the case of an air permit hearing, any of those persons or a state legislator, requests a contested case hearing concerning an application, the person making the request shall make the request to the chief clerk, who shall take the appropriate actions contemplated in §265.28 of this title (relating to Request for SOAH to Acquire Jurisdiction Over Case).

§263.22. Request for Hearing by Affected Person.

(a) When authorized by law, affected persons may request that a contested case hearing be held concerning an application.

(b) A request for hearing must be in writing and filed with the chief clerk. The request must:

(1) give the name, address, and telephone number of the person who files the request;

(2) identify the person's personal justiciable interest affected by the application;

(3) state a clear and unambiguous request for a contested case hearing; and

(4) provide other information required by the public notice of application.

(c) The deadline to file a request for a hearing will be specified in the public notice of the application.

(d) The chief clerk shall respond in writing to a request for hearing, protest, or other response to the notice of application to explain how the person may submit public comment to the executive director and how the person may seek alternative dispute resolution under commission rules.

§263.23. Review of Request for Hearing.

(a) The general counsel shall determine whether a request for a contested case hearing on an application meets the requirements of this subchapter.

(b) The chief clerk shall deliver to the general counsel a copy of all documents filed with the chief clerk in response to public notice of an application. The chief clerk shall also deliver or mail copies of the documents to the executive director, the public interest counsel, and the applicant.

(c) The executive director, the public interest counsel, and the applicant may submit a written response to the request for hearing by a deadline set by the general counsel. Any response shall be filed with the chief clerk, and served on the executive director, the public interest counsel, the applicant, and the person who filed the request. If the facts alleged in the request are challenged, the general counsel may require the person who filed the request to submit an affidavit or other competent evidence. The general counsel may also hold a meeting, in person or by telephone conference, at which he or she may discuss the request with representatives of the executive director, the public interest counsel, the applicant, and the persons who filed the requests.

(d) The general counsel shall evaluate whether a request for hearing meets the requirements of this subchapter and, if so, whether the application should be processed under the requirements of Chapter 265, Subchapter F of this title (relating to Special Procedures for Freezing the Process). Upon determining a request for hearing is valid, the general counsel shall direct the chief clerk concerning the notice of hearing, including a proper description of whether the requirements of Chapter 265, Subchapter F of this title apply. When evaluating whether the provisions of that subchapter should apply, the general counsel shall consider at a minimum: the number and sophistication of the parties or potential parties; the expected length of the hearing; and the complexity of the issues. The general counsel may allow the parties to present evidence and argument regarding this determination.

(e) If the general counsel determines that the request for a contested case hearing does not meet the requirements of this subchapter, the general counsel shall schedule the request and application for the commission's consideration during a commissioners' meeting. The commission shall determine whether the request for hearing meets the requirements of this subchapter. If the commission determines the request(s) for hearing do not meet the requirements of this subchapter, the commission may take action to approve or deny the application.

(f) If the general counsel or the commission determines that a request for a contested case hearing meets the requirements of this subchapter, the general counsel shall direct the chief clerk to refer the case for hearing under §263.28 of this title (relating to Request for SOAH to Acquire Jurisdiction Over Case).

§263.24. Substantive Requirements. A request for a contested case hearing must meet the following requirements:

(1) the request is made by an affected person; and

(2) the request is reasonable.

§263.25. Determination of Affected Person.

(a) Concerning any application, an affected person is one who has a personal justiciable interest related to a legal right, duty, privilege, power, or economic interest affected by the application. An interest common to members of the general public does not qualify as a personal justiciable interest.

(b) All relevant factors shall be considered, including the following:

(1) whether the interest claimed is one protected by the law under which the application will be considered;

(2) distance restrictions or other limitations imposed by law on the affected interest;

(3) whether a reasonable nexus exists between the interest claimed and the activity regulated;

(4) the health, safety, and use of property of the affected person; and

(5) use of the impacted natural resource by the affected person.

§263.26. Determination of Reasonableness of Request for Hearing. The determination of the reasonableness of a request for a hearing shall be based on the following:

(1) whether the request for a hearing is based solely on something other than concerns within the jurisdiction of the commission; and

(2) for air quality permits requests that are considered unreasonable, include a request concerning an amendment, modification, or renewal that would not result in an increase in allowable emissions and will not result in the emission of an air contaminant not previously emitted. The following shall also be considered:

(A) whether the project is an emissions reduction project including:

(i) whether there are no increases in emissions of any contaminants and the reduction project is not driven by a non-compliance situation; and

(ii) whether the project will have both emission reductions and incidental increases where the net effect is an emission reduction;

(B) whether the project is mandated by commission rule;

(C) the location of the proposed project;

(D) whether the applicant requests authority to substitute an equivalent or more efficient control device;

(E) whether the request for a contested case hearing is based solely on something other than concerns about air pollution;

(F) the extent to which the person requesting a hearing is likely to be impacted by the emissions; and

(G) the applicant's compliance history.

§263.27. Request for Contested Case Hearing by Group or Association. A group or association may request a contested case hearing only if the group or association meets all of the following requirements:

(1) one or more members of the group or association would otherwise have standing to request a hearing in their own right;

(2) the interests the group or association seeks to protect are germane to the organization's purpose; and

(3) neither the claim asserted nor the relief requested requires the participation of the individual members in the case.

§263.28. Request for SOAH to Acquire Jurisdiction Over Case. If the chief clerk receives authorization pursuant to this subchapter to refer an application to SOAH, the chief clerk shall take the following actions:

(1) file a Request for Setting of Hearing form, or Request for Assignment of Administrative Law Judge form, whichever is appropriate. The executive director shall prepare a list of issues or areas that must be addressed, which the chief clerk shall file with SOAH;

(2) deliver or mail notice of the referral of the application to the general counsel, the executive director, the public interest counsel, the applicant, the person or persons who requested a contested case hearing, and any other person who has filed with the chief clerk a written request that they be given notice of hearings. The notice shall contain instructions on the proper procedure to file documents in a case referred to SOAH; and

(3) issue public notice of the hearing as required by law, and in coordination with the policies and procedures of SOAH.

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 July 5, 1995.

TRD-9508171 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Subchapter C. Expiration

• 30 TAC §263.40

The new section is proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new section implements the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§263.40. Expiration. This chapter will expire on May 31, 1996.

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 July 5, 1995.

TRD-9508172 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Chapter 264. Alternative Dispute Resolution

• 30 TAC §§264.2, 264.3, 264.5-264.8, 264.10, 264.20

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §§264.2, 264.3, 264.5-264.8, and 264.10, and new §264.20, concerning the TNRCC procedural rules. The proposed changes to the commission's procedural rules would implement recent legislation in Senate Bills (SB) 12, 741, and 1546. SB 12 directs the State Office of Administrative Hearings (SOAH) to conduct contested case hearings for the commission (other than hearings before one or more commissioners). SB 741 authorizes the commission to delegate to the executive director the authority to act on uncontested applications. SB 1546 requires the commission to adopt rules concerning whether a person is an "affected person" and is entitled to standing in a contested case hearing. The commission limited the scope of this review of the procedural rules so that the new rules may be finally adopted by September 1, 1995, which is the effective date of SB 12 and 1546.

In proposing this rule package, the TNRCC is attempting to limit any rule changes to those necessitated by recent legislation. Additionally, an attempt has been made to recodify the current TNRCC practices and reorganize the procedural rules into a more logical format. No substantive change is intended by

this recodification. Comment is specifically solicited on any changes in the recodification that appear to be substantive in nature. Comment is also solicited upon those sections that enact recent legislative changes in the agency's authority, and how these rules comport with the new legislation.

The TNRCC is continuing to review the procedural rules of the agency, with an eye towards providing efficient and understandable application review procedures. Additional changes to streamline and improve upon these rules are contemplated that current time limits do not allow to be incorporated into this rule package. Therefore, another review of these rules will begin after the final promulgation of this package (TNRCC Rule Log Number 95124-263-AD). The second review will focus upon general agency procedures and will allow broad discussion of all agency procedures and application processes. To provide a firm time frame for the next review, the current rule package, as proposed, will expire on May 31, 1996.

Before publication, the TNRCC sought informal comment on the proposed rules from approximately 60 people representing agency advisory groups, various interest groups, and regular practitioners before the agency. Due to the complexities of transferring contested cases to the purview of another state agency and the short time prior to the effective date of the legislation, the TNRCC sought this early, informal review of the proposed rules to ensure that no large issues or problems were overlooked or created. Many thorough and detailed comments were received. These comments helped the staff clarify some rules and correct many errors that crept into the first draft. The TNRCC would like to thank those who reviewed this draft package and submitted the many helpful comments. Comments received, but not addressed in this proposal, will be considered either in the response to comments in this rulemaking, or in the subsequent rule package.

The only significant change made in response to the early comments involved re-drafting Chapter 263, Subchapter A, regarding delegation of uncontested applications and approvals to the executive director. The TNRCC had attempted to draft a delegation section that codified existing TNRCC practice, which distinguishes between media. This approach necessitated maintaining procedural differences between actions on air permit applications, and all other types of actions. Due to the informal comments received, the TNRCC became convinced that there was a need to clarify the delegation of actions on air permit applications, as well as a need to create additional procedural similarity between the actions on air applications and actions on applications in other media. These changes are incorporated into this proposal.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections. The transfer of responsibilities from the commission to SOAH is not anticipated to

significantly affect the costs of the transferred hearing functions; therefore, no net impact to state government will result.

Mr. Minick 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 improvement in the hearings process for contested matters before the commission and enhanced consistency in the conduct of administrative proceedings for state agencies. There will be no effect on small businesses. There is no anticipated economic cost for persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held August 10, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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 August 11, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on August 11, 1995, will be considered by the commission prior to any final action on the proposal. Please mail written comments to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95124-263-AD. Please fax comments to (512) 239-5687. Copies of the proposed rules are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Randall Terrell at (512) 239-0577.

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.

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The amendments implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

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

Commission—The Texas Natural Resource Conservation Commission [Texas Water Commission]. When used in connection with a hearing, the word "commission" includes any judge [examiner] assigned to the proceeding.

Judge [Examiner]—An administrative law judge [or hearing examiner] employed by SOAH [commission in the Office of Hearing Examiners].

Contested [Contested] matter—A request for a license, permit, order, or other formal authorization from the commission which is opposed by an affected person.

SOAH—State Office of Administrative Hearings.

§264.3. Informal Disposition of Protested/Contested Matters. Unless precluded by law, informal disposition may be made of any protested or contested matter by stipulation, consent order, agreed settlement, mediation, or default. [However, this chapter does not apply to enforcement cases.]

§264.5. Appointment of Mediator.

(a) For each [contested] matter which has been referred for resolution through alternative dispute resolution procedures, the alternative dispute resolution director shall assign a mediator, from the pool of mediators employed by the commission, to facilitate the informal disposition of such contested matter. The alternative dispute resolution director may assign a substitute or additional mediator to a proceeding without the necessity of duplicating any duty or function performed by the previous mediator.

(b) A mediator who is not a commission or SOAH employee may be used for the alternative dispute resolution procedures provided that:

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

[(3) the alternative dispute resolution director agrees to the substitution and selection; and]

(3)[(4)] the outside mediator agrees to be subject to the direction of the commission's alternative dispute resolution director and also subject to all time limits imposed by the director, the judge [examiner], statute, or regulation.

(c) Whenever an outside mediator is used, the following shall apply.

(1) Any governmental subdivision or entity that is a statutory party to the hearing, such as the commission's executive director and public interest counsel[, or the Texas Air Control Board], is prohibited from paying for the outside mediator.

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

§264.6. Mediator Pool: Qualifications.

(a) The commission shall establish a pool of mediators to resolve contested matters through alternative dispute resolution procedures.

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

(b) If the mediator is [an administrative law] a judge or a hearing examiner of the commission, that person will not also sit as the judge [presiding examiner] for the case.

§264.7. Time Period.

(a) (No change.)

(b) Formal alternative dispute resolution. In contested matters concerning applications filed pursuant to the Texas Water Code, Chapters 26 and 27, and the Texas Health and Safety Code, Chapter 361, formal alternative dispute resolution procedures shall not be employed until the executive director has completed processing the subject application or petition and has issued a draft permit or determined that a draft permit should not be issued. [The provisions of this subsection shall apply to complex hearings as defined in §274.2 of this title (relating to Definitions).] Upon unanimous motion of the parties and at the discretion of the judge [examiner], the provisions of this subsection may apply to contested hearings concerning applications filed pursuant to the Texas Water Code, Chapters 26 and 27, and the Texas Health and Safety Code, Chapter 361, but which are not subject to the provisions of Chapter 274 of this title (relating to Expediting the Complex Hearings)]. In such cases, it is within the discretion of the judge [examiner] to continue the hearing to allow the use of formal alternative dispute resolution procedures.

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

(4) It is within the discretion of the judge [examiner], upon a unanimous motion of the parties, to continue the hearing for a reasonable period of time not to exceed 14 days, to allow alternative dispute resolution procedures to continue towards a settlement or towards agreeing to contested issues.

§264.8. Stipulations. When alternative dispute resolution procedures do not result in the full settlement of a contested matter, the parties, in conjunction with the assigned mediator, shall limit the contested issues through the entry of written stipulations. Such stipulations shall be forwarded or formally presented to the judge [examiner] assigned to conduct the hearing on the merits for inclusion in the hearing record.

§264.10. Confidentiality of Communications in Alternative Dispute Resolution Procedures.

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

(d) If this section conflicts with other legal requirements for disclosure of communications or materials, the issue of confidentiality may be presented to the judge [examiner] to determine, in camera, whether the facts, circumstances, and the context of the communications or materials sought to be disclosed warrant a protective order of the judge [examiner] or whether the communications or materials are subject to disclosure.

(e) The mediator may not communicate with the judge [presiding examiner] or any commissioner, directly or indirectly, on any aspect of Alternative Dispute Resolution negotiations which are deemed confidential by this section.

§264.20. Expiration. This chapter will expire on May 31, 1996.

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 July 5, 1995.

TRD-9508174 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

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Chapter 265. Procedures
Before Public Hearings

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §§265.1-265.9, 265.10-265.20-265.24, 265.26-265.51, 265.53-265.55 and proposes new §§265.1, 265.2, 265.21-265.30, 265.41-265.48, 265.61-265.73, 265.81-265.88, 265.101-265.104, 265.106-265.113, 265.121-265. 134, 265.141-265.145, 265.151-265.166, and 265.170, concerning the TNRCC procedural rules. The proposed changes to the commission's procedural rules would implement recent legislation in Senate Bills (SB) 12, 741, and 1546. SB 12 directs the State Office of Administrative Hearings (SOAH) to conduct contested case hearings for the commission (other than hearings before one or more commissioners). SB 741 authorizes the commission to delegate to the executive director the authority to act on uncontested applications. SB 1546 requires the commission to adopt rules concerning whether a person is an "affected person" and is entitled to standing in a contested case hearing. The commission limited the scope of

this review of the procedural rules so that the new rules may be finally adopted by September 1, 1995, which is the effective date of SB 12 and 1546.

In proposing this rule package, the TNRCC is attempting to limit any rule changes to those necessitated by recent legislation. Additionally, an attempt has been made to recodify the current TNRCC practices and reorganize the procedural rules into a more logical format. No substantive change is intended by this recodification. Comment is specifically solicited on any changes in the recodification that appear to be substantive in nature. Comment is also solicited upon those sections that enact recent legislative changes in the agency's authority, and how these rules comport with the new legislation.

The TNRCC is continuing to review the procedural rules of the agency, with an eye towards providing efficient and understandable application review procedures. Additional changes to streamline and improve upon these rules are contemplated that current time limits do not allow to be incorporated into this rule package. Therefore, another review of these rules will begin after the final promulgation of this package (TNRCC Rule Log Number 95124-263-AD). The second review will focus upon general agency procedures and will allow broad discussion of all agency procedures and application processes. To provide a firm time frame for the next review, the current rule package, as proposed, will expire on May 31, 1996.

Before publication, the TNRCC sought informal comment on the proposed rules from approximately 60 people representing agency advisory groups, various interest groups, and regular practitioners before the agency. Due to the complexities of transferring contested cases to the purview of another state agency and the short time prior to the effective date of the legislation, the TNRCC sought this early, informal review of the proposed rules to ensure that no large issues or problems were overlooked or created. Many thorough and detailed comments were received. These comments helped the staff clarify some rules and correct many errors that crept into the first draft. The TNRCC would like to thank those who reviewed this draft package and submitted the many helpful comments. Comments received, but not addressed in this proposal, will be considered either in the response to comments in this rulemaking, or in the subsequent rule package.

The only significant change made in response to the early comments involved re-drafting Chapter 263, Subchapter A, regarding delegation of uncontested applications and approvals to the executive director. The TNRCC had attempted to draft a delegation section that codified existing TNRCC practice, which distinguishes between media. This approach necessitated maintaining procedural differences between actions on air permit applications, and all other types of actions. Due to the informal comments received, the TNRCC became convinced that there was a need to clarify the delegation of actions on air permit applications, as well as a need to create additional procedural similarity between the actions on air applications

and actions on applications in other media. These changes are incorporated into this proposal.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no significant fiscal implications for state or local government as a result of enforcing or administering the sections. The transfer of responsibilities from the commission to SOAH is not anticipated to significantly affect the costs of the transferred hearing functions; therefore, no net impact to state government will result.

Mr. Minick 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 improvement in the hearings process for contested matters before the commission and enhanced consistency in the conduct of administrative proceedings for state agencies. There will be no effect on small businesses. There is no anticipated economic cost for persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held August 10, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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 August 11, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on August 11, 1995, will be considered by the commission prior to any final action on the proposal. Please mail written comments to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95124-263-AD. Please fax comments to (512) 239-5687. Copies of the proposed rules are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, contact Randall Terrell at (512) 239-0577.

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.

• 30 TAC §§265.1-265.9

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245,

James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The repeals implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

- §265.1. *Initial Pleadings.*
- §265.2. *Executive Director Forwards Initial Pleadings to the Commission.*
- §265.3. *Acceptance for Filing.*
- §265.4. *Affidavit of Publication.*
- §265.5. *Effect of Failure to Furnish Affidavit.*
- §265.6. *Conference Before Hearing.*
- §265.7. *Recordation of Conference Action.*
- §265.8. *Prefiled Testimony and Exhibits.*
- §265.9. *Written Protest.*

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 July 5, 1995.

TRD-9508175	Lydia Gonzalez-Gromatzky Acting Director, Legal Services Division Texas Natural Resource Conservation Commission
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Proposed date of adoption: August 30, 1995
For further information, please call: (512) 239-1966

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Chapter 265. Contested Case Hearings

Subchapter A. Definitions

• 30 TAC §§265.1, §265.2

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and

other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

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

APA—the Administrative Procedure Act (Government Code, Chapter 2001).

Applicant or petitioner—A party seeking a license, permit, order, or rule from the commission.

Chief clerk—The chief clerk of the commission or any authorized individual designated by the chief clerk to act in his or her place.

Commission—The Texas Natural Resource Conservation Commission. When used in connection with a hearing which may be conducted by SOAH, the word commission includes any judge assigned to the proceeding.

Complainant—Any party who has filed a signed, written complaint with the commission against any party subject to the jurisdiction of the commission.

Executive director—The executive director of the commission, or any authorized individual designated by the executive director to act in his or her place.

General counsel—The general counsel of the commission, or any authorized individual designated by the general counsel to act in his or her place.

Judge—An administrative law judge employed by SOAH.

Intervenor—Any party otherwise not defined.

License—The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

Licensing—The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Party—Each person or agency named or admitted as a party.

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

Petitioner—See Applicant.

Pleadings—Written allegations filed by parties concerning their respective claims, such as applications, protests, complaints, claims, and other similar documents, including those submitted by the executive director and the public interest counsel.

Presiding officer—The chairman or acting chairman of the commission. When used in connection with a proceeding conducted by a judge, "presiding officer"

means the judge, or if more than one judge is conducting a proceeding, the judge so designated.

Protestant—Any party opposing, in whole or in part, an application or petition filed with the commission.

Register—The Texas Register.

Respondent—Any party against whom any complaint has been filed.

SOAH—State Office of Administrative Hearings.

§265.2. Evidentiary Hearing Held by Commissioners. When an evidentiary hearing is held before one or more commissioners, the rules of this chapter will apply. "Judge" shall mean the commissioner presiding over the hearing.

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 July 5, 1995.

TRD-9508180 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Subchapter B. General Discovery Rules

• 30 TAC §§265.10-265.20

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The repeals implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.10. Discovery.

§265.11. Forms of Discovery.

§265.12. Scope of Discovery.

§265.13. Exceptions.

§265.14. Protective Orders.

§265.15. Duty to Supplement.

§265.16. Discovery of Documents and Things.

§265.17. Interrogatories to Parties.

§265.18. Admission of Facts and Genuineness of Document.

§265.19. Requests for Information.

§265.20. Sanctions for Failure to Comply with Discovery Ruling.

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 July 5, 1995.

TRD-9508176 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Subchapter C. Special Procedures for Freezing the Process

• 30 TAC §§265.21-265.24, 265.26-265.35

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The repeals implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.21. Applicability.

§265.22. Procedures Applicable to the Executive Director and Public Interest Council.

§265.23. First Preliminary Hearing.

§265.24. Discovery Schedule and Freezing the Process for Hearings Conducted Pursuant to this Subchapter.

§265.26. Identification of Witnesses.

§265.27. Limiting the Number of Witnesses.

§265.28. Rebuttal.

§265.29. Prefiled Testimony.

§265.30. Supplementing Prefiled Testimony and Objections.

§265.31. Subpoena of Witnesses and for the Production of Documentary Evidence.

§265.32. Form of Subpoena.

§265.33. Witness Shall Attend Hearing.

§265.34. Evidence.

§265.35. Additional Testimony.

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 July 5, 1995.

TRD-9508177 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Chapter 265. Contested Case Hearings

Subchapter B. General Rules

• 30 TAC §§265.21-265.30

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.21. *Administrative Law Judges.*

(a) The commission delegates to judges employed by the Natural Resource Conservation Division of SOAH the authority to preside at public hearings designated by the commission and to report to the commission on such hearings in the manner provided by law. Proceedings referred by the commission to SOAH will be assigned to judges by the chief administrative law judge. When the chief administrative law judge assigns more than one judge to hear a particular proceeding, one of the judges will be designated as the presiding judge and shall resolve all procedural and evidentiary questions.

(b) The presiding judge shall have authority to do the following:

- (1) set hearing dates;
- (2) convene the hearing at the time and place specified in the notice for the public hearing;
- (3) establish the jurisdiction of the commission concerning the subject matter under consideration;
- (4) rule on motions and on the admissibility of evidence and amendments to pleadings;
- (5) designate and align parties and establish the order for presentation of evidence;
- (6) administer oaths to all persons presenting testimony in a manner calculated to impress the witness with the importance and solemnity of the promise to adhere to the truth;
- (7) examine witnesses;
- (8) issue subpoenas when required to compel the attendance of witnesses, or the production of papers and documents related to the hearing;
- (9) commission and require the taking of depositions, to compel other forms of discovery in accordance with these sections, and to issue sanctions under these sections for noncompliance with discovery rulings;
- (10) set prehearing conferences and require prehearing orders;
- (11) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of presentation without prejudicing any rights of parties to the proceeding;
- (12) limit testimony to matters under the commission's jurisdiction;
- (13) recess any hearing from time to time and from place to place;

(14) reopen the record of a hearing, prior to issuance of a proposal for decision, for additional evidence where necessary to make the record more complete; and

(15) exercise any other appropriate powers necessary or convenient to carry out his or her responsibilities.

§265.22. *Substitution of Judges.* The chief administrative law judge may, for good cause, assign a substitute or additional judge to a proceeding without the necessity of duplicating any duty or function performed by the previous judge.

§265.23. *Representation at Hearings.*

(a) Attorney of record. An attorney of record is one who has appeared in a proceeding or whose name is subscribed to any application or other pleading or to some agreement of the parties filed in the proceedings. The attorney shall be considered to have continued as attorney of record to the end of the proceeding with the commission unless there is a statement to the contrary appearing in the record.

(b) Number of counsel heard. Not more than one counsel or representative for each party or aligned group of parties shall be heard on any question or in the hearing except upon special leave of the judge.

(c) Conduct of counsel.

(1) Counsel shall observe the letter and spirit of all canons of ethics, including those concerning improper ex parte communications with the commissioners and judges.

(2) Counsel shall advise their clients and witnesses of applicable requirements of conduct and decorum.

(3) All objections, arguments, and other comments by counsel shall be directed to the judge and not to other participants.

§265.24. *Conduct and Decorum.*

(a) Generally.

(1) All persons, parties, representatives, witnesses, and other participants in a commission proceeding shall conduct themselves with proper dignity, courtesy, and respect for the commission, judge, parties, witnesses, and all other participants. No participant shall engage in any activity that interferes with commissioners' meetings or proceedings.

(2) All participants in commission proceedings shall refer to and address other participants respectfully by using appropriate titles and surnames.

(3) All participants shall enter the meeting or hearing room before the scheduled time for each session. When the judge calls the meeting or hearing to order, complete order shall be observed.

(4) All participants shall, and observers may, register their presence by completing a registration form and submitting it to the judge.

(5) At the discretion of the judge, there shall be no smoking in commissioners' meetings or proceedings.

(6) All participants shall dress appropriately for a commission proceeding. Attorneys shall dress the same as for an appearance in a district court of this state.

(b) Disorderly conduct. No person may conduct himself in a commission proceeding in any manner which interferes with the orderly and dignified conduct of commission business. In a hearing before a judge, the judge shall first warn a person violating this section to refrain from the specific conduct in violation. Upon further violation of this section by the same person, the judge may exclude that person from the proceeding for such time and under such conditions as are necessary to correct the situation. Violation of this section shall also be sufficient cause for the Judge to recess the hearing. Subject to the provisions of §265.71 of this title (relating to Interlocutory Appeals and Certified Questions), no objections to any action taken by the examiner under this section will be considered by the commission until it considers the proposal for decision.

§265.25. *Consolidation and Severance.*

(a) Consolidation. Consistent with notices required by law, the judge may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare. The commission may, when it refers matters to SOAH, direct that the matters be consolidated for hearing.

(b) Severance. The judge may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

§265.26. *Ex Parte Communications.*

(a) No ex parte communications. During the pendency of a contested case either at the State Office of Administrative Hearings or before the commission, no party, person, or their representatives shall communicate directly or indirectly with any commissioner or the judge concerning any issue of fact or law relative to the pending case, except on notice and opportunity for all parties to participate.

(b) Utilizing special skills of the commission. The judge may seek the special skills or knowledge of commission staff in evaluating the evidence in a contested case. The judge shall follow the following procedure.

(1) The judge shall issue an order, copied to all parties, asking the executive director to assign a staff person with expertise who has not participated in the proceeding or in the processing of the matter being considered for potential consultation.

(2) All communications between the designated staff expert and the judge shall be either recorded or in writing, and all such communications submitted to or considered by the judge shall be made available as public records when the proposal for decision is issued.

§265.27. Burden of Proof. In any proceeding other than a proceeding involving a proposed change of rates, the burden of proof is on the moving party. The burden of proof in a proceeding involving a proposed change of rates is governed by §291.12 of this title (relating to Burden of Proof).

§265.28. Audio Recording of Proceedings. The judge shall cause each proceeding to be recorded on audio cassette tape. Any person may obtain a copy of the tape recording from the judge or, after conclusion of the hearing, may submit a request to the chief clerk accompanied by payment of all reproduction costs.

§265.29. Witness Fees.

(a) A person who is not a party and who is subpoenaed or otherwise compelled to attend any hearing or proceeding to testify, to give a deposition, or to produce books, records, papers, or other objects that may be necessary and proper for the purpose of the proceeding pursuant to this section is entitled to receive: mileage reimbursement, at the current rate of mileage reimbursement for state employees as established by the legislature, for going to, and returning from the place of the hearing or the place where the deposition is taken, if the place is more than 25 miles from the person's place of residence; and a minimum fee of \$70 or the amount equal to state employees' current maximum travel reimbursement for overnight lodging plus meals as established by the legislature, whichever is greater, for each day or part of a day the person is necessarily present as a witness or deponent. This fee shall be paid to the witness or deponent even if overnight lodging is not used, and the fee shall not be prorated for parts of days.

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

§265.30. Transcriptions of Hearings.

(a) Official hearings reporter. Consistent with its court reporting services agreement, the commission will provide a certified shorthand hearings reporter to make a verbatim record and transcript of any commissioners' meeting, hearing, or other proceeding upon the timely request of any person. The hearings reporter provided by the commission shall be the official reporter for commission proceedings. If the commission does not provide a hearings reporter a party may, at his own expense, furnish a certified shorthand hearings reporter who the commission may designate as the official reporter for the proceeding.

(b) Requests for hearings reporter services.

(1) A request for a verbatim record or transcript of a proceeding may be submitted at any time, but shall be submitted in writing to the chief clerk of the commission or the judge and shall specify the name, mailing address, and daytime telephone number of the requester; the name and date of the commission proceeding; and a statement of whether a transcript is requested. A request for a transcript of a proceeding already reported may be made directly to the hearings reporter.

(2) A person requesting a verbatim record without a transcript of a proceeding shall pay the applicable reporting fees in the commission's court reporting services agreement.

(3) A person requesting a transcript of a proceeding shall pay for at least an original and two copies of the transcript in addition to any applicable reporting fees in accordance with the commission's court reporting services agreement. The hearings reporter shall provide the commission the original and one copy of the transcript free of charge.

(4) Upon his or her own motion, the judge may request a verbatim record and an original and two copies of a transcript of a proceeding.

(5) In hearings expected to last three days or more, the applicant may be required to pay for the transcript up front, by the judge, subject to reimbursement from other parties upon assessment of costs.

(c) Cancellation of hearings reporter services. A person who causes the judge to cancel a hearing or meeting for

which a verbatim record or transcript has been requested is responsible for paying the hearings reporter, upon demand, the full daily reporting fee in the commission's court reporting services agreement unless the cancellation occurs more than 24 hours prior to the scheduled beginning of the hearing or meeting.

(d) Assessment of reporting and transcription costs.

(1) Upon the timely filed motion of a party or upon its own motion, the commission may assess reporting and transcription costs to one or more of the parties participating in the proceeding. The commission shall consider the following factors in assessing reporting and transcription costs:

(A) the party who requested the transcript;

(B) the financial ability of the party to pay the costs;

(C) the extent to which the party participated in the hearing;

(D) the relative benefits to the various parties of having a transcript;

(E) the budgetary constraints of a state or federal administrative agency participating in the proceeding;

(F) in rate proceedings, the extent to which the expense of the rate proceeding is included in the utility's allowable expenses; and

(G) any other factor which is relevant to a just and reasonable assessment of costs.

(2) The commission will not assess reporting or transcription costs to statutory parties who are precluded by law from appealing any ruling, decision, or other act of the commission.

(3) In any proceeding where the assessment of reporting or transcription costs is an issue, the judge shall provide the parties an opportunity to present evidence and argument on the issue. A judge shall include in the proposal for decision a recommendation for the assessment of costs.

(4) The parties may agree upon the division or assessment of reporting and transcription costs. The terms of such an agreement shall be made part of the record of the proceeding.

(e) Payment of reporting or transcription assessment.

(1) Each party assessed a reporting or transcription cost in a commission proceeding shall pay the assessment in full within ten days after the commission's order is final, as provided by the APA. The assessment shall be paid by check payable to the order of the hearings reporter firm that reports or transcribes the proceeding, or as otherwise ordered by the commission. Payment shall be remitted to the chief clerk of the commission or as otherwise ordered by the commission.

(2) If a party fails to pay the assessment in accordance with subsection (a) of this section the commission may forward the matter to the attorney general of Texas for prosecution and collection.

(3) Upon a party's filing its sworn motion showing good cause for failure to pay its assessment in accordance with subsection (a) of this section, accompanied by tender of payment of the party's assessment in full, the commission may grant an exception to the time within which payment must have been made under subsection (a) of this section, accept the payment, and otherwise enforce its assessment.

(f) Sale of transcript copies. The hearings reporter may sell copies of a transcript of a commission proceeding in accordance with the commission's court reporting services agreement, but the commission shall not be precluded from complying with the Open Records Act, Texas Government Code, Chapter 552.

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

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TRD-9508181 Lydia Gonzalez-Gromatzky
Acting Director, Legal
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For further information, please call: (512) 239-1966

Chapter 265. Procedures Before Public Hearings

Subchapter D. Discovery

• 30 TAC §§265.36-265.49

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and

the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The repeals implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.36. *Discovery in Hearings Held under Subchapter C.*

§265.37. *Forms and Scope of Discovery; Protective Orders; Supplementation of Responses.*

§265.38. *Stipulations Regarding Discovery Procedure.*

§265.39. *Discovery and Production of Documents and Things for Inspection, Copying, or Photography.*

§265.40. *Interrogatories to Parties.*

§265.41. *Requests for Admissions.*

§265.42. *Depositions.*

§265.43. *Issuance of Commission to Take Deposition.*

§265.44. *Witness Shall Comply with Discovery.*

§265.45. *Non-stenographic Recording; Deposition by Telephone.*

§265.46. *Failure of Party or Witness to Attend or to Serve Subpoena; Expenses.*

§265.47. *Deposition Examination. Cross-examination, and Objections.*

§265.48. *Submission to Witness; Changes; Signing.*

§265.49. *Use of Deposition Transcripts in Commission Proceedings.*

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

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Chapter 265. Contested Case Hearings

Subchapter C. General Procedures

• 30 TAC §§265.41-265.48

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.41. *Informal Proceeding/Remand to Executive Director.*

(a) A commission proceeding may be conducted as an informal proceeding when in the judgment of the judge the conduct of a proceeding under informal procedures will:

(1) result in savings of time or costs to all parties;

(2) lead to a negotiated or agreed settlement of facts or issues in controversy; and

(3) not prejudice the rights of any party.

(b) If, during an informal proceeding, all parties reach a negotiated or agreed settlement which in the judgment of the judge settles all facts or issues in controversy, the proceeding shall not be a contested case under the APA and no proposal for decision nor detailed findings of fact and conclusions of law will be made.

(c) If the parties do not reach a negotiated or agreed settlement of all facts and issues in controversy, the judge may adjourn the informal proceeding and convene a contested case hearing under standard hearing procedures as otherwise provided for in commission regulations.

§265.42. *Withdrawing the Application.*

(a) Absent commission authorization or agreement of the parties, an applicant may not withdraw his application without prejudice once the judge has taken jurisdiction over the application. The judge will forward the request to withdraw the application and his recommendation to the commission.

(b) In addition to commission authorization or agreement of the parties, the

application may also be withdrawn without prejudice if the applicant reimburses the other parties all costs the other parties have incurred in the permitting process for the subject application.

§265.43. Procedure Before Preliminary Hearing.

(a) Conference before preliminary hearing.

(1) At the discretion of the judge, a conference before hearing may be held at a time and place stated in the notice. If notice of the conference is not given in the notice of public hearing, notice of the conference shall be mailed at least ten days prior to the conference or the conference may be held at the public hearing date, time, and place stated in the notice of public hearing. If notice of public hearing is required to be published, notice of a conference to be held prior to the initial public hearing date shall be published at least ten days prior to the conference.

(2) A conference may be held to consider the following:

(A) the formulation and simplification of issues;

(B) the necessity or desirability of amending pleadings;

(C) the possibility of making admissions or stipulations;

(D) the procedure at the hearing;

(E) the identification of and specification of the number of witnesses;

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

(G) the designation of parties;

(H) the scheduling of discovery; and

(I) any other matters which may expedite the hearing or otherwise facilitate the hearing process.

(3) At the discretion of the judge, additional conferences before the hearing may be scheduled and held without the necessity of publication.

(b) Recordation of conference action. As determined by the judge, action taken at the conference shall be reduced to writing and made a part of the record or a statement thereof shall be made on the record at the close of the conference or at the hearing. After a prehearing conference, the

judge may make appropriate rulings concerning matters discussed at the conference.

§265.44. Initial Pleadings. Applications, petitions, complaints, and other pleadings which initiate new proceedings before the commission should be delivered to the executive director, together with all related materials, for initial processing and review in accordance with the rules of the commission.

§265.45. Executive Director Forwards Initial Pleadings to the Commission. After an application, petition, or other document initiating a new proceeding and requiring action by the commission is processed, the executive director shall forward the pleading to the chief clerk for disposition. Pleadings, including those of the executive director and the public interest counsel, shall be accompanied by an agenda action request if the proceeding is to be immediately set before the commission.

§265.46. Acceptance for Filing. The acceptance of a pleading for filing is not a final decision of acceptance, but is a preliminary and rebuttable determination that the pleading meets the minimum standards required by law in order to be ready for a public hearing.

§265.47. Affidavit of Publication. Any notice which an applicant is required to publish shall be published in the manner required by law and as directed by the commission. The applicant shall cause the publisher of the notice to furnish a tear sheet copy of the published notice and a publisher's affidavit which the applicant shall file with the commission as quickly as possible following publication, but not less than ten days before the scheduled date of action or date of hearing on the application. The affidavit shall state the date or dates on which the notice was published and the pertinent counties in which the newspaper is of general circulation. The publisher's affidavit and tear sheet shall be considered prima facie evidence of publication.

§265.48. Effect of Failure to Furnish Affidavit. Failure to furnish evidence of publication of the notice in the manner required may be deemed evidence of abandonment of the application. If the affidavit of publication is not timely filed, the scheduled action or hearing on the application may be postponed and action withheld pending receipt of the affidavit. The application may be dismissed without prejudice if the affidavit of publication is not received within a reasonable time.

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

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**Chapter 265. Procedures
Before Public Hearings**

Subchapter E. Sanctions

• 30 TAC §§265.50, 265.51,
265.53-265.55

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

The repeals are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The repeals implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.50. Abuse of Discovery; Sanctions.

§265.51. Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions.

§265.53. Failure to Identify or Limit Witnesses.

§265.54. Failure to Identify Testimony.

§265.55. Barring Exhibits.

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

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Chapter 265. Contested Case Hearings

Subchapter D. Hearing Procedures

• 30 TAC §§265.61-265.73

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.61. Designation of Parties.

(a) Determination by judge. All parties to a proceeding shall be determined at the first day of hearing or at such time as may be designated by the judge. In order to be admitted as a party, a person must have a justiciable interest in the matter being considered and must, unless the person is specifically named in the matter being considered, appear at the proceeding in person or by representative and seek to be admitted as a party. Regardless of the designations of pleadings, the parties and their pleadings shall be accorded their appropriate alignment in the proceeding. After parties are designated, no other person will be admitted as a party except upon finding of good cause and extenuating circumstances and that the hearing in progress will not be unreasonably delayed. At the discretion of the judge, persons who are not parties may be permitted to make or file statements.

(b) Statutory parties.

(1) The executive director and public interest counsel of the commission are designated as parties to all commission proceedings.

(2) The Texas Water Development Board shall be designated a party to any commission proceeding in which the board requests party status.

(3) The Texas Parks and Wildlife Department shall be designated a party in commission proceedings on applications for permits to store, take, or divert water if the department requests party status.

(4) The statutory parties shall have such procedural rights and obligations as may be specified by applicable statutes and rules of the commission.

(c) Alignment of participants. Participants (both party and non-party) may be aligned according to the nature of the pro-

ceeding and their relationship to it. The judge may require participants of an aligned class to select one or more persons to represent them in the proceeding.

(d) Effect of postponement. If a hearing on an application is postponed for any reason, including the applicant's failure to provide notice as required by law, any person designated as a party retains party status.

§265.62. *Persons Not Parties.* Persons who are not designated as parties to the proceeding may register their protest or make comments orally or in writing. Such protest or comments shall be included in the files of the proceeding, but shall not be considered by the judge as evidence in the record. Additionally, a person who is not a party to the proceeding may, at the judge's request, submit questions to the judge. At the discretion of the judge, the judge may address any such questions to witnesses in the proceeding where it appears that such questioning may lead to a full disclosure of the facts without unduly delaying the hearing or burdening the record.

§265.63. Appearance.

(a) Any person may appear at a hearing in person or by authorized representative. A person appearing in a representative capacity may be required to prove his authority.

(b) Except for good cause and extenuating circumstances, the applicant or petitioner shall appear at the public hearing. Failure to so appear may be grounds for withholding consideration of a matter or for dismissal without prejudice.

(c) Whenever it is necessary or proper for any party to an application or proceeding to make an affidavit, it may be made by either the party or his representative, unless otherwise provided by statute.

§265.64. Rights and Obligations of Parties at the Hearing.

(a) Rights. A party has the right to conduct discovery, present a direct case, cross-examine witnesses in the hearing, make oral and written arguments, obtain copies of all pleadings, motions, replies, and other filed documents, receive copies of all notices issued by the commission concerning the application to which the person is a party, and, as directed by the judge, otherwise fully participate as a party in the proceeding. A person may seek leave to withdraw his or her party status at any time upon written request to the judge or by request stated on the record during a hearing. Party status is not withdrawn unless and until the judge grants the request for leave to withdraw.

(b) Order of presentation.

(1) In all proceedings the moving party shall have the right to open and close. Where several matters have been consolidated, the judge will designate who will open and close. The judge will determine at what stage intervenors will be permitted to offer evidence and argument. After all parties have completed the presentation of their evidence, the judge may call upon any party for further material or relevant evidence upon any issue.

(2) Before the moving party opens in a permit hearing, the Executive Director's Staff shall open with a simple statement of its preliminary position on the application and, in a permit hearing, will present the Staff's draft permit including special provisions, if any. In a permit hearing, the applicant presents evidence to meet its burden of proof on the application, any opponents present evidence, the Public Interest Counsel presents evidence, and the Staff presents its evidence. In all cases, the applicant shall be allowed to close with its rebuttal. Any party may present a rebuttal case when another party presents evidence which could not have been reasonably anticipated.

(c) Cross-examination of witnesses. Witnesses shall be subject to cross-examination by any party in conformance with any alignment required by the judge under §265.61(c) of this title (relating to Designation of Parties). The judge may allow persons who are not parties to submit questions for witnesses to the judge as set out in §265.62 of this title (relating to Persons Not Parties).

§265.65. Continuance.

(a) The presiding officer may continue a public hearing or meeting from time to time and from place to place. If the time and place for the proceeding to reconvene are not announced at the hearing or meeting, a notice shall be mailed at a reasonable time to all parties and other persons who, in the judgment of the presiding officer, may be affected by action taken as a result of the hearing.

(b) Motions for continuance shall be in writing or stated on the record, and shall be sworn unless the facts alleged therein to show good cause are part of the record of the proceeding.

§265.66. *Motions.* A motion, unless made during a hearing, shall be made in writing, shall set forth the relief or order sought, and shall be timely filed with the judge. If parties have been designated, a copy shall be furnished by the movant to each applicant, petitioner, and other party of record. Any reply to the motion shall be timely

filed with the judge with copies served on the other parties. Failure to furnish copies may be grounds for withholding consideration of the motion or reply. Unless otherwise directed by the judge, motions based on matters which do not appear of record must be supported by affidavit. When necessary in the judgment of the judge, a hearing will be held to consider any motion.

§265.67. Conference After Preliminary Hearing.

(a) Upon written notice or notice stated in the record in any proceeding, parties or their representatives may be directed to appear at a specified time and place for a conference to consider the following:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleadings;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the resumption of the hearing;
- (5) the identification and specification of the number of witnesses;
- (6) the filing and exchange of prepared testimony and exhibits;
- (7) the designation of parties;
- (8) the scheduling of discovery; and
- (9) any other matters which may expedite the hearing or otherwise facilitate the hearing process.

(b) As determined by the judge, action taken at the conference shall be reduced to writing and made a part of the record or a statement thereof shall be made on the record at the close of the conference or at the hearing. After a hearing conference, the presiding officer may make appropriate rulings concerning matters discussed at the conference.

§265.68. Agreements to be in Writing. No agreement between parties or their representatives affecting any pending matter will be considered by the judge unless it is in writing, signed and filed as a part of the record, or unless it is announced at the hearing and entered of record.

§265.69. Evidence.

(a) General admissibility of evidence.

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The Texas Rules of Civil Evidence as applied in nonjury civil cases in the district

courts of this state shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The judge shall give effect to the rules of privilege recognized by law.

(2) When a proceeding will be expedited and the interest of parties will not be prejudiced substantially, testimony may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be admitted into evidence as if read or presented orally, upon the witness' being sworn and identifying the same as a true and accurate record of what his testimony would be if given orally. The witness shall be subject to clarifying questions and to cross-examination, and the prepared testimony shall be subject to objection.

(3) Testimony will be received only from witnesses called by a party or his or her representative or the judge. The presiding officer may allow or request testimony from any person whose position is not adequately represented by any party, subject to cross-examination by all parties or their representatives. Such testimony may be allowed at the presiding officer's discretion. All parties shall have an opportunity to take discovery of such person.

(b) Stipulation. Evidence may be stipulated by agreement of all parties. The judge and commission will determine the weight, if any, to be accorded stipulated evidence.

(c) Prefiled testimony and exhibits. The judge may require parties to prepare their direct testimony in written form if the judge determines that a proceeding will be expedited and that the interests of the parties will not be prejudiced substantially. The judge may require the parties to file and serve their direct testimony and exhibits prior to the beginning of the hearing.

(d) Abstracts of documents. When documents are numerous, the presiding officer may receive in evidence only those which are representative and may require the abstracting of relevant data from the documents and the presentation of the abstracts in the form of an exhibit. Parties shall have the right to examine the documents from which the abstracts are made.

(e) Exhibits.

(1) Exhibits of a documentary character shall not exceed 8-1/2 by 11 inches unless they are folded to the required size. Maps and drawings which are offered as exhibits shall be rolled or folded so as not to unduly encumber the record. Exhibits

not conforming to this rule may be excluded.

(2) Each exhibit offered shall be tendered for identification and placed in the record. Copies shall be furnished to the presiding officer, each of the parties, and the hearings reporter, unless the presiding officer shall rule otherwise.

(3) In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to the exhibit.

(f) Official notice.

(1) The presiding officer may take official notice of all facts judicially cognizable. In addition, the presiding officer may take official notice of any generally recognized facts within the specialized knowledge of the commission.

(2) The presiding officer shall notify all parties before or during the evidentiary hearing or by reference in preliminary reports, drafts of orders, or otherwise, of any material officially noticed, including any memoranda or data prepared by the executive director and relied upon by the commission in prior proceedings. All parties shall be afforded an opportunity to contest any material so noticed.

§265.70. Objections. Objections shall be timely noted in the record. Formal exception to the ruling of the judge is not necessary to preserve the objecting party's right on appeal.

§265.71. Interlocutory Appeals and Certified Questions.

(a) No interlocutory appeals may be made to the commission by a party to a proceeding before a judge.

(b) On a motion by a party served on the judge or on the judge's own motion, the judge may certify a question to the commission. Certified questions may be made at any time during a proceeding, regarding commission policy, jurisdiction, or the imposition of any sanction by the judge which would substantially impair a party's ability to present his or her case. Policy questions for certification purposes include, but are not limited to:

- (1) the commission's interpretation of its rules and applicable statutes;
- (2) which rules or statutes are applicable to the proceeding; or
- (3) whether commission policy should be established or clarified as to a

substantive or procedural issue of significance to the proceeding.

(c) The judge shall file the certified question with the chief clerk and serve copies on the parties. Within five days after the certified question is filed, parties to the proceeding may file briefs or replies. The chief clerk shall provide copies of the certified question and any briefs or replies to the general counsel and commissioners. Upon the request of the general counsel or one or more commissioners to the general counsel, the certified question will be scheduled for consideration during a commissioners' meeting. The chief clerk shall give the judge notice of the scheduling. The judge may, in his or her discretion, abate the hearing until the commission answers the certified question, or continue with the hearing if the judge determines that no party will be substantially harmed by proceeding while awaiting a response. If no request to set the question for consideration is received from the general counsel by the chief clerk within 15 days after filing, the request will be deemed denied by operation of law.

§265.72. Oral Argument. At the conclusion of the hearing, oral argument may be heard upon request of the parties or upon directive of the judge. Reasonable time limits may be prescribed. The judge may require or accept written briefs in lieu of oral arguments. When any matter heard before the judge is presented to the commissioners for final decision, further oral argument may be heard by the commissioners.

§265.73. Submittal of Findings of Fact and Conclusions of Law. The judge may request that the parties submit proposed findings of fact and conclusions of law separately stated.

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

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Lydia Gonzalez-Gromatzky
Acting Director, Legal
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◆ ◆ ◆
**Subchapter E. Discovery and
Sanctions**

• **30 TAC §§265.81-265.88**

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety

Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.81. Discovery.

(a) Power to authorize discovery. The presiding officer may allow any form of voluntary discovery and may compel any form of discovery authorized by the APA.

(b) Forms of discovery: voluntary and compellable.

(1) Voluntary discovery. Voluntary forms of discovery are highly favored by the commission. Parties must attempt to engage in voluntary discovery before seeking compelled discovery. Voluntary forms of discovery include requests for admission, interrogatories, requests for information, and all forms of compellable discovery voluntarily engaged in, such as depositions, the production of documents and things, or entry onto land pursuant to the APA. Copies of all voluntary discovery documents shall be filed with all parties, but need not be filed with the commission unless otherwise directed by the presiding officer. During voluntary discovery, the Texas Rules of Civil Procedure may be used for guidance by the requesting and responding parties. Any response made to a voluntary discovery request, other than a response objecting to the request, may be used in the same manner as if the discovery had been ordered by the presiding officer pursuant to the APA.

(2) Compellable discovery. Compellable includes all those forms of discovery authorized by the APA. A party may request the commission to compel discovery after voluntary discovery attempts have failed by filing a discovery motion with the presiding officer and upon notice to all other parties at least ten days before the hearing on the merits. Motions to compel discovery may be filed less than ten days before the hearing on the merits upon a showing of good cause. Copies of all compellable discovery documents, including answers and objections thereto, shall be filed with all other parties and the presiding officer. Affidavits regarding actions taken to engage in voluntary discovery may be considered as evidence in ruling upon motions to compel discovery and attendant requests for continuance.

§265.82. Scope of Discovery.

(a) Except as provided in subsection (b) of this section or §265.86 of this

title (relating to Protective Orders), parties may obtain discovery regarding any matter which is relevant to the subject matter of the proceeding whether it relates to the position of the party seeking discovery or the position of the other party. It is not grounds for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(b) The following matters are not discoverable:

(1) the work product of an attorney;

(2) the written statements of potential witnesses and parties, except that any person, whether a party or not, shall be entitled to obtain, upon request, a copy of a statement he has previously made concerning the action or its subject matter and which is in the possession, custody, or control of any party;

(3) the identity, mental impressions, and opinions of an expert who has been retained or specially employed by another party in anticipation of a commission proceeding or in preparation for hearing, or any documents or tangible things containing such information if the expert will not be called as an expert witness, except that the identity, mental impressions, and opinions of an expert who will not be called to testify as an expert and any documents or tangible things containing such impressions and opinions are discoverable if the consulting expert's opinion or impressions have been reviewed by a testifying expert;

(4) with the exception of discoverable communications prepared by or for experts, any communication passing between agents or representatives or the employees of any party to the proceeding or communications between any party and his agents, representatives, or their employees, where made subsequent to the filing of the application, petition, complaint, motion, report, or other initial pleading upon which the proceeding is based, and made in connection with the prosecution, investigation, or protest of the subject of the proceeding.

(c) Nothing in this section shall be construed to render nondiscoverable the identity and location of any potential party, any person having knowledge of relevant facts, any expert who is expected to be called as a witness in the action, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert.

§265.83. Types of Discovery.

(a) Interrogatories to parties. Interrogatories may be used as a form of voluntary discovery under §265.81 of this title (relating to Discovery).

(b) Admission of facts and of genuineness of document. Requests for admission may be used as a form of voluntary discovery from other parties under §265.81 of this title.

(c) Requests for information. Requests for information may be used by any party as a part of voluntary discovery pursuant to §265.81 of this title. Requests for information by the Executive Director of the commission for matters arising out of the commission's rate setting jurisdiction under the Texas Water Code, Chapters 11 and 12, or the commission's statutory responsibilities under the Texas Water Code, Chapter 13, are deemed part of the commission's investigatory powers to which answers may be compelled upon proper motion and notice to all parties. Failure to adequately respond to requests for information by the Executive Director of the commission may result in sanctions authorized for compellable discovery pursuant to §265.86 of this title (relating to Protective Orders).

§265.84. Issuance of Subpoena or Commission to take Deposition.

(a) Upon proper request by a party, the judge shall issue subpoenas and commissions to take depositions. A request for issuance shall be filed with the chief clerk, and a copy shall be served on the judge and the parties.

(b) Before seeking issuance of either a subpoena or commission, the requestor shall attempt to secure voluntary appearance of the witness or production of materials. If this is not possible, the requestor shall indicate what circumstances prevent such voluntary appearance or production in the request.

(c) If the requestor and witness sign an "Agreement to Waive Fee" form, subpoenas and commissions may be issued without a witness fee deposit. Only a non-party witness or deponent is entitled to receive this fee.

(d) If the witness fee is not waived, the requestor shall make the witness fee deposit in the appropriate amount as indicated on the forms requesting issuance. This amount is based on an estimate of the mileage to be traveled to and from the hearing or deposition, if over 25 miles, and days expected to be spent in the hearing or deposition. This deposit should be made payable to the commission and should be filed with chief clerk and must be made before issuance of the subpoena or commission.

(e) Upon deposit of all necessary monies and completion of all forms, the subpoena or commission shall be issued to the requestor to effect service.

§265.85. Form of Subpoena. The heading of the subpoena shall be "The Texas Natural Resource Conservation Commission." It shall state the style of the hearing, that the hearing is pending before SOAH, the time and place at which the witness is required to appear, and the party at whose insistence the witness is summoned. It shall be signed by the chief clerk, but need not be under the seal of the commission and the date of issuance shall be noted thereon. It may be made returnable forthwith, or on any date for which hearing of the docketed matter may be set. It shall be addressed to any sheriff or constable of the State of Texas or other person authorized to serve subpoenas as provided in the Texas Rules of Civil Procedure, Rule 178.

§265.86. Protective Orders. On motion specifying the grounds and made by any person against or from whom discovery is sought, the judge may make any ruling in the interest of justice necessary to protect the party against whom compellable discovery is sought from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Specifically, the judge's authority as to such rulings extends to, although it is not necessarily limited by, any of the following:

(1) ruling that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;

(2) ruling that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the presiding officer; or

(3) ruling that results of discovery be sealed or otherwise adequately protected; that its distribution be limited; or that its disclosure be restricted.

§265.87. Duty to Supplement. A party who has responded to a request for voluntary or compellable discovery that was correct and complete when made is under no duty to supplement his response to include information thereafter acquired, except the following shall be supplemented not less than ten days prior to the hearing on the merits unless the presiding officer finds that a good cause exists for permitting or requiring later supplementation.

(1) A party is under a duty seasonably to supplement his response if he obtains information upon the basis of which:

(A) he or she knows that the response was incorrect or incomplete when made; or

(B) he or she knows that the response, though correct and complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading.

(2) If the party expects to call an expert witness when the identity or subject matter of such expert witness' testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, such response must be supplemented to include the name, address, and telephone number of the expert witness and the substance of the testimony which the expert witness is expected to testify, as soon as is practical, but in no event less than ten days prior to the hearing on the merits except on leave of the judge.

(3) In addition, a duty to supplement answers may be imposed by ruling of the judge or agreement of the parties, or at any time prior to hearing through new requests for supplementation of prior answers.

§265.88. Sanctions for Failure to Comply with Discovery.

(a) If a person fails to comply with a subpoena or commission for deposition issued by the judge, the commission or the party requesting the subpoena or commission for deposition may seek enforcement under the APA, §2001.201.

(b) If the judge finds a party is abusing voluntary discovery or if the judge finds that any interrogatory or request for information is unreasonably frivolous, oppressive, or harassing, or that a response or answer is unreasonably frivolous or made for the purpose of delay, then the judge shall allow compellable discovery. Affidavits regarding actions taken to engage in voluntary discovery may be considered as evidence in considering motions for compelled discovery and attendant motions for continuance. In considering motions for continuance occasioned by failure of voluntary discovery, the presiding officer may consider the degree of abuse in addition to other pertinent factors in setting new deadlines for compelled discovery and the hearing on the merits.

(c) If the judge finds a party is abusing compelled discovery, the judge may do any of the following:

(1) suspend processing of the application or petition if the applicant or petitioner is noncompliant;

(2) disallow any further discovery of any kind or a particular kind by the noncompliant party;

(3) rule that particular facts shall be regarded as established for the purposes

of the proceeding in accordance with the claim of the party obtaining the discovery ruling;

(4) limit the noncompliant party's participation in the proceeding;

(5) disallow the noncompliant party's presentation of evidence on issues that were the subject of the discovery request;

(6) disallow part or all of applicant's attorney fees from inclusion in the rate base in water and sewer utility cases;

(7) recommend to the commission that the hearing be dismissed with or without prejudice;

(8) allow evidence to be introduced against a party abusing discovery which would otherwise be excluded for not meeting the deadline for exchange of such evidence; and

(9) allow testimony against a party abusing discovery which would otherwise be excluded for not meeting the deadline established for listing potential witnesses.

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 July 5, 1995.

TRD-9508184 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Subchapter F. Special Procedures for Freezing the Process

Procedures

- 30 TAC §§265.101-265.104, 265.106-265.113

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.101. Applicability.

(a) The provisions of this subchapter shall apply to permit hearings as designated in the notice of hearing as well

as to other hearings designated by the judge for good cause.

(1) Except by agreement of the parties, the provisions of this subchapter do not apply to permit hearings at which jurisdiction is established prior to July 22, 1994.

(2) Notwithstanding the designation made in the notice of hearing, an application may either be included in, or excluded from, the applicability of this subchapter or any portion of this subchapter by:

(A) agreement of the parties only with the approval of the judge; or

(B) by the judge for good cause. Good cause may include without limitation a finding that the lack of complexity of a proceeding in a hearing does not warrant the implementation of all or a portion of this subchapter.

(b) When evaluating whether the provisions of this subchapter should apply to a permit hearing, the judge shall consider at a minimum:

(1) the number and sophistication of the parties or potential parties;

(2) the expected length of the hearing; and

(3) the complexity of the issues. The judge shall allow the parties to present evidence and argument regarding this determination.

(c) If a judge orders a permit application to be placed under the provisions of this subchapter after the notice of hearing, the judge shall allow reasonable time for:

(1) the executive director and public interest counsel to comply with §265.102 of this title (relating to Procedures Applicable to the Executive Director and Public Interest Counsel); and

(2) all parties to comply with §265.103 of this title (relating to First Preliminary Hearing).

(d) The provisions of other chapters of this title and other subchapters of this chapter are inapplicable to proceedings to which this subchapter applies only to the extent that such provisions conflict with this subchapter.

§265.102. Procedures Applicable to the Executive Director and Public Interest Counsel.

(a) Executive director.

(1) After the executive director has conducted his technical review of an application, the executive director shall prepare a proposed permit based on the appli-

cation submitted. The executive director shall develop an initial position recommending issuance, issuance with additional or different permit provisions, or denial of the permit. If the executive director recommends issuance with additional or different permit provisions, he or she shall specify those provisions in a document separate from the proposed permit. If the executive director's recommendation is to deny, he or she shall issue a document summarizing the basis for his or her position. The proposed permit and additional documents prepared by the executive director shall be forwarded to the Chief Clerk's Office for filing and setting. This provision does not impair the executive director's ability to return applications pursuant to §281.18 and §281.19 of this title (relating to Applications Returned and Technical Review).

(2) The executive director may change his or her position based on evidence or other new information. The executive director shall timely notify all parties on the record or in writing if he or she changes his or her opinion, and the other parties shall be afforded the opportunity to respond.

(b) Public interest counsel. The Public Interest Counsel shall comply with all time frames and procedures relevant to protestants pursuant to this chapter, unless otherwise determined by the judge.

§265.103. First Preliminary Hearing. After the required notice has been given and a request for hearing has been received, a judge will convene a public hearing to take jurisdiction over the application, accept public commentary, designate parties, and set a discovery and procedural schedule. At this hearing, the judge shall address the jurisdiction of the commission over the proceeding. If jurisdiction is established, the following shall occur:

(1) the judge shall accept public commentary and name the parties;

(2) the judge shall set acceptable methods of service of pleadings, motions, and discovery;

(3) the executive director shall provide his evaluation and assessment pursuant to §265.102 of this title (relating to Procedures Applicable to the Executive Director and Public Interest Counsel) along with the proposed permit and any additional documents prepared by the executive director related to his or her assessment;

(4) the applicant shall submit proposed findings of fact and conclusions of law;

(5) the applicant shall identify what constitutes the application and shall provide a total of two copies of the permit application, for use by all of the protestants

in the case. These copies shall include all notices of deficiency and the applicant's response to those notices;

(6) the executive director and the applicant shall provide their witness lists;

(7) the parties shall raise their claims of confidentiality of portions of the application or agency files in a request for a protective order; and

(8) the judge shall establish a procedural schedule for the hearing consistent with the provisions of §265.104 of this title (relating to Discovery Schedule and Freezing the Process for Hearings Conducted Pursuant to this Subchapter). Without limiting §265.102(a)(2) of this title, based on the executive director's position, the judge may also set a procedural schedule for the executive director to file responses or issues lists in accord with the time periods set out in §265.104 of this title.

§265.104. Discovery Schedule and Freezing the Process for Hearings Conducted Pursuant to this Subchapter.

(a) First discovery period. The first discovery period shall extend 30 to 80 days beginning immediately after the date on which jurisdiction is established, as set out in full in §265.121(a)(1) of this title (relating to Discovery in Hearings Held under Subchapter F).

(b) Protestants' first list of issues. On the last day of the first discovery period, the protestants shall identify issues based on the proposed findings of fact and conclusions of law submitted by the applicant pursuant to §265.103(4) of this title (relating to First Preliminary Hearing), and shall include a statement as to the basis of the protestant's dispute on each issue. In addition, on the last day of the first discovery period, protestants may also raise new issues and proposed findings of fact and conclusions of law.

(c) Second discovery period. The second discovery period shall extend 30 to 80 days beginning immediately after the protestants' list of issues is submitted, as set out in full in §265.121(a)(2) of this title.

(d) Applicant's response. The applicant may respond to issues raised by the protestants no later than the last day of the second discovery period by amending its application and/or proposed findings of fact and conclusions of law at this time, responses being limited to the issues raised by the other parties. Given the nature and degree of amendment, the application may be remanded by the judge to the executive director for further technical review. The application may be subject to additional notice, discovery, and hearing requirements.

Subsequent to the time for filing a response pursuant to this subsection, the applicant may not file any amendment to its application except as provided in subsection (g) of this section.

(e) Third discovery period. This period shall extend 20 to 45 days immediately following the conclusion of the second discovery period, and shall be limited in accordance with §265.121(a)(3) of this title.

(f) Protestants' second list of issues. On or before the last day of the third discovery period, protestants are entitled to submit a second list of issues. The protestants' second list of issues shall be limited in scope to the applicant's response as provided in subsection (d) of this section.

(g) Applicant's second response. The applicant may respond to issues raised in the protestants' second list of issues within seven days after the third discovery period. The applicant may be allowed by the judge to respond with a minor amendment and proposed findings of fact and conclusions of law limited to protestants' second list of issues, within seven days of the third discovery period. Issues related to any minor amendment filed by the applicant will be considered by the judge at the prehearing conference for inclusion in the final issue list. Subsequent to the time for filing a response pursuant to this subsection, the applicant may not file any amendment except by agreement of the parties.

(h) Prehearing meeting. A prehearing meeting may be held within three or ten days after the conclusion of the third discovery period, depending upon whether protestants submit a second list of issues. The prehearing meeting is a meeting of the parties without the judge. At this meeting, the parties shall bring for submission to the judge and exchange among parties findings of fact, conclusions of law, stipulations, and exhibits. The parties may have the proceedings recorded. If parties do not convene a meeting pursuant to this subsection, they shall submit to the judge and exchange among parties findings of fact, conclusions of law, stipulations, and exhibits within three or ten working days after the conclusion of the third discovery period.

(i) Prehearing conference and order. Within seven to 14 days after the conclusion of the third discovery period, the judge shall hold a prehearing conference.

(1) All parties shall address the stipulations of the proposed findings of fact and conclusions of law beginning with the applicant. The judge shall determine which issues remain and which findings of fact and conclusions of law have been stipulated. Proposed findings and conclusions shall be treated as follows.

(A) A proposed finding or conclusion stipulated by all parties shall be regarded as established.

(B) A proposed finding or conclusion that has not been stipulated, was on the other parties' issue list, and for which the other parties have a reasonable basis for continuing to contest the issue, may be raised as an issue at the hearing. The reasonableness of the other parties' basis for contesting the issue may receive further inquiry by the judge during the prehearing conference. If the examiner determines that the other parties have not shown a reasonable basis for contesting the finding or conclusion and the executive director did not raise the issue as a basis for permit denial, the judge shall deem the finding or conclusion stipulated.

(2) Exhibits shall be offered and marked and the judge will rule on their admissibility insofar as possible. At hearing all objections to exhibits, which could have been cured if raised in a timely manner, shall be deemed waived if they were not raised during the prehearing conference. Parties wishing to offer exhibits at any time subsequent to the prehearing conference shall notify all other parties as soon as practicable of their intention to seek leave to submit additional exhibits. The judge has the discretion to permit the offer of exhibits not submitted at the prehearing conference for good cause. Good cause includes the need for one party to prepare an exhibit in response to another party's exhibit first seen at the prehearing conference, the need to prepare an exhibit in response to the direct testimony of another party, and other cases which are justified by the party seeking to submit the exhibit.

(3) The judge shall set final case time limitations at or before the prehearing conference.

(4) The judge shall promptly incorporate all rulings and determinations in a written prehearing order.

(j) Failure to comply with schedules. Parties who do not identify issues, make amendments, propose findings of fact and conclusions of law, or submit responses in accord with the schedules established under this subchapter and with the judge's orders implementing it will be regarded as waiving the right to pursue them in an evidentiary hearing conducted pursuant to this subchapter.

(k) Final preparation. Final preparation for hearing shall extend no more than 14 calendar days from the date of the prehearing conference.

(l) Evidentiary hearing. The evidentiary hearing shall extend from five to no more than 25 calendar days in duration

immediately following final preparation for hearing, subject to extension by the judge for good cause. The judge shall set reasonable time limitations for the presentation of the cases of all parties in order to limit the hearing to this time period.

(m) Proposal for decision. The judge shall issue a Proposal for Decision within 20 to 55 days from the conclusion of the evidentiary hearing.

(n) Modification of schedules. The scheduled periods set out in this section are presumptively the time limits, but they may be modified in exceptional circumstances for good cause either by the judge or by agreement of the parties with approval of the judge for good cause. Good cause may include without limitation a finding that the complexity or lack thereof of a proceeding warrants modification of one or more of the scheduled periods.

(o) Motion for rehearing. A party may not raise for the first time on motion for rehearing an issue of fact or law which it has not previously raised as a contested issue unless the issue is related to:

- (1) a procedural irregularity; or
- (2) changed circumstance, where the issue is material and a party demonstrates good cause for failure to raise it as an issue prior to the prehearing conference. Notwithstanding the foregoing, the commission may exercise its discretion to address an issue not raised by the other parties or remand an issue depending on the evidence in the record.

§265.106. Identification of Witnesses. The judge shall require the parties to exchange lists of witnesses who will be called to testify at the evidentiary hearing. The witness lists shall include the names and addresses of the witnesses and a brief description of the subject matter of their anticipated testimony.

(1) The witness lists of the applicant and the executive director shall be submitted on the day that jurisdiction is established over the proceeding, and may be amended by these parties to address the protestants' and Public Interest Counsel's list of issues.

(2) The witness lists of the protestants and Public Interest Counsel shall be submitted when the protestants and Public Interest Counsel list their issues.

(3) Parties may call rebuttal witnesses not identified on their witness lists only on a showing of good cause and after the parties are afforded a reasonable opportunity to conduct discovery.

(4) The judge may allow a party to amend its witness list upon a showing of good cause. The parties shall have sufficient

time, as determined by the judge, to take discovery on newly added witnesses, as authorized in this paragraph or by paragraphs (1)-(3) of this section. There is a continuing obligation to update witness lists as soon as the need for and identity of the new witness is reasonably known.

§265.107. Limiting the Number of Witnesses. At the request of a party or on the judge's own motion, the judge may reduce excessive numbers of witnesses identified pursuant to §265.106 of this title (relating to Identification of Witnesses), as follows.

(1) The examiner may direct the party to do one of the following:

(A) voluntarily reduce its listed witnesses to a specified number; or

(B) provide a summary of the expected testimony of each witness sufficiently specific to show the need for the testimony.

(2) The judge may use the witness lists and any summaries of testimony provided to strike witnesses whose testimony would be unduly repetitious or irrelevant, or in order to render discovery and the hearing process manageable.

(3) If a party fails or refuses to comply with the directions of the judge pursuant to this section, the judge may limit or strike the testimony of witnesses called by the party in any reasonable manner.

§265.108. Rebuttal.

(a) Except as provided by subsection (b) of this section, the applicant, as the party with the burden of proof, is the only party allowed to present a rebuttal case. In all cases, the applicant shall be allowed to close with its rebuttal.

(b) If a party can demonstrate that evidence was presented by another party which could not have been reasonably anticipated at the time that party presented its direct case, the party may present a rebuttal case upon leave of the judge.

(c) Rebuttal cases must be presented within the time limitations set by the judge in the prehearing order.

§265.109. Prefiled Testimony.

(a) Unless otherwise directed by the judge, any party shall have the option to prefile all or any part of the testimony of all or any one of its witnesses. One party's election to prefile shall not control another party's decision regarding whether to prefile testimony. If a party decides to use prefiled testimony, it shall notify the other parties

and the judge on or before the last day of the second discovery period, identifying the relevant witness(es).

(b) The judge may direct all parties to prefile their entire direct cases. If all direct testimony is prefiled, whether by judge's order or by agreement of the parties:

(1) no party shall be allowed to go beyond the scope of its prefiled testimony on direct examination; and

(2) the judge may limit or prohibit non-adverse cross-examination if unnecessary to the development of a complete evidentiary record.

(c) The live presentation of prefiled testimony at the evidentiary hearing shall be limited as provided by the judge within the scope of the original prefiled testimony to introductory material, corrections to the prefiled testimony, and a brief summary. The live presentation shall generally last no more than 30 minutes for each prefiled witness.

(d) The judge shall set the deadline for the filing of prefiled testimony at a reasonable time before the evidentiary hearing. The factors the judge shall consider include the complexity of the material, the expected length of the material, the number of witnesses or issues that are to be presented by prefiled testimony, and the acceptable method of presenting objections.

§265.110. Supplementing Prefiled Testimony and Objections.

(a) At the discretion of the judge, prefiled testimony may be supplemented with the introduction of newly discovered evidence, or when it becomes obvious to the witness that the original prefiled testimony was false or incomplete, or when substantive evidence has been excluded as a result of the judge's ruling on an objection to prefiled testimony.

(b) If prefiled testimony is supplemented as provided in this section, the other parties may be afforded the opportunity to supplement their prefiled testimony or prefiled objections. Supplementation by the other parties shall be limited to those subjects which were supplemented by the original witness.

§265.111. Witness Shall Attend Hearing. Every witness summoned in any hearing shall attend the hearing from day to day, and from place to place, until discharged by the judge or party summoning such witness. If any witness after being duly subpoenaed fails to attend, such witness may be subject to any remedies available through district court to the party summoning the witness.

§265.112. Evidence.

(a) In contested cases, irrelevant, immaterial, or unduly repetitious evidence will be excluded.

(b) Whenever necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

§265.113. Additional Testimony. When it appears to be necessary to the administration of justice, the judge may permit additional evidence to be offered at any time.

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 July 5, 1995.

TRD-9508185 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512)
239-1966

◆ ◆ ◆
Discovery

• 30 TAC §§265.121-265.134

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.121. Discovery in Hearings Held under Subchapter F.

(a) Except when otherwise ordered by the judge, discovery in hearings held under this subchapter will be separated by time and manner into three distinct periods. Within the time frame set for each period in this subsection, the judge shall have the discretion to set the duration of each discovery period.

(1) First discovery period. The first discovery period shall extend 30 to 80 days from the date that jurisdiction is taken by SOAH. This period is reserved for the

protestants' discovery from the applicant. The applicant may conduct limited discovery related to the nature of each protestant (including, for example, the type and date of organization, purpose, and number of members) and whether the source of funding is by a competitor of the applicant.

(2) Second discovery period. The second discovery period shall extend 30 to 80 days from the end of the first discovery period. Discovery during this period shall consist of the following:

(A) the protestant may discover from the staff;

(B) the applicant may discover from the protestant and the staff; the number of interrogatories available to the applicant during the second discovery period shall be reduced by the number of interrogatories submitted during the first discovery period; and

(C) the staff may discover from the protestant and the applicant.

(3) Third discovery period. The third discovery period shall extend 20 to 45 days from the end of the second discovery period. During this period, any discovery by the protestant or the applicant from the staff shall be limited to the staff's position regarding the applicant's response, and the staff's position regarding the protestants' issues. Discovery from the applicant and the protestant shall be limited to the scope of the listed issues as provided in §265.104(b) of this title (relating to Discovery Schedule) and the applicant's response as provided in §265.104(d) of this title. The judge shall have discretion to limit or expand discovery in this period further in the interest of fairness. The judge shall identify which of the time periods listed in paragraphs (1) or (2) of this subsection applies to discovery for those parties not fitting into the categories discussed as appropriate.

(b) Whenever discovery is sought of the staff of the executive director in any of the discovery periods, it shall be in accord with the following provisions.

(1) Beginning at the time jurisdiction is taken, all parties shall have access to all unprivileged documents in the agency's files without the necessity of submitting an Open Records request or a Request for Production. It shall be the agency's responsibility to ensure that documents protected from discovery as provided for under law are removed from agency public files and that all assertions of privilege by the executive director relating to those agency files are made at the time jurisdiction is taken or other timely manner.

(2) The executive director shall answer Interrogatories and Requests for Production during the second and third discovery periods.

(3) The executive director shall be subject to depositions during the second and third discovery periods under the following conditions.

(A) Each deposition shall be limited to a total of four hours.

(B) Any party seeking to depose a staff witness shall attempt to set the time and date of the deposition through agreement with the staff.

(C) The staff shall not be required to submit to a date for the deposition less than ten days from the date of the request.

(D) The staff shall not be required to submit to a deposition any later than a date 20 days prior to the prehearing conference.

(E) All depositions of staff witnesses shall be taken in Austin in one of the commission office buildings.

(F) All of these requirements may be waived by agreement of the staff or by the judge on a showing of good cause.

(c) Voluntary discovery may be sought at any time by any party.

§265.122. Forms and Scope of Discovery; Protective Orders; Supplementation of Responses.

(a) Forms of discovery. For purposes of hearings held under this subchapter, all forms of discovery are deemed compellable. Permissible forms of discovery for hearings under this subchapter include:

(1) oral or written depositions of any party or nonparty;

(2) written interrogatories;

(3) requests of a party for admissions of facts and the genuineness or identity of documents or things;

(4) requests and motions for production, examination, and copying of documents or other tangible materials; and

(5) requests and motions for entry upon and examination of real property.

(b) Scope of discovery. Except as provided in subsection (c) of this section, unless otherwise limited by order of the judge in accordance with these rules, the scope of discovery is as follows.

(1) In general. Parties may obtain discovery regarding any matter which is relevant to the subject matter in the pending proceeding. It is not grounds for objection that the information sought will be inadmissible at hearing if the information sought appears to be reasonably calculated to lead to the discovery of admissible evidence. It is also not grounds for objection that an interrogatory propounded pursuant to §265.125 of this title (relating to Interrogatories to Parties) involves an opinion or contention that relates to fact or the application of law to fact, but the judge may order that such an interrogatory not be answered until after designated discovery has been completed or until a prehearing conference or other later time. It is also not grounds for objection that a request for admission propounded pursuant to §265.126 of this title (relating to Requests for Admissions) relates to statements or opinions of fact or of the application of law to fact or mixed questions of law and fact or that the documents referred to in a request may not be admissible at trial.

(2) Documents and tangible things. A party may obtain discovery of the existence, description, nature, custody, condition, location, and contents of any and all documents (including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom production is sought, into reasonably usable form) and any other tangible things which constitute or contain matters relevant to the subject matter in the proceeding. A person is not required to produce a document or tangible thing unless it is within the person's possession, custody, or control. Possession, custody, or control includes constructive possession such that the person need not have actual physical possession. As long as the person has a superior right to compel the production from a third party (including an agency, authority, or representative), the person has possession, custody, or control. The executive director and the public interest counsel of the commission are not required to amass, assemble, collect, compile, gather, and/or sort the materials described in this paragraph if those materials are readily available in the commission's records.

(3) Land.

(A) During the appropriate discovery period, a party may obtain a right of entry upon designated land or other property in the possession or control of a person upon whom a request or motion to produce is served when the designated land or other property is relevant to the application which is the subject of the hearing for the purpose

of inspection and measuring, surveying, photographing, testing or sampling the property, or any designated object or operation thereon. This provision is not intended to affect any statutory rights authorizing access. If a person has a superior right to compel a third person to permit entry, the person with the right has possession or control. Upon request of the controller or possessor of the land, the judge may order that entry upon the land be subject to any existing safety regulations or protections of trade secrets or processes, and may impose other reasonable restrictions on this right as necessary. Unless otherwise ordered by the judge, the parties shall enter into a standard Agreement for Entry Upon Land which contains the following:

(i) a release and indemnification provision;

(ii) allowance for all parties to split samples;

(iii) a provision that the controller of the land shall allow entry within a reasonable period of time after the request; and

(iv) a provision that the controller of the land shall have the right to accompany the party entering the property.

(B) The parties may request and the judge will rule on whether a party intending to take samples shall be required to reveal the types of samples and methodology and parameters of tests performed on those samples prior to or subsequent to entry upon land.

(4) Potential parties and witnesses. A party may obtain discovery of the identity and location (name, address, and telephone number) of any potential party and of persons having knowledge of relevant facts. A person has knowledge of relevant facts when he or she has or may have knowledge of any discoverable matter. The information need not be admissible in order to satisfy the requirements of this subsection and personal knowledge is not required.

(5) Experts and reports of experts. Discovery of the facts known, mental impressions, and opinions of experts, otherwise discoverable because the information is relevant to the subject matter in the pending proceeding, but which were acquired or developed in anticipation of trial and the discovery of the identity of experts from whom the information may be learned may be obtained only as follows.

(A) General. A party may obtain discovery of the identity and location (name, address, and telephone number) of an expert who may be called as an expert witness, the subject matter of which the

witness is expected to testify, the mental impressions and opinions held by the expert, and the facts known to the expert (regardless of when the factual information was acquired) which relate to or form the basis of the mental impressions and opinions held by the expert. The disclosure of the same information concerning an expert used for consultation and who is not expected to be called as an expert witness at trial is required if the consulting expert's opinion or impressions have been reviewed by a testifying expert.

(B) Reports. A party may also obtain discovery of documents and tangible things, including all tangible reports, physical models, compilations of data, and other materials prepared by an expert or for an expert in anticipation of the expert's hearing and deposition testimony. The disclosure of material prepared by an expert used for consultation is required even if it was prepared in anticipation of trial if the consulting expert's opinions or impressions have been reviewed by a testifying expert.

(C) Determination of status. The judge has discretion to compel a party to make the determination and disclosure of whether an expert may be called to testify within a reasonable and specific time.

(D) Reduction of report to tangible form. If the discoverable factual observations, tests, supporting data, calculations, photographs, or opinions of an expert who will be called as an expert witness have not been recorded and reduced to tangible form, the judge may order these matters reduced to tangible form and produced within a reasonable time.

(6) Statements. Any person, whether or not a party, shall be entitled to obtain, upon written request, his own statement previously made concerning the matter which is the subject of the hearing, or its subject matter, which is in the possession, custody, or control of any party. If the request is refused, the person may move for a judge's order under §265.141 of this title (relating to Abuse of Discovery; Sanctions). For the purpose of this paragraph, a statement previously made is:

(A) a written statement signed or otherwise adopted or approved by the person making it; and

(B) a stenographic, mechanical, electrical, or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

(c) Exemptions. The following matters are protected from disclosure by privilege.

(1) Work product. The work product of an attorney, subject to the exceptions of Texas Rules of Civil Evidence Rule 503(d), which shall govern as to work product as well as to attorney-client privilege;

(2) Experts. The identity, mental impressions, and opinions of an expert who has been informally consulted or of an expert who has been retained or specially employed by another party in anticipation of, or preparation for hearing, or any documents or tangible things containing such information if the expert will not be called as an expert witness, except that the identity, mental impressions, and opinions of an expert who will not be called to testify as an expert and any documents or tangible things containing such impressions and opinions are discoverable if the consulting expert's opinion or impressions have been reviewed by a testifying expert;

(3) Written statements. The written statements of potential witnesses and parties, when made in connection with, or in anticipation of, the prosecution, investigation, defense, or protest of the particular application or petition that is the subject of the proceeding, except that persons, whether parties or not, shall be entitled to obtain, upon request, copies of statements they have previously made concerning the application or petition or its subject matter and which are in the possession, custody, or control of any party. The term "written statements" includes:

(A) a written statement signed or otherwise adopted or approved by the person making it; and

(B) a stenographic, mechanical, electrical, or other type of recording, or any transcription thereof which is a substantially verbatim recital of a statement made by the person and contemporaneously recorded. For purposes of this paragraph, a photograph is not a statement.

(4) Party communications. Communications between agents or representatives or the employees of a party to the hearing or communications between a party and that party's agents, representatives, or employees, when made in connection with the prosecution, investigation, defense, or protest of the particular application or petition that is the subject of the particular proceeding, or in anticipation of the prosecution, protest, or defense of any claims made in a part of the pending hearing. This exemption does not include communications prepared by or for experts that are otherwise discoverable. For the purposes of this paragraph, a photograph is not a communication.

(5) Other privileged information; any matter protected from disclosure by any other privilege. Upon a showing that the party seeking discovery has substantial need of the materials and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means, a party may obtain discovery of the materials otherwise exempt from discovery by paragraphs (3) and (4) of this subsection. Nothing in this subsection shall be construed to render non-discoverable the identity and location of any potential party, any person having knowledge or relevant facts, any expert who is expected to be called as a witness during trial, or of any consulting expert whose opinions or impressions have been reviewed by a testifying expert.

(d) Presentation of objections. Either an objection, a motion to compel, or a motion for protective order made by a party to discovery shall preserve that objection without further support or action by the party unless the objection or motion is set for special hearing and determined by the judge. At any reasonable time, any party may request a special hearing on any objection, motion to compel, or motion for protective order. The failure of a party to obtain a ruling prior to trial on any objection to discovery, motion to compel, or motion for protective order does not waive such objection or motion. In objecting to an appropriate request within the scope of subsection (b) of this section, a party seeking to exclude any matter from discovery on the basis of an exemption or immunity from discovery must specifically plead the particular exemption or immunity from discovery relied upon and at or prior to any special hearing, shall produce any evidence necessary to support such claim either in the form of affidavits served at least seven days before the special hearing or by testimony. If the judge determines that an in camera inspection and review by the judge of some or all of the requested discovery is necessary, the objecting party must segregate and produce the discovery to the judge in a sealed wrapper or by answers made in camera to deposition questions, to be transcribed and sealed in event the objection is sustained. When a party seeks to exclude documents from discovery and the basis for objection is undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights rather than a specific immunity or exemption, it is not necessary for the judge to conduct an inspection and review of the particular discovery before ruling on the objection. After the date on which answers are to be served, objections are waived unless an extension of time has been obtained by agreement or order of the judge or good cause is shown for the failure to object within such period.

(e) Protective orders. On motion specifying the grounds and made by any person against or from whom discovery is sought under these rules, the judge may make any order in the interests of justice necessary to protect the movant from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights. Insofar as the applicant is claiming confidentiality of any part of the permit application, the applicant shall request a protective order at the time that jurisdiction is taken. All other claims of confidentiality shall be handled as they arise, according to the timelines established under subsection (d) of this section. Unless amended by the judge, a standard order developed by SOAH shall be used. Motions or responses made under this section may have exhibits attached including affidavits, discovery pleadings, or any other documents. Specifically, the judge's authority as to such orders extends to, but is not limited by, any of the following:

(1) ordering that requested discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;

(2) ordering that the discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the judge.

(f) Duty to supplement. A party who has responded to a request for discovery that was correct and complete when made is under no duty to supplement his response to include information thereafter acquired, except the following shall be supplemented not less than 30 days prior to trial unless the judge finds that a good cause exists for permitting or requiring later supplementation.

(1) A party is under a duty reasonably to supplement his response if he obtains information upon the basis of which:

(A) he knows that the response was incomplete and incorrect when made;

(B) he knows that the response, though correct and complete when made, is no longer true and complete and the circumstances are such that failure to amend the answer is in substance misleading.

(2) If the party expects to call an expert witness when the identity or the subject matter of such expert witness' testimony has not been previously disclosed in response to an appropriate inquiry directly addressed to these matters, such response must be supplemented to include the name,

address, and telephone number of the expert witness and the substance of the testimony concerning which the expert witness is expected to testify, as soon as is practical, but in no event less than 30 days prior to trial, except on leave of the judge.

(3) In addition, a duty to supplement answers may be imposed by order of the judge or agreement of the parties, or at any time prior to trial, through new requests for supplementation or prior answers.

(g) Discovery disputes.

(1) Discovery motions. All discovery motions shall contain a certificate by the party filing same that efforts to resolve the discovery dispute without the necessity of judge intervention have been attempted and failed.

(2) Motions to compel and for protective orders. Whenever a discovery dispute arises, the disputing party shall file a motion to compel or for protective order. Any response shall be filed within five working days of receipt. The response may be a showing of good cause for extra time to respond. The judge shall rule within five working days of the response.

(3) Finality of judge's ruling. No discovery issues shall be certified to the commission.

§265.123. Stipulations Regarding Discovery Procedure. Unless the judge orders otherwise, the parties may, by written agreement:

(1) provide that depositions be taken before any person, at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions; and

(2) modify the procedures provided by these rules for other methods of discovery. An agreement affecting a deposition upon oral examination is enforceable if the agreement is recorded in the deposition transcript.

§265.124. Discovery and Production of Documents and Things for Inspection, Copying, or Photography.

(a) Any party may serve upon any other party a request:

(1) to produce and permit the party making the request or someone acting on his behalf, to inspect, sample, test, photograph, and/or copy, any designated documents or tangible things which constitute or contain matters within the scope of and subject to the limitations of §265.122 of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses) which are in the possession, custody, or control of the party upon whom the request is served; or

(2) to permit entry upon designated land or other property in the possession or control of the party upon whom the request is served for the purpose of inspection and measuring, surveying, photographing, testing, or sampling the property or any designated object or operation within the scope of §265.122 of this title.

(b) The request shall set forth the items to be inspected either by individual item or by category, and describe each item and category with reasonable particularity. The request shall specify a reasonable time, place, and manner for making the inspection and performing the related acts.

(c) The party upon whom the request is served shall make the documents available in Texas and shall serve a written response which shall state, with respect to each item or category of items, that inspection or other requested action will be permitted as requested, and he shall thereafter comply with the request, except only to the extent that he makes objections in writing to particular items, categories or items, stating specific reasons why such discovery should not be allowed.

(d) A true copy of the request and response, together with proof of the service thereof on all parties, shall be filed promptly with the judge by the party making it, except that any documents produced in response to a request need not be filed.

(e) A party who produces documents for inspection shall produce them as they are kept in the usual course of business, or shall organize and label them to correspond with the categories in the request. The judge may require all documents to be produced in usable form, which may require production of computer disks. The judge may also require a party to provide reasonable indices to its documents or computerized information produced in response to discovery requests, and to maintain a log of documents produced.

(f) Testing or examination shall not extend to destruction or material alteration of an article without notice, hearing, and prior approval by the judge.

(g) In order to avoid unnecessary duplication, the judge shall, whenever convenient, group parties for document production.

(h) The judge may determine on a case-by-case basis a reasonable allocation of costs associated with the production.

(i) The request shall be served upon every party to the hearing. The party upon whom the request is served shall serve a written response and objections, if any, within 21 days after the service of the request. The time for making a response may be shortened or lengthened by the judge.

(j) If objection is made to a request or to a response, either party may file a motion and seek relief pursuant to §265.122 of this title or §265.141 of this title (relating to Abuse of Discovery; Sanctions).

§265.125. Interrogatories to Parties.

(a) Any party may serve upon any other party written interrogatories to be answered by the party served, or, if the party served is a public or private corporation, or a partnership or association, or governmental agency, by an officer or agent who shall furnish such information as is available to the party. Upon request of the judge, a true copy of the interrogatories and the written answers or objections, together with proof of service, shall be filed promptly with the judge by the party making them, except that when an interrogatory is answered by reference as permitted in paragraph (2) of this subsection, the records so referenced need not be filed.

(1) Service. When a party is represented by an attorney, service of interrogatories and answers to interrogatories shall be made on the attorney unless service upon the party himself is ordered by the judge. Copies of all interrogatories and answers to interrogatories shall be sent to every other party.

(2) Scope. Interrogatories may relate to any matters which can be inquired into under §265.122 of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses), but the answers, subject to any objections as to admissibility, may be used only against the party answering the interrogatories. Where the answer to an interrogatory may be derived or ascertained from public records, or from the business records of the party upon whom the interrogatory has been served or from an examination, audit, or inspection of such business records, or from a compilation, abstract, or summary based thereon, and the burden of deriving or ascertaining the answer is substantially the same for the party serving the interrogatory as for the party served, it is sufficient answer to such interrogatory to specify the records from which the answer may be derived or ascertained and, if applicable, to afford the party serving the interrogatory reasonable opportunity to examine, audit, or inspect such records and to make copies, compilations, abstracts, or summaries. The specification of records provided shall include sufficient detail to permit the interrogating party to locate and identify as readily as can the party served, the records from which the answers may be ascertained.

(3) Discovery periods. The availability of interrogatories shall be limited according to the discovery period, as described in §265.121 of this title (relating

to Discovery in Hearings held under Subchapter F).

(A) In the first or second discovery period each party shall be allowed to serve one set of interrogatories, as permitted in Rule 168(5) of the Texas Rules of Civil Procedure. If the applicant has used interrogatories during the first discovery period, the interrogatories shall be considered as part of the total number of interrogatories the applicant is allowed during the second discovery period.

(B) In the third discovery period, each party shall also be allowed a second set of 20 interrogatories.

(b) Interrogatories may be served after a deposition has been taken, and a deposition may be sought after interrogatories have been answered, but the judge, on motion of the deponent or the party interrogated, may make such protective order as justice requires.

(c) Unless other time limits are set by the judge or by agreement of the parties, the party upon whom the interrogatories have been served shall serve answers upon the party submitting the interrogatories within the time specified by the party serving the interrogatories, which specified time shall not be less than 21 days after the service of the interrogatories. The judge may enlarge or shorten the time for serving answers or objections.

(d) The number of questions, including subsections, in a set of interrogatories served during the first or second discovery period shall be limited so as not to require more than 30 answers. In the second set of interrogatories allowed in the third discovery period, the interrogatories shall be limited so as not to require more than 20 answers. Each part of a compound question will be considered a separate question. No more than two sets of interrogatories may be served by a party to any other party, except by agreement or as may be permitted by the judge upon a showing of good cause. The judge may reduce or enlarge the number of interrogatories or sets of interrogatories if justice so requires. Furthermore, the judge may group parties specifically for discovery purposes, in order to limit the number of questions that must be answered by any party. In the event that parties are grouped, the judge may increase the allowable number of interrogatories beyond that specified in Rule 168(5) of the Texas Rules of Civil Procedure to the extent fairness requires. The provisions of §265.122 of this title are applicable for the protection of the party from whom answers to interrogatories are sought under this section.

(e) The interrogatories shall be answered separately and fully in writing under oath. Answers to interrogatories shall be preceded by the question or interrogatory to which the answer pertains. True copies of the interrogatories, and answers and objections thereto, shall be served on all parties or their attorneys, and copies thereof shall be provided to any additional parties upon request. The answers shall be signed and verified by the person making them and the provisions of §265.63(c) of this title (relating to Affidavit by Representative) shall not apply.

(f) A party may serve written objections to specific interrogatories or portions thereof. Objections must be served within 14 days of receiving the interrogatories. Answers only to those interrogatories, or portions thereof, to which objection is made, shall be deferred until the objections are ruled upon and for such additional time thereafter as the judge may direct.

§265.126. Requests for Admissions.

(a) Request for admission.

(1) At any time after jurisdiction over the application or petition has been taken by the judge except as provided in §265.142 of this title (relating to Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions), a party may serve upon any other party a written request for the admission, for purposes of the pending proceeding only, of the truth of any matters within the scope of §265.122 of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses) set forth in the request that relate to statements or opinions of fact or of the application of law to fact, including the genuineness of any documents described in the request. Except by agreement of the parties or upon leave of the judge, a party may serve only one set of admissions upon any other party.

(2) Copies of the documents shall be served with the request unless they have been or are otherwise furnished or made available for inspection or copying. Whenever a party is represented by an attorney of record, service for a request for admissions shall be made on his attorney unless service on the party himself is ordered by the judge. Upon request of the judge, a true copy of a request for admissions or of a written answer or objection, together with proof of the service thereof, shall be promptly filed with the judge by the party making it.

(3) Each matter of which an admission is requested shall be separately set forth. The judge may specify the dates by which the admission may be served, answered, specifically denied, or objected to as provided in this section. The matter is

admitted without necessity of a judge's order unless, within 14 days after service of the request, or within such time as the judge may allow, or as otherwise agreed by the parties, the party to whom the request is directed serves upon the party requesting the admission a written answer or objection addressed to the matter, signed by the party or by his attorney.

(4) If objection to a requested admission is made, the reason therefore shall be stated.

(5) The answer to a requested admission shall specifically deny the matter or set forth in detail the reasons that the answering party cannot truthfully admit or deny the matter. A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify his answer or deny only a part of the matter of which an admission is requested, he shall specify so much of it as is true and qualify or deny the remainder.

(6) An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless he states that he has made reasonable inquiry and that the information known or easily obtainable by him is insufficient to enable him to admit or deny.

(7) A party who considers that a matter of which an admission is requested presents a genuine issue for hearing may not, on that ground alone, object to the request; he may, subject to the provisions of §265.141 of this title (relating to Abuse of Discovery; Sanctions), deny the matter or set forth reasons why he cannot admit or deny it.

(b) Effect of admissions.

(1) Any matter admitted under this section is conclusively established as to the party making the admission unless the judge, on motion and for good cause shown, permits withdrawal or amendment of the admission.

(2) Subject to the provisions of §265.122 of this title governing duty to supplement discovery responses, the judge may permit withdrawal or amendment of responses and deemed admissions upon a showing of good cause for such withdrawal or amendment if the judge finds that the parties relying upon the responses and deemed admissions will not be unduly prejudiced and that the presentation of the merits of the proceeding will be subserved thereby.

§265.127. Depositions.

(a) Type of deposition. The types of depositions allowed shall include those under of the Texas Rules of Civil Procedure. The deposing party shall have the

option of selecting the type of deposition, but in all cases a recording shall be made. When a party seeks a deposition that is not transcribed by a court reporter, any other party may, at its own cost, provide for a court reporter.

(b) Deposition witnesses. The judge may order that all deposition witnesses be made available in Texas. At the time of deposition the witness shall be prepared to testify about those issues and opinions for which the witness is identified.

§265.128. *Issuance of Subpoena or Commission to Take Deposition.* A subpoena or commission to take deposition shall be issued under §265.84 of this title (relating to Issuance of Subpoena or Commission to take Deposition).

§265.129. *Sanctions for Failure to Comply with Subpoena or Commission to Take Deposition.* If a person fails to comply with a subpoena or commission to take deposition, the commission or the party requesting the subpoena or commission may seek enforcement under the APA, §2001.201.

§265.130. *Non-Stenographic Recording; Deposition by Telephone.*

(a) Non-stenographic recording. Any party may cause the testimony and other available evidence at a deposition upon oral examination to be recorded by other than stenographic means, including videotape recordings, upon leave of the judge, and the non-stenographic recording may be presented at trial in lieu of reading from a stenographic transcription of the deposition, subject to the following.

(1) Any party intending to make a non-stenographic recording shall give five day's of notice to all other parties by mail, return receipt requested, and shall specify in said notice the type of non-stenographic recording which will be used.

(2) After notice is given, any party may make a motion for relief under §265.122 of this title (relating to Forms and Scope of Discovery; Protective Orders; Supplementation of Responses). If a special hearing session is not held prior to the taking of the deposition, the non-stenographic recording shall be made subject to the judge's ruling at a later time.

(3) Any party shall have reasonable access to the original recording and may obtain a duplicate copy at his own expense.

(4) The expense of a non-stenographic recording shall not be taxed as costs, unless before the deposition is taken, the parties so agree, or the judge so orders, for good cause shown, on motion and notice.

(5) The non-stenographic recording shall not dispense with the requirement of a stenographic transcription unless the judge shall so order on motion and notice before the deposition is taken and such order shall make such provision concerning the manner of taking, preserving, and filing the non-stenographic recording as may be necessary to assure that the recorded testimony will be intelligible, accurate, and trustworthy. Such order shall not prevent any party from having stenographic transcription made at his own expense. In the event of an appeal, the non-stenographic recording shall be reduced to writing at the expense of the party making the recording.

(b) Deposition by telephone. The parties may stipulate in writing, or the judge may, upon motion, order that a deposition be taken by telephone. For the purposes of this section and §265.12(a) of this title (relating to Issuance of Subpoena or Commission to Take Deposition) and §265.141 of this title (relating to Abuse of Discovery; Sanctions), a deposition taken by telephone is taken in the district and at the place where the deponent is to answer questions propounded to him.

§265.131. *Failure of Party or Witness to Attend or to Serve Subpoena; Expenses.*

(a) Failure of party giving notice to attend. If the party giving the notice of the taking of an oral deposition fails to attend and proceed therewith and another party attends in person or by attorney pursuant to the notice, the judge may recommend that the commission order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

(b) Failure of witness to attend. If a party gives notice of the taking of an oral deposition of a witness and the witness does not attend because of the fault of the party giving the notice, if another party attends in person or by attorney because he expects the deposition of that witness to be taken, the judge may recommend that the commission order the party giving the notice to pay to such other party the reasonable expenses incurred by him and his attorney in attending, including reasonable attorney fees.

§265.132. *Deposition Examination, Cross-Examination, and Objections.*

(a) Written cross-questions on oral examination. At any time before the expiration of ten days from the date of the service of the notice to take oral deposition, any party, in lieu of participating in the oral examination may serve written questions on the party proposing to take the deposition, who shall cause them to be transmitted to

the officer authorized to take the deposition, who shall propound them to the witness and record the answers verbatim.

(b) Oath. Every person whose deposition is taken upon oral examination shall be first cautioned and sworn to testify the truth, the whole truth, and nothing but the truth.

(c) Examination. The witness shall be carefully examined; his testimony shall be recorded at the time it is given and thereafter transcribed by the officer taking the deposition or by some person under his personal supervision.

(d) Objections to testimony. The officer taking the oral deposition shall not sustain objections made to any of the testimony or fail to record the testimony of the witness because an objection is made by any of the parties or attorneys engaged in taking the testimony. Any objections made when the deposition is taken shall be recorded with the testimony and reserved for the action of the judge before whom the cause is pending. Absent express agreement recorded in the deposition to the contrary:

(1) objections to the form of questions or the non-responsiveness of answers are waived if not made at the taking of an oral deposition; and

(2) except as provided in paragraph (1) of this subsection, or unless otherwise provided by agreement of the parties recorded by the officer in the deposition transcript, the judge shall not be confined to objections made at the taking of testimony.

§265.133. *Submission to Witness; Changes; Signing.*

(a) When the testimony is fully transcribed, the deposition officer shall transmit or provide the original deposition transcript to the witness, or if the witness is a party with an attorney of record, to the attorney of record, for examination and signature by the witness before any officer authorized to administer an oath, unless such examination and signature are waived by the witness and by the parties.

(b) No erasures or obliterations of any kind are to be made to the original testimony as transcribed by the deposition officer. Any changes in form or substance which the witness desires to make shall be furnished to the deposition officer by the witness, together with a statement of the reasons given by the witness for making such changes. The changes and the statement of the reasons for the changes shall be attached to the deposition by the depositions officer. The deposition transcript and any changes shall then be subscribed by the witness under oath, before any officer authorized to administer an oath, unless the parties by stipulation waive the signing or

the witness is ill or cannot be found or refuses to sign.

(c) If the witness does not sign and return the original deposition transcript within 20 days of its submission to him or his counsel of record, the deposition officer shall sign a true copy of the transcript and state on the record the fact of the waiver of examination and signature or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor. The copy of the deposition transcript may then be used as fully as though signed, unless on motion to suppress, the judge determines that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

§265.134. Use of Deposition Transcripts in Commission Proceedings.

(a) Use of deposition transcript in same proceeding.

(1) Use of depositions. At trial or upon a hearing on a motion, any part or all of a deposition taken in the same proceeding, insofar as admissible under the Texas Rules of Civil Evidence, may be used by any person for any purpose against any party who was present or represented at the taking of the deposition or who had reasonable notice thereof. Further, the Texas Rules of Civil Evidence shall be applied to each question and answer as though the witness were then present and testifying. Depositions shall include the original transcripts or any certified copies thereof. Unavailability of the deponent is not a requirement for admissibility.

(2) Included within meaning of "same proceeding." Substitution of parties pursuant to these rules does not affect the right to use depositions previously taken.

(3) Parties joined after deposition taken. If one becomes a party after a deposition is taken and has an interest similar to that of any party described in paragraphs (1) or (2) of this subsection, the deposition is admissible against him if he has had a reasonable opportunity, after becoming a party, to redepose the deponent, and has failed to exercise that opportunity. Any existing deposition may be used by parties joined after the deposition is taken for any purpose against any party in accordance with paragraphs (1) and (2) of this subsection.

(b) Use of deposition transcript taken in different proceeding. At trial or upon the hearing of a motion or an interlocutory proceeding before a judge, any part or all of a deposition taken in a different proceeding may be used subject to the provisions and requirements of the Texas Rules of Civil Evidence. Further, the Texas Rules of Civil Evidence shall be applied to each

question and answer as though the witness was then present and testifying.

(c) Motion to suppress. When a deposition transcript has been delivered by the deposition officer and notice of delivery given at least one entire day before the day on which the case is called for trial, errors and irregularities in the notice of delivery, and errors in the manner in which the testimony is transcribed or the deposition transcript is prepared, signed, certified, sealed, endorsed, delivered, or otherwise dealt with by the deposition officer are waived, unless a motion to suppress the deposition transcript or some part thereof is made and notice of the written objections made in the motion is given to every other party before trial commences.

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 July 5, 1995.

TRD-9508186 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

◆ ◆ ◆
Sanctions

• 30 TAC §§265.141-265.145

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.141. Abuse of Discovery; Sanctions.

(a) Motion for sanctions or order compelling discovery. A party, upon reasonable notice to all other parties and to all other persons affected thereby, may apply for sanctions or an order compelling discovery as follows.

(1) Motion. According to subparagraphs (A)-(D) of this paragraph, the discovering party may move for an order compelling a designation, an appearance, an answer or answers, or inspection or production in accordance with the request, or apply to the judge for imposition of any sanction authorized by subsection (b)(2) of

this section without the necessity of first having obtained a judge's order compelling such discovery:

(A) if a party or other deponent which is a corporation or other entity fails to designate the persons or persons to testify on the deponent's behalf, and, if the deponent so desires, the matters on which each person designated will testify; or

(B) if a party, or other deponent, or a person designated to testify on behalf of a party or other deponent fails:

(i) to appear before the officer who is to take his deposition, after being served with a proper notice; or

(ii) to answer a question propounded or submitted upon oral examination or upon written questions; or

(C) if a party fails:

(i) to serve answers or objections to interrogatories after proper service of the interrogatories; or

(ii) to answer an interrogatory; or

(iii) to serve a written response to a request for inspection after proper service of the request; or

(iv) to respond that discovery will be permitted as requested or fails to permit discovery as requested in response to a request for inspection;

(D) if a party fails to comply with any person's written request for the person's own statement.

(2) Depositions upon oral examination. When taking a deposition on oral examination, the proponent of the question may complete or adjourn the examination before he applies for an order.

(3) Protective orders. If the judge denies the motion in whole or in part, the judge may make an appropriate protective order.

(4) Material misrepresentations. Material misrepresentations, including misleading statements or omissions of material information in any application material, or in response to a discovery request or in testimony, constitutes a violation and may be punished by the judge with the full range of sanctions, including a recommendation of denial, of the relief requested in the hearing by the responsible party.

(5) Evasive or incomplete answer. For purposes of this section, an evasive or incomplete answer is to be treated as a failure to answer.

(b) Failure to comply with order or with discovery requests.

(1) Sanctions by court. If a deponent fails to appear or to be sworn or to answer a question after being directed to do so by a judge, the failure may be appealed to district court by the movant as provided by law.

(2) Sanctions by judge and commission. If a party or an officer, director, or managing agent of a party or a person designated under subsection (a)(1) of this section to testify on behalf of a party fails to comply with proper discovery requests or to obey an order to provide or permit discovery, including an order made under subsection (a) of this section, the judge may impose any of the authorized sanctions or he or she may, after notice and hearing, make such orders, or recommendations to the commission, in regard to the failure as are just, and among others, the following:

(A) a judge's order disallowing any further discovery of any kind or of a particular kind by the disobedient party;

(B) a judge's order that the matters regarding which the order was made or any other designated facts shall be taken to be established for the purposes of the action in accordance with the claim of the party obtaining the order;

(C) a judge's order refusing to allow the disobedient party to support or oppose designated claims, or prohibiting him or her from introducing designated matters in evidence; and

(D) a judge's order striking out pleadings, or parts thereof, or staying further proceedings until the order is obeyed. The commission may issue an order dismissing, with or without prejudice, the application, petition, or proceedings or any part thereof.

(c) Abuse of discovery process in seeking, making, or resisting discovery. If the judge finds a party is abusing the discovery process in seeking, making, or resisting discovery or if the judge finds that any interrogatory or request for inspection or production is unreasonably frivolous, oppressive, or harassing, or that a response or answer is unreasonably frivolous or made for the purposes of delay, then the judge, or the commission may, after notice and hearing, impose any authorized sanction or recommend that the commission dismiss the proceedings. Such order of sanction shall be subject to review on appeal when the commission's order becomes final.

(d) Failure to comply with requests for admissions.

(1) Deemed admission. Each matter of which an admission is requested shall be deemed admitted unless, within the time provided for in §265.126 of this title (relating to Requests for Admission), the party to whom the request is directed serves upon the party requesting the admissions a sufficient written answer or objection in compliance with the requirements of §265.126 of this title, addressed to each matter of which an admission is requested. For purposes of this section, an evasive or incomplete answer may be treated as a failure to answer.

(2) Motion. The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the judge determines that an objection is justified, the judge may order that an answer be served. If the judge determines that an answer does not comply with the requirements of §265.126 of this title, the judge may order either that the matter be admitted or that an amended answer be served.

(e) Failure to respond to or supplement discovery. A party who fails to respond to or supplement his response to a request for discovery shall not be entitled to present evidence which the party was under a duty to provide in a response or supplemental response or to offer the testimony of an expert witness or of any other person having knowledge of discoverable matter, unless the judge finds that good cause, sufficient to require admission, exists. The burden of establishing good cause is upon the party offering the evidence and good cause must be shown in the record.

§265.142. Sanctions for Failure to Serve or Deliver Copy of Pleadings and Motions. If any party fails to serve on or deliver to the other parties a copy of any pleading, plea, motion, prefiled testimony or prefiled objections, or other application for a judge's order, the judge may, in his discretion, on notice and hearing:

(1) order all or any part of such document stricken; or

(2) direct that such party shall not be permitted to present grounds for relief, protest, or defense contained therein.

§265.143. Failure to Identify Witnesses. A party shall be barred from calling a witness who has not been identified pursuant to §265.106 of this title (relating to Identification of Witnesses).

§265.144. Failure to Identify Testimony. Absent good cause, a witness shall be barred from testifying about matters which were not identified by the sponsoring party in its witness list and amendments thereto,

and/or in that witness' prefiled testimony, when election to prefile testimony has been noticed by the sponsoring party or when prefiled testimony has been directed by the judge.

§265.145. Barring Exhibits. Absent good cause under §265.104(i)(2) of this title (relating to Discovery Schedule and Freezing the Process for Hearings Conducted Pursuant to this Subchapter), an exhibit shall not be accepted into the record which was not offered at the prehearing conference.

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 July 5, 1995.

TRD-9508187

Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

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For further information, please call: (512) 239-1966

Subchapter G. Post Hearing Procedures

• 30 TAC §§265.151-265.166

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new sections implement the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.151. Pleadings Prior to Proposal for Decision. Before the proposal for decision is issued, briefs or proposed findings of fact may be filed only when permitted or requested by the judge.

§265.152. Judge's Proposal for Decision.

(a) Judge's Proposal for Decision. After closing the hearing record, the judge will file a written proposal for decision with the chief clerk within 30 working days and will send a copy by certified mail to each party. If the judge is unable to file the proposal within the 30 days, the judge shall request an extension from the commission by filing a request with the chief clerk. Neither the judge's failure to request an extension; the commission's failure to grant

the requested extension, nor the judge's failure to file the proposal within the 30-day or extended period shall in any way affect the validity of the judge's proposal for decision or the commission's jurisdiction, consideration, or action relative to the proposal for decision.

(b) Judge's proposal for decision: adverse to a party. A written proposal for decision shall be filed by the judge who conducted the hearing or by a substitute judge who has read the record. If the proposal for decision is adverse to a party to the proceeding, it shall contain a statement of the reasons for the proposal as well as findings of fact and conclusions of law which support the proposal. If any party has filed proposed findings of fact upon request and by leave of the judge in accordance with §265.73 of this title (relating to Submittal of Findings of Fact and Conclusions of Law), the judge shall include with his proposal for decision recommended rulings on all findings of fact so proposed. Where more than one judge has been assigned to hear a particular proceeding, the presiding judge will issue the proposal for decision and the other assigned judge or judges may file comments thereto.

(c) Judge's proposal for decision: not adverse to any party. If the proposal for decision is not adverse to any party to the proceeding, the judge may informally dispose of the matter by proposing to the commission an order which need not contain findings of fact, conclusions of law, or reasons for the proposal. If the proposal for decision is not adverse to any party and a permit is to be issued, the judge need not propose an order to the commission.

§265.153. Waiver of Right to Review Judge's Proposal. Any party may waive the right to review and comment upon the judge's proposal for decision. The waiver shall be either in writing or stated on the record at the hearing.

§265.154. Pleadings Following Proposal for Decision.

(a) Pleadings. Unless right of review has been waived, any adversely affected party may, within ten days after the date of issuance of the proposal for decision, file exceptions or briefs. Proposed findings of fact may be filed when permitted or requested by the commission. Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 20 days after the date of issuance of the proposal for decision.

(b) Amended and supplemental pleadings. Unless otherwise provided in these sections, the Texas Rules of Civil Procedure pertaining to amended and supplemental pleadings in trials before the dis-

trict courts of this state shall apply in hearings before the commission.

(c) Motions. A motion, unless made during a hearing, shall be made in writing, shall set forth the relief or order sought, and shall be timely filed with the chief clerk. Any reply to the motion shall be timely filed with the chief clerk. Unless otherwise directed by the commission, motions based on matters which do not appear of record must be supported by affidavit. When necessary in the judgment of the commission, a hearing will be held to consider any motion.

(d) Change of filing deadlines. The general counsel may change the deadlines to file pleadings following the proposal for decision. A party requesting a change must file a written request with the chief clerk, and must serve a copy on the general counsel, the judge, and the other parties. The request must explain that the party requesting the change has contacted the other parties, and whether the request is opposed by any party. The request must include proposed dates (preferably a range of dates) and must indicate whether the judge and the parties agree on the proposed dates.

§265.155. Judge May Amend Proposal for Decision. The judge may amend the proposal for decision pursuant to exceptions, replies, or briefs submitted by the parties without the proposal for decision again being served on the parties.

§265.156. Scheduling Commissioners' Meetings.

(a) The chief clerk, in coordination with the judge, shall schedule motions by parties requiring commission action and the presentation of the proposal for decision. The judge, when transmitting the proposal for decision, shall notify the parties of the date of the commissioner's meeting and the deadlines for the filing of exceptions and replies. The general counsel, either by agreement of the parties and the judge, or on the general counsel's own motion, may reschedule the presentation of the proposal for decision. The chief clerk shall send notice of the rescheduled meeting date to the parties no later than ten days before the rescheduled meeting.

(b) Consistent with notices required by law, the commission may consolidate related matters if the consolidation will not injure any party and may save time and expense or otherwise benefit the public interest and welfare.

(c) The commission may sever issues in a proceeding or hold special hearings on separate issues if doing so will not injure any party and may save time and expense or benefit the public interest and welfare.

§265.157. Oral Presentation Before the Commission. In proceedings where a judge has held a public hearing and has issued a proposal for decision or other report to the commission, all oral presentations before the commission shall be limited to five minutes each, excluding time for answering questions, unless the chairman establishes other limitations. Before the commissioners' meeting the general counsel may allot time for oral presentations. Oral presentations and responses to questions shall be directed to the commission.

§265.158. Conduct and Decorum in Commissioners' Meetings and Hearings.

(a) The chairman, or in his or her absence, the acting chairman, shall preside over all meetings and hearings of the commission and have control of the floor.

(b) Participants shall not approach the commission's bench without first obtaining leave from the chairman, and must never lean on or go behind the bench.

(c) Participants should anticipate any need to set up or move furniture, appliances, or easels, and shall make advance arrangements with the chief clerk.

(d) Participants should remain seated except to address the commission or to appropriately handle documents, exhibits or physical evidence.

(e) Participants, except commission personnel, shall address the commission from the podium.

(f) Participants shall not ask argumentative questions, but may ask questions for informational or clarification purposes only.

§265.159. Remand to Judge. The commission may remand any proceeding to a judge with instructions as to the subject matter of further hearings, if any, and the judge's duties in preparing supplemental materials or revised orders for the commission's final adoption.

§265.160. Decision.

(a) Final decision. The commission shall make its final decision upon the expiration of 20 days or later, following service of the judge's proposal for decision, unless the parties have waived review under §265.153 of this title (relating to Waiver of Right to Review Judge's Proposal). The final decision, if adverse to any party, shall include findings of fact and conclusions of law separately stated. If any party has filed proposed findings of fact at the request of the judge in accordance with §265.73 of this title (relating to Submittal of Findings of Fact and Conclusions of Law), the com-

mission will include in its final decision a ruling on the proposed findings of fact, unless waived by the party.

(b) Prompt final decision. The commission's final decision customarily will be rendered within 60 days after the date the hearing is finally closed. In a case heard by a judge, a longer period of time may be necessary in order to present the matter to the commission for final decision. If additional time is likely to be required, that fact shall be announced by the judge at the conclusion of the hearing.

§265.161. After Public Hearing Before the Full Commission—Pleadings Prior to Final Decision. In matters heard before a majority of the commission, briefs or proposed findings of fact may be filed when permitted or requested by the commission. The general counsel shall set the deadlines for filing such documents.

§265.162. After Public Hearing Before the Full Texas Natural Resource Conservation Commission—Final Decision. The commission shall by written order make its final decision which, if adverse to any party, shall include findings of fact and conclusions of law separately stated. If any party filed proposed findings of fact at the commission's request, the commission will include in its final decision a ruling on the proposed findings of fact, unless waived by the party.

§265.163. Motion for Rehearing.

(a) Filing motion. Except as provided by the APA, a motion for rehearing is a prerequisite to an appeal. The motion shall be filed in writing with the chief clerk within 20 days after the date the party or his attorney of record is notified of the final decision or order. A party or attorney of record is presumed to have been notified on the date that the final decision or order is mailed by first-class mail. On or before the date of filing of a motion for rehearing, a copy of the motion shall be mailed or delivered to all parties with certification of service furnished to the commission. The motion shall contain the following information:

- (1) the name and representative capacity of the person filing the motion;
- (2) the style and official docket number assigned by SOAH, and official docket number assigned by the commission;
- (3) the date of the final decision or order; and
- (4) a concise statement of each allegation of error.

(b) Reply to motion for rehearing. A reply to a motion for rehearing must be

filed with the chief clerk within 30 days after the date a party or his attorney of record is notified of rendition of the final decision or order. A party or attorney of record is presumed to have been notified on the date that the final decision or order is mailed by first-class mail.

(c) Ruling on motion for rehearing.

(1) The general counsel shall review any motion for rehearing and reply(ies) to a motion for rehearing, and may determine that the motion for rehearing should be scheduled for consideration during a commissioners' meeting. Unless the commission rules on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of rendition of the final decision or order, the motion is overruled by operation of law.

(2) A motion for rehearing may be granted in whole or in part. When the motion for rehearing is granted, the final decision or order is nullified. The commission may reopen the hearing to the extent it deems necessary. Thereafter, the commission shall render a final decision or order as required by these sections.

(d) Modification of time limits. The time limits specified in this section may be modified as follows:

(1) the commission or the general counsel may extend the period of time for filing motions for rehearing and replies and for taking action on the motions so long as the period for taking agency action is not extended beyond 90 days after rendition of the final decision or order; or

(2) in the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order; or

(3) by agreement of the parties with the approval of the commission.

§265.164. Decision Final and Appealable. A decision or order of the commission is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision or order of the commission is final and appealable on the date of rendition of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law.

§265.165. Appeal of Final Decision.

(a) File petition. A person affected by a final decision or order of the commission may file a petition for judicial review within 30 days after the decision or order is final and appealable.

(b) The record. The record in a contested case shall include the following:

(1) all pleadings, motions, and intermediate rulings;

(2) evidence received or considered;

(3) a statement of matters officially noticed;

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

(5) summaries of the results of any conferences held before or during the hearing;

(6) proposed findings, exceptions, and briefs;

(7) any decision, opinion, or report by the officer presiding at the hearing; and

(8) prefiled testimony.

§265.166. Costs of Record on Appeal. A party who appeals a final decision in a contested case shall pay all costs of preparation of the original or a certified copy of the record of the agency proceeding that is required to be transmitted to the reviewing court. A charge imposed as provided by this section is considered to be a court cost and may be assessed by the court in accordance with the Texas Rules of Civil Procedure.

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 July 5, 1995.

TRD-9508188

Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Subchapter H. Expiration

• 30 TAC §265.170

The new section is proposed under the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017, which authorize the TNRCC to adopt any rules necessary to carry out its powers and duties under the Water Code and other laws of Texas and to establish and approve all general policy of the commission.

The new section implements the Texas Water Code, §§5.103, 5.105, and 26.011, and the Texas Health and Safety Code, §§361.011, 361.017, 361.024, and 382.017.

§265.170. *Expiration.* This chapter will expire on May 31, 1996.

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 July 5, 1995.

TRD-9508189 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Services Division
Texas Natural Resource
Conservation
Commission

Proposed date of adoption: August 30, 1995

For further information, please call: (512) 239-1966

Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (TNRCC) proposes an amendment to §330.4 and new §330.66, concerning municipal solid waste management facilities used in the transfer of grease trap waste, grit trap waste, septage, and other similar liquid waste. Transfer facilities meeting certain capacity requirements will be exempt from permit requirements and will be required to give notice of operation to the TNRCC and will be required to design and operate the facility in accordance with a new proposed section.

The amendment is intended to encourage the development of certain liquid waste transfer stations, thereby reducing transportation costs for liquid waste. Due to federal requirements of Subtitle D of the Resource Conservation and Recovery Act, many landfills in Texas have ceased accepting certain types of liquid waste, and the distance to an approved disposal or processing facility can cause an economic transportation burden.

The proposed changes are consistent with Senate Bill 963, 73rd Legislature (1993) which amended the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.111. The bill exempts certain municipal solid waste management facilities involved in the transfer of municipal solid waste from the TNRCC municipal solid waste permit requirements. In order to qualify for permit exemption, the facility must comply with certain design and operational requirements, and must meet certain capacity limits.

The amendment to §330.4 adds new subsection (r) to provide that a permit is not required for a municipal solid waste management facility that is used in the transfer of liquid waste if certain criteria are met. In lieu of permitting, these facilities must notify the TNRCC of their operation and must design and operate the facility pursuant to requirements of §330.66 (Liquid Waste Transfer Facility Design and Operation).

New §330.66 delineates operation and design criteria which must be met by transfer facilities exempted from permit requirements under §330.4(r).

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the sections are in effect there will be fiscal implications as a result of administration and enforcement of the sections. The costs to the state of processing municipal solid waste permits will be reduced. The actual savings to the state are prospective and cannot be determined at this time, but will be reflected by the number of transfer stations sought. Cost savings will potentially be realized by applicants. These savings also cannot be estimated but will depend on individual circumstances and the potential savings from avoiding the costs of permit application and approval.

Mr. Minick also has determined that for the first five years the sections are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the management and control of municipal solid waste, improvements in transporting municipal solid waste, and improved compliance with commission rules relating to municipal solid waste. No added cost impacts are anticipated to small businesses. No negative economic impacts are anticipated to applicants. There are no fiscal effects anticipated for any person required to comply to the sections as proposed.

Written comments on the proposal should mention Log Number 95063-330-WS and may be submitted to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, MC-201, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6087. Written comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Wayne Lee, Waste Policy and Regulations Division, (512) 239-6815.

Subchapter A. General Information

• 30 TAC §330.4

The amendment is proposed under the authority of the Texas Water Code, §5.103, which provides the TNRCC with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of this state, and under Senate Bill 963, as passed by the 73rd Legislature; and pursuant to the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.024, which provides the TNRCC with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management, and control of solid waste under its jurisdiction.

The amendment affects the Texas Health and Safety Code, §361.111.

§330.4. *Permit Required.*

(a)-(q) (No change.)

(r) A permit is not required for a municipal solid waste transfer station that is used only in the transfer of grease trap waste, grit trap waste, septage, or

other similar liquid waste if the facility used in the transfer will receive 32,000 gallons per day or less. Liquid waste transfer stations that will receive 32,000 gallons a day or less may operate if they notify the Executive Director 30 days prior to initiating operations and if the facility is designed and operated in accordance with the requirements of §330.66 of this title (relating to Liquid Waste Transfer Facility Design and Operation). Facilities that will receive over 32,000 gallons per day must apply for a permit.

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

Issued in Austin, Texas, on July 5, 1995.

TRD-9508162 Lydia Gonzalez-Gromatzky
Acting Director, Legal
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: August 11, 1995

For further information, please call. (512) 239-6087

Subchapter E. Permit Procedures

• 30 TAC §330.66

The new section is proposed under the authority of the Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission (TNRCC) with the authority to adopt any rules necessary to carry out the powers and duties under the provisions of the Texas Water Code, the Texas Solid Waste Disposal Act, Texas Health and Safety Code, §361.024 and §361.061, which provides the TNRCC with the authority to regulate municipal solid waste and adopt rules as necessary to regulate the operation, management and control of solid waste under its jurisdiction.

The new section affects the Texas Health and Safety Code, §361.111.

§330.66. *Liquid Waste Transfer Facility Design and Operation.*

(a) Applicability.

(1) This section shall apply to a municipal solid waste management facility that handles only liquid waste and which is exempt from permit requirements under §330.4(r) of this title (relating to Permit Required).

(2) New liquid waste transfer facilities with permanent holding vessels (fixed facilities) must comply with all requirements of this section.

(3) New liquid waste transfer facilities that only transfer from vehicle to vehicle must comply with applicable requirements of this section.

(4) Existing liquid waste transfer facilities must comply with applicable requirements of this section and must notify the Texas Natural Resource Conservation Commission (TNRCC) of their operation within 30 days of the effective date of these regulations.

(5) Temporary storage facilities as defined in §312.147 of this title (relating to Temporary Storage) that store 8,000 gallons or less for a period of four days or less in mobile containers are not required to follow the liquid waste transfer station rules in this section. Owners and operators of temporary storage facilities that store 8,000 gallons or less for a period of four days or less must follow the notification rules in this section.

(6) Secondary transporters of liquid wastes as defined in §312.148 of this title (relating to Secondary Transportation of Waste) are subject to all applicable requirements in this section.

(7) This section is applicable to liquid waste transfer facilities located on or at other TNRCC authorized facilities.

(b) Public meeting. The owner or operator of each liquid waste transfer facility shall conduct a public meeting in the local area within 30 days of facility operation, or as determined by the executive director, to describe the proposed action to the general public. A one time notice of the public meeting shall be provided by the facility owner or operator two weeks prior to the meeting in the format prescribed in the Health and Safety Code, §361.0791(d) and (e) (relating to Public Meeting and Notice Requirements). Evidence that the meeting was held shall be submitted to the TNRCC in the form of a copy of the meeting notice as published and a notarized statement from the facility owner or operator stating that the meeting was held and stating the meeting date and location. This meeting requirement is applicable to all liquid waste transfer facilities.

(c) Notification. The owner or operator shall notify the executive director in writing of the intent to operate a liquid waste transfer facility 30 days prior to the operation of the facility by completing a TNRCC Form entitled "Notice of Intent to Operate a Liquid Waste Transfer Facility," available from the TNRCC. The facility will be issued a registration number by the TNRCC upon receipt of the Form. Documentation of the facility design and operation shall be maintained as follows.

(1) Waste data. For all liquid waste transfer facilities, documentation of

the incoming and outgoing liquid waste rate shall be maintained at the facility or at the facility headquarters, as applicable. The incoming liquid waste rate shall be supported by trip ticket receipts and annual reports. Random sampling and analysis of the incoming waste should be conducted and records maintained.

(2) Site plan. For fixed facilities only, a site layout plan, signed and sealed by a registered professional engineer, and a location map must be maintained at the facility.

(3) Land-use. For all liquid waste transfer facilities, the owner or operator shall maintain documentation at the facility of local government approval/acceptance of the site location, e.g., conformity with local zoning restrictions, a building permit, license, nonconforming use authorization, deed restrictions, etc. These regulations do not grant authorization for any activities of the facility that are not in compliance with local government ordinances and regulations.

(4) Site operating plan.

(A) A site operating plan shall be maintained at the facility or at the facility headquarters for all liquid waste transfer facilities. The site operating plan shall include, at a minimum, a description of the general liquid waste data, the facility operation, facility maintenance, safety provisions, emergency procedures, fire protection, operating hours, spill control procedures, and vector control procedures.

(B) For each facility, the plan shall also address alternate procedures in the event that the facility becomes inoperable for periods longer than 24 hours.

(C) For all liquid waste transfer facilities, the liquid waste data shall be maintained to include an estimate of the amount of liquid waste to be received daily, the maximum amount of liquid waste to be stored, the maximum and average lengths of time that liquid waste is to remain on the site, and the intended destination of the liquid waste received. The data shall be maintained either at the facility or at the facility headquarters.

(D) The plan shall address emergency procedures for catastrophic vessel failure, for accidental discharges, and for spills of liquid waste. For fixed storage facilities, a plan shall be maintained on site that addresses yearly vessel inspection and procedures to repair leaks, if found. In the event of a discharge or spill of waste at the transfer facility the owner or operator of the facility must take appropriate action to pro-

tect human health and the environment, e.g., notify local law enforcement and health authorities; dike the discharge area; clean up any waste discharge that occurs; or take such action as may be required or approved by federal, state, or local officials having jurisdiction so that the waste discharge no longer presents a public health or environmental problem.

(5) Legal description. For all liquid waste transfer facilities, a legal description of the property, including the book and page number of the county deed records of the current property owner, shall be maintained at the site or at the facility headquarters. If the property is platted, the book and page number of the final plat record and a copy of the final plat shall be maintained on site or at the facility headquarters.

(6) Evidence of financial assurance. For fixed facilities only, evidence of financial assurance shall be submitted to the TNRCC in accordance with §330.9 and §§330.280-330.286 of this title, (relating to Financial Assurance). A cost estimate of the cost to close the facility shall be submitted with the notice. The financial assurance document shall be submitted prior to facility operation. The financial assurance instrument will be released upon the submission of a statement that the facility has ceased accepting liquid waste and that any remaining waste has been removed to another approved facility, as long as the facility is in compliance with TNRCC rules. No post-closure care for financial assurance is required.

(7) Statement of owner or operator. The following document shall be signed, notarized, and submitted with the notification form:

(A) I,

_____, state that I have knowledge of the facts set forth in the plans and that these facts are true and correct, to the best of my knowledge and belief. I further state that, to my knowledge and belief, the project does not in any way violate any law, rule, ordinance, or decree of the duly authorized governmental entity having jurisdiction. I further state that I am the facility owner or operator or am authorized to act for the owner or operator.

(Signature)

Name and _____
(Date) (Type Title)

(B) Notary public's certificate: Subscribed and sworn to before me, by the said _____, this _____ day of _____ 19____, to certify which witness my hand and seal of office.

No-

tary Public in and for _____ County, Texas. My commission expires on _____.

(d) Design criteria.

(1) Facility design. The facility shall be designed in accordance with all local building codes, land development code requirements, and deed restrictions, if applicable. Building setback lines shall be followed, if applicable. Vehicle parking shall be provided on-site for equipment and employees. Necessary water connections for facility cleaning shall be provided.

(2) Water pollution control. Lagoons, open-top storage facilities, and open vessels are prohibited. Underground storage facilities are prohibited. Provisions for the handling of spilled liquids and any washdown waters from the facility shall be provided. Normally, at fixed facilities, concrete pads with raised curbs around the perimeter, asphalt-paved areas with berms, or the equivalent containment facilities should be utilized to control spills of waste and any other contaminated water. Other spill control methods are acceptable.

(3) Odor control. All liquid waste transfer facilities shall be designed to transfer liquids with a minimal time exposure of liquid waste to the air. The owner or operator shall consider all necessary measures to prevent or eliminate nuisance odors. All liquid waste shall be stored in odor retaining containers and vessels. The applicant should consider additional on-site buffer zones for odor control. The facility shall be designed and operated to prevent nuisance odors from leaving the property boundary of the facility. If nuisance odors are found to be passing the facility property boundary, the facility owner or operator may be required to suspend operations until the nuisance is abated.

(4) Visual screening. Screening or other measures to minimize adverse visual impacts should be considered where appropriate.

(5) Site drainage. For fixed facilities only, drainage provisions for controlling surface water on or near the site shall be provided. The locations of any proposed dikes, berms, storm sewers, levees, detention ponds, and the outfall point shall be identified in the site plan.

(6) 100-year flood. If the fixed facility is located in a 100-year floodplain, the facility shall be designed to prevent washout of contaminants. Such designs normally include levees and other flood control structures.

(7) Site access. The site access road from a publicly-owned roadway to each facility shall be at least a two-lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for waste transporter vehicles shall be provided. The access road design shall include adequate turning radii according to the vehicles

that will utilize the site and shall avoid disruption of normal traffic patterns. A positive means to control dust and mud shall be provided.

(8) Access control. Access to each site should be controlled by a perimeter fence, four-foot barbed wire or six-foot chain-link, or equivalent, with lockable gates. A sign shall be provided that gives the site name, owner or operator's name, facility registration number, operating hours, telephone number, and site rules.

(e) General prohibitions. A person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of liquid waste, or the use or operation of a liquid waste facility to store, process, or dispose of liquid waste, in violation of the Texas Solid Waste Disposal Act, or any regulations, rules, permit, license, order of the commission or in such a manner so as to cause:

(1) the discharge or imminent threat of discharge of liquid waste into or adjacent to the waters in the state without obtaining specific authorization for such discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

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 July 5, 1995.

TRD-9508163

Lydia Gonzalez-Gromatzky
Acting Director, Legal
Division
Texas Natural Resource
Conservation
Commission

Earliest possible date of adoption: August 11, 1995

For further information, please call: (512) 239-6087

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 72. Memoranda of Understanding with Other State Agencies

Memorandum of Understanding with the Texas Department of Criminal Justice

• **40 TAC §72.4001**

The Texas Department of Human Services (DHS) proposes new §72.4001, concerning the memorandum of understanding with the Texas Department of Criminal Justice (TDCJ)

regarding special programs, in its Memoranda of Understanding with Other State Agencies rule chapter. The new section will adopt by reference Texas Administrative Code Title 37, Public Safety and Corrections, Part VI, Texas Department of Criminal Justice, Chapter 15, Special Programs; §159.5 and §159.7, which was proposed in the April 4, 1995, issue of the *Texas Register* (20 TexReg 2523) and was adopted without changes in the May 16, 1995, issue of the *Texas Register* (20 TexReg 3673). The purpose of this memorandum of understanding is to implement the requirement in Senate Bill 252, enacted by the 73rd Legislature, that DHS enter into two memoranda of understanding with TDCJ and other health and human service agencies in order to develop and implement a continuity of care system for offenders with physical disabilities and elderly offenders.

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

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that communication and coordination between the various health and human services agencies and the TDCJ system will be improved. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposal may be directed to Austin R. Kessler at (512) 450-4867 in DHS's Health Policy, Research, and Initiatives Department. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-479, 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, Chapter 22, which provides the department with the authority to administer public assistance programs.

The new section implements the Human Resources Code §§22.001-22.024.

§72.4001. *Memorandum of Understanding with the Texas Department of Criminal Justice.* The Texas Department of Human Services (DHS) adopts by reference Texas Administrative Code Title 37, Public Safety and Corrections, Part VI, Texas Department of Criminal Justice, Chapter 159, Special Programs, §159.5 and §159.7 (relating to Continuity of Care System for Offenders with Physical Disabilities and Continuity of Care System of Elderly Offenders) as adopted effective May 31, 1995. This memorandum of understanding between the Texas Department of Criminal Justice and DHS provides for continuity of care system for offenders with physical disabilities and elderly offenders.

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 June 28, 1995.

TRD-9507964

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

Proposed date of adoption: September 1, 1995

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

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 1. Management

Advisory Committees

• 43 TAC §1.82, §1.83

The Texas Department of Transportation proposes amendments to §1.82 and §1.83, concerning department advisory committee operations and procedures and advisory committee responsibilities.

Senate Bill 1428, 74th Legislature, repealed Texas Civil Statutes, Article 6673g, §2, which required the governor, the lieutenant governor, and the speaker of the house of representatives to appoint members to a committee to advise the commission on the rules of the department that may affect the environment. Senate Bill 3, 74th Legislature enacted Texas Civil Statutes, 6675c, requires the department to appoint a rules advisory committee to advise the department on the adoption of rules concerning the registration of tow trucks under Texas Civil Statutes, Article 6675c, and the administration of the Vehicle Storage Facility Act, Texas Civil Statutes 6687-9a. Senate Bill 3, 74th Legislature, further provides that the department may adopt rules to govern the operations of the advisory committee.

Texas Civil Statutes, Article 6252-33, provide that a state agency which is advised by an advisory committee shall adopt rules that state the purpose of the committee and describe the task of the committee and the manner in which the committee will report to the agency.

Section 1.82 and §1.83 are amended to comply with Senate Bill 1428 and Senate Bill 3. The amendments will abolish the Environmental Advisory Committee and establish the Tow Truck Rules Advisory Committee, with representation from the regulated community, law enforcement, and the general public, to help ensure effective communication among interested parties and valuable input into the development of the rules affecting the tow truck industry.

Robert W. Jackson, Deputy General Counsel for Policy, has determined that for the first five years the sections are in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Jackson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Mr. Jackson also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections will be to comply with Senate Bill 1248 and to continue to provide forums to facilitate communication among the department, other governmental agencies, and the public regarding transportation issues. 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.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendments. The public hearing will be held at 3:30 p.m., on Friday, July 21, 1995, in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 3:00 p.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. 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 Eloise Lundgren, Director of the Public Information Office, at 125 E. 11th St., Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangement can be made.

Comments on the proposal may be submitted to Robert W. Jackson, Deputy General Counsel for Policy, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on August 10, 1995.

The amendments are proposed under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically Senate Bill 1428 which repealed Texas Civil Statutes, Article 6673g, §2, which required the governor, the lieutenant governor, and the speaker of the house of representatives to appoint members to a committee to advise the commission on the rules of the department that may affect the environment, and

Senate Bill 3, 74th Legislature, which requires the department to appoint a rules advisory committee to advise the department on the adoption of rules concerning the registration of tow trucks under Texas Civil Statutes, Article 6675c, and the administration of the Vehicle Storage Facility Act, Texas Civil Statutes 6687-9a.

Texas Civil Statutes, Article 6252-33 and Article 6675c are affected by these proposed amendments.

§1.82. Statutory Advisory Committee Operations and Procedures.

(a) (No change.)

(b) Membership.

(1) (No change.)

(2) [Environmental and] Public Transportation. Members of the [Environmental and] Public Transportation Advisory Committee [Committees] shall be appointed and shall serve pursuant to Texas Civil Statutes, Article 6663b [and Texas Civil Statutes, Article 6673g, respectively].

(3) Tow Truck Rules. The department's assistant deputy director for motorists services will appoint to the Tow Truck Rules Advisory Committee two members who represent the general public and one member each as representatives of the following:

(A) tow truck operators;

(B) vehicle storage facility operators;

(C) owners of property having parking facilities;

(D) law enforcement agencies or municipalities; and

(E) insurance companies.

(4)[(3)] Officers. Each committee shall elect a chair and vice-chair by majority vote of the members of the committee.

(c) Meetings.

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

(4) Attendance. A record of attendance at each meeting shall be made. If a member of a committee appointed by the commission or by the department misses two consecutive meetings, written notice shall be given to the member. A third consecutive absence from a regular meeting will be sufficient grounds for removal of the member [by the commission].

(5)-(7) (No change.)

(d) Reimbursement. Advisory committee members are not entitled to receive compensation for serving as members. Members of the Public Transportation and Aviation Advisory Committees [, but] will be reimbursed for reasonable and necessary expenses for performing their duties. Current rules and laws governing reimbursement of expenses for state employees shall govern reimbursement for expenses of advisory committee members.

(e)-(h) (No change.)

§1.83. Statutory Advisory Committees.

(a) [Environmental Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6673g, the Environmental Advisory Committee provides a forum for the exchange of information between the department, the commission and committee members representing the general public and the environmental community. Advice and recommendations expressed by the committee provide the department and the commission with greater insight with regard to environmental issues; thus, facilitating the department's and the commission's goal of ensuring that environmental considerations are fully integrated into department and commission rules and policies.

(2) Duties. The committee shall:

[(A) advise the commission on rules of the department that may affect the environment;

[(B) become informed and knowledgeable of the department's environmental activities, and the environmental policies, and rules which govern the department's operations;

[(C) communicate to the department any views or recommendations of the committee regarding the department's environmental policies, rules, and procedures;

[(D) communicate the roles, mission, and environmental policies of the

department in order to promote a better understanding of the department throughout the general public and environmental community; and

[(E) perform other duties as determined by order of the commission.

[(3) Meetings. The committee shall meet:

[(A) as necessary, at the call of its chair, but not exceeding once each month;

[(B) at the request of the commission; and

[(C) as required by §1.84 of this title (relating to Rulemaking). ♦

[(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.]

[(b)] Aviation Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 46c-3, the Aviation Advisory Committee provides a direct link for general aviation users' input into the Texas Airport System. The committee provides a forum for exchange of information concerning the users' view of the needs and requirements for the economic development of the aviation system. The members of the committee are an avenue for interested parties to utilize to voice their concerns and have that data conveyed for action for system improvement. Additionally, committee members are representatives of the department and its Aviation Division, able to furnish data on resources available to the Texas aviation users.

(2) Duties. The committee shall:

(A) periodically review the adopted capital improvement program;

(B) advise the commission on the preparation and adoption of an aviation facilities development program;

(C) advise the commission on the establishment and maintenance of a method for determining priorities among locations and projects to receive state financial assistance for aviation facility development;

(D) advise the commission on the preparation and update of a multi-year aviation facilities capital improvement program; and

(E) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet once a calendar year and such other times as requested by the Aviation Division Director.

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

(b)[(c)] Public Transportation Advisory Committee.

(1) Purpose. Created pursuant to Texas Civil Statutes, Article 6663b, the Public Transportation Advisory Committee provides a forum for the exchange of information between the department, the commission, and committee members representing the transit industry and the general public. Advice and recommendations expressed by the committee provide the department and the commission with a broader perspective regarding public transportation matters that will be considered in formulating department policies.

(2) Duties. The committee shall:

(A) advise the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating state public transportation funds if the allocation methodology is not specified by statute;

(B) comment on proposed rules or rule changes involving public transportation matters during their development and prior to final adoption unless an emergency requires immediate action by the commission; and

(C) perform other duties as determined by order of the commission.

(3) Meetings. The committee shall meet:

(A) as necessary, at the call of its chair, but not exceeding once each month;

(B) at the request of the commission; and

(C) as required by §1.84 of this title (relating to Rulemaking).

(4) Duration. The committee is abolished September 1, 1997, unless continued in existence by affirmative vote of the commission.

Chapter 3. Finance Division

• 43 TAC §3.1

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

The Texas Department of Transportation proposes the repeal of §3.1, concerning partial payments. This section is no longer necessary due to the simultaneous proposed adoption of the re-enacted subject matter in Chapter 9, Contract Management, as new §9.20 concerning partial payments, in an amended form.

Frank S. Smith, Director of Budget and Finance Division, has determined that for the first five-year period the repeal is in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal.

Mr. Smith also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will provide ease of access to all rules relating to contract management. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed repeal. The public hearing will be held at 9:00 a.m. on Wednesday, August 2, 1995, in the delegation room of the Dewitt C. Greer, State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person

who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. 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 Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Frank J. Smith, Director, Budget and Finance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1995.

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation.

The repeal does not affect other statutes, articles, or codes.

§3.1. Partial Payments.

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 July 5, 1995.

TRD-9508194

Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Earliest possible date of adoption: August 11, 1995

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

Chapter 4. Employment Practices

Subchapter E. Sick Leave Pool Program

• 43 TAC §§4.50-4.56

The Texas Department of Transportation proposes new §§4.50-4.56, concerning the department's sick leave pool program.

Government Code, Chapter 661 authorizes the department to establish a sick leave pool program and to adopt rules and prescribe procedures to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state. The General Appropriations Act, Fiscal Years 1994-1995, Article V, §8(2) defines family members and provides conditions when sick leave may be taken by an employee for illness of the employee or a family member.

Adoption of §§4.50-4.56 is necessary to replace, in an amended form, the provisions of §§1.300-1.305, concerning the department's sick leave pool program. §§1.300-1.305 are being contemporaneously proposed for repeal because the subject matter of these sections fall within Chapter 4, Employment Practices.

New §§4.50-4.56 allow for greater control of the pool balance by allowing for the recertification of an employee's or employee's immediate family member's illness or injury; setting emergency procedures for controlling the balance of hours in the sick leave pool program when it reaches 7,200 hours or below; limiting the employee's use of hours from the sick leave pool for family members not residing in that employee's household to the time necessary to provide care and assistance to a spouse, child, or parent who needs such care as a direct result of a documented medical condition; identifying the specific criteria used to determine if an illness or injury is catastrophic and allowing the patient's health care provider to make that determination based on this criteria; and allowing the department to seek a second and third opinion by a health care provider other than the patient's health care providers, if the validity of the certification is questioned.

Cathy J. Williams, Director of the Human Resources Division, has determined that for the first five-year period the new sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the new sections.

Ms. Williams has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Ms. Williams also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of implementing the sections will be a more efficient and consistent approach for department employees to contribute and be granted hours from the sick leave pool. 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.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed new sections. A public hearing will be held at 1:30 p.m. on Tuesday, July 25, 1995, in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 1:00 p.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repeti-

tive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issues being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. 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 Eloise Lundgren, Director of Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed new sections may be submitted to Cathy J. Williams, Director, Human Resources Division, Texas Department of Transportation, DeWitt C. Greer Building, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on August 10, 1995.

The new sections are proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Government Code, Chapter 661, which authorizes the department to adopt rules administering a sick leave pool program.

Government Code, Chapter 661 is affected by the proposed new sections

§4.50 Purpose. The purpose of the sick leave pool program is to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state. Authority for the creation of the sick leave pool program is contained in Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

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

Accrued leave time—Vacation leave, sick leave, and compensatory time.

Catastrophic illness or injury—A severe condition or combination of conditions affecting the mental or physical health of an employee or an employee's immediate family member that requires the services of a health care provider for a prolonged period

of time and that forces the employee to exhaust all leave time earned by that employee and to lose compensation from the state.

Contribute—To give sick leave from an employee's personal sick leave account to the department sick leave pool.

Employee—A person, other than the executive director, who is employed by the department.

Health care provider—A practitioner as defined by Texas Civil Statutes, Article 4590i, who is practicing within the scope of his or her license.

Human resources officer—An employee in a district, division, or special office who is responsible for verifying the accuracy of all employee leave time records, and for the district, division, or special office extended sick leave program. If more than one employee has these responsibilities, their activities will be coordinated for the purpose of this subchapter.

Immediate family—Those individuals who are related by kinship, adoption, or marriage, as well as foster children certified by the Texas Department of Protective and Regulatory Services.

Permanent disability—A physical or mental impairment that substantially limits one or more major life activities.

Pool administrator—The Director of the Human Resources Division or his or her designee who administers the department's sick leave pool program.

Request—An initial application for withdrawal from the sick leave pool or an application for an extension of a withdrawal due to a catastrophic illness or injury.

Severe condition—Any illness or injury that poses an imminent threat to the life of the patient, results in a permanent disability, or causes the employee to be off work for three continuous months or more for the current episode.

Sick leave pool—A department-wide pool that receives voluntary contributions of sick leave from employees and which transfers approved amounts of sick leave to eligible employees.

Withdrawal—An approved transfer of sick leave hours from the department sick leave pool.

§4.52. Administration of the Pool. The pool administrator is responsible for developing procedures for the operation of the pool; developing forms for contributing leave to, or requesting leave from the sick leave pool; and issuing interpretations and clarifications of the sick leave pool program.

§4.53. Eligibility.

(a) All employees may participate in the sick leave pool program.

(b) An employee with a catastrophic illness or injury is not required to

contribute to the pool before he or she may apply for pool leave.

(c) An employee who has previously contributed to the pool and does not suffer a catastrophic illness or injury may apply to use sick leave from the sick leave pool as specified in §4.55 of this title (relating to Contribution Returns).

§4.54. Contributions.

(a) Restrictions.

(1) An employee may voluntarily contribute any amount of sick leave hours allowed by Government Code, Chapter 661, Subchapter A, State Employee Sick Leave Pool.

(2) Contributions may not be specified for use by a certain individual.

(b) Procedures.

(1) The department will encourage an employee who is planning to retire, terminate employment, or resign to contribute sick leave hours upon separation, if the employee has not already contributed the amount allowed.

(2) An employee who wishes to contribute sick leave to the pool shall submit a contribution form prescribed by the pool administrator to his or her human resources officer.

(3) After verifying the accuracy of information on the application, the human resources officer shall sign the application and submit it to the pool administrator.

(4) Once the application is approved by the pool administrator, the pool administrator shall transfer hours from the employee's account to the sick leave pool account.

§4.55. Contribution Returns.

(a) Restrictions.

(1) An employee or employee's immediate family member must suffer an illness or injury, not necessarily catastrophic, to have the employee's contribution returned.

(2) The number of hours that may be returned to an employee shall not exceed the total number of hours he or she has contributed since the beginning of the program, June 1, 1990.

(3) All accrued leave time must be exhausted by the employee before hours will be returned from a previous contribution.

(4) The maximum number of hours that may be returned per request shall not exceed the amount needed. The amount needed is determined by the amount of unpaid leave incurred because of the illness or injury.

(5) If the pool balance cannot accommodate the amount needed, the employee shall be refunded one-third the balance of the pool.

(6) An employee who is planning to retire and who has contributed sick leave to the pool may not have his or her contributions returned in order to receive a retirement credit.

(b) Procedures.

(1) The employee shall complete a withdrawal of contribution form prescribed by the pool administrator.

(2) The human resources officer shall verify leave balances and the date and time all accrued leave time was or will be exhausted.

(3) The pool administrator shall review the contribution form and approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

§4.56. Withdrawals.

(a) Restrictions.

(1) An employee or an employee's immediate family must have a catastrophic illness or injury to be eligible to withdraw from the pool. The patient's health care provider must certify in writing that the illness or injury of the employee or member of the employee's immediate family is catastrophic.

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. The certification should include the diagnosis and prognosis of the condition or combination of conditions and the date the employee or employee's immediate family member will be able to return to normal activities. If the certification is for the employee's immediate family member, it should also include the amount of time the employee will be needed to provide primary care. The health care provider certification shall be in a form prescribed by the pool administrator.

(3) The employee must submit an updated health care provider's certification that certifies that the catastrophic illness or injury still exists or that it is necessary for the employee to be off work to recover or assist in the recovery from the treatment of the catastrophic illness or injury before an extension may be approved.

(4) Hours transferred from the pool for an illness or injury resulting in a permanent disability may be used solely for the treatment of the illness or injury and not for rehabilitation or training needed as a result of the disability.

(5) An employee's use of a transfer from the sick leave pool for family members not residing in that employee's household is strictly limited to the time necessary to provide assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition.

(6) The maximum hours that may be transferred per request is 720 hours (90 calendar days) or one third of the balance of the pool, whichever is less at the time request is received. The maximum number of hours that may be transferred per catastrophic condition is 720 hours (90 calendar days).

(7) When the pool balance is below 7,200 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340 hours. The time transferred will begin on the date and time the employee exhausted all accrued leave. Additionally, the pool administrator will approve or deny all requests in the order in which they are received.

(8) An employee who uses pool sick leave in accordance with this subchapter is not required to pay back that leave.

(9) An employee must exhaust all accrued leave time before being eligible to use hours approved for a particular catastrophic illness or injury from the sick leave pool.

(10) All withdrawals from the pool must be used solely for the catastrophic illness or injury for which they were granted.

(11) An employee who is in need of additional sick leave after exhausting all accrued leave time shall exhaust all available extended sick leave before using time granted from the sick leave pool.

(12) An employee who is injured on the job, who is entitled to receive worker compensation payments, and who chooses to integrate his or her sick leave, and vacation leave, or compensatory time is also eligible to receive a withdrawal in accordance with this subchapter.

(13) The pool administrator may approve the use of a withdrawal on an intermittent basis provided that the employee justifies his or her need for such use and support the amount of time the employee expects to use within a three month period, with documentation from his or her health care provider. The employee may request an extension of time used intermittently if the need still exists after the three month period is over.

(14) The pool administrator may require the patient's condition to be recertified by a health care provider on a monthly basis. If the employee is determined to be able to return to work sooner than a previous certification, the pool administrator may require the unused portion of a withdrawal to be returned to the pool. If the employee fails to cooperate with recertification requirements and reevaluation procedures, the pool administrator may deny the request or require that the unused portion of a withdrawal be returned to the sick leave pool.

(15) Unused sick leave from the pool shall be returned to the pool when the need for such leave ceases to exist or the pool administrator requires it in accordance with this subchapter.

(16) The estate of a deceased employee is not entitled to payment for unused sick leave from the pool.

(b) Procedures.

(1) The employee shall complete the application for withdrawal. The human resources officer shall assist the employee by verifying leave balances and the date and time all accrued leave time was or will be exhausted.

(2) The employee shall submit the application and the health care provider's certification form to his or her health care provider no earlier than 15 workdays before the need for the withdrawal. The health care provider will complete the certification and mail it, with the completed application, directly to the pool administrator.

(3) The pool administrator will consider applications for withdrawal in the order in which they are received. The pool administrator shall stamp the date and time of receipt on each application, and shall approve or deny the request within five working days of that date.

(4) If the pool administrator questions the validity of the certification completed by the employee's health care provider, based on the average expected duration or severity of the condition, the administrator may request a health care provider, contracted by the department, to review the patient's medical records. The contracted health care provider may consult with the patient's health care provider if more information is needed. If the determination of the contracted health care provider differs from the patient's health care provider, the pool administrator may request that the patient's medical records be reviewed by a third health care provider who is not under contract with the department. The pool administrator and the employee must agree on the third health care provider. The determination of the third health care

provider is binding. The department will pay for both reviews. If the employee fails to cooperate with the medical records review, the pool administrator may deny the request or require that the unused portion of the withdrawal to be returned to the sick leave pool.

(5) The pool administrator will determine the amount of sick leave transferred for each request based on:

(A) the number of hours requested by the employee;

(B) the health care provider's certification which indicates the approximate date the patient will be able to return to light and normal duties or the amount of time that the employee is needed to provide primary care for the immediate family member;

(C) the date and time all accrued leave time was or will be exhausted; and

(D) the balance of the pool.

(6) The pool administrator shall approve or deny the transfer of hours from the sick leave pool to the employees personal sick leave account.

(7) The human resources officer shall inform the pool administrator of the amount of leave the employee used for the illness or injury at the end of each month, and, if he or she has returned to work, the total number of hours used and how many hours are being returned.

(8) The pool administrator shall return all unused hours to the pool.

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

Issued in Austin, Texas, on July 5, 1995.

TRD-9508195

Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Earliest possible date of adoption: August 11, 1995

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

Chapter 9. Contract Management

The Texas Department of Transportation proposes an amendment to §9.11, concerning definitions and new §9.20, concerning partial payments. New §9.20 replaces existing §3.1 concerning partial payments which is simultaneously being proposed for repeal. The

amendments and new section are necessary to update rules that carry out the provisions of Texas Civil Statutes, Article 6674m as amended by Senate Bill 532, 74th Legislature, Regular Session.

Texas Civil Statutes, Article 6674m provide for the partial payment of highway improvement contracts, and require the department to retain 5.0% of the contract price until the entire work has been completed and accepted. Senate Bill 532, 74th Legislature removes the requirement from Texas Civil Statutes, Article 6674m that the department retain 5.0% of the contract price until the work is completed and accepted in contracts for maintenance or contracts for the making of necessary plans and surveys preliminary to construction, reconstruction, or maintenance.

New §9.11 provides definitions of a routine maintenance contract and a preventive maintenance contract. These are necessary to distinguish preventive maintenance contracts from routine maintenance contracts, which are not required to have 5.0% of the contract price retained under new §9.20.

New §9.20 provides that 5.0% of the contract price is retained in construction and preventive maintenance contracts until the work has been accepted and completed, the retained amount may be deposited in a trust account if the contract price exceeds \$300,000, interest on the retainage will be paid to the contractor unless otherwise specified, and funds will not be retained for routine maintenance contracts or contracts for the making of all necessary plans and surveys preliminary to construction, reconstruction, or maintenance.

Frank S. Smith, Director of Budget and Finance Division, has determined that for the first five years the amendment and new section are in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment and new section.

Mr. Smith also has determined that for each year of the first five years the amendment and new section are in effect, the public benefit anticipated as a result of enforcing the sections will be to encourage small businesses that could have had their cash flow impeded if retainage were required on maintenance contracts or contracts for the making of necessary plans and surveys preliminary to construction, reconstruction, or maintenance. There may be a positive fiscal impact for small businesses in the form of improved cash flow, but the extent of the impact can not be determined at this time. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendment and new section. The public hearing will be held

at 9:00 a.m. on Wednesday, August 2, 1995, in the delegation room of the Dewitt C. Greer, State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. 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 Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Frank J. Smith, Director, Budget and Finance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1995.

Subchapter B. Highway Improvement Contracts

• 43 TAC §9.11

The amendment is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, Texas Civil Statutes, Article 6674i, which require rules to be prescribed on all bidders on bids received for contracts awarded for the improvement of the state highway system, and Texas Civil Statutes, Article 6674m which provide for the partial payment of highway improvement contracts, and require the department to retain 5.0% of the contract price until the entire work has been completed and accepted.

Texas Civil Statutes, Article 6674i and Article 6674m is affected by this amendment.

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

Preventive maintenance contract—Contracts let through the construction contracting procedure to preserve and prevent further deterioration of the roadways and rights of way, with all its components.

Routine maintenance contract—Contracts let through the routine maintenance contracting procedure to preserve and repair roadways and right of way, with all its components, to its designed or accepted configuration.

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 July 5, 1995.

TRD-9508196

Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 43 TAC §9.20

The new section is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, Texas Civil Statutes, Article 6674i, which require rules to be prescribed on all bidders on bids received for contracts awarded for the improvement of the state highway system, and Texas Civil Statutes, Article 6674m which provide for the partial payment of highway improvement contracts, and require the department to retain 5.0% percent of the contract price until the entire work has been completed and accepted.

Texas Civil Statutes, Article 6674i and Article 6674m is affected by the new section.

§9.20. Partial Payments. Highway improvement contracts may provide for partial payments.

(1) Construction and preventive maintenance contracts. Construction contracts and preventive maintenance contracts will provide for partial payments of an amount not exceeding 95% of the value of the work done. The department will retain 5.0% percent of the contract price until the entire work has been completed and accepted. At the request of a contractor and with the approval of the department and the state treasurer, the retained amount may be deposited under the terms of a trust agreement with a state or national bank domiciled in Texas as selected by the contractor,

provided that the contract price exceeds \$300,000. The trust agreement shall provide that:

(A) interest earned on deposited funds will be paid to the contractor unless otherwise specified under the terms of the agreement;

(B) all expenses incident to the deposit and all charges made by the escrow agent for custody of the securities and forwarding of interest shall be paid solely by the contractor;

(C) the department may, at any time and with or without reason, demand in writing that the bank return or repay, within 30 days of the demand, the retainage or any investments in which it is invested; and

(D) any other terms and conditions prescribed by the department and the state treasurer as necessary to protect the interests of the state.

(2) Routine maintenance and professional services contracts. The department will not retain funds for routine maintenance contracts or contracts for the making of all necessary plans and surveys preliminary to construction, reconstruction, or maintenance.

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

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Robert E. Shaddock
General Counsel
Texas Department of
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For further information, please call: (512) 463-8630

◆ ◆ ◆
• 43 TAC §§9.12, 9.13, 9.15, 9.17

The Texas Department of Transportation proposes amendments to §9.12, §9.13, §9.15 and §9.17, concerning Highway Improvement Contracts. House Bill 2176, 74th Legislature, Regular Session, amended Article 6674h to: limit the advertising necessary for highway improvement contracts involving an amount less than \$300,000; allow bids for amounts less than \$300,000 to be filed with the district and opened and read by the district engineer or the district engineer's designee; and provide that the department may authorize the executive director or the director's designee to reject bids or award such contracts.

Section 9.12 is amended to provide for bid information to be submitted by the bidder to the department's Construction and Maintenance

Division in Austin 15 days prior to the last day of letting, that satisfactory audited financial information will qualify the bidder for a 12-month period, that the department may grant a three-month grace period, and that the department may require current financial information under certain circumstances. To clarify department procedures and inform potential bidders of department requirements, §9.12 is also amended to describe its levels of bidding capacity and the relation of the levels to previous experience.

Section 9.13 is amended in accordance with House Bill 2176 to authorize limited advertising for contracts involving an engineer's estimated cost of less than \$300,000.

Section 9.15 is amended in accordance with House Bill 2176 to authorize bids for contracts with an engineer's estimate of less than \$300,000 to be opened and read at a public meeting conducted by the district engineer, or his or her designee.

Section 9.17 is amended in accordance with House Bill 2176, which provides that the commission may authorize the executive director or the director's designee to award or reject bids for contracts involving less than \$300,000. The amendments authorize the executive director or the director's designee to reject bids or award such contracts under the same conditions and limitations as apply to other contracts.

Walter W. Chambers, P.E., Director of Construction and Maintenance Division, has determined that for each year of the first five-year period the amendments are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the amendments.

Mr. Chambers has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amended sections.

Mr. Chambers also has determined that for each year of the first five years the amended sections are in effect the public benefit anticipated as a result of enforcing the amended sections will be to: ensure a fair and equitable bidding process for highway improvement contracts; to inform the public of department policy and procedures; and expedite the letting and award of contracts under \$300,000. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed sections. The public hearing will be held at 9:00 a.m. on Tuesday, August 1, 1995, in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations

will be reserved exclusively to the presiding officer as may be necessary to ensure a complete records. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lungren, Director of the Public Information office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments on the proposed amendments may be submitted to Wayne W. Chambers, Director of Construction and Maintenance, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on August 10, 1995.

The amendments are proposed under Texas Civil Statutes, Articles 6666, which provide the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation; and Texas Civil Statutes, Article 6674i, which require the commission to prescribe rules on all bidders on bids received for contracts awarded for the improvement of the state highway system.

Texas Civil Statutes, Articles 6674a, et seq are affected by the proposed amendments.

§9.12. Qualification of Bidders and Registration of Subcontractors.

(a) Audited financial qualification of construction and maintenance bidders. Unless waived under paragraph (2) of this subsection, to be eligible to bid on a construction or maintenance contract a potential bidder must be prequalified in accordance with paragraph (1) of this subsection.

(1) Requirements.

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

(C) Satisfactory audited financial information will grant a 12-month period of qualification from the date of the statement.

(D) A three month grace period of qualification, for the purpose of preparing and submitting current audited information, will be granted, if requested, prior to the expiration date of the statement.

(E) The department may require current audited information at any time if circumstances develop which may alter the firm's financial condition, ownership structure, affiliation status, or ability to operate as an on-going concern.

(2) Waiver.

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

(C) The department will make its examination and determination based on the information submitted, and advise the bidder of its approved bidding capacity. A bidder with no prior experience in construction or maintenance will receive a bidding capacity of \$100,000. An experienced bidder with sufficient working capital and financial capability, as determined by the department, will receive a bidding capacity of:

(i) \$300,00 for a bidder submitting compiled financial information if the principals of the bidder have at least one year experience in construction and/or maintenance and have satisfactorily completed at least two projects in these fields;

(ii) \$500,000 for a bidder submitting compiled financial information if the principals of the bidder have at least two years experience in construction and/or maintenance and have satisfactorily completed at least four projects in these fields; and

(iii) over \$500,000 for a bidder submitting reviewed financial information if the principals of the bidder have at least three years of experience in construction and/or maintenance and have satisfactorily completed at least six projects in these fields.

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

(d) For purposes of this section, an audited financial statement involves an examination of the accounting system, records, and financial statements by an independent certified public accountant in accordance with generally accepted auditing standards. Based on the examination, the auditor expresses an opinion concerning the fairness of the financial statements in conformity with generally accepted accounting principles. A reviewed financial statement is substantially less in scope than an audited financial statement, and consists primar-

ily of inquiries of company personnel and analytical procedures applied to financial data by an independent certified public accountant. Only negative assurance is expressed by the auditor, meaning the auditor is not aware of any material modifications that should be made in order for the financial statements to conform to generally accepted accounting principles. A compiled financial statement is limited to presenting in the form of financial statements information that is the representation of management. No opinion or any other form of assurance is expressed on the statements by the auditor.

§9.13. Notice of Letting and Issuance of Proposals.

(a) Notice to bidders and advertisements

(1) Notice.

(A) Mailing list. The department will maintain [a] mailing lists [list] of all registered subcontractors and bidders approved to bid under §9. 12 of this title (relating to Qualification of Bidders and Registration of Subcontractors). The department will also maintain a mailing list of parties who have purchased a notice subscription for \$25 per year to cover costs of mailing the notices

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

(2) Advertising.

(A) Notice of the time, when, and place where contracts will be let and bids opened will be published in a newspaper in the county where the work is to be done once a week for at least two weeks prior to the time set for the letting of the contract and in two other newspapers designated by the department. If there is no newspaper published in the county in which the work is to be done, the advertising shall be for publication in a newspaper published in the county nearest the county seat of the county in which the work is to be done.

(B) Notice of the time, when, and place where contracts with an engineer's estimate of involving less than \$300,000 [\$100,000] will be let and bids opened will be published in two successive issues of a newspaper published in the county in which the work is to be done, and if there is no newspaper published in the county in which the work is to be done, the advertising shall be for publication in a newspaper in the county nearest the county seat of the county in which the work is to be done.

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

§9.15. Acceptance, Rejection, and Reading of Proposals.

(a) Public reading.

(1) Bids will be opened and read at a public meeting [hearing] conducted by the director of the department's Construction and Maintenance Division, or his or her designee on behalf of the commission. Each meeting [hearing] shall be in the City of Austin, at a time and location specified in the advertisement.

(2) Bids for contracts with an engineer's estimate of less than \$300,000 [\$100,000] may be opened and read at a public meeting [hearing] conducted by the district engineer, or his or her designee on behalf of the commission. Each such meeting [hearing] shall be held at the district headquarters in the district in which the work is to occur.

(b)-(d) (No change.)

§9.17. Award of Contract.

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

(d) Contracts with an engineer's estimate of less than \$300,000 may be awarded or rejected by the executive director or the executive director's designee under the same conditions and limitations as provided in subsections (a)-(c) of this section.

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

Issued in Austin, Texas, on July 5, 1995.

TRD-9508197 Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Earliest possible date of adoption: August 11, 1995

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

◆ ◆ ◆
• 43 TAC §9.38

The Texas Department of Transportation proposes an amendment to §9.38, concerning contract management. The amendment is necessary to update rules that carry out the provisions of Texas Civil Statutes, Article 6674m as amended by Senate Bill 532, 74th Legislature, Regular Session.

Texas Civil Statutes, Article 6674m provide for the partial payment of highway improvement contracts, and require the department to retain five percent of the contract price until the entire work has been completed and accepted. Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, sets forth requirements for se-

lection and contracting of architectural and engineering services.

Senate Bill 532, 74th Legislature, Regular Session, removes the requirement that the department retain five percent of the contract price until the work is completed and accepted in contracts for the making of necessary plans and surveys preliminary to construction, reconstruction, or maintenance. In accordance with Senate Bill 532, 74th Legislature, the amendment to §9.38 removes the requirements that the department withhold five percent from each monthly payment until completion of the contract work and two percent until completion of the final audit.

Frank S. Smith, Director of Budget and Finance Division, has determined that for the first five years the amendment is in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment.

Mr. Smith also has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be to encourage small businesses that could have had their cash flow impeded if retainage were required on contracts for the making of necessary plans and surveys preliminary to construction, reconstruction, or maintenance. There may be a positive fiscal impact for small businesses in the form of improved cash flow, but the extent of the impact cannot be determined at this time. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed amendment. The public hearing will be held at 9:00 a.m. on Wednesday, August 2, 1995, in the delegation room of the Dewitt C. Greer, State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views and identical or similar comments through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or request for alternative language or other revisions in the proposed text should be submit-

ted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer. 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 Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588 at least two work days prior to the meeting so that appropriate arrangements can be made.

Written comments on the proposal may be submitted to Frank J. Smith, Director, Budget and Finance Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1995.

The amendment is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation; Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act which sets forth requirements for selection and contracting of architectural and engineering services; and Texas Civil Statutes, Article 6674m which provide for the partial payment of highway improvement contracts, and require the department to retain five percent of the contract price until the entire work has been completed and accepted.

Texas Civil Statutes, Article 6674m and Government Code, Chapter 2254, Subchapter A, are affected by this amendment.

§9.38. Contract Management.

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

(c) Operations.

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

[(5) Retainage on engineering contracts. The department will withhold 5.0% of each monthly payment until completion of the contract work. The department will withhold the entire retainage for lump sum contracts which allow monthly billing until satisfactory completion of the contract. For contracts which require a final audit, the department may reduce retainage from 5.0% to 2.0% upon successful completion and approval of the contract work. The department may request an interim audit upon successful completion and approval of all contract work prior to the release of the retainage. The department will release the final 2.0% upon completion of the final audit.]

(5)[(6)] Interim audit. The department may require the services of the provider during the construction phase to review shop drawings, plans or procedures.

or perform other services related to its design. If these services are anticipated, the department may request an interim audit upon completion and approval of the plans, specifications, and cost estimate.

(d)-(g) (No change.)

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

Issued in Austin, Texas, on July 5, 1995

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Robert E. Shaddock
General Counsel
Texas Department of
Transportation

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

Chapter 11. Design

Notice of Lettings

• 43 TAC §11.31

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Department of Transportation or in the

Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Department of Transportation proposes the repeal of §11.31, concerning notification and legal advertisements of lettings. The section is no longer necessary due to the adoption of the re-enacted subject matter in an amended form in Chapter 9, Contract Management, as §9.13, effective November 23, 1994

Robert L. Wilson, Director of the Design Division, has determined that for the first five-year period the repeal is in effect, there will not be fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Wilson has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal

Mr. Wilson also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be a more expeditious development of mutually beneficial and priority projects by maximizing the available local and state funds. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed

Written comments on the proposal may be submitted to Robert L. Wilson, Director, De-

sign Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on August 10, 1995.

The repeal is proposed under Texas Civil Statutes, Article 6666, which provide the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation and Texas Civil Statutes, Article 6674h which provides the procedure for competitive bids.

Texas Civil Statutes, Article 6674h is affected by the proposed repeal.

§11.31. Notification and Legal Advertisements of Lettings.

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 July 5, 1995.

TRD-9508201

Robert E. Shaddock
General Counsel
Texas Department of
Transportation

Earliest possible date of adoption: August 11, 1995

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

Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.

The Commissioner of Insurance, at a public hearing under Docket Number 2154 scheduled for July 25, 1995, at 1.30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a form filing by the Texas Department of Banking (Department) for revised surety bond forms entitled "Currency Exchange Bond" and "Sale of Checks Bond". The Currency Exchange Bond is a requirement of Texas Civil Statutes, Article 350. The Sale of Checks Bond is a requirement of Texas Civil Statutes, Article 489d.

The "Currency Exchange Bond" has been revised as follows: The title of the bond. A

reference has been added to bound the surety and principal not only to Texas Civil Statutes (Act), Article 350, but also "any rules adopted pursuant to the Act". Additional wording has been added which now includes "any fines, fees, or other monies due and owing the Department" as part of the obligation in addition to "for the use and benefit of any creditor of the principal for any liability incurred". A counter signature line for the signature of the Licensed Local Recording Agent has been added. There also have been other minor editorial changes.

The "Sale of Checks Bond" has been revised as follows: The title of the bond. A reference has been added to bound the surety and principal not only to Texas Civil Statutes (Act), Article 489d, but also "any rules adopted pursuant to the Act". A counter signature line for the signature of the Licensed Local Recording Agent has been added. There also have been other changes of an editorial nature.

Copies of the full text of the proposed bond forms for the Department are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4124 (refer to Reference Number O-0695-11).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it

from the requirements of the Administrative Procedure Act.

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 June 30, 1995.

TRD-9508061

Alicia M. Fachtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

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

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the Texas Register not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the Texas Register not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas

Department of Insurance, 333 Guadalupe Street,
Austin, Texas 78714-9104)

The Commissioner of Insurance, at a public hearing under Docket Number 2155 scheduled for July 25, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a form filing by the Texas Education Agency for revised surety bond forms: One entitled "Course Provider Bond" and two other bonds both entitled "Driver Education School Bond". Also filed for approval are revised Continuation Agreements for each bond. All three bonds are a requirement of Texas Civil Statutes, Article 4413(29c), as amended by Senate Bill 964, Acts of the 74th Legislature, Regular Session 1995.

The following revisions have been made to the Course Provider Bond: The title of the bond has been changed from Driver Training School Bond to Course Provider Bond. The penalty of the bond has been increased from \$10,000 to \$25,000. Reference to sections of

Article 4413(29c) in the conditions of the bond has been revised to reflect "Section 13(a-2), (g) (3), (h), Section 13B, Section 9". All references to "Driver Training School" has been deleted and substituted with "Course Provider". There are other minor editorial changes.

The two bond forms entitled "Driver Education School Bond" have been revised as follows: The titles of the bonds have been changed from Driver Training School Bond to Driver Education School Bond. Reference to the sections of Article 4413(29c) in the conditions of the bonds have been revised to reflect "Section 13(a), (g) (1), (h), Section 9". There are other minor editorial changes. The penalty on the bonds remain the same, \$10,000 for a primary school and \$5,000 for each branch school.

The Continuation Agreements for each bond form have been revised to track with the revisions of the bond forms. Also a line has been added at the bottom of the forms to provide a space for the Texas Resident Agent to print his or her name.

Copies of the full text of the proposed bond forms for the Texas Education Agency are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4124 (refer to Reference Number O-0695-12).

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 June 30, 1995.

TRD-9508063

Alicia M. Fechtel
General Counsel and Chief
Clerk
Texas Department of
Insurance

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

◆ ◆ ◆

Name: Jo Ester
Grade: 12
School: Plano Senior High School, Plano ISD



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 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 313. Officials and Rules of Horse Racing

Subchapter D. Running of the Race

The Race

- 16 TAC §313.447

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §313.447, submitted by the Texas Racing Commission has been automatically withdrawn, effective July 3, 1995. The amendment as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10412).

TRD-9508103

- 16 TAC §313.450

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §313.450, submitted by the Texas Racing Commission has been automatically withdrawn, effective July 3, 1995. The amendment as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10412).

TRD-9508104

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Suspension or Revocation of Licensure

- 22 TAC §535.164

The Texas Real Estate Commission has withdrawn from consideration for permanent adoption a proposed amendment to §535.164, which appeared in the March 17,

1995, issue of the *Texas Register* (20 TexReg 1855). The effective date of this withdrawal is June 30, 1995

Issued in Austin, Texas, on June 30, 1995.

TRD-9508057

Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: June 30, 1995

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

TITLE 25. HEALTH SER- VICES

Part I. Texas Department of Health

Chapter 289. Radiation Control

Texas Regulation for Control of Radiation

- 25 TAC §289.130

The Texas Department of Health has withdrawn from consideration for permanent adoption a proposed new §289.130, which appeared in the December 27, 1994, issue of the *Texas Register* (19 TexReg 10300). The effective date of this withdrawal is June 7, 1995.

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

TRD-9506908

Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: June 7, 1995

For further information, please call: (512) 458-7236

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 406. ICF/MR Programs

Subchapter D. Reimbursement Methodology

- 25 TAC §§406.151-406.155,
406.159, 406.160

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the pro-

posed repeal of §§406.151-406.155, 406.159, and 406.160, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective July 3, 1995. The repeals as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10414).

TRD-9508105

- 25 TAC §§406.151-406.158,
406.161, 406.162

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new and amendments to §§406.151-406.158, 406.161, and 406.162, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective July 3, 1995. The amendments and new sections as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10415).

TRD-9508106

Chapter 409. Medicaid Programs

Subchapter A. General Reim- bursement Methodology for All Medical Assistance Pro- grams

- 25 TAC §§409.1, 409.2,
409.8-409.18

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new and amendments to §§409.1, 409.2, and 409.8-409.18, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective July 3, 1995. The amendments and new sections as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10421).

TRD-9508107

- 25 TAC §§409.2-409.7

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed repeal of §§409.2-409.7, submitted by the Texas Department of Mental Health and

Mental Retardation has been automatically withdrawn, effective July 3, 1995. The repeal as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10446).

TRD-9508108

◆ ◆ ◆
**Subchapter E. Home and
Community-based Services-
OBRA**

• **25 TAC §409.164**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §409.164, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective July 3, 1995. The amendment as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10448).

TRD-9508109

◆ ◆ ◆
**Subchapter F. Case Manage-
ment Program Requirements**

• **25 TAC §409.206**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §409.206, submitted by the Texas Department of Mental Health and

Mental Retardation has been automatically withdrawn, effective July 3, 1995. The amendment as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10452).

TRD-9508110

◆ ◆ ◆
**Subchapter G. Case Manage-
ment for Persons with
Chronic Mental Illness**

• **25 TAC §409.255**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §409.255, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective July 3, 1995. The amendment as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10457).

TRD-9508111

◆ ◆ ◆
**Subchapter H. Diagnostic Ser-
vices for Persons with Po-
tential of Mental Retardation**

• **25 TAC §409.306**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the pro-

posed amendment to §409.306, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective July 3, 1995. The amendment as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10461).

TRD-9508112

◆ ◆ ◆
**Subchapter I. Rehabilitative
Services for Persons with
Mental Illness**

• **25 TAC §409.356**

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §409.356, submitted by the Texas Department of Mental Health and Mental Retardation has been automatically withdrawn, effective July 3, 1995. The amendment as proposed appeared in the December 30, 1994, issue of the *Texas Register* (19 TexReg 10465).

TRD-9508113

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 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §§217.2, 217.5, 217.6

The Board of Nurse Examiners adopts amendments to §§217.2, 217.5, and 217.6, concerning Licensure by Examination for Graduates of Basic Nursing Education Programs, Temporary License and Endorsement and Requirements for Licensure of Nurses Not Eligible for Temporary Licensure or Endorsement Under §217.5, without changes to the proposed text as published in the May 26, 1995, issue of the *Texas Register* (20 TexReg 3883).

During the 73rd Legislative Session, the Nursing Practice Act was amended by House Bill 756 and House Bill 2180. House Bill 2180 addressed Article 4526, License Renewal. The new language states, in part, that the board by rule may adopt a system under which licenses expire on various dates during the year. Although this process has been in place since 1981, the language was changed in the Act requiring rules addressing license renewal.

The adopted amendments will bring the agency into compliance with House Bill 2180.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Nursing Practice Act, Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on June 29, 1995.

TRD-9508013 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: July 20, 1995

Proposal publication date: May 26, 1995

For further information, please call: (512)
835-8675

• 22 TAC §217.18

The Board of Nurse Examiners adopts an amendment to §217.18, concerning Prohibition of Copying the License/Permit/Permanent Certificate of a Registered Nurse/Graduate Nurse, without changes to the proposed text as published in the May 26, 1995, issue of the *Texas Register* (20 TexReg 3884).

This rule was implemented in 1990 in response to the number of imposter cases occurring during that period. However, since 1990, the number of imposter cases has remained constant. Following a review of the procedures required for license verification, staff concluded the rule was too restrictive and therefore, recommended modification.

This proposed amendment will allow the copying of licenses by employers and credentialing organizations who have a legitimate interest in the license of a registered nurse.

The adopted amendment will maintain that the copying of licenses for any reason is not permitted; however, under certain circumstances, this procedure may be

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Nursing Practice Act, Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on June 29, 1995.

TRD-9508014 Louise Waddill, Ph.D., R.N.
Executive Director
Board of Nurse Examiners

Effective date: July 20, 1995

Proposal publication date: May 26, 1995

For further information, please call: (512)
835-8675

Part XXXI. Texas State Board of Examiners of Dietitians

Chapter 711. Dietitians

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

The Texas State Board of Examiners of Dietitians (board) adopts amendments to §§711.1-711.3, 711.5-711.9, 711.13-711.15, and 711.17-711.19, without changes to the proposed text as published in the March 17, 1995, issue of the *Texas Register* (20 TexReg 1862).

Specifically, the sections cover definitions; the board's operation; the profession of dietetics; experience requirements for examination; examinations for dietitian licensure; application procedures; determination of eligibility; provisional licensed dietitians; licensing of persons with criminal backgrounds to be dietitians and provisional dietitians; violations, complaints, and subsequent board actions; formal hearings; continuing education requirements; temporary license; and informal disposition.

The amendments update existing sections relating to the regulation of dietitians. Specifically, the amendments add a new definition; update legal citations; add code of ethics provisions for applicants; revise rule petition procedures; require certain disclosures by a dietitian; clarify examination procedures; add requirements for provisional licensed dietitians who fail the examination; shorten the time for a pre-planned professional experience program; expand acceptable continuing education experiences; allow informal resolutions of a complaint; make various minor changes which clarify meaning without substantial change, improve grammar and style, and delete unnecessary language; waive continuing education for 60 year old dietitians not in active practice; and clarify inconsistencies in the rules.

The sections insure the regulation of dietitians continues to identify competent practitioners and that licenses are increasing their knowledge and ability through continuing education.

No comments were received regarding adoption of the amendments.

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).

State Bar of Texas

Thursday-Friday, July 13-14, 1995, 9:30 a.m. and 8:30 a.m., respectively.

1414 Colorado, Room 206

Austin

Commission for Lawyer Discipline

AGENDA:

Call to order/introductions/review minutes of prior meetings/review matters unresolved in prior meetings/review and discuss: statistical reports; commission's compliance with provisions of the State Bar Act, Texas Rules of Disciplinary Procedure and Orders of the Supreme Court; budget and operations of the Office of General Counsel and Commission of Lawyer Discipline; grievance committees; special counsel program; mediation of disciplinary matters/presentations by trial staff/closed session to discuss: authorization to make, accept or reject settlement offers or take other appropriate action with respect to pending litigation and/or cases pending before evidentiary panels of grievance committees; assignment of special counsel to pending litigation; personnel matters/public session reconvened to discuss and take action on those matters discuss in closed session/discuss future meetings/discuss other matters as appropriately come before the commission/receive public comment/and adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: July 5, 1995, 4:07 p.m.

TRD-9508252

Texas Boll Weevil Eradication Foundation

Monday, July 10, 1995, 10:30 a.m.

942 Arroyo

San Angelo

Technical Committee

AGENDA:

Approval of last meeting minutes

Opening remarks and comments

Program update: Lower Rio Grande Valley, Southern Rolling Plains

Group discussion topics: Alternative spring treatment methods for boll weevil eradication

Next meeting date and location

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212 or (915) 672-2800.

Filed: June 30, 1995, 10:58 a.m.

TRD-9508038

Monday, July 10, 1995, 10:30 a.m.

942 Arroyo

San Angelo

Revised Agenda

Technical Committee

AGENDA:

In addition to the previously filed agenda, the following agenda items are being added:

Group discussion topics: 12% vs. 16% ULV Malathion Amending Environmental Impact Statement to include other chemicals, efficacy studies of selected chemicals

Contact: Frank Myers, P.O. Box 5089, Abilene, Texas 79608-5089, 1-800-687-1212 or (915) 672-2800.

Filed: June 30, 1995, at 3:25 p.m.

TRD-9508060

Texas Bond Review Board

Tuesday, July 11, 1995, 10:00 a.m.

300 West 15th Street, Committee Room #5, Clements Building, Fifth Floor

Austin

Planning Session

AGENDA:

I. Call to order

II. Approval of Minutes

III. Discussion of proposed issues

A. Texas Department of Criminal Justice-lease purchase of fabric waste reclamation line

B. Texas Public Finance Authority-Tax-exempt general obligation commercial pa-

per notes for projects for Texas Youth Commission

C. Texas Woman's University-Constitutional Appropriation Bonds, Series 1995

D. Texas Woman's University-Combined Fee Revenue Bonds, Series 1995

E. Texas Southern University-Consolidated Revenue Bonds

IV. Other business

A. Texas Public Finance Authority-transfer of unobligated construction fund balances from projects funded for the Texas Department of Mental Health and Mental Retardation (Series 1987, 1988C and 1990A General Obligation Bonds)

B. Texas Department of Housing and Community Affairs-amendments to documents related to Texas Housing Agency Multi-Family Housing Revenue Bonds, Series 1984

C. Texas Department of Housing and Community Affairs-amendments to documents related to Texas Housing Agency Adjustable Rate Demand Multi-Family Housing Revenue Bonds 1984, Series A

D. Texas Department of Housing and Community Affairs-amendments to documents related to Texas Housing Agency Adjustable Rate Demand Multi-Family Housing Revenue Bonds 1984, Series B

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: July 3, 1995, 11:52 a.m.

TRD-9508102

Conservatorship Board

Tuesday, July 11, 1995, 1:30 p.m.

710 Brazos, Perry Brooks Building

Austin

Revised Agenda

AGENDA:

Approval of June 27, 1995 minutes

Contact: Tom Mann, 710 Brazos, Austin, Texas 78701, (512) 867-8809.

Filed: July 3, 1995, 11:14 a.m.

TRD-9508101

Tuesday, July 11, 1995, 1:30 p.m.

710 Brazos, Perry Brooks Building

Austin

Emergency Revised Agenda

AGENDA:

Approval of alternative methadone treatment providers; action on reports/findings.

Reason for emergency: Necessary for Conservatorship Board to meet in order to meet statutory mandate.

Contact: Tom Mann, 710 Brazos, Austin, Texas 78701, (512) 867-8809.

Filed: July 6, 1995, 9:20 a.m.

TRD-9508268

Texas State Board of Examiners of Professional Counselors

Monday, July 10, 1995, 9:30 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Complaints Committee

AGENDA:

The committee will discuss and possibly act on action concerning K. H.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 29, 1995, 2:12 p.m.

TRD-9508007

Monday, July 10, 1995, 10:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Rules Committee

AGENDA:

The committee will discuss and possibly act on amendments to 22 Texas Administrative Code, Chapter 681.

Contact: Kathy Craft, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6658. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 29, 1995, 2:12 p.m.

TRD-9508006

Texas Commission for the Deaf and Hearing Impaired

Friday, July 14, 1995, 9:00 a.m.

Brown-Heatly Building, Room 1430, 4900 North Lamar Boulevard

Austin

Board

AGENDA:

Call to order; approval of minutes of May 19, 1995 meeting; executive director's report, including update on legislative action and agency activity, approval of biennial operating plan, and discussion of financial/budget information; BEI report, including certifications, revocations, expenditure approval for Level V materials, selection for BEI Board vacancy, and discussion/possible action regarding MSS and oral specialty certification; direct services report, including award of contracts for fiscal year 1996, contractors' training travel allotments, and reallocation of Houston area fiscal year 1995 funds; information items; public comment; and adjournment.

Contact: Loyce Kessler, 4800 North Lamar Boulevard, #310, Austin, Texas 78756, (512) 451-8494.

Filed: June 29, 1995, 10:31 a.m.

TRD-9508002

State Board of Dental Examiners

Friday, July 14, 1995, 10:30 a.m.

SBDE Offices, William P. Hobby Building, 333 Guadalupe, Tower Three, Suite 800

Austin

Review Committee Meeting

AGENDA:

I. Call to order

II. Roll call

III. Approval of minutes of past committee meeting of June 30, 1995

IV. Discuss, consider and review dental applications for licensure by credentials and make recommendations to the board for approval of denial of applications

V. Announcements

VI. Adjourn

Contact: Douglas A. Beran, Ph.D., 333 Guadalupe, Tower Three, Suite 800, Austin, Texas 78701, (512) 463-6400.

Filed: July 5, 1995, 3:45 p.m.

TRD-9508247

Texas Diabetes Council

Friday, July 14, 1995, 10:00 a.m.

Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will discuss and possibly act on: approval of the minutes from the April 21, 1995 meeting; Texas Diabetes Council year-to-date progress reports and fiscal year 1995 budget utilization; Texas Diabetes Council proposed fiscal year 1996-1997 budget; Texas Diabetes Council election of officers; and approval of the council's meeting calendar.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7534. 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: June 29, 1995, 2:11 p.m.

TRD-9508005

◆ ◆ ◆
**Texas Interagency Council
on Early Childhood Inter-
vention**

**Thursday-Friday, July 13-14, 1995, 10:00
a.m. and 8:30 a.m., respectively.**

4412 Spicewood Springs Road, Building
600

Austin

Advisory Committee to the Interagency
Council on Early Childhood Intervention

AGENDA:

Thursday, July 13: Call to order. Approval of April, 1995 minutes. Public comment. Chair report: calendar next year's meetings, organization of July meeting and planning for next year, and report on managed care conference. Briefings and updates: update on multi-served counties policy, update on natural environments policies, council motions, and position paper on compliance review system. Executive director's report: "spring rounds" and legislative update; council report. The Program Services, Interagency Coordination, Early Identification, and Personnel Preparation Subcommittee meetings will meet from 1:30 to 4:15 p.m. At 4:15 p.m. committee will hear subcommittee reports. The meeting will break at 5:00 p.m.

Friday, July 14: Planning for fiscal year 1996: local ICCs, and work that needs to be done and the charge to committees; FYI: Data summary; and adjourn.

Contact: Linda Hill, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 502-4900.

Filed: July 5, 1995, 3:00 p.m.

TRD-9508243

East Texas State University

Friday, July 14, 1995, 10:00 a.m.

Dallas Love Field Business Center, San Antonio Room, 8008 Cedar Springs

Dallas

Board of Regents, Campus Planning, Finance and Auditing Committee

AGENDA:

1. James Newberry settlement
2. Budget issues-fiscal year 1996 budget
3. Investment policy
4. Audit report

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: July 5, 1995, 8:44 a.m.

TRD-9508157

Friday, July 14, 1995, 10:00 a.m.

Dallas Love Field Business Center, San Antonio Room, 8008 Cedar Springs

Dallas

Revised Agenda

Board of Regents, Campus Planning, Finance and Auditing Committee

AGENDA:

1. James Newberry settlement
2. Architect report-ETSU-Texarkana
3. Budget issues-fiscal year 1996 budget
4. Investment policy
5. Audit report

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: July 5, 1995, 1:21 p.m.

TRD-9508214

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Texas Education Agency

**Thursday-Friday, July 13-14, 1995, 9:00
a.m.**

William B. Travis Building, Room 1-104,
1701 North Congress Avenue

Austin

Commission on Standards for the Teaching Profession (CSTP)

AGENDA:

Thursday, July 13. At 9:00 a.m., opening activities include roll call, adoption of agenda, approval of minutes for June 1-2 and June 29 meetings, introductions, and presentation to commission members

by Dr. Jack Christie, Chair, State Board of Education. At 9:10 a.m., action items for consideration include experimental/pilot program yearly reports from West Texas A&M University, Houston-Tillotson College, and Texas Education Collaborative: Prairie View A&M University and Texas A&M University-College Station. At 1:00 p.m. will be a program approval request from the University of Houston-Victoria. There are two requests for out-of-country student teaching experience: Texas Christian University, 2:00-2:30 p.m., and Texas Wesleyan University, 2:30-3:00 p.m. From 3:30-5:00 p.m., discussion items include statements from the Texas Coalition of Administrators of Human Sciences (Home Economics) and the Texas Association of Developing Colleges: Huston-Tillotson University, Jarvis Christian University, Paul Quin University, Texas College, and Wiley College. Discussion items also include the State Board of Education update, legislative update, the 48th Annual Texas Conference on Teacher Education update, and an update from the Division of Educator Assessment and Appraisal. At 5:00 p.m., the commission will conclude with a summary and suggestions for follow-up. Friday, July 14. At 9:00 a.m., opening activities include roll call and introductions. From 9:10 a.m.-4:30 p.m., the commission members will participate in a workshop which will center on the Commission Position Statement: Time and Effort Document, Certification Reengineering Strategic Plan, and Pending Issues Document. At 4:30 p.m., the commission will adjourn.

Contact: Delia Quintanilla, 1701 North Congress Avenue, CC 204/Room 5-121, Austin, Texas 78701, (512) 463-9337.

Filed: July 5, 1995, 1:16 p.m.

TRD-9508211

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**State Employee Charitable
Campaign**

Tuesday, July 18, 1995, 3:00 p.m.

4000 Southpark #1200

Tyler

Local Employee Committee-Tyler

AGENDA:

1. Call to order
2. Discuss 1995 local campaign material printing and distribution
3. Discuss kick-off date and location
4. Discuss agenda and schedule next meeting

Contact: Mary Mathey, 4000 Southpark #1200, Tyler, Texas 75703, (512) 450-0840.

Filed: June 30, 1995, 2:17 p.m.

TRD-9508053

Fire Fighters' Pension Commission

Wednesday, July 12, 1995, 1:00 p.m.

Wyndham Hotel, IH-35 South at Ben White Boulevard

Austin

Emergency Meeting

Administrative Division

AGENDA:

The Senate Bill 411 Statewide Volunteer Fire Fighters' Retirement Fund Board of Trustees will meet for the purpose of interviewing prospective fixed income money managers.

Reason for emergency: Current fixed income manager company has sold.

Contact: Helen Campbell, 3910 South IH-35, #235, Austin, Texas 78704, (512) 462-0222.

Filed: June 30, 1995, 4:33 p.m.

TRD-9508069

Texas Commission on Fire Protection

Thursday-Friday, July 13-14, 1995, 9:00 a.m.

12675 North Research and 6121 IH 35 North

Austin

Emergency Revised Agenda

Commission

AGENDA:

Executive session under Texas Government Code, §551.074. Election of assistant presiding officer and secretary and discussion of their duties. Discussion and possible action on: duties and responsibilities of commissioners including but not limited to the formation of subcommittees to analyze and report to the commission regarding the budget and strategic plan; procedural rules according to which commission meetings are conducted; appointments to advisory committees or councils; proposal for decision in Docket Number 411-95-0119; matters from the Volunteer Fire Fighter Advisory Committee; matters from the Fire Protection Personnel Advisory Committee; matters from the Funds Allocation Advisory Committee; rules under 37 TAC Chapter 520 relating to approval or testing laboratories which approve extinguisher, alarm, and sprinkle systems; rules under 37 TAC Chapter 521 relating to Fire Extinguishers; rules under 37 TAC Chapter 531 relating to Fire Alarms; rules under 37 TAC Chapter 541 relating to Fire Sprinklers. Report from Firemen's Training school Advisory Board representative. Discussion and possible action regarding concerns of the Texas Forest Service, Texas A&M University Fire Training School and Texas A&M Engineering Extension Service. Presentation by William Westoff, manager, International Fire Service Accreditation Congress. Matters from the executive director. New matters from the public. The commission may also attend a reception at 6:00 p.m. on Friday, July 14, at the Red Lion Hotel, 6121 IH 35 North, Austin; at the reception, general discussion of the agency's authority may occur, but no action will be taken. Discussion and possible action on future and meeting dates.

tems; rules under 37 TAC Chapter 521 relating to Fire Extinguishers; rules under 37 TAC Chapter 531 relating to Fire Alarms; rules under 37 TAC Chapter 541 relating to Fire Sprinklers. Report from Firemen's Training school Advisory Board representative. Discussion and possible action regarding concerns of the Texas Forest Service, Texas A&M University Fire Training School and Texas A&M Engineering Extension Service. Presentation by William Westoff, manager, International Fire Service Accreditation Congress. Matters from the executive director. New matters from the public. The commission may also attend a reception at 6:00 p.m. on Friday, July 14, at the Red Lion Hotel, 6121 IH 35 North, Austin; at the reception, general discussion of the agency's authority may occur, but no action will be taken. Discussion and possible action on future and meeting dates.

Contact: Carol Menchu, 12675 North Research, Austin, Texas 78759, (512) 918-7100.

Filed: July 3, 1995, 3:34 p.m.

TRD-9508153

Office of the Governor

Thursday-Friday, July 13-14, 1995, 8:30 a.m.

Sheraton Grand Hotel, 2525 West Loop South

Houston

Auto Theft Prevention Authority

AGENDA:

I. Call to order, introductions, and approval of minutes of last board meeting. II. Discussion/decisions for grant awards for the 1996 annual grant funding cycle. (Board will recess Thursday afternoon and reconvene at 8:30 a.m. on Friday to continue the grant review) III. Adjourn.

Contact: Linda Young, 4000 Jackson Avenue, Austin, Texas 78731, (512) 467-3999.

Filed: June 29, 1995, 3:24 p.m.

TRD-9508016

Health and Human Services Commission

Thursday, July 13, 1995, 9:15 a.m.

701 West 51st, Winters Building

Austin

Medical Care Advisory Committee

AGENDA:

Opening comments; State Medicaid Director's comments; approval of minutes; Med-

icaid vendor drug dispensing fee; cost of living adjustments-74th Legislative Session; proposed rules concerning Lone STAR Select contracting process for inpatient hospital services; miscellaneous rule changes related to individual providers of the Medical Transportation Program; ICF/MR rate methodology; Community Based Alternative (CBA) rule changes; Medically Dependent Children Program; transfer from TDHS to TDH; refusal to comply with service delivery provisions; nursing facility requirements for licensure and Medicaid certification; comprehensive income and resource policy for Indian-related exclusions; allowable deductions for wages; conversion of a resource; termination of 1929(b) Program; vendor drug update; open discussion by members. Next meeting/adjournment.

Contact: Geri Willems, 4807 Spicewood Springs Road, Building Four, Austin, Texas 78759, (512) 502-3256.

Filed: July 5, 1995, 9:53 a.m.

TRD-9508202

Texas Department of Insurance

Friday, July 14, 1995, 9:00 a.m.

333 Guadalupe Street, Room 1264, Tower I Austin

Texas HMO Solvency Surveillance Committee

AGENDA:

- 1. Call to order
- 2. Approval of May 12, 1995 minutes
- 3. Staff report
- 4. Review of overall HMO industry
- 5. Executive session consultation with attorney regarding contemplated litigation, Texas Government Code, §551.071
- 6. Reconvene in open session (to discuss any further business)
- 7. Adjourn

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: June 30, 1995, 10:58 a.m.

TRD-9508039

Texas Board of Professional Land Surveying

Friday, July 21, 1995, 9:00 a.m.

7701 North Lamar Boulevard, Suite 400

Austin

Board Meeting

AGENDA:

The Board will meet to approve the minutes of the previous meeting; to consider and act upon presentations from Charles Styron concerning certifications and Eugene Baker concerning experience requirements; to hear a report from the executive director; to consider and act upon active complaints and show cause actions, recommendations from committee reports, approve the October, 1995 examinations, revisions of Board Rules 663.19(e), 663.18(a) and 661.41(d) and to propose rules to address absolutes and the use of legal terminology; to consider and act upon correspondence to and from the Board, old business and to receive comments from the public. 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 Sandy Smith at (512) 452-9427 two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Sandy Smith, 7701 North Lamar Boulevard, Suite 400, Austin, Texas 78752, (512) 452-9427.

Filed: July 6, 1995, 8:49 a.m.

TRD-9508266

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Texas Department of Licensing and Regulation

Monday, July 17, 1995, 1:00 p.m.

E.O. Thompson Building, 920 Colorado, Fourth Floor Conference Room

Austin

Revised Agenda

Architectural Barriers Advisory Committee

AGENDA:

Revising previous agenda submitted to include:

VII. Other business

A. Plan review and inspection procedures

All facilities are accessible to persons with disabilities. Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at (512) 463-7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: Rick Baudoin, 920 Colorado, Austin, Texas 78711, (512) 463-3519.

Filed: June 30, 1995, 9:47 a.m.

TRD-9508036

Thursday, July 20, 1995, 1:00 p.m.

E.O. Thompson Building, 920 Colorado, Fourth Floor Conference Room

Austin

Auctioneer Education Advisory Board

AGENDA:

I. Call to order

II. Welcome/introduction of new board members

III. Record of attendance

IV. Election of presiding officer

V. Approval of minutes of July 12, 1994 meeting

VI. Department briefing

A. Staff introductions

B. Organization

C. Board procedures

D. Report on seminars held under the last grant

VII. Old business

A. Consideration of proposals for education grants

1. Houston Community College

2. Texas A&M Extension Service

3. Texas Auctioneer Association

VIII. New business

A. Discussion of further activities, if applicable

IX. Public comment

X. Next meeting

XI. Adjournment

All facilities are accessible to persons with disabilities. Under the Americans with Disabilities Act, persons who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at (512) 463-7348 two working days prior to the meeting so that the appropriate arrangements can be made.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas 78711, (512) 463-7356.

Filed: July 5, 1995, 2:01 p.m.

TRD-9508236

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Texas Natural Resource Conservation Commission

Wednesday, July 12, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters: Class 3 Mods; Class 2 Mods; district matters; water utility matters; Irrigators Advisory Council; Superfund enforcement; public water supply enforcement; industrial waste discharge enforcement; industrial hazardous waste enforcement; municipal waste discharge enforcement; petroleum storage tank enforcement; air quality enforcement; staff report; motion for reconsideration; rules; emergency order; hearing request denial; examiner items; resolution; executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: June 29, 1995, 11:19 a.m.

TRD-9508003

Thursday, July 13, 1995, 9:30 a.m.

TNRCC Park 35 Office Complex, 12015 Park 35 Circle, North IH-35, Building E, Room 201-S

Austin

Water Well Drillers Advisory Council

AGENDA:

The Texas Water Well Drillers Advisory Council will meet to discuss and take action on the following: consider the approval of minutes of the May 11, 1995 meeting; consider whether to set the following complaints for a formal hearing or to take appropriate legal action: John Evans, Mark Lewis, Gerald Goodwin, Reynaldo Torres, Wes Hartless, Don Hays, Charles Huffman, Bobby Perez, Traye Phelps, Michael Stewart Shepherd, Floyd Smith; consider certification of applicants for registration and driller-trainee registration; and consider staff reports.

Contact: Bonnie Rubey, 12015 Park 35 Circle, North IH-35, Building E, Room 201-S, Austin, Texas 78701, (512) 239-0600.

Filed: June 30, 1995, 4:35 p.m.

TRD-9508070

Tuesday, July 25, 1995, 10:00 a.m.

Building C, Room 308E, 12124 Park 35 Circle

Austin

Revised Agenda

Office of Hearings Examiners

AGENDA:

Notice of public hearing on assessment of administrative penalties and requiring certain actions of Duncan Thompson Petroleum, Inc.; Kenneth Glass; Melvin Sharry; Brooks Operating Company; Murdock Distributing Company; and Inez Arceneaux, TNRCC Docket Number 94-0150-PST-E.

Contact: Carol Wood, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: July 5, 1995, 10:42 a.m.

TRD-9508209

Thursday, July 27, 1995, 2:00 p.m.

TNRCC Park 35 Office Complex, Building B, Room 201 A, 13100 North IH-35

Austin

Texas Groundwater Protection Committee

AGENDA:

The Texas Groundwater Protection Committee will meet to discuss: subcommittee reports from Agricultural Chemicals, Data Management and Nonpoint Source; presentations from David Meeseey, Texas Water Development Board, and TNRCC, legislative update; status update from CSGWPP development status, SFIREG meeting, draft Texas Ground Water Programs Directory; outreach efforts; discuss draft Texas Ground-Water Programs Directory and Texas State Management Plan for prevention of pesticide contamination of ground water; announcements; and public comment.

Contact: Mary Ambrose, P.O. Box 13087, Austin, Texas 78701, (512) 239-4800.

Filed: June 30, 1995, 4:35 p.m.

TRD-9508071

Tuesday, August 1, 1995, 10:00 a.m.

Building F, Room 31034, 12015 Park 35 Circle

Austin

Office of Hearings Examiners

AGENDA:

Notice of public hearing on assessment of administrative penalties and requiring certain actions of Lubbock Electrocoating, Inc.; Von Kimble; and Robert Paulger, TNRCC Docket Number 95-0806-IHW-E.

Contact: Carol Wood, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: July 5, 1995, 8:37 a.m.

TRD-9508156

Texas State Board of Perfusionists

Friday, July 18, 1995, 10:00 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Rule Committee

AGENDA:

The committee will discuss and possibly act on: amendments to 25 Texas Administrative Code, Chapter 761; emergency extension of grandfather clause to §761.10; and setting of the next meeting date.

Contact: Jo Whittenburg, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6751. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: July 3, 1995, 3:23 p.m.

TRD-9508151

Texas Department of Public Safety

Tuesday, July 11, 1995, 10:00 a.m.

DPS Headquarters, Building C, Auditorium, 5805 North Lamar Boulevard

Austin

Public Safety Commission

AGENDA:

Approval of minutes

Budget matters

Internal audit report

Personnel matters

Pending and contemplated litigation

Real estate matters

Public comment

Miscellaneous and other unfinished business

Review of DPS employee Cheryl Steadman's complaint

Contact: James Wilson, 5805 North Lamar Boulevard, Austin, Texas 78752, (512) 465-2000, Ext. 3700.

Filed: June 29, 1995, 3:00 p.m.

TRD-9508015

Public Utility Commission of Texas

Wednesday, July 12, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting at which the commissioners will consider Project Number 12123-The commission will consider for publication a new rule concerning foreign utility company ownership by exempt holding companies, Project Number 14362-The commission will consider for publication a new rule concerning registration of exempt wholesale generators and power marketers, and Docket Number 13827-Application of Southwestern Public Service Company for approval of notices of intent for a 203 MW Philips Cogeneration Project and a 103 MW Combustion Turbine Project.

Contact: Amalija J. Hodgins, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 30, 1995, 1:00 p.m.

TRD-9508049

Wednesday, July 12, 1995, 9:05 a.m.

7800 Shoal Creek Boulevard

Austin

Administrative

AGENDA

There will be an administrative meeting for discussion, consideration, and possible action on staff report on the potential for stranded investment; discussion and possible action on agency reorganization; budget and fiscal matters; adjournment for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and final adjournment.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 3, 1995, 1:19 p.m.

TRD-9508118

Friday, July 21, 1995, 10:00 a.m. (Rescheduled from July 13, 1995)

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

The prehearing conference has been rescheduled for the above date and time in Docket Number 14271: application of Southwestern Bell Telephone Company for waivers of the requirements of Public Utility Commission Substantive Rule 23. 69 related to the deployment of ISDN based services.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: July 3, 1995, 1:19 p.m.

TRD-9508115

Texas Racing Commission

Monday, July 10, 1995, 10:00 a.m.

John H. Reagan Building, 105 West 15th Street, Room 106

Austin

AGENDA:

Call to order; roll call; action on the following rules; §§303.33, 305.44, 305.47, 309.183, 311.159, 313.503, 315.1, 315.111, 319.7, 321.235; consideration of and action on following contested cases: SOAH Number 476-94-1890, TxRC Number 94-02-17, in re: the appeal by Susan Barrington from Stewards' Ruling Sam Houston 116 (Proposal for Decision); SOAH Number 476-94-1707, TxRC Number 94-02-16, in re: the appeal by Earl D. Martenn from Stewards' Ruling Trinity 1422 (Proposal for Decision); SOAH Number 476-94-515, TxRC Number 93-02-08, in re: the appeal by James C. Hudson from Stewards' Ruling Trinity 1183 (Motion for Rehearing); consideration of and action on request by Gulf Greyhound Park for additional race performance; consideration of and action on the following: Application period for receiving racetrack license applications; matters relating to Bandera Downs' Class 2 license; contracts between pari-mutuel horse racetracks and the Texas Horsemen's Benevolent and Protective Association. Old and new business; and adjourn.

Contact: Paula Cochran Carter, P.O. Box 12080, Austin, Texas 78701, (512) 794-8461.

Filed: June 30, 1995, 3:16 p.m.

TRD-9508058

Railroad Commission of Texas

Monday, July 10, 1995, 8:00 a.m.

Southwestern University, 1001 East University Avenue, University Commons, Rooms A and B

Georgetown

AGENDA:

The commission will hold an internal management planning conference with its managers. At the conference the commission will consider and/or take action on the organizational structure, administration, re-

sources, mission and goals of the agency. No other business will be considered.

Contact: Brenda Loudermilk, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7149.

Filed: June 30, 1995, 11:51 a.m.

TRD-9508045

Tuesday, July 11, 1995, 8:00 a.m.

Southwestern University, 1001 East University Avenue, University Commons, Rooms A and B

Georgetown

AGENDA:

The commission will hold an internal management planning conference with its managers. At the conference the commission will consider and/or take action on the organizational structure, administration, resources, mission and goals of the agency. No other business will be considered.

Contact: Brenda Loudermilk, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7149.

Filed: June 30, 1995, 11:51 a.m.

TRD-9508046

Boards for Lease of State-Owned Lands

Friday, July 7, 1995, 9:00 a.m.

General Land Office, Stephen F. Austin Building, 1700 North Congress Avenue, Room 833

Austin

Board for Lease of Texas Parks and Wildlife Department

AGENDA:

Approval of previous board meeting minutes; surface lease renewal application, Candy Abshire Wildlife Management Area, Chambers County; pipeline easement application, Lower Neches Wildlife Management Area, Jefferson County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: June 29, 1995, 2:13 p.m.

TRD-9508008

Stephen F. Austin State University

Friday, July 14, 1995, 9:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents Finance Committee Meeting

AGENDA:

I. Financial affairs

A. 1995-1996 budget

B. Proposed bond sale

Contact: Dan Angel, 1936 North Street, Room 307, Nacogdoches, Texas 75961, (409) 468-2201.

Filed: June 29, 1995, 4:23 p.m.

TRD-9508024

The Texas A&M University System, Board of Regents

Wednesday, July 12, 1995, 10:00 a.m.

Board of Regents Meeting Room, Texas A&M University, Clark Street

College Station

Board of Regents (Telephonic Meeting)

AGENDA:

The purpose of the meeting is to award the construction contract for the Special Events Center at Texas A&M University and granting the easement for the widening of George Bush Drive.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: June 29, 1995, 3:51 p.m.

TRD-9508021

Texas Title Insurance Guaranty Association

Tuesday, July 11, 1995, 10:00 a.m.

333 Guadalupe

Austin

Board of Directors

AGENDA:

I. Call meeting to order

II. Approval of minutes from April 11, 1995 Board of Directors meeting

III. Special deputy receiver's report-Ed Engleking

IV. Consideration and possible action by directors on closing of Standard Title Company, including assignment of restitution payment

V. Title examiner's report-Ethel Benedict

VI. Conservator's report-Gene Jarmon

- VII. Financial report—Marvin Coffman
- VIII. Counsel's report—Burnie Burner
- IX. Set date and time for next meeting
- X. Adjourn

Contact: Burnie Burner, 301 Congress Avenue, Suite 800, Austin, Texas 78701, (512) 474-1587.

Filed: June 30, 1995, 11:57 a.m.

TRD-9508047

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Texas Department of Transportation

Friday, July 14, 1995, 9:30 a.m.

Room 102, Building 200, 200 Riverside Drive

Austin

Environmental Advisory Committee

AGENDA:

Approval of minutes. In accordance with 43 TAC §1.84(b) review of proposed rulemaking concerning the Statewide Transportation Enhancement Program. Overview of Sunset Legislation that created the Environmental Advisory Committee. Status update on fireguard policy. Status of non-attainment areas. Briefing on current status/commission action regarding rules previously reviewed by the committee.

Contact: Dianna Noble, 125 East 11th Street, Austin, Texas 78701, (512) 416-3001.

Filed: July 5, 1995, 9:32 a.m.

TRD-9508173

Friday, July 21, 1995, 9:00 a.m.

200 East Riverside Drive, Room 102

Austin

Interagency Abandoned Rail Corridor Committee

AGENDA:

Approval of minutes. Legislative update. Discussion of Burlington Northern/Santa Fe merger proceedings. Discussion of current status of various forthcoming, pending, or recently authorized abandonments or sales. Discussion of possible revisions to committee goals.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: June 30, 1995, 11:41 a.m.

TRD-9508044

Texas State Treasury

Wednesday, July 12, 1995, 11:00 a.m.

200 East Tenth Street, Room 227

Austin

TexPool Advisory Board

AGENDA:

Call to order; approval of minutes; treasurer's remarks/TexPool update; impact of legislative changes on TexPool; discussion of upcoming TexPool conference; TexPool's operation and financial status reports; TexPool's investment report; discussion of agenda for next meeting.

Contact: Ellen Rathgeber, 200 East Tenth Street, Suite 309, Austin, Texas 78701, (512) 463-5971.

Filed: June 29, 1995, 1:34 p.m.

TRD-9508004

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University of Houston

Monday, July 17, 1995, 2:00 p.m.

SRII Building, Room 201, University of Houston, 4800 Calhoun Boulevard

Houston

Animal Care Committee

AGENDA:

To discuss and/or act upon the following:

Approval of June minutes

Renewal protocols

Review of semi-annual program review and facilities inspection

Pot-belly pig use in pageant

Contact: Rosemary Grimmer, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222.

Filed: July 5, 1995, 2:18 p.m.

TRD-9508239

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University of Houston System

Thursday, July 13, 1995, 10:30 a.m.

1600 Smith, Suite 3400, Conference Room One, University of Houston System Offices

Houston

Academic and Student Affairs

AGENDA:

To discuss and/or approve the following: executive session, report from executive session.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: July 6, 1995, 9:02 a.m.

TRD-9508267

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Texas Workers' Compensation Commission

Thursday, July 6, 1995, 9:00 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to order
2. Approval of minutes for the public hearing of May 3, 1995, public meeting of May 4, 1995 and public hearing of June 14, 1995
3. Discussion, and possible action on new application for Certificate of Authority to Self-Insure
4. Discussion and possible action on requests for renewal of Certificate of Authority to Self-Insure
5. Discussion and possible action on adoption of rules: Rules 126.10 and 130.6
6. Discussion and possible action on repeal of existing rule: Rule 130.6
7. Discussion and possible action on rule making petition regarding the following rules: Rule 141.7, 142.16 and 143.5
8. Discussion and possible action on proposal of new rule: Rule 166.8
9. Discussion and possible action on withdrawal of current proposal: Rule 166.8
10. Discussion and possible action on adoption of new rules: Rules 166.1-166.7, 166.9
11. Discussion and possible action on adoption of repeal of the following rules: Rules 166.101-166.108, 166.111-166.113
12. Discussion of implementation of House Bill 1089 and other legislative issues
13. Discussion and possible action on electing a vice-chairman for the Texas Workers' Compensation
14. Discussion and possible action on TWCC Employer Commissioner to serve on the Texas Certified Self-Insured Guaranty Association
15. Discussion and possible action on commissioner subcommittee assignments
16. Executive session
17. Action on matters considered in executive session
18. General reports, discussion and possible action on issues relating to commission activities

19. Confirmation of future public meetings and hearings

20. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: June 30, 1995, 5:00 p.m.

TRD-9508072

Regional Meetings

Meetings Filed June 29, 1995

The Aqua Water Supply Corporation Board of Directors met at 305 Eskew, Bastrop, July 10, 1995, at 7:30 p.m. Information may be obtained from Adlinie Rathman, Drawer P, Bastrop, Texas 78602, (512) 303-3943. TRD-9508023.

The Cass County Appraisal District Appraisal Review Board met at 502 North Main Street, Linden, July 7, 1995, at 9:00 a.m. Information may be obtained from Janelle Clements, F.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9508022.

The Panhandle Ground Water Conservation District Number 3 Board of Directors (Public Hearing) met at the Hazlewood Building, 413 Elsie Street, Panhandle, July 5, 1995, at 7:00 p.m. Information may be obtained from C. E. Williams, Box 637, White Deer, Texas 79097, (806) 883-2501. TRD-9508012.

The Red River Authority of Texas Board of Directors will meet at the Sheraton Hotel, 100 Central Freeway, Wichita Falls, July 19, 1995, at 10:00 a.m. Information may be obtained from Ronald J. Glenn, 900 Eighth Street, Wichita Falls, Texas 76301-6894, (817) 723-0855. TRD-9508009.

Meetings Filed June 30, 1995

The Bandera County Appraisal District (Revised Agenda.) Board of Directors met at the Bandera County Appraisal District, 1116 Main Street, Bandera, July 10, 1995, at 7:00 p.m. Information may be obtained from P. H. Coates, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, Fax: (210) 796-3672. TRD-9508030.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Called Meeting) met at 1124A Regal Row, Austin, July 6, 1995, at 5:30 p.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: (512) 282-7016. TRD-9508026.

The Bexar Appraisal District Appraisal Review Board met at 535 South Main

Street, San Antonio, July 7, 1995, at 9:00 a.m. Information may be obtained from Beverly Houston, P.O. Box 830248, San Antonio, Texas 78283-0248, (210) 224-8511. TRD-9508068.

The Comal Appraisal District (Revised Agenda.) Appraisal Review Board will meet at 176 East Mill Street #102, New Braunfels, July 17-20, 1995, at 8:30 a.m. Information may be obtained from Curtis Koehler, P.O. Box 311222, New Braunfels, Texas 78131-1322, (210) 625-8597. TRD-9508059.

The Coryell County Appraisal District Appraisal Review Board met at 113 North Seventh Street, Gatesville, July 5, 1995, at 9:30 a.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9508029.

The Creedmoor Maha Water Corporation Board (Monthly Meeting) met at 1699 Laws Road, Mustang Ridge, July 5, 1995, at 7:30 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Buda, Texas 78610, (512) 243-2113 or (512) 243-1991. TRD-9508040.

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, July 5, 1995, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9508041.

The Dawson County Central Appraisal District Board of Directors met at 1806 Lubbock Highway, Lamesa, July 5, 1995, at 7:00 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9508042.

The Garza Central Appraisal District Appraisal Review Board will meet at 124 East Main, Post, July 18, 1995, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9508054.

The Jack County Appraisal District Appraisal Review Board met at 210 North Church Street, Jacksboro, July 10, 1995, at 9:00 a.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9508051.

The Jack County Appraisal District Board of Directors will meet at 210 North Church Street, Jacksboro, July 11, 1995, at 7:00 p.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301. TRD-9508052.

The Lampasas County Appraisal District Appraisal Review Board met at 109 East Fifth Street, Lampasas, July 5, 1995, at 9:00

a.m. Information may be obtained from Tommy L. Watson, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9508025.

The Lavaca County Central Appraisal District (Revised Agenda.) Board of Directors met at 113 North Main Street, Hallettsville, July 10, 1995, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9508043.

The Central Appraisal District of Rockwall County Appraisal Review Board met at 106 North San Jacinto, Rockwall, July 6, 1995, at 8:30 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9508035.

The Stephens County Rural WSC Board (Regular Monthly Meeting) met at 301 West Elm Street, Breckenridge, July 6, 1995, at 7:30 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9508037.

Meetings Filed July 3, 1995

The Bosque County Central Appraisal District Appraisal Review Board will meet at 202 South Highway 6, Meridian, July 11, 1995, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9508148.

The Bosque County Central Appraisal District Appraisal Review Board will meet at 202 South Highway 6, Meridian, July 13, 1995, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76665-0393, (817) 435-2304. TRD-9508147.

The Canadian River Municipal Water Authority Board will meet one mile west of Sanford, Sanford, July 12, 1995, at 11:00 a.m. Information may be obtained from John C. Williams, P.E., P.O. Box 99, Sanford, Texas 79078, (806) 865-3325. TRD-9508126.

The Canyon Regional Water Authority Board (Regular Meeting) met at the Guadalupe Fire Training Facility, 850 Lakeside Pass Drive, New Braunfels, July 10, 1995, at 7:00 p.m. Information may be obtained from Gloria Kaufman, Route 2, Box 654 W, New Braunfels, Texas 78130-9579, (210) 609-0543. TRD-9508122.

The Central Texas Area Consortium (Regular Meeting) met at 2 North Fifth Street, Temple, July 6, 1995, at 7:00 p.m. Information may be obtained from Michael B. Herring, P.O. Box 3303, Temple, Texas 76505-3303, (817) 791-9102. TRD-9508098.

The Colorado County Appraisal District Board of Directors met at 400 Spring, County Courtroom, Columbus, July 10, 1995, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9508074.

The Colorado County Appraisal District Appraisal Review Board will meet at 400 Spring Street, County Courtroom, Columbus, July 14, 1995, at 1:00 p.m. Information may be obtained from Billy Youens, P.O. Box 10, Columbus, Texas 78934, (409) 732-8222. TRD-9508097.

The Elm Creek WSC Board met at 508 Avenue E, Moody, July 10, 1995, at 7:00 p.m. Information may be obtained from Debra Williams, 508 Avenue E, Moody, Texas 76557, (817) 853-3838. TRD-9508125.

The Falls County Appraisal District Board of Directors met at the intersection of Highway 6 and 7, Falls County Courthouse, First Floor, Marlin, July 10, 1995, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9508094.

The Falls County Appraisal District Appraisal Review Board will meet at the intersection of Highway 6 and 7, Falls County Courthouse, First Floor, Marlin, Texas, July 11, 1995, at 9:00 a.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9508095.

The Gregg Appraisal District Appraisal Review Board met at 2010 Gilmer Road, Longview, July 10, 1995, at 9:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9508152.

The Hamilton County Appraisal Review Board met at 119 East Henry, Hamilton, July 6-7, 1995, at 8:30 a.m. and 9:00 a.m., respectively. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (817) 386-8945. TRD-9508150.

The Mills County Appraisal District Appraisal Review Board will meet at the Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, July 13, 1995, at 8:00 a.m. Information may be obtained from Cynthia Partin, P. O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9508100.

The Nolan County Central Appraisal District Board of Directors will meet at Betty's Breakfast, Oak Street, Sweetwater, July 11, 1995, at 7:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9508154.

The Nolan County Central Appraisal District Appraisal Review Board will meet at the Nolan County Courthouse, Third Floor, Sweetwater, July 11, 1995, at 9:00 a.m. Information may be obtained from Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421. TRD-9508155.

The North Plains Ground Water Conservation District Number Two Board (Regular Meeting) will meet at 603 East First, Dumas, July 11, 1995, at 10:00 a.m. Information may be obtained from Richard S. Bowers, P.O. Box 795, Dumas, Texas 79029-0795, (806) 935-6401. TRD-9508096.

The Texas Public Workers' Compensation Program Board of Directors met 8901 Business Park Drive, Austin, July 10, 1995, at 11:30 a.m. Information may be obtained from Russ Edwards, 1205 Lakeshore Drive, Marble Falls, Texas 78654, (210) 693-2508. TRD-9508127.

The Quality Work Force Planning, Region VII Upper Rio Grande Private Industry Council Board will meet at 1155 Westmoreland, Suite 211, El Paso, July 12, 1995, at 7:30 a.m. Information may be obtained from Norman R. Haley, 1155 Westmoreland, Suite 211, El Paso, Texas 79925, (915) 772-5627. TRD-9508073.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market, Sinton, July 13, 1995, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9508149.

The South Franklin Water Supply Corporation Board of Directors will meet at the Office of South Franklin Water Supply Corporation, 4430 Highway 115, South of Mount Vernon, July 11, 1995, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860-3400. TRD-9508123.

The Swisher County Appraisal District Appraisal Review Board met at 130 North Armstrong, Tulia, July 7, 1995, at 8:45 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 78088, (806) 995-4118. TRD-9508124.

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Meetings Filed July 5, 1995

The Austin Transportation Study Policy Advisory Committee met at the Bass Lecture Hall, Sid Richardson Building, 26th and Red River, Austin, July 10, 1995, at 6:00 p.m. Information may be obtained from Michael R. Aulick, 301 West Second, Austin, Texas 78701, (512) 499-2275 or Fax: (512) 499-6385. TRD-9508207.

The Bexar-Medina-Atascosa Counties Water Control and Improvement District #1 Board of Directors met at 221 Highway 132, Natalia, July 10, 1995, at 8:00 a.m. Information may be obtained from John W. Ward III, P.O. Box 170, Natalia, Texas 78059, (210) 665-2132. TRD-9508161.

The Bi-County WSC will meet at the Bi-County WSC Office, FM 2254, Pittsburg, July 11, 1995, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9508255.

The Blanco County Appraisal District Board of Directors will meet at Avenue G and Seventh Street, Johnson City, July 11, 1995, at Noon. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. TRD-9508244.

The Brazos River Authority (Revised Agenda.) Water Quality Committee will meet at 4400 Cobbs Drive, Waco, July 11, 1995, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9508237.

The Brown County Appraisal District Board of Directors met at 403 Fisk Avenue, Brownwood, July 10, 1995, at 7:00 p.m. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9508259.

The Cass County Appraisal District Appraisal Review Board met at 502 North Main Street, Linden, July 10, 1995, at 9:00 a.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9508210.

The Concho Valley Council of Governments Private Industry Council will meet at 5014 Knickerbocker Road, San Angelo, July 12, 1995, at 3:00 p.m. Information may be obtained from Monette Molinar, 5002 Knickerbocker Road, San Angelo, Texas 76904, (915) 944-9666. TRD-9508249.

The Concho Valley Council of Governments Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, July 12, 1995, at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9508260.

The Colorado River Municipal Water District Board of Directors will meet at 400 East 24th Street, Big Spring, July 13, 1995, at 9:00 a.m. Information may be obtained from O. H. Ivie, Box 869, Big Spring, Texas 79720, (915) 267-6341. TRD-9508253.

The Denton Central Appraisal District Appraisal Review Board will meet at 3911 Morse Street, Denton, July 19, 1995, at 9:00 a.m. Information may be obtained from Kathy Pierson, P.O. Box 2816, Denton, Texas 76202-2816, (817) 566-0904. TRD-9508203.

The El Oso Water Supply Corporation Board of Directors will meet at FM 99, Karnes City, July 11, 1995, at 7:30 p.m. Information may be obtained from Judith Zimmermann, P.O. Box 309, Karnes City, Texas 78118, (210) 780-3539. TRD-9508204.

The Erath County Appraisal District Appraisal Review Board will meet at 1390 Harbin Drive, Stephenville, July 11-13, 1995, at 9:00 a.m. Information may be obtained from Mitzzi Meekins, P.O. Box 94, Stephenville, Texas 76401, (817) 965-5434. TRD-9508258.

The Grand Parkway Association Board of Directors will meet at 5757 Woodway, 140 East Wing, Houston, July 13, 1995, at 8:15 a.m. Information may be obtained from Jerry L. Coffman, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9508215.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, July 11, 1995, at 11:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9508240.

The Gulf Bend Center Board of Trustees will meet at 1502 East Airline, Victoria, July 12, 1995, at Noon. Information may be obtained from Agnes Moeller, 1502 East Airline, Victoria, Texas 77901, (512) 575-0611. TRD-9508160.

The Hamilton County Appraisal District Board will meet at 119 East Henry, Hamilton, July 11, 1995, at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (817) 386-8945. TRD-9508158.

The Hansford Appraisal Review Board Appraisal Review Board met at 709 West Seventh Street, Spearman, July 10, 1995, at 9:00 a.m. Information may be obtained from Alice Peddy, P.O. Box 519, Spearman, Texas 79081-0519, (806) 659-5575. TRD-9508241.

The Harris County Appraisal District Board of Directors met at 2800 North Loop West, Eighth Floor, Houston, July 10, 1995, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9508159.

The High Plains Underground Water Conservation District Number 1 Board will meet at 2930 Avenue Q, Board Room,

Lubbock, July 11, 1995, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9508235.

The Hood County Appraisal District Appraisal Review Board will meet at 1902 West Pearl Street, District Office, Granbury, July 11-13, 1995, at 8:10 a.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9508242.

The Johnson County Central Appraisal District Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 10-12, 1995, at 8:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9508246.

The Johnson County Central Appraisal District Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, July 18, 1995, at 8:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9508245.

The Local Government Investment Cooperative Board of Directors will meet at 7001 Preston Road, Suite 800, Dallas, July 13, 1995, at 2:00 p.m. Information may be obtained from Darryl Pounds, 7001 Preston Road, Suite 800, Dallas, Texas 75202, (214) 522-8830, Fax: (214) 522-7667. TRD-9508256.

The Scurry County Appraisal District Appraisal Review Board met at 2612 College Avenue, Snyder, July 10, 1995, at 10:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9508205.

The Scurry County Appraisal District (Revised Agenda.) Appraisal Review Board met at 2612 College Avenue, Snyder, July 10, 1995, at 10:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9508208.

The Scurry County Appraisal District Appraisal Review Board will meet at 2612 College Avenue, Snyder, July 11, 1995, at 9:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9508206.

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, July 11, 1995, at 8:30 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9508251.

The South Plains Association of Governments Board of Directors will meet at 1323

58th Street, Lubbock, July 11, 1995, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9508248.

The Sulphur-Cypress Soil and Water Conservation District #419 will meet at 1809, West Ferguson, Suite D, Mt. Pleasant, July 13, 1995, at 8:30 a.m. Information may be obtained from Beverly Amerson, 1809 West Ferguson, Suite D, Mt. Pleasant, Texas 75455, (903) 572-5411. TRD-9508254.

The Central Appraisal District of Taylor County Board of Directors will meet at 1534 South Treadaway, Abilene, July 12, 1995, at 3:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381 or Fax: (915) 677-7877. TRD-9508212.

Meetings Filed July 6, 1995

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main Street, Lometa, July 10, 1995, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158, Lometa, Texas 76853, (512) 752-3505. TRD-9508263.

The San Jacinto River Authority Board of Directors will meet at 2301 North Millbend Drive, The Woodlands, July 12, 1995, at 12:30 p.m. Information may be obtained from James R. Adams, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9508264.

The TML Group Benefits Risk Pool Budget Committee met at the Texas Municipal Center, 1821 Rutherford Lane, Suite 300, Austin, July 10, 1995, at 10:30 a.m. Information may be obtained from Suzanne Steindorf, 1821 Rutherford Lane, Suite 300, Austin, Texas 78754, (512) 719-6521. TRD-9508262.

The Wise County Appraisal District Board of Directors will meet at 206 South State Street, Decatur, July 11, 1995, at 8:00 p.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9508265.



Name: Cindy Laviolette
Grade: 12
School: Plano Senior High School, Plano ISD

IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article, 5069-1. 04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	07/03/95-07/09/95	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(3)	07/01/95-07/31/95	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose. (3)For variable rate commercial transactions only.

Issued in Austin, Texas, on June 26, 1995.

TRD-9507975 Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner

Filed: June 29, 1995

Texas Education Agency Request for Applications

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-95-023 is authorized by the National Literacy Act of 1991, §353 and §322.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications from eligible grant recipients (local educational agencies, correctional education agencies, community-based organizations, public or private nonprofit agencies, postsecondary educational institutions, an institution that serves educationally disadvantaged adults, and any other institution that has the ability to provide literacy services to adults and families) to conduct special adult education and literacy experimental demonstration projects and gateway grants.

Description. The following projects will be funded.

Statewide capacity building projects.

1. Adult education and literacy new technologies. This project will provide the opportunity for the development of

a policy and long-range plan for the use of technology in adult education and literacy through a multi-pronged approach. One project will be funded in an amount not to exceed \$125,000.

2. Adult education for the homeless curriculum development. This multi-year initiative will permit the development of a curriculum that will integrate a problem-solving, life planning approach with basic and secondary education for homeless adults working toward self-sufficiency. Applicants will be required to demonstrate expertise in curriculum development, teacher training, and an understanding of the needs of homeless adults. One project will be funded in an amount not to exceed \$80,000.

3. Performance measures assessment system. The adult education and literacy performance measures assessment system will be based on the framework developed by the Educational Testing Service for the National and Texas Adult Literacy Surveys but will be expanded to include measures of writing, speaking, and listening, and competencies included in the Secretary's Commission on Achieving Necessary Skills (SCANS). One project will be funded in an amount not to exceed \$220,000.

Local demonstration projects.

1. Workforce literacy partnership demonstrations. Funding for this category of projects will provide "seed money" for shared-cost work force literacy partnership implementation projects between adult education and literacy grant recipients and the private sector. Applicants will be encouraged to develop local financial and in-kind resources to contrib-

ute to the proposed projects. A total of \$100,000 for these projects is available.

2. Family literacy demonstration projects. These projects provide the "seed money" for adult education and literacy programs to develop and implement family literacy and integrate the design into the ongoing program. These local capacity building projects will be funded in the order of the average total scores of the applications, from the highest to the lowest, until funds for this category of projects are exhausted. A total of \$398,000 is available for these projects.

3. Adult secondary education transition projects. This category of projects will provide "seed money" to permit the development of transition curriculum, resources, and services which will improve student proficiencies in accessing further education, training, and/or employment opportunities and will be integrated into the adult secondary education program. These capacity building projects will be funded in the order of the average total scores of the applications, from the highest to the lowest, until funds for this category of projects are exhausted. A total of \$150,000 is available for these projects.

Gateway grants.

Through coordination, public housing agencies provide for comprehensive services, customized curricula, enhanced access, support services, and other community services necessary to build "one-stop shopping" opportunities to serve undereducated adults who are the most educationally disadvantaged and hardest to serve. Gateway grants may focus on family literacy programming. Only public housing agencies are eligible applicants for gateway grants, and are required to coordinate with adult education in the development of projects. A total of \$200,000 is available for these projects.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. The TEA reserves the right to select from the highest ranking applications those that address all requirements in the RFA.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-95-023 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFA number in your request.

Further Information. For clarifying information about the RFA, contact Dr. Deborah Stedman, Division of Adult and Community Education, Texas Education Agency, (512) 463-9294.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Daylight Time), Monday, August 14, 1995, to be considered.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508114

Cris Cloudt
Executive Associate Commissioner for
Policy Planning and Information
Management
Texas Education Agency

Filed: July 3, 1995

Office of the Governor, Criminal Justice Division

Correct on Request for Applications under the Juvenile Justice and Delinquency Prevention Act

In the June 9, 1995, edition of the *Texas Register* (20 TexReg 4292), the closing date for receipt of applications read: the original and five copies of the grant application must be received at the above address by 5:00 p.m. on July 3, 1995. The date originally stated has been changed. The new closing date for receipt of applications is July 24, 1995.

Issued in Austin, Texas, on July 5, 1995.

TRD-9508190

Pete Wassdorf
General Counsel
Office of the Governor, Criminal Justice
Division

Filed: July 5, 1995

Texas Department of Health Correction of Error

The Texas Department of Health submitted a correction of error, which was published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3495). The correction of error contained an error, the correction is as follows.

On page 20 TexReg 2776, subsection (b)(22), the last equation should read "...each of these organs or tissues ($H_{E,50} = \sum W_T H_{T,50}$)"

On page 20 TexReg 2777, subsection (b)(31), the last equation should read "organs or tissues that are irradiated ($H_E = \sum W_T H_T$)"

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 radioactive 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
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Luling	Edgar B. Davis Memorial Hospital	L04844	Luling	0	06/26/95
San Antonio	Heart Center of Central San Antonio	L04860	San Antonio	0	06/27/95

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Abilene	Abilene Regional Medical Center	L02434	Abilene	35	06/15/95
Amarillo	Panhandle Nuclear Rx, Ltd.	L04683	Amarillo	4	06/15/95
Amarillo	Northwest Texas Hospital	L02054	Amarillo	44	06/27/95
Austin	Texas Department of Health	L01155	Austin	73	06/28/95
Baytown	Chevron Chemical Company	L00962	Baytown	25	06/21/95
Cleveland	Cleveland Regional Medical Center	L02055	Cleveland	16	06/28/95
Conroe	Sadler Clinic	L02515	Conroe	14	06/14/95
Corpus Christi	Doctors Regional Medical Center	L02816	Corpus Christi	34	06/15/95
Corpus Christi	Hoechst Celanese Corporation	L00409	Corpus Christi	55	06/22/95
Denton	Denton Community Hospital	L04003	Denton	14	06/16/95
Denton	Denton Community Hospital	L04003	Denton	15	06/21/95
Duncanville	The Center	L03717	Duncanville	13	06/15/95
Fort Worth	Moncrief Radiation Center	L00047	Fort Worth	28	06/26/95
Houston	Lark Sequencing Technologies, Inc.	L04387	Houston	6	06/15/95
Houston	Northwest Houston Cardiovascular Imaging, P.A.	L04253	Houston	6	06/21/95
Houston	Memorial Care System	L00439	Houston	48	06/27/95
Irving	Abbott Manufacturing, Inc.	L04841	Irving	1	06/21/95
Jewett	Nucor Steel Corporation	L02504	Jewett	9	06/26/95
Lake Jackson	Brazosport Memorial Hospital	L03027	Lake Jackson	10	06/29/95
Midland	G. Murthy Gollapudi, M.D., Ph.D.	L03238	Midland	6	06/20/95
Midland	Memorial Hospital and Medical Center	L00728	Midland	50	06/23/95
N. Richland Hills	HCA Health Services of Texas Inc.	L02271	N. Richland Hills	20	06/28/95
Orange	Miles Inc.	L00976	Orange	37	06/16/95
Pasadena	Montell USA Inc.	L01854	Pasadena	25	06/21/95
Pasadena	Pasadena Bayshore Medical Center	L00153	Pasadena	50	06/27/95
Plano	Plano Diagnostic Imaging Center	L04843	Plano	1	06/21/95

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Port Arthur	SOLOCO, Inc.	L04708	Bridge City	5	06/09/95
San Angelo	Angelo Clinic Association	L04216	San Angelo	3	06/20/95
San Antonio	Southwest Texas Methodist Hospital	L00594	San Antonio	113	06/21/95
Stephenville	Harris Methodist Erath County	L03097	Stephenville	12	06/15/95
Throughout Texas	General Inspection Services	L02319	Houston	28	06/16/95
Throughout Texas	Century Inspection, Inc.	L00062	Dallas	70	06/16/95
Throughout Texas	Texas Department of Transportation	L00197	Austin	74	06/20/95
Throughout Texas	Geotech Engineering and Testing	L03923	Houston	11	06/22/95
Throughout Texas	Halliburton Energy Services	L00442	Houston	79	06/20/95
Throughout Texas	Koch Engineering Company, Inc.	L03913	La Porte	43	06/20/95
Throughout Texas	JTM Industries, Inc.	L04045	Jewett	4	06/20/95
Throughout Texas	Monitoring Services	L04501	Friendswood	3	06/23/95
Throughout Texas	Gilbert Texas Construction Corp.	L04569	Fort Worth	10	06/27/95
Throughout Texas	D-Arrow Inspection Inc.	L03816	Houston	47	06/27/95
Throughout Texas	Texas Department of Transportation	L00197	Austin	75	06/27/95
Throughout Texas	B&H Inspection Services Inc.	L04684	Robstown	2	06/27/95
Throughout Texas	Guardian NDT Services, Inc.	L04099	Corpus Christi	35	06/28/95
Throughout Texas	San Antonio Development Agency	L04174	San Antonio	9	06/28/95
Throughout Texas	MQS Inspection Incorporated	L00087	Houston	64	06/28/95
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	100	06/28/95
Tyler	East Texas Medical Center	L00977	Tyler	61	06/22/95
Tyler	Radiation Control Systems	L04235	Houston	11	06/23/95
Victoria	Citizens Medical Center	L00283	Victoria	53	06/15/95
Wharton	Gulf Coast Medical Center	L01390	Wharton	17	06/26/95
Wichita Falls	Bethania Regional Health Care Center	L01844	Wichita Falls	42	06/21/95

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Fort Worth	Maxum Diagnostic Center	L03807	Fort Worth	16	06/23/95
Throughout Texas	Independent Testing Laboratories	L03795	Houston	25	06/28/95

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Carrollton	Ybarrondo & Associates - Sciencetech, Inc.	L04435	Carrollton	5	06/20/95
Dallas	Stanley E. Hodges, Jr., M.D. and Associates	L00472	Dallas	40	06/15/95
Richardson	NDRC Laboratories, Inc.	L02811	Richardson	13	06/28/95
Throughout Texas	Texas Perforators	L03544	Seguin	9	06/22/95

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, 78756-3180.

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 June 29, 1995.

TRD-9508076 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: July 3, 1995

Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Royce L. Borho, D.C. (registrant-R06106) of Austin to cease and desist using the Fisher x-ray unit (Model Number FSW300; Serial Number L0351) to perform cervical, thoracic and lumbar spine x-ray procedures until the health-related violations found during a recent inspection of the facility are corrected. The bureau determined that continued radiation exposure to patients in excess of that required to produce a diagnostic image constitutes an immediate threat to public health and safety, and the existence of an emergency. The registrant is further required to provide evidence satisfactory to the

bureau regarding the actions taken to correct the violations and the methods used to prevent their recurrence.

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 July 3, 1995.

TRD-9508120 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: July 3, 1995

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Austin Regional Clinic, P.A. (registrant M-00371) of Austin to cease and desist performing mammographic examinations until all violations noted during a recent inspection have been corrected and all mammography systems have been certified in accordance with the Texas Regulations for Control of Radiation. The bureau determined the use of uncertified mammographic systems without a complete quality assurance program, and without regard to the results of adequate quality assurance testing according to Texas radiation regulations, subjects patients to unnecessary exposure to radiation. This constitutes an immediate threat to public health and safety, and the existence of an emergency.

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 June 29, 1995.

TRD-9508010 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 29, 1995

Notice of Intent to Revoke a Certificate of Registration

Pursuant to Texas Regulations for Control of Radiation (TRCR), Part 13 (25 Texas Administrative Code §289.112), the Bureau of Radiation Control (bureau), Texas Department of Health (department), filed a complaint against the following registrant: J. Victor Shroyer, D.D.S., Palestine, R00648.

The department intends to revoke the certificate of registration; order the registrant to cease and desist use of radiation machine(s); order the registrant to divest himself of such equipment; and order the registrant to present evidence satisfactory to the bureau that he has complied with the orders and the provisions of the Health and Safety Code, Chapter 401. If the fee is paid and the items in the complaint are corrected within 30 days of the date of the complaint, the department will not issue an order.

This notice affords the opportunity to the registrant for a hearing to show cause why the certificate of registration should not be revoked. A written request for a hearing must be received by the bureau within 30 days from the date of service of the complaint to be valid. Such written

request must be filed with Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189. Should no request for a public hearing be timely filed or if the fee is not paid or if the items in the complaint are not corrected, the certificate of registration will be revoked at the end of the 30-day period of notice. 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 July 3, 1995.

TRD-9508121 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: July 3, 1995

Request for Proposal-Shots Across Texas Childhood Immunization Initiative

Generally, The Community Grants Fund has been established within the Texas Department of Health (TDH) to enable and empower local volunteer collaborative groups to think and act creatively to find the solutions to local problems which cause children to be unimmunized. The Community Grants Fund is a source of funding available to local immunization coalitions for development, implementation, and/or continuation of projects that demonstrate effective strategies to improve the rate of childhood immunizations in the state. A coalition is an association of two or more agencies or organizations committed to working together in a cooperative effort with regional/local health departments. The TDH has supported the development of a statewide coalition called Shots Across Texas. The TDH provides administrative leadership to the coalition and is the financial agent for appropriations, donations, and gifts to the Community Grants Fund.

Background. The State of Texas recognizes the severity of the problem of low childhood immunization rates. In the spring of 1993, the 73rd Legislature of Texas passed Senate Bill 266, a childhood immunization law which mandates the age-appropriate immunization of every child in Texas. The legislature also doubled the TDH's immunization budget for the purchase of increased supplies of vaccine, infrastructure build-up and some marketing activities. Generous as this allocation is in a time of fiscal restraint in Texas, even more resources are needed to adequately address this major public health problem.

Founding Donation. The Aetna Foundation (Aetna) of Hartford, Connecticut, has generously made the founding donation for the Community Grants Fund. Aetna has made immunizing the children of the United States one of its two national priority endeavors. Aetna believes in local solutions to local problems, and has actively forged partnerships with federal and state governments, health care professionals, community organizations, hospitals, businesses and philanthropic organizations throughout the nation. Aetna enthusiastically supports the Community Grants Fund for the State of Texas, not only through the provision of financial resources, but through active participation in the Community Grants Fund Committee of the Shots Across Texas Coalition.

Availability of Funds. The Community Grants Fund Committee will recommend that TDH make awards for local

immunization coalition activities in two funding ranges, range one being from \$1.00 to \$500, and range two from \$501 to \$25,000.

Application Procedures. Application forms, including attachments, may be obtained from Lynn Denton, Immunization Strategic Coordinator, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Each applicant shall carefully complete the application form, including attachments, and return the original and two copies (unbound) to the TDH. The TDH has sole discretion and reserves the right to cancel or reject any or all applications received if it is deemed in the TDH's best interest. This application does not constitute a commitment by the TDH to fund a coalition or to pay for costs incurred in the preparation of the application. Incomplete applications will not be considered for funding. An application is incomplete if it does not contain the required attachments, is not signed and dated, has unanswered questions, or is otherwise incomplete. Applications, including those for awards in the amount of \$1.00-\$500, and \$501-\$25,000, shall be sent to Ms. Denton at the above-mentioned address. Applications must be received by the TDH no later than 2:00 p.m. CST, October 25th, 1995.

Eligible Applicants. Eligible applicants are coalitions comprised of governmental, public, private and not-for-profit entities dedicated to working collaboratively to increase the immunization rate of Texas Children. At least one 501(c)(3) organization must be a member of the local coalition. A coalition is not required to be or become a legally incorporated organization in order to receive funding. As an alternative, a lead agency which is incorporated can be designated to accept funds on behalf of the coalition members. If the organization managing the funds is not-for-profit, the organization must attach a copy of the organization's 501(c)(3) tax exempt status letter from the Internal Revenue Service, along with a list of the organization's board of directors, their addresses, and occupations. Organizations working independently are not eligible to apply.

Funding Criteria. A Community Grants Fund Committee work group will evaluate the applications. The TDH will make awards based upon an equitable distribution of funds throughout the state and competitive scores of the applications. The following criteria will be used to evaluate the applications: geographic funding allocation; compliance with application instructions; evidence of collaborative efforts (public/private groups); evidence of community support (letters, matching funds, in-kind support, etc.); statement of the coalition's purpose/goals; clear description of proposed activities to be funded; reasonableness of budget; evidence that the coalition is not building a new and separate system, but is enhancing the capacity of the existing healthcare network; and sustainability of the coalition. Each applicant will be notified in writing of the decision within 30 days.

Funds may not be used for: purchase of vaccines (available from TDH); indirect costs; out-of-state travel; purchase of equipment; loans to individuals; and fund raising events, including the cost of food, beverages, and entertainment.

Reporting Requirements. A programmatic and financial report will be due within 30 days after the end of the project period for the \$1.00-\$500 grants. Bi-annual final programmatic and financial reports for a one-year period will be required for the awards from \$501-\$25,000. These should be sent to: Lynn Denton, Immunization Strategic

Coordinator, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Additional Information. For additional information, contact Lynn Denton, Immunization Strategic Coordinator, at the previously-mentioned address or at (512) 458-7449 or 1-800-252-9152.

Issued in Austin, Texas, on June 29, 1995.

TRD-9508011 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: June 29, 1995

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**Health and Human Services
Commission
Public Notice**

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 95-12, Amendment Number 477.

The amendment revises the Plan to address the requirements imposed by the Omnibus Budget Reconciliation Act (OBRA) of 1987, §4211(b)(2), and §4801(e) (1)(A),(B) and (e)(19) of OBRA 1990. The amendment is effective October 1, 1995.

If additional information is needed, please contact Pam McDonald, Texas Department of Human Services, at (512) 450-4086.

Issued in Austin, Texas, on June 27, 1995.

TRD-9507818 Tim Graves
Deputy Commissioner
Health and Human Services Commission

Filed: June 27, 1995

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**Texas Historical Commission
Consultant Proposal Request**

Pursuant to Government Code, Subchapter B, §2254, the Texas Historical Commission is requesting statements of qualifications for Architectural Services for work to be performed at the Texas Governor's Mansion. The project requires a consultant with experience in the areas of historical material research and documentation, existing materials analysis, roof design and analysis, structural engineering, code compliance, cost estimating, and historic roof systems detailing. The selected firm will provide all necessary services to provide an existing conditions roof analysis, replacement recommendations, and cost estimates for proposed work based on historical research and physical evidence. All offers for consultant services must describe experience, professional qualifications, and project approach as identified in the Request for Qualifications package available from the Texas Historical Commission, Attention: Tere O'Connell, Division of Architecture, P. O. Box 12276, Austin, Texas 78711, (512) 463-6183, Fax (512) 463-6095.

A Pre-submittal conference will be held on Wednesday, July 26, 1995, at 9:00 a.m. in the conservatory of the Texas Governor's Mansion, 1010 Colorado Street, Austin, Texas.

This meeting will consist of a review of the program, roof examination, and will provide an opportunity for consultants to present their questions. Attendance is strongly encouraged.

Three copies of a response should be submitted in a sealed envelope bearing the name and address of the respondent and the title: "Texas Governor's Mansion Roof Study."

Responses should be delivered to: Texas Historical Commission, Attention: Tere O'Connell, 108 West 16th Street, Second Floor, Austin, Texas 78701, or mailed to: Texas Historical Commission, Attention: Tere O'Connell, P.O. Box 12276, Austin, Texas 78711.

The closing date for receipt of a response is Wednesday, August 2, 1995, at 5:00 p.m. Only responses received on or before that time, date and place can be accepted.

Evaluation criteria will be based on qualifications identified within the RFQ, with emphasis placed on a firm's experience with projects of similar scope and exceptional historic significance. RFQ responses will be evaluated by a committee of appropriate persons, which may include THC, General Services Commission and Governor's Mansion staff. The evaluation committee may take an opportunity to conduct personal interviews with prospective candidates. A point system shall be used to select the most qualified party(ies) with whom to negotiate the final contract.

Issued in Austin, Texas, on July 3, 1995.

TRD-9508075 Curtis Tunnell
Executive Director
Texas Historical Commission

Filed: July 3, 1995

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**Texas Department of Human Services
Request For Proposals—Announcement of
Available Funds For Refugee Social
Services**

The Texas Department of Human Services (DHS) is pleased to announce the availability of Refugee Social Services funds from the federal Office of Refugee Resettlement (ORR) in the Department of Health and Human Services.

Description of Services: The Refugee Social Services program provides employment and training services, English as a Second Language instruction, health and emergency services and home management services through local contracts in areas of the state with the largest number of refugee arrivals: Amarillo, Austin, Beaumont, Dallas, Fort Worth, Houston and San Antonio. The estimated amount of funds available for the state is \$3 million; with funds allocated to each local area based on the number of refugee arrivals. The allocation amounts per service and per geographic area are listed in the RFP.

The Code of Federal Regulations (CFR) 45, parts 400 and 401, give the State the authority to contract with public and private agencies for the provision of Refugee Social Services. In Texas, DHS is the single state agency responsible for the administration of the Refugee Social Services program. Within DHS, the Office of Immigration and Refugee Affairs is the entity responsible for the direct management of the Refugee Social Services program.

Funds will be awarded on a competitive basis to public or

private agencies which can demonstrate the greatest aptitude for effectively serving the target population: persons admitted to the United States as "refugees" under the Immigration and Nationality Act (INA), §2.07 or granted asylum under the INA, §2.08. Eligibility also includes Cubans and Haitians under the Refugee Education Assistance Act of 1980, §5.01 (Public Law 96-422); certain Amerasians from Vietnam who were admitted to the U.S. as immigrants under the Foreign Operations, Export Financing and Related Programs Appropriations Act of 1988, §584. Eligible persons must possess original Immigration and Naturalization Services (INS) documents which verify admission status under one of the above laws. Persons admitted to the United States by the Immigration and Naturalization Services (INS) under §207 and §208 of the Immigration and Nationality Act, Amerasians from Vietnam and Cuban and Haitian Entrants.

Application Deadline: Five copies of the proposal must be delivered, not faxed, to: Debbie Desmond, Refugee Program Director, Office of Immigration and Refugee Affairs, 9101 Burnet Road, Suite 216, Austin, Texas, 78758. Proposals must be received no later than 4:00 p.m. CST on August 15, 1995. Proposals received after this date/time, or faxed copies, will not be considered.

Proposal Evaluation and Funding Award: The final selection of contractors shall be made by representatives of the Office of Immigration and Refugee Affairs in accordance with applicable state and federal laws. The evaluation criteria and scores for each are contained in the RFP document. A copy of the RFP will be sent upon written request submitted to Debbie Desmond at the address listed in this notice.

Issued in Austin, Texas, on June 28, 1995.

TRD-9507962 Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: June 28, 1995

Texas Department of Insurance Notices

The Commissioner of Insurance or his designee, will consider approval of a rate filing request outside the promulgated flexibility band filed by Chrysler Insurance Company pursuant to Texas Insurance Code, Article 5.101, §3(f). They are proposing rates of +123% on Collision for commercial automobile for single interest.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance Division, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701, within 30 days after publication of this notice.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508065 Alicia M. Fecthel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: June 30, 1995

The Commissioner of Insurance or his designee, will consider approval of a rate filing request outside the promulgated flexibility band filed by Maryland Casualty Company pursuant to Texas Insurance Code, Article 5.101, §3(f). They are proposing rates of -82.2% for Liability and -70.5% for Physical Damage for private passenger automobile insurance for the antique and classic automobile program.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance Division, P.O. Box 149104, Austin, Texas 78767-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701, within 30 days after publication of this notice.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508066 Alicia M. Fecthel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: June 30, 1995

The Commissioner of Insurance or his designee, will consider approval of a rate filing request outside the promulgated flexibility band filed by the Texas Farm Bureau Underwriters pursuant to Texas Insurance Code, Article 5.101, §3(f). They are proposing rates ranging from +2.60 to +147.82% above the benchmark by class, territory, and coverage for private passenger automobile for non-standard business.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless an objection is filed with the Chief Economist, Birny Birnbaum, at the Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508067 Alicia M. Fecthel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: June 30, 1995

Notices of Public Hearing

The Commissioner of Insurance, at a public hearing under Docket Number 2154 scheduled for July 25, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a form filing by the Texas Department of Banking (Department) for revised surety bond forms entitled "Currency Exchange Bond" and "Sale of Checks Bond". The Currency Exchange Bond is a requirement of Texas Civil Statutes, Article 350. The Sale of Checks Bond is a requirement of Texas Civil Statutes, Article 489d.

The "Currency Exchange Bond" has been revised as follows: The title of the bond. A reference has been added to

bound the surety and principal not only to Texas Civil Statutes (Act), Article 350, but also "any rules adopted pursuant to the Act". Additional wording has been added which now includes "any fines, fees, or other monies due and owing the Department" as part of the obligation in addition to "for the use and benefit of any creditor of the principal for any liability incurred". A counter signature line for the signature of the Licensed Local Recording Agent has been added. There also have been other minor editorial changes.

The "Sale of Checks Bond" has been revised as follows: The title of the bond. A reference has been added to bound the surety and principal not only to Texas Civil Statutes (Act), Article 489d, but also "any rules adopted pursuant to the Act". A counter signature line for the signature of the Licensed Local Recording Agent has been added. There also have been other changes of an editorial nature.

Copies of the full text of the proposed bond forms for the Department are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4124 (refer to Reference Number O-0695-11).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508062 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: June 30, 1995

The Commissioner of Insurance, at a public hearing under Docket Number 2155 scheduled for July 25, 1995, at 1:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a form filing by the Texas Education Agency for revised surety bond forms: One entitled "Course Provider Bond" and two other bonds both entitled "Driver Education School Bond". Also filed for approval are revised Continuation Agreements for each bond. All three bonds are a requirement of Texas Civil Statutes, Article 4413(29c), as amended by Senate Bill 964, Acts of the 74th Legislature, Regular Session 1995.

The following revisions have been made to the Course Provider Bond: The title of the bond has been changed from Driver Training School Bond to Course Provider Bond. The penalty of the bond has been increased from \$10,000 to \$25,000. Reference to sections of Article 4413(29c) in the conditions of the bond has been revised to reflect "Section 13(a-2), (g) (3), (h), Section 13B, Section 9". All references to "Driver Training School" has been deleted and substituted with "Course Provider". There are other minor editorial changes.

The two bond forms entitled "Driver Education School Bond" have been revised as follows: The titles of the bonds have been changed from Driver Training School Bond to Driver Education School Bond. Reference to the sections of Article 4413(29c) in the conditions of the bonds have been revised to reflect "Section 13(a), (g) (1), (h), Section 9". There are other minor editorial changes. The penalty on the bonds remain the same, \$10,000 for a

primary school and \$5,000 for each branch school.

The Continuation Agreements for each bond form have been revised to track with the revisions of the bond forms. Also a line has been added at the bottom of the forms to provide a space for the Texas Resident Agent to print his or her name.

Copies of the full text of the proposed bond forms for the Texas Education Agency are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the text, please contact Angie Arizpe at (512) 322-4124 (refer to Reference Number O-0695-12).

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508064 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: June 30, 1995

Midwestern State University, Board of Regents

Request for Proposal-Bond Counsel

The Board of Regents of Midwestern State University is requesting proposals for the purpose of retaining a firm to act as the Board's bond counsel on all items of financing necessary for the Board's issuance of tax exempt bonds. The Board is considering two bond issues during the 1995-1996 school year. One issue is a constitutional bond issue in the approximate amount of four million dollars. A second issue will be a student fee revenue bond in the approximate amount of three million dollars, and the issue will be on an parity to existing bond issues of the university.

Final selection of the Bond Counsel will be based on prior experience, organization, size and structure of firm, qualifications of staff, responsiveness of written proposals to the purpose and scope of services, and costs. Proposals from women, woman-owned firms, minorities, and minority-owned firms are encouraged.

The Board of Regents of Midwestern State University reserves the right to accept or reject any or all proposals submitted under this proposal request and to negotiate modifications to improve the quality or cost effectiveness of any proposal.

All proposals must be in a sealed envelope and clearly marked: "Sealed Proposal-Bond Counsel Services." All proposals must be received by 11:00 a.m. on July 26, 1995.

Three copies of the proposal are required and may be mailed to: Midwestern State University, Attention: Al Hooten, Vice President for Business Affairs, 3410 Taft Boulevard, Wichita Falls, Texas 76308 or hand delivered to 3410 Taft Boulevard, Room 102, Hardin Administration Building, Wichita Falls, Texas by 11:00 a.m. on July 26, 1995. Each proposal should indicate the name and phone number of the principal contact for the firm.

State Highway 16 and Highway 1283 at the Town of Pipe Creek in Bandera County, Texas; new; 13783-01.

Beacon Estates Water Supply Corporation; the wastewater treatment facilities are approximately 800 feet east of Farm-to-Market Road (FM) 359; approximately three miles north of the intersection of FM 359 and FM 1458 in Waller County, Texas; renewal; 12848-01.

City of Cumby; the City of Cumby Wastewater Treatment Facilities; the plant site is approximately 2,000 feet east of the intersection of Interstate Highway 30 and Farm-to-Market Road 275 on the east side of the City of Cumby along the south side of the Louisiana and Arkansas Railroad in Hopkins County, Texas; new; 13792-01.

Friona Industries, L.P.; the waste treatment facilities; the beef feedlot is on the east side of Farm-to-Market Road (FM) 3140 about two miles south of the intersection of FM 3140 and U.S. Highway 60, five miles east of Friona, Parmer County, Texas; amendment; 01600.

City of Georgetown; the wastewater treatment facilities are approximately 2,000 feet north-northeast of Williamson County Road 190 crossing Berry Creek, approximately 4,250 feet northwest of the intersection of Interstate Highway 35 and State Highway 195 in Williamson County, Texas; renewal; 12831-01.

City of Groves; the South Wastewater Treatment Facilities are on Taft Avenue approximately one mile southeast of the intersection of Taft Avenue and State Highway 73 in Jefferson County, Texas; amendment; 10094-01.

PSF Finance, L.P.; the meat packing plant is on the west side of unpaved County Road Number 1, approximately two miles north of the intersection of unpaved County Road Number 1 and Farm-to-Market Road 1058, approximately three miles west of the City of Hereford, Deaf Smith County, Texas; new; 03813.

Sanderson Farms, Inc.; a poultry processing plant; the plant is approximately 1.6 miles southwest of the intersection of Highway 21 and Farm-to-Market Road 2818 at the end of Shiloh Road in the City of Bryan, Brazos County, Texas; new; 03821.

Texas Department of Criminal Justice Eastham Unit; a multi-use confined animal operation; the Eastham Unit is on the west side of Farm-to-Market Road 230 approximately 8.5 miles southwest of the intersection of Farm-to-Market Roads 230 and 2915 in Houston County, Texas; amendment; 02897.

City of Winona; the wastewater treatment facilities are west of Harris Creek and south of Farm-to-Market Road 16, approximately 1,000 feet due south of the intersection of Farm-to-Market Road 16 and State Highway 155 in Smith County, Texas; renewal; 10922-01.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508031 Gloria A. Vasquez
Chief Clerk's Office
Texas Natural Resource Conservation
Commission

Filed: June 30, 1995

Notice of Award

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of a modification to a

consulting services contract award for design and development of a pollution cleanup division course.

The notice for the award of the contract to TechLaw, Inc. was published in the November 15, 1994, issue of the *Texas Register* (19 TexReg 9072).

Description of Services. The contractor, TechLaw, Inc., will design and develop an Introduction to the Pollution Cleanup Division course for the TNRCC. The following major products will be produced: Final Draft of Task 1, Training Objectives and Course Outline, by December 16, 1994; Final Draft of Task 2, Instructor manuals, by May 26, 1995; Final Draft of Task 3, Student Workbooks, by May 26, 1995; Final Draft of Task 4, Visual Aids, by May 26, 1995; Final Draft of Task 5, Train-the-Trainer Course, by August 11, 1995; Task 6, In-place Training of TNRCC Staff, by September 21, 1995; and Task 7, Feedback to TNRCC Staff (regarding proficiency of selected trainers), by September 21, 1995.

Effective Date and Value of Contract. The effective date for completion of the contract has been amended from May 23, 1995, to September 21, 1995. The total cost of the contract remains \$55,555.

Name of the Contractor. The contractor is TechLaw, Inc., 1099 East 18th Street, Plaza Tower, Suite 690, Denver, Colorado 80202.

Persons who have questions concerning this award may contact Carol Batterton, Division Director, Environmental Training Division, TNRCC, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6300.

Issued in Austin, Texas, on July 3, 1995.

TRD-9508164 Lydia Gonzalez-Gromatzky
Acting Director, Legal Division
Texas Natural Resource Conservation
Commission

Filed: July 5, 1995

Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests

for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

Approval of Paul Hampton doing business as Briarwood Water Supply to Acquire the Briarwood Harbor Subdivision Water System and Transfer Water CCN Number 12497 from Larry Hendricks doing business as Briarwood Water Supply in Henderson County, Texas (Application Number 30737-S, Albert Holck).

Issued in Austin, Texas, on June 30, 1995.

TRD-9508032 Gloria A. Vasquez
Chief Clerk's Office
Texas Natural Resource Conservation
Commission

Filed: June 30, 1995

Notice of Public Hearing (Emissions Banking)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; 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 or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 101 and the SIP.

The TNRCC proposes revisions to §101.29, concerning Emissions Banking. The proposed revisions will encourage greater use of the bank by removing disincentives for its use, thereby helping industry achieve clean air goals in a flexible, cost-effective manner.

A public hearing on the proposal will be held August 8, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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. The deadline for submission of written comments will be 30 days after the date of publication in the *Texas Register*. 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. Please mail written comments to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95118-101-AI. Please fax comments to (512) 239-5687. Copies of the revision are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, please contact Mike Magee at (512) 239-1511.

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 July 3, 1995.

TRD-9508116 Lydia Gonzalez-Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: July 3, 1995

Notice of Public Hearing (Procedural Rules)

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Water Code, §26.011; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §25.5, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapters 261, 263, 264, 265, and 337.

The TNRCC proposes revisions to Chapters 261, 263, 264, 265, and 337, concerning the TNRCC procedural rules. The proposed changes to the commission's procedural rules will implement recent legislation in Senate Bills (SB) 12, 741, and 1546. SB 12 directs the State Office of Administrative Hearings to conduct contested case hearings for the commission (other than hearings before one or more commissioners). SB 741 authorizes the commission to delegate to the executive director the authority to act on uncontested applications. SB 1546 requires the commission to adopt rules concerning whether a person is an "affected person" and is entitled to standing in a contested case hearing. In proposing this rule package, the TNRCC is attempting to limit any rule changes to those necessitated by recent legislation. Additionally, an attempt has been made to recodify the current TNRCC practices and reorganize the procedural rules into a more logical format. No substantive change is intended by this recodification. The commission limited the scope of this review of the procedural rules so that the new rules may be finally adopted by September 1, 1995, which is the effective date of SB 12 and 1546.

A public hearing on the proposal will be held August 10, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. 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 August 11, 1995. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on August 11, 1995, will be considered by the commission prior to any final action on the proposal. Please mail written comments to Lisa Martin, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95124-263-AD. Please fax comments to (512) 239-5687. Copies of the revisions are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, please contact Randall Terrell at (512) 239-0577.

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 July 5, 1995.

TRD-9508165 Lydia Gonzalez-Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation
Commission

Filed: July 5, 1995

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**Notices of Receipt of Application for
Municipal Solid Waste Facilities for
the Week Ending June 30, 1995**

Application by Enviro Waste Management; Proposed Permit Number MSW2250, authorizing a Type V (Grease and Grit Trap) Waste Processing Facility to receive municipal solid waste. The proposed site covers approximately 0.5 acres of land and is located at 5119-B East Seventh Street in the city of Austin, Travis County, Texas.

Application by Blue Flats Disposal, Inc. Proposed Permit Number MSW2247, authorizing a Type I (Landfill) municipal solid waste facility. The proposed site covers approximately 140.872 acres of land and is located on the north side of Interstate Highway 20 at the Blue Flats/Panama Road exit, approximately four miles east of the city of Gordon in Palo Pinto County.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number, TNRCC docket number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing."; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

If one or more protests and/or requests for hearing are filed on an application, the Executive Director will not

issue the permit and will forward the application to the Office of Hearings Examiners where an evidentiary hearing may be held. If no protests and/or requests for hearing are filed on an application, the Executive Director will approve the application. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3009.

Issued in Austin, Texas, on June 30, 1995.

TRD-9508034 Gloria A. Vasquez
Chief Clerk's Office
Texas Natural Resource Conservation
Commission

Filed: June 30, 1995

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**Public Utility Commission of Texas
Notice of Workshop**

The Public Utility Commission of Texas will hold a workshop on Thursday July 13, 1995, at 9:00 a.m. in Hearing Room A to receive input from interested parties concerning the drafting of new rule(s) and/or amendments to existing rules relating to rural and small incumbent local exchange companies and cooperatives. The purpose of the new rule(s) and/or revisions to existing rules will be to eliminate unnecessary burdens and expenses on rural and small incumbent local exchange companies and cooperatives. The examination of Commission policies, reporting requirements, and procedural and substantive rules relating to rural and small incumbent local exchange companies and cooperatives is undertaken pursuant to Public Utility Regulatory Act, (PURA) 95A §3.213(j). The Commissioners are not expected to be present at the workshop.

This workshop is the first step toward adoption of rule(s) by the Commission. Following the workshop, a proposed rule or proposed rules will be presented to the Commissioners and recommended for publication. This project has been assigned Project Number 14359.

Persons who plan to attend the workshop should register with Laura Valasquez at (513) 458-0370. If you have any questions, please call Scott Sapperstein at (512) 458-0281 or Pam Whittington at (512) 458-0167.

Issued in Austin, Texas, on June 29, 1995.

TRD-9508027 John M. Rentrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: June 30, 1995

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**San Antonio River Authority
Request for Proposal**

The San Antonio River Authority, on behalf of the West Central Trans-Texas Policy Management Committee (PMC), requests proposals from firms interested in assist-

ing the West Central PMC in developing a public participation/stakeholder involvement process which will enable the West Central PMC to make decisions, in a manner which involves a high degree of public participation/stakeholder involvement, about water supply needs and potential water supply alternatives evaluated in a Phase 1 conceptual planning study in order to move into Phase 2 feasibility studies.

Description: The firm will: 1) evaluate and make recommendations regarding implementation of public participation/stakeholder involvement; 2) design and recommend a process to ensure adequate public participation and stakeholder involvement in Phase 2; 3) assist the PMC in the development of the Phase 2 scope of work; 4) facilitate information transfer and public participation during the Phase 2 study; and 5) recommend and help implement a process to achieve public acceptance of the results of the technical study and of the alternatives selected for implementation. The work will be conducted in steps or phases to allow the study sponsors an opportunity to gauge the success of the effort and modify the approach if necessary.

Interested firms or teams should possess qualifications in the following areas: 1) Public Participation/Stakeholder Involvement; 2) Integrated Resource Planning; 3) Decision Analysis Techniques.

Format: Fifteen copies of the proposal shall be submitted. The proposal shall consist of a narrative not to exceed ten pages in length. At least three client references must be included indicating contact person and phone number. The proposer's most recent and most related work should be given preference when listing client references. Attachments to the ten page narrative should include resumes of those team members who will actually be working on the study, project descriptions, and other pertinent supplemental information.

Responses: The narrative should address the following items: 1) the proposer's understanding of the Phase 2 study and the staffing and management approach the proposer would take to design a public participation/stakeholder involvement process adequate to satisfy the West Central PMC's objectives and requirements; 2) the proposer's and its staff's demonstration that they have the experience and meet the key qualifications necessary to complete the study with brief descriptions of previous projects; 3) locations of the proposer's offices and the extent to which each office will participate in the study; 4) organization and delineation of responsibilities among proposer's team members; 5) the proposer's understanding of Edwards Aquifer and Trans-Texas related issues.

Deadline: Proposals must be received in the general offices of the San Antonio River Authority located at 100 East Guenther Street, San Antonio, Texas 78204 no later than 4:30 p.m., Friday, August 11, 1995. "Trans-Texas Water Program" should be indicated on top of the envelope.

Pre-proposal Meeting: A pre-proposal meeting is scheduled for 10:00 a.m., July 26, 1995, at the San Antonio River Authority boardroom located at 100 East Guenther Street, San Antonio, Texas. Attendance is encouraged but is not mandatory.

Contact: Requests for additional information regarding this request for proposals should be addressed to Steven J. Raabe, P.E. at (210) 227-1373 or Fax (210) 227-4323.

Issued in San Antonio, Texas, on June 30, 1995.

TRD-9508099

James W. Thompson
Assistant Secretary
San Antonio River Authority

Filed: July 3, 1995

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Texas Turnpike Authority
Request for Qualifications

The following request for qualifications for providing professional financial advisory services is filed under the provisions of the Texas Government Code, Chapter 2254.

The Texas Turnpike Authority (the TTA) is soliciting statements of interest and qualifications from professional financial advisory firms to provide financial advisory services for an agency of the State of Texas. Firms responding must demonstrate a history of providing expert advice to governmental agencies including but not limited to investment of available assets in permissible interest yielding accounts and paper, issuance and servicing of tax exempt debt, analysis of the financial feasibility of potential turnpike projects, and continuing financial review and analyses of previously issued tax-exempt turnpike financing. Such financial advisory services can occur over the next ten years.

Proposed fees or budgets shall not be submitted with any initial response or other communication of a firm. A financial advisor qualification packet will be available July 3, 1995 and will be issued to each firm filing a written notice that it desires to respond. Final firm responses must be received in the offices of the Texas Turnpike Authority before 4:45 p.m. CDST July 21, 1995 to be eligible for consideration.

When a firm responds by filing its qualifications, it shall include a statement regarding the affirmative action program of the firm and shall include a statement that the responding financial advisor has familiarized itself with the TTA Historically Underutilized Business Policy and will conform with that policy.

Each firm will be evaluated on experience in providing financial advisory services of the type routinely required by the TTA, the expertise of personnel who will be assigned to TTA, the respondents office location(s), size of the respondents firm, and the reputation of the respondent in the financial/underwriting/investment banking industry.

Qualifications filed will be reviewed by board/staff selection committee(s) to identify those most qualified and experienced respondents who may best serve the TTA on specific assignments. The final financial advisor selection, if any, will be made following completion of the review of responses and negotiation of a satisfactory fee.

Questions concerning this assignment shall be directed to Susan Buse, Comptroller, Texas Turnpike Authority, (214) 522-6200.

Issued in Austin, Texas, on June 27, 1995.

TRD-9507978

James W. Griffin, P.E.
Executive Director
Texas Turnpike Authority

Filed: June 29, 1995
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