

# TEXAS REGISTER

## IN THIS ISSUE

Volume 20, Number 60 August 11, 1995

Page 6043-6164

### **Office of the Attorney General Requests for Opinions**

RQ-822.....	6053
RQ-824.....	6053
RQ-825.....	6053
RQ-826.....	6053
RQ-828.....	6053
RQ-829.....	6053
RQ-830.....	6053
RQ-831.....	6053
RQ-832.....	6053
RQ-833.....	6053

### **Emergency Sections**

#### **Texas Higher Education Coordinating Board**

##### **Program Development**

19 TAC §5.313.....	6055
--------------------	------

##### **Student Services**

19 TAC §21.2.....	6055
19 TAC §21.5.....	6055

19 TAC §21.21, §21.26, §21.31, §21.32.....	6056
19 TAC §21.938.....	6057
19 TAC §§21.950-21.959.....	6058
19 TAC §§21.1010-21.1020.....	6059

### **Proposed Sections**

#### **Texas Department of Agriculture**

##### **Quarantines**

4 TAC §§5.171-5.179.....	6061
--------------------------	------

##### **Boll Weevil Control**

4 TAC §§6.1-6.6.....	6061
4 TAC §§6.1-6.10.....	6062

#### **State Finance Commission**

##### **Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings**

7 TAC §§9.11-9.31.....	6065
------------------------	------

#### **Public Utility Commission of Texas**

##### **Substantive Rules**

16 TAC §23.95.....	6069
--------------------	------

Contents Continued Inside



The Texas Register is printed on recycled paper



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

Secretary of State Antonio O. Garza, Jr.

Director Dan Procter

Assistant Director Dee Wright

Circulation/Marketing Tamara Joiner Jill S. Ledbetter

TAC Editor Dana Blanton

TAC Typographer Madeline Chrisner

Documents Section Supervisor Patty Webster

Document Editors Roberta Knight

Open Meetings/Editor Jamie McCornack

Production Section Supervisor Ann Franklin

Production Editors/Typographers Carla Carter Roy Felps Mimi Sanchez

Receptionist Dancene Jarzombek

Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except July 7, November 10, November 28, and December 29, 1995. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy..

Material in the Texas Register is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the Texas Register Director, provided no such republication shall bear the legend Texas Register or "Official" without the written permission of the director. The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions

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

Proposed Rules - sections proposed for adoption

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

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

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

Open Meetings - notices of open meetings

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

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

How to Cite: Material published in the Texas Register is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 20 (1995) is cited as follows: 20 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "20 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 20 TexReg 3"

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using Texas Register indexes, the Texas Administrative Code, section numbers, or TRD number.

Texas Administrative Code

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

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

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

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

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

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

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

1 indicates the title under which the agency appears in the Texas Administrative Code; TAC stands for the Texas Administrative Code; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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

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

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

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

**Texas Department of Licensing and Regulation**

**Boxing**

16 TAC §§61.201, 61.202, 61.205, 61.206, 61.210-61.212 ..... 6070  
16 TAC §61.203 ..... 6072

**Career Counseling Services**

16 TAC §62.80 ..... 6072

**Employers of Certain Temporary Common Workers**

16 TAC §64.80 ..... 6072

**Boiler Division**

16 TAC §65.80 ..... 6073

**Registration of Property Tax Consultants**

16 TAC §§66.10, 66.22, 66.65, 66.71, 66.82 ..... 6074

**Architectural Barriers**

16 TAC §68.65, §68.80 ..... 6074

**Elevators, Escalators and Related Equipment**

16 TAC §§74.10, 74.50, 74.65, 74.70, 74.80, 74.90, 74.100 ..... 6075

**Texas Higher Education Coordinating Board**

**Program Development**

19 TAC §5.313 ..... 6076

**Student Services**

19 TAC §21.2 ..... 6076  
19 TAC §21.5 ..... 6077  
19 TAC §§21.21, 21.26, 21.31, 21.32 ..... 6077  
19 TAC §21.938 ..... 6077  
19 TAC §§21.950-21.959 ..... 6077  
19 TAC §§21.1010.21.2020 ..... 6078

**Texas Natural Resource Conservation Commission**

**Control of Air Pollution From Motor Vehicles**

30 TAC §§114.3, 114.6, 114.7 ..... 6079  
30 TAC §114.3 ..... 6079

**Water Rates**

30 TAC §§291.3, 291.5-291.8, 291.13-291.15 ..... 6082  
30 TAC §291.41 ..... 6084

30 TAC §§291.71-291.73, 291.75-291.76 ..... 6085  
30 TAC §291.73 ..... 6086  
30 TAC §§291.80-291.90 ..... 6087  
30 TAC §§291.85-291.89 ..... 6097  
30 TAC §§291.91-291.95 ..... 6097  
30 TAC §§291.101, 291.102, 291.105-291.118 ..... 6099  
30 TAC §§291.101-201.119 ..... 6099  
30 TAC §§291.121-291.123, 291.125, 291.127 ..... 6105  
30 TAC §§291.141-291.143 ..... 6106

**Comptroller of Public Accounts**

**Tax Administration**

34 TAC §3.152 ..... 6108

**Texas Board of Occupational Therapy Examiners**

**License Renewal**

40 TAC §370.1 ..... 6108

**Texas Department of Transportation**

**Finance**

43 TAC §5.10 ..... 6109

**Traffic Operations**

43 TAC §§25.400-25.407 ..... 6112  
43 TAC §25.409 ..... 6117

**Withdrawn Sections**

**Texas Department of Human Services**

**Memoranda of Understanding with Other State Agencies**

40 TAC §72.501 ..... 6119

**Adopted Sections**

**Texas Department of Insurance**

**Notifications Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L..... 6121**

**Tables and Graphics Sections**

Tables and Graphics ..... 6123

**Open Meetings Sections**

Texas Department of Aging ..... 6131  
Texas Department of Agriculture ..... 6131  
Texas Appraiser Licensing and Certification Board... 6132  
State Bar of Texas ..... 6132  
Children's Trust Fund of Texas Council ..... 6132  
Texas Department of Commerce ..... 6132

Conservatorship Board.....6133  
State Employee Charitable Campaign.....6133  
Texas Employment Commission.....6133  
Texas Ethics Commission.....6133  
General Land Office.....6134  
Office of the Governor, Criminal Justice Division  
.....6134  
Texas Historical Commission.....6134  
Texas Department of Insurance.....6134  
Texas Lottery Commission.....6134  
Texas Board of Licensure for Professional Medical Physi-  
cists.....6135  
Texas Natural Resource Conservation Commission  
.....6135  
Board of Nurse Examiners.....6135  
Texas Department of Protective and Regulatory Services  
.....6136  
Public Utility Commission of Texas.....6136  
Texas Senate.....6166  
Stephen F. Austin State University.....6136  
Board of Tax Professional Examiners.....6136  
Texas Department of Transportation.....6137  
University of Houston System.....6137  
University Interscholastic League.....6137  
Texas Water Development Board.....6137  
Texas Workers' Compensation Insurance Facility  
.....6138  
Regional Meetings.....6138

***In Addition Sections***

**Comptroller of Public Accounts**

Correction of Error.....6141

**Texas Department of Health**

Licensing Actions for Radioactive Materials.....6141  
Notice of Emergency Cease and Desist Orders  
.....6144  
Notice of Emergency Impoundment Order.....6144  
Notice of Preliminary Report for Assessment of Adminis-  
trative Penalties and Notice of Violation.....6144

**Texas Department of Health**

Request for Proposals for the Development of a Diabetes  
Awareness and Education Project in African American  
Communities in Texas.....6144  
Request for Proposals for the Development of a Diabetes  
and Pregnancy Project.....6145

**Texas Department of Human  
Services**

Notice of Consultant Contract Amendments.....6145  
Request for Proposal for Commercial Warehousing and  
Distribution of Commodities.....6146

**Texas Department of Insurance**

Company License.....6146  
Exemption to Membership in the Texas Workers' Com-  
pensation Insurance Facility  
.....6146  
Notices of Applications.....6147  
Notices of Public Hearings.....6148  
Third Party Administrator Applications.....6151

**Texas Mental Health and Mental  
Retardation**

RFP for Consultant Services to Restructure Reimburse-  
ment Methodology for ICF-MR and HCS-Waiver Pro-  
grams.....6151

**Texas Natural Resource  
Conservation Commission**

Enforcement Orders.....6152  
Notice of Application for Amendments to Certificates of  
Adjudication Pursuant to Texas Water Code, §11.122 Re-  
quiring Notice to Interadjacent Appropriators.....6153  
Notices of Application for Permits to Appropriate Public  
Waters of the State of Texas.....6154  
Notices of Application for Temporary Permits to Appro-  
priate Public Waters of the State of Texas.....6155  
Notices of Applications for Waste Disposal Per-  
mits.....6156  
Notices of Opportunity to Comment on Permitting Ac-  
tions.....6158  
Notices of Public Hearings.....6159  
Notices of Public Hearings (Inspection/Maintenance Pro-  
gram).....6160  
Provisionally-Issued Temporary Permits to Appropriate  
State Water.....6160

**North Central Texas Council of  
Governments**

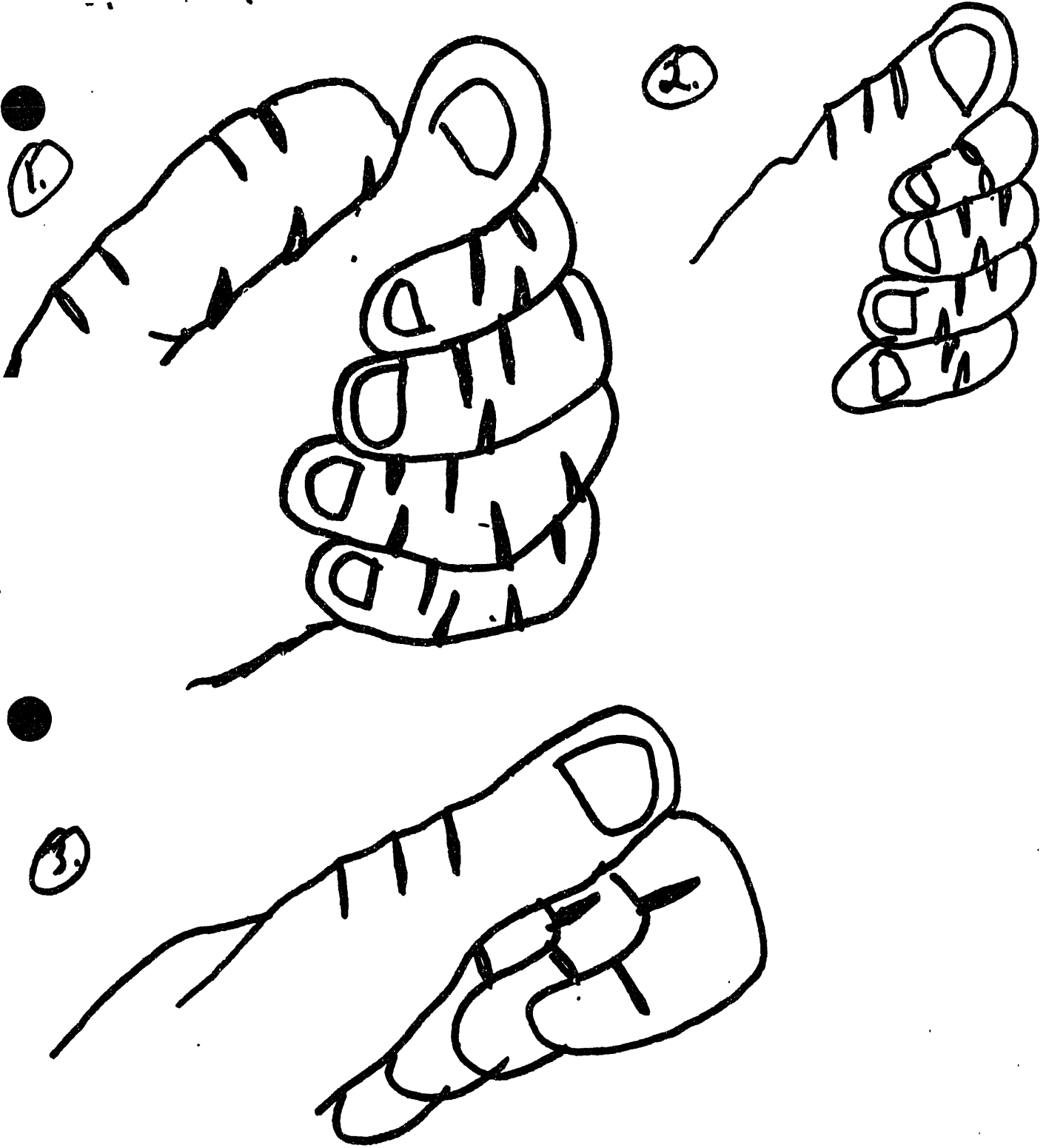
Request for Proposals.....6161

**Texas State Board of Pharmacy**

Election of Officers.....6162

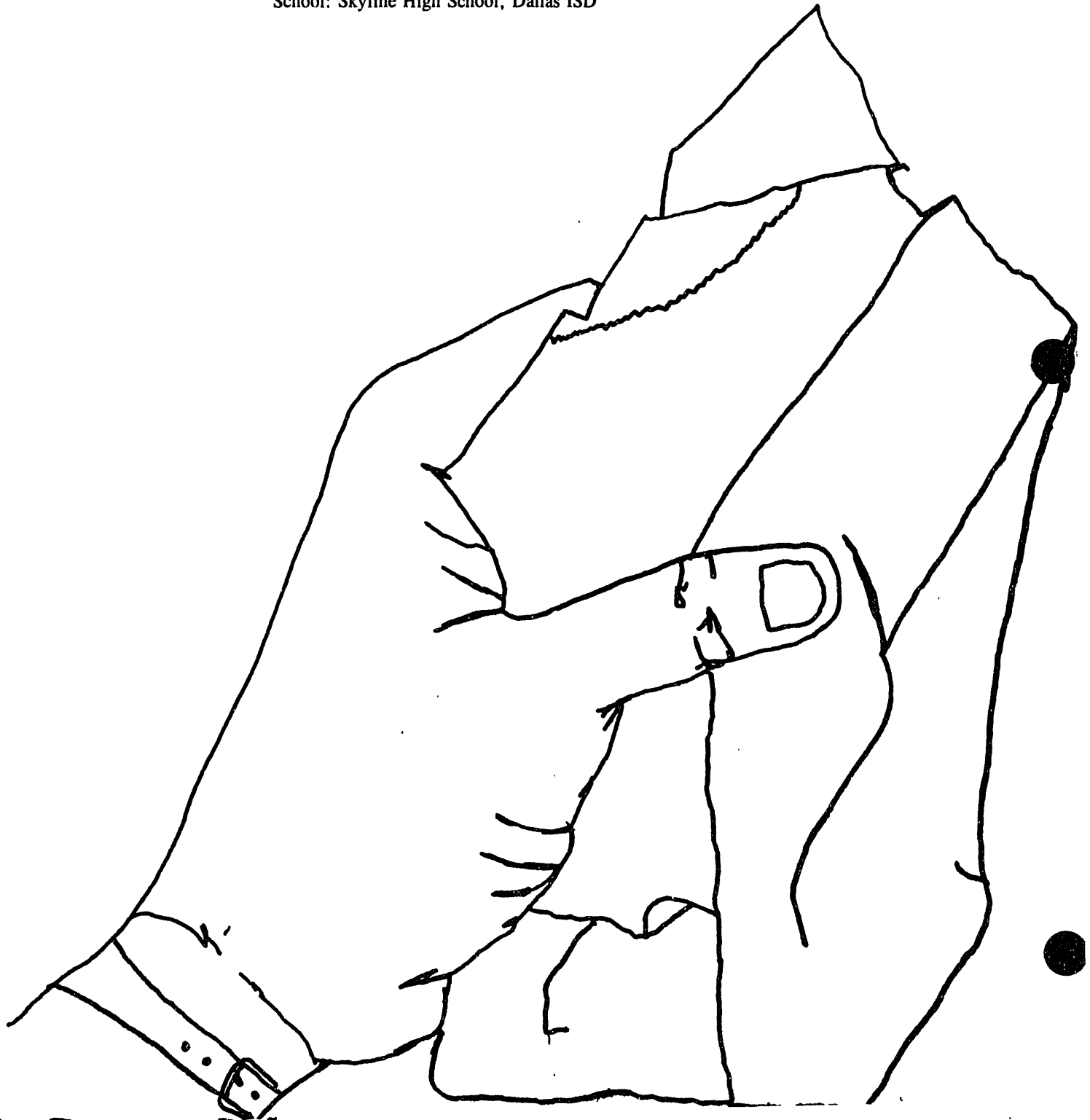
**Public Utility Commission of Texas**

Notice of Joint Petition for Extended Area Calling Service  
(EAS) from the Kilgore Exchange to the Longview  
Exchange.....6162  
Notice of Workshop.....6164

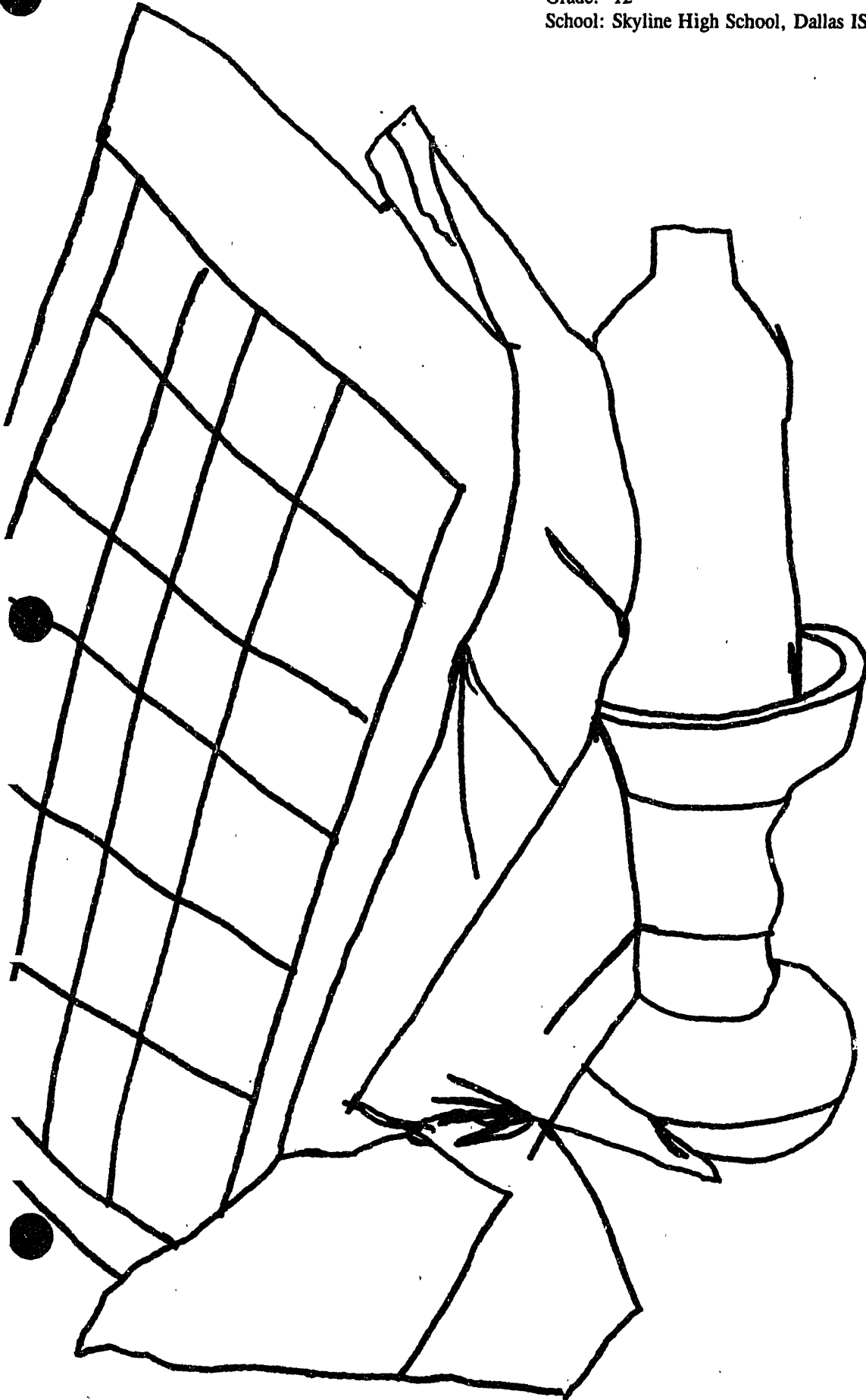


Name: Sir Mayes  
Grade: 9  
School: Skyline High School, Dallas ISD

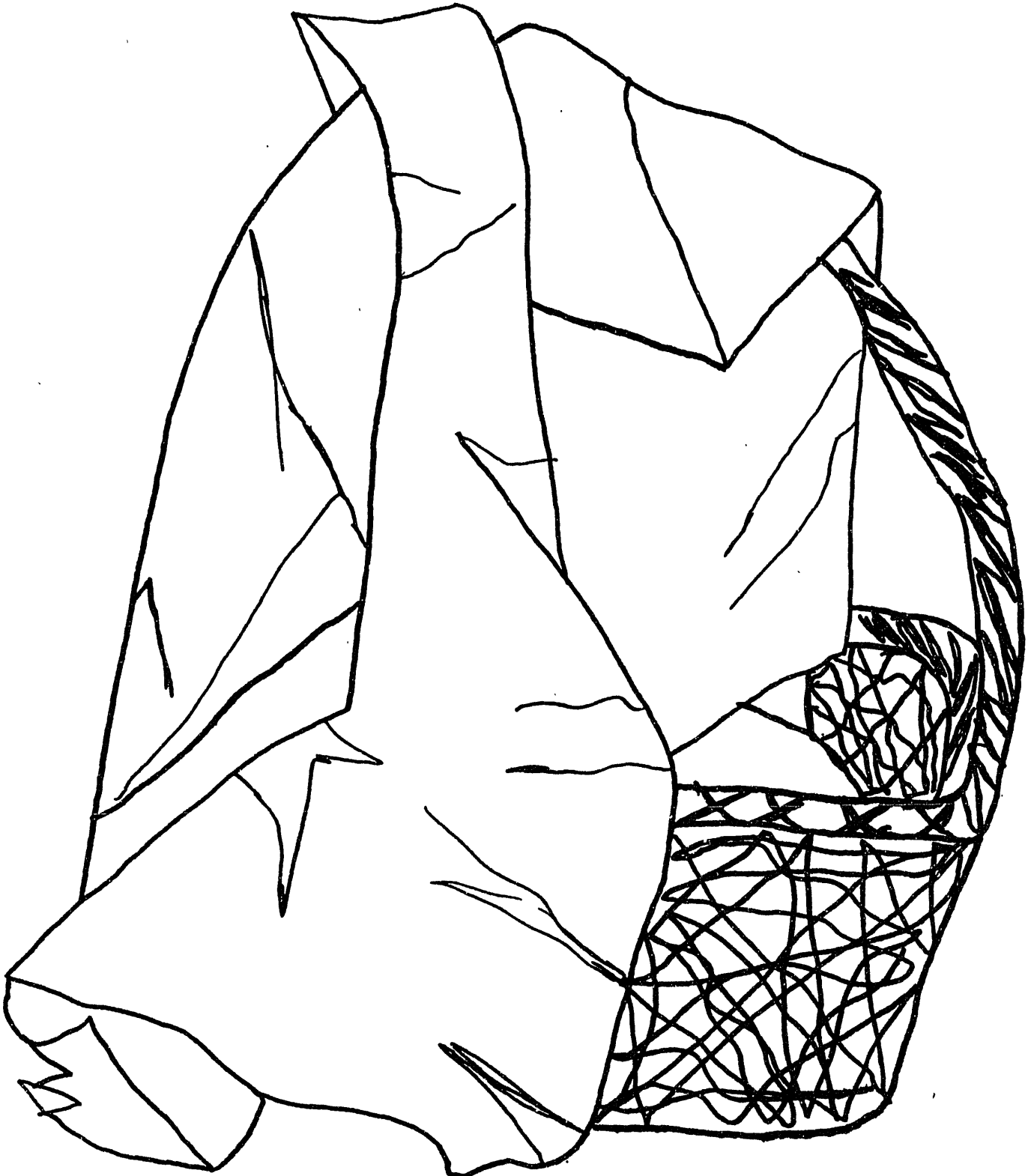
Name: Kendel Joseph  
Grade: 12  
School: Skyline High School, Dallas ISD



Name: Kendel Joseph  
Grade: 12  
School: Skyline High School, Dallas ISD

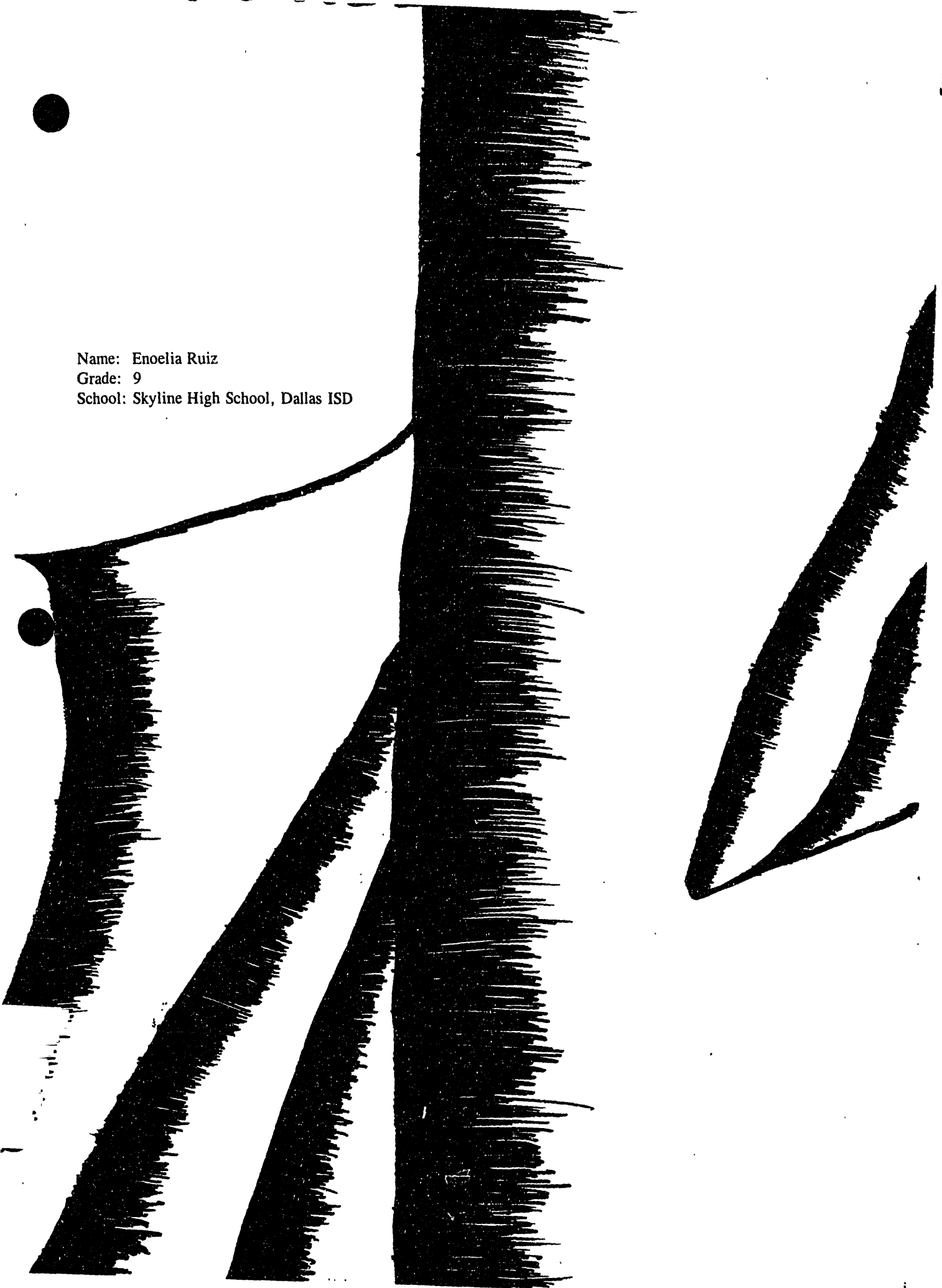


Name: Kendel Joseph  
Grade: 12  
School: Skyline High School, Dallas ISD





Name: Enoelia Ruiz  
Grade: 9  
School: Skyline High School, Dallas ISD



Name: Enoelia Ruiz  
Grade: 9  
School: Skyline High School, Dallas ISD



# ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the **Texas Register**. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

## Requests for Opinions

(RQ-822). Request from David R. Smith, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199 concerning whether the Texas Department of Health, pursuant to section 241.023(c), Health and Safety Code, may issue a single license to a hospital which is located on two separated "premises".

(RQ-824). Request from Honorable Al Edwards, State Representative, District 146, House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910 concerning whether a municipality may use sales taxes levied pursuant to Texas Civil Statutes, Article 5190.6, Section 4B, to construct sanitary sewer lines in an existing residential subdivision.

(RQ-825). Request from David R. Smith, M.D., Commissioner of Health, 1149 West 49th Street, Austin, Texas 78756-3199 concerning whether information regarding a hospital's compliance with federal regulations, collected by the Texas Department of Health pursuant to a contract with the Health Care Financing Administration, is exempted from disclosure under the Open Records Act.

(RQ-826). Request from Honorable Robert Hill Trapp, Criminal District Attorney, San Jacinto County, P.O. Box 430, Coldspring, Texas 77331, concerning whether, when the county salary grievance committee has rec-

ommended an increase in salary for certain county officers, the salary increase becomes effective only at the start of the next fiscal year.

(RQ-828). Request from Honorable Ron Wilson, Chair, Licensing & Administrative Procedures, House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910 concerning whether a transit authority established under Texas Civil Statutes, Article 1118x, may prohibit a passenger from carrying a concealed handgun on its property, even though the individual is licensed to do so under Texas Civil Statutes, Article 4413(29ee).

(RQ-829). Request from Honorable Warren Chisum, Chair, House Environmental Committee, House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910 concerning constitutionality of tax exemption for the Nature Conservancy of Texas, Inc., section 11.23(c), Tax Code.

(RQ-830). Request from Honorable Steven C. Hilbig, Bexar County Criminal District Attorney, 300 Dolorosa, Suite 5072, San Antonio, Texas 78205-3030, concerning whether the Texas Department of Protective and Regulatory Services is responsible for certain expenses made on behalf of minors for whom the Department has been named the permanent managing conservator.

(RQ-831). Request from Jack Woods, General Counsel, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas

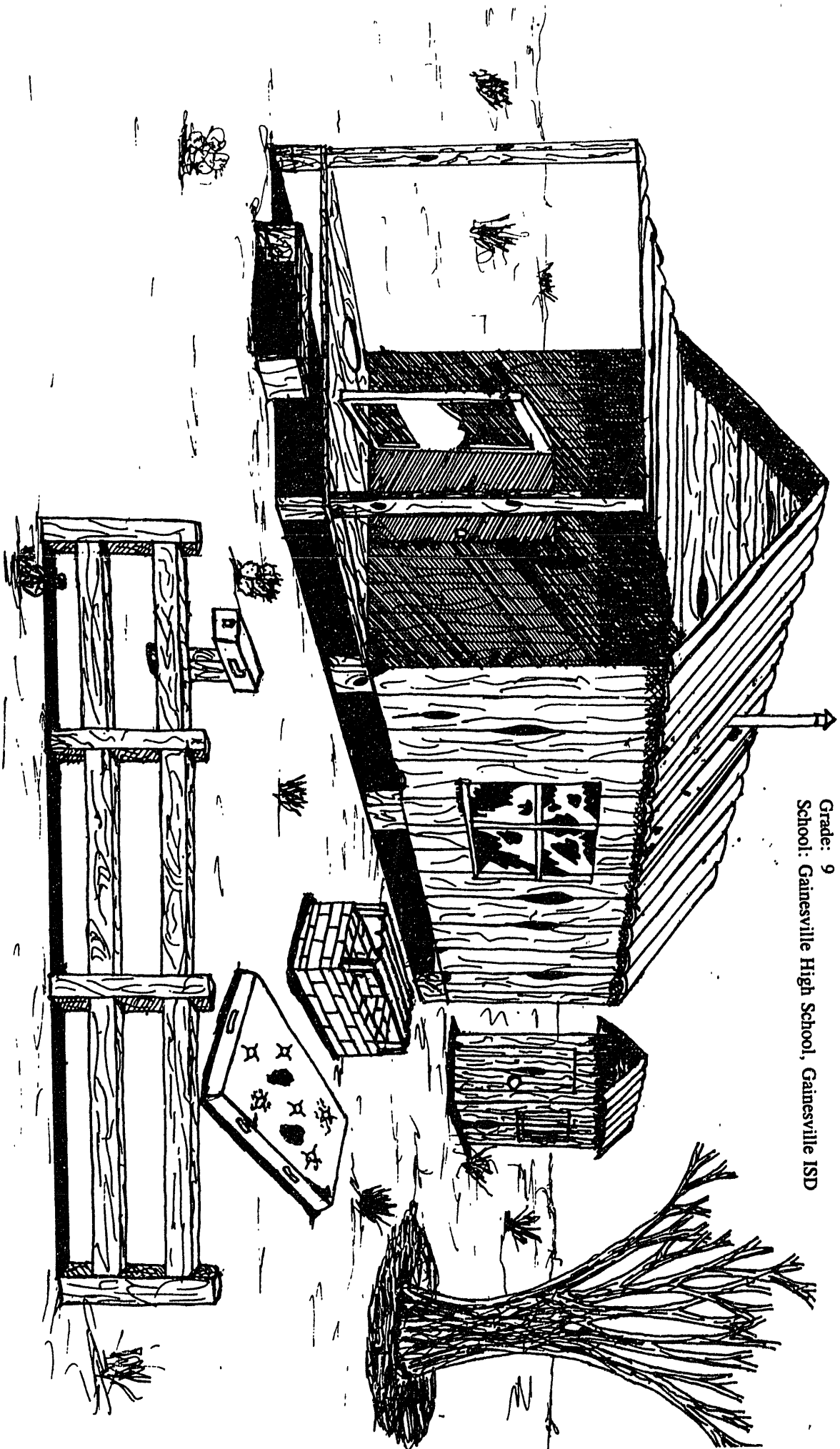
78768-2286, concerning interpretation of procedural provisions governmental bodies must comply with when requesting an open records decision under subchapter G, Chapter 552 of the Government Code, as amended by House Bill 1718, Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 1035.

(RQ-832). Request from James C. Tidwell, Wolfe Clark & Henderson, L.L.P., 123 North Crockett Street, Suite 100, Sherman, Texas 75090 and Mark S. Houser, Vial, Hamilton, Koch & Knox, L.L.P., 1717 Main Street, Suite 4400, Dallas, Texas 75201 concerning whether a political subdivision that is a party to pending litigation must timely request an attorney general decision under section 552.301 to withhold from the public information that relates to that litigation if its attorney has determined that the information should be withheld under section 552.103.

(RQ-833). Request from Douglas R. Hyde, Assistant City Attorney, City of Dallas, City Hall, Dallas, Texas 75201 concerning whether a city must timely request an attorney general decision under section 552.301 of the Government Code to withhold from the public, under section 552.108, records of an active criminal investigation by its police department.

TRD-9509782





Name: Melissa Alexander  
Grade: 9  
School: Gainesville High School, Gainesville ISD

# EMERGENCY RULES

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

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

## TITLE 19. EDUCATION

### Part I. Texas Higher Education Coordinating Board

#### Chapter 5. Program Development

##### Subchapter P. Testing and Remediation

###### • 19 TAC §5.313

The Texas Higher Education Coordinating Board adopts on an emergency basis an amendment to §5.313(m), concerning testing and remediation. The rule is to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. In the opinion of legal counsel, the inconsistent application of the "once exempt, always exempt" policy requires that this rule be changed immediately.

The amendment is adopted on an emergency basis under the Texas Education Code, §51.306, which provides the Texas Higher Education Coordinating Board with the authority to promulgate rules.

###### §5.313. Eligibility.

(a)-(l)(No change.)

(m) Students with three or more semester credit hours or the equivalent awarded prior to fall semester, 1989, are exempt from the Texas Academic Skills Program (TASP) regardless of any election of academic fresh start (Texas Education Code (TEC) 51.929). [Students cannot claim exemption from TASP on the basis of hours which they elect to ignore under Senate Bill 1321 (academic fresh start).]

Issued in Austin, Texas, on August 2, 1995.

TRD-9509652

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995

For further information, please call: (512) 483-6160

#### Chapter 21. Student Services

##### Subchapter A. General Provisions

###### • 19 TAC §21.2

The Texas Higher Education Coordinating Board adopts on an emergency basis an amendment to §21.2, concerning general provisions. The rule is to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The rules are being proposed for emergency action to implement a change in the nonresident tuition rate effective with the opening of the 1995 fall semester, as directed by House Bill 1792.

The amendment is adopted on an emergency basis under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to promulgate rules.

*§21.2. Determination of Tuition Rate for Nonresident and Foreign Students [Determination of Cost of Education for Use in Determining the Tuition Rate for Nonresident and Foreign Students].*

(a) Prior to January 1 of each calendar year in which the academic year begins, or as soon thereafter as is practicable, the Coordinating Board shall determine the tuition rate for nonresident and foreign students enrolled in general academic teaching and health-related institutions except in programs leading to a D.D.S., M.D., D.O., D.V.M., or law degree, and report the rate to the appropriate institutions. [Prior to January 1 of each odd-numbered year, the Texas Higher Education Coordinating Board shall determine the average cost of education per semester credit hour for general academic teaching institutions for the biennium that includes that year.]

(b) The rate set per semester credit hour is to equal the average of the nonresident undergraduate tuition charged to a resident of this state at a public state university in each of the five most populous states other than Texas. [The cost will be computed on the general revenue appropriations and an estimate of applicable total income. Appropriations for special items, new construction or repair or rehabilitation of a facility will be excluded.]

[(c) The cost of education per semester credit hour shall be the tuition rate to be charged to nonresident and foreign students by general academic institutions and health science centers, except in programs leading to a D.D.S., M.D., D.O., D.V.M., or law degree during each academic year of the succeeding biennium.

[(d) The Coordinating Board shall report the tuition rates to the appropriate institutions as soon as possible after the tuition rates are determined.]

Issued in Austin, Texas, on August 2, 1995.

TRD-9509663

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995

For further information, please call: (512) 483-6160

###### • 19 TAC §21.5

The Texas Higher Education Coordinating Board adopts on an emergency basis new §21.5, concerning general provisions. The rule is to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The rules are being proposed for emergency action to implement the provisions of House Bill 2640 in the 1995 fall semester.

The new section is adopted on an emergency basis under House Bill 2640, which provides

the Texas Higher Education Coordinating Board with the authority to promulgate rules.

*§21.5. Refund of Tuition and Fees at Public Community/Junior and Technical Colleges.*

(a) A community/junior or technical college, as soon as practicable, shall refund the amount of fees and tuition in excess of the minimum tuition collected for courses from which students drop within the first 12 days of a fall or spring semester or within the first four days of a summer term. The institution may not delay a refund on the grounds that the student may withdraw from the institution later in the semester or term. An institution may assess a non-refundable \$15 matriculation fee if the student withdraws from the institution before the first day of classes.

(b) A community/junior or technical college shall refund to a student withdrawing from the institution an amount equal to the product of the amount of tuition and mandatory fees collected for each course in which the student is enrolled on the date the student withdraws multiplied by the applicable percent derived from the following tables:

(1) If the student withdraws during a fall or spring semester or comparable trimester:

(A) prior to the first class day 100%

(B) during the first five class days 80%

(C) during the second five class days 70%

(D) during the third five class days 50%

(E) during the fourth five class days 25%

(F) after the fourth five class days None; and

(2) if the student withdraws during a summer term:

(A) prior to the first class day 100%

(B) during the first, second, or third class day 80%

(C) during the fourth, fifth, or sixth class day 50%

(D) seventh day of class and thereafter None.

(c) Separate withdrawal refund schedules may be established for optional fees such as intercollegiate athletics, cultural entertainment, parking, and yearbooks.

(d) A community/junior or technical college shall refund tuition and fees paid by a sponsor, donor, or scholarship to the source rather than directly to the student who has withdrawn if the funds were made available through the institution.

(e) A community/junior or technical college may terminate student services and privileges, such as health services, library privileges, facilities usage, and athletic and cultural entertainment tickets when a student withdraws from the institution.

(f) If a student withdraws from an institution because the student is called to active military service, the institution, at the student's option, shall:

(1) refund the tuition and fees paid by the student for the semester in which the student withdraws;

(2) grant a student, who is eligible under the institution's guidelines, an incomplete grade in all courses by designating "withdrawn-military" on the student's transcript; or

(3) as determined by the instructor, assign an appropriate final grade or credit to a student who has satisfactorily completed a substantial amount of course work and who has demonstrated sufficient mastery of the course material.

Issued in Austin, Texas, on August 2, 1995.  
TRD-9509881

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995

For further information, please call: (512)  
483-6160

◆ ◆ ◆  
**Subchapter B. Determining  
Residence Status**

• **19 TAC §§21.21, 21.26, 21.31,  
21.32**

The Texas Higher Education Coordinating Board adopts on an emergency basis amendments to §§21.21, 21.26, 21.31, and 21.32, concerning determining residence status. The rules are to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The amendments are being proposed for emergency action to implement the provisions of §4, House Bill 1792, and House Bill 1836 for use in the determination of tuition for certain students in the 1995 fall semester.

The amendments are adopted on an emergency basis under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to promulgate rules.

*§21.21. Minors and Dependents.*

(a) Residence of a Minor or a Dependent. The residence of a minor or dependent child is usually that of the parent with whom the individual resides. However, a dependent child who is not eligible to establish a domicile in the United States may not establish residence for tuition purposes based on his/her parent's residence.

(b) Residence of a Dependent 18 Years of Age or Older. The residence of a dependent 18 years of age or older is that of the parent who claims the individual as a dependent for federal income tax purposes both for the year for which the individual is enrolling and for the preceding tax year. However, a dependent child who is not eligible to establish a domicile in the United States may not establish residence for tuition purposes based on his/her parent's residence.

(c)-(j) (No change.)

*§21.26. Economic Development and Diversification Employees.* An individual eligible to establish a domicile in Texas, who has come from outside Texas and registered in an educational institution before having resided in Texas for a 12-month period immediately preceding the date of registration and his dependents, are entitled to pay the tuition fee and other fees required of Texas residents if the individual has located in Texas as an employee of a business or organization within five years of the date that such business or organization became established in this state as part of the program of state economic development and diversification authorized by the constitution and laws of this state and if the individual files with the Texas institution of higher education at which he registers a letter of intent to establish residency in Texas.

*§21.31. Competitive [Academic] Scholarship Recipients.* Certain students receiving competitive [academic] scholarships may be exempted from paying nonresident tuition rates.

(1) To qualify for exemption from paying nonresident tuition rates a student must be awarded a competitive [academic] scholarship in the amount set out in subparagraphs (A)-(C) of this paragraph [of \$200 or more] for the academic year, the summer session or both by an official scholarship committee or committees of the public institution of higher education they are [he or she is] attending. If nonresidents or foreign students in competition with

other students, including Texas residents, obtain these competitive [academic] scholarships, the students may pay the same tuition as a resident of Texas during the registration period in which the competitive [academic] scholarship is in effect. At the time the competitive [academic] scholarship is made, the institution must designate the term or terms in which the scholarship will be in effect. [A competitive academic scholarship that qualifies the holder for waiver of the difference between the tuition charged to resident and nonresident students shall be awarded for the purpose of encouraging academic excellence in the academic program in which the student is enrolled. Effective in the 1989-1990 academic year] An [an] institution shall not waive nonresident tuition on the basis of competitive [academic] scholarships for more than 5.0% of its total enrollment in the corresponding semester or term of the previous academic year. If the recipient of the scholarship is concurrently enrolled at more than one institution, the waiver of nonresident tuition is only effective at the institution awarding the scholarship.

(A) During the 1995-96 academic year, students awarded competitive academic scholarships prior to September 1, 1995 may receive a waiver of nonresident tuition for the period covered by the scholarship if the academic scholarship is for at least \$200.

(B) During the 1995-1996 academic year, students awarded academic and nonacademic competitive scholarships after September 1, 1995, must receive scholarships of at least \$500 in order to qualify for a waiver of nonresident tuition during the period covered by the scholarship.

(C) Beginning in fall 1996, competitive scholarships must be for at least \$1,000 in order to qualify a student for a waiver of nonresident tuition during the period covered by the scholarship.

(2) A nonresident or foreign student is eligible to pay the fees and charges required of Texas residents if the student holds a competitive academic scholarship or stipend and is accepted in a clinical biomedical research training program designed to lead to both a doctor of medicine and doctor of philosophy degree.

*§21.32. Tuition Reciprocity with Bordering States or Countries.*

(a) Residents of a state bordering Texas. Nonresidents who are residents of a state of the United States bordering Texas are entitled to pay Texas resident rates upon registering in a two-year institution in the

Lamar University System, or in any Texas public technical college or public junior college if the county in which the public technical college is located is within 100 miles of the state in which the nonresident student resides or the district of the public junior college includes any part of a county that is immediately adjacent to the state of the United States in which the nonresidents reside, provided that Texas residents are entitled to pay in-state fees and charges at a similar school in the bordering state. Nonresident public junior college students described in this section who have graduated or completed 45 semester credit hours at an eligible junior college shall be entitled to pay Texas resident rates at a Texas public senior upper level institution of higher education (those institutions offering only junior, senior and graduate level programs) which is located within the Texas public junior college district, provided that Texas residents are entitled to pay in-state fees and charges at a similar institution in the bordering state.

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

(b) Citizens of Mexico. A citizen of Mexico who registers for instruction offered by a general academic institution in a county bordering Mexico or at Texas A&M University-Kingsville is eligible to pay tuition equal to that charged Texas residents provided the student demonstrates a financial need after the resources of the student and the student's family have been considered. General academic teaching institutions other than Texas A&M University-Kingsville, located in counties which are not adjacent to Mexico, may allow a limited number of citizens of Mexico who demonstrate financial need to register and pay the Texas resident tuition rate at their institution. The number of such students each institution may enroll in any one term is not to exceed one eligible student per thousand of enrollment of the institution's total enrollment in that term. Institutions with fewer than 5000 students may enroll up to five eligible students.

(c) Residents of adjacent counties of bordering states. A nonresident student who is a resident of a county or parish of Arkansas, Louisiana, New Mexico or Oklahoma that is adjacent to this state and who registers in a Texas public institution of higher education, the governing board of which has agreed to admit the student at the resident tuition fee prescribed by this chapter, shall pay tuition equal to that charged residents of this state at the institution. The state in which the student resides must allow a resident of a county of this state that is adjacent to that state to register in a public institution of higher education in that state at the tuition fee charged resi-

dents of that state. The admitting Texas institution must have on file a copy of a letter from the Chief Executive Officer of a neighboring state public institution which certifies that eligible Texas residents are entitled to pay in-state tuition at the neighboring state institution. To be valid, the certifying letter must have been issued no longer than two years before the start of the involved enrollment period; also, a copy of the letter must be filed with the Texas Higher Education Coordinating Board.

Issued in Austin, Texas, on August 2, 1995.

TRD-9509659

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
Subchapter BB. Pilot Program  
for Enrolling Students from  
Mexico

• 19 TAC §21.938

The Texas Higher Education Coordinating Board adopts an emergency basis an amendment to §21.938, concerning pilot program for enrolling students from Mexico. The rule is to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The amendment is being proposed on an emergency basis to implement §4 of House Bill 1792, passed by the 74th session of the Legislature. The item needs emergency action in order for the benefits of the legislation to begin with the opening of the fall semester, the effective date of the legislation.

The amendment is also being proposed for emergency action in order to relieve hardship at some institutions regarding the number of Mexican citizens eligible for waiver of the difference between resident and nonresident tuition. The strained financial circumstances of many Mexican citizens causes need for emergency action on this item in order for its advantages to be available in the 1995 fall semester.

The amendment is adopted on an emergency basis under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to promulgate rules.

*§21.938. Numbers of Students Eligible to Participate in the Pilot Program.*

(a) Each border county program and Texas A&M University-Kingsville may enroll an unlimited number of eligible students.

(b) Each general academic teaching institution not located in a county immediately adjacent to Mexico, except Texas A&M University-Kingsville, may enroll up to one eligible student per thousand of the institution's overall enrollment. Institutions with fewer than 5,000 students may enroll up to five eligible students. [20 eligible students per year, no more than ten of which may be transfer students from border county programs. ]

Issued in Austin, Texas, on August 2, 1995.

TRD-9509653 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
**Subchapter CC. Tuition Credit Program**

• 19 TAC §§21.950-21.959

The Texas Higher Education Coordinating Board adopts on an emergency basis the repeal of §§21.950-21.959, concerning Tuition Credit Program. The repeals are to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days notice. The repeal of the rules is proposed for emergency action in order for the provisions of House Bill 1479 to be available to qualified scholarship recipients in the 1995 fall semester.

The repeals are adopted on an emergency basis under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to promulgate rules.

§21.950. *Purpose.*

§21.951. *Delegation of Powers and Duties.*

§21.952. *Definitions.*

§21.953. *Eligible Institutions.*

§21.954. *Eligible Students.*

§21.955. *Source of Funding.*

§21.956. *Award Amounts.*

§21.957. *Disbursement of Funds.*

§21.958. *Refunds.*

§21.959. *Reporting Requirements.*

Issued in Austin, Texas, on August 2, 1995.

TRD-9509657 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
**Subchapter CC. Early High School Graduation Scholarship Program**

• 19 TAC §§21.950-21.959

The Texas Higher Education Coordinating Board adopts emergency new §§21.950-21.959, concerning early high school graduation scholarship program. The rules are to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a requirement of state or federal law requires adoption of the rule on less than 30 days' notice. The new subchapter is being proposed for emergency action in order for the provisions of House Bill 1479 to be available to qualified scholarship recipients in the 1995 fall semester.

The new sections are adopted on an emergency basis under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to promulgate rules.

§21.950. *Purpose.* The purpose of the Early High School Graduation Scholarship Program is to increase the efficiency of the Foundation School Program and provide tuition assistance to eligible students.

§21.951. *Delegation of Powers and Duties.* The Texas Higher Education Coordinating Board in cooperation with the Texas Education Agency shall administer the Early High School Graduation Scholarship Program.

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

Board—The Texas Higher Education Coordinating Board.

Commissioner—The commissioner of higher education, the chief executive officer of the board.

High school graduate—An individual who has completed the requisite number of units, the prescribed courses, the examinations and other requirements and has received, or is eligible to receive, a high

school diploma from a public high school in Texas.

§21.953. *Eligible Institutions.*

(a) The board shall approve for participation in the Early High School Graduation Scholarship Program any Texas public institution of higher education; or any non-profit, independent Texas college or university which is a regular member of, or candidate for accreditation by the Commission on Colleges of the Southern Association of Colleges and Schools. Nonprofit, independent professional schools which award bachelor's or other higher degrees, and which are not members of the Commission on Colleges of the Southern Association of Colleges and Schools, may petition the board for consideration of approval. In any case, a theological or religious seminary shall not be eligible for approval.

(b) The chief executive officer of an eligible institution shall designate a Program Officer for the Early High School Graduation Scholarship Program. Unless otherwise specified by the chief executive officer of the institution, the Director of Financial Aid at an eligible institution shall serve as the Program Officer for the Early High School Graduation Scholarship Program. The Program Officer shall be the board's on-campus agent to certify all institutional transactions, activities and reports with respect to the Early High School Graduation Scholarship Program.

(c) To be eligible, an independent institution must provide a matching award for the state funds awarded through the Early High School Graduation Scholarship Program.

§21.954. *Eligible Students.* To be eligible to receive an award through the Early High School Graduation Scholarship Program, a person must:

(1) graduate from a Texas public high school within thirty-six months of his/her original enrollment, having completed all years of high school in Texas;

(2) provide the Program Officer proof of eligibility, in the form of a certificate issued by the board;

(3) provide written approval of a parent or person standing in parental relation to the student;

(4) be a Texas resident; and

(5) not be a recipient of \$1,000 through the Tuition Credit Program in operation in 1993 and 1994.

§21.955. *Source of Funding.* Amounts sufficient to reimburse colleges for tuition scholarships awarded to students who meet the eligibility requirements of the program will be drawn from funds appropriated for



Foundation School Program allocations and transferred to the board by the Commissioner of Education.

**§21.956. Award Amounts.** The amount awarded a student through this program may not exceed the least of:

(1) the student's actual tuition charges for college credit courses (tuition for remedial or other non-college credit courses is not covered),

(2) \$1,000, or

(3) the sum of \$1,000 minus the amount the student received through the Tuition Credit Program. Students attending eligible independent institutions must receive an equal amount of institutional tuition gift assistance during the same enrollment period.

**§21.957. Awarding of Scholarships.**

(a) Students eligible for the tuition scholarships are to have their high schools provide the board a letter which attests to the student's eligibility with respect to early graduation, parental approval and high school enrollment only in Texas. The letter should also indicate the college or university the student plans to attend.

(b) Upon receipt of the high school letter, the board will send a letter to the institution of higher education advising the institution of the student's potential eligibility. A copy of the board's letter will be sent to the student.

(c) When the student registers at the institution, the institution is to verify the student's Texas resident status. If the student is a resident and the institution has a letter of eligibility from the board, it may then grant the student a tuition scholarship in the appropriate amount.

(d) If the student chooses to attend an institution other than the one indicated in the high school letter, he/she should advise the board of the change and the board will send the new institution a letter of eligibility.

(e) If the tuition award in the student's first semester in the Early High School Graduation Scholarship Program, combined with funds received through the Tuition Credit Program, is less than \$1,000, the balance of the student's eligibility may be used in a subsequent semester.

(f) Under no conditions may a student's total award through this program plus funds received through the Tuition Credit Program exceed \$1,000 of state funds.

**§21.958. Refunds.** The institution attended by a Tuition Credit award recipient who withdraws from a class or drops classes

during the first four weeks of class will be expected to make a refund to the Early High School Graduation Scholarship Program for tuition received for the dropped classes in accordance with the following schedule:

(1) If drop is before classes begin, refund full amount;

(2) If drop is within first five days of classes, refund 80%;

(3) If drop is within second five days of classes, refund 70%;

(4) If drop is within third five days of classes, refund 50%;

(5) If drop is during fourth five days of classes, refund 25%;

(6) If drop is after the fourth five days of classes, no refund required.

**§21.959. Reporting Requirements.**

(a) Institutions wishing to receive state reimbursements for the tuition awards made through the Early High School Graduation Scholarship Program must submit a report to the board which includes

(1) student name

(2) student social security number

(3) school district from which the student graduated from high school and

(4) amount of tuition award.

(b) Upon receipt of the report, the board will confirm that the student aggregate awards do not exceed \$1,000 and will send each institution a check for the appropriate amount of tuition reimbursement for its students during that reporting period.

Issued in Austin, Texas, on August 2, 1995.

TRD-9509655

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
**Subchapter FF. State Scholarship Program for Ethnic Recruitment**

• **19 TAC §§21.1010-21.1020**

The Texas Higher Education Coordinating Board adopts on an emergency basis new Subchapter FF, §§21.1010-21.1020, concerning state scholarship program for ethnic recruitment. The rules are to be adopted on an emergency basis pursuant to the Texas Government Code, §2001.034, which allows a state agency to adopt an emergency rule if a

requirement of state or federal law requires adoption of the rules on less than 30 days' notice.

The rules are being proposed for emergency action in order to provide guidelines for use by institutions in making scholarship awards prior to opening of the 1995 fall semester.

The new sections are adopted on an emergency basis under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to promulgate rules.

**§21.1010. Purpose.** The purpose of the State Scholarship Program for Ethnic Recruitment is to encourage academically talented undergraduate and graduate minority students to participate in the higher education experience and to promote the ethnic diversity of institutions of higher education.

**§21.1011. Delegation of Powers and Duties.** The Texas Higher Education Coordinating Board shall administer the State Scholarship Program for Ethnic Recruitment.

**§21.1012. Definitions.** The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Board**—The Texas Higher Education Coordinating Board.

**Commissioner**—The commissioner of higher education, the chief executive officer of the board.

**Financial need**—The cost of attendance at an institution of higher education less the expected family contribution and any gift aid for which the student is eligible. The cost of education and family contribution are to be determined in accordance with board guidelines.

**Half-time student**—A student who has been formally admitted to the institution and is enrolled or is expected to be enrolled for a half-time course load as determined by the educational program in which he or she is enrolled.

**Ethnic minority**—A member of an ethnic group (excluding non-resident aliens) comprising less than 40% of the students at the institution.

**Local funds**—Funds from sources other than state appropriated funds.

**Program Officer**—The State Scholarship for Ethnic Recruitment Program Officer designated by an eligible institution to represent the program described in this subchapter on that campus.

**§21.1013. Eligible Institutions.**

(a) An eligible institution of higher education may be any general academic teaching institution as defined in the Texas Education Code, §61.003(3).

(b) The chief executive officer of an eligible institution shall designate a Program Officer for the State Scholarship Program for Ethnic Recruitment. Unless otherwise specified by the chief executive officer of the institution, the Director of Financial Aid at an eligible institution shall serve as the Program Officer, and shall be the board's on-campus agent to certify all institutional transactions, activities and reports with respect to the State Scholarship Program for Ethnic Recruitment.

(c) To participate, an otherwise eligible institution must match the funds provided by the state with local funds.

*§21.1014. Eligible Students.* To be eligible to receive an award through the State Scholarship Program for Ethnic Recruitment, a person must:

- (1) be a bona fide Texas resident;
- (2) be enrolled at an eligible institution on at least a half-time basis;
- (3) be enrolled as a freshman student who has graduated in the upper 1/3 of his/her high school class or have a composite SAT score of at least 830 or ACT score of at least 17;
- (4) be a new transfer undergraduate student with at least a 2.50 grade point average on a 4.00 point scale at the last college attended;
- (5) be enrolled as a continuing sophomore, junior, or senior who has a grade point average at this institution of at least 2.50 on a 4.00 scale;
- (6) be a new graduate student with at least a 2.50 grade point average on a 4.00 point scale in his/her undergraduate course work;
- (7) be a continuing graduate student with at least a 3.00 grade point average on a 4.00 point scale in all courses taken as a graduate student;

(8) not be a recipient of any form of athletic scholarship;

(9) show financial need; and

(10) be a member of an ethnic minority that comprises less than 40% of the institution's student population.

*§21.1015. Source of Funding.* Out of funds appropriated for the State Scholarship Program for Ethnic Recruitment, the Commissioner shall allocate funds to eligible institutions in proportion to the size of their eligible population in the preceding fall term. Institutions must provide local funds of an amount at least equal to the state funds provided.

*§21.1016. Award Amounts.* No student's award may exceed the lesser of his/her financial need or \$2,000 (half of which is state funds; half of which is institutional matching funds). A minimum of one disbursement per semester will be required.

*§21.1017. Certification and Disbursement Procedures.*

(a) Program officers are to determine student eligibility and submit applications for selected students to the board, along with the required matching funds.

(b) The board will deposit the matching funds, process applications and request checks from the state Comptroller's office.

(c) Upon receipt of the checks from the Comptroller, the board will forward them to institutional business offices, along with affirmation forms to be signed by students prior to the release of funds.

(d) Any portion of an institution's allocation which is not encumbered by December 1 will be reallocated to other institutions on a first come/first served basis. After December 1, an institution may reuse funds from warrant cancellations or refunds only if replacement applications are submitted with the returned funds or within three working days.

(e) No institution may receive more than 15% of the total appropriations in any one year.

*§21.1018. Refunds and Cancellations.*

(a) In no case shall funds be refunded to a withdrawing student but shall be returned to the board for deposit in the state treasury account from which originally drawn. Refunds are to be identified with student name, social security number and disbursement date and be returned to the board promptly. All refund accounts should be cleared as soon as possible or not later than 60 days after the date of issue.

(b) In those cases in which a state check is not promptly received by a student or deposited (at the student's request) into the student's account, the check should be voided and returned to the board. No checks should be held by the institution for more than 60 days after the date of issue.

*§21.1019. Affirmation Forms.* Each disbursement of scholarship funds must be documented. An affirmation form, indicating the amount of scholarship being disbursed to a particular student and confirming the student's eligibility must be signed by the receiving student. One copy of the signed affirmation form must be forwarded to the board.

*§21.1020. Program Review Requirements.* Any institution whose students receive funds through the scholarship program in a year is subject to a program review.

Issued in Austin, Texas, on August 2, 1995.

TRD-9509665

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Effective date: August 2, 1995

Expiration date: November 30, 1995.

For further information, please call: (512) 483-6160

◆ ◆ ◆

# PROPOSED RULES

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

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

## TITLE 4. AGRICULTURE Part I. Texas Department of Agriculture

### Chapter 5. Quarantines

#### Pink Bollworm Quarantine

##### • 4 TAC §§5.171-5.179

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

The Texas Department of Agriculture (the department) proposes the repeal of §§5.171-5.179, concerning pink bollworm quarantine. These sections are being repealed in order to comply with statutory changes made by the 74th Legislature, Regular Session, 1995, in accordance with House Bill 3003. The department is proposing new §§6.1-6.10 to combine the current pink bollworm and boll weevil regulations into one consolidated rule which assists in control and minimizes the spread of cotton pests.

Rick Smathers, deputy director for agri-systems programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Smathers also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the elimination of producer confusion regarding regulation requirements. Currently, confusion exists among producers regarding why certain areas of Texas are regulated only for control of boll weevil and others only for control of pink bollworm. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rick Smathers, Deputy Director for Agri-Systems, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement and administration of the Cotton Pest Law.

The code sections that will be affected by the proposal are Texas Agriculture Code, Chapter 74.

§5.171. *Quarantined Pest.*

§5.172. *Definitions.*

§5.173. *Quarantined Areas.*

§5.174. *Quarantined Articles.*

§5.175. *Movement of Quarantined Articles.*

§5.176. *Permits.*

§5.177. *Inspection and Disposal.*

§5.178. *Quarantine Zones.*

§5.179. *Authorized Planting and Stalk Destruction Dates.*

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

Issued in Austin, Texas, on August 2, 1995.

TRD-9509668

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: September 11, 1995

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

◆ ◆ ◆

## Chapter 6. Boll Weevil Control

### • 4 TAC §§6.1-6.6

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

The Texas Department of Agriculture (the department) proposes the repeal of §§6.1-6.6, concerning boll weevil control. These sections are being repealed in order to comply with statutory changes made by the 74th Legislature, Regular Session, 1995, in accordance with House Bill 3003. The department is proposing new §§6.1-6.10 to combine the current pink bollworm and boll weevil regulations into one consolidated rule which assists in control and minimizes the spread of cotton pests.

Rick Smathers, deputy director for agri-systems programs, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Smathers also has determined that for each year of the first five years the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the elimination of producer confusion regarding the requirements. Currently, confusion exists among producers regarding why certain areas of Texas are regulated only for control of boll weevil and others only for control of pink bollworm. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Rick Smathers, Deputy Director for Agri-Systems, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeals are proposed under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement and administration of the Cotton Pest Law.

The code sections that will be affected by the proposal are Texas Agriculture Code, Chapter 74, Subchapter A.

§6.1. *Public Nuisance.*

§6.2. *Definitions.*

§6.3. *Pest Management Zones.*

§6.4. *Authorized Planting Dates, Cotton Destruction Dates and Prescribed Methods of Destruction.*

§6.5. *Responsibility for Compliance.*

§6.6. *Expiration Provision.*

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

Issued in Austin, Texas, on August 2, 1995.

TRD-9509669

Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: September 11, 1995

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

◆ ◆ ◆  
**Chapter 6. Cotton Pest Control [Boll Weevil Control]**

• 4 TAC §§6.1-6.10

The Texas Department of Agriculture (the department) proposes new §§6. 1-6.10, concerning cotton pest control. These new sections are being proposed in order to comply with statutory changes made by the 74th Legislature, Regular Session, 1995 in accordance with House Bill 3003. The department is proposing new §§6.1-6.10 to combine the current pink bollworm and boll weevil regulations into one consolidated rule which assists in controlling and minimizing the spread of cotton pests.

Rick Smathers, deputy director for agri-systems programs, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Smathers also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be the elimination of producer confusion regarding regulation requirements. Currently, confusion exists among producers regarding why certain areas of Texas are regulated only for control of pink bollworm. There will be no effect on small businesses. There is no anti-

ipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rick Smathers, Deputy Director for Agri-Systems, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules as necessary for the efficient enforcement and administration of the Cotton Pest Law. The new sections concerning quarantines are proposed under the Texas Agriculture Code, §74.010, which permits the regulation of cotton pests and quarantines; and the Texas Agriculture Code, Chapter 71, Subchapter A, which authorizes inspections, quarantines, and control and eradication zones for dangerous insect pests.

The code sections that will be affected by the proposal are the Texas Agriculture Code, Chapter 74, Subchapter A.

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

**Boll weevil**—The insect *Anthonomus grandis Boheman*, in any stage of development, including the egg, larval, pupal, and adult stages.

**Cotton destruction date**—The date established in §6.9 for the mechanical destruction of cotton stalks, re-growth cotton or volunteer cotton at the end of a growing season.

**Cotton pest**—Includes the boll weevil and/or the pink bollworm.

**Cotton products**—Seed cotton, cotton lint, linters, oil mill waste, gin waste, gin trash, all other forms of unmanufactured cotton fiber, cottonseed, cottonseed hulls, cottonseed cake, and cottonseed meal.

**Department**—The Texas Department of Agriculture and the commissioner of agriculture, or his designee.

**Gin trash**—All of the material produced during the cleaning and ginning of seed cotton, or snapped cotton except the lint, cottonseed, and gin waste.

**Gin waste**—All forms of unmanufactured waste cotton fiber (including gin motes) resulting from the ginning of seed cotton.

**Infestation (infested)**—The presence of a cotton pest. (Infested shall be construed accordingly.)

**Inspector**—An authorized inspector or other employee of the Texas Department of Agriculture, or an inspector or other employee of the United States Department of Agriculture, or individual designated by the commissioner of agriculture.

**Kenaf (*Hibiscus cannabinus L.*)**—All parts of kenaf plants, including seeds and pods.

**Lint**—All forms of raw ginned cotton except linters and waste.

**Linters**—All forms of unmanufactured cotton fiber separated from cottonseed after the lint has been removed.

**Moved (movement and move)**—Shipped, offered for shipment to a common carrier, received for transportation or transported, moved, or allowed to be moved by any person within or from any quarantined area. (Movement and move shall be construed accordingly.)

**Oil mill waste**—Waste products, including motes, derived from the milling of cottonseed.

**Okra (*Hibiscus esculentus*)**—All parts of okra plants, including seeds and edible and dry pods.

**Permit**—An approved document issued by an inspector allowing movement of a quarantined article.

**Pink bollworm**—The insect *Pectinophora gossypiella*, Saunders, in any stage of development, including the egg, larval, pupal, and adult stages.

**Planting dates**—The time period established in §6.9 during which cotton planting is to be completed in a pest management zone.

**Quarantined area**—Any portion of the State of Texas which has been placed under quarantine by the department on account of cotton pest infestation.

**Quarantined articles**—Products and articles that are subject to the restrictions in this quarantine as further defined in §6.3 of this title (relating to Quarantined Articles).

**Re-growth cotton**—Cotton that has not been completely destroyed in such a way as to absolutely prevent further growth.

**Seed cotton**—All forms of cotton lint from which the seed has not been separated.

**Treatment (treated)**—A treatment applied under the observation of an inspector in accordance with methods selected by him from authorized procedures known to be effective under the conditions applied.

**Volunteer cotton**—Cotton developing from incidental seeds.

§6.2. *Quarantined Areas.* Pursuant to the Texas Agriculture Code, Chapter 71, all that part of the State of Texas except the counties of Armstrong, Carson, Dallam, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Potter, Randall, Roberts and Sherman is hereby designated as a quarantined area within the meaning of these regulations.

§6.3. *Quarantined Articles.* The following are quarantined articles: cotton; cotton products; okra; kenaf; bagging; and other containers and wrappers for cotton and cotton products; railway cars, trucks, and any other means of transportation which have been used in conveying quarantined cotton and cotton products or which are fouled there-

with; and, when contaminated with cotton pests or quarantined cotton or cotton products, any other item possible of containing live cotton pests in any state of their development.

#### §6.4. *Movement of Quarantined Articles.*

(a) Within quarantined areas. There are no restrictions to the movement of quarantined articles within quarantined areas under normal conditions. However, if the department determines that the movement of quarantined articles may result in increased infestation, the movement may be denied or a permit may be required.

(b) Within free areas. There are no restrictions to the movement of quarantined articles within free areas under normal conditions. However, if the department determines that such movement may result in increased infestation, a permit may be required.

(c) From a quarantined area to a free area. A permit is required except when the department determines that there will be little or no danger of increased infestation or expansion of the quarantined area by such movement, in which case a permit may be waived.

(d) From a free area into or through a quarantined area. No permit is required except when the department determines that the movement may cause an increase in infestation. A permit may then be required.

#### §6.5. *Permits.*

(a) Issuing authority. Permits shall be issued by an inspector.

(b) Attachments. When permits are required, they shall be securely fastened to the outside of the container in which the quarantined articles are being moved, except when the permit is attached to the shipping documents and the quarantined articles are adequately described on the shipping documents or on the permit. The attachment of the permit to each of the containers is not required.

(c) Conditions of issuance. Permits may be issued by an inspector if the quarantined articles:

(1) have been treated to destroy infestation in accordance with approved procedures; and

(2) the inspector has determined that such movement will not result in the spread of the cotton pest.

(d) Exemptions. An inspector may exempt any quarantined article from any condition governing movement of quarantined articles if he or she determines that such movement will not result in the spread of the cotton pest.

(e) Cancellation. Any permits issued under these regulations may be withdrawn or canceled and further permits refused, whenever, in the judgment of an inspector, the further use of such permits might result in the spread of the cotton pest.

(f) Fee. Pursuant to the Texas Agriculture Code, §71.005(c), a fee of \$25 shall be paid to the department for each permit issued.

§6.6. *Inspection and Disposal.* Department of Agriculture inspectors and peace officers from the Department of Public Safety may:

(1) Inspect host plants in fields or host plant products where stored for cotton pests.

(2) Detain and inspect, without warrant, any means of conveyance that is moved into or within this state upon reasonable suspicion that the conveyance contains equipment or host plant products that may be contaminated with cotton pests.

(3) Seize and order the destruction of infested fields of host plants or host plant products.

(4) Seize and order the destruction or return to the point of origin of quarantined articles imported into the State of Texas or transported within the state in violation of these regulations.

§6.7. *Pest Management Zones.* The department under the authority of the Texas Agriculture Code, Chapter 74, Subchapter A, may establish a geographical zone of all or part of one or more counties for the control or prevention of cotton pests. Currently established zones are as follows:

(1) Zone 1. Includes the following counties: Brooks, Cameron, Hidalgo, Jim Hogg, Starr, Willacy, Zapata counties and the southern part of Kenedy County encompassing the area below an east-west line through Katherine and Armstrong, Texas.

(2) Zone 2, Area (1). Includes the following counties: Duval, Jim Wells, Kleberg, Nueces, Webb, counties and the northern portion of Kenedy County encompassing the area above an east-west line through Katherine and Armstrong, Texas.

(3) Zone 2, Area (2). Includes the following counties: Aransas, San Patricio counties and south and east of Highway 59 in Bee and Live Oak counties.

(4) Zone 2, Area (3). Includes the following counties: Calhoun, Goliad, LaSalle, McMullen, Refugio, Victoria and north and west of Highway 59 in Bee and Live Oak counties.

(5) Zone 3, Area (1). Includes the following counties: Jackson and Matagorda counties and that portion of Wharton County west of the Colorado River.

(6) Zone 3, Area (2). Includes the following counties: Austin, Brazoria, and Fort Bend counties and that portion of Wharton County east of the Colorado River.

(7) Zone 4. Includes the following counties: Atascosa, Bexar, DeWitt, Dimmitt, Frio, Karnes, Kinney, Maverick, Medina, Uvalde, Val Verde, Wilson, and Zavala.

(8) Zone 5. Includes the following counties: Chambers, Colorado, Fayette, Galveston, Gonzales, Harris, Jefferson, Lavaca, Liberty, Orange, Waller, and Washington.

(9) Zone 6. Includes the following counties: Bastrop, Caldwell, Comal, Guadalupe, Hays, Lee, Milam, Travis, and Williamson.

(10) Zone 7. Includes the following counties: Anderson, Angelina, Bell, Bosque, Brazos, Burleson, Burnet, Coryell, Cherokee, Ellis, Falls, Freestone, Grimes, Hamilton, Hardin, Henderson, Hill, Hood, Houston, Jasper, Johnson, Lampasas, Leon, Limestone, McLennan, Madison, Montgomery, Nacogdoches, Navarro, Newton, Panola, Polk, Robertson, Rusk, Sabine, San Augustine, San Jacinto, Shelby, Smith, Somervell, Trinity, Tyler, and Walker.

(11) Zone 8. Includes the following counties: Pecos, Ward, and Reeves.

(12) Zone 9. Includes the following counties: El Paso County and that portion of Hudspeth County bounded by Interstate Highway 10 on the north, the El Paso County line on the west, the Rio Grande River on the south and a line from old Fort Whitman, north along Highway 34 to Interstate 10 on the east.

#### §6.8. *Administrative Committees.*

(a) Each pest management zone shall be governed by an administrative committee. The committee shall consist of one authorized representative of the department and, subject to subsection (c) of this section, cotton producers representing each county within the zone. Producer representation of counties within the zone shall be based on acreage of cotton production in each county as follows:

(1) one to 25,000 acres = one representative;

(2) 25,001 to 50,000 acres = two representatives;

(3) 50,001 to 75,000 acres = three representatives;

(4) 75,001 to 100,000 acres = four representatives;

(5) 101,001 to 125,000 acres = five representatives;

(6) 125,001 to 150,000 acres = six representatives;

(7) 150,001 to 175,000 acres = seven representatives;

(8) 175,001 to 200,000 acres = eight representatives;

(9) 200,001 to 225,000 acres = nine representatives and

(10) more than 225,001 acres = ten representatives.

(b) The commissioner shall appoint the producer members of the administrative committee for a term of two years expiring on December 31 of the second year, selecting the appointees from a pool of nominees submitted by a certified cotton producer organization within the pest management zone. A member may be re-appointed for consecutive terms. In cases where no certified cotton producer organization is established, nominees may be submitted for each individual county by, in the following priority order: a County Extension Agriculture Committee; a County Consolidated Farm Service Agency Committee (CFSA); an established agriculture business that is representative of the entire county; or any other established business or non-profit organization as designated by the department.

(c) Nominees must be active producers and/or residents from the county they will represent. A minimum of three nominees must be provided for each producer position on each administrative committee.

(d) If an administrative committee member is unable to attend a meeting, he or she may appoint a replacement to attend the meeting as a temporary representative.

#### §6.9. Authorized Planting and Stalk Destruction Dates.

(a) All cotton plants in any of the pest management zones set forth in §6.7 of this title (relating to Pest Management Zones) shall be planted within and mechanically destroyed by the authorized planting and stalk destruction dates indicated for each zone. Destruction shall be accomplished by the methods described as follows.

(1) Zone 1.

(A) Planting dates: February 1-April 20.

(B) Cotton destruction date: on or before September 1. Destruction shall

be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(2) Zone 2.

(A) Area (1).

(i) Planting dates: February 1-April 15.

(ii) Cotton destruction date: on or before September 10.

(iii) Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(B) Area (2).

(i) Planting dates: February 1-April 15.

(ii) Cotton destruction date: on or before September 25.

(iii) Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(C) Area (3).

(i) Planting dates: March 1-May 1.

(ii) Cotton destruction date: on or before October 1;

(iii) Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(3) Zone 3.

(A) Area (1).

(i) Planting dates: March 5-May 15.

(ii) Cotton destruction date: on or before October 1.

(iii) Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(B) Area (2).

(i) Planting dates: March 5-May 15;

(ii) Cotton destruction date: on or before October 15.

(iii) Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(4) Zone 4.

(A) Planting dates: March 5-May 10.

(B) Cotton destruction date: on or before October 10. Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(5) Zone 5.

(A) Planting dates: March 10-May 20.

(B) Cotton destruction date: on or before October 20. Destruction shall be accomplished by shredding and/or plowing out the plants to prevent further growth of any cotton plants.

(6) Zone 6.

(A) Planting dates: March 10-May 20.

(B) Cotton destruction date: on or before October 31. Destruction shall be accomplished by shredding and/or plowing out the plants to prevent further growth of any cotton plants.

(7) Zone 7.

(A) Planting dates: March 20-May 31.

(B) Cotton destruction date: on or before November 30. Destruction shall be accomplished by shredding and/or plowing out the plants to prevent further growth of any cotton plants.

(8) Zone 8. Cotton destruction date: on or before February 1.

(A) Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(B) Plowing shall be performed with an implement which dislodges the root and leaves the soil in a ridged and roughened condition.

(9) Zone 9.

(A) Planting dates: March 15-May 31.

(B) Cotton destruction date: on or before February 1. Destruction shall be accomplished by shredding and plowing out the plants to prohibit the presence of any cotton plants.

(b) The department may, on written request by a farm owner and/or operator, grant an extension of the cotton planting or destruction dates. The department may also, on written request by a farm owner and/or operator, authorize an alternative to the method of mechanical destruction of cotton prescribed by these rules. Requests for extensions or changes in the method of the destruction of cotton stalks, regrowth cotton or volunteer cotton may be granted for the reasons listed in paragraph (4) of this subsection

(1) A written request must include the Consolidated Farm Service Agency (CFSA) Farm/Tract Number, the reason for the request, the amount of acreage subject to the request, and the amount of time needed to complete planting or destruction.

(2) All requests for extensions on initially un-destroyed or un-planted cotton or for approval of an alternative method of cotton destruction must be postmarked on or prior to the last planting date or cotton destruction date, whichever is applicable. An extension may be requested after the last planting date if sufficient information is provided by the owner or operator documenting that the crop was initially planted prior to the planting deadline and re-planting is necessary, or after the cotton destruction date if the stalks were previously destroyed prior to the deadline. Extensions may be granted based on the criteria in paragraph (4) of this subsection.

(3) Failure to submit an extension request when required constitutes a violation and shall subject the farm owner and/or operator to administrative penalties as allowed by the Texas Agriculture Code, Chapter 74, and the Texas Agriculture Code, §12.020.

(4) Extension requests will be considered for approval only if compliance with subsection (a) of this section is delayed for one or more of the following reasons:

- (A) research;
- (B) weather conditions;
- (C) illness; or
- (D) mechanical failure.

(c) Where there is conflict between the planting and cotton destruction dates set for counties in the pest management zones established under this chapter, and the planting and stalk destruction dates set for those same counties under other federal, state or county regulations, the dates set under this chapter shall take precedence, unless otherwise specified.

**§6.10. Responsibility for Compliance.** The land owner and farm operator are subject to administrative penalties for violations of these regulations.

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

Issued in Austin, Texas, on August 2, 1995.

TRD-9509670 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: September 11, 1995

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

## TITLE 7. BANKING AND SECURITIES

### Part II. State Finance Commission

#### Chapter 9. Rules of Procedure for Contested Case Hearings, Appeals, and Rulemakings

##### Subchapter B. Contested Case Hearings

###### • 7 TAC §§9.11-9.31

The Finance Commission of Texas, the Texas Department of Banking, the Texas Savings and Loan Commissioner, and the Consumer Credit Commissioner propose new §§9.11-9.31, to establish uniform rules of practice and procedure for contested case hearings for the Finance Commission, the Department of Banking, the Savings and Loan department, and the Office of the Consumer Credit Commissioner (the agencies).

The new Texas Banking Act, §1.011(b), Act of May 18, 1995, House Bill 1543, §1, 74th Legislature, authorizes the finance commission to employ a hearing officer to conduct hearings for each of the agencies. The adoption of uniform rules will expedite the fair hearing of contested cases before all of the agencies and simplify the hearing officer's duties.

The agencies have previously proposed new Title 7, Chapter 9, Subchapters A-E, comprised of proposed §§9.1-9.5, 9.11-9.30, 9.51-9.57, 9.71-9.72, and 9. 81-9.84, to establish uniform rules of practice and procedure for contested case hearings, appeals, and rulemakings for the agencies, published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5563). Because of the inadvertent omission of one section in proposed Subchapter B, the proposal to adopt Subchapter B is withdrawn in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6013) in favor of this proposal. A proposed new §9.22 is included in this pro-

posal and the remaining proposed sections in Subchapter B are renumbered accordingly.

Larry J. Craddock, Hearing Officer for the Finance Commission, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections

Mr. Craddock 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 benefit by no longer having to learn differences in procedure and practice when appearing before each individual agency. It will also be easier for one person to conduct hearings before all of the agencies if the same rules of practice and procedure are applicable to each agency.

The mailing address for all comments on this proposal is 2601 North Lamar Boulevard, Austin, Texas 78705-4294. Comments may be submitted in writing to the Finance Commission in care of Everett D. Jobe, General Counsel, Texas Department of Banking, or to the Department of Banking in care of Mr. Jobe, or to Savings and Loan Commissioner James L. Pledger, or to Consumer Credit Commissioner Leslie L. Pettijohn.

The new sections are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The Texas Banking Act, §1.012(a)(5), Act of May 18, 1995, House Bill 1543, §1, 74th Legislature, authorizes the finance commission to adopt rules necessary or reasonable to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

Article 350, §7, authorizes the finance commission to adopt rules necessary to implement Article 350 (governing regulation of currency exchange and transmission licenses).

Texas Civil Statutes, Article 489d, §9E, as added by Act of May 27, 1995, House Bill 1608, §8, 74th Legislature, authorizes the finance commission to adopt rules necessary for the enforcement and orderly administration of the Sale of Checks Act.

Texas Civil Statutes, Article 548b, authorizes the Department of Banking to adopt rules concerning matters incidental to the enforcement and orderly administration of Article 548b (governing the sale of prepaid funeral services or merchandise).

The new Texas Banking Act, §1.013, Act of May 18, 1995, House Bill 1543, §1, 74th Legislature, authorizes the finance commission to adopt rules applicable to state savings associations or to savings banks. Texas Civil Statutes, Article 489e, §4.04(2), and Article 852a, §8.01(2), also authorize the savings and loan commissioner and the finance commission to adopt procedural rules for deciding applications filed with the savings and loan commissioner or the savings and loan department.

The new Texas Banking Act, §1.014, Act of May 18, 1995, House Bill 1543, §1, 74th Legislature, authorizes the finance commission to adopt rules necessary for supervising the consumer credit commissioner and for ensuring compliance with Title 79, Revised Statutes (Texas Civil Statutes, Articles 5069-1.01 et seq). Texas Civil Statutes, Article 5069-3.12(1), also authorizes the finance commission to adopt rules necessary for the enforcement of Chapter 3 (Articles 5069-3.01 et seq, relating to regulated loans). Texas Civil Statutes, Article 5069-51.09(b), further authorizes the consumer credit commissioner to adopt rules necessary for the enforcement of the Texas Pawn Shop Act (Articles 5069-51.01 et seq, relating to regulation of pawn shops).

The following statutory provisions are affected by the proposed new: The Texas Banking Act, Act of May 18, 1995, House Bill 1543, §1, 74th Legislature; Texas Civil Statutes, Articles 350, 489d, 489e, 548b, 852a, 5069-1.01 et seq; and Chapter 712, Health and Safety Code.

#### §9.11. Notice.

(a) Unless another statute authorizing a different notice period is applicable to the particular proceeding, all hearings in contested cases must be preceded by at least ten days notice, as required by Government Code, §2001.051. Licensees and permittees shall keep the agency informed as to their correct current mailing address. In all cases in which service on a licensee or permittee is made by registered or certified mail, return receipt requested, to the address furnished the agency, service is effective when the notice is placed in the mail, postage prepaid.

(b) Notices of disciplinary proceedings that are required to be preceded by a hearing must comply with Government Code, §2001.052, and a draft copy of the notice shall be submitted to the administrative law judge at the time a setting is requested that substantially contains:

(1) an order to appear at a specified time and date in a designated hearing room, State Finance Commission Building, at 2601 North Lamar Boulevard, Austin, Texas 78705-4204;

(2) a statement of the nature of the administrative action to be commenced and the authority under which the administrative action is conducted;

(3) a description in plain language of the specific act(s) or omission(s) asserted as grounds for the contemplated administrative action;

(4) a description of the remedies sought, including the penalties or consequences sought to be imposed;

(5) a disclosure that the respondent is entitled to:

(A) be represented by an attorney of respondent's choice;

(B) directly or through an attorney cross examine the witnesses against the respondent; and

(C) respond and present evidence and argument in respondent's behalf pursuant to Government Code §2001.051(b) and §2001.087;

(6) a disclosure that the failure of respondent to appear at the hearing will be considered a waiver of respondent's rights under paragraph (5) of this subsection; and

(7) the name, title, address, and phone number of person handling the administrative action for the agency and to whom the respondent or the respondent's attorney should direct inquiries regarding additional information, detail, or further discussion or negotiation in connection with the administrative action.

(c) Notice of an action that is not required to be preceded by a hearing, but that requires a party to be advised of a right to hearing before the action becomes final, must contain a notice that a written request for a hearing under the Administrative Procedure Act must be delivered to the agency within a specified number of days from the mailing of the notice, or the administrative action will become final.

§9.12. *Default.* If, after receiving notice, a party fails to attend a hearing, the administrative law judge may proceed in that party's absence and, where appropriate, may issue a proposal for decision against that party. The proposal for decision shall be served upon the defaulting party and the party will be afforded the opportunity to contest it in the same manner as if he or she had been present for the hearing.

§9.13. *Appearances and Representation.* Since contested case procedures are closely modeled upon those used in a court of law, the agency strongly urges but does not require parties to employ attorneys to represent them. A private individual may appear pro se. An officer, partner, or full time employee may represent a corporation, partnership, association, or firm in a hearing before the administrative law judge even if that person is not a licensed attorney, if that person observes proper decorum and the instructions of the administrative law judge. Attorneys who are licensed in other states but not in Texas may represent a client in a contested case hearing with the permission of the administrative law judge.

§9.14. *Protests.* Protests shall be allowed to the extent authorized by court decisions, statutes, or administrative regulations applicable to each agency and type of proceeding. A certificate of service shall be included on any protest showing that a copy has been served on the applicant. Every protest must be accompanied by any filing fees required by statute or administrative regulation.

§9.15. *Participation by General Public.* The administrative law judge has discretion to allow members of the general public to testify under oath or affirmation without the necessity of their becoming a party. The administrative law judge may set fair and reasonable conditions on such appearances, and the testimony shall be subject to cross-examination, challenge and rebuttal. After affording all parties a reasonable opportunity to be heard on this issue, the administrative law judge shall determine the extent, if any, to which members of the general public who are not parties shall be allowed to participate in a contested case.

§9.16. *Motion for More Definite Statement.* If a pleading is so vague or ambiguous that a party is unable to fully understand what is intended to be placed in issue, the party may move for a more definite statement and the administrative law judge shall grant the motion if it is well taken and direct that a more definite statement be made.

§9.17. *Continuances.* Motions for continuance must be in writing and filed not less than five calendar days prior to the hearing, except for good cause shown. Motions must set forth the specific grounds upon which the moving party seeks continuance, make reference to all similar motions filed in the case, and state whether all parties agree with the continuance. Continuances will not be granted based on the need for discovery if discovery requests have not previously been served upon the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence previously undisclosed despite the diligence of the moving party.

#### §9.18. Prehearing Conferences.

(a) Sua sponte or on the motion of any party, the administrative law judge may direct that the parties or their authorized representatives appear at a prehearing conference to consider such matters as:

(1) simplifying and settling issues;

(2) disclosing names, identities, and location of proposed witnesses and sup-



plying a brief statement of what is proposed to be established by the testimony of each;

(3) limiting the number of and exchanging reports of expert witnesses expected to be called by a party;

(4) obtaining:

(A) admissions of fact; and

(B) stipulations as to the admissibility into evidence of documents and other exhibits;

(5) the exchange of documentary evidence to be submitted at the hearing;

(6) establishing discovery deadlines; and

(7) any other matter which may expedite the hearing or otherwise facilitate the hearing process.

(b) The administrative law judge may require the parties to prepare prehearing briefs prior to or subsequent to the prehearing conference covering such matters as the administrative law judge may specify.

(c) In the administrative law judge's discretion, the prehearing conference may be formal or informal, may be conducted in person or by telephone, and may be conducted with or without a court reporter. In the event that no court reporter is used, the administrative law judge shall prepare a memorandum encompassing any agreements reached and decisions made including any admissions, stipulations, or agreed proposals.

#### §9.19. Discovery.

(a) All parties are entitled to use the following discovery procedures as set forth in the Texas Rules of Civil Procedure: interrogatories, requests for admissions, oral depositions, depositions on written questions, written discovery and production of documents, and entry upon designated land and other property. Use of such forms of discovery must be in accordance with and subject to limitations provided for discovery under the Texas Rules of Civil Procedure. Parties shall apply to the administrative law judge for issuance of a commission to take a deposition only if they disagree on its scheduling or scope.

(b) A party upon whom a request for discovery is served may object and move for a protective order and the administrative law judge shall promptly set such motion for a hearing which may be held either in person or by telephone. For good cause shown, the administrative law judge may direct that discovery be made in some other place or manner than originally proposed, that certain matters are not discover-

able, that the scope of examination be limited to certain matters, that the examination be held with no one present except parties and their officers or counsel, that the deposition be sealed and opened only by order of the administrative law judge, or may make such other orders as justice may require, including an order terminating all further discovery upon a showing that discovery is being conducted in bad faith or unreasonably.

(c) In the event that a request for discovery is not honored, or only partially honored, the requesting party may file a motion to compel discovery and the administrative law judge may compel compliance with the discovery request through all such sanctions as may appear reasonable and just under the facts and circumstances of the particular case.

#### §9.20. Subpoenas.

(a) On written request by a party, or sua sponte, the administrative law judge may issue a subpoena addressed to any person authorized to serve a subpoena under Rule 178, Texas Rules of Civil Procedure, to require witnesses from anywhere in the State of Texas to attend the hearing or a deposition and to produce books, records, papers, or other objects needed as evidence.

(b) Before issuing a subpoena at the request of any party other than the agency itself, the administrative law judge shall require that party to make a deposit with the agency sufficient to cover the witness fees provided in §22.002, Civil Practice and Remedies Code, and the estimated cost of serving the subpoena.

#### §9.21. Conduct of Hearings.

(a) Contested case hearing procedures are set forth in this chapter and in Government Code, §§2001.051-2001.147. Subject to approval by the agency head(s), the administrative law judge has authority analogous to that of a district judge sitting without a jury in a civil case and may make such rulings and issue such orders as may be required to provide a fair, just, expeditious, orderly, and proper hearing. Sua sponte or on motion, the administrative law judge may summon and swear an interpreter to facilitate the taking of evidence. Hearings are open to the public, except that matters made confidential by law must be considered in executive session if requested. If an executive session is not requested before confidential evidence is introduced, the confidentiality of such evidence shall be deemed to have been waived. Each party has the opportunity to present its case, by calling and examining witnesses, offering documentary evidence, and making legal arguments. Each party has the opportunity to cross-examine opposing witnesses on any

matter relevant to the issues even though the matter was not covered in direct examination. An objection to testimony or evidentiary offers must be stated timely, along with the basis for the objection.

(b) The Texas Rules of Civil Evidence, as applied in nonjury civil cases in the courts of Texas, apply in contested cases under this chapter. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under those rules may be admitted, except where precluded by statute, if of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs

(c) The evidentiary exception for "evidence not admissible under the Texas Rules of Civil Evidence if of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs" will be treated as analogous to the residual exception to the hearsay rule under Federal Rule of Evidence 803(24), i.e., such evidence will be admitted if the administrative law judge determines that:

(1) the fact the evidence is offered to prove is material;

(2) the evidence offered is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts;

(3) the interests of justice will be served by admission of the evidence; and

(4) the proponent of the evidence makes it known to the adverse party sufficiently in advance of the hearing to provide the adverse party with a fair opportunity to prepare to meet it.

(d) The rules of privilege and exemption recognized by Texas law apply in all hearings.

(e) Public comments in the form of letters and affidavits are not admissible into evidence in contested case hearings unless they satisfy one of the exceptions to the hearsay rule or come into evidence without objection.

#### §9.22. In camera materials.

(a) The administrative law judge may order that documents, testimony, or other data recognized as privileged under the statutes and regulations pertaining to each agency be received and preserved in camera (kept confidential and excluded from the public record). If such material is received in camera, all parties to a contested case proceeding will be entitled to access to the in camera material so that they may fully prepare their respective cases including cross examination and rebuttal. On ap-

plication from a party, witness or deponent entitled to invoke the privilege, the administrative law judge may enter a protective order that allows all parties access to the confidential material, prohibits disclosure of the material or the information contained therein to non-parties, and restricts use of the material and information to the case immediately at hand. In proposed findings, conclusions, briefs, or other documents, parties shall make a good faith effort to refer to in camera material and information in a general way without revealing specific detail so as to avoid making the information public. If parties consider it necessary to include specific details of in camera information in their briefs, arguments, or in proposed findings and conclusions of law, they shall incorporate those references into separate proposed findings, conclusions, briefs, or other documents marked "confidential, contains in camera information." Such separate proposed findings, conclusions, briefs, or other documents shall become part of the in camera record and made available only to people to whom the administrative law judge has allowed access to the in camera record. Similarly, the administrative law judge in drafting the proposal for decision shall avoid revealing details of the in camera information to the extent practicable. If necessary to state details of the in camera information in order to make appropriate findings of fact or conclusions of law, the administrative law judge may redact the version of the proposal for decision made available to the general public or may state in the version made available to the general public that some required findings or conclusions are based upon confidential information and those findings and conclusions are fully discussed in an in camera supplement to the proposal for decision. The agency head(s), and the finance commission (if the case is appealed to the finance commission), or the court (if the case is appealed to the court) shall also have access to the in camera material. The protective order shall remain in effect unless the agency head(s), the finance commission (if the case is appealed to the finance commission), or the court (if the case is appealed to the court), revokes or modifies it. The administrative law judge shall specify in the protective order whether the in camera material will be returned or destroyed if no appeal is taken or when the time for appeal has expired and the date following final disposition of the case by which the materials will be returned or destroyed. The agency shall destroy all in camera material as soon as the retention schedule approved by the state library permits its destruction except that the agency may retain one or more copies of the full proposal for decision for its files.

(b) To the extent that in camera material may be coded, redacted, or summarized and made part of the public record

without disclosing protected information, the administrative law judge shall order that to be done so as to minimize the extent to which an in camera record is needed.

(c) A person determined to have violated a protective order may be subjected to appropriate sanctions including but not limited to a letter of reprimand, an order barring such person from appearing before the administrative law judge to represent another for a designated time period from the date that a violation has been determined to exist; an order denying the person access to confidential information for a designated time period from the date that a violation has been determined to exist; and an order requiring the person to immediately return all material containing the confidential information, such as briefs, notes, or charts based on any such information received.

#### §9.23. Order of Proceedings.

(a) In proceedings initiated by filing an application with the agency, the applicant shall open and shall present evidence and testimony first. The protesting party, if any, shall present its evidence and testimony upon completion of the applicant's case in chief. The agency shall present its evidence and testimony following the protesting party(s).

(b) In hearings initiated as a result of agency investigations or show cause orders, the agency shall open and shall present evidence and testimony first. The respondent shall present its evidence and testimony upon completion of the agency's case in chief.

(c) Where evidence is peculiarly within the knowledge of one party, or in any proceedings not covered by application of subsections (a) and (b) of this section, the administrative law judge may direct who shall open and the order of presentation.

(d) Each party is permitted to put on rebuttal witnesses and evidence as necessary to present a complete case.

§9.24. *Prefiled Testimony.* Sua sponte or on motion of any party, the administrative law judge may omit oral presentation of the direct testimony of any witness and may allow prefiled written testimony to be presented in its place. The written testimony carries the same force and effect as though stated orally by the witness; provided that the witness must be present at the hearing at which such testimony is offered and adopt such testimony under oath, and must be made available for cross-examination. Written reports of agency investigations on fact issues, if offered into evidence in a hearing in which the facts covered by the report are

directly at issue, will be treated as prefiled testimony and the investigator must be made available for cross examination.

§9.25. *Stipulations.* Parties may by written stipulation agree upon the facts or any portion thereof and their stipulation may be regarded and used as evidence at the hearing. The administrative law judge in such cases may require any additional evidence necessary to establish the facts to the administrative law judge's satisfaction.

§9.26. *Official Notice.* The administrative law judge may take official notice of judicially cognizable facts, and of generally recognized facts within the area of the agency's specialized knowledge. A party that desires the administrative law judge to take official notice of particular facts must make a motion that the administrative law judge do so, stating with specificity the facts, material, records, or documents encompassed in the motion. A party who opposes the motion will have the opportunity to contest the requested action. The administrative law judge may also sua sponte take official notice of facts, material, records, or documents on giving the parties an opportunity to contest the facts, material, records, or documents to be officially noticed.

§9.27. *Reporters and Transcripts.* In all proceedings when requested by the administrative law judge, the agency, or by any party, a court reporter shall make a stenographic record of the hearing.

#### §9.28. Telephone Hearings.

(a) The administrative law judge may, with consent of all parties, conduct all or part of a hearing by telephone. Documentary evidence to be offered during a telephone hearing must be mailed by the proponent to all parties and the administrative law judge prior to hearing.

(b) The following may be considered a failure to appear for a telephone hearing and grounds for default, if the conditions exist for more than 20 minutes after the scheduled time for hearing:

- (1) failure to answer the telephone;
- (2) failure to free the telephone for a hearing; or
- (3) failure to be ready to proceed with the hearing as scheduled.

§9.29. *Recovery of Agency Costs.* The administrative law judge may allocate costs incurred by the agency among the parties. Such costs may include, but shall not be limited to, the estimated, fully allocated cost of agency employees participating in

the hearing, internal and external or out-of-pocket expenses incurred by the agency, administrative law judge fees and expenses, court reporter fees and expenses, investigative costs, witness fees and deposition expenses, witnesses' travel expenses, reasonable fees for professional services of expert witnesses, and the reasonable cost of a study, analysis, audit or other project the administrative law judge finds to have been necessary in preparation of the agency's case.

*§9.30. Filing of Exceptions and Replies To The Proposal for Decision.* Any party of record may, within ten days after the date of service of a proposal for decision, file exceptions to the proposal for decision. Replies to such exceptions may be filed within ten days after the last day for filing of such exceptions. Copies of exceptions and replies must be served on all parties of record.

*§9.31. Consideration of Proposal for Decision.*

(a) The agency head(s) may:

- (1) adopt the proposal for decision, in whole or in part;
- (2) modify and adopt the proposal for decision, in whole or in part;
- (3) decline to adopt the proposal for decision, in whole or in part;
- (4) remand the proceeding for further examination by the administrative law judge; or
- (5) direct the administrative law judge to give further consideration to the proceeding with or without reopening the hearing.

(b) If on remand additional evidence is received which results in a substantial revision of the administrative law judge's recommendation for final action, a new proposal for decision shall be prepared and served on the parties and they shall be given an opportunity to file exceptions and make replies to the new proposal for decision the same as if it were the original proposal for decision.

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

Issued in Austin, Texas, on August 4, 1995.

TRD-9509759

Everette D. Jobe  
General Counsel  
State Finance Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 475-1300

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 23. Substantive Rules

##### Telephone

###### • 16 TAC §23.95

The Public Utility Commission of Texas proposes new §23.95, relating to Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.

The rule is authorized by the Public Utility Regulatory Act of 1995, §3. 2135(i), which requires the Public Utility Commission of Texas to promulgate rules prescribing the voting procedures an incumbent local exchange company that is a cooperative corporation must use in order to achieve partial deregulation or to reverse partial deregulation.

Proposed rule §23.95 requires any cooperative utilizing the section to provide each cooperative member a ballot and instructions explaining that a majority vote of the cooperative's members will permit the cooperative to offer new services on an optional basis and/or change its rates and tariffs without Commission approval. The rule also establishes timelines for the return of ballots for tabulation. The rule orders similar requirements for the reversal of partial deregulation.

Patricia Ana Garcia Escobedo, Assistant General Counsel, Public Utility Commission, 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 the enforcing or administering the section.

Ms. Escobedo 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 rule will be uniform voting procedures that will protect the interests of cooperative members. There will be no effect on small businesses as a result of enforcing this section. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Ms. Escobedo has determined further that for the first five years the section is in effect it is likely to have no effect on the opportunities for employment in the geographic areas of Texas affected by implementing this section.

Comments on the proposed rule (13 copies) may be submitted within 30 days to the Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757. The Commission specifically seeks comment on whether the rule should contain standard language that explains partial deregulation and reversal of partial deregulation and their effects that would be required in the instructions that accompany the ballot.

General Counsel will conduct a public hearing on this rulemaking at the Commission's offices under Government Code, §2.001.029 on

September 19, 1995, at 10:00 a.m.

The new rule is proposed under the Public Utility Regulatory Act of 1995, §1.101 and §3.2135, 74th Legislature, Regular Session 1995, as amended by House Bill 2128, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

The following statute is affected by this rule: the Public Utility Regulatory Act of 1995, Senate Bill 319, §1.101 and §3.2135, 74th Legislature, Regular Session 1995, as amended by House Bill 2128.

*§23.95. Voting Procedures for Partial Deregulation or Reversal of Partial Deregulation of Telephone Cooperatives.*

(a) Purpose. A cooperative seeking to partially deregulate or to reverse partial deregulation shall utilize the voting procedures required in this section.

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

(1) Cooperative—An incumbent local exchange that is a cooperative corporation.

(2) Majority vote—A vote of more than 50% of the ballots returned by the cooperative's members.

(3) Partial deregulation—The ability of a cooperative to offer new services on an optional basis and/or change its rates and tariffs under the provisions of the Act, §3.2135.

(c) Balloting. Balloting by a cooperative shall comply with the requirements in this subsection.

(1) A ballot, instructions, and a postage-paid return envelope, addressed to the cooperative, shall be provided to each member of the cooperative.

(2) Materials required in paragraph (1) of this subsection may be provided as bill inserts or as a separate mailing.

(3) The ballot shall be printed as a separate form on paper that is a different color from any other paper contained in the same mailing and shall be contained on one page.

(4) Each ballot shall be written in English on one side of the ballot and in Spanish on the opposite side, if §23.6 of this title (relating to Spanish Language Requirements) is applicable.

(5) The ballot shall be entitled:

(A) "BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or

(B) "BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.

(6) Each ballot shall:

(A) provide brief instructions to mark with an "X" either the box "FOR" or "AGAINST" the action that is the subject of the balloting;

(B) provide in boldface type that is larger than surrounding text the date certain by which the ballot must be post-marked for tabulation; and

(C) contain a box labeled "FOR Authorizing the Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to partially deregulate, or contain a box labeled "FOR Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" and a box labeled "AGAINST Authorizing the Reversal of Partial Deregulation of the (Name of the Cooperative)" if the ballot is one to reverse partial deregulation.

(7) Ballots must include the statement "By signing this ballot, I affirm that I am the member to whom this ballot was addressed" and must provide, following the statement, lined spaces for the member to provide his or her printed name, address, telephone number, and signature.

(8) Ballots shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.

(d) Instructions for balloting. Instructions for balloting by a cooperative shall comply with the requirements in this subsection.

(1) A ballot, instructions, and an envelope, addressed to the cooperative, shall be provided to each member of the cooperative.

(2) Materials required in paragraph (1) of this subsection may be provided as bill inserts or as a separate mailing.

(3) Instructions for balloting shall accompany each ballot provided to a member of the cooperative.

(4) Instructions shall be printed as a form separate from the ballot and any other insert provided in the same mailing and shall be provided in English on one side of the form and in Spanish on the opposite side, if §23.6 (relating to Spanish Language Requirements) is applicable.

(5) Instructions shall be entitled:

(A) "INSTRUCTIONS FOR BALLOT SEEKING THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one for partial deregulation; or

(B) "INSTRUCTIONS FOR BALLOT SEEKING TO REVERSE THE PARTIAL DEREGULATION OF (NAME OF COOPERATIVE)" if the ballot is one to reverse partial deregulation.

(6) Instructions shall explain in plain language the meaning of:

(A) partial deregulation and the effects of partial deregulation, if the vote is one to partially deregulate; or

(B) reversal of partial deregulation and the effects of reversal of partial deregulation, if the vote is one to reverse partial deregulation.

(7) Instructions must state in boldface type that is larger than surrounding text the date certain by which the ballot must be postmarked for tabulation.

(8) Instructions shall explain that a ballot must be returned for tabulation in the postage-paid return envelope provided with the ballot.

(9) Instructions shall not contain any statement regarding how a member should cast a vote on the action that is the subject of the balloting.

(10) Instructions shall define majority vote and shall explain that a majority vote is required in order to achieve the action that is the subject of the balloting.

(e) Tabulation of ballots.

(1) A ballot will be tabulated if it:

(A) contains a mark in the box either "FOR" or "AGAINST" the action being sought;

(B) is postmarked for tabulation within 45 days following the date that ballots are mailed to members; and

(C) is returned in the postage-paid return envelope, addressed to the cooperative, provided to the member with the ballot.

(2) The following votes will not be tabulated:

(A) a ballot for which neither a "FOR" nor an "AGAINST" vote is cast;

(B) a ballot for which both a "FOR" and an "AGAINST" vote is cast;

(C) a ballot that represents a second vote for the member;

(D) a ballot for which the procedures required by this section are not followed;

(E) a ballot for which the envelope bears a postmark later than the 45th day following the date the ballot was mailed to members.

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

Issued in Austin, Texas, on August 3, 1995.

TRD-9509686

Amalija J. Hodgins  
Secretary of the  
Commission  
Public Utility Commission  
of Texas

Earliest possible date of adoption: September 11, 1995

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

## Part IV. Texas Department of Licensing and Regulation

### Chapter 61. Boxing

#### Subchapter B. Elimination Tournaments

- 16 TAC §§61.201, 61.202, 61.205, 61.206, 61.210-61.212

The Texas Department of Licensing and Regulation proposes amendments to §§61.201, 61.202, 61.205, 61.206, and 61.210-61.212, concerning Elimination tournaments. The amendments are being proposed to correspond with legislative changes.

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

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved safety. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

Colorado, Eighth Floor, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Boxing Act.

The following article is affected by these amendments: §61.201-Article 8501-1, §3; §61.202-Article 8501-1, §10; §61.205-Article 8501-1, §2; §61.206-Article 8501-1, §16; §61.210-Article 8501-1, §2; §61.211-Article 8501-1, §4; and §61.212-Article 8501-1, §4.

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

[Championship contest—An elimination event at which the winners of previous elimination events fight to determine a champion for the stated level of the event. Championship events may be on a state, regional, national or international level.]

[Elimination tournament—A contest where contestants fight a series of bouts until only one winner remains in each weight class.

[Elimination tournament contestant—A person who is not a licensed professional boxer or has not competed in more than five sanctioned amateur bouts and who competes for a prize in elimination tournaments.

#### **§61.202. Registration Requirements.**

(a) The requirements for licensing as a [promoter.] referee, judge, timekeeper, manager, and second of elimination tournaments are as specified in §§61.21 [§§61.20]-61.26 of this title (relating to Licensing Requirements—[Promoter.] Referee, Matchmaker, Judge, Timekeeper, Manager, and Second).

(b) The fee for [promoter.] referee, judge, timekeeper, manager, and second of elimination tournaments are as specified in §61.80 of this title (relating to Fees—Annual Application Fees).

(c) Before an individual performs as an elimination tournament contestant, he shall be registered by the Commissioner. A registered elimination tournament contestant shall keep the registration receipt in his possession. The registration receipt expires seven days after the date of issuance.

(1) Each elimination tournament contestant applicant shall submit:

(A) a completed application form;

(B) state approved picture I.D.;

(C) registration fee of \$50 as specified in §61.209 of this title (relating to Fees); and

(D) proof of a comprehensive medical examination as specified in §61.109 this title (relating to Technical Requirements—Boxers).

[(2) An applicant for registration as an elimination tournament contestant shall not have any previous professional boxing experience and shall not have over five sanctioned amateur wins in the last five years. Nothing in these rules shall prohibit a previous elimination tournament contestant from participating in future elimination tournaments and championships.

[(3) The department will not issue a registration to anyone under age 17. Minors, age 17 but not yet 18 or over, applying for registration as an elimination tournament contestant must submit written consent from a parent or guardian.]

(2)[(4)] The department will not issue a registration to any applicant who has attained age 36 [35] without a hearing. Before issuing any registration to an applicant who has attained age 36 [35], the department shall require physical testing including, but not limited to, neurological examination, ophthalmological examination, EEG, EKG, and stress tests.

[(5) An applicant must submit proof of proper training. Written certification outlining the training program for a minimum of four weeks prior to the tournament is required.]

#### **§61.205. General Prohibitions.**

(a) General prohibitions applicable to elimination tournaments, are as specified in §61.62 of this title (relating to General Prohibitions).

(b) Elimination tournament promoters shall not arrange matches between contestants. The department will hold a drawing for all matches in each weight category.

#### **§61.206. Responsibilities of the Promoter.**

(a) Responsibilities of the promoter of an elimination tournament are as specified in Texas Civil Statutes, Article 8501-1, §16.

(b) When notifying the department of the promoters decision not to use headgear, the promoter must:

(1) mail by certified/registered mail a notice to the department containing;

(A) a statement that the promoter assumes full responsibility for the contestants safety and welfare, and relieves the department of the responsibility, to protect the best interest of the contestant pursuant to Texas Civil Statutes, Article 8501-1, §2; and

(B) a list of all contestants who will not be required to wear headgear, by name, date of birth, social security number (optional), name of closest living relative, address and phone number.

(2) include a \$25 fee for processing the notice; and

(3) provide insurance as specified in §61.70 of this title (relating to Responsibilities of Promoter) from an insurance company authorized to do business in the State of Texas. [§61.70 of this title (relating to Responsibilities of Promoter).]

#### **§61.210. Technical Requirements.**

(a) Elimination tournaments consist [are two night events consisting] of a minimum of 36 scheduled rounds on each night.

[(b) All of the contestants shall fight once the first night, except in championship tournaments where contestants may fight twice on the first night of the tournament. The second or final night contestants will continue fighting until a winner is declared, provided the contestant passed the between bout physical.]

(b) [(c)] If a contestant is disqualified during a pre-tournament physical examination, the physician shall notify the department and promoter immediately.

(c)[(d)] Each bout will consist of three 60 second rounds with a minimum one minute rest period between rounds.

(d)[(e)] Contestants who do not win the first evening can still compete on the second evening at the option of the promoter and with approval of the department.

(e)[(f)] Any contestant who is knocked out on the first evening is not eligible to fight again in that tournament.

[(g) All contestants, on the first evening, are matched by random selection from the individual contestants within their weight classification. On the second night, during the preliminary bouts, the matches will again be made in the weight classifications. From that point on, in the quarter, semi-finals and finals it will be a case of who wins as they eliminate to the final winner, in each weight class represented.]

#### **§61.211. Technical Requirements—Contestant's Weigh-in and Time Requirements.**

[(a) Each contestant must be of the proper weight class in which he will compete pursuant to 61.110 of this title (relating to Technical Requirements-Boxer's Weight and Time Requirements).

[(b)] Each contestant shall be in appropriate dressing room 45 minutes before the first bout.

*§61.212. Technical Requirements-Contestant Safety.*

[(a) All contestants shall use 16 ounce gloves and wear approved headgear.

[(b) Contestants must wear an approved groin guard, or a kidney-groin guard supplied by the promoter.]

[(a)][(c)] On the second night of the tournament, a second physical shall be given to the remaining contestants to assure their fitness to compete.

[(b)][(d)] Each contestant shall be examined by the ringside physician between each bout.

[(e) Regional and championship events as certified at the discretion of the executive director shall be permitted without the use of headgear.]

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

Issued in Austin, Texas, on August 3, 1995.

TRD-9509707 Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: September 11, 1995

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

◆ ◆ ◆  
• 16 TAC §61.203

*(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 Licensing and Regulation or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)*

The Texas Department of Licensing and Regulation proposes the repeal of §61.203, concerning Elimination tournaments. The section is being proposed for repeal because bond requirements are now addressed in Texas Civil Statutes, Article 8501-1 due to recent legislative changes to the statute.

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

Mr. Brush 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 improved safety. 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.

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

The repeal is proposed under Texas Civil Statutes, Article 8501-1, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Boxing Act.

The following article is affected by this repeal: Article 8501-1, §8.

*§61.203. Bond Requirements.*

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

Issued in Austin, Texas, on August 3, 1995.

TRD-9509708 Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: September 11, 1995

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

◆ ◆ ◆  
Chapter 62. Career Counseling Services

• 16 TAC §62.80

The Texas Department of Licensing and Regulation proposes an amendment to §62.80, concerning career counseling services. The amended section proposes raising the fees for an original certificate of authority to cover the cost of administration and enforcement of the career counseling services program. The fees currently in place are below the amount required by the department to cover costs. Since the department is required to structure fees for each statute to pay for its own regulation, fees must be increased.

James D. Brush, II, Director, Policies and Standards Division, has determined that for the first five-year period the section is in effect there will be implications for state or local government as a result of enforcing or administering the section. State government revenue will increase approximately \$18,000 each year. There will be no effect on local government.

Mr. Brush also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be enhanced

public welfare and consumer protection. There will be a fiscal effect on small businesses and persons who are required to comply with the section as proposed. The cost of compliance will be an additional \$450 for an initial certificate of authority, an additional \$450 for annual renewal, and an additional \$25 for issuing a duplicate certificate of authority.

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

The amendment is proposed under Texas Civil Statutes, Article 5221a-8, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The following is the Article that is affected by this rule: Article 5221a-8, §3.

*§62.80. Fees-Original Certificate of Authority.*

(a) The fee for an initial certificate of authority is \$575 [\$125].

(b) The annual fee for a renewal is \$575 [\$125].

(c) (No change.)

(d) A \$50 [\$25] fee will be charged for issuing a duplicate certificate of authority.

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

Issued in Austin, Texas, on August 4, 1995.

TRD-9509781 Jack W. Garison  
Executive Director  
Texas Department of  
Licensing and  
Regulation

Earliest possible date of adoption: September 11, 1995

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

◆ ◆ ◆  
Chapter 64. Employers of Certain Temporary Common Workers

• 16 TAC §64.80

The Texas Department of Licensing and Regulation proposes an amendment to §64.80, concerning temporary common worker licensing fees. The amendment is being proposed to increase the fees charged for licensing to cover the cost of administration and enforcement of the Act since the department is required to structure fees for each statute to pay for its own regulation.

James D. Brush, II, director, Policies and Standards Division, has determined that for

the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. State government revenue will increase approximately \$17,000 each year. There will be no fiscal implications on local government.

Mr. Brush also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that more of the cost of enforcing the statute will be covered by fees. The anticipated economic cost to small businesses and persons who are required to comply with the sections as proposed is an additional \$375 for an original license and an additional \$475 for renewal.

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

The amendment is proposed under Texas Civil Statutes, Article 5221a-10, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Texas Temporary Common Workers Act.

The following article is affected by this amendment: Article 5221a-10, §9.

#### §64.80. Fees-License.

(a) The fee for the initial license is \$675 [and each renewal is \$300].

(b) The fee for a renewal license is \$725.

(c)[(b)] These fees are [This fee is] not refundable.

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

Issued in Austin, Texas, on August 3, 1995.

TRD-9509710

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

Earliest possible date of adoption: September 11, 1995

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

## Chapter 65. Boiler Division

### • 16 TAC §65.80

The Texas Department of Licensing and Regulation proposes an amendment to §65.80, concerning the certification of boilers. The amendment provides for an increase in certificate/inspection fees and exam administration fees for the American Petroleum Institute (API).

James D. Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the section is in effect there will be fiscal implications for state government as a result of enforcing or administering the section will be an increase in revenue of \$452,357 for fiscal years 1995-1999. There will be no fiscal implications on local government.

Mr. Brush also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the state will recover the cost of enforcement and administration as required for the inspection of boilers and the administration of exams. There will be a fiscal effect on persons, some of which will be an undeterminable amount of small business owners, who are required to comply with the section as proposed. The cost of compliance will be an additional \$10 per certificate of operation issued as a result of a boiler inspection performed by an authorized inspector, an additional \$20 per boiler inspection performed by a deputy inspector, and an additional \$25 for each American Petroleum Institute (API) exam administered.

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

The amendment is proposed under the Health and Safety Code, Chapter 755, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules in keeping with standard usage for the construction, inspection, installation, use, maintenance, repair, alteration, and operation of boilers

The statute that is affected by this amendment is the Health and Safety Code, Chapter 755, §755.030.

#### 65.80. Fees.

##### (a) Certificate/inspection fees.

(1) Inspection by authorized inspector. The owner or operator or his/her agent shall make a \$40 [\$30] payment for the certificate of operation fee.

(2) Inspection by deputy inspector. The owner or operator shall make payment of the appropriate fee as shown below.

(A) The inspection fees for all boilers other than heating boilers shall be:

(i) those with a heating surface of 50 square feet (4.65 square meters) or less-\$80 [\$60];

(ii) those with a heating surface greater than 50 square feet (4.65 square meters) but not greater than 100 square feet (9.29 square meters)-\$90 [\$70];

(iii) those with a heating surface greater than 100 square feet (9.29 square meters) but not greater than 500

square feet (46.45 square meters) -\$105 [\$85];

(iv) those with a heating surface greater than 500 square feet (46.45 square meters) but not greater than 1,500 square feet (139.35 square meters)-\$120 [\$100]; and

(v) those with a heating surface greater than 1,500 square feet (139.35 square meters) -\$160 [\$140].

(B) The inspection fees for heating boilers shall be:

(i) those without a man-hole-\$80 [\$60]; and

(ii) those with a man-hole-\$110 [\$90].

(3) All fees must be paid in full to the Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711 before a certificate of operation will be issued.

(b) (No change.)

(c) Texas Commission fees.

(1) Exam-\$25, re-exam-\$25.

(2) New-\$25, renewal-\$10, late renewal-additional \$12.50 (total \$22.50).

(3) Reinstatement-\$25.

(4) Replacement:

(A) certificate only-\$10;

(B) identifying commission card only-\$10;

(C) certificate and identifying commission card-\$25. [; and]

(d) Exam administration fees:

(1) National Board exam-\$25;

(2) American Petroleum Institute (API) 510 exam-\$50.

(e)[(d)] [The fee for the] Boiler law and rules [is]-\$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 August 3, 1995.

TRD-9509706

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

Earliest possible date of adoption: September 11, 1995

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

## Chapter 66. Registration of Property Tax Consultants

- 16 TAC §§66.10, 66.22, 66.65, 66.71, 66.82

The Texas Department of Licensing and Regulation proposes amendments to §§66.10, 66.22, 66.65, 66.71, and 66.82, concerning the registration of property tax consultants. The sections are being proposed to reflect statutory changes, enforcement needs, and increase the duplicate registration fee.

James D. Brush, II, Director, Policies and Standards Division 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 for the first five-year period the sections are in effect will be an estimated increase in revenue of \$125 per year. There will be no fiscal implications for local government.

Mr. Brush 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 enhanced public welfare and consumer protection. Costs to small businesses and persons who are required to comply with the sections as proposed will be an additional \$25 for obtaining a duplicate registration.

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

The amendments are proposed under Texas Civil Statutes, Article 8886, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the statute.

The following are the articles that are affected by these rules: Article 8886, §6; Article 8886, §2; Article 8886, §5; Article 8886, §10; Article 8886, §6; Article 8886, §3.

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

[Property tax consultant—An individual who performs property tax consulting services and who on and after February 1, 1995 is employed by or under the supervision of a senior property tax consultant.]

### §66.22. Continuing Education.

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

(d) Courses approved under Texas Civil Statutes, Article 8886, §5(h) will be accepted.

### §66.65. Advisory Council.

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

(d) Expenses reimbursed to council members shall be limited to authorized expenses incurred while on council business and travelling to and from council meetings. The least expensive method of travel should be used. Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose.

(e)-(h) (No change.)

### §66.71. Responsibilities of Registrant-Records.

(a) The registrant must allow the Department, as part of an inspection or investigation, to enter his business premises during reasonable business hours to examine and copy any records that are pertinent to an inspection or investigation being conducted.

(b) Client records shall be maintained for not less than three years following the date last action was taken or service performed on behalf of the client.

### §66.82. Fees-Duplicate Registration.

A \$50 [\$25] fee will be charged for issuing a duplicate registration.

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

Issued in Austin, Texas, on August 4, 1995.

TRD-9509780

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

Earliest possible date of adoption: September 11, 1995

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

## Chapter 68. Architectural Barriers

- 16 TAC §§68.65, §68.80

The Texas Department of Licensing and Regulation proposes amendments to §68.65 and §68.80, concerning Architectural Barriers. The amendment to §68.65 adds a statement that advisory board members may be reimbursed for expenses only when money has been appropriated for that purpose. The amendment to §68.80 raises fees to cover the cost of administration and enforcement of the architectural barriers program. The justification for the increase in fees is that the fees currently in place are below the amount required by the department to cover the cost of administration and enforcement of the Architectural Barriers Act. Since the department is required to structure fees for each statute to pay for its own regulation, fees must be increased.

James D. Brush, II, director, Policies and Standards Division, 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. State government revenue will increase approximately \$599,876 each year. There will be no effect on local government.

Mr. Brush 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 enhanced public welfare and consumer protection. There will be a fiscal effect on small businesses and persons who are required to comply with the sections as proposed. The cost of compliance will be an approximate overall average increase in plan review and inspection fees of 54%.

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

The amendments are proposed under Texas Civil Statutes, Article 9102, Elimination of Architectural Barriers Act, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the Act.

The following article is affected by these amendments: §68.65—Article 9102, §7 and §68.80—Article 9102, §6.

### §68.65. Advisory Committee.

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

(d) Expenses reimbursed to committee members shall be limited to authorized expenses incurred while on committee business and travelling to and from committee meetings. The least expensive method of travel should be used. Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose.

(e)-(h) (No change.)

### §68.80 Fees.

(a) (No change.)

(b) Fee Schedule:  
Figure 1: 16 TAC §68.80(b)

(c)-(f) (No change.)

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

Issued in Austin, Texas, on August 3, 1995.

TRD-9509705

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



Earliest possible date of adoption: September 11, 1995

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

## Chapter 74. Elevators, Escalators, and Related Equipment

- 16 TAC §§74.10, 74.50, 74.65, 74.70, 74.80, 74.90, 74.100

The Texas Department of Licensing and Regulation proposes amendments to §§74.10, 74.50, 74.65, 74.70, 74.80, 74.90, and 74.100, concerning certification of elevators, escalators and related equipment. The amendments are being proposed to correspond with legislative changes.

James D Brush, II, director, Policies and Standards Division, has determined that for the first five-year period the sections are in effect there will be fiscal implication for state government as a result of enforcing or administering the sections. State government revenue will increase approximately \$130,950 each year. There will be no effect on local government.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be improved public safety. The cost of compliance for small businesses and individuals will be the building owner will have to pay an additional \$5.00 per building and an additional \$5.00 per elevator, escalator or related equipment. The cost of compliance to the inspector will be an additional \$5.00 per year.

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

The amendments are proposed under the Health and Safety Code, Chapter 754, which provides the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent and purposes of the amended codes.

The following article is affected by these amendments: §74.10-Health and Safety Code, Chapter 754, §754.015; §74.50-Health and Safety Code, Chapter 754, §754.015; §74.65-Health and Safety Code, Chapter 754, §754.012; §74.70-Health and Safety Code, Chapter 754, §754.015; §74.80-Health and Safety Code, Chapter 754, §754.023; §74.90-Health and Safety Code, Chapter 754, §754.023; and §74.100-Health and Safety Code, Chapter 754, §754.015.

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

**Annual inspection-Periodic routine inspection/test** as defined in the ASME Safety Code for Elevators and Escalators, A17.1.

**Delay-Suspension of compliance with American Society of Mechanical Engineers (ASME), Safety Codes for a specific period of time.**

**Inspection report-Department approved cover sheet including one department approved test data sheet for each elevator, escalator, or related equipment.**

**Waiver-Indefinite suspension** [A waiver or delay] of compliance with [American Society of Mechanical Engineers] (ASME), [A17.3.] Safety Codes [Code for Existing Elevators and Escalators].

**§74.50. Reporting Requirements.** Inspectors shall report all inspections [noncompliance] to the department **within seven days** by copy of the inspection report cover sheet.

[(1)] The report of noncompliance shall identify which elevator(s) or related equipment is in violation.

[(2)] The report of noncompliance shall identify the ASME Code section violated.]

**§74.65. Advisory Board.**

(a) The purpose of the Elevator Advisory Board is to advise the commissioner on the adoption of appropriate standards for the installation, alteration, [and] operation and inspection of elevators, escalators and related equipment, the status of elevators, escalators and related equipment used by the public in this state, and any other matter considered relevant by the commissioner.

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

[(d)] Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and travelling to and from board meetings. The least expensive method of travel should be used.

[(e)] Expenses related to subcommittee meetings will be reimbursed only if authorized by the commissioner or the commissioner's designee. These expenses will be reimbursed only to the board members appointed to the subcommittee or requested by the chair to assist or appear before the subcommittee.

[(f)] Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide and Texas Department of Licensing and Regulation policies governing travel allowances for employees.]

(d)[(g)] The board shall consist of those regulated industry members and consumers of services members specified in the

Act, a professional engineer or architect specified in the Act, and four additional consumers of services of the industry regulated by the Act or of the department, one of which should be a person with disabilities. Board members will serve for staggered three year terms with two regulated industry positions and two consumer positions expiring in each of the first and second years and one of each position expiring in the third year.

(e)[(h)] Terms of board members shall expire November 1 of each year. Initial terms will be established so that the terms expiring in the first, second and third years will expire November 1 of the years 1995, 1996 and 1997.

(f)[(i)] The member who is a professional engineer or architect, who is neither a regulated industry member nor a consumer member, will serve a three-year term with an initial expiration date of November 1, 1995.

(g) Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose.

**§74.70. Responsibilities of the Certificate Holder/Registrant.**

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

(c) The owner of the building shall have all inspections of elevators, escalators, or related equipment in the building completed within 60 days after starting the first inspection.

(d) The owner or representative of a building owner, must report all accidents to the department by the fastest means available and in writing within 72 hours.

**§74.80. Fees.**

(a) Inspector registration fees:

- (1) original-\$15 [\$10]; and
- (2) renewal-\$15 [\$10].

(b) Certificate of compliance [inspection] filing fees:

(1) within 60 [30] days of inspection date-\$20 [\$15]; [and]

(2) \$5.00 per elevator, escalator or related equipment; and [late filing fee-\$115.]

(3) \$120 if the inspection report is filed after the 60th day.

(c) Inspector's equipment [Test tags, wire rope, and lead seals]:

(1) \$160 for a kit of 100 test tags, wire rope and lead seals; and

(2) (No change.)

(d) (No change.)

(e) A fee may not be charged or collected by the department for a certificate of compliance [inspection] for an institution of higher education as defined in the Education Code, §61.003. The fees charged by the QEI-1 inspector or inspection agency for performing the inspection shall be paid by the institution of higher education

§74.90. *Sanctions.*

(a) (No change.)

[(b) Denial or revocation of an inspector's registration.

[(1) An inspector's registration may be denied or revoked by the commissioner after due investigation and hearing for willful falsification in their application.

[(2) The registrant is entitled to a hearing before the commissioner. Each part of all hearings shall be in accordance with Title 10, Government Code.]

(b)[(c)] An inspector shall be reported to the ASME-QEI-1 certifying body for willful falsification of a test data sheet [certificate of inspection] and/or failure to notify the agency of a non-compliance.

§74.100. *Technical Requirements.*

(a) The department adopts the 1994 [latest] edition of the ASME A17.1 and A17.3, Safety Code for Elevators and Escalators.

(b) (No change.)

(c) Test tags must be attached to equipment in accordance with the 1994 [latest] edition of the ASME A17.1 and A17.3, Safety Code for Elevator and Escalators.

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

(d) The inspector shall identify each elevator, escalator or related equipment with a number decal issued by the department.

(1) The decal shall be affixed to the upper right hand corner of the control panel.

(2) A department decal shall only be affixed to equipment that does not currently have a decal displayed.

(3) All correspondence and inspection reports shall reference the decal number.

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

Issued in Austin, Texas, on August 3, 1995.

TRD-9509709

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

Earliest possible date of adoption: September 11, 1995

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

◆ ◆ ◆  
**TITLE 19. EDUCATION**  
**Part I. Texas Higher**  
**Education Coordinating**  
**Board**

**Chapter 5. Program**  
**Development**

**Subchapter P. Testing and Re-**  
**mediation**

• **19 TAC §5.313**

*(Editor's Note. The Texas Higher Education Coordinating Board proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)*

The Texas Higher Education Coordinating Board proposes an amendment to §5.313(m), concerning Testing and Remediation (Eligibility). Current TASP policy provided that any student who elected Academic Fresh Start for credit hours earned prior to the Fall of 1989 could not use the same hours as a basis for an exemption from the TASP test. Thus, if any student who was previously exempt from TASP elected Academic Fresh Start, the student would lose the TASP exemption and would be required to take the test. The rule is being changed to reconsider this policy in light of the fact that for all other valid TASP exemptions, once a student is exempt, he or she can not later lose the exemption and be required to take the TASP test.

Bill Sanford, Assistant Commissioner for Universities has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Dr. Sanford also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that students, once exempt, can not later lose the exemption and be required to take the TASP test. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under Texas Education Code, §51.306, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Remediation (Eligibility).

There are no other sections affected by this rule.

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

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

TRD-9509651

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Proposed date of adoption: October 27, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
**Chapter 21. Student Services**

**Subchapter A. General Provi-**  
**sions**

• **19 TAC §21.2**

*(Editor's Note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)*

The Texas Higher Education Coordinating Board proposes an amendment to §21.2, concerning Determination of Tuition Rate for Non-resident and Foreign Students. The amendment is being made to implement provisions of House Bill. 1792. The rules change the method for calculating nonresident tuition.

Mack Adams, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Adams also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that a higher nonresident tuition will be charged; thereby, the state's income should rise and expenses, due to fewer nonresident students, should decrease. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

There are no other sections affected by this rule.

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

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

Proposed date of adoption: October 27, 1995

For further information, please call: (512)  
483-6160◆ ◆ ◆  
• 19 TAC §21.5*(Editor's Note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)*

The Texas Higher Education Coordinating Board proposes new §21.5, concerning Refund of Tuition and Fees at Public Community/Junior and Technical Colleges. The new section is being proposed to implement changes mandated by passage of House Bill 2640. The rule will require community/junior and technical colleges to refund tuition and fees on a consistent basis.

Mack Adams, Assistant Commissioner for Student Services, has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Adams also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that withdrawing students will be handled uniformly. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under House Bill 2640, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

There are no other sections affected by this rule.

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

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

TRD-9509662

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Proposed date of adoption: October 27, 1995

For further information, please call: (512)  
483-6160  
◆ ◆ ◆Subchapter B. Determining  
Residence Status• 19 TAC §§21.21, 21.26, 21.31,  
21.32*(Editor's Note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended sections it adopts on an emergency basis in this issue. The text of the amended sections is in the Emergency Rules section of this issue.)*

The Texas Higher Education Coordinating Board proposes amendments to §§21.21, 21.26, 21.31, and 21.32, concerning Determining Residence Status. The amendments are being made to improve clarity of rules and to implement changes mandated by House Bill 1792 and House Bill 1836. The rules are used to guide decisions regarding admission of students and their classification for tuition determination purposes.

Mack Adams, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Mr. Adams also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that classification of students will be done consistent with legislative intention. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendments are proposed under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determining Residence Status.

There are no other sections affected by these rules.

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

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

TRD-9509660

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Proposed date of adoption: October 27, 1995

For further information, please call: (512)  
483-6160  
◆ ◆ ◆Subchapter BB. Pilot Program  
for Enrolling Students from  
Mexico

## • 19 TAC §21.938

*(Editor's Note: The Texas Higher Education Coordinating Board proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)*

The Texas Higher Education Coordinating Board proposes an amendment to §21.938, concerning Numbers of Students Eligible to Participate in the Pilot Program. The amendment is being made to guide program operation. Program is scheduled by legislation to start operating in January 1996. The amendment will provide a framework for program operations.

Mack Adams, Assistant Commissioner for Student Services has determined that for the first five-year period the rule is in effect there will be no fiscal implications as a result of enforcing or administering the rule.

Mr. Adams also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that scholarships for eligible students will be available starting January, 1996. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The amendment is proposed under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Pilot Program for Enrolling Students from Mexico.

There are no other sections affected by this rule.

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

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

TRD-9509654

James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Proposed date of adoption: October 27, 1995

For further information, please call: (512)  
483-6160  
◆ ◆ ◆Subchapter CC. Tuition Credit  
Program

## • 19 TAC §§21.950-21.959

*(Editor's Note: The Texas Higher Education Coordinating Board proposes for permanent adoption the repealed sections it adopts on*

an emergency basis in this issue. The text of the repealed sections is in the Emergency Rules section of this issue.)

The Texas Higher Education Coordinating Board proposes the repeal of Subchapter CC, §§21.950-21.959, concerning Tuition Credit Program. The rules are being repealed to implement provisions of House Bill 1479 regarding the Early High School Graduation Scholarship Program. The rules will provide \$1,000 state scholarships to students graduating high school in no more than 36 months.

Mack Adams, Assistant Commissioner for Student Services has determined that for the first five-year period the repeals are in effect there will be no fiscal implications as a result of enforcing or administering the repeals. Funds for the scholarships will come from savings in the Foundation School Fund due to students graduating in three as opposed to four years.

Mr. Adams also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be that the state will save approximately 75% of the cost of maintaining a student through one year of high school. Students will benefit by \$1,000 scholarships. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The repeals are proposed under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

There were no other sections affected by these repeals.

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

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

TRD-9509658 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Proposed date of adoption: October 27, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
**Subchapter CC. Early High School Graduation Scholarship Program**

◆ ◆ ◆  
**• 19 TAC §§21.950-21.959**

*(Editor's Note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the*

*new sections is in the Emergency Rules section of this issue.)*

The Texas Higher Education Coordinating Board proposes new Subchapter CC, §§21.950-21.959, concerning Early High School Graduation Scholarship Program. The new rules are being made to implement provisions of House Bill 1479 regarding the Early High School Graduation Scholarship Program. The rules will provide \$1,000 state scholarships to students graduating high school in no more than 36 months.

Mack Adams, Assistant Commissioner for Student Services has determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules. Funds for the scholarships will come from savings in the Foundation School Fund due to students graduating in three as opposed to four years.

Mr. Adams also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that the state will save approximately 75% of the cost of maintaining a student through one year of high school. Students will benefit by \$1,000 scholarships. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The new sections are proposed under House Bill 1479, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Determination of Tuition Rate for Non-resident and Foreign Students.

There are no other sections affected by these rules.

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

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

TRD-9509656 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Proposed date of adoption: October 27, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
**Subchapter FF. State Scholarship Program for Ethnic Recruitment**

◆ ◆ ◆  
**• 19 TAC §§21.1010-21.1020**

*(Editor's Note: The Texas Higher Education Coordinating Board proposes for permanent adoption the new sections it adopts on an emergency basis in this issue. The text of the new sections is in the Emergency Rules section of this issue.)*

The Texas Higher Education Coordinating Board proposes new Subchapter FF, §§21.1010-21.1020, concerning State Scholarship Program for Ethnic Recruitment. The new rules are being made because program funding for this program received a 200% increase therefore rules for the administration of the program are necessary. There are several differences in the eligibility of students to participate in the program.

Mack Adams, Assistant Commissioner for Student Services, has determined that for the first five-year period the rules are in effect there will be no fiscal implications as a result of enforcing or administering the rules.

Mr. Adams also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be that program operation should be clarified by the rules. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Dr. Kenneth H. Ashworth, Commissioner of Higher Education, Texas Higher Education Coordinating Board, P. O. Box 12788, Austin, Texas 78711.

The new sections are proposed under House Bill 1792, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Scholarship Program for Ethnic Recruitment.

There are no other sections affected by these rules.

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

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

TRD-9509666 James McWhorter  
Assistant Commissioner for  
Administration  
Texas Higher Education  
Coordinating Board

Proposed date of adoption: October 27, 1995

For further information, please call: (512) 483-6160

◆ ◆ ◆  
**TITLE 30. ENVIRONMENTAL QUALITY**

**Part I. Texas Natural Resource Conservation Commission**

**Chapter 114. Control of Air Pollution From Motor Vehicles**

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes the repeal of §§114.3, 114.6, and 114.7, concerning Inspection Requirements, Hardship Eligibility Criteria, and Inspection and Maintenance Fees; and new §114.3, concerning Inspection Requirements.

Senate Bill 178, passed by the 74th Texas Legislature, 1995, gives implementation responsibility for an interim Inspection and Maintenance program to the Texas Department of Public Safety and directs the TNRCC to adopt emergency rules to repeal conflicting requirements as soon as possible. On June 14, 1995 (published in the June 23, 1995, issue of the *Texas Register* (20 TexReg 4523)), the TNRCC adopted emergency rules that repealed §§114.3, 114.6, and 114.7, concerning Inspection Requirements, Hardship Eligibility Criteria, and Inspection and Maintenance Fees. In addition, the TNRCC adopted on an emergency basis new §114.3, concerning Inspection Requirements. At this time, TNRCC proposes to adopt new §114.3 and repeal §§114.3, 114.6, and 114.7 on a permanent basis.

The new §114.3 requires motorists to comply with air pollution emission control requirements included in the annual vehicle safety inspection program. The new section also requires that the rules and regulations adopted by DPS be completely and properly performed prior to the issuance of a vehicle inspection certificate.

The current §114.6 established the hardship eligibility criteria. The DPS may now promulgate such standards.

The current §114.7 set fees for inspections and fees associated with conducting tests. The DPS will now promulgate such standards.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The effect on state government will be a reduction in cost to the commission associated with the operation of the Inspection and Maintenance program. Actual costs to the commission to operate the interim program will be an estimated \$3 million for fiscal year 1996, which is approximately half of the projected \$6 million annual budget of the January 1995 program. Of the \$3 million budget savings, approximately \$700,000 represents personnel savings. The commission will also realize a loss of potential revenue of approximately \$8 million per year on an annual basis. The potential future costs of the Inspection and Maintenance program, in amounts up to the potential revenues will also be saved, in addition to actual reductions of current cost. Any cost savings and revenue reductions could be offset or reversed upon reactivation of the Inspection and Maintenance program within the commission. The Texas Department of Transportation will experience a cost savings for fiscal year 1996. However, these savings could be partially offset by program reactivation costs beginning in fiscal year 1996 and continuing into fiscal year 1997.

Local governments choosing to conduct enforcement activities could experience a decrease in the amount of revenue that would potentially be realized from penalties collected on noncompliant vehicles. In addition, county tax assessor-collectors in the affected areas will experience a reduction in fees, as

they will no longer collect vehicle emissions certificates under current statutory authority and the sections as proposed. The magnitude of these effects on local governments cannot be determined.

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 additional convenience to motorists in terms of greater choice of inspection and repair facilities, lower vehicle inspection rates, and less stringent vehicle testing. The sections as proposed will have fiscal implications for small businesses within the affected nonattainment areas. The minor cost savings attributed to vehicle owner/operators generally will apply to small businesses and will vary with the number of vehicles subject to the inspection and maintenance program. Vehicle owners or operators will have their vehicles inspected according to the pre-January 1994 emissions inspection requirements and rates, which vary according to county of vehicle registration. This will result in a small decrease in rates. Motorists in Harris County will save approximately \$12 per year, per vehicle under the interim program established by the rules. However, motorists in the Dallas/Fort Worth and El Paso communities will not save significantly on an annual basis.

A public hearing on the proposal will be held September 12, 1995, at 10:00 a.m. in Room 201A of TNRCC Building B, located at 12100 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 of this proposal 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 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 #95152-114-A1. 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, please contact Catherine Collins at (512) 239-0389.

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 §§114.3, 114.6, 114.7

*(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 Health and Safety Code, 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 repeals implement the Texas Health and Safety Code, TCAA, §382.017.

§114.3. *Inspection Requirements.*

§114.6. *Hardship Eligibility Criteria.*

§114.7. *Inspection and Maintenance Fees.*

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

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

TRD-9509808

Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption: October 25, 1995

For further information, please call: (512) 239-1966

◆ ◆ ◆  
• 30 TAC §114.3

The new section is proposed under the Texas Health and Safety Code, 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 new section implements the Texas Health and Safety Code, §382.017.

§114.3. *Inspection Requirements.*

(a) No person may operate any motor vehicle which does not comply with air pollution emission control related requirements included in the annual vehicle safety inspection requirements administered by the Texas Department of Public Safety (DPS) as evidenced by a currently valid inspection certificate affixed to the vehicle windshield.

(b) No person may issue or allow the issuance of a vehicle inspection certificate, as authorized by DPS, unless all air pollution emission control related requirements of the annual vehicle safety inspection are completely and properly performed in accordance with the rules and regulations adopted by DPS. Prior to taking any enforcement action regarding this provision,

the Texas Natural Resource Conservation Commission shall consult with DPS.

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

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

TRD-9509809 Lydia Gonzalez-Gromatzky  
Acting Director, Legal  
Services Division  
Texas Natural Resource  
Conservation  
Commission

Proposed date of adoption October 25, 1995

For further information, please call. (512)  
239-1966

## Chapter 291. Water Rates

The Texas Natural Resource Conservation Commission (commission) proposes the repeal of §§291.73, 291.85-291.89, 291.101, 291.102, and 291.105-291.118, amendments to §§291.3, 291.5-291.8, 291.13-291.15, 291.41, 291.71, 291.72, 291.75, 291.76, 291.81-291.84, 291.91-291.95, 291.103, 291.104, 291.121-291.123, 291.125, and 291.127; and new §§291.73, 291.80, 291.85-291.90, 291.101-291.102, 291.105-291.119, and 291.141-291.143, relating to the regulation of retail public utilities and submetered and nonsubmetered master metered service providers.

The repeals, amendments and new sections will bring the current rules into conformance with current statutes, clarify the rules by reorganizing and rewording sections, eliminate certain requirements, and provide for implementation of policies and procedures authorized by statutory changes. The repeals, amendments and new sections are proposed under House Bill 827, 72nd Legislature, 1991; Senate Bill 2, Special Session, August 1991, House Bill 2677, 73rd Legislature, 1993; and House Bills 1001 and 2387, 74th Legislature, 1995, which in pertinent part amended the Texas Water Code (Water Code), Chapter 13; and under the Texas Water Code §§5.103, 5.105, and 13.041 which provide the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services, and submetered and nonsubmetered master metered service providers. The new or amended sections establish the substantive regulations which affect the policies of the commission regarding the assurance of water and sewer rates, fees, operations, and services which are just and reasonable. The new sections also outline the procedures for presentation of these matters to the commission for consideration and decision.

There are amendments throughout these sections to reflect the change in agency name from Texas Water Commission to Texas Natural Resource Conservation Commission, to make minor clarifications and formatting changes, to reference other portions of relevant rules, correct misspelled words, errors in punctuation, and for consistency to delete references to "a designated repre-

sentative" or "his designated representative" when referring to the activities of the executive director or staff carrying out those responsibilities on behalf of the executive director

Amendments to §291.3 add definitions for affected county, billing period, point of use, and standby fee. The definition of "physician" has been moved from the former §291.87(g). The definition of "member" has been amended to clarify that a member must hold a membership and either receive utility service from the water supply or sewer service corporation (WSC) or be a record owner of property in the area served by the WSC. The definition of "water and sewer utility" has been amended to include an "affected county." The definition of "water supply or sewer service corporation" has been amended to clarify the requirements necessary to be considered a member-owned, member-controlled water supply or sewer service corporation.

Section 291.5, Filing of Document, has been amended to provide an updated name and address for filing applications and documents.

Section 291.6, Signatories to Applicants, has been amended to authorize a county official to sign an application without formal action by the commissioners court each time an application is filed.

Section 291.7, Filing Fees, has been amended for consistency with statutory language.

Section 291.8, Administrative Completeness, has been amended for consistency with statutory language and to clarify that incomplete applications are not deemed to have been filed. Section 291.8 has also been amended to establish time requirements for the proposed effective date for approval of a sale, acquisition, lease, or rental or merger or consolidation (STM) of a water or sewer system required to possess a certificate of convenience and necessity (CCN).

The title of §291.13, Record of Proceeding, has been amended to clarify the contents of that section.

Section 291.14, Emergency Orders, has been amended to include statutory language authorizing the commission to issue an emergency order to appoint a temporary manager under §13.4134 of the Water Code and/or to approve an emergency rate increase under §13.4133 of the Water Code.

Section 291.15, Jurisdiction of Municipality Surrender of Jurisdiction, has been amended to identify which municipalities have surrendered jurisdiction over the rates of utilities operating within their corporate limits to the commission.

Section 291.41, Appeal of Ratemaking Pursuant to the Texas Water Code §13.043, has been amended to conform to statutory language and to clarify who may appeal under Texas Water Code §13.043(g). The word "service" has been inserted before applicant to clarify that it is referring to someone applying for service. Wording has been added to clarify the authority of the executive director to establish an interim charge to be paid by the applicant in order to receive service while

the appeal is being processed, to specify how fees will be paid or reimbursed after a final commission decision, to list additional criteria required by statute to be considered in an appeal and to make commission decisions binding on similarly situated applicants until the WSC's tariff is changed. Section 291.41(h) has been added to clarify the commission's authority to establish interim rates for appeals under §291.41(a),(b) or (f). Section 291.41(i) has been added to include the statutory criteria to be used in establishing rates for appeals under these subsections.

Section 291.71, General Reports, has been amended to clarify its applicability only to water and sewer utilities as defined in §291.3 unless otherwise noted. The reference to initial reporting has been deleted since it applied to reports to be submitted in 1988. Section 291.71 has been amended to clarify that reports are due on the dates specified by the executive director. References to the requirements for contents of annual reports have been consolidated in §291.73. Section 291.71 has also been amended to clarify that the executive director is authorized to act on behalf of the commission in areas related to reporting requirements.

Section 291.72, Financial Records and Reports--Uniform System of Accounts, has been amended to authorize the executive director to specify uniform systems of accounts for utilities. Affected counties operating utilities have been exempted from these requirements.

New §291.73, Water and Sewer Utilities Annual Reports, includes all of the requirements for annual reports, including those previously found in §291.71(e). Counties are exempted from the requirement to file annual reports.

Section 291.75, Management Audits, has been amended to clarify the commission's statutory authority to inquire into the activities of affiliated interests when conducting management audits of utilities and to direct reports to the executive director.

Section 291.76, Regulatory Assessment, has been amended for internal consistency of terms and to correct citations in accordance with statutory changes.

New §291.80 is an applicability provision which has been added to clarify that Subchapter E only applies to water and sewer utilities as defined in §291.3 unless otherwise specified.

Section 291.81, Customer Relations, has been rewritten for clarification and amended to require utilities to maintain a copy of the commission rules, Chapter 291 and §290.38-290.49 at their offices and allow customers to review them on request. Section 291.81 has also been amended to clarify that responses to complaints forwarded to a utility from the commission should be directed to the executive director. Section 291.81(d) has been amended to allow the executive director to allow utilities more flexibility in determining the location of local offices.

Section 291.82, Resolution of Disputes, has been amended for better clarity and to require a customer to cooperate with the utility to resolve a dispute.

Section 291.83, Refusal of Service, has been reorganized and rewritten for better clarity. Section 291.83 clarifies the acceptable grounds for refusal to serve a service applicant and clarifies the commission's longstanding policy for determining when a customer is within a utility's certificated area. Section 291.83 also clarifies that failure to pay standby fees authorized by commission rules is grounds for refusal to serve.

Section 291.84, Service Applicant and Customer Deposit, has been amended to clarify agreements for service between utilities and landlord/tenants. Section 291.84 has been amended to clarify how unclaimed deposits should be handled.

New §291.85, Response to Request for Service by a Retail Public Utility Within Its Certificated Area, allows a retail public utility to require a service request where service has not previously been provided by the property owner. Section 291.85 also clarifies a retail public utility's authority to require easements in certain situations. Section 291.85 delineates the obligations and notice requirements of water supply and sewer service corporations and special utility districts for serving developments within their certificated areas in conformance with statutory language. Appendix A has been added to clarify the minimum public notice requirements.

New §291.86, Service Connections, clarifies that if a developer defaults on an agreement to provide facilities, a utility is not obligated to pay for the facilities to serve a residential customer. Section 291.86 also clarifies what costs a residential applicant can be required to bear and the criteria for determining those costs.

New §291.87, Billing, requires utilities to give state agencies at least 30 days to pay a bill and to limit return check charges approved by the executive director to the actual documentable cost to the utility. Section 291.87 authorizes utilities to charge standby fees to developers under contract or under certain specified conditions if approved by the commission in a rate change application and with proper notice to the developer.

New §291.88, Discontinuance of Service, clarifies the language for notice requirements and recognizes agreements between water and sewer utilities under §13.250 of the Water Code. Section 291.88 also clarifies the agreements and procedures for a retail public water utility disconnecting service to a customer who has failed to pay a bill to another sewer service provider under an agreement or commission order. The definition of physician has been moved from §291.88 to §291.3, Definitions. Section 291.88 incorporates language to allow a utility to charge a reconnect fee when personnel from the utility attempt to disconnect service but are prevented by actions of the customer, and to charge a seasonal reconnect fee if one is included in the approved tariff.

New §291.89, Meters, requires one meter per residence in accordance with commission requirements in 30 TAC Chapter 290. Section 291.89 describes a utility's access to meters and cutoff valves and ability to disconnect

when access is denied by a customer. It also establishes procedures for meter tests requested by a customer and clarifies the technical requirements for meter testing.

New §291.90, Continuity of Service, incorporates the former §291.89 and eliminates reporting requirements.

Section 291.91, Applicability, has been amended to clarify that it applies to all retail public utilities which possess or are required to possess a CCN. "Retail Public" has been incorporated throughout the section for clarity. Throughout the sections wording has been amended for better clarity.

Section 291.92 has been amended to clarify that utilities operating within the corporate limits of a municipality must comply with commission rules for rates, records and reporting and customer service and quality of service unless the municipality adopts its own rules.

Section 291.93 has been amended to clarify that the executive director may authorize temporary water rationing approaches different from a plan previously adopted by a utility when necessary. Section 291.93 has also been amended to conform to current statutory requirements when a utility has reached 85% of its rated capacity and to specify the type of report to be filed. Section 291.93 has been amended to clarify that a utility or water supply corporation exempted from the requirements to possess a CCN under §13.242 of the Water Code may still be required to meet minimum criteria for quality and quantity of water produced and sold to customers.

Section 291.94 has been amended to clarify that retail public utilities providing sewer service and possessing CCNs must plan and furnish adequate facilities to meet the commission's minimum criteria and to clarify the definition of sewer service.

New §291.101, Certificates Required, establishes when a certificate of convenience is required and includes the new statutory requirement that a utility operated by an affected county must possess a CCN. Section 291.101 also clarifies that systems with less than 15 connections that are authorized by rule to operate without a CCN may not operate within the CCN area of another retail public utility without written consent.

New §291.102, Criteria for Considering and Granting Certificates or Amendments, sets forth such criteria.

Section 291.103 has been renamed "Certificates Not Required" and amended to incorporate the former paragraphs (2) and (3) of §291.105. The section is now devoted to situations when CCNs are not required and the heading and language have been reworded accordingly. Section 291.103 has been amended to add paragraphs (c) and (d) to implement the permissive authority of §13.242(c) of the Water Code to allow a municipality that has given notice of its intent to serve an area under §13.255 of the Water Code, paragraph (c), and systems with less than 15 potential connections, paragraph (d), to provide service without a CCN, and sets out requirements for service quality and rate changes.

Section 291.104, Applicant, has been amended to clarify who may file an application.

New §291.105, Contents of Certificate of Convenience and Necessity Applications, formerly §291.106, reduces the level of detail required for CCN applications and maps unless specifically requested in the application form and requires disclosure of affiliated interests in applications.

New §291.106, Notice for Applications for Certificates of Convenience and Necessity, formerly §291.107 relates to notice requirements of an application for issuance or amendment of a CCN.

New §291.107, Action on Applications, formerly §291.108 relates to action on applications and has been amended to reflect the statutory authority of the executive director to act on and issue CCNs on uncontested applications.

New §291.108, Corrections to Certificates of Convenience and Necessity, relates to corrections to CCNs. Section 291.108 clarifies that a CCN can be reissued to reflect a change in corporate name only without the necessity of a formal application.

New §291.109, Report of Sale, Merger, or Consolidation, relates to reports of sales and mergers. Section 291.109 also incorporates the wording and requirements of the current statute and clarifies some of the criteria under which the executive director may request a hearing based on the provisions of §13.246 of the code.

New §291.110, Foreclosure and Bankruptcy, relates to foreclosures and bankruptcy. Section 291.110 incorporates the wording and requirements of the current statute relating to foreclosures and bankruptcy. Section 291.110 also clarifies that a person foreclosing on a utility other than a financial institution is not authorized to charge and collect rates for service provided unless the person files an application with the commission to obtain or transfer a CCN within 30 days after the foreclosure is completed. Provisions are also included dealing with notice required and the conditions under which a financial institution can operate a utility after a foreclosure.

New §291.111, Purchase of Voting Stock in Another Utility, relates to the purchase of voting stock and the requirements of the current statute for stock transactions.

New §291.112, Transfer of Certificate of Convenience and Necessity, relates to transfers of CCNs and incorporates the wording and requirements of the current statute.

New §291.113, Revocation or Amendment of Certificate, relates to revocations or amendments of CCNs.

New §291.114, Requirement to Provide Continuous and Adequate Service, relates to the requirement to provide continuous and adequate service. Section 291.114 also incorporates current statutory language allowing a water service provider to terminate service to a customer for nonpayment of a sewer bill due to another service provider under an agreement.

New §291 115, Cessation of Operations by a Retail Public Utility, deals with cessation of service. This section incorporates the wording and requirements of the current statute relating to persons who are required to possess a CCN or utilities with less than 15 connections. This section also requires publication of notice in addition to mailed notice only when deemed necessary by the executive director or the commission. This section also clarifies the criteria the commission will use to determine whether to allow a utility to cease operations, and incorporates current statutory language authorizing appointment of a temporary manager when a utility abandons a system.

New §291 116, Exclusiveness of Certificates, formerly §291 115, relates to the exclusiveness of a CCN.

New §291 118, Contents of Request for Commission Order Under the Texas Water Code, §13 252, formerly §291 117, relates to the contents of a request for commission order.

New §291 119, Filing of Maps, formerly §291 118, relates to the filing of maps with the commission.

Section 291 121, General Rules, is amended to update references to the former Texas Water Commission.

Section 291 122, Definitions, is amended to update references to the former Texas Water Commission.

Section 291 123, Records and Reports, is amended to delete outdated time frames relating to registration of utility submetering or billing for nonsubmetered master metered service.

Section 291 125, Billing, is amended to clarify that certain decisions will be made by the executive director rather than the commission.

Section 291 127, Submeters, is amended to clarify that certain decisions will be made by the executive director rather than the commission and provides flexibility for the executive director to approve alternate procedures and testing when justified.

New §291 141, Supervision of Certain Utilities, implements the authority provided by recent legislation which authorizes the commission to place a utility under supervision.

New §291.142, Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver, implements the authority provided by recent legislation which authorizes the commission to appoint a temporary manager to operate a utility that has been abandoned or is being referred to the attorney general for the appointment of a receiver. It outlines actions which may lead to the commission placing the utility under supervision or referring the utility to the attorney general for receivership and in the interim naming a temporary manager.

New §291 143, Operation of a Utility by a Temporary Manager, outlines the duties and responsibilities of the temporary manager.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that, for the first five years these sections as proposed

are in effect, there will be fiscal implications as a result of enforcement and administration of these sections. No significant fiscal implications for state government are anticipated. A slight reduction in cost is anticipated due to fewer applications being filed by utilities and water supply corporations with less than 15 potential service connections which are no longer required to have CCNs. This small decrease in cost will be offset by an increase in costs related to an anticipated increase in requests from utility service providers for pass-through rate adjustment to recover costs for sampling and inspection fees. The net effect on state government will be negligible. A significant number of the utilities subject to these sections are units of local government. The fiscal implications for local governments will be similar to those anticipated for any similar utility service provider. Small businesses are also affected by the proposed sections. The fiscal effects on privately-owned utilities will also vary with the size and site-specific conditions of each individual system. Generally, the smallest systems will realize a reduction in cost due to the elimination of regulatory requirements for systems of less than 15 connections.

The effects anticipated for regulated utility service providers include potential cost savings. The elimination of unnecessary reporting and filing requirements as well as simpler, more clear service rules should reduce costs currently incurred. Simplified procedures for recovering increased costs to comply with regulatory requirements for sampling and inspection fees and miscellaneous service fees should result in revenue enhancements or improved cost savings. The positive financial benefit will vary based on the size of the utility and the changes in other operational expenses which determine the necessity for changing rates. Under the existing rules, each rate change required an application filing fee ranging from \$50 to \$500 plus the cost of preparing a rate change application at a typical cost of between \$50 to \$2,500. In addition, those utilities that choose to operate under the partial exemption for utilities with less than 15 potential connections should experience significant regulatory cost savings as compared to revenues. Application fee savings range from \$50 to \$100 plus the cost of preparing applications of up to \$500.

Mr. Minick also has determined that, for the first five years these sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with these sections will be more cost-effective regulation of water utility service providers and utility systems, potentially lower water utility rates due to reduced regulatory requirements for service providers, and improved delivery of services by providers to water utility customers. There are no anticipated costs to any person required to comply with these sections as proposed not identified above.

A public hearing on the proposal will be held on Tuesday, September 5, 1995, at 10:00 a.m. in Room 254S of TNRCC Building E, located at 12124 North IH-35, Park 35 Technology Center, Austin, Texas. 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 on the proposal should mention Rule Log Number 95005-291-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, Post Office Box 13087, Austin, Texas 78711-3087, (512) 239-4640. 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 Steve Blackhurst at (512) 239-6960.

## Subchapter A. General Provisions

### • 30 TAC §§291.3, 291.5-291.8, 291.13-291.15

The amendments are proposed under House Bill 827, 72nd Legislature, 1991, Senate Bill 2, Special Session, August 1991, House Bill 2677, 73rd Legislature, 1993, and House Bills 1001, and 2387, 74th Legislature, 1995, which in pertinent part amended the Texas Water Code, Chapter 13; and under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

There are no other rules, codes or statutes that will be affected by this proposal.

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

#### Affected County—A county:

(A) that has a per capita income that averaged 25% below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25% above the state average for the most recent three consecutive years for which statistics are available; and

(B) any part of which is within 50 miles of an international border.

**Billing period**—The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

**Member**—A person who holds [holding] a membership in a water supply or sewer service corporation and who either receives water or sewer utility service from the corporation or [who] is a record



owner of a fee simple title to property in an area served by a water supply or sewer service corporation. [The term does not include a person or entity that holds an interest in property solely as security for the performance of an obligation, or that only builds on or develops the property for sale to others.] In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns

**Membership fee**—A fee assessed each water supply or sewer service corporation service applicant which entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed pursuant to said bylaws. The fee should not exceed approximately 12 times the monthly base rate for water or sewer service. The membership fee shall not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees or contributions in aid of construction [construction].

**Physician**—Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

**Point of use or point of ultimate use**—The primary location where water is used or sewage is generated; for example a residence or commercial or industrial facility.

**Standby fee**—A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

**Water and sewer utility**—Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation[.], but does not include any person or corporation not otherwise a public utility

that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

**Water supply or sewer service corporation**—Any nonprofit, member-owned, member-controlled corporation organized and operating under Chapter 76, Acts of the 43rd Legislature, First Called Session, 1933 (Texas Civil Statutes, Article 1434a) that provides potable water or sewer service for compensation. **The term does not include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. To qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions:**

(A) all members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested;

(B) each member is entitled to only one vote regardless of the number of memberships owned by that member;

(C) a [A] majority of the directors and officers of the corporation must be members of the corporation; and

(D) the corporation's bylaws include language indicating the factors specified in subparagraphs (A)-(C) are in effect.

#### §291.5. Filing of Documents.

(a) Filing with commission. All documents relating to any proceeding pending or to be instituted before the commission shall be filed with the commission unless admitted as part of the record in a hearing. Unless otherwise provided in this chapter, an original and four [three] copies shall be filed. Except as provided in §291.3 of this title (relating to Administrative Completeness), documents shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or commission rules.

(b) Where to file. All filings and other communications with the commission pursuant to this chapter shall be delivered to the **Utility Rates and Services [Rates] Section, Water Utilities Division, Texas Natural Resource Conservation [Water] Commission**, [1700 North Congress Avenue.] P.O. Box 13087, Austin, Texas 78711-3087.

#### §291.6. Signatories to Applications.

(a) All applications shall be signed by a corporate officer, partner, proprietor, their attorney-at-law, or the principal executive officer or ranking elected official of a governmental entity or other person having representative capacity to transact business on behalf of the retail public utility. If the signor is not a corporate officer, partner, proprietor, their attorney-at-law, or principal executive officer or ranking elected official of a governmental entity, the application must contain written proof that such signature is duly authorized

(b) Applications shall contain a certification stating that the person signing has personally examined and is familiar with the information submitted in the application and that the information is true, accurate, and complete.

§291.7. Filing Fees. Each application, petition, or complaint which is intended to institute a proceeding before the commission shall be accompanied by the appropriate filing fee as required by the Texas Water Code, §5.235 and §13.4521, and costs of mailing notice, if any.

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

(3) An application for sale, assignment, or lease of a certificate of convenience and necessity under the Texas Water Code, §13.251, or notice of intent to sell, acquire [assign], lease, or rent or merge or consolidate a water or sewer system under the Texas Water Code, §13.301, must be accompanied by the appropriate fee as follows (one fee will suffice for both applications).

(A)-(D) (No change)

(4) (No change)

#### §291.8 Administrative Completeness

(a) Notice of rate/tariff change, report of sale, acquisition, lease or rental or merger or consolidation, and sale, assignment of, or lease of a certificate, and applications for certificates of convenience and necessity shall be reviewed by the staff for administrative completeness within ten working days of receipt of the application. A notice or an application for rate/tariff change, report of sale, acquisition, lease

or rental or merger or consolidation, and applications for certificates of convenience and necessity shall not be deemed to have been filed until a determination of administrative completeness is made. Upon determination that the notice or application is administratively complete, the executive director will notify the applicant by mail of that determination. If the executive director determines that material deficiencies exist in any pleadings, statement of intent, applications, or other requests for commission action addressed by this chapter, the notice or application may be rejected and the effective date suspended until the deficiencies are corrected.

(b) (No change.)

(c) In cases involving a proposed sale, acquisition, lease, or rental or merger or consolidation of any water or sewer system required by law to possess a certificate of convenience and necessity, the proposed effective date of the transaction must be at least 120 days after the date that an application is received by the commission and public notice is provided, unless notice is waived for good cause shown.

*§291.13. Record of Proceeding [;Right to Hearing].* A record shall be kept of all proceedings before the regulatory authority, unless all parties waive the keeping of the record.

*§291.14. Emergency Orders.*

(a) The commission may issue emergency orders, with or without a hearing:

(1) (No change.)

(2) to compel a retail public utility to provide an emergency interconnection with a neighboring retail public utility for the provision of temporary water or sewer service, or both, for not more than 90 days if service discontinuance or serious impairment in service is imminent or has occurred; [, and/or.]

(3) to establish reasonable compensation for the temporary service required under subsection (a)(2) of this section and may allow the retail public utility receiving the service to make a temporary adjustment to its rate structure to ensure proper payment;

(4) to appoint a temporary manager under the Texas Water Code, §13.4134; and/or

(5) to approve an emergency rate increase under the Code, §13.4133.

(b) (No change.)

*§291.15. Jurisdiction of Municipality: Surrender of Jurisdiction.*

(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(b) The City of Coffee City municipality surrendered its jurisdiction to the commission effective December 4, 1993.

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

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

TRD-9509816 Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640



**Subchapter C. Ratemaking Appeals**

**• 30 TAC §291.41**

The amendment is proposed under Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

*§291.41 Appeal of Ratemaking Pursuant to the Texas Water Code, §13.043.*

(a) (No change.)

(b) An appeal under the Texas Water Code, §13.043(b) must be initiated within 90[120] days after the effective day of the rate change or, if appealing under subdivision 13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing an original and four

copies of a petition for review with the commission and by filing a copy of the petition with the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service [not less than 30 days prior to filing with the commission]. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) a nonprofit water supply or sewer service corporation created and operating under Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 ([Texas Civil Statutes,] Article 1434a, Vernon's Texas Civil Statutes);

(2) (No change.)

(3) a municipally owned utility, if the ratepayers reside outside the corporate limits of the municipality; [and]

(4) a district or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, that provides water or sewer service to household users; and

(5) a utility owned by an affected county, if the ratepayer's rates are actually or may be adversely affected. For the purposes of this subchapter, ratepayers who reside outside the boundaries of the district or authority shall be considered a separate class from ratepayers who reside inside those boundaries.

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

(f) A retail public utility that receives water or sewer service from another retail public utility or political subdivision of the state, including an affected county, may appeal to the commission, a decision of the provider of water or sewer service affecting the amount paid for water or sewer service. An appeal under this subsection must be initiated within 90 days after notice of the decision is received from the provider of the service by filing a petition by the retail public utility and accompanied by the filing fee as required by the Texas Water Code, §5.235.

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under Texas Water Code, §13.043(g)

must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation [corporation's decision] affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service. The appeal must be accompanied by a \$100 filing fee as required by the Texas Water Code, §5 235.

(1) The executive director may, if requested by the applicant, establish an interim charge for connecting service. If the applicant pays the charges determined by the executive director, the corporation or affected county shall provide service to the applicant pending final disposition of the appeal.

(2) If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant which exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.

(3) In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(4) A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the executive director or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received

by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility.

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

Issued in Austin, Texas, on August 7, 1995

TRD-9509818

Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call (512) 239-4640

#### Subchapter D. Records and Reports

##### • 30 TAC §§291.71-291.73, 291.75, 291.76

The amendments and new section are proposed under the Texas Water Code, Chapter 13, and under the Texas Water Code, §§5 103, 5.105, and 13 041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services

##### §291 71 General Reports

(a) Who shall file The recordkeeping, reporting, and filing requirements listed in this section shall apply only to [all] water and sewer utilities, unless otherwise noted in this subchapter of this chapter [operating in the State of Texas to the extent authorized by the Texas Water Code (the code), Chapter 13]

[(b) Initial reporting Periodic reporting shall commence with an initial filing, unless otherwise specified in this subchapter, such that the initial annual report shall reflect the transactions and condition of the utility for the most recent fiscal quarter ending on or prior to January 1, 1988. All initial reports shall, unless otherwise specified in this section, be filed within 90 days of this date or after issuance of commission instructions or forms]

(b)[(c)] Report attestation All reports submitted to the commission shall be attested to by an officer or manager of the utility under whose direction the report is prepared, or if under trust or receivership,

by the receiver or a duly authorized person, or if not incorporated, by the proprietor, manager, superintendent, or other official in responsible charge of the utility's operation

(c) [(d)] Due dates of reports All reports must be received by the commission on or before [the following due dates unless otherwise specified in this subchapter.

[(1) annual service and financial reports-on or before] the dates specified by the executive director.[.]

[(2) special or additional reports-as may be prescribed by the commission.

[(e) Contents of report. The annual report shall be submitted on forms prescribed by the commission and shall disclose the information required on the forms and may include.

[(1) the rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility,

[(2) rules and regulations relating to or affecting the rates, utility service, product or commodity furnished by the utility,

[(3) all ownership and management relationships among the utility and other entities, including individuals;

[(4) all transactions with affiliates, including, but not limited to, payments for costs of any services, interest expense, or for any property, right, or thing,

[(5) information on receipts and disbursements of revenues,

[(6) all payments of compensation (other than salary or wages subject to the withholding of federal income tax) for legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and

[(7) a verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence district, for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts

[(f) Gross receipts assessment reporting. All utilities subject to the requirements of the Texas Water Code, §§13.451-13.453, shall file a gross receipts assessment report with the state comptroller reflecting those gross receipts subject to the assessment stipulated in the Code on a form prescribed by the state comptroller. These reports shall be required on an annual basis for those companies that have elected to remit their assessment annually and on a quarterly basis for those companies that have elected to remit their assessment quarterly. Such reports and assessments shall be remitted in accordance with the Texas Water Code, §§13.451-13.453.]

(d)[(g)] Information omitted from reports. The commission or the executive director may waive the reporting of any information required in this subchapter if it determines that it is either impractical or unduly burdensome on any utility to furnish the requested information. If any such information is omitted by permission of the commission or the executive director, a written explanation of the omission must be stated in the report.

(e)[(h)] Special and additional reports. Each utility shall report on forms prescribed by the commission or the executive director special and additional information as requested which relates to the operation of the business of the utility.

(f)[(i)] Report amendments. Corrections of reports resulting from new information or errors shall be filed on a form prescribed by the commission or the executive director.

(g)[(j)] Penalty for refusal to file on time. In addition to penalties prescribed by law, the commission may disallow for rate making purposes the costs related to the activities for which information was requested and not timely filed.

**§291.72. Financial Records and Reports—Uniform System of Accounts.** Every public utility, except a utility operated by an affected county, shall keep uniform accounts as prescribed by the commission of all business transacted. The classification of utilities, index of accounts, definitions, and general instructions pertaining to each uniform system of accounts, as amended from time to time, shall be adhered to at all times, unless provided otherwise by these sections or by rules of a federal regulatory body having jurisdiction over the utility, or unless specifically permitted by the executive director [commission].

(1) (No change.)

(2) System of accounts. For the purpose of accounting and reporting to the commission, each public water and/or sewer utility shall maintain its books and records in accordance with the following prescribed uniform system of accounts:

(A) Class A—[commission-approved] system of accounts approved by the executive director which [as] will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class A utilities;

(B) Class B—[commission-approved] system of accounts approved by the executive director which [as] will be

adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class B utilities;

(C) Class C—[commission-approved] system of accounts approved by the executive director which [as] will be adequately informative for all regulatory purposes or uniform system of accounts as adopted and amended by the National Association of Regulatory Utility Commissioners for Class C utilities.

(3) (No change.)

**§291.73. Water and Sewer Utilities Annual Reports.**

(a) Each utility, except a utility operated by an affected county, shall file a service and financial report by April 1 of each year unless otherwise specified in a form prescribed by the executive director.

(b) Contents of report. The annual report shall disclose the information required on the forms and may include:

(1) the rates that are subject to the original or appellate jurisdiction of the commission for any service, product, or commodity offered by the utility;

(2) rules and regulations relating to or affecting the rates, utility service, product or commodity furnished by the utility;

(3) all ownership and management relationships among the utility and other entities, including individuals, with which the utility has had financial transactions during the reporting period;

(4) all transactions with affiliates, including, but not limited to, payments for costs of any services, interest expense, or for any property, right, or thing;

(5) information on receipts and disbursements of revenues;

(6) all payments of compensation (other than salary or wages subject to the withholding of federal income tax) for legislative matters in Texas or for representation before the Texas Legislature or any governmental agency or body; and

(7) a verified or certified copy of the appropriate permit, issued by the conservation, reclamation, or subsidence district, for each utility which withdraws groundwater from conservation, reclamation, or subsidence districts.

**§291.75. Management Audits.** The commission may inquire into the management and affairs of all utilities and the affiliated interests of those utilities in order to keep

itself informed as to the manner and method in which they are conducted and may obtain all information to enable it to perform management audits. The utility and, if applicable, the affiliated interest shall report to the executive director [commission] on the status of the implementation of the recommendations of the audit and shall file subsequent reports at the times the executive director [commission] considers appropriate.

**§291.76. Regulatory Assessment.**

(a) For the purpose of this section, utility service provider means a public utility, water supply [corporation] or sewer service corporation as defined in the Water Code, §13.002, or a district as defined in the Water Code, §49.001 [§50.001].

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

(d) Amounts payable to the commission shall be based on the following:

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

(3) for a [water] district as defined in the Water Code, §49.001 [§50.001], 0.5% of the charge for retail water and sewer service.

(e)-(n) (No change.)

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

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

TRD-9509819 Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640

## Subchapter D. Records and Reports

### • 30 TAC §291.73

(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 Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Water Code, §§5.103, 5.105, and 13.041, which provide the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.73. *Water and Sewer Utilities Annual Reports.*

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

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

TRD-9509820

Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640

◆ ◆ ◆  
Subchapter E. Customer Service and Protection

• 30 TAC §§291.80-291.90

The new sections and amendments are proposed under the Texas Water Code, Chapter 13; and under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

◆ ◆ ◆  
§291.80. *Applicability.* Unless otherwise noted, this subchapter is applicable only to "water and sewer utilities" as defined under Subchapter A of this Chapter (relating to General Provisions).

§291.81. *Customer Relations.*

(a) Information to customers.

(1) Upon receipt of a request for service or service transfer, the utility shall fully inform the service applicant or customer of the cost of initiating or transferring service. The utility shall clearly inform the service applicant which service initiation costs will be borne by the utility and which costs are to be paid by the service applicant. The utility shall inform the service applicant if any cost information is estimated. Also see §291.85 of this title (relating to Response to Requests for Service by a Retail Public Utility Within Its Certificated Area). [Upon request for service by an applicant or for transfer of service by a customer, the utility shall fully inform the customer of the cost of initiating or transferring service and, upon request shall furnish a copy of the rate schedule from its approved tariff. The utility shall clearly inform the applicant of which service initiation costs will be borne by the utility and which costs are the responsibility of the applicant. Where information about costs is estimated, the utility shall so inform the applicant.]

(2) Upon request, the utility shall provide the customer or service applicant with a free copy of the applicable rate schedule from its approved tariff. A complete copy of the utility's approved tariff shall be available at its local office for review by a customer or service applicant upon request.

(3)[(2)] Each utility shall maintain a current set of maps showing the physical locations of its facilities. All facilities (production, transmission, distribution or collection lines, treatment plants, etc.) shall be labeled to indicate the size, design capacity, and any pertinent information which will accurately describe the utility's facilities. These maps, and such other maps as may be required by the commission, shall be kept by the utility in a central location and will be available for commission inspection during normal working hours.

(4) Each utility shall maintain a current copy of the commission's substantive rules, Chapter 291 of this title (relating to Water Rates) at each office location and make them available for customer inspection during normal working hours.

(5) Each water utility shall maintain a current copy of the commission's "Rules and Regulations for Public Water Systems," §§290.38-290.49 of this title (relating to Water Hygiene), at each office location and make them available for customer inspection during normal working hours.

(b) Customer complaints. Customer complaints are also addressed in §291.82 of this title (relating to Resolution of Disputes).

(1) Upon receipt of a complaint from a customer or service applicant, either in person, by letter or by telephone, the utility shall promptly conduct an investigation and report its finding(s) to the complainant. [Upon complaint to the utility by a customer or applicant for service either in person, at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof.]

(2) In the event the complainant is dissatisfied with the utility's report, the utility must advise the complainant of their [that he has] recourse through [in] the Texas Natural Resource Conservation[Water] Commission complaint process, and that such process can be initiated by contacting the Consumer Assistance [Relations] Coordinator, Water Utilities Division, Texas Natural Resource Conservation [Water] Commission, P.O. Box 13087, Austin, Texas 78711-3087. The commission

encourages all complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(3) Each utility shall make an initial response to the executive director within 15 days of receipt of a complaint from the commission on behalf of a customer or service applicant [for service]. The commission or the executive director may require a utility to provide a written response to the complainant, to the commission, or both. Pending resolution of a complaint, the commission or the executive director may require continuation or restoration of service.

(4) The utility shall keep a record of all complaints for a period of two years following the final settlement of each complaint. The record of complaint shall include the name and address of the complainant, the date the complaint was received by the utility, a description of the nature of the complaint, and the adjustment or disposition of the complaint. [The utility is required to keep a record of all complaints which shows the name and address of the complainant, the date and nature of the complaint and the adjustment or disposition thereof, for a period of two years subsequent to the final settlement of the complaint.]

(c) Telephone number. For each of the systems it operates, the [The] utility must maintain and note on the customer's monthly bill either [billing] a local or toll free telephone number (or numbers) to which a customer can direct questions about their utility service [which may be reached by a local call by customers of each of the systems it operates. At the utility's option, a toll-free telephone number or the equivalent may be provided].

(d) Local office. Unless authorized by the executive director pursuant to a written request, each [Each] utility shall have an office in the county or immediate area (within 20 miles) of a portion of its utility service area in which it keeps all books, records, tariffs, and memoranda required by the commission and at which it will accept customer payments or applications for service. Unless authorized by the executive director pursuant to a written request [Additionally], each utility shall make available and notify customers of a location within 20 miles of each of its utility service facilities where payments can be made to restore service after disconnection for nonpayment, nonuse or other reasons specified in §291. 88 [§291.87] of this title (relating to Discontinuance of Service).

§291.82. *Resolution of Disputes.* Any customer or service applicant [for service] requesting the opportunity to dispute any

action or determination of a utility under the utility's customer service rules [of the commission] shall be given an opportunity for a review by the utility. If the utility is unable to provide a review immediately following the customer's request, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. The commission may require continuation or restoration of service pending resolution of a complaint. If the customer will not allow an inspection or chooses not to participate in such review or chooses not to make arrangements for such review to take place within five working days after requesting it, the utility [company] may disconnect service for the reasons listed in §291.88 of this title (relating to Discontinuance of Service), provided [providing] notice has been given in accordance with that subsection [standard disconnect procedures].

#### §291.83. Refusal of Service.

(a) **Grounds for refusal to serve.** A utility may decline to serve a service applicant for the following reasons: [Compliance by applicant. An applicant for service must be in compliance with state and municipal regulations applicable to the type of service applied for and approved rules and regulations of the utility governing the service applied for which are on file with the commission. A utility may decline to serve an applicant which fails to be in compliance or for the following reasons:]

(1) the service applicant is not in compliance with state or municipal regulations applicable to the type of service requested; [if the applicant's installation or equipment is known to be inadequate or of such character that satisfactory service cannot be given;]

(2) the service applicant is not in compliance with the rules and regulations of the utility governing the type of service requested which are in its approved tariff on file with the commission; [if the applicant is indebted to any utility for the same kind of service as that applied for. However, in the event of indebtedness of the applicant is in dispute, the applicant shall be served upon complying with the deposit requirements in §291.84 of this title (relating to Applicant and Customer Deposit); or]

(3) the service applicant is indebted to any utility for the same type of service as that requested [applied for]. However, in the event the indebtedness of the service applicant is in dispute, the service applicant shall be served upon complying with the deposit requirements in §291.84 of this title (relating to the Service Applicant and Customer Deposit); [for refusal to make a deposit if applicant is re-

quired to make a deposit under these sections];

(4) the service applicant's primary point of use is outside the certificated area;

(5) standby fees authorized under §291.87(o) of this title (relating to Billing) have not been paid for the specific property or lot on which service is being requested; or

(6) the utility is prohibited from providing service under Vernon's Texas Civil Statutes, Local Government Code, §212.012 or §232.029

(b) **Service Applicant's recourse.** In the event [that] the utility refuses [shall refuse] to serve a service [an] applicant under the provisions of these sections, the utility shall [must] inform the service applicant in writing of the basis of its refusal and that the service applicant may file a complaint with the commission thereon.

(c) **Insufficient grounds for refusal to serve.** The following shall not constitute sufficient cause for refusal of service to a present customer or service applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) failure to pay a bill to correct previous underbilling due to misapplication of rates more than six months prior to the date of application;]

(3)[(3)] violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules;

(4)[(4)] failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;

(5)[(5)] failure to pay the bill of another customer at the same address except where a [the] change of customer identity is made to avoid or evade payment of a utility bill;

(6)[(6)] failure to pay for the restoration of a tap removed by the utility at its option or removed as the result of tampering or delinquency in payment by a previous customer; or

(7)[(7)] failure to comply with regulations or rules for anything other than the type of utility service specifically requested including failure to comply with septic tank regulations or sewer hook-up requirements.

(8) failure to pay standby fees.]

#### §291.84. Service Applicant and Customer Deposit.

(a) **Deposit on Tariff.** [Deposit policy:] Deposits may only be charged if listed on the utility's approved tariff.

(1) **Residential service applicants.** If a residential service applicant does not establish credit to the satisfaction of the utility, the residential service applicant may [can] be required to pay a deposit that does not exceed \$50 for water service and \$50 for sewer service.

(2) **Commercial and Nonresidential service applicants.** If a commercial or nonresidential service [an] applicant [for nonresidential service] does not establish credit to the satisfaction of the utility, the service applicant may be required to make a deposit. The required deposit shall not exceed an amount equivalent to one-sixth of the estimated annual billings. [If actual billings of a nonresidential customer are at least twice the amount of the estimated billings, a new deposit requirement may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.]

(3) **Commercial and Nonresidential Customers.** If actual monthly billings of a commercial or nonresidential customer are more than twice the amount of the estimated billings at the time service was established, a new deposit amount may be calculated and an additional deposit may be required to be made within 15 days after the issuance of written notice.

(b)[(3)] **Customers not disconnected.** Current customers who have not been disconnected for nonpayment or other similar reasons in §291.88 [§291.87] of this title (relating to Discontinuance of Service) shall [may] not be required to pay a deposit.

(c)[(b)] **Applicants 65 years of age or older.** No [cash] deposit may be required of a [applicants for permanent] residential service applicant who is [are] 65 years of age or older if the [such] applicant does not have a delinquent [an outstanding] account balance with the utility or another water or sewer utility [which accrued within the last two years].

(d)[(c)] **Interest[s] on deposits.** Each utility shall pay a minimum interest on all customer [such] deposits at an annual rate at least equal to a rate set each calendar year by the Public Utility Commission of Texas in accordance with the provisions of Texas Civil Statutes, Article 1440a. Payment of the interest to the customer shall be made annually if requested by the customer, or at the time the deposit is returned or credited to the customer's account. Inquiries

about the appropriate interest rate to be paid each year a deposit is held [current interest rate] may be directed to the Water Utilities Division of the commission [Texas Water Commission].

(e)[(d)] Landlords/tenants. In cases of landlord/tenant relationships, the utility may require both parties [each party] to sign an agreement specifying which party [who] is responsible for bills and deposits. This agreement may be included as a provision of the utility's approved service application form. The utility shall not require the landlord to guarantee the tenant's customer deposit or monthly service bill as a condition of service. The utility may require the landlord to guarantee the payment of service extension fees under the utility's approved tariff if these facilities will remain in public service after the tenant vacates the leased premises. If the landlord signs a guarantee of payment for deposits or monthly service bills, the guarantee shall remain in full force and effect until the guarantee is withdrawn in writing and copies are provided to both the utility and the tenant.

(f)[(e)] Reestablishment of credit or deposit. Every service applicant who has previously been a customer of the utility and whose service has been discontinued for nonpayment of bills, meter tampering, bypassing of meter or failure to comply with applicable state and municipal regulations or regulations of the utility shall be required, before service is resumed, to pay all amounts due the utility or execute a deferred payment agreement, if offered, and may be required to pay a deposit[,] if the utility does not currently have a deposit from the customer. The burden shall be on the utility to prove the amount of utility service received but not paid for and the reasonableness of any charges for such unpaid service, as well as all other elements of any bill required to be paid as a condition of service restoration.

(g)[(f)] Records of deposits.

(1) The utility shall keep records to show:

(A) the name and address of each depositor;

(B) the amount and date of the deposit;

(C) each transaction concerning the deposit; and

(D) the amount of interest earned on customer deposit funds.

(2) The utility shall issue a receipt of deposit to each service applicant or

customer from whom a deposit is received [and shall provide means whereby a depositor may establish a claim if the receipt is lost].

(3) A record of each unclaimed deposit shall [must] be maintained for at least seven [four] years, during which time the utility shall make a reasonable effort to return the deposit or may transfer the unclaimed deposit to the State Treasurer. If not already transferred, after seven years, unclaimed deposits shall be transferred to the State Treasurer.

(h) [(g)] Refund of deposit.

(1) If service is not connected, or after disconnection of service, the utility shall promptly and automatically refund the service applicant's or customer's deposit plus accrued interest or the balance, if any, in excess of the unpaid bills for service furnished. The utility may refund deposits plus accumulated interest at any time prior to termination of utility service. The utility's policy for refunds to current customers must be consistent and non-discriminatory.

(2) When a residential customer has paid bills for service for 18 consecutive billings without being delinquent, the utility shall promptly refund the deposit with interest to the customer either by payment or credit to the customer's bill. Deposits from customers who do not meet this criteria may be retained until service is terminated.

(i)[(h)] Transfer of service. A transfer of service from one service location[premise] to another within the service area of the utility shall not be deemed a disconnection within the meaning of this section [these sections], and no additional deposit may be demanded unless permitted by this subchapter [these sections].

*§291.85. Response to Requests for Service by a Retail Public Utility Within Its Certificated Area*

(a) Except as provided for in subsection (e) of this section, every retail public utility shall serve each qualified service applicant within its certificated area as soon as is practical after receiving a completed application. A qualified service applicant is an applicant who has met all of the retail public utility's requirements contained in its tariff, schedule of rates, or service policies and regulations for extension of service including the delivery to the retail public utility of any service connection inspection certificates required by law.

(1) Where a new service tap is required, the retail public utility may require that the property owner make the request for the tap to be installed.

(2) Upon request for service by a service applicant, the retail public utility shall make available and accept a completed written application for service.

(3) Except for good cause, at a location where service has previously been provided the utility must reconnect service within one working day after the applicant has submitted a completed application for service and met any other requirements in the utility's approved tariff.

(4) A request for service that requires a tap but does not require line extensions, construction, or new facilities shall be filled within five working days after a completed service application has been accepted.

(5) If construction is required to fill the order and if it cannot be completed within 30 days, the retail public utility shall provide a written explanation of the construction required and an expected date of service.

(b) Except for good cause shown, the failure to provide service within 30 days of an expected date or within 180 days of the date a completed application was accepted from a qualified applicant may constitute refusal to serve, and may result in the assessment of administrative penalties or revocation of the certificate of convenience and necessity or the granting of a certificate to another retail public utility to serve the applicant.

(c) The cost of extension and any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be provided to the customer in writing upon assessment of the costs of necessary line work, but before construction begins. Also see §291.81(a)(1) of this title (relating to Customer Relations).

(d) Where recorded public utility easements on the service applicant's property do not exist or public road right-of-way easements are not available to access the property of a service applicant, the retail public utility may require the service applicant or land owner to grant a permanent recorded public utility easement dedicated to the retail public utility which will provide a reasonable right of access and use to allow the retail public utility to construct, install, maintain, inspect and test water or sewer plant necessary to serve that applicant. As a condition of service to a new subdivision, retail public utilities may require developers to provide permanent recorded public utility easements to and throughout the subdivision sufficient to construct, install, maintain, inspect, and test water or sewer plant necessary to serve the subdivision's anticipated service demands upon full occupancy.

(e) Service Extensions by a Water Supply or Sewer Service Corporation or Special Utility District.

(1) A water supply or sewer service corporation or a special utility district organized under Chapter 65 of the code is not required to extend retail water or sewer utility service to a service applicant in a subdivision within its certificated area if it documents that:

(A) the developer of the subdivision has failed to comply with the subdivision service extension policy as set forth in the tariff of the corporation or the policies of the special utility district; and

(B) the service applicant purchased the property after the corporation or special utility district gave notice of its rules which are applicable to service to subdivisions in accordance with the notice requirements in this subsection.

(2) Publication of notice, in compliance with the form notice in Appendix A, in a newspaper of general circulation in each county in which the corporation or special utility district is certificated for utility service of the requirement to comply with the subdivision service extension policy constitutes notice under this subsection. The notice must be published once a week for two consecutive weeks on a biennial basis and must contain information describing the subdivision service extension policy of the corporation or special utility district. The corporation or special utility district must be able to provide proof of publication through an affidavit of the publisher of the newspaper that specifies each county in which the newspaper is generally circulated: Figure 1: 30 TAC §290.85(e)(2).

(3) As an alternative to publication of notice, a corporation or special utility district may demonstrate by any reasonable means that a developer has been notified of the requirement to comply with the subdivision service extension policy, including:

(A) an agreement executed by the developer;

(B) correspondence with the developer that sets forth the subdivision service extension policy; or

(C) any other documentation that reasonably establishes that the developer should be aware of the subdivision service extension policy.

(4) For purposes of this subsection:

(A) "Developer" means a person who subdivides land or requests more than two water or sewer service connections on a single contiguous tract of land.

(B) "Service applicant" means a person, other than a developer, who applies for retail water or sewer utility service.

#### §291.86. Service Connections.

##### (a) Water Service Connections.

(1) Tap Fees. The fees for initiation of service, where no service previously existed, shall be in accordance with the following.

(A) The fee charged by a utility for connecting a residential service applicant's premises to the system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.

(B) Whether listed on the utility's approved tariff or not, the tap fee charged for all service connections requiring meters larger than 3/4 inch shall be limited to the actual cost of materials, labor and administrative costs for making the individual service connection and road construction or impact fees charged by authorities with control of road use and a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs.

(C) An additional fee may be charged to a residential service applicant, if stated on the approved tariff, for a tap expense not normally incurred; for example, a road bore for customers outside of subdivisions or residential areas.

(2) Installation and Service Connection.

(A) The utility shall furnish and install, for the purpose of connecting its distribution system to the service applicant's property, the service pipe from its main to the meter location on the service applicant's property. See also §291.86(a)(3) of this title (relating to Source Connections). For all new installations, a utility-owned cut-off valve shall be provided on

the utility side of the meter. Utilities without customer meters shall provide and maintain a cut-off valve on the customer's property as near the property line as possible. This does not relieve the utility of the obligation to comply with §291.89 of this title (relating to Meters).

(B) The service applicant shall be responsible for furnishing and laying the necessary service line from the meter to the place of consumption and shall keep the service line in good repair. For new taps, service applicants may be required to install a customer owned cut-off valve on the customer's side of the meter or connection. Customers who have damaged the utility's cut-off valve or curb stop through unauthorized use or tampering may be required to install a customer owned cut-off valve on the customer's side of the meter or connection within a reasonable timeframe of not less than 30 days if currently connected or prior to restoration of service if the customer has been lawfully disconnected under these rules. The customer's responsibility shall begin at the discharge side of the meter or utility's cut-off valve if there are no meters. If the utility's meter or cut-off valve is not on the customer's property, the customer's responsibility will begin at the property line.

(3) Location of meters. Meters shall be on the customer's property, readily accessible for maintenance and reading and, so far as practicable, the meter shall be at a location mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from damage.

(4) Relocation and conversion of meters. If an existing meter is moved to a location designated by the customer for the customer's convenience, the utility may not be responsible except for negligence. The customer may be charged the actual cost of relocating the meter. If the customer requests that an existing meter be replaced with a meter of another size or capacity, the customer may be charged the actual cost of converting the meter including enlarging the line from the main to the meter if necessary.

##### (b) Sewer Service Connections.

(1) Tap Fees. The fees for initiation of sewer service, where no service previously existed, shall be in accordance with the following:

(A) The fee charged by a utility for connecting a residential service applicant's premises to the sewer system shall be as stated on the approved tariff. In determining the reasonableness of a tap fee, the commission will consider the actual costs of materials, labor, and administrative



costs for such service connections and road construction or impact fees charged by authorities with control of road use if typically incurred and may allow a reasonable estimate of tax liabilities. The commission may limit the tap fee to an amount equal to the average costs incurred by the utility.

(B) The fee charged for all commercial or nonstandard service connections shall be set at the actual cost of materials, labor and administrative costs for making the service connection and road construction or impact fees charged by authorities with control of road use and may include a reasonable estimate of tax liabilities. The service applicant shall be given an itemized statement of the costs

(C) A fee in addition to the standard tap fee may be charged for a new residential service connection which requires expenses not normally incurred if clearly identified on the approved tariff; for example, a road bore for service applicants outside of subdivisions or residential areas.

(D) Tap fees for sewer systems designed to receive effluent from a receiving tank located on the customer's property, whether fed by gravity or pressure into the utility's sewer main, may include charges to install a receiving tank and appurtenances on the customer's property and service line from the tank to the utility's main which meets the minimum standards set by the utility and authorized by the commission. The tank may include grinder pumps, etc. to pump the effluent into the utility's main. Ownership of and maintenance responsibilities for the receiving tank and appurtenances shall be specified in the utility's approved tariff.

(2) Installation and Service Connections.

(A) The utility shall furnish and install, for the purpose of connecting its collection system to the service applicant's service line, the service pipe from its main to a point on the customer's property.

(B) The customer shall be responsible for furnishing and laying the necessary customer service line from the utility's line to the residence.

(3) Maintenance By Customer.

(A) The customer service line and appurtenances installed by the customer shall be constructed in accordance with the laws and regulations of the State of Texas, local plumbing codes, or, in the absence of such local codes, the National Plumbing Code, or other standards as prescribed by the commission.

(B) It shall be the customer's responsibility to maintain the customer service line and any appurtenances which are the customer's responsibility in good operating condition, such as, clear of obstruction, defects, leaks or blockage. If the utility can provide evidence of excessive infiltration or inflow into the customer's service line or failure to provide proper pretreatment, the utility may, with the written approval of the executive director, require that the customer repair the line or eliminate the infiltration or inflow or take such actions necessary to correct the problem. If the customer fails to correct the problem within a reasonable time, the utility may disconnect the service after notice as required under §291.88 of this title (relating to Discontinuance of Service). Less than 10 days notice may be given if authorized by the executive director.

(C) If the customer retains ownership of receiving tanks and appurtenances located on the customer's property under the utility's tariff, routine maintenance and repairs are the customer's responsibility. The utility may require in its approved tariff that parts and equipment meet the minimum standards set by the utility to ensure proper and efficient operation of the sewer system but cannot require that the customer purchase parts or repair service from the utility.

(c) Line extension and construction charges. Each utility shall file its extension policy with the commission as part of its tariff. The policy shall be consistent, non-discriminatory, and subject to the approval of the executive director. No contribution in aid of construction may be required of any service applicant except as provided for in the approved extension policy, or as may be provided for in this subsection if the utility applies the policy consistently and submits tariff revisions to incorporate the provisions of this subsection within 12 months after the effective date.

(1) Contributions in aid of construction shall not be required of individual residential service applicants for production, storage, treatment, or transmission facilities unless that residential customer places unique, non-standard service demands upon the system, in which case, the customer may be charged the additional cost of extending service to and throughout his property, including the cost of all necessary collection or transmission facilities necessary to meet the service demands anticipated to be created by that property.

(2) Developers may be required to provide contributions in aid of construction in amounts sufficient to reimburse the utility for:

(A) existing uncommitted facilities at their original cost if the utility has not previously been reimbursed. A utility is not required to allocate existing uncommitted facilities to a developer for projected development beyond a reasonable planning period; or

(B) additional facilities compliant with the commission's minimum design criteria for facilities used in the production, transmission, pumping, or treatment of water or the commission's minimum design criteria for wastewater collection and treatment facilities and to provide for reasonable local demand requirements. Income tax liabilities which may be incurred due to collection of contributions in aid of construction may be included in extension charges to developers. Additional tax liabilities due to collection of the original tax liability may not be collected unless they can be supported and are specifically noted in the approved extension policy.

(3) For purposes of this subsection, a developer is one who subdivides or requests more than two water service connections or sewer service connections on a single contiguous tract of land.

(d) Cost utilities and service applicants shall bear.

(1) Within its certificated area, a utility shall be required to bear the cost of the first 200 feet of any water main or sewer collection line necessary to extend service to an individual residential service applicant within a platted subdivision unless the utility can document:

(A) that the developer of the subdivision refused to provide facilities compatible with the utility's facilities in accordance with the utility's approved extension policy after receiving a written request from the utility; or

(B) that the developer of the subdivision defaulted on the terms and conditions of a written agreement or contract existing between the utility and the developer regarding payment for services, extensions, or other requirements; or in the event the developer declared bankruptcy and was therefore unable to meet obligations; and

(C) that the residential service applicant purchased the property from the developer after the developer was notified of the need to provide facilities to the utility.

(2) A residential service applicant may be charged the remaining costs of

extending service to his property; provided, however, that the residential service applicant may only be required to pay the cost equivalent to the cost of extending the nearest water main or wastewater collection line, whether or not that line has adequate capacity to serve that residential service applicant. The following criteria shall be considered to determine the residential service applicant's cost for extending service.

(A) The residential service applicant shall not be required to pay for costs of main extensions greater than 2" in diameter for water distribution and pressure wastewater collection lines and 6" in diameter for gravity wastewater lines.

(B) Exceptions may be granted by the executive director if:

(i) adequate service cannot be provided to the applicant using the maximum line sizes listed due to distance or elevation, in which case, it shall be the utility's burden to justify that a larger diameter pipe is required for adequate service;

(ii) larger minimum line sizes are required under subdivision platting requirements or building codes of municipalities whose corporate limits or extraterritorial jurisdiction boundaries the point of use is located; or

(iii) the residential service applicant is located outside the CCN service area.

(C) If an exception is granted, the utility must establish a proportional cost plan for the specific extension or a rebate plan which may be limited to seven years to return the portion of the applicant's costs for oversizing as new customers are added to ensure that future applicants for service on the line pay at least as much as the initial service applicant.

(3) The utility shall bear the cost of any oversizing of water distribution lines or wastewater collection lines necessary to serve other potential service applicants or customers in the immediate area or for fire flow requirements unless an exception is granted under paragraph (2)(B) of this subsection.

(4) For purposes of determining the costs that service applicants shall pay, commercial customers with service demands greater than residential customer demands in the certificated area, industrial, and wholesale customers may be treated as developers. A service applicant requesting a one inch meter for a lawn sprinkler system to service a residential lot is not considered nonstandard service.

(e) Other Fees for Service Applicants. Utilities shall not charge membership fees or application fees.

#### §291.87. Billing

(a) Authorized rates. Bills shall be calculated according to the rates approved by the commission and listed on the utility's approved tariff. Unless specifically authorized by the commission, a utility may not apply a metered rate to customers in a subdivision or geographically defined area unless all customers in the subdivision or geographically defined area are metered.

(b) Due date. The due date of the bill for utility service shall not be less than 16 days after issuance unless the customer is a State Agency. If the customer is a State Agency, the due date for the bill shall be not less than 30 days after issuance unless otherwise agreed to by the State Agency. The postmark on the bill or the recorded date of mailing by the utility if there is no postmark on the bill, shall constitute proof of the date of issuance. Payment for utility service is delinquent if the full payment, including late fees and regulatory assessments, is not received at the utility or at the utility's authorized payment agency by 5:00 p.m. on the due date. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either \$2.00 or 5.0% may be made on delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments which were not delinquent.

(d) Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments. The utility shall offer a deferred payment plan to any residential

customer if the customer's bill is more than three times the average monthly bill for that customer for the previous 12 months and if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers who cannot pay an outstanding bill in full but are willing to pay the balance in reasonable installments. A deferred payment plan may include a finance charge which shall not exceed an annual rate of 10% simple interest. Any finance charges must be clearly stated on the deferred payment agreement.

(e) Rendering and form of bills.

(1) Bills for water and sewer service shall be rendered monthly unless otherwise authorized by the commission, or unless service is terminated before the end of a billing cycle. Service initiated less than one week before the next billing cycle begins may be billed with the following month's bill. Bills shall be rendered as promptly as possible following the reading of meters. One bill shall be rendered for each meter.

(2) The customer's bill shall show all the following information, if applicable, and shall be arranged so as to allow the customer to readily compute the bill with a copy of the applicable rate schedule:

(A) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(B) the number and kind of units metered;

(C) the applicable rate class or code;

(D) the total amount due for water service;

(E) the amount deducted as a credit required by a commission order;

(F) the amount due as a surcharge;

(G) the total amount due on or before the due date of the bill;

(H) the due date of the bill;

(I) the date by which customers must pay the bill in order to avoid addition of a penalty;

(J) the total amount due as penalty for nonpayment within a designated period;

(K) a distinct marking to identify an estimated bill;

(L) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill;

(M) the total amount due for sewer service;

(N) the gallonage used in determining sewer usage;

(O) the local telephone number or toll free number where the utility can be reached.

(3) Charges for nonutility services or any other fee or charge not specifically authorized by the code or these rules or specifically listed on the utility's approved tariff may not be included on the bill.

(f) Charges for sewer service. Utilities are not required to use meters to measure the quantity of sewage disposed of by individual customers. When a sewer utility is operated in conjunction with a water utility which serves the same customer, the charge for sewage disposal service may be based on the consumption of water as registered on the customer's water meter. Where measurement of water consumption is not available, the utility shall use the best means available for determining the quantity of sewage disposal service used. A method of separating customers by class shall be adopted so as to apply rates which will accurately reflect the cost of service to each class of customer.

(g) Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the services being provided to the customer, or if the utility fails to bill the customer for such services, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling shall not exceed six months unless such undercharge is a result of meter tampering, bypass, or diversion by the customer as defined in §291.89 of this title (relating to Meters). If the underbilling is \$25 or more, the utility shall offer to such customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of

meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(h) Estimated bills. When there is good reason for doing so, a water or sewer utility may issue estimated bills, provided that an actual meter reading is taken every two months and appropriate adjustments made to the bills.

(i) Prorated charges for partial-month bills. When a bill is issued for a period of less than one month, charges should be computed as follows.

(1) Metered service. Service shall be billed for the base rate, as shown in the utility's tariff, prorated for the number of days service was provided; plus the volume metered in excess of the prorated volume allowed in the base rate.

(2) Flat-rate service. The charge shall be prorated on the basis of the proportionate part of the period during which service was rendered.

(3) Surcharges. Surcharges approved by the commission do not have to be prorated on the basis of the number of days service was provided.

(j) Prorated charges due to utility service outages. In the event that utility service is interrupted or seriously impaired for more than 24 consecutive hours, the utility shall prorate the base charge to the customer to reflect this loss of service. The base charge to the customer shall be prorated on the basis of the proportionate part of the period during which service was interrupted.

(k) Disputed bills.

(1) A customer may advise a utility that a bill is in dispute by written notice or in person during normal business hours. A dispute must be registered with the utility prior to the date of proposed discontinuance for a customer to avoid discontinuance of service as provided by these sections.

(2) Notwithstanding any other section of this chapter, the customer shall not be required to pay the disputed portion of a bill which exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute. For purposes of this section only, the customer's average monthly usage shall be the average of the customer's usage for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage shall be estimated on the basis of usage levels of similar customers under similar conditions.

(3) Notwithstanding any other section of this chapter, a utility customer's service shall not be subject to discontinu-

ance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute. The customer is obligated to pay any billings not disputed as established in §291.88 of this title (relating to Discontinuance of Service).

(l) Notification of alternative payment programs or payment assistance. Anytime a customer contacts a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall provide information to the customer in English and in Spanish if requested of available alternative payment and payment assistance programs available from the utility and of the eligibility requirements and procedure for applying for each.

(m) Adjusted bills. There shall be a presumption of reasonableness of billing methodology by a sewer utility for winter average billing or by a water utility with regard to a case of meter tampering, bypassing, or other service diversion if any one of the following methods of calculating an adjusted bill is used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills shall be based on at least 12 consecutive months of comparable usage history of that customer, when available, or lesser history if the customer has not been served at that site for 12 months. This subsection, however, does not prohibit utilities from using other methods of calculating bills for unmetered water when the usage of other methods can be shown to be more appropriate in the case in question;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) calculation of bills for unmetered consumption over the entire period of meter bypassing or other service diversion, if the amount of actual unmetered consumption can be calculated by industry recognized testing procedures; or

(4) a reasonable adjustment is made to the sewer bill if a water leak can be documented during the winter averaging period and winter average water use is the basis for calculating a customer's sewer charges. If the actual water loss can be calculated, the consumption shall be adjusted accordingly. If not, the prior year average can be used if available. If the actual water loss cannot be calculated and the customer's prior year's average is not available, then a typical average for other customers on the system with similar consumption patterns may be used.

(n) Equipment damage charges. A

utility may charge for all labor, material, equipment, and all other actual costs necessary to repair or replace all equipment damaged due to negligence, meter tampering or bypassing, service diversion, or the discharge of wastes which the system cannot properly treat. The utility may charge for all actual costs necessary to correct service diversion or unauthorized taps where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer. A utility may not charge any additional penalty or any other charge other than actual costs unless such penalty has been expressly approved by the commission and filed in the utility's tariff. Except in cases of meter tampering or service diversion, a utility may not disconnect service of a customer refusing to pay damage charges unless authorized to in writing by the executive director.

(o) Fees. Utilities may not charge disconnect fees, service call fees, field collection fees, or standby fees except as authorized in this chapter.

(1) A utility may only charge a developer standby fees for unrecovered costs of facilities committed to a developer's property under the following circumstances:

(A) under a contract and only in accordance with the terms of the contract; or

(B) if service is not being provided to a lot or lots within two years after installation of facilities necessary to provide service to the lots has been completed and if the standby fees are included on the utility's approved tariff after a rate change application has been properly filed. The fees cannot be billed to the developer or collected until the standby fees have been approved by the commission or executive director.

(2) Except as provided in §291.88(h)(2) of this title (relating to Discontinuance of Service) and §291.89(c) (relating to Meters) other fees listed on a utility's approved tariff may be charged when appropriate. Return check charges included on a utility's approved tariff may not exceed the utility's documentable cost.

(p) Payment with cash. When a customer pays any portion of a bill with cash, the utility must issue a written receipt for the payment.

#### §291.88. Discontinuance of Service.

(a) Disconnection with notice.

(1) Notice requirements. Proper notice shall consist of a separate written

statement which a utility must mail or hand deliver to a customer before service may be disconnected. The notice must be provided in English and Spanish if necessary to adequately inform the customer and must include the following information:

(A) the words "termination notice" or similar language approved by the executive director written in a way to stand out from other information on the notice;

(B) the action required to avoid disconnection, such as paying past due service charges;

(C) the date by which the required action must be completed to avoid disconnection. This date must be at least ten days from the date the notice is provided unless a shorter time is authorized by the executive director;

(D) the intended date of disconnection;

(E) the office hours, telephone number, and address of the utility's local office;

(F) the total past due charges;

(G) all reconnect fees that will be required to restore water or sewer service if service is disconnected;

(H) if notice is provided by a sewer service provider under subsection (e) of this section, the notice must also state:

(i) that failure to pay past due sewer charges will result in termination of water service; and

(ii) that water service will not be reconnected until all past due and currently due sewer service charges and the sewer reconnect fee are paid.

(2) Reasons for disconnection. Utility service may be disconnected after proper notice for any of the following reasons:

(A) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement.

(i) Payment by check which has been rejected for insufficient funds, closed account, or for which a stop payment order has been issued is not deemed to be payment to the utility.

(ii) Payment at a utility's office or authorized payment agency is considered payment to the utility.

(iii) The utility is not obligated to accept payment of the bill when an employee is at the customer's location to disconnect service;

(B) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others;

(C) operation of non-standard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation;

(D) failure to comply with deposit or guarantee arrangements where required by §291.84 of this title (relating to Service Applicant and Customer Deposit); and

(E) failure to pay charges for sewer service provided by another retail public utility in accordance with subsection (e) of this section.

(b) Disconnection without notice. Utility service may be disconnected without prior notice for the following reasons:

(1) where a known and dangerous condition related to the type of service provided exists. Where reasonable, given the nature of the reason for disconnection, a written notice of the disconnection, explaining the reason service was disconnected, shall be posted at the entrance to the property, the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected;

(2) where service is connected without authority by a person who has not made application for service;

(3) where service has been reconnected without authority following termination of service for nonpayment under subsection (a) of this section;

(4) or in instances of tampering with the utility's meter or equipment, bypassing the same, or other instances of diversion as defined in §291.89 of this title (relating to Meters).

(c) Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

(1) failure to pay for utility service provided to a previous occupant of the premises;

(2) failure to pay for merchandise, or charges for non-utility service provided by the utility;

(3) failure to pay for a different type or class of utility service unless the fee for such service is included on the same bill or unless such disconnection is in accordance with subsection (e) of this section;

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service;

(5) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §291.89 of this title (relating to Meters);

(6) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control;

(7) failure to comply with regulations or rules regarding anything other than the type of service being provided including failure to comply with septic tank regulations or sewer hook-up requirements;

(8) refusal of a current customer to sign a service agreement; or

(9) failure to pay standby fees.

(d) Disconnection due to utility abandonment. No public utility may abandon a customer or a certificated service area unless it has complied with the requirements of §291.114 of this title (relating to Requirement to Provide Continuous and Adequate Service) and obtained approval from the commission.

(e) Disconnection of water service due to nonpayment of sewer charges.

(1) Where sewer service is provided by one retail public utility and water service is provided by another retail public utility, the retail public utility that provides the water service shall disconnect water service to a customer who has not paid undisputed sewer charges if requested by the sewer service provider and if an agreement exists between the two retail public utilities regarding such disconnection or if an order has been issued by the commission specifying a process for such disconnections.

(A) Before water service may be terminated, proper notice of such termination must be given to the customer and the water service provider by the sewer service provider. Such notice must be in conformity with subsection (a) of this section.

(B) Water and sewer service shall be reconnected in accordance with subsection (h) of this section. The water service provider may not charge the customer a reconnect fee prior to reconnection unless it is for nonpayment of water service charges in accordance with its approved tariff. The water service provider may require the customer to pay any water service charges which have been billed but remain unpaid prior to reconnection. The water utility may require the sewer utility to reimburse it for the cost of disconnecting the water service in an amount not to exceed \$50. The sewer utility may charge the customer its approved reconnect fee for nonpayment in addition to any past due charges.

(C) If the retail public utilities providing water and sewer service cannot reach an agreement regarding disconnection of water service for nonpayment of sewer charges, the commission may issue an order requiring disconnections under specified conditions.

(D) The commission will issue an order requiring termination of service by the retail public utility providing water service if either:

(i) the retail public utility providing sewer service has obtained funding through the State or Federal government for the provision, expansion or upgrading of such sewer service; or

(ii) the commission finds that an order is necessary to effectuate the purposes of the Texas Water Code.

(2) A utility providing water service to customers who are provided sewer service by another retail public utility may enter into an agreement to provide billing services for the sewer service provider. In this instance, the customer may only be charged the tariffed reconnect fee for nonpayment of a bill on the water service provider's tariff.

(f) Disconnection for ill customers. No utility may discontinue service to a delinquent residential customer when that customer establishes that some person residing at that residence will become seriously ill or more seriously ill if service is discontinued. To avoid disconnection under these circumstances, the customer must provide a written statement from a physician to the utility prior to the stated date of disconnection. Service may be disconnected in accordance with subsection (a) of this section if the next month's bill and the past due bill are not paid by the due date of the next month's bill, unless the customer enters into a deferred payment plan with the utility.

(g) Disconnection upon customer request. A utility shall disconnect service within 24 hours after receiving a written request from the customer.

(h) Service restoration.

(1) Utility personnel must be available during normal business hours to accept payment on the day service is disconnected and the day after service is disconnected, unless the disconnection is at the customer's request or due to the existence of a dangerous condition related to the type of service provided. Once the past due service charges and applicable reconnect fees are paid or other circumstances which resulted in disconnection are corrected, the utility must restore service within 24 hours.

(2) Reconnect Fees.

(A) A reconnect fee, or seasonal reconnect fee as appropriate, may be charged for restoring service if listed on the utility's approved tariff.

(B) A reconnect fee may not be charged where service was not disconnected, except in circumstances where a utility representative arrives at a customer's service location with the intent to disconnect service because of a delinquent bill, and the customer prevents the utility from disconnecting the service.

(C) Except as provided under §291.89(c) of this title (relating to Meters) when a customer prevents disconnection at the water meter or connecting point between the utility and customer sewer lines, a reconnect fee charged for restoring water or sewer service after disconnection for nonpayment of monthly charges shall not exceed \$25 provided the customer pays the delinquent charges and requests to have service restored within 45 days. If a request to have service reconnected is not made within 45 days of the date of disconnection, the utility may charge its approved reconnect fee or seasonal reconnect fee.

§291.89. Meters.

(a) Meter requirements.

(1) Use of meter. All charges for water service shall be based on meter measurements, except where otherwise authorized in the utility's approved tariff.

(2) Installation by utility. Unless otherwise authorized by the commission, each utility shall provide, install, own and maintain all meters necessary for the measurement of water provided to its customers.

(3) Standard type. No utility shall furnish, set up, or put in use any meter which is not reliable and of a standard type which meets industry standards; provided, however, special meters not necessarily

conforming to such standard types may be used for investigation or experimental purposes.

(4) One meter is required for each residential, commercial, or industrial service connection. An apartment building or mobile home park may be considered by the utility to be a single commercial facility for the purpose of these sections. The executive director may grant an exception to the individual meter requirement if the plumbing of an existing multiple use or multiple occupant building would prohibit the installation of individual meters at a reasonable cost or would result in unreasonable disruption of the customary use of the property.

(b) Meter readings

(1) Meter unit indication. In general, each meter shall indicate clearly the gallons of water or other units of service for which charge is made to the customer.

(2) Reading of meters

(A) Service meters shall be read at monthly intervals, and as nearly as possible on the corresponding day of each month, but may be read at other than monthly intervals if authorized in the utility's approved tariff.

(B) The utility shall charge for volume usage at the lowest block charge on its approved tariff when the meter reading date varies by more than two days from the normal meter reading date.

(c) Access to meters and utility cutoff valves

(1) At the customer's request, utility employees must present information identifying themselves as employees of the utility in order to establish the right of access.

(2) Utility employees shall be allowed access for the purpose of reading, testing, installing, maintaining and removing meters and using utility cutoff valves. Conditions that may hinder access include, but are not limited to, fences with locked gates, vehicles or objects placed on top of meters or meter boxes, and unrestrained animals.

(3) When access is hindered on an ongoing basis, utilities may, but are not required to, make alternative arrangements for obtaining meter readings as described in paragraphs (4) and (5) of this subsection. Alternative arrangements for obtaining meter readings shall be made in writing with a copy provided to the customer and a copy filed in the utility's records on that customer.

(4) If access to a meter is hindered and the customer agrees to read his

own meter and provide readings to the utility, the utility may bill according to the customer's readings, provided the meter is read by the utility at regular intervals (not exceeding six months) and billing adjustments are made for any overcharges or undercharges.

(5) If access to a meter is hindered and the customer does not agree to read their own meter, the utility may bill according to estimated consumption; provided the meter is read by the utility at regular intervals (not exceeding three months) and billing adjustments are made for any overcharges or undercharges.

(6) If access to a meter is hindered and the customer will not arrange for access at regular intervals, the utility may relocate the meter to a more accessible location and may charge the customer for the actual cost of relocating the meter. Before relocating the meter, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of relocating the meter, an explanation of the condition hindering access and what the customer can do to correct that condition, and information on how to contact the utility. The notice shall give the customer a reasonable length of time to arrange for utility access so the customer may avoid incurring the relocation cost. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.

(7) If access to a meter, cutoff valve or sewer connection is hindered by the customer and the customer's service is subject to disconnection under §291.88 of this title (relating to Discontinuance of Service), the utility may disconnect service at the main and may charge the customer for the actual cost of disconnection and any subsequent reconnection. The utility shall document the condition preventing access by providing photographic evidence or a sworn affidavit. Before disconnecting service at the main, the utility shall provide the customer with written notice of its intent to do so. The notice required under this subparagraph shall include information on the estimated cost of disconnecting service at the main and reconnecting service and shall give the customer at least 72 hours to correct the condition preventing access and to pay any delinquent charges due the utility before disconnection at the main. The customer may also be required to pay the tariffed reconnect fee for nonpayment in addition to delinquent charges even if service is not physically disconnected. A copy of the notice given to the customer shall be filed with the utility's records on the customer's account.

(d) Meter tests on request of customer

(1) Upon the request of a customer, each utility shall make without charge a test of the accuracy of the customer's meter. If the customer asks to observe the test, the test shall be conducted in the customer's presence or in the presence of the customer's authorized representative. The test shall be made during the utility's normal working hours at a time convenient to the customer. Whenever possible, the test shall be made on the customer's premises, but may, at the utility's discretion, be made at the utility's testing facility.

(2) Following the completion of any requested test, the utility shall promptly advise the customer of the date of the test, the result of the test, who made the test and the date the meter was removed if applicable.

(3) If the meter has been tested by the utility or a testing facility at the customer's request, and within a period of two years the customer requests a new test, the utility shall make the test, but if the meter is found to be within the accuracy standards established by the American Water Works Association, the utility may charge the customer a fee which reflects the cost to test the meter, but this charge shall in no event be more than \$25 for a residential customer.

(e) Meter testing.

(1) The accuracy of a water meter shall be tested by comparing the actual amount of water passing through it with the amount indicated on the dial. The test shall be conducted in accordance with the standards for testing cold water meters as prescribed by the American Water Works Association or other procedures approved by the executive director.

(2) The utility shall provide the necessary standard facilities, instruments, and other equipment for testing its meters in compliance with these sections. Any utility may be exempted from this requirement by the commission provided that satisfactory arrangements are made for testing its meters by another utility or testing facility equipped to test meters in compliance with these sections.

(3) Measuring devices for testing meters may consist of a calibrated tank or container for volumetric measurement or a tank mounted upon scales for weight measurement. If a volumetric standard is used, it shall be accompanied by a certificate of accuracy from any standard laboratory as may be approved by the commission or executive director. The executive director can also authorize the use of a volumetric container for testing meters without a laboratory certification when it is in the best interest of the customer and utility to reduce the cost of testing. If a weight standard is used, the scales shall be tested and cali-

brated periodically by such approved laboratory and a record maintained of the results of the test.

(4) Standards used for meter testing shall be of a capacity sufficient to insure accurate determination of meter accuracy and shall be subject to the approval of the commission.

(5) A standard meter may be provided and used by a utility for the purpose of testing meters in place. This standard meter shall be tested and calibrated at least once per year unless a longer period is approved by the executive director to insure its accuracy within the limits required by these sections. A record of such tests shall be kept by the utility for at least three years following the tests.

(f) Meter test prior to installation. No meter shall be placed in service unless its accuracy has been established. If any meter shall have been removed from service, it must be properly tested and adjusted before being placed in service again. No meter shall be placed in service if its accuracy falls outside the limits as specified by the American Water Works Association.

(g) Bill adjustment due to meter error. If any meter is found to be outside of the accuracy standards established by the American Water Works Association, proper correction shall be made of previous readings for the period of six months immediately preceding the removal of such meter from service for the test, or from the time the meter was in service since last tested, but not exceeding six months, as the meter shall have been shown to be in error by such test, and adjusted bills shall be rendered. No refund is required from the utility except to the customer last served by the meter prior to the testing. If a meter is found not to register for any period, unless bypassed or tampered with, the utility shall make a charge for units used, but not metered, for a period not to exceed three months, based on amounts used under similar conditions during the period preceding or subsequent thereto, or during corresponding periods in previous years.

(h) Meter tampering. For purposes of these sections, meter tampering, bypass, or diversion shall be defined as tampering with a water or sewer utility company's meter or equipment causing damage or unnecessary expense to the utility, bypassing the same, or other instances of diversion, such as physically disorienting the meter, objects attached to the meter to divert service or to bypass, insertion of objects into the meter, and other electrical and mechanical means of tampering with, bypassing, or diverting utility service. The burden of proof of meter tampering, bypass, or diversion is on the utility. Photographic evidence must be accompanied by a sworn affidavit

by the utility when any action regarding meter tampering as provided for in these sections is initiated. A court finding of meter tampering may be used instead of photographic or other evidence, if applicable.

#### §291.90. Continuity of Service.

##### (a) Service interruptions.

(1) Every utility or water supply or sewer service corporation shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(b) Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

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

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

TRD-9509821 Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640

#### • 30 TAC §§291.85-291.89

(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 13.041, which provide the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

#### §291.85. Requests for Service.

#### §291.86. Billing.

#### §291.87. Discontinuance of Service.

#### §291.88. Meters.

#### §291.89. Continuity of Service.

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

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

TRD-9509822 Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640

### Subchapter F. Quality of Service

#### • 30 TAC §§291.91-291.95

The amendments are proposed under the Texas Water Code, Chapter 13, and under the Texas Water Code §§5.103, 5.105, and 13.041 which provide the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

§291.91. Applicability. Except where otherwise noted, this chapter applies to retail public utilities[utility service provided by both water and sewer utilities] as defined by §291.3 of this title (relating to Definitions of Terms[.]) which possess or are required to possess a Certificate of Convenience and Necessity.

#### §291.92. Requirements by Others.

(a) The application of commission rules shall not relieve the retail public utility [or the water supply or sewer service corporation] from abiding by the requirements of the laws and regulations of the state, local department of health, local ordinances, and all other regulatory agencies having jurisdiction over such matters.

(b) The commission's rules in this Chapter relating to rates, records and reporting, customer service and protection and quality of service shall [service and response to requests for service for utilities operating within a municipality's corporate limits] apply to utilities operating within the corporate limits of a municipality exercising original rate jurisdiction, unless the municipality adopts its own rules

§291.93 Adequacy of Water Utility Service

(a) Sufficiency of service. Each retail public utility which provides water service [and water supply corporation] shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(1) The water system quantity and quality requirements of the commission [Texas Department of Health or Texas Water Commission] shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.

(2) In cases of extreme drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, temporary restrictions may be instituted to limit water usage. For utilities, these [These] temporary restrictions must be in accordance with an approved water rationing plan. Unless specifically authorized by the executive director, retail public utilities may not use water rationing in lieu of providing facilities which meet the minimum capacity requirements of the commission's rules in 30 Texas Administrative Code, Chapter 290, (relating to Rules and Regulations for Public Water Systems) [Water rationing is not a legitimate alternative when water systems are deficient in meeting the "Minimum Water System Quantity Requirements" of the Texas Department of Health, requirements of the Texas Water Commission], or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(A) An approved water rationing plan must be on file with the utility's approved tariff prior to implementing water rationing unless authorized by the executive director.

(B) Temporary restrictions must be in accordance with the utility's approved water rationing plan on file or specifically authorized by the executive director. The utility shall file a status report every 30 days that rationing continues or as required by the executive director. The executive director may suspend implementation of the restrictions at any time with written notice to the utility.

(C) The utility must provide written notice [Written notice must be provided] to each customer prior to implementing the provisions of the rationing plan. Mailed notice is acceptable and may be enforced by the utility if mailed 72 hours prior to the start of rationing. If notice is hand delivered, the utility cannot enforce the provisions of the plan for 24 hours after notice is provided unless authorized by the executive director. Notice shall be provided [by telephone] to the commission prior to implementing the program and may be by telephone if [followed, within ten days, by] written notice is provided by mail within ten days. Customer notice must contain:

(i)-(iv) (No change)

(3) A retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most restrictive criteria of the commission's minimum capacity requirements in Chapter 290 of this title (relating to Rules and Regulations for Public Water Systems) shall submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area. [A utility or water supply corporation that has been notified by the Texas Department of Health that additional connections should not be added due to system deficiencies shall notify the commission in writing within 30 days of receiving notification from the Texas Department of Health and shall specifically indicate what steps will be taken to remedy the situation and provide a definite time schedule for making improvements so that additional connections can be added in compliance with the certification requirements to serve every applicant for service and to provide continuous and adequate service.]

(A) This report is due no later than the 120th day after the retail public utility receives a copy of the commission field inspection report indicating that the system has reached 85% of its capacity.

(i) Capacity is considered to be the overall rated capacity in number of residential connection equivalents based on the most restrictive criteria for production, treatment, storage or pumping.

(ii) For retail public utilities currently at or exceeding 85% of capacity, this report is due no later than the 180th day after the effective date of these rules.

(B) The report should be submitted in writing and should contain the following:

(i) A brief description of the overall utility system and service area.

(ii) An analysis of the plant capacity as defined above.

(iii) Details on how the retail public utility will provide service to the remaining areas within the boundaries of its certificated area. This includes projections of cost and expected design and installation dates for additional facilities.

(C) The executive director may waive or limit the reporting requirements if the retail public utility demonstrates that the projected growth of the area will not require the retail public utility to exceed 100% of its current capacity for the next five years.

(D) Any retail public utility required to file reports under this section of the rules, including those requesting waivers, shall file updated reports annually until the system demand is below 85% capacity.

(E) Submission of this report shall not relieve the retail public utility from abiding by the requirements of other regulatory agencies as set forth in §291.92 of this title (relating to Requirements by Others).

(b) Quality of product

(1) Each retail public utility which possesses or is required to possess a certificate of convenience and necessity shall furnish water which meets the minimum quality criteria for drinking water prescribed by the commission [Texas Department of Health]. A utility or water supply corporation which is authorized to operate without a certificate of convenience and necessity pursuant to §13.242(c) of the code may be required by the executive director to meet the minimum criteria prescribed by the commission if so instructed in writing.



(2) Each retail public utility [which possesses or is required to possess a certificate of convenience and necessity] must promptly take all reasonable actions necessary to protect the health of its customers at all times

(c) Maintenance of Facilities. Every retail public utility shall maintain its facilities to protect it from contamination, ensure efficient operation and promptly repair leaks

#### §291.04. Adequacy of Sewer Service

(a) Sufficiency of service Each retail public utility shall plan, furnish, operate, and maintain collection, treatment, and disposal facilities to collect, treat and dispose of waterborne human waste and waste from domestic activities such as washing, bathing, and food preparation. These facilities must be of sufficient size [The system's facilities for the collection, treatment, and disposal of sewage must be adequately sized] to meet the minimum design criteria for wastewater facilities of the commission for all normal demands for service and provide a reasonable reserve for emergencies Unless specifically authorized in a written service agreement, a retail public utility is not required to receive, treat and dispose of waste with high BOD or TSS characteristics that cannot be reasonably processed, or storm water, run-off water, food or food scraps not previously processed by a grinder or similar garbage disposal unit, grease or oils, except as incidental waste in the process or wash water used in or resulting from food preparation by sewer utility customers engaged in the preparation and/or processing of food for domestic consumption or sale to the public. Grease and oils from grease traps or other grease and/or oil storage containers shall not be placed in the wastewater system.

(b) Sufficiency of treatment. Each retail public utility [system] shall maintain and operate [a] treatment facilities [facility] of adequate size and properly equipped to treat sewage and discharge the effluent at the quality required by the laws and regulations of the State of Texas.

(c) Maintenance of facilities

(1) The retail public utility shall maintain its collection system and appurtenances to minimize blockages

(2) (No change.)

§291.95 Standards of Construction. In determining standard practice, the commission will be guided by the provisions of the American Water Works Association, and such other codes and standards that are generally accepted by the industry, except

as modified by this commission, [the Texas Department of Health,] or municipal regulations within their jurisdiction. Each system shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interference with service furnished by other retail public utilities insofar as practical.

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

Issued in Austin, Texas, on August 7, 1995

TRD-9509823 Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption. September 11, 1995

For further information, please call: (512) 239-4640

### ◆ ◆ ◆ Subchapter G. Certificates of Convenience and Necessity

#### • 30 TAC §§291.101, 291.102, 291.105-291.118

*(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 13.041, which provide the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

#### §291.101 Definition of Terms

#### §291.102 Certificate Required.

#### §291.105. Certificates of Amendments for New Service Areas and Facilities.

#### §291.106. Contents of Certificate or Amendments for New Service Areas and Facilities.

#### §291.107. Notice for Applications for Certificates of Convenience and Necessity.

#### §291.108 Action on Applications.

#### §291.109. Corrections to Certificates of Convenience and Necessity.

#### §291.110. Report of Sale, Merger or Consolidation

#### §291.111. Transfer of Certificate of Convenience and Necessity

#### §291.112. Revocation or Amendment of Certificate.

#### §291.113. Requirement to Provide Continuous and Adequate Service

#### §291.114. Cessation of Operations by a Retail Public Utility.

#### §291.115. Exclusiveness of Certificates.

#### §291.116 Contracts Valid and Enforceable

#### §291.117. Contents of Request for Commission Order Under the Texas Water Code, §13.252

#### §291.118. Filing of Maps

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

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

TRD-9509824 Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption September 11, 1995

For further information, please call (512) 239-4640

### ◆ ◆ ◆ Subchapter G. Certificates of Convenience and Necessity

#### • 30 TAC §§291.101-291.119

The amendments and new sections are proposed under the Texas Water Code, Chapter 13; and under the Texas Water Code, §§5.103, 5.105, and 13.041, which provides the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services

#### §291.101 Certificate Required.

(a) Unless otherwise specified, a utility, a utility operated by an affected county, or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate

that the present or future public convenience and necessity requires or will require that installation, operation, or extension. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer service is being lawfully furnished by another retail public utility without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility or a utility or water supply corporation that is operating under provisions pursuant to the Texas Water Code, §13.242(c) may not construct facilities to provide water or sewer service to more than one service connection not on the property owned by the person and that are within the certificated service area of a retail public utility without first obtaining written consent from the retail public utility.

§291.102. *Criteria for Considering and Granting Certificates or Amendments.* The commission may grant applications and issue or amend certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege. In considering whether to grant or amend a certificate, the commission shall consider:

- (1) the adequacy of service currently provided to the requested area;
- (2) the need for additional service in the requested area;
- (3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;
- (4) the ability of the applicant to provide adequate service;
- (5) the feasibility of obtaining service from an adjacent retail public utility;
- (6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;
- (7) environmental integrity; and
- (8) the probable improvement in service or lowering of cost to consumers in that area.

§291.103. *Certificates Not Required [Exceptions for Extension of Service].*

(a) **Extension of Service.** [A retail public utility is not required to secure a certificate of public convenience and necessity for:]

(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of public convenience and necessity, a retail public utility is not required to secure a certificate of public convenience and necessity for:

(A)[(1)] an extension into territory contiguous to that already served by it, if the point of ultimate use is within one quarter mile of the boundary of its [the] certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility; or, [.]

(B) [(2)] an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity.

(2)[(b)] Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the certificated [certificate] area clearly showing the extension, accompanied by a written explanation of the extension

(b) **Construction of Facilities.** A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension is necessary for the service, accommodation, convenience, or safety of the public.

(c) **Municipality Pursuant to the Texas Water Code, §13.255.** A municipality which has given notice under the Texas Water Code, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:

(1) a copy of the notice required pursuant to the Texas Water Code, §13.255; and

(2) a map showing the area affected under the Texas Water Code, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.

(d) **Utility or Water Supply Corporation With Less Than 15 Potential Connections.**

(1) A utility or water supply corporation is exempt from the requirement to possess a certificate of convenience and necessity in order to provide retail water service if it:

(A) has less than 15 potential service connections;

(B) is not owned by or affiliated with a retail public utility or any other provider of potable water service;

(C) is not within the certificated area of another retail public utility; and

(D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.

(2) Utilities or water supply corporations currently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.

(3) The executive director may revoke the current certificate of convenience and necessity upon written request by the exempt utility or water supply corporation.

(4) An exempted utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the executive director which shall not be more stringent than those in §§291.80-291.90 of this title.

(5) The exempted utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.

(6) **Exempt Utility Tariff and Rate Change Requirements.** An exempted utility operating with or without a certificate of convenience and necessity:

(A) must maintain a current copy of the exempt utility tariff form with its current rates at its business location; and

(B) may change its rates without following the requirements in §291.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of rate changes prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written protests may be submitted to the commission at that address. If the commission receives written protests to a proposed rate change from at least 50% of the customers of an exempt utility following this procedure or from a water supply corporation within 90 days after the effective date of the rate change, the executive director will review the service provider's records or other information relating to the cost of providing service. After reviewing the information and any comments from customers or the service provider, the executive director will establish the rates to be charged by the service provider which shall be effective on the date originally noticed by the service provider. These rates are not subject to appeal by either the exempted utility or water supply corporation or the customers and may not be changed for 12 months after the effective date without authorization by the executive director. The service provider shall refund any rates collected in excess of the rates established by the executive director in accordance with the timeframes or other requirements established by the executive director. A rate change application filed by an exempt utility that follows the rate change procedures in §291.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.

(7) A utility operating under these requirements may not discontinue service to any customer with or without notice except in accordance with §291.88(a), (b) or (c) of this title (relating to Discontinuance of Service) and a water supply corporation may not discontinue service for any reason not in accordance with its bylaws unless authorized to in writing by the executive director.

(8) A utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff specified by the executive director shall be subject to any and all enforcement remedies provided by this chapter and the Texas Water Code, Chapter 13.

§291.104. *Applicant* It is the responsibility of the owner of the utility or the Presi-

dent of the Board of Directors or designated representative of the water supply or sewer service corporation, affected county, district or municipality to submit an application for a certificate of convenience and necessity.

§291.105 *Contents of Certificate of Convenience and Necessity Applications.* Applications for certificates of convenience and necessity or for an amendment to a certificate shall contain an original and three copies of the following materials unless otherwise specified in the application:

(1) the appropriate application form prescribed by the commission, completed as instructed and properly executed,

(2) a State Highway County Map, or equivalent, which clearly defines the proposed service area of the applicant. Service boundaries shall conform to verifiable landmarks such as roads, creeks, and railroads. Separate maps shall be filed for each county in which the retail public utility operates,

(3) other more detailed maps as may be specified in the application form;

(4) an original and three copies of any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit or license from the proper municipality, Texas Department of Health, or other public authority,

(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public;

(6) a schedule for the ultimate construction of all proposed facilities, keyed to maps showing where such facilities will be located to provide service;

(7) source of funding for facilities,

(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;

(9) disclosure of all affiliated interests as defined by §291.3 of this title (relating to Definition of Terms); or

(10) any other information that the executive director may reasonably require.

§291.106. *Notice for Applications for Certificates of Convenience and Necessity.*

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:

(1) all information outlined in the Administrative Procedure Act, Texas Civil Statutes, Article 6252-13a, §13;

(2) all information stipulated in the commission's Instructions for Completing an Application for a Certificate of Convenience and Necessity; and

(3) a statement that persons who wish to intervene or comment upon the action sought should contact the Utility Rates and Services Section, Water Utilities Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, within 30 days of mailing or publication of notice, whichever occurs later.

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(2) Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.

(3) Utilities that are required to possess a certificate but that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted and any other information required in the application.

(4) Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

(c) The applicant shall publish the notice 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 notice is received from the commission. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission within 30 days of the last

publication date. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(d) The commission may require the applicant to deliver notice to other affected persons or agencies.

*§291.107. Action on Applications.*

(a) The commission may conduct a public hearing on any application.

(b) The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing has been requested.

(c) The executive director may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn in accordance with Chapter 263 of this title (relating to General Rules).

(d) If a hearing is requested, the commission shall fix a time and place for the hearing. Notice of the hearing shall be issued at least ten days in advance of the hearing. Mailed notice shall be provided to all parties and any person requesting a hearing.

*§291.108. Corrections to Certificates of Convenience and Necessity.* The commission or executive director may make corrections to certificates, either by reissuing the certificate or by issuing an endorsement to the certificate, without the necessity of observing the formal application procedures prescribed in this chapter:

(1) to correct a clerical or typographical error;

(2) to describe more accurately the location of the certificated area,

(3) to change the name of a corporation which amends its articles of incorporation only to reflect a name change; or

(4) to state more accurately or update any provision in a certificate without changing the substance of any such provision, including the updating or redrawing of maps which have been incorporated by reference in a certificate.

*§291.109 Report of Sale, Merger, or Consolidation*

(a) At least 120 days before the proposed effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall

notify the commission and give public notice of the proposed transaction. The notification shall be on the form required by the commission. Public notice may be waived by the executive director for good cause shown.

(b) The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger or consolidation to determine whether the transaction will serve the public interest.

(c) Prior to the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the decision to either approve the sale administratively or to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

(1) the notification to the commission or the public notice was improper;

(2) the person purchasing or acquiring the water or sewer system is inexperienced as a utility service provider;

(3) the person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of noncompliance with the requirements of the commission or the Texas Department of Health or of continuing mismanagement or misuse of revenues as a utility service provider,

(4) the person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system;

(5) it is in the public interest to investigate the following factors:

(A) whether the seller has failed to comply with a commission order;

(B) the adequacy of service currently provided to the area;

(C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;

(E) the ability of the person purchasing or acquiring the water or sewer system to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(d) Unless the executive director requests that a public hearing be held, the sale, acquisition, lease, or rental or merger or consolidation may be completed as proposed at the end of the 120-day period or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.

(e) Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.

(f) If a hearing is requested or if the utility or water supply or sewer service corporation fails to provide the required notification or public notice, the sale, acquisition, lease, merger, consolidation or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(g) A sale, acquisition, lease, or rental of any water or sewer system, required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of the Texas Water Code, §13.301 is void.

(h) The requirements of the Texas Water Code, §13.301 do not apply to the purchase of replacement property, to a transaction under the Texas Water Code, §13.255 or to foreclosure on the physical assets of a utility.

(i) If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues re-

quired for normal operation, expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(j) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

#### §291.110. Foreclosure and Bankruptcy.

(a) A utility that receives notice that all or a portion of the utility's facilities or property used to provide utility service are being posted for foreclosure shall notify the commission in writing of that fact not later than the tenth day after the date on which the utility receives the notice.

(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing utility service unless the person has a completed application for a certificate of convenience and necessity or to transfer the current certificate of convenience and necessity on file with the commission within 30 days after the foreclosure is completed.

(c) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide utility service is not required to provide the 120-day notice prescribed by §13.301 of the code, but shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

(d) The financial institution may operate the utility for an interim period not to exceed 12 months before transferring or otherwise obtaining a certificate of convenience and necessity unless the executive director in writing extends the time period. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.

(e) Not later than the 48th hour after the hour in which a utility files a bankruptcy petition, the utility shall report this fact to the commission in writing.

#### §291.111. Purchase of Voting Stock in Another Utility.

(a) At least 60 days before a utility purchases voting stock in or a person acquires a controlling interest in a utility doing business in this state, the utility or person shall notify the commission of the proposed purchase or acquisition.

(b) The executive director may request that the commission hold a public hearing on the transaction if the executive director believes that a criteria prescribed by §291.110(c) of this title (relating to Foreclosure and Bankruptcy) applies.

(c) Unless the executive director requests that a public hearing be held, the purchase or acquisition may be completed as proposed at the end of the 60 day period or may be completed at any time after the executive director notifies the person or utility that a hearing will not be requested.

(d) The utility or person must notify the commission within 30 days after the date that the transaction is completed.

(e) If a hearing is requested by the executive director or if the person or utility fails to provide the required notification to the commission 60 days prior to the transaction, the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

#### §291.112. Transfer of Certificate of Convenience and Necessity.

(a) Effective date of transfer. A certificate is issued in person and continues in force until further order of the commission, and may be transferred only by the approval of the commission. Any attempted transfer is not effective for any purpose until actually approved by the commission.

(b) Sell, assignment, or lease of certificate of convenience and necessity. Except as provided by the Texas Water Code, §13.255 a utility or a water supply or sewer service corporation may not sell, assign, or lease a certificate of public convenience and necessity or any right obtained under a certificate unless the commission has determined that the purchaser, assignee, or lessee is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors under the Texas Water Code, §13.246(c). The sale, assignment, or lease shall be on the conditions prescribed by the commission.

(c) Notice of proposed sale, acquisition, lease, rental, merger, or consolidation and transfer of a certificate of convenience and necessity.

(1) Unless notice is waived by the executive director for good cause shown, mailed notice shall be given to customers of the water or sewer system to be sold, acquired, leased or rented or merged or consolidated and other affected parties as determined by the executive director on the form prescribed by the executive director and shall include the following

(A) the name and business address of the currently certificated retail public utility and the retail public utility which will acquire the facilities or certificate;

(B) a description of the service area of the retail public utility being transferred;

(C) the anticipated effect of the acquisition or transfer on the operation or the rates and services provided to customers being transferred; and

(D) a statement that persons who wish to comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.

(2) The commission may require the applicant to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the area in which the retail public utility being transferred is located and publication may be allowed in lieu of individual notice as required in this subsection.

(3) The applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extraterritorial jurisdiction which overlaps the proposed service area.

(4) If the executive director does not request a hearing, the commission may approve the transfer by order at a regular meeting of the commission.

(5) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued. Mailed notice shall be issued to all parties and affected persons.

(6) The commission may approve a sale, acquisition, lease or rental, or merger or consolidation and/or transfer of a certificate of convenience and necessity if it determines that the transaction is in the public interest after considering:

(A) if notice has been properly given,

(B) if the retail public utility which will acquire the facilities or certificate is capable of rendering adequate and continuous service to every consumer within the certificated area, after considering the factors set forth in the Texas Water Code, §13.246(c) The commission may refuse to approve a sale, acquisition, lease, rental, merger, or consolidation and/or transfer where conditions of a judicial decree, compliance agreement or other enforcement order have not been substantially met,

(C) the experience of the person purchasing or acquiring the water or sewer system as a utility service provider,

(D) the history of the person or an affiliated interest of the person in complying with the requirements of the commission or the Texas Department of Health or of properly managing or using revenues as a utility service provider, or

(E) the ability of the person purchasing or acquiring the water or sewer system to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system

(d) Reporting of customer deposits. Within 30 days after the sale of transfer of any utility or operating units thereof, the seller shall file with the commission, under oath, in addition to other information, a list showing the names and addresses of all customers served by such utility or unit who have to their credit a deposit, the date such deposit was made, the amount thereof, and the unpaid interest thereon. All such deposits shall be refunded to the customers or transferred to the new owner, with all accrued interest

#### §291.113. Revocation or Amendment of Certificate

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity if it finds that the certificate holder has never provided, is no longer providing service or has failed to provide continuous and adequate service in the area, or part of the area covered by the certificate

(b) If the certificate of any utility is revoked or amended, the commission may require one or more utilities to provide service in the area in question

§291.114. Requirement to Provide Continuous and Adequate Service. Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

#### §291.115. Cessation of Operations by a Retail Public Utility.

(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity desiring to discontinue, reduce or impair utility service, except under the conditions listed in the Texas Water Code, §13.250(b), must file a petition with the commission which sets out:

(1) the action proposed by the retail public utility;

(2) the proposed effective date of the actions which must be at least 20 days after the petition is filed with the commission;

(3) a concise statement of the reasons for proposing the action; and

(4) the area affected by the action, including maps as described by §291.106(2) and (3) of this title (relating to Notice for Applications for Certificates of Convenience and Necessity).

(b) The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following:

(1) the name and business address of the retail public utility which seeks to cease operations;

(2) a description of the service area of the retail public utility involved;

(3) the anticipated effect of the cessation of operations on the rates and services provided to the customers; and

(4) a statement that persons who wish to intervene or comment upon the action sought should contact the designated representative of the executive director at the commission's mailing address within 30 days of mailing or publication of notice, whichever occurs later.

(c) After review by the commission, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the petitioner's service area and any city whose extraterritorial jurisdiction overlaps the applicant's service area, and to the customers of the applicant proposing to cease operations.

(d) The applicant may be required by the executive director or the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county of operation which shall include, in addition to the information specified in subsection (b) of this section:

(1) the sale price of the facilities;

(2) the name and mailing address of the owner of the retail public utility; and

(3) the business telephone of the retail public utility.

(e) The commission may require the applicant to deliver notice to other affected persons or agencies.

(f) If, 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing is requested, the commission may consider the application for final decision without further hearing.

(g) If a hearing is requested, the commission shall fix a time and place for the hearing and notice thereof shall be issued at least ten days in advance of the hearing. Mailed notice shall be issued to any person requesting a hearing.

(h) In no circumstance may a retail public utility which possesses or is required to possess a certificate of convenience and necessity, a person who possesses facilities used to provide utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a certificate of convenience and necessity pursuant to §291.103(d) of this title (relating to Certificates Not Required) cease operations without commission authorization.

(i) In determining whether to grant authorization to the retail public utility for

discontinuation, reduction, or impairment of utility service, the commission shall consider, but is not limited to, the following factors:

- (1) the effect on the customers.
- (2) the costs associated with bringing the system into compliance;
- (3) the applicant's diligence in locating alternative sources of service.
- (4) the applicant's efforts to sell the system, such as running advertisements, contacting similar adjacent retail public utilities, or discussing cooperative organization with the customers;
- (5) the asking price for purchase of the system as it relates to the undepreciated original cost of the system for ratemaking purposes;
- (6) the relationship between the applicant and the original developer of the area served;
- (7) the availability of alternative sources of service, such as adjacent retail public utilities or groundwater, and
- (8) the feasibility of customers obtaining service from alternative sources, considering the costs to the customer, quality of service available from the alternative source, and length of time before full service can be provided.

(j) If a utility does abandon operation of its facilities without commission authorization, the commission may appoint a temporary manager to take over operations of the facilities to ensure continuous and adequate service.

**§291.116. Exclusiveness of Certificates.** Any certificate granted under this subchapter shall not be construed to vest exclusive service or property rights in and to the area certificated. The commission may grant, upon finding that the public convenience and necessity requires additional certification to another retail public utility or utilities, additional certification to any other retail public utility or utilities to all or any part of the area previously certificated pursuant to this chapter.

**§291.117. Contracts Valid and Enforceable.** Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the certificates of public convenience and necessity.

**§291.118. Contents of Request for Commission Order Under the Texas Water Code, §13.252.** If a retail public utility in con-

structing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of public convenience and necessity, the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following

- (1) the name and business address of the retail public utility making the request;
- (2) the name and business address of the retail public utility which is to be the subject of the order.
- (3) a description of the alleged interference;
- (4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;
- (5) copies of any other information or documentation which would support the position of the requesting utility;
- (6) the filing fee as prescribed by the Texas Water Code, §5.235, and
- (7) other information as the executive director may require

**§291.119. Filing of Maps.** On request by the commission, each utility and water supply or sewer service corporation shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for production, transmission and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas.

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

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

TRD-9509825 Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640



## Subchapter H. Utility Submetering

### • 30 TAC §§291.121-291.123, 291.125, 291.127

The amendments are proposed under the Texas Water Code, §§5.103, 5.105 and 13.041, which provide the commission with rulemaking authority to regulate utility submetering

#### §291.121. General Rules.

(a)-(b) (No change)

(c) Severability clause. The adoption of this section will in no way preclude the Texas Natural Resource Conservation [Water] Commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either upon complaint or upon its own motion or upon application of any utility. If any provision of this section is held invalid, such invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are declared to be severable. The provisions of this section shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person

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

Commission—The Texas Natural Resource Conservation [Water] Commission.

#### §291.123. Records and Reports.

(a) Either the owner or the owner's management company engaging or proposing to engage in utility submetering or billing for nonsubmetered master metered service must register with the commission [on or before March 1, 1988, or] 30 days prior to commencing utility submetering[, whichever occurs first,] and provide the following information:

- (1) (No change.)
- (2) date billing [began or] is to begin,
- (3)-(4) (No change.)
- (b)-(d) (No change.)

#### §291.125 Billing.

(a) Rental agreement for submetering. All rental agreements between the owner and the tenants shall clearly state

that the dwelling unit is submetered, that the bills will be issued on that basis, that water consumption or wastewater charges based on water consumption for all common areas and common facilities will be the responsibility of the owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. Each owner shall provide a tenant, at the time the lease is signed, a copy of this section or a narrative summary approved by the executive director [or his designated representative] to inform the tenant of his rights and the owner's responsibilities under this section.

(b) Rental agreement for nonsubmetered master metered utility service. All rental agreements between the apartment owner and the tenants shall provide a clear written description of the method of the allocation of nonsubmetered master metered utilities for the apartment house. The method of allocation may be changed only after 90 days notice of such change to the tenants. The rental agreement for each apartment unit shall contain a statement of the average monthly bill for the previous calendar year for that apartment unit. Each owner shall provide a tenant, at the time a lease is signed, a copy of this section or a narrative summary approved by the executive director [or his designated representative] to inform the tenant of his rights and the owner's responsibilities under this section.

(c) Rendering and form of submetered bill.

(1) (No change.)

(2) The billing unit shall be that used by the utility in its billing to the owner such as thousand gallons [gallon] or hundred cubic feet for water or wastewater submetering.

(3) (No change.)

(4) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in paragraph (7) [(8)] of this subsection. The submetered bill must clearly state "submetered water" or "submetered wastewater" as applicable.

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

(d) Rendering and form of nonsubmetered master metered bill.

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

(3) Methods to allocate nonsubmetered master metered utilities to

tenants, other than the method outlined in this section, must be approved by the executive director [commission].

(4) (No change.)

(e)-(m) (No change.)

#### §291.127. Submeters.

(a) Submeter requirements.

(1) Use of submeter. All water sold by an owner shall be charged for by meter measurements.

(2) Installation by owner. Unless otherwise authorized by the executive director [commission], each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water or wastewater to its tenants.

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

(e) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (d) of this section, proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with §291.125(i) [(g)] of this title (related to overbilling [Billing]). If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.

(f) (No change.)

(g) Location of submeters. Submeters or cut-off valves in conjunction with the submeters shall be installed in accordance with the standards set by the AWWA unless otherwise approved by the executive director, and will be readily accessible for reading, testing, and inspection, where such activities will cause minimum interference and inconvenience to the tenant.

(h) Submeter testing facilities and equipment. Unless other reference standards and procedures are approved by the executive director the following standards and procedures must be followed.

(1) (No change.)

(2) Testing of reference standards. Reference standards of all kinds shall be submitted once each year or on a scheduled basis approved by the executive director [commission] to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.

(3) (No change.)

(i)-(j) (No change.)

(k) Restriction. Unless otherwise provided by the executive director [commission], no dwelling unit may be submetered unless all dwelling units are submetered.

(l) (No change.)

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

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

TRD-9509830

Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640

### Subchapter J. Enforcement, Supervision and Receivership

#### • 30 TAC §§291.141-291.143

The new sections are proposed under the Texas Water Code, Chapter 13; and under the Texas Water Code, §§5.103, 5.105, and 13.041, which provide the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services.

#### §291.141. Supervision of Certain Utilities.

(a) The commission may place a utility under supervision where:

(1) the utility has exhibited gross or continuing mismanagement; or

(2) the utility has exhibited gross or continuing noncompliance with Chapter 13 of the Water Code or commission rules; or

(3) the utility has exhibited non-compliance with commission orders; and

(4) notice has been provided to the utility advising the utility of the proposed commission action, the reasons for the action and giving the utility an opportunity to request a hearing.

(b) The commission may require the utility to abide by conditions and requirements, including but not limited to:

(1) management requirements;

(2) additional reporting requirements;

(3) restrictions on hiring, salary or benefit increases, capital investment, borrowing, stock issuance or dividend declarations, and liquidation of assets;



(4) a requirement that the utility place all or part of the utility's funds and revenues into an account in a financial institution approved by the executive director and restricting use of funds in that account to reasonable and necessary expenses;

(5) operational requirements;

(6) priority order of payments or obligations; and

(7) limitation of payment for owner's or owner's family member's expenses or salaries or payments to affiliates.

(c) Any utility under supervision may be required to obtain the approval of the executive director before taking any action that may be restricted under subsection (b) of this section. If the commission in its order has required prior approval, any action or transaction which occurs without that approval may be voided by the executive director.

*§291.142. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.*

(a) The commission, after providing to the utility notice and an opportunity for a hearing, may authorize a willing person to temporarily manage and operate a utility that has:

(1) discontinued or abandoned operations or the provision of services; or

(2) is being referred to the attorney general for the appointment of a receiver under the Texas Water Code, §13.412 for:

(A) having abandoned operation of its facilities; or

(B) having violated a final order of the commission; or

(C) having allowed any property owned or controlled by it to be used in violation of a final order of the commission.

(b) The commission may appoint a person under this section by emergency order, and notice of the action is adequate if the notice is mailed or hand-delivered to the last known address of the utility's headquarters. A corporation may be appointed a temporary manager.

(c) Abandonment includes but is not limited to:

(1) failure to pay utility bills; or

(2) failure to make necessary and timely repairs to maintain continuous and adequate service.

(d) This section does not affect the

authority of the commission to pursue an enforcement claim against a utility or an affiliated interest.

*§291.143. Operation of a Utility by a Temporary Manager.*

(a) By emergency order under the Texas Water Code, §13.4132, the commission may appoint a person to temporarily manage and operate a utility that has discontinued or abandoned operations, or which is being referred to the Attorney General for the appointment of a receiver under the Texas Water Code, §13.412.

(b) A person appointed under this section has the powers necessary and shall ensure the continued operation of the utility and the provision of continuous and adequate services to customers. The duties of the temporary manager appointed by the commission will include:

(1) reading meters,

(2) billing for utility services;

(3) collecting revenues;

(4) disbursing funds;

(5) requesting rate increases if needed;

(6) sampling;

(7) making necessary repairs; and,

(8) performing other acts necessary to assure continuous and adequate utility service as authorized by the commission.

(c) Upon appointment by the commission, the temporary manager will post financial assurance with the commission in an amount and type acceptable to the commission. The temporary manager or the executive director may request waiver of the financial assurance requirements or may request substitution of some other form of collateral as a means of ensuring the continued performance of the temporary manager.

(d) The temporary manager shall serve a term of one year, unless:

(1) specified otherwise by the commission;

(2) an extension is requested by the executive director or the temporary manager and granted by the commission;

(3) the temporary manager is discharged from his responsibilities by the commission, or,

(4) a superseding action is taken by an appropriate court on the appointment of a receiver at the request of the Attorney General.

(e) Within 60 days after appointment, a temporary manager shall return to the commission an inventory of all property received.

(f) Compensation for the temporary manager will come from utility revenues and will be set by the commission at the time of appointment. Changes in the compensation agreement can be approved by the executive director.

(g) The temporary manager shall collect the assets and carry on the business of the utility and shall use the revenues and assets of the utility in the best interests of the customers to ensure that continuous and adequate utility service is provided. The temporary manager shall give priority to expenses incurred in normal utility operations and for repairs and improvements made since being appointed temporary manager.

(h) The temporary manager shall report to the executive director on a monthly basis. This report shall include:

(1) an income statement for the reporting period;

(2) a summary of utility activities such as improvements or major repairs made, number of connections added, and amount of water produced or treated; and

(3) any other information required by the executive director.

(i) During the period in which the utility is managed by the temporary manager, the certificate of convenience and necessity shall remain in the name of the utility owner; however, the temporary manager assumes the obligations for operating within all legal requirements.

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

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

TRD-9509826

Lydia Gonzalez Gromatzky  
Acting Director, Legal  
Division  
Texas Natural Resource  
Conservation  
Commission

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 239-4640

# TITLE 34. PUBLIC FINANCE

## Part I. Comptroller of Public Accounts

### Chapter 3. Tax Administration

#### Subchapter J. Petroleum Products Delivery Fee

##### • 34 TAC §3.152

The Comptroller of Public Accounts proposes an amendment to §3 152, concerning imposition and collection of the petroleum products delivery fee. The 74th Legislature, 1995, amended the Water Code, Chapter 26, to increase the fees imposed on the withdrawal of petroleum products from a bulk facility storage tank for delivery directly into a cargo tank or barge for transportation to another location other than another bulk facility in Texas for distribution or sale. This amendment implements that legislation.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule is in effect there will be no fiscal impact on the state or local government beyond that anticipated in the legislation's fiscal note.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding tax responsibilities relating to the collection of the petroleum products delivery fee. This rule is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Joe A. Galvan, Jr., Manager, Tax Administration Division, P.O. Box 13528, Austin, Texas 78711.

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

The amendment implements the Water Code, §26.3574.

##### §3.152. Imposition and Collection of the Fee.

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

(c) The fee is collected by the operator of a bulk facility from the person ordering the withdrawal. The fee is computed as follows:

(1) \$25 [\$12.50] for each delivery into a cargo tank or barge having a capacity of less than 2,500 gallons;

(2) \$50 [\$25] for each delivery into a cargo tank or barge having a capacity of 2,500 gallons or more but less than 5,000 gallons;

(3) \$75 [\$37.50] for each delivery into a cargo tank or barge having a capacity of 5,000 gallons or more but less than 8,000 gallons;

(4) \$100 [\$50] for each delivery into a cargo tank or barge having a capacity of 8,000 gallons or more but less than 10,000 gallons; and

(5) a \$50 [\$25] fee for each increment of 5,000 gallons or any part thereof delivered into a cargo tank or barge having a capacity of 10,000 gallons or more.

(d)-(l) (No change.)

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

Issued in Austin, Texas, on August 2, 1995

TRD-9509701

Martin Cherry  
Chief, General Law  
Comptroller of Public  
Accounts

Earliest possible date of adoption: September 11, 1995

For further information, please call: (512) 463-4028

# TITLE 40. SOCIAL SERVICE AND ASSISTANCE

## Part XII. Texas Board of Occupational Therapy Examiners

### Chapter 370. License Renewal

#### • 40 TAC §370.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §370.1, concerning License Renewal. This proposed amendment allows for the phasing in of biennial license renewals with clarification of renewal requirements

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Maline 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 issuance of two-year license renewals to qualified occupational therapists and occupational therapy assistants. There will be no effect on small businesses. There is no anticipated economic cost to persons having to comply with this amended rule as proposed.

Comments on the proposed rule may be submitted to Joy L. Vaughn, Acting OT Coordinator, Texas Board of Occupational Therapy Examiners, 3001 South Lamar Boulevard, Suite 101, Austin, Texas 78704.

The amendment is proposed under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Texas Civil Statutes, Article 8851 is affected by this amendment.

##### §370.1. License Renewal.

(a) Renewal of an unexpired license shall be in accordance with the Act, §24, and renewal of an expired license shall be in accordance with the Act, §25.

(1) Biennial renewal. Licensees holding a regular license are required to renew their licenses biennially by the end of their birthday month.

(2) Implementation of the two-year renewal will occur in two phases. Implementation of these phases will begin January 1996.

(A) Licensees whose last digit in their license number is even will renew their licenses for two years. They are required to submit 15 contact hours of continuing education with the renewal which is required in 1996. These 15 contact hours of continuing education must have been obtained in the 12 months prior to their birthday month. For their 1998 and beyond biennial renewal, they must submit 30 contact hours of continuing education. These 30 contact hours must have been obtained in the 24 months prior to their birthday month.

(B) Licensees whose last digit in their license number is odd will initially renew their licenses for only one year. They are required to submit 15 contact hours of continuing education with the renewal which is required in 1996. These 15 contact hours of continuing education must have been obtained in the 12 months prior to their birthday month. For their 1997 renewal, they must submit 15 contact hours of continuing education. These 15 contact hours must have been obtained in the 12 months prior to their birthday month. For their 1999 and beyond biennial renewal, they must submit 30 contact hours of continuing education. These 30 contact hours must have been obtained in the 24 months prior to their birthday month.

(b) (No change.)

(c) The complete renewal application must be postmarked by the fifteenth of the month preceding the birth month to be assured receipt of a license renewal certificate or written verification of licensure for display purposes.

(d)(c) The board considers a Complete Renewal (refer to §362.1 of this title (relating to Definitions)) on-time for the purpose of assessing late fees if it is postmarked not later than the expiration date of the license.

(e)(d) A licensee who fails to renew his or her license by the expiration date and continues to work as an OTR or a COTA may be subject to disciplinary action.

(f)(e) A license shall not be renewed if a licensee has defaulted on a Guaranteed Student Loan from the Texas Guaranteed Student Loan Corporation (TGSLC). Upon notice from TGSLC that a repayment agreement has been established, the license shall be renewed.

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

Issued in Austin, Texas, on August 4, 1995.

TRD-9509752

John P. Maline  
Executive Director  
Texas Board of  
Occupational Therapy  
Examiners

Earliest possible date of adoption. September 11, 1995

For further information, please call (512) 443-8202

## TITLE 43. TRANSPORTATION

### Part I. Texas Department of Transportation

#### Chapter 5. Finance

##### • 43 TAC §5.10

The Texas Department of Transportation proposes new § 5.10, concerning the collection of debts.

The new section is proposed to comply with Government Code, §2107.002, which requires the department to establish procedures by rule for collecting a delinquent obligation, and Title 1, Texas Administrative Code, §§59.1-59.3, which establishes the attorney general guidelines for state agencies concerning the collection process.

Section 5.10 defines terms, and establishes procedures for: determination of liability, collection from contractors, demand letters, record retention, referrals of a delinquent obligation to the attorney general, and supplemental and alternative collection procedures

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

Mr. Smith has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed new section

Mr. Smith 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 compliance with Government Code, §2107.002 and Title 1, Texas Administrative Code, §§59.1-59.3, and the clear understanding of the department's procedures to determine liability for each person responsible for an obligation. 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

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 section. A public hearing will be held at 9:00 a.m. on Monday, August 21, 1995, in the first floor hearing 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 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 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 written comments will be 5:00 p.m. on September 11, 1995.

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 and Government Code, §2107.002, which requires the department to establish procedures by rule for collecting a delinquent obligation and a reasonable period for collection and requires the department's collection procedures to conform to the guidelines established by the attorney general.

Government Code, §2107.002 is affected by this proposed new section.

#### §5.10. Collection of Debts.

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

(1) Attorney general—The Office of the Attorney General of Texas.

(2) Debtor—Any person or entity liable for an obligation owed to the department or against whom a claim or demand for payment has been made.

(3) Delinquent—When a payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Department—The Texas Department of Transportation.

(5) Demand letter—A writing setting forth the nature and amount of an obligation owed to the department that is delivered by United States certified mail, first class.

(6) District—A subdivision of the department responsible for the day-to-day operations of the department in a specific geographically defined area.

(7) Division—An organizational unit in the department's Austin headquarters.

(8) Obligation—A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(9) Person—An individual, corporation, organization, business trust, estate, trust, partnership, association, and any other legal entity.

(10) Security—Any right to have property owned by an entity with an obligation to the department sold or forfeited in satisfaction of the obligation, and any instrument granting a cause of action in favor of the department against another entity or that entity's property, such as bond, letter of credit, or other collateral that has been pledged to the department to secure an obligation.

(b) Determination of liability. When a person who is responsible for an

obligation to the department has failed or refused to make payments, the department will deem the obligation delinquent.

(c) Collection from contractors. If a contractor of the department is delinquent and the department owes payment to that contractor, then the department will subtract the delinquent amount from payment.

(d) Demand letters.

(1) The division or district responsible for determining that an obligation is owed to the department will issue a first demand letter no later than 30 days after the obligation becomes delinquent.

(2) If no satisfactory response is received within 30 days after the date of the first letter, the division or district will send a second and final demand letter no later than 60 days after the obligation becomes delinquent. The second demand letter will include a deadline to respond and a notation, where practicable, that a copy is being sent to the attorney general who may file a lawsuit on the account.

(3) Demand letters will be mailed in an envelope bearing the notation "address correction requested" in conformity with 39 Code of Federal Regulations §265(d). If an address correction is provided by the United States Postal Service, the division or district will resend the demand letter to that address prior to referral to the attorney general.

(e) Records. The department will retain records of a delinquent obligation. A record shall contain documentation of the following information:

(1) the identity of the person or entity liable on any part of the obligation;

(2) the physical address of the debtor's place of business;

(3) the debtor's residence, where applicable;

(4) a post office box address where it is impractical to obtain a physical address, or when the post office box address is in addition to a correct physical address;

(5) attempted contacts with the debtor;

(6) the substance of communications with the debtor;

(7) efforts to locate the debtor and the assets of the debtor;

(8) state warrants that may be issued to the debtor;

(9) current contracts with the department;

(10) security interests that the department has against any assets of the debtor;

(11) notices of bankruptcy, proofs of claim, dismissals and discharge orders received from the United States bankruptcy courts; and

(12) other information relevant to collection of the delinquent account.

(f) Referrals of a delinquent obligation to the attorney general.

(1) Prior to referral of a delinquent obligation to the attorney general, the department will:

(A) verify the debtor's address and telephone number,

(B) transmit no more than two demand letters to the debtor;

(C) verify that the obligation is not uncollectible;

(D) prepare and file a proof of claim in the case of a bankruptcy unless the department is represented by the attorney general; and

(E) file a claim in the probate proceeding if the debtor is deceased unless the department is represented by the attorney general.

(2) The department will consider a delinquent obligation uncollectible and will make no further effort to collect if the obligation:

(A) has been dismissed or discharged in bankruptcy;

(B) is subject to an applicable limitations provision that would prevent collection as a matter of law;

(C) is owed by a corporation which has been dissolved, is in liquidation under Chapter 7 of the United States Bankruptcy Code, has forfeited its corporate privileges or charter, or, in the case of a foreign corporation, had its certificate of authority revoked unless circumstances indicate that the account is nonetheless collectible or that fraud was involved;

(D) is owed by an individual who is located out-of-state, or outside the United States, unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of department funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified,

(E) is owed by a debtor who is deceased, where probate proceedings have concluded, and where there are no remaining assets available for distribution; or

(F) is owed by a debtor whose circumstances demonstrate a permanent inability to pay or make payments toward the obligation.

(3) In making a determination of whether to refer a matter to the attorney general, the department will consider:

(A) the expense of further collection procedures;

(B) the size of the debt;

(C) the existence of any security;

(D) the likelihood of collection through passive means such as the filing of a lien;

(E) the availability of resources to collect the obligation; and

(F) policy reasons or other good cause.

(4) The department will refer a delinquent obligation to the attorney general for further collection efforts not later than the 30th day after the date the department determines that normal department collection procedures for a delinquent obligation have failed.

(g) Supplemental and alternative collection procedures.

(1) Liens. The department, unless represented by the attorney general, will record a lien securing the delinquent obligation in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law as soon as is practicable. Unless the delinquent obligation has been paid in full, any lien securing the indebtedness may not be released without the approval of the attorney representing the department after the matter has been referred to the attorney general.

(2) Warrants. The department will utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by Government Code, §403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid.

This agency hereby certifies that the proposal has been reviewed by legal counsel and

found to be within the agency's authority to adopt

Issued in Austin, Texas, on August 3, 1995.

TRD-9509740

Robert E. Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: September 11, 1995

For further information, please call (512) 463-8630

## Chapter 25. Traffic Operations

The Texas Department of Transportation proposes amendments to §§25.400-25.407 and new §25.409, concerning the information logo sign program

These revisions are proposed under Texas Civil Statutes, Article 4477-9a as amended by Senate Bill 882 of the 74th Texas Legislature. Senate Bill 882 expanded the existing information logo sign program and created a new category of logo sign, the major shopping area guide sign

Section 25.400 is amended to expand the eligible areas of the logo sign program and provide signing for major shopping areas within urbanized areas of greater than 200,000 population

Section 25.401 is amended to include the definitions of close proximity interchange, multiple crossroad interchange, driveway access, eligible highway, eligible urban highway, gross building area, information logo sign, major shopping area, major shopping area guide sign, major shopping area ramp sign, multiple crossroad interchange, and retail shopping mall

Section 25.402 is amended to allow the contractor to priority market the specific information logo signs to those commercial establishments that are located within the first one-mile within the initial three-mile radius of the interchange. If adequate participation is not found, the contractor may increase the radius in one-mile increments. In addition, this amendment requires the contractor to develop an inventory of the retail shopping malls, determine eligibility for major shopping guide signs, and determine if ground mount or overhead signing will be needed. If overhead signing is needed, the signing for the retail shopping mall becomes the responsibility of the department. For specific information logo signs, the contractor is required to obtain department approval before developing site plans at close proximity or multiple crossroad interchanges to insure fair and equitable chance of participation for all eligible commercial establishments at these interchanges, as well as the needs of the motorists. The contractor is required to cooperate and transfer the names of potential commercial establishments to the other contractors of information logo sign programs operating in the area, attend meetings as required by the department, and refund advance payments for logo sign or major shopping area signing if the department creates a situation where the

existing logo signs or major shopping area guide signs at an interchange are permanently removed. The amendments explain the different fees and how they affect the commercial establishment or retail shopping mall.

Section 25.404 is amended to include additional terms and a revised bidding formula to include major shopping area guide signs. The numbers resulting from this formula are the final criteria for the department's selection of a contractor to operate the information logo sign program

Section 25.405 is amended to provide specifications for design, content, placement, and relation to existing signs for specific information logo signs and ramp signs, allow the maximum number of business logos allowed per sign to increase from four to six per sign, limit the maximum number of services to three, and allow the department the approval authority before signs are fabricated. This section includes the specifications for design, content, placement, and relation to existing signs of major shopping area guide signs and ramp signs

Section 25.406 is amended to include a visibility requirement for commercial establishment eligibility. This allows only those businesses that can be easily located by the motorists to participate in the specific information logo sign program. This section also give priority to those commercial establishments that are located within the first one-mile radius of the interchange. The contractor may market commercial establishments, in increments up to 15 miles, outside the initial three-mile radius if no commercial establishment within the three miles of the interchanges is willing to participate.

Section 25.407 is amended to prioritize the arrangement of the six commercial establishment logo spaces within the sign based on the results of a random drawing if the logo sign will contain two or more services. This section also includes responsibilities and rights of commercial establishment and the retail shopping mall with regard to multi-year participation agreements between the contractor and commercial establishment or retail shopping mall, and removal of business logo and forfeiture of advance payments if the commercial establishment or retail shopping mall defaults on the participation agreement.

New §25.409 defines the parameters of major shopping area eligibility for signing

Gary K. Trietsch, P.E., Director of Traffic Operations, has determined that there will be fiscal implications as result of enforcing or administering the sections. The effect on state government for the first five-year period the sections will be in effect will be an estimated increase in revenue of \$60,000 per year for the years 1996-2000. There will be no effect on local government as a result of enforcing or administering the sections.

Mr. Trietsch certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments and new section

Mr. Trietsch also has determined for each year of the first five years the amendments

and new section are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure that signs are erected on eligible highways and urban highway rights of way giving specific information of interest to the travelling public including the availability of retail services with specific brand names. There will be no effect on small businesses. There will be minimal 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 adoption. A public hearing will be held at 1:30 p.m. on Tuesday, August 22, 1995 in the first floor hearing 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 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. 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 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 Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two days prior to the hearing so that appropriate arrangements can be made

Written comments on the proposed amendments and new sections may be submitted to Gary K. Trietsch, P.E., Director of Traffic Operations, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of written comments will be 5:00 p.m. on September 10, 1995.

[Specific] Information Logo Sign Program

• 43 TAC §§25.400-25.407

The amendments are proposed under Texas Civil Statutes, Article 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 more specifically, Texas Civil Statutes, Article 4477-9a, which authorize the Texas Department of Transportation to erect and maintain information logo signs within eligible highways and urban rights of way.

TEXAS Civil Statutes, Article 4477-9a, is affected by the amendments

§25.400. *Purpose.* Texas Civil Statutes, Article 4477-9a, require the commission to contract with a person, firm, group, or association in the State of Texas to erect and maintain information logo signs within eligible highways and urban highway rights of way [signs that give specific information of interest to the traveling public including specific brand names, at appropriate locations along highways in each county with a population of less than 20,000]. It further requires the commission to adopt rules necessary to administer and enforce this signing program, and to regulate the content, composition, placement, erection, and maintenance of [specific] information logo signs and supports within eligible highways [interstate highway] and urban highway rights [right] of way. The sections under this undesignated head prescribe the policies and procedures for the implementation of an [a specific] information logo sign program.

§25.401. *Definitions.* The following words and terms, when used in the sections under this undesignated head, shall have the following meanings, unless the context clearly indicates otherwise.

**Close proximity interchanges**—Sequential interchanges in a direction of travel where exit ramp spacing or existing regulatory, guide, or warning signs preclude placement of a minimum of two specific information logo signs between exits.

**Driveway access**—A vehicle entrance, built in compliance with state and local standards and regulations, for use by the public providing access from a public street or highway to a commercial establishment or major shopping area.

**Eligible highway**—A highway that is located outside an urbanized area with a population of 50,000 or more; and qualifies for a maximum speed limit of 65 miles per hour under 23 United States Code, §154, or if that law is repealed, qualified for a maximum speed limit of 65 miles per hour on the day before the

effective date of the repeal.

**Eligible urban highway**—An interstate highway located inside an urbanized area with a population of 200,000 or more.

**Gross building area**—Square footage of usable area within a building, or series of buildings under one roof, that is considered usable by the retail businesses and the public; if a building is multi-level, this includes the square footage available on each level.

**Information logo sign**—A specific information logo sign or a major shopping area guide sign.

**Interchange**—The intersection of the centerlines of an eligible [interstate] highway or eligible urban highway and a crossroad.

**Major shopping area**—An enclosed retail shopping mall offering goods and services for sale to the public located on a minimum 30 acres of land that contains one million square feet or more of gross building area.

**Major shopping area guide sign**—A rectangular sign panel imprinted with the name of the retail shopping area as it is commonly known to the public and containing directional information.

**Major shopping area ramp sign**—A sign with the common name of the retail shopping mall, directional arrows, and/or distances placed near an eligible urban highway exit ramp or access road.

**Multiple crossroad interchange**—An interchange in which one exit in a direction of travel from an eligible highway provides the only point of access for two or more crossroads; the center of a multiple crossroad interchange is the mid-point of the intersection of the centerline of the eligible highway and centerlines of the affected crossroads.

**Ramp sign**—A sign with ramp business logos or the name of the major shopping area, directional arrows, and distances placed near an [interstate] eligible highway or eligible urban highway exit ramp

**Retail shopping mall**—Retail businesses located within a building, or a series of buildings, connected by a common continuous roof and walls, and enclosing and covering all inner pedestrian walkways and common areas.

§25.402. [Specific] Information Logo Sign Program.

(a) Program. The department may award a contract or contracts to a person, firm, group, or association in the State of Texas, for an initial period not to exceed five years, to develop, operate, and maintain [specific] information logo signs at appropriate locations along eligible [interstate] highways and eligible urban highways [in each county with a population of less than 20,000 according to the latest federal cen-

sus], subject to the following terms and conditions.

(b) Marketing

(1) In marketing the specific information logo sign program, the contractor shall:

[(1)] develop an inventory of potential eligible commercial establishments;

(A) within a one-mile radius of the interchange if the total number of eligible commercial establishments willing to participate is equal to or greater than the number of available spaces and the available alternate positions for a motorist service;

(B) within a two-mile radius of the interchange if the total number of eligible commercial establishments willing to participate is equal to or greater than the number of available spaces and the available alternate positions for a motorist service; or

(C) within a three-mile radius of the interchange.

(2) In marketing the major shopping area sign program, the contractor shall:

(A) develop an inventory of potential eligible retail shopping malls;

(B) submit this inventory to the department and, with department concurrence, determine which of the potential eligible retail shopping malls will require overhead or ground mounted signing (retail shopping malls that require overhead signing shall become the responsibility of the department, and the retail shopping mall shall reimburse the department for all costs for site plans, engineering, fabrication, erection, inspection, and maintenance of overhead signs and supports);

(C)[(2)] send letters explaining the program to potential eligible commercial establishments and retail shopping malls; and

(D)[(3)] advertise the specific information logo sign program in local papers and post notices at appropriate locations at the county seats.

(c) Market study and site plans. Prior to construction of a [specific] information logo sign at an approved location, the contractor must submit to the department a market study and site plan. For close prox-

imity interchanges and multiple cross-road interchanges, the contractor shall submit a market study to the department for approval before development of the site plan. Upon approval of the site plan, the contractor may begin work at the location described.

(d) As-built plans. The contractor shall submit as-built plans to the department within 45 calendar days upon completion of the installation of [specific] information [business] logo signs.

(e) Sign erection in first year. In the first year of the contract between the department and contractor, the contractor shall erect [specific] information logo signs and business logos at a minimum of 40% of the interchanges where participation agreements have been completed between the commercial establishments or the retail shopping mall and the contractor. Information [Specific information] logo signs and business logos shall be erected within two years of the execution date of an agreement between the commercial establishments or the retail shopping mall and the contractor pursuant to §25.407 of this title (relating to Program Operation).

(f) Cooperation with other contractors. The contractor is required to cooperate with any contractor working on the state highway system as well as any other contractors operating information logo sign programs within the State. Upon request by a potential lessee, the department, or a member of the public, the contractor will furnish the name, address, and telephone number of other information logo sign contractors.

(g) [(f)] Annual report. The contractor shall furnish an annual report to the department. The annual report will include the contractor's financial statement as provided in §25.403 of this title (relating to Prequalification), summary of eligible interchanges, business logos erected, major shopping area guide signs erected, and number of participation agreements completed. Other reports may also be required throughout the year as determined by the department.

(h) Meetings. The contractor is required to attend meetings with the department or department representatives at least once per calendar year at a date and location determined by the department to discuss program operation. The department may also require other meetings.

(i)[(g)] Installation by contractor. Installation of [specific] information [and business] logo signs may only be performed by the contractor, a subcontractor approved by the department, or, in emergency situations, by the department. In the event that the department undertakes installation or

other duties of the contractor, the contractor shall immediately remit to the department the specified fee or cost of such work.

(j)[(h)] Department review. Prior to installation, the design and location of information [business] logo signs must be submitted to the department for review. The department shall inspect installation and monitor maintenance.

(k)[(i)] Sign relocation or removal [Additional signing]. If the department determines that additional regulatory, warning, or guide signing is needed at an interchange, existing or planned [specific] information logo signs shall be removed or relocated by the contractor as directed by the department and at the sole expense of the contractor. If the department determines that construction or maintenance activities within the eligible highway or eligible urban highway rights of way will create conditions where existing information logo signs will not be in compliance with Texas Civil Statutes, Article 4477-9a, or provisions of this title, the contractor shall:

(1) remove the business logos and ramp business logos of the affected commercial establishments;

(2) remove the information logo signs and ramp signs; and

(3) reimburse advance rental fees paid by commercial establishments or retail shopping malls prorated as per the date of removal of the business logos or major shopping area guide signs.

(l)[(j)] Sign maintenance. The [specific] information logo signs shall be maintained by the contractor in a manner and condition that is a distinct benefit to the safety of the public, benefit to the commercial establishments or retail shopping malls, and to the satisfaction of the department.

(m)[(k)] Fees.

(1) Non-refundable fees. The contractor shall assess the following non-refundable fees and shall remit to the department an amount equal to 5.0% of all such fees no later than the seventh business day following the last day of the month such fees are received by the contractor.

(A) Business logo installation [Installation] fee. A one-time fee in the amount specified in the contractor's bid proposal under §25.404 of this title (relating to Contract Award Procedures) for the installation of the commercial establishment's business logo and, if necessary, ramp business logo.

(B) Business logo annual [Annual] rental fee. An annual fee for each

business logo and for each ramp business logo (for ramp signs) in the respective amounts specified in the contractor's bid proposal under §25.404 of this title (relating to Contract Award Procedures).

(C) Business logo covering [Covering] fee. A total fee of \$100 for covering a business logo and the ramp business logo and a total fee of \$100 for uncovering a business logo and the ramp business logo pursuant to §25.407 of this title (relating to Program Operation).

(D) Business logo replacement [Replacement] fee. A \$100 fee for each business logo and ramp business logo replaced at the request of the commercial establishment.

(E) Major shopping area guide sign annual rental fee. An annual fee for major shopping area sign and ramp sign in the respective amounts specified in the contractor's bid proposal under §25.404 of this title (relating to Contract Award Procedures).

(F) Major shopping area guide sign installation fee. A one-time fee of \$1,000 for initial installation of each major shopping area guide sign pursuant to §25.407 of this title (relating to Program Operation).

(G) Major shopping area guide sign covering fee. A total fee of \$500 for covering the major shopping area guide sign and the ramp sign and a total fee of \$500 for uncovering the major shopping area guide signs and the ramp signs pursuant to §25.407 of this title (relating to Program Operation).

(2) Reduced fees. The contractor shall reduce the annual rental fee a prorated amount for each calendar day when:

(A) the business or ramp business logo(s), or the major shopping area guide sign has not been erected; or

(B) a previously erected business, [or] ramp business logo, or major shopping area guide sign is obscured from view of the motorists for a period of time exceeding ten consecutive calendar days.

(3) Non-reducible fee. A contractor may not reduce the annual fee for the period a business logo, [or] ramp business logo, or major shopping area guide sign is covered at the request of the commercial establishment or retail shopping mall.

(n)(l) Bonding. The contractor shall satisfy all requirements of Texas Civil Statutes, Article 5160, relating to bonds.

(o)(m) Permits, licenses, and taxes. The contractor shall procure all permits and licenses; pay all charges, fees, and taxes; and give all notices necessary and incidental to the due and lawful prosecution of the work. When requested, the contractor shall furnish the department with evidence of compliance with the permit, license, and tax requirements.

(p)(n) Records. The contractor shall, consistent with generally accepted accounting principles, maintain all books, documents, paper, advertising contracts, accounting records, and other evidence pertaining to the contract with the department and shall, upon request of the department, make available such documents, records, and information for examination by the department, its designee, or the State Auditor.

(q)(o) Termination. The department or the contractor may terminate the contract upon default of the other party.

(1) If the contractor terminates the contract or defaults prior to the conclusion date of any five-year term, ownership of the contract rights and any rights in the information [business] logo signs constructed at the various interchanges and intersections shall immediately pass to and vest in the department on the effective date of termination, and the contractor shall not be entitled to any compensation.

(2) If the department terminates the contract for reasons other than default of the contractor, the contractor will be paid for a percentage of the fair market value, as established by the department, for each of the [specific] information logo signs erected. The percentages are as follows: elapsed time since sign installation: 0-1 year-90%; one-two years-75%; two-three years-50%; three-four years-25%; four years or greater-0%.

(r)(p) Sale, transfer, and assignment of contract. The contractor shall not sell, transfer, assign, or otherwise dispose of the contract or any portion thereof, or of its right, title, or interest therein, without the prior written consent of the department.

#### §25.403. Prequalification.

(a) Eligibility. If the department elects to let a contract for the implementation of the information logo sign program, [To be eligible to submit a bid on a contract for the specific information logo sign program,] a contractor must prequalify by submitting an introductory letter and a statement of interest to be eligible to submit a bid under Transportation Code, Chapter 223. A committee of department

employees appointed by the director of the division of traffic [maintenance and] operations will evaluate and score each statement of interest. To prequalify, a contractor must receive a final score of not less than 70 points on the statement of interest.

(b) Introductory letter. The introductory letter shall be addressed to Director of Traffic [Maintenance and] Operations, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483, and shall contain:

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

(c) (No change.)

(d) Page limits. The entire statement of interest including the eight sections listed in subsection (c) of this section should not exceed 25 [18] pages. A page is defined as an 8.5 by 11 inch or 11 by 17 inch sheet containing text, pictures, graphs, charts, plan sheets, or any other graphics. Not more than five [three] 11 by 17 inch sheets, may be used in conjunction with pictures, graphs, charts, plans, and other graphics. If 11 by 17 inch sheets contain text only, they will be counted as two pages.

#### §25.404. Contract Award Procedures.

(a) Notice. The department will publish a notice of intent to award a [specific] information logo sign program contract in industry related publications at least 45 calendar days prior to contractor selection. The notice shall include prequalification requirements for potential contractors.

(b) Bidding requirements.

(1) To be considered for award of a contract under this section, a contractor must file with the director of traffic [maintenance and] operations a sealed bid proposal in a form prescribed by the department. Submission of the bid proposal must comply with the location, date, and time requirements of the notice. The bids shall be opened at a public hearing conducted by the director of traffic [maintenance and] operations. All bidders may attend and all bids shall be opened in their presence.

(2) The bid amount will be the total of the specific information logo sign installation fee plus, five times the sum of the annual rental fees for one business logo sign space and one ramp business logo sign per direction of travel, added to one-tenth of the sum of the major shopping area guide sign and major shopping area ramp sign rental fees. Expressed as a formula in the following Figure 1.  
Figure 1: 43 TAC §25.404(b)(2)

(3) The department will not consider a bid which:

(A) fails to comply with any requirement of the notice;

(B) specifies an installation fee that is less than 5.0% or greater than 25% of the business logo annual rental fee; [or]

(C) specifies that the ramp business logo annual rental fee is less than 5.0% or greater than 15% of the business logo annual rental fee;

(D) specifies a major shopping area guide sign annual rental fee that is less than two times or greater than six times the business logo annual rental fee; or

(E) specifies that the major shopping area ramp sign annual rental fee is less than one-half or greater than 150% of the business logo annual rental fee.

(c) Award of contract.

(1) All bid proposals received by the director of traffic [maintenance and] operations shall be tabulated and forwarded to the commission. The commission may accept or reject all bids, and if accepted, award the contract to the lowest bidder

(2) The department will notify the contractor by certified mail of the award of a [specific] information [business] logo sign program contract within ten calendar days of the date of the award. To accept the award, the contractor must execute a contract with the department within 30 calendar days of the date of the award

(3) (No change.)

#### §25.405. Specifications for Information logo signs.

(a) Specific information logo signs.

(1) Design. A specific information logo sign shall:

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

(F) provide [not more than eight inches] vertical spacing and [not more than 12 inches] horizontal spacing for a balanced appearance of [between] business logos.

(2) Content. A specific information logo sign shall contain:

(A) (No change.)



(B) the exit number or, if exit numbers are not applicable, other directional information;

(C) no more than six [four] business logos on one sign panel; and

(D) no more than three types [one type] of services [service] on a sign panel[, or, in an area having fewer than three qualified commercial establishments available for that service, no more than two types of services on that sign panel]. Signs with greater than two services shall be approved by the department prior to fabrication and installation.

(3) Placement. Subject to approval of the department, a specific information logo sign shall be installed or placed:

(A)-(I) (No change.)

(J) where a motorist, after following the sign(s), can conveniently re-enter the highway and continue in the original direction of travel; [and]

(K) at least 800 feet between two large guide signs, but not excessively spaced[, from another sign having the same legend]; and

(L) at closely spaced interchanges when signs for each exit is not possible, the sign(s) may consist of two sections, one for each exit (the top section shall display the business logos for the first exit and the lower sections shall display the business logos for the second exit).

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate logo signs.

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

(d) Major shopping area guide signs.

(1) Design. A major shopping area sign shall:

(A) have a green background with a white reflective legend and border;

(B) meet the applicable provisions of the Texas MUTCD;

(C) have background, legend, and border material which conforms with department specifications for reflective sheeting;

(D) not be illuminated externally or internally; and

(E) be fabricated, erected, and maintained in conformance with department specifications and fabrication details.

(2) Content. A major shopping area guide sign shall:

(A) contain the name of the major shopping area as it is commonly known to the public; and

(B) contain the exit number or, if exit numbers are not applicable, other directional information.

(3) Placement. Subject to approval of the department, a major shopping area guide sign shall be installed or placed:

(A) independently mounted, or if approved by the department, attached to existing guide signs;

(B) to take advantage of natural terrain;

(C) to have the least impact on the scenic environment;

(D) to avoid visual conflict with other signs within the highway right-of-way;

(E) with a lateral offset equal to or greater than existing guide signs;

(F) for both directions of travel on the eligible urban highway;

(G) without blocking motorists' visibility of existing traffic control and guide signs; and

(H) in locations that are not overhead unless approved by the department.

(4) Existing signs. Existing regulatory, warning, destination, guide, recreation, and cultural interest signs will not be removed; provided, however, that subject to the written approval of the

department, such existing signs may be relocated by special permission of the department at the sole expense and responsibility of the contractor and only to the extent necessary to accommodate major shopping area guide signs.

(e) Major shopping area ramp signs.

(1) Design. A major shopping area ramp sign shall:

(A) have a green background with a white reflective legend and border;

(B) meet the applicable provisions of the Texas MUTCD;

(C) have background, legend, and border material which conforms with department specifications for reflective sheeting;

(D) be fabricated, erected, and maintained in conformance with department specifications and fabrication details; and

(E) not be illuminated internally or externally.

(2) Content. A ramp sign shall contain:

(A) the name of the major shopping area as it is commonly known to the public; and

(B) directional arrows and distances.

(3) Placement. Subject to approval of the department, the major shopping area ramp sign(s) may be placed along an exit ramp or access road, or at an intersection of an access road and crossroad if the retail shopping mall driveway access, buildings, or parking areas are not visible from that exit ramp, access road, or intersection.

*§25.406. Commercial Establishment Eligibility.*

(a) General requirements for eligibility. To be eligible to have a business logo placed on a specific information logo sign, a commercial establishment must:

(1) (No change.)

(2) be located with driveway access to the [interstate] access road (frontage road), ramp, or intersecting crossroad;

(3) be visible, or have on-premise signing visible, from the com-

mercial establishment's driveway access or the exit ramp, access road, crossroad, or intersection;

(4) be located within the marketing inventory as stated in §25.402(b) of this title (relating to Information Logo Sign Program) but not farther than three miles from an interchange on an eligible [interstate] highway; [ , or, other eligible service of the same kind is located within that distance, be located within 15 miles of the interchange and be issued a permit by the department];

(5) if no service participating or willing to participate in the specific information logo sign program is located within three miles of an interchange, the department may approve commercial establishments of the same service:

(A) if located not farther than six miles from the interchange;

(B) nine miles from the interchange if no service participating or willing to participate is located six miles from the interchange;

(C) 12 miles from the interchange if no service participating or willing to participate is located nine miles of the interchange; or

(D) 15 miles from the interchange if no service participating or willing to participate is located 12 miles of the interchange;

(6) [(4)] comply with all applicable laws concerning the provisions of public accommodations without regard to race, religion, color, sex, or national origin; and

(7)[(5)] post its hours of operation on or near the main entrance so that they are visible to the public during open and closed hours.

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

#### §25.407. Program Operation.

(a) Commercial establishment and retail shopping mall application.

(1) Applications for commercial establishments or retail shopping malls desiring to participate in the [specific] information logo sign program are available upon request from the Texas Department of Transportation, Traffic [Division of Maintenance and] Operations, 125 East 11th Street, Austin, Texas 78701-2483.

(2) A commercial establishment or retail shopping malls desiring to participate in the [specific] information logo sign

program must submit an application to the contractor and verify that all requirements are met. Applications must be submitted to the location as stated on the application form. The contractor will verify the eligibility of each applicant.

(3) For commercial establishments, a separate application is required for each primary motorist service per interchange per direction of travel. Only one application per commercial establishment per primary motorist service per direction of travel per interchange will be accepted.

(4)-(8) (No change.)

(b) Commercial establishment selection.

(1) Available business logo space(s) and relative placement of business logos on the specific information logo sign, available first alternate position, and available second alternate position for each primary motorist service for each direction of travel at an interchange will be awarded by the annual or emergency random drawing of the qualified applications received before the commercial establishment application deadline. The relative placement of business logos in available space(s), in order of selection, is upper left, upper middle, upper right, lower left, lower middle, and lower right. For a specific information logo sign that includes more than one service, the relative placement of business logos in available space(s), in order of selection, is left to right and top to bottom for each portion of the sign designated for each service.

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

(c) Responsibilities and rights of commercial establishment.

(1) (No change.)

(2) A commercial establishment may renew its participation agreement with the contractor on an annual or multi-year basis no later than July 31 of the last year of the contract. If the commercial establishment does not renew the agreement with the contractor, the contractor will remove the business logo at the end of the participation agreement, and will make the vacated space(s) available to other commercial establishments pursuant to subsection (b) of this section.

(d) (No change.)

(e) Removal of business logo.

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

(3) If [When] the business logo is removed due to the default of the commercial establishment to perform within the terms of the participation agreement and this undesignated head, the participation agreement is terminated between the commercial establishment and the contrac-

tor. All funds paid to the contractor by the commercial establishment are forfeited. Upon removal of a business logo, the vacated space becomes available pursuant to subsection (b) of this section. A replacement commercial business is selected, as stated in the commercial establishment selection process.

(4) If the business logo is removed permanently due to actions of the department, the participation agreement is terminated between the commercial establishment and the contractor. Advance funds paid to the contractor by the commercial establishment will be pro-rated as per the date of removal, and any remaining amounts refunded to the commercial establishment.

(f) Responsibilities and rights of the retail shopping mall.

(1) The retail shopping mall may renew its participation agreement with the contractor on an annual or multi-year basis no later than 60 days from the termination date of the contract. If the retail shopping mall does not renew the agreement with the contractor, the contractor will remove the major shopping area guide signs and ramp signs at the end of the participation agreement.

(2) A major shopping area guide sign(s) of a retail shopping mall may be covered by the contractor if the retail shopping mall is temporarily closed for a period not exceeding 30 calendar days. The signs shall remain covered until the retail shopping mall reopens.

(g) Removal of major shopping area guide sign.

(1) A major shopping area guide sign of a participating retail shopping mall shall be removed by the contractor if the retail shopping mall:

(A) ceases to exist;

(B) fails to pay the annual rental fee or other fees within 30 calendar days of the due date as specified on the agreement;

(C) is temporarily closed for more than 30 calendar days;

(D) does not meet the minimum requirements as stated herein, and all corrections are not made within 30 calendar days of written notification; or

(E) is sold, and the new retail shopping mall does not continue as a public retail business.

(2) Removal of a major shopping area guide sign by the contractor will include the removal of the major shopping area's ramp sign(s).

(3) If the major shopping area guide sign is removed due to the default of the retail shopping mall to perform within the terms of the participation agreement and the requirements as stated herein, the participation agreement is terminated between the retail shopping mall and the contractor. All funds paid to the contractor by the retail shopping mall are forfeited.

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

Issued in Austin, Texas, on August 3, 1995

TRD-9509738 Robert E Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption: September 11, 1995

For further information, please call (512) 463-8630



### Information Logo Sign Program

#### • 43 TAC §25.409

The new section is proposed under Texas Civil Statutes, Article 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 more specifically, Texas Civil Statutes, Article 4477-9a, which authorize the Texas Department of Transportation to erect and maintain information logo signs within eligible highways and urban rights of way

Texas Civil Statutes, Article 4477-9a, is affected by the new section

§25.409 *Major Shopping Area Eligibility* To be eligible to have a major shopping area guide sign, the retail shopping mall must

(1) be located not farther than three miles from an interchange with an eligible urban highway,

(2) consist of 30 acres or more of land.

(3) include an enclosed gross building area of 1,000,000 square feet or more of gross building area,

(4) be located with driveway access to the eligible urban highway access road (frontage road), ramp, intersecting crossroad or city street, and

(5) post its hours of operation on or near the main public entrance(s) so that they are visible to the public during open and closed hours

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

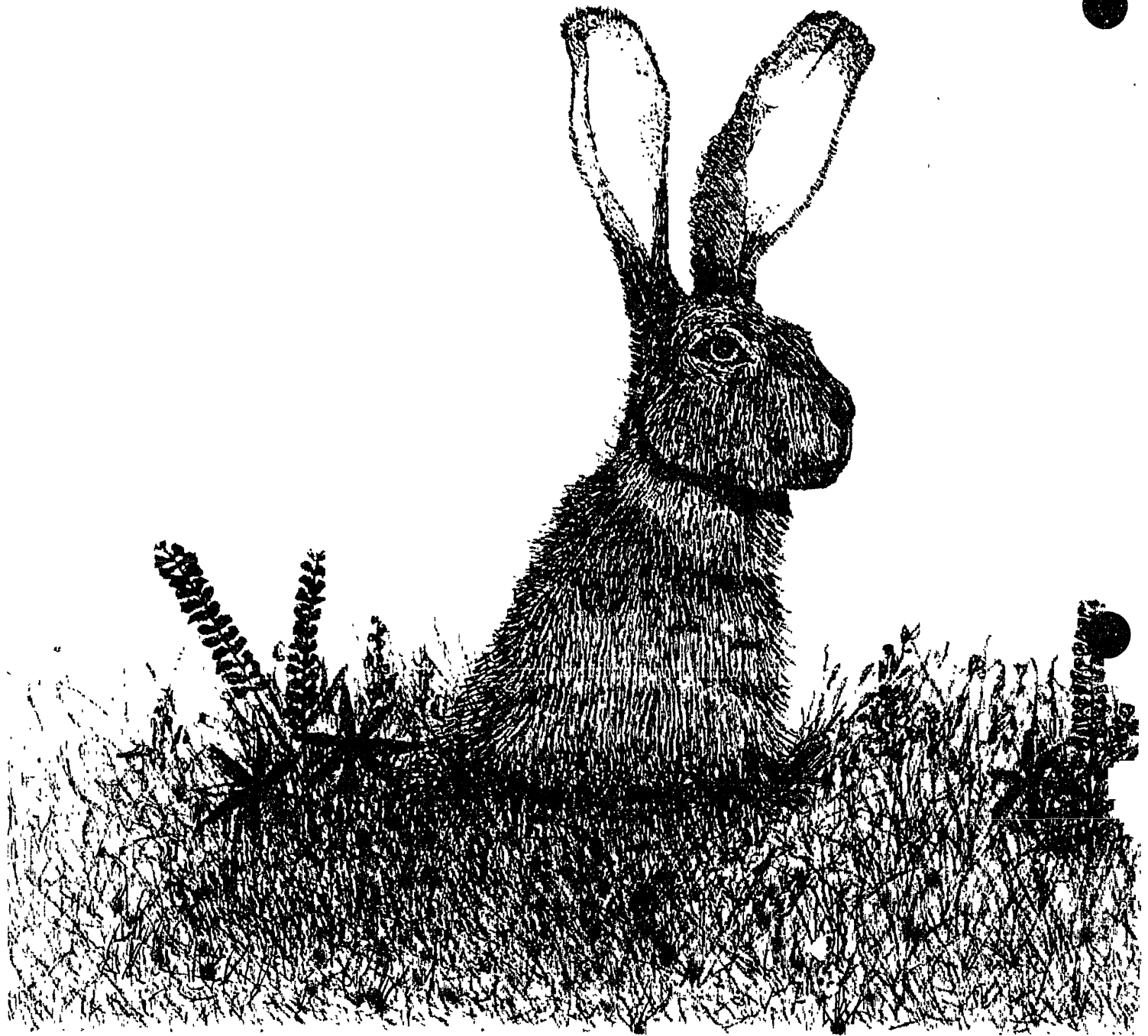
Issued in Austin, Texas, on August 3, 1995

TRD-9509739 Robert E Shaddock  
General Counsel  
Texas Department of  
Transportation

Earliest possible date of adoption September 11, 1995

For further information, please call (512) 463-8630





Name: Jacklyn Motsen  
Grade: 10  
School: Gainesville High School, Gainesville 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 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 72. Memoranda of Understanding with Other State Agencies

##### Memorandum of Understanding Concerning Capacity Assessment of Persons Who Are Elderly and Persons with Mental Retardation and/or Developmental Disabilities for a Surrogate Decision Maker or Guardian Referral

###### • 40 TAC §72.501

The Texas Department of Human Services has withdrawn from consideration for permanent adoption proposed new §72.501, which appeared in the February 7, 1995, issue of the *Texas Register* (20 TexReg 876). The effective date of this withdrawal is August 3, 1995.

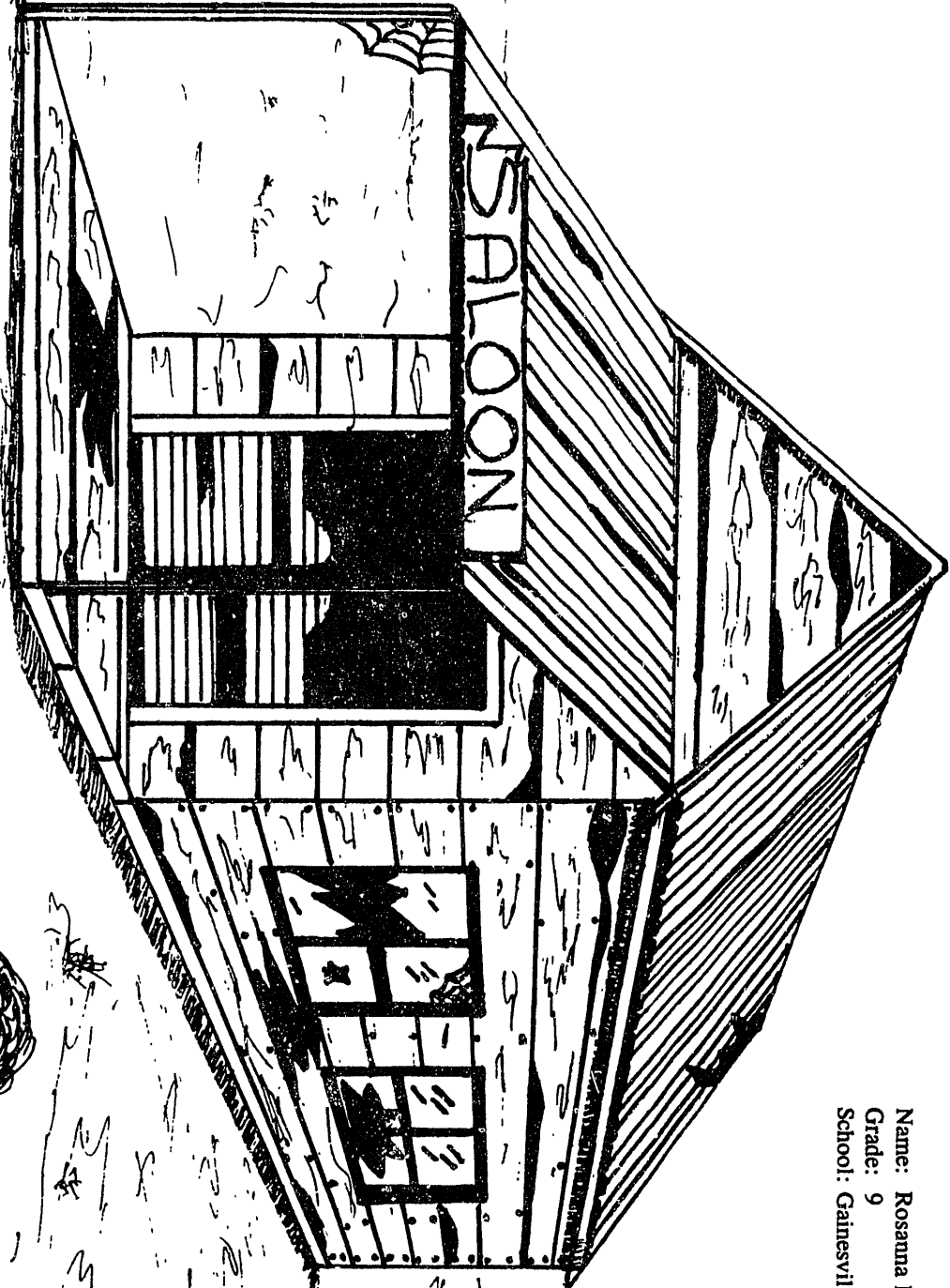
Issued in Austin, Texas, on August 3, 1995.

TRD-9509683      Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date: August 3, 1995

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





Name: Rosanna Hellinger

Grade: 9

School: Gainesville High School, Gainesville ISD

# ADOPTED RULES

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

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

## 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 notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.)*

*These actions become effective 15 days after the date of publication or on a later specified date*

*The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin)*

The Commissioner of Insurance, at a public hearing under Docket Number 2154 held at 1:30 p.m., July 25, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, adopted a forms 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 Article 350, Vernon's Texas Civil Statutes. The Sale of Checks Bond is a requirement of Article 489d, Vernon's Texas Civil Statutes. The forms were filed in the Chief Clerk's Office on June 30, 1995.

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 Article 350, Vernon's Texas Civil Statutes (Act) 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 Article 489d, Vernon's Texas Civil Statutes (Act) but also "any rules adopted pursuant to the Act." A counter sig-

nature line for the signature of the Licensed Local Recording Agent has been added. There also has been other changes of an editorial nature.

The full text of the surety bond form filing (Reference Number 0-0695-11), was published in the July 11, 1995, issue of the *Texas Register* (20 TexReg 5062).

The Texas Department of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15 and 5.97.

The full text of the surety bond forms entitled "Currency Exchange Bond" and "Sale of Checks Bond", as adopted by the Texas Department of Insurance are filed with the Chief Clerk under (Reference Number 0-0695-11) and is incorporated by reference by Commissioner Order Number 95-0771.

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 August 3, 1995.

TRD-9509696  
Alicia M. Fechtel  
General Counsel and Chief  
Clerk  
Texas Department of  
Insurance

Effective date: August 26, 1995

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 notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.)*

*These actions become effective 15 days after the date of publication or on a later specified date.*

*The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)*

The Commissioner of Insurance, at a public hearing under Document Number 2155 held at 1:30 p.m., July 25, 1995, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, adopted a forms 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 Article 4413(29c), Vernon's Texas Civil Statutes, as amended by Senate Bill 1391, acts of the 74th Legislature, Regular Session 1995. The forms were filed in the Chief Clerk's Office on June 30, 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 "§13(a-2), (g) (3), (h), §13B, §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 "§13(a), (g) (1), (h), §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.

The full text of the surety bond form filing (Reference Number 0-0695-12), was published in the July 11, 1995, issue of the *Texas Register* (20 TexReg 5063).

The Texas Department of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.13, 5.15 and 5.97.

The full text of the revised forms entitled "Course Provider Bond," "Driver Education School Bond" and "Continuation Agreement," as adopted by the Texas Department of Insurance are filed with the Chief Clerk under (Reference Number 0-0895-12) and is incorporated by reference by Commissioner Order Number 95-0770.

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 August 3, 1995.

TRD-9509885      Alicia M. Fichte  
                          General Counsel and Chief  
                          Clerk  
                          Texas Department of  
                          Insurance

Effective date: August 26, 1995

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

◆            ◆            ◆



# TABLES AND GRAPHICS

---

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

FIGURE 1: 16 TAC, Section 68.80 (b)

Fee Schedule:

<u>Construction Cost</u>	<u>Review Fee</u>	<u>Inspection Fee</u>
\$ 50,000 - \$ 200,000	<u>\$176</u> [\$135]	<u>\$215</u> [\$65]
200,001 - 500,000	<u>215</u> [185]	<u>240</u> [90]
500,001 - 1,000,000	<u>305</u> [235]	<u>265</u> [115]
1,000,001 - 5,000,000	<u>371</u> [285]	<u>290</u> [140]
5,000,001 - 10,000,000	<u>500</u> [385]	<u>315</u> [215]
10,000,001 - 15,000,000	<u>543</u> [485]	<u>340</u> [290]
15,000,001 - 25,000,000	<u>711</u> [635]	440
25,000,001 - 50,000,000	<u>879</u> [785]	665
50,000,001 - 75,000,000	<u>1,103</u> [985]	890
> 75,000,000	Contact TDLR for negotiated fee	

Inspection of State Leases, (no construction involved)	- <u>\$135</u> [\$65] per lease
Preliminary Review Fee	- <u>\$145</u> [\$100] each
Special Inspection Fee	- <u>\$215</u> [\$65] per hour, two hour minimum
Variance Application Fee	- <u>\$100</u> [\$75] each
Variance Appeal	- <u>\$100</u> [\$75]
Contract Provider Project Filing Fee	- <u>\$35</u> [\$25] each
Project Information Request	- <u>\$35</u> [\$25] each



Construction according to design approved by \_\_\_\_\_ Water Supply Corporation/Special Utility District and dedication by the developer of water/sewer facilities within the subdivision following inspection.

\_\_\_\_\_ Water Supply Corporation's/Special Utility District's tariff and a map showing \_\_\_\_\_ Water Supply Corporation's/Special Utility District's service area may be reviewed at \_\_\_\_\_ Water Supply Corporation's/Special Utility District's offices, at [address of the water supply corporation/special utility district]; the tariff/policy and service area map also are filed of record at the Texas Natural Resource Conservation Commission in Austin, Texas and may be reviewed by contacting the TNRCC, c/o Utility Rates and Services [Certification and Rate Design] Section, Water Utilities Division, P. O. Box 13087, Austin, Texas 78711.

Figure 1: 43 TAC <\*>25.404 (b) (2)

$$B = IF + \{5 \times [(BLARF_1 + BLARF_R) + 0.10 \times (MSAARF_1 + MSAARF_R)]\} \text{ where:}$$

B = Contractor's bid

IF = Installation fee for one business logo

BLARF<sub>1</sub> = Annual rental fee for one business logo sign space

BLARF<sub>R</sub> = Annual rental fee for one ramp business logo sign space

MSAARF<sub>1</sub> = Annual rental fee for one major shopping area guide sign

MSAARF<sub>R</sub> = Annual rental fee for one major shopping area ramp sign

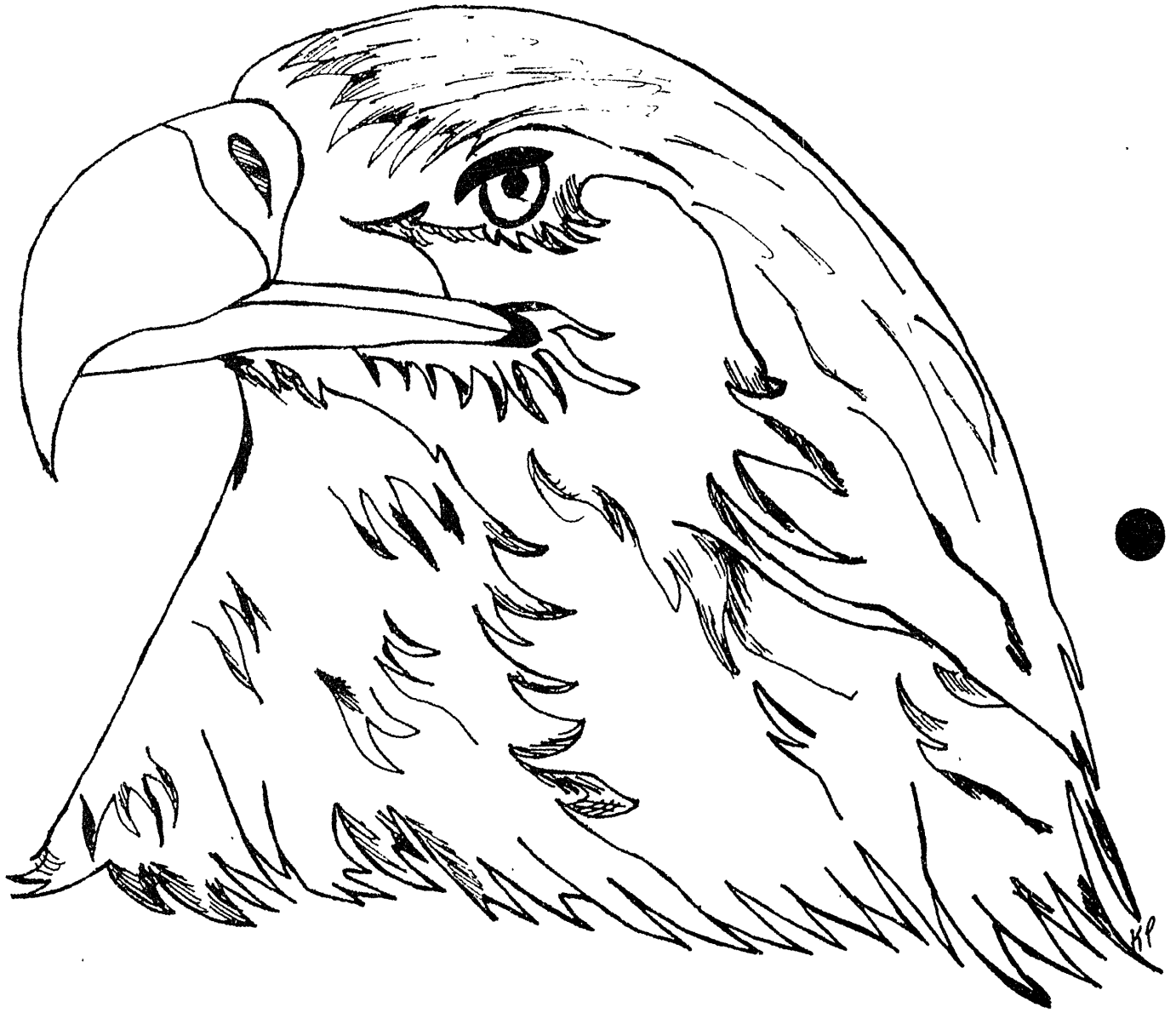
$$[B = IF + [5 \times (ARF_1 + ARF_R)] \text{ where:}$$

B = Contractor's bid

IF = Installation fee

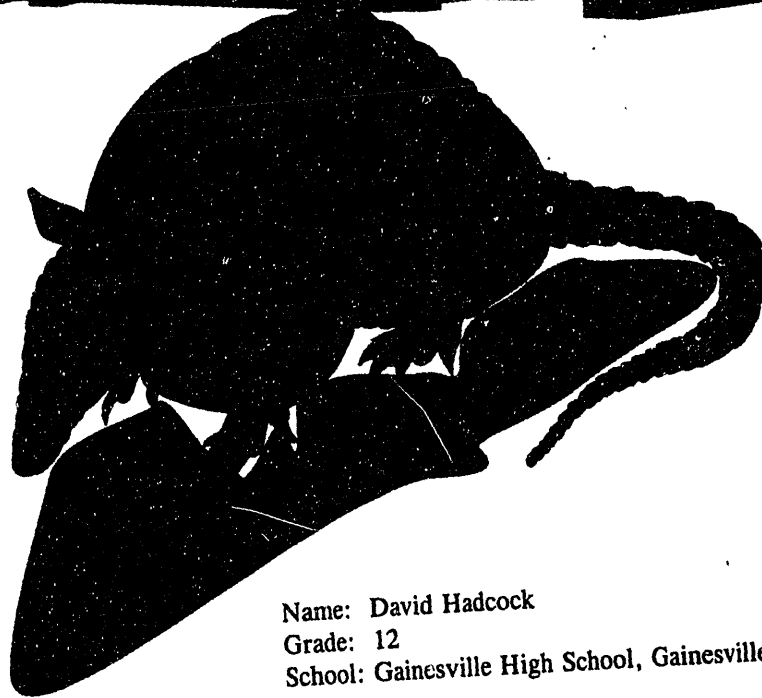
ARF<sub>1</sub> = Annual rental fee for one business logo sign space

ARF<sub>R</sub> = Annual rental fee for one ramp business logo sign space]



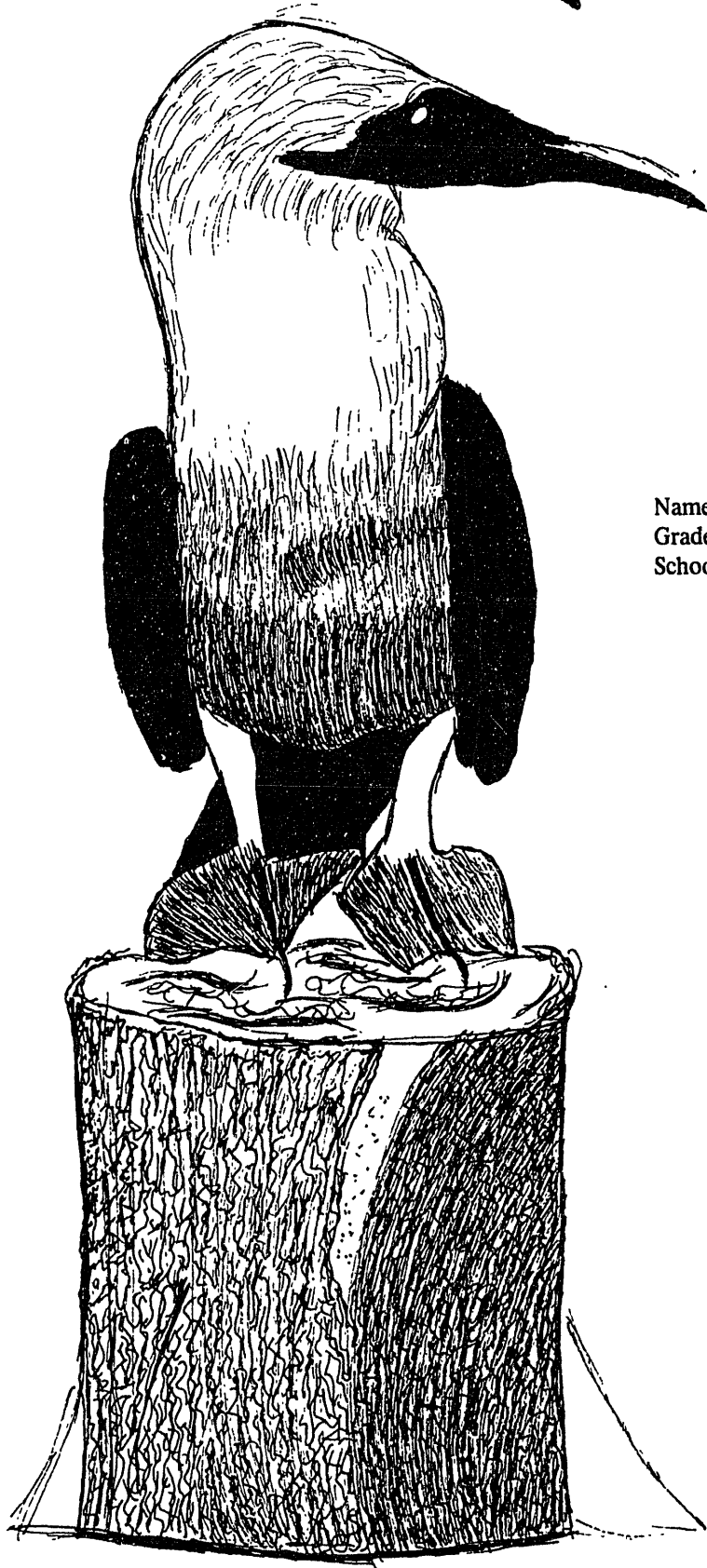
Name: Kelly Price  
Grade: 12  
School: Gainesville High School, Gainesville ISD

Texas



Name: David Hadcock  
Grade: 12  
School: Gainesville High School, Gainesville ISD

Register



Name: Shona Copling  
Grade: 10  
School: Gainesville High School, Gainesville ISD



# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department on Aging

Tuesday, August 15, 1995, 2:30 p.m.

Bahia Mar Resort and Conference Center,  
Sol Room, 6300 Padre Boulevard

South Padre Island

Area Agency on Aging (AAA) Operations  
Committee

### AGENDA

Consider and possibly act on

Call to order. Public hearing to receive comments on amended administrative rules. Minutes of June 7, 1995 meeting. Publish amended rules in *Texas Register* for final adoption. Publish new rules in *Texas Register* for review and comment. Follow up on funding of Legal Services Hotline. Adjourn.

Contact: Mary Sapp, P.O. Box 12786,  
Austin, Texas 78701, (512) 444-2727.

Filed: August 7, 1995, 4:31 p.m.

TRD-9509854

Tuesday, August 15, 1995, 4:00 p.m.

Bahia Mar Resort and Conference Center,  
Sol Room, 6300 Padre Boulevard

South Padre Island

Audit and Finance Committee

### AGENDA

Consider and possibly act on: Call to order. Minutes of June 7, 1995 meeting. Fiscal year 1996 operating budget. TDoA Board travel reimbursement requests submission policy. Decision on disposition/contract for

fiscal year 1996 Foster Grandparent, Senior Companion, and Retired and Senior Volunteer Program funds. Approve signature authority for Barbara Zimmerman of the Fiscal Division, for Uniform Statewide Accounting System release and file download, purchase request and payment vouchers, travel advance disbursements, and any other purposes necessary for the fulfillment of job duties. Audit updates-internal and state auditor. Budget report. Adjourn.

Contact: Mary Sapp, P.O. Box 12786,  
Austin, Texas 78701, (512) 444-2727.

Filed: August 7, 1995, 4:31 p.m.

TRD-9509855

Wednesday, August 16, 1995, 9:00 a.m.

Bahia Mar Resort and Conference Center,  
Texas Room, 6300 Padre Boulevard

South Padre Island

Board on Aging

### AGENDA:

Consider and possibly act on: Call to order. Minutes of June 8, 1995 meeting. Public testimony. Chair's report. Executive director's report. Appointment of options for Independent Living Advisory Committee. Reports including: Options for Independent Living-Fiscal Year 1996-1997 options for independent living funding. Policy for future options request for proposals; Audit and Finance-Fiscal Year 1996 operating budget; TDoA Board travel reimbursement request submission policy; conflict of interest policy on contracting; extend internal

audit contract for one year. Decision on disposition/contract for fiscal year 1996 Foster Grandparent, Senior Companion, and Retired and Senior Volunteer Program funds; approve signature authority for Fiscal Division staff; AAA Operations-Publish new, revised, re-located administrative rules for final adoption; publish new administrative rules for comment; adoption of census figures to use in funding formulae. Board member travel. General announcements. Adjourn.

Contact: Mary Sapp, P.O. Box 12786,  
Austin, Texas 78701, (512) 444-2727.

Filed: August 7, 1995, 4:31 p.m.

TRD-9509856

## Texas Department of Agriculture

Friday, August 11, 1995, 8:00 a.m.

Texas A&M Experiment Station, 2401 East  
Highway 83

Weslaco

Lower Rio Grande Valley Cotton Pest Management Committee

### AGENDA:

Minutes of June 2, 1995 meeting, introduction of committee members and Texas Department of Agriculture staff, report on Texas Department of Agriculture 1994 program, law and regulation changes for 1995, report on Texas Department of Agriculture 1995 program, committee member area re-

ports, extension report, Consolidated Farm Service Agency report, additional business before the committee, committee recommendations for program improvement, closing comments.

Contact: Rick Smathers, 1700 North Congress Avenue, Austin, Texas 78711, (512) 305-8946.

Filed: August 3, 1995, 10:19 a.m.

TRD-9509689

Thursday, August 31, 1995, 10:00 a.m.  
Texas Department of Agriculture, 1700 North Congress Avenue, Room 928B

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas pesticide laws by Randell Stephens doing business as Stephens Ag-Air, Incorporated.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: August 3, 1995, 1:07 p.m.

TRD-9509692

### Texas Appraiser Licensing and Certification Board

Tuesday, August 15, 1995, 9:00 a.m.

Conference Room 123, 1101 Camino La Costa

Austin

Enforcement Committee

AGENDA:

Tuesday, August 15, 1995.

Call to order; discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board concerning complaint 95-011; adjourn.

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: August 4, 1995, 1:49 p.m.

TRD-9509763

### The State Bar of Texas

Friday, August 11, 1995, 8:30 a.m.

The Texas Law Center, Room 206, 1414 Colorado

Austin

Revised Agenda

The Commission for Lawyer Discipline

AGENDA:

To correct Item Number 15 of the agenda as follows:

15. Discuss assignment of special counsel to one or more pending cases involving two following respondent attorneys:

10. Michael W. Johnson (remove the name Charles King); and

19. Steve Hardman (remove the name Roger Townsend).

Contact: Anne McKenna, P.O. Box 12847, Austin, Texas 78711, 1-800-204-2222.

Filed: August 3, 1995, 3:11 p.m.

TRD-9509711

### Children's Trust Fund of Texas Council

Friday, August 18, 1995, 9:00 a.m.

8929 Shoal Creek Boulevard, Suite 200

Austin

Children's Trust Fund of Texas Council

AGENDA:

Introduction

Chairperson's Report

Executive Director's Report

Fiscal Year 1996 Program Selection

Lunch

Fiscal Year 1996 Program Section (Continued)

New Business

Adjourn

Contact: Sue Marshall, 8929 Shoal Creek Boulevard, Suite 200, Austin, Texas 78757-6854, (512) 458-1281.

Filed: August 8, 1995, 8:25 a.m.

TRD-9509860

### Texas Department of Commerce

Tuesday, August 15, 1995, 9:30 a.m.

1700 North Congress Avenue, Room 118

Austin

Policy Board

AGENDA:

9:30 a.m. Call to order; recess into executive session; call back to order; adoption of the minutes from the meeting of June 14, 1995; report from the executive director; reinstatement of Tourism Advisory Committee; final adoption of amendments to the Smart Job Fund rules; final adoption of amendments to the Texas Enterprise Zone Program rules; appointment of Policy Board members as directors of the Texas Small

Business Industrial Development Corporation (TSBIDC); consideration of authorizing an extension of the credit facility for the Texas Department of Commerce's Taxable Commercial Paper Notes Series A (Texas Leverage Fund); approval of amended Grievance Procedures Job Training Partnership Act rules; business development briefing and Global Communities Workshop Initiatives-Regional Cooperation; Economic Development Strategies for Success; public comments; and adjourn.

Contact: Shirley Zimmermann, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0158.

Filed: August 4, 1995, 8:26 a.m.

TRD-9509732

Tuesday, August 15, 1995, 11:16 a.m.

1700 North Congress Avenue, Room 118

Austin

Texas Small Business Industrial Development Corporation

AGENDA:

11:16 a.m. Call to order; approval of minutes from the April 13, 1994 meeting; consider appointing officers and authorizing execution and delivery of amendments to the Letter of Credit Agreement, the Guaranteed Investment Contract; consider appointment of directors for TEXCAP Financing Corporation and appointment of officers for TSBIDC; public comments; and adjourn.

Contact: Shirley Zimmermann, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0158.

Filed: August 4, 1995, 8:27 a.m.

TRD-9509734

Tuesday, August 15, 1995, 11:37 a.m.

1700 North Congress Avenue, Room 118

Austin

TEXCAP Financing Corporation

AGENDA:

11:37 a.m. Call to order; approval of minutes from the April 13, 1994 meeting; consider appointing officers and authorizing execution and delivery of amendments to the Letter of Credit Agreement, the Guaranteed Investment Contract and other bond documents relating to the Texas Small Business Industrial Development Corporation Floating Rate Demand Revenue Bonds; public comments; and adjourn.

Contact: Shirley Zimmerman, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0158.

Filed: August 4, 1995, 8:26 a.m.

TRD-9509731

Tuesday, August 15, 1995, 11:52 a.m.  
1700 North Congress Avenue, Room 118  
Austin  
Texas Economic Development Corporation  
AGENDA:

11:52 a.m. Call to order; approval of minutes from the June 14, 1995 meeting; public comments; and adjourn.

Contact: Shirley Zimmerman, 1700 North Congress, Austin, Texas 78701, (512) 936-0158.

Filed: August 4, 1995, 8:26 a.m.

TRD-9509733

Wednesday, August 16, 1995, 8:30 a.m.  
U.T. Alumni Center, John Connally Ballroom, 2110 San Jacinto Boulevard  
Austin

Texas Defense Economic Adjustment Advisory Council

AGENDA:

I. Welcoming remarks

II. Overview of council mission

III. Presentation by Base Closure and Realignment Commission (BRAC) 95 impacted communities

IV. Committee meeting/discussions

Community development

Environmental issues

Human resources

Defense industry

V. Conclusion

\*Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services are requested to contact Audra Lipe at (512) 936-0105 at least two days before this meeting so that appropriate arrangements can be made. Please contact Audra Lipe at (512) 936-0105 if you need assistance in having English translated to Spanish.

Contact: Audra Lipe, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0105.

Filed: August 7, 1995, 8:30 a.m.

TRD-9509806

## Conservatorship Board

Tuesday, August 8, 1995, 9:00 a.m.

710 Brazos, Perry Brooks Building

Austin

Emergency Revised Agenda

AGENDA:

Approval of August 1, 1995 minutes.

Necessary for Conservatorship Board to meet in order to meet statutory mandate.

Contact: Tom Mann, 710 Brazos, Austin, Texas 78701, (512) 867-8809.

Filed: August 3, 1995, 11:29 a.m.

TRD-9509691

## State Employee Charitable Campaign

Wednesday, August 16, 1995, 4:00 p.m.

901 Ross Avenue

Dallas

Local Employee Committee-Dallas

AGENDA:

1995 Kick-Off Planning

Contact: Kim Barber, 901 Ross Avenue, Dallas, Texas 75202, (512) 450-0840.

Filed: August 8, 1995, 9:25 a.m.

TRD-9509867

Monday, August 21, 1995, 4:00 p.m.

2207 Line Avenue

Amarillo

Local Employee Committee-Amarillo

AGENDA:

Discuss planning agency coordinator training

Discuss kick-off

Contact: Sheryl Baker, 2207 Line Avenue, Amarillo, Texas 79016, (806) 376-6359, FAX: (806) 376-9343.

Filed: August 8, 1995, 9:26 a.m.

TRD-9509868

Tuesday, August 22, 1995, 3:00 p.m.

625 Dallas Drive, Suite 525

Denton

Local Employee Committee-Denton

AGENDA:

1. Campaign Progress Report

Contact: Pat Gobble, 625 Dallas Drive, Suite 525, Denton, Texas 76205, (817) 566-5851.

Filed: August 8, 1995, 9:26 a.m.

TRD-9509869

## Texas Employment Commission

Tuesday, August 15, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; consideration and possible approval of bid for interior renovations at the Eagle Pass agency-owned building; consideration and possible approval of bid for interior renovations at the Victoria agency-owned building; consideration and possible approval of biennial operating plan for information technology; staff reports; internal procedures of commission appeals; consideration and action on tax liability cases listed on Commission Docket 33; consideration and action on higher level appeals in unemployment compensation cases listed on Commission Dockets 33 and 33A; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 7, 1995, 4:12 p.m.

TRD-9509852

## Texas Ethics Commission

Friday, August 11, 1995, 9:30 a.m.

Room 106, Nedderman Hall, University of Texas

Arlington

AGENDA:

The commission will take roll call; hear comments by the commissioners and the executive director, and communications from the public; approve the minutes of the July 14, 1995, meeting; briefing, discussion, and possible action to waive certain fines assessed for late filing of a report; briefing, discussion, and possible action regarding upgrading computer equipment; public discussion and possible action to propose a rule for debt retirement by judicial candidates and officeholders not participating in the 1996 election; discussion and possible action in response to the following Advisory Opinions Requests Numbers 305-308 and SP-5; executive session for discussion of personnel matters and salaries; possible action regarding personnel matters and/or salaries. Adjourn.

Contact: Sarah Woelk, 1101 Camino La Costa, Austin, Texas 78701, (512) 463-5300.

Filed: August 3, 1995, 1:14 p.m.

TRD-9509697

## General Land Office

Tuesday, August 15, 1995, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

School Land Board

### AGENDA:

Approval of previous board meeting minutes; pooling applications, Lopeno NE Field, Zapata County; Neches River (Yegua EY), Jefferson and Orange counties; Oletha, SW (Travis Peak), Limestone County; Mesquite Bay (Frio G-1), Aransas County; Eicke Ranch, Borden County; Joaquin, Travis Peak Field, Panola and Shelby counties; consideration of proposed rule amendments to 31 TAC §9.7, including amendments relating to annual royalty reporting and payment and royalty reduction incentives for marginally productive properties; direct land sales, Brewster County; coastal public lands, structure (cabin) permit amendments, terminations, requests and renewals, Laguna Madre, Cameron County; Laguna Madre, Kleberg County; commercial lease application, Copano Bay, Aransas County; consideration of compliance program, Chapter 33, Texas Natural Resources Code and proposed rules for implementation; executive session—pending and proposed litigation; executive session—consideration of direct land sale under Texas Natural Resources Code, §51.052(h), Navarro County; open session—consideration of direct land sale under Texas Natural Resources Code, §51.052(h), Navarro County; executive session—consideration of purchase of a portion of Fort Worth State School, Tarrant County from TXMHMR and simultaneous sale to Tarrant County; open session—consideration of purchase of a portion of Fort Worth State School, Tarrant County from TXMHMR and simultaneous sale to Tarrant County.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016.

Filed: August 7, 1995, 3:58 p.m.

TRD-9509850

## Office of the Governor, Criminal Justice Division

Friday, August 18, 1995, 10:30 a.m.

Texas State Capital Extension Auditorium, West 15th at Congress Avenue

Austin

### AGENDA:

The Criminal Justice Division of the Office of the Governor will hold a town hall meet-

ing during which Governor George W. Bush and the public will comment on the topic "Seeking Solutions: Innovative Ideas in Criminal Justice."

I. Opening comments by Karen J. Greene, executive director, Criminal Justice Division, Office of the Governor.

II. Introductions by Karen J. Greene, executive director, Criminal Justice Division, Office of the Governor.

III. Comments by George W. Bush, Governor.

IV. Public comment.

V. Adjournment.

Contact: Karen Greene, 221 East 11th Street, Austin, Texas 78701, (512) 463-5706.

Filed: August 7, 1995, 2:50 p.m.

TRD-9509848

## Texas Historical Commission

Thursday, August 17, 1995, 9:00 a.m.

121 E McIntyre

Edinburg

Governor's Task Force on Los Caminos del Rio Heritage Project

### AGENDA:

1. Briefing on Los Caminos del Rio Heritage Project
2. Discussion on project boundary issues; second heritage summit; proposed cooperative actions by Task Force for 1996

Contact: Mario Sanchez, P.O. Box 12276, Austin, Texas 78711, (512) 463-5755.

Filed: August 7, 1995, 2:46 p.m.

TRD-9509838

## Texas Department of Insurance

Monday, August 21, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

### AGENDA:

454-95-0533.C

To consider whether disciplinary action should be taken against Joan Lee Collin, Houston, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License, Group II Insurance Agent's License, and Local Recording Agent's License issued by the Texas Department of Insurance and All Payless Insurance Agency, Inc., Houston,

Texas, which holds a Local Recording Agent's License issued by the Texas Department of Insurance (continued from June 21, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 8, 1995, 8:50 a.m.

TRD-9509862

Tuesday, August 22, 1995, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

### AGENDA:

454-95-0824.C

To consider whether disciplinary action should be taken against Glen Mark Barling, Arlington, Texas, who holds a Local Recording Agent's License-Motor Vehicle only-issued by the Texas Department of Insurance and to consider the application of Glen Mark Barling, Arlington, Texas, for a Local Recording Agent's License-Multiple Lines-to be issued by the Texas Department of Insurance (reset from October 2, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 8, 1995, 8:50 a.m.

TRD-9509861

## Texas Lottery Commission

Saturday, August 12, 1995, 9:30 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

### AGENDA:

According to the complete agenda, the Texas Lottery Commission will call the meeting to order; approval of minutes of the June 29, 1995 meeting; report by the Bingo Advisory Committee and possible action on its activities; consideration and possible action on policy relating to the 35% bingo charitable distribution; report by the executive director and possible discussion on bingo legislative update and the Bingo Vendors' Conference; consideration and possible action on the location of future commission meetings; consideration and possible action on the issue of assignability of lottery prize winnings, such action may include the proposal of a rule; consideration and possible action to authorize the executive director to designate one or more employees to approve vouchers of the agency pursuant to §2103.061 of the Texas Government Code; consideration and possible action on the

commission receiving public comment at commission meetings and on the receipt of public comment by individual commissioners; commission will meet in executive session with its attorneys to receive legal advice regarding pending litigation pursuant to §551.071(l) of the Texas Government Code, including *Wolverine Council Auxiliary v. Texas Lottery Commission*, *Scott Wenner v. Texas Lottery Commission*, *Frances Vaughn v. Texas Lottery Commission* and *Nora Linares*, in the interest of *April Jo Flores*, a child, *Hendrick et al. v. Texas Lottery Commission*, in re *LRN*, and *First Approach Financial, Inc. and Western United Life Assurance Company v. Texas Lottery Commission*, to receive legal advice from its attorneys pursuant to §551.071(2) of the Texas Government Code regarding the assignability of lottery prize winnings and regarding communications by participants and non-participants in pending litigation with individual commissioners, to deliberate the appointment, employment, or duties of the internal auditor pursuant to §551.074(a)(1) of the Texas Government Code; and, to deliberate the purchase, exchange, lease of value of real property pursuant to §551.072 of the Texas Government Code; consideration and possible action, including approval of proposed amendment to lease, creating a lease with option to purchase (lottery headquarters); consideration of the status and possible entry of an order in the following contested cases: Docket Number 362-94-1098, *b-K and B Sales, Inc. doing business as Goodtime Bingo*, Docket Number 362-95-0643-*Shahzada Jahanqir Malik, Agent doing business as Stop to Shop*; report by the executive director and possible discussion on the financial status of the agency, the operation of the agency, and the planning calendar; public comment on items on the agenda at such time as the commission deems appropriate and as time allows; and adjournment.

For ADA assistance, call Michelle Guerrero at (512) 323-3791 at least two days prior to meeting.

Contact: Michelle Guerrero, 5937 North IH-35, Austin, Texas 78752, (512) 323-3791.

Filed: August 3, 1995, 4:32 p.m.

TRD-9509729

◆ ◆ ◆  
**Texas Board of Licensure  
for Professional Medical  
Physicists**

Tuesday, August 15, 1995, 2:00 p.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Credentials Committee

**AGENDA:**

The committee will discuss and possibly act on applicants under 22 Texas Administrative Code, §601.6, Application Procedures with regard to application numbers (115; 272; 274; 306; 308; 310; 312; 321; 328; 345; 364; 381; 388; 397; and 400) and examination eligibility of potential examinees (X1-X7).

Contact: Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6655. 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: August 4, 1995, 4:40 p.m.

TRD-9509801

Wednesday, August 16, 1995, 10:30 a.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

**AGENDA:**

The committee will discuss and possibly act on: approval of minutes from May 3, 1995 meeting; chairman's report; executive secretary's report; Bureau of Radiation Control rules (current rules and interpretation and future rules); rules pertaining to the licensure of professional medical physicists, 22 Texas Administrative Code, Chapter 601; eligibility of temporary license holders to take state examination and upgrade to annual license; supervision of temporary licensed medical physicists; "Guidelines for Delineating the Practice of Medical Physics"; proposal for decision concerning denial of applications K. P. and J. P.); orders denying applications of B. B. and A. C.; ratification of applications approved by executive secretary; determining adequacy of formal education ratification of applications approved by the Credentials Committee; and setting of next meeting date.

Contact: Jeanette Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6655. 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: August 4, 1995, 4:10 p.m.

TRD-9509802

Wednesday, August 16, 1995, 2:00 p.m.

Room S-402, The Exchange Building, 8407 Wall Street

Austin

Credentials Committee

**AGENDA:**

The committee will discuss and possibly act on applicants under 22 Texas Administrative Code, §601.6, Application Procedures

with regard to application numbers (115; 272; 274; 306; 308; 310; 312; 321; 328; 345; 364; 381; 388; 397; and 400); and examination eligibility of potential examinees (X1-X7).

Contact: Jeanette A. Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6655.

Filed: August 4, 1995, 4:40 p.m.

TRD-9509803

◆ ◆ ◆  
**Texas Natural Resource  
Conservation Commission**

Wednesday, August 23, 1995, 9:30 a.m.

Building E, Room 201S, 12118 North Interstate 35

Austin

**AGENDA:**

Laughlin Environmental, Inc. (Laughlin) has applied to the TNRCC for a temporary order (TNRCC Docket Number 95-1200-MWD) to authorize the discharge of treated water effluent at a daily maximum volume not to exceed 1,000,000 gallons per day from two temporary above-ground storage impoundments at the City of Houston East Water Purification Plant. The water purification plant is located at the northwest corner of the intersection of Federal Road and Clinton Drive in the City of Galena Park, Harris County, Texas. The applicant has stated that this request is justified in order to dredge and thereby restore the storage capacity of the forebays at the plant which are approaching maximum sediment capacity. Accumulated sediment is causing a reduced retention time in the forebays resulting in an increase in the amount of additives needed in the flocculation process and the potential degradation of the City of Houston water supply.

Contact: Helen Stovall Gilbert, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0600.

Filed: August 4, 1995, 4:39 p.m.

TRD-9509800

◆ ◆ ◆  
**Board of Nurse Examiners**

August 15, 1995, 9:00 a.m.

9101 Burnet Road, Suite 104

Austin

Eligibility and Disciplinary Committee

**AGENDA:**

The Eligibility and Disciplinary Committee will meet to review and take action on one declaratory order; seven ALJ proposals for

decision; 18 agreed orders; and eight eligibility matters.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: August 4, 1995, 3:22 p.m.

TRD-9509788

## Texas Department of Protective and Regulatory Services

Tuesday-Wednesday, August 15-16, 1995, 9:30 a.m.

701 West 51st Street, Public Hearing Room  
Austin

Texas Board of Protective and Regulatory Services

### AGENDA:

On Tuesday, August 15, 1995, the board will conduct a work session on the following topics beginning at 9:30 a.m. in the southwest corner of the Public Hearing Room: a. Fiscal year 1996 operating budget. b. Presentation of report by Tonn and Associates. c. Executive session. The board will meet in closed executive session to discuss personnel matters. The board will return to open session. d. Presentation of initiatives and action plan for responsiveness to inquiries and complaints. e. Schedule for board meetings and work sessions. f. Reimbursement for 24-hour child-care facilities. On Wednesday, August 16, 1995: 1. Call to order. 2. Reading, correction, and approval of the minutes of July 18, 1995. 3. Public testimony. Individuals testifying before the board must submit a completed registration form no later than 9:30 a.m. 4. Report by the chair. 5. Report by the interim executive director. 6. Staff reports-updates on: a. sunset review. b. CAPS project. c. implementation of legislation. 7. Unfinished business-consideration and approval: a. to publish proposed rules for investigation of community TXMHMR facilities. b. of reimbursement for 24-hour child-care facilities. 8. New business: a. consideration and approval of fiscal year 1996 operating budget. b. consideration of report by Tonn and Associates. c. consideration and approval of the schedule of meetings and work sessions for the board of PRS. 9. announcements. 10. adjournment.

Contact: Michael Gee, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 450-3645.

Filed: August 7, 1995, 2:28 p.m.

TRD-9509836

## Public Utility Commission of Texas

Monday, August 14, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

### AGENDA:

The commission will hold a workshop in Project Number 14045-Rulemaking on transmission pricing and access. (This workshop was originally scheduled for 9:00 a.m.)

Contact: Amalija J. Hodgins, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1995, 8:47 a.m.

TRD-9509736

Friday, August 18, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

### AGENDA:

The commission will hold a workshop in Project Number 14045-Rulemaking on transmission pricing and access. (This workshop was originally scheduled for 9:00 a.m.)

Contact: Amalija J. Hodgins, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 4, 1995, 8:47 a.m.

TRD-9509737

## Texas Senate

Tuesday, August 22, 1995, 9:00 a.m.

1100 Congress Avenue, State Capitol Senate Chamber

Austin

Senate Committee on Health and Human Services

### AGENDA:

Joint Public Meeting: Senate Committee on Health and Human Services and the House Committee on Public Health.

The purpose of the meeting will be to receive a briefing from the staff of the State Medicaid Office regarding the details of the 1115 Medicaid waiver before it is submitted to the federal Health Care Financing Administration (HCFA) on Thursday, August 31, 1995, as required by Senate Bill 10.

\* No Public Testimony Will Be Taken

Contact: Penny Hildon, P.O. Box 12068, Austin, Texas 78711, (512) 463-0360.

Filed: August 8, 1995, 9:39 a.m.

TRD-9509870

## Stephen F. Austin State University

Tuesday, August 8, 1995, 9:00 a.m.

1936 North Street, Room 307, Austin Building

Nacogdoches

Board of Regents

### AGENDA:

VI. Financial Affairs

Add item:

L. Natural gas contract

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, (409) 468-2201.

Filed: August 3, 1995, 4:52 p.m.

TRD-9509730

## Board of Tax Professional Examiners

Sunday, August 13, 1995, 5:00 p.m.

Fairmont Hotel, 1717 Akard

Dallas

### AGENDA:

Regular quarterly meeting: Call to order, determine the presence of a quorum, swear in new board members, recognition of visitors, approval of May 17, 1995 minutes, report from chairman of the Professional Standards Committee (PSC), discussion and any appropriate action on the approval of persons for reclassification, certification and recertification, discussion and any appropriate action on proposal to review criteria for representation to the Professional Standards Committee, discussion and any appropriate action on license suspension law for non-payment of child support, discussion and any appropriate action on a registrant's request for the board to waive 22 TAC §623.14(e)(I) and allow her to retake an examination, discussion and any appropriate action on registrant's request to accept "back payment of [her] registration fees for 1994," discussion and any appropriate action on House Bill 1, the Appropriations Act, and the amount of the Board's 1996 registration fees, discussion and any appropriate action on House Bill 1, Article IX, §128 regarding examination fees, discussion and any appropriate action on whether the board has exceeded its legal authority contained in Texas Civil Statutes, Article 8885, §17(b) of the Property Taxation Profes-

sional Certification Act by enacting 22 TAC §623.15(c) in the board's rules regarding Adjustment of Time Requirement, discussion and any appropriate action on executive director's report, discussion and any appropriate action to increase executive director's salary, executive session under the authority of Title 5, Chapter 551.075 of the Government Code, reconvene in open session, public comments on any subject without discussion and adjournment.

Contact: Peter A. Stone, 333 Guadalupe Street, Tower Two, Suite 520, Austin, Texas 78701-3942, (512) 305-7300.

Filed: August 4, 1995, 11:12 a.m.

TRD-9509755

## Texas Department of Transportation

Friday, August 18, 1995, 9:00 a.m.

McAllen Miller International Airport, East Conference Room, 2600 South Main

McAllen

Aviation Advisory Committee

AGENDA:

Approve minutes. Review and comment of the Aviation Facility Development program. Briefing on the fiscal year 1996 state budget. Briefing on the fiscal year 1996 proposed Federal Grant Program. Briefing of transition of aviation duties to districts. Status report on using modified state highway specifications for airport projects. Status report on Global Positioning Satellite Instrument Approach Development (GPS) status report on aviation legislation considered by the 74th Legislative Session. Adjourn.

Contact: Suetta Murray, 150 East Riverside Drive, Austin, Texas 78704, (512) 416-4504.

Filed: August 4, 1995, 9:38 a.m.

TRD-9509743

Wednesday, August 23, 1995, 9:30 a.m.

Room 309, Building 150, 150 Riverside Drive

Austin

Environmental Advisory Committee

AGENDA:

Approve minutes. In accordance with 43 TAC, §1.84(c) final review of rulemaking concerning the Statewide Transportation Enhancement Program. In accordance with 43 TAC §1.84(f), Waiver of Preliminary Review of Proposed Rulemaking Concerning International Bridges. In accordance with 43 TAC §1.84(c), Final Review of Rulemaking Concerning International Bridges. Briefing on current status/commis-

sion action regarding rules previously reviewed by the committee.

Contact: Dianna Noble, 125 East 11th Street, Austin, Texas 78701, (512) 416-3001.

Filed: August 4, 1995, 9:38 a.m.

TRD-9509744

## University of Houston System

Thursday, August 10, 1995, Noon.

1600 Smith, Suite 3400, Conference Room One, UH System Offices

Houston

Facilities Planning and Building Committee

AGENDA:

To discuss and/or approve the Construction Program Management Services-University of Houston.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: August 4, 1995, 4:39 p.m.

TRD-9509799

## University Interscholastic League

Wednesday, August 9, 1995, 1:00 p.m.

Wyndham Hotel, IH-35 at Ben White

Austin

State Executive Committee

AGENDA:

AA. Case transferred by District 8-AAAAA Executive Committee requesting a penalty greater than reprimand for school district personnel Ken Ozee, Arlington Sam Houston High School for violation of the amateur rule, §441.

BB. Allegation of violation of the Athletic Code, §1201(a) and the Athletic Code for Coaches, §1201(b), Coach John Terry O'Dell, Gustine High School

CC. Appeal of the automatic penalty for coaches ejected from contests as required in §1208(h)

1. Coach Todd Brown, Austin Lanier High School

2. Coach Tom Hatch, Cleburne High School

3. Coach Nick Voris and Coach Gary Key, Galveston Ball High School

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: August 3, 1995, 4:25 p.m.

TRD-9509727

Wednesday, August 9, 1995, 1:00 p.m.

Wyndham Hotel, IH-35 at Ben White

Austin

Revised Agenda

State Executive Committee

AGENDA:

AA. Case transferred by District 8-AAAAA Executive Committee requesting a penalty greater than reprimand for school district personnel Ken Ozee, Arlington Sam Houston High School for violation of the amateur rule, §441.

BB. Allegation of violation of the Athletic Code, §1201(a) and the Athletic Code for Coaches, §1201(b), Coach John Terry O'Dell, Gustine High School.

CC. Appeal of the automatic penalty for coaches ejected from contests as required in §1208(h)

1. Coach Todd Brown, Austin Lanier High School

2. Coach Tom Hatch, Cleburne High School

DD. Case transferred by District 24-AAAAA Executive Committee requesting a penalty greater than reprimand for school district personnel Nick Voris and Gary Key, Galveston Ball High School, for violation of §1202, Employment of Coaches.

Contact: C. Ray Daniel, 3001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

Filed: August 4, 1995, 9:39 a.m.

TRD-9509747

## Texas Water Development Board

Tuesday, August 15, 1995, 10:00 a.m.

DFW Airport Administration Building, Second Floor, 3200 East Airfield Drive

Dallas

Texas Water Development Board

AGENDA:

Consider approval of the minutes of the meeting of July 20, 1995.

Consider adopting a resolution authorizing the issuance, sale, and delivery of up to \$23,105,000 in principal of State of Texas Water Development Refunding Bonds, Taxable Series 1995; appointing a paying agent/registrar for the bonds; approving a letter of representations with the Depository Trust Company to Implement the book-

entry-only system of registration for the bonds; appointing an escrow agent and approving an escrow agreement for the bonds being refunded; authorizing the redemption of refunded bonds; approving and deeming final a preliminary official statement to be used in the marketing of the bonds; approving and authorizing the Executive Administrator and Development Fund Director to act on behalf of the Texas Water Development Board in the selling and delivery of such bonds within the limitations and provisions specified therein, and approving and authorizing other instruments and procedures related thereto.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, (512) 463-7847.

Filed: August 7, 1995, 2:22 p.m.

TRD-9509835

### Texas Workers' Compensation Insurance Facility

Tuesday, August 22, 1995, 8:00 a.m.

DoubleTree Guest Suites Hotel, 303 West 15th Street

Austin

Governing Committee Meeting

AGENDA:

Approval of minutes from the July 17, 1995 Governing Committee meeting Orientation for new Governing Committee members on the facility's history Consideration and possible approval of committee appointments by the chairman Consideration and possible action on recommendations from the Appeals Committee and/or hearings officer. Consideration and possible action on servicing company request for reimbursement of legal fees and expenses. Informational report on the 1995 Special Project Budgeted Expenditures and Recoveries. Executive director's report. Executive session(s) regarding personnel matters and pending legal matters Following the closed executive session(s), the Governing Committee will reconvene in open and public session and take any action as may be desirable or necessary as a result of the closed deliberations, including possible approval of settlements of potential or existing litigation, possible approval of facility transition plans and personnel policies.

Contact: Peter E. Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: August 4, 1995, 8:38 a.m.

TRD-9509735

## Regional Meetings

### Meetings Filed August 3, 1995

**The Austin-Travis County MHMR Center Board of Trustees, Human Resources Committee** met at 1700 South Lamar Boulevard, Building 3, Suite 312, Austin, August 9, 1995, at 4:30 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 440-4031. TRD-9509699.

**The Brazos Higher Education Service Corporation, Inc. Board of Directors** met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, August 9, 1995, at 11:15 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9509717.

**The Brazos Valley Development Council Chief Elected Officials** met at 1706 East 29th Street, Bryan, August 9, 1995, at 12:30 p.m. Information may be obtained from Paul Hillers, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9509728.

**The Brazos Valley Development Council Executive Committee** met at in the BVDC Conference Room, 1706 East 29th Street, Bryan, August 9, 1995, at 1:30 p.m. Information may be obtained from Tom Wilkinson, Jr., P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9509725.

**The Cass County Appraisal District Board of Directors** met at 502 North Main Street, Linden, August 8, 1995, at 7:00 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (903) 756-7545. TRD-9509713.

**The Dewitt County Appraisal District Board of Directors** will meet at 103 Bailey Street, Cuero, August 15, 1995, at 7:30 p.m. Information may be obtained from John Haliburton, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9509700.

**The Guadalupe-Blanco River Authority (Revised Agenda.) Legal Committee** met at 933 East Court Street, Seguin, August 8, 1995, at 2:00 p.m. Information may be obtained from W. E. West, Jr., P.O. Box 271, Seguin, Texas 78156-0271, (210) 379-5822. TRD-9509704.

**The Hansford County Appraisal District Board of Directors** met at 709 West Seventh, Spearman, August 9, 1995, at 9:00 a.m. Information may be obtained from Alice Peddy, P.O. Box 519, Spearman, Texas 79081, (806) 659-5575. TRD-9509714.

**The Hays County Appraisal District Board of Directors** met at 21001 North IH-35, Kyle, August 10, 1995, at 3:30 p.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9509690.

**The Hickory Underground Water Conservation District Number One Board and Advisors** met at 2005 South Bridge Street, Brady, August 10, 1995, at 6:45 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9509720.

**The Hickory Underground Water Conservation District Number One Board and Advisors** met at 2005 South Bridge Street, Brady, August 10, 1995, at 7:00 p.m. Information may be obtained from Lorna Moore, P.O. Box 1214, Brady, Texas 76825, (915) 597-2785. TRD-9509719.

**The Lavaca Higher Education Authority, Inc. Board of Directors** met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, August 9, 1995, at 11:00 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9509716.

**The Nortex Regional Planning Commission Executive Committee** will meet at the Galaxy Center #2 North, Suite 200, 4309 Jacksboro Highway, Wichita Falls, August 17, 1995, at Noon. Information may be obtained from Dennis Wilde, P.O. Box 5144, Wichita Falls, Texas 76307-5144, (817) 322-5281. TRD-9509702.

**The Nueces Higher Education Authority, Inc. Board of Directors** met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, August 9, 1995, at 11:40 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9509721.

**The Rockwall County Central Appraisal District Board of Directors** met at 106 North San Jacinto, Rockwall, August 8, 1995, at 7:30 p.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034. TRD-9509724.

**The Sabine Higher Education Authority, Inc. Board of Directors** met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, August 9, 1995, at 11:50 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9509722.

**The Sabine Valley Center Board of Trustees** met at the Guest Inn, Lobby Conference Room, 419 Spur 63, Longview, August 10, 1995, at 5:30 p.m. Information may be obtained from Mack Blackwell or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9509698.

**The Shackelford Water Supply Corporation Directors** met at the Fort Griffin Restaurant, Albany, August 9, 1995, at Noon. Information may be obtained from Gaynell



Perkins, Box 11, Albany, Texas 76430, (817) 345-6868. TRD-9509726.

The Sulphur-Cypress Soil and Water Conservation District #419 met at 1809 West Ferguson, Suite D, Mt. Pleasant, August 10, 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-9509703.

The Trinity Higher Education Authority, Inc. Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, August 9, 1995, at 11:30 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9509718.

The Upshur County Appraisal District Appraisal Review Board will meet at Warren and Trinity Streets, Gilmer, August 15, 1995, at 8:45 a.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9509693.



### Meetings Filed August 4, 1995

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Called Meeting) met at 1124A Regal Row, Austin, August 10, 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-9509779.

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, August 8, 1995, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9509775.

The Bastrop Central Appraisal District Appraisal Review Board met at 1200 Cedar Street, Bastrop, August 10, 1995, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9509774.

The Bi-County WSC met at FM Road 2254, Pittsburg, August 8, 1995, at 7:00 p.m. Information may be obtained from Freeman Phillips, P.O. Box 848, Pittsburg, Texas 75686, (903) 856-5840. TRD-9509742.

The Bosque Higher Education Authority, Inc. Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, August 9, 1995, at Noon. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9509761.

The Brazos Higher Education Service Corporation, Inc. (Revised Agenda.) Board of Directors met at the Brazos Club of Waco, 510 North Valley Mills Drive, Waco, August 9, 1995, at 11:15 a.m. Information may be obtained from Murray Watson, Jr., 2600 Washington Avenue, Waco, Texas 76710, (817) 753-0915. TRD-9509760.

The Coleman County Water Supply Corporation Board of Directors met at 214 Santa Anna Avenue, Coleman, August 9, 1995, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, (915) 625-2133. TRD-9509758.

The Dallas Area Rapid Transit Audit Committee met at 1401 Pacific, Conference Room "B", Dallas, August 8, 1995, at 11:00 a.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9509786.

The Dallas Area Rapid Transit Committee-of-the-Whole met at 1401 Pacific, Conference Room "C", Dallas, August 8, 1995, at 1:00 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9509785.

The Dallas Area Rapid Transit (Revised Agenda.) Board met at 1401 Pacific, Board Room-First Floor, Dallas, August 8, 1995, at 6:30 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9509787.

The Education Service Center, Region One Region I ESC Board met at 1900 North Schunior, Edinburg, August 9, 1995, at Noon. Information may be obtained from Dr. Roberto Zamora, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9509778.

The El Oso Water Supply Corporation Board of Directors met at FM 99, Karnes City, August 8, 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-9509773.

The Elm Creek WSC Board will meet at 508 Avenue E, Moody, August 14, 1995, at 7:00 p.m. Information may be obtained from Debra Williams, 508 Avenue E, Moody, Texas 76557, (817) 853-3838. TRD-9509784.

The Harris County Appraisal District will meet at 2800 North Loop West, Eighth Floor, Houston, August 11, 1995, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9509776.

The Heart of Texas Housing Finance Corporation Board met at the HOTCOG Building, 300 Franklin Avenue, Waco, August 10, 1995, at Noon. Information may be obtained from Lyndon Olson, 510 North Valley Mills Drive, Suite 600, Waco, Texas 76710, (817) 776-3336. TRD-9509754.

The Hunt County Appraisal District Board of Directors met at 4801 King Street, Greenville, August 10, 1995, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9509764.

The Johnson County Rural Water Supply Corporation Board (Special Called Meeting) met at the Corporation Office, 2849 Highway 171S, Cleburne, August 8, 1995, at 6:00 p.m. Information may be obtained from Peggy Johnson, P. O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9509751.

The Kempner Water Supply Corporation Board of Directors met at Highway 190, Kempner, August 10, 1995, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, (512) 932-3701. TRD-9509756.

The Manville Water Supply Corporation Board met at Spur 277, Board Room, Coupland, August 10, 1995, at 7:00 p.m. Information may be obtained from Tony Graf, P.O. Box 248, Coupland, Texas 78615, (512) 272-4044. TRD-9509789.

The Riceland Regional Mental Health Authority Joint Hospital Committee met at 3007 North Richmond Road, Wharton, August 10, 1995, at 9:30 a. m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9509745.

The Riceland Regional Mental Health Authority Finance Committee met at 3007 North Richmond Road, Wharton, August 10, 1995, at 11:00 a.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3096. TRD-9509746.

The South Texas Private Industry Council, Incorporated will meet at 901 Kennedy Street, Zapata, August 24, 1995, at 4:00 p.m. Information may be obtained from Myrna V. Herbst, P.O. Box 1757, Laredo, Texas 78044-1757, (210) 722-0546. TRD-9509777.

The Trinity River Authority of Texas Legal Committee will meet at 5300 South Collins Street, Arlington, August 11, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9509753.



## Meetings Filed August 5, 1995

**The Dallas Area Rapid Transit (Emergency Meeting.)** Legal Ad Hoc Committee met in Conference Room B, 1401 Pacific, Dallas, August 9, 1995, at Noon. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371. TRD-9509805.



## Meetings Filed August 7, 1995

**The Callahan County Appraisal District Board of Directors** will meet at 130-A West Fourth Street, Baird, August 21, 1995, at 8:00 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165. TRD-9509815.

**The Education Service Center, Region III Board of Directors** will meet at 1905 Leary Lane, Victoria, August 14, 1995, at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9509857.

**The Education Service Center Region VI (Revised Agenda.) Board of Directors** met at 1301 Sam Houston Avenue, Huntsville, August 10, 1995, at 5:00 p.m. Information may be obtained from Bobby Roberts, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9509849.

**The Palo Pinto Appraisal District Board of Directors** will meet at the Court House, Highway 180, Palo Pinto, August 16, 1995, at 3:00 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD-9509813.

**The Palo Pinto Appraisal District Board of Directors** will meet at the Court House, Highway 180, Palo Pinto, August 16, 1995, at 3:15 p.m. Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484-0250, (817) 659-1281. TRD-9509814.

**The South East Texas Regional Planning Commission Executive Committee** will meet at 801 Main, Beaumont City Council Chambers, Beaumont, August 16, 1995, at 7:00 p.m. Information may be obtained from Jackie Vice Solis, P.O. Drawer 1387,

Nederland, Texas 77627, (409) 727-2384. TRD-9509829.

**The Trinity River Authority of Texas Administration Committee** will meet at 5300 South Collins Street, Arlington, August 14, 1995, at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9509834.



## Meetings Filed August 8, 1995

**The Bexar-Medina-Atascosa Counties Water Control and Improvement District One Board of Directors** will meet at 221 Highway 132, Natalia, August 14, 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-9509864.

**The San Antonio River Authority Board of Directors** will meet at 100 East Guenther Street, Boardroom, San Antonio, August 16, 1995, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, (210) 227-1373. TRD-9509863.



# 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.

---

## Comptroller of Public Accounts Correction of Error

The Comptroller of Public Accounts proposed new §3.828, concerning the definition of workers' compensation insurance gross premium for the purpose of maintenance taxes. The rule appeared in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5205).

In §3.828(a)(8) the formula should read: "... (i.e. Premium=(Basis of premium x Rate) + or - Other changes).



## Texas Department of Health 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
-----	----	-----	----	-----	-----
Grand Prairie	Carrier Diagnostic Center	L04876	Grand Prairie	0	07/17/95
Houston	West Houston Heart Center	L04882	Houston	0	07/20/95
Odessa	Odessa Regional Hospital	L04885	Odessa	0	07/25/95
Temple	Specialty Pharmacy Services Incorporated	L04883	Temple	0	07/21/95

**AMENDMENTS TO EXISTING LICENSES ISSUED:**

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Lake Jackson	Non-Destructive Inspection Corporation	L02712	Lake Jackson	41	07/25/95
Arlington	Pioneer Imaging and Diagnosis	L04817	Arlington	1	07/25/95
Austin	Austin Radiological Association	L00545	Austin	72	07/25/95
Borger	Golden Plains Community Hospital	L04369	Borger	4	07/20/95
Carrollton	SGS - Thompson Microelectronics	L03930	Carrollton	8	07/18/95
Commerce	Sherwood Medical	L03314	Commerce	12	07/18/95
Corpus Christi	Doctors Regional Medical Center	L02816	Corpus Christi	35	07/25/95
Corpus Christi	Corpus Christi Radiology Center	L04493	Corpus Christi	5	07/21/95
Dallas	Maxum Diagnostic Center	L03125	Dallas	34	07/25/95
Dallas	Kaiser Foundation Health Plan of Texas	L03755	Dallas	22	07/21/95
Fort Worth	Moncrief Radiation Center	L00047	Fort Worth	29	07/20/95
Fort Worth	Moncrief Radiation Center	L00047	Fort Worth	30	07/28/95
Fort Worth	John Peter Smith Hospital	L02208	Fort Worth	26	07/27/95
Fort Worth	All Saints Episcopal Hospital	L02212	Fort Worth	37	07/28/95
Fort Worth	Fort Worth Police Department	L04374	Fort Worth	4	07/17/95
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	36	07/17/95
Houston	Baylor College of Medicine	L00680	Houston	52	07/21/95
Houston	Bellaire General Hospital	L02038	Houston	24	07/25/95
Houston	University of Texas Health Science	L02774	Houston	27	07/28/95
Houston	Tanox Biosystems Incorporated	L04094	Houston	5	07/18/95
Houston	Tanox Biosystems Incorporated	L04094	Houston	6	07/21/95
Katy	Katy Medical Center Inc	L03052	Katy	19	07/27/95
Longview	King Tool Company	L02750	Longview	14	07/25/95
Lubbock	Saint Mary of the Plains Hospital and	L01547	Lubbock	41	07/18/95
Midland	Memorial Hospital and Medical Center	L00728	Midland	51	07/19/95
Nederland	AMI Hospitals of Texas Ltd	L01756	Nederland	25	07/28/95
Plano	Presbyterian Hospital of Plano	L04467	Plano	6	07/25/95

San Antonio	Southwest Texas Methodist Hospital	L00594	San Antonio	114	07/21/95
Stephenville	Harris Methodist Stephenville	L03097	Stephenville	14	07/21/95
Texarkana	Saint Michael Health Care Center	L04805	Texarkana	3	07/24/95
The Woodlands	Woodlands Sports Medicine The	L04390	The Woodlands	8	07/28/95
Throughout Texas	Professional Service Industries Inc	L00203	Longview	79	07/21/95
Throughout Texas	Professional service industries inc	L00203	Longview	0	07/21/95
Throughout Texas	Texas A & M University	L00448	College Station	85	07/21/95
Throughout Texas	TN Technologies Inc	L01105	Round rock	43	07/19/95
Throughout Texas	Trinity Engineering Testing Corporation	L01351	Corpus Christi	33	07/28/95
Throughout Texas	Berry Fabricators	L01575	Corpus Christi	27	07/25/95
Throughout Texas	H & G Inspection Company Inc	L02181	Houston	92	07/19/95
Throughout Texas	H & H X-Ray Services Inc	L02516	Tyler	22	07/18/95
Throughout Texas	Richardson Associates	L02889	Haltom City	13	07/28/95
Throughout Texas	TN Technologies Inc	L03524	Round Rock	36	07/19/95
Throughout Texas	Corpus Christi Inspection and Engineering Inc	L04379	Katy	39	07/17/95
Throughout Texas	Corpus Christi Inspection and Engineering Inc	L04379	Katy	40	07/17/95
Throughout Texas	Solus Schall U S A	L04463	Houston	10	07/17/95
Throughout Texas	Lead Based Plant Testing Services Inc	L04586	Houston	3	07/20/95
Throughout Texas	Westex Inspection Incorporated	L04775	Odessa	2	07/18/95
Throughout Texas	E D Baker Corporation	L04872	Borger	1	07/17/95
Wichita Falls	Wichita General Hospital	L00350	Wichita Falls	54	07/20/95
Wichita Falls	Wichita General Hospital	L00403	Wichita Falls	23	07/26/95

**RENEWALS OF EXISTING LICENSES ISSUED:**

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Corpus Christi	Mcturbine Inc	L04341	Corpus Christi	2	07/25/95
Plano	Medical Center of Plano	L02032	Plano	27	07/19/95
San Antonio	El Dorado Chemical Company	L04366	San Antonio	4	07/18/95
Throughout Texas	Boart Longyear Company	L04302	Houston	5	07/21/95

**TERMINATIONS OF LICENSES ISSUED:**

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Beaumont	Jefferson County Engineering Department	L02872	Beaumont	6	07/21/95
Odessa	Kebco Pipe Services Inc	L03163	Odessa	8	07/17/95

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person

affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

Issued in Austin, Texas, on July 31, 1995.

TRD-9509667 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: August 2, 1995

◆ ◆ ◆  
**Notice of Emergency Cease and Desist  
Order**

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Daniels Chiropractic Clinic (registrant-R16401) of Austin to cease and desist using the Universal x-ray unit (Model Number 325; Serial Number MR1224-1289) to perform cervical and lumbar spine x-ray procedures until the health-related violation found during a recent inspection of the facility is 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 violation and the methods used to prevent its 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 August 4, 1995.

TRD-9509750 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: August 4, 1995

◆ ◆ ◆  
**Notice of Emergency Impoundment  
Order**

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Provident Medical Center of Dallas to immediately surrender to the bureau for impoundment all sources of radiation that were possessed under the facility's certificate of registration-R15984. The registration was revoked by the bureau on February 22, 1995. The order was issued because the facility's flagrant failure to comply with the Order of Revocation by not disabling or disposing of the x-ray equipment constitutes an immediate threat to public health and safety, and the existence of an emergency. The order will remain in effect until the bureau has received, reviewed and approved the actions taken to ensure compliance with the revocation order.

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 August 4, 1995.

TRD-9509749 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: August 4, 1995

◆ ◆ ◆  
**Notice of Preliminary Report for  
Assessment of Administrative Penalties  
and Notice of Violation**

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Robert L. Walls, D.C. (registrant-R18517-REVOKED) of Fort Worth for violations of the Texas Regulations for Control of Radiation. A total penalty of \$3,000 is proposed to be assessed to the registrant for operating x-ray equipment without a valid certificate of registration. Using x-ray equipment without a certificate of registration results in unauthorized equipment being used for the application of radiation to the members of the public. In addition, the registrant refused to allow a bureau inspection of the facility to ensure the conditions of a revocation order issued July 15, 1994, were met.

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 August 4, 1995.

TRD-9509748 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: August 4, 1995

◆ ◆ ◆  
**Request for Proposals for the  
Development of a Diabetes Awareness  
and Education Project in African  
American Communities in Texas**

**Purpose.** The Texas Department of Health (department), Texas Diabetes Council is requesting proposals (RFP) for the development of a diabetes awareness and education projects in three large, urban, African American communities in Texas.

**Description.** The department is seeking a contractor to provide diabetes awareness, education and prevention activities which will target urban African American communities. Goals are to reduce the incidence of diabetes and its complications; to promote early detection and diagnosis of diabetes and to improve access to quality diabetes treatment services and care. The department will use the competitive procurement process to select up to three contractors to provide client awareness, education and prevention activities in targeted communities.

**Eligible Applicants.** Eligible offerors include government entities, community-based agencies, medical/nursing schools, colleges and private nonprofit agencies.

**Limitations.** Funding for the selected proposal will depend upon available state appropriations. The department reserves the right to reject any and all offers received in

response to the RFP and cancel the RFP if it is deemed in the best interest of the department.

**Term.** The tentative effective date for the contract is November 1, 1995. Renewal of the competitively procured contract usually begins at the beginning of each state fiscal year (September 1). At its option, the department may negotiate the renewal or extension of any contract(s) on a noncompetitive basis for a total contract duration not to exceed 48 months.

**Deadlines.** All proposals to be considered for funding through this RFP must be received by 5:00 p.m. on September 22, 1995, at the Texas Department of Health, Texas Diabetes Council, 1100 West 49th Street, Austin, Texas 78756 (Attention: Blake Fry). Proposals received after this deadline will not be accepted. Faxes will not be accepted.

**Evaluation and Selection.** An external and internal evaluation selection committee designated by the department will rank and score the proposals. The evaluation of this RFP will be based upon the following criteria: submitter organization and staffing; submitter experience and expertise; the awareness and education plans and activities being culturally appropriate for African American values, belief and lifestyles; and budget feasibility and cost.

**Contact Person.** To obtain a complete copy of the RFP, please contact Mary Thomas, Texas Department of Health, Texas Diabetes Council, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7490.

Issued in Austin, Texas on August 4, 1995.

TRD-9509810 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: August 7, 1995

◆ ◆ ◆  
**Request for Proposals for the  
Development of a Diabetes and  
Pregnancy Project**

**Purpose.** The Texas Department of Health (department), Texas Diabetes Council is requesting proposals (RFP) for the development of a Diabetes and Pregnancy Project.

**Description.** The department is seeking a contractor to expand the awareness of the morbidity and mortality associated with established diabetes mellitus (EDM) and gestational diabetes mellitus (GDM) and to develop models to be followed by medical practitioners, local health departments, community health centers, and others interested in reducing the high human and economic costs of EDM and GDM. The department will use the competitive procurement process to select one contractor to develop patient and provider education materials, curricula, and provider training programs with a maximum award of \$120,000 the first year and \$150,000 the second year.

**Eligible Applicants.** Eligible offerors include medical and nursing schools and private nonprofit agencies. Medical and nursing schools are limited to one application per institution.

**Limitations.** Funding for the selected proposal will depend upon available state appropriations. The department reserves the right to reject any and all offers received in response to the RFP and cancel the RFP if it is deemed in the best interest of the department.

**Term.** The tentative effective date for the contract is November 1, 1995. Renewal of the competitively procured contract usually begins at the beginning of each state fiscal year (September 1). At its option, the department may negotiate the renewal or extension of any contract(s) on a noncompetitive basis for a total contract duration not to exceed 24 months.

**Deadlines.** All proposals to be considered for funding through this RFP must be received by 5:00 p.m. on September 29, 1995, at the Texas Department of Health, Texas Diabetes Council, 1100 West 49th Street, Austin, Texas 78756 (Attention: Blake Fry). Proposals received after this deadline will not be accepted. Faxes will not be accepted.

**Evaluation and Selection.** An external and internal evaluation selection panel designated by the department will rank and score the proposals. The evaluation of this RFP will be based upon the following criteria: offeror organization and staffing; offeror experience and expertise; the development and implementation approach; and budget feasibility and cost.

**Contact person.** To obtain a complete copy of the RFP, please contact Pete Hoffman, Texas Department of Health, Texas Diabetes Council, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7490.

Issued in Austin, Texas on August 4, 1995.

TRD-9509811 Susan K. Steeg  
General Counsel  
Texas Department of Health

Filed: August 7, 1995

◆ ◆ ◆  
**Texas Department of Human Services  
Notice of Consultant Contract  
Amendments**

In Accordance with the Texas Government Code, Chapter 2254, Subchapter B, Texas Department of Human Services (TDHS) publishes this notice of an amendment to two consultant contracts. The notice of awards for the original contracts was published in the August 17, 1993, issue of the *Texas Register* (18 TexReg 5522). The notice of the first amendment to the two consultant contracts was published in the July 26, 1994, issue of the *Texas Register* (19 TexReg 5784).

The contracts were awarded to two consultants to provide expertise in information resources for the completion of two separate, but related, consulting projects for the Texas Nursing Facility Medicare Case Mix and Quality Demonstration.

The Texas Department of Human Services awarded one consultant contract to Austin Data Management Associates, 313 West 37th Street, Austin, Texas 78705. The total dollar amount of the original contract was \$65,000, and was effective from September 1, 1993 through August 31, 1994. TDHS extended this contract through August 31, 1995 and increased the total amount of the contract by \$80,000, for a revised total not to exceed \$145,000.

TDHS intends to extend this contract through August 31, 1996 and increase the total amount of the contract by \$50,000 for a revised total not to exceed \$195,000.

The Texas Department of Human Services awarded a second consultant contract to Red Bluff Computing Con-

sultants, P.O. Box 90892, Austin, Texas 78709. The total dollar amount of the contract was \$40,000, and was effective from September 1, 1993 through August 31, 1994. TDHS extended this contract through August 31, 1995 and increased the total amount of the contract by \$54,000, for a revised total not to exceed \$94,000.

TDHS intends to extend this contract through August 31, 1996 and increase the total amount of the contract by \$54,000 for a revised total not to exceed \$148,000.

Each consultant must provide all deliverables under the amended contracts no later than September 30, 1996.

Issued in Austin, Texas on August 4, 1995.

TRD-9509804 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: August 4, 1995

◆ ◆ ◆  
**Request for Proposal for Commercial  
Warehousing and Distribution of  
Commodities**

The Special Nutrition Programs Section of the Texas Department of Human Services (TDHS) is responsible for distributing commodities donated by the United States Department of Agriculture (USDA) to eligible recipient agencies (RAs). Commercial Distributors distribute commodities under contract with DHS. USDA delivers shipments directly to the commercial warehouses.

This notice announces TDHS' request for proposals (RFP) for commercial warehousing and delivering commodities.

Description of Services Required: Services needed require a facility to receive and store shipments of USDA commodities; to maintain and operate delivery vehicles in sufficient number and types to handle the volume and the variety of commodities; and to support a computer system capable of handling tracking and reporting as required by TDHS and USDA.

The facility must include freezer, cooler, and dry storage space and be able to handle such products as butter, frozen meats, cheese, grain products, and fresh, canned, and frozen fruits and vegetables.

Delivery vehicles must safely transport frozen, cooled, and dry products. Donated foods must be delivered to participating recipient agencies regularly and as scheduled.

TDHS will award contracts only to commercial distributors with computer hardware, as specified in the RFP, and with capable staff, who are assigned to use TDHS-supplied software to track and report on commodities received, stored, and distributed.

Minimum Requirements: TDHS will consider a bid only from a commercial distributor which, as of the date of the bid: has operated a similar business/service for the past three years with dry, cool, and cold storage, has temperature controlled trucks for deliveries, as specified, and provides proof from an accredited Texas Company that the commercial distributor qualifies for warehouse and performance bonds in the amounts required by the RFP. TDHS will award contracts on a best value basis and only to commercial distributors agreeing to the general conditions specified in the RFP. General conditions include, but are not limited to, the commercial distributor agreeing to: bill

RAs using the rate table the commercial distributor selected from the "rate curve price schedule" in the RFP and submitted with its bid during the RFP process; comply with all applicable state and federal laws, regulations, and policies; adhere to TDHS' storage and distribution procedures; agree to maintain accounting records for three years and 90 days; and assume liability for audit exceptions noted by TDHS and USDA auditors.

Effective Date of Contract: The contract will be for a 12-month period beginning June 1, 1996 and ending May 31, 1997. The contract provides for two contract extensions of one year each. A proposed change to federal regulations, if approved, will allow two additional 1-year extensions (for a total of four 1-year extensions).

Contact Person: Interested parties may request a bid packet from Rick Gresser, Texas Department of Human Services, Special Nutrition Programs, P.O. Box 149030, Mail Code Y-906, Austin, Texas, 78714-9030. Or, call (512) 467-5847.

Closing Date for Bids: All bids must be received by 3:00 p.m. on Friday, September 29, 1995. An optional pre-bid meeting will be held Wednesday, September 6, 1995 at 1:30 p.m. in the Joe C. Thompson Conference Center, Room 2.120, 26th and Red River, Austin, Texas.

Issued in Austin, Texas, on August 3, 1995.

TRD-9509684 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: August 3, 1995

◆ ◆ ◆  
**Texas Department of Insurance  
Company License**

The following applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas for UniCARE Life & Health Insurance Company, a domestic life, accident and health company. The home office is in Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the Attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509793 Ailcia M. Fecttel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆ ◆ ◆  
**Exemption to Membership in the Texas  
Workers' Compensation Insurance  
Facility**

The following companies have filed affidavits with the Texas Department of Insurance to continue their exemption to membership in the Texas Workers' Compensation Insurance Facility through August 31, 1996.

Affidavits have been received from: American Risk Funding Insurance Company, British American Insurance Com-



pany, Financial Casualty & Surety, Inc., First Employees Insurance Company, Highlands Casualty Company, Montfort Insurance Company, Petroleum Casualty Company, and Sunbelt Insurance Company.

Any objections to the continuation of exemption to membership in the Texas Workers' Compensation Insurance Facility for these eight companies must be filed within 15 days after this notice was filed with the Secretary of State, addressed to the attention of Alicia M. Fechtel, Chief Clerk, Mail Code 113-2A, Texas Department of Insurance Texas, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy of the objections must be submitted to Nancy Moore, Deputy Commissioner Workers' Compensation, Texas Department of Insurance, Mail Code 105-2A, P.O. Box 149092, Austin, Texas 78714-9092.

Issued in Austin, Texas on August 7, 1995.

TRD-9509828 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 7, 1995

◆ ◆ ◆

### Notice of Application by Community First Health Plans, Inc., San Antonio, Texas for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas

Notice is given to the public of the application of Community First Health Plans, Inc., San Antonio, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) offering basic health care services in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, Sixth Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to Community First Health Plans, Inc., without a public hearing.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509790 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆ ◆ ◆

### Notice of Application by Humana HMO Texas, Inc., San Antonio, Texas for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas

Notice is given to the public of the application of Humana HMO Texas, Inc., San Antonio, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) offering basic health care services in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The

application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, Sixth Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to Humana HMO Texas, Inc., San Antonio, Texas, without a public hearing.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509792 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆ ◆ ◆

### Notice of Application by Seton Health Plan, Inc., Austin, Texas for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas

Notice is given to the public of the application of Seton Health Plan, Inc., Austin, Texas for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) offering basic health care services in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at the offices of the Texas Department of Insurance, HMO Unit, 333 Guadalupe, Hobby Tower I, Sixth Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to Seton Health Plan, Inc. without a public hearing.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509791 Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆ ◆ ◆

### Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the applications of the listed small employer carriers to be risk-assuming carriers under Texas Insurance Code, Article 26.52. A small employer carrier is defined by the Texas Insurance Code, Chapter 26 as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by the Texas Insurance Code, Chapter 26 as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carriers have applied to be risk-assuming carriers:

Aetna Health Plans of North Texas; Aetna Health Plans of Texas, Inc.; Aetna Life Insurance Company; American Fidelity Assurance Company; Anthem Health Plans of Texas, Inc.; Anthem Life Insurance Company of Indiana; Blue Cross and Blue Shield of Texas, Inc.; Centennial Life

Insurance Company, The; Cigna Healthcare of Texas, Inc.; Connecticut General Life Insurance Company; Employers Health Insurance Company; Federated Mutual Insurance Company; FHP of Texas, Inc.; First Pyramid Life Insurance Company of America, The; Fortis Benefits Insurance Company; Gem Insurance Company; General American Life Insurance Company; Great West Life & Annuity Insurance Company; Guardian Life Insurance Company of America, The; Home Life Financial Assurance Corporation; Humana Health Plan of Texas, Inc.; Humana Insurance Company; Jefferson-Pilot Life Insurance Company; John Alden Life Insurance Company; Lamar Life Insurance Company; Lincoln National Life Insurance Company, The; MetLife Healthcare Network of Texas, Inc.; Metrahealth Insurance Company, The; PCA Health Plans of Texas, Inc.; Phoenix American Life Insurance Company; Phoenix Home Life Mutual Insurance Company; PM Group Life Insurance Company; Principal Health Care of Texas, Inc.; Principal Mutual Life Insurance Company; Protective Life Insurance Company; Prudential Health Care Plan, Inc.; Prudential Insurance Company of America, The; Rio Grande HMO, Inc.; Safeco Life Insurance Company; Sanus Health Plan, Inc.; Sanus Texas Health Plan, Inc.; Scott and White Health Plan; Sentry Life Insurance Company; SHA, L.L.C. (doing business as Firstcare); Time Insurance Company; TMG Life Insurance Company; Travelers Health Network of Texas, Inc.; Travelers Insurance Company, The; Trustmark Insurance Company (Mutual); United States Life Insurance Company in the City of New York, The; United Wisconsin Life Insurance Company;

The applications are subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe, Hobby Tower Three, Third Floor, Austin, Texas.

If you wish to comment on these applications to be risk-assuming carriers, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to Alicia M. Fechtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Upon consideration of each application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to approve the application to be a risk-assuming carrier.

Issued in Austin, Texas, on August 3, 1995.

TRD-9509694  
Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 3, 1995

## Notices of Public Hearing

The Texas Department of Insurance will hold a public hearing under Docket Number 2165, on August 22, 1995, from 10:00 a.m. until noon at the Crawford Executive Building at 985 Interstate 10 North in Beaumont, Texas, to hear public testimony from residents of Chambers and Jefferson counties on the proposed Building Code for Windstorm Resistant Construction. All interested parties, including members of the general public, are invited to attend and provide comments and recommendations.

The hearing is the fourth of six such hearings to be held by the Department in the month of August for residents of the 14 first tier Texas coastal counties which are eligible for windstorm and hail insurance coverage by the Texas Catastrophe Property Insurance Association (TCPIA). The other five hearing dates are: August 8 in Harlingen for residents of Cameron, Willacy, and Kenedy counties; August 9 in Port Lavaca for residents of Calhoun, Refugio, and Matagorda counties; August 10 in Corpus Christi for residents of Aransas, Kleberg, Nueces, and San Patricio counties; August 23 in League City for residents of Galveston County; and August 24 in Lake Jackson for residents of Brazoria County. Separate hearing notices will be published for each of these hearings.

Pursuant to the Catastrophe Property Insurance Pool Act (Insurance Code, Article 21.49), the TCPIA was created by the Texas legislature in 1971 to provide windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market. Currently, the TCPIA provides this coverage to residents of 14 coastal counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy counties. Insurance Code, Article 21.49, §6A, which addresses inspections of structures for determining insurability by the TCPIA, provides that all new construction, repairs, or additions which commenced on or after January 1, 1988, must be inspected or approved by the Department for compliance with the building specifications in the TCPIA plan of operation to be insurable by the TCPIA.

The proposed building code that is the subject of this hearing is a draft proposal by the Building Code Advisory Committee to revise and update the current building specifications in the TCPIA plan of operation. Such revision and updating is proposed to ensure the building of safer and stronger structures along the Texas coast to better withstand significant natural disasters, such as Hurricane Andrew which struck Florida in 1992. The Building Code Advisory Committee is appointed by the Commissioner of Insurance pursuant to Article 21.49, §6A(f) to advise and make recommendations to the Commissioner on building specifications in the TCPIA plan of operation. The proposed code, which specifies separate building requirements for structures located seaward and inland of the intra-coastal canal to qualify for windstorm and hail insurance coverage by the TCPIA, includes foundation, framing, roofing, and exterior covering specifications. Following the six public hearings, the Building Code Advisory Committee will finalize the proposed code for submission to the Commissioner for consideration of adoption.

Persons interested in additional information or in obtaining copies of the proposed code may contact the Texas Department of Insurance Windstorm Inspection Field Offices located at 5550 Eastex Freeway, Suite E3, in Beaumont, Texas 77708 (409) 892-4677 and 10616 Eagle Drive in Mont Belvieu, Texas 77580 (713) 385-1798.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5 and §6A, which authorize the Commissioner to adopt building specifications in the TCPIA plan of operation for determining the insurability of structures in the 14 first tier coastal counties of Texas for windstorm and hail insurance coverage by the TCPIA. Article 21.49, §6A also authorizes the Commissioner to appoint an advisory committee to advise and make recommendations on building specifications in the TCPIA plan of operation. Any person may appear and testify for or against the proposed code.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509796

Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆ ◆ ◆

The Texas Department of Insurance will hold a public hearing under Docket Number 2166, on August 23, 1995, at 5:00 p.m. in the Civic Center at 400 West Walker in League City, Texas, to hear public testimony from residents of Galveston County on the proposed Building Code for Windstorm Resistant Construction. All interested parties, including members of the general public, are invited to attend and provide comments and recommendations.

The hearing is the fifth of six such hearings to be held by the Department in the month of August for residents of the 14 first tier Texas coastal counties which are eligible for windstorm and hail insurance coverage by the Texas Catastrophe Property Insurance Association (TCPIA). The other five hearing dates are: August 8 in Harlingen for residents of Cameron, Willacy, and Kenedy counties; August 9 in Port Lavaca for residents of Calhoun, Refugio, and Matagorda counties; August 10 in Corpus Christi for residents of Aransas, Kleberg, Nueces, and San Patricio counties; August 22 in Beaumont for residents of Chambers and Jefferson counties; and August 24 in Lake Jackson for residents of Brazoria County. Separate hearing notices will be published for each of these hearings.

Pursuant to the Catastrophe Property Insurance Pool Act (Insurance Code, Article 21.49), the TCPIA was created by the Texas legislature in 1971 to provide windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market. Currently, the TCPIA provides this coverage to residents of 14 coastal counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy counties. Insurance Code, Article 21.49, §6A, which addresses inspections of structures for determining insurability by the TCPIA, provides that all new construction, repairs, or additions which commenced on or after January 1, 1988, must be inspected or approved by the Department for compliance with the building specifications in the TCPIA plan of operation to be insurable by the TCPIA.

The proposed building code that is the subject of this hearing is a draft proposal by the Building Code Advisory Committee to revise and update the current building specifications in the TCPIA plan of operation. Such revision and updating is proposed to ensure the building of safer and stronger structures along the Texas coast to better withstand significant natural disasters, such as Hurricane Andrew which struck Florida in 1992. The Building Code Advisory Committee is appointed by the Commissioner of Insurance pursuant to Article 21.49, §6A(f) to advise and make recommendations to the Commissioner on building specifications in the TCPIA plan of operation. The proposed code, which specifies separate building requirements for structures located seaward and inland of the intra-coastal canal to qualify for windstorm and hail insurance coverage by the TCPIA, includes foundation, framing, roofing, and exterior covering specifications. Following the six public hearings, the Building Code Advisory Committee will finalize the proposed code for

submission to the Commissioner for consideration of adoption.

Persons interested in additional information or in obtaining copies of the proposed code may contact the Texas Department of Insurance Windstorm Inspection Field Office located at 2201 Market Street, #600, Galveston, Texas 77580 (409) 765-9341 and (713) 474-5025.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5 and §6A, which authorize the Commissioner to adopt building specifications in the TCPIA plan of operation for determining the insurability of structures in the 14 first tier coastal counties of Texas for windstorm and hail insurance coverage by the TCPIA. Article 21.49, §6A also authorizes the Commissioner to appoint an advisory committee to advise and make recommendations on building specifications in the TCPIA plan of operation. Any person may appear and testify for or against the proposed code.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509795

Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆ ◆ ◆

The Commissioner of Insurance will hold a public hearing under Docket Number 2168 on August 30 and 31, 1995, at 9:00 a.m. in Room 100, Commissioner's Hearing Room of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701. The hearing will be continued to Friday, September 1, 1995, as necessary. The purpose of the public hearing will be to receive comments and evidence regarding the determination of rate reduction amounts, the methodologies to be used and adoption of proposed 28 TAC §§5.14000-5.14011 concerning temporary rate reductions for certain lines of insurance from all interested parties.

The proposed new sections were published in the July 28, 1995, issue of the *Texas Register* (20 TexReg 5598) and are proposed under the Insurance Code, Articles 5.131 and 1.03A. New Article 5.131 enacted by the 74th Legislature, among other things, requires the Commissioner to issue rules by October 1, 1995, mandating appropriate rate reductions for certain lines of insurance to pass through, on a prospective basis, the savings that accrue from tort reform legislation enacted in the regular sessions of the 73rd and 74th Legislatures. Article 1.03A authorizes the Commissioner of Insurance to promulgate and adopt rules and regulations for the conduct and execution of the duties and functions of the Department.

New §5.14000 explains the purpose of the subchapter and §5.14001 defines certain terms used in the subchapter. New §5.14002 describes the insurers who must comply with the sections and how the Department will monitor compliance with the subchapter. The rulemaking procedures which will be followed to determine the rate reduction factor are described in §5.14003. Section 5.14004 will establish the amount of rate reduction or the rate reduction factor for certain lines of liability insurance. This amount will be determined by the Commissioner after he has received evidence at the rulemaking hearing. Section 5.14005 provides the various methodologies being considered by the Department for application of the rate reduction factor. This section also permits, in certain limited situations, an insurer to reduce the rate reduction factor by

specific pricing components contained in proposed TDI Form TR95, Pricing Components by Tort Reform. The final methodology utilized for application of the rate reduction factor may be one or more of the proposed methods based on factors such as the type of company and the line or subline of insurance. The Commissioner will determine which method or methods will be adopted based on evidence adduced at the hearing and comments received on the proposed sections. Section 5.14006 provides that the rate reduction factor remains in effect during the term of the policy and provides that any policy or endorsement issued or renewed after the determination of a new factor will apply the new factor, unless a Department approved manual requires otherwise. Section 5.14007 provides the filing requirements for insurers. Section 5.14008 sets out the mechanism for insurers to obtain administrative relief from disapproval of rates which do not reflect the required reduction and provides that the Commissioner can grant an insurer relief from application of the required reduction in rate in certain limited situations. Under §5.14009 the Commissioner may exempt lines or sublines from the effect of the rate reduction when and as credible evidence indicates that the rates in the specific line or subline reflect the actual experience resulting from the tort reform legislation. Section 5.14010 provides for notice to policyholders about tort reform legislation and its potential impact. Section 5.14011 relates to the effectiveness of a rate reduction during an appeal and severability of a provision if determined invalid.

#### AGENDA:

Wednesday, August 30, 1995, Staff presentation on §§5.14000-5.14003 and §§5.14006-5.14011, including a summary of the proposed rules and comments received on the proposed rules, as well as staff's response to comments.

Comments by interested parties on §§5.14000-5.14003 and §§5.14006-5.14011. Comments will be taken by rule number.

Staff presentation on §5.14004 and §5.14005, for commercial lines. Staff will present the recommended rate reduction factors for the commercial lines coverages and describe the methodologies and assumptions used to arrive at them. Staff will discuss application of the recommended rate reduction factors. The presentation will include a summary of comments received on the proposed factors, as well as staff's response to comments. The order in which the specific commercial lines will be discussed is as follows:

- (1) professional liability insurance, Insurance Code, Article 5.15-1;
- (2) commercial liability insurance for damages arising out of the manufacture, design, importation, distribution, packaging, labeling, lease, or sale of a product or for completed operations coverage (products/completed operations);
- (3) commercial automobile liability insurance;
- (4) commercial multi-peril insurance;
- (5) the employer's liability portion of workers' compensation insurance;
- (6) commercial general liability, which includes premises medical, fire legal liability, personal advertising injury, contractual liability, and liability for all premises;
- (7) commercial umbrella and excess liability;

(8) professional liability other than insurance described by paragraph (1) of this section;

(9) other commercial liability insurance, if not already covered as a part of coverage in paragraph (6), when written as a monoline coverage or added to another policy, including the following lines and sublines:

- (A) fire legal liability;
- (B) contractual liability;
- (C) pollution liability (claims made);
- (D) owners and contractors protective liability;
- (E) railroad protective liability;
- (F) liquor liability (claims made);
- (G) farm liability;
- (H) garage liability;
- (I) all other commercial liability lines and sublines.

Comments by interested parties on §5.14004 and §5.14005, commercial lines. Comments should be made by commercial line or subline in the order listed under staff's presentation, followed by any comments on §5.14005

Thursday, August 31 Continuation of comments on commercial lines (if necessary).

Staff presentation on §5.14004 and §5.14005, for personal lines. Staff will present the recommended rate reduction factors for the personal lines coverages and describe the methodologies and assumptions used to arrive at them. Staff will discuss application of the recommended rate reduction factors. The presentation will include a summary of comments received on the proposed factors, as well as staff's response to comments. The order in which the specific personal lines will be discussed is as follows:

- (1) private passenger automobile liability insurance;
- (2) personal umbrella and excess liability insurance;
- (3) the liability portion of:
  - (A) homeowner's insurance;
  - (B) farm and ranch owner's insurance;
  - (C) renter's insurance.

Comments by interested parties on §5.14004 and §5.14005, personal lines. Comments should be made by personal line or subline in the order listed under staff's presentation, followed by any comments on §5.14005.

Friday, September 1, 1995, 9:00 a.m. Continuation of comments on personal lines if necessary.

The Department is cognizant that persons have a 30 day comment period. However, due to statutory time constraints and the complexity of the proposed rules, the Department respectfully requests that parties who plan to present testimony or comments at the hearing provide a written copy of all testimony and comments, with supporting exhibits, data and studies, to Alicia M. Fechtel, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-1C, Austin, Texas 78714-9104 by August 25, 1995. An additional copy of the comment should be submitted to C. H. Mah, Associate Commissioner, Technical Analysis, Texas Department of Insurance, P.O. Box 149104, Mail Code 105-5G, Austin, Texas 78714-9104. The Department also requests that comments be organized by the specific rule

number, by line or subline of insurance and by applicable tort reform, as it applies to a line or subline. Written comments must be received by August 31 to be considered by the Commissioner prior to any final action on the proposed sections.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509797      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆                    ◆                    ◆

The Texas Department of Insurance will hold a public hearing under Docket Number 2167, on August 24, 1995, at 4:30 p.m. in the City Council Chambers at 25 Oak Drive in Lake Jackson, Texas, to hear public testimony from residents of Brazoria County on the proposed Building Code for Windstorm Resistant Construction. All interested parties, including members of the general public, are invited to attend and provide comments and recommendations.

The hearing is the last of six such hearings to be held by the Department in the month of August for residents of the 14 first tier Texas coastal counties which are eligible for windstorm and hail insurance coverage by the Texas Catastrophe Property Insurance Association (TCPIA). The other five hearing dates are: August 8 in Harlingen for residents of Cameron, Willacy, and Kenedy counties; August 9 in Port Lavaca for residents of Calhoun, Refugio, and Matagorda counties; August 10 in Corpus Christi for residents of Aransas, Kleberg, Nueces, and San Patricio counties; August 22 in Beaumont for residents of Chambers and Jefferson counties; and August 23 in League City for residents of Galveston County. Separate hearing notices will be published for each of these hearings.

Pursuant to the Catastrophe Property Insurance Pool Act (Insurance Code, Article 21.49), the TCPIA was created by the Texas legislature in 1971 to provide windstorm and hail insurance coverage to coastal residents who are unable to obtain such coverage in the voluntary market. Currently, the TCPIA provides this coverage to residents of 14 coastal counties: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio, and Willacy counties. Insurance Code, Article 21.49, §6A, which addresses inspections of structures for determining insurability by the TCPIA, provides that all new construction, repairs, or additions which commenced on or after January 1, 1988, must be inspected or approved by the Department for compliance with the building specifications in the TCPIA plan of operation to be insurable by the TCPIA.

The proposed building code that is the subject of this hearing is a draft proposal by the Building Code Advisory Committee to revise and update the current building specifications in the TCPIA plan of operation. Such revision and updating is proposed to ensure the building of safer and stronger structures along the Texas coast to better withstand significant natural disasters, such as Hurricane Andrew which struck Florida in 1992. The Building Code Advisory Committee is appointed by the Commissioner of Insurance pursuant to Article 21.49, §6A(f) to advise and make recommendations to the Commissioner on building specifications in the TCPIA plan of operation. The proposed code, which specifies separate building requirements for structures located seaward and inland of the

intra-coastal canal to qualify for windstorm and hail insurance coverage by the TCPIA, includes foundation, framing, roofing, and exterior covering specifications. Following the six public hearings, the Building Code Advisory Committee will finalize the proposed code for submission to the Commissioner for consideration of adoption. Persons interested in additional information or in obtaining copies of the proposed code may contact the Texas Department of Insurance Windstorm Inspection Field Offices located at 200 East Mulberry, Suite A in Angleton, Texas 77515 (409) 848-0953 and 3322 Sixth Street, Suite 3 in Bay City, Texas 77414 (409) 244-9451.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5 and §6A, which authorize the Commissioner to adopt building specifications in the TCPIA plan of operation for determining the insurability of structures in the 14 first tier coastal counties of Texas for windstorm and hail insurance coverage by the TCPIA. Article 21.49 §6A also authorizes the Commissioner to appoint an advisory committee to advise and make recommendations on building specifications in the TCPIA plan of operation. Any person may appear and testify for or against the proposed code.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509794      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆                    ◆                    ◆

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Sheffield, Olson & McQueen, Inc., a foreign third party administrator. The home office is Edina, Minnesota.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509798      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: August 4, 1995

◆                    ◆                    ◆

### Texas Department of Mental Health and Mental Retardation

#### RFP for Consultant Services to Restructure Reimbursement Methodology for ICF/MR and HCS-Waiver Programs

In accordance with the Texas Government Code, Chapter 2254, Subchapter B, the Texas Department of Mental Health and Mental Retardation (TDMHMR) announces its intention to enter into a consulting contract to restructure TDMHMR's reimbursement methodologies for its Intermediate Care Facilities for persons with Mental Retarda-

tion (ICF-MR) and Home and Community Services (HCS) waiver programs.

Proposals for this project will be accepted through September 15, 1995. Any interested firms or individuals should contact Ernest McKenney, Director of Medicaid Administration, at the Texas Department of Mental Health and Mental Retardation, Office of Medicaid Administration, P.O. Box 12668, Austin, Texas, 78711-2668, (512) 323-3856 (voice) or (512) 323-3571 (facsimile).

The firm or individual awarded a contract must have demonstrated expertise in developing reimbursement methodologies for ICFs-MR and 1915(c) waiver programs targeted to persons eligible for ICF-MR services. The consultant's previous work in these areas should reflect an equitable balance of incentives for quality care, consumer access, and cost containment. Consultant must demonstrate the capability to develop a formal findings process designed to comply with the Boren Amendment for ICFs-MR and develop overall recommendations which would be administratively feasible and acceptable to the Health Care Financing Administration (HCFA).

Proposals must be in writing and must set forth full, accurate, and complete information as required in the RFP. Oral instructions or offers will not be considered.

The consulting contract will be negotiated and awarded on the basis described in the RFP. TDMHMR reserves the right to reject any and all bids.

Issued in Austin, Texas on August 7, 1995.

TRD-9509812      Ann Utley  
                          Chair, Texas MHMR Board  
                          Texas Department of Mental Health and  
                          Mental Retardation

Filed: August 7, 1995

◆            ◆            ◆

## Texas Natural Resource Conservation Commission

### Enforcement Orders

An agreed enforcement order was entered regarding CITY OF BEEVILLE, Docket Number 95-1060-MWD-E (Permit Number 10124-02), on July 13, 1995, assessing \$7,520 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Merrilee Roberts, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4490.

An enforcement order was entered regarding BIG TEX OIL COMPANY INC., Docket Number 95-0192-PST-E (TNRCC Facility I.D. 05336; Enforcement I.D. E10276), on July 13, 1995, assessing \$19,593 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cynthia Hayes, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 230-4100.

An agreed enforcement order was entered regarding EG&G AUTOMOTIVE RESEARCH INC, Docket Num-

ber 95-0345-IHW-E (SWR Number 69022), on July 13, 1995, assessing \$19,880 in administrative penalties with \$5,960 deferred.

Information concerning any aspect of this order may be obtained by contacting James Eblen, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2563.

An agreed enforcement order was entered regarding MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT Number 56, Docket Number 94-0604-MWD-E (Expired Permit Number 12503-01) on July 13, 1995, assessing \$3,060 in administrative penalties with \$3,060 deferred.

Information concerning any aspect of this order may be obtained by contacting Carla N. Thomas, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4483.

An agreed enforcement order was entered regarding OLIN CORPORATION, Docket Number 94-0332-IHW-E (SWR Number 30795), on July 13, 1995, assessing \$20,400 in administrative penalties with \$9,960 deferred.

Information concerning any aspect of this order may be obtained by contacting Paul Sarahan, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3422.

An agreed enforcement order was entered regarding PILGRIM'S PRIDE CORPORATION, RANDEE CORPORATION, WINSTON LAND AND CATTLE COMPANY, AND JOHN R. WINSTON JR.; Docket Number 94-0378-IWD-E (SWR Numbers 31660, 40897, & 39904; No WQ Permit Number; Air Account Numbers AC-0074-P, TF-0011-F, & AC-0043-A); on July 13, 1995, assessing \$500,000 in administrative penalties with \$100,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Paul C. Sarahan, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3422.

An agreed enforcement order was entered regarding CHEMICAL RESEARCH AND LICENSING COMPANY, Docket Number 95-0619-PWS-E (PWS I.D. 1012722), on July 13, 1995, assessing \$830 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katherine Wheatley, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6020.

An agreed enforcement order was entered regarding TRINITY BAY CONSERVATION DISTRICT, Docket Number 95-0463-PWS-E (PWS I.D. Numbers 0360002, 0360030, and 0360018), on July 13, 1995, assessing \$2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Tom Napier, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6063.

Issued in Austin, Texas, on August 2, 1995.

TRD-9509636 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 2, 1995

◆ ◆ ◆  
An agreed enforcement order was entered regarding ALANIS, OSCAR, Docket Number 95-1038-WWD-E (Water Well Drillers License Number 2693-W) on July 31, 1995, assessing \$1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

An agreed enforcement order was entered regarding EXXON CHEMICAL AMERICAS, Docket Number 95-1078-IHW-E (SWR Number 33880) on July 31, 1995, assessing \$16,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Vic McWherter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0579.

An agreed enforcement order was entered regarding FARMERS COOPERATIVE OF EL CAMPO, Docket Number 95-1113-AGR-E (NO PERMIT) on July 31, 1995, assessing \$9,600 in administrative penalties with \$1,780 deferred.

Information concerning any aspect of this order may be obtained by contacting Robert Powell, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4487.

An agreed enforcement order was entered regarding FOURTEEN LICENSED AND UNLICENSED DRILLERS & INSTALLERS, Docket Number 95-1061-WWD-E, on July 31, 1995, assessing \$11,000 in administrative penalties. (DAVID BURLESON, License Number 3093W-\$2,000; BOB CASPARIS, License Number 3012W-\$1,500; JOE HUGHES, License Number 678W-\$1,250; STEPHEN HUSTON, No License-\$250; JEFFREY JOHNSON, No License-\$250; JOHNNY KEY, License Number 1606W-\$250; JOE MILES, License Number 2156W-\$750; JOE MOORE, No License-\$250; DENNIS MILLER, License Number 2055W-\$2,500; MARIO MOYA, No License-\$500; ROGER NORTH, License Number 2446W-\$250; BUDDY SCHERFF, No License-\$250; GLYNNE STAPLES, No License-\$250; JOE WESTBROOK, No License-\$750)

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

An agreed enforcement order was entered regarding GERALD LUBIANSKI ENTERPRISES, INC., Docket Number 95-0841-IWD-E (NO PERMIT) on July 31, 1995, assessing \$4,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Kathy Keils, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0678.

An enforcement order was entered regarding LAMAR WATER SUPPLY CORPORATION, Docket Number 95-0921-MWD-E (Permit Number 10669-01) on July 31, 1995, assessing \$5,180 in administrative penalties with \$5,180 deferred.

Information concerning any aspect of this order may be obtained by contacting Raymond Winter, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-0477.

An agreed enforcement order was entered regarding NORTH TEXAS MUNICIPAL WATER DISTRICT, Docket Number 95-0217-MWD-E (Permit Number 12047-01) on July 31, 1995, assessing \$7,240 in administrative penalties with \$1,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4492.

An agreed enforcement order was entered regarding TRENTON CITY OF, Docket Number 94-0534-MWD-E (Permit Number 10704-01) on July 31, 1995, assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Guy Henry, Staff Attorney, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6259.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509765 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

◆ ◆ ◆  
**Notices of Application for Amendments  
to Certificate of Adjudication Pursuant  
to Texas Water Code, §11.122,  
Requiring Notice to Interjacent  
Appropriators**

The following notice was mailed August 4, 1995:

DALLAS COUNTY PARK CITIES MUNICIPAL UTILITY DISTRICT Application Number 08-2363A to amend Certificate of Adjudication Number 08-2363 which authorizes the storage of 50,000 acre-feet of water in Grapevine Reservoir on Denton Creek, Trinity River Basin, and

diversion and use of not to exceed 50,000 acre-feet of water per annum from the reservoir for domestic, municipal, industrial and recreational purposes within the Dallas County Park Cities Municipal Utility District. The authorized diversion point is at a point on the Old Channel Elm Fork Trinity River and the authorized diversion rate was "not specified". Applicant seeks to amend this certificate by adding irrigation as an authorized use, adding authorization to also divert water from perimeter of Grapevine Reservoir, and specifying maximum diversion rate from perimeter of reservoir as 17 cfs (7,629.6 gpm). No other changes are requested.

This application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain matters. The Executive Director will issue the amendments to the Certificates of Adjudication unless one or more persons file written protests and/or requests for hearing within 14 days of the date of notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application 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 or requests for hearing are filed, the Executive Director will approve the application. If you wish to appeal a Certificate 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 Certificate.

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, or by mail at the following address: Chief Clerk's Office-Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509769 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

◆ ◆ ◆  
**Application for Permit to Appropriate  
Public Waters of the State of Texas**

Permits of application for permits to appropriate Public Waters of the State of Texas issued during the period of July 28-August 4, 1995:

LEE ROY COSPER and wife, JUDITH McBEAN COSPER; Application Number 5531 for a permit pursuant to §11.121, Texas Water Code, and TNRCC Rules 30 TAC §§295.1, et seq to divert and use 80 acre-feet of

water per annum from the Guadalupe River, Guadalupe River Basin, approximately six miles southeast of Kerrville in Kerr County, Texas, to irrigate 40 acres of land owned by the applicants.

FELIX BRONDER; Application Number 5532 for a permit pursuant to Texas Water Code, §11.121, and TNRCC Rules 30 TAC §§295.1, et seq to divert and use 2.5 acre-feet of water per annum from the San Antonio River, San Antonio River Basin, approximately ten miles northwest of Karnes City and 1.5 miles southwest of Falls City in Karnes County, Texas, to irrigate land owned by the applicant.

BAR-TO-LO, INC.; Application Number 12-2247A to amend Certificate of Adjudication Number 12-2247 pursuant to Texas Water Code, §11.122, and TNRCC Rules 30 TAC §§295.1, et seq Certificate of Adjudication Number 12-2247 authorized diversion and use of 35 acre-feet of water per annum from an existing exempt 179 acre-foot reservoir to irrigate 35 acres of land in Erath County, Texas. Applicant seeks to amend the certificate by adding another on-channel reservoir with a capacity of 27 acre-feet and a surface area of three acres, increasing the amount of water diverted per annum from the North Branch of Little Green Creek by 81 acre-feet, irrigating an additional 185 acres of land within the same tracts, and adding a diversion point on the perimeter of the new reservoir and requesting a diversion rate of 1.78 cfs (800 gpm) from the new reservoir. No other changes are requested.

Del E. Webb Development Company, L.P.; Application Number 5533 for a permit pursuant to Texas Water Code, §11.121, and TNRCC Rules 30 TAC §§295.1, et seq to divert and use a total of 28.6 acre-feet of water per annum from an existing on-channel reservoir (Reservoir Number 1) and maintain a second on-channel reservoir (Reservoir Number 2) as well as construct a proposed off-channel reservoir (Reservoir Number 3) in the Brazos River Basin. Water diverted from Reservoir Number 1 will be used to maintain the proposed off-channel Reservoir Number 3, as well as for irrigation of 9.7 acres of recreational park land owned by the applicant and located approximately six miles northwest of Georgetown in Williamson County, Texas. Reservoir Number 1 is on Berry Creek, tributary of the San Gabriel River, tributary of Little River, tributary of the Brazos River, Brazos River Basin. Reservoir Number 2 is on an unnamed tributary of Berry Creek. Applicant is requesting authorization on the existing on-channel Reservoir Number 1 to increase the capacity of the reservoir to 39.9 acre-feet (the reservoir currently has a capacity of 14.9 acre-feet with a surface area of 4.3 acres).

INGRAM READYMIX, INC.; Application Number 5420A to amend Permit Number 5420 pursuant to Texas Water Code, §11.122, and TNRCC Rules 30 TAC §§295.1, et seq The permit authorized diversion and use of not to exceed 65 acre-feet of water per annum from Hondo Creek, tributary of the Frio River, tributary of the Nueces River, Nueces River Basin, for mining purposes (gravel washing) in Medina County, approximately 2.7 miles northeast of Hondo, Texas. Diversion of water is authorized at a maximum rate of 250 gallons per minute. Applicant is seeking authorization to increase the amount of water diverted to 100 acre-feet per annum, with the maximum diversion rate remaining the same. Applicant states that 89% of the total water diverted will be returned to Hondo Creek.



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 permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

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 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 or requests for hearing are filed, the Executive Director will approve the application 30 days after newspaper publication of the notice of application, 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 Office of the Chief Clerk-Mail Code 105, 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, or by mail to the following address: Office of the Chief Clerk-Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3300.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509768

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

◆ ◆ ◆  
**Notices of Application for Temporary  
Permits to Appropriate Public Waters  
of the State of Texas—For the Week  
Ending August 4, 1995**

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 (Mail Code 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.

Consideration of application of Flo Community Water Supply Corporation to amend Water Certificate of Convenience and Necessity Number 11585 in Leon County, Texas. (Application #30837-C, Albert Holck)

**APPLICATION NUMBER 23-313A BY THE COUNTY OF HIDALGO FOR AN AMENDMENT TO CERTIFICATE OF ADJUDICATION NUMBER 23-313, PURSUANT TO TWC.§11.122.** Applicant seeks to amend Certificate Number 23-313 to combine 15.825 acre-feet of Class "B" water rights from Certificate Number 23-491 with the 17.85 acre-feet of Class "A" water rights owned by the applicant under Certificate NUMBER 23-313, and to change points of diversion, purpose (irrigation to industrial use) and place of use authorized for the water rights authorized by Certificate Number 23-491 and Certificate Number 23-313. According to 31 TAC §303.43, the conversion of the 15.825 acre-feet of Class "B" water rights will result in an authorization of 6.33 acre-feet of industrial water, and the conversion of the 17.85 of Class "A" water rights will result in an authorization of 8.925 acre-feet of industrial water per annum, Rio Grande, Rio Grande Basin, Hidalgo County, Texas.

Application Number 23-2772E by Rancho Blanco Corporation, a Delaware Corporation for a Texas Water Code, §11.122 Water Use Permit Application. Applicant seeks to temporarily change the purpose of use of 560 acre-feet of Class "B" irrigation water rights to mining use for a term to end November 1, 1995. Rio Grande, Rio Grande Basin, Val Verde County, Texas.(Kellye Rila)

**APPLICATION NUMBER 14-1422A BY WEIRICH BROTHERS, INC. TO AMEND CERTIFICATE OF ADJUDICATION NUMBER 14-1422. FOR EXECUTIVE DIRECTOR CONSIDERATION.** Applicant seeks authorization to amend Certificate of Adjudication Number 14-1422, which authorizes the diversion and use of not to exceed 50.2 acre-feet of water per annum from the Pedernales River, Colorado River Basin, for mining use adjacent to a diversion point in Gillespie County approximately five miles southwest of Fredericksburg, Texas, by changing the point of diversion to a point approximately one mile downstream and to change the place of use of water to a

tract of land adjacent to the new diversion point. (Terry Slade)

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NUMBER 149** for a minor amendment to Permit Number 11836-01 in order to add an interim III phase with a discharge volume not to exceed an average flow of 645,000 gallons per day. The proposed permit is also requesting an extension of the compliance date for the interim II phase in accordance with 30 TAC Chapter 305.62(c)(2)(A). The permit currently authorizes a discharge of treated domestic wastewater effluent at an interim I and interim II phase volumes not to exceed an average flow of 575,000 gallons per day, and a final phase volume not to exceed an average flow of 925,000 gallons per day, which will remain the same. The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The Sommerall Subdivision Wastewater Treatment Facilities are at 16427 Skyblue Lane which is approximately 1/2 mile west of State Highway 6 and North of Spencer Road in Harris County, Texas.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509767      Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

◆      ◆      ◆  
**Notices of Applications for Waste  
Disposal Permits**

Notices of applications for waste disposal permits issued during the period of July 24-28, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The executive director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the executive director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the executive director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the executive director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the executive director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office, Mail Code 105, 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.

**ANR PIPELINE COMPANY**; a fuel transfer facility; The plant site is at 7912 South First Avenue, approximately 500 feet south of the intersection of South First Avenue and King Street in the City of Port Arthur, Jefferson County, Texas; new; 03825.

**BRAZORIA COUNTY MUNICIPAL UTILITY DISTRICT Number 6**; the wastewater treatment facilities are approximately 0.2 mile east of State Highway 288 and 0.55 mile south of FM Road 218, on the west side of County Road 94 in Brazoria County, Texas; new; 13784-01.

**C & W MANHATTAN ASSOCIATES**; the dairy is located on the west side of Farm-to-Market Road 3176. The site is approximately two miles north of the intersection of FM Road 3176 and FM Road 462 in Frio and Medina Counties, Texas; amendment; 03527.

**DON DEVRIES**; the dairy is on an unnamed county road one mile northwest of the intersection of FM Road 2303 and State Highway 219, approximately nine miles northwest of Stephenville in Erath County, Texas; renewal; 03164.

**FARCO MINING OF TEXAS, INC.**; the active mining area at the Rachal Coal Mine; the plant site is west of and adjacent to FM Road 1472 at a point approximately 41 miles northwest of the City of Laredo, Webb County, Texas; renewal; 03229.

**THE GEON COMPANY**; the wastewater treatment plant is at 2400 Miller Cut-Off Road, approximately 3,000 feet of the intersection of Miller Cut-Off Road and State Highway 134 (Battleground Road) in the City of LaPorte, Harris County, Texas; amendment; 02097.

**CITY OF GROVES**; the North Wastewater Treatment Facilities; the facilities are at the western corner of Georgia Avenue and Mockingbird Lane, approximately 0.5 mile northeast of the intersection of State Highway 347 and State Highway Spur 136 in Jefferson County, Texas; renewal; 10094-01.

**HARRIS COUNTY MUNICIPAL UTILITY DISTRICT 170**; the wastewater treatment facilities are approximately 600 feet west of Jones Road, 3,000 feet south of FM Road 1960 and adjacent to White Oak Bayou in Harris County, Texas; renewal; 12121-01.

**CITY OF HOUSTON**; the wastewater treatment facilities are on the north bank of Whiteoak Bayou, approximately 500 feet west of the crossing of Whiteoak Bayou by North Houston Rosslyn Road in the City of Houston, Harris County, Texas; renewal; 10495-099.

**RALPH LEE**; the dairy is located on the north side of FM Road 2486, approximately three miles west of the intersection of FM Road 2486 and FM Road 218 in Hamilton County, Texas; new; 03814.

**LIVESTOCK INVESTORS, INC.**; the cattle feedlot is located immediately east of FM Road 1057 at a point approximately one mile south of the intersection of FM

Road 1057 and U.S. Highway 60 in Castro County, Texas; amendment; 01400.

**NIKI HOLDINGS, LTD., INC.;** the wastewater treatment facilities are on the north side of State Highway 87, approximately 3,000 feet west of the intersection of State Highway 87 and Monkhouse Road in the City of Crystal Beach in Galveston County, Texas; renewal; 12936-01.

**CITY OF MINEOLA;** the wastewater treatment plant is approximately 0.3 mile east of U.S. Highway 69 at a point two miles southeast of the center of the City of Mineola in Wood County, Texas; amendment; 10349-01.

**NUTRI-FEEDS, INC.;** a meat rendering and pet food production facility; the facility is approximately 3.5 miles southwest of the City of Hereford at the intersection of Road I and State Highway 60 in Deaf Smith County, Texas; renewal; 01300.

**CITY OF PILOT POINT;** the City of Pilot Point Wastewater Treatment Facilities; the plant is approximately one mile west-southwest of the intersection of U.S. Highway 377 and State Highway Loop 387, approximately one and 1/2 miles northwest of the intersection of U.S. Highway 377 and FM Road 455 in Denton County, Texas; 10361-01.

**CITY OF SOMERVILLE;** the City of Somerville Wastewater Treatment Facilities; the facilities are adjacent to FM Road 1361, approximately 0.5 mile northeast of the intersection of FM Road 1361 and State Highway 36, east of the City of Somerville in Burleson County, Texas; renewal; 10371-01.

**WILLIAM G. VELDUIZEN;** the dairy is on an unnamed county road approximately 4.5 miles south-southwest of Stephenville and approximately three miles west of the intersection of FM Road 847 and FM Road 914 in Erath County, Texas; new; 03816.

**HENRY WHITEFIELD;** the dairy is on an unmarked county road west-southwest of Stephenville, approximately 0.5 mile west of the intersection of U.S. Highway 377 and FM Road 988, and 0.25 mile north of U.S. Highway 377 in Erath County, Texas; renewal; 03241.

**CITY OF WHITEWRIGHT;** the wastewater treatment plant is approximately one block west of the intersection of FM Road 898 and the MK&T Railroad, north of Whitewright in Grayson County, Texas; renewal; 10644-01.

Issued in Austin, Texas, on August 2, 1995.

TRD-9508637

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 2, 1995

◆ ◆ ◆  
Notices of applications for waste disposal permits issued during the period of July 31-August 4, 1995.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing;" a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. In the event a hearing is held, the Office of Hearings Examiners will submit a recommendation to the Commission for final decision. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

**BETZ LABORATORIES, INC.;** a plant that manufactures water treatment and specialty process chemicals; the plant is on U.S. Highway 90, north of the Southern Pacific Railroad main line and west of Willow Marsh Bayou in the City of Beaumont, Jefferson County, Texas; renewal; 02640.

**JACK BEYER, BEYER BARN #1;** the dairy is approximately 9.5 miles northwest of Stephenville and south of the intersection of FM Road 219 and FM Road 2303 on the south side of FM Road 219 in Erath County, Texas; renewal; 03234.

**JACK BEYER, BARN #2;** the dairy is on the south side of FM Road 219, approximately 0.25 miles east of the intersection of FM Road 219 and FM Road 2303, and approximately 9.5 miles northwest of Stephenville in Erath County, Texas; renewal; 03235.

**JACK BEYER AND JIM BEYER;** the auction barn is on the northwest side of U.S. Highway 377, approximately three miles southwest of the intersection of U.S. Highway 377 and FM Road 988, in Erath County, Texas; renewal; 03211.

**ROBERT E. BLISS;** the dairy operation is on an unnamed county road approximately 2.1 miles north and 0.8 miles east of the intersection of FM Road 8 and the county road, approximately 5.5 miles west of Lingleville in Erath County, Texas; renewal; 03085.

**BRIDGESTONE MUNICIPAL UTILITY DISTRICT;** the Bridgestone Wastewater Treatment Facilities are on the south bank of Seals Gully, approximately 2,000 feet upstream of the point where Spring-Cypress Road crosses Seals Gully in Harris County, Texas; amendment; 11835-01.

CACTUS FEEDER'S, INC.; the feedyard is on the west side of an unnamed county road, approximately 1.5 miles north of the intersection of the county road and State Highway 281. The site is approximately three miles northwest of the intersection of State Highway 281 and State Highway 287, and three miles northwest of Etter in Moore and Sherman County, Texas; amendment; 01378.

HAWAIIAN PINE CREEK, LTD, Cacharel Company, Inc., General Partner; the Pine Creek Village Mobile Home Park Wastewater Treatment Facilities; the wastewater treatment facilities are approximately 1.4 miles northeast of the intersection of Interstate Highway 35 West and State Highway 114 and 2.4 miles northwest of the intersection of State Highway 114 and U.S. Highway 377 in Denton County, Texas; renewal; 12771-01.

WILFRED A. HOFF; the dairy is on the east side of U.S. Highway 281. The site is approximately one mile south of the intersection of U.S. Highway 281 and State Highway 25. The site is south of Windthorst, Archer County, Texas; new; 03841.

DAN W. HUMPHREY; the dairy is on the west side of FM Road 69 approximately 1.5 miles north of the intersection of FM Road 69 and State Highway 11, in Hopkins County, Texas; renewal; 03170.

CITY OF MIDLAND; the wastewater treatment site and irrigation site are immediately southeast of the intersection of Interstate Highway 20 and State Highway 307 in Midland County, Texas; amendment; 10223-01.

WAYNE MOERMAN; the dairy is located east of FM Road 573, approximately ten miles south of the intersection of FM Road 573 and FM 590 in Comanche County, Texas; renewal; 03202.

J. D. MYRICK; the feedlot is on an unnamed county road approximately 2.5 miles east of FM Road 168. The site is approximately 4.5 miles northeast of the intersection of FM 168 and FM Road 194 which is in the City of Hart, Castro County, Texas; new; 03831.

MIKE ROBERSON; the dairy is on St. George Road approximately 2.7 miles south of the intersection of State Highway 377 and St. George Road and approximately 2.9 miles south of Dublin in Erath County, Texas; renewal; 03305.

STAR ENTERPRISE, GENERAL PARTNERSHIP, TEXAS ADDITIVE COMPANY, AND HUNTSMAN CORPORATION; a petroleum refinery, petroleum terminals and chemical complex; the Port Arthur Plant is at the northwest end of Houston Avenue in the City of Port Arthur; Port Neches Terminal just east of the intersection of State Highway 366 and FM Road 136 and adjacent to the Neches River, Jefferson County, Texas; amendment; 00414.

GARY VISS; the dairy is in San Angelo, on the east side of State Highway 208, approximately 2.1 miles south of the intersection of State Highway 208 and FM Road 2105 in Tom Green County, Texas; renewal; 03186.

WHITE RIVER MUNICIPAL WATER DISTRICT; the water treatment facilities; the plant site is on the north side of FM Road 2794, approximately 6.5 miles east southeast of the intersection of FM Roads 2794 and 651, approximately 16.5 miles south southeast of the City of Crosbyton in Crosby County, Texas; renewal; 10621-01.

BENNY WILLIAMS; the dairy is on the east side of an unnamed county road approximately 4.25 miles east of the

intersection of U.S. Highway 281 and FM Road 219. The site is in Hamilton County, Texas; new; 03832.

DISPOSAL SYSTEMS, INC.; authorizes subsurface disposal of hazardous and non-hazardous waste generated on-site by the permittee's facility and from other sources on a commercial basis. Waste disposal wells WDW-169 and WDW-249 are located in the George Ross Survey, A-646 in Harris County, Texas; amendment; WDW-169 and WDW-249; 45 day notice.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509766

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

◆ ◆ ◆  
**Notice of Opportunity to Comment on  
Permitting Actions**

Notice of Application Number TA-7505 submitted by Edward J. Coufal for a temporary permit to appropriate Public Waters of the State of Texas was issued on August 4, 1995 to divert and use ten acre-feet of water for a three-year period from a point on Daily Branch, tributary of Little Elm Creek, tributary of Big Elm Creek, tributary of the Little River, tributary of the Brazos River, Brazos River Basin, for irrigation purposes in Bell County, Texas. The proposed point of diversion is on the west side and adjacent to FM 3117, approximately five miles southeast of Temple and approximately 12 miles northeast of Belton, Bell County, where water will be diverted at a maximum rate of 1.11 cfs (500 gpm).

This application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within ten days from the date this notice 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 application 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; 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, 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 *Texas Register* 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 Office of the Chief Clerk (Mail Code 105) 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 Office of the Chief Clerk-Mail Code 105, Texas Natural Resource

Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-3315.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509770 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

◆ ◆ ◆  
**Notice of Opportunity to Comment on  
Permitting Actions—For the Week  
Ending July 28, 1995**

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 (Mail Code 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.

Consideration of Hoe Water Supply Corporation for a Water Certificate of Convenience and Necessity in Harris County, Texas. (Application #30798-C, Albert Holck)

Consideration of Myrtle Springs Water Supply Corporation to amend Water Certificate of Convenience and Necessity Number 11200 in Van Zandt County, Texas. (Application #30540-C, Roy E. Roberts)

Application by the City of Jacksonville to regulate on-site sewage facilities within their jurisdiction.

Application by the City of Brookside Village to regulate on-site sewage facilities within their jurisdiction.

Application by the City of Cedar Hill to regulate on-site sewage facilities within their jurisdiction.

CITY OF MESQUITE for a minor amendment to Permit Number MSW556 in order to revise the operating hours to Monday through Saturday from 7:00 a.m. to 7:00 p. m. for city vehicles only. The municipal solid waste facility is located 0.5 miles southeast of the intersection of Interstate Highway 635 and U. S. Highway 175, in Dallas County, Texas.

Issued in Austin, Texas, on July 28, 1995.

TRD-9509638 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 2, 1995

◆ ◆ ◆  
**Notice of Public Hearing**

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; and Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or Commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 291.

The repeals, amendments and new sections will bring the current rules into conformance with current statutes, clarify the rules by reorganizing and rewording sections, eliminate certain requirements and provide for implementation of policies and procedures authorized by statutory changes. The repeals, amendments and new sections are proposed under House Bill 827, 72nd Legislature, 1991, Senate Bill 2, Special Session, August 1991, House Bill 2677, 73rd Legislature, 1993, and House Bills 1001 and 2387, 74th Legislature, 1995, which in pertinent part amended the Texas Water Code (Water Code), Chapter 13, and under the Texas Water Code §§5.103, 5.105 and 13.041, which provide the commission with rulemaking authority relating to the regulation and supervision of retail public utilities' rates, fees, operations, and services and submetered and nonsubmetered master metered service providers. The new or amended sections establish the substantive regulations which effect the policies of the commission regarding the assurance of water and sewer rates, fees, operations, and services which are just and reasonable. The new sections also outline the procedures for presentation of these matters to the commission for consideration and decision.

A public hearing on the proposal will be held September 5, 1995, at 10:00 a. m. in Room 254S of the 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 must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. Written comments on the proposal should mention Log Number 95005-291-

WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. For further information or questions concerning this proposal, please contact Steve Blackhurst at 239-6960.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

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

TRD-9509827

Lydia Gonzalez-Gromatzky  
Acting Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: August 7, 1995

◆ ◆ ◆  
**Notice of Public Hearing  
(Inspection/Maintenance Program)**

Notice is hereby given that the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 114 and the State Implementation Plan (SIP) pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning SIPs.

Senate Bill 178, passed by the 74th Texas Legislature, 1995, gives implementation responsibility for an interim Inspection and Maintenance program to the Texas Department of Public Safety and directs the TNRCC to adopt emergency rules to repeal conflicting requirements as soon as possible. On June 14, 1995 (published in the June 23, 1995, issue of the *Texas Register* (20 TexReg 4523)), the TNRCC adopted emergency rules that repealed §§114.3, 114.6, and 114.7, concerning Inspection Requirements, Hardship Eligibility Criteria, and Inspection and Maintenance Fees. In addition, the TNRCC adopted on an emergency basis new §114.3, concerning Inspection Requirements. At this time, TNRCC proposes to adopt new §114.3 and the repeal of §§114.3, 114.6, and 114.7 on a permanent basis.

A public hearing on the proposal will be held September 12, 1995, at 10:00 a.m. in Room 201A of TNRCC Building B, located at 12100 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 of the proposed rules 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 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 #95152-114-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 Catherine Collins at (512) 239-0389.

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 27, 1995.

TRD-9509807

Lydia Gonzalez-Gromatzky  
Acting Director, Legal Services Division  
Texas Natural Resource Conservation  
Commission

Filed: August 7, 1995

◆ ◆ ◆  
**Provisionally-Issued Temporary Permits  
to Appropriate State Water**

Permits issued during the period of July 24-28, 1995.

Application Number TA-7498 by Amoco Chemicals Company, for diversion of three acre-feet in a one-month period for industrial (hydrostatic test) use. Water may be diverted from a ship canal of Galveston Bay, approximately two miles southeast of Texas City, Galveston County, Texas, San Jacinto-Brazos Coastal Basin.

Application Number TA-7497 by Kerr County for diversion of ten acre-feet over a one-year period for irrigation use. Water may be diverted from Flatrock Lake on the Guadalupe River at the inlet of Third Creek into the Guadalupe River, approximately 3.5 miles southeast of Kerrville, Kerr County, Texas, Guadalupe River Basin.

Application Number TA-7496 by Seminole Pipeline Company, for diversion of ten acre-feet in a one year period for industrial use (hydrostatic test). Water may be diverted approximately 15 miles northwest of Anderson in Grimes County, Texas, Brazos River Basin.

Provisionally-Issued Temporary permits to appropriate state water are issued for a period of not more than one year and authorize the use of not more than ten acre-feet of water. The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing

as provided in 30 TAC §295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509771 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

Permits issued during the period of July 31-August 4, 1995.

Application Number TA-7501 by Exxon Pipeline Company, for diversion of ten acre-feet in a one year period for water (hydrostatic test) use. Water may be diverted approximately 18 miles northeast of Junction in Kimble County, Texas, Colorado River Basin.

Application Number TA-7502 by Exxon Pipeline Company, for diversion of ten acre-feet in a one year period for industrial (hydrostatic test) use. Water may be diverted approximately five miles southeast of Bastrop in Bastrop County, Texas, Colorado River Basin.

Application Number TA-7503 for Exxon Pipeline Company for diversion of ten acre-feet in a one year period for industrial use. Water may be diverted approximately eight miles northeast of Johnson City in Blanco County, Texas, Colorado River Basin.

Application Number TA-7511 by Exxon Pipeline Company for diversion of ten acre-feet in a one year period for industrial (hydrostatic test) use. Water may be diverted approximately eight miles south of Hempstead in Waller County, Texas, Brazos River Basin.

Application Number TA-7504 by Young Contractors, Inc., for diversion of five acre-feet in a one year period for industrial use (highway construction). Water may be diverted at the stream crossing of FM 3371, approximately 11 miles east-southeast of Groesbeck, Limestone County, Texas, Brazos River Basin.

Application Number TA-7500 by Comal County Fresh-Water Supply District Number 1 for diversion of ten acre-feet in a six-month period for Municipal use. Water may be diverted from Rebecca Creek at Knoll Schwlope Crossing, approximately 22 miles west of New Braunfels, Comal County, Texas, Guadalupe River Basin.

Application Number TA-7506 for Tennessee Gas Pipeline for diversion of one acre-foot in a one-year period for industrial use. Water may be diverted from the Sabine River at the pipeline right of way, approximately five miles east of Carthage, Panola County, Texas, Sabine River Basin.

Application Number TA-7508 for QL Corp doing business as Quick Line Service Company for diversion of four acre-feet in a one year period for mining (oil well drilling) use. Water may be diverted from near the FM 1738 crossing of Hunter Creek, approximately five miles east of Jasper, Jasper County, Texas, Neches River Basin.

Application Number TA-7510 by Lonnie Lishka Company for diversion of six acre-feet in a one-year period for

industrial use. Water may be diverted from Ponds Creek at the Highway 359 crossing, approximately two miles east of Waller, Waller County, Texas, Brazos River Basin.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509772 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: August 4, 1995

## North Central Texas Council of Governments

### Consultant Proposal Request

This request by the North Central Texas Council of Governments (NCTCOG) for consultant services is filed under the provisions of Government Code, Chapter 2254.

Dallas County initiated a south Outer Loop (Loop 9) Feasibility and Route Alignment Study earlier this year to provide a comprehensive assessment and evaluation of surface transportation needs and alternatives in the corridor extending from I.H. 20 in the east to S.H. 360 in the west in Dallas County. The remaining section of the western section between S.H. 360 in the east and I.H. 35W is located in Tarrant County.

NCTCOG intends to retain a consultant to provide technical assistance and support for the Major Investment Study process for the western section of the Loop 9 corridor from S.H. 360 to I.H. 35W.

#### Contract Award Procedures

The firm selected to perform this study will be recommended by a Project Review Committee. The PRC will use evaluation criteria and methodology consistent with the scope of services contained in the Request for Proposals. The NCTCOG Executive Board will review the PRC's recommendations and, if found acceptable, will issue contract awards.

#### Regulations

NCTCOG, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 41 United States Code 2000d to 2000d-4; and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part, Nondiscrimination in Federal Assisted Programs of the Department of Transportation issued pursuant to such act, hereby notifies all proposers that it will affirmatively assure that in regard to any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full opportunity to submit proposals in response to this invitation and will not be discriminated against on the grounds of race, color, sex, age, national origin, or disability in consideration of an award.

#### Due Date

Proposals must be submitted no later than 1:00 p.m., Central Standard Time, Tuesday, September 5, 1995, to David Faria, Principal Transportation Engineer, North Central Texas Council of Governments, 616 Six Flags Drive, Second Floor, or P.O. Box 5888, Arlington, Texas 76005-5888. For more information and copies of the Request for Proposals, contact Shirley Henry, (817) 695-9243.

Issued in Arlington, Texas, on August 1, 1995.

TRD-9509685 Mike Eastland  
Executive Director  
North Central Texas Council of  
Governments

Filed: August 3, 1995

◆ ◆ ◆  
**Texas State Board of Pharmacy**  
**Election of Officers**

The Texas State Board of Pharmacy announces the election of the following officers for Fiscal Year 1996 (September 1, 1995-August 31, 1996).

President, Charlie Bellinger Bethea, R.Ph., Houston, Texas

Vice President, Gilbert Acuna, R.Ph., Kingsville, Texas

Treasurer, Susan H. Jacobson, El Paso, Texas

Issued in Austin, Texas, on August 4, 1995.

TRD-9509783 Fred S. Brinkley, Jr., R.Ph., M.B.A.  
Executive Director/Secretary  
Texas State Board of Pharmacy

Filed: August 4, 1995

<u>Rate Band</u>	<u>Miles</u>	<u>First Minute</u>	<u>Each Additional Minute</u>
A	0-7	.030	.015
B	8-14	.042	.021
C	15-21	.060	.030
D	22-28	.084	.042
E	29+	.093	.054

**Public Utility Commission of Texas**  
**Notice of Joint Petition for Extended**  
**Area Calling Service (EAS) from the**  
**Kilgore Exchange to the Longview**  
**Exchange**

Notice is hereby given to the public of the filing with the Public Utility Commission of Texas (Commission) of a joint petition and agreement on July 25, 1995, seeking approval of optional Extended Area Calling Service (EAS) from the Kilgore Exchange to the Longview Exchange pursuant to Public Utility Commission Substantive Rule 23.49(b)(8).

Project Number and Title: Joint Petition of GTE Southwest, Inc., (GTE), Southwestern Bell Telephone Company, Inc., (SWB), the City of Kilgore, and the Counties of Gregg, Rusk, and Smith, Texas, for Extended Area Service (EAS) from the Kilgore Exchange to the Longview Exchange; Project Number 14458.

The Joint Petition and Agreement: The Kilgore Exchange, served by GTE Southwest, Inc., (GTE) has requested EAS in the form of optional, toll-free, one-way and two-way community calling plans (Texas Local Calling Plano) to the Longview Exchange, which is served by Southwestern Bell Telephone Company, Inc. (SWB). The different options of the Texas Local Calling Plan will be available to GTE's single-party customers and will consist of three different options as follows:

Option 1: Community Calling Plan. This plan will provide optional, one-way, discounted, measured rate EAS to all single-party customers residing within the existing telephone exchange boundary of the Kilgore Exchange. A \$1.00 monthly subscription fee shall be charged to each customer subscribing to this option. The usage rates for this plan are as follows:



<u>Discounted Time Period</u>	<u>Amount of Discount</u>
5:00 p.m. to 11:00 p.m. (Monday through Friday and Sunday)	25%
11:00 p.m. to 8:00 a.m. (Daily)	40%
8:00 a.m. to 5:00 p.m. (Sunday)	40%
All day on Saturday and on the following Holidays: New Year's Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day	40%

Option 2: Premium Calling Plan. This plan will provide optional, one-way, flat-rate EAS to all single-party customers residing within the existing telephone exchange boundary of the Kilgore Exchange at the monthly rates detailed in the table as follows.

Option 3: Premium Plus Calling Plan. This plan will provide optional, two-way, flat-rate EAS to all single-party customers residing within the existing telephone exchange boundary of the Kilgore Exchange. Those customers residing in the existing Kilgore Exchange area electing to subscribe to the Premium and Premium Plus Calling Plans will pay a flat-rate monthly additive, in addition to basic monthly local exchange service charges, as follows:

<u>Class of Service</u>	<u>One-Way Premium Rate Additive</u>	<u>Two-Way Premium Plus Rate Additive</u>
One-Party Residence	\$10.00	\$20.00
One-Party Business	\$22.00	\$44.00
Key	\$25.70	\$51.35
PBX, Centranet (per network access)	\$35.90	\$71.70

In addition to the rate structure described in the preceding paragraphs, GTE's standard service connection charges will apply to all current local exchange customers placing orders for EAS. GTE will waive the standard service connection charge for customers subscribing to EAS dur-

ing the first 90 days after the EAS in-service date. There will be no change in rates for Southwestern Bell Telephone Company's Longview Exchange customers as a consequence of the implementation of EAS between the Kilgore and Longview Exchanges.

The joint applicants have requested that the joint petition be processed administratively pursuant to Public Utility Commission Substantive Rules 23.49(b)(8)(C). Persons who wish to intervene in this proceeding or to comment upon the actions sought should contact the Public Utility Commission of Texas (Commission), 7800 Shoal Creek Boulevard, Austin, Texas, 78757, or call the Commission's Office of Public Information at (512) 458-0388, by October 10, 1995. The telecommunications device for the deaf (TTY) is (512) 458-0221.

Issued in Austin, Texas, on August 3, 1995.

TRD-9509712      Amalija J. Hodgins  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 3, 1995

◆            ◆            ◆  
**Notice of Workshop**

The Public Utility Commission of Texas will hold a workshop on Tuesday, August 29, 1995, at 9:00 a.m. in

the Commissioner's Hearing Room on a new rule concerning interconnection arrangements for the termination of intraexchange traffic and related issues. The purpose of the new rule would be to set policies governing interconnection arrangements pursuant to PURA 1995 §3.458(f). The Commissioners may or may not be present at the workshop.

A list of questions regarding issues to be discussed at the workshop will be made available after August 15, 1995. Parties should be prepared to discuss their responses to the questions at the workshop. Following this workshop, Staff will develop a draft of the proposed rule to be discussed at a future workshop. A proposed rule will then be presented to the Commissioners and recommended for publication. This project has been assigned Project Number 14440.

Persons who plan to attend the workshop and/or wish to obtain the list of questions should register with Carol Milner at (512) 458-0277. If you have any questions, please call Patricia Escobedo at (512) 458-0272 or Meena Thomas at (512) 458-0211.

Issued in Austin, Texas, on August 4, 1995.

TRD-9509741      Amalija J. Hodgins  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: August 4, 1995