TEXAS REGISTER

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Part II - Volume 20, Number 64

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How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

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

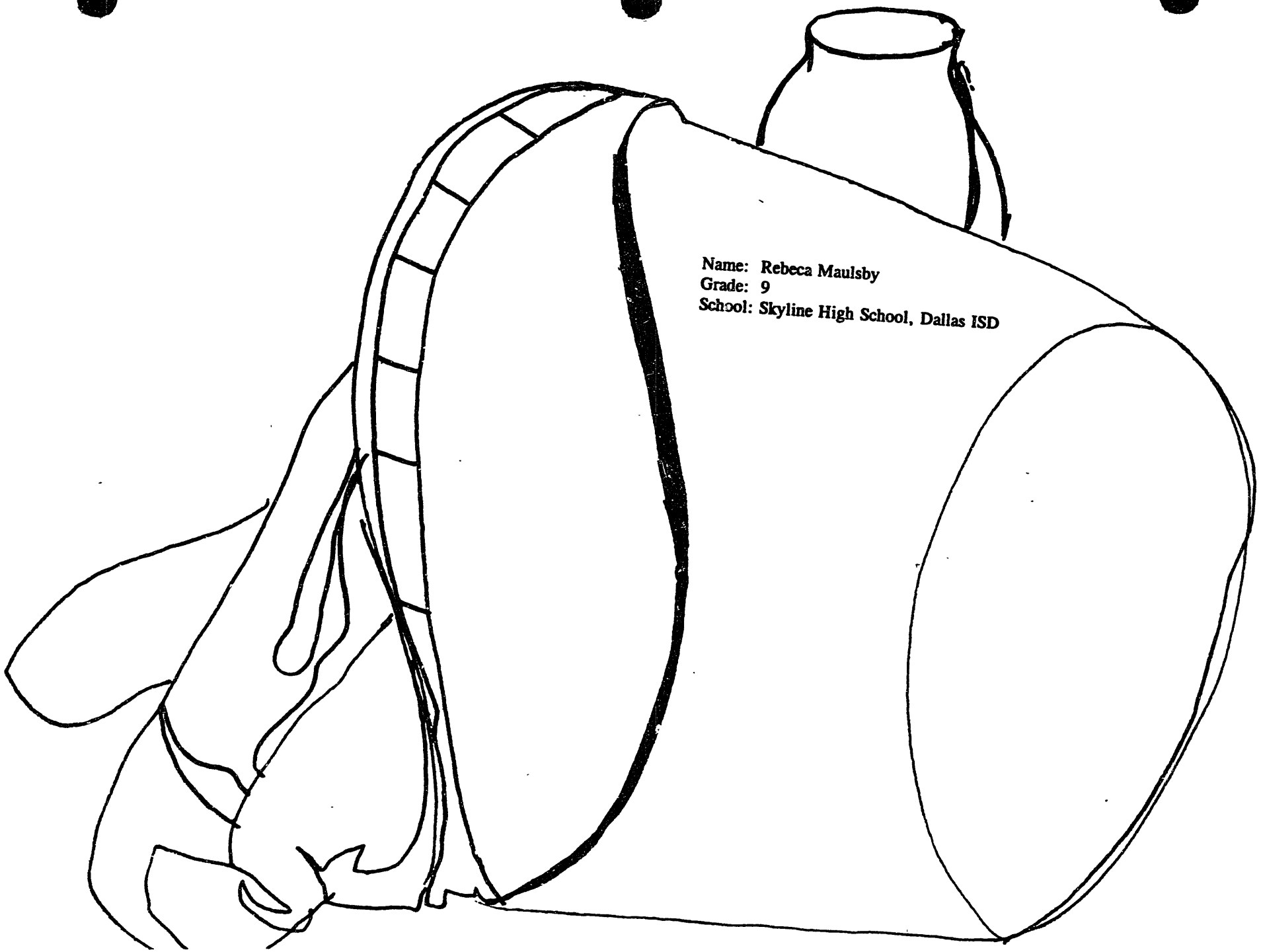
1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

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.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ADOPTED RULES

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

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

TITLE 10. COMMUNITY DEVELOPMENT

Part V. Texas Department of Commerce

Chapter 176. Enterprise Zone Program Rules

• 10 TAC §§176.1-176.12

The Texas Department of Commerce (Commerce) adopts amendments to §§176.1-176.12, implementing the Texas Enterprise Zone Act, Texas Government Code, Chapter 2303, Texas Government Code (Vernon's Session Laws 1993 and 1995), as amended. Section 176.2 and §176.10 are adopted with minor changes to the proposed text as published in the July 11, 1995, issue of the *Texas Register* (20 TexReg 4975). Sections 176.1, 176.3-176.9 and 176.11-176.12 are adopted without changes and will not be republished.

Section 176.1, General Provisions, contains the general provisions and definitions for the Texas Enterprise Zone Program. The rule modifies the name of the governing board of Commerce to the policy board and changes definitions to conform with statutory changes made in House Bill 2065 passed by the 74th Legislature.

Section 176.2, Filing Requirements for Applications and Claims, provides application filing guidelines, new enterprise zone designation guidelines, enterprise project filing guidelines, and qualified business certification guidelines. The rule requires applications to be submitted in the form prescribed by Commerce, clarifies the circumstances under which Commerce may deny zone redesignation, changes the enterprise project deadline from bi-monthly to quarterly, eliminates pre-deadline reviews of project applications by Commerce staff, clarifies requirements for a qualified hotel, and makes conforming amendments with the tax code. It also requires qualified businesses and enterprise projects to file their sales tax claims directly with the Comptroller of Public Accounts and redefines the parameters for on-site reviews of records of companies applying for job certifications. Staff is slightly modifying §176.2(b)(1)(A) from what was proposed to correct an inadvertent omission from proposed rules. Finally adopted §176.2(b)(1)(A) has been modified to require to require only one original enterprise zone application be submitted by applicant communities. The prior rule required submission of one original and one copy. This change will conform this subsection with the changes to enterprise project and qualified business filing guidelines in §176.2(b)(6)(A) and §176.2(b)(6)(B)(iii), respectively, and reduce costs and the administrative burden on local governments. It will also reduce Commerce filing requirements. All other changes to this section are adopted as proposed.

Section 176.3, Eligibility Requirements for Designation of Enterprise Zones, sets forth the eligibility requirements for zone designation. The rule specifies that communities with areas designated as federal empowerment zones and enterprise communities are automatically state enterprise zones. These designations do not, however, count against the number of state zones the communities may have. Section 176.3 also specifies the State Data Center and Texas Workforce Commission as the sources of population and labor force data, respectively, clarifies what is meant by current data, discontinues the use of local labor force surveys, requires all new zones to be enterprise project eligible zones, defines what constitutes the loss of businesses or jobs as a secondary criterion for zone designation, and adds and defines youth arrests as a new secondary criterion for zone designation. These changes are adopted as originally proposed.

Section 176.4, Application Contents for Designation of Enterprise Zones, contains the requirements for zone applications. It requires enterprise zone applicants to complete the forms provided by Commerce, requires all incentives offered by a community be summarized in the nominating order or ordinance, requires communities to offer three incentives, only one of which is financial in nature, requires the zone liaison to be identified by position, clarifies that a separate ordinance or order is required to be adopted for each zone being nominated by a community, requires communities to identify a marketing strategy for their zone, clarifies further information on local incentives that must be identified in a zone application, and provides conforming language with state law allowing taxing units to offer different terms of abatement to property owners in enterprise zones. Section 176.4 is adopted as originally proposed.

Section 176.5, Requirements for Designation of Recycling Market Development Zone and Respective Loans or Grants, contains the requirements for establishing recycling market development zones and implementing loans and grants. It is adopted as originally proposed.

Section 176.6, Application Contents for Designation as a Recycling Market Development Zone identifies the requirements for designating a recycling market development zone. It is adopted as originally proposed.

Section 176.7, Requirements for Designation of Enterprise Projects identifies the requirements for designating a business as an enterprise project. It is adopted as originally proposed.

Section 176.8, Application Contents for Designation of an Enterprise Project, contains the requirements for zone applications. The adopted changes outline information needed to evaluate enterprise project applications including that it is an enterprise project eligible zone and its location in the zone by census area, and eliminate redundancies. Section 176.8 is adopted as originally proposed.

Section 176.9, Certification of Neighborhood Enterprise Associations, contains the requirements for designating a neighborhood enterprise association. It is adopted as originally proposed.

Section 176.10, Approval Standards, contains the requirements for approving enterprise zone applications, recycling market development zone applications, and enterprise project applications. It modifies the application deadlines from bi-monthly to quarterly as previously stated in §176.2, conforms the rules to comply with House Bill 2065 passed by the 74th Legislature allowing 65 enterprise projects to be designated in the FY 1996-1997 biennium, and sets forth the elements and weighting Commerce must consider when evaluating enterprise project applications, and clarifies that resolutions are required to nominate businesses for enterprise project designation. The rule also provides additional explanation about the procedures qualified businesses and qualified builders must use to apply and qualify for benefits and provides that enterprise projects must be certified as qualified businesses by Commerce to qualify for a franchise tax reduction. Based upon comments received on the proposed rules, Commerce has slightly modified two elements of the proposed rule. Adopted §176.10(b)(2)(A) has been modified to allow each community to have four regular enterprise projects during the FY 1996-1997 fiscal biennium, rather than two for each enterprise

zone as originally proposed However, no more than six projects, regular and bonus, are allowed for each community. The latter change has been made in §176.10(o)(2)(B). The change to §176.10 will alleviate the commenter's concern that the rule, as proposed, would create an artificial expansion in the number of zones requested to be designated by communities. Finally, §176.10(b)(2)(C) has been created to respond to a comment suggesting that Commerce utilize a true scoring system competition where the number of enterprise project applications submitted to Commerce exceed the number of designations available during the FY 1996-1997 fiscal biennium. Except for these changes made because Commerce agreed with submitted comments, §176.10 is adopted as proposed.

Section 176 11, Reporting Requirements, contains the reporting requirements of zone administrators and other agencies to the department, and by Commerce to the Governor, Legislature, and Legislative Budget Board. This section is adopted as proposed.

Section 176.12, Boundary Amendments, identifies the requirements for amending the boundary of enterprise zones and clarifies that a public hearing must be held before area is added to an existing enterprise zone. This section is adopted as proposed.

Comments in opposition to portions of the proposed rules, or requesting changes to the proposed rules, were received from Tax Incentive Strategies. The firm's president requested that those submitting enterprise zone program applications be able to send them by electronic means to Commerce. The firm also commented that communities not be required to type directly on the forms provided by the Commerce, as prescribed in the proposed rules, §176.2(a)(1), since this reverses the trend of increasing the use of available technology. While Commerce believes these comments have merit, it is not changing its rules for the following reasons. Commerce projects that in the near future it will have the capability to accept applications by electronic media. However, until certain logistical issues are resolved such as storage, backup, and access, hard copy documents still need to be submitted. Moreover, Commerce's goal is to simplify and streamline the applications so that applicants submit only what is absolutely necessary for Commerce to determine viability. Applicants typically submit more information than is absolutely necessary and in an incorrect format or sequence. This increases the amount of staff review time, increases deficiencies communities must correct before viability can be determined, and ultimately requires more storage space for applications. The new rule requirement will decrease review time by providing precise requirements to program applicants. The program applications are being modified to conform with this rule change and will require that entries be made directly on Commerce forms. Commerce does intend to make these forms available to applicants on electronic media in the near future.

The commenter also requested that Commerce modify the scoring system at §176.10(b)(3) of the rules to exclude manufacturers from being scored based upon the distress of the census area where they locate within a zone The commenter contends manufacturers cannot locate in the highest distressed area of the zone, which typically includes residential area, due to zoning restrictions. Commerce agrees this may be a concern, but cannot modify rules since the change is required to conform with statutory provisions in House Bill 2065 passed by the 74th Texas Legislature.

The commenter opposed the proposed to §176.10(b)(2)(A) to limit the number of enterprise project designations to two for each zone for the state FY 1996-1997 biennium. She suggested four projects for each community with the possibility of bonus projects based upon how the four projects score. The commenter's concern was that Commerce's proposal to allocate projects by the number of zones a community may have would cause communities having fewer than three zones to create more zones so that the community would be automatically eligible to nominate more projects The Texas Enterprise Zone Act allows each city and county to have no more than three enterprise zones. Commerce agrees with the commenter that its proposed rule may have unintended consequences. However, the allocation system must provide equal access for all communities. Commerce believes that four projects per community for the biennium with unlimited bonus projects provides unequal access to communities. Accordingly, as set forth in the summary of adopted §176.10, Commerce has modified that section to allow each community to have four regular enterprise projects during the FY 1996-1997 fiscal biennium. No more than six projects, regular and bonus, will be allowed for a community. Justification for the overall cap is that through June of the FY 1994-1995 biennium, 45 zones had one or more enterprise projects approved by Commerce. Thirty-two of the 45 zones had only one project. This statistic implies that without some cap on the overall number of projects per community, communities will have unlimited access to project designations. This change will be made accordingly in §176.10(b)(2) (B).

The commenter also suggested Commerce create a "true" competition for enterprise project designations once the number of applications submitted in a quarterly round exceeds the number of statutorily authorized project designations available during the FY 1996-1997 biennium. The quarterly round where a true competition is necessary may be the last quarter of the biennium or an earlier quarter depending upon how many designations are made during the initial quarterly rounds of the biennium. The contention is that a true competition will ensure that projects providing the highest impact on the Texas economy will receive the remaining designations. Commerce agrees. Section 176.10(b)(2)(C) has been created to accomodate this comment.

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

§176.2 Filing Requirements for Applications and Claims.

(a) Form.

(1) Enterprise Zones and Enterprise Projects. An application must be filed on letter-sized paper and must contain all information and documentation required under the Act and this chapter, as applicable. The application must be submitted in a three-ring loose-leaf binder. Each application for designation as an enterprise zone, for enterprise zone boundary amendments, recycling market development zone, and for enterprise project designation must be typed directly on the form provided by the department and must include all applicable attachments as specified in the application.

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

(b) Filing.

(1) Enterprise zones.

(A) Applications for enterprise zone designation, enterprise zone boundary amendments, or recycling market development zone designation may be filed with the department on any day. The applicant shall file with the department an original of an application for designation of an enterprise zone, enterprise zone boundary amendment, or recycling market development zone if by separate application from an enterprise zone or zone boundary amendment application. A separate application must be submitted to the department for each area nominated for designation as an enterprise zone or to amend the boundaries of a designated enterprise zone.

(B) During the six-month period preceding the expiration of designation as an enterprise zone, an application may be filed for a new zone designation for the area or portions of the area, to become effective upon the designation expiration date or no later than the 90th day after the day of receipt of the application. An application that includes land area previously designated as an enterprise zone will be

subject to review by the department for evaluation of past performance to promote and develop the zone in accordance with the applicant's or applicants' attempts to meet the original zone objectives and to fulfill commitments outlined in the zone application from which zone designation was previously approved. In the event that the department determines from the evaluation of prior zone performance that the applicant or applicants have made insufficient use of the zone designation to advance the purposes of the Act as represented in its original enterprise zone application and its agreement with the department to designate the area as an enterprise zone, the department may deny approval of an area or portions of areas as authorized by the Act, §2303.111.

(2) Recycling market development zones. Applications for recycling market development zone designation may be simultaneously submitted to the department as part of an application for enterprise zone designation. To achieve designation as a recycling market development zone for an enterprise zone designated prior to September 1, 1993, a separate application must be filed with the department that meets the requirements for designation as a recycling market development zone.

(3) Recycling market development zone loans and grants. Applications to the department in the form prescribed by the department and procedures for filing will be established as funds become available from appropriated funds or from any special fund and interest earned therefrom, less administrative recovery portion determined by the department. The department may adopt rules concerning interest rates, repayment plans, or any other operational details as determined appropriate.

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

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

(6) Certifications.

(A) Enterprise projects.

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

(ii) An enterprise project must be annually certified by the department as a qualified business to receive its state sales and use tax refunds and franchise tax reductions.

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

(B) Qualified business.

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

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

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

(C) Forms. One original form must be submitted to the department to request certification as a qualified business, to request certification of new permanent jobs created or to request certification of retained jobs. One original form as provided by the Comptroller should be submitted to the Comptroller to request refunds of state sales and use taxes. The rules promulgated by the comptroller must also be followed to file a claim for tax refunds or reductions.

(D) Neighborhood enterprise associations. Applications to the department for certification of a neighborhood enterprise association may be filed with the department on any day.

(c) Completeness. Each application or claim must be as complete as practicable, and must include the fee set forth in subsection (d) of this section. The department will stamp or otherwise designate the date on which it receives each application. The date stamped or otherwise designated for any application received after the close of business on any day will be the next day. A day is as defined in the Act and §176.1 of this title (relating to General Provisions).

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

(1) $500 for an enterprise zone designation;

(2) $500 to amend the boundaries of a state designated enterprise zone;

(3) $300 for an enterprise project designation;

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

(5) $300 for designation as a recycling market development zone;

(6) $500 for residential builder certification as a qualified business for a three-year period;

(7) $300 for certification as a neighborhood enterprise association. The fee must be submitted in the form of a cashiers check made payable to the Texas Department of Commerce/Texas Enterprise Zone Program.

(e) Staff consideration of applications or job certification requests. Staff shall review the application or job certification request to determine if the application or job certification request meets the eligibility criteria under the Act and this title. A job certification request submitted by an enterprise project may cover multiple years. Businesses applying for designation and job certifications are subject to on-site inspection. Following staff review, the application will be submitted to the executive director for consideration. Written notification will be given to applicants of the final status of an application or job certification.

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

(2) Not later than five days after the deadline for accepting applications for enterprise project designation, the department shall notify the applicant that it has received the application.

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

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

(2) The department shall review the enterprise project applications that have qualified for consideration following staff review. The department will either approve the application, disapprove it, remand it to the applicant for further action, or make such other disposition of the application as may be appropriate. Enterprise project designation becomes effective immediately upon department approval of an enterprise project application and action to grant the designation. Written notice of the designation will simultaneously be given to the applicant governing body's or bodies' designated liaison or liaisons and the enterprise project applicant. The notice will include an effective date and an expiration date of the project designation which shall include the 90-day period immediately preceding the designation during which benefits under the designation may be allowed.

(g) Consideration of recycling market development zone applications. In the event that a recycling market development zone application is included as part of an enterprise zone designation, the consideration process will be the same as for enterprise zone designation except that the criteria to qualify an area for recycling market development zone designation must be met just as it must be met for an area already designated as an enterprise zone to be further designated as a recycling market development zone.

§176.10. Approval Standards.

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

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

(1) During the state fiscal biennium beginning September 1, 1995, the application deadlines for receipt of enterprise project applications by the department is 5:00 p.m., Austin, Texas time, on the first business day of every third month beginning with September 1995. The department may designate no more than 65 enterprise projects during any fiscal biennium, as specified by the Act, §2303.403.

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

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

(B) Each enterprise project application will be scored against all other enterprise project applications received each quarterly deadline, as specified in §176.10(b)(1) of this Chapter. If an enterprise project application scores within the top quartile (25%) of all the other applications submitted on a quarterly deadline, the nominating enterprise zone governing body may nominate a qualified business for a bonus enterprise project designation on any subsequent quarterly deadline within the state fiscal biennium. Designations will be awarded only if enterprise project designations are available. The bonus enterprise project applications will be scored in the same manner as all other enterprise project applications received on each quarterly deadline. If a bonus project application scores within the top quartile (25%) of all the bonus and regular applications received on a quarterly deadline, the nominating enterprise zone may nominate an additional bonus enterprise project for designation on any subsequent quarterly deadline within the same fiscal biennium. The bonus enterprise project designations may only be located in the enterprise zone from which the bonus enterprise project designation was earned, subject to enterprise project availability. Each application submitted to the department will be evaluated on the commitments made by the community and qualified business as specified under the Act,

§2303.405. In no case may an enterprise zone governing body have a combined total of more than six enterprise project designations, including regular and bonus designations, during the state fiscal biennium beginning September 1, 1995.

(C) In the event the number of enterprise project applications submitted during a quarterly round exceeds the number of remaining designations that may be made during the state fiscal biennium, as specified under §176.10(b)(1) of this Chapter, the applications that score the highest based upon the evaluation system specified in this Chapter will be awarded designations.

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

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

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

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

(B) 25.0% of the evaluation depends on the local effort to achieve development and revitalization of the enterprise zone. This evaluation criteria is designed to measure the level of local support on the part of the community or communities nominating the qualified business and the qualified business applying for enterprise project designation. This includes, but is not limited to, such factors as set forth in the Act, §2303.405(c), (d), and (e); and

(C) 25% of the evaluation depends on the evaluation criteria as determined by the department, which will be evenly divided between:

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

(ii) the type and wage level of the jobs to be created and retained by the qualified business. The wage level of the jobs will be evaluated on how they compare to the regional average salary of a high wage/high skill job.

(c) Period for which designation is in effect.

(1) An area may be designated as an enterprise zone for a maximum period of seven years. Designation of an enterprise zone as a recycling market development zone will run concurrently to begin with the date the recycling market development zone is designated and to end with the date the applicable enterprise zone designation expires. However, if an area is designated as a federal enterprise zone, the area may be designated for a longer period not to exceed that permitted by federal law. Any designation of an area as an enterprise zone and a recycling market development zone, if applicable, shall remain in effect during the period beginning on the date of the designation and ending on the earliest of:

(A) September 1 of the seventh calendar year following the calendar year in which such date ending the enterprise zone designation occurs, or in the case of federal enterprise zone designation, the date federal designation period ends, or

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

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

(ii) the department determines that the governing body has not complied with commitments made in the ordinance or order nominating the area as an enterprise zone or recycling market development zone, as applicable.

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

(A) five years after the date the designation is made; or

(B) the last day that completes the original project designation period of a qualified business that has assumed the designation of the enterprise project through a lease or purchase of a designated qualified business for the purpose of continuing its operations in the applicable enterprise zone under a name or legal structure other than that of the qualified business originally receiving the designation and that has met the requirements of the department to qualify for the assumption, as specified under §176.8(c) of this title. The assumption of a project designation or a name change by a qualified business does not extend the original designation period, which is applicable to the original and subsequent designee, and which will end on the earliest of the last day of the original five-year designation; or

(C) following a public hearing by the governing body or bodies that nominated the qualified business for enterprise project designation, the date the department determines that the qualified business is not in compliance with any requirement for designation as an enterprise project. The governing body or bodies will be deemed to have held a public hearing if the removal of the designation of an enterprise project is included as an agenda item of a regular session in which the governing body or bodies meet to take official action. The department will act to dedesignate an enterprise project upon the written request of a governing body or bodies after:

(i) the governing body or bodies has provided written notice to the qualified business that has been designated an enterprise project, 30 calendar days in advance of the proposed action, that the governing body or bodies is initiating proceedings to remove the project designation. The notice must specify the reason why the governing body or bodies believes the project is in noncompliance and specify the time, date and location where the enterprise zone governing body or bodies plans to take official action to request the department to remove the designation. A copy of the notice and copies of any written responses to the notice by the qualified business must be provided to the department;

(ii) a public hearing is held and a resolution adopted that requests the department to remove the project designation as of a specific date. The resolution must specify the conditions that caused the dedesignation process to be initiated and include a finding that written notice as specified under this title has been given;

(iii) following the governing body's or bodies' written request to the department to dedesignate an enterprise project, the qualified business may appeal the governing body's or bodies' action to the department's executive director. Such appeal must be made in writing within thirty days of the governing body's or bodies' written request to the department for dedesignation. Upon receipt of such appeal, the executive director shall act upon the appeal within 30 days from the date the appeal is received.

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

(1) Selection of recycling market development zones will be based upon the commitment level and incentives offered by each applicant.

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

(e) Approval standards for certification of a qualified business. Qualified business certification and the certification of new or retained jobs may be granted by the local governing body or bodies for purposes of local benefits, if applicable, or the department, for purposes of state benefits, as applicable, in accordance with the Act. The department shall provide the assistance the Comptroller requires in administering this section.

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

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

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

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

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

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

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

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

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

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

(1) A builder must complete the enterprise project application form and other information as stipulated in this subsection to be eligible to be designated an enterprise project. A builder that meets the criteria in this chapter is eligible for the benefits allowed a qualified business under the Act To be eligible to apply for enterprise project designation, the builder or consortium of builders that is certified as a qualified business must have permanent offices located in Texas. In addition to the information required of a business applying for enterprise project designation under §176.8 of this title (relating to Application Contents for an Enterprise Project), the applicant must provide:

(A) the name of the builder, name of company under which building occurs, principle business location, address of office serving the enterprise zone construction activity, telephone numbers, including the telecommunication devices for the deaf (TDD) number, if applicable, and facsimile numbers if applicable;

(B) five written references from satisfied homeowners for whom properties were constructed by the builder in the three years preceding the date of the application;

(C) current bank references and bank references for the past three years;

(D) financial evidence including two years of tax returns or other satisfactory evidence to substantiate financial viability as a builder; and

(E) documentation that supports participation in a 10-year insured warranty program.

(2) A builder proposing a housing project in an enterprise zone, must provide a complete description of the new residential housing to be constructed, including a statement concerning whether the housing constitutes affordable housing under the governing body's or bodies' criteria, preliminary building plans, the location(s) of planned construction, number of units to be constructed, estimated sales price of homes, statement of affirmative action participation in employment practices, a statement regarding the coordinated use of other federal, state, or local funds, and other enhancements to the project. The applicant builder(s) must meet all requirements other than physical headquarters location in the zone and hiring requirements required of other enterprise projects.

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

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

(A) The governing body or bodies or the department may not grant its approval unless the association has hired or appointed a chief executive officer.

(B) The department may not grant state certification to a neighborhood enterprise association unless that association has first made a diligent effort to obtain certification from the applicable enterprise zone governing body or bodies and the association provides documentation to the department of that effort to obtain local certification and the reasons the association was unable to obtain certification from the applicable governing body or bodies.

(2) The neighborhood enterprise association may implement projects, other

than those enumerated in the Act, by submitting an application to the governing body or the state for approval of the specific project or activity. Applications submitted for approval to the governing body or the state must describe the nature and benefit of the project, including:

(A) how it will contribute to the self-help efforts of the residents of the area involved;

(B) how it will involve the residents of the area in project planning and implementation;

(C) whether there are sufficient resources to complete the project and whether the association will be fiscally responsible for the project; and

(D) how it will enhance the enterprise zone in one of the following ways:

(i) by creating permanent jobs;

(ii) by physically improving the housing stock;

(iii) by stimulating neighborhood business activity; or

(iv) by preventing crime.

(3) An existing responsible unit of government may contract with a neighborhood enterprise association to provide services in an amount corresponding to the amount of money saved by the unit of government through this method of providing a service.

(h) If the governing body or bodies does not specifically disapprove of a project proposed by the association before the 45th day after the day of the receipt of the application, it shall be considered approved. If the governing body or bodies disapproves of the application, it shall specify its reasons for this decision and allow 60 days for the applicant to make amendments.

(i) The association may enter into contracts and participate in joint ventures with the state or a state agency or institution. The association may receive money without approval of the governing body or bodies.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on 21, 1995.

TRD-9510557 Michael Regan
Chief Administrative Officer
Texas Department of Commerce

Effective date: September 11, 1995

Proposal publication date: July 11, 1995

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

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

The Public Utility Commission of Texas adopts amendments to §§22.1-22.4, 22.21, 22.31-33, 22.51-52, 22.54, 22.71-73, 22.75, 22.78, 22.80, 22.103-104, 22.123, 22.125-126, 22.144, 22.145, 22.161, 22.181, 22.202, 22.204, 22.222, 22. 225, 22.226, 22.242-245, 22.261-264, 22.282, and 22.283 and new §§22.35, 22. 127, 22.206, and 22.207, concerning practice and procedure, with changes to the text proposed in the July 11, 1995, issue of the *Texas Register* (20 TexReg 4990). The proposed text of §22.161 was published on July 18, 1995, issue of the *Texas Register* (20 TexReg 5322). The proposed amendments are occasioned by recent legislation, especially Senate Bill 373, 74th Legislature, Regular Session 1995 (Senate Bill 373) which amended the Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995 (PURA), as well as, a need to update certain other sections. The changes made in response to legislation include recognizing the transfer of commission's hearings division to the State Office of Administrative Hearings (SOAH), addressing the requirement to have a settlement rule, authorizing sanctions under certain circumstances, recognizing that the chairman of the commission is named by the Governor, and updating the references to statutes. The amendments also include a process for the certification of questions by SOAH to the commission. Some changes were not occasioned by legislation. In order to give the commission greater flexibility in rulemaking, the commission's rulemaking process is modified. The deadline for the filing of documents to be considered by the commission is changed to five days prior to the meeting at which the document is to be considered. Certain other changes are also being made.

Comments were filed by AT&T Communications of the Southwest, Inc. (AT&T), Consumers Union, the Texas electric operating companies of Central and South West Corporation (CSW), Gulf States Utilities Company (GSU), Houston Lighting & Power Company (HL&P), the Office of Public Utility Counsel (OPC), Southwestern Bell Telephone Company (SWB), Texas Industrial Energy Consumers (TIEC), the Texas Ratepayers' Organization to Save Energy (Texas ROSE), Texas Statewide Telephone Cooperative, Inc. (TSTCI), the Texas Telephone Association (TTA) and Texas Utilities Electric Company (TU). Most of the comments recommended changes to the proposed amendments or opposed the amendments to a particular section. SWB and TTA opposed adoption of the amendments in total in addition to comments on particular parts of the proposal.

A public hearing was held on July 21, 1995. Most of the parties that offered comments at the public hearing filed comments covering at least the issues that they addressed at the hearing. Only Brazos Electric Power Cooperative (Brazos) and South Texas Electric Cooperative (STEC) presented comments at the hearing but did not file written comments. The comments that were made at the hearing and that were filed are discussed together below.

As mentioned in this document, SWB and TTA opposed adoption of any of the proposed changes. STEC expressed similar concerns as TTA and SWB but focused that concern on particular sections rather than the proposals as a whole. TTA was concerned that by adopting the changes now, without joint adoption with the State Office of Administrative Hearings (SOAH) which is required after September 1, 1995, the rules would have to be reconsidered after September 1, 1995. SWB vehemently objected to the process by which the rule changes are being performed. SWB objected to getting less than 30 days to draft comments saying that the length of time afforded for comments was "inadequate time to research and develop its comments." SWB maintained that the comment period was contrary to commission procedural rule 22.82(c) which provides for 30 days for comments in response to a rule proposal. With regard to §22.161, which was not published until July 18, 1995, instead of July 11, 1995 when all of the rest of the proposed amendments had been published, SWB maintains that there was a particularly unreasonable period of time to comment. SWB maintains that there is no reason to provide for a comment period of less than 30 days and that the proposals go beyond the ministerial changes necessary to recognize the transfer of the hearings function to the SOAH. SWB commented that making the proposed amendments is inefficient because the rules will have to be revisited once the Commission's reorganization is complete. SWB commented that there is no need for an "emergency rewrite" of the rules because the commission recently completed a extensive rewrite of its rules of practice and procedure. SWB recommended that the Commission wait and jointly adopt with SOAH rules that will affect practice and procedure before SOAH because this was what was apparently intended by the Legislature and it would benefit all parties to have the input from SOAH especially those not accustomed to SOAH practice.

HL&P commented on the "accelerated time frame of this rulemaking" and reserved the right to comment on any fine tuning that may occur later.

The commission has expedited this rulemaking so that the commission's rules of practice and procedure properly reflect the transfer of the hearings function to SOAH, and the different procedures necessary because of that transfer, as close as possible to the date of the transfer, September 1, 1995. Given the broad number of rules affected, the commission found it to be administratively efficient to update the rules in general. This

updating included such things as references to statutes that have been codified, such as the Administrative Procedure Act, the Government Code, Chapter 2001, (APA) to revising practices that were simply in need of revision, such as the rulemaking process. The commission finds that the need to reflect the transfer by September 1, 1995, and the efficiencies in making other changes at the same time, constitute good cause under §22.5(b) of the commission's procedural rules for not following the normal procedure for making rule changes set out in §22.282 of the commission's procedural rules.

The commission finds that there has been a reasonable opportunity for public input. All parties have had a reasonable period of time to comment on these proposals and a public hearing was held. Comments were due two weeks after publication in the *Texas Register*, but the parties had access to the proposal since the open meeting of June 29, 1995, which is thirteen days prior to the publication. The requirements of the Administrative Procedures Act have been met. As for the late publication of the text to §22.161, the commission delayed adoption of that section until the requisite 30 days had passed to eliminate any argument that thirty days notice of the adoption of that section had not been given.

SWB and TIEC commented that the definition of "protested case" appears to be identical to the definition of a contested case. TU commented that the definition is superfluous. SWB stated that the definition should either be eliminated or clarified and subject to further comment. SWB and TIEC noted that the only place the term is used is in the definition of the Commission Secretary, and it is used there in the negative ("unprotested"). SWB suggested that the word "unprotested" should just be changed to "uncontested" in the definition of the Commission Secretary and that the definition of "unprotested" should be eliminated.

The commission proposed the definition of "protested case" as part of its plan to reflect the transfer of the hearings function to SOAH. The definition was created to identify those cases that did not require a hearing. The commission's definition of "contested case" is consistent with §2001.003(1) of the APA. Although all contested cases are by definition subject to a hearing, not all go to hearing because the parties may settle or may not desire to have a hearing. The definition of "protested case" was intended to identify those contested cases in which a hearing is necessary and thus, by implication, define "unprotested cases" which are cases in which a hearing is not necessary. The newly created office of Commission Secretary is authorized to preside over unprotested cases. It is envisioned that this will be done pursuant to the proposed section entitled, "Informal Dispositions," §22.35. Given the confusion that this proposal apparently generated, the commission finds it necessary to change the definition to define "unprotested case."

TU commented that the definition of PURA should be updated to refer to the Public Utility Regulatory Act of 1995. The commission has made this change.

SWB commented that the definition of a "rulemaking" contained in §22.2 and the reference in §22.54 (Notice to be Provided by the Commission) to the rulemaking provisions of the Government Code inappropriately refer to §2001. 038 of the Government Code which section does not concern rulemaking proceedings but rather concerns declaratory judgments actions filed in court to test the validity of a rule. The commission agrees and the references have been corrected. The same change has also been made to §22.282(b).

Several parties commented on the proposed amendments to §22.3 that require communications between Administrative Law Judges (ALJs) and staff used as technical experts to be done in writing or recorded. Consumers Union supports the proposed amendment. CSW, OPC, TU and HL&P recommended that all communications between ALJs and technical staff be reduced to writing. CSW stated that recorded communications would be difficult to cite, and verify, in briefs and exceptions. TU expressed a similar concern. OPC reasoned that an audit trail "will be even more important" after the Commission begins to use SOAH services. HL&P expressed concern about the quality of recordings, the risk that they could be erased or altered, the difficulty of making them publically available, and the erosion of public confidence that ex parte limitations are being observed when there is not a written record of communications. TU also expressed concern about the quality of recordings and the risk that they might be inadvertently erased. CSW further commented that requiring all communications to be in writing would add a degree of formality to the communications that would be beneficial. GSU commented that any communication to an ALJ should be made public at the time it is made and, in fact, should be "conducted in the open where it is contemporaneously available for all parties to hear" and comment upon. Texas ROSE commented that the requirement to record or put in writing all communications should also apply to communications about a case between a commissioner and an employee. TU commented that while the practice of recording communications might be consistent with SOAH practice, it is not consistent with commission practice. TU commented that cases should be decided on the basis of the evidence presented and subject to cross-examination and that although a commission could rely on the specialized knowledge of agency staff, "Section 2001.061 and §2001.090 of the Administrative Procedure Act" require that notice be given of such discussions and opportunity be given to contest the statements of agency staff.

With regard to Texas ROSE's comment that the same provision should be required for communications between commissioners and agency staff, the commission disagrees. The APA allows decision makers to rely on agency expertise as long as the agency employee has not participated in the hearing, §2001.061(c). There is no requirement that those consultations be made public except to the extent that they are reduced to writing or are data, §2001.060(7). The commission should have full and unconstrained access to staff members that have not participated in the case but that may be helpful in evaluating the evidence. To require the recording of all such conversations would create a chilling effect on commissioner efforts to thoroughly and fairly evaluate the evidence.

The commission is not persuaded by the comments that all communications between ALJs and agency staff who have not participated in the hearing should be done in writing. SOAH ALJs and staff should be able to communicate orally in order to clarify understandings and fill in details. However, the commission believes that written communications should be preferred over oral. The language has been changed to reflect this preference, but recording of communications is still allowed so long as a table of contents is maintained for each recording. Furthermore, GSU's suggestion that the communications be done in a public meeting or be contemporaneously provided is an overly burdensome requirement that may chill the ALJs' efforts to understand the evidence.

SWB commented that the caption to §22.33(d) should not be changed as was proposed to "Commission Action:" because the subsection includes action by others than the commission, that being, the Commission Secretary, a SOAH ALJ and an individual Commissioner. The commission agrees and the caption has been left in its original form.

TIEC commented on §22.35 concerning informal disposition. TIEC expressed concern that the process may violate parties' due process rights in that no express provision is made for a hearing and there is no provision that requires a case to be fully settled to be handled by informal disposition. Further, TIEC questioned how and who makes the decision on an informal matter and who determines that it is not adverse to any party other than the general counsel. TIEC also stated that they were perplexed because it appeared "informal disposition" is different from "administrative review" provided by §22.32, which requires the case to be fully settled. TIEC recommended three cures: 1. Incorporating "informal disposition" into the "administrative review" section; or 2. Amending the "informal disposition" section to require that it can only be done if there are no interveners or the case is settled; or 3. Having the parties determine whether a decision is adverse to them and whether a hearing is necessary.

The commission does not believe any changes to its proposal are necessary in response to these comments. The difference between "administrative review" and "informal disposition" is that with administrative review the case is handled by an ALJ at SOAH while with informal disposition the case is handled by the Commission Secretary and the Commission. Both processes involve cases in which a hearing is not necessary. TIEC's concern that the commission will unilaterally decide a hearing is not necessary is unfounded. A hearing is necessary as a matter of law in any contested case in which a party has requested a hearing. See the APA, §2001.051. The commission intends to comply with the requirements of the APA.

Consumers Union objected to the proposed changes to §22.52 concerning notice. Specifically, Consumers Union objected to the exclusion of applications for certificates of

NOTICE

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operating authority (COAs) and service provider certificates of operating authority (SPCOA) from the notice requirements of §22.52(c). Consumers Union noted that the Public Utility Regulatory Act of 1995, §3.2531(b) as amended by House Bill 2128, 74th Legislature, Regular Session 1995, requires notice of these applications.

SWB commented that the exclusion of COA and SPCOA applications from the notice requirements is neither mandated by legislation nor explained in the preamble. SWB suggested that if the issue of notice is the subject of a rule change at this time, the proposal should include what notice will be required. SWB noted that notice is addressed in the application forms being considered for COAs and SPCOAs, but stated that notice is more appropriately addressed in a rule than in a form.

The commission excluded COAs and SPCOAs from the notice requirements of §22.52(c) because if they were not excluded, that section would have dictated notice be provided by the applicant. The commission believes that PURA, §3.2531(b) requires the commission to provide notice of COA and SPCOA applications. Therefore the commission makes no change.

HL&P commented on §22.71 concerning the filing deadlines for documents addressed to the commissioners. HL&P requested that staff documents be available prior to whatever deadline is imposed by the rule, whether it is the two days of the existing rule or five days in the proposed amendments.

The commission disagrees. In contested cases, the staff should follow the deadlines imposed on all the other parties to a case. There is no reason to put the staff at a disadvantage in contested proceedings. The deadlines for rulemakings are best addressed with the rule regarding rulemakings.

TU commented that §22.72, concerning requisites for pleadings, be amended to replace the reference to licensing new generating stations with a reference to integrated resource planning, and thus allow briefs longer than 100 pages in integrated resource planning proceedings. TU noted the change was appropriate given the creation of an integrated resource planning process by virtue of PURA §2.051. The commission has not made this change for two reasons. First, because the commission did not propose any changes to this section, it would be inappropriate to make changes upon adoption. Second, the change is premature given that the commission has not yet formally adopted an integrated resource plan and that §2.28(b) of Senate Bill 373 grandfathers the licensing process for generating plants for some period of time.

GSU commented on §22.78(d) with regard to the time limits for a utility to file a rate filing package in response to a complaint GSU stated that 30 days may not be adequate time to prepare a partial rate filing application and recommended that deference be given to the utility in determining the amount of time that would be needed to file the application. GSU suggested language that provided for such deference.

The commission finds GSUs comments unpersuasive because the existing rule already directs the presiding officer to set an appropriate deadline. There is no reason to create by rule a presumption in favor of the utility on this matter.

A number of parties commented on the changes to §22.80 which concerns Commission prescribed forms. GSU and SWB noted that the *Texas Register* publication of this section omitted some language rendering the section unintelligible. Thus, GSU stated that it was unable to specifically comment on this section. However, GSU offered the general comment that forms should be subject to rulemaking provisions because a form may affect substantive rights GSU also noted the beneficial effect that public input had on the last revision to the Commission's rate filing package and proposed language that would require publication for comment of any new form or significant change to an existing form. SWB offered comments on the language for this section provided in a General Counsel memorandum and opposed the elimination of the requirement that forms be published for public comment. Similarly, CSW, TSTCI, TU, and HL&P opposed the changes that would allow the Commission to change a form without public comment. CSW noted that public comment is useful in identifying unnecessary reporting requirements. HL&P, SWB, TU, and CSW commented that forms may affect substantive rights. TU noted the forms for rate filings and for transmission certificates can particularly affect substantive rights. SWB commented that the additional flexibility that might be gained by eliminating this requirement came at the expense of the input from stakeholders. Consumers Union and OPC supported the comments made at the public hearing of July 21, 1995 that commission prescribed forms should be adopted through a rulemaking or, at a minimum, the current practice of requiring public comment on forms should be maintained. The commission finds these comments persuasive so the proposed changes to this section are not being made.

GSU and TIEC opposed the change to §22.123 that would reduce the number of days for filing an appeal of an Examiner's Order from ten days to five working days after the issuance of a written order. GSU stated that five days is not an adequate period of time to assess an order, draft an appeal, and discuss it with senior management, and that ten days has been workable in the past. TIEC noted that because the orders are often mailed, the parties may get the orders only a day or two in advance of the five-day deadline. TIEC suggested that the current deadline should be maintained or at a minimum the deadline should be five working days from receipt of the order. The commission finds these comments to be persuasive so the filing deadline for appeals is not being changed.

SWB sought clarification of the purpose of the changes to §22.125 wherein the phrase "interim rate relief" was replaced with the phrase "interim relief. " SWB expressed concern that the change would prohibit interim relief of any kind not just rate relief in tariff filings even though in the past interim relief has been granted without problems, for instance, for new services.

The purpose of the proposed changes to this section was to expand the applicability of the section to make clear relief other than rate relief was available on an interim basis. The change to subsection (a) does have the effect of reducing the relief that is available in tariff proceedings as noted by SWB, but the commission believes that this is appropriate. Tariff filings are often processed on an expedited basis. See for instance, §23.26(g) of the commission's substantive rules, which provides a 65 day timeline for certain tariffs. However, if a tariff filing is docketed, interim relief should be available. The language of subsection (a) has been changed to clarify this.

SWB opposes the adoption of §22.127 which provides for the certification of an issue to the commission. SWB commented that the rule is only [redacted]ed by Senate Bill 373 which does [redacted] effect until September 1, 1995 and re[redacted] that the rule be jointly adopted with S[redacted]. Further SWB maintained that adoption by the Commission is pointless because Senate Bill 373 requires joint adoption and therefore it would have to be adopted again. SWB commented that the proposal exceeds the Commission's authority because Section 1.35 of Senate Bill 373 which provides for certification of questions is directed at the utility division at SOAH, but the commission's proposal authorizes all presiding officers to certify a question and not just SOAH ALJs.

Despite the comments of SWB, the commission believes it is appropriate to adopt a certification rule at this time. The commission has the authority to adopt procedures governing its cases irrespective of the passage of Senate Bill 373. In fact, there have already been instances in which commission ALJs have certified questions to the commission. See Docket Number 13400, Investigation into the Impact of Open Access Comparability Transmission Terms and Conditions Accepted by Central and Southwest Services, Inc. As for the requirement that the certification rule be jointly adopted, this section is being jointly adopted. The agencies' staffs have conferred on this matter and SOAH has published the same proposal. See July 18, 1995 issue of the *Texas Register* (20 TexReg 5115, 5117).

SWB commented that the list of issues that may be certified is too broad in that it is not limited to case specific factual issues which SWB maintains is the effect of the language in the statute that limits certification to issues involving an ultimate finding of compliance or satisfaction. SWB further commented that contested cases are inappropriate forums for a shift in policy, and at any rate, the shift should not be done in the middle of a case. Further, SWB commented that the issues of subsection (b)(2) which allows certification of which rules and statutes are applicable to a proceeding are issues of law and not questions of compliance or satisfaction of a standard. SWB commented that the absence of a reference to a factual record is a defect in that it may be necessary to develop a evidentiary record before an issue of compliance or satisfaction of a statutory standard can be determined. TIEC commented that the process should be more narrowly defined. TIEC stated it was unclear at what point in a proceeding certification could occur and under

what circumstances should the ALJ certify a question. TIEC expressed concern that the process may result in the commission ruling on a question without the benefit of a fully developed record nor the parties' briefs. TIEC submitted that certification should occur as part of the Proposal for Decision.

As for the substantive comments of SWB and TIEC, the commission finds them to be unpersuasive. The commission views the certification process as a means of improving administrative efficiency by allowing a SOAH ALJ to seek clarification of any issue "that involves an ultimate finding of compliance with or satisfaction of a statutory standard" at any time during the proceeding. Such a process could lead to the savings of resources by all parties by clarifying the commission's view of a particular statutory standard prior to the final decision on a case. The commission disagrees that such issues are limited to fact issues. Determining compliance with a statutory standard requires an interpretation of the statutory standard, which is obviously a legal question. Consequently, the legal issues of subpart (b)(2) are appropriately certifiable questions.

The commission finds SWB's and TIEC's concern that the commission will prematurely decide issues without the benefit of an evidentiary record to be unfounded. The SOAH ALJ should recognize which issues need evidentiary development and which do not. If the ALJ fails to do so, the commission should be able recognize issues that require an evidentiary record, especially with the assistance of the parties to point out those questions that are not ripe for decision.

SWB and TU commented that the deadlines for briefing and commission consideration are problematic. SWB suggested that because the commission is required to consider an issue within twenty days, but a party must file a brief no later than seven days prior to commission consideration, a party could have only one day to brief if the commission considered the certification on the eighth day. TU noted that under certain circumstances it would be impossible for the parties to meet the briefing deadline of seven days prior to consideration, for instance, if the commission considered the matter on the sixth day. TU suggested that the proposal be amended to provide for commission consideration no earlier than twenty days after submission of the certified issue by the ALJ and briefs to be filed within thirteen days of submission of the certified issue by the ALJ.

The commission agrees with these comments. The deadlines have been changed as proposed by TU.

TU commented that "presiding examiner" should be changed to "presiding officer" in §22.144(g)." The change to §22.144 has been made.

GSU and SWB commented on §22.161 (Sanctions). GSU first suggested that all sanctions be stayed until such time that the Commission determines whether it will hear the appeal. GSU noted that such treatment would be similar to the practice of ALJs to stay their orders directing the disclosure of information to allow the party wishing to protect the information to appeal to the Commission. SWB also commented that the reason for the automatic stay and appeal with regard to sanctions against the General Counsel but no other party was not explained, creates an appearance of impropriety, and raises constitutional questions of equal protection. SWB proposed that this provision be eliminated or applied uniformly.

The commission had proposed the different treatment for the General Counsel because the General Counsel is an employee of the commission, and it only seemed appropriate for the commission to pay special attention to the allegations of disobedience of one of its employees. The commission thought this would be self-evident. However, the commission finds merit in automatically staying all sanctions to allow an opportunity of appeal. The language has been so changed.

GSU also commented that the Commission's proposal for this section would authorize the Commissioners, the Commission and the Secretary of the Commission, as presiding officers, to punish a party for contempt even though the Government Code (Section 2003.047, Amendments of Senate Bill 373) gives the power to hold a party in contempt only to SOAH ALJs. GSU stated that because PURA, §1.326 provides that the Commission may apply to a court of competent jurisdiction for contempt proceedings against a party that has been disobedient of Commission orders, the Commission cannot impose a different or additional sanction or penalty, citing Harrington *v.* Railroad Commission, 375 S.W. 2d 892, 895 (Tex. 1964).

The commission believes that GSU's argument has merit. The language has been changed in a manner similar to that proposed by GSU.

SWB commented that because this section was not published until July 18, 1995, it cannot be adopted until 30 days after that date, not thirty days after July 11, 1995. Out of an abundance of caution, the Commission delayed adoption of this section until thirty days had run from July 18, 1995.

HL&P also commented on §22.161 and recommended that two additional sanctions be added to those that the ALJs have authority to impose: 1. Limiting cross-examination; and 2. Recommending the disallowance of rate case expenses that relate to the offensive action.

The commission finds it unnecessary to expressly include these two sanctions. The first is implied in §22.161(4) and (5). The second is available as part of the commission's power to evaluate the reasonableness of a party's rate case expenses.

A number of parties commented on §22.181, which is the proposal to require a showing of good cause before an applicant can withdraw an application. AT&T recognized that there is a legitimate desire to prevent parties from gaming the system by waiting until an adverse outcome appears to be forthcoming before withdrawing an application, but expressed concern that the proposal would have a chilling effect on the filing of applications and settlements and that it would add an additional level of review. AT&T, Brazos, and TSTCI suggested that the Commission require a showing of good cause only after the applicant has presented its direct case. It was noted that this would be consistent with Rule 162 of the Texas Rules of Civil Procedure which requires leave of court to withdraw a lawsuit after the plaintiff has offered a direct case. AT&T pointed out that the Missouri Public Service Commission has a rule similar in concept. TSTCI stated that there should be a requirement to show good cause after the petitioner has presented its case because otherwise there would be no deterrent for a petitioner to abuse the process by causing other parties to invest resources in a proceeding only to have the "abusive filer" dismiss "its case at the last minute." CSW commented that the requirement to show good cause introduces an unnecessary additional review. CSW supports a provision that would permit an applicant to withdraw its application up to the time that it has presented its direct case. GSU opposed the amendment and stated that any party should be able to withdraw its request at any time prior to the rendition of a final order as is currently provided by the Commission's rules. In the alternative, GSU suggested that the Commission follow the practice of the Texas Rules of Civil Procedure. HL&P supported the comments made by other utilities at the public hearing that a petitioning party should have the right to withdraw a petition and that the Commission should follow the district court practice of allowing a plaintiff to withdraw at any time prior to the complete introduction of the plaintiff's case. HL&P stated that such practice would allow the efficient and expeditious disposal of cases when a petitioning party wishes to withdraw. TTA commented that "good cause" is not explained. SWB commented that this change is not required by legislation and eliminates a long-standing right of utilities. SWB stated that if the commission denies a utility's request to withdraw an application, it has "put itself in the position of running the utility's business." SWB argued that when a commission has gained jurisdiction by a voluntary filing, the Commission may not forcibly retain jurisdiction. SWB stated that it had not had adequate time to research the issues, but that this proposal raised jurisdictional and constitutional concerns, in that if the commission could not force a filing in the first place, it cannot by rule to forcibly retain jurisdiction against the wishes of a utility. SWB opposed the alternative of following Rule 162 of the Texas Rules of Civil Procedure, because such treatment "is inappropriate in the regulatory arena, in which a company's manner of conducting its business is potentially subject to modification beyond the mere denial of its application." Finally SWB, commented that the standard for withdrawing an application, "good cause," is not explained nor is the process for determining whether good cause exists. SWB requested that this proposal be withdrawn. TU commented that the commission's experience with one of TU's cases may be the motivation behind this rule change. TU had litigated an application then withdrew it when on remand thus causing all of the previous effort to have been wasted. However, TU maintained that by withdrawing the case they had prevented

further waste of resources. Noting that the counsel who withdrew the application had only withdrawn that single application in nine-[illegible]en years of practice before the commission, [illegible]U maintained that no rule change is necessary because there is not a problem to be cured. TU commented that if the commission wants to further some policy, it need not do so through a pending case with an applicant who desires to withdraw, but rather, the commission can promulgate the policy by a Substantive Rule or formal policy statement. TU urged that the existing rule not be changed or, in the alternative, that the rule be modeled after Rule 162 of the Texas Rules of Civil Procedure.

The commission finds persuasive those comments that the commission should model this section after Rule 162 of the Texas Rules of Civil Procedure. Requiring a showing of good cause after the applicant has presented its direct case provides a proper balance between the interests of the applicant in being able to withdraw an application and the interest of the commission and the other parties in preventing wasteful proceedings. As for SWB allegations that such a rule raises jurisdictional and constitutional questions, the commission finds that it cannot respond because SWB failed to adequately explain those concerns. The commission believes that once this section is in place, applicants will be on notice that they cannot withdraw without the permission of the commission once they proceed past their direct case. By proceeding past their direct case, applicants have waived their right to withdraw without the commis[illegible]n's permission and have submitted to the [illegible]mmission's jurisdiction. This is not much different than an applicant not being able to withdraw once the commission has entered a final order. The commission does not believe that this proposal raises constitutional and jurisdictional questions. The commission is also unpersuaded by the comments that complain that good cause is not explained. The good cause standard is one that is widely recognized and used frequently by this commission.

Several parties commented on the amendments concerning contested settlements. STEC commented at the hearing that they opposed the adoption of the new §22.206, concerning consideration of contested settlements, because the proposal was not thorough enough STEC submitted that the legislative intent behind Senate Bill 373 was for the Commission to adopt a thorough settlement rule that covered all aspects of the settlement process rather than just meet the minimum requirements spelled out in Section 1.23 of Senate Bill 373. Consumers Union and Texas ROSE agreed with STEC's comments. Texas ROSE stated that the proposal would not improve on the current practices followed by the commission. Texas ROSE noted that past attempts to adopt a more thorough settlement rule have been unsuccessful Texas ROSE recommended reviving the last attempt to have a thorough settlement [illegible]ule rather than adopting this proposal. CSW [illegible]pports the development of additional proce[illegible]ures that will encourage settlements. HL&P recommended that the provision be strengthened by adding two requirements taken from the case City of Somerville v. Public Utility Commission, 865 S.W 2d 557, 560 (Tex. App.-Austin 1993, no writ): 1. Any non-settling parties must be afforded the opportunity to participate in the settlement negotiations and present evidence at a hearing on the merits addressing the provisions of the settlement; and 2. After a hearing on the merits, the Commission must find that the terms of the settlement are fair, just and reasonable and are supported by appropriate findings of fact derived from the evidentiary record of the proceeding. TIEC supported the commission proposal stating that the proposal provides for flexibility yet protects due process of the non-settling parties. TIEC commented that settlement of complicated cases requires a flexible process

The commission believes that its original proposal is appropriate at this time. Under Senate Bill 373, after September 1, 1995, the commission cannot approve a settlement unless the settlement complies with rules that are required to be adopted under Senate Bill 373. Thus, unless the commission has a settlement rule in place, the commission will be unable to consider settlements after September 1, 1995 It is clearly not in the public interest for the commission to knowingly take steps that will prevent it from considering settlements. The proposal is consistent with the plain language of Senate Bill 373 and with current commission practice. As noted by some of the commenters, past attempts to comprehensively address settlements in a rule have been controversial. It would also not be in the public interest to rush forward with a detailed and thorough rule and not give the parties adequate time to participate

No commenter objected to any of the particular provisions of the rules. The objection was that the rule should be more comprehensive. For the reasons discussed above, the commission rejects those comments that request the commission proceed with a detailed rule at this time.

TU commented that "Hearings Officer's Orders" in §22.222 should be changed to "Presiding Officer's Orders." The commission agrees, so this change has been made.

Consumers Union and GSU commented on §22.242 which addresses complaints Consumers Union supported the changes requiring record keeping, but requested that the rule be further amended to track complaints not under the Commission's jurisdiction because it would generate information useful to federal regulators and state lawmakers. Consumers Union also commented that the Commission should track complaints made by telephone because consumers should have the opportunity to register complaints by phone and a trained staff person could elicit more accurate information by phone than from written correspondence. GSU commented that the requirement that a complainant residing within the limits of a city present the complaint concerning electric service to the city should be expressly qualified to not apply when a city has relinquished jurisdiction. HL&P commented that resources are often wasted on a case when it is docketed before it is determined whether the commission has jurisdiction. HL&P suggested the addition of language to require an affirmative indication in the complaint of facts showing that the commission has jurisdiction. At the public hearing HL&P also discussed the possibility of setting up a procedure for the Secretary to notify the utility of the complaint in order to verify the location of the customer and thus commission jurisdiction.

The commission disagrees with Consumers Union comments that the commission should track complaints beyond the commission's jurisdiction and keep a record of complaints made by telephone. The proposed changes are consistent with the directive of the legislature. PURA, §1.401(b) as amended by Senate Bill 373, directs the commission to keep a file on "written complaint(s) filed with the commission that the commission has authority to resolve." As for tracking complaints on matters beyond the commission's jurisdiction, in a time of limited state resources, it would be inappropriate for the commission to commit to spend funds tracking complaints which it has no ability to resolve. The requirement that complaints be written is also sound. It is not burdensome on the consumer to require complaints be submitted in writing, and requiring the complaints to be written minimizes the chance of misunderstanding what the complaint is about. The commission disagrees with HL&Ps suggestion that complaint should have an affirmative statement that the commission has jurisdiction. Such a requirement could impede access to the commission by the public, who would likely not be familiar with the details of commission jurisdiction. Furthermore, §22.242 already has a requirement that complaints must be first presented to the city, if the city has jurisdiction. While the commission is cognizant of the waste of resources that has occurred when cases have been docketed only later to discover the commission does not have jurisdiction, the commission believes that the problem should be cured by efforts of the staff and/or the utility rather than placing an additional burden on the consumer.

TU commented that the first sentence of §22.243(a) should be changed to reflect changes made by Senate Bill 373 to the section of the PURA from which this sentence was taken. Because the commission did not propose a change to this section in its proposal, the commission believes it would be inappropriate to make the suggested change, but will do so when it revisits its rules in the future.

SWB commented that with regard to the part of §22.261, concerning proposals for decisions, which allows the commission to issue a final order without hearing the case nor reading the record if the decision is not adverse to any party except for the commission, it is not clear how a decision can be adverse to the commission. The commission's proposal for this section is consistent with §2001.062 of the APA which allows an agency to issue a final decision on a contested case even though the agency officials have not heard the case nor read the record so long as the decision is adverse to no one other than the agency.

TSTCI commented on existing §22.263(d), concerning reciprocity of final orders of other

states, and suggested it be expanded to allow reciprocal treatment of not just orders of other states but also substantive rules, procedural rules and reports of other states. Because the commission did not propose any changes to this section of the commission's rules, the commission cannot consider this suggestion

Several parties commented on the proposed changes to §22.282 which is the section that addresses the rulemaking process at the Commission. AT&T commented that the elimination of the reference to workshops could be interpreted to mean that the Commission would no longer hold workshops as part of the rulemaking process AT&T also pointed out that §3.452 of the Public Utility Regulatory Act of 1995 as amended by House Bill 2128, 74th Legislature, Regular Session, provides for evidentiary hearings in rulemakings concerning unbundling. AT&T proposed that the Commission adopt a sentence in this section that refers to the Commission's discretion to hold workshops and hearings on a proposed rule. Consumers Union strongly objected to the proposed changes. Consumers Union commented that the procedures provided for rulemakings in the existing rule, that is, workshops, timely access to staff recommendations and limits on communications with Commissioners, have been successful reforms to Commission rulemaking process. Consumers Union commented that previous to these changes, they found the Commission rulemaking process frustrating and inaccessible, and subject to frequent delays Finally, Consumers Union commented that it is inappropriate to "diminish opportunities for public involvement and direct participation by Commissioners in the development of rules" at a time when rulemaking is becoming more important. GSU commented that it has found it extremely useful to be able to comment on the Commission Staff's recommendation on a rule proposal as provided under the existing Commission rules. Therefore, GSU opposed the proposed deletion of the subsection that requires the staff to make an initial recommendation and that allows parties to comment on that recommendation. TTA commented that they have found the rule workshops to be very useful and productive and that they did not understand why the commission wanted to delete references to them from its rules. SWB commented that it is not necessary to eliminate the provisions of this section that are discretionary (e.g. workshops, initial comments) in order to increase flexibility because the discretionary nature of those parts already gives the commission flexibility. Furthermore, SWB urged that the commission not to delete the provisions that provide for an initial and final recommendation by staff and for comments by interested parties at the open meeting at the time of consideration of the adoption of the rule. SWB maintained that these aspects allow for valuable public input and produce a better product. Finally, SWB suggested that there are less drastic measures that could be taken to streamline the rulemaking process, such as requiring a staff recommendation five days prior to the open meeting and still allowing public comment on the staff recommendation at that meeting. TIEC supports the proposed changes to the process of rulemaking because it has found the current process to be expensive, lengthy, and often without results, i e. few proposed rules are adopted.

The commission is persuaded by the comments that the discretionary provision for workshops and initial comments should be maintained. However, the specified windows for holding workshops has been removed as was originally proposed. The commission finds less persuasive those comments requesting the retention on the required process at the end of a rulemaking in which the staff presents an initial recommendation upon which parties file written comments which are then summarized and presented along with the presentation of the staff's final recommendation This is a time and resource consuming process As noted by one of the commenters, the commission faces a great number of rulemakings over the next year. In order to handle that workload, the commission finds it necessary to streamline the process and give the commission greater flexibility. SWB's comment that the staff should be required to file its recommendation in advance of the open meeting at which the proposed rule will be considered has merit, but the commission believes seven days is preferable to five suggested by SWB. The language has been changed to require staff to submit its recommendation one week in advance of the meeting unless otherwise specified by the commission.

SWB noted a number of typographical errors and an incorrect cite to the Administrative Procedures Act. The commission has corrected these problems in the amendments that it is adopting.

CSW encouraged the Commission to publish additional procedures addressing the determination of when cases are to be referred to the State Office of Administrative Hearings (SOAH) and the flow of pleadings and case related information between the Commission and the SOAH. Similarly, HL&P expressed concern about the filing of documents that need the immediate attention and action of SOAH and noted that there may be a logistical problem in getting a file stamped copy of the document to a SOAH ALJ. HL&P stated an interest in seeing further discussion on this procedure.

The commission believes that additional changes to the procedural rules will be necessary after the transition of the hearings function to SOAH is complete. It is not possible to predict all of problems that such change may cause. The commission will propose additional changes as it sees fit. It should be noted that SOAH has proposed some rules concerning filing procedures as they relate to the Public Utility Commission. 20 Tex.Reg. 5115.

All comments, including any not specifically discussed herein, were fully considered by the commission.

Subchapter A. General Provisions and Definitions

- **16 TAC §§22.1-22.4**

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

§22.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Public Utility Commission of Texas that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.

(b) Scope.

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

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the authority or duties of the general counsel or commission staff, or the substantive rights of any person.

(3) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

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

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

Administrative Review–Process under which an application may be approved without a formal hearing.

Affected Person–The definition of affected person is that definition given in the Public Utility Regulatory Act, §1.003(1).

Applicant–A person, including the general counsel, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

Application–A written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

APA–The Administrative Procedure Act, The Government Code, Chapter 2001, as it may be amended from time to time.

Authorized Representative–A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate, in a proceeding. The appearance may be entered in person or by subscribing the representative's name upon any pleading filed on behalf of the party or person seeking to be a party or otherwise to participate in the proceeding. The authorized representative shall be considered to remain a representative of record unless a statement or pleading to the contrary is filed or stated in the record.

Chairman–The commissioner designated by the Governor to serve as chairman.

Commission–The Public Utility Commission of Texas.

Commissioner–One of the members of the Public Utility Commission of Texas.

Complainant–A person, including the general counsel, who files a complaint intended to initiate a proceeding with the commission regarding any act or omission by the commission or any person subject to the commission's jurisdiction.

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

Control Number–Number assigned by the secretary to a docket, project, or tariff.

Days–Calendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules.

Docket–A proceeding handled as a contested case under APA.

Final Order–The whole or part of the final disposition by the commission of the issues before the commission in a proceeding, rendered in compliance with §22.263 of this title (relating to Final Orders).

Financial Interest–Any legal or equitable interest, or any relationship as officer, director, trustee, advisor, or other active participant in the affairs of a party. An interest as a taxpayer, utility ratepayer, or cooperative member is not a financial interest. An interest a person holds indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of that person's control is not a financial interest.

General Counsel–The individual employed by the commission and charged with the duties of the general counsel under PURA. The general counsel duties may be delegated as necessary.

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

Hearing Day–A day of hearing when the merits of a proceeding are considered at the hearing on the merits, a final order meeting, or a regional hearing.

Intervenor–A person, other than the applicant, respondent, or the general counsel, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.

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

Major Rate Proceeding–Any proceeding filed pursuant to PURA, §2.212 or §3.211 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of $100,000 or 2. 5%. In addition, a major rate proceeding is any rate proceeding initiated pursuant to PURA, §2.211 or §3.210 in which the respondent utility is directed to file a rate filing package.

Municipality–A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of Texas. A municipality is a "person" as defined in this section.

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

Person–An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.

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

Prehearing Conference–Any conference or meeting of the parties, prior to the hearing on the merits, on the record and presided over by the presiding officer.

Presiding Officer–The commission, any commissioner, the commission secretary in an unprotested case, or any administrative law judge presiding over a proceeding or any portion thereof.

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

Project–A rulemaking or other proceeding that is not a docket or a tariff.

Protestant–A person who is not a party to the case who submits oral or written comments. A person classified as a protestant does not have rights to participate in a proceeding other than by providing oral or written comments.

PURA–The Public Utility Regulatory Act of 1995, as it may be amended from time to time.

Relative–An individual (or spouse of an individual) who is related to the individual in issue (or the spouse of the individual in issue) within the second degree of consanguinity or relationship according to the civil law system.

Respondent–A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

Rulemaking–A proceeding pursuant to APA, §§2001. 021-2001.037 conducted to adopt, amend, or repeal a commission rule.

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

SOAH–The State Office of Administrative Hearings.

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

Unprotested Case–A contested case in which a hearing is not necessary.

Working Day–A day on which the commission is open for the conduct of business.

§22.3. Standards of Conduct.

(a) Standards of Conduct for Parties.

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

(2) Upon a finding of a violation of paragraph (1) of this subsection, any party, witness, attorney, or other representative may be excluded by the presiding officer from any proceeding for such period and upon such conditions as are just, or may be subject to other just, reasonable, and lawful disciplinary action as the commission may prescribe.

(b) Communications.

(1) Personal Communications. Communications in person by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission shall be governed by the APA, §2001.061. Records shall be kept of all such communications and shall be available to the public on a monthly basis. The records of communications shall contain the following information:

(A) name and address of the person contacting the commission;

(B) name and address of the party or business entity represented;

(C) case, proceeding, or application, if available;

(D) subject matter of communication;

(E) the date of the communication;

(F) the action, if any, requested of the commission; and

(G) whether the person has received, or expects to receive, a financial benefit in return for making the communication.

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

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

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

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

(2) the commissioner, or any relative of the commissioner, is a party or has a financial interest in the subject matter of the issue or in one of the parties, or the commissioner has any other interest that could be substantially affected by the determination of the issue; or

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

(e) Motions for Disqualification or Recusal of an Administrative Law Judge.

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

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

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

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

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

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

(7) If the administrative law judge determines that a motion for disqualification or recusal was frivolous or capricious, or filed for purposes of delaying the proceeding, the movant may be sanctioned in accordance with §22.161 of this title (relating to Sanctions).

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

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

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

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

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

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

(5) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the

record, either expressly or by their failure to take action on a timely basis.

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

§22.4. Computation of Time.

(a) Counting Days. In computing any period of time prescribed or allowed by this chapter, by order of the commission or any administrative law judge, or by any applicable statute, the period shall begin on the day after the act, event, or default in question. The period shall conclude on the last day of the designated period unless that day is a day the commission is not open for business, in which event the designated period runs until the end of the next day on which the commission is open for business.

(b) Extensions. Unless otherwise provided by statute, the time for filing any documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9510503 Paula Mueller
Secretary of the Commission
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For further information, please call: (512) 458-0100

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Subchapter B. The Organization of the Commission

• 16 TAC §22.21

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

§22.21. Meetings.

(a) The commission shall meet at times and places to be determined either by the chairman of the commission or by agreement of any two of the commissioners.

(b) The chairman of the commission shall preside over any proceeding or meeting of the commission, unless some other commissioner is designated by the chairman to preside.

(c) Notice of all commission meetings shall be provided in accordance with the Open Meetings Act, Texas Government Code, Chapter 551, as amended, and the Administrative Procedure Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Classification of Applications or Other Documents Initiating a Proceeding

• 16 TAC §§22.31-22.33

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

§22.31. Classification in General.

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

(b) Control Numbering System. The secretary shall establish and maintain a control numbering system.

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

§22.32. Administrative Review.

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

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

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

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

(4) the administrative law judge finds that no hearing or commission action is necessary and that administrative review is warranted.

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

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

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

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

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

§22.33. Tariff Filings.

(a) Applicability and Classification. This section shall apply to undocketed ap-

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

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

(1) if an electric or regular telephone tariff filing would change the revenues received by the utility for an existing service;

(2) if an electric or regular telephone tariff filing would allow the utility to begin charging for a service previously available but for which there was not a separate charge;

(3) if an electric or regular telephone tariff filing would eliminate an existing service to which one or more customers actually subscribe;

(4) if an electric or regular telephone tariff filing would increase a customer's bill even though the rate for a particular service is not being changed;

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

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

(c) Effective Date. Except for tariffs required to be filed pursuant to a commission rule specifying the effective date of such tariffs and for tariffs filed in compliance with a final order of the commission, no electric or regular telephone tariff filing may take effect prior to 35 days after filing unless approved by the presiding officer. The requested effective date will be assumed to be 35 days after filing unless the applicant requests a different date in its application. The presiding officer may suspend the operation of the electric or regular telephone tariff filing for 150 days beyond the effective date, or, with the agreement of the applicant, to a later date.

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

(e) Appeal of Interim Orders and Notices of Docketing. Interim orders and notices of docketing regarding tariff filings shall be appealable to the Commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order).

(f) Effect of Notices of Approval, Approval With Modification, and Denial. A notice of approval, approval with modification, or denial of a tariff filing shall be the final determination of the commission regarding the tariff filing, and shall be subject to motions for rehearing pursuant to §22.264 of this title (relating to Rehearing).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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• 16 TAC §22.35

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

§22.35. Informal Disposition.

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

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

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

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

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

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

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

(e) Exceptions to Proposed Order. Parties may file exceptions or suggested corrections to the proposed order, provided such exceptions or corrections are filed with the commission no less than 7 days before the commission is scheduled to consider the application in an open meeting.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Notice

• 16 TAC §§22.51, 22.52, 22.54

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

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

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

(1) Publication of Notice. The applicant shall publish notice of its statement of intent to change rates in conspicuous form and place at least once a week for four consecutive weeks prior to the effective date of the proposed rate change, in a newspaper having general circulation in

each county containing territory affected by the proposed rate change. The published notice shall contain the following information:

(A) the effect the proposed change is expected to have on the revenues of the company for major rate proceedings, the change must be expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues;

(B) the effective date of the proposed rate change;

(C) the classes and numbers of utility customers affected by the rate change;

(D) a description of the service for which a change is requested;

(E) whenever possible, the established intervention deadline; and

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

(2) Notice by Mail. The applicant shall mail notice of its statement of intent to change rates to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed in prominent lettering: "Notice of Rate Change Request." The notice must meet the requirements of paragraph (1) of this subsection. Whenever possible, the established intervention deadline shall be included in the notice.

(3) Notice to Municipalities. The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate change.

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

(1) Publication Not Required. The applicant may not be required to publish notice of its statement of intent to change rates in any newspaper when the utility is seeking to reduce rates for all affected customers.

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

(A) the effect the proposed change is expected to have on the revenues of the applicant, expressed as an annual dollar decrease from adjusted test year revenues and as a percent decrease from adjusted test year revenues;

(B) the effective date of the proposed rate decrease;

(C) the classes and numbers of utility customers affected by the rate decrease;

(D) a description of the service for which a rate change is requested;

(E) whenever possible, the established intervention deadline; and

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

(3) Notice to Municipalities. The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate decrease.

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

(d) Affidavits Regarding Notice. The applicant shall submit affidavits attesting to the provision of the notice required or ordered pursuant to this section within a reasonable time and by such date as may be established by the presiding officer.

(1) Publisher's Affidavits. Proof of publication of notice shall be made in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published.

(2) Affidavit for Notice to Affected Customers. If notice to affected customers has been provided, an affidavit attesting to the provision of notice to affected customers shall specify the dates of the provision of such notice; the means by which such notice was provided; and the affected customer classes to which such notice was provided.

(3) Affidavit for Notice to Municipality. An affidavit attesting to the provision of notice to municipalities shall specify the dates of the provision of notice and the identity of the individual cities to which such notice was provided.

§22.52. Notice in Licensing Proceedings.

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

(1) Applicant shall publish notice of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the application is filed with the commission. This notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall further describe in clear, precise language the geographic area for which the certificate is being requested and the location of all preferred and alternative routes of the proposed facility. This description should refer to area landmarks,

including but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Office at (512) 458-0256 or (512) 458-0221 for the text telephone. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall, upon or before filing an application, also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection and a map which clearly and conspicuously illustrates the location of the area for which the certificate is being requested, including the preferred location and any alternative locations of the proposed facility, to cities and neighboring utilities providing the same utility service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice provided to county government(s) shall be identical to that provided to cities and neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to cities, neighboring utilities and county governments who have not already received such notice.

(3) Applicant shall, upon or before filing an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility. The notice must contain all information required in paragraph (1) of this subsection and a clear and conspicuous statement that the owner's land may be directly affected by the preferred route or one of the alternative routes if the certificate is granted. A map which clearly and conspicuously illustrates the preferred and any alternative locations of the facility proposed in the application shall be included. Applicants may provide either a map of the entire proposed route or maps for each county. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to all directly affected landowners who have not already received such notice. For the purposes of this paragraph, land is directly affected if an easement would be obtained over all or a portion of it, or if it contains a habitable structure that would be within 200 feet of the proposed facility. Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). Upon the filing of such proof, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied.

(4) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

(b) Notice by Applicants for New Electric Generating Plant. Persons planning to apply for a certificate of convenience and necessity for a new electric generating plant shall file a notice of such intent with the commission pursuant to PURA, §2.255(d). Applicants for new electric generating plants shall give notice in the following ways:

(1) Applicants for a Notice of Intent shall provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant is proposed to be located, if known, and in each county containing territory served by the utility, once each week for two consecutive weeks beginning the week after the notice of intent is filed with the commission. This notice shall identify the site of the facility, if known. This notice shall further identify in general terms the type of facility, including at a minimum the fuel to be used, basic technology, size of the plant and estimated service date, and the estimated expense associated with the project. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission Consumer Affairs Office at (512) 458-0256 or 458-0221 for the text telephone. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicants for a certificate of convenience and necessity for a new electric generating plant shall provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant will be located, and in each county containing territory served by the utility, once each week for two consecutive weeks beginning the week after the application is filed with the commission. Applicant shall also provide notice to the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. This notice shall contain the same information as required in paragraph (1) of this subsection. Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention. Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(c) Notice in Telephone Licensing Proceedings. In all telephone licensing proceedings, except minor boundary changes, applications for a certificate of operating authority, or applications for a service provider certificate of operating authority, the applicant shall give notice in the following ways:

(1) Applicant shall publish 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 the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. Whenever possible, the notice should state the established intervention deadline. The notice shall also include the following statement: "Persons with questions about this project should

contact [name of utility] at [utility contact telephone number]. Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Office at (512) 458-0256, or (512) 458-0221 for the text telephone. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention.

§22.54. Notice to Be Provided by the Commission.

(a) Notice in Original or Appellate Jurisdiction Proceedings. In any proceeding, other than a petition for rulemaking, invoking the commission's original or appellate jurisdiction, the commission shall provide notice in accordance with APA in addition to any other notice required by law. Ten days notice shall be given of the initial prehearing conference in a proceeding. After the initial prehearing conference, reasonable notice of subsequent prehearing conferences may be provided on the record in a prehearing conference or by written notice to the parties.

(b) Notice in Rulemaking Proceedings. The commission shall provide notice of the proposed adoption of any rule pursuant to APA, §§2001. 021-2001.037.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Pleadings

• 16 TAC §§22.71-22.73, 22.75, 22.78, 22.80

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

§22.71. Filing of Pleadings and Other Materials.

(a) File With the Commission Filing Clerk. All pleadings, rate filing packages, written testimony, and any other document required to be filed with the commission shall be filed with the commission filing clerk, and shall state the control number on the heading, if known.

(b) Number of Documents to be Filed. Unless otherwise provided by this chapter or ordered by the presiding officer, the number of documents to be filed are as follows:

(1) Exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the commissioners: 18 copies;

(2) testimony and briefs: 10 copies;

(3) rate filing package: 16 copies;

(4) applications for certificates of convenience and necessity and notice of intent petitions: four copies;

(5) discovery requests and responses: five copies; and

(6) other pleadings and documents: eight copies.

(c) Receipt by the Commission. Pleadings and any other documents shall be deemed filed when the proper number of legible copies is presented to the commission filing clerk for filing. The commission filing clerk shall be required to accept pleadings and documents if the person seeking to make a filing is in the office of the commission filing clerk with the required number of copies by the time the pleading or document is required to be filed.

(d) No Filing Fee. No filing fee is required to file any pleading or other document with the commission.

(e) Office Hours of the Commission Filing Clerk. For the purpose of filing pleadings and other documents, including proposals for decision, the office hours of the commission filing clerk are from 8:00 a.m. to 5:00 p.m., Monday-Friday, on working days.

(f) Filing a Copy or Facsimile Copy in Lieu of an Original. Subject to the requirements of subsection (c) of this section, a copy of an original document or pleading, including a copy that has been transmitted through a telecopier, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.

(g) Filing Deadline. All documents shall be filed by 3:00 p.m. on the date due, unless otherwise ordered by the presiding officer.

(h) Filing Deadlines for Documents Addressed to Commissioners.

(1) Except as provided in paragraph (2) of this subsection, all documents addressed to the commissioners relating to any proceeding that has been placed on the agenda of a final order meeting shall be filed with the commission filing clerk no later five days prior to the final order meeting at which the proceeding will be considered provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline and do not meet one of the exceptions in paragraph (2) of this subsection, will be considered untimely filed.

(2) The deadline established in paragraph (1) of this subsection does not apply if:

(A) The documents have been specifically requested by one of the commissioners;

(B) The parties are negotiating and such negotiation requires the late filing of documents; or

(C) Good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meet the deadline was not the result of the negligence of the party. The finding of good cause lies within the discretion of the commission.

(3) Documents filed under paragraph (2) of this subsection shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

§22.72. Formal Requisites of Pleadings to Be Filed With the Commission.

(a) Requirements of Form.

(1) Unless otherwise authorized or required by the presiding officer, filings shall be typewritten or printed on paper measuring approximately 8 1/2 by 11 inches; shall include the style and number of the docket or project in which they are submitted, if available; shall identify by heading the nature of the pleading submitted and the name of the party submitting the same; and shall be signed by the party, or the party's authorized representative.

(2) Any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in paragraph (1) of this section, if it cannot be provided legibly on letter-size paper.

(b) Format. Any filing with the commission must:

(1) have double-spaced print with left margins not less than one inch wide, except that any letter, tariff filing, rate filing, or proposed findings of fact and conclusions of law may be single-spaced;

(2) indent and single-space any quotation which exceeds 50 words;

(3) be bound or stapled at the left side only, if the filing exceeds one page; and

(4) be printed in not less than 10-point type.

(c) Citation Form. Any filing with the commission should comply with the rules of citation, set forth in the most current edition of the Texas Rules of Form published by the University of Texas Law Review Association (for Texas authorities) and the most current edition of A Uniform System of Citation, published by The Harvard Law Review Association (for all other authorities). Neither Rule 1.1 of the Uniform System nor the comparable portion of the Texas Rules of Form shall be applicable in proceedings.

(d) Signature. Every pleading shall be signed by the party or the party's authorized representative, and shall include the party's address, telephone number, and, if available, telecopier number. If the person signing the pleading is an attorney licensed in Texas, the attorney's State bar number shall be provided.

(e) Page Limits. In major rate proceedings, proceedings initiated pursuant to PURA §2.211 or §3.210, fuel reconciliations, petitions to declare a market subject to significant competition, and applications for licensing of new generating plant, except for testimony and rate filing packages, no pleading shall exceed 100 pages in length, including attachments. In all other dockets, no pleading shall exceed 50 pages in length, including attachments. The page limitation shall not apply to courtesy copies of legal authorities cited in the pleading. A presiding officer may establish a larger or smaller page limit. In establishing larger or smaller page limits, the presiding officer shall consider such factors as which party has the burden of proof and the extent of opposition to a party's position that would need to be addressed in the pleading.

(f) Transmittal Letters. Transmittal letters may be attached to pleadings or any other document filed with the commission. If transmittal letters are submitted, they shall be considered part of the record.

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

(1) a statement of the jurisdiction of the commission over the parties and subject matter;

(2) a list of all the known parties, classes of customers, and territories, if applicable, which would be affected if the requested relief were granted;

(3) the name and address of each party against whom specific relief is sought;

(4) a concise statement of the facts relied upon by the pleading party;

(5) a concise statement of the specific relief, action, or order desired by the pleading party;

(6) any other matter required by statute or rule; and

(7) a certificate of service.

§22.75. Examination and Correction of Pleadings.

(a) Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

(b) Procedural Sufficiency of Pleadings. Any pleading that does not comply in all material respects with this chapter, shall nevertheless be conditionally accepted for filing. Upon notification by the presiding officer of a deficiency in pleadings, the pleading party shall correct or complete the pleading in accordance with the notification. If the pleading party fails to correct the deficiency, the pleading may be stricken from the record.

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

(1) Motions to find a rate change application materially deficient shall be filed no later than 21 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find a rate change application materially deficient shall be filed no later than five working days after such motion is received.

(2) If within 35 days after filing of a rate change application, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.

(3) If the presiding officer determines that material deficiencies exist in an application, the presiding officer shall issue a written order within 35 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. The effective date of the proposed change will be 35 days after the filing of a sufficient application. The statutory deadlines shall be calculated based on the date of filing the sufficient application.

(d) Notice of Material Deficiencies in Applications for Certificates of Convenience and Necessity for Transmission Lines. This subsection applies to applications for certificates of convenience and necessity for transmission lines.

(1) Motions to find an application for certificate of convenience and necessity for transmission line materially deficient shall be filed no later than 60 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application for certificate of convenience and necessity for transmission line materially deficient shall be filed no later than 15 days after such motion is received.

(2) If, within 90 days after filing of an application for certificate of convenience and necessity for transmission line, the presiding officer has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.

(3) If the presiding officer determines that material deficiencies exist in an application, the presiding officer shall issue a written order within 90 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. Any statutory deadlines shall be calculated based on the date of filing the sufficient application.

(e) Additional Requirements. Additional requirements as set forth in §22.76 of this title (relating to Amended Pleadings) apply.

§22.78. Responsive Pleadings and Emergency Action.

(a) General Rule. Unless otherwise specified by statute, by this chapter, or by order of the presiding officer, a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made. Responsive pleadings shall state the date of receipt of the pleading to which response is made.

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

(c) Emergency Action. Unless otherwise precluded by law or this chapter, the presiding officer may take action on a pleading before the deadline for filing responsive pleadings when necessary to prevent or mitigate imminent harm or injury to persons or to real or personal property. Action taken pursuant to this subsection is subject to modification based on a timely responsive pleading.

(d) Section 2.211 or §3.210 Investigations or Complaints. In a complaint proceeding filed pursuant to PURA, §2.211 or §3.210, the presiding officer shall determine the scope of the response that the utility shall be required to file, up to and including the filing of a full rate filing package. The presiding officer shall also set an appropriate deadline for the utility's response. In no event shall the deadline for filing a response be less than 120 days if a full rate filing package is required, or less than 30 days if a full rate filing package is not required.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 18, 1995.

TRD-9510508 Paula Mueller
Secretary of the Commission
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For further information, please call: (512) 458-0100

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Subchapter F. Parties

• 16 TAC §22.103, §22.104

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

§22.103. Standing to Intervene.

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

(b) Standing to Intervene. Persons desiring to intervene must file a motion to intervene and be recognized as a party under §22.104 of this title (relating to Motions to Intervene) in order to participate as a party in a proceeding. Any association or organized group must include in its motion to intervene a list of the members of the association or group that are persons other than individuals that will be represented by the association or organized group in the proceedings. The group or association shall supplement the list of members represented in the motion at any time a member is added or deleted from the list of members represented. A person has standing to intervene if that person:

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

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

§22.104. Motions to Intervene.

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

(b) Time for Filing Motion. Motions to intervene shall be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding officer. The deadline for filing a motion to intervene in a licensing or notice of intent proceeding shall be 70 days after the application is filed. The motion shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.

(c) Rights of Persons With Pending Motions to Intervene. Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding officer's ruling on the motion to intervene.

(d) Late Intervention.

(1) A motion to intervene that was not timely filed may be granted. In acting on a late filed motion to intervene, the presiding officer shall consider:

(A) any objections that are filed;

(B) whether the movant had good cause for failing to file the motion within the time prescribed;

(C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;

(D) whether any disruption of the proceeding might result from permitting late intervention; and

(E) whether the public interest is likely to be served by allowing the intervention.

(2) The presiding officer may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.

(3) Except as otherwise ordered, an intervenor shall accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter G. Prehearing Proceedings

• 16 TAC §§22.123, 22.125, 22.126

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

§22.123. Appeal of an Interim Order.

(a) Availability of Appeal. Appeals are available for any order of the presiding officer that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or application for rehearing prior to issuance of a proposal for decision.

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

(c) Contents. An appeal shall specify the reasons why the interim order is unjustified or improper.

(d) Responses. Any response to an appeal shall be filed within five working days of the filing of the appeal.

(e) Motion for Stay. Pending a ruling by the commissioners, the presiding officer may, upon motion, grant a stay of the interim order. A motion for a stay shall specify the basis for a stay. Good cause shall be shown for granting a stay. The mere filing of an appeal shall not stay the interim order or the procedural schedule.

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

(g) Denial. If after ten days of the filing of an appeal, the commissioners have not, by agenda ballot, placed the appeal on the agenda of an open meeting, the appeal is deemed denied. The commissioners shall rule on the interim order within 20 days of the filing of the appeal. If the commissioners do not rule on the appeal within 20 days of its filing, or extend the time for ruling, the interim order is deemed approved and any granted stay is lifted.

(h) Reconsideration. The presiding officer may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal prior to a commission decision on the appeal.

§22.125. Interim Relief.

(a) Availability. Interim relief is not available for tariff filings unless the tariff filing has been docketed.

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

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

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

(2) other remedies available under law;

(3) changed circumstances;

(4) the effect of granting the request on the parties and the public interest;

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

(6) any other relevant factors as determined by the presiding officer.

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

(e) Refunds and Surcharges. Interim rates shall be subject to refund or surcharge to the extent the rates ultimately established differ from the interim rates.

§22.126. Bonded Rates. During the pendency of its rate proceeding, a utility seeking to implement rates under bond pursuant to PURA, §2.212(e) or §3.211(e) shall file an original and ten copies of its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective. The application shall conform to the requirements of Subchapter E, of this chapter (relating to Pleadings). The bond shall be in an amount equal to or greater than one-sixth of the annual difference between the utility's current rates and the bonded rates. The bond must be approved by the secretary as to sufficiency based on the commission staff's review of the utility's application. Any decision by the secretary either approving or disapproving a bond is appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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• 16 TAC §22.127

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

§22.127. Certification of an Issue to the Commission.

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

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

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

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

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

(c) Procedure for Certification. The presiding officer shall submit the certified issue to the secretary. The secretary shall place the certified issue on the commission's agenda to be considered at the earliest time practicable that is not earlier than twenty days after its submission. Parties may file briefs on the certified issue within thirteen days of its submission. The presiding officer may abate the proceeding while a certified issue is pending.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter H. Discovery Procedures

• 16 TAC §22.144, §22.145

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

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

(a) Availability. At any time after an application is filed, and subject to the provisions of §22.141 of this title (relating to Forms and Scope of Discovery), any party may serve upon any other party written requests for information and requests for admission of fact.

(b) Making Requests for Information.

(1) Contents. A request under this section shall identify with reasonable particularity the information, documents or material sought. A request seeking inspection of documents or property shall describe with reasonable particularity the documents to be produced or the property to which access is requested, and shall set forth the items to be inspected by individual item or by category.

(2) Service. A copy of each request for information shall be served upon all parties to the proceeding. Requests for information may be served by facsimile transmittal only by agreement of the party from whom discovery is sought or if authorized by the presiding officer. Requests for information that are received after 3:00 p.m. shall be deemed to have been received the following business day. Responses to requests for information shall be served on the requesting party and any party that has requested, in writing, to be served.

(c) Responding to Requests for Information.

(1) Time for Response. The party upon whom a request is served shall serve a full written response to the request within 20 days after receipt of the request. The presiding officer, on motion and for good cause shown, may extend or shorten the time for providing responses.

(2) Requirements of Response.

(A) Each response to discovery under this subsection shall identify the preparer or person under whose direct supervision the response was prepared, and the sponsoring witness, if any.

(B) Each request for information shall be answered separately. Responses to requests for information shall be preceded by the request to which the answer pertains.

(C) Responses to requests for production of documents, property, or other items, shall state, for each item or category of items for which an objection has not been raised, that inspection or other requested action will be permitted at a mutually convenient time at the location where the documents, property, or other items are maintained. If compliance with the request is impossible, a written response shall be filed stating the reasons for the unavailability of the information.

(D) Where the response to a request for information may be derived or ascertained from local public records, the responding party shall not be obligated to produce the documents for the requesting party. It shall be sufficient answer to identify with particularity the public records that contain the requested information.

(E) Where a request may be answered by production of or reference to information that currently exists in the form of a document, computer record, or other existing tangible thing that is voluminous, as defined in subsection (h) of this section, it is a sufficient answer to the request to specify the records from which the answer may be derived or ascertained and to afford a reasonable opportunity to the requesting party to examine, to audit or to inspect such records and to allow the requesting party to make copies, compilations, abstracts or summaries from such records. The specification of records provided shall include sufficient detail to permit the requesting party to locate and to identify, as readily as can the responding party, the records from which the answers may be ascertained.

(F) Responses to requests for information shall be filed under oath, unless the responding party stipulates in writing that responses to requests for information can be treated by all parties as if the answers were filed under oath.

(d) Objections to Requests for Information. Parties shall negotiate diligently and in good faith concerning any discovery dispute prior to filing an objection. The objections shall include a statement that negotiations were conducted diligently and in good faith. If negotiation fails, objections to requests for information, if any, shall be filed within ten calendar days of receipt of the request for information. The objections shall state the date the request for information was received.

(1) The objections shall be a separate pleading and entitled "Objections of (name of objecting party) to (style of RFI objected to)." The request for information to which an objection is being filed shall be stated and the specific grounds for the objection shall be separately listed for each question. If an objection pertains only to a

part of a question, that part shall be clearly identified. All arguments upon which the objecting party relies shall be presented in full in the objection.

(2) If the objection is founded upon a claim of privilege or exemption under Rule 166(b)(3) of the Texas Rules of Civil Procedure, the objecting party shall file within two working days of the filing of the objections, an index that lists, for each document: the date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the privilege(s) or exemption(s) that is claimed. A full and complete explanation of the claimed privilege or exemption shall be provided. The index shall be sufficiently detailed to enable the presiding officer to identify the documents from the list provided. The index and explanations shall be public documents and shall be served on all parties who are entitled to receive copies of responses to requests for information under subsection (b)(2) of this section. If a document is to be provided pursuant to the terms of a protective order, the responding party need not comply with the procedures of this paragraph.

(3) A party raising objections on the grounds of relevance as well as grounds of privilege or exemption is not required to file an index to the privileged or exempt documents at the time the objections are filed. A party may instead include an objection to the filing of the index. The objections shall show good cause for postponement of the filing of the index. An index to the privileged or exempt documents shall be due within five working days of receipt of an order denying the relevance objection or overruling the objection to the filing of an index.

(4) The requirement to respond to those requests, or portions thereof, to which objection is made shall be postponed until the objections are ruled upon and for such additional time thereafter as the presiding officer may direct.

(5) In the interests of narrowing discovery disputes, the responding party may agree to provide certain information sought by a request while objecting to the provision of other information sought by the request.

(e) Motions to Compel. The party seeking discovery shall file a motion to compel no later than five working days after the objection is received. Absence of a motion to compel will be construed as an indication that the parties have resolved their dispute. The presiding officer may rule on the motion to compel based on written pleadings without allowing additional argument.

(f) Responses to Motions to Compel. Responses to a motion to compel shall be filed within five working days after receipt of the motion, and shall include all factual and legal arguments the respondent wants to present regarding the motion.

(g) In Camera Inspection. If an objection is founded on a claim of privilege or an exemption under Rule 166(b)(3) of the Texas Rules of Civil Procedure, the burden is on the objecting party to request an in camera inspection and to provide the documents for review. Any request shall be filed within three working days of the receipt of the motion to compel. The request shall contain the factual and legal basis to support the claimed exemption or privilege. The objecting party shall review the documents and note with specificity any portions to which the claimed privilege or exemption claim does not apply. The objecting party shall provide the documents to the presiding officer, under seal, no later than one working day after it requests an in camera inspection. Documents submitted for in camera review shall not be filed with the commission filing clerk. Documents submitted for in camera review shall be submitted to the presiding officer and enclosed in a sealed and labeled container accompanied by an explanatory cover letter. The cover letter shall identify the control number and style of the proceeding and explain the nature of the sealed materials. The container shall identify the control number, style of the case, name of the submitting party, and be marked "IN CAMERA REVIEW" in bold print at least one inch in size. Each page for which a privilege is asserted shall be marked "privileged."

(h) Production of Voluminous Material. The following procedures shall apply to production of voluminous materials:

(1) Responses to particular questions that consist of less than 100 pages are not voluminous and shall be provided in full.

(2) Subject to paragraph (3) of this subsection, the responding party shall make available all voluminous information provided in response to a request for information at a designated location in Austin.

(3) A party will be released from its obligation to make available the requested voluminous data at a designated location in Austin, only if the volume of the data exceeds eight linear feet of documents. In that event, the party shall make the information available where the documents are located.

(4) The party providing the voluminous material shall organize the responses and material to enable parties to efficiently review the documents, including labeling of material by request for information number and subparts.

(i) Duty to Supplement. A responding party is under a continuing duty to supplement its discovery responses if that party acquires information upon the basis of which the party knows or should know that the response was incorrect or incomplete when made, or though correct or complete when made, is materially incorrect or incomplete. The responding party shall amend its prior response within five working days of acquiring the information.

(j) Requests for Admission of Facts. Requests for admission of facts shall be made in accordance with Rule 169 of the Texas Rules of Civil Procedure.

§22.145. Subpoenas.

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

(b) Service and Return. A subpoena may be addressed to the sheriff or any constable, who may serve the subpoena in any manner authorized by the Texas Rules of Civil Procedure; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena, or by any other method authorized by the Texas Rules of Civil Procedure.

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

(d) Motions to Quash. Motions to quash subpoenas shall be filed at least three working days before the date the witness is ordered to appear or the documents or other objects are ordered to be produced, unless the party ordered to respond to the subpoena shows that it was justifiably unable to file objections at that time.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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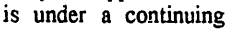

Subchapter I. Sanctions

• 16 TAC §22.161

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

§22.161. Sanctions.

(a) Enforcement of Subpoenas or Commissions for Depositions. If a person fails to comply with the subpoena or commission for deposition issued by the presiding officer, the commission or the party requesting the subpoena or commission for deposition may seek enforcement pursuant to APA.

(b) Causes for Imposition of Sanctions. An administrative law judge, on the administrative law judge's own motion or on the motion of a party, after notice and an opportunity for a hearing, may impose appropriate sanctions against a party or its representative for:

(1) filing a motion or pleading that was brought in bad faith, for the purpose of harassment, or for any other improper purpose, such as to cause unnecessary delay or needless increase in the cost of the proceeding;

(2) abusing the discovery process in seeking, making or resisting discovery;

(3) failing to obey an order of an administrative law judge or the commission.

(c) Types of Sanctions. A sanction imposed under subsection (b) of this section may include, as appropriate and justified, issuance of an order:

(1) disallowing further discovery of any kind or a particular kind by the disobedient party;

(2) charging all or any part of the expenses of discovery against the offending party or its representative;

(3) holding that designated facts be deemed admitted for purposes of the proceeding;

(4) refusing to allow the offending party to support or oppose a designated claim or defense or prohibiting the party from introducing designated matters in evidence;

(5) disallowing in whole or in part requests for relief by the offending party and excluding evidence in support of such requests;

(6) punishing the offending party or its representative for contempt to the same extent as a district court;

(7) requiring the offending party or its representative to pay, at the time ordered by the administrative law judge, the reasonable expenses, including attorney's fees, incurred by other parties because of the sanctionable behavior; and

(8) striking pleadings or testimony, or both, in whole or in part, or staying further proceedings until the order is obeyed.

(d) Imposition of Sanctions by the Commission. In addition to the sanctions listed in subsection (c) of this section that may be imposed by an administrative law judge, except for subsection (c)(6), any other presiding officer including the commission, after notice and opportunity for hearing, may impose sanctions including:

(1) disallow the disobedient party's rights to participate in the proceeding;

(2) dismiss the application with or without prejudice;

(3) institute civil action; or

(4) impose any other sanction available to the commission by law.

(e) Procedure. A motion for sanctions may be filed at any time during the proceeding or may be initiated sua sponte by the presiding officer. A motion to compel discovery is not a prerequisite to the filing of a motion for sanctions. A motion should contain all factual allegations necessary to apprise the parties and the presiding officer of the conduct at issue, should request specific relief, and shall be verified by affidavit. A motion shall be served on all parties. Upon receipt of the motion, a hearing shall be held on the motion. Any order regarding sanctions issued by a presiding officer shall be appealable pursuant to §22.123 of this title (relating to Appeal of an Interim Order). Any sanction imposed by the presiding officer shall be automatically stayed to allow the party to appeal the imposition of the sanction to the commission.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Secretary of the Commission
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Subchapter J. Summary Proceedings

• 16 TAC §22.181

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

§22.181. Dismissal of a Proceeding.

(a) Motions for Dismissal.

(1) Upon the motion of the presiding officer or the motion of any party, the presiding officer may recommend that the commission dismiss, with or without prejudice, any proceeding without an evidentiary hearing, for any of the following reasons:

(A) lack of jurisdiction;

(B) moot questions or obsolete petitions;

(C) res judicata;

(D) collateral estoppel;

(E) unnecessary duplication of proceedings;

(F) failure to prosecute;

(G) failure to state a claim for which relief can be granted; or

(H) other good cause shown.

(2) The party that initiated the proceeding shall have 20 days from the date of receipt to respond to a motion to dismiss. If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.

(3) If the presiding officer determines that the proceeding should be dismissed, the presiding officer shall prepare a Proposal for Decision to that effect and, if requested, shall set an expedited schedule for exceptions and replies. The commission shall consider the Proposal for Decision as soon as is practicable.

(b) Withdrawal of Application. A party that initiated a proceeding may withdraw its application, petition, or complaint, without prejudice to refiling of same, at any

time before that party has presented its direct case. After the presentation of its direct case, but prior to the signing of a final order thereon by the commission, a party may withdraw its application, petition, or complaint, without prejudice to refiling of same, only upon a finding of good cause by the presiding officer. If an application is authorized to be withdrawn, the presiding officer shall issue an order of dismissal without prejudice.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter K. Hearings

• 16 TAC §§22.202, §22.204

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

§22.202. Presiding Officer.

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

(b) Commission May Preside Over Any Hearing. The commission has the authority to conduct any prehearing conference and hearing on any proceeding. The commission may conduct the entire hearing, or it may preside over a hearing in progress, in which case the commissioners shall read the record established to that date. Rulemaking hearings may be conducted by the commission or its designee.

(c) Authority of Presiding Officer. The presiding officer has broad discretion in conducting the course, conduct, and scope of the hearing. The presiding officer's authority includes, but is not limited to, the power to administer oaths and affirmations; call and examine witnesses; receive evidence and testimony; rule upon the admissibility of evidence and amendments to pleadings; issue subpoenas; issue discovery, procedural, and scheduling orders; impose sanctions; compel the attendance of witnesses and the production of documents; authorize the taking of depositions; re-open the record, prior to the issuance of a proposal for decision, for additional evidence where it is necessary to make the record correct, accurate, and complete; make proposed findings of fact and conclusions of law; make proposed orders; issue interim orders; recess any hearing from time-to-time; abate a proceeding, and take any other action not prohibited by law or by commission rule which is necessary for an efficient and fair hearing.

(d) Conduct of Hearing. The presiding officer shall rule expeditiously on all motions and objections made at the hearing. The presiding officer shall conduct the hearing in such a manner to secure fairness in administration, eliminate unjustifiable delay, and promote the development of the record consistent with the applicable laws. The presiding officer shall endeavor to limit the presentation of evidence that creates an unfair prejudice, confuses the issues, or causes undue delay or needless presentation of cumulative evidence, and may:

(1) set reasonable times for a party to present evidence, including oral testimony of its own witnesses and cross-examination of other party's witnesses;

(2) establish the order in which parties will present evidence and conduct cross-examination;

(3) limit the number of witnesses to avoid cumulative or repetitious testimony;

(4) limit the time allowed for cross-examination; and

(5) order the presentation of cumulative evidence discontinued.

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

§22.204. Transcript and Record.

(a) Preparation of Transcript. When requested by any party to a proceeding, a stenographic record of all proceedings before a presiding officer in any prehearing conference or hearing, including all evidence and argument, shall be made by an official reporter appointed by the commission. It is the responsibility of the party desiring the stenographic record to arrange for the official reporter to be present.

(b) Purchase of Copies. A party may purchase a copy of the transcript from the official reporter at rates set by the commission.

(c) Corrections to Transcript. Proposed written corrections of purported errors in a transcript shall be filed and served on each party of record, the official reporter, and the presiding officer within a reasonable time after the discovery of the error. The presiding officer may establish time limits for proposing corrections. If no party objects to the proposed corrections within 12 days after filing, the presiding officer may direct that the official reporter correct the transcript as appropriate. In the event that the presiding officer or a party disagrees on suggested corrections, the presiding officer may hold a posthearing conference and take evidence and argument to determine whether, and in what manner, the record shall be changed.

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

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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• 16 TAC §22.206, §22.207

The new sections are adopted under the Public Utility Regulatory Act of 1995, §1.101,

Senate Bill 319, 74th Legislature, Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure. Cross Index to Statutes: Public Utility Regulatory Act of 1995, Senate Bill 319, 74th Legislature, Regular Session 1995.

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

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter L. Evidence and Exhibits in Contested Cases

• 16 TAC §§22.222, 22.225, 22.226

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

§22.222. Official Notice.

(a) Facts Noticeable. Official notice may be taken of judicially cognizable facts not subject to reasonable dispute in that they are generally known within the jurisdiction of the commission or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. In addition, official notice may be taken of generally recognized facts within the area of the commission's specialized knowledge.

(b) Motions for Official Notice and Opportunity to Respond. If a party intends to rely on matters officially noticed as part of that party's direct case, the motion for official notice shall be made by the deadline established for that party to prefile direct testimony or as directed by the presiding officer. Otherwise, a party's motion for official notice shall be made prior to the conclusion of the evidentiary hearing unless made pursuant to §22. 226(d) of this title (relating to Exhibits). Motions for official notice may be written or oral. The motion shall state with specificity the facts, material, records, or documents of which official notice is requested, and copies of such materials, records, or documents shall be provided to the presiding officer and all parties, unless otherwise ordered by the presiding officer on a showing of good cause. A party who opposes the motion shall have the opportunity to contest the requested action.

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

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

§22.225. Written Testimony and Accompanying Exhibits.

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

(1) Unless otherwise ordered by the presiding officer upon a showing of good cause, the written direct and rebuttal testimony and accompanying exhibits of each witness shall be prefiled. Deposition testimony and responses to requests for information by an opposing party that a party plans to introduce as part of its direct case shall be filed at the time the party files its written direct testimony. The presiding officer shall establish a date for filing of deposition testimony and requests for information that an applicant plans to introduce as part of its direct case.

(2) Deposition testimony and responses to requests for information that a party plans to introduce in support of its rebuttal case shall be filed at the time the party files its written rebuttal testimony.

(3) A party is not required to prefile documents it intends to use during cross-examination except that the presiding officer may require parties to identify documents that may be used during cross examination if it is necessary for the orderly conduct of the hearing.

(4) Objections to prefiled direct testimony and exhibits, including deposition testimony and responses to requests for information, shall be filed on dates established by the presiding officer and shall be ruled upon before or at the time the prefiled testimony and accompanying exhibits are offered. Objections to prefiled rebuttal testimony shall be filed pursuant to the schedule ordered by the presiding officer.

(5) Nothing in this section shall preclude a party from using discovery responses in its direct or rebuttal case even if such responses were not received prior to the applicable deadline for prefiling written testimony and exhibits.

(6) The testimony pre-filing schedule in a major PURA §2.212 or §3. 211 rate proceeding shall be established as set out in this subsection.

(A) Any utility filing an application to change its rates in a major rate proceeding shall file the written testimony and exhibits supporting its direct case on the same date that such statement of intent

to change its rates is filed with the commission. As set forth in §22.243(b) of this title (relating to Rate Change Proceedings), the prefiled written testimony and exhibits shall be included in the rate filing package filed with the application.

(B) Other parties in the proceeding shall prefile written testimony and exhibits according to the schedule set forth by the presiding officer. Except for good cause shown or upon agreement of the parties, the general counsel may not be required to file earlier than seven days prior to hearing.

(C) The presiding officer shall establish dates for filing of rebuttal testimony.

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

(8) The times for pre-filing set out in this section may be modified upon a showing of good cause.

(9) Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and admission of the testimony into evidence would not be unduly prejudicial to the legal rights of any party. A party that intends to offer late-filed testimony into evidence shall, at the earliest opportunity, inform the presiding officer, who shall establish reasonable procedures and deadlines regarding such testimony.

(b) Admission of Prefiled Testimony. Unless otherwise ordered by the presiding officer, direct and rebuttal testimony shall be received in written form. The written testimony of a witness on direct examination or rebuttal, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the written testimony being read into the record. A witness who is offering written testimony shall be sworn and shall be asked whether the written testimony is a true and accurate representation of what the testimony would be if the testimony were to be given orally at the time the written testimony is offered into evidence. The witness shall submit to cross-examination, clarifying questions, redirect examination, and recross-examination. The presiding officer may allow voir dire examination where appropriate. Written testimony shall be subject to the same evidentiary objections as oral testimony. Timely prefiling of written testimony and exhibits, if required under this section or by order of the presiding officer, is a prerequisite for admission into evidence.

(c) Supplementation of Prefiled Testimony and Exhibits. Oral or written supplementation of prefiled testimony and exhibits may be allowed prior to or during the hearing provided that the witness is available for cross-examination. The presiding officer may exclude such testimony if there is a showing that the supplemental testimony raises new issues or unreasonably deprives opposing parties of the opportunity to respond to the supplemental testimony. The presiding officer may admit the supplemental testimony and grant the parties time to respond.

(d) Tender and Service. On or before the date the prefiled written testimony and exhibits are due, parties shall file the number of copies required by §22.71 of this title (relating to Filing of Pleadings and Other Materials), or other commission rule or order, of the testimony and exhibits with the commission filing clerk and shall serve a copy upon each party.

(e) Withdrawal of Evidence. Any exhibit offered and admitted in evidence may not be withdrawn except with the agreement of all parties and approval of the presiding officer.

§22.226. Exhibits.

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

(b) Marking and Exchanging Exhibits. Each exhibit offered in evidence shall be marked for identification by the presiding officer or official reporter, if one is present. Copies of the exhibit shall be furnished to the presiding officer and distributed to each party present at the hearing no later than the time the exhibit is offered in evidence, or at an earlier time if ordered by the presiding officer for the orderly conduct of the hearing.

(c) Excluded Exhibits. If the party offering an exhibit that has been identified, objected to and excluded wishes to withdraw the offer, the presiding officer shall permit the return of the exhibit to the party.

(d) Late Exhibits. Except as may otherwise be agreed to by the parties on the record prior to the close of the hearing, no exhibit shall be received in evidence in any proceeding after the hearing has been concluded except on the motion of the presiding officer or for good cause shown on written motion of the party offering the evidence. If the admission into evidence of a late-filed exhibit is proposed, copies shall be served on all parties of record. Parties shall file pleadings in opposition to admission of late-filed exhibits within five working days of the receipt of the motion requesting admission of the exhibit.

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Subchapter M. Procedures and Filing Requirements in Particular Commission Proceedings

• 16 TAC §§22.242-22.245

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

§22.242. Complaints.

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

(1) the date the complaint is received;

(2) the name of the complainant;

(3) the subject matter of the complaint;

(4) a record of all persons contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint; and

(6) for complaints for which the commission took no action, an explanation of the reason the complaint was closed without action.

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) the name of the complainant or complainants;

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

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

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

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

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

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

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

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

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

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

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

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

§22.243. Rate Change Proceedings.

(a) Statements of Intent. No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the utility, the effective date of the proposed rate change, the classes and numbers of utility ratepayers affected, and a description of the service for which a change is requested. For major rate proceedings, the expected change in revenues must be expressed as an annual dollar increase over adjusted test year revenues

and as a percent increase over adjusted test year revenues.

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

(c) Uncontested Applications Subject to Administrative Review. If no motion to intervene is filed by the deadline for filing motions to intervene, the application may be considered pursuant to the procedure set forth in §22. 32 of this title (relating to Administrative Review).

§22.244. Review of Municipal Rate Actions.

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

(1) Each signature page of a petition shall contain in legible form above the signatures the following:

(A) A statement that the petition is an appeal of a specific rate action of the municipality in question;

(B) The date of and a concise description of that rate action;

(C) A statement designating a specific individual, group of individuals, or organization as the signatories' authorized representative; and

(D) A statement that the designated representative is authorized to represent the signatories in all proceedings before the commission and appropriate courts of law and to do all things necessary to represent the signatories in those proceedings.

(2) The printed or typed name, telephone number, street or rural route address, and facsimile transmission number, if available, of each signatory shall be provided. Post office box numbers are not sufficient. In appeals relating to PURA, §2.108(c), the petition shall list the address of the location where service is received if the address differs from the residential address of the signatory.

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

(c) Validity of Petition and Correction of Deficiencies. The petition shall include all of the information required by this section, legibly written, for each signature in order for the signature to be deemed valid. The presiding officer may allow the petitioner a reasonable time of up to 30 days from the date any deficiencies are identified to cure any defects in the petition.

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

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

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

(3) The period for the municipality's review of the signatures on the petition may be extended by the presiding officer for good cause.

(4) Failure of the municipality to timely submit the statement of review shall result in all signatures being deemed valid, unless any signature is otherwise shown to be invalid or is invalid on its face.

(5) Objections by the municipality to the authenticity of signatures shall be set out in its statement of review and shall be resolved by the presiding officer.

(e) Disputes. Any dispute over the sufficiency or legibility of a petition shall be resolved by the presiding officer by interim order.

§22.245. Notice of Intent Petitions.

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

(b) Procedural Schedule. The presiding officer shall establish a procedural schedule that allows for commission action on the application within the 180-day statutory deadline set forth in PURA §2.255(d)(2). The 180-day statutory time period shall be established based on the filing of a sufficient application, and shall not run during any delay in providing the required notice.

(c) Waiver of Deadline. The utility that filed the notice of intent may waive the 180-day statutory deadline.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 18, 1995.

TRD-9510518 **Paula Mueller**
Secretary of the Commission
Public Utility Commission of Texas

Effective date: September 8, 1995

Proposal publication date: July 11, 1995

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

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Subchapter N. Decision and Orders

• 16 TAC §§22.261-22.264

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

§22.261. Proposals for Decision.

(a) Requirement and Contents of Proposal for Decision. In a contested case, if a majority of the commissioners has not heard the case or read the record, the com-

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

(b) Procedures Regarding Proposed Orders. If the presiding officer's recommendation is not adverse to any party, the recommendation may be made through a proposed order containing findings of fact and conclusions of law. The proposed order shall be served on all parties, and the presiding officer shall establish a deadline for submitting proposed corrections or clarifications.

(c) Findings and Conclusions. The presiding officer may direct or authorize the parties to draft and submit proposed findings of fact and conclusions of law. The commission is not required to rule on findings of fact and conclusions of law that are not required or authorized.

(d) Exceptions and Replies.

(1) Who may file. Any party may file exceptions to the Proposal for Decision within the time period specified by the presiding officer. If any party files exceptions, the opportunity shall be afforded to all parties to respond within a time period set by the presiding officer.

(2) Presentation. The presiding officer may require that issues be addressed in a specified order or according to a specified format. Proposed findings and conclusions may be submitted in conjunction with exceptions and replies. The evidence and law relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions or replies to which they relate.

(3) Request for Extension. A request for extension of time within which to file exceptions or replies shall be filed with the commission filing clerk and served on all parties. The presiding officer may allow additional time for good cause shown. If additional time is allowed for exceptions, reasonable additional time shall be allowed for replies.

§22.262. Commission Action After a Proposal for Decision.

(a) Commission Action. The commission may change a finding of fact or conclusion of law made by the administrative law judge or vacate or modify an order issued by the administrative law judge only if the commission:

(1) determines that the administrative law judge:

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

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

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

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

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

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

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

(d) Oral Argument Before the Commission.

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

(2) Oral argument shall be allowed at the discretion of the commission. The commission may limit the scope and duration of oral argument. The party bearing the burden of proof has the right to open and close oral argument.

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

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

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

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

§22.263. Final Orders.

(a) Form and Content.

(1) A final order of the commission shall be in writing and signed by a majority of the commissioners.

(2) A final order shall include findings of fact and conclusions of law separately stated and may incorporate findings of fact and conclusions of law proposed within a proposal for decision.

(3) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

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

(b) Notice. Parties shall be notified of the commission's final order pursuant to the requirements of APA.

(c) Effective Date of Order. Unless otherwise stated, the date a final order is signed is the effective date of that order, and such date shall be stated therein.

(d) Reciprocity of Final Orders Between States. After reviewing the facts and the issues presented, a final order may be adopted by the commission even though it is inconsistent with the commission's procedural or substantive rules provided that the final order, or the portion thereof that is inconsistent with commission rules, is a final order, or a part thereof, rendered by a regulatory agency of some state other than the State of Texas and provided further that the number of customers in Texas affected by the final order is no more than the lesser of either 1,000 customers or 10% of the

total number of customers of the affected utility.

§22.264. Rehearing.

(a) Motions for rehearing, replies thereto, and commission action on motions for rehearing shall be governed by APA.

(b) All motions for rehearing shall state the claimed error with specificity. If an ultimate finding of fact stated in statutory language is claimed to be in error, the motion for rehearing shall state all underlying or basic findings of fact claimed to be in error and shall cite specific evidence which is relied upon as support for the claim of error.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 18, 1995.

TRD-9510519 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Effective date: September 8, 1995

Proposal publication date: July 11, 1995

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

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Subchapter O. Rulemaking

• 16 TAC §22.282, §22.283

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

§22.282. Notice and Public Participation in Rulemaking Procedures.

(a) Initial Comments. Prior to publishing a proposed rule or initiating a major amendment to an existing rule, the commission may solicit comments on the need for a rule and potential scope of the rule by publication of a notice of rulemaking project in the "In Addition" section of the *Texas Register*. A notice filed pursuant to this section shall contain a brief description and statement of the intended objective of the proposed rule and indicate if a draft of the proposed rule is available for review by interested persons. Unless otherwise prescribed by the commission, any comments concerning the rulemaking project shall be due within 30 days from the date of publication of the notice. The commission may hold workshops and/or public hearings on the rulemaking project.

(b) Notice. The commission may initiate a rulemaking project by publishing notice of the proposed rule in accordance with APA, §§2001. 021-2001.037.

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

(d) Public Hearing. The commission may schedule workshops or public hearings on the proposed rule. In the case of substantive rules, opportunity for public hearing shall be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members.

(e) Staff Recommendation. Staff's final recommendation shall be submitted to the commission and filed in central records at least seven days prior to the date on which the commission is scheduled to consider the matter, unless some other date is specified by the commission. Staff will notify all persons who have filed comments concerning the proposed rule of the filing of staff's final recommendation.

(f) Final Adoption. During the Open Meeting at which the commission considers the proposed rule for final action, the commission may allow interested persons to present oral comments in response to the staff's final recommendation. Following consideration of comments, the commission will issue an order adopting, adopting as amended, or withdrawing the rule within six months after the date of publication of the proposed rule or the rule is automatically withdrawn.

§22.283. Emergency Adoption. Notwithstanding any other provision of these rules, if the commission finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30-days notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The commission shall set forth the requisite finding in the preamble to the rule. An emergency rule adopted under the provisions of this section, and the commission's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the *Texas Register*. All of the requirements of APA, §2001.024 apply to this section.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 18, 1995.

TRD-9510520 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Effective date: September 8, 1995

Proposal publication date: July 11, 1995

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

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TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Subchapter M. Approval and Operation of Community/Junior College Branch Campuses

• 19 TAC §5.265

The Texas Higher Education Coordinating Board adopts an amendment to §5. 265 concerning Approval and Operation of Community/Junior College Branch Campuses (Procedures) without changes to the proposed text as published in the June 9, 1995, issue of the *Texas Register* (20 TexReg 4191).

The Coordinating Board rules related to the approval and operation of community/junior college branch campuses includes a section on facilities. The intent of the language in the facilities section was to ensure adequate local support for all community college facilities, both in and out of district. The rule was widely regarded as prohibiting a community college from teaching in a facility it owns outside of its district, even though the Education Code permits community colleges to own buildings outside their districts. The deletion of this rule is recommended because the purpose of the rule that adequate local support be provided to branch campuses is covered sufficiently in Chapter 5, §5.265(5).

There were no comments received regarding the adoption of the amendment.

The amendment is adopted under Texas Education Code, §130.086 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval and Operation of Community/Junior College Branch Campuses (Procedures).

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 17, 1995.

TRD-9510539 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: September 8, 1995

Proposal publication date: June 9, 1995

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

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Chapter 7. Texas State Postsecondary Review Program

Subchapter C. State Review Standards and Procedures.

• 19 TAC §7.42

The Texas Higher Education Coordinating Board adopts an amendment to §7. 42, concerning State Review Standards and Procedures without changes to the proposed text as published in the June 9, 1995, issue of the *Texas Register* (20 TxReg 4171).

The amendment is necessary due to their required inclusion by the United States Department of Educa prompting the Board to make the changes. The amendment will function to standardize the Texas rules in certain areas required of all the States by the Secretary of Education; the effect of the changes will be to assure the Department of the same level of performance expectation in Texas as in all other States.

There were no comments received regarding the proposed amendments.

The amendment is adopted under Texas Education Code, §61.051 which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning State Review Standards and Procedures.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 17, 1995.

TRD-9510541 James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: September 8, 1995

Proposal publication date: June 9, 1995

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

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TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Definitions

• 22 TAC §535.13

The Texas Real Estate Commission adopts an amendment to §535.13, concerning dispositions of real estate, with changes to the proposed text as published in the June 6, 1995, issue of the *Texas Register* (20 TexReg 4116). The amendment generally requires a real estate license for a person to receive a valuable consideration for arranging for other persons to occupy vacant residential property. If the person is leasing the property from its owner and then subleasing to the occupant, a real estate license would not be required. The amendment also provides that the collection of rents for an owner is not an act requiring a real estate license unless the person collecting the rent is engaged in the renting or leasing of the property for the owner. Adoption of the amendment is necessary to provide guidelines for determining when a real estate license is required in transactions involving leases or collection of rent.

The Commissission determined that the proposed quidelines for determining whether an agreement between the owner of the property and the person who arranges for another person to occupy the property is a lease were unnecessary. The section was adopted without the guidelines, which will permit greater flexibility in negotiations by the parties to the transaction.

The commission received one comment on the proposal suggesting that the consideration received by the owner should be substantial before an agreement should be considered a lease. Since the final version of the section does not contain required elements of a lease, the Commission did not incorporate the suggested change into the section.

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

§535.13. Dispositions of Real Estate.

(a) (No change.)

(b) Unless otherwise exempted by Texas Civil Statutes, Article 6573a (the Act), a person who collects rentals for an owner of real property and for a valuable consideration must be licensed if the person also rents or leases the property for the owner.

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

(h) Arranging for a person to occupy a vacant residential property is an act requiring a real estate license if the actor:

(1) does not own the property or lease the property from its owner;

(2) receives a valuable consideration; and

(3) is not exempted from the requirement of a license by the Act, §3.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510415 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective Date: September 7, 1995

Proposal publication date: June 6, 1995

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

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Education, Experience, Educational, Programs, Time Periods, and Type of License

• 22 TAC 535.61, §535.66

The Texas Real Estate Commission adopts amendments to §535.61, concerning examinations and acceptance of courses, and to §535.66, concerning accreditation of educational programs, without changes to the proposed text as published in the July 4, 1995, issue of the *Texas Register* (20 TexReg 4900). The amendments primarily address the offering by educational providers and acceptance by the commission of real estate courses using alternative delivery methods, such as computers.

The amendment to §535.61 will permit applicants for a real estate license to receive course credit for a course offered by alternative delivery methods if the course satisfies the specific requirements established by the commission. The amendment to §535.66 addresses schools accredited by the commission and permits the schools to offer courses by alternative delivery methods if the course meets the specific requirements established by §535.71, relating to Mandatory Continuing Education. These amendments are adopted in conjunction with an amendment to §535.71 establishing the specific guidelines for courses offered by alternative delivery methods. The amendments are necessary for the commission to accept courses offered by methods other than classroom presentation or correspondence.

No comments were received regarding adoption of the amendments.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510416 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective date: September 7, 1995

Proposal publication date: July 4, 1995

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

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Mandatory Continuing Education

• §535.71

The Texas Real Estate Commission adopts an amendment to §535.71, concerning approval of providers, courses and instructors for mandatory continuing education (MCE), without changes to the proposed text as published in the July 4, 1995, issue of the *Texas Register* (20 TexReg 4901). The amendment is adopted in connection with other changes to commission rules relating to the acceptance of courses offered by alternative delivery methods, such as computers. The amendment to §535.71 establishes guidelines for the offering of the courses, requiring providers to divide the course material into major units of content and each unit into modules of instruction. Learning objectives and a means of diagnostic assessment of each student's performance also will be required. Courses must be tailored to the individual student and provide remediation until mastery is achieved. The basis and rationale for each instructional approach must be specified in the application for course approval, and courses consisting primarily of text material presented on a computer or questions similar to the state licensing examination will not be approved.

The amendment also requires an approved instructor or provider's representative to grade any of the coursework. The provider must offer the courses under an approved instructor or provider who would be available to answer students' questions or to provide assistance and to ensure that the student who completes the work is the student who is enrolled in the course. A student must not be certified by the provider as having successfully completed the course unless the student has completed all instructional modules required to demonstrate mastery of the material, has attended any hours of live instruction or testing required for the course and has passed a proctored final examination conducted in a secure setting.

The amendment also permits MCE credit to be given for a number of core real estate course. A student will request credit by filing a form adopted by the commission for that purpose. Adoption of the amendment is necessary to provide guidelines for the offering and acceptance of courses using alternative delivery methods.

No comments were received regarding adoption of the amendment.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510417 Mark A. Moseley
General Counsel
Texas Real Estate Commission

Effective date: September 7, 1995

Proposal publication date: July 4, 1995

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

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Part XXXII. State Board of Examiners for Speech-Language Pathology and Audiology

Chapter 741. Speech-Language Pathologists and Audiologists

The State Board of Examiners for Speech-Language Pathology and Audiology adopts amendments to §741.2 and §741.87; the repeal of existing §741.32; and new §741.32, concerning speech-language pathologists and audiologists. New §741.32 is adopted with changes to the proposed text as published in the April 18, 1995, issue of the *Texas Register* (20 TexReg 2773-2775). Section 741.2 and §741.87 and the repeal of existing §741.32 are adopted without changes and will therefore not be republished.

The sections are being amended to add definitions for "extended rechecks" and "30-day trial period"; and to clarify the time period for refund of a hearing instrument to correspond with the new definition for "30-day trial period." The repeal allows for the adoption of a new §741.32 which sets out the board's definition of "hearing screening" for the purposes of Texas Civil Statutes, Article 4512j, §9(h) and (k).

The amendment to define "extended recheck" sets out the procedures a hearing screener must follow after failures of hearing screening and recommendation for a professional evaluation. The amendment to define "30-day trial period" clarifies that the purchaser of a hearing instrument will be allowed a full 30-day trial period following purchase in which to actually use the instrument. The new section which defines hearing screening requires the Texas Department of Health and registered nurses to perform hearing screening at 25 dB.

At the request of the Fort Worth Audiology Association, a public hearing on the proposed repeal and new §741.32 was held on Thursday, July 27, 1995, from 9:00 a.m. to 11:00 a.m., in Conference Room S402, Texas Department of Health Annex Building, 8407 Wall Street, Austin, Texas 78754.

The following comments were received concerning the proposed sections.

COMMENT: Concerning the definition of "hearing screening" as defined in §741.32, the board received comments requesting that the hearing screening level remain at 20 dB.

RESPONSE: The board was required to define "hearing screening" by the 73rd Legislature, 1993. The board originally adopted a definition that would require hearing screening be conducted at 20 dB effective August 1, 1994. In January 1995, a decision to revise the definition was made in a meeting with representatives of the Texas Department of Health hearing screening program, the Texas Nurses Association, and the Texas Association of School Nurses. The proposed definition using 25 dB was the agreed-upon language from that meeting.

It has been well-documented that 20 dB is a standard that the board should strive for in the early identification of hearing loss in children in Texas. Establishing a more stringent standard would assist in the early identification and remediation of certain ear and hearing problems in a more timely fashion. It has also been well-documented that establishing this standard at the present time without adequate preparation by the individuals and programs responsible for administration of hearing screening programs in the state is not possible. The problems in immediately accepting and implementing a 20 dB standard revolve around the environment in which the screener is testing (ambient room noise); training of state certified screeners to meet new program criteria; and mandating a program for which there may not be sufficient funding to enact the program such as purchase of additional equipment, construction changes to meet standards for a test room, and funding for follow-up testing and care.

The board does, however, feel strongly that immediate steps need to be taken to work toward establishing the lower 20 dB standard. The first of these steps is a look at the ambient noise environment in which the screening is taking place. Presently there is not a generally accepted standard for ambient room noise in hearing screening. (There is a standard for the amount of light in a room for vision screening.) The board feels that a standard needs to be adopted to assure the board that accurate results are being recorded. The board will be working with the Texas Department of Health to arrive at a recommended standard for maximum ambient room noise levels during hearing screening. This standard for ambient room noise could then be phased in over a period of time (3 or 4 years), after which a second look would be taken at adopting the 20 dB standard for hearing screening.

Therefore, at this time, the board disagrees with the comment and will adopt 25 dB as the standard.

COMMENT: Concerning the definition of hearing screening in §741.32, several commenters were in favor of the section as written.

RESPONSE: The board is appreciative of the comments.

COMMENT: Concerning proposed §741.32(c), a commenter asked about the definition of a "licensed professional" and asked that the board be more specific.

RESPONSE: The board agrees that the term used should be more specific and has substituted "licensed physician or licensed audiologist" for "licensed professional" in order to make the rule clearer and relettered proposed subsection (c) as subsection (d) in order to address the next comment.

COMMENT: Concerning §741.32(b), a commenter asked about substituting "two failures in one ear or one failure in each ear" instead of "two failures in the same ear" because the results may indicate that a reevaluation is required.

RESPONSE: The board agrees but because the proposed language is already being taught to the school districts for the upcoming school year, the board decided to begin the implementation of the new language on September 1, 1996. This revision is reflected in new subsection (c). Language was added to subsection (b) to clarify that the language in this subsection would expire on August 31, 1996 due to the enforcement of the new language in subsection (b).

COMMENT: Concerning §741.32, a commenter asked that the board required that persons screening pre-school and school aged children as identified by the Special Senses and Communications Disorder Act, Texas Health and Safety Code, Chapter 36, shall be required to have four hours of instruction on ambient noise and its affects on pure tone screening.

RESPONSE: The board does not have the authority to regulate the screeners by requiring a certain level of training. That is a function of the Texas Department of Health.

COMMENT: Concerning §741.32, a commenter asked that the ambient noise level in the hearing screening room not exceed 42 dBA during the screenings and, if the noise level exceeds 42 dBA, then appropriate noise reduction earphones must be used during the screenings to insure compliance.

RESPONSE: As previously stated in this preamble, the board believes that further research is necessary before making any determination concerning this issue.

Groups or associations that commented on §741.32 were the Texas Speech-Language-Hearing Association, the Fort Worth Audiology Association, the Texas Department of Health, Texas Association of School Nurses, Texas Nurses Association, and Lubbock Independent School District. The commenters were neither for or against the sections in their entirety; however, they had questions and offered suggestions regarding changes.

Subchapter A. Introduction

• 22 TAC §741.2

The amendment is adopted under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510470 Gene R. Powers, Ph.D.
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: September 8, 1995

Proposal publication date: April 18, 1995

For further information, please call: (512) 458-7236

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Subchapter C. Testing Procedures and Equipment

• 22 TAC §741.32

The repeal is adopted under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510471 Gene R. Powers, Ph.D.
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: September 8, 1995

Proposal publication date: April 18, 1995

For further information, please call: (512) 458-7236

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The new section is adopted under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments.

§741.32. Hearing Screening.

(a) Hearing screening is a manually administered individual pure-tone air conduction screening with pass/fail results for the purpose of rapidly identifying those persons with possible hearing impairment which has the potential of interfering with communication. Hearing screening will be conducted as follows: 25 dB HL (re ANSI-1989) at the frequencies of 500, 1,000, 2,000, and 4,000 hertz (Hz). No response at the screening level at any two frequencies in either ear is the criterion for failure.

(b) Two failures in the same ear would be followed with a second pure-tone air conduction screening of the same frequencies at 25 dB HL (re ANSI-1989) within three to four weeks. This subsection will expire August 31, 1996.

(c) Effective September 1, 1996, two failures in one ear or one failure in each ear would be followed with a second pure-tone air conduction screening of the same frequencies at 25 dB HL (re ANSI-1989) within three to four weeks.

(d) If the second pure-tone air conduction screening described in subsection (b) of this section is failed, a recommendation shall be made for a professional evaluation of hearing by a licensed physician or a licensed audiologist. If the person tested was a minor, the recommendation shall be made to a parent or guardian. At that time an extended recheck may be performed by the screener.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510472 Gene R. Powers, Ph.D.
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

Effective date: September 8, 1995

Proposal publication date: April 18, 1995

For further information, please call: (512) 458-7236

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Subchapter F. Requirements for Registration of Audiologists and Interns in Audiology Who Fit and Dispense Hearing Instruments

• 22 TAC §741.87

The amendment is adopted under Texas Civil Statutes, Article 4512j, §5 and §9A, which provide the State Board of Examiners for Speech-Language Pathology and Audiology with the authority to adopt rules necessary to administer and enforce Article 4512j, and to regulate licensees who fit and dispense hearing instruments.

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510473 Gene R. Powers, Ph D.
Chairperson
State Board of Examiners for Speech-Language Pathology and Audiology

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Proposal publication date: April 18, 1995

For further information, please call: (512) 458-7236

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 289. Radiation Control

The Texas Department of Health (department) adopts amendments to §289. 116 and §289.122; and new §289.230, concerning certification of mammography systems, with changes to the proposed text as published in the March 28, 1995, issue of the *Texas Register* (20 TexReg 2257) and to the corrections as published in the April 25, 1995, issue of the *Texas Register* (20 TexReg 3108). Section 289.112 adopts by reference Part 42 of the Texas Regulations for Control of Radiation (TRCR) titled, "Registration of Radiation Machines and Services"; and §289.116 adopts by reference Part 32 of the TRCR titled, "Use of Radiation Machines in the Healing Arts and Veterinary Medicine." Part 42 and Part 32 are adopted without changes to the text as proposed.

The new section combines 32.17, 32.44, Appendix 32-C, 42.24, and portions of 42 32, 42.34, and 42.40 from TRCR Parts 32 and 42 concerning mammography and consolidates them into new §289.230 relating to certification of mammography systems. The new section for mammography certification was created to make it easier for registrants to follow regulations that are specific to this modality because of the continuing changes in mammography legislation and federal regulations. Clarifying language has been added for readability and paragraphs delineating record keeping requirements for authorized use locations and mobile services have been added. Section 289.230 also incorporates items from the interim final standards of the federal Mammography Quality Standards Act (MQSA). This will make state regulations more compatible with MQSA. The changes include definitions, items on physician and technologist training, medical physicist responsibilities, and clinical interpretation requirements.

The amendments and new section are part of the first phase to convert existing sections that adopt by reference the various parts of the TRCR to *Texas Register* format.

The following is a summary of all changes made to the proposed new section.

In subsection (b), the definitions for "American College of Radiology (ACR) phantom," "density difference," "fog test," and "phototimer" were deleted and the subsection renumbered. The words "mammographic machines" were replaced by "x-ray producing machines" in subsection (a)(1). In subsection (a)(2), the word "individual" was replaced by "physician," and the words "to practice the healing arts in which a radiation machine is used" were replaced by "with license in good standing." In subsection (b)(2), the words "or body" were deleted. In subsection (b)(7), the word "or" was added between "conferences, seminars" and a semi-colon added after the word "seminars." The word "maintaining" was added before "viewing conditions" in subsection (b)(11). The sentence, "The phantom shall be approved or accepted by the (FDA)" was added to the end of subsection (b)(20). In subsection (b)(21), the word "x-radiation" replaces "radiation." In subsection (b)(31), the title "mammographic screening" was deleted and replaced with "self-referral mammography." The words "of the healing arts legally authorized to prescribe such tests for the purpose of diagnosis. Screening is considered self-referral" were deleted. In subsection (b)(36) subparagraph (B) was deleted and renumbered. In subsection (c)(1), the word "exclusively" was added after the word "used;" language referencing specific sections was added; and the words "this chapter but are not..." were deleted. In subsection (c)(2), the exemption for rhodium filters and anodes was deleted and an exemption for xerography systems not used for detection of diseases of the breast was added. Subsection (c)(3) was added to exempt equipment not meeting the standards of subsection (e)(1)(G). Subsection (c)(4) was added to allow exemptions from certain requirements for mammography systems used exclusively for invasive interventions for localizations or biopsy procedures. In subsection (d)(1), the words "with minimum" were replaced by "while minimizing." Subsection (d)(1) (B) was changed to indicate specifically when quality control items are to be performed on equipment. There was also a change to indicate the use of an alternate processor if the main processor fails to meet operating parameters. In subsection (d)(1)(B)(i)(I), the words "deviations of ± 0.15 or more in OD" were replaced by "deviations exceeding ± 0.15 in OD." In subsection (d)(1)(B)(iv), the requirement for a phantom image to be performed prior to the first patient exposure at each new location for mobile services was deleted and the section reworded for clarity. The words "and within 60 days after a tube or tube insert replacement" were added to the end of the sentence in subsection (d)(1)(B)(xv). In subsection (d)(1)(B)(xvi), the words "evaluation of focal spot performance" were added in place of "focal spot size. " The sentence "Films included in the repeat analysis are not required to be kept after completion of the analysis," was added at the end of subsection (d)(1)(C(i). In subsection (d)(1)(C)(ii), the word "integrity" was replaced by "condition." In subsection (d)(1)(C)(iii), the words "Sufficient light or" were deleted. At the end of subsection (d)(1)(E)(i), these words were added, "or he signed by electronic signature by the interpreting physician and include permission to use an electronic signature for the report." The sentence, "A facility is not required to maintain copies of the lay person summary," was added at the end of subsection (d)(1)(E)(iii). In subsection (d) (1)(F), "24 hours" was used in place of "ten." In subsection (d)(1)(F)(i), the words "or printed label" and "facility name" were added. In subsection (d)(1) (F)(ii), the word "or" was added after the words "film jacket." Subsections (d)(1)(F)(iii)(I) and (IV) were deleted and the subsection renumbered. Subsection (d)(1)(F)(iii)(II) was changed to read "date and time of the first exam of each batch, and date and time of batch development." In subsection (d)(2)(A), the words "the" and "and/or performing stereotactic biopsies" were deleted. In subsection (d)(2)(A)((ii), the reference to the osteopathic association was corrected and an additional reference added at the end of the subsection. In subsection (d)(2)(B)(ii), the words "at least" were moved to follow the words "an average of." Subsection (d)(2)(B)(iii) was deleted. In subsection (d)(2)(C) , the words "evaluating the performance" replaced "performing evaluation" and the word "systems" replaced "system performance." In addition, references to the Texas Radiation Control Act and other sections were added. In (d)(3)(B) the sentence, "In the absence of a qualified operator, a medical physicist may perform these tests" was replaced by "The facility may assign the responsibility for individual tasks within the quality assurance program to a quality control technologist." In subsection (d)(3)(B)(viii), the word "integrity" was replaced by "condition." In subsection (d)(3)(C)(i)(II), "resolution and/or focal spot size" was replaced by "evaluation of focal spot performance." Subsections (d)(3)(C)(i)(IX) on image quality evaluation and (X) on artifact evaluation were added. Subsection (d)(3)(C)(i) was renumbered. In subsection (d)(3)(C)(ii)(III), the word "radiologist" was replaced by "physician." Subsection (d)(3)(D) on additional medical physicist's responsibilities was added. In subsection (d)(4), all references to "mammographic screening" have been replaced with "self-referral" mammography. In subsection (d)(5)(A)(i), the word "emergency" was deleted and the word "and" inserted between "operating and safety." Subsection (d)(5)(A)(ii) was deleted and the subsection was renumbered. In subsection (d)(5)(A)(iii), the words "at least" and "for on-board processors" were added. In subsection (d)(5) (A)(iv), the word "current" was added and specific sections of the chapter were referenced and required to be kept with the mobile service. In subsection (d)(5)(A)(v), the words "copy of" were added before the word "certification." In subsection (d)(5)(A)(vi), the words "if applicable" were added. In subsection (d)(5)(B), the word "other" was inserted before the word "records." In subsection (d)(6)(A)(i), the word "emergency" was deleted and the word "and" inserted between the words "operating and safety." The word "current" was added in subsection (d)(6)(A)(viii). In subsection (d)(6)(A)(ix), "mammography certification" was replaced by "certification of mammography system." The words "if applicable" were added to subsection (d)(6)(A)(x). Subsection (d)(6)(A)(xi) was deleted and the subsection renumbered. In subsection (d)(7), the word "emergency" was deleted and the word "and" inserted between the words "operating and

safety." Subsection (d)(9) on protective clothing was deleted and a subsection on technique charts added. Subsections (d)(11) on holding patients and film, (d)(12)(A),(B), and (C) on exposures of individuals other than the patient, and (d)(13) on x-ray control were deleted and the subsection renumbered. In the new subsection (d)(11), the words "verbal and visual" replaced "oral." The words "These records may be maintained in electronic format" were added to new subsection (d)(13). Subsection (e)(1)(E) was renamed and reworded. In subsection (e)(1)(F), a provision was added for the kVp to meet manufacturer's specifications or in the absence of manufacturer's specifications meet other provisions of the subsection. In subsection (e)(1)(G), the reference to §289.116 was deleted and specific wording on this requirement inserted. In addition, the words "for acrylic or BR-12 phantom thickness of 2 cm to 6 cm" were deleted. Subsection (e)(1)(H) was rewritten to reflect ACR guidelines and to add a provision for target/filter combinations not addressed by ACR that do not meet requirements. In subsection (e)(1)(I)(i), the word "removable" was deleted and subsection (e) (1)(I)(i)(III) on magnification requirements was added. The word "initially" was added after "systems" in subsection (e)(1)(I)(iii). In subsection (e)(1)(L) (i), the order of "I, II, and III" was changed. Subsection (e)(1)(L)(ii) was added on optical density (OD) of the phantom. In subsection (e)(1)(M), a range of 4.0 to 4.5 cm was added. In subsection (e)(1)(N), the reference to §289. 116 was deleted and specific language for this requirement added. In subsection (e)(2), a range of 4.0 to 4.5 cm was added. Subsections (e)(2)(D) and (e)(3) were deleted. In subsection (f)(3), the word "separate" was deleted and the word "shall" replaced the word "may." In addition the word "current" was added in the last sentence. In subsection (f)(5)(E), "self-referral" replaced "screening." Subsection (f)(6) was rewritten to specifically delineate requirements for stereotactic or other unique mammographic imaging modalities. Subsection (i) on responsibilities of registrants was renumbered and rewritten to delineate requirements. In addition, subsection (i)(3) was corrected to accurately reflect the time requirements in subsection (o)(2). Subsection (k) was changed to read "Renewal of certification of mammography systems" instead of "Renewal of certificate of registration." In subsection (k)(1), the word "registration" was replaced by "certification." In subsection (n) (1)(E), the sentence "Satisfactory inspection..." was deleted. In subsection (n)(1)(F), the words "and/or II" were deleted. In subsection (o)(1)(A)(vii)(I), corrected wording was inserted. In subsection (o)(1)(B)(iii), the word "axillary" was replaced by the word "supplemental." In the proposed figure 2, the time requirement for subsection (d)(9)(B) was deleted, as is reflective in figure 4 of the final section.

The following are the comments made on the proposed section and the department's responses to those comments.

Comment. One commenter stated, "Considering the proliferation of new regulations in mammography the creation of a new part is warranted. In general, all of the regulations should be eliminated by revoking House Bill 63 which no longer serves a purpose but continues to exact a significant monetary expense on mammography providers in Texas (see subsection (a)).

Response. The department acknowledged the remarks and made no change to the section as a result of the comment.

Comment. Many commenters indicated that facilities must comply with ACR, MQSA, and the state and are concerned about overlapping regulations and redundancy and the annual certification required by the state. They are also concerned with the expenditure of time, money, and personnel on duplicate regulations. There is a perceived concern that the proposed rules and language are not compatible with those of ACR and MQSA and the National Council on Radiation Protection (NCRP). One commenter further indicated that according to ACR, Texas regulations that overlap MQSA standards cannot be more restrictive than the MQSA. One commenter requests that the department incorporate the ACR standards into the regulations by reference. Several commenters feel that the tiers of regulations will add to the cost of mammography and could lead to the demise of low-cost screening mammography and the loss of mammography services in some areas of the state. One commenter suggests that Texas accept ACR or MQSA certification in lieu of Texas certification and inspections. Another commenter suggests exempting ACR accredited facilities from certification and allow only those facilities who do not want to be ACR accredited to have state certification. The commenter further suggests that the ACR or FDA could forward results of the inspections to the Bureau of Radiation Control (BRC) (see subsections (d) through (n)).

Response. In 1993, the 72nd Texas Legislature passed House Bill 63, an act regulating mammography in Texas. This law requires that standards shall be no less stringent than the standards applicable under MQSA. Additionally, it requires annual certification and inspections for all mammography systems in the state, including those accredited by ACR. The ACR does not perform inspections. Ultimately, the state and MQSA inspections will be combined, as MQSA also requires annual inspections. The implementation of House Bill 63 is assigned to the department because of its authority to regulate sources of radiation under the Texas Radiation Control Act. The FDA adopted interim final standards published in the December 21, 1993, edition of the *Federal Register* that adopted by reference the 1992, edition of the ACR "Mammography Quality Control: Radiologist's Manual, Radiologic Technologist's Manual, and Medical Physicist's Manual." The proposed §289.230 followed the guidelines in those manuals. In the September 30, 1994, edition of the *Federal Register*, the FDA amended the interim final standards and allowed facilities to use either the 1992 or the 1994, edition of "Mammography Quality Control: Radiologist's Manual, and Medical Physicist's Manual." The department is attempting to modify the regulations to add as much flexibility to registrants as possible. Language utilized in §289.230 follows the ACR and MQSA. MQSA rules do allow states with mammography regulations to be more restrictive. The department is not referencing the ACR manuals as the FDA is in the process of writing specific standards and will ultimately discontinue the reference to those manuals. The department made no change to the section as a result of the comment.

Comment. Two commenters felt it was an unwise precedent for the department to place diagnostic mammography in a section separate from all other uses of ionizing radiation in medical, dental, podiatric, and chiropractic practice. One commenter feels there is no rational justification for treating the diagnosis of breast cancer in such a unique manner.

Response. Because of the recent changes and the anticipated continuing changes in mammography legislation, the department was having to amend several sections each time new laws were enacted. The department therefore created one section specifically for mammography to cut down the cost and time to amend several sections as changes occurred. The proposed consolidation has been positively received by mammography registrants. The department made no change to the section as a result of the comment.

Comment. One commenter suggested moving the definitions to the end of the section like any glossary.

Response. The department is following the format of other sections of the chapter. The department made no change to the section as a result of the comment.

Comment. One commenter stated, "While I am very aware that there is no intent from the BRC to include breast imaging modalities other than x-ray imaging, there is no statement to that fact in these regulations. While ultrasound and MRI are obviously outside the scope of the BRC for they do not use ionizing radiations, the same is not true for nuclear medicine procedures. " The commenter suggests that a statement needs to be included in the subsection indicating that only procedures involving x-ray units are covered (see subsection (a)).

Response. The department agreed and has added language to indicate that the purpose of this section is to regulate x-ray producing mammographic machines.

Comment. A commenter questioned if all the mammography references to §289. 116 are removed, what applies and why should this be stated in subsection (a) (3)?

Response. The department agreed and has removed the reference to §289.116.

Comment. Several commenters felt that the department should not put in specifications on phantoms as these change every year or two and the regulations would be behind the ACR and FDA and cause everyone to perform two separate tests, one for ACR and one for the BRC. One commenter suggested using the language "means a phantom approved or accepted by the ACR," (see deleted subsection (b)(1)).

Response. The department agreed and has deleted the definition and the specifics of the ACR phantom and has referenced a phantom

approved or accepted by the FDA, which is the entity approving accrediting bodies, such as the ACR.

Comment. Several commenters questioned that in the ACR "Mammography Quality Control Manual, Revised Edition, 1994," the mammographic phantom is "equivalent to approximately 4.2 cm compressed breast tissue..." The glandular dose conversion tables are for 4.2 cm breasts. Previously, the phantom was considered a "4.5 cm breast" and the conversion tables were for 4.5 cm breasts. Commenters suggested changing the definition in subsection (b)(1) and the regulations in subsection (e)(1)(L) and (M) to reflect the fact that the mammographic phantom is now considered a 4.2 breast by the ACR, which is an accrediting body for MQSA (see deleted subsection (b)(1).

Response. The September 30, 1994, edition of the *Federal Register* amended the interim final rules of the FDA for all to use the 1992 or the 1994 ACR Quality Assurance Manuals; therefore both 4.2 or 4.5 could be used. The department has deleted the specifics of this phantom and is referencing a phantom approved or accepted by the FDA, which is the entity approving accrediting bodies, such as the ACR.

Comment. One commenter questioned if the presence of "or body" in the definition of "Accrediting body or body" is a typo? (see subsection (b)(1)).

Response. This definition is from the MQSA requirements but the department has deleted "or body" from the definition for clarification.

Comment. One commenter felt that the definitions of "Contact hour" and "Continuing education" contradict each other in that "contact hour" states that it is attendance and/or participation in instructor-directed activities and "continuing education" states that it means acquiring contact hours by attendance and/or participation in lectures, conferences, seminars or participation in self-study programs (see subsection (b)(7)).

Response. The department acknowledged the comment and has added punctuation to the definition of "continuing education" that should clarify the meaning.

Comment. One commenter indicated that the definition of "Control panel" specifies that the control panel is used for the "manual setting of technique factors." The commenter felt this seems rather limiting since the control panel usually includes means of selecting automatic modes, which in turn select the technique factors, as well as initiating the exposure (see subsection (b)(8)).

Response. The definition's intent is to indicate a panel where one physically, i.e. manually, sets controls for either manual or automatic exposure control. The department made no change to the section as a result of the comment.

Comment. Concerning proposed subsection (b)(11), several commenters felt the definition of "Density difference" needs to be more precise and two commenters questioned why density difference is defined but not "speed index" or "base + fog?"

Response. The department acknowledged the comment and feels that since "speed index" and "base + fog" are also not defined that these definitions would be better placed in a regulatory guide than in section. The definition for "density difference" has been deleted.

Comment. One commenter suggested that in the definition of "Facility" the last phrase, "and the viewing conditions for that interpretation," is unclear and suggested substituting "area and equipment" for "conditions," (see subsection (b)(11)).

Response. The department acknowledged the comment and has added the word "maintaining" between the words "and" and "the" to read "and maintaining the viewing conditions" for clarity.

Comment. Concerning proposed subsection (b)(14), Many commenters suggested the definition of "Fog test" should be rewritten as the fog test described does not agree with the current definition of fog in that it appears to allow the use of unsensitized film.

Response. The department acknowledged the comment and the fact that the definition needs to be changed to use exposed film. The department deleted the definition and is placing it in a regulatory guide rather than a section.

Comment. One commenter suggested that the definition of "Half-value layer (HVL)" be rewritten to read, "The half value layer is the thickness of a specific substance which, when introduced into the path of a beam of radiation, reduces the exposure rate by one-half" (see subsection (b)(13)).

Response. The department acknowledged the comment and made no change to the section as a result of the comment.

Comment. Several commenters indicated the definition of "Mammography" would include magnetic resonance imaging and radionuclide imaging and suggests replacing "radiation" with "x-radiation" (see subsection (b)(21)).

Response. The department agreed and has replaced "radiation" with "x-radiation."

Comment. Several commenters had questions on screening mammograms on asymptomatic women. One commenter asked if such exams are exempt from this section? Other commenters had questions on "who could order" these exams (see subsection (b)(31)).

Response. The department acknowledged the comments. The intent of this definition was to define "self-referred" mammography only. The department has changed "screening" to read "self-referral" mammography to clarify and avoid confusion.

Comment. Concerning proposed subsection (b)(35), definition of "Phototimer, " one commenter indicated that it should be noted that there is at least one phototimer on the market today (General Electric) that not only controls time, but kV, filtration, and target material as well.

Response. The department acknowledged the comment and has deleted the definition as it was determined that this terminology is not used in this section.

Comment. One commenter indicated that the definition of "Source-to-image receptor distance" follows the *Code of Federal Regulations* (CFR) in specifying that the distance is measured to the center of the input surface of the image receptor. The commenter indicated it seemed that this is not the way SID is either specified or measured in mammography and the FDA, in its 13 January 1995 draft of final regulations for MQSA, subsection (b)(5)(ii)(A), introduced the description, "distance from the source to the midpoint of the chest wall edge of the image receptor support device." The commenter suggests that since §289.230 deals specifically with mammography, it may be reasonable to have a special definition of SID as used in mammography included in this section (see subsections (b)(32) and (33)).

Response. The department acknowledged the comment and anticipates changing the regulations when the FDA regulations become final. The department made no change to the section as a result of the comment.

Comment. One commenter suggests changing "source" to "focal spot" in the definition of "Source-to-image receptor distance" (see subsections (b)(32) and (33)).

Response. The definition used is from 21 CFR 1020.30(b). The department made no change to the section as a result of the comment.

Comment. One commenter suggested inserting the words "or target" after "source" in the definition of "Source-to-image receptor distance" (see subsections (b)(32) and (33)).

Response. The definition used is from 21 CFR 1020.30(b). The department made no change to the section as a result of the comment.

Comment. One commenter suggested the definition of "Source-to-image receptor distance" be changed to, "...means the distance from the focal spot to the center of the input surface..." (see subsections (b)(32) and (33)).

Response. The definition used is from 21 CFR 1020.30(b). The department made no change to the section as a result of the comment.

Comment. One commenter felt that the definition of "Survey" should be changed to allow the following: "...performed by or under the direct supervision of a medical physicist." The commenter felt there are not enough medical physicists to do all the mammography systems in use. Using assistants, the medical physicist would be responsible for the correct testing procedures and accuracy of the testing (see subsection (b)(34)).

Response. The Medical Physics Practice Act does not allow delegation of duties of the medical physicist nor do the interim final standards of MQSA. The department made no change to the section as a result of the comment.

Comment. One commenter suggested using the following language in the definition of "Survey", "...means an on-site physics con-

sultation and performance monitoring of a mammography system performed by a licensed Medical Physicist." The commenter indicated the inclusion of "performance monitoring" brings this definition into agreement with that published by the ACR and the FDA (see subsection (b)(34)).

Response. Section 900.12(d)(5) of the interim final standards of MQSA addresses "surveys" and states that "As a part of its overall quality assurance program, each facility shall have a medical physicist establish, monitor, ...and perform a survey of the facility..." The department made no change to the section as a result of the comment.

Comment. Concerning proposed subsection (b)(40)(B), several commenters suggested excluding hand-carried x-ray equipment from the definition of "X-ray equipment" as mammographic equipment will probably never be hand-held (see subsection (b)(36)).

Response. The department agreed and has deleted this subparagraph.

Comment. Two commenters felt the definition of "X-ray tube" is a totally impractical definition and should be simplified. One of the commenters said that the statement of "one-fourth of the maximum" is not measurable and unenforceable nor could the commenter find a reference for this anywhere (see subsection (b)(38)).

Response. The definition used is from 21 CFR 1020.30(b). The department made no change to the section as a result of the comment.

Comment. One commenter noted with satisfaction that maintenance or maintenance schedule is not defined in the subsection (see subsection (b)).

Response. The department acknowledged the comment and made no change to the section as a result of the comment.

Comment. One commenter indicated the wording, "These units are required to meet applicable provisions of this chapter," is confusing and requests clarifying language (see subsection (c)(1)).

Response. The department agreed and has added language to indicate that the units must meet the applicable provisions of "§289.112 and §289.116 of this title."

Comment. Many commenters questioned why mammographic systems utilizing rhodium filters are exempt from the beam quality requirements of subsection (e) (1)(H). One commenter suggested that this exemption should be broader to allow for any non Mo/Mo combination to exceed the requirements of beam quality (see subsection (c)(2)).

Response. The department agreed and has deleted this exemption and made changes to the beam quality requirements in subsection (e)(1)(H).

Comment. Several commenters suggested changing the word "minimum" to "acceptable" as the dose must be acceptable, i.e., ..low, but not minimal, as the most minimal exposures will produce a poor quality image (see subsection (d)(1)(A)).

Response. The intent of the statement was to indicate that high-quality images be produced while minimizing patient exposure. The department has changed the language in this section to reflect that intent.

Comment. One commenter stated that codifying of quality assurance in subsection (d)(1) seems to be unnecessary and will require "constant changing" as national standards are revised. The commenter indicated it would be appropriate to incorporate by reference the current ACR Mammography Quality Control Manual, since MQSA will require compliance to this standard and there should not be two separate sets of regulations for mammography providers to meet (see subsection (d)(1)).

Response. The FDA adopted interim final standards for mammography that adopted by reference the 1992 and 1994 ACR quality control manuals. The department is not referencing the ACR manuals as the FDA is in the process of writing specific standards and will discontinue the reference to the ACR manuals. The department made no change to the section as a result of the comment.

Comment. Several commenters questioned the requirement that if a processor does not meet parameters in this section, then mammography shall not be performed. Two commenters suggested language to allow the use of an alternate processor (see subsection (d)(1)(B)).

Response. The department agreed and has included provisions to utilize a backup processor.

Comment. Several commenters felt requiring films be maintained for a year is unnecessary and is done only for the convenience of inspectors and the overburdensome record maintenance should be eliminated (see subsection (d)(1) (B)).

Response. Subsection (d)(5)(A) of this section delineates only the records needed to be kept on units authorized for mobile services. Subsection (d)(5)(B) of this section states that all other records required by this part shall be maintained at a specified location. It is not the intent of the requirement to keep one year's worth of images on a van, but only those for 90 days. The department did change the language in subsection (d)(5)(A) to indicate that 90 days of quality control records must be maintained only on vans with on-board processors.

Comment. One commenter questioned why the densitometer must be checked every 12 months and wondered what this means? The commenter also asks if calibrated QC strips should likewise be recalibrated every 12 months? The commenter felt this is an unnecessary requirement in view of all the additional routine monitoring required and questioned that it is overkill to require complete processor monitoring on a weekend or for the situation where a single patient might be examined (see subsection (d)(1)(B)(i)).

Response. The densitometer needs to be checked to ensure that it remains stable. Some manufacturers recommend weekly calibrations that the registrant may perform. The intent of processor monitoring is to assure high quality images for every patient, whether the exam occurs on a weekend or weekday. These procedures follow ACR guidelines. The department made no change to the section as a result of the comment.

Comment. Concerning proposed subsection (d)(1)(B)(iv), several commenters questioned performing a phantom image prior to doing films at each new location for mobile mammography services. One commenter indicated this requires one to three hours of travel time just to develop a phantom.

Response. The department agreed and has deleted the requirement for a phantom image at each new location for mobile services.

Comment. One commenter understood the point being made by the term, "prior to the first patient exposure" as it refers to processor monitoring but did not understand how the same term applies to phantom images since they aren't a daily requirement (see subsection (d)(1)(B)(iv)).

Response. The department agreed and has deleted this requirement.

Comment. One commenter suggested using the word "services" in place of "systems" at the end of the first sentence (see subsection (d)(1)(B)(iv)).

Response. The department agreed and has changed the section to reflect the comment.

Comment. Two commenters suggested "corrective action" needs to be defined in the repeat analysis section as ACR requires repeat analysis only if at least 300 patients have been imaged (see subsection (d)(1)(C)(i)).

Response. "Corrective action" means that once the registrant determines the causes of the repeat films, such as poor positioning, patient motion, or artifacts, steps may be taken to investigate and reduce the problem. The department made no change to the section as a result of the comment.

Comment. Several commenters questioned what "view box uniformity" and "device integrity" are and how should they be documented. One commenter stated that masking mammography is an accepted practice now but should not be required as a regulation. The commenter further stated that checking the viewbox every six months means that some sort of record must be maintained (see subsection (d)(1)(C)(ii)).

Response. "Viewbox uniformity" means visually checking the viewboxes for uniformity of luminance. ACR guidelines recommend checking the viewboxes on a weekly basis. The department changed the word "integrity" to "condition."

Comment. Concerning subsection (d)(1)(C)(iii), several commenters indicated that this is unclear and that ACR doesn't say anything about sensitizing film by exposing it to light. One commenter indicated that the ACR "Mammography Quality Control Manual, Revised Edition, 1994," is required by ACR and therefore by MQSA (see).

Response. FDA and the MQSA allow the use of the 1992 or 1994 quality control manuals. The department deleted the words "sufficient light" from this clause.

Comment. Concerning subsection (d)(1)(E)(i), two commenters suggested allowing the use of an electronic signature by the interpreting physician as computer systems have many fail safes to ensure security. One commenter included suggested language for this subsection.

Response. The department agreed and has incorporated the suggested language into the rule.

Comment. Concerning subsection (d)(1)(E)(iii), two commenters suggested that this requirement should apply only to the written medical report and not to the lay summary which is unnecessary duplication of paper and effort and will increase the expense of the study.

Response. The department agreed and has included language that indicates a facility is not required to maintain of copy of the lay summary.

Comment. One commenter suggested rescinding the ten-hour limitation on batch processing. The commenter indicated that mobile mammography is critical to the less populated, more remote areas of the state and is hindered by this regulation because of geographic distance from fixed-site locations (see subsection (d)(1)(F)).

Response. The department agreed and has changed the ten hour limitation to 24 hours.

Comment. Several commenters indicated that while it is advantageous to permanently mark films with name and date, certain circumstances require deviation from that standard. The commenter further indicated that errors are made during the original flash/exposure of film and corrections can only be made by using a printed sticker and suggested provisions need to be made for such eventualities (see subsection (d)(1)(F)(i)).

Response. The department agreed and has added language that also allows the use of a printed label.

Comment. Several commenters questioned why the recording of "compressed breast thickness and kVp is required?" Two commenters state that while many newer units automatically record that information on the film, the recording of that information from older units will be labor intensive and the commenter is puzzled why the state would require this (see subsection (d)(1)(F)(ii)).

Response. The department agrees with the ACR recommendation on recording degree of compression and kVp which is especially important for the technologist in self-referral or screening mammography when a physician may not be on-site to review films and patients may need to be called back in for additional views. The use of this information can aid in reducing the amount of exposure on repeat films. The department made no change to the section as a result of the comment.

Comment. Two commenters questioned keeping a patient log that serves no purpose but adds significantly to the paperwork requirements. One commenter stated that on many occasions they have had to add an additional employee to maintain this and other paperwork requirements, and the log, once completed, is filed away never to be seen again (see subsection (d)(1)(F)(iii)(II)).

Response. The requirement for the log has been modified to include the date and time of the first exam of each batch, and the date and time of batch development. It is the department's experience that facilities routinely maintain patient logs, either manually or electronically.

Comment. Several commenters stated that it is time to eliminate xeromammography from the regulations as few units remain operative. One commenter stated that he is not aware of a single xeromammography system still in operation (see subsection (d)(1)(G)).

Response. There are xeromammography units operating in the state. The department made no change to the section as a result of the comment.

Comment. Concerning subsection (d)(1)(G), in regard to the last sentence, one commenter stated "Sounds like the department doesn't know how to distill the essence. Does the department have a copy available?"

Response. The department acknowledged the comment and made no change to the section as a result of the comment.

Comment. One commenter questioned why the requirement for documented training in mammography interpretation was deleted as the commenter felt this was rather important (see subsection (d)(2)(A)(i)).

Response. The department deleted this as it was in lieu of board certification. The department made no change to the section as a result of the comment.

Comment. One commenter suggested correcting the reference to the osteopathic continuing education body and adding the following to the end of the sentence "..or the Council on Postdoctoral Training of the American Osteopathic Association (COPT-AOA) (see subsection (d)(2)(A)(ii)).

Response. The department agreed and has made the correction and added the reference.

Comment. Concerning subsection (d)(2)(B)(i), one commenter felt that five years of experience cannot be a substitute for formal training. The commenter further stated that there are too many technologists practicing that perform a modality for years and still fail to improve or learn anything more than is necessary to get by.

Response. The five years of experience was a method to "grandfather" mammography technologists and is only substituted for the 20 hours of formal training. All technologists performing mammography must acquire the continuing education credits required during each three year period. The department made no change to the section as a result of the comment.

Comment. One commenter suggested moving "at least" to after "an average of" (see subsection (d)(2)(B)(ii)).

Response. The department agreed and has made the change.

Comment. Concerning subsection (d)(2)(B)(ii), one commenter felt the wording is unclear and questioned whether it means, "five hours per year" or can one accumulate fifteen or twenty hours at one course at one time and use this as the fifteen needed every three years. The commenter stated it will be difficult to acquire five useful mammography specific CEU's per year without taking a full course earning fifteen or twenty CEU's and gaining a lot of useful knowledge.

Response. The intent of the requirement is that continuing education credits be acquired at an average of five hours per year over a three year period. A technologist may acquire credits during one continuing education session or accumulate them as smaller increments that can be acquired at continuing education sessions such as the annual Texas Society of Radiologic Technologists meeting. The department made no change to the section as a result of the comment.

Comment. Concerning proposed subsection (d)(2)(B)(iii), two commenters questioned if this requirement is really necessary and when was the last time an inspector asked this question of a tech. The commenters felt this paragraph should be eliminated.

Response. The department agreed and has deleted this clause.

Comment. One commenter indicated that it would be helpful to give the reference that a physicist must also be registered with the department as a physicist new to Texas will not be familiar with the difference between licensing and registration and would appreciate some guidance (see subsection (d)(2)(C)).

Response. The department agreed and has added the reference.

Comment. Several commenters stated that they do not believe that a person licensed as a diagnostic medical physicist should be required to be registered with the department when neither technologists nor physicians are so required (see subsection (d)(2)(C)).

Response. The Texas Radiation Control Act, §401.101, requires all persons using sources of radiation to be registered. Physicians with solo practices must hold individual registrations and all other physicians using sources of radiation are required to be listed on facility registrations or licenses. The Texas Medical Practice Act allows physicians to delegate and x-ray technologists perform exams under that delegation. Technologists, therefore, are not required to be registered individually. Likewise, physicists with solo practices performing consultant work must hold an individual registration. Physicists working solely at a facility that holds a registration are exempt from individual registration in accordance with §289.122. The department made no change to the section as a result of the comment.

Comment. Concerning subsection (d)(2)(C), several commenters suggested adding wording that would allow assistants under direct supervision of a licensed diagnostic radiological physicist who is registered with the department to perform mammographic system performance evaluation. The licensed physicist would be responsible for the correct testing procedures and accuracy of the testing (see subsection (d)(2)(C)).

Response. The Texas Medical Physics Practice Act and MQSA do not allow delegation of mammography physicists' duties to qualified assistants. The department made no change to the section as a result of the comment.

Comment. One commenter questioned if a physicist is part of a group that is registered, does that individual have to also be registered separately? (see subsection (d)(2)(C)).

Response. If a physicist is part of a group that is registered, it is not necessary for that individual to be registered separately. The department made no change to the section as a result of the comment.

Comment. One commenter suggested adding "or medical health physics" after "diagnostic radiological physics" as both are qualified for this activity under the Medical Physics Practice Act (see subsection (d)(2)(C)).

Response. House Bill 63, Subchapter L, §401.424(a)(4)(B) requires that the licensed medical physicist hold a specialty in radiology. The department made no change to the section as a result of the comment.

Comment. Several commenters felt that many of the equipment operators tasks can be better performed by individuals other than equipment operators and the phrase that allows a physicist to perform these tasks is redundant. One commenter stated that the ACR has explicitly indicated that individuals other than the mammography technologist may perform tasks that are the responsibility of the technologist (see subsection (d)(3)(B)).

Response. The department agreed and has changed the language to allow a facility to delegate individual technologist's tasks within the quality assurance program to a quality control technologist.

Comment. Concerning subsection (d)(3)(C), two commenters suggested changing "survey" to "performance evaluation" which the commenters felt would be in keeping with ACR and FDA nomenclature. One commenter suggested that the evaluation of image quality and image artifacts should be included.

Response. Section 900.12(d)(5) of the FDA's interim final standards for MQSA addresses "surveys" and states that "As a part of its overall quality assurance program, each facility should have a medical physicist establish, monitor, ...and perform a survey of the facility..." The department agreed with the commenter on the evaluation of image quality and image artifacts and has added this language.

Comment. Concerning subsection (d)(3)(C)(i)(IV), one commenter questioned if the reference in the subclause to subsection (d)(1)(N) is correct.

Response. The reference is correct and the department made no change to the section as a result of the comment.

Comment. Concerning subsection (d)(3)(C)(i)(VIII), one commenter stated that the reference to subsection (e)(1)(E) indicates that a resolution test can be performed for evaluating the focal spot, yet there is no mention of resolution checks in the subsection. The commenter recommended the reference to resolution be added to eliminate confusion.

Response. The department agreed and has changed the language in subsection (e)(1)(E).

Comment. Two commenters felt the quality assurance program is a large document and needs to be available at the specified location for inspection by the department but does not need to be kept with the mobile unit (see subsection (d)(5)(A)(ii)).

Response. The department agreed and has deleted this from the requirements.

Comment. One commenter suggested using the same wording in subsection (d)(5) (A)(iii) as in (d)(6)(A)(iv).

Response. This requirement refers to mobile services, so using the phrase "at that location" would not be appropriate. The department made no change to the section as a result of the comment.

Comment. Two commenters suggested deleting the requirement to keep quality control records on the van for 90 days. The commenters indicated quality control records must be maintained at the site of the processor utilized to develop the films and for some facilities this is the home base and not with the mobile unit. The commenters further stated that requiring this would increase expenses by necessitating either double charting of processor daily quality control or by increasing the need for couriers or telephone calls between home base and the mobile unit (see subsection (d)(5)(A)(iv)).

Response. The department agreed and has changed the requirement to apply only to mobile services with on-board processors.

Comment. Two commenters suggested specifying the sections of the chapter that are pertinent to mammography that are to be kept on the unit and not require the whole chapter (see subsection (d)(5)(A)(v)).

Response. The department agreed and has specified sections that should be kept with the mobile service.

Comment. Two commenters suggested keeping one month of films on the van and sending the others to the authorized use location. One commenter suggested changing 90 days to 45 days (see subsection (d)(5)(A)(iv))

Response. The department has changed the requirement to apply only to those mobile services with on-board processors.

Comment. Two commenters suggested changing "survey" to "equipment evaluation" or "annual performance evaluation" for consistency (see subsection (d)(6)(A)(vii)).

Response. Section 900.12(d)(5) of the FDA's interim final standards for MQSA addresses "surveys" and states that "As a part of its overall quality assurance program, each facility should have a medical physicist establish, monitor, ...and perform a survey of the facility..." The department made no change to the section as a result of the comment.

Comment. One commenter suggested adding the word "current" in front of TRCR (see subsection (d)(6)(A)(viii)).

Response. The department agreed and has added the wording change.

Comment. One commenter questioned what emergency procedures are in x-ray? The commenter further suggested that throughout the rules these should read "Operating and Safety Procedures" and be defined as being equivalent to requirements in TRCR Part 21. The commenter also suggested in the first sentence to use the words "shall include" instead of "including" (see subsection (d)(7))

Response. The department has changed the requirement to delete the word "emergency."

Comment. One commenter indicated that "Personnel Monitoring" is in the title but is not addressed. The commenter questioned "what exemptions?" and suggested substituting "limits" for "requirements" (see subsection (d)(8)).

Response. The department has inserted the words "and personnel monitoring" in the body of this paragraph. Personnel may be exempt from personnel monitoring in accordance with TRCR Part 21 as adopted by reference in §289. 113.

Comment. Concerning subsection (d)(9), two commenters felt that language on protective clothing and devices is unnecessary.

Response. The department agreed and has deleted the paragraph.

Comment. One commenter felt the last sentence of subsection (d)(10) is redundant with subsection (o)(2).

Response. The department acknowledged the comment and made no change to the section as a result of the comment.

Comment. Concerning proposed subsection (d)(11), several commenters felt that the requirement on "holding patients and film" is unnecessary and should be deleted.

Response. The department agreed and has deleted the paragraph.

Comment. Concerning proposed subsection (d)(13), several commenters felt that the requirement on permanent control booths is unnecessary as many excellent mammography systems are equipped with fold-away shields that are perfectly adequate.

Response. The department agreed and has deleted the paragraph.

Comment. Concerning subsection proposed (d)(14), several commenters felt that the paragraph on "exposure of individuals other than the patient" is covered in another section of this chapter and should be eliminated.

Response. The department agreed and has deleted subparagraphs (A), (B), and (C) of proposed subsection (d)(14).

Comment. Concerning proposed subsection (d)(15), two commenters suggested that the signature requirement is not useful and allowing records to be maintained in electronic format would be helpful.

Response. The department agreed and has deleted the requirement for a signature and allowed the maintenance of records by electronic format.

Comment. Concerning proposed subsection (d)(15), one commenter suggested that the word "maintenance" be replaced with the accepted nomenclature of "performance evaluation."

Response. The department acknowledged the comment and made no change to the section as a result of the comment.

Comment. Two commenters questioned if "individual component" includes each screw and bolt and suggested deleting "and their individual components" (see subsection (e)(1)(B)).

Response. This was not the intent of the proposed section. The department made no change to the section as a result of the comment.

Comment. One commenter indicated interpretation of mammographic images is enhanced by the ability to reduce all extraneous light and the requirement that the x-ray field cannot extend beyond the outside edges of the image receptor effectively prevents complete exposure of the outside edges of the film. The commenter further indicated that additional light is allowed around the unexposed edges of the film, thus hindering the radiologist's ability, and collimation should be allowed to extend beyond the outside edges by 1.0% of the SID. This extension of the field will be stopped by the breast support tray and will not affect either the patient or the examination adversely (see subsection (e)(1)(D)).

Response. Collimation requirements are defined by the FDA. The department made no change to the section as a result of the comments.

Comment. Many commenters indicated that the latest ACR physics manual suggests the use of a line pair test tool for assessment of the focal spot (see subsection (e)(1)(E)). Several commenters felt that the requirement for the focal spot to meet NEMA specifications is outdated and should be eliminated (see subsection (e)(1)(E)).

Response. The FDA adopted amended interim final standards published in the September 30, 1994, edition of the *Federal Register* that allows facilities to use either the 1992 or the 1994, edition of the ACR quality control manuals. The 1994 ACR manual allows the use of either method. The department has changed the section to follow ACR guidelines.

Comment. Two commenters suggested replacing "actual kVp" with "measured kVp" (see subsection (e)(1)(F)).

Response. The terminology is consistent with that used by ACR. The department made no change to the section as a result of the comment.

Comment. One commenter questioned if it is intended that "kVp used in clinical conditions" be matched with the phantom thickness, that is, is it intended that the lower clinical kVp's be used with the smaller phantom thicknesses and the higher kVp's used with the larger thicknesses? The commenter stated that meeting this requirement can be difficult if it is required that the full range of phantom thicknesses be imaged over the full range of clinically used kVp's (see subsection (e)(1)(G)).

Response. The department agreed and has deleted the language "for acrylic or BR-12 phantom thickness of 2 centimeters to 6 centimeters." The department has also allowed a provision in subsection (c)(3) for equipment that does not meet this standard.

Comment. One commenter indicated that the AEC performance test is very minimal compared with the additional tests required by ACR and that the department requirements do not allow older units' compensation circuits to be used. The commenter stated that under department requirements, units not able to maintain film density to within ± 0.3 fail; however, ACR allows such units to pass if a technique chart using density control settings is used. The commenter felt this requirement discriminates against older units that may be corrected with a technique chart (see subsection (e)(1)(G)).

Response. The department agreed and has allowed a provision in subsection (c)(3) for older equipment that may not meet this standard.

Comment. Two commenters indicated that the requirement in subsection (e)(1) (G) is written in such a way that a perfectly acceptable test to measure AEC performance could be cited just because it was not performed exactly the way the department thinks it should be done. The commenters state that the department should only be concerned with whether the test was done by a licensed medical physicist, and what corrective actions were taken, if required. The physicist is responsible for determining the appropriate test, evaluating the results, and recommending appropriate corrective action.

Response. The department acknowledged the comment and deleted the language "for acrylic or BR-12 phantom thickness of 2 centimeters to 6 centimeters."

Comment. Many commenters suggested following the recommendation of the ACR on HVL. Two commenters stated that the ACR does not address the appropriate range of HVL for tungsten targets with rhodium filters and there are a significant number of Siemen's systems with this combination in Texas (see subsection (e)(1)(H)).

Response. The department agreed and has changed the requirement to be consistent with the ACR. A provision has also been included for equipment with target/filter combinations not addressed by the ACR.

Comment. Several commenters noted that the wording of this sentence indicates that a removable grid is required and that many systems are manufactured with non-removable grids and suggested deleting the word "removable" except for systems designed for magnification mammography (see subsection (e)(1)(I)(i)).

Response. The wording followed the FDA interim final standards §900.12(b) (2)(iv). The department has amended this section to delete the word "removable. " Language was included for equipment used for magnification studies to have a removable grid.

Comment. One commenter indicated that a spot of poor film-screen contact outside the usual area of the screen that is used for visualization of the breast does not interfere with the image and the section should be modified to account for this situation (see subsection (e)(1)(K)).

Response. Film-screen contact must be acceptable for the whole area as a facility must be prepared to image patients with large breasts. The department made no change to the section as a result of the comment.

Comment One commenter indicated no deduction is made for artifacts in the phantom image as will be required by MQSA (see subsection (e)(1)(L)).

Response. The accrediting body scores the phantom. The intent of this requirement is for the facility to have some basis for image quality. The department added a provision for optical density for the phantom.

Comment. Two commenters indicated the department should not put itself in the position of shooting at a moving target on exactly what the specifications should be on this month's standard phantom and if the phantom is approved by ACR and/or FDA, the image quality acceptance criteria will be published with the phantom (see subsection (e)(1)(L)).

Response. For the current phantoms, the scoring criteria are appropriate. The department made no change to the section as a result of the comment.

Comment. One commenter suggested the statement in subsection (e)(1)(L)(iii) "No mammogram shall be taken on patients if this minimum is not met," exceeds the recommendations by both FDA and ACR and should be eliminated. The commenter indicated there are many clinical situations where a patient may be disserved if an examination is not performed due to an equivocal phantom image.

Response. The department considers the quality of the mammogram to be the topmost consideration in the establishment of the state law and rules for mammography and made no change to the section as a result of the comment.

Comment. One commenter stated if the facility knew the composition of the breast *a priori*, then there would be no need for mammography at all. The commenter suggested this be worded to make more sense: "The technique settings and equipment used ...shall be those used by the facility for commonly recording and processing clinical mammographic images (see subsection (e)(1)(M)).

Response. The technique settings to be used for the test are specific to a certain breast composition. The department made no change to the section as a result of the comment.

Comment. Concerning subsection (e)(1)(N), one commenter asked why the subparagraph references §289.116 and why not put the information here in this subsection (see subsection (e)(1)(N)).

Response. The department agreed and has included the referenced portion from §289.116 into this section.

Comment. Concerning subsection (e)(2), two commenters questioned why this has to be specified in millirad or milliGray and why not rad or centiGray.

Response. This is the terminology used by the ACR and is most common in the medical physicists' reports the department receives on average glandular dose. The department made no change to the section as a result of the comment.

Comment. Several commenters stated that the ACR phantom is now considered equivalent to a 4.2 cm compressed breast and the 1994 ACR manuals indicate a 4. 2 cm compressed breast and all the new conversion tables assume 4.2 cm. (see subsection (e)(2)).

Response. There is controversy between FDA and ACR as to whether this should be 4.2 or 4.5 cm. The department changed the section to reflect a range of 4.0 to 4.5 cm.

Comment. One commenter stated that if there are no xeromammography systems left, subsection (e)(2)(C) should be deleted.

Response. The department made no change to the section as a result of the comment, as there are xeromammography units operating in the state.

Comment. Several commenters stated that calculation of average glandular dose for specialized stereotactic systems is not appropriate (see subsection (e)(2)(D)).

Response. The department agreed and has deleted the requirement.

Comment. One commenter indicated that if he has correctly interpreted the opening statement of subsection (e)(3), the entire section is intended to be applied to stereotactic as well as diagnostic systems. The commenter recommended that inclusion of stereotactic units under these requirements be considered on a section-by-section basis and after some additional study of the practicality and implications of the inclusion, rather than by an all-inclusive statement.

Response. The department has revised the certification requirements for stereotactic units.

Comment. One commenter suggested that consistency between the requirement in subsection (e)(3)(A) and those proposed in §289.116 should be considered.

Response. The department agreed and has deleted this requirement.

Comment. Two commenters questioned why the requirement in subsection (e)(3) (B) is necessary.

Response. The department agreed and has deleted this requirement.

Comment. Several commenters stated that compliance with subsection (e)(3)(C) is the responsibility of the FDA and it is not possible to evaluate this in the field. The commenters suggested that it should be deleted.

Response. The department agreed and has deleted the requirement.

Comment. One commenter stated there is no consistency between how the department has decided to administer subsection (f) and what is actually written in the section. The commenter has been told by BRC that prior approval must be obtained for changes to components if they are listed on the certificate itself. Other items in the original application that are not listed individually on the certificate may be changed with only a requirement of notification, not prior approval. The commenter stated that the only reference that could be found regarding the submission of information is in subsections (f)(1) and (i). The commenter stated that the department has evidently arbitrarily chosen to include radiologists and technologists on the certificate but not processors or viewing devices (see subsection (f)).

Response. Radiologists and technologists are listed on the certification of mammography systems for non-ACR accredited facilities or for those facilities that chose to submit paperwork and pay the fee as a non-accredited facility. The mammography equipment itself, along with the radiation safety officer and the supervising physician will always be listed on a certification. Subsection (i) has been amended to specify the responsibilities of the registrant with regard to notification of changes.

Comment. One commenter felt it is an onerous and unnecessary burden to have to complete State of Texas certification forms for each mammo unit every year as this pile of information almost duplicates the data required for ACR accreditation except the state requires more information than the ACR. The commenter states the certification process was a good idea before MQSA accreditation became mandatory and universal but is no longer useful. A simple one page registration form along with a copy of the MQSA accreditation certificate is now sufficient. The commenter is concerned that the ACR accreditation lasts for three years and the state certification expires after one year and all forms must be refiled again (see subsection (f)).

Response. Annual certification is a requirement of House Bill 63, passed by the 72nd Legislature and will remain in effect unless the Legislature amends the law The requirements of this law are in addition to the requirements of MQSA. The annual renewal process is very simple, requiring only minimal information and any changes the facility may have had since the last certification process. The department made no change to the section as a result of the comment.

Comment. One commenter indicated that since the department issues one mammography certificate with one control number, then it is not appropriate to use the term "separate." The commenter realizes that House Bill 63 uses that term but the department's use of the word is very misleading (see subsection (f)(3)).

Response. The department agreed and has deleted the word "separate."

Comment. Many commenters indicated that the requirements of subsection (f) (6) prohibit anyone but a radiologist from performing stereotactic breast biopsy procedures. The commenters suggested that this be changed since general surgeons are seeing the majority of patients with breast disease and are the most familiar with breast anatomy and the treatment of breast lesions and surgeons see the majority of patients for post-mammography diagnosis and evaluation. They further stated that stereotactic equipment is not used for interpretation but rather for localization and tissue diagnosis of a breast lesion. One commenter indicated that providing women with a comprehensive, cost effective, team approach in health care delivery can be best achieved by allowing surgeons, who are adequately trained, to perform this procedure in partnership with the radiologist.

Response. The department agreed and has deleted the requirement for localization or biopsy procedures to be performed by a radiologist.

Comment. Many commenters stated that stereotactic mammography systems have completely different design criteria from screening and diagnostic mammography systems and cannot meet the department's requirements. The commenters suggest that the requirements be deleted or modified (see subsection (f)(6)).

Response. The department agreed and has revised the certification requirements for equipment used for invasive interventions for localization or biopsy procedures.

Comment. Two commenters questioned the department's ability to meet the time limitations in subsection (f)(7) and felt the department should consider withdrawing the time commitments in this section.

Response. The time limitations are internal to the department. The department made no change to the section as a result of the comment.

Comment. Two commenters questioned if subsection (f)(8) shouldn't be included in §289.122.

Response. This requirement is intended to serve in conjunction with subsection (f)(7). The department made no change to the section as a result of the comment.

Comment. Several commenters questioned the requirements for notification. The commenters said some changes are out of their control and questioned what happens if they don't notify the department "prior to" the unannounced departure of one of their staff (see subsection (i)(1))

Response. The department acknowledged the comment and has amended this subsection to delineate changes and time frames for notification

Comment. Two commenters indicated the requirement in subsection (i)(2) of keeping training and experience records until termination of the certificate is not consistent with information listed in subsection (o)(2).

Response. The department agreed and has corrected the inconsistency.

Comment. Many commenters are concerned with posting a notice of failure for a facility. One commenter also questioned what exactly constitutes severity level I and II violations for

mammography. The commenters felt the current system of citation and notification of violation is completely unproductive and only serves to increase animosity between the department and the facilities and furthermore, posting of notice of violations increases the level of anxiety in the patient population and encourages frivolous lawsuits (see subsections (n)(1)(E) and (F)).

Response. Section 401.430(g) of House Bill 63 requires the posting of a failure notice. The department has amended the section to require the posting of a failure notice only in the case of a facility receiving a Level I violation.

Comment. Concerning subsection (n)(2), a commenter indicated that it would appear that everyone is exempt from the initial inspection within 60 days and this was originally meant to release ACR accredited units from the initial inspection, but the new wording in subsection (f)(3) does not make that clear any longer. The commenter suggested either remove entirely the 60-day inspection requirements or rewrite subsection (f)(3) to better indicate ACR accredited units.

Response. New facilities or facilities adding new (and not replacement) mammography equipment still fall under the 60-day inspection requirement, since these are required to have state certification before they can operate and subsequently even apply for ACR accreditation. Tho department made no change to the section as a result of the comment.

Comment. Two commenters asked that the term "fibro-granular" be corrected to "fibroglandular" and change "Axillary" to "Supplemental" views as there are many views needed for diagnostic mammography for a problem solving approach (see subsection (o)(1)).

Response. The department agreed and has made the correction and change.

Comment. Two commenters did not understand the logic of different time frames and states the varying time requirements of record keeping are confusing and suggested if a common time requirement be adopted (see subsection (o)(2)).

Response. The time frames are generally assigned because of the nature of the record. Usually, they are kept for two years unless stated by law, which is the case of the seven year time frame for keeping the medical physicist's report in accordance with §401.424(a)(4)(C) of House Bill 63. Films associated with quality assurance tests are kept for one year. Qualifications of physicians and technologists are kept until the certification terminates or until two years after they leave a facility. Continuing education records, that are on a three year cycle, are maintained for six years. The department made no change to the section as a result of the comment.

Nine representatives from Texas Osteopathic Medical Association in Round Rock; Richmond Imaging Associates in Houston; General Electric Company in Milwaukee, Wisconsin; Susan G. Komen Breast Centers in Dallas; Radiological Physics, Inc. in El Paso; Baylor College of Medicine in Houston; and three individuals were generally in favor of the amendments, however, presented comments and suggestions for changes to the proposed amendments as discussed in the summary of comments.

Twenty-two representatives from East Texas Medical Center Cancer Institute in Tyler; Scott & White in Temple; Baylor College of Medicine in Houston; The University of Texas M. D. Anderson Cancer Center in Houston; University of Texas Medical School in Houston; The University of Texas Southwestern Medical Center in Dallas; Texas Radiological Society in Austin; The University of Texas Health Science Center in San Antonio; Surgical Associates in Euless, Texas; Mobile Health, Inc. in Houston; and three individuals, were generally opposed to the amendments and presented comments and suggestions for changes to the proposed amendments as discussed in the summary of comments.

Texas Regulations for the Control of Radiation

• 25 TAC §289.116, §289.122

The amendments are adopted under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§289.116. Use of Radiation Machines in the Healing Arts and Veterinary Medicine.

(a) The Texas Department of Health adopts by reference Part 32, "Radiation Machines in the Healing Arts and Veterinary Medicine" of the Department's document titled Texas Regulations for Control of Radiation, as amended in October 1, 1995.

(b) (No change.)

§289.122. Registration of Radiation Machine Use and Services.

(a) The Texas Department of Health adopts by reference Part 42, "Registration of Radiation Machine Use and Services" of the Department's document titled Texas Regulations for Control of Radiation, as amended in October 1, 1995.

(b) (No change.)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 21, 1995.

TRD-9510578 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: October 1, 1995

Proposal publication date: March 28, 1995

For further information, please call: (512) 458-7236

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Registration Regulations

• 25 TAC §289.230

The new section is adopted under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

§289.230. Certification of Mammography Systems.

(a) Scope and purpose.

(1) This section provides for the certification of mammography systems. No person shall use x-ray producing machines for mammography of humans except as authorized in a certification of mammography systems issued by the agency in accordance with the requirements of this section.

(2) The use of all mammography machines certified in accordance with this section shall be by or under the supervision of a physician licensed by the Texas State Board of Medical Examiners with license in good standing.

(3) In addition to the requirements of this section, all registrants are subject to the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.113 of this title (relating to Standards for Protection Against Radiation), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.122 of this title (relating to Registration of Radiation Machine Use and Services), §289.126 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and Other Regulatory Services), and §289.201 of this title (relating to General Provisions).

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

(1) Accrediting body-An entity that has been approved by the United States Food and Drug Administration (FDA) under 42 United States Code, §263b(e)(1)(A) to accredit mammography facilities.

(2) Automatic exposure control (AEC)-A device which automatically controls one or more technique factors in order to obtain at preselected locations a required quantity of radiation (See definition for phototimer).

(3) Average glandular dose-The value in millirad or milligray for a given breast or phantom thickness which estimates the average absorbed dose to the

glandular tissue extrapolated from free air exposures and based on fixed filter thickness and target material.

(4) Beam-limiting device-A device which provides a means to restrict the dimensions of the x-ray field.

(5) Calibration-The response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or the strength of a source of radiation relative to a standard.

(6) Contact hour-50 minutes of attendance and/or participation in instructor-directed activities.

(7) Continuing education-Acquiring contact hours by attendance and/or participation in lectures, conferences, or seminars; or participation in self-study programs.

(8) Control panel-That part of the radiation machine control upon which are mounted the switches, knobs, push buttons, and other hardware necessary for manually setting the technique factors.

(9) Dedicated mammographic equipment-Equipment that has been specifically designed and manufactured for mammography.

(10) Equipment (See definition for x-ray equipment).

(11) Facility-A hospital, outpatient department, clinic, radiology practice, mobile unit, an office of a physician, or other person that conducts breast cancer screening or diagnosis through mammography activities, including any or all of the following:

(A) the operation of equipment to produce a mammogram;

(B) processing of film;

(C) initial interpretation of the mammogram; and

(D) maintaining the viewing conditions for that interpretation.

(12) Formal training-Attendance and participation in instructor-directed activities. This does not include self-study programs.

(13) Half-value layer (HVL) -The thickness of a specified material that attenuates the beam of radiation to an extent such that the exposure rate is reduced to one-half of its original value. In this definition, the contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.

(14) Interpreting physician-A physician who interprets mammographic images.

(15) Image receptor-Any device, such as a fluorescent screen or radiographic film, that transforms incident x-ray photons either into a visible image or into another form that can be made into a visible image by further transformations.

(16) kV-Kilovolt.

(17) kVp-Kilovolt peak.

(18) mA-Milliampere.

(19) Mammogram-A radiographic image produced through mammography.

(20) Mammographic phantom-A test object used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer. The phantom shall be approved or accepted by the FDA.

(21) Mammography-The use of x-radiation to produce an image of the breast on film, paper, or digital display that may be used to detect the presence of pathological conditions of the breast.

(22) Mammography system-includes the following:

(A) an x-ray unit used as a source of radiation in producing images of breast tissue;

(B) an imaging system used for the formation of a latent image of breast tissue;

(C) an imaging processing device for changing a latent image of breast tissue to a visual image that can be used for diagnostic purposes;

(D) a viewing device used for the visual evaluation of an image of breast tissue if the image is produced in interpreting visual data captured on an image receptor;

(E) a medical radiological technologist who performs a mammography; and

(F) a physician who engages in, and who meets the requirements adopted by board rule relating to the reading, evaluation, and interpretation of mammograms.

(23) mAs-Milliampere-second.

(24) Medical physicist-A person meeting the qualifications for a medical physicist specified in subsection (d)(2)(C) of this section.

(25) Medical radiological technologist-An individual specifically trained in the use of radiographic equipment and the positioning of patients for radiographic examinations and who meets the requirements in subsection (d) (2)(B) of this section.

(26) Mobile services-Utilizing radiation machines in temporary locations for limited time periods. The radiation machines may be fixed inside a mobile van or transported to temporary locations.

(27) Mobile x-ray equipment-(See definition for x-ray equipment).

(28) Optical density (OD)-A measure of the percentage of incident light transmitted through a developed film; it is defined by the equation
Figure 1: 25 TAC §289.230(b)(28)

(29) Patient-Any individual who undergoes clinical evaluation in a mammography facility, regardless of whether the person is referred by a physician or is self-referred.

(30) Phantom image-A radiographic image of a phantom.

(31) Self-referral mammography-The use of x-radiation to test asymptomatic women for the detection of diseases of the breasts when such tests are not specifically and individually ordered by a licensed physician.

(32) SID-(See definition for source-to-image receptor distance).

(33) Source-to-image receptor distance-The distance from the source to the center of the input surface of the image receptor.

(34) Survey-An on-site physics consultation and evaluation of a mammography system performed by a medical physicist.

(35) Technical aspects of mammography-In relation to continuing education, some or all of the following subjects must be included:

(A) anatomy and physiology of the female breast;

(B) mammographic positioning;

(C) technical factors used in mammography;

(D) mammographic film evaluation and critique;

(E) breast pathology; and

(F) mammographic quality assurance procedures.

(36) X-ray equipment-An x-ray system, subsystem, or component thereof. Types of x-ray equipment are as follows:

(A) mobile x-ray equipment-x-ray equipment mounted on a permanent base with wheels and/or casters for moving while completely assembled;

(B) stationary x-ray equipment-x-ray equipment which is installed in a fixed location.

(37) X-ray field-That area of the intersection of the useful beam and any one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the exposure rate is one-fourth of the maximum in the intersection.

(38) X-ray tube-Any electron tube which is designed to be used primarily for the production of x-rays.

(c) Exemptions.

(1) Mammography machines or cabinet x-ray units used exclusively for examination of breast biopsy specimens are exempt from the requirements of this section. These units are required to meet applicable provisions of Texas Regulations for Control of Radiation (TRCR) Part 32 as adopted by reference in §289.116 of this title (relating to Use of Radiation Machines in the Healing Arts and Veterinary Medicine) and TRCR Part 42 as adopted by reference in §289.112 of this title.

(2) Xerography systems not used for detection of diseases of the breast are exempt from the requirements of this section. These units are required to meet applicable provisions of TRCR Part 32 as adopted by reference in §289.116 of this title and TRCR Part 42 as adopted by reference in §289.112 of this title.

(3) Mammography systems not meeting the AEC requirements of subsection (e)(1)(G) of this section are exempt from this requirement if changes in the facility's technique chart reflect the density settings required to maintain the film density to within ± 0.3 OD when the AEC is utilized. This change shall be addressed in the operating and safety procedures.

(4) Mammography systems used exclusively for invasive interventions for localization or biopsy procedures or other unique mammographic imaging modalities are exempt from the requirements of this part except for those listed in subsection (f)(6) of this section.

(d) Operational controls for mammographic equipment.

(1) Quality assurance.

(A) Quality assurance program. Each registrant shall have a written, ongoing quality assurance program specific to mammographic imaging covering all components of the diagnostic x-ray imaging system to ensure consistently high-quality images while minimizing patient exposure. Responsibilities under this requirement include:

(i) conducting equipment performance monitoring functions;

(ii) analyzing the monitoring results to determine if there are problems requiring correction;

(iii) carrying out or arranging for the necessary corrective actions when results of monitoring quality control tests including those specified in subparagraph (B) of this paragraph indicate the need; and

(iv) maintenance of records documenting the requirements of this paragraph for agency inspection for a minimum of two years.

(B) The registrant shall ensure that the following quality control items are performed at least as often as the frequency specified, when mammographic equipment is initially installed, replaced, or reassembled after moving, and after tube or tube inserts are installed. When the results of tests performed in accordance with this subparagraph and paragraph (C) of this paragraph do not meet the required acceptance criteria, corrective action shall begin within 30 days following the check and completed no longer than 90 days from commencement, unless authorized by the agency. Clinical images of mammographic examinations shall not be processed using a processor that deviates from the requirements of clause (i) of this subparagraph. A processor, other than the one commonly in use, may be used temporarily provided that the backup processor has been tested according to clause (i) of this subparagraph and has shown to be in tolerance, and a phantom image from the mammography system shall be acquired and run in the backup processor and evaluated for acceptable quality according to clause (iv) of this subparagraph, prior to the first patient exposure. Records of the quality control checks, including any correction or repair, shall be maintained for a minimum of two years for inspection by the agency. Films which result from the performance of quality control tests shall be maintained for a minimum of 12 months.

(i) Processor performance shall be evaluated by sensitometric and densitometric means and by developer temperature daily, or on each day of use for mammography, and the results recorded before the first patient exposure. The calibration of the densitometer must be checked every 12 months. Film processors utilized for mammography shall be adjusted to and operated at the specifications recommended by the mammographic film manufacturer, or at other settings such that the sensitometric performance is at least equivalent. For any registrant performing mammography and using film processors at multiple locations, such as a mobile service, each processor shall be subject to this requirement. Corrective action shall be taken when:

(I) deviations exceeding ± 0.15 in OD from established operating levels occur for readings of mid-density and DD on the sensitometric control charts; and/or

(II) base plus fog (B+F) exceeds the established operating level by more than 0.03 OD;

(ii) Darkroom cleaning shall be performed daily.

(iii) Screen cleaning shall be performed weekly.

(iv) Image quality shall be evaluated using a mammographic phantom to comply with subsection (e)(1)(L) of this section at intervals not to exceed one month. Each phantom image and a record of the evaluation of that image shall be maintained at the location where the mammography image was produced or with the radiographic equipment for mobile services.

(v) Equipment observation check shall be performed monthly.

(vi) Analysis of fixer retention in film shall be performed at intervals not to exceed three months.

(vii) Compression device performance (releases, level of force, etc.) shall comply with subsection (e)(1)(J) of this section and shall be performed at intervals not to exceed six months.

(viii) Screen-film contact and screen artifact detection shall comply with subsection (e)(1)(K) of this section and shall be performed at intervals not to exceed six months.

(ix) Uniformity of screen speed shall be performed at intervals not to exceed 12 months.

(x) Beam limiting device alignment shall comply with subsection (e)(1)(D) of this section and shall be performed at intervals not to exceed 12 months.

(xi) kVp accuracy shall comply with subsection (e)(1)(F) of this

section and shall be performed at intervals not to exceed 12 months.

(xii) Output reproducibility, mA or mAs linearity shall comply with subsection (e)(1)(N) of this section and shall be performed at intervals not to exceed 12 months.

(xiii) AEC reproducibility and performance (response to kVp and phantom thickness) shall comply with subsection (e)(1)(G) of this section and shall be performed at intervals not to exceed 12 months.

(xiv) HVL shall comply with subsection (e)(1)(H) of this section and shall be performed at intervals not to exceed 12 months.

(xv) The average glandular dose shall comply with subsection (e)(2) of this section and shall be performed at intervals not to exceed 12 months and within 60 days after a tube or tube insert replacement.

(xvi) Evaluation of focal spot performance shall comply with subsection (e)(1)(E) of this section and shall be performed at intervals not to exceed 12 months.

(C) Additional quality control requirements. When deviations are found, corrections or repairs shall be made in accordance with paragraph (1)(B) of this subsection.

(i) A repeat analysis on clinical images repeated or rejected shall be performed and documented at intervals not to exceed three months. Corrective action shall be taken if the retake rate for the facility exceeds 5.0%. Test films, cleared films, or film processed as a result of exposure of a film bin are not to be included in the count for repeat analysis. Films included in the repeat analysis are not required to be kept after completion of the analysis.

(ii) Means shall be provided to block extraneous light from the viewer's eye when the illuminated surface of the viewbox is larger than the film size or area of clinical interest. Viewbox uniformity and condition of devices used to block extraneous light shall be checked at intervals not to exceed six months.

(iii) Darkroom integrity shall be checked at intervals not to exceed six months. Darkroom fog levels shall not exceed 0.05 OD when sensitized film is exposed to darkroom conditions with safelight on for two minutes. Film shall be sensitized by exposing it to x-radiation so that after processing an OD of 1.2 -1.6 is achieved.

(D) Retention of clinical images. A registrant shall maintain and make available to a mammography patient of the facility original mammograms performed at the facility until:

(i) the fifth anniversary of the mammography; or

(ii) if an additional mammogram of the same mammography patient is not performed within the five year period by the facility, the tenth anniversary of the mammography; or

(iii) at the request of the mammography patient, the mammography patient's medical records are permanently transferred to another medical institution, to a physician of the mammography patient, or to the mammography patient. This institution or physician will maintain and become responsible for the original film until the fifth or tenth anniversary as specified in clauses (i) and (ii) of this subparagraph.

(E) Interpretation of clinical images. Each facility shall prepare a written report of the results of any mammography examination. Such report shall be completed as soon as reasonably possible and shall:

(i) be signed by the interpreting physician or be signed by electronic signature by the interpreting physician and include permission to use an electronic signature for the report; and

(ii) be provided to the mammography patient's physician(s); or

(I) if the mammography patient's physician is not available the report shall be sent directly to the mammography patient; and

(II) if such report is sent to the mammography patient, it shall include a summary written in language easily understood by a lay person; or

(III) if the patient is self-referred, such report shall comply with the provisions of paragraph (4) of this subsection; and

(iii) be maintained in the mammography patient's medical record in accordance with clauses (i) and (ii) of this subparagraph. A facility is not required to maintain copies of the lay person summary.

(F) Processing of mammographic images. Each registrant shall utilize the same processor for clinical mammographic and mammographic phantom images. Clinical images shall be processed within an interval not to exceed 24 hours from the time the first clinical image is taken.

(i) Each clinical image shall be marked by a film flasher device, lead marker or printed label in a non-critical area on the film. The information shall include, but is not limited to, facility name, patient's name, and the date of the film.

(ii) Information shall also be maintained for each clinical image by utilizing a label on each film, recording on the film jacket, or maintaining a log or other means. The information shall include, but is not limited to, compressed breast thickness or degree of compression, and kVp.

(iii) Facilities utilizing batch processing shall:

(I) use a container to transport clinical images that will protect the film from exposure to light and radiation;

(II) maintain a log to include each patient name and unique identification number, date and time of the first exam of each batch, and date and time of batch development.

(G) Xerography. Processing equipment for xerography shall be evaluated daily on each day of use before the first mammography patient exposure. Processing and maintenance of equipment shall be performed in accordance with manufacturer's recommendations. Xerography systems shall comply with all the requirements for mammography in this subsection and in subsection (e) of this section except for the following: subparagraph (B)(i)-(iii), (vi), (viii), and (ix) of this paragraph; subparagraph (C)(ii) and (iii) of this paragraph; and subparagraph (F) of this paragraph.

(2) Personnel qualifications.

(A) Interpreting physician. Each physician interpreting mammograms shall:

(i) hold a current Texas license issued by the Texas State Board of Medical Examiners; and

(I) be certified by the American Board of Radiology, the American Osteopathic Board of Radiology, or one of the other bodies approved by the FDA to certify interpreting physicians; or

(II) have equivalent formal training and experience;

(ii) have had 40 hours of documented continuing medical education credits in mammography. (Continuing edu-

cation credits shall be approved by the Accreditation Council for Continuing Medical Education (ACCME) or the Committee on Continuing Medical Education of the American Osteopathic Association.) Forty hours specifically devoted to mammography during residency will be accepted if documented in writing by the radiologist, and if the residency program has been approved by the Accreditation Council for Graduate Medical Education (ACGME) or the Council on Postdoctoral Training of the American Osteopathic Association (COPTAOA);

(iii) have the following initial experience six months preceding application:

(I) have read and interpreted the mammograms from the examinations of at least 240 mammography patients; or

(II) have read and interpreted the mammograms from the examinations of at least 240 mammography patients under the direct supervision of a qualified interpreting physician; and

(iv) have the following continuing experience:

(I) read and interpret mammograms from the examination of an average of at least 40 mammography patients per month over 24 months; and

(II) participate in education programs, either by teaching or completing an average of at least five continuing medical education credits in mammography per year at intervals not to exceed three years.

(B) Operators of equipment.

(i) The x-ray mammographic machines shall be operated by an individual certified as a medical radiologic technologist under Chapter 1096, Acts of the 70th Legislature, Regular Session, 1987 (Texas Civil Statutes, Article 4512m) who has completed:

(I) a minimum of 20 hours of formal mammographic training as outlined in subsection (o)(1) of this section;

(II) five years of documented experience performing mammography; or

(III) holds an American Registry of Radiologic Technologists (ARRT) Certificate of Advanced Qualification in Mammography.

(ii) Medical radiologic technologists meeting the requirements of clause (i)(I)-(III) of this subparagraph shall accumulate an average of at least five continuing education hours per year in the technical aspects of mammography at intervals not to exceed three years.

(C) Medical physicist. The person evaluating the performance of mammographic systems in accordance with these regulations shall hold a current Texas license under the Medical Physics Practice Act, Article 4512n in diagnostic radiological physics. The person must also be registered with the agency in accordance with 42.22 of TRCR Part 42 as adopted by reference in §289.122 of this title and the Texas Radiation Control Act unless exempted by 42.2(?) of TRCR Part 42 as adopted by reference in §289.122 of this title.

(3) Personnel responsibilities.

(A) Supervising physician responsibilities are as follows:

(i) to provide oversight and direction for all aspects of the quality assurance program;

(ii) to ensure that technologists have adequate training in mammography and continuing education;

(iii) to arrange staffing and scheduling so that adequate time is available to carry out the quality control tests and to record and interpret the results;

(iv) to select a medical physicist who will administer the program and perform the physicists' tests;

(v) to select a technologist to perform the quality control tests; and

(vi) to review the technologists' quality control test results at least every three months, or more frequently if consistency has not yet been achieved; and to review the physicists' results annually or more frequently when needed.

(B) Equipment operators' responsibilities include performing and recording the results of the following tests or tasks at the frequency indicated. The facility may assign the responsibility for individual tasks within the quality assurance program to a quality control technologist.

(i) Processor quality control shall be performed daily in accordance with paragraph (1)(B)(i) of this subsection.

(ii) Darkroom cleaning shall be performed daily.

(iii) Screen cleaning shall be performed weekly.

(iv) Image quality using a mammographic phantom shall be performed monthly in accordance with paragraph (1)(B)(iv) of this subsection.

(v) Equipment observation check shall be performed monthly.

(vi) Repeat film analysis shall be performed quarterly in accordance with paragraph (1)(C)(i) of this subsection.

(vii) Analysis of fixer retention in film shall be performed quarterly. The estimated amount of residual hypo shall be 0.05 grams per square meter (5 micrograms per square centimeter) or less.

(viii) Viewbox uniformity and condition of devices used to block extraneous light shall be checked semiannually in accordance with paragraph (1)(C)(ii) of this subsection.

(ix) Compression device performance shall be checked semiannually and shall be in accordance with subsection (e)(1)(J) of this section.

(x) Darkroom integrity shall be checked semiannually and shall be in accordance with paragraph (1)(C)(iii) of this subsection.

(xi) Screen-film contact shall be checked semiannually and shall be in accordance with subsection (e)(1)(K) of this section.

(C) Medical physicists' responsibilities include an annual on-site mammography survey of the entire mammography system. Records of the survey shall be maintained by the facility for seven years. The survey by the medical physicist shall include:

(i) performing the tests listed below:

(I) alignment of beam limiting device in accordance with subsection (e)(1)(D) of this section;

(II) evaluation of focal spot performance in accordance with subsection (e)(1)(E) of this section;

(III) kVp accuracy in accordance with subsection (e)(1)(F) of this section;

(IV) beam quality assessment (HVL measurement) in accordance with subsection (e) (1)(H) of this section;

(V) AEC performance in accordance with subsection (e)(1)(G) of this section;

(VI) uniformity of screen speed;

(VII) average glandular dose in accordance with subsection (e)(2) of this section; and

(VIII) output reproducibility, mA and mAs linearity in accordance with subsection (e)(1)(N) of this section;

(IX) image quality evaluation in accordance with subsection (e)(1)(L) of this section; and

(X) artifact evaluation; and

(ii) providing the following to the facility:

(I) a written report of the test results;

(II) written recommendations for corrective actions according to the test results; and

(III) a review of the test results with the supervising physician or his/her designee and the technologist(s) performing the quality control.

(D) The medical physicists' responsibilities shall also include:

(i) performing a survey that verifies that the mammographic unit meets the equipment standards in subsection (e)(1) of this section and the average glandular dose meets the requirements of subsection (e) (2) of this section on equipment that is initially installed, replaced, or reassembled after moving; and

(ii) verifying the average glandular dose within 60 days of replacement in accordance with subsection (e) (2) of this section on mammographic units that have had a tube or tube insert replaced.

(4) Self-referral mammography. Any person proposing to conduct a self-referral mammography program shall not initiate such a program without prior approval of the agency. When requesting such approval, that person shall submit the following information:

(A) the number and type of views (or projections);

(B) the age of the population to be examined and the frequency of the exam following established, nationally recognized criteria, such as those of the American Cancer Society, American College of Radiology, or the National Council on Radiation Protection and Measurements;

(C) written procedures to include the following:

(i) method of advising individuals of the results of the self-referral mammography procedure and any further medical needs indicated. If a report is sent to the mammography patient, it shall include a summary written in language easily understood by a lay person;

(ii) method of advising private physicians of the results of the self-referral mammography procedure and any further medical needs indicated;

(iii) method of follow-up to confirm that mammography patients with positive findings and mammography patients needing repeat exams, have received proper notification; and

(iv) method of follow-up to confirm that practitioners have received proper notification of patients with positive findings needing repeat exams; and

(D) methods for educating mammography patients in breast self-examination techniques and on the necessity for follow-up by a physician.

(5) Records required to be kept with units authorized for mobile services.

(A) In addition to the requirements of 22.11 of TRCR Part 22 as adopted by reference in §289. 114 of this title, copies of the following shall be kept with units authorized for mobile services:

(i) operating and safety procedures in accordance with paragraph (7) of this subsection;

(ii) medical radiologic technologists' credentials;

(iii) current quality control records for at least the last 90 calendar days for on-board processors in accordance with paragraph (1) of this subsection;

(iv) current TRCR Part 13 as adopted by reference in §289.112 of this title, TRCR Part 21 as adopted by reference in §289.113 of this title, TRCR Part 22 as adopted by reference in §289.114 of this title, TRCR Part 42 as adopted by reference in §289.122 of this title, §289.201 of this title, and this section.

(v) copy of certification of mammography system; and

(vi) certification of inspection or notice of failure from last inspection if applicable.

(B) All other records required by this section shall be maintained at a specified location for inspection by the agency.

(6) Records required at authorized use locations.

(A) In addition to the requirements of 22.11 of TRCR Part 22 as adopted by reference in §289. 114 of this title, copies of the following shall be kept at authorized use locations:

(i) operating and safety procedures in accordance with paragraph (7) of this subsection;

(ii) quality assurance program in accordance with paragraph (1) of this subsection;

(iii) credentials for interpreting physicians operating at that location in accordance with paragraph (2)(A) of this subsection;

(iv) credentials for medical radiologic technologists operating at that location in accordance with paragraph (2)(B) of this subsection;

(v) quality control records in accordance with paragraph (1) of this subsection;

(vi) training and continuing education records for interpreting physicians and medical radiologic technologists operating at that location in accordance with paragraph (2)(A) and (B) of this subsection;

(vii) current physicist annual survey of the mammography system;

(viii) current TRCR divisions "General (G)" and "Registration (R)";

(ix) copy of certification of mammography system;

(x) certification of inspection or notification of failure if applicable;

(xi) records of receipts, transfers, and disposal in accordance with paragraph (10) of this subsection; and

(xii) calibration, maintenance, and modification records in accordance with paragraph (15) of this subsection.

(B) All records required by this section shall be maintained at a specific location for inspection by the agency.

(7) Operating and safety procedures. Each registrant shall have written operating and safety procedures that shall be made available to each individual operating x-ray equipment, including any restrictions of the operating technique required for

the safe operation of the particular x-ray system. These procedures shall include a quality assurance program in accordance with paragraph (1) of this subsection. These procedures may be included in a radiation protection program required by 21.101 of TRCR Part 21 as adopted by reference in §289.113 of this title.

(8) Radiation dose limitation and personnel monitoring. Except as otherwise exempted, all individuals who are associated with the operation of a radiation machine are subject to the radiation dose requirements of §289.113 of this title.

(9) Technique chart. A chart or manual shall be provided or electronically displayed in the vicinity of the central panel of each machine which specifies technique factors to be utilized versus patient's anatomical size except for systems that have only automatic exposure control.

(10) Receipt, transfer, and disposal of mammographic machines. Each registrant shall maintain records showing the receipt, transfer, and disposal of mammographic machines. These records shall include the date of receipt, transfer, or disposal, the name and signature of the individual making the record, and the manufacturer's model and serial number from the control panel of the mammographic machine. Records shall be maintained for inspection by the agency until the certification of mammography system is terminated.

(11) Viewing system. Windows, mirrors, closed circuit television, or an equivalent system shall be provided to permit the operator to continuously observe the patient during irradiation. The operator shall be able to maintain verbal, visual, and aural contac with the patient.

(12) Exposure of individuals other than the patient. Only the staff and ancillary personnel required for the medical procedure or training shall be in the room during the radiation exposure.

(13) Calibration, maintenance, and modifications. Each registrant shall maintain records showing calibrations, maintenance, and modifications performed on each mammographic machine. These records shall include the date of the calibration, maintenance, or modification performed, the name of the individual making the record, and the manufacturer's model and serial number of the control panel of the mammographic machine. These records may be maintained in electronic format.

(e) Mammographic x-ray systems. Except for paragraph (1)(I)(ii) and (iii) of this subsection, these requirements are effective October 1, 1995.

(1) Equipment standards. Only x-ray systems meeting the following standards shall be used:

(A) System design. Only equipment that has been specifically designed and manufactured for mammography in accordance with 21 CFR 1010.2, 1020.30, and 1020.31 shall be used.

(B) Image receptor. The image receptor systems and their individual components shall be specifically designed for mammography.

(C) Target/Filter. The x-ray system must have the capability of providing kVp/target/filter combinations compatible with image receptor systems meeting the requirements of paragraph (1)(B) of this subsection.

(D) Collimation. The mammographic system shall be provided with means to limit the useful beam such that the x-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated SID except the edge of the image receptor designed to be adjacent to the chest wall where the x-ray field may not extend beyond this edge by more than 2.0% of the SID. The collimated light field edges shall not differ from the respective edges of the x-ray field along either the length or the width of the visually defined field by more than 2.0% of the SID.

(E) Evaluation of focal spot performance. Focal spot performance shall be evaluated by measuring both parallel and perpendicular to the anode-cathode axis and determining whether they are in compliance with manufacturer provided and National Electrical Manufacturers Association (NEMA) specifications. Focal spot performance also may be evaluated by determining limiting resolution by using a high-contrast resolution pattern. All focal spot dimensions shall be measured.

(F) Accuracy of kVp. The actual kVp shall meet manufacturer's specifications or in the absence of manufacturer's specifications shall be within (G) Figure 2: 25 TAC §289.230(e)(1)(G)

(H) Beam quality. When used with screen-film image receptors, and the contribution to filtration made by the compression device is included, the HVL shall be >/- kVp/100 + 0.03 (in units of millimeters of aluminum) but < kVp/100 + C (millimeters of aluminum) where C = 0.12 millimeters Al for molybdenum/molybdenum, C = 0.19 millimeters Al for molybdenum/rhodium, and C = 0.22 millimeters Al for rhodium/rhodium. Facilities with mammographic units with anode/filter combinations that do not meet the requirements of this paragraph may request an exemption. The exemption request should include manufacturer's specifications for HVL for the specific anode/filter combination. For xeroradiography, the HVL of the useful beam with the compression device in place shall be at least 1.0 and not greater than 1.6 millimeters aluminum equivalent, tested at the kVp used under clinical conditions.

(I) System capabilities. A mammographic x-ray system utilizing screen-film image receptors shall have the capability of:

(i) having the provision for operating with grids that are:

(I) integral to the x-ray system;

(II) available for all image receptor sizes of the system; and

(III) removable if used for diagnostic magnification procedures;

(ii) automatic exposure control for systems installed after September 1, 1993; and

(iii) displaying post-exposure mAs after an exposure made using an automatic exposure control device, for systems initially installed after September 1, 1993.

(J) Compression. The x-ray system shall be capable of compressing the breast with a force of at least 25 pounds and shall be capable of maintaining this compression for at least 15 seconds. For systems with automatic compression, the maximum force applied without manual assistance shall not exceed 40 pounds; and the chest wall edge of the compression paddle must be aligned with the chest wall edge of the image receptor to within ± 1.0% of the SID with the compression paddle placed 6 centimeters above the patient support device.

(K) Screen-film contact. Cassettes shall not be used for mammography if one or more large areas (±1 square centimeter) of poor contact can be seen in a 40 mesh test.

(L) Image quality.

(i) The mammographic x-ray imaging system shall be capable of producing images of the mammographic phantom in which the following objects are visualized:

(I) the four largest fibers with thicknesses of: 1.56 millimeters, 1.12 millimeters, 0.89 millimeters, and 0.75 millimeters.

(II) the three largest speck groups with diameters of: 0.54 millimeters, 0.40 millimeters, and 0.32 millimeters; and

(III) the three largest masses with thicknesses of: 2.0 millimeters, 1.0 millimeters, and 0.75 millimeters;

(ii) The optical density of the film should be greater than 1.20 with control limits of ± 0.20; while the density difference should be about 0.40 with control limits of ± 0.05 for a 4 millimeter-thick disc.

(iii) The images shall be made on the standard mammographic film in use at the facility. No mammograms shall be taken on patients if this minimum is not met.

(M) Technique settings. The technique settings used for subparagraph (L) of this paragraph and paragraph (2) of this subsection shall be those used by the facility for its clinical images of a 50% adipose/50% glandular 4.0 to 4.5 centimeters compressed breast, utilizing the processor used for patient films.

(N) Output reproducibility. Output reproducibility and ma or mAs linearity shall comply with the following.

(i) Figure 3: 25 TAC §289.230(e)(N)(i)

(ii) Figure 4: 25 TAC §289.230(e)(N)(ii)

(2) Dose. The average glandular dose for one craniocaudal view of a 4.0 to 4.5 centimeters (1.8 inch) compressed breast, composed of 50% adipose/50% glandular tissue, shall not exceed the following values:

(A) 100 millirads (1 milligray) for film/screen systems without grid;

(B) 300 millirads (3 milligray) for film/screen systems with grid; and

(C) 400 millirads (4 milligray) for xeroradiographic systems.

(f) Certification requirements. In addition to the requirements of 42.20 and 42.25 of TRCR Part 42 as adopted by reference in §289.122 of this title, if applicable, each applicant shall comply with the following.

(1) Each person having a mammographic x-ray unit shall apply for and receive certification for the mammography system from the agency before beginning use of the mammographic x-ray unit on humans.

(2) An application for mammography certification must be signed by a licensed physician. The signature of the applicant and the radiation safety officer (RSO) shall also be required.

(3) An applicant for certification must obtain a certification on each mammography system that is used by the applicant or the applicant's agent (for the purposes of the requirements of this paragraph, the word "used" refers to the entity other than the technologist that directs the application of radiation to humans). An application for mammography system certification may contain information on multiple mammography x-ray units. Each x-ray unit must be identified by referring to the machine's manufacturer, model number, and serial number of the control panel. An applicant or applicant's agent shall provide proof of current accreditation by an accrediting body approved by the FDA on forms prescribed by the agency.

(4) The applicant shall be qualified by reason of training and experience to use the mammographic machines for the purpose requested in accordance with these rules in such a manner as to minimize danger to public health and safety.

(5) Each applicant shall submit documentation of the following:

(A) proposed quality assurance program in accordance with subsection (d)(1) of this section;

(B) personnel qualifications in accordance with subsection (d)(2) of this section;

(C) model and serial number of each mammographic unit control panel; and

(D) evidence by a physicist holding a current Texas license under the Medical Physics Practice Act, Article 4512n with a specialty in Diagnostic Radiological Physics that:

(i) each unit meets the equipment standards in subsection (e)(1) of this section; and

(ii) the average glandular dose for one craniocaudal view for each unit does not exceed the appropriate values in subsection (e)(2) of this section; and

(E) if the facility offers self-referral mammography, self-referral program information in accordance with subsection (d)(4) of this section.

(6) An applicant for certification of mammography stereotactic systems or other unique mammographic imaging modalities shall comply with subsections (d)(1)(A), (B)(xi)-(xiv), and (xvi); (2)(B) and (C); (3)(A) and (B) as applicable; (3)(C) as applicable; (6) as applicable; (7); (8) -(13); (e)(1)(E)-(H), and (N); (f) except for the accreditation requirements of FDA in (f)(3); (g); (h); (i) as applicable; (j); (k); (l); (m); (n)(1)(B) -(F), and (G); (o)(1); and (2) as applicable, of this section . The purpose and scope of this section and the definitions in subsection (b) of this section also apply to certification of these systems.

(7) Applications shall be processed in accordance with the following time periods.

(A) The first period is the time from receipt of an application by the Division of Licensing, Registration and Standards to the date of issuance or denial of the certification or a written notice outlining why the application is incomplete or unacceptable. This time period is 60 days.

(B) The second period is the time from receipt of the last item necessary to complete the application to the date of issuance or denial of the certification. This time period is 30 days.

(C) These time periods are exclusive of any time period incident to hearings and post-hearing activities required by the Government Code, Chapters 2001 and 2002.

(8) Notwithstanding the provisions of 12.11(a) of TRCR Part 12 as adopted by reference in §289.126 of this title, reimbursement of application fees may be granted in the following manner:

(A) In the event the application is not processed in the time periods as stated in paragraph (7) of this subsection, the applicant has the right to request of the director of the Radiation Control Program full reimbursement of all application fees paid in that particular application process. If the director does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(B) Good cause for exceeding the period established is considered to exist if:

(i) the number of applications for certification to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(ii) another public or private entity utilized in the application process caused the delay; or

(iii) other conditions existed giving good cause for exceeding the established periods.

(C) If the request for full reimbursement authorized by subparagraph (A) of this paragraph is denied, the applicant may then request a hearing by appeal to the Commissioner of Health for a resolution of the dispute. The appeal will be processed in accordance with the formal hearing procedures of the Texas Department of Health, §§1.21-1.34 of this title (relating to Formal Hearing Procedures).

(g) Issuance of certification of mammography systems. Issuance of certification of mammography systems shall be in accordance with 42.29 of TRCR Part 42 as adopted by reference in §289.122 of this title.

(h) Specific terms and conditions of certification of mammography systems. Specific terms and conditions of certification of mammography systems shall be in accordance with 42.31 of TRCR Part 42 as adopted by reference in §289.122 of this title.

(i) Responsibilities of registrant.

(1) In addition to the requirements of 42.32(b), (d), (e) and (f) of TRCR Part 42 as adopted by reference in §289.122 of this title, a registrant shall notify the agency in writing prior to any changes that would render the information contained in the application or the certification of mammography systems inaccurate. These include but are not limited to:

(A) name and mailing address;

(B) street address where machine(s) will be used; and

(C) mammographic x-ray units.

(i) A facility with an existing certification of mammography system may begin using a new or replacement unit before receiving an updated certification if the paperwork regarding the unit has been submitted to the agency with a licensed medical physicists's report verifying compliance of the new unit with the regulations. The physicist's report is required prior to using the unit on patients.

(ii) Loaner units may be used on patients for 60 days without adding the unit to the certification. A licensed medical physicist's report verifying compliance of the loaner unit with the regulations must be completed prior to use on patients. The results of the survey must be submitted to the agency with a cover letter indicating period of use.

(iii) Units involved in clinical trial evaluations may be used on patients for 60 days without adding the unit to an existing certification. A licensed medical physicist's report verifying compliance of the loaner unit with the regulations must be completed prior to use on patients. The results of the survey must be submitted to the agency with a cover letter indicating period of use. If the use period will exceed 60 days, the facility will be required to add the unit to their certification and a prorated fee will be assessed.

(iv) No fees will be assessed for loaner units or evaluation periods of 60 days or less.

(v) Loaner units or units involved in clinical trial evaluations are exempt from the inspection requirement in subsection (n)(1)(A) of this section.

(2) The registrant is required to verify and maintain copies of the qualifications of the individuals listed in subparagraphs (A)-(E) of this paragraph. Notification of change in any of the following is required within 30 days of such change.

(A) radiation safety officer;

(B) supervising physician;

(C) interpreting physicians;

(D) operators of equipment;

(E) licensed medical physicist;

(F) processor;

(G) film/screen change; and

(H) changes in the facilities operating and safety procedures or quality control program.

(3) Records of training and experience required by this section shall be maintained for review in accordance with subsection (o)(2) of this section.

(j) Expiration and termination of certification of mammography systems. Expiration and termination of certification of mammography systems shall be in accordance with 42.33 of TRCR Part 42 as adopted by reference in §289.122 of this title.

(k) Renewal of certification of mammography systems.

(1) Application for renewal of certification shall be filed in accordance with subsection (f) of this section and 42.20 and 42.25 of TRCR Part 42 as adopted by reference in §289.122 of this title, as applicable.

(2) If a registrant files an application in proper form at least 30 days before the existing certification expires, such existing certification shall not expire until the application status has been determined by the agency.

(3) A certification for a mammographic unit is valid for one year and may be renewed annually on payment of the required fee.

(A) If a registrant fails to renew the certification by the required date, the registrant may renew the certification on payment of the renewal fee and a late fee. If the certification is not renewed before the 181st day after the date on which the certificate expired, the registrant must apply for an original certification under this section.

(B) A mammography system may not be used after the expiration date of the certification unless the holder of the expired certification has made a timely and sufficient application for renewal of the certificate as provided in subsection (j) of this section and 42.20 or 42.25 of TRCR Part 42 as adopted by reference in §289.122 of this title, as applicable.

(l) Modification and revocation of certification of mammography systems. Modification and revocation of certification of mammography systems shall be in accordance with 42.35 of TRCR Part 42 as adopted by reference in §289.122 of this title.

(m) Reciprocal recognition of out-of-state certificates of registration. Mammographic x-ray units will not be granted reciprocal recognition and must comply with the requirements of subsection (e) of this section.

(n) Inspections. In addition to the requirements of §289. 201(e) of this title, the following applies to inspections of mammography systems.

(1) Routine inspection of mammography systems.

(A) The agency shall inspect each mammography system that receives a certification in accordance with this chapter not later than the 60th day after the date the certification is issued.

(B) The agency shall inspect, at least once annually, each mammography system that receives a certification.

(C) To protect the public health, the agency may conduct more frequent inspections than required this section.

(D) The agency shall make reasonable attempts to coordinate inspections in this chapter with other inspections required in accordance with this section for the facility where the mammography system is used.

(E) After each satisfactory inspection, the agency shall issue a certificate of inspection for each mammography system inspected. The certificate of inspection must be posted at a conspicuous place on or near the place where the mammography system is used. The certificate of inspection shall:

(i) specifically identify the mammography system inspected;

(ii) state the name and address of the facility where the mammography system was used at the time of the inspection; and

(iii) state the date of the inspection.

(F) Any Severity Level I violation as described in 13.9 of TRCR Part 13 as adopted by reference in §289.112 of this title, found by the agency, constitutes grounds for posting notice of failure of the mammography system to satisfy agency requirements.

(i) Notification of such failure shall be posted.

(I) on the mammography x-ray unit at a conspicuous place if the violation is machine-related; or

(II) near the place where the mammography system practices if the violation is personnel-related; and

(III) in a sufficient number of places to permit the patient to observe the notice.

(ii) The notice of failure shall remain posted until the facility is authorized to remove it by the agency. A facility may post documentation of corrections of the violations submitted to the agency along with the notice of failure until approval to remove the notice of failure is received from the agency.

(G) The agency may require registrants to notify mammography patients whose health or safety may have been or may be adversely affected by failure of a mammography system to meet the requirements of the Act or this chapter.

(i) The patient notification, if required, shall include:

(I) explanation of the mammography system failure to the patient; and

(II) the potential consequences to the mammography patient.

(ii) The registrant shall maintain a record of the mammography patients notified in accordance with subsection (d)(1)(G) of this section for inspection by the agency. The records shall include the name and address of each mammography patient notified, date of notification, and a copy of the text sent to the individual.

(2) A mammography system that has been issued a certification under subsection (f)(3) of this section is exempt from the inspection requirements of paragraph (1)(A) of this subsection.

(o) Appendices.

(1) Subjects to be included in mammography training shall be as follows:

(A) anatomy and physiology of the female breast which shall include:

(i) mammary glands;

(ii) external anatomy;

(iii) retromammary space;

(iv) central portion;

(v) cooper's ligament;

(vi) vessels, nerves, lymphatics; and

(vii) breast tissue:

(I) fibro-glandular;

(II) fibro-fatty;

(III) fatty; and

(IV) lactating;

(B) mammography positioning which shall include actual positioning of patients and/or models as follows:

(i) craniocaudal;

(ii) mediolateral oblique;

(iii) supplemental;

(iv) magnification;

(v) errors in positioning;

(vi) postoperative breast and the augmented breast;

(vii) breast localization and specimen radiography; and

(viii) use of compression;

(C) technical factors;

(D) film evaluation and critique;

(E) pathology; and

(F) quality assurance program.

(2) Time requirements for record keeping shall be in accordance with the following chart.

Figure 5: 25 TAC §289.230(o)(2)

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 21, 1995.

TRD-9510577 Susan K. Steeg
General Counsel
Texas Department of Health

Effective date: October 1, 1995

Proposal publication date: March 28, 1995

For further information, please call: (512) 458-7236

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 87. Treatment

• 37 TAC §87.21

The Texas Youth Commission (TYC) adopts an amendment to §87.21, concerning furloughs, without changes to the proposed text as published in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5207).

The justification for amending the section is to have a more efficient system of granting furloughs to TYC youth in residential programs.

The amendment will define specific types of furloughs that may be granted for TYC youth in residential programs and the restrictions that apply to each type of furlough.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to permit the child liberty under supervision and on conditions it believes conducive to acceptable behavior.

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

This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on August 18, 1995.

TRD-9510522 Steve Robinson
Executive Director
Texas Youth Commission

Effective date: September 8, 1995

Proposal publication date: July 18, 1995

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

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 22 TAC 203.13(8)

$C \times C = C' \times V'$

C = strength of concentrated fluid

V = volume of ounces of concentrated fluid

C' = strength of dilute fluid

V' = volume of ounces of dilute fluid

For example, how much of a 20 index fluid will it take to make two gallons (256 oz.) of a one index (1%) injection solution? Solving for V.

$C \times V = C' \times V'$

$20 \times V = 1 \times 256$

$20V = 256$

$V = 256/20 = 12.8$ oz.

Figure 1: 25 TAC, §289.230(b)(28)

$$OD = \log_{10} \frac{Io}{It}$$

where I_o = light intensity incident on the film and
I_t = light transmitted through the film.

Figure 2: 25 TAC §289.230(e)(1)(G)

(G) Automatic exposure control performance. The coefficient of variation of exposure shall not exceed 0.10 when all technique factors are held constant. This requirement shall be deemed to have been met if, when 4 exposures are made at identical technique factors, the value of the average exposure ($\bar{E}$) is greater than or equal to 5 times the maximum exposure (E_{max}) minus the minimum exposure (E_{min}). In addition, mammographic systems in the AEC mode shall be able to maintain constant film density to within +/- 0.3 OD of the average OD over the range of kVp used in clinical conditions.

$$\bar{E} \geq 5(E_{max} - E_{min})$$

Figure 3: 25 TAC §289.230(e)(1)(N)(i)

(i) Exposure Reproducibility. The coefficient of variation of exposure shall not exceed 0.10 when all technique factors are held constant. This requirement shall be deemed to have been met if, when 4 exposures are made at identical technique factors, the value of the average exposure ($\bar{E}$) is greater than or equal to 5 times the maximum exposure (E_{max}) minus the minimum exposure (E_{min}):

$$\bar{E} \geq 5(E_{max} - E_{min})$$

Figure 4: 25 TAC §289.230(e)(1)(N)(ii)

(ii) Linearity. The average ratios of exposure (mR) to the indicated milliampere-seconds (mAs) product obtained at any two consecutive tube current settings shall not differ by more than 0.10 times their sum, where $\overline{X}_1$ and $\overline{X}_2$ are the average mR/mAs values obtained at each of two consecutive tube current settings:

$$(\overline{X}_1 - \overline{X}_2) \leq 0.10(\overline{X}_1 + \overline{X}_2)$$

Figure 5: 25 TAC §289.230(0)(2)

Specific Subection	Name of Record	Time Interval for Record Keeping
(d)(1)(A)	Quality Assurance Program	2 years
(d)(1)(B)(i) through (xvi), and (C)	Quality Control Checks	2 years
(d)(1)(B)(i) and (iv)	Films Resulting from Performance of Quality Control Tests	1 year
(d)(1)(D)	Retention of Clinical Images	In accordance with subsection (d)(1)(D) of this section
(d)(2)(A)	Interpreting Physician Qualifications	Until termination of certification or 2 years after physician leaves facility
(d)(2)(A)(iv)(I)	Interpreting Physician Continuing Experience	2 years
(d)(2)(A)(iv)(II)	Interpreting Physician Continuing Education	6 years
(d)(2)(B)(i)	Medical Radiologic Technologist Qualifications	Until termination of certification or 2 years after technologist leaves facility
(d)(2)(B)(ii)	Medical Radiologic Technologist Continuing Education	6 years
(d)(3)(C)	Physicist Mammography Survey	7 years
(d)(10)	Records of Receipts, Transfer, and Disposal	Until termination of certification
(d)(15)	Records of Calibrations, Maintenance, and Modifications Performed on Mammographic Machines	2 years
(n)(1)(E)	Certification of Inspection	Until termination of certification
(n)(1)(F)	Notice of Failure	Until termination of certification
(n)(1)(G)	Patient Notification	Until termination of certification

Name: Gerardo Ramirez
Grade: 9
School: Skyline High School, Dallas 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 State Board of Public Accountancy

Thursday, August 24, 1995, 9:00 a.m.

333 Guadalupe, Room 910

Austin

Emergency Revised Agenda

Board Meeting

AGENDA

Consideration of recommendations of the Technical Standards Review Committee; the Behavioral Enforcement Committee; the Rules Committee regarding proposed revisions to board rule §527.4(2) and §511.106(5)(c); the Qualifications Committee; the Major Case Enforcement Committee; the adoption of proposed revisions to board rule §505.10-Board Committees; as well as the consideration of proposed board orders, consent orders, proposals for decision and motions for rehearing submitted by Robert E. Adelson, Robert Garza and James R. Ray.

Reason for emergency: Immediate action is required as the original transmission of this agenda was not received as a result of technical transmission difficulties which were not reasonably foreseeable.

Contact: J Randel (Jerry) Hill, 333 Guadalupe, Tower III, Room 900, Austin, Texas 78701-3900, (512) 505-5542.

Filed: August 21, 1995, 10:35 a.m.

TRD-9510575

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Texas Department of Agriculture

Tuesday, August 29, 1995, 1:00 p.m.

Ambassador Hotel, 3100 I-40 West

Amarillo

Texas Corn Producers Board Committee Meetings

AGENDA:

1:00 p.m.-Advertising, Promotion and Education

Report on committee meeting on May 1, presentation of Thacker Proposal; report on Chicago Food Fair, Texas County Agent's meeting, and budget and funds used for promotion; presentation on proposal for automobile trade, Baylor University Proposal, Texas Agricultural Lifetime Leadership Proposal Educational Video to assist in marketing; discussion on future promotion activities; committee recommendations; discussion on any other business; and adjourn.

3:00 p.m.-Research Proposals and Oversight Committee

Call to order; report on Research Proposals Committee meeting on May 1; presentation on research proposal, for Dr. Nancy Keller; consideration of in-progress research projects; committee recommendations; discussion on any other business; and adjourn.

3:30 p.m.-C-O-R-N Committee

Call to order; action on report from committee meeting on May 1; discussion on strategic planning session; discussion of TCPB appearances; consideration of other interest involving budget; discussion on any other business; and adjourn.

4:00 p.m.-Finance Committee

Call to order; report on committee meeting on May 1; discussion on April, May, and June financial statements; budget recommendations from other committees; discussion and consideration of TCPB budget; discussion on any other business; and adjourn.

Contact: Carl King, 218 East Bedford, Dimmitt, Texas 79027, (806) 647-4224.

Filed: August 21, 1995, 3:38 p.m.

TRD-9510592

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State Aircraft Pooling Board

Friday, August 25, 1995, 1:00 p.m.

4900 Old Manor Road

Austin

AGENDA:

The board will take roll call; hold executive session for discussion of personnel matters; possible action regarding personnel matters and/or salaries. Adjourn.

Contact: Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

Filed: August 17, 1995, 2:47 p.m.

TRD-9510439

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Texas Animal Health Commission

Wednesday, August 30, 1995, 2:30 p.m.

2105 Kramer Lane

Austin

Audit Subcommittee

AGENDA:

I. Approval of minutes from the meeting of June 28, 1995.

II. Discussion and possible action on Area 1 (Amarillo) management control review.

III Discussion and possible action on human resources report.

IV. Discussion and possible action on audit plan for fiscal year 1996

V. Discussion of changes to Article 9.

VI. Public comment.

VII. Adjournment.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: August 22, 1995, 8:36 a.m.

TRD-9510594

Wednesday, August 30, 1995, 3:30 p.m.

2105 Kramer Lane

Austin

Finance Subcommittee

AGENDA:

I. Approval of minutes from the meeting of June 28, 1995.

II Discussion and possible action on the biennial operating plan for information resources for fiscal year 1996-1997.

III. Discussion and possible action on the Information Needs Assessment Project.

IV. Discussion and possible action on fiscal year 1996-1997 budget process.

V. Discussion and possible action on fiscal year 1996-1997 operating budget.

VI. Discussion and possible action on fiscal year 1995 operating budget.

VII. Public comment.

VIII. Adjournment.

Contact: Melissa Nitsche, P.O. Box 12966, Austin, Texas 78711-2966, (512) 719-0714.

Filed: August 22, 1995, 8:36 a.m.

TRD-9510595

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Texas Commission on the Arts

Thursday, September 7, 1995, 9:00 a.m.

Embassy Suites Hotel, 1800 South Second Street

McAllen

Administrative Committee Meeting

AGENDA:

I. Call to order

II. Public hearing

III. Approval of minutes of the June 2, 1995

Administrative Committee meeting

IV. Financial statement fiscal year 1995

V. Legislative outcomes

VI. Texas cultural endowment

VII. Policy recommendations

A. Application social security requirement

B. Touring program revision

C. Other business

VIII. Alamo Rent A Car update

IX. "State of the Arts" license plate update

A. Sales and marketing report

B. Marketing strategies

C. Other business

X. Other business

XI. Adjournment

Contact: Deborah Cole, P.O. Box 13406, Austin, Texas 78711-3406, (512) 463-5535.

Filed: August 21, 1995, 10:23 a.m.

TRD-9510574

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Texas Committee on Purchases of Products and Services of Blind and Severely Disabled Persons

Thursday, August 21, 1995, 9:00 a.m.

General Services Commission, Central Services Building, 1711 San Jacinto, Room 200-B

Austin

Pricing Subcommittee

AGENDA:

Call to order and introduction of subcommittee members and guests

Acceptance of minutes from May 26, 1995, meeting

Discussion and recommendation for action on new services; renewal services; new products

Discussion and recommendations for action on product changes and revisions

Adjournment

Contact: Pat Martin, P.O. Box 13047, Austin, Texas 78711, (512) 463-3443.

Filed: August 18, 1995, 3:16 p.m.

TRD-9510547

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Texas Department of Commerce

Monday, August 28, 1995, 10:00 a.m.

1700 North Congress Avenue, Room 119

Austin

Texas Manufacturing Institute

AGENDA:

10:00 a.m.-Call to order

Action item

10:01 a.m.-Adoption of minutes from meeting of April 14, 1995

Information items

10:05 a.m.-TMAC Strategic Plan presentation

10:35 a.m.-TMAC Headquarters operation update

Regional offices' update

10:45 a.m.-Southwest Research Institute-South Central Office

The University of Texas at Arlington, Automation and Robotics Research Institute-Metroplex Office

Texas A&M University System, Texas Engineering Extension Service-Statewide Office

University of Houston-Gulf Coast Office

The University of Texas at El Paso-Upper Rio Grande Office

Noon-Adjourn

Persons with disabilities who plan to attend this meeting who may need auxiliary aids or services, or who need assistance in having English translated into Spanish, should contact Lena Chiu (512) 936-0234, at least two days before this meeting so that appropriate arrangements can be made.

Contact: Lena Chiu, 1700 North Congress Avenue, Austin, Texas 78701, (512) 936-0234.

Filed: August 17, 1995, 3:50 p.m.

TRD-9510455

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Texas Employment Commission

Tuesday, August 29, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

Emergency Meeting

AGENDA:

Prior meeting notes; 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 and higher level appeals in unemployment compensation cases listed on Commission Docket 35; and set date of next meeting.

Reason for emergency: Systemwide electrical failure prevented timely filing. Meeting could not be rescheduled due to the need to meet federal time requirements.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: August 22, 1995, 8:41 a.m.

TRD-9510597

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Texas General Land Office

Wednesday, August 30, 1995, 9:30 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room #831

Austin

Veteran's Land Board

AGENDA:

116. Approval of the July 19, 1995, minutes of the VLB meeting.

117. Consideration of all steps necessary for issuance of State of Texas general obligation bonds to refund an amount not to exceed $125,000,000.

118. Review of the Forward Swap and State of Texas Veterans' Housing Assistance Refunding Bonds, Series 1995 transaction.

119. Consideration of a resolution to terminate the swap dated February 1, 1994, between the Veterans Land Board of the State of Texas and AIG Financial Productions Corporation.

120. Consideration of all steps necessary for the issuance of State of Texas general obligation bonds to refund an amount not to exceed $88,490,000 of State of Texas Veterans' Housing Assistance Bonds, Series 1985.

121. Consideration of the selection of underwriter(s) for the Housing Program transaction(s).

122. Resolution authorizing the Texas Veterans Land Board to participate in the Texas Department of Housing and Community Affairs subsidized Home Purchase Loan Program.

Contact: Karen Pratt, 1700 North Congress Avenue, Room 700, Austin, Texas 78701, (512) 463-5171.

Filed: August 21, 1995, 1:41 a.m.

TRD-9510585

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Texas Department of Health

Tuesday, August 29, 1995, 9:00 a.m.

Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

Drug Use Review Board

AGENDA:

The board will discuss and possibly act on: presentation on health care reform by Michael D. McKinney, M.D., Commissioner, Texas Health and Human Services Commission; update on current vendor drug program issue; approval of the minutes from the April 18, 1995 meeting; responses to HMG-CoA reductase inhibitor, sedative-hypnotic and anti-hyperlipidemic intervention letters; selected patient profiles on the use of Ketorolac, Digoxin, and Interferon-beta; Estrogen/Progesterone therapy; meeting of ad hoc committees (Provider Education; and Intervention); educational material on ulcer disease management; election of chair and vice-chair; selection of targeted drug for next profiles; and scheduling next meeting/adjournment.

Contact: Curtis Burch, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6947. For ADA assistance, contact Richard Butler at (512) 458-6410 or T.D.D. 458-7708 at least two days prior to the meeting.

Filed: August 18, 1995, 3:16 p.m.

TRD-9510546

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Texas Department of Insurance

Friday, September 8, 1995, 9:00 a.m.

333 Guadalupe Street, Room 1264, Tower One

Austin

Texas Health Reinsurance System

AGENDA:

I. Call to order

II. Discussion and take possible action on approving the minutes of the last meeting

III. Participation by the public

IV. Discussion and report from TDI staff, including comments received for August 29 public hearing

V. Discussion and take possible action on amending or revising the plan of operation

VI. Discussion and take possible action on actuarial and operational items of the System

A. Report from the actuarial firm of Milliman and Robertson, Inc. concerning assessments, rates, terms of a contract with the System, provisions and operations.

B. Rates for the standard mandated plans.

C. Ability to use a variable rating system and/or the premium rates used by the reinsured carriers.

D. Assessments, including interim, assessment formula, terms a a contract with the System, statutory provisions and operations.

E. Other general business associated with the actuarial function.

VII. Discussion and take possible action on the hiring of an administrating carrier for the System, and take possible action on the hiring

VIII. Discussion and take possible action on an interim assessment

IX. Any further business

X. Setting the agenda, date and location for next board meeting

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: August 18, 1995, 2:28 p.m.

TRD-9510533

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Texas Juvenile Probation Commission

Thursday, August 24, 1995, 10:30 a.m.

2015 South IH-35

Austin

Emergency Revised Agency

Board Meeting

AGENDA:

Revised Emergency Agenda

11. Closed executive session

Interview of top finalists for the TJPC executive director's position by the full board

Discussion of TJPC executive director's position

12. Open session to take action on items discussed in the closed executive session; appointment of new TJPC executive director

Reason for emergency: In order to have TJPC's a new executive director on board by September 1, 1995.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: August 21, 1995, 10:36 a.m.

TRD-9510576

Thursday, August 31, 1995, 2:00 p.m.

2015 South IH-35

Austin

TJPC/TYC Subcommittee

AGENDA:

Call to order; approval of April 21, 1995 minutes; discuss establishment of subcommittees; State Commitment Survey and Juvenile Justice funding options; coordinated efforts (a) Joint Strategic Plan, (b) Commitment targets, (c) TJPC and TYC Training Conference; Sunset Review Policy issues; schedule next meeting.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: August 17, 1995, 2:20 p.m.

TRD-9510433

Thursday, August 31, 1995, 2:00 p.m.

2015 South IH-35

Austin

TJPC/TYC Subcommittee

AGENDA:

Call to order; approval of April 21, 1995 minutes; discuss establishment of subcommittees; State Commitment Survey and Juvenile Justice funding options; coordinated efforts (a) Joint Strategic Plan, (b) Commitment targets, (c) TJPC and TYC Training Conference; Sunset Review policy issues; schedule next meeting.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: August 17, 1995, 2:21 p.m.

TRD-9510434

Thursday, August 31, 1995, 2:00 p.m.

2015 South IH-35

Austin

TJPC/TYC Subcommittee

AGENDA:

Call to order; approval of April 21, 1995 minutes; discuss establishment of subcommittees; State Commitment Survey and Juvenile Justice funding options; coordinated efforts (a) Joint Strategic Plan, (b) Commitment targets, (c) TJPC and TYC Training Conference; Sunset Review policy issues; schedule next meeting.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: August 17, 1995, 2:21 p.m.

TRD-9510435

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Texas State Board of Medical Examiners

Friday-Saturday, August 18-19, 1995, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Emergency Revised Agenda

AGENDA:

In addition to the previously posted agenda, the following were added: approval of additional agreed orders, approval of additional modification/termination request orders, appointment of representatives to an advisory commission to the Board of Chiropractic Examiners, and approval of committee appointments for new board members.

Reason for emergency: Information has been received by the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: August 17, 1995, 3:50 p.m.

TRD-9510445

Monday-Tuesday, August 28-29, 1995, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners Grandfathering, Reciprocity, and Application Committee

AGENDA:

August 28, 1995

Call to order

Roll call

Executive session under the authority of the Open Meetings Act, §551.071 or the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Revised Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and license disciplinary actions.

Open session to review applicants for automatic licensure:

9:00 a.m.-Charles Johnson, Per Godsk Otte, Gary Stier, and Arthur Glen Minshew

10:00 a.m.-Jackie Kopanski and Maria Pilar New

11:00 a.m.-Yuly Zhang and Chunhui Lu

1:00 p.m.-Allan J. Walling, Mostafa Bighamian, Yu-Zhi Li, and John Pascone

2:30 p.m.-Joe Santos, Mark Hogan, Ronald Shipman, Henrietta Rice Murayama, Ralph Britt, and Nelda English

August 29, 9:00 a.m.

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Revised Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.

Open session to review applicants for licensure by endorsement:

Hsiao-Fen Chuo and Masaaki Nakano

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: August 18, 1995, 9:28 a.m.

TRD-9510475

Tuesday, August 29, 1995, 9:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners, Education Committee

AGENDA:

Call to order

Roll call

Discussion and possible action on:

a. Rules related to licensure and acupuncture schools

b. Participation in the development of computer simulated point location exam of National Commission for the Certification of Acupuncturists

Citizen communication-a maximum of ten speakers will be allowed to speak to the committee for up to three minutes each, on a "first come, first served" basis regarding education concerns.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: August 18, 1995, 9:28 a.m.

TRD-9510476

Tuesday, August 29, 1995, 10:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners Examination, Licensure and Fee Committee

AGENDA:

Call to order

Roll call

Executive session under the authority of the Open Meetings, §551.071 of the Government Code and Article 4495b, §2.07(b) and §2.09(o), Texas Civil Statutes for private consultation and advice of counsel concerning pending litigation relative to applications for licensure and licensee disciplinary actions.

Open session to review applicant for licensure by examination:

Edward Zarandin Saloma

Citizen communication: a maximum of ten speakers will be allowed to speak to the committee for up to three minutes each, on a "first come, first served" basis regarding examination, licensure and fee issues.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: August 18, 1995, 9:29 a.m.

TRD-9510477

Tuesday, August 29, 1995, 11:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Texas State Board of Acupuncture Examiners

AGENDA:

The agenda includes speakers on auricular acupuncture, discussion, recommendations and possible action on auricular, approval of 1996 board meeting dates, approval of minutes from previous board meeting, presentation of reports and approval of action items from committees meeting during board meeting, citizens communication, and executive director's report.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax: (512) 834-4597.

Filed: August 18, 1995, 9:29 a.m.

TRD-9510478

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Midwestern State University

Thursday, August 24, 1995, 10:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

AGENDA:

The board will consider 1) a recommendation concerning easement request by the City of Wichita Falls; 2) a recommendation to enter into a tuition reciprocity agreement with an Oklahoma school; and 3) course and lab fees for the respiratory care program.

Contact: Deborah L. Barrow, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: August 18, 1995, 10:56 a.m.

TRD-9510497

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Texas Natural Resource Conservation Commission

Friday, August 25, 1995, 9:30 a.m.

12015 Park 35 Circle, Building E, Room 201S

Austin

Municipal Solid Waste Management and Resource Recovery Advisory Council

AGENDA:

The next meeting of the Municipal Solid Waste Management and Resource Recovery Advisory Council will be held August 25, 1995, Texas Natural Resource Conservation Commission complex, Building E, Room 201S. The meeting will be held form 9:30 a.m. to 4:30 p.m.

The meeting will include minutes of the July 27-28, 1995 council meeting. Organizational structure for the council, discussion regarding monitoring groundwater contamination at landfills and methane gas migration from landfills, Border Affairs Committee meeting, Municipal Solid Waste Division report, Waste Planning and Assessment Division report, Office of Pollution Prevention and Recycling report, and public comments.

The meeting is open to the general public and comments are welcome.

Contact: Gary W. Trim, 12015 Park 35 Circle, Building E, Mail Code 124, Austin, Texas 78711-3087, (512) 239-6708 or fax (512) 239-6717.

Filed: August 18, 1995, 10:48 a.m.

TRD-9510492

Wednesday, August 30, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters: Class 2 mods; underground injection control permits; Class 3 modification; district matters; water rights; water utility matter; municipal waste discharge enforcement; petroleum storage tank enforcement; miscellaneous; contract; resolution; rules; report; motion for reconsideration; hearing request denial; emergency authorization; examiner's items; executive session; in addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular action at a future date or time. (Registration begins at 8:45 a.m. until 9:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: August 21, 1995, 9:26 a.m.

TRD-9510568

Wednesday, August 30, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

Revised Agenda

AGENDA:

This addendum is being posted to replace Item #34.

Contact: Doug Kitt, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: August 21, 1995, 1:02 a.m.

TRD-9510579

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Public Utility Commission of Texas

Monday, November 13, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits will be held on the above date and time in Docket Number 14434: Complaint of Larry Wade against GTE Southwest, Inc., regarding Centranet Service.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 17, 1995, 2:48 p.m.

TRD-9510443

Monday, April 15, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Hearings Division

AGENDA:

A hearing on the merits has been scheduled for the above date and time in Docket Num-

ber 14152-complaint of City of Denton against GTE Southwest, Inc.

Contact: Paul Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: August 21, 1995, 1:04 a.m.

TRD-9510580

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Railroad Commission of Texas

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The Commission will consider and act on the Office of Information Services Director's Report on Division Administration, Budget, Procedures, and Personnel Matters.

Contact: Brian W. Schaible, P.O. Box 12967, Austin, Texas 78701, (512) 463-6710.

Filed: August 18, 1995, 1:41 p.m.

TRD-9510531

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The commission may meet in executive session on any items listed above as authorized by the Open Meetings Act.

Contact: Carole J. Vogel, P.O. Box 12967, Austin, Texas 78711, (512) 463-7033.

Filed: August 18, 1995, 10:32 a.m.

TRD-9510484

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures and personnel matters, including the Consolidated Print Shop Franchise Agreement and interagency contract with the Texas Education Agency.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: August 18, 1995, 10:36 a.m.

TRD-9510485

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Melvin B. Hodgkiss, P.E., P.O. Box 12967, Austin, Texas 78711, (512) 463-6901.

Filed: August 18, 1995, 10:37 a.m.

TRD-9510486

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on agency administration, budget, policy and procedures, and personnel matters for all divisions. The commission may meet in executive session to consider the appointment, employment, evaluation, re-assignment, duties, discipline and/or dismissal of personnel.

Contact: Mark Bogan, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-6981.

Filed: August 18, 1995, 10:37 a.m.

TRD-9510487

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the agency budget, fiscal and administrative matters and the Administrative Services Division director's report on division administration, budget, procedures and personnel matters, including the Consolidated Print Shop Franchise Agreement, interagency contract with the Texas Education Agency, Corpus Christi District Office interagency contract, and annual maintenance contracts.

Contact: Roger Dillon, P.O. Box 12967, Austin, Texas 78711-2967, (512) 463-7257.

Filed: August 18, 1995, 10:38 a.m.

TRD-9510488

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, annual maintenance contract renewals and personnel matters.

Contact: Bob Kmetz, P.O. Box 12967, Austin, Texas 78701, (512) 463-7251.

Filed: August 18, 1995, 10:38 a.m.

TRD-9510489

Tuesday, August 29, 1995, 9:30 a.m.

1701 North Congress Avenue, First Floor Conference Room 1-111

Austin

AGENDA:

The commission will consider and act on the Information Resource Manager's report on information resource planning documents.

The commission will consider and act on the Information Resource Manager's report on the administration, budget, procedures, equipment acquisitions, contracts, work schedules and quarterly updates associated with the Department of Energy-RRC Area of Review (AOR) Data Management Enhancement Grant Status Review.

Contact: Mel Mireles, P.O. Box 12967, Austin, Texas 78701, (512) 463-7249.

Filed: August 18, 1995, 10:39 a.m.

TRD-9510490

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Texas Savings and Loan Department

Wednesday, September 6, 1995, 9:00 a.m.

Finance Commission Building, 2601 North Lamar Boulevard, Third Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application of Coastal Banc SSB, Houston, Texas to merge with Texas Capital Bank, N.A., with Coastal Bank SSB the surviving entity, from which record the commissioner will determine whether to

grant or deny the application.

Contact: Teresa Scarborough, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 475-1350.

Filed: August 17, 1995, 3:27 p.m.

TRD-9510448

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Teacher Retirement System of Texas

Tuesday, August 29, 1995, 1:30 p.m.

1717 Main Street, Seventh Floor Boardroom

Austin

Board of Trustees Real Estate Committee

AGENDA:

Approval of minutes of July 21, 1995, meeting; consideration of proposed sale of property owned by TRST Plantation, Inc.; consideration of proposed sale of properties owned by TRST Houston, Inc.; and update on mortgage risk ratings.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400.

Filed: August 22, 1995, 9:23 a.m.

TRD-9510599

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Texans' War on Drugs

Tuesday, August 29, 1995, 10:00 a.m.

611 North West Loop 410

San Antonio

Emergency Meeting

Board of Directors Meeting

AGENDA:

1) Call to order

2) Establish quorum

3) Approval of minutes

4) Executive session

5) Action on matters discussed in executive session

6) President's report

7) Set next meeting date

8) Other business

9) Adjourn

Reason for emergency: Power outage.

Contact: Janis Pittel, 313 East Anderson Lane, Suite 101, Austin, Texas 78752-1222, (512) 452-0141.

Filed: August 22, 1995, 8:36 a.m.

TRD-9510596

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The Texas A&M University System, Board of Regents

Friday, August 25, 1995, 10:00 a.m.

Texas A&M University-Corpus Christi, Chapman Conference Room, Corpus Christi Hall, Room 276

Corpus Christi

Revised Agenda

System Policies Committee

AGENDA:

Revised Agenda:

The purpose of this meeting is to review the following policies for recommendation to the full board: community collaboration policy; system investment policy; system airplane travel policy; control of fraud and fraudulent actions policy; debt management policy; budget/authorizations, limitation, and delegation of authority policy; crisis management policy; real property, gift and bequest acceptance policy; administration of real estate policy; system litigation policy; ethics policy; research agreement policy; and tenure policy.

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600.

Filed: August 21, 1995, 5:00 p.m.

TRD-9510593

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Texas Southern University

Friday, September 1, 1995, 3:00 p.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Finance and Buildings Committee

AGENDA:

Meeting to consider: Matters relating to financial reporting systems, and budgets; fiscal reports from the administration; investments; contract awards; and informational items.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: August 18, 1995, 10:03 a.m.

TRD-9510481

Friday, October 6, 1995, 8:30 a.m.

3100 Cleburne, Hannah Hall, Room 111

Houston

Board of Regents

AGENDA:

Meeting to consider: Minutes; report of the president; report from standing committees; executive session.

Contact: Everett O. Bell, 3100 Cleburne, Houston, Texas 77004, (713) 529-8911.

Filed: August 18, 1995, 10:03 a.m.

TRD-9510480

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University of Houston System

Wednesday, August 23, 1995, 1:00 p.m.

Shamrock Room, Conrad Hilton College Building, 4800 Calhoun, University of Houston

Houston

Board of Regents

AGENDA:

To discuss and/or approve the following: Executive session; revision of board policy; personnel recommendations; organizational charts: 1996 annual plan summaries; installation of stair and elevators; fiscal year 1996 operating budget; and Higher Education Assistance Fund Five Year Plan.

Contact: Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

Filed: August 17, 1995, 4:49 p.m.

TRD-9510458

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The University of Texas at Austin

Wednesday, August 27, 1995, 1:00 p.m.

Alumni Center, Schmidt Room, 21st and San Jacinto

Austin

Intercollegiate Athletics for Men

AGENDA:

Convene into open session, recess into executive session, reconvene into open session, approve minutes of June 7, 1995, items from executive session, development, schedules/schedule changes, tickets/ticket policy, budget/budget items, construction, new business, old business and adjourn.

Contact: Betty Corley, P.O. Box 7399, Austin, Texas 78713, (512) 471-5757.

Filed: August 18, 1995, 11:11 a.m.

TRD-9510498

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Texas Workers' Compensation Insurance Fund

Tuesday, August 29, 1995, 7:00 p.m.

98 San Jacinto Boulevard, Plaza Suite 516

Austin

Board of Directors

AGENDA:

The Board of Directors of the Texas Workers' Compensation Insurance Fund (Fund) will have an informal dinner at 7:00 p.m. on Tuesday, August 29, 1995 The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund and invited guests. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 100 Congress Avenue, Austin, Texas 78701, (512) 404-7142.

Filed: August 21, 1995, 2:49 p.m.

TRD-9510591

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Regional Meetings

Meetings Filed August 17, 1995

The Alamo Area Council of Governments 9-1-1 Area Judges Committee met at 118 Broadway, Suite 400, San Antonio, August 23, 1995, at 9: 30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9510451.

The Alamo Area Council of Governments Rural Area Judges met at 118 Broadway, Suite 400, San Antonio, August 23, 1995, at 10:30 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9510452.

The Alamo Area Council of Governments Alamo Area Housing Finance Corporation met at 118 Broadway, Suite 400, San Antonio, Tuesday, August 23, 1995, at 11:00 a.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9510453.

The Alamo Area Council of Governments Board of Directors met at 118 Broadway, Suite 400, San Antonio, August 23, 1995, at 1:00 p.m. Information may be obtained from Al J. Notzon III, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9510454.

The Capital Area Rural Transportation System (CARTS) CARTS Board of Directors met at 2010 East Sixth Street, Austin, August 24, 1995, at 9:00 a. m. Information may be obtained from Edna M. Burroughs, P.O. Box 6050, Austin, Texas 78702, (512) 389-1011. TRD-9510429.

The Central Counties Center for MHMR Services (Revised Agenda.) Board of Trustees met at 304 South 22nd Street, Temple, August 24, 1995, at 7: 15 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9510419.

The Golden Crescent Private Industry Council Joint Executive/Planning Committee met at 2401 Houston Highway, Victoria, August 21, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512)576-5872. TRD-9510430.

The Golden Crescent Private Industry Council met at 2401 Houston Highway, Victoria, August 23, 1995, at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9510431.

The Hays County Appraisal District Appraisal Review Board met at 21001 North IH-35, Kyle, August 22, 1995, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9510436.

The Lower Rio Grande Valley Development Council Hidalgo County Metropolitan Planning Organization met at the TxDOT District Office, 600 West Expressway US 83, Pharr, August 24, 1995, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 4900 North 23rd Street, McAllen, Texas (210) 682-3481. TRD-9510432.

The Pecan Valley MHMR Region Board of Trustees met at 104 Pirate Drive, Granbury, August 23, 1995, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9510420.

The Permian Basin Regional Planning Commission Board of Directors Permian Basin Private Industry Council met at 2910 LaForce Boulevard, Midland, August 23, 1995, at 10:00 a.m. Information may be obtained from Carole Burrow, P.O. Box 60660, Midland, Texas 79711-0660. TRD-9510457.

The San Antonio-Bexar County Metropolitan Planning Organization Bicycle Mobility Task Force met at the Municipal Plaza Building, B Room, corner of Main and Commerce, San Antonio, August 23, 1995, at 4:00 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9510444.

The San Jacinto River Authority Board of Directors met at 2301 North Millbend Drive, The Woodlands, August 23, 1995, at 12:30 p.m. Information may be obtained from James R. Adams or Ruby Shiver, P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9510456.

The West Central Texas Municipal Water District Board of Directors met at 410 Hickory, Abilene, August 23, 1995, at 9:30 a.m. Information may be obtained from Michele R. Sanders, P.O. Box 2362, Abilene, Texas 79604, (915) 673-8254. TRD-9510447.

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Meetings Filed August 18, 1995

The Austin Travis County MHMR Center Finance and Control Committee met at 1430 Collier Street, Austin, August 22, 1995, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141, Ext. 4031. TRD-9510521.

The Austin Travis County MHMR Center (Revised Agenda.) Finance and Control Committee met at 1430 Collier Street, Austin, August 22, 1995, at Noon. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141. TRD-9510553.

The Barton Springs/Edwards Aquifer Conservation District Board of Directors (Called Meeting) met at 1124A Regal Row, Austin, August 22, 1995, at 9:00 a.m. Information may be obtained from Bill E. Couch, 1124A Regal Row, Austin, Texas 78748, (512) 282-8441, Fax: (512) 282-7016. TRD-9510496.

The Brazos Valley MHMR Authority Budget and Finance/Personnel Committee met at 804 Texas Avenue, Conference Room B, Bryan, August 24, 1995, at Noon. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9510548.

The Brazos Valley MHMR Authority Board of Trustees met at 804 Texas Avenue, Conference Room A, Bryan, August 24, 1995, at 1:00 p.m. Information may be obtained from Leon Bawcom, P.O. Box 4588, Bryan, Texas 77805, (409) 822-6467. TRD-9510549.

The Carson County Appraisal District Board of Directors met at 102 Main Street, Panhandle, August 23, 1995, at 9:00 a.m. Information may be obtained from Donita Herber, Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9510552.

The Carson County Appraisal District Board of Directors met at 102 Main Street, Panhandle, August 23, 1995, at 9:30 a.m. Information may be obtained from Donita

Herber, Box 970, Panhandle, Texas 79068, (806) 537-3569. TRD-9510551.

The Central Texas Council of Governments Work Force Development Board of Central Texas met at 321 North Penelope, Belton, August 24, 1995, at 10:00 a.m. Information may be obtained from Susan Kamas, P.O. Box 729, Belton, Texas 76513, (817) 939-3771. TRD-9510483.

The Coryell County Appraisal District Board of Directors met at 113 North Seventh Street, Gatesville, August 24, 1995, at 5:30 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9510494.

The Coryell County Appraisal District Board of Directors met at 113 North Seventh Street, Gatesville, August 24, 1995, at 6:30 p.m. Information may be obtained from Darrell Lisenbe, P.O. Box 142, Gatesville, Texas 76528, (817) 865-6593. TRD-9510493.

The Dallas Area Rapid Transit Bylaws Ad Hoc Committee met in Conference Room B, 1401 Pacific, Dallas, August 22, 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-9510527.

The Dallas Area Rapid Transit Committee-of-the-Whole met in Conference Room C, 1401 Pacific Avenue, Dallas, August 22, 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-9510528.

The Dallas Area Rapid Transit (Revised Agenda.) Board met in the Board Room, First Floor, 1401 Pacific, Dallas, August 22, 1995, at 6:30 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9510529.

The Deep East Texas Quality Work Force, Region XIV met at 1615 South Chestnut, Angelina Chamber of Commerce, Community Room, Lufkin, August 22, 1995, at 8:30 a.m. Information may be obtained from Jerry Whitaker, P.O. Box 1768, Lufkin, Texas 75902, (409) 633-5370. TRD-9510534.

The Gillespie Central Appraisal District Board of Directors will meet at the Gillespie County Courthouse, County Courtroom, 101 West Main, Fredericksburg, August 31, 1995, at 9:00 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (210) 997-9807. TRD-9510474.

The Heart of Texas Region MHMR Center Board of Trustees met at 110 South 12th Street, Waco, August 23, 1995, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext. 290. TRD-9510479.

The Johnson County Rural Water Supply Corporation Board (Special Called Meeting) met at the Corporation Office, 2849 Highway 171S, Cleburne, August 21, 1995, at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9510525.

The Lower Colorado River Authority Investment Subcommittee of the Board of Trustees for LCRA's Benefit Plans met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 22, 1995, at 1:00 p.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, 3701 Lake Austin Boulevard, Austin, Texas 78767, (512) 473-4043. TRD-9510461.

The Lower Colorado River Authority Audit Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510469.

The Lower Colorado River Authority Board of Directors met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510462.

The Lower Colorado River Authority Community Resources and Development Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510468.

The Lower Colorado River Authority Conservation and Environmental Protection Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510466.

The Lower Colorado River Authority Energy Operations Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510464.

The Lower Colorado River Authority Finance and Administration Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9: 00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510467.

The Lower Colorado River Authority Natural Resources Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510465.

The Lower Colorado River Authority Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock Building, Board Room, Austin, August 23, 1995, and reconvening, if necessary, August 24, 1995, at 9: 00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, (512) 473-3287. TRD-9510463.

The Middle Rio Grande Development Council Board of Directors met at the Holiday Inn, Sage Room, 920 East Main Street, Uvalde, August 23, 1995, at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9510530.

The San Antonio-Bexar County Metropolitan Planning Organization Transportation Steering Committee will meet at the International Conference Center, Convention Center Complex, San Antonio, August 28, 1995, at 1:30 p.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9510524.

The Stephens County Rural WSC Board (Called Meeting) met at 301 West Elm Street, Breckenridge, August 21, 1995, at 7:30 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9510526.

The Tarrant Appraisal District Tarrant Appraisal Review Board will meet at 2329 Gravel Road, Fort Worth, September 18-21 and 25-28, 1995, at 8:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9510535.

The Wichita Falls MPO Policy Advisory Committee will meet at 1300 Seventh Street, Memorial Auditorium, City Council Conference Room, Wichita Falls, August 28, 1995, at 8:30 a.m. Information may be obtained from Richard Luedke, 1300 Sev-

enth Street, Wichita Falls, Texas 76301, (817) 761-7447. TRD-9510495.

The Wichita Falls MPO (Public Meeting) will meet at the Wichita Fallas ISD Administration Building, 1104 Broad Street, Board Room, Wichita Falls, August 29, 1995, at 7:00 p.m. Information may be obtained from Richard Luedke, 1300 Seventh Street, Wichita Falls, Texas 76301, (817) 761-7447. TRD-9510532.

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Meetings Filed August 21, 1995

The Austin-Travis County MHMR Center Board of Trustees met at 1430 Collier Street, Board Room, Austin, August 24, 1995, at 5:00 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9510567.

The Burke Center (Emergency Revised Agenda.) Board of Trustees Mental Retardation Joint Conference Committee met at 2105 North John Redditt Drive, Lufkin, August 22, 1995, at 11:30 a.m. (Reason for emergency: The location has been changed due to the fact that the air conditioning has gone out and cannot be repaired before Thursday, August 24.) Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9510584.

The Burke Center (Emergency Revised Agenda.) Board of Trustees met at 2105 North John Redditt Drive, Lufkin, August 22, 1995, at 1:00 p.m. (Reason for emergency: The location has been changed due to the fact that the air conditioning has gone out and cannot be repaired before Thursday, August 24.) Information may be obtained from Sandra J. Vann, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9510583.

The Central Plain Centers for MHMR and SA Board of Trustees met at 208 South Columbia, Plainview, August 24, 1995, at 6:00 p.m. Information may be obtained from Gail P. Davis, 2700 Yonkers, Plainview, Texas 79072, (806) 293-2636. TRD-9510581.

The Dallas Central Appraisal District Appraisal Review Board will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, August 30, 1995, at 10:00 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9510566.

The Farmer County Appraisal District Board of Directors will meet at 305 Third Street, Bovina, September 14, 1995, at 7:00 p.m. Information may be obtained from Ronald E. Procter, P.O. Box 56, Bovina, Texas 79009, (806) 238-1405. TRD-9510588.

The Golden Crescent Regional Planning Commission Board of Directors will meet at 568 Big Bend Drive, Regional Airport, Building 102, Victoria, August 30, 1995, at 5:00 p.m. Information may be obtained from Rhonda G. Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587. TRD-9510586.

The Harris Country Appraisal District will meet at 2800 North Loop West, Eighth Floor, Houston, August 25, 1995, at 8:00 a.m. Information may be obtained from Susan Jordan, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9510570.

The Johnson County Central Appraisal District Appraisal Review Board will meet at 109 North Main, Suite 201, Room 202, Cleburne, September 6-7, 1995, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, (817) 645-3986. TRD-9510587.

The Northeast Texas Municipal Water District Board of Directors will meet at Highway 250 South, Hughes Springs, August 28, 1995, at 10:00 a.m. Information may be obtained from J. W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (903) 639-7338. TRD-9510569.

The North Texas Regional Library System (Revised Agenda.) Board of Directors met at Saginaw City Hall, 333 West McLeroy Boulevard, Saginaw, August 24, 1995, at 1:30 p.m. Information may be obtained from Cheryl Smith, 1111 Foch Street, Suite 100, Fort Worth, Texas 75107-2949, (817) 335-6076. TRD-9510582.

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Meetings Filed August 22, 1995

The Brazos River Authority Board of Directors will meet at 4400 Cobbs Drive, Waco, August 28, 1995, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441. TRD-9510600.

The Education Service Center, Region V Board will meet at 2295 Delaware Street, Beaumont, August 30, 1995, at 1:15 p.m. Information may be obtained from Robert E. Nicks, 2295 Delaware Street, Beaumont Texas 77703-4299, (409) 838-5555. TRD 9510598.

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IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Notice of Public Hearing

The Texas Department of Agriculture will hold a public hearing to take public comment and to provide information to the public regarding the department's regulation changes, regarding movement of Milam County into new Cotton Pest Management Zone 6 which requires the destruction of stalks on or before October 31, as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6062). Previous destruction requirements were set for on or before November 30. The hearing will be held as follows.

Tuesday, August 29, 1995, at the Youth Exposition Building, 301 South Houston, Cameron, Texas, beginning at 9:00 a.m.

For more information, please contact Dan Clair, Texas Department of Agriculture, Regal Tech Center, 1720 Regal Row, Suite 118, Dallas, Texas, (214) 631-0265.

Issued in Austin, Texas, on August 18, 1995.

TRD-9510491 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: August 18, 1995

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Heart of Texas Council of Governments

Consultant Proposal Request

The Heart of Texas Council of Governments (HOTCOG) is requesting proposals for an audit of all programs and contracts it administers. This proposal will serve as a basis for a three-year period beginning October 1, 1994-September 30, 1995 and the subsequent two fiscal years ending in 1996 and 1997. This request is filed under the provisions of Texas Government Code, Subchapter B, 2254.

The audit must be conducted under the guidelines of generally accepted auditing standards and other guidelines as highlighted in the Council's request for proposals. The proposals will be reviewed by the Heart of Texas Council of Governments and a contract will be awarded on the basis of the firm's experience, firm knowledge of the work to be performed, the proposed audit cost by year, and the firm size. Small, female-owned and minority-owned firms are encouraged to submit. Firms submitting proposals must be members of the quality assurance program (peer review) to be considered.

Request for proposal packages may be obtained by contacting John C. Minnix, Director of Administration, Heart of Texas Council of Government, 300 Franklin Avenue, Waco, Texas 76701-2244, (817) 756-7822. All proposals must be received no later than 4:30 p.m. (Central Standard Time) on September 15, 1995. Proposals received after the specified date and time will not be considered.

Issued in Waco, Texas, on August 15, 1995.

TRD-9510356 Leon A. Willhite
Executive Director
Heart of Texas Council of Governments

Filed: August 16, 1995

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Texas Department of Insurance

Notice

The Commissioner of Insurance has rescheduled to September 22, 1995, at 9: 00 a.m. in Room 102, Special Master's Hearing Room of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78701. A hearing under Docket Number 2170, originally set for October 6, 1995. Concerning the petition by the staff of the Texas Department of Insurance proposing amendments to the Homeowners and Farm and Ranch Owners sections of the Texas Personal Lines Manual.

Notice of the hearing was published in the August 18, 1995, issue of the *Texas Register* (20 TexReg 6363) and (20 TexReg 6318).

Issued in Austin, Texas on August 18, 1995.

TRD-9510544 Alicia M Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 18, 1995

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Notice of Application by The Wellness Health Plan of Texas, 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 THE WELLNESS HEALTH PLAN OF TEXAS, 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 THE WELLNESS HEALTH PLAN OF TEXAS, INC., without a public hearing.

Issued in Austin, Texas on August 18, 1995.

TRD-9510543 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 18, 1995

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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 Legacy Marketing Group, a foreign third party administrator. The home office is Petaluma, California.

Application for incorporation in Texas of Elite Benefit Systems, Inc., a domestic third party administrator. The home office is Dallas, Texas.

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, Mail Code 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas on August 21, 1995.

TRD-9510573 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: August 21, 1995

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Texas Natural Resource Conservation Commission

Notice of Application for Waste Disposal Permits

Waste disposal permits issued during the period of August 14-August 18, 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.

BILLY E. NEWSOM DAIRY; the dairy is on Johnson County Road 1005 between Johnson County Roads 913 and 915 near Godley, Johnson County, Texas; new; 03801.

E.I DU PONT DE NEMOURS AND COMPANY, INC.; a freon fluorocarbons plant, a freon alternative plant, caustic chlorine plant (operated by Occidental Chemicals, Inc.), and a cyclohexane plant; the plant site is on the south side of State Highway 361, approximately 1.25 miles west of the intersection of State Highway 361 and State Highway 35, southeast of the City of Gregory, San Patricio County, Texas; renewal; 01651.

FINA OIL AND CHEMICAL COMPANY; the Big Spring Refinery and Petrochemical plant is adjacent to Interstate Highway 20 (IH 20) and approximately 1/2 mile east of the intersection of IH 20 and Farm-to-Market Road 700 near the City of Big Spring, Howard County, Texas; renewal; 01768.

GALVESTON COUNTY WATER CONTROL AND IMPROVEMENT DISTRICT NUMBER 8; wastewater treatment plant site is on the north side of 11th Street approximately 0.75 mile east of the intersection of 11th Street and Farm-to-Market Road 646 in the City of Santa Fe in Galveston County, Texas; amendment; 10174-01.

CITY OF KERRVILLE; the Kerrville Wastewater Treatment Facilities are at 3650 Loop 534, at the end of Beach Street on the City Farm in the southeast section of the City of Kerrville in Kerr County, Texas; amendment; 10576-01.

MONFORT, INC.; a hide curing operation in conjunction with a slaughterhouse and meat packing plant; the plant site is in Schroeder Industrial Park, which is south of the Moore/Sherman County line and west of U.S. Highway 287, in the City of Cactus in Moore County, Texas; renewal; 10204-01.

CITY OF ROXTON; the Roxton Wastewater Treatment Facilities; the facilities are approximately 2,400 feet southeast of the intersection of Farm-to-Market Road 137 and Chaparral Railroad on the north side of Denton Creek and on the south side of the City of Roxton in Lamar County, Texas; renewal; 10204-01.

SPENCER JONES; the dairy is on the east side of County Road 617. The site is approximately four miles north of

the intersection of County Road 218 and County Road 617 in Hamilton County, Texas; new; 03810.

HENRY STEITZ; the facilities and disposal site are adjacent to the west side of the Missouri Pacific Railroad and 3,300 feet east of the intersection of State Highway 75 and Camp Silver Springs Road, five miles north of Conroe, Montgomery County, Texas; amendment; 11085-01.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE; RAMSEY UNITS; a swine and dog operation; the facilities are at the Texas Department of Criminal Justice Ramsey I, II, and III units. The units are on Farm-to-Market Road 655, approximately five miles west of the intersection of Farm-to-Market Road 521 and Farm-to-Market Road 655. The site is approximately eight miles north of Angleton in Brazoria County, Texas; renewal; 03004.

GENE VASEK; the cattle feedyard is on the south side of Farm-to-Market Road 1058; approximately 0.75 miles west of the intersection of Farm-to-Market Road 1058 and Farm-to-Market Road 1057 and is west of Hereford, Deaf Smith County, Texas; new; 03843.

GULF STATES UTILITIES COMPANY; operation of a non-commercial container storage facility for the receipt, storage and transfer of Class I non-hazardous industrial solid waste; wastes authorized by the permit are materials and equipment contaminated with or containing polychlorinated biphenyl (PCB); Wastes are received from off-site sources and are limited to that generated by permittee-owned facilities; the facility is located on approximately 4.8 acres at 3105 Laurel Street, approximately two miles west of downtown Beaumont at the intersection of Laurel Street and IH-10 eastbound service road in the City of Beaumont, Jefferson County, Texas; renewal; SW39057; 30 day notice.

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

TRD-9510500 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: August 18, 1995

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Notice of Receipt of Application and Declaration of Administrative Completeness for Municipal Solid Waste Management Facilities for the Week Ending August 18, 1995

Application by Laidlaw Waste Systems, Inc.; Proposed Permit Amendment Number MSW1614-B, authorizing an amendment to their Type I (Landfill) municipal solid waste facility permit. The site covers approximately 144 acres of land and is located south of Heath Lane, approximately 0.5 miles east of the intersection of Heath Lane and U.S. Highway 69, in Cherokee County, Texas.

This application is subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permit unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication.

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address and daytime phone number; the application number, TNRCC docket number or other recognizable reference to the application; the statement "I/we request an evidentiary public hearing."; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; and a description of the location of your property relative to the applicant's operations.

If one or more protests and/or requests for hearing are filed on an application, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where an evidentiary hearing may be held. If no protests and/or requests for hearing are filed on an application, the Executive Director will approve the application. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing or questions concerning procedures should be submitted in writing to the Chief Clerk's Office, Park 35 TNRCC Complex, Building F, Room 4301, Texas Natural Resource Conservation Commission, Mail Code 105, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

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

TRD-9510501 Lydia Gonzalez-Gromatzky
Director Legal Services Division
Texas Natural Resource Conservation Commission

Filed: August 18, 1995

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Notice of Opportunity to Comment on Permitting Actions for the week ending August 18, 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 these applications should be submitted in writing to the Chief Clerk's Office (Mailcode 105), Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-3300.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

KENT COUNTY for a minor amendment to Permit Number 13698-01 to allow the permittee to install barbed wire fence around the entire parimeter of the 40 acre plant site instead of a chain link fence. The current permit authorizes disposal treated domestic wastewater by evaporation and/or by irrigation. The disposal volume is not to exceed an average of 101,500 gallons per day, which will remain the same. Application rates for the irrigated land shall not exceed 3.79 acre/acre/year. No discharge of pollutants into waters in the State is authorized by this permit. The wastewater treatment facility and irrigation site are approximately 1,200 feet south of Farm-to-Market Road 1228 and approximately 7,500 feet west of the intersection of Farm-to-Market Road 1228 and State Highway 70 in Kent County, Texas.

Consideration of the application of MoorTex Water Supply Corporation to Purchase Facilities of Ad Rem Petroleum, Inc. and Obtain a Water CCN in Moore County, Texas. (Application #30796-S and 30797-C/Guillermo Zevallos)

Consideration of the application of the City of Georgetown to Transfer Water CCN Number 12698 and Sewer CCN Number 20771 from Berry Creek Partners dba Berry Creek Utilities; Amend Water CCN Number 12369; Amend Sewer CCN Number 20786; Cancel Water CCN Number 12698; and Cancel Sewer CCN Number 20771 in Williamson County, Texas. (Application #30781-S and 30782-S, Guillermo Zevallos)

MOBIL OIL CORPORATION for a minor amendment to Permit Number 00649 to change the biomonitoring testing requirements from 48-hour acute testing to seven-day chronic testing. The permit currently authorizes: a discharge of treated effluent at a volume not to exceed 970,000 gallons per day via Outfall 001; a discharge of treated effluent at a volume not to exceed 785,000 gallons per day via Outfall 002; intermittent flow variable discharges of stormwater via Outfalls 004 and 005; a discharge of noncontact process cooling water at a volume not to exceed an average flow of 720,000 gallons per day via Outfall 006; and a discharge of noncontact process cooling water at a volume not to exceed an average flow of 432,000 gallons per day via Outfall 007, which will remain the same. The plant which manufactures ammonium phosphate fertilizer is on the south bank of the Houston Ship Channel at the northern terminus of Davison Road at 2001 Jackson Road in the City if Pasadena, Harris County, Texas.

Consideration of the application of Windermere Utility Company, Inc. to Transfer a Portion of Water CCN Number 12064 from T.P. Investments; Amend Water CCN Numbers 11471 and 12064 in Travis and Williamson County, Texas. (Application #30515-S, Debi Carlson)

Issued in Austin, Texas, on August 18, 1995.

TRD-9510502 Lydia Gonzalez-Gromatzky
Director Legal Services Division
Texas Natural Resource Conservation Commission

Filed: August 18, 1995

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Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Order (AO) pursuant to §382.096 of the Texas Clean Air Act (the Act), Health and Safety Code Chapter 382. Section 382.096 of the Act requires that the TNRCC may not approve this AO unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed order and of the opportunity to comment must be published in the *Texas Register* no later than the thirtieth day before the date on which the public comment period closes, which in this case is **September 23, 1995**. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate or inconsistent with the requirements of the Texas Clean Air Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of the proposed AO is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, Third Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed below. Written comments about this AO should be sent to the Staff Attorney designated for the AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be received by **5:00 p.m. on September 23, 1995**. Written comments may also be sent by facsimile machine to the Staff Attorney at (512) 239-3434. The TNRCC Staff Attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, Section 382.096 provides that comments on the AO should be submitted to the TNRCC in writing.

(1)COMPANY: BASN Corporation; DOCKET NUMBER: 95-1210-PST-E; ENFORCEMENT ID NUMBER: E10969; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: retail gasoline service station; RULE VIOLATED: TNRCC Rule 30 TAC §115.246 by failing to maintain required records; TNRCC Rule 30 TAC §115.241 by failing to provide a Stage II vapor recovery system capable of reducing emissions of volatile organic compounds by at least 95% at a gasoline fueling facility; and TNRCC Rule 30 TAC §115.249 by failing to comply with Stage II vapor recovery requirements according to the scheduled implementation date. PENALTY: $1,200; STAFF ATTORNEY: Raymond C. Winter, (512) 239-0477; REGIONAL OFFICE: 1019 North Duncanville Road, Duncanville, Texas 75116-2201, (214) 298-6171.

Issued in Austin, Texas on August 18, 1995.

TRD-9510554 Lydia Gonzales Gromatzky
Director, Legal Services Division

Texas Natural Resource Conservation Commission

Filed: August 18, 1995

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Provisionally-Issued Temporary Permits to Appropriate State Water

Permits issued during the period of August 10-16, 1995

Application Number TA-7498 for Amoco Chemicals Company diversion of 9.5 acre-feet in a one year period for industrial use. Water may be diverted from Harvey Creek, at the stream crossing of FM 83, approximately 18 miles southwest of San Augustine, San Augustine, County, Texas, and from Ayish Bayou, at the stream crossing of FM 83, approximately 18 miles southwest of San Augustine, San Augustine, County, Texas, Neches River Basin.

Application Number TA-7515 for Reece Albert, Inc. diversion of ten acre-feet in a one year period for industrial use (highway construction). Water may be diverted from Spring Creek, at the stream crossing of FM 2335, approximately 15 miles west of San Angelo, Tom Green County, Texas, Colorado River Basin, South Concho River, at the stream crossing of U.S. Highway 277 approximately 14 miles southeast of San Angelo, Tom Green County, Texas and from West Rocky Creek, at the stream crossing of FM 853, approximately 13 miles northeast of Mertzon, Iron County, Texas, Colorado River Basin.

Application Number TA-7518 for Kenneth W. Arthur diversion of .5 acre-foot in a one year period for industrial use (road construction). Water may be diverted just east of U.S. Highway 83, and to the north of State Highway 127 approximately 25 miles north of Uvalde, Texas, Nueces River Basin.

Application Number TA-7519 for Union Pacific Resources Company diversion of ten acre-feet in a one year period for mining use. Water may be diverted just north of FM 2714 from Jack's Creek, approximately 19 miles east of La Grange, Fayette County, Texas, Colorado River Basin.

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 previously 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 §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 787311, (512) 239-3300.

Issued in Austin, Texas, on August 18, 1995.

TRD-9510499 Gloria A. Vasquez
Chief Clerk
Texas Natural Resource Conservation Commission

Filed: August 18, 1995

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Public Hearing Notice

The Texas Natural Resource Conservation Commission will conduct a public hearing beginning at 6:00 p.m., October 12, 1995, Houston-Galveston Area Council Office, 3555 Timmons Lane, Second Floor, Room A, Houston, Texas in order to receive testimony concerning the draft report for Total Maximum Daily Loads (TMDL) for Total Copper, Total Silver, Total Lead, Total Zinc, Total Arsenic, and Total Mercury in the San Jacinto River Tidal, Houston Ship Channel, and Buffalo Bayou in the San Jacinto River Basin (Segments 1001, 1005, 1006, 1007, 1013, 1014, 1016, and 1017). The public hearing shall be conducted in accordance with §26.011 and §26.037 of the *Texas Water Code*.

The primary purpose of this document is to define treatment levels for wastewater dischargers to a segment and specify other program actions that need to be taken in order to attain and maintain the water quality standards, describe nonpoint source pollution from tributaries to a segment, and identify treatment level alternatives using receiving stream water quality simulations. A section containing recommended treatment levels and other proposed recommended actions is also included.

The public is encouraged to attend the hearing and to present relevant evidence or opinions concerning the TMDL report. Written testimony which is submitted prior to or during the public hearing will be included in the record. The Commission would appreciate receiving a copy of all written testimony at least five days before the hearing. Copies of written testimony and questions concerning the public hearing should be addressed to Charles Marshall, TNRCC, Water Planning and Assessment Division, Mail Code 150, P.O. Box 13087, Austin, Texas 78711 or call (512) 239-4532.

A limited number of copies of the draft report are available for review either at the TNRCC Library, Park 35 Complex, Building A, Room 102, 120100 Park 35 Circle, Austin or the Houston-Galveston Area Council, 3555 Timmons Lane, Houston. A copy of the report may be obtained upon written request from Charles Marshall at the listed post office box address. There are no charges for the pre-hearing draft copies of this document; however, a fee will be charged for the finalized post-hearing copies.

The date selected for this hearing is intended to comply with deadlines set by statute and regulation. Any publication or receipt of this notice less than 45 calendar days prior to the hearing date is due to the necessity of scheduling the hearing on the date selected.

Issued in Austin, Texas on August 21, 1995.

TRD-9510572 Lydia Gonzalez-Gromatzky
Acting Director, Legal Division
Texas Natural Resource Conservation Commission

Filed: August 21, 1995

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Public Utility Commission

Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract for Billing and Collection Services.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for Approval of a customer-specific contract pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14552.

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for Billing and Collection Services with Call-for-less Long Distance, Inc. The geographic service market for this specific service is anywhere within the state of Texas where Call-for-less Long Distance, Inc. provides services to Southwestern Bell End user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 17, 1995.

TRD-9510442 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 17, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for American Airlines, Fort Worth, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for American Airlines pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14553.

The Application. Southwestern Bell Telephone Company is requesting approval of an optional feature addition to the existing PLEXAR-Custom service for American Airlines. The geographic service market for this specific service is the Fort Worth, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 17, 1995.

TRD-9510440 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 17, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Bank of the West, El Paso, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Bank of the West pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14554.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Bank of the West. The geographic service market for this specific service is the El Paso, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 17, 1995.

TRD-9510441 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 17, 1995

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Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific contract.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for approval of a customer-specific contract for Billing and Collection Services with Sprint Communications Company L.P. pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 14566.

The Application. Southwestern Bell Telephone Company is requesting approval of a customer-specific contract for Billing and Collection Services with Sprint Communications Company L.P. The geographic service market is anywhere within the State of Texas where Sprint Communications Company L.P. provides services to Southwestern Bell end user customers.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on August 17, 1995.

TRD-9510449 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 17, 1995

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Petition for Rulemaking

The Public Utility Commission of Texas has received a petition for rulemaking from the City of Dallas, Texas (City of Dallas). The City of Dallas requests that the

Commission adopt a rule to designate a single three-digit number for municipal non-emergency services. The rule proposed by the City of Dallas requests the 511 abbreviated dialing arrangement. The City of Dallas notes that such an abbreviated dialing arrangement will permit trained personnel to direct inquiries to the proper area and will provide citizens access to more responsive and accountable services by means of a single, easy-to-remember, three-digit number. Services include municipally-owned utilities, street repairs, traffic control, animal control, land use control, parks, building code enforcement, waste disposal, health services, library services, cultural services, consumer protection, and business regulation. According to the proposed rule, no commercial use of the abbreviated dialing arrangement will be permitted.

Copies of the petition filed by the City of Dallas are available in Central Records of the Public Utility Commission.

The commission requests comments on whether it should initiate a proceeding in the manner requested by the City of Dallas. Parties should file 15 copies of their comments with the commission's Secretary, Paula Mueller, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 21 days of the publication of this notice in the *Texas Register*. Comments should refer to Project Number 14563. This notice is not a formal notice of proposed rulemaking, but the comments will assist the commission in deciding whether to initiate a rulemaking proceeding.

Issued in Austin, Texas on August 21, 1995.

TRD-9510571 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: August 21, 1995

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Southwest Texas State University

Fund Raising Counsel

Southwest Texas State University in San Marcos solicits proposals for its major gifts campaign. This consulting service is a continuation of a service previously performed by The Dini Partners, Houston, Texas.

The firm must have a proven track record assisting large state universities in Texas with similar campaigns.

The contractor must provide advice and guidance on research, cultivation, solicitation and stewardship for private gifts to the university.

Assistance with the recruitment and training of volunteer leadership, goal setting, campaign accounting procedures, and overall assistance are also required.

Southwest Texas will give preferential consideration to firms who have previous experience working with Southwest Texas State University.

This contract will be awarded to The Dini Partners, Houston, Texas as an extension of an existing contract.

Contact: Gerald W. Hill, Vice President for University Advancement, Southwest Texas State University, San Marcos, Texas 78666-4612.

Closing Date: September 24, 1995. Contract will be awarded by the Board of Regents, Texas State University System.

Issued in Austin, Texas, on August 16, 1995.

TRD-9510382 Gerald W. Hill
Vice President, for the University Advancement
Southwest Texas State University

Filed: August 16, 1995

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Texas Department of Transportation

Request for Proposals

Notice of Invitation. The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract #08-6XXP5001–to perform routine BRINSAP safety inspection and PONTIS elemental data collection in thirteen different counties within the Abilene District. The provider will be evaluated and selected based on their knowledge and experience in routine bridge inspection. The selected provider will be expected to attend PONTIS elemental data inspection training conducted by TxDOT, prior to execution of the contract.

Deadline. A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered to TxDOT, Abilene District Office, Attention: David L. Seago, Transportation Planning and Development, 4250 North Clack, Abilene, Texas 79604, mailed to P.O. Box 150, Abilene, Texas 79604-0150 or faxed to (915) 676-6902. Letters of interest will be received until 5:00 p.m. on Friday, September 15, 1995. The letter of interest must include the engineer's name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet.)

Proposal Submittal Deadline. Proposals for contract #08-6XXP5001 will be accepted until 5:00 p.m. on Friday, October 20, 1995 at the TxDOT, Abilene District Office addresses.

Agency Contact. Requests for additional information regarding this notice of invitation should be addressed to David L. Seago at (915) 676-6813 or Fax (915) 676-6902.

Contract #19-645P5006–for preparation of plans, specifications and estimates for US 259 from FM 3245 south of Diana to 0.1 miles north of FM 726 in Upshur County.

Deadline. A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered to TxDOT, Atlanta District Office, 701 East Main Street, Atlanta, Texas 75551, mailed to P.O. Box 1210, Atlanta, Texas 75551-1210, or faxed to (903) 799-1214. Letters of interest will be received until 5:00 p.m. on Wednesday, September 6, 1995. The letter of interest must include the engineer's name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or

fax, will be required to receive Request for Proposal packet.)

Pre-proposal Meeting. A mandatory attendance pre-proposal meeting will be held on Tuesday, September 12, 1995, at the TxDOT, Atlanta District Office, 701 East Main Street, Atlanta, Texas at 1:30 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

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 Dennis M. Beckham, P.E. at (903) 799-1201 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline. Proposals for contract #19-645P5006 will be accepted until 5:00 p.m. on Monday, October 9, 1995 at the TxDOT, Atlanta District Office addresses.

Agency Contact. Requests for additional information regarding this notice of invitation should be addressed to Dennis M. Beckham, P.E. at (903) 799-1201 or Fax (903) 799-1214.

Contract(s) #24-545P5013 through #24-545P5022–for work authorization contracts to include but not limited to the following types of work (in any combination): cost estimates, design parameters, drainage & hydraulic studies, environmental assessments and documentation, feasibility studies, geographic information systems, pavement studies, public meeting/hearings, right-of-way documentation, traffic/transportation studies, surveying, schematic and geometric layouts, and value engineering.

Deadline. A letter of interest notifying TxDOT of the provider's intent to submit a proposal shall be either hand-delivered to TxDOT, El Paso District Office, 212 North Clark Drive, El Paso, Texas 79905-0278, mailed to P.O. Box 10278, El Paso, Texas 79994-0278 or faxed to (915) 774-4263. Letters of interest will be received until 5:00 p.m. (MDT) on Wednesday, September 6, 1995. The letter of interest must include the engineer's name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet.)

Pre-proposal Meeting. A mandatory attendance pre-proposal meeting will be held on Tuesday, September 12, 1995, at Hilton-Airport, AV Theater, El Paso International Airport, El Paso, Texas 79925 at 10:00 a.m. (MDT). (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

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 Gerardo Leos, P.E. at (915) 774-4200 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline. Proposals for contract(s) #24-545P5013 through #24-545P5022 will be accepted until 5:00 p.m. (MDT) on Friday, September 29, 1995 at the TxDOT, El Paso District Office addresses.

Agency Contact. Requests for additional information regarding this notice of invitation should be addressed to Gerardo Leos, P.E., Assistant Advance Project Development Engineer at (915) 774-4200 or Fax (915) 774-4263.

Issued in Austin, Texas on August 18, 1995.

TRD-9510555 Robert E. Shaddock
General Counsel
Texas Department of Transportation

Filed: August 18, 1995