TEXAS REGISTER

IN THIS ISSUE

Volume 20, Number 77 October 10, 1995 *Page 8249-8344*

The Table of TAC Titles Affected, published October 6, 1995, stated in the heading that the range covered January-September. The Table contained cites only for the month of September.

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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date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

In Addition Sections

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17 Signature and Title of Editor, Publisher, Business Manager, or Owner — Date

Dan Proctor 9-25-95

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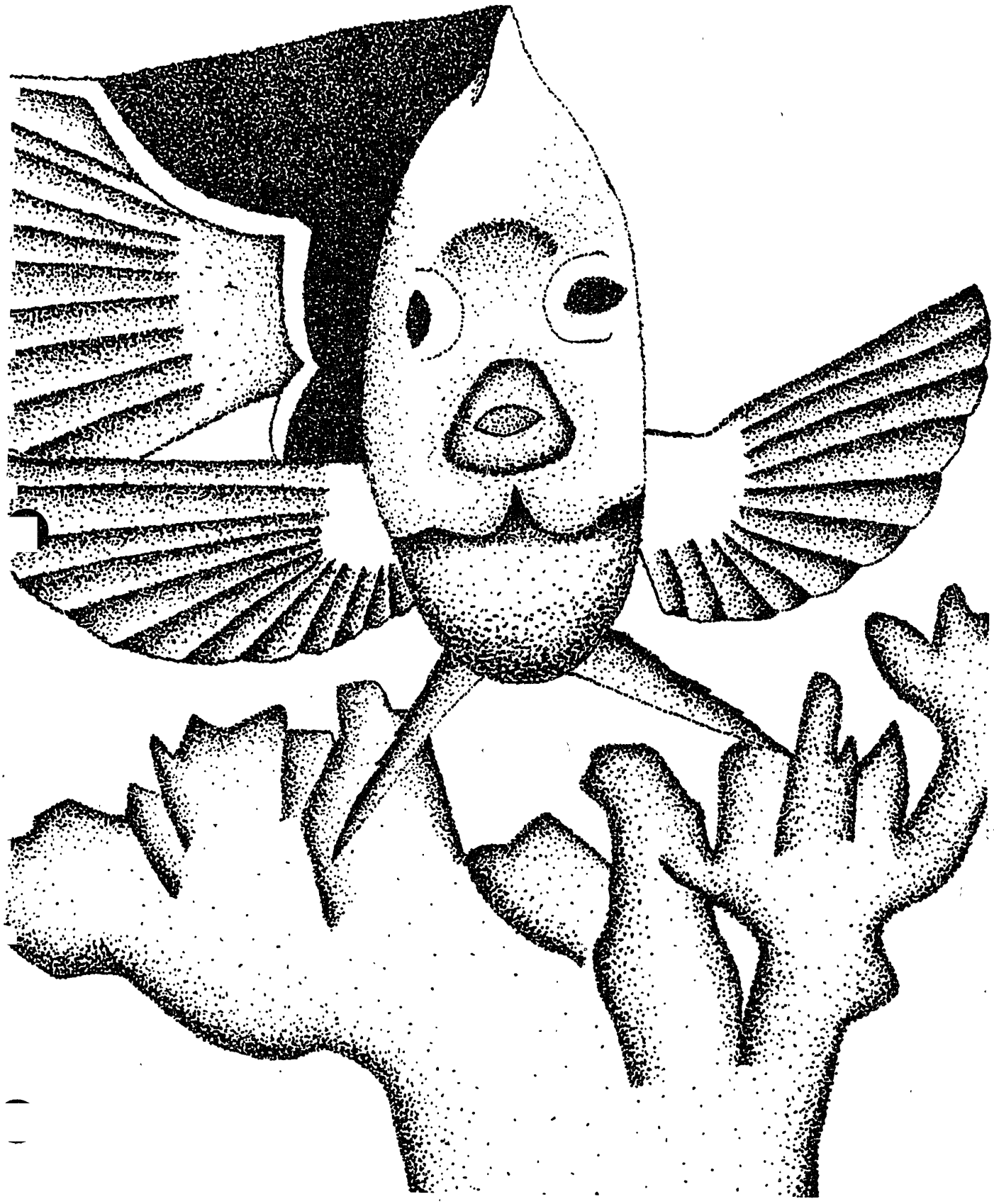

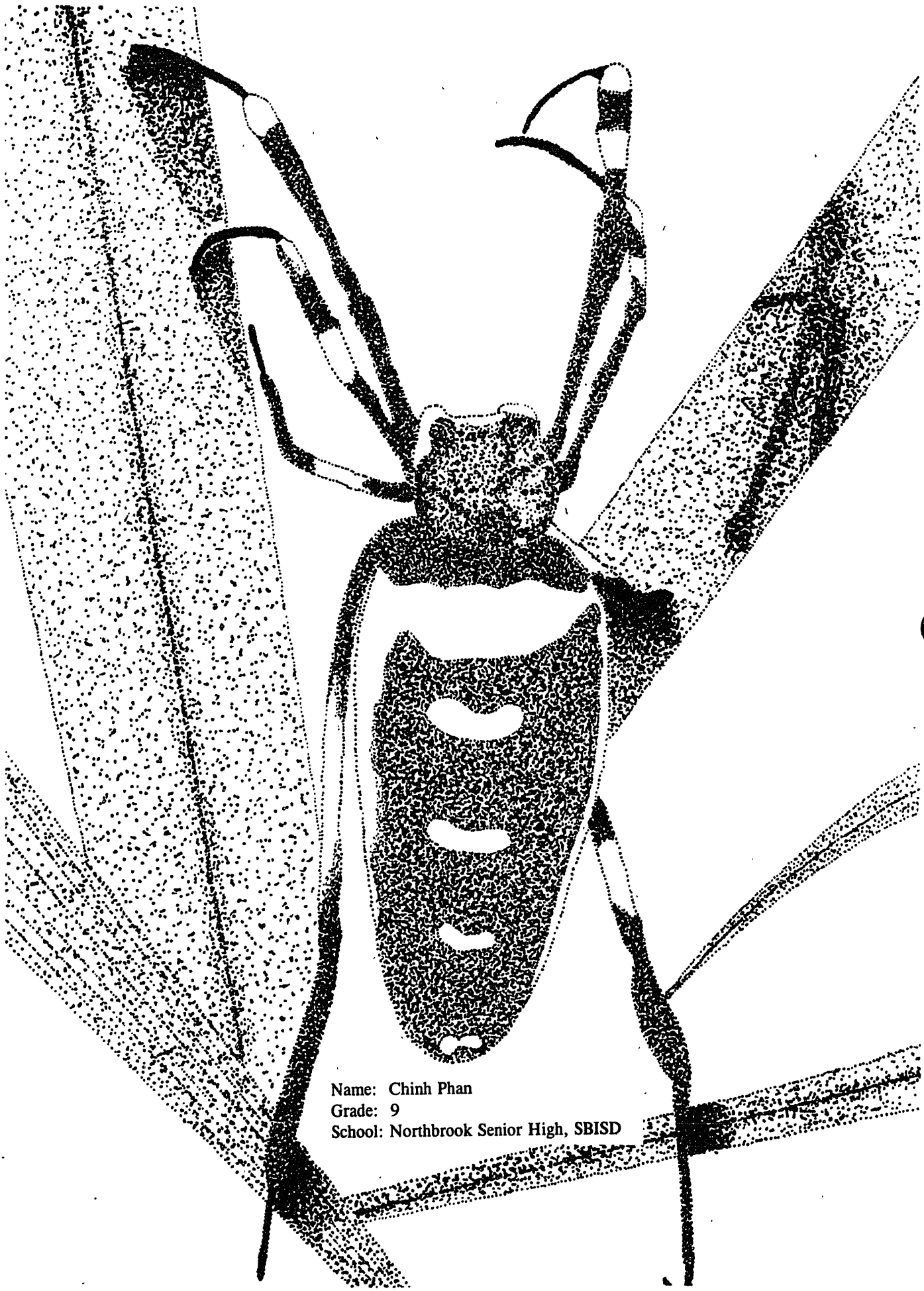

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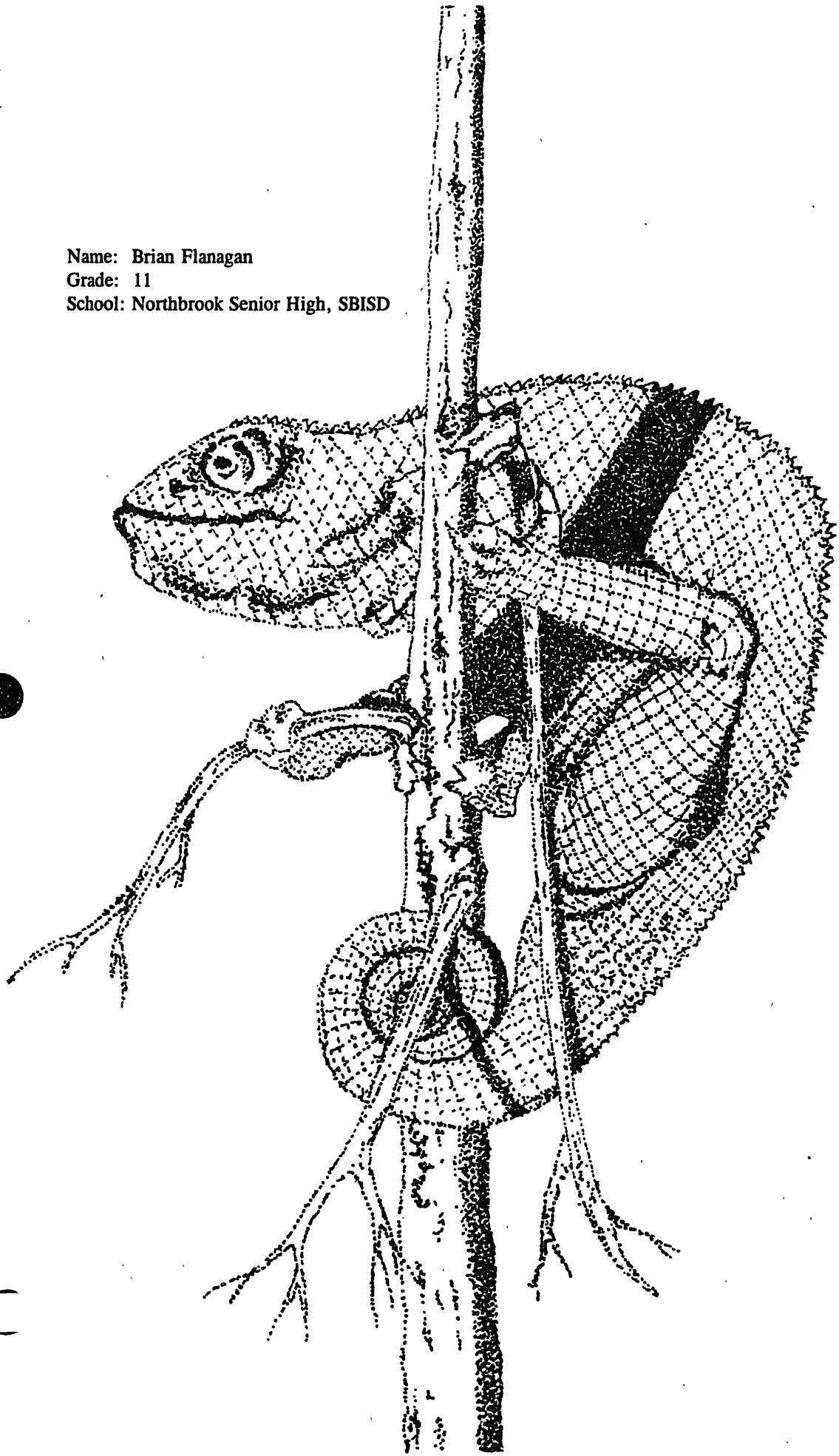

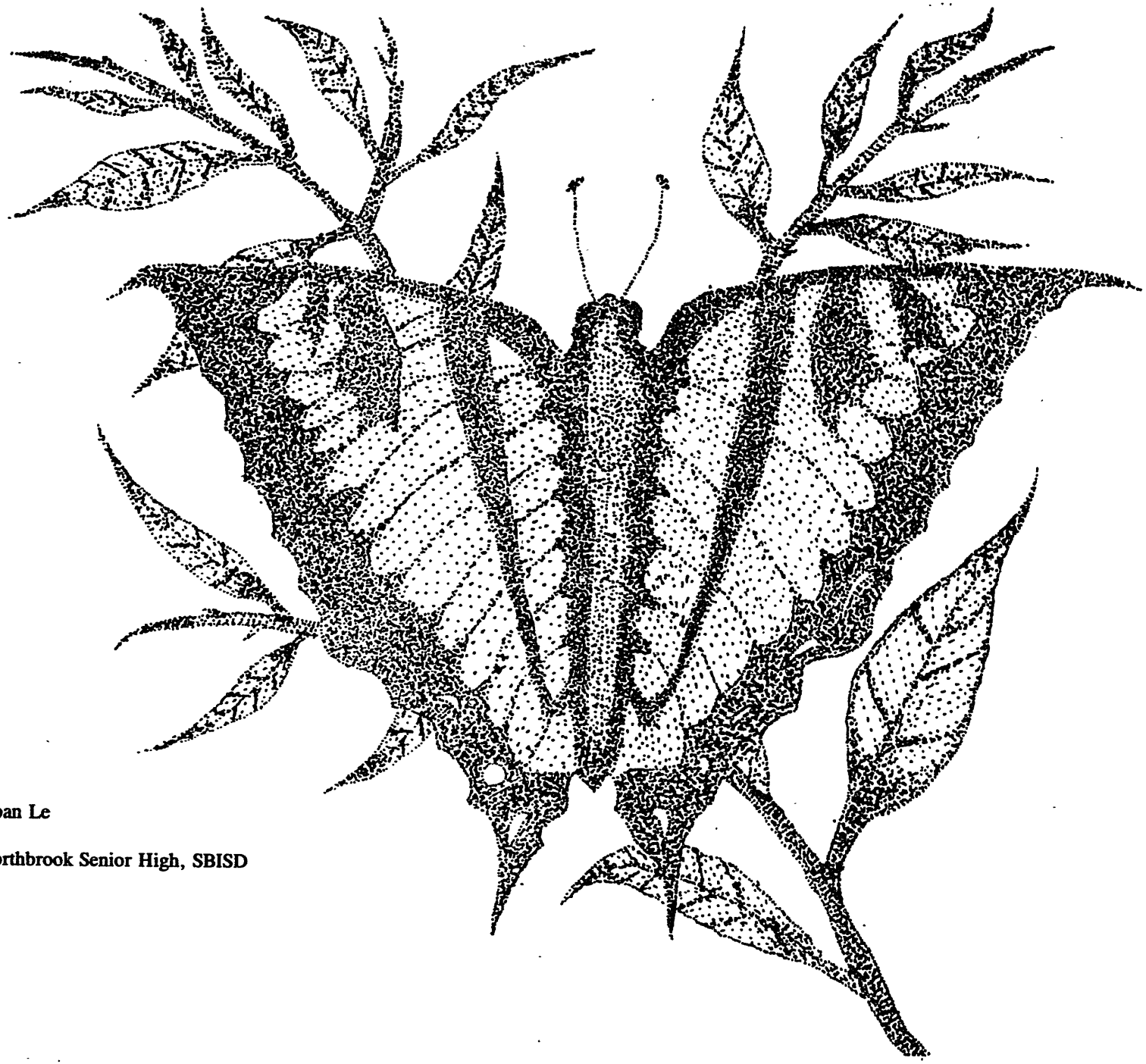

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TEXAS ETHICS COMMISSION

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

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

Advisory Opinion Requests

AOR-317. The Texas Ethics Commission has been asked to consider whether a legislator may received payment from a law firm for services performed before the legislator held public office. The payments in question are for services provided to the law firm to assist the law firm in entering into a contract with a school district.

AOR-318. The Texas Ethics Commission has been asked whether a judge may use campaign funds to pay for social events sponsored by a local bar association.

AOR-319. The Texas Ethics Commission has been asked to consider the meaning of the phrase "a particular matter in which the former officer or employee participated" in the Government Code, §572.054(b). The specific question is whether a former employee of a state agency "participated" in a matter he was unaware of during his tenure at the state agency if the employees who had personal involvement with the matter were subordinate to him in the agency personnel hierarchy.

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

TRD-9512558 Lucia Dodson
Executive Assistant
Texas Ethics Commission

Filed: October 3, 1995

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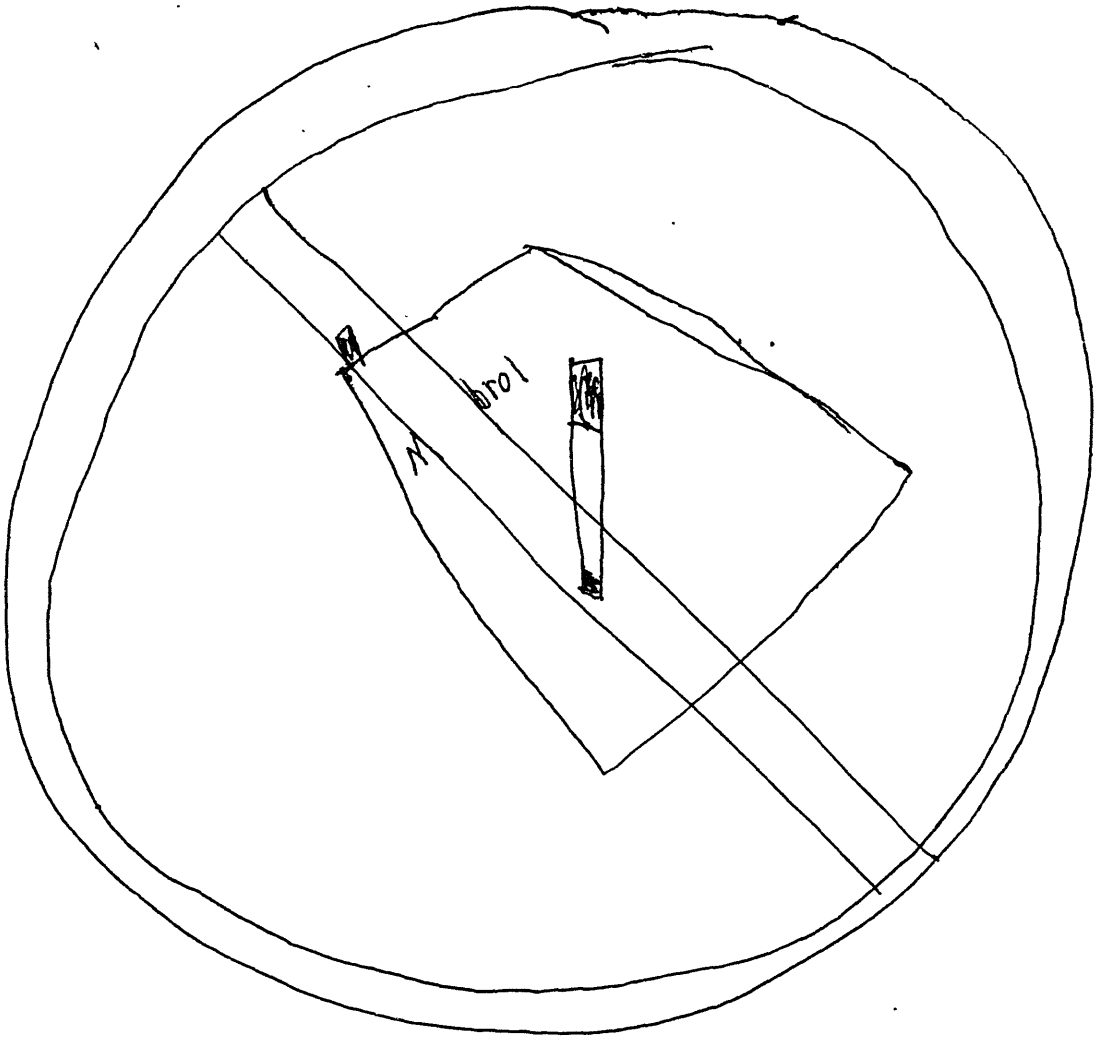

EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 103. Dental Hygiene Licensure

Qualifications of Applicants

• 22 TAC §103.2

The State Board of Dental Examiners adopts on an emergency basis new §103.2, concerning procedures whereby dental hygienists practicing in other states, territories, and the District of Columbia may obtain a dental hygienist's license based on credentials from those jurisdictions.

This rule is adopted on an emergency basis to comply with statutory requirements of the Dental Practice Act for hygienists to be able to become licensed by credentials. The Board has determined there is an imminent peril to the public health and safety in that there is an unfulfilled demand for dental hygienists. There is an immediate need for additional qualified hygienists to perform dental hygiene work for dentists to assure quality services are available to the public and to provide dentists the dental hygiene support necessary for them to comply with the Dental Practice Act.

The new rule is adopted on an emergency basis under Texas Government Code, §2001.034; Texas Civil Statutes, Article 4551d(a), which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules and regulations necessary to assure compliance with law related to the practice of dentistry; and Article 4545a, §1, which provides for licensing of dental hygienists by credentials.

§103.2. Licensure by Credentials-Dental Hygienist. The State Board of Dental Examiners will license dental hygiene applicants by credentials upon payment of a fee, in an amount set by the Board, who meet all SBDE and State of Texas minimum applicant requirements, general licensure qualifications, and all of the following criteria:

(1) Has graduated from a dental hygiene school accredited by the Commission on Dental Accreditation of the American Dental Association.

(2) Is currently licensed in good standing in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act.

(3) Has practiced dental hygiene:

(A) For a minimum of five years immediately prior to applying.

(i) The term immediately means:

(I) For applications received by the SBDE between February 6, 1995, and October 31, 1995, all or part of the period of time between June 1, 1994, and October 31, 1995.

(II) For applications received by the SBDE after October 31, 1995, a period of time up to 120 days in length.

(ii) An applicant has practiced dental hygiene for five years if he or she has been actively engaged in practice for at least 26 weeks in each of the past five years.

(B) As a dental educator for a minimum of five years; or

(C) for two years of obligated service in the state under the National Health Service Corps or other federal scholarship or loan repayment program.

(4) Is endorsed by the state board of dentistry of the jurisdiction of current practice. Such endorsement is established by providing a copy under seal of the jurisdictional entity of the current dental hygienist's license and by a certified statement that he/she has current good standing in said jurisdiction.

(5) Has not been the subject of final or pending disciplinary action in any jurisdiction in which he/she is or has been licensed.

(6) Has successfully completed the SBDE's jurisprudence examination.

(7) Has passed a national written examination relating to dental hygiene as certified by the Joint Commission on National Dental Examinations or other examination approved by the SBDE.

(8) Is reputable, as demonstrated by at least two letters of character reference which have been notarized.

(9) Each candidate for licensure by credentials must submit to the credentials review committee of the Board the above required documents and information, and other documents or information that may be requested, to enable the committee to appropriately evaluate an application and make a recommendation to the Board for action on the application.

(10) Each applicant must show proof of current CPR certification as required by the Texas Dental Practice Act, Article 4545a, §1(a)(6).

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

TRD-9512539 Douglas A. Beran, Ph.D
Executive Director
State Board of Dental Examiners

Effective date: October 2, 1995

Expiration date: January 30, 1996

For further information, please call: (512) 463-6400

♦ ♦ ♦

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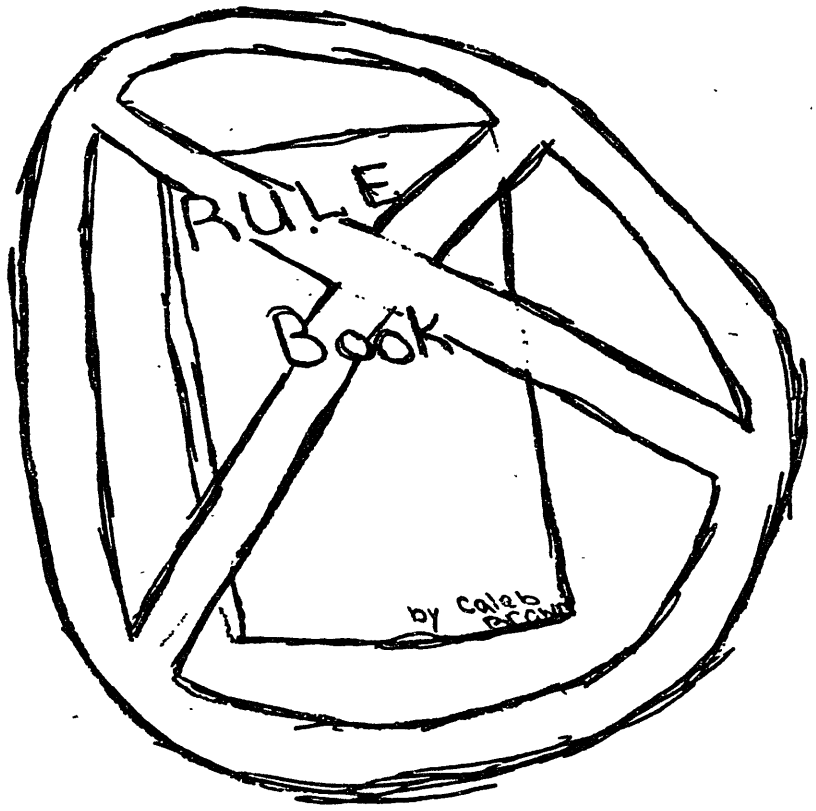
NO RULES



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Standards

• 1 TAC §251.7

The Advisory Commission on State Emergency Communications (ACSEC) proposes new §251.7, in accordance with the Texas Health and Safety Code, Chapter 771, concerning Guidelines for Implementing Integrated Services to identify the integration of the typical 9-1-1 features (Automatic Number Identification, Automatic Location Identification, and Selective Routing) with a digital map display of location information into one workstation at the emergency call answering position. The technological changes which are occurring, as well as the increasing volume of callers who cannot accurately identify their location (e.g., cellular callers) has created the need for the addition of these guidelines.

Mary A. Boyd, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Any additional costs which may arise due to the implementation of the newly allowed level of service, are already accounted for in the agencies' strategic plan budget and will be paid for through the 9-1-1 service fees and 9-1-1 surcharge fees. Ms. Boyd also has determined that there will be no fiscal effect on local employment or the local economy.

Ms. Boyd also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the need of emergency assistance. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mary Boyd, Executive Director, ACSEC, 333 Guadalupe, Suite 2-212, Austin, Texas 78701-3942.

The new section is proposed under the Health and Safety Code, Chapter 771, §§771.051, 771,056, and 771.057, which authorizes the ACSEC with authority to develop and amend a regional plan for the establishment and operation of 9-1-1 services throughout a 9-1-1 region that meets the standards established by the commission according to procedures determined by the Commission.

The proposed new rule affects the Health and Safety Code, Chapter 771, §§771.051, 771.056 and 771.057.

§251.7. Guidelines for Implementing Integrated Services.

(a) Definitions. When used in this rule, the following words and terms shall have the meanings identified in paragraphs (1)-(13) of this subsection, unless the context and use of the word or terms clearly indicates otherwise.

(1) 9-1-1 Database Record-A physical record which includes the telephone subscriber information to include the caller's telephone number, related locational information, and class of service, and conforms to NENA adopted database standards.

(2) 9-1-1 Funds-Funds assessed and disbursed in accordance with the Texas Health and Safety Code, Chapter 771.

(3) 9-1-1 Equipment-Capital equipment acquired partially or in whole with 9-1-1 funds and designed to support and/or facilitate the delivery of an emergency 9-1-1 call to an appropriate emergency response agency.

(4) Address Completion-A county addressing project, based upon the inventory, has corrected address errors, notified all affected residents or address changes by the county addressing authority, provided all new or changed addresses to telephone companies and the post office, and established a maintenance method.

(5) Address Maintenance Plan-A plan that identifies a cost effective program for the maintenance of addressing in a county. For regional planning commissions, this plan is part of a regional plan as described by the Texas Health and Safety Code, Chapter 771.

(6) Digital Map. A computer generated and stored data set based on a coordinate system which includes geographical and attribute information pertaining to a defined location. A digital map includes street name and locational information, data sets related to emergency service provider boundaries, as well as other associated data.

(7) Emergency Communications District-A public agency or group of public agencies acting jointly that provided 9-1-1 service before September 1, 1987, or that had voted or contracted before that date to provide that service; or a district created under Texas Health and Safety Code, Chapter 772, Subchapters B, C, or D.

(8) Integrated Services-A level of service which, in an integrated fashion, combines features normally associated with 9-1-1 call delivery, including but not limited to automatic number identification (ANI), automatic location identification (ALI), selective routing (SR) capabilities, and utilizes integrated enhancements to facilitate call delivery including, but not limited to, digital mapping capabilities. Integrated services for this application is defined as incorporating multiple data signals into a single workstation.

(9) Graphical Display of Location Information-The ability to display a map on a telecommunicator's terminal in response to a 9-1-1 call, or inquiry, that relates to the caller's location. Features may include the display of an address or geographic based coordinate locations, and the ability to zoom, pan and show other related geographical information or features.

(10) Geographic Information System (GIS)-A system necessary to map emergency service number (ESN) boundaries and reflect annexations and other feature changes; to list emergency service provider translations for ESNs, to provide and maintain master street address guide (MSAG) format, validate and resolve database discrepancies; to project new addresses and block ranges as an initial assignment or correction for ongoing issuance of new addresses; and for locator maps for emergency services providers.

(11) Regional Planning Commission-A commission established under Local Government Code, Chapter 391, also referred to as a regional council of governments (COG).

(12) Strategic Plans-Regional plans developed in compliance with Chapter 771 shall include a strategic plan that projects regional 9-1-1 service costs, and service fee and other non-equalization surcharge revenues at least three years into the future, beginning September 1, 1994. Within the context of §771.056(d), the Advisory Commission on State Emergency Communications (ACSEC) shall consider any revenue insufficiencies to represent need for equalization surcharge funding support.

(13) Wireless 9-1-1 Call-A call into a 9-1-1 system from an end user of two-way local wireless voice service available to the public from a commercial mobile radio service. The term includes any wireless two-way communication device provided by a mobile service or the functional equivalent of a mobile service.

(b) Policy and Procedures. As authorized by the Texas Health and Safety Code, Chapter 771, the ACSEC may impose 9-1-1 emergency service fees and equalization surcharges to support the planning, development, and provision of 9-1-1 service throughout the state of Texas. The implementation of such service involves the procurement, installation and operation of equipment designed to either support or facilitate the delivery of an emergency call to an appropriate emergency response agency. In addition, the ACSEC has funded addressing projects throughout the state to allow for the implementation of automatic location identification (ALI) level of service. In the funding of such projects, it has been the policy of the ACSEC to fund geographic information systems and the development of digital maps to support such activities. The ACSEC recognizes the rapidly changing telecommunications environment in wireless services and its impact on 9-1-1 emergency services. Integration of new technology and 9-1-1 functionality will facilitate the delivery of an emergency call. It is the policy of the ACSEC that all 9-1-1 emergency calls for service be handled at the highest level of service available. In accordance with this policy, the following policies and procedures shall apply to the installation and implementation of integrated services funded in part or in whole by the 9-1-1 funds referenced in subsection (a)(2) of this section (relating to Definitions) .

(1) For regional planning commissions and emergency communication districts requesting the funding of integrated services under this policy, the implementation of such services would only pertain to the graphical display of location information.

(2) Prior to the implementation of graphical display of location information for a county system, a regional planning commission, and/or emergency communication district shall meet the following requirements:

(A) complete the county addressing project;

(B) develop a digital map; and

(C) establish and adopt a maintenance plan of the county digital map, county addressing project, and the associated county 9-1-1 database records.

(3) The maintenance plan shall be provided to ACSEC in conjunction with strategic plan annual review or district requests submitted to the Commission following the adoption of this rule in accordance with established Commission policy.

(4) Annual budgeted costs associated with graphical display of 9-1-1 shall be monitored by the ACSEC staff for consistency with approved maintenance plans and systems costs. Such costs that are determined by ACSEC staff to not be consistent with the approved strategic plan, shall be presented for review and approval by the Commission.

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

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

TRD-9512592 Mary A Boyd
Executive Director
Advisory Commission on State Emergency Communications

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 305-6911

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Chapter 255. Finance

• 1 TAC §255.4

The Advisory Commission on State Emergency Communications proposes an amendment to §255.4, concerning the definition of equivalent local exchange access line. The proposed amendment modifies the existing definition to reflect changes in the local telephone service environment since the definition was originally adopted. The proposed modification would allow for the assessment of a $.50 emergency service fee to all local telecommunications subscribers, including, but not limited to, subscribers of cellular telephone service, except those subscribers exempted by statute and §255.6. For clarification and uniformity of billing of the 9-1-1 emergency service fee, this amendment redefines an equivalent local exchange access line.

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

Ms. Boyd also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification and uniformity in the billing of the 9-1-1 service fees as approved and authorized by the Advisory Commission on State Emergency Communications. The anticipated economic cost to persons and small and large businesses who are required to comply with the proposed section is a maximum assessed fee of $.50 on each equivalent local exchange access line.

Comments on the proposal may be submitted to Mary A. Boyd, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701, (512) 305-6911.

The amendment is proposed under the Health and Safety Code, Chapter 771, §§771.071, 771.073, and 771.075, which provides the Advisory Commission on State Emergency Communications with the authority to administer the implementation of statewide 9-1-1 emergency telephone service and to determine what constitutes an equivalent local exchange access line for purposes of imposing an emergency service fee.

The proposed amendment affects the Health and Safety Code, Chapter 771, §§771.071.

§255.4. Definition of Equivalent Local Exchange Access Line. The term "equivalent local exchange access line" means any telephone line or service for which a federal subscriber line charge is assessed by a [the] local exchange service provider on the customer's bill **or any cellular telephone, communication channel, personal communication system, commercial mobile radio service, cable/broadband services, or any other wire or wireless means that connects the customer to the public switched telecommunications network and provides the customer with ability to reach a public safety answering point by dialing the digits 9-1-1. The term does not include coin-operated public telephone equipment, public telephone equipment operated by card reader, commercial mobile radio service that provides access to a paging or other one-way signaling service, a communication channel suitable only for data transmission, a wireless roaming service or other nonvocal commercial mobile radio service, or a private telecommunications system.**

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

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

TRD-9512593 Mary A. Boyd
Executive Director
Advisory Commission on State Emergency Communications

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 305-6911

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• 1 TAC §255.7

The Advisory Commission on State Emergency Communications proposes an amendment to §255.7, concerning the collection and remittance of 9-1-1 emergency service fees and equalization surcharges in order to implement recent legislative clarifications on collection and remittance.

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

Ms Boyd also has determined that the cost of compliance with the section for small businesses will be that the cost associated with telephone companies' billing, collecting, and reporting of 9-1-1 revenues will be offset by the retention of a 2.0% administrative charge; however, companies in non-compliance would incur penalties. The Commission has no historical data and is unable to estimate an exact fiscal impact.

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

Comments on the proposal may be submitted to Mary A. Boyd, Executive Director, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701, (512) 305-6911.

The amendment is proposed under the Health and Safety Code, Chapter 771, §§771.071, 771.075, 771.076, 771.072, and 771.073, which provides the Advisory Commission on State Emergency Communications with the authority to impose the billing and collection of 9-1-1 service fee and surcharges by service providers and maintain the authority to audit said providers.

The proposed amendment affects the Health and Safety Code, Chapter 771, §771.077.

§255.7. 9-1-1 Service Fee and Surcharge Billing and Remittance Authorization.

(a)The 9-1-1 service fee and equalization surcharge, authorized pursuant to the Health and Safety Code, §771.071 and §771.072 shall be billed by each service provider to all classes of customers and individual customers, except those expressly exempted by §771.074 and Commission Rule. The service providers have no authority to cease the billing of 9-1-1 fees and surcharges on any customer or type of customer unless and until formally authorized to do so by the Commission.

(b) The service providers shall collect and remit the fees or surcharges to the appropriate parties no later than the 60th day after the last day of the month in which the fees or surcharges are collected. Failure to remit such fees or surcharges in a timely manner may, after notice and opportunity for hearing, result in late payment penalties to be assessed in the amount not to exceed $100 a day for each delinquent day.

(c) If, in the preceding calendar year, a service provider collects an average of less than $1,000 per month for either fees or surcharges, then that service provider may remit the fees or surcharges to the appropriate parties on a quarterly basis. Quarterly payments shall be received by the appropriate parties no later than the 15th day following the end of the calendar quarter. Quarterly reports must show the amounts collected and remitted for each month of the quarter.

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

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

TRD-9512594 Mary A Boyd
Executive Director
Advisory Commission on State Emergency Communications

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 305-6911

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

The Public Utility Commission of Texas proposes amendments to Substantive Rules, §23.21 (relating to Cost of Service), §23.23 (relating to Rate Design), §23.24 (relating to Form and Filing of Tariffs), §23.26 (relating to New and Experimental Services), §23.27 (relating to Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges), §23. 28 (relating to Promotional Rates for LEC Services), §23.41 (relating to Customer Relations), §23.42 (relating to Refusal of Service), §23 44 (relating to New Construction), §23.45 (relating to Billing), §23.46 (relating to Discontinuance of Service), §23.48 (relating to Continuity of Service), §23.49 (relating to Telephone Extended Area Service and Expanded Toll-free Local Calling Areas), §23.52 (relating to Tel-Assistance and Lifeline Service), §23.55 (relating to Operator Services), §23.56 (relating to Statewide Dual-Party Relay Service), §23.58 (relating to Pay-per-call Information Services Call Blocking). The proposed amendments are occasioned by recent legislation, as well as a need to update certain definitions in the sections. The changes made in response to legislation include recognition of new certification categories, such as certificates of operating authority and service provider certificates of operating authority, for providers of telecommunications services, and clarifications as to the areas where the commission's jurisdiction is restricted to dominant certificated telecommunications utilities.

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

Mr. Pea also has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be that there will be greater opportunities for new providers to enter the telecommunications services market in Texas. There will be no effect on small businesses as result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed amendments (13 copies) may be submitted to Secretary, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within twenty days of the date of publication in the *Texas Register*. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendments. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 14372. The commission staff will hold a public hearing on this proposal on November 10, 1995

Rates

• 16 TAC §§23.21, 23.23, 23.24, 23.26-23.28

The amendments are proposed under the Public Utility Regulatory Act of 1995, 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, 74th Legislature, Regular Session 1995.

§23.21. Cost of Service.

(a) Application. Unless the context clearly indicates otherwise, in this section the term utility, insofar as it relates to telecommunications utilities, shall refer to dominant certificated telecommunications utilities (DCTUs).

(b)[(a)] Components of cost of service and post test year adjustments. Except as provided for in **the Public Utility Regulatory Act of 1995, subtitles H and I of Title III, or in** any section of these rules dealing with fuel expenses, rates are to be based upon a utility's cost of rendering service to the public during a historical test year, adjusted for known and measurable changes. Post test year adjustments for known and measurable changes to historical test year data (including, but not limited to revenue, expenses, and invested capital) will be considered only where the attendant impacts on all aspects of a utility's operations can be with reasonable certainty identified, quantified, and matched. The two components of cost of service are allowable expenses and return on invested capital.

(c)[(b)] Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the public shall be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered, except as provided for in any section of these rules dealing with fuel expenses.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to the rules in this section, may include, but are not limited to, the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used by and useful to the utility in providing such service to the public. Payments to affiliated interests for costs of service, or any property, right or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the **Public Utility Regulatory Act of 1995, §2. 208(b) and §3.208(b)** [Act, §41(c)(1)].

(B) Depreciation expense based on original cost and computed on a straight line basis as approved by the commission. Other methods of non-accelerated depreciation may be used for electric generating units when it is determined that such depreciation methodology is a more equitable means of recovering the cost of the plant.

(C) Assessments and taxes other than income taxes.

(D) Federal income taxes on a normalized basis. Federal income taxes shall be computed according to the provisions of the **Public Utility Regulatory Act of 1995, §2.208(c) and §3.208(c)** [Act, §41(c)(2)].

(E) Advertising, contributions and donations. The actual expenditures for ordinary advertising, contributions, and donations may be allowed as a cost of service provided that the total sum of all such items allowed in the cost of service shall not exceed 3/10 of 1.0% (0.3%) of the gross receipts of the utility for services rendered to the public. The following expenses shall be included in the calculation of the 3/10 of 1.0% (0.3%) maximum:

(i) funds expended advertising methods of conserving energy;

(ii) funds expended advertising methods by which the consumer can effect a savings in total utility bills;

(iii) funds expended advertising load factor improvement at off peak times;

(iv) funds expended in support of or membership in professional or trade associations provided such associations contribute toward the professionalism of their membership. However, membership expenses related to legislative advocacy, directly or indirectly, shall not be considered allowable expenses.

(F) Nuclear decommissioning expense. The following restrictions shall apply to the inclusion of nuclear decommissioning costs that are placed in a utility's cost of service.

(i) An electric utility owning or leasing an interest in a nuclear-fueled generating unit shall include its cost of nuclear decommissioning in its cost of service. Funds collected from ratepayers for decommissioning shall be deposited monthly in irrevocable trusts external to the utility, in accordance with §23.59 of this title (relating to Nuclear Decommissioning Trusts). All funds held in short-term investments must bear interest. The level of the annual cost of decommissioning for ratemaking purposes will be determined in each rate case based on an allowance for contingencies of 10% of the cost of decommissioning, the most current information reasonably available regarding the cost of decommissioning, the balance of funds in the decommissioning trust, anticipated escalation rates, the anticipated return on the funds in the decommissioning trust, and other relevant factors. The annual amount for the cost of decommissioning determined pursuant to the preceding sentence shall be expressly included in the cost of service established by the commission's order.

(ii) In the event that an electric utility implements an interim rate increase, including an increase filed under bond, an incremental change in decommissioning funding shall be included in the increase.

(iii) A utility's decommissioning fund and trust balances will be reviewed in general rate cases. In the event that a utility does not have a rate case within a five-year period, the commission, on its own motion or on the motion of the commission's General Counsel, the Office of Public Utility Counsel, or any affected person, may initiate a proceeding to review the utility's decommissioning cost study and plan, and the balance of the trust.

(iv) An electric utility shall perform, or cause to be performed, a study of the decommissioning costs of each nuclear generating unit that it owns or in which it leases an interest. A study or a redetermination of the previous study shall be performed at least every five years. The study or redetermination should consider the most current information reasonably available on the cost of decommissioning. A copy of the study or redetermination shall be filed with the commission and copies provided to the commission's **Regulatory** [General Counsel and Electric] Division and the Office of Public Utility Counsel. A utility's most recent decommissioning study or redeterminations shall be filed with the commission within 30 days of the effective date of this subsection. The five year requirement for a new study or redetermination shall begin from the date of the last study or redetermination.

(G) Accruals credited to reserve accounts for self insurance under a plan requested by a utility and approved by the commission. The commission shall consider approval of a self insurance plan in a rate case in which expenses or rate base treatment are requested for a such a plan. For the purposes of this rule, a self insurance plan is a plan providing for accruals to be credited to reserve accounts. The reserve accounts are to be charged with property and liability losses which occur, and which could not have been reasonably anticipated and included in operating and maintenance expenses, and are not paid or reimbursed by commercial insurance. The commission will approve a self insurance plan to the extent it finds it to be in the public interest. In order to establish that the plan is in the public interest, the utility must present a cost benefit analysis performed by a qualified inde-

pendent insurance consultant that demonstrates that, with consideration of all costs, self insurance is a lower cost alternative than commercial insurance and that the ratepayers will receive the benefits of the self insurance plan. The cost benefit analysis shall present a detailed analysis of the appropriate limits of self insurance, an analysis of the appropriate annual accruals to build a reserve account for self insurance, and the level at which further accruals should be decreased or terminated.

(H) Postretirement benefits other than pensions (OPEB). For ratemaking purposes, expense associated with postretirement benefits other than pensions (OPEB) shall be treated as follows:

(i) OPEB expense shall be included in a utility's cost of service for ratemaking purposes based on actual payments made.

(ii) A utility may request a one-time conversion to inclusion of current OPEB expense in cost of service for ratemaking purposes on an accrual basis in accordance with generally accepted accounting principles (GAAP). Rate recognition of OPEB expense on an accrual basis shall be made only in the context of a full rate case.

(iii) A utility shall not be allowed to recover current OPEB expense on an accrual basis until GAAP requires that utility to report OPEB expense on an accrual basis.

(iv) For ratemaking purposes, the transition obligation shall be amortized over 20 years.

(v) OPEB amounts included in rates shall be placed in an irrevocable external trust fund dedicated to the payment of OPEB expenses. The trust shall be established no later than six months after the order establishing the OPEB expense amount included in rates. The utility shall make deposits to the fund no less frequently than annually. Deposits on the fund shall include, in addition to the amount included in rates, an amount equal to fund earnings that would have accrued if deposits had been made monthly. The funding requirement can be met with deposits made in advance of the recognition of the expense for ratemaking purposes. The utility shall, to the extent permitted by the Internal Revenue Code, establish a postretirement benefit plan that allows for current federal income tax deductions for contributions and allows earnings on the trust funds to accumulate tax free.

(2) Expenses not allowed. The following expenses shall never be allowed as a component of cost of service:

(A) legislative advocacy expenses, whether made directly or indirectly, including but not limited to legislative advocacy expenses included in professional or trade association dues;

(B) funds expended in support of political candidates;

(C) funds expended in support of any political movement;

(D) funds expended in promotion of political or religious causes;

(E) funds expended in support of or membership in social, recreational, fraternal, or religious clubs or organizations;

(F) funds promoting increased consumption of electricity or water;

(G) additional funds expended to mail any parcel or letter containing any of the items mentioned in subparagraphs (A)-(F) of this paragraph;

(H) payments, except those made under an insurance or risk-sharing arrangement executed before the date of the loss, made to cover costs of an accident, equipment failure, or negligence at a utility facility owned by a person or governmental body not selling power within the State of Texas;

(I) costs, including, but not limited to, interest expense, of processing a refund or credit of sums collected in excess of the rate finally ordered by the commission in a case where the utility has put bonded rates into effect, or when the utility has otherwise been ordered to make refunds;

(J) any expenditure found by the commission to be unreasonable, unnecessary, or not in the public interest, including but not limited to executive salaries, advertising expenses, legal expenses, penalties and interest on overdue taxes, criminal penalties or fines, and civil penalties or fines.

(d)[(c)] Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) Rate of return. The commission shall allow each utility a reasonable opportunity to earn a reasonable rate of return, which is expressed as a percentage of invested capital, and shall fix the rate of return in accordance with the following principles.

(A) The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties. A rate of return may be reasonable at one time and become too high or too low because of [by] changes affecting opportunities for investment, the money market, and business conditions generally.

(B) The commission shall consider efforts by the utility to comply with the statewide energy plan, the efforts and achievements of the utility in the conservation of resources, the quality of the utility's services, the efficiency of the utility's operations, and the quality of the utility's management, along with other applicable conditions and practices.

(C) The commission may, in addition, consider inflation, deflation, the growth rate of the service area, and the need for the utility to attract new capital. The rate of return must be high enough to attract necessary capital but need not go beyond that. In each case, the commission shall consider the utility's cost of capital, which is the composite of the cost of the various classes of capital used by the utility.

(i) Debt capital. The cost of debt capital is the actual cost of debt.

(ii) Equity capital. The cost of equity capital shall be based upon a fair return on its value. For companies with ownership expressed in terms of shares of stock, equity capital commonly consists of the following classes of stock.

(I) Common stock capital. The cost of common stock capital shall be based upon a fair return on its value.

(II) Preferred stock capital. The cost of preferred stock capital is its annual dividend requirement, if any, plus an adjustment for premiums, discounts, and cost of issuance.

(2) Invested capital; rate base. The rate of return is applied to the rate base. The rate base, sometimes referred to as invested capital, includes as a major component the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public. Components to be included in determining the overall rate base are as follows:

(A) Original cost, less accumulated depreciation, of utility plant used by and useful to the [public] utility in providing service.

(i) Original cost shall be the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor.

(ii) Reserve for depreciation is the accumulation of recognized allocations of original cost, representing recovery of initial investment, over the estimated useful life of the asset. Depreciation shall be computed on a straight line basis or by such other method approved under subsection (b)(1)(B) of this section over the expected useful life of the item or facility.

(iii) Payments to affiliated interests shall not be allowed as a capital cost except as provided in the **Public Utility Regulatory Act of 1995, §2.208(b) and §3.208(b)**. [Act, §41(c)(1).]

(B) Working capital allowance to be composed of, but not limited to the following:

(i) Reasonable inventories of materials, supplies, and fuel held specifically for purposes of permitting efficient operation of the utility in providing normal utility service. This amount excludes appliance inventories and inventories found by the commission to be unreasonable, excessive, or not in the public interest.

(ii) Reasonable prepayments for operating expenses. Prepayments to affiliated interests shall be subject to the standards set forth in the **Public Utility Regulatory Act of 1995, §2.208(b) and §3.208(b)**. [Act, §41(c)(1).]

(iii) A reasonable allowance for cash working capital. The following shall apply in determining the amount to be included in invested capital for cash working capital:

(I) Cash working capital for electric and telephone [interexchange] utilities shall in no event be greater than one-eighth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments.

(II) Cash working capital for all **DCTUs** [other telephone utilities] shall in no event be greater than one-twelfth of total annual operations and maintenance expense, excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments.

(III) For electric cooperatives, river authorities, and investor-owned utilities that purchase 100% of their power requirements, one-eighth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, fuel, and prepayments will be considered a reasonable allowance for cash working capital. For telephone cooperatives, one-twelfth of operations and maintenance expense excluding amounts charged to operations and maintenance expense for materials, supplies, and prepayments will be considered a reasonable allowance for cash working capital.

(IV) Operations and maintenance expense does not include depreciation, other taxes, or federal income taxes, for purposes of subclauses (I), (II), (III), and (VI) of this clause.

(V) For all investor-owned electric utilities and all telephone **DCTUs** [local exchange carriers] with **31,000** [50,000] or more access lines, a reasonable allowance for cash working capital, including a request of zero, will be determined by the use of a lead-lag study. A lead-lag study will be performed in accordance with the following criteria:

(-a-) The lead-lag study will use the cash method; all non-cash items, including but not limited to depreciation, amortization, deferred taxes, prepaid items, and return (including interest on long-term debt and dividends on preferred stock), will not be considered.

(-b-) Any reasonable sampling method that is shown to be unbiased may be used in performing the lead-lag study.

(-c-) The check clear date, or the invoice due date, whichever is later, will be used in calculating the lead-lag days used in the study. In those cases where multiple due dates and payment terms are offered by vendors, the invoice due date is the date corresponding to the terms accepted by the utility.

(-d-) All funds received by the utility except electronic transfers shall be considered available for use no later than the business day following the receipt of the funds in any repository of the utility (e.g. lockbox, post office box, branch office). All funds received by electronic transfer will be considered available the day of receipt.

(-e-) For [electric and telephone] utilities the balance of cash and working funds included in the working cash allowance calculation shall consist of the average daily bank balance of all non-interest bearing demand deposits and working cash funds.

(-f-) The lead on federal income tax expense shall be calculated by measurement of the interval between the mid-point of the annual service period and the actual payment date of the utility.

(-g-) If the cash working capital calculation results in a negative amount, the negative amount shall be included in rate base.

(VI) If cash working capital is required to be determined by the use of a lead-lag study under the previous subclause and either the utility does not file a lead lag study or the utility's lead-lag study is determined to be so flawed as to be unreliable, in the absence of persuasive evidence that suggests a different amount of cash working capital, an amount of cash working capital equal to negative one-eighth of operations and maintenance expense including fuel and purchased power in the case of an electric utility, or negative one-twelfth of operations and maintenance expense in the case of a telephone utility, will be presumed to be the reasonable level of cash working capital.

(VII) For all investor-owned telephone **DCTUs** [local exchange carriers] with fewer than **31,000** [50,000] access lines, cash working capital shall be calculated by any method that the commission determines to be reasonable, subject to subclause (IV) of this clause.

(C) Deduction of certain items which include, but are not limited to, the following:

(i) accumulated reserve for deferred federal income taxes;

(ii) unamortized investment tax credit to the extent allowed by the Internal Revenue Code;

(iii) contingency and/or property insurance reserves;

(iv) contributions in aid of construction;

(v) customer deposits and other sources of cost-free capital;

(D) Construction work in progress. The inclusion of construction work in progress is an exceptional form of rate relief. Under ordinary circumstances the rate base shall consist only of those items which are used and useful in provid-

ing service to the public. Under exceptional circumstances, the commission will include construction work in progress in rate base to the extent that the utility has proven that:

(i) the inclusion is necessary to the financial integrity of the utility; and

(ii) major projects under construction have been efficiently and prudently planned and managed. However, construction work in progress shall not be allowed for any portion of a major project which the utility has failed to prove was efficiently and prudently planned and managed.

(E) Nuclear plant in service. A nuclear generating unit shall not be eligible for inclusion in a utility's rate base as plant in service until such time as the utility has shown that the unit is in commercial operation. Such showing of commercial operation is separate and apart from, and bears no relationship to, issues such as prudent and efficient planning and management, excess capacity, or whether the unit meets the test of used and useful, and shall not be construed as satisfying the utility's burden of proof as to such other issues in the same or subsequent proceedings. A utility seeking to show that such a unit is in commercial operation must:

(i) prove that the preoperational testing program, consisting of those tests conducted following completion of construction and construction-related inspections and tests, but prior to fuel loading, to demonstrate, to the extent practical, the capability of structures, systems and components to meet performance requirements to satisfy design criteria, has been completed with all test deficiencies corrected. The requirement to correct all test deficiencies may be waived on a showing that such deficiencies do not impact on safety or system operation;

(ii) prove that the startup test program, consisting of those test activities scheduled to be performed during and after fuel loading that confirm the design bases and demonstrate, to the extent practical, that the plant will operate in accordance with design, has been completed;

(iii) prove that the unit has furnished power to the grid for an uninterrupted period of 100 hours, or the run duration period required by the full warranted output performance test of the nuclear steam supply system, whichever is greater, at a power level between 95% and 100% of the unit's nominal net electrical output as used for the purpose of plant design;

(iv) prove by use of computer simulation studies or other evidence that the plant and associated transmission facilities can supply to the utility's Texas customers their full share of the unit's rated power with the single most critical transmission line out of service;

(v) prove that the unit is supplying electricity to the utility's transmission grid with output scheduled by the load dispatcher subject to plant availability; and

(vi) file with the commission a fully documented explanation of the cause of each unscheduled and unanticipated delay of 100 hours or more and each Nuclear Regulatory Commission notice of violation received in the pre-operational or startup test programs, as defined in clauses (i) and (ii) of this subparagraph, together with fully documented descriptions of the measures taken by the utility to correct and prevent reoccurrence of the incident which caused delay and the measures taken in response to the notice of violation.

(F) Self insurance reserve accounts. If a self insurance plan is approved by the commission, any shortages to the reserve account will be an increase to the rate base and any surpluses will be a decrease to the rate base. The utility shall maintain appropriate books and records to permit the commission to properly review all charges to the reserve account and determine whether the charges being booked to the reserve account are reasonable and correct.

(e)[(d)] Adjustment for House Bill 11, Acts of 72nd Legislature, First Called Special Session 1991.

(1) Each utility that is subject to the commission's rate setting jurisdiction, pays state franchise taxes, and has not had a rate proceeding under the Act, §§2.211, 2.212, 3.210 or 3.211 [§42 or §43], in which the effects of House Bill 11 were considered in the setting of rates shall be subject to this subsection. Except as provided in the following sentence, on or before December 1 of each year, each utility subject to this subsection shall file with the commission a tariff sheet, or tariff sheets, applicable to each rate class setting forth an interim House Bill 11 tax adjustment factor. If a utility chooses not to request an increase under this subsection or if the utility has otherwise limited itself by agreement to recovering tax changes that are the subject of this subsection by a method different from that prescribed in this subsection, the utility need not file tariff sheets but shall make an informational filing showing its calculations including an explanation and all underlying supporting documentation showing the effect of House Bill 11 on its taxes. If the adjustment is a decrease that amounts to less than $1.00 [$.50] per customer for electric utilities or access line for DCTUs [telephone utilities] on an annual basis, the tariff shall not include a factor, but shall state that the reduction will be applied against the adjustment for future years. In all other tariffs, the factors set forth in the tariff sheets shall be calculated as set forth in the following paragraphs. Utilities that are required to file tariff sheets shall include an explanation of how the interim factor was calculated as well as showing all the calculations. For state taxes to be paid during 1992, all utilities subject to this subsection shall make the initial filing as soon as practical, but no later than 90 days, after the adoption of this rule.

(2) If the adjustment is a decrease requiring a factor or the utility affirmatively requests that an adjustment be made to its billings to account for the effect of House Bill 11 on its state taxes, the tariff filing will be docketed and will automatically go into effect on January 1 of the year following the filing. If the adjustment is a decrease being carried forward to future years, the filing will be treated as a tariff filing except that it shall take effect on January 1 of the year following the filing. A utility may amend a tariff filed under this subsection to make mid-course corrections as necessary. For all amended filings, all tariffs will take effect on the date specified by the utility, but in no event earlier than ten days after the filing.

(3) The interim House Bill 11 tax adjustment factor shall be calculated by allocating the effect on the utility's state taxes for the next calendar year of House Bill 11 as provided in paragraph (6) of this subsection. The effect on the utility's state taxes for the coming calendar year shall be calculated by subtracting the estimated state taxes that would be attributable to the calendar year if the law prior to House Bill 11 was still in effect from the estimated state taxes that will be due or are attributable to the calendar year under House Bill 11. In calculating the state taxes that would be due during the calendar year if the law prior to House Bill 11 was still in effect, four-twelfths of the franchise tax paid or that would have been paid in the previous year and eight-twelfths of the franchise tax that would have been paid in the calendar year in question will be considered attributable to the calendar year in question. For 1992 alone, the taxes attributable to the calendar year under House Bill 11 shall also include four-twelfths of the franchise taxes paid in 1991. In performing the calculation, the various fees imposed by House Bill 11 will not be considered taxes. In calculating the taxes that are estimated to be paid, changes resulting from audits or amended returns for previous periods that were covered by this rule shall be considered. The state franchise tax imposed by House Bill 11 will be considered to be a franchise tax and not an

income tax regardless of the method of calculation.

(4) If an interim factor goes into effect, it shall be subject to surcharge or refund to the extent it differs from the factor finally set by the commission. If a surcharge or refund is necessary, a credit or surcharge will be made to the existing customers' bills. If the refund or surcharge amount is less than either **$10,000** [$5,000] in total or **$1.00** [$.50] per customer, calculated by dividing the total refund or surcharge by the total number of customers, the utility may make the refund or surcharge by carrying it forward until a year when the cumulative total refund or surcharge is not less than either **$10,000** [$5,000] or **$1.00** [$.50] per customer. Simple interest will be added to the amount due at the rate set by the commission for overbillings and underbillings starting at the beginning of the month in which the obligation accrued and ending on the last day of the month preceding the refund or surcharge. The month, or months, in which the obligation accrues will be determined by comparing the collections each month under the tariff filed by the utility with the amount that should have been collected had the utility been able to precisely predict its tax bill and its sales. The number of days in each month shall be considered for purposes of the interest calculation. Interest will be added to decreases that are carried to future years and will be calculated by the same method.

(5) The utility shall file, on or before the first business day after March 1 of the year following the year that a particular factor was in effect, testimony supporting the final adjustment factor that it is requesting to account for the effect of House Bill 11 on its state taxes for that year. The utility's filing will include a copy of the Franchise Tax Return filed with the Comptroller's Office and the details of their computation of the tax that would have been due had House Bill 11 not been enacted. The hearing on the merits for purposes of setting the final factor, if necessary, shall be convened no earlier than 45 days after the filing of the utility's testimony and shall be strictly limited to issues under this subsection. For purposes of administrative efficiency, the **presiding officer** [hearings examiner] assigned to a case may grant a utility's request that the final hearing on a particular year's factor be delayed for up to three years; however, if such a request is granted, any interest to be paid by the utility shall be at the utility's cost of capital as determined in the utility's last rate case. **Requests to delay the final hearing on a particular year's factor shall be filed with the testimony supporting the final adjustment factor.**

(6). The billing adjustment should apply over the entire year; however, if the adjustment necessary to account for the effect of House Bill 11 is so small that it would be difficult to apply on a monthly basis, the utility may make the billing adjustment during a single month. Cost allocation and rate design are as follows.

(A) Electric utilities. For electric utilities, if the adjustment factor results in a lower cost to the ratepayers, the revenue decrease shall be allocated to the customers on the same basis as the franchise taxes were allocated in the utility's last rate case. If the adjustment factor results in a greater cost to the ratepayers, the revenue increase will be allocated to the customers in the same manner as were federal income taxes in the utility's last rate case. The factor for each customer within a class will then be calculated based on expected kilowatt-hour (kwh) sales and charged on a per kwh basis, except that the factor for each customer within an industrial class served at transmission-level voltage will be calculated as a percentage of the base revenues (excluding fuel, any applicable PCRF charges, and add-on revenue taxes) received from that class during the most recent 12-month period.

(B) **DCTUs** [Telephone utilities]. Any increase or decrease will be allocated to each customer class and service based on the revenues from that class or service. For purposes of determining revenues, the period to be used will be the same as that for the federal tax return used to compute the state taxes. The adjustment factor will be billed as a percentage of the customer's bill except that coin telephone local calling shall not be billed any adjustment. Such percentage shall be determined by computing the ratio of a class's or service's allocated franchise tax to its historic revenues. The adjustment on the customer bill will be rounded to the nearest cent.

(7) The utility shall separately list the adjustment on each customer's bill and label the adjustment "cost of service surcharge" if the adjustment is an increase or "cost of service credit" if the adjustment is a decrease.

§23.23. Rate Design.

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

(d) Telephone.

(1) General. **Dominant certificated telecommunications utility (DCTU)** [Local exchange company (LEC)] rates for intrastate access services shall be established in accordance with the provisions of this subsection. Nothing in this subsection precludes a **DCTU** [an LEC] from offering new, experimental, promotional, or competitive services in accordance with other provisions of this part authorizing such offerings.

(2) Definitions. The following words and terms, when used within this subsection, shall have the following meanings, unless the context clearly indicates otherwise.

(A) Access customer-Any user of services which are obtained from a **DCTU** [an LEC] access service tariff.

(B) Access services-**DCTU** [LEC] services which provide connections for or are related to the origination or termination of intrastate telecommunications services that are generally, but not limited to, interexchange services.

(C) Dedicated signalling transport-Transmission of out-of-band signalling information between an access customer's common channel signalling network and a **DCTU's** [LEC's] signalling transport point on facilities dedicated to the use of a single customer.

(D) Direct-trunked transport-Transmission of traffic between the serving wire center and another **DCTU** [LEC] office, without intermediate switching, which is charged on a flat-rate basis.

(E) Equal access -**DCTU** [LEC] access which is provided to access customers on a tariffed basis, which is equal in type, quality and price to Feature Group C, and for which the rates are unbundled. From an end user's perspective, equal access is characterized by the availability of 1-plus dialing with the end user's interexchange carrier of choice on interLATA calls.

(F)-(G) (No change.)

(H) Interexchange Carrier (IXC)-A carrier other than a **DCTU** [LEC] providing any means of transporting intrastate telecommunications messages between local exchanges, but not solely within local exchanges, in the State of Texas. An entity is not an IXC solely because of:

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

(I) Interexchange Carrier Access Charge (ICAC)-A usage-sensitive rate that is usually assessed in conjunction with carrier common line (CCL) usage. The revenues from the assessment of the ICAC are pooled and distributed to **DCTUs** [LECs] pursuant to commission order. The ICAC is to be phased down and eliminated pursuant to the provisions of this subsection. During the phasedown, the ICAC will be referred to as the transitional ICAC.

(J) (No change.)

(K) Meet point billing-A DCTU [An LEC] access billing arrangement for services to access customers when local transport is jointly provided by more than one DCTU [LEC].

(L) Percent Interstate Usage (PIU)-An access customer-specific ratio or ratios determined by dividing interstate access minutes by total access minutes. The specific ratio shall be determined by the DCTU [LEC] unless the DCTU's [LEC's] network is incapable of determining the jurisdiction of the access minutes. A PIU establishes the jurisdiction of switched access usage for determining rates charged to switched access customers and affects the allocation of switched access revenue and costs by DCTUs [LECs] between the interstate and intrastate jurisdictions.

(M) (No change.)

(N) Serving wire center (SWC)-The DCTU [LEC]-designated central office which serves the access customer's point of demarcation.

(O) Special access-A transmission path connecting customer-designated premises to each other either directly or through a hub or hubs where bridging, multiplexing or network reconfiguration service functions are performed and includes all exchange access not requiring switching performed by the DCTU's [local exchange carrier's] end office switches.

(P) Switched access-Access service that is provided by DCTUs [LECs] to access customers and that requires the use of DCTU [LEC] network switching or common line facilities generally, but not necessarily, for the origination or termination of interexchange calls. Switched access includes all forms of transport provided by the DCTU [LEC] over which switched access traffic is delivered.

(Q) (No change.)

(R) Switched access minutes or access minutes of use-The measured or assumed duration of time that DCTU [LEC] network facilities are used by access customers. Access minutes are measured for the purpose of calculating access charges applicable to access customers.

(S) Tandem-switched transport-Transmission of traffic between the serving wire center and another DCTU [LEC] office that is switched at a tandem switch and charged on a usage basis.

(T) Transitional ICAC-A rate, calculated pursuant to paragraph (6) [(5)] of this subsection.

(3) Switched access rates of incumbent local exchange companies. Notwithstanding paragraphs (4) and (5) of this subsection, an incumbent local exchange company may file with the commission tariffs for switched access service that have been approved by the Federal Communications Commission, provided that the tariffs include all rate elements in the company's interstate access tariff other than end user charges. If on review the filed tariffs contain the same rates, terms, and conditions, excluding any end user charges, as approved by the Federal Communications Commission, the commission shall order the rates to be the intrastate switched access rates, terms, and conditions for the incumbent local exchange company within 60 days of filing.

(4)[(3)] Access services. Each DCTU's [LEC's] tariff must include the recurring and nonrecurring charges for all access services offered by the DCTU [LEC]. A DCTU [An LEC] is not required to include in its access tariff any access service that its network is technologically incapable of providing. A DCTU [An LEC] must include in its access tariff any access service which is provided on a special assembly basis if the service is provided to more than three customers or if the service is provided at more than three locations. DCTUs [LECs] are prohibited from charging intrastate end user common line charges, intrastate subscriber line charges, or similar intrastate end user charges.

(5)[(4)] Access rates. The structure and rates for all DCTUs' [LECs'] intrastate switched access services shall be established in accordance with the following requirements.

(A) Originating rate. Each DCTU [LEC] shall calculate its composite originating switched access rate, excluding the transitional ICAC rate. If such composite switched access rate is calculated to be greater than $.0461 per premium originating access minutes of use, the DCTU [LEC] must show good cause to charge such rate in its initial compliance application filed pursuant to paragraph (7) [(6)] of this subsection, and must include in such filing a showing that the PIUs of its access customers are reasonable. For purposes of calculating the composite originating switched access rate, each DCTU [LEC] shall incorporate its weighted average local transport rate and an effective per minute rate for all recurring rate elements. The requirements of this subparagraph apply to Southwestern Bell Telephone Company effective December 14, 1993 unless otherwise ordered by the commission.

(B) Terminating rate. Each DCTU [LEC] shall calculate its composite terminating switched access rate, excluding terminating CCL and the transitional ICAC rate. If such composite terminating switched access rate is calculated to be greater than $.0183 per premium terminating access minutes of use, the DCTU [LEC] must show good cause to charge such rate in its initial compliance application filed pursuant to paragraph (7) [(6)] of this subsection, and must include in such filing a showing that the PIUs of its access customers are reasonable. For purposes of calculating the composite terminating switched access rate, each DCTU [LEC] shall incorporate its weighted average local transport rate and an effective per minute rate for all recurring rate elements. The requirements of this subparagraph apply to Southwestern Bell Telephone Company effective December 14, 1993 unless otherwise ordered by the commission.

(C) Terminating CCL. In the initial compliance filing, each DCTU's [LEC's] terminating CCL may be residually priced to produce the equivalent amount of revenues defined by paragraph (6)(A)(i) of this subsection, except that the terminating CCL rate shall not exceed $.08 per premium terminating rated access minute of use in the initial filing nor in any subsequent filing.

(D) Premium rates. The requirements of this subparagraph apply to Southwestern Bell Telephone Company effective December 14, 1994 unless otherwise ordered by the commission. Premium access rates shall apply only to those switched access minutes that:

(i) terminate via Feature Group B, provided, however, any existing discounts for termination via Feature Group B shall be phased out in accordance with the schedule for the phasedown of the transitional ICAC revenue requirement as set forth in paragraph (6) [(5)](B) of this subsection;

(ii) originate or terminate via Feature Group C;

(iii) originate from an equal access end office via any switched access feature group;

(iv) terminate to an equal access end office via any switched access feature group;

(E) Local switching. The rate differential between the LS1 and LS2 local switching rate elements shall be phased into one premium local switching rate element in accordance with the schedule for the phasedown of the transitional ICAC revenue requirement as set forth in paragraph (6) [(5)](B) of this subsection. The requirements of this subparagraph apply to Southwestern Bell Telephone Company effective December 14, 1994 unless otherwise ordered by the commission.

(F) Local transport rate structure and pricing. Local transport rates shall not contain unreasonable distance sensitivity. Each **DCTU** [local exchange carrier, as defined in §23.61 of this title (relating to Telephone Utilities),] shall comply with clauses (i)-(ix) of this subparagraph, unless indicated otherwise.

(i) Transport Services. Each **DCTU** [local exchange carrier] that is subject to this subparagraph shall offer transport services that consist of the following elements: entrance facilities, direct-trunked transport, tandem-switched transport, dedicated signalling transport, and a residual charge.

(ii) Entrance Facilities.

(I) All access customers that use the **DCTU's** [LEC's] facilities between the customer-designated point of demarcation and the SWC shall be assessed a flat-rated entrance facilities charge based upon the service level ordered. **Dominant certificated telecommunications utilities** [LECs] shall offer entrance facilities at voicegrade, DS1 and DS3 service levels.

(II) Rates for entrance facilities shall be set no lower than 105% of the long run incremental cost (LRIC) for each service level stated in subclause (I) of this clause.

(III) The **DCTU** [LEC] may charge distance-sensitive rates for entrance facilities as enumerated in clause (viii) of this subparagraph. Mileage shall be measured as airline mileage between the point of demarcation and the SWC.

(iii) Direct-Trunked Transport.

(I) All access customers that use the **DCTU's** [LEC's] direct-trunked transport facilities shall be assessed a flat-rated direct-trunked transport charge based upon the service level ordered. **Dominant certificated telecommunications utilities** [LECs] shall offer direct trunked transport at voice grade, DS1 and DS3 service levels.

(II) Rates for direct-trunked transport facilities shall be set no lower than 105% of the long run incremental cost (LRIC) for each service level in subclause (I) of this clause. Additionally, these rates shall be set consistent with the requirement in clause (vii) of this subparagraph.

(III) The **DCTU** [LEC] may charge distance sensitive rates for direct-trunked transport, as enumerated in clause (viii) of this subparagraph. Mileage shall be measured as airline mileage between the SWC and end office or between customer-designated points.

(IV) Centralized equal access providers are not required to provide direct-trunked transport services. **DCTUs** [Local exchange carriers] that do not have measurement and billing capabilities at their end offices are not required to provide direct-trunked transport services at those end offices.

(iv) Tandem-Switched Transport.

(I) All access customers that use the **DCTU's** [LEC's] tandem-switched transport facilities shall be assessed the following rates:

(-a-) a per access minute tandem switching charge; and

(-b-) a per access minute tandem-switched transmission charge.

(II) The rates for tandem-switched transport facilities shall be set no lower than 105% of the long run incremental cost (LRIC). Additionally, these rates shall be set consistent with the requirements in clause (vii) of this subparagraph.

(III) The **DCTU** [LEC] may charge distance-sensitive rates for tandem-switched transmission elements, as enumerated in clause (viii) of this subparagraph. Mileage shall be measured as airline mileage between the SWC and the end office, unless the customer has ordered tandem-switched transport between the tandem office and the end office, in which case mileage shall be measured as airline mileage between the tandem office and the end office.

(v) Dedicated Signalling Transport: Dedicated signalling transport shall be provided in accordance with the following requirements. Any **DCTU** [LEC] that currently provides dedicated signalling transport shall file tariff revisions to comply with the requirements of this clause in accordance with the schedule contained in subclause (III) of clause (ix) of this subsection.

(I) Dedicated signalling transport shall consist of two subelements, a signalling link charge and a signalling transfer point (STP) port termination charge.

(II) A flat-rated signalling link charge per unit of capacity shall be assessed upon all access customers that use facilities between the access customer's common channel signalling network and the **DCTU's** [LEC's] signalling transfer point or equivalent facilities. If the **DCTU** [LEC] charges distance-sensitive rates for the signalling link, mileage shall be measured as airline mileage between the access customer's common channel signalling network and the **DCTU's** [LEC's] signalling transfer point.

(III) A flat-rated STP port termination charge per port shall be assessed upon all access customers that use dedicated signalling transport.

(IV) Rates for dedicated signalling transport facilities shall be set no lower than 105% of the long run incremental cost (LRIC).

(vi) Residual Charge.

(I) The **DCTU** [LEC] shall assess only one residual charge for each local switching access minute of use sold to those customers interconnecting with the **DCTU's** [LEC's] switched access network by ordering from the **DCTU's** [LEC's] access tariff.

(II) The initial residual charge contained in the initial tariff amendments filed pursuant to clause (ix)(III) of this subparagraph shall be computed as set forth in items (-a-)-(-c-) of this subclause:

(-a-) The rates developed pursuant to this subparagraph for entrance facilities, tandem-switched transport, direct-trunked transport, and dedicated signalling transport services shall be multiplied by 1994 demand to calculate an estimated revenue.

(-b-) The estimated revenue shall be subtracted from the intrastate local switched transport service revenues for 1994 to calculate a residual amount.

(-c-) The residual amount shall be divided by the total intra-

state local switching access minutes for 1994 to calculate the residual charge.

(vii) Transport Rate Differences. The rate differences between tandem-switched transport, DS1 direct-trunked transport and DS3 direct-trunked transport, shall be reasonable. The difference between the rate and 105% of the LRIC for DS1 direct-trunked transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. The difference between the rate and 105% of the LRIC for DS0 direct-trunked transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. The difference between the rate and 105% of the LRIC for tandem-switched transport shall not exceed 150% of the difference between the rate and 105% of the LRIC for DS3 direct-trunked transport, on an equivalent unit of capacity basis. To determine the rate and LRIC relationships between the transport options, the tandem switch LRIC must be included in the LRIC for the tandem-switched transport option.

(viii) Distance Sensitive Rates. If the **DCTU** [LEC] employs distance-sensitive rates for entrance facilities, direct-trunked transport and/or tandem-switched transmission elements, they shall be assessed in the following manner:

(I) a distance-sensitive component shall be charged for the use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the transmission link; and

(II) a nondistance-sensitive component shall be charged for the use of the circuit equipment at the ends of the transmission link.

(ix) Tariff Provisions.

(I) a distance-sensitive component shall be charged for the use of the transmission facilities, including intermediate transmission circuit equipment between the end points of the transmission link; and

(II) a nondistance-sensitive component shall be charged for the use of the circuit equipment at the ends of the transmission link.

(III) Initial tariff amendments to implement the provisions of this subparagraph shall be filed according to the following schedule:

(-a-) **DCTUs** [LECs] with 1 million or more access lines shall file no later than 120 days from the effective date of this subparagraph;

(-b-) **DCTUs** [LECs] with 50,000 or more access lines but fewer than one million access lines may file no earlier than 180 days from the effective date of this subparagraph;

(-c-) **DCTUs** [LECs] with fewer than 50,000 access lines may file no earlier than 240 days from the effective date of this subparagraph.

(IV) Initial tariff amendments filed in compliance with this subsection shall be filed pursuant to §23.26 of this title (relating to New and Experimental Services). Tariff revisions filed pursuant to this subparagraph shall not be combined in a single application with any other tariff revision. Initial tariff amendments shall not be permitted to become effective before expanded interconnection for switched transport services becomes available from the **DCTU** [LEC] for those **DCTUs** [local exchange carriers] subject to substantive rule §23.92 of this title (relating to Expanded Interconnection).

(V) Local exchange carriers not subject to substantive rule §23.91 of this title (relating to Long Run Incremental Cost Methodology for **DCTU** [LEC] Services) may propose charges that are the same as the charges in effect for the carrier's interstate provision of the same service or adopt the switched transport rates of another **DCTU** [LEC] that are developed pursuant to the requirements of this section.

(VI) Within 120 days after the completion of LRIC cost studies required by substantive rule §23.91 of this title (relating to Long Run Incremental Cost Methodology for LEC Services), any **DCTU** [LEC] subject to that rule shall file tariff amendments in order to revise its local transport rates in conformity with this section based upon the new LRIC cost studies.

(G) ICAC. The ICAC rate shall be phased down and eliminated by March 1, 1995 in accordance with paragraph **(6)** [(5)] of this subsection.

(H) Lower rates. Nothing in this paragraph prevents a **DCTU** [an LEC] from charging a lower rate for any rate element than the amount specified herein; however, no **DCTU** [LEC] shall charge any rate for switched access that is not contained in its switched access tariff.

(I) Rounding. The rates for all access services shall be assessed using conventional rounding of fractional units of applicable billing units, i. e. a fraction equal to or greater than .5 of one unit will be rounded up to the next higher whole unit, while fractions less than .5 of one unit will be rounded down to the next lower whole unit, except that local transport mileage may be rounded up to the next whole mile.

(6)[(5)] ICAC transition. If the rates established in conformity with paragraph **(5)** [(4)] of this subsection are not sufficient to yield a level of revenues equivalent to a **DCTU's** [LEC's] base level of switched access revenues, as defined subparagraph (A)(i) of this paragraph, and the **DCTU** [LEC] has not established an HCA requirement under §23.53(d) of this title, then the **DCTU** [LEC] shall be entitled to receive transitional ICAC revenues as provided herein:

(A) Transitional ICAC revenues. Each **DCTU's** [LEC's] benchmark level of transitional ICAC revenues shall be calculated as follows:

(i) 1991 switched access demand shall be multiplied by rates in effect as of August 31, 1992 for each switched access rate element including any applicable access credits, and added to 1991 booked ICAC revenues minus billed ICAC revenues to determine the base level switched access revenues. However, for any **DCTU** [LEC] which has a PURA, **§3.210**, [§42] proceeding completed between January 1, 1992 and September 1, 1992, 1991 booked ICAC revenues shall be adjusted in accordance with the commission's final order in that **§3.210** [§42] proceeding.

(ii) 1991 switched access demand shall be multiplied by the **DCTU's** [LEC's] switched access rates to be effective September 1, 1992 in compliance with paragraph **(5)** [(4)] of this subsection (excluding the transitional ICAC rate) to determine the **DCTU's** [LEC's] initial compliance level of switched access revenues. In no event shall a terminating CCL rate of less than $.08 be used for purposes of this calculation.

(iii) Each **DCTU's** [LEC's] benchmark level of transitional ICAC revenues shall be equal to its base level switched access revenues, determined in accordance with clause (i) of this subparagraph, less its initial compliance level of switched access revenues determined in accordance with clause (ii) of this subparagraph.

(B) Phaseout. For the purposes of establishing a benchmark level for phasing out the transitional ICAC revenues, each **DCTU's** [LEC's] authorized level of transitional ICAC revenues established in accordance with subparagraph (A) of this paragraph shall be such **DCTU's** [LEC's]

benchmark level of transitional ICAC revenues. Each **DCTU's** [LEC's] transitional ICAC revenues shall be phased down from its benchmark and eliminated in accordance with provisions of this paragraph. Except as provided in subparagraph (F) of this paragraph, the phaseout shall be accomplished as set out in clauses (i) and (ii) of this subparagraph.

(i) For **DCTUs** [LECs] with less than 75,000 access lines as of January 1, 1992, the effective date and percentage of phaseout are as follows: September 1, 1992-25%; September 1, 1993-60%, March 1, 1995-100%.

(ii) For **DCTUs** [LECs] with 75,000 or more access lines as of January 1, 1992, the effective date and percentage of phaseout are as follows: September 1, 1992-25%; September 1, 1993-60%; September 1, 1994-100%. The applicable phaseout percentage shall be applied to the **DCTU's** [LEC's] benchmark level of transitional ICAC revenues determined in accordance with subparagraph (A) of this paragraph. The applicable phaseout percentage shall be applied to the **DCTU's** [LEC's] benchmark level of transitional ICAC revenues determined in accordance with subparagraph (A) of this paragraph;

(C) Transitional ICAC rate. Effective September 1, 1992, each **DCTU** [LEC] shall include in its access tariff a transitional ICAC rate set to yield the total level of transitional ICAC revenues established for all **DCTUs** [LECs] in accordance with this paragraph. The transitional ICAC rate shall be a uniform statewide rate element charged by all **DCTUs** [LECs] except as otherwise provided in subparagraph (F) of this paragraph. The transitional ICAC rate shall be reduced effective September 1, 1993 and September 1, 1994, and shall yield the level of transitional ICAC revenues established for all **DCTUs** [LECs] for the next phasedown period. The transitional ICAC rate shall be eliminated effective March 1, 1995. The transitional ICAC for these subsequent periods shall be established as part of the initial compliance filing. The reduction in the transitional ICAC rate will reflect the reductions in each **DCTU's** [LEC's] transitional ICAC revenue requirement as described in subparagraph (B) of this paragraph. The transitional ICAC rate shall be determined by dividing the total amount of transitional ICAC revenues for the relevant period by 1991 switched access demand.

(D) Revenue collection and disbursement. Monthly, each **DCTU** [LEC] shall forward to the association, established pursuant to §23.17 of this title (relating to Administration of IntraLATA Compensation and Interexchange Carrier Access Charge Revenues), all revenues collected pursuant to its tariffed transitional ICAC rate. Each month, the association will disburse to each **DCTU** [LEC] 1/12 of its authorized level of transitional ICAC revenues for the then-applicable 12-month phasedown period. However, for the six-month phasedown period beginning September 1, 1994, the association will disburse monthly to each **DCTU** [LEC] 1/6 of the authorized level of transitional ICAC revenues. Any surplus over the approved level of transitional ICAC revenues for all **DCTUs** [LECs] pursuant to subparagraphs (A) and (B) of this paragraph shall be distributed quarterly to access customers based on each access customer's proportionate share of total transitional ICAC minutes of use for the 12-month period ending three months prior to the beginning of the quarter during which the surplus was accumulated. Effective January 1, 1994, any surplus over the approved level of transitional ICAC revenues shall be distributed based on each access customer's proportionate share of total transitional ICAC minutes of use.

(E) High Cost Assistance. Any **DCTU** [LEC] which establishes an HCA requirement pursuant to §23.53(d) of this title shall no longer be entitled to receive transitional ICAC revenues.

(F) Holdover cases. Any **DCTU** [LEC] which has not had its rates adjusted in conformity with this subsection as of September 1, 1992, shall continue to bill its tariffed ICAC rate until such time as its access rates are brought into compliance with this subsection. Such rate shall be deemed its transitional ICAC rate for the period during which it remains in effect. All ICAC revenues collected by such **DCTUs** [LECs] shall be forwarded to the association and used to fund the transitional ICAC Pool. The level of ICAC revenues that such **DCTUs** [LECs] receive from the transitional ICAC pool will not be affected by the adoption of this section until such time as the access rates charged by such **DCTUs** [LECs] are brought into compliance with this subsection.

(7)[(6)] Initial compliance filing. Existing rates for access services shall remain in effect until changed by subsequent order of the commission. On or before June 1, 1992, each **DCTU** [LEC] shall file an initial application to bring its access rates into compliance with the provisions of paragraphs (5) [(4)] and (6) [(5)] of this subsection. Except as otherwise required by this subsection or commission order, the terms and conditions of each **DCTU's** [LEC's] intrastate switched access tariff proposed in the initial compliance filing shall mirror the terms and conditions for the usage-sensitive rate elements of its interstate switched access tariff as of March 31, 1992. The requirements of this paragraph are not applicable to Southwestern Bell Telephone Company. The initial compliance tariff for each **DCTU** [LEC] shall become effective September 1, 1992, unless otherwise ordered by the commission. The initial compliance filing shall be supported by sufficient information to fully demonstrate compliance with the requirements of this subsection. However, the initial filing shall not be considered a major change of rates as defined by PURA, **§3.211**, [§43] unless the **DCTU's** [LEC's] aggregate revenues will increase more than the greater of $100,000 or 2.5%. The **DCTU** [LEC] shall not be required to submit a rate filing package unless the initial filing constitutes a major rate change or unless the **DCTU** [LEC] is otherwise ordered to do so. The commission may review the initial compliance application:

(A) in any PURA, **§3. 210** [§42] proceeding underway on the effective date of this section;

(B) in a PURA, **§3.210** [§42] proceeding initiated against an individual company after the effective date of this rule; or

(C) in a PURA, **§3.211** or **§3.213** [§43 or §43B] proceeding initiated by the Company after the effective date of this rule.

(8) [(7)] Administrative provisions

(A) Percent Interstate Usage (PIU). Within 60 days of the adoption of this subsection, Southwestern Bell Telephone Company shall file its compliance tariff regarding PIU provisions. Within 30 days of adoption by the commission of amended Percent Interstate Usage (PIU) reporting, auditing, and backbilling procedures for Southwestern Bell Telephone Company, all independent **DCTUs** [LECs] must file administrative revisions to their intrastate access service tariffs to mirror the PIU provisions in the intrastate access service tariff of Southwestern Bell Telephone Company. The intrastate access service tariff of all **DCTUs** [LECs] must contain, at a minimum, the requirements stated in clauses (i)-(iii) of this subparagraph.

(i) Jurisdictional determination capability. If the **DCTU** [LEC] possesses the network capability to determine the jurisdiction of an access service, a monthly PIU, based upon the actual jurisdictional determination of access services used by the access customer, must be calculated by the **DCTU** [LEC] and applied to the monthly bill for each access customer.

(ii) No jurisdictional determination capability. If a **DCTU's** [LEC's] network facilities are incapable of making a determination of the jurisdiction of an access service, such **DCTU** [LEC] shall establish guidelines in its access tariff that permit an access customer to self-report. PIUs may be self-reported by access customers to **DCTUs** [LECs] if all of the requirements of subclauses (I)-(VI) of this clause are met.

(I) A **DCTU** [LEC] must request and receive written representation from the self-reporting access customer that the access customer possesses a network technology or has established other reasonable methods which it can accurately determine the jurisdiction of each access service used by the access customer.

(II) The **DCTU** [LEC] must request and receive a written representation from the access customer that the access customer calculates self-reported PIUs based upon the actual jurisdiction of each access service used by the access customer.

(III) The **DCTU** [LEC] must request and receive from the access customer, at a minimum, an annual report supporting the self-reported PIUs.

(IV) The **DCTU's** [LEC's] intrastate access tariff must establish a monitoring procedure for the annual monitoring of all self-reported PIUs and an auditing procedure for timely auditing of questionable self-reported PIUs.

(V) The **DCTU's** [LEC's] intrastate access service tariff must contain an adjustment procedure for the correction of up to 12 months of access service bills which were based upon an erroneous PIU as determined through a PIU audit.

(VI) The **DCTU's** [LEC's] intrastate access tariff must specify that the **DCTU** [LEC] is responsible for verifying the accuracy of the PIU report and the access customer is responsible for the accuracy of self-reported PIUs.

(iii) Default PIU. If the **DCTU's** [LEC's] network facilities are incapable of determining Call jurisdiction and the access customer fails to exercise its self-reporting option under clause (ii) of this subparagraph, the **DCTU** [LEC] must provide written notice to the access customer by certified mail that, if the customer fails to exercise one of its options within 30 days of receipt of such notice, a PIU will be established at 50%. Nothing in this paragraph prohibits the **DCTU** [LEC] from auditing such access customer. If such an audit is conducted, the results of such audit will be used to determine that access customer's PIU.

(B) Meet point billing. The provisions in this subparagraph pertain to access services which are required to be meet point billed.

(i) Tariffs. **DCTUs** [LECs] must file administrative tariff amendments to reflect compliance with the most current "Multiple Exchange Carrier Access Billing (MECAB)" and "Multiple Exchange Carrier Ordering and Design (MECOD)" guidelines within 60 days after acceptance of these guidelines or acceptance of revisions to these guidelines by the Federal Communications Commission. If the Federal Communications Commission accepts the "Small Exchange Company Access Billing (SECAB)" guidelines pertaining to meet point billing, small local exchange companies, **as defined in §23.94 of this title (relating to Small Local Exchange Carrier Regulatory Flexibility)**, may file tariff amendments within 60 days after acceptance by the Federal Communications Commission to reflect compliance with MECAB through the implementation of SECAB.

(ii) Compensation. For any meet point billed service, a **DCTU** [an LEC] is authorized to receive compensation for its portion of the jointly-provided access service. If a **DCTU** [an LEC] receives compensation above the amount associated with the provision of its portion of a jointly-provided access service, the **DCTU** [LEC] must immediately file a **proposed** [an administrative] tariff amendment with the commission to recover only its portion of the jointly-provided service and, within 30 days after approval of the required tariff amendment, must refund the surplus amount received with interest to each affected customer. Additionally, **DCTUs** [LECs] are prohibited from filing tariff amendments that result in a jointly-provided access service billed amount which exceeds charges for 100% of the jointly-provided service.

(C) Equal access. Beginning January 1, 1993, **DCTUs** [LECs] must file with the commission, on January 1 of each odd-numbered year, a report which describes the **DCTU's** [LEC's] ten-year forecasted plan and schedule for implementation of equal access technology in Texas. Reports filed on and after January 1, 1995, must include a description of all changes to the information provided in the prior biennial report, along with detailed explanations for such changes. However, when a **DCTU** [an LEC] implements equal access in 100% of the areas for which the **DCTU** [LEC] is certificated to provide local exchange service, the **DCTU** [LEC] shall file a final equal access report with the commission. In such report, the **DCTU** [LEC] will affirm that the **DCTU** [LEC] will notify the commission if it no longer provides equal access to 100% of its certificated area and will resume reporting in compliance with the provisions of this subparagraph.

(e) Electric. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of customers, taking into consideration the need to conserve energy and resources.

§23.24. Form and Filing of Tariffs.

(a) Application. Unless the context clearly indicates otherwise, in this section the term utility insofar as it relates to telecommunications utilities, shall refer to dominant carriers.

(b)[(a)] Effective tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its effective tariff filed with the commission.

(c)[(b)] Requirements as to size, form, identification and filing of tariffs.

(1) Every public utility shall file with the commission filing clerk five copies of its tariff containing schedules of all its rates, tolls, charges, rules, and regulations pertaining to all of its utility service by September 1, 1976, or when it applies for a certificate of convenience and necessity to operate as a public utility, if it is not in existence as of September 1, 1976. It shall also file five copies of each subsequent revision. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(2) All tariffs shall be in **looseleaf** [looseleaf] form of size 8 1/2 inches by 11 inches and shall be plainly printed or reproduced on paper of good quality. The front page of the tariff shall contain the name of the utility and location of its principal office and the type of service rendered (telephone, electric, etc.).

(3) Each rate schedule must clearly state the territory, city, county, or exchange wherein said schedule is applicable.

(4) Tariff sheets are to be numbered consecutively per schedule. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(5) Any other telecommunications utility, after a declaration by the commission that it is a dominant carrier, shall file tariffs complying with the above requirements. These tariffs shall be filed within the time specified in the commission order finding the telecommunications utility a dominant carrier, or within 60 days in the absence of such a specification.

(d)[(c)] Composition of tariffs. The tariff shall contain sections setting forth:

(1) a table of contents;

(2) a preliminary statement containing a brief description of the utility's operations;

(3) a list of the cities, exchanges, and counties in which service is provided;

(4) the rate schedules; and

(5) the service rules and regulations, including forms of the service agreements.

(e)[(d)] Tariff filings in response to commission orders. Tariff filings made in response to an order issued by the commission shall include a transmittal letter stating that the tariffs attached are in compliance with the order, giving the docket number, date of the order, a list of tariff sheets filed, and any other necessary information. Said tariff sheets shall comply with all other rules in this chapter and shall include only changes ordered. The effective date and/or wording of said tariffs shall comply with the provisions of the order.

(f)[(e)] Symbols for changes. Each proposed tariff sheet shall contain notations in the right-hand margin indicating each change made on these sheets. Notations to be used are: (C) to denote a change in regulations; (D) to denote discontinued rates or regulations; (E) to denote the correction of an error made during a revision (the revision which resulted in the error must be one connected to some material contained in the tariff prior to the revision); (I) to denote a rate increase; (N) to denote a new rate or regulation; (R) to denote a rate reduction; and (T) to denote a change in text, but no change in rate or regulation. In addition to symbols for changes, each changed provision in the tariff shall contain a vertical line in the right-hand margin of the page which clearly shows the exact number of lines being changed.

(g) [(f)] Availability of tariffs. Each utility shall make available to the public at each of its business offices or designated sales offices within Texas all of its tariffs currently on file with the commission, and its employees shall lend assistance to seekers of information therefrom and afford inquirers an opportunity to examine any of such tariffs upon request. The utility also shall provide copies of any portion of the tariffs at a reasonable cost to reproduce such tariff for a requesting party.

(h) [(g)] Rejection. Any tariff filed with the commission and found not to be in compliance with these sections shall be so marked and returned to the utility with a brief explanation of the reasons for rejection.

(i) [(h)] Change by other regulatory authorities. Tariffs which are filed to reflect changes in rates or regulations set by other regulatory authorities shall include a copy of the order or ordinance authorizing the change.

(j)[(i)] Effective date of tariff change. No jurisdictional tariff change may take effect prior to 35 days after filing without commission approval. The requested date will be assumed to be 35 days after filing unless the utility requesting the change requests a different date in its application. The commission may suspend the effective date of the tariff change for 120 days after the requested effective date and extend that suspension another 30 days if it finds that a longer time will be required for final determination. In the case of an actual hearing on the merits of a case that exceeds 15 days, the [commission may extend the] suspension **date is extended** for two days for each one day of actual hearing in excess of 15 actual hearing days.

§23.26. New and Experimental Services.

(a) Application. This section applies to **dominant certificated telecommunications utilities (DCTUs)** [local exchange carriers (LECs)], as that term is defined by **§23.3** [23.61] of this title (relating to **Definitions** [Telephone Utilities]), which are subject to the rate-making jurisdiction of the commission for any service or market.

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

(1) new service means any service proposed after the effective date of this section and not offered on a tariffed basis prior to January 1, 1988 and specifically excludes basic local **telecommunications** [exchange] service including local measured service. If a proposed service could serve as an alternative or replacement for a service offered prior to January 1, 1988 and does not provide significant improvements (other than price) over, or significant additional services not available under a service offered prior to January 1, 1988, it shall not be considered a new service.

(2) (No change.)

(3) administrative review means a process whereby an application is reviewed by the commission staff and the Office of Public Utility Counsel and ruled on by the presiding **officer** [examiner] without an evidentiary hearing and without an order signed by the commission.

(c) Filings requesting approval of new and experimental services. **A DCTU** [An LEC] may request approval of a new or experimental service by following the procedures outlined in this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the **Regulatory** [Telephone] Division and one copy to the Office of Public Utility Counsel. Nothing in this section precludes **a DCTU** [an LEC] from utilizing other provisions of this title to **seek approval** to offer such services, however, the commission or the presiding **officer** [examiner], in its discretion, may require any application for a new or experimental service to comply with the requirements of this section. Not later than 30 days prior to the proposed effective date of the new or experimental service, the **DCTU** [LEC] shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent by the **DCTU** [LEC] to use the procedures established in this section;

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

(4) a statement detailing the type of notice, if any, the utility has provided or intends to provide to the public regarding the application and a brief statement explaining why the **DCTU's** [LEC's] notice proposal is reasonable;

(5) (No change.)

(6) detailed documentation showing that the proposed service is priced above the long run incremental cost of such service. **The commission shall allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.** The application shall also include projections of revenues, demand, and expenses demonstrating that in the second year after the service is first offered, the proposed rates will generate sufficient annual revenues to recover the annual long

run incremental costs of providing the service, as well as a contribution for joint and/or common costs. Capital costs related to providing the service shall be separately identified in these projections. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application.

(7) If the application concerns a service which will not initially be offered systemwide, the application shall separately explain for each exchange in which the service will not be offered why the **DCTU's** [LEC's] facilities in that exchange do not have the technical capability to handle the service. The application shall also include an implementation plan which shall specify the **DCTU's** [LEC's] plans for making the service available in such exchanges within a reasonable time after receipt by the LEC of a bona fide request for the service. The **DCTU** [LEC] shall also specify in its plan what requirements must be met for a request for service to be considered bona fide. This requirement does not apply to experimental services, but the **DCTU** [LEC] shall specify the exchanges in which it proposes to offer the experimental service.

(8) (No change.)

(9) Any other information which the **DCTU** [LEC] wants considered in connection with the commission's review of its application.

(d) Modifications and waivers of requirements. In its application a **DCTU** [an LEC] may request and the commission or the presiding **officer** [examiner] may grant for good cause the modification or waiver of requirements set forth in this section concerning systemwide rates; systemwide provision of service; the one-year maximum period for offering an experimental service; the one-year, cost-related prove-in period; or long run incremental cost support. Subsequent to the introduction of an experimental service, a **DCTU** [an LEC] may also apply for modification of the period initially approved for offering the service. However, no experimental service shall be approved for more than two years, no prove-in period shall be extended beyond two years and, in lieu of incremental cost information, the **DCTU** [LEC] must provide other cost support demonstrating that the proposed rates for the service will recover its costs plus a contribution within the required period. A waiver of the incremental cost standard shall only be granted if the presiding **officer** [examiner] determines that such a standard imposes an unreasonable burden on a **DCTU** [an LEC] which has inadequate resources to produce the required cost information to meet that standard and if the **presiding officer** [examiner] determines that an appropriate alternative cost standard is available. Any request for modification or waiver of these requirements shall include a complete statement of the **DCTU's** [LEC's] arguments supporting that request. The presiding **officer** [examiner] shall rule on the waiver request within 15 days of the filing of the request. A copy of the **presiding officer's** [examiner's] ruling shall be provided to the commission, and the commission may overrule any waiver granted by a presiding **officer** [examiner] within 15 days of the **presiding officer's** [examiner's] ruling.

(e) Notice. The presiding **officer** [examiner] may require notice to be provided to the public in addition to that proposed by the **DCTU** [LEC]. **Not less than five days before** [Before] the effective date of the application, the **DCTU** [LEC] shall file a statement indicating the date on which all notice provided to the public was completed and proof of such notice. If public notice of the application is required, it shall include a description of the new or experimental service, the proposed rates and other terms of the service, the types of customers likely to be affected if the service is approved, the probable effect on **the DCTU's** [LEC's] revenues if the service is approved, the proposed effective date for the service, and the following language: "Persons who wish to comment on this application should notify the commission by specified date, ten days before the proposed effective date. Requests for further information should be mailed to the Public Utility Commission of Texas, **(insert the commission's current address)** [7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757], or you may call the Public Utility **Commission's** [Commission] Public Information Office at **(insert the commission's current telephone numbers)** [(512) 458-0223 or (512) 458-0227], or **(insert current commission telephone number for text telephone** [512]) 458-0221 teletypewriter for the deaf."

(f) Requirements for proposed new and experimental services. Unless waived or modified by the presiding **officer** [examiner] as provided under subsection (d) of this section, the following requirements shall apply to any new service approved under this section:

(1) Such new service shall be offered at the same price throughout the **DCTU's** [LEC's] system.

(2) The service shall also be offered in every exchange served by the **DCTU** [LEC], except exchanges in which the **DCTU's** [LEC's] facilities do not have the technical capability to handle the service.

(3) (No change.)

(4) An experimental service approved under this section[,] may be flexibly priced provided that the minimum rate in the range of rates shall be above the long run incremental cost of providing the service. The **DCTU** [LEC] may make a change in rates within an approved range of rates upon such notice to customers and the commission as the presiding **officer** [examiner] may require. In addition, before discontinuing provision of an experimental service, the **DCTU** [LEC] shall give such notice of the discontinuation as the presiding **officer** [examiner] may require.

(g) Administrative review. An application considered under this section shall be reviewed administratively unless the presiding **officer** [examiner], for good cause, determines at any point during the review that the application should be docketed. The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later. The application shall be examined for sufficiency. If the presiding **officer** [examiner] concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding **officer** [examiner]. Thereafter, any time deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding **officer** [examiner] extends that date. While the application is being administratively reviewed, the commission staff and the staff of the Office of Public Utility Counsel may submit requests for information to the **DCTU** [LEC]. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the **DCTU** [LEC]. No later than 20 days after the filing date of the application, interested persons may provide to the commission staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding **officer** [examiner] written comments or recommendations concerning the application. No later than 35 days after the effective date of the application, the presiding **officer** [examiner] shall complete an administrative review to determine whether the **DCTU's** [LEC's] application meets the following requirements.

(1) (No change.)

(2) Notice was provided as required by the presiding **officer** [examiner].

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

(h) Approval or denial of application. For its application to be approved, the **DCTU** [LEC] must meet all of the requirements in this section, unless such requirements are modified or waived by the presiding **officer** [examiner] as provided under paragraph (d) of this section. If, based on the administrative review, the presiding **officer** [examiner] determines that all requirements not waived have been met, the **DCTU** [LEC] shall be permitted to offer the service at the rates and terms approved by the presiding **officer** [examiner]. If, based on the administrative review, the presiding **officer** [examiner] determines that one or more of the requirements not waived have not been met, the presiding **officer** [examiner] may dismiss or, upon prior request of the **DCTU** [LEC], shall docket the application.

(i) (No change.)

(j) Interim rates. For good cause, interim rates may be approved after docketing. However, interim rates shall not be approved if the new service requires substantial initial investment by customers before they may receive the service unless the commission requires the **DCTU** [LEC] to notify every customer prior to purchasing the service that this investment is at risk due to the interim nature of the service and the rates for the service and unless the **DCTU** [LEC] makes appropriate provisions to protect its customers from the risks of the **DCTU's** [LEC's] failure to notify.

(k) Reporting requirements. If a new service is approved based on either an administrative review or a docketed proceeding, the **DCTU** [LEC] shall file with the commission tracking reports showing the actual revenues; demand and related expenses for the service; its progress on the implementation plan, if any such plan was approved by the commission; and such other information as may be required by the commission (or, in connection with an administrative review, by the presiding **officer** [examiner]) or requested by the commission staff. One such report shall be due nine months after the service is first offered and shall contain information for at least the first six months the service was offered. The second such report shall be filed twelve months after the service is first offered and shall contain information for at least the first nine months the service was offered. The third such report shall be filed no later than 15 months after the service is first offered and shall contain information for at least the first 12 months the service was offered. Such reporting requirements shall be waived for experimental services of one year's duration or less, but the **DCTU** [LEC] shall retain in its record such information related to revenues, demand and expenses and shall submit such information with any subsequent request to make a formerly experimental service a permanent new service.

(l) Subsequent review of the service. If a new or experimental service is approved under the procedures set forth in this section, the **commission staff** [commission's general counsel] or any affected person may file with the commission a petition seeking modification of the rates or terms under which the service is offered or withdrawal of the service.

§23.27. Rate-Setting Flexibility for Services Subject to Significant Competitive Challenges.

(a) Application. The provisions of this section apply to **incumbent** local exchange companies (LECs), as defined by §23.3 [23.61] of this title (relating to **Definitions** [Telephone Utilities]).

(b) Pricing flexibility.

(1) The types of pricing flexibility that an LEC may request are set forth in subparagraphs (A)-(D) of this paragraph.

(A) Banded rates. If an LEC is granted the authority to charge banded rates, the minimum rates shall yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided. When an LEC is granted the authority to charge banded rates, the LEC shall file a tariff showing the minimum and maximum rates and specifying its current rate. The current rate, as specified in the LEC's tariff, shall be applied uniformly to all customers of the service in each exchange for which the commission has approved banded rates. If the LEC desires to charge a rate different from its current rate, but between the minimum and maximum rates, it shall file a revised tariff on or before the effective date of the rate change. The minimum and maximum rates may only be changed as provided for in **§§3.210, 3.211, or 3.213 of the Public Utility Regulatory Act of 1995.** [the Act, §§42, 43, or 43B.]

(B) (No change.)

(C) Detariffing. If an LEC is granted the authority to detariff a service, the LEC shall maintain at the commission a current price list for the service, and the commission shall retain authority to regulate the quality, terms and conditions of the detariffed service, other than rates. The commission may determine the appropriate ratemaking treatment of any revenues from or costs of providing a detariffed service in a proceeding under **§§3.210, 3.211, or 3.213 ofthe Public Utility Regulatory** Act of 1995 [, §§42, 43, or 43B].

(D) (No change.)

(2) LECs have the authority to enter into customer-specific contracts for those services specified in subsection (c)(1)(A)-(D) of this section. For those services, LECs may apply to the commission pursuant to this subsection to obtain a type of pricing flexibility specified in paragraph (1) of this subsection other than customer-specific contracts. For other services, LECs may apply to the commission pursuant to this subsection to obtain any type of pricing flexibility specified in paragraph (1) of this subsection. However, nothing in this subsection shall permit an LEC to obtain pricing flexibility for basic local **telecommunications** [exchange] service, including local measured service, or for any service that includes as a component a service not subject to significant competitive challenge. Additionally, nothing in this subsection shall permit an LEC to enter into customer-specific contracts or to obtain detariffing with respect to message telecommunications services, switched access services, or wide area telecommunications service.

(3) An application for pricing flexibility filed under this paragraph shall:

(A)-(I) (No change.)

(J) demonstrate that the service identified pursuant to subparagraph (C) of this paragraph is not basic local **telecommunications** [exchange] service, including local measured service;

(K)-(M) (No change.)

(N) for any type of pricing flexibility other than detariffing, include proposed tariffs and identify any tariff language that restricts the resale, sharing, or joint use of the service identified pursuant to subparagraph (C) of this paragraph and any component thereof and demonstrate why such restrictive tariff language is consistent with the policy established in the Act, §3.051 [§18](a); and

(O) (No change.)

(4) The commission shall allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt the cost studies approved by the commission for a Tier 1 LEC.

(5) [(4)]An application for pricing flexibility shall be docketed and assigned to a presiding **officer** [examiner]. No later than ten working days after the filing of an application for pricing flexibility, the

presiding **officer** [examiner] shall issue an order scheduling a prehearing conference for the purposes of determining notice **requirements,** establishing a procedural schedule, and addressing other matters as may be appropriate. The [presiding examiner shall issue an order setting a procedural schedule that ensures that a final determination is made by the] commission **shall make a final decision** no later than 180 days after the completion of notice, as ordered by the presiding **officer** [examiner]. However, this 180-day period shall be extended two days for each one day of actual hearing on the merits of the case that exceeds 15 days. The presiding **officer** [examiner] or commission, upon a showing of good cause relating to the applicant's failure or refusal to prosecute, including but not limited to the applicant's unreasonable resistance to discovery, may further extend the timeline, provided that the order shall specifically identify the facts found to constitute good cause. This deadline may be expressly waived by the applicant.

(6)[(5)] For LECs with less than **31, 000** [50,000] access lines, the commission shall not be limited under paragraph **(7)(D)** [(6)(C)] (i)-(x) of this subsection to considering only competition within the exchange(s) where the LEC will provide the service. Pursuant to paragraph (3)(O) of this subsection, an LEC with less than **31,000** [50,000] access lines may provide information that addresses the criteria of paragraph (3)(G)-(I) of this subsection with respect to products or services available outside the exchange(s) designated in paragraph (3)(E) of this subsection.

(7)[(6)] An application for pricing flexibility shall be approved if, after an evidentiary hearing, the commission finds, based on the evidence, that:

(A) no service for which pricing flexibility is sought is basic local **telecommunications** [exchange] service, including local measured service;

(B) no service for which the LEC requests detariffing of rates or authority to enter into customer-specific contracts is message telecommunications service, switched access service, or wide area telecommunications service;

(C) no service for which pricing flexibility is sought includes a component that is not subject to significant competitive challenge;

(D) the grant of pricing flexibility for the service identified pursuant to paragraph (3)(C) of this subsection within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection is appropriate to allow the LEC to respond to a significant competitive challenge, based upon consideration of the following:

(i) the number and size of telecommunications utilities or other persons providing the same, equivalent, or substitutable service within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(ii) the extent to which the same, equivalent, or substitutable service is available within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(iii) the ability of customers to obtain the same, equivalent, or substitutable services at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(iv) the ability of telecommunications utilities or other persons to make the same, equivalent, or substitutable service readily available at comparable rates, terms, and conditions within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(v) the existence of any significant barrier to the entry or exit of a provider of the same, equivalent or substitutable services within the exchange(s) designated pursuant to paragraph (3)(E) of this subsection;

(vi) whether there are mechanisms to minimize potential anticompetitive practices, to the extent that any such practice has been identified in the record;

(vii) whether there are mechanisms to prevent the subsidization of the service with revenues from regulated monopoly services;

(viii) whether the ability of the LEC to flexibly price the service within the designated exchange(s) would have any significant impact on universal service;

(ix) whether the type of pricing flexibility requested is appropriate in light of the level and nature of competition within the exchange(s) where the LEC will provide the service; and

(x) any other relevant information contained in the record;

(E) the rates, if the type of pricing flexibility granted is either banded rates or some other type of pricing flexibility pursuant to paragraph (1)(D) of this subsection that involves rate-setting, are just and reasonable and:

(i) yield revenues that are equal to or greater than 105% of the long run incremental cost of the service in the geographic market in which the service will be provided;

(ii) are not unreasonably preferential, prejudicial or discriminatory;

(iii) are such that the service will not be subsidized directly or indirectly by regulated monopoly services; and

(iv) are not predatory or anticompetitive.

(8)[(7)] Nothing in this subsection is intended to prevent the presiding **officer** [examiner] from recommending, **or** [based on] the **commission from approving based on the** record evidence, relief other than that requested in the application.

(c) Customer-specific contracts.

(1) An LEC shall have the authority to enter into customer-specific contracts for:

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

(D) customized services that are unique because of size or configuration, provided that such customized services shall not include basic local **telecommunications** [exchange] service, including local measured service, or message telecommunications services, switched access services, or wide area telecommunications service; and

(E) (No change.)

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

(6) For good cause, an LEC may request interim approval of a customer-specific contract and associated tariff sheets for services other than those specified in paragraph (1)(A)-(D) of this subsection.

(A) (No change.)

(B) Immediately upon filing its application, the LEC shall hand-deliver to the commission's **Office of Policy Development** [telephone division], the commission's **Regulatory Division,** [general counsel], the commission's **secretary** [director of hearings], and the Office of Public Utility Counsel a file-stamped copy of the application.

(C) The request for interim approval shall be reviewed administratively.

(i) The presiding **officer** [examiner] shall issue an order setting forth a procedural schedule for review of the request for interim approval, including:

(I) (No change.)

(II) a date by which the **commission staff** [commission's general counsel] shall file comments or a recommendation concerning the request.

(ii) The presiding **officer** [examiner] shall rule on the request for interim approval no sooner than ten working days after the filing of an application.

(D) (No change.)

(7) Approval of a customer-specific contract and associated tariff sheets is as follows.

(A) An application for approval of a customer-specific contract and associated tariff sheets considered under this subsection shall be reviewed administratively, unless the LEC requests that the application be docketed or the presiding **officer** [examiner], for good cause, determines at any point during the review that the application should be docketed. For good cause the presiding **officer** [examiner] may grant interim approval of an application that has been docketed, but may do so no sooner than ten working days after the filing of the application.

(i) The effective date of the customer-specific contract and associated tariff sheets shall be the later of:

(I) 30 days after the filing of a sufficient application, as determined by the presiding **officer** [examiner];

(II)-(III) (No change.)

(ii) (No change.)

(iii) The presiding **officer** [examiner] shall issue an order setting forth a procedural schedule for review of the application for approval of a customer-specific contract and associated tariff sheets, including, but not limited to:

(I) dates by which any interested person, the Office of Public Utility Counsel, or the **commission staff** [commission's general counsel] may file comments as to the sufficiency of the application;

(II) -(III) (No change.)

(IV) dates by which the **commission staff** [commission's general counsel] shall file comments or recommendations concerning the approval of the application

(iv) The presiding **officer** [examiner] shall review the application for approval of a customer-specific contract and associated tariff sheets filed pursuant to paragraph (4) of this subsection for sufficiency. If the presiding **officer** [examiner] concludes, after a review of the application and all comments, that material deficiencies exist in the application, the LEC shall be notified of any specific deficiency within ten working days of the filing of its application.

(B) After a sufficient application for approval of a customer-specific contract and associated tariff sheets has been filed, the presiding **officer** [examiner] shall review the application and all comments and recommendations filed to determine whether the LEC's application meets the requirements set forth in clauses (i) -(vi) of this subparagraph. If the presiding **officer** [examiner] finds that the application does not satisfy one or more of these requirements, the presiding **officer** [examiner] shall deny the application or, upon prior request of the LEC, docket the application. If docketed, the commission's rules applicable to docketed proceedings shall apply and the contracted service shall not be initiated without the approval of the commission or the presiding **officer** [examiner]. The application shall be approved by the presiding **officer** [examiner] if all of the following requirements are satisfied:

(i)-(vi) (No change.)

(d) Subsequent review. The commission may [review], modify, or revoke, upon notice and hearing, the authorization of any type or types of pricing flexibility granted pursuant to this section.

(e) Review of cost standards under this section. Any costs standards established by the commission in this section shall be subject to change pending the commission's deliberations in the cost standards rulemaking required by **§3.051(h) of the Public Utility Regulatory** [the] Act **of 1995**[, §18(h)].

(f) (No change.)

§23 28. Promotional Rates [for LEC Services].

(a) Application. This section applies to **dominant certificated telecommunications utilities (DCTUs)** [local exchange carriers (LECs)] as that term is defined by **§23.3** [23.61] of this title (relating to **Definitions** [Telephone Utilities]) which are subject to the ratemaking jurisdiction of the commission for any service or market.

(b) Purpose. The procedures outlined in this section are intended to establish a process by which **DCTUs** [LECs] may obtain authorization for offering promotional rates for the purpose of increasing long term demand for a service and/or utilizing unused capacity of the **DCTU's** [LEC's] network.

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

(1) Promotional rate–A temporary tariff, fare, toll, rental or other compensation charged by a **DCTU** [LEC] to new or new and existing customers and designed to induce customers to test out a service. A promotional rate shall incorporate a reduction or a waiver of some rate element in the tariffed rates of the service, or a reduction or waiver of the service's installation charge and/or service connection charges, and shall not incorporate any charge for discontinuance of the service by the customer. Such rates may not be offered for basic local **telecommunications** [exchange] service, including local measured service.

(2) Administrative review–A process whereby an application is reviewed by staff and the Office of Public Utility Counsel and ruled on by the presiding **officer** [examiner] without an evidentiary hearing and without an order signed by the commission.

(d) Filings requesting approval of promotional rates. After the effective date of this section, a **DCTU** [an LEC] may request approval of promotional rates for a service by following the procedures outlined in this section. In addition to copies required by other commission rules, one copy of the application shall be delivered to the **Regulatory Division** [telephone division]. Nothing in this section precludes a **DCTU** [an LEC] from utilizing other provisions of this title to offer such promotional rates. Not later than 30 days prior to the proposed effective date of the promotional rate, the **DCTU** [LEC] shall file with the commission and the Office of Public Utility Counsel an application containing the following information:

(1) a statement of intent by the **DCTU** [LEC] to use the procedures established in this section;

(2) a description of the specific proposed or tariffed service for which promotional rates are proposed and a description of the temporary rates for such service proposed by the **DCTU** [LEC];

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

(6) a statement detailing the type of notice, if any, the**DCTU** [LEC] has provided or intends to provide to the public regarding the application and a brief statement explaining why the **DCTU's** [LEC's] notice proposal is reasonable;

(7) (No change.)

(8) detailed documentation showing the long run incremental cost of

the service for which promotional rates are requested, including projections of revenues, demand and expenses of the service for the period during which the promotional rates are proposed to be offered. The **commission** [application] shall **allow an incumbent LEC that is not a Tier 1 LEC as of September 1, 1995, at that company's option, to adopt** [include projections of the effect of the promotional rate on the service's revenues and cost and its impact on the service's contribution during] the cost **studies approved** by [promotional period and over] the **commission for a Tier 1 LEC** [remaining life of the service]. The application shall include projections of the effect of the promotional rate on the service's revenues and cost and its impact on the service's contribution during the promotional period and over the remaining life of the service. The application shall also include all workpapers and supporting documentation relating to computations or assumptions contained in the application; and

(9) any other information which the **DCTU** [LEC] wants considered in connection with the commission's review of its application.

(e) Modification and waivers of requirements. In its application a **DCTU** [an LEC] may request the waiver of the long run incremental cost requirements set forth in this section. Such a waiver shall only be granted if the presiding **officer** [examiner] determines that the long run incremental cost standard imposes an unreasonable burden on a **DCTU** [an LEC] which has inadequate resources to produce the required cost information to meet the standard and if the presiding **officer** [examiner] determines that an appropriate alternative cost standard is available. If the long run incremental cost standard is waived, the **DCTU** [LEC] must provide other cost information showing the relationship between its proposed promotional rates and the costs of providing the service. **A DCTU** [An LEC] may also request a waiver of the requirement that promotional rates be offered in every exchange when such rates are proposed to be offered for a tariffed service which is being expanded into central offices which previously did not provide the service. Any request for waiver of the long run incremental cost information requirement or the systemwide application of the promotional rates requirement shall include a complete statement of the **DCTU** [LEC's] arguments supporting that request.

(f) Notice. At least ten days before any application under this section may be filed by a **DCTU** [an LEC], the **DCTU** [LEC] shall file a statement of intent to file such an application and the expected filing date. Such notice shall also include a statement of the **DCTU's** [LEC's] intent to use the expedited procedures of this section, a description of the service, and a description of the proposed promotional rates and the proposed promotional period. The commission shall then publish notice of the **DCTU's** [LEC's] intent to file such application in the Texas Register. The presiding **officer** [examiner] may require notice to be provided to the public in addition to that proposed by the **DCTU** [LEC] in its application. Before the effective date of the application, the utility shall file a statement indicating the date on which all notice provided to the public was completed and proof of such notice. If public notice of the application is required, it shall include a description of the service for which promotional rates are proposed, the rates which are proposed by the **DCTU** [LEC], the time period during which the promotional rates are proposed to be in effect, the types of customers likely to be affected if the application is approved, and the following language: "Persons who wish to comment on this application should notify the commission by (specified date, ten days before the proposed effective date). Requests for further information may be mailed to the Public Utility Commission of Texas, **(insert current commission address)** [7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757], or you may call the commission's Public Information Office at **(insert current commission telephone numbers** [512]) [458-0223 or (512) 458-0227] or **(insert current commission telephone number for text telephone** [512]) [458-0221] teletypewriter for the deaf."

(g) Requirements for promotional rates. Unless waived or modified by the presiding **officer** [examiner] as provided in subsection (e) of this section, the following requirements shall apply to promotional rates approved under this section:

(1) the promotional rates shall be offered in every exchange in which the service is offered throughout the **DCTU's** [LEC's] system;

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

(4) the promotional rate shall be designed to generate sufficient revenue to recover the long run incremental cost of providing the service (or, if the long run incremental cost standard is waived, such other costs as are approved by the commission) within one year of introduction of the promotional rate. If the proposed promotional rate is for the reduction or elimination of an installation charge or service connection charge, the revenue and costs related to provision of the entire service shall be used in determining whether the cost standard for the service is met. If the proposed promotional rate is for a service whose tariffed rate does not recover the costs of providing the service, a promotional rate may be approved if the **DCTU** [LEC] can demonstrate that the promotional rate will move the service closer to full cost recovery. However, no promotional rate shall be approved for a service whose tariffed rate does not recover the cost of the service if such service has been found to be subject to significant competition under §23.27 of this title or if the service is enumerated in **§3.051(e)(3)(B)** of the Public Utility Regulatory Act[,] **of 1995** [§(18)(3)(b)]. The commission may approve a promotional rate even if it does not provide a contribution to joint and common costs.

(h) Administrative review. An application considered under this section shall be reviewed administratively unless the presiding **officer** [examiner], for **good** cause, determines at any point during the review that the application should be docketed. The operation of the proposed rate schedule may be suspended for 35 days after the effective date of the application. The effective date shall be no earlier than 30 days after the filing date of the application or 30 days after public notice is completed, whichever is later. The application shall be examined for sufficiency. If the presiding **officer** [examiner] concludes that material deficiencies exist in the application, the applicant shall be notified within ten working days of the filing date of the specific deficiency in its application, and the earliest possible effective date of the application shall be no less than 30 days after the filing of a sufficient application with substantially complete information as required by the presiding **officer** [examiner]. Thereafter, any deadlines shall be determined from the 30th day after the filing of the sufficient application and information or from the effective date if the presiding **officer** [examiner] extends that date. While the application is being administratively reviewed, the commission staff and the Office of Public Utility Counsel may submit requests for information to the **DCTU** [LEC]. Three copies of all answers to such requests for information shall be provided to the commission staff and the Office of Public Utility Counsel within ten days after receipt of the request by the **DCTU** [LEC]. No later than 20 days after the filing of a sufficient application with substantially complete information as required by the presiding **officer** [examiner], interested persons may provide to the staff written comments or recommendations concerning the application. The commission staff shall and the Office of Public Utility Counsel may file with the presiding **officer** [examiner] written comments or recommendations concerning the application. No later than 35 days after the effective date of the application, the presiding **officer** [examiner] shall complete an administrative review to determine whether the **DCTU's** [LEC's] application meets the following requirements:

(1) (No change.)

(2) notice was provided as required by the presiding **officer** [examiner];

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

(i) Approval or denial of application. For its application to be approved, the **DCTU** [LEC] must meet all of the requirements in subsection (h) of this section, unless such requirements are modified or waived by the presiding **officer** [examiner] as provided under subsection (e) of this section. If, based on the administrative review, the presiding **officer** [examiner] determines that all requirements not waived have been met, the **DCTU** [LEC] shall be permitted to offer the service at the rates and terms approved by the presiding **officer** [examiner]. If, based on the administrative review, the presiding **officer** [examiner] determines that one or more of the requirements not waived have not been met, the presiding **officer** [examiner] may dismiss or, upon prior request of the **DCTU** [LEC], shall docket the application.

(j) (No change.)

(k) Notification to the public of services to be offered at promotional rates. If promotional rates for a service are approved under this section, all advertising related to such service and its promotional rates shall clearly describe the temporary nature of the rate, the date on which the promotional rate will expire, and the rate which will apply after expiration of the promotional rate. The **DCTU** [LEC] shall provide the same information to all customers requesting rate information for such service or ordering the service during the period the promotional rates are in effect.

(l) Reporting requirements. If promotional rates are approved based on either an administrative review or a docketed proceeding, the **DCTU** [LEC] shall file with the commission a report showing the actual revenues, demand and related expenses and investment for the service over each period promotional rates are in effect. This report shall be filed with the commission within three months after each authorized period for offering promotional rates has expired.

(m)-(n) (No change.)

(o) Review of cost standard under this section. Any cost **and pricing** standard established by the commission in this section shall be subject to change pending the commission's deliberations in the cost **and pricing**standard rulemakings required by **§3.051(h)** [§18(h)] of the Public Utility Regulatory Act **of 1995.**

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

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

TRD-9512599 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: November 10, 1995

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

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Customer Service and Protection

- **16 TAC §§23.41, 23.42, 23.44-23.46, 23.48, 23.49, 23.52, 23. 55, 23.56, 23.58**

The amendments are proposed under the Public Utility Regulatory Act of 1995, 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, 74th Legislature, Regular Session 1995.

§23.41. Customer Relations.

(a) Application. Unless the context clearly indicates otherwise, in this section the term utility insofar as it relates to telecommunications utilities, shall refer to dominant carriers.

(b)[(a)] Information to customers. Each utility shall:

(1) Maintain a current set of maps showing the physical locations of its facilities. All facilities (generating plants, telephone exchange locations, transmission, distribution lines, etc.) shall be labeled to indicate the size, nominal capacity and voltage, or any pertinent information which will accurately describe the utility's facilities. These maps, or such other maps as may be required by the commission, shall be kept by the utility in a central location and will be available for commission inspection during normal working hours. Each business office or service center shall have available up-to-date maps, plans, or records of its immediate area, with such other information as may be necessary to enable the utility to advise applicants, and others entitled to the information, as to the facilities available for serving that locality.

(2) Upon request for service by a residential applicant or for a transfer of service by a residential customer, the utility shall inform the applicant or customer of the utility's lowest-priced alternatives available at the customer's location. The utility shall provide this information beginning with the lowest-price alternative and giving full consideration to applicable equipment options and installation charges.

(3) In compliance with the commission's rules of practice and procedure, notify customers affected by a change in rates or schedule of classification.

(4) Post a notice in a conspicuous place in each business office of the utility where applications for service are received, informing the public that copies of the rate schedules and rules relating to the service of the utility, as filed with the commission, are available for inspection.

(5) Beginning on or before six months from the date of adoption of this rule, each utility shall mail to all existing residential telephone or electric utility customers, and thereafter provide to all new residential telephone or electric utility customers, at the time service is initiated, a pamphlet or information packet containing the information required by this section. The information shall additionally be mailed to all customers on at least a biennial basis at no charge to the customer. The pamphlet or packet shall be entitled "Your Rights as a Customer. " The information shall be written in plain, nontechnical language, using personal pronouns where appropriate. This information shall be provided in English and Spanish as necessary to adequately inform the customer; however, the commission may exempt the utility from the requirement that the information be provided in Spanish upon application and a showing that 10% or fewer of its customers are exclusively Spanish speaking, and that the utility will notify all customers, through a statement, in both English and Spanish, in the pamphlet or packet, that the information is available in Spanish from the utility, both by mail and at the utility's offices.

(A) the customer's right to information concerning rates and services and the customer's right to inspect or obtain at reproduction cost a copy of the applicable tariffs and service rules;

(B) the customer's right to have his/her meter tested without charge under §23.47(d) of this title (relating to Meters), if applicable;

(C) the time allowed to pay outstanding bills;

(D) grounds for termination of service;

(E) the steps that must be taken before a utility may terminate service;

(F) how the customer can resolve billing disputes with the utility and how disputes affect termination of service;

(G) information on alternative payment plans offered by the utility, including, but not limited to, deferred payment plans, level billing programs, average payment plans, as well as a statement that a customer has the right to request these alternative payment plans;

(H) the steps necessary to have service reconnected after involuntary termination;

(I) the customer's right to a supervisory review under §23.46(j) and right to file a complaint with the local municipal regulatory authority and/or the commission, as may be applicable, regarding any matter concerning the utility's service. The commission's address and telephone number shall accompany this information;

(J) the hours, addresses, and telephone numbers of utility offices where bills may be paid and information may be obtained; and

(K) the customer's right to be instructed by the utility how to read his or her meter, if applicable;

(L) the circumstances under which the utility may require a deposit or additional deposit; how a deposit is calculated; the interest paid on deposits; and the time frame and requirement for return of the deposit to the customer.

(M) a statement that funded financial assistance may be available for persons in need of assistance with their electric utility payments, and that additional information may be obtained by contacting the local office of the utility, Texas Department of Human Resources, Texas Department of Community Affairs, or the Public Utility Commission of Texas. The central office telephone number (toll-free number, if available) and address for each state agency shall also be provided;

(N) a statement that utility services are provided without discrimination as to a customer's race, nationality, color, religion, sex, or marital status, and a summary of the company's policy regarding the provision of credit history based upon the credit history of a customer's former spouse;

(O) notice of any special services such as readers or notices in **Braille** [braille], if available, and the telephone number of the teletypewriter for the deaf at the commission.

(6) Telephone utilities shall either provide customers with the pamphlets or information packets as set forth in paragraph (5) of this subsection or, if the telephone utility provides the customer with the same information in the telephone directories provided each customer pursuant to §23.61(b) of this title (relating to Telephone Utilities), the utility shall provide a printed statement on the bill, or a billing insert identifying the location of the information in paragraph (5) of this subsection. The statement shall be published every six months.

(7) Where necessary, a toll-free telephone number or the equivalent (such as WATS or collect calls) will be provided for telephone or electric customers for repair service or billing inquiries.

(8) Utilities shall encourage customers with physical disabilities and those who care for such customers, to identify themselves to the utility so that special action can be taken to inform these persons of their rights, where necessary and appropriate to the person's circumstance.

(c)[(b)] Customer complaints.

(1) Upon complaint to the utility by a customer either at its office, by letter, or by telephone, the utility shall promptly make a suitable investigation and advise the complainant of the results thereof.

(2) In the event the complainant is dissatisfied with the utility's report, the utility must advise the complainant of the Public Utility Commission of Texas complaint process, giving the customer the address and telephone number of the Consumer Affairs Division of the commission. If applicable, the utility shall also give the customer the commission's TTY number for the deaf and hearing impaired.

(3) The utility shall make a suitable investigation of all complaints forwarded from the commission on behalf of a customer. The utility shall advise the commission of the results of the investigation in writing. Initial response to the commission must be made within 30 days after the complaint is forwarded by the commission. The commission encourages all customer complaints to be made in writing to assist the commission in maintaining records on the quality of service of each utility.

(4) The utility shall keep a record of all complaints which shall show the name and address of the complainant, the date and nature of the complaint and the adjustment or disposition thereof for a period of two years subsequent to the final ·lement of the complaint. Complaints ·reference to rates or charges which require no further action by the utility need not be recorded.

§23.42. Refusal of Service.

(a) Application. Unless the context clearly indicates otherwise, in this section the term utility, insofar as it relates to telecommunications utilities, shall refer to dominant carriers.

(b)[(a)] Compliance by applicant. Any utility may decline to serve an applicant until such applicant has complied with the state and municipal regulations and approved rules and regulations of the utility on file with the commission governing the service applied for or for the following reasons:

(1) Applicant's facilities inadequate. If the applicant's installation or equipment is known to be hazardous or of such character that satisfactory service cannot be given.

(2) For indebtedness. If the applicant is indebted to any utility for the same kind of service as that applied for, including only the carriage charges of interexchange carriers where a local exchange carrier bills those charges pursuant to its tariffs; provided, however, that in the event the indebtedness of the applicant is in dispute, the applicant shall be served upon complying with the deposit requirement in §23.43 of this title (relating to Applicant and Customer Deposit). In the event that the appropriate federal authority prohibits payment of interstate carriage charges of interexchange carriers as a condition of local exchange telephone service or prohibits disconnection of local exchange service for failure to pay interexchange carriage charges, payment of intrastate carriage charges of interexchange carriers shall not be a condition for local exchange **telephone** service .

(3) Refusal to make deposit. For refusal to make a deposit if applicant is required to make a deposit under these sections.

(c)[(b)] Applicant's recourse. In the event that the utility shall refuse to serve an applicant under the provisions of these sections, the utility must inform the applicant of the basis of its refusal and that the applicant may file a complaint with the commission thereon.

(d)[(c)] Insufficient grounds for refusal to serve. The following shall not constitute sufficient cause for refusal of service to a present customer or applicant:

(1) delinquency in payment for service by a previous occupant of the premises to be served;

(2) failure to pay for merchandise, or charges for non-utility service purchased from the utility;

(3) failure to pay a bill to correct previous underbilling due to misapplication of rates more than six months prior to the date of application;

(4) violation of the utility's rules pertaining to operation of nonstandard equipment or unauthorized attachments which interferes with the service of others, or other services such as communication services, unless the customer has first been notified and been afforded reasonable opportunity to comply with said rules

(5) failure to pay a bill of another customer as guarantor thereof, unless the guarantee was made in writing to the utility as a condition precedent to service;

(6) failure to pay the bill of another customer at the same address except where the change of customer identity is made to avoid or evade payment of a utility bill. A customer may request a supervisory review if the utility determines that evasion has occurred and refuses to provide service.

§23.44. New Construction.

(a) Application. Unless the context clearly indicates otherwise, in this section the terms utility and public utility, insofar as they relate to telecommunications utilities, shall refer to dominant carriers.

(b)[(a)] Standards of construction. In determining standard practice, the commission will be guided by the provisions of the American National Standards Institute, Incorporated, the National Electrical Safety Code, and such other codes and standards that are generally accepted by the industry, except as modified by this commission or by municipal regulations within their jurisdiction. Each utility shall construct, install, operate, and maintain its plant, structures, equipment, and lines in accordance with these standards, and in such manner to best accommodate the public, and to prevent interferences with service furnished by other public utilities insofar as practical.

(1) The standards of construction shall apply to, but are not limited to, the construction of any new electric transmission facilities, rebuilding, upgrading, or relocation of existing electric transmission facilities.

(2) For electric transmission line construction requiring the acquisition of new rights-of-way, utilities must include, at a minimum, in the easement agreement a provision for prohibiting the new construction of habitable structures within the right-of-way. However, utilities may negotiate appropriate exceptions in instances where the utility is subject to a restrictive agreement being granted by a governmental agency or within the constraints of an industrial site. Any exception to this subsection must meet all the applicable requirements of the National Electric Safety Code.

(3) For the purposes of this subsection, "habitable structures" shall include those structures normally inhabited by humans on a daily, or regular basis. The term "habitable structures" shall include, but is not limited to, single-family dwellings and related structures, apartment buildings, business structures, major additions to the aforementioned types of pre-existing structures, and mobile home parks. However, the term "habitable structures" shall not include necessary repairs to existing structures, farm or livestock facilities, storage barns, hunting structures, small personal storage sheds, or similar structures.

(c)[(b)] Line extension and construction charges. Every utility shall file its extension policy as required in §23.24(b)(1) of this title (relating to Form and Filings of Tariffs). The policy shall be consistent, nondiscriminatory, and subject to the approval of the commission. No contribution in aid of construction may be required of any customer except as provided for in the extension policy.

(1) Where service is being switched between electric companies, the electric utility disconnecting such customer shall be permitted to charge the customer a disconnection fee of an amount set forth in its tariff, and such fee shall be based upon the average direct labor and vehicle costs of disconnecting such customer and any distribution facilities rendered idle and not usable elsewhere on the system based upon the original cost of such facilities less depreciation and salvage. Prior to any disconnection under this section, the customer shall pay the disconnecting electric utility for service up through the date of disconnection and the charges for disconnection set forth in this section. Upon payment of such charges the utility shall give the customer a paid receipt. The connecting electric utility may not provide service to said customer until it has evidence from the disconnecting electric utility that the customer has paid for electric service through the date of disconnection and any charges for disconnection under this section.

(2) Utilities shall not charge disconnect fees, membership fees, application fees, or service call fees or any other fee or charge for service or function that is a normal utility service except as provided in the tariff of the utility.

(d)[(c)] Response to request for service. Every public utility shall serve each qualified applicant for service within its certificated area as rapidly as is practical.

(1) Those applications for new electric service not involving line extension or new facilities should be filled within seven working days. Applications for electric residential service requiring line extension should be filled as quickly as possible and shall be filled within 90 days unless unavailability of materials causes unavoidable delays.

(2) Applications for new telephone service shall be filled in accordance with §23.61(e)(2) of this title (relating to Telephone Utilities). Those applications for new telephone residential service requiring line extensions should be filled as quickly as possible and shall be filled within 90 days unless unavailability of materials or other situations which are reasonably beyond the control of the utility cause unavoidable delays. Drop wire less than 300 feet in length which connects the utility distribution facility to the customer premises is not considered a line extension. For this rule, facility placement which requires a permit for a road or railroad crossing will be classed as a line extension.

(3) If a line extension is required by other than a large industrial or commercial electric customer or if facilities are not available, the telephone or electric utility shall inform the customer within ten working days of receipt of the application, giving the customer an estimated completion date.

(4) In the event that residential utility service is delayed in excess of 90 days after an applicant has met credit requirements and made satisfactory arrangements for payment of any required construction charges, a report shall be made to the commission listing the name, location and cause for delay. Unless such delays are due to causes which are reasonably beyond the control of the utility, delay in excess of 90 days shall constitute refusal to serve, and consideration may be given to revoking the certificate of convenience and necessity (or other certificate), or to granting a certificate to another utility to serve the applicant, or refusal may be considered in arriving at a proper return on the invested capital of the utility.

(5) Any construction cost options such as rebates to the customer, sharing of construction costs between the utility and the customer, or sharing of costs between the customer and other applicants shall be explained to the customer following assessment of necessary line work.

§23.45. Billing.

(a) Application. Unless the context clearly indicates otherwise, in this section the term utility, insofar as it relates to telecommunications utilities, shall refer to dominant carriers.

(b)[(a)] Due date. The due date of the bill for utility service shall not be less than 16 days after issuance. A bill for utility service is delinquent if not received at the utility or at the utility's authorized payment agency by the due date. The postmark, if any, on the envelope of the bill, or an issuance date on the bill, if there is no postmark on the envelope, shall constitute proof of the date of issuance. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.

(c)[(b)] Penalty on delinquent bills for retail service. A one-time penalty not to exceed 5.0% may be made on delinquent commercial or industrial bills; however, no such penalty shall apply to residential bills under this section. A telecommunications utility providing any service to the state, including service to an agency in any branch of government, shall not assess a fee, penalty, interest, or other charge to the state for delinquent payment of a bill for that service. The 5. 0% penalty on delinquent commercial and industrial bills may not be applied to any balance to which the penalty was applied in a previous billing.

(d)[(c)] Deferred payment plan. A deferred payment plan is any arrangement or agreement between the utility and a customer in which an outstanding bill will be paid in installments that extend beyond the due date of the next bill. The utility shall offer, upon request, a deferred payment plan to any residential customer who has expressed an inability to pay all of his or her bill, if that customer has not been issued more than two disconnection notices at any time during the preceding 12 months. In all other cases, the utility is encouraged to offer a deferred payment plan to residential customers.

(1) Every deferred payment plan entered into due to the customer's inability to pay the outstanding bill in full shall provide that service will not be discontinued if the customer pays current bills and a reasonable amount of the outstanding bill and agrees to pay the balance in reasonable installments until the bill is paid. A payment of not more than one-third of the total deferred amount may be required as a reasonable amount under this paragraph.

(2) For purposes of determining reasonableness under these rules, the following shall be considered:

(A) size of the delinquent account;

(B) customer's ability to pay;

(C) customer's payment history;

(D) time that the debt has been outstanding;

(E) reasons why debt has been outstanding;

(F) any other relevant factors concerning the circumstances of the customer.

(3) A deferred payment plan offered by a utility, when reduced to writing, shall state, immediately preceding the space provided for the customer's signature and in boldface print at least two sizes larger than any other used thereon, that: If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement.

(4) A deferred payment plan may include a 5.0% penalty for late payment but shall not include a finance charge.

(5) If a customer has not fulfilled the terms of a deferred payment plan, the utility shall have the right to disconnect service. However, the utility may not disconnect service until a disconnect notice has been issued to the customer indicating the customer has not met the terms of the plan. Such notice and disconnection shall conform with the disconnection rules in §23.46 of this title (relating to Discontinuance of Service). Under such circumstances, the utility may, but shall not be required to, offer subsequent negotiation of a deferred payment plan agreement prior to disconnection.

(6) Any utility which institutes a deferred payment plan shall not refuse a customer participation in such a program on the basis of race, color, creed, sex, or marital status.

(7) A deferred payment plan may be made by visiting the utility's business office or contacting the utility by telephone. If the customer visits the utility's business office, the utility may ask the customer to sign the deferred payment plan. The utility must provide the customer with a copy of the signed plan. If the agreement is made over the telephone, the utility shall send a copy of the plan to the customer.

(8) If the customer's economic or financial circumstances change substantially during the time of the deferred payment plan, the utility may renegotiate the deferred payment plan with the customer, taking into account the changed economic and financial circumstances of the customer.

(9) A utility is not required to enter into a deferred payment plan with any customer who is lacking sufficient credit or a satisfactory history of payment for previous service when that customer has had service from the present utility for not more than three months.

(e)[(d)] Payment arrangements. Payment arrangements are any arrangements or agreements between the utility and a customer in which an outstanding bill will be paid after the due date of the outstanding bill but before the due date of the next bill. If a customer does not fulfill the terms of such payment arrangements, the utility shall have the right to disconnect service. If a disconnect notice was issued prior to the payment arrangements being made, such notice shall suffice as notice to the customer. If payment arrangements are made prior to issuance of a disconnect notice, such notice must be issued before the customer's service may be disconnected.

(f) [(e)] Level and average payment plan. Electric utilities with seasonal usage or seasonal demands are encouraged to offer a level payment plan or average payment plan to elderly or chronically ill residential customers who may be on fixed incomes and to other customers having similarly unique financial needs.

(1) The payment plan may be one of the following methods:

(A) A level payment plan allowing eligible residential customers to pay on a monthly basis a fixed billing rate of one-twelfth of that customer's estimated annual consumption at the appropriate customer class rates, with provisions for quarterly adjustments as may be determined based on actual usage.

(B) An average payment plan allowing eligible residential customers to pay on a monthly basis one-twelfth of the sum of that customer's current month's consumption plus the previous 11 month's consumption (or an estimate thereof, for a new customer) at the appropriate customer class rates, plus a portion of any unbilled balance.

(2) If a customer for a utility service does not fulfill the terms and obligations of a level payment agreement or an average payment plan, the utility shall have the right to disconnect service to that customer pursuant to the disconnection rules provided elsewhere in these sections.

(3) The utility may collect a customer deposit from all customers entering into level payment plans or average

payment plans; the deposit will not exceed an amount equivalent to one-sixth of the estimated annual billing. Notwithstanding any other provision of these sections, the utility may retain said deposit for the duration of the level or average payment plan; however, the utility shall pay such interest on the deposit as is provided elsewhere in these sections.

(g)[(f)] Rendering and form of bills.

(1) Telephone utilities.

(A) Bills for telephone service shall be rendered monthly unless otherwise authorized by the Commission, or unless service is rendered for a period of less than one month, and shall provide a listing of all charges due and payable including outstanding amounts in the same customer class the utility has chosen to transfer from a customer's prior delinquent account(s). The utility shall provide, at no charge to the customer, a breakdown of local service charges at the time the service is initially installed or modified and upon request. Additionally, a notice shall be included on the customer's bill offering, at no charge to the customer, either an annual or monthly itemized breakdown of all local service charges. The itemized breakdown may be provided as a part of the customer's bill or as a separate mailing. Itemized toll statements shall be included in each bill. If the telephone utility is billing the customer for services provided by another telecommunications utility or for services provided by a [private pay telephone] provider **of pay telephone service** that uses automated call completion technology to complete operator service calls, the bill shall identify the utility or the [private pay telephone] provider **of pay telephone service** whose rates are used to calculate the charges for each call listed on the bill. This requirement to identify the entity whose rates are used to calculate the charges does not apply to intraLATA services provided in another state by a regulated local exchange carrier. Customer billing sent through the United States mail shall be sent in an envelope.

(B) Billing information provided to each customer on a monthly basis shall include but not be limited to:

(i) the period for which the bill is rendered;

(ii) each applicable telephone number and/or account number;

(iii) the total amount due for features and services provided;

(iv) the sub-total for basic local **telecommunications** service. If EMS/EAS service is mandatory, charges for the service shall be included in the sub-total for basic local service. If EMS/EAS service is optional, the incremental charges for EMS/EAS shall be included in the subtotal for optional features;

(v) the sub-total for all optional features or services included in the bill;

(vi) the **customer** [local exchange] access line charge(s);

(vii) each fee or charge set by an agency of the federal, state, or local government, including but not limited to, subscriber line charges and charges for 911 service, as more fully set forth in subsection (l) [(k)] of this section;

(viii) applicable taxes;

(ix) explanations of any abbreviations or symbols used on the customer's bill to identify specific charges; and

(x) the information required by this paragraph which shall be arranged so as to allow the customer to readily compute the bill with the information provided.

(C) In the event a customer's service is interrupted other than by the negligence or willful act of the customer, and it remains out of order for 24 hours or longer after access to the premises is made available and after being reported to be out of order, appropriate adjustment or refunds shall be made to the customer. The amount of adjustment or refund shall be determined on the basis of the known period of interruption, generally beginning from the time the service interruption is first reported. The refund to the customer shall be the pro rata part of the month's flat rate charges for the period of days and that portion of the service facilities rendered useless or inoperative. The refund may be accomplished by a credit on a subsequent bill for telephone service.

(2) Electrical utilities.

(A) Bills for electric service shall be rendered monthly, unless otherwise authorized by the commission, or unless service is rendered for a period of less than a month. Bills shall be rendered as promptly as possible following the reading of meters.

(B) The customer's bill shall show all the following information:

(i) if the meter is read by the utility, the date and reading of the meter at the beginning and at the end of the period for which the bill is rendered;

(ii) the number and kind of units metered;

(iii) the applicable rate schedule and title or code;

(iv) the total amount due for services provided, including outstanding amounts in the same customer class the utility has chosen to transfer from a customer's prior delinquent account(s). Such transferred accounts shall not include continuation of service from one address to another within the same utility serving area, or contracts of guarantee involving a written agreement between a utility and its guarantor if a customer defaults;

(v) the total amount due after addition of any penalty for nonpayment within a designated period. The terms "gross bill" and "net bill" or other similar terms implying the granting of a discount for prompt payment shall be used only when an actual discount for prompt payment is granted. The terms shall not be used when a penalty is added for nonpayment within a designated period;

(vi) a distinct marking to identify an estimated bill;

(vii) any conversions from meter reading units to billing units, or any other calculations to determine billing units from recording or other devices, or any other factors used in determining the bill; and

(viii) the information required in clauses (ii)-(v), and (vii) of this subparagraph shall be arranged so as to allow the customer to readily compute his bill with the applicable rate schedule which shall be mailed on request to the customer. Customer charges are to be identified separately on the residential customer's bill.

(3) Past due balance. All rules pertaining to billing and disconnection of service shall apply to backbilling, with the exception of **§23.45(b)** [§23.45(a)].

(h)[(g)] Overbilling and underbilling. If billings for utility service are found to differ from the utility's lawful rates for the service being purchased by the customer, or if the utility fails to bill the customer for such service, a billing adjustment shall be calculated by the utility. If the customer is due a refund, an adjustment shall be made for the entire period of the overcharges. If an overcharge is adjusted by the utility within three billing cycles of the bill in error, interest shall not accrue. Unless otherwise provided in this section, if an overcharge is not adjusted by the utility within three billing cycles of the bill in error, interest shall be applied to the amount of the overcharge at the rate set by the commission annually for a calendar year. That rate shall be based on an average of prime commercial paper rates for the previous 12-month period. Interest on overcharges that are not adjusted by the utility within three billing cycles of the bill in error shall accrue from the date of payment unless the utility chooses to provide interest

to all of its affected customers from the date of the bill in error. All interest shall be compounded annually. Interest shall not apply to leveling plans or estimated billings that are authorized by statute or rule. Interest shall not apply to undercharged amounts unless such amounts are found to be the result of meter tampering, bypass, or diversion by the customer, as defined in §23.47(f) of this title (relating to Meters). Interest on undercharged amounts shall also be compounded on an annual basis and shall accrue from the day the customer is found to have first tampered, bypassed or diverted. If the customer was undercharged, the utility may backbill the customer for the amount which was underbilled. The backbilling is not to exceed six months unless the utility can produce records to identify and justify the additional amount of backbilling or unless such undercharge is a result of meter tampering, bypassing, or diversion by the customer as defined in §23.47(f). However, the utility may not disconnect service if the customer fails to pay charges arising from an underbilling more than six months prior to the date the utility initially notified the customer of the amount of the undercharge and the total additional amount due unless such undercharge is a result of meter tampering, bypassing, or diversion by the customer as defined in §23.47(f). If the underbilling is $25 or more, the utility shall offer the customer a deferred payment plan option for the same length of time as that of the underbilling. In cases of meter tampering, bypass, or diversion, a utility may, but is not required to, offer a customer a deferred payment plan.

(i)[(h)] Estimated bills.

(1) When there is good reason for doing so, an electric utility may submit estimated bills provided that an actual meter reading is taken every three months. In months where the meter reader is unable to gain access to the premises to read the meter on regular meter reading trips, or in months where meters are not read, the utility must provide the customer with a postcard and request the customer to read the meter and return the card to the utility. If such postcard is not received by the utility in time for billing, the utility may estimate meter reading and render bill accordingly.

(2) If an electric utility has a customer-read program in which customers read their own meters and report their usage monthly, and no meter reading is submitted by a customer, the utility may estimate the customer's meter reading and render a bill accordingly. However, the utility must read the meter if the customer does not submit readings for three consecutive months so that a corrected bill may be issued.

(j)[(i)] Disputed bills.

(1) In the event of a dispute between a customer and a utility regarding any bill for utility service, the utility shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the customer and, in the event the dispute is not resolved, shall inform the customer of the complaint procedures of the commission

(2) Notwithstanding any other section of these rules, the customer, except customers of telephone utilities, shall not be required to pay the disputed portion of the bill which exceeds the amount of that customer's average monthly usage at current rates pending the completion of the determination of the dispute, but in no event more than 60 days. For purposes of this rule only, the customer's average monthly usage at current rates shall be the average of the customer's gross utility service for the preceding 12-month period. Where no previous usage history exists, consumption for calculating the average monthly usage shall be estimated on the basis of usage levels of similar customers and under similar conditions.

(3) Notwithstanding any other section of these rules, a telephone utility customer's service shall not be subject to discontinuance for nonpayment of that portion of a bill under dispute pending the completion of the determination of the dispute, but in no event to exceed 60 days. The customer is obligated to pay any billings not disputed as established in §23.46 of this title (relating to Discontinuance of Service).

(k)[(j)] Notification of alternative payment programs or payment assistance. Anytime a customer contacts a utility to discuss their inability to pay a bill or indicate that they are in need of assistance with their bill payment, the utility or utility representative shall inform the customer of all available alternative payment and payment assistance programs available from the utility, such as deferred payment plans, disconnection moratoriums for the ill, and energy assistance programs, as applicable, and of the eligibility requirements and procedure for applying for each.

(l)[(k)] Fees. Any fee or charge set by an agency of the federal, state, or local government shall be shown on the bill as a separate item, indicating the federal, state, or local government agency and concisely stating the nature of the fee or charge. This section does not apply to sales taxes or franchise fees.

(m)[(l)] Adjusted bills due to meter tampering. There shall be a presumption of reasonableness of billing methodology by an electric utility with regard to a case of meter tampering, bypassing, or other service diversion if any of the following methods of calculating such bills are used:

(1) estimated bills based upon service consumed by that customer at that location under similar conditions during periods preceding the initiation of meter tampering or service diversion. Such estimated bills shall be based on at least 24 consecutive months of comparable usage history of that customer, when available, or lessor history if the customer has not been served at that site for 24 months;

(2) estimated bills based upon that customer's usage at that location after the service diversion has been corrected;

(3) where a customer will allow the electric utility to perform a load study of the customer's appliances, heating/cooling equipment, etc., in use during the period of meter tampering, by estimated bills using the total for the projected loads of those appliances, heating/cooling equipment, etc., using nationally recognized appliance load studies published by the Edison Electric Institute or the manufacturer's information for each appliance for other item of electrical equipment, or where available, comparable load study data obtained by the utility submetering appliance operation in its service area;

(4) in cases of a tampered meter where the amount of actual unmetered consumption can be calculated after testing the meter using industry recognized testing procedures, bills may be calculated for the consumption over the entire period of meter tampering;

(5) in cases of meter bypassing or other service diversion, where the amount of actual unmetered consumption can be calculated by industry recognized testing procedures, bills may be calculated for the consumption over the entire period of meter bypassing or other service diversion;

(A) paragraph (1) of this subsection does not prohibit utilities from using other methods of calculating bills for unmetered electricity or water when the usage of other methods can be shown to be more appropriate in the case in question;

(B) a utility may charge for all labor, material and equipment necessary to repair or replace all equipment damaged due to meter tampering or bypassing or other service diversion, and other costs necessary to correct service diversion where there is no equipment damage, including incidents where service is reconnected without authority. An itemized bill of such charges must be provided to the customer;

(C) a utility may not charge any additional penalty or make any other additional charge for meter tampering or bypassing or other service diversion unless such penalty has been expressly approved by the commission and filed in the utility's

tariff, or such other additional charge has been approved by order of the commission or court of law of competent jurisdiction.

(n) [(m)] Record retention. Each utility shall maintain monthly billing records for each account for at least two years after mailing of the bill. The billing records shall contain data sufficient to reconstruct a customer's billing for a given month. Copies of billing records may be obtained by the customer upon request.

(o)[(n)] Compliance. All utilities shall revise their billing format in compliance with this section within 365 days of the effective date of this section.

§23.46. Discontinuance of Service.

(a) Application. Unless the context clearly indicates otherwise, in this section the terms utility and public utility, insofar as they relate to telecommunications utilities, shall refer to dominant carriers.

(b)[(a)] Disconnection for delinquent bills. A customer's utility service may be disconnected if a bill has not been paid or a deferred payment agreement entered into within 26 days from the date of issuance of a bill and if proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least ten days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The information included in the notice shall be provided in English and Spanish as necessary to adequately inform the customer. Attached to or on the face of the termination notice or electric bills shall appear a statement notifying the customer that if they are in need of assistance with the payment of their bill, or are ill and unable to pay their bill, they may be eligible for payment assistance or special payment programs, such as deferred payment plans, disconnection moratoriums for the ill, or energy assistance programs, and to contact the local office of the utility for information on the available programs. Attached to or on the face of the termination notice for telephone bills shall appear a statement notifying the customer that if they are in need of assistance with payment of their bill, or are ill and unable to pay their bill, they may be eligible for alternative payment programs, such as deferred payment plans, and to contact the local office of the utility for more information. If mailed, the cut-off day may not fall on a holiday or weekend, but shall fall on the next working day after the tenth day. Payment at a utility's authorized payment agency is considered payment to the utility. The company shall not issue late notices or disconnect notice to the customer earlier than the first day the bill becomes delinquent, so that a reasonable length of time is allowed to ascertain receipt of payment by mail or at the utility's authorized payment agency.

(c)[(b)] Disconnection with notice. Utility service may be disconnected after proper notice for any of the following reasons:

(1) failure to pay a delinquent account for utility service or failure to comply with the terms of a deferred payment agreement including only the carriage charges of interexchange carriers where a local exchange carrier's tariff provides for billing for those carriers. In the event the appropriate federal authority prohibits disconnection of local exchange **telephone** service for failure to pay the interstate charges of an interexchange carrier or prohibits payment of interexchange carriage charges as a condition of local exchange **telephone** service, intrastate carriage charges of an interexchange carrier shall not be a cause for disconnection of local exchange **telephone** service.

(2) violation of the utility's rules pertaining to the use of service in a manner which interferes with the service of others or the operation of nonstandard equipment, if a reasonable attempt has been made to notify the customer and the customer is provided with a reasonable opportunity to remedy the situation.

(3) failure to comply with the deposit or guarantee arrangements where required by §23.43 of this title (relating to Applicant and Customer Deposit).

(d)[(c)] Disconnection without notice. Utility service may be disconnected without notice where a known dangerous condition exists for as long as the condition exists or where service is connected without authority by a person who has not made application for service or who has reconnected service without authority following termination of service for nonpayment or in instances of tampering with the utility company's meter or equipment, bypassing the same, or other instances of diversion as defined in §23.47 of this title (relating to Meters). Where reasonable, given the nature of the hazardous condition, a written statement providing notice of disconnection and the reason therefor shall be posted at the place of common entry or upon the front door of each affected residential unit as soon as possible after service has been disconnected.

(e)[(d)] Disconnection prohibited. Utility service may not be disconnected for any of the following reasons:

(1) delinquency in payment for utility service by a previous occupant of the premises.

(2) failure to pay for merchandise, or charges for nonutility service provided by the utility.

(3) failure to pay for a different type or class of utility service unless fee for such service is included on the same bill.

(4) failure to pay the account of another customer as guarantor thereof, unless the utility has in writing the guarantee as a condition precedent to service.

(5) failure to pay charges arising from an underbilling occurring due to any misapplication of rates more than six months prior to the current billing.

(6) failure to pay charges arising from an underbilling due to any faulty metering, unless the meter has been tampered with or unless such underbilling charges are due under §23.47 of this title (relating to Meters).

(7) failure to pay an estimated bill other than a bill rendered pursuant to an approved meter-reading plan, unless the utility is unable to read the meter due to circumstances beyond its control.

(f)[(e)] Disconnection on holidays or weekends. Unless a dangerous condition exists, or unless the customer requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when personnel of the utility are not available to the public for the purpose of making collections and reconnecting service.

(g)[(f)] Disconnection due to utility abandonment. No public utility may abandon a customer or a certified service area without written notice to its customers therein and all similar neighboring utilities, and approval from the commission.

(h)[(g)] Disconnection for ill and disabled. No electric public utility may discontinue service to a delinquent residential customer permanently residing in an individually metered dwelling unit when that customer establishes that discontinuance of service will result in some person residing at that residence becoming seriously ill or more seriously ill if service is discontinued. Each time a customer seeks to avoid termination of service under this rule, the customer must have the attending physician (for purposes of this rule, the term "physician" shall mean any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official) call or contact the utility within 16 days of issuance of the bill. A written statement must be received by the utility from the physician an within 26 days of the issuance of the utility bill. The prohibition against service termination provided by this rule shall last 63 days from the issuance of the utility bill or such lesser period as may be agreed upon by the utility and the customer or physician. The customer who makes such request shall enter into a deferred payment plan.

(i)[(h)] Disconnection to energy assistance grantees. No electric public utility may terminate service to a delinquent residential customer for a billing period in which the customer has applied for and been granted energy assistance funds if any agency for administration of these funds has notified the utility, prior to the date of disconnection, of approval of an award sufficient to cover the bill, or a portion of the bill so that the customer can successfully enter into deferred payment plan for the balance of the bill.

(j)[(i)] Disconnection during extreme weather. On a day when the previous day's highest temperature did not exceed 32 degrees [0] F, and the temperature is predicted to remain at that level for the next 24 hours, according to the nearest National Weather Service (NWS) reports, or in zones where an excessive heat alert is in effect as determined by the NWS and reported by the National Oceanic and Atmospheric Administration (NOAA), an electric utility cannot disconnect a customer until the utility ascertains that no life-threatening condition exists in the customer's household, or would exist, because of disconnection during severe weather conditions.

(k)[(j)] Resolution of disputes. Any customer or applicant for service requesting the opportunity to dispute any action or determination of a utility under the customer service rules of the commission §§23.41-23.48 of this title (relating to Customer Service and Protection) shall be given an opportunity for a supervisory review by the utility. If the utility is unable to provide a supervisory review immediately following the customer's request for such review, arrangements for the review shall be made for the earliest possible date. Service shall not be disconnected pending completion of the review. If the customer chooses not to participate in such review or to make arrangements for such review to take place within five days after requesting it, the company may disconnect service, providing notice has been issued under standard disconnect procedures. Any customer who is dissatisfied with the review by the public utility must be informed of their right to file a complaint and/or request a hearing before the appropriate municipal regulatory body or the Public Utility Commission of Texas, whichever is applicable. The results of the supervisory review must be provided in writing to the customer within ten days of the review, if requested.

(l)[(k)] Disconnection of master-metered apartments. When a bill for utility services is delinquent for a master-metered apartment complex (defined as a submetered or nonsubmetered building in which a single meter serves five or more residential dwelling units), the following shall apply:

(1) The utility shall send a notice to the customer as required in subsection (a) of this section. At the time such notice is issued, the utility shall also inform the customer that notice of possible disconnection will be provided to the tenants of the apartment complex in six days if payment is not rendered before that time.

(2) At least six days after providing notice to the customer and at least four days prior to disconnect, the utility shall post a minimum of five notices in conspicuous areas in the corridors or other public places of the apartment complex. Language in the notice shall be prominently displayed and shall read:

(3) Notice to residents of (name and address of apartment complex) electric utility service to this apartment complex is scheduled for disconnection on (date), because (reason for disconnection).

(m) [(l)] Disconnection for nonpayment of charges for calls placed from combat or war zones. Residential local exchange telephone service may not be disconnected for failure to pay any charges for calls placed from combat or war zones, as designated by the federal government, by American military personnel that are billed to a telephone number in Texas, subject to the provisions of paragraphs (1)-(6) of this subsection.

(1) The **dominant certificated telecommunications utility (DCTU)** [local exchange carrier] must offer a deferred payment plan to any residential customer who expresses an inability to pay that portion of a bill associated with calls placed from a combat or war zone, as designated by the federal government, by American military personnel.

(2) The deferred payment plan must, at the customer's choice, provide either:

(A) that the customer pays current charges other than current charges for calls placed from such combat or war zones, plus 1/12th each month of the outstanding balance of all charges for calls placed from such combat or war zones; or

(B) that the customer pays current charges, other than current charges for calls placed from such combat or war zones, and upon the return of the calling party or parties from any such combat or war zone or upon conclusion of any such combat or war, whichever occurs later, the customer pays no more than 1/12th each month of the outstanding balance of all charges for calls placed from any such combat or war zone where such combat or war has concluded.

(3) A deferred payment plan offered by a utility, when reduced to writing, must state, immediately preceding the space provided for the customer's signature and in boldface print at least two sizes larger than any other used thereon, that: "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement".

(4) If a customer has not fulfilled the terms of a deferred payment plan under this subsection, the utility is required to offer subsequent negotiation of a deferred payment plan agreement under reasonable terms and conditions no more onerous to the customer than those required in paragraphs (1)-(3) and (5) and (6) of this subsection

(5) Any **DCTU** [local exchange carrier] that institutes a deferred payment plan must not refuse a customer participation in such a program on the basis of race, color, creed, sex, or marital status.

(6) A deferred payment plan may be made by visiting the utility's business office or contacting the **DCTU** [local exchange carrier] by telephone. If the customer visits the **DCTU's** [local exchange carrier's] business office, the **DCTU** [local exchange carrier] may ask the customer to sign the deferred payment plan. The **DCTU** [local exchange carrier] must provide the customer with a copy of the signed plan. If the agreement is made over the telephone, the **DCTU** [local exchange carrier] must send a copy of the plan to the customer.

(7) Interest or penalties shall not be assessed under any deferred payment plan authorized in this subsection.

(n) [(m)] Disconnection for nonpayment of electric utility service charges for families with military personnel serving in a combat or war zone and for certain members of the reserve component. An electric utility shall not disconnect a customer's residential electric utility service for the customer's failure to pay for such service, if the customer, a spouse, or the head of the household is serving military duty in a combat or war zone, as designated by the federal government, or is a member of the reserve component who is serving military duty that is directly related to such hostilities, subject to the following provisions of this subsection.

(1) The utility will verify with the customer or his or her family member that the customer, a spouse, or the head of the household is serving military duty in such a combat or war zone, or is a member of the reserve component who is serving

military duty that is directly related to such hostilities

(2) A utility must offer a deferred payment plan under this subsection to any residential customer who expresses an inability to pay for electric utility service because of the service of the customer, a spouse, or the head of the household on military duty in such a combat or war zone or as a member of the reserve component on military duty that is directly related to such hostilities. Upon the cessation of hostilities or the return of the person serving military duty, whichever occurs later, and upon request by a customer, a utility will offer subsequent renegotiation of a deferred payment plan agreement under reasonable terms and conditions for the outstanding balance owed for electric utility service charges. Such renegotiation shall include a deferred payment plan under this subsection with terms extending up to 12 months for the unpaid balance.

(3) A deferred payment plan offered by a utility under this subsection, when reduced to writing, must state, immediately preceding the space provided for a customer's signature and in boldface print at least two sizes larger than any other used thereon, that: "If you are not satisfied with this contract, or if agreement was made by telephone and you feel this contract does not reflect your understanding of that agreement, contact the utility immediately and do not sign this contract. If you do not contact the utility, or if you sign this agreement, you give up your right to dispute the amount due under the agreement except for the utility's failure or refusal to comply with the terms of this agreement".

(4) Any electric utility that institutes a deferred payment plan under this subsection must not refuse a customer participation in such a program on the basis of race, color, creed, sex, or marital status.

(5) A deferred payment plan offered under this subsection may be made by visiting the utility's business office or contacting the utility by telephone. If the customer visits the utility's business office, the utility may ask the customer to sign the deferred payment plan. The utility must provide the customer with a copy of the signed plan. If the agreement is made over the telephone, the utility must send a copy of the plan to the customer.

(6) Interest or penalties shall not be assessed under any deferred payment plan authorized in this subsection.

§23.48. Continuity of Service.

(a) Application. Unless the context clearly indicates otherwise, in this section the term utility, insofar as it relates to telecommunications utilities, shall refer to dominant carriers.

(b)[(a)] Service interruptions.

(1) Every [public] utility shall make all reasonable efforts to prevent interruptions of service. When interruptions occur, the utility shall reestablish service within the shortest possible time.

(2) Each utility shall make reasonable provisions to meet emergencies resulting from failure of service, and each utility shall issue instructions to its employees covering procedures to be followed in the event of emergency in order to prevent or mitigate interruption or impairment of service.

(3) In the event of national emergency or local disaster resulting in disruption of normal service, the utility may, in the public interest, interrupt service to other customers to provide necessary service to civil defense or other emergency service agencies on a temporary basis until normal service to these agencies can be restored.

(c)[(b)] Record of interruption. Except for momentary interruptions due to automatic equipment operations, each utility shall keep a complete record of all interruptions, both emergency and scheduled. This record shall show the cause for interruptions, date, time, duration, location, approximate number of customers affected, and, in cases of emergency interruptions, the remedy and steps taken to prevent recurrence.

(d)[(c)] Report to commission.

(1) Telephone utilities. The following guidelines are a minimum basis for reporting service interruptions. Any report of service interruption shall state the cause(s) of the interruption.Dominant certificated telecommunications utilities **(DCTUs)** [Local exchange companies] should use judgment in reporting major outages lasting less than four hours. **DCTUs** [Local exchange companies] shall notify the commission in writing of interruptions in service lasting four or more hours affecting:

(A) 50% of the toll circuits serving an exchange;

(B) 50% of the Extended Area Service circuits serving an exchange;

(C) 50% of a central office; or

(D) 20% or more of an exchange's access lines.

(2) Electric utilities. The commission shall be notified in writing of interruptions in service affecting the entire system or any major division of the system which is owned or operated by the utility lasting more than one hour. The notice shall also state the cause(s) of such interruptions. This subsection applies only to outages occurring within this state.

(e)[(d)] Change in character of service. In case any change is made by the utility in the type of service rendered which would adversely affect the efficiency of operation or the adjustment of the equipment of customers, all customers who may be affected shall be notified by the utility at least 60 days in advance of the change or if such notice is not possible, as early as feasible. Where adjustments or replacements of the utility's standard equipment must be made to permit use under such changed conditions, adjustment shall be made by the utility without charge to the customers, or in lieu of such adjustments or replacements, the utility may make cash or credit allowances based on the duration of the change and the degree of efficiency loss.

(f)[(e)] Emergency Operations Plan. By December 31, 1992, **or within 60 days of being declared a dominant carrier, whichever is later** [and every two years thereafter], each utility shall file with the commission a general description of its emergency operations plan. **Each utility shall thereafter update its plan by filing revision sheets that clearly indicate any changes in the plan within 30 days of such changes.** A general description of the plan shall also be made available at the utility's main office for inspection by the public. A complete copy of the plan shall be made available at the utility's main office for inspection by the commission or its staff upon request.

(1) Telephone utilities. Each emergency plan filed by a dominant **carrier** [telecommunications utility] must include, but need not be limited to, the following:

(A) a communications plan that describes the procedures for contacting the media, customers and critical users (including but not limited to hospitals, police stations, fire stations and critical city offices) as soon as reasonably possible either before or at the onset of an emergency. The communications plan should also:

(i) address how the utility's telephone system and complaint handling procedures will be augmented during an emergency;

(ii) identify key personnel and equipment that will be required to implement the plan when an emergency occurs;

(B) priorities for restoration of service.

(2) Electric utilities. Each electric utility's emergency plan must include, but need not be limited to, the following:

(A) a description of the registry of customers directly served by the utility with special in-house, major, life-sustaining equipment and the plan to identify and communicate with these customers;

(B) a communications plan that describes the procedures for contacting the media and customers and critical loads directly served by the utility (including but not limited to hospitals, police stations, fire stations and critical water and wastewater facilities) as soon as reasonably possible either before or at the onset of an electrical emergency. The communications plan should also address how the utility's telephone system and complaint handling procedures will be augmented during an emergency. Utilities should make every reasonable effort to solicit help from cogenerators during times of generation shortages to prevent interruptions in service;

(C) curtailment priorities and procedures for shedding load and rotating black-outs;

(D) priorities for restoration of service;

(E) a summary of power plant weatherization plans and procedures; and

(F) a summary of the utility's alternative fuel and storage capacity

§23.49. Telephone Extended Area Service (EAS) and Expanded Toll-free Local Calling Areas.

(a) Purpose. This section is intended to establish consistent procedures for the processing of requests for extended area service (EAS) and to provide for an expedited hearing allowing the expansion of two-way toll-free local calling for rural areas, as enacted in Senate Bill 632 by the 73rd Legislature.

(b) Extended Area Service. **The term utility(ies) in this subsection refers to dominant certificated telecommunications utility(ies).**

(1) Filing Requirements.

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

(F) Petitions for extended area service into metropolitan exchanges on file with the commission on or before the effective date of this section will be grouped by relevant metropolitan exchange For each metropolitan exchange, **the commission staff** [General Counsel] will file a motion to docket a proceeding for the determination of uniform extended area service rate additives as directed by paragraphs (3), (4), and (5) of this subsection for all pending EAS requests to that metropolitan exchange. Upon the docketing of such a proceeding, two weeks notice in a newspaper of general circulation in the metropolitan area shall be published. The notice shall contain such information as deemed reasonable by the **presiding officer** [hearings examiner] in the proceeding No fewer than 60 days from the final publication of notice shall pass before the demand studies required by paragraph (3) of this subsection are initiated. New petitioners for extended area service into the metropolitan exchange may be accepted prior to the initiation of the demand studies

(2) Community of interest.

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

(D) The project shall be established as a formal docket upon the motion of **the commission staff** [General Counsel].

(E) Following the docketing of a request, a prehearing conference will be scheduled to establish the exchange to which EAS is sought, and to report any agreements reached by the parties. The utility(ies) involved shall conduct appropriate demand and costing analyses according to paragraphs (3) and (4) of this subsection

(3) (No change.)

(4) Determination of costs.

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

(C) The utility(ies) shall file with the commission **and serve copies on commission** staff and other parties to the proceeding the summary results of these studies, together with such supporting schedules and detailed documentation as will permit the identification of study components and verification and understanding of study results according to the following schedule, unless the utility(ies) can demonstrate that good cause exists to expand the time schedule for a particular study:

(i) Incremental costs identified in paragraph (1) of this subsection shall be filed no later than 90 days from the filing of the results of the demand analysis conducted pursuant to paragraph (3) of this subsection; and

(ii) toll revenue effects, if analyzed pursuant to subparagraph (B) of this paragraph, shall be filed no later than 90 days from the filing of the results of the incremental costs, pursuant to clause (i) of this subparagraph.

(5) (No change.)

(6) Subscription threshold

(A) A threshold demand level shall be established by the commission's order in the docketed proceeding prior to the design or construction of facilities for the service. A reasonable presubscription process will then be undertaken to determine the likely demand level. If the likely demand level equals or exceeds the threshold demand level, then EAS shall be provided in accordance with the commission's order. If the threshold demand level is not met, the affected utility(ies) **is not required** [shall be relieved of any duty or obligation] to provide the EAS approved by the commission.

(B) (No change.)

(7) Notice.

(A) Notice of the **filing of an EAS application** [assignment of a project number, pursuant to paragraph (2)(C) of this subsection,] must be provided to all subscribers within the petitioning exchange(s), by publication for two consecutive weeks in a newspaper of general circulation in the area. Notice must also be given to individual subscribers either through inserts in customer bills, or through a separate mailing to each subscriber. The notice must state: the project number, the nature of the request, and the commission's mailing address and telephone number to contact in the event an individual wishes to protest or intervene. The commission shall also publish notice in the *Texas Register*.

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

(8) Joint filings.

(A) EAS agreements. The commission may approve agreements for EAS or EAS substitute services filed jointly by the representatives of petitioning exchanges and the affected utility(ies) (joint filings) so long as the agreements are in accordance with subparagraph (C)(i)-**(x)** [(ix)] of this paragraph.

(B) (No change.)

(C) Joint filings shall be permitted subject to the following:

(i) The parties to such joint filings shall include the name of each **utility** [local exchange company (LEC)]

which provides service in the affected exchanges and one duly appointed representative for each of the affected exchange. Each exchange representative shall be designated jointly by the governing officials of all incorporated areas within the affected exchange and the county commission(s) representing any unincorporated areas within the affected exchange.

(ii)-(vi) (No change.)

(vii) These joint filings shall demonstrate that the proposed rate additives:

(I) (No change.)

(II) shall recover, for the **utility** [local exchange company] providing the service, the appropriate cost of providing EAS including a contribution to joint costs.

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

(c) (No change.)

§23.52. Tel-Assistance and Lifeline Service.

(a) Application. This section applies to local exchange carriers (LECs)[, as that term is defined by 23.61(a)[(17)] of this title (relating to Telephone Utilities), that are subject to the rate-making jurisdiction of the commission for any service or geographic market].

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

(1) Tel-Assistance Service–A program providing eligible consumers, as determined under applicable rules of the Texas Department of Human Services, with a reduction in costs of certain telecommunications **services** [service].

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

(4) Qualifying service–

(A) residential flat rate basic local exchange service; [or]

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

(c) Rate reductions under tel-assistance service. Each LEC shall provide tel-assistance service to all eligible consumers within its certificated area in the form of a 65% reduction in the applicable tariff rate for the service provided. The reduction shall apply only to the qualifying service. The reduction for local area calling usage shall be limited to an amount such that together with the reduction for local exchange access service the overall rate reduction does not exceed the comparable reduction applicable to flat rate service.

(d)-(j) (No change.)

§23.55. Operator Services.

(a) (No change.)

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

(1)-(10) (No change.)

(11) Administrative review–A process whereby an application is reviewed by the staff and the Office of Public Utility Counsel and ruled on by the presiding **officer** [examiner] without an evidentiary hearing and without an order signed by the commission.

(12) (No change.)

(13) Telephones intended to be utilized by the public–Telephones that are accessible to the public, including, but not limited to, [private] pay telephones, [public and semi-public pay telephones owned by local exchange carriers,] telephones in guest rooms and common areas of hotels, motels, or other lodging locations, and telephones in hospital patient rooms.

(14) (No change.)

(c) Requirements to provide operator service.

(1) An OSP that provides end user operator services for a call aggregator through a telephone intended to be utilized by the public must do so pursuant to a contract with the call aggregator, as a presubscribed interexchange carrier, or, in the case of a **dominant certificated telecommunications utility (DCTU)** [local exchange carrier], pursuant to a tariff approved by the commission.

(2) (No change.)

(3) Where an OSP is presubscribed for interLATA operator services at [public or semi-public] pay telephones owned by a **DCTU** [local exchange carrier], the **DCTU** [local exchange carrier] shall for those telephones comply with all provisions of this section otherwise required to be included in contracts between OSPs and call aggregators.

(4) If a **DCTU** [local exchange carrier] or presubscribed interexchange carrier provides operator services through telephones intended to be utilized by the public, other than those telephones subject to paragraphs (2) and (3) of this subsection, and pays fees or other forms of compensation to a call aggregator, the **DCTU** [local exchange carrier] or presubscribed interexchange carrier shall do so pursuant to a contract with the call aggregator.

(d) Information to be provided at the telephone set.

(1) A contract between an OSP and a call aggregator for the provision of operator services through telephones intended to be utilized by the public shall require the call aggregator to attach to each telephone set that has access to the operator service and that is intended to be utilized by the public a card furnished by the OSP that provides:

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

(C) instructions for accessing the **operator of a local exchange carrier that meets the requirements of subsection (k)(3) of this section,** [operator], or a statement that instructions for accessing **such** [the] local exchange carrier operator are available at a designated toll-free telephone number, 24 hours a day, seven days a week, except, **DCTUs** [local exchange carriers] are exempt from this subparagraph;

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

(F) a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or contact the **operator of (insert name of a local exchange carrier that meets the requirements enumerated in subsection (k)(3) of this section and that serves the area)** [local exchange carrier] operator for assistance." or, in the case of telephones that directly route "0-" calls to **such** [the] local exchange carrier operator, a notice that states, "You may use another long distance carrier. Follow your carrier's instructions, or dial "0" for assistance."

[(2) If the OSP's average intrastate charge (which includes all charges ultimately charged to the end user, including surcharges, fees, and any other form of compensation charged by the OSP on behalf of the call aggregator) exceeds 115% of the average intrastate charge of a dominant carrier, the contract between the OSP and the call aggregator for the provision of operator services through telephones intended to be utilized by the public shall require the call aggregator to attach to each telephone set that has access to the operator service and that is intended to be utilized by the public a card furnished by the OSP that legibly and conspicuously states in capital letters: CHARGES FOR (insert company name)'s OPERATOR SERVICES ARE NOT REGULATED. For the purposes of this paragraph, the OSP's average intrastate charge exceeds 115% of the average intrastate charge of a dominant carrier if the requirements of subparagraphs (A)-(D) of this paragraph are not met.

[(A) The average operator surcharge of the OSP, which shall be calculated by adding the OSP's highest operator surcharges for "0+" station to station calls, "0-" station to station calls, "0+" calling card or credit card calls, "0-" calling card or credit card calls, "0+" person to person calls, and "0-" person to person calls and dividing the total of such operator surcharges by six, does not exceed 115% of the average operator surcharge of a dominant carrier, which shall be calculated in the same manner. For purposes of this subparagraph, "operator surcharges" shall include any surcharges, any fees, and any other form of compensation charged by the OSP on behalf of the call aggregator

[(B) The average message telecommunications service (MTS) charge for one minute, five minute, and ten minute calls of the OSP, calculated by determining the OSP's simple average one minute MTS charge for all mileage bands and all time of day bands, the OSP's simple average five minute MTS charge for all mileage bands and all time of day bands, and the OSP's simple average ten minute MTS charge for all mileage bands and all time of day bands, and then averaging the three averages, does not exceed 115% of the average MTS service charge for one minute, five minute, and ten minute calls of the same dominant carrier used in subparagraph (A) of this paragraph. The average MTS charge of the dominant carrier shall be calculated in the same manner as the OSP's average MTS charge, using the rates for two point service found in the dominant carrier's MTS tariff.

[(C) All charges incurred by the end user are included in the calculation required by either subparagraph (A) or (B) of this paragraph.

[(D) The OSP's charge (including any surcharges, any fees, and any other form of compensation charged by the OSP on behalf of the call aggregator) for any operator service call does not exceed 130% of the charge for the equivalent service of the same dominant carrier used in subparagraph (A) of this paragraph.]

(2) [(3)] Notwithstanding **paragraph** [paragraphs] (1) [and (2)] of this subsection, in the case of [public or semi-public] pay telephones owned by the **DCTU** [local exchange carrier], where the **DCTU** [local exchange carrier] is the OSP for intraLATA operator service and another carrier is the OSP for interLATA operator service, the interLATA OSP shall inform the **DCTU** [local exchange carrier] of the appropriate information to be posted, and the **DCTU** [local exchange carrier] shall post the information required by paragraphs (1)(A), (B), **and** (D) [and paragraph (2)] of this subsection for the interLATA OSP. In addition, **DCTU** [the local exchange carrier] shall post the information required by paragraph (1)(E) and (F) of this subsection. After initial information cards are posted, **DCTUs** [local exchange carriers] may file tariffs to recover from the OSPs presubscribed to [public and semi-public] pay telephones owned by the **DCTUs** [local exchange carriers] the incremental cost for maintaining updated information cards plus a reasonable contribution.

(3)[(4)] The commission may approve applications for modification of the requirements contained in this subsection upon showing of good cause. Applications for modification may be filed by the call aggregator or by the OSP. The commission shall process applications for modification using the following criteria and procedures:

(A) Each application for modification shall contain a certificate of service attesting that a copy of the request has been served upon the Office of Public Utility Counsel.

(B) Each application for modification shall clearly set forth the good cause for approval of the modification.

(C) Each application for modification shall initially be assigned a project control number, assigned to **a presiding officer** [an examiner], and reviewed administratively.

(i) No later than 30 days after the filing date of the application, interested persons other than the commission staff and the Office of Public Utility Counsel may file written comments or recommendations concerning the application. No later than 60 days after the filing of the application, the commission staff shall, and the Office of Public Utility Counsel may, file written comments or recommendations concerning the application.

(ii) Within 90 days of filing, after administrative review, the presiding **officer** [examiner] shall approve, deny, or docket the application. The **presiding officer** [examiner] may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed [to determine whether good cause exists].

(D) [If the presiding examiner either approves or denies the application for modification,] **Any** [any] participating party may request, within ten days of the **presiding officer's order approving or denying** [examiner's ruling, that] the application, **that the application** be docketed, and upon such request, the application shall be docketed.

(E) If the presiding **officer** [examiner] either approves or denies the application for modification and no participating party has requested that the application be docketed, a copy of the **presiding officer's** [examiner's] ruling shall be provided to the commission. The commission may, within 40 days of the **presiding officer's** [examiner's] ruling, overrule the approval or denial and order that the application for modification be docketed.

(4)[(5)] The requirements of this subsection shall not apply to telephones located in confinement facilities.

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

(g) 911 calls, "0-" calls, and end user choice.

(1) A contract between an OSP and a call aggregator for the provision of operator services through telephones intended to be utilized by the public shall require the call aggregator to allow 911 calls to be outpulsed directly to the Public Service Answering Point without requiring a coin or credit card[, except embedded public and semi-public pay telephones owned by the local exchange carriers shall be exempt for a period of four years from the without requiring a coin or credit card requirement of this paragraph].

(2) Where End User Choice, as herein defined, is not available, a contract between an OSP and a call aggregator for the provision of operator services through telephones intended to be utilized by the public shall[,] require the call aggregator to allow "0-" calls and to directly, **without charge to the calling party**, route all "0-" calls to **an** [the local exchange carrier operator] without charge to the calling party unless the OSP provides access to emergency service providers. In providing access to emergency service providers, the] OSP **that provides access to emergency services that meet the technical standards set forth in subparagraph (A)-(F) of this paragraph. Specifically, such an OSP** shall:

(A) easily identify the originating telephone number and the location of the originating telephone, except **DCTUs** [local exchange carriers] shall be allowed to identify the location using internal sources such as repair service or business office records if such internal sources are accessible to operators for emergency purposes 24 hours a day;

(B) (No change.)

(C) be available 24 hours a day, seven days a week, without requiring a coin or credit card[, except embedded public and semi-public pay telephones owned by the local exchange carriers shall be exempt for a period of four years from the without requiring a coin or credit card requirement of this paragraph];

(D)-(F) (No change.)

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

(5) Nothing in this section shall be deemed to require the initial routing of "0-" calls from [public or semi-public] pay telephones owned by a [the] local exchange carrier **that provides access to emergency service providers and that meets the requirements enumerated in subsection (k)(3) of this section** to any OSP other than the local exchange carrier itself.

(h) Customer complaints. This subsection shall only apply to OSPs that are not **DCTUs** [dominant carriers] except where otherwise stated.

(1) The OSP shall have a toll-free telephone number that callers may utilize, during normal business hours, to voice complaints and make inquiries. [This paragraph also applies to dominant interexchange carriers.]

(2) (No change.)

(3) In the event the complainant is dissatisfied with the OSP's report, the OSP shall advise the complainant of the Public Utility Commission of Texas complaint process, giving the customer the address and telephone number of the Public Information **Office** [Division] of the commission. If appropriate, the OSP shall also give the customer the commission's TDD number for the speech- and hearing-impaired.

(4)-(5) (No change.)

(i) Access. A contract between an OSP and a call aggregator for the provision of operator services through telephones intended to be utilized by the public shall require that the call aggregator allow access to the **operator of a** local exchange carrier **that meets the requirements enumerated in subsection (k)(3) of this section and serves** [operator serving] the **area** [exchange] from which the call is made, and to other telecommunications utilities unless otherwise provided in paragraph (3) of this subsection.

(1) The access required by this subsection shall be provided subject to the conditions contained in subparagraphs (A)-(C) of this paragraph.

(A) Access to **such** [the] local exchange carrier operator shall be accomplished either:

(i) (No change.)

(ii) by transfer or redirection of the call by the OSP, without charge to the caller, in accordance with the requirements of subclauses (I)-(III) of this clause:

(I) the OSP shall transfer or redirect the call to **such** [the] local exchange carrier operator serving the originating **area** [exchange];

(II) the OSP shall transfer or redirect the call to **such** [the] local exchange carrier operator in such a way that the local exchange carrier operator receives all signaling information (e.g., ANI and OLS) that would have been received by the local exchange operator if the call had been directly routed to the local exchange carrier; and

(III) (No change.)

(B) (No change.)

(C) Access to interexchange carriers by "10XXX+0" (whether "10XXX+0+" or "10XXX+0-") dialing shall not be blocked if the end office serving the originating line has originating line screening capability. A nonpresubscribed interexchange carrier shall not bill the call aggregator or the presubscribed interexchange carrier for local or toll messages originated at the call aggregator's facility by use of "10XXX+0" (whether "10XXX+0+" or "10XXX+0-") dialing, **or where the calls originated at** [if] the call **aggregator's facility and otherwise reached an operator position, if the call aggregator**

[(i)] has subscribed to the necessary local exchange carrier-provided outgoing call screening to ensure that appropriate originating line screening is transmitted with each call[; and

[(ii) has provided 30 days notice to the interexchange carrier that originating line screening is available].

(2) (No change.)

(3) Waivers to the access requirement may be granted by the commission to prevent fraudulent use of telephone services or for other good cause. An application under subparagraph (B) of this paragraph is not required for any generic waiver granted by subparagraph (A) of this paragraph.

(A) (No change.)

(B) Applications for waiver of the requirement for access to the local exchange carrier operator or to other telecommunications utilities to prevent fraudulent use of telephone service or for other good cause may be filed by the call aggregator or the OSP. The commission shall process such applications for waiver using the following criteria and procedures:

(i) Each application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and affected telecommunications utilities, such telecommunications utilities to include those identified in the list referred to in paragraph (2) of this subsection and the local exchange **carriers** [carrier] serving the affected exchange. If the application for waiver pertains to technical limitations of certain equipment, the application for waiver shall contain a certificate of service attesting that a copy of the application has been served upon the Office of Public Utility Counsel and all telecommunications utilities registered with or certificated by the commission. The certificate shall list the telecommunications utilities on which copies of the application were served.

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

(iv) Each application for waiver shall initially be assigned a project control number, assigned to **a presiding officer** [an examiner], and reviewed administratively.

(I) (No change.)

(II) Within 90 days of the filing, after administrative review, the presiding **officer** [examiner] shall approve, deny, or docket the application. The **presiding officer** [examiner] may postpone a decision on the application beyond the 90th day after filing if he or she finds that additional information is needed to determine whether good cause exists.

(v) [If the presiding examiner either approves or denies the application for waiver,] **Any** [any] participating party may request, within ten days of the **presiding officer's** [examiner's] ruling, **approving or denying** [that] the application, **that the application** be docketed, and upon such request, the application shall be docketed.

(vi) If the presiding **officer** [examiner] either approves or denies the application for waiver and no participating party has requested that the application be docketed, a copy of the **presiding officer's** [examiner's] ruling shall be provided to the

commission. The commission may, within 40 days of the **presiding officer's** [examiner's] ruling, overrule the approval or denial and order that the request for waiver be docketed.

(vii) (No change.)

(j) (No change.)

(k) **Dominant certificated telecommunications utility (DCTU)** [Local exchange carrier] requirements.

(1) Each **DCTU** [local exchange carrier] shall make validation information (e.g. **DCTU** [local exchange carrier] calling card numbers, whether an access line is equipped with billed number screening, or whether an access line is a pay telephone) available to any interexchange carrier requesting it by December 31, 1991, on the same prices, terms, and conditions that the **DCTU** [local exchange carrier] provides the service to any other interexchange carrier. The **DCTU** [local exchange carrier] may comply with the requirements of this paragraph by providing its own data base, making arrangements with another **DCTU** [local exchange carrier] to provide the information, or making arrangements with a third-party vendor.

(2) Each**DCTU** [local exchange carrier] shall offer billing and collection services to any interexchange carrier requesting it by December 31, 1991, on the same prices, terms, and conditions that the **DCTU** [local exchange carrier] provides the services to any other interexchange carrier. If validation information is available for calls that the interexchange carrier (or a third-party billing and collection agent operating on behalf of the interexchange carrier) will bill through the **DCTU** [local exchange carrier], the interexchange carrier is required to validate the call and is allowed to submit the call for billing only if the call was validated.

(3) If a **DCTU** [local exchange carrier] receives a request from a caller to access another carrier, the **DCTU** [local exchange carrier] shall, using the same prices, terms, and conditions for all carriers, either:

(A) (No change.)

(B) instruct the caller how to access the caller's carrier of choice if that carrier has provided the **DCTU** [local exchange carrier] with the information referred to in subsection (l)(2) of this section

(l) (No change.)

(m) Other requirements.

(1) OSPs that are not **DCTUs** [dominant carriers] are subject to the requirements contained in the Public Utility Regulatory Act **of 1995** and the commission's substantive rules for nondominant telecommunications utilities.

(2) (No change.)

(n) Enforcement. The commission may investigate any complaint against any OSP, interexchange carrier or **DCTU** [local exchange carrier] alleged to have violated the provisions of this section. The company shall be given an opportunity to informally resolve any complaint involving violation of these rules. If no resolution is achieved informally, the commission may upon its own motion or upon request of the original **complainant** [complaint] formally investigate the complaint, and, upon proper notice, evidentiary hearing, and determination that a violation has occurred or is about to occur, may take action to stop, correct or prevent the violation.

(o) (No change.)

§23.56. Statewide Dual-Party Relay Service.

(a) Purpose. The provisions of this section are intended to establish a statewide telecommunications dual-party relay service for the hearing-impaired and speech-impaired using special communications equipment such as telecommunications devices for the deaf (TDD), computers, and operator translations. The service shall be provided on a statewide basis by one telecommunications carrier. However, certain aspects of the operation of the dual-party relay service are applicable to local exchange carriers and other telecommunications utilities, as those terms are defined by **§23.3** [§23.61(a)(17) and (34)] of this title (relating to **Definitions** [Telephone Utilities]).

(b)-(g) (No change.)

(h) Universal Service Fund Assessment.

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

(3) Division of LEC Assessment among LECs.

(A) The Administrator shall establish an assessment rate to apply to LECs. This rate shall be calculated by dividing the cost assessed to LECs as set forth in paragraph (2) of this subsection for the current period by the total number of **customer** [basic local service] access lines as of December 31 of the previous year.

(B) The assessment to each LEC shall be the number of that LEC's **customer** [basic local service] access lines as of December 31 of the previous year multiplied by the LEC assessment rate for the period.

(4) (No change.)

(i)-(k) (No change.)

(l) Reports. The relay service carrier, local exchange carriers, and other telecommunications utilities shall make such reports as required by the commission. **The commission staff will forward** [Additionally, local exchange carriers shall submit annual reports by January 31 of each year] to the Universal Service Fund Administrator [showing] the total number of access lines **counts received pursuant to §23.13(d)** [as of December 31 of the previous year].

(m) (No change.)

§23.58. Pay-per-call Information Services Call Blocking.

(a) Definition. Pay-per-call Information Services are services that allow a caller to dial a specified 1-900-XXX-XXXX or 976-XXXX number. Such services routinely deliver, for a predetermined (sometimes time-sensitive) fee, a prerecorded or live message or interactive program. Usually **a telecommunications utility** [an Interexchange Carrier (IXC) or the Local Exchange Company (LEC)] will transport the call and bill the end-user on behalf of the information provider.

(b) Free Blocking. Within 90 days of **March 7, 1991 or within 90 days of being declared a dominant carrier, whichever is later,** [adoption of this section] all **dominant certificated telecommunications utilities (DCTUs)** [LECs] are required, upon request, to block access to all Pay-per-call Information Services (900 and 976 services) when a call is placed to a 1-900-XXXX or 976-XXXX number. There will be no charge to the end-user for the first blocking request. However, there may be a non-recurring charge applicable for subsequent blocking requests.

(c) Subscription to Blocking. The request of the end-user shall be determined in the following method:

(1) End-users not currently receiving blocking. In order to restrict access to Pay-per-call Information Services, end-users must order blocking either orally or by means of a written ballot. Within 60 days of **March 7, 1991 or within 60 days** [the adoption] of **being declared a DCTU, whichever is later** [this section], each **DCTU** [LEC] must notify its end-users of the upcoming free blocking and send a post-paid ballot to all existing end-users (either through bill inserts or a separate mailing) allowing them to choose whether they want to restrict access to Pay-per-call Information Services.

(2) End-users currently receiving blocking. End-users that are receiving blocking of 976-XXXX services by a

DCTU [an LEC] on **March 7, 1991,** [the effective date of this section] shall be notified by the **DCTU** [LEC] that by order of the commission, blocking of Pay-per-call Information Services may only be offered for both 1-900-XXXX and 976-XXXX numbers. Within 60 days of **March 7, 1991 or within 60 days** [the adoption] of **being declared a DCTU, whichever is later** [this section], each **DCTU** [LEC] shall send a post-paid ballot to all existing end-users (either through bill inserts or a separate mailing) allowing them to choose whether they want access to Pay-per-call Information Services. The **DCTUs** [LECs] shall indicate to the end-user that on the date for which blocking will be implemented by all **DCTUs** [LECs] pursuant to this section, all Pay-per-call Information Services (900 and 976 services) will be blocked for such end-users unless the customer notifies the **DCTU** [LEC] orally or in writing that such end-user desires no blocking

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

(d) Mandatory Blocking. In areas where restricting access to Pay-per-call Information Services is not technically possible all access to the Pay-per-call Information Services must be blocked.

(1) (No change)

(2) Once an area that has been mandatorily blocked attains the capability to provide blocking, the **DCTU** [LEC] shall provide the notice and balloting procedures set out in subdivisions (b) and (c) of this section, and such requests received by the **DCTU** [LEC] from the end-user shall thereafter be treated as an initial blocking request.

(e) Disconnection. **DCTUs** [LECs] may not disconnect an end-user's local telephone service for nonpayment of charges for Pay-per-call Information Service. **DCTUs** [LECs] may implement involuntary blocking of Pay-per-call Information Service for nonpayment of charges for Pay-per-call Information Service.

(f) **Compliance. By March 7, 1991, or within 45 days** [Tracking. Certain information will be tracked by the LECs in order to permit, among other things, the examination] of **being declared** [the costs incurred in connection with this section at the time that LEC affected by this section has its rates examined. All LECs are required to file, on] a **DCTU, whichever is later, each DCTU** [semi-annual basis, a cost-tracking report that includes:

[(1) All costs and expenditures associated with the establishment and maintenance of the Pay-per-call Information Services blocking provided pursuant to this section.

[(2) The number of customers selecting the blocking option as a result of the balloting or polling of customers.

[(3) The number of customers who have ordered that the blocking originally provided to their line be removed, and any costs associated with such orders.

[(4) The number of customers who have ordered blocking on a subsequent occasion, which pursuant to this section would incur a non-recurring charge.

[(g) Compliance. All LECs] shall file tariffs in compliance with this section [within 45 days of the effective date of this section]. The compliance tariffs will be reviewed by **Staff** [the Telephone Division]. Within 35 days of the date of filing of the report, the [Hearings Division shall either approve the] tariff **will either be approved** or [suspend] the effective date of the tariff **will be suspended** for further review.

(g)[(h)] Severability. If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this section that can be given effect without the invalid provision or application. It is the intent of the commission that the provisions of this section are severable.

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

Issued in Austin, Texas, on September 29, 1995

TRD-9512601 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Earliest possible date of adoption: November 10, 1995

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

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 101. Dental Licensure

• 22 TAC §101.7

The State Board of Dental Examiners proposes an amendment to §101.7, concerning procedures whereby dentists practicing in other states, territories, and the District of Columbia may obtain a dental license based on credentials from those jurisdictions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for local government. The fiscal implications for the state will be contingent upon the number of applicants who apply for licensing by credentials and the revenue generated by the requisite fees. There will be associated administrative costs to process the applications; these costs will be contingent upon the number of applications.

Mr. Beran also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be an increased number of dentists available to perform dental work. There will be no effect on small businesses. The anticipated economic costs to persons who are required to comply with the rule as proposed will be the application fees the Board requires for dentist licensing by credentials set forth in §102.1; additional other costs may be those necessary for applicants to obtain documentation required by the Board to be submitted with their applications for licensing by credentials Mr Beran has determined that there will be no local employment impact as a result of enforcing this rule as proposed and has appointed Carol McPherson, Director of Administration, as liaison to the Texas Employment Commission.

Comments on the proposed rule may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

The amendment is proposed under Texas Government Code, §§2001.001 et seq; Texas Civil Statutes, Article 4551d(a), which provides the State Board of Dental Examiners with the authority to promulgate rules consistent with the Dental Practice Act, and Article 4545(a), §1, which provides for licensing of dentists by credentials.

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

§101.7. Licensure by Credentials-Dentists. The [Texas] State Board of Dental Examiners **will** [may] license applicants by credentials **upon payment of a fee, in an amount set by the Board,** [in its discretion, on a case by case basis, without examination] who meet all **SBDE** [TSBDE] and State of Texas minimum applicant requirements [and], general licensure qualifications and all of the following criteria [and requirements, which shall include, but shall not be limited in all instances to, the following criteria]:

(1) Has graduated from a dental school accredited by the Commission on Dental Accreditation **of the American Dental Associaton.**

(2) Is currently licensed in **good standing in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the requirements of the Texas Dental Practice Act.** [another jurisdiction whose initial licensure examination is comparable to the TSBDE licensure examination;]

(3) Has practiced dentistry:

(A) For a minimum of five years immediately prior to applying:

(B) As a dental educator for a minimum of five years; or

(C) for two years of obligated service in the state under the National Health Service Corps or other federal scholarship or loan repayment program. [been in practice or full time dental education for a minimum of five continuous years immediately prior to applying for licensure]

(4) Is endorsed by the state board of dentistry of the jurisdiction of current practice. Such endorsement is established by providing a copy under seal of the jurisdiction entity of the current dentist's license and by a certified statement that he/she has current good standing in said jurisdiction. [in all states in which he/she is licensed.]

(5) Has not been the subject of final or [is not the subject of] pending disciplinary action in any jurisdiction [state] in which he/she is or has been licensed.

(6) Has successfully completed the SBDE's jurisprudence examination.

(7)[(6)] Has passed a national written examination relating to dentistry as certified by the Joint Commission on National Dental Examinations or other examination approved by the SBDE. [not failed the Texas State Board of Dental Examiners licensing examination within the last three years;]

(8)[(7)] Has successfully passed background checks for criminal or fraudulent activities to include information from the National Practitioner Data Bank, and/or the AADE Clearinghouse for Disciplinary Action;

(9)[(8) Is not involved in litigation, pending or otherwise, against the Texas State Board of Dental Examiners.] Each candidate for licensure by credentials must submit to the credentials review committee of the Board the above required documents and information, and other documents or information that may be requested, to enable the committee to appropriately evaluate an application and make a recommendation to the Board for [Board] action on the application. [An application for licensure by credentials must be accompanied by a $200 application fee.]

(10) Each applicant must show proof of current CPR certification as required by the Texas Dental Practice Act, Article 4545a, §1(a)(6).

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

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

TRD-9512543 Douglas A. Beran, Ph.D
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-6400

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Chapter 102. Fees

• 22 TAC §102.1

The State Board of Dental Examiners proposes amendment to §102.1, concerning fees.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect there will be the following fiscal implications for state government as a result of enforcing or administering the rule.

Fiscal Year 1996, $247,500; Fiscal Year 1997, $247,500; Fiscal Year 1998, $247,500; Fiscal Year 1999, $247,500; Fiscal Year 2000, $247,500.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an increased number of dentists available to perform dental work and an increased number of dental hygienists available to perform dental hygiene work. Mr. Beran has determined there will be no local employment impact as a result of enforcing this rule as proposed and has appointed Carol McPherson, Director of Administration, as liaison to the Texas Employment Commission.

Comments on the proposed rule may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

The amendment is proposed under Texas Government Code, §§2001.001 et seq; Texas Civil Statutes, Article 4544, §1; Article 4545a, §1; Article 4545a, §2; Article 4550a, §1; Article 4550a, §2; Article 4551; Article 4551e, §5; Article 4551f, §6(a); Texas Health and Safety Code, §467.004; §467. 0041. The Board interprets these statutes to give it authority to adopt rules.

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

§102.1. Licensing and Examination Fees.

(a) Any person desiring to obtain a license to practice dentistry, dental hygiene and operate a dental laboratory in the State of Texas shall pay the following fees:

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

(4) dental licensure by credentials application fee: $2,000 [$200].

(5) dental hygiene licensure by credentials application fee: $475 [$150].

(b)-(g) (No change.)

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

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

TRD-9512541 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-6400

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Chapter 103. Dental Hygiene Licensure

• 22 TAC §103.2

(Editor's Note: The State Board of Dental Examiners proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The State Board of Dental Examiners proposes new §103.2, concerning procedures whereby dental hygienists practicing in other states, territories, and the District of Columbia may obtain a dental hygienist's license based on credentials from those jurisdictions.

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rule is in effect, there will be no fiscal implications for local government. The fiscal implications for the state will be contingent upon the number of applicants who apply for licensing by credentials and the revenue generated by the requisite fees. There will be associated administrative costs to process the applications; these costs will be contingent upon the number of applications.

Mr. Beran also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be an increased number of dental hygienists available to perform dental hygiene work for dentists to assure quality dental hygiene services are provided to the public. There will be no effect on small businesses. The anticipated economic costs to persons who are required to comply with the rule as proposed will be the application fees the Board requires for dental hygiene licensing by credentials set forth in §102.1; additional other costs may be those necessary for applicants to obtain documentation required by the Board to be submitted with their applications for licensing by credentials. Mr. Beran has determined there will be no local employment impact as a result of enforcing this rule as proposed and has appointed Carol McPherson, Director of

Administration, as liaison to the Texas Employment Commission.

Comments on the proposed new rule may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

The new rule is proposed under Texas Government Code, §§2001.001 et seq; Texas Civil Statutes, Article 4551d(a), which provides the State Board of Dental Examiners with the authority to adopt and promulgate rules and regulations necessary to assure compliance with law related to the practice of dentistry, and Article 4545(a)§1, which provides for licensing of dental hygienists by credentials.

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

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

Issued in Austin, Texas, on October 2, 1995

TRD-9512540 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-6400

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Chapter 104. Continuing Education Dentists and Dental Hygienist

• 22 TAC §§104.1-104.5

The State Board of Dental Examiners proposes new §§104.1-104.5, concerning minimum continuing education requirements for dentists and dental hygienists as required by amendments to the Dental Practice Act enacted by the 74th Texas Legislative Session (Senate Bill 18).

Douglas A. Beran, Executive Director, State Board of Dental Examiners, has determined that for the first five-year period the rules are in effect, there will be no fiscal implications for local government. The fiscal implications for the state will be contingent upon the administrative costs associated with processing the documentation necessary to establish an in-house continuing education history for each licensee; additional administrative costs will be contingent upon the costs to conduct statistically-valid random samples of dentists and dental hygienists to audit their participation in continuing education.

Mr. Beran also has determined that for each of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be dentists and dental hygienists will be current with the latest scientific and technical developments as related to clinical care. Small and large businesses identified as approved providers of continuing education will receive income (enrollment fees) from participants; the amount of income for each provider will be contingent upon the number of enrollees and the enrollment fee for the selected course(s). The anticipated economic costs to persons who are required to comply with the rules as proposed will be the enrollment fees for the continuing education courses selected by licensees. Mr. Beran has determined that there will be no local employment impact as a result of enforcing these rules as proposed and has appointed Carol McPherson, Director of Administration, as liaison to the Texas Employment Commission.

Comments on the proposed new rules may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701.

The new rules are proposed under Texas Government Code, §§2001.001 et seq; Texas Civil Statutes, Article 4544, §5; Article 4551e, §5A; Article 4551d(a), which provides the State Board of Dental Examiners with the authority to promulgate rules consistent with the Dental Practice Act.

The proposed new rules do not affect other statutes, articles, or codes.

§104.1. Requirement. As a prerequisite to the annual renewal of a dentist's license or a dental hygienist's license, 36 hours of acceptable continuing education are required to be completed by the applicant within a three-year period as defined in paragraphs (1)-(9) of this section:

(1) Hours from a previous period shall not count nor shall extra credits be accumulated for use in a subsequent period; i.e., banking of hours is not permitted

(2) The three-year period will be determined as follows:

(A) For a dentist or dental hygienist licensed on or before December 31, 1995, the period begins on the 1996 renewal date and the first three-year period ends on the licensee's renewal date in 1999.

(B) For a dentist or dental hygienist licensed after December 31, 1995, the period begins on the date the license issues and the first three-year period ends on the date of the dentist's or dental hygienists's third renewal date.

(C) Thereafter, each licensee will begin a new three-year period each third renewal date.

(3) Each licensee shall select and participate in the continuing education courses endorsed by the providers identified in §104.2 of this title (relating to Provider's Continuing Education).

(4) Hours taken on or after February 6, 1995, may count toward the accumulation of hours for the first three-year period if they meet the criteria for acceptable continuing education hours identified in §104.2.

(5) All 36 hours must be either technical or scientific as related to clinical care.

(6) Hours in the standards of the Occupational Safety and Health Administration (OSHA) or in cardiopulmonary resuscitation (CPR) are existing requirements and are not to be considered in the 36-hour requirement.

(7) No more than 12 hours in any 36-hour accumulation may be in self-study. These self-study hours must be provided by those entities cited in §104.2. Examples of self-study courses include, but are not limited to, correspondence courses, video courses, audio courses, reading courses.

(8) Any individual or entity may petition one of the providers listed in §104.2 to offer continuing education.

(9) Individual courses and/or instructors will be approved by providers cited in §104.2.

§104.2. Provider's Continuing Education. Education courses endorsed by the following providers will meet the criteria for acceptable continuing education hours if such hours are either technical or scientific as related to clinical care and in content as certified by the following providers:

(1) American Dental Association-Continuing Education Recognition Program (CERP);

(2) American Dental Association, its component, and its constituent organizations;

(3) Academy of General Dentistry and its constituents and approved sponsors;

(4) Dental/dental hygiene schools and programs accredited by the Commission on Dental Accreditation of the American Dental Association;

(5) American Dental Association approved specialty organizations;

(6) American Dental Hygienists' Association, its component, and its constituent organizations;

(7) American Medical Association approved specialty organizations;

(8) American Medical Association approved hospital courses;

(9) National Dental Association, its constituent, and its component societies;

(10) National Dental Hygienists' Association, its constituent, and its component societies;

(11) Other providers as approved by the Board.

§104.3. Retired Status.

(a) Any dentist or dental hygienist requesting a change from retired status to active status must submit to the State Board of Dental Examiners, in addition to other requirements in the rules of the State Board of Dental Examiners, proof of 36 hours of acceptable scientific and/or technical as related to clinical care continuing education with the request for licensure reinstatement.

(b) Said 36 hours of continuing education shall have been taken within 36 months of the date of the request to change retirement status.

§104.4. Penalties.

(a) Each licensee shall attest on the annual renewal application that he/she is in compliance with the statutory requirements for continuing education.

(b) Falsification of a continuing education attestation is a violation of the Dental Practice Act and such false certification or the failure to attend and complete the required number of continuing education hours shall subject the dentist or dental hygienist to disciplinary action up to and including revocation of license, or imposition of administrative penalties as provided by these rules.

§104.5. Auditable Documentation.

(a) Each licensee shall maintain in his/her possession auditable documentation of continuing education hours completed for a minimum of two time periods or six years.

(b) Documentation shall confirm attendance as evidenced by original certificates of attendance, contact hours certificates, academic transcripts, gradeslips, or other documents furnished by the course provider.

(c) Documentation shall include records of courses taken, the dates and locations and number of hours for such courses, and course notes or materials.

(d) Copies of documentation shall be submitted to the State Board of Dental Examiners upon audit.

(e) State Board of Dental Examiners will begin auditing all licensees by statistically-valid random samples after the end of the first three-year period.

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

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

TRD-9512542 Douglas A. Beran, Ph.D.
Executive Director
State Board of Dental Examiners

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-6400

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Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Requirements for Licensure

• 22 TAC §535.51

The Texas Real Estate Commission proposes an amendment to §535.51, concerning general requirements for licensure. The amendment would adopt by reference a series of application forms used by persons applying for a real estate broker license or for a real estate salesman license. The forms are being revised to clarify the requirement of each applicant to provide the commission with the applicant's social security number under the provisions of House Bill Number 433, 74th Legislature (1995), to state increased fees collected by the commission for the Texas Real Estate Research Center and to request the applicant's electronic mail number or facsimilie machine number for easier communication with the commission.

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

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification and increased efficiency in the licensing process for applicants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

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

The amendment affects Texas Civil Statutes, Article 6573a.

§535.51. General Requirements.

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

(d) The commission adopts by reference the following forms approved by the commission which are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for a Real Estate Broker License, TREC Form **BL-3** [BL-2];

(2) Application for a Real Estate Broker License by a Corporation, TREC Form **BLC-3** [BLC-2];

(3) Application for Late Renewal of Real Estate Broker License Privileges, TREC Form **BLR-3** [BLR-2];

(4) Application for Late Renewal of Real Estate Broker License Privileges by a Corporation, TREC Form **BLRC-3** [BLRC-2];

(5) Application for Real Estate Salesman License, TREC Form **SL-3** [SL-2];

(6) Application for Late Renewal of Real Estate Salesman License Privileges, Form TREC **SLR-3** [SLR-2];

(7) (No change.)

(8) Application for Real Estate Broker License by a Limited Liability Company, TREC Form **BLLLC-3** [BLLLC-2];

(9) Application of Currently Licensed Broker for Salesman License, TREC Form **BSL-2** [BSL-1]; and

(10) Application for Late Renewal of a Real Estate Broker License by a Limited Liability Company, TREC Form **BLRLLC-2** [BLRLLC-1].

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

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

TRD-9512609 Mark Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: November 10, 1995

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

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Education, Experience, Educational Programs

• 22 TAC §535.61

The Texas Real Estate Commission proposes an amendment to §535.61, concerning examinations and acceptance of courses. The amendment provides exceptions under which the commission will accept for core real estate credit courses which were completed more than ten years prior to the filing of a person's application. Exceptions would be provided for persons who had been li-

censed as a real estate broker or salesman in Texas or in any other state within the five-year period prior to the filing of the application and for persons who completed the course as part of a two-year, or higher, degree from an accredited college or university with at least 12 semester hours in real estate. The amendment is proposed in response to a number of requests from prospective applicants for real estate licensure who desired core real estate credit for courses for which credit cannot be given under the current section.

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

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be the facilitation of previously licensed persons' return to the real estate business. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

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

The amendment affects Texas Civil Statutes, Article 6573a.

§535.61. Examinations and Acceptance of Courses.

(a)-(z) (No change.)

(aa) The commission may not accept more than one course with the same course title and level or same course content and level completed within three years of each other, unless there have been significant changes in the subject matter, such as the promulgation of new contract forms, major law revisions, and major changes in real estate financing. The commission may not accept a core real estate course completed more than ten years prior to the date of the applicant's transcript evaluation. If the commission has evaluated the education of a potential applicant, courses acceptable at the time of the evaluation will not be rejected under this subsection for a period of one year after the date of the evaluation. **Provided, however, the ten-year restriction on the acceptance of courses does not apply in either of the following instances.**

(1) The applicant was licensed as a real estate broker or salesman in this or any other state within the five year period prior to filing the application.

(2) The course was completed as part of a two-year, or higher, degree from an accredited college or university awarded with at least 12 semester hours in real estate.

(bb)-(ff) (No change.)

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

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

TRD-9512610 Mark Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: November 10, 1995

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

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Licensed Real Estate Inspectors

• 22 TAC §535.208

The Texas Real Estate Commission proposes an amendment to §535.208, concerning application for an inspector license. The amendment adopts by reference a series of application forms used by a person in obtaining a license as an apprentice inspector, as a real estate inspector, or as a professional inspector. The forms are being revised to clarify the requirement of each applicant to provide the commission with the applicant's social security number under the provisions of House Bill Number 433, 74th Legislature (1995) and to request the applicant's electornic mail number or facsimilie machine number for easier communication with the commission.

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

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be clarification and increasead efficiency in the licensing process for applicants. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

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

The amendment affects Texas Civil Statutes, Article 6573a.

§535.208. Application for a License.

(a) (No change.)

(b) The Texas Real Estate Commission adopts by reference the following forms approved by the commission in 1991 or 1994. These forms are published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188:

(1) Application for a License as an Apprentice Inspector, Form REI 2-3 [2-2];

(2) Application for a License as a Real Estate Inspector, Form REI 4-3 [4-2]; and

(3) Application for a License as a Professional Inspector, Form REI 6-3 [6-2].

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

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

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

TRD-9512611 Mark Moseley
General Counsel
Texas Real Estate
Commission

Earliest possible date of adoption: November 10, 1995

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

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Chapter 537. Professional Agreements and Standard Contracts

• 22 TAC §§537.11, 537.43, 537.44

The Texas Real Estate Commission Proposes an amendment to §537.11, new §537.43, and new §537.44, concerning standard contract forms.

The amendment to §537.11 would add two forms to the list of standard contract forms promulgated by the commission. The forms were developed by the Texas Real Estate Broker-Lawyer Committee, a committee of six real estate brokers appointed by the commission and six attorneys appointed by the State Bar of Texas. Licensed real estate brokers and salesmen are generally required to use contract forms promulgated by the commission when negotiating the sale of real property. The two new forms are TREC Number 36-0, Addendum for Property Subject to Mandatory Membership in an Owner's Association, and TREC Number 37-0, Resale Certificate for Property Subject to Mandatory Membership in an Owner's Association.

New §537.43 would adopt TREC Number 36-0 by reference. The form is an addendum for use with other TREC contract forms. The form would be used to specify whether the buyer requires the seller of the property to deliver a resale certificate or other documents to the buyer; if the resale certificate is required but is not timely delivered, the buyer may terminate the contract within three days after time for the certificate to have been delivered. If the resale certificate is required and is timely delivered, the buyer may terminate the contract upon reasonable objection to the resale certificate within 72 hours after the certificate is delivered. The buyer would waive the right of termination if it is not exercised within 72 hours after the certificate is delivered. The addendum also addresses repairs to the property which are the obligation of the owners' association. The addendum sets up a process for the buyer to obtain the assurance of the owners' association that required repairs to such property will be performed or the buyer may terminate the contract. Transfer fees and current assessments may also be disclosed to the buyer in the addendum.

New §537.44 would adopt TREC Form Number 37-0 by reference. The form is a resale certificate to be completed by or on the behalf of the owners' association. The form would be used to provide the buyer with information concerning rights of first refusal held by the association, assessments, unpaid obligations of the seller, capital expenditures, reserves, pending law suits, insurance coverage, violations of by-laws, rules of the association or material physical defects in the property, violations of health of building codes, transfer fees and leasehold estates affecting the property.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Any revenue received by the Texas Real Estate Commission from the sale of copies of the forms would be offset by the costs of making the copies available. There is no anticipated impact on local or state employment as a result of implementing the sections.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be the availability of standardized contract forms for use in the negotiation of real estate transactions. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections other than the cost of the forms, estimated at $5.00 per pad of 50 copies.

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

The amendment and new sections are proposed under Texas Civil Statutes, Article 6573a, §16(e), which authorize the Texas Real Estate Commission to adopt rules requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

The proposed sections affect Texas Civil Statutes, Article 6573a, §16.

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC Number 2-4 is promulgated for use as an addendum only to another promulgated standard contract form. Standard Contract Form TREC Number 9-2 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC Number 10-2 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC Number 11-3 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC Number 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC Number 13-1 is promulgated for use as an addendum concerning new home insulation to be attached to promulgated forms of contracts. Standard Contract Form TREC Number 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC Number 16-2 is promulgated for use as a residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-2 is promulgated for use in the resale of residential real estate where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC Number 21-2 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC Number 23-1 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC Number 24-1 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC Number 25-1 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC Number 26-2 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC Number 27-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is an inspection with a right to terminate. Standard Contract Form TREC Number 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC Number 29-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC Number 30-0 is promulgated for use in the resale of a residential condominium unit where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC Number 31-0 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC Number 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC Number 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form Number 34-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form Number 35-0 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. **Standard Contract Form TREC Form Number 36-0 is promulgated for use as an addendum to be added to promulgated forms in the sale of property subject to mandatory membership in an owners' association. Standard Contract Form TREC Form Number 37-0 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association.**

(b)-(j) (No change.)

§537.43. Standard Contract Form TREC Number 36-0. The Texas Real Estate Commission adopts by reference standard contract form TREC Number 36-0 approved by the Texas Real Estate Commission in 1995. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.44. Standard Contract Form TREC Number 37-0. The Texas Real Estate Commission adopts by reference standard contract form TREC Number 37-0 approved by the Texas Real Estate Commission in 1995. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

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

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

TRD-9512612 Mark Moseley
General Counsel
Texas Real Estate Commission

Earliest possible date of adoption: November 10, 1995

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

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TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 408. Standards and Quality Assurance

Subchapter C. Quality Assurance and Improvement System (QAIS) for Mental Retardation Services and Supports

• 25 TAC §§408.51-408.63

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §§408.51-408.63, concerning quality assurance and improvement system (QAIS) for mental retardation services and supports.

QAIS replaces the 1988 TDMHMR Community Standards for individuals with Mental Retardation for use by local mental retardation authorities and designated providers in assessing their performance. Those standards are adopted by reference in Chapter 408, Subchapter A, concerning standards of the Texas Department of Mental Health and Mental Retardation-quality assurance, which is proposed for repeal in this issue of the *Texas Register*. QAIS is an outcome-oriented system which concentrates on measuring desired results rather than the processes by which those results are achieved. An essential feature of this system is a focus on outcomes as defined by the individuals receiving services and supports.

The development of QAIS began with the appointment in 1994 of a guidance team charged with developing a set of outcomes for people to replace the 1988 standards. The guidance team, which included representatives from community centers, state facilities, and the department's Central Office plus a representative from The Accreditation Council, quickly realized that a move from the process focus of the 1988 standards to an outcomes-for-people focus required a significantly different quality assurance and improvement system. Three project teams-each composed of family members of consumers, private providers, and representatives from community centers and state facilities, plus a liaison to the guidance team-began meeting in February 1995 to develop that new system. The areas of focus for the three teams were: outcomes for people, services, and organizations; processes (self-assessment, plan of improvement, and resources for organizational support); and external validation. As with the guidance team, The Accreditation Council provided consultation to the three project teams.

A preliminary report on the work of the guidance team and three project teams was presented to the Texas MHMR Board during its July 1995; the general direction and focus were approved by the board. In September 1995, the guidance team presented its final report to the board which approved the recommendations and approved the first stages of implementation for QAIS.

Donald C. Green, chief financial officer, has determined that for the first year the sections as proposed are implemented the additional cost to the department will be approximately $389,000. The majority of that expense results from the preparation and printing of a handbook, training, and follow-up review. For each succeeding year of the first five-year period the sections are in effect, the additional costs to the department are expected to be approximately $120,000, to be expended primarily on continuing training and certification of validatory. There will be no additional cost to local government as a result of enforcing the sections as proposed, although a redirection of existing quality assurance and training resources may be necessary.

Steve Shon, director, Managed Care Administration, has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated is an improvement in the efficiency and effectiveness of state authority oversight of an increasingly decentralized system. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Questions about the content of the proposal may be directed to Gretchen Claiborne, Long-Term Services and Supports, Managed Care Administration, (512) 206-4614. Written comments on the proposal may be sent to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

A hearing to accept public testimony regarding the proposal has been scheduled for 1:30 p.m., Thursday, October 26, 1995, in the TDMHMR Central Office auditorium (main building) at 909 West 45th Street in Austin, Texas If interpreters for the hearing impaired are required, please contact Laura Thomas in the Office of Policy Development at (512) 206-4516 at least 72 hours prior to the hearing.

The new sections are proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and §534.052, which gives the board rulemaking authority for community-based mental health and mental retardation services provided by community centers and other contract providers.

The new sections affect the Texas Health and Safety Code, §532.052.

§408.51. Purpose. This subchapter describes the quality assurance and improvement system (QAIS) for community-based mental retardation services and supports funded by the Texas Department of Mental Health and Mental Retardation. QAIS implements the Texas Health and Safety Code, §534. 052, concerning standards for community-based mental health and mental retardation services provided through a local mental health or mental retardation authority.

§408.52. Application. The provisions of this subchapter apply to community-based mental retardation services and supports funded by the department and delivered by:

(1) local mental retardation authorities and the providers with which they contract; and

(2) designated providers.

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

CARE-The department's Client Assignment and Registration System, an online data entry system developed to provide demographic and other data about individuals served by the department.

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

Designated provider-As defined in the Texas Health and Safety Code, §534.054, a service provider with whom the department contracts for the delivery of a specific community-based mental health or mental retardation service in a specified local service area of the state. The term does not include a local authority.

Local authority-As defined in the Texas Health and Safety Code, §531.002, an entity to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility within a specified region for planning, policy development, coordination, and resource development and allocation and for supervising and ensuring the provision of mental retardation services to individuals with mental retardation in one or more local service areas.

Outcome Based Performance Measures-The Accreditation Council's copyrighted system of quality improvement and measurement that emphasizes responsiveness on the part of service organizations to the individual needs of that organization's consumers rather than traditional compli-

ance with established standards. The system:

(A) focuses on outcomes for consumers rather than the organizational processes that contribute to those outcomes;

(B) is concise, focusing on those priority outcomes that people with disabilities indicate are most important to them; and

(C) can be used with all services and programs-residential, vocational, social, or residential-and for consumers with different disabilities.

Provider-

(A) any organization or entity, associated by a contract in a working alliance with a local authority or the department to provide community-based services and supports, including its employees or agents; or

(B) that part of a local authority directly providing services and supports to individuals with mental retardation, including employees or agents.

The Accreditation Council-A national quality enhancement organization representing national consumer and professional organizations and service providers dedicated to providing leadership and improving the quality of services for people with disabilities through the establishment of standards; provision of education, consultation, and training; dissemination of publications, accreditation of organizations and the recognition of excellence.

Quality Assurance and Improvement System (QAIS)-The framework by which local authorities and designated providers measure the quality, efficiency, and effectiveness of their organizations and the services and supports they provide to consumers either directly or by contracting with providers. It is an outcome-oriented system that concentrates on measuring desired results and the processes used to obtain those results, as defined by the consumer. The system is based on The Accreditation Council's Outcome Based Performance Measures and involves three stages:

(A) self-assessment;

(B) plan of improvement; and

(C) external validation.

§408.54. Responsibilities of Local Authorities and Designated Providers.

(a) Through its contract with the department, the local authority or designated provider shall assure its compliance with the provisions of this subchapter.

(b) Through its contract with other providers, the local authority shall require compliance with the provisions of this subchapter as it applies to services and supports provided by the provider which are funded through the department.

§408.55. Self-assessment by Local Authorities and Designated Providers.

(a) Self-assessment and the subsequent development of a plan of improvement as described in §408.58 of this title (relating to Plan of Improvement) occurs annually beginning with state fiscal year 1996 and is completed before the end of the final quarter of every fiscal year. The self-assessment is based on The Accreditation Council's Outcome Based Performance Measures which are adopted by reference as Exhibit A in §408.60 of this title (relating to Exhibits).

(b) The self-assessment is conducted by a team comprising at least four people, including the team coordinator.

(1) The chief executive officer (CEO) or designee of the local authority or designated provider names a staff member as team coordinator.

(2) The team coordinator selects other members of the team with consideration given to both the communication needs and the diverse cultural, ethnic, and religious backgrounds of the consumers who receive services and supports from that local authority or designated provider. Recommended team members include:

(A) at least one consumer and/or family member;

(B) one direct care staff person;

(C) one person from the local community who has no affiliation with the organization; and

(D) one administrative staff person.

(3) No team member may serve more than three consecutive years on the team, with at least 25% of the team members being replaced each year.

(c) The local authority or designated provider also may choose to include on the team persons from other local authorities or designated providers of similar size. Having a team member from outside the organization may prove beneficial when reviewing the outcome measures for organizations.

(d) Team members will receive training in the self-assessment process in addition to an orientation which includes an overview of the consumers being reviewed, the importance of confidentiality, scheduling, and team assignments.

(1) The training is based on model curriculum provided by the department, as described in §408.61 of this title (relating to Training.)

(2) Each team member will sign a statement agreeing to respect the confidential nature of the information concerning the consumers being reviewed.

(e) The self assessment is performed using guidelines provided by the department, and is designed to evaluate two aspects of quality, which are:

(1) outcomes of services that contribute to the quality of life (outcome measures for people); and

(2) the organizational structure and processes that support quality services and supports (outcome measures for organizations).

(f) The self-assessment process should take no longer than 15 working days with a formal feedback session immediately following the completion of the self-assessment. This timeframe permits the organization to gain a "snapshot" of itself and maintain the continuity and validity of the self-assessment. The self-assessment is divided into the following key components:

(1) visits to settings where services and supports are provided for:

(A) discussion and interaction with consumers, staff, service coordinators, and other significant people;

(B) observation of the environment; and

(C) review of documentation, when necessary;

(2) the completion of all individual consumer reports;

(3) the team synthesis and consensus process including;

(A) compilation of interview or rating sheets; and

(B) a consensus to generate a summary report of findings; and

(4) feedback session for the CEO and invited staff.

§408.56. Outcome Measures for People.

(a) The outcome measures for people survey is designed to measure the impact of services and supports on the lives of consumers. It is recommended that the survey include between 5.0% and 20% of the total number of consumers served by the organization.

(1) Despite the size of the organization, the sample should include no less than 20 consumers. The organization may include as many consumers beyond this number as is deemed necessary to derive a representative sample; it is expected that most organizations will survey approximately 30 consumers.

(2) The sample should include consumers from all service and support areas representing the demographics of the local authority or designated provider.

(3) Technical assistance regarding the development of a stratified, random sample is provided in Sample Selection and Stratification which is adopted by reference as Exhibit B in §408.60 of this title (relating to Exhibits).

(b) The sample selection process includes:

(1) at least one consumer for each type of service recipient e.g., consumers with challenging behaviors or intensive health care needs);

(2) at least one consumer from each service category including contracted services(e.g. residential, vocational); and

(3) additional stratifications to enhance random sample selection (e.g., funding sources, service sites, and demographics).

(c) The program coordinator/case manager for each consumer included in the survey will be contacted by the team coordinator or another team member to explain the assessment process and to obtain the written consent of the consumer or the consumer's legally authorized representative as described in Chapter 403, Subchapter K of this title (relating to Client-Identifying Information).

(d) The presence of each outcome is determined by the consumer or the consumer's legally authorized representative. It is evidenced through the interview process with the consumer and, when appropriate, with the other significant people in the consumer's life.

(e) The interview is supplemented by observations of the consumer's environment and, when necessary, by reviewing documentation to resolve perceived conflicts in information.

(f) Each outcome measure is addressed with every consumer chosen for the interview process.

(g) The Outcome Measures for People Results Worksheet is adopted by reference as Exhibit C and the Outcomes for People Scoring Grid is adopted by reference as Exhibit D in §408.60 of this title (relating to Exhibits).

§408.57. Outcome Measures for Organizations.

(a) The outcome measures for the organization support the findings of the outcome measures for people. The issues of health, safety, and rights are reviewed through assessment of the supports and services provided by the organization.

(b) The organization's written documentation, together with interviews of designated staff and other stakeholders and the observations of team members, form the basis for reviewing the outcomes for organizations. Documentation of a utilization management process, policies and procedures, and strategic planning is in evidence.

(c) An organization profile will be generated by the team which identifies the extent to which processes contribute to outcomes, strengths in meeting outcomes, and area needing improvement.

(d) The Outcomes for Organizations Results Worksheet is adopted by reference as Exhibit E in §408.60 of this title (relating to Exhibits).

§408.58. Plan of Improvement.

(a) The plan of improvement is intended to be a dynamic document that guides the organization in assuring that improvements are made which support consumers in realizing their desired outcomes.

(b) A team selected by the organization's CEO to coordinate the plan of improvement activities should include a representative from the self-assessment team to ensure the continuity of the process.

(c) The plan of improvement is developed within 30 calendar days of the feedback session described in §408.55(f)(4) of this title (relating to Self-assessment by Local Authorities and Designated Providers) and is reviewed, amended, and acted upon as determined necessary by a quarterly sampling of the relevant outcomes.

(d) The team analyzes the self-assessment data and other relevant information such as the organization's strategic plan or reports of other regulatory entities, develops a concise profile of the strengths and weaknesses evident in critical areas, determines areas for improvement, and arranges these in priorities based upon the organization's mission and its contract with the department.

(1) Strategies to address high priority issues and barriers to opportunities for improvement are identified.

(2) Ultimately, the team consolidates the results of these efforts into a plan of improvement consistent with any additional strategy or planning done by the organization.

(e) The plan of improvement has five essential components:

(1) a statement of the mission of the organization;

(2) development of goals essential for the fulfillment of the mission;

(3) action steps which will lead to the accomplishment of goals and which are specific enough to articulate responsibilities across the organization;

(4) a quarterly evaluation process which will document progress towards goals, illuminate areas for further quality enhancement endeavors, and include a sampling of relevant outcomes; and

(5) an evaluation process which describes and assesses leadership and personal involvement in setting direction, and developing and maintaining a leadership system that supports the mission.

§408.59. External Validation.

(a) The local authority or designated provider will submit its annual self-assessment results and plan of improvement along with the quarterly updates to the department's Managed Care Administration for the external validation portion of the QAIS which will:

(1) reassure the public that public funds are being expended prudently for the purpose intended; and

(2) affirm to the administrators of the local authority or designated provider and to the trustees of the local authority that QAIS is being implemented as intended and that data are representative of the organization's performance.

(b) The external validation process consists of three phases:

(1) pre-visit activities including:

(A) desk review of requested documentation;

(B) determination of external validation team composition;

(C) selection of an independent, stratified/random sample of indi-

viduals from the CARE system, separate from the sample used by the organization in the self-assessment;

(D) scheduling of on-site external validation process activities: and

(E) coordination of external validation process details with organization;

(2) on-site activities intended to confirm the findings and products of the organization's self-assessment and plan of improvement are:

(A) examination of the products of the internal self-assessment through validation of the organization's implementation of the self-assessment instrument and plan of improvement; and

(B) feedback regarding the consumers' responses concerning all outcomes and confirmation of the findings on the health, safety, and rights outcome measures through interviews with the consumers selected in the random sample; and

(3) followup reporting activities including:

(A) a closed exit conference with key staff;

(B) an open exit conference for staff, consumers, advocates, parents, and other interested parties; and

(C) provision of information to the department's Managed Care Administration.

(c) The external validation team leader:

(1) provides information to the department's Managed Care Administration regarding the organization's performance as reflected in the self assessment and the status of the plan of improvement; and

(2) notifies the organization's CEO and department's Managed Care Administration of problems in the outcome areas of health, safety, and rights which require immediate action.

(d) The external validation team consists of no more than four people, including:

(1) team leader from Central Office who has at least five years experience in direct management of or direct delivery of services and supports to individuals with mental retardation;

(2) second person from Central Office with same qualification as the team leader;

(3) peer reviewer from another local authority organization or designated provider; and

(4) a representative from the local authority's managed services organization or another person from Central Office with same qualifications as the team leader.

(e) During fiscal year 1996, each local authority and designated provider performs a self-assessment and develops a plan of improvement, but without the external validation component.

(f) In fiscal year 1997, the external validation component is conducted for that year's self-assessment and plan of improvement for each local authority and designated provider. A representative from The Accreditation Council will be present during approximately 25% of the on-site visits to ensure reliability.

(g) After 1997, each local authority and designated provider will conduct a self-assessment and develop a plan of improvement. The frequency of the on-site visit portion of the external validation, however, will depend upon the number of outcomes present during the previous year's external validation;

(1) up to 19 outcomes present, one year cycle;

(2) 20-23 outcomes present, two year cycle; and

(3) 24 or more outcomes present, three year cycle.

(h) Desk review of every organization's self-assessment will occur on an annual basis in order to provide information to the department's Managed Care Administration for contract negotiations and for use in compiling statewide data related to outcomes for individuals and organizations.

(i) Deemed status will be granted to those organizations accredited by The Accreditation Council based on evidence presented to the department's Managed Care Administration of continuing accreditation. These organizations will be exempt from the on-site external validation process, but will be required to submit an annual self-assessment and plan of improvement to Central Office for data compilation and further contract negotiation.

§408.60. Exhibits.

(a) Documents adopted by reference in this subchapter include:

(1) Exhibit A-The Accreditation Council's Outcome Based Performance Measures;

(2) Exhibit B-Sample Selection and Stratification;

(3) Exhibit C-Outcomes for People Results Worksheet;

(4) Exhibit D-Outcomes for People Scoring Grid; and

(5) Exhibit E-Outcomes for Organizations Worksheet.

(b) Copies of the Outcome Based Performance Measures listed in subsection (a) (1) of this section may be obtained by contacting The Accreditation Council, 100 West Road, Suite 406, Towson, Maryland 21204. All other documents listed in subsection (a) of this section may be obtained by contacting the Office of Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

§408.61. Training.

(a) Training and other learning opportunities for all stakeholders of the local authority or designated provider are based on The Accreditation Council's Outcome-Based Performance Measures and other service quality improvement concepts. Start-up training is provided for all stakeholders, including:

(1) board members (of local authorities);

(2) managers and supervisors;

(3) staff providing services and supports;

(4) other professional and paraprofessional staff, including external service providers; and

(5) consumers, family members, and advocates.

(b) Training is consistent with guidelines and materials provided by the department and must be tailored to the needs and interests of the stakeholder groups.

(c) Specific training packages for the QAIS self-assessment review team and the plan of improvement team include information on interviewing techniques, confidentiality, scoring, and the processes for implementing the self assessment and the plan of improvement.

§408.62. References. Statutes and department rules referenced in this subchapter include:

(1) Texas Health and Safety Code, §§531.002, 534.052, and 534.054; and

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

§408.63. Distribution.

(a) Copies of this subchapter shall be distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff of the department's Central Office;

(3) chairs of boards of trustees of local authorities;

(4) CEOs of local authorities and designated providers; and

(5) interested advocates and advocacy organizations.

(b) The CEOs of local authorities and designated providers are responsible for distributing copies of this subchapter to:

(1) appropriate staff;

(2) providers;

(3) agents;

(4) any individual receiving services and supports who requests a copy;

(5) family members and advocates of individuals receiving services and supports who request a copy, and

(6) any employee who requests a copy; and

(7) any other person who requests a copy.

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

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

TRD-9512596 Ann Utley
Chair, Texas MHMR Board
Texas Department of
Mental Health and
Mental Retardation

Earliest possible date of adoption: November 10, 1995

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

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TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 116. Control of Air Pollution by Permits for New Construction or Modification

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes amendments to §116.10, concerning General Definitions, and §116. 116, concerning Amendments and Alterations; the repeal of §116.117, concerning Distance Limitations; and new §116.112, concerning Distance Limitations, §116.117, concerning Notification for Changes at Qualified Facilities, §116.118, concerning Qualified Facilities, and §116.119, concerning Demonstrating Compliance with Allowable Emission Rate. The TNRCC permit amendment and alteration criteria and procedures are being modified pursuant to Senate Bill 1126 (74th Legislature, 1995).

The TNRCC proposes revisions to §116.10, concerning General Definitions, to amend the definition of new source and to add new definitions for actual emission rate, allowable emission rate, best available control technology (BACT), maximum allowable emission rate table, modification of existing facility, net increase in allowable emissions, non-qualified facility, qualified facility, and relatively equivalent compound.

The TNRCC requests comments on the definition of relatively equivalent compound. Relatively equivalent compound is defined generally in this rule proposal so that specificity on chemical groupings may be handled in a separate guidance document. The approach of the staff is to develop concurrently with the rule proposal a guidance document which assists qualified facility implementation of changes under the proposed §116.116(b) (2). The guidance document will group compounds based on similar chemical and effects characteristics

In the definition of actual emission rate, facilities are allowed to consider any consecutive 12-month period within the past ten years before the change. This definition establishes a rolling window. The ten-year period is constrained by the requirement that the window for considering actual emissions must begin no earlier than January 1, 1990. The purpose of this restriction is to ensure the ability of the permitting system to protect public health in the early years of the new exemptions.

Proposed §116.116, concerning Amendments and Alterations, establishes the criteria by which qualified facilities that make changes must apply with the executive director for a permit amendment. The proposed section also directs qualified facilities to make application for permit amendments on the PI-1 form and requires that any existing level of control at a qualified facility not be lessened by actions allowed under this section.

Proposed §116.117, concerning Notification for Changes at Qualified Facilities, provides the criteria for notification to the TNRCC for various changes at qualified facilities. In addition, the section establishes the requirement for record keeping of all changes made under the proposed §116. 116(b)(2) at the facility. This section also requires that all changes be incorporated into the facility's permit upon amendment or renewal and provides for the continual applicability of any appropriate federal requirement. The staff requests specific comments on the August 1 deadline for submission of annual reports of changes that did not require notification.

Proposed §116.118, concerning Qualified Facilities, provides the cases in which prior involvement of the TNRCC is necessary for a facility to be considered qualified. The staff also requests specific comments and assistance on the concept of adjusting a grandfathered facility's allowable emission rate once current BACT is applied to become a qualified facility. It is expected that the maximum potential emission rate with BACT will be higher than the facility's actual emission rate with BACT applied. The difference between the two emission rates should allow for the facility to exercise the flexibility established by this rule.

Proposed §116.119, concerning Demonstrating Compliance with Allowable Emission Rate, provides the opportunity for the executive director to require any facility to submit information demonstrating compliance with allowable emission rates.

Proposed §116.112, concerning Distance Limitations, relocates the exact rule language in the repealed §116.117 to this new section.

As mentioned previously, the staff of the TNRCC will develop guidance for the implementation of changes allowed under §116.116(b)(2). The staff will have two guidance documents for this purpose A BACT guidance document will be provided in order for facilities to become qualified for treatment under §116.116(b)(2). The guidance document will be comprehensive enough to establish BACT for many types of facilities. However, in some instances, a case-by-case review will be required for control technologies not in the guidance document. It is intended that this guidance document also be flexible for quick revision as different technologies demonstrate equivalency to established technologies.

The staff will develop a TNRCC guidance document covering modifications to existing facilities. This guidance will assist in the implementation aspects of chemical speciation, trading of allowable and actual emission levels, and notification. On chemical speciation, the staff will determine groupings for chemical compounds that have similar characteristics and effects. These groupings are intended to allow qualified facilities to make changes which result in the emission of a different, yet relatively equivalent compound without obtaining a permit amendment.

Along with the grouping, the staff will establish a de minimis level under which emission point trading of compounds within a grouping may occur without notification of the TNRCC. Trading of compounds between groupings will be permissible under certain ratios based upon impacts. These determinations will be a part of the guidance document.

Notification of the TNRCC is required under specific circumstances in this proposal. The guidance document will further clarify the required information to be included in the various notifications as well as establish the form to be submitted to the TNRCC.

While the required reviews by the TNRCC under these rules were kept to a minimum, nothing should prevent a facility from voluntarily requesting additional guidance or early review from the TNRCC. The TNRCC is willing to assist companies in making the appro-

priate determinations so that facilities may properly use the flexibility afforded by Senate Bill 1126.

Steve Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections are in effect there will be no major fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Minick also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be decreases in the emissions from grandfathered facilities which are required to install Best Available Control Technology to use these sections. There will be negligible costs to the regulated community and no new economic costs to persons who are required to comply with the sections as proposed.

A public hearing on the proposal will be held November 6, 1995, at 2:00 p.m. in Room 131E of TNRCC Building C, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of this proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. Please mail comments to Lisa Martin, Office of Policy and Regulatory Development, Mail Code 202, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95144-116-AI. Please fax comments to (512) 239-5687. Copies of the revision are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, please contact Thomas Ortiz at (512) 239-1054.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Subchapter A. Definitions

• 30 TAC §116.10

The amendment is proposed under the Texas Health and Safety Code, Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment implements the Texas Health and Safety Code, §382. 017.

§116.10. General Definitions. Unless specifically defined in the Texas Clean Air Act (TCAA) or in the rules of the Texas Natural Resource Conservation Commission (TNRCC or commission) [board], the terms used by the commission [board] have the meanings commonly ascribed to them in the field of air pollution control. In addition to the terms which are defined by the TCAA, and in §101.1 of this title (relating to General Rules), the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

Actual emission rate-The highest annual rate (consecutive 12-month period) of emissions from a qualified facility achieved within a 120-month period prior to the change. The period shall start no earlier than January 1, 1990. This rate cannot exceed any federal or state emissions limitation.

Allowable emission rate-An authorized rate of emissions from a facility that emits air contaminants. This rate cannot exceed the allowable emission rate specified by an applicable state or federal regulation other than this chapter.

(A) An allowable emission rate for a permitted facility is an enforceable emission limit established in a permit on a maximum allowable emissions rate table plus any allowable emissions authorized by a standard exemption.

(B) An allowable emission rate for an exempted facility is the least of the emission rate allowed in §116.211 of this title (relating to Standard Exemption List), a rate specified in the applicable exemption, or a federally enforceable rate established on a PI-8.

(C) An allowable emission rate for a qualified grandfathered facility is an emission rate at the maximum capacity according to the physical or operational design.

(D) An allowable emission rate for a facility authorized by standard permit, other than §116. 617(2) of this title (relating to Standard Permits List), is the maximum emission rate represented in the registration for the standard permit.

(E) An allowable emission rate for a qualified facility voluntarily installing controls shall be the maximum allowable emission rate prior to the installation of the controls.

BACT-Best Available Control Technology with consideration given to the technical practicability and the economic reasonableness of reducing or eliminating emissions from the facility.

Maximum allowable emissions rate table-A table establishing the allowable emission rates included with a permit.

Modification of existing facility-Any physical change in, or change in the method of operation of a facility in a manner that increases the amount of any air contaminant emitted by the facility into the atmosphere or that results in the emission of any air contaminant not previously emitted. The term does not include:

(A) insignificant increases in the amount of any air contaminant emitted that is authorized by one or more board exemptions;

(B) insignificant increases at a permitted facility;

(C) maintenance or replacement of equipment components that do not increase or tend to increase the amount or change the characteristics of the air contaminants emitted into the atmosphere;

(D) an increase in the annual hours of operation unless the existing facility has received a preconstruction permit or has been exempted, pursuant to §116.211 of this title, from preconstruction permit requirements;

(E) a physical change in, or change in the method of operation of, a facility that does not result in a net increase in allowable emissions of any air contaminant and that does not result in the emissions of any air contaminant not previously emitted, provided that the facility:

(i) **has received a preconstruction permit or permit amendment or has been exempted pursuant to §116.211 of this title from preconstruction permit requirements no earlier than 120 months before the change will occur; or**

(ii) **uses, regardless of whether the facility has received a permit, an air pollution control method that is at least as effective as BACT, considering technical practicability and economic reasonableness, that the board required or would have required for a facility of the same class or type as a condition or issuing a permit or permit amendment 120 months before the change will occur;**

(F) a physical change in, or change in the method of operation of, a facility where the change is within the scope of a flexible permit; or

(G) a change in the method of operation of a natural gas processing, treating, or compression facility connected to or part of a natural gas gathering or transmission pipeline which does not result in an annual emission rate of a pollutant in excess of the volume emitted at the maximum designed capacity, provided that the facility is one for which:

(i) construction or operation started on or before September 1, 1971, and at which either no modification has occurred after September 1, 1971, or at which modifications have occurred only pursuant to standard exemptions; or

(ii) construction started after September 1, 1971, and before March 1, 1972, and which registered in accordance with the TCAA, §382.060, as that section existed prior to September 1, 1991.

Net increase in allowable emissions-For a qualified facility, an increase in allowable emissions considering any air pollution control method applied to the facility, any decrease in allowable emissions from other qualified facilities at the same TNRCC air quality account number that have received a permit or permit amendment within 120 months, and any decrease in actual emissions from other qualified facilities at the same TNRCC account number.

New source-Any stationary source, the construction or modification of which is commenced after August 30, 1971; or, for those sources that had contracts to start before August 30, 1971, but did not start actual construction until after March 1, 1972 [March 5, 1972].

Non-qualified facility-Any facility that is not a qualified facility.

Qualified facility-An existing facility that has received a permit or has been exempted pursuant to Subchapter C of this chapter (relating to Permit Exemptions) no earlier than 120 months prior to a change in that facility; or, that uses an air pollution control method that is at least as effective as BACT that would have been required for the same type of facility that received a permit no earlier than 120 months prior to a physical or operation change to the facility. If a facility adds controls to become a qualified facility, those controls must meet current BACT requirements.

Relatively equivalent compound-A compound that is in the same grouping due to similar characteristics and effects as specified by the executive director of the TNRCC.

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

Issued in Austin, Texas, on September 5, 1995.

TRD-9512546 Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: November 29, 1995

For further information, please call: (512) 239-1966

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Subchapter B. New Source Review Permits

Permit Application

• 30 TAC §§116.112, 116.116-116.119

The amendment and new sections are proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The proposed amendment and new sections implement the Health and Safety Code, §382.017.

§116.112. Distance Limitations.

(a) Lead smelters. Pursuant to the Texas Clean Air Act, §382.053, a permit shall not be issued for a new lead smelting plant at a site located within 3,000 feet of the residence of any individual and at which lead smelting operations have not been conducted before August 31, 1987. This subsection does not apply to a modification of a lead smelting plant in operation on or before August 31, 1987, to a new lead smelting plant or modification of a plant with the capacity to produce not more than 200 pounds of lead per hour, or to a lead smelting plant that was located more than 3,000 feet from the nearest residence when the plant began operations.

(b) Hazardous waste permits. Permits for hazardous waste management facilities shall not be issued if the facility is to be located in the vicinity of specified public access areas under the following circumstances.

(1) No permit shall be issued for a new hazardous waste landfill or land treatment facility or an areal expansion of an existing facility if the boundary of the facility or expansion is to be located within 1,000 feet of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(2) No permit shall be issued for a new commercial hazardous waste management facility or the subsequent areal expansion of such a facility or unit of that facility if the boundary of the unit is to be located within one-half mile (2,640 feet) of an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park.

(3) For a subsequent areal expansion of a new commercial hazardous waste management facility that is required to comply with paragraph (2) of this subsection, distances shall be measured from a residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park only if such structure, water supply, or park was in place at the time the distance was certified for the original permit.

(4) No permit shall be issued for a new commercial hazardous waste management facility that is proposed to be located within one-half mile (2,640 feet) from an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park, at any distance beyond the facility's property boundaries, unless the applicant demonstrates that the facility will be operated so as to safeguard public health and welfare and protect physical property and the environment.

(5) The measurement of distances required by paragraphs (1)-(4) of this subsection shall be taken toward an established residence, church, school, day care center, surface water body used for a public drinking water supply, or dedicated public park that is in use when the permit application is filed with the Texas Natural Resource Conservation Commission. The restrictions imposed by paragraphs (1)-(4) of this subsection do not apply to a residence, church, school, day care center, surface water body used for a public drinking water supply, a dedicated public park located within the boundaries of a commercial hazardous waste management facility, or property owned by the permit applicant.

(6) The measurement of distances required by paragraphs (1)-(4) of this subsection shall be taken from a perimeter around the proposed hazardous waste management unit. The perimeter shall be no more than 75 feet from the edge of the proposed hazardous waste management unit.

§116.116. Amendments and Alterations.

(a) **Representations and conditions** [Permit amendments]. All representa-

tions with regard to construction plans and operation procedures in an application for a permit, special permit, or special exemption, as well as any general and special conditions attached to the permit, special permit, or special exemption itself, become conditions upon which the subsequent permit, special permit, or special exemption are issued. [It shall be unlawful for any person to vary from such representation or permit condition if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless application is made to the executive director to amend the permit or special permit in that regard and such amendment is approved by the executive director or **the Texas Natural Resource Conservation Commission** [Commission]. Applications to amend a permit or special permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).]

(b) Permit amendments.

(1) For non-qualified facilities, it shall be unlawful for any person to vary from any representation or permit condition if the change will cause a change in the method of control of emissions, the character of the emissions, or will result in an increase in the discharge of the various emissions, unless application is made to the executive director to amend the permit or special permit in that regard and such amendment is approved by the executive director or the Texas Natural Resource Conservation Commission (TNRCC). Applications to amend a permit or special permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title (relating to General Application).

(2) For qualified facilities, it shall be unlawful for any person to vary from any representation or permit condition if the change will result in the emission of any substance other than a relatively equivalent compound or result in a net increase in the allowable emissions, unless application is made to the executive director to amend the permit or special permit in that regard and such amendment is approved by the executive director or the TNRCC. Applications to amend a permit or special permit shall be submitted with a completed Form PI-1 and are subject to the requirements of §116.111 of this title. The existing level of control may not be lessened for any qualified facility.

(c)[(b)] Permit alterations.

(1) A permit alteration is:

(A) any variation from a representation in a permit application that does not involve an increase in emission rates or a change in the character or method of control of emissions; or

(B) [for] any change in a general or special condition of a permit that does not involve an increase in emission rates or a change in the character or method of control of emissions; [.]

(C) a decrease in allowable emissions.

(2) All requests for permit alterations which may result in an increase in off-property concentrations of air contaminants, involve a change in permit conditions, or affect facility or control equipment performance must receive prior approval by the executive director. The executive director shall be notified in writing of all other permit alterations. Any request for permit alteration shall include information sufficient to demonstrate that the change does not interfere with the owner or operator's previous demonstrations of compliance with the requirements of §116.111(3) of this title.

(3) Permit alterations shall not be subject to the requirements of Best Available Control Technology identified in §116.111(3) of this title.

(d)[(c)] Standard exemption in lieu of permit amendment or alteration. Notwithstanding subsections (a), [or] (b), or (c) of this section, no permit amendment or alteration is required if the changes to the permitted facility qualify for an exemption under Subchapter C of this chapter (relating to Permit Exemptions) unless prohibited by permit condition as provided in §116.115 of this title (relating to Special Conditions). All such exempted changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

§116.117. Notification for Changes at Qualified facilities.

(a) All qualified facilities shall maintain documentation at the plant site supporting that physical or operational changes are excluded from permitting requirements per §116.116(b)(2) of this title (relating to Amendments and Alterations). This documentation shall include quantification of all emission increases and decreases associated with the physical or operational change, a description of the physical or operational change, a description of any equipment being installed, sufficient information as may be necessary to demonstrate that the project will comply with the Federal Clean Air Act, Title 1, Parts C and D, and be made available to representatives of the Texas Natural Resource Conservation Commission (TNRCC) upon request.

(b) No notification is required at the time a change is made for qualified facilities that meet the following criteria. An annual report, including information described in subsection (a) of this section, of all changes made to a facility shall be submitted to the appropriate TNRCC regional office by August 1st of each year:

(1) Best Available Control Technology for the facility has been established by the executive director of the TNRCC;

(2) the facility has an established allowable emission rate on an accurate maximum allowable emission rate table (MAERT), PI-8 form or PI-E form. A MAERT shall be considered to be accurate if all air contaminants affected by the change have been represented, all emission points have been identified, and emissions have been calculated according to good engineering practices; and

(3) the change involves no trading of allowable or actual emissions between facilities.

(c) Pre-change notification on a PI-E form shall be submitted to the TNRCC by certified mail prior to the physical or operational change. The physical or operational change may be made after receipt of written notification from the TNRCC that there are no objections, or 45 days after receipt by the TNRCC of the registration for the change, whichever occurs first. This prior notification shall be required if the change involves a trade of allowable or actual emissions above a de minimis level established by the executive director of the TNRCC.

(d) Post-change notification on a PI-E form within 30 days of the change is required for all trades between facilities below the de minimis level established by the executive director of the TNRCC.

(e) All such changes to a permitted facility shall be incorporated into that facility's permit at such time as the permit is amended or renewed.

(f) Nothing in this section shall limit the applicability of any federal requirement.

§116.118. Qualified Facilities.

(a) In order to establish that the facility is qualified, pre-change notification on a PI-E form shall be submitted to the Texas Natural Resource Conservation Commission (TNRCC) by certified mail prior to the physical or operational change in the following cases:

(1) Best Available Control Technology (BACT) for the facility has not been established by the executive director of the TNRCC;

(2) the facility does not have an allowable emission rate or the allowable emission rate is inaccurate.

(b) The physical or operational change may be made after receipt of written notification from the TNRCC that there are no objections, or 45 days after receipt by the TNRCC of the registration for the change, whichever occurs first This notification may be submitted at the same time as a pre-change notification required under §116.117(c) of this title (relating to Notification for Changes at Qualified Facilities) or at any other time prior to making a physical or operational change to the facility.

(c) If installing controls to become a qualified facility, the facility must install BACT and the allowable emission rate for the facility shall be the maximum potential emission rate after the installation of controls. If otherwise required, authorization under this chapter shall be obtained prior to installation of these controls.

§116.119 Demonstrating Compliance with Allowable Emission Rate. The owner or operator of any facility may be required to submit information demonstrating compliance with allowable emission rates upon request of the Texas Natural Resource Conservation Commission (TNRCC). The method of demonstrating compliance shall be as required by this section or as otherwise directed by the TNRCC:

(1) the method specified in a permit covering that facility;

(2) continuous emissions monitors;

(3) parametric/predictive emissions monitors,

(4) stack testing supported by engineering calculation based on measured process variables;

(5) emissions related recordkeeping.

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

Issued in Austin, Texas, on September 5, 1995.

TRD-9512548 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: November 29, 1995

For further information, please call: (512) 239-1966

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• 30 TAC §116.117

(Editor's note. The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Natural Resource Conservation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.017, which provides the TNRCC with the authority to adopt rules consistent with the policy and purposes of the TCAA.

The repeal implements the Texas Health and Safety Code, §382.017.

§116.117. Distance Limitations.

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

Issued in Austin, Texas, on September 5, 1995.

TRD-9512547 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Proposed date of adoption: November 29, 1995

For further information, please call: (512) 239-1966

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Chapter 330. Municipal Solid Waste

The Texas Natural Resource Conservation Commission (commission or TNRCC) proposes the repeal of §330.568, amendments to §§330.561-330.567, and new §330.568 and §330.569, concerning the development of regional and local solid waste management plans, and financial assistance to regional planning commissions and local governments

The proposed amendments specify requirements for the preparation and approval of regional and local solid waste management plans and the provisions of a planning fund for providing financial assistance to prepare those plans. The new §330.569 establishes a new regional solid waste grants program. The title of the subchapter will therefore be changed from "Guidelines for Regional and Local Solid Waste Management Plans" to "Regional and Local Solid Waste Management Planning and Financial Assistance".

The proposed rule changes update the regional and local planning requirements in the existing rules to include a requirement to conduct an inventory of existing and closed landfills, and to otherwise update the rule language to account for changes in agency responsibilities and plan approval policies. The new grants program provides for financial assistance to regional planning commissions and local governments to conduct local and regional projects consistent with state, regional, and local solid waste management plans, and to update and maintain those plans. The allocation of funds under the new grants program is to be according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs. The specific details of this formula have been developed by the commission, in cooperation with various interested parties, and copies will be available at the public hearing to be held October 27, 1995.

Amendment to §330.561, relating to purpose and scope, reflect the agency's current jurisdiction over all of the types of wastes that must be considered in regional and local solid waste management plans.

Amendment to §330.562, relating to definitions of terms and abbreviations, include new definitions and eliminate some that are no longer necessary.

Amendment to §330.563, relating to regional and local plan requirements, specify the requirement in House Bill 2537, Regular Session, 73rd Legislature (1993) that regional and local solid waste management plans include an inventory of municipal solid waste landfill units, including those that are no longer in operation, the location of those units, the current owners of the land on which the former landfill units were located, and the current use of the land.

Amendment to §330.564, relating to coordinating with other programs, reflect changes in requirements to coordinate solid waste management plans with programs of other agencies as a result of the consolidation of Texas Air Control Board and the Texas Water Commission and the transfer of the municipal solid waste management program from the Texas Department of Health (TDH) to the TNRCC.

Amendment to §330.565, relating to public participation requirements for solid waste plans, is amended only to change references regarding the TDH to the TNRCC.

Section 330.566, relating to procedures for regional and local plan submission and approval, is amended to change references regarding the Commissioner of Health to the Executive Director (TNRCC) and Board of Health to the TNRCC, and to revise procedures for updating approved solid waste management plans.

Section 330.567, relating to financial assistance for regional and local plans, is amended to change references regarding the TDH and Board of Health to the TNRCC and Commissioner of Health to Executive Director (of the TNRCC), and to update procedures for obtaining state financial assistance for regional and local planning.

Section 330.568, concerning approved state, regional, and local solid waste management plans, is proposed to be repealed because those state and regional solid waste manage-

ment plans referred to in this section are no longer the most current plans in effect.

New §330.568, concerning approved state, regional, and local solid waste management plans, is proposed to address the approval of new state and regional solid waste management plans. The new section will incorporate into the rules by reference those state and regional solid waste management plans that have been adopted to date. The new section also outlines new procedures for incorporating updates to adopted regional solid waste management plans into those plans, and the responsibility of regional and local governments to implement approved state, regional, and local plans

New §330.569, concerning regional solid waste grants program, is proposed to implement the provisions of House Bill 3072, Regular Session, 74th Legislature (1995), which directs that half of the revenue collected from the state's municipal solid waste disposal fees be dedicated to local and regional solid waste projects consistent with regional plans approved by the commission and that those plans be updated and maintained. This new program will include provisions for allocating the dedicated funds to the state's 24 municipal solid waste planning regions through a formula being developed by the TNRCC, in accordance with the direction set forth in the legislation.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on state government will be a reduction of approximately $7 million annually in direct operating and contract expenses of the commission and an equivalent increase in pass-through grant expenditures. Included in the cost reductions to the state are savings associated with the administration of solid waste grants and contracts. Other state agencies currently receiving inter-agency contract funds for solid waste projects may realize reductions in available funding beyond fiscal year 1995 as a result of the increases in funding to local governments. The effect on local governments will be a net increase of approximately 40%, or $4 million on an annual basis, in state funding available for regional and local solid waste programs and projects. Regional planning commissions or other units of local government will potentially incur some additional costs to conduct an inventory of existing and closed landfills. These costs will be substantially mitigated in the short-term by the TNRCC, which will provide the necessary information from a statewide inventory for use by local governments. Long-term costs to local governments to maintain such an inventory are not anticipated to be significant. Small businesses may benefit indirectly through the provision of funds for projects to support cooperation between public and private entities; however, there are no direct fiscal implications anticipated for small businesses as a result of adoption of these sections.

Mr. Minick also has determined that for each year of the first five-year period that the sections as proposed are in effect, the public benefit anticipated as a result of enforcement of and compliance with the sections will be enhanced quality and availability of information on the location of existing and closed municipal solid waste landfills, and increased state grant funding for regional and local solid waste management projects. There are no economic costs anticipated for any person required to comply with the rules as proposed.

Written comments on the proposal should mention Rule Log Number 95141-330-WS and may be submitted to Bettie Mabry Bell, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 201, P.O. Box 13087, Austin, Texas 78711-3087. Written comments must be received by 5:00 p.m., 30 days from the date of publication of this proposal in the *Texas Register*. For further information or questions concerning this proposal, please contact Stephen Dayton, Waste Planning and Assessment Division, at (512) 239-6824.

A public hearing on the proposal will be held on October 27, 1995, at 10:00 a.m. in Room 254 of Building E of the TNRCC Park 35 Office Complex located at 12118 North IH-35, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Subchapter O. Regional and Local Solid Waste Management Planning and Financial Assistance

• 30 TAC §§330.561-330.569

The amendments and new sections are proposed under the Texas Water Code, §5.103, which provides the TNRCC with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (the Conservation Act), Texas Health and Safety Code, §363.021, which gives the TNRCC the authority to adopt and promulgate rules to implement the Conservation Act.

The amendments and new sections affect the Health and Safety Code, Chapter 363.

§330.561. Purpose and Scope.

(a) Purpose. The sections in this subchapter are intended to guide in the development and implementation of regional and local solid waste management plans. They specify the required and recommended content of regional and local solid waste management plans, provide for coordination with other programs and public participation, establish criteria for regional and local plan submission and approval, and set out criteria for financial assistance to regional and local governments for the development **and implementation** of regional and local solid waste management plans.

(b) Scope.

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

(4) Waste types.

(A) (No change.)

(B) The regional or local plan shall consider, where appropriate, the types of solid waste listed in clauses (i)-**(vii)** [(iv)] of this subparagraph:

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

(v) **industrial wastes;**

(vi) **mining wastes; and**

(vii) **agricultural wastes.**

[(C) The regional or local plan should address, where applicable, wastes which may be governed by separate rules under the jurisdiction of other departments. Addressing these wastes is considered applicable where they impact upon municipal operations, systems, or facilities. The wastes which may need to be addressed:

[(i) industrial wastes;

[(ii) mining wastes; and

[(iii) agricultural wastes.]

(5) (No change.)

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

[Board-The Texas Board of Health.]

Executive director-The executive director of the Texas Natural Resource Conservation Commission and successors, or a person authorized to act on its behalf.

[Local government-A county, municipality, or other political subdivision of the state exercising authority granted under §361. 165 of the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §6.]

Planning fund-The municipal solid waste management planning fund created in the state treasury by **the** rehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act **C.A., Health and Safety Code, Chapter 363)**[, Texas Civil Statutes, Article 4477-7c].

Public agency-A city, county, district, or authority created and operating un-

der the Texas Constitution, Article III, §52(b)(1) or (2), or Article XVI, §59, or a combination of two or more of these governmental entities acting under an interlocal agreement and having the authority under state laws [the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Texas Civil Statutes, Article 4477-7c, or other laws] to own and operate a solid waste management system.

Regional or local solid waste management plan-A plan adopted by a planning region or local government under authority of the Municipal Solid Waste Management, Resource Recovery, and Conservation Act (**Texas Civil Statutes, Health and Safety Code, Chapter 363**)[, Texas Civil Statutes, Article 4477-7c, §7].

Regional Planning Commission-A regional planning commission created under Chapter 391, Local Government Code.

Regional solid waste grants program-The program established to utilize funds dedicated under the Health and Safety Code, Chapter 361, §361.014 for local and regional solid waste projects and to update and maintain regional solid waste management plans.

State solid waste management plan-The **municipal** solid waste management plan for Texas.

[Technical assistance fund-The municipal waste resource recovery applied research and technical assistance fund created in the state treasury by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act, Texas Civil Statutes, Article 4477-7c.]

Variance-The granting of relief from the terms or conditions of a plan by the **executive director** [commissioner].

§330.563. Regional and Local Plan Requirements.

(a) Regional plans. A regional plan identifies the problems, goals, objectives, and recommended actions for solid waste management over a long-range period for the entire planning region.

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

(3) Plan content. A regional plan shall be the result of a planning process related to the proper management of solid waste in the planning region. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and actions recommended to accomplish those goals and objectives. The regional plan shall include:

(A)-(K) (No change.)

(L) regional goals and objectives, **including waste reduction goals consistent with state goals** [including recycling rate goals];

(M) advantages and disadvantages of alternative actions; [and]

(N) the recommended plan of action and associated timetable for achieving regional goals and objectives, including: **waste reduction** [recycling rate goals; source reduction and waste minimization]; composting programs for yard wastes and related organic wastes; household hazardous waste collection and disposal programs; **public education programs;** and the need for new or expanded facilities and practices; **and**

(O) an inventory of municipal solid waste landfill units, including landfill units no longer in operation. To the extent possible, such inventories shall list the location of such units, the current owners of the land on which the former landfill units were located, and the current use of the land. The executive director may conduct inventories, in coordination with the regional planning commissions, on a statewide basis and provide such inventories to the regional planning commissions to incorporate into their regional plans.

(4) (No change.)

(b) Local plans. A local plan addresses specific short- and long-range problems and actions related to solid waste management within the jurisdiction of one or more local governments and may be developed regardless of whether a regional plan has been developed which will affect the local planning area.

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

(3) Plan content. A local plan shall be the result of a planning process that is related to the proper management of solid waste in the local planning area. The process shall include identification of problems and collection and evaluation of the data necessary to provide a written public statement of goals and objectives and the actions recommended to accomplish those goals and objectives. The local plan shall include:

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

(I) local goals and objectives associated with management problems, **including waste reduction goals consistent with state and regional goals** [including recycling rate goals];

(J) advantages and disadvantages of alternative actions; [and]

(K) the recommended plan of action and associated timetable for accomplishing the goals and objectives, including: **waste reduction** [recycling rate goals; source reduction and waste minimization]; composting programs for yard wastes and related organic wastes; household hazardous waste collection programs; **public education programs;** and the need for new or expanded facilities or practices; **and**

(L) an inventory of municipal solid waste landfill units, including landfill units no longer in operation. To the extent possible, such inventories shall list the location of such units, the current owners of the land on which the former landfill units were located, and the current use of the land. For this requirement, local plans may substitute the inventory of municipal solid waste landfill units required by §330.563(a)(3)(O) of this title (relating to Regional and Local Plan Requirements).

(4) (No change.)

§330.564. Coordination with Other Programs.

(a) All solid waste plans shall be consistent with provisions established by federal, state, and local programs that affect solid waste management and shall consider programs and requirements from:

(1) (No change.)

(2) state jurisdiction:

(A) Texas Natural Resource Conservation Commission;

(B) Railroad Commission of Texas; and

(C) other state agencies;

[(A) Texas Department of Health;

[(B) Texas Water Commission;

[(C) Railroad Commission of Texas;

[(D) Texas Air Control Board; and

[(E) other state agencies;]

(3) (No change.)

(b) (No change.)

§330.565. Public Participation Requirements for Solid Waste Plans.

(a) Advisory committee. An advisory committee shall be convened to provide input, review, and comment during development of regional and local plans. Committee members shall be appointed who represent a broad range of interests, including a representative of the **commission** [department], public officials, private operators, citizen groups, and interested individuals.

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

(e) Plan approval. Local and regional solid waste management plans shall be approved by the governing body of the responsible entity before being submitted to the **commission** [department] for approval.

§330.566. Procedures for Regional and Local Plan Submission and Approval.

(a) Prior to the submission of a plan, the plan shall be adopted by the regional planning **commission** [agency] or local government(s) pursuant to applicable administrative procedures. Local governments shall coordinate with the appropriate regional [solid waste] planning **commission** [agency] and ensure **that a local** [the] plan is consistent with any regional solid waste management plan in effect for the region encompassing the jurisdiction of the local government, if a regional plan has been approved by the **commission** [department].

(b) **The executive director** [Within 90 days after a regional or local plan has been submitted, the commissioner] will tentatively determine if the plan conforms to this subchapter and the state solid waste management plan. The **executive director** [commissioner] will communicate this determination to the agency which submitted the plan. If the plan is not in conformance, a notice of deficiencies will be provided to the planning agency [within 30 days of the tentative disapproval]. The **executive director** [commissioner] has authority to disapprove any plan which has deficiencies. Disapproved plans will not be considered by the **commission** [board] until the **executive director** [commissioner] determines that deficiencies have been corrected, unless the applicant submits a request for appeal to the **commission** [board]. In order for a plan to be considered under such circumstances, the appeal must be in writing and must be submitted to the **executive director** [commissioner] within 30 days following the day the applicant receives notification of tentative plan disapproval by the **executive director** [commissioner].

(c) If the **executive director** [commissioner] tentatively determines a regional or local plan meets the requirements of this subchapter, is in conformance with the state solid waste management plan, and should be approved, the **executive director** [commissioner] will submit the plan to the **commission** [board], which, if it concurs with the **executive director's** [commissioner's] approval, shall approve a plan by adopting a rule in accordance with the Administrative Procedure [and Texas Register] Act, **Texas Government Code, Chapter 2001** [Texas Civil Statutes, Article 6252-13a]. **Commission** [Board] action on the plan will normally occur within 60 days of the tentative decision by the **executive director** [commissioner] to approve the plan, but the approval will not be effective until the plan has completed the rulemaking process specified by the Administrative Procedure [and Texas Register] Act, i.e., publication of the proposed action in the Texas Register, a 30-day public comment period, and publication of the final rule action in the Texas Register. If approved, the **executive director** [commissioner] will notify the agency of the **commission's** [board's] approval. In the event the plan is not approved, the **commission** [board] will state the plan's deficiencies and the **executive director** [commissioner] will immediately notify the planning agency of the **commission's** [board's] decision and the plan's deficiencies. The plan may be resubmitted for approval if the **executive director** [commissioner] determines that deficiencies have been corrected.

(d) If a regional or local solid waste management plan is adopted by rule of the **commission** [board], public and private solid waste management activities and state regulatory activities shall conform to the adopted regional or local solid waste management plan. The plan shall only remain in effect during the planning period defined in the plan. [When the effective date or planning period has passed or expired, requirements or restrictions of the plan shall no longer be binding.] Under procedures and criteria of subsections (g) and (h) of this section, the **executive director** [commissioner] may grant a variance from an adopted regional or local solid waste management plan.

(e) If a portion of a regional or local plan is determined by the **executive director** [commissioner] to no longer be in compliance with the state solid waste management plan or these sections, the **executive director** [commissioner] may request that the regional body or local government revise the plan. If such a revision is not submitted to the **commission** [department] within 180 days, the **executive director** [commissioner] may ask the **commission** [board] to withdraw its approval of that portion of the plan.

(f) A planning **commission or local government** [agency] may submit revisions or updates to an approved plan that reflect new information or changed conditions. **Updates to an approved plan to provide for changes to data and information contained in the plan, which do not substantially change the scope or content of the goals and recommendations of the plan, may be incorporated into an approved plan upon approval by the executive director without further adoption procedures being required. At the discretion of the executive director, or upon request by the planning commission or local government, major revisions and amendments to an approved plan that substantially change the scope or content of the goals and recommendations of the plan** [These revisions] shall be considered by the same procedures as original plan submission and approval.

(g) Upon application, the **executive director** [commissioner] may grant a variance from an adopted regional or local solid waste management plan when:

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

(h) If the **executive director** [commissioner] intends to grant a variance from the requirements of a plan, the **executive director** [department] will offer the opportunity for a public hearing on the matter prior to the [commissioner's] final decision. The hearing, if requested, will be advertised and conducted within the area affected by the plan.

§330.567. Financial Assistance for Regional and Local Plans.

(a) Authority. The municipal solid waste management planning fund is established by the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act **(Texas Civil Statutes, Health and Safety Code, Chapter 363)**[, Health and Safety Code, §§363.091-363.093 (Texas Civil Statutes, Article 4477-c, §8),] as a special fund in the state treasury.

(b) Administration of the planning fund.

(1) The **executive director** [commissioner] shall administer the financial assistance program and the planning fund under the direction of the **commission** [board].

(2) An applicant for financial assistance from the planning fund shall agree to comply with the state solid waste management plan, the **commission's** [department's municipal solid waste manage-

ment] rules, and any other requirements adopted by the **commission** [board]. [The scope of work for the planning effort shall be mutually agreed upon by the department and the applicant].

(3) The **executive director** [department] shall not authorize release of funds under an application for financial assistance until the applicant has furnished the **commission** [department] with a resolution adopted by the governing body of each public agency or planning region which is a party to the application certifying that.

(A) the applicant will comply with the provisions of the financial assistance program and the requirements of the **commission** [department];

(B) the grant will only be used for the purposes for which it was provided; [and]

(C) regional or local solid waste management plans developed with state financial assistance will be adopted by the governing body **as its policy; and**

(D) future municipal solid waste management activities will, to the extent reasonably feasible, conform to the regional or local solid waste management plan.

(4)-(5) (No change.)

(6) The **executive director** [department] may approve an application consistent with the provisions of this section when the **executive director** [department] finds state financial participation is in the public interest and when it is determined that both state and regional or local funding is sufficient to complete the agreed scope of services. [The department shall approve or disapprove an application for financial assistance within 90 days of its receipt.]

(c) Applications.

(1) Requests for state financial assistance shall be made on forms furnished by the commission and shall include a work program and budget for a defined period in which the tasks described in the work program are to be completed.

(2) The only applicant eligible to apply for regional planning financial assistance shall be the regional planning commission designated as responsible for the planning region for which a plan is considered.

(3) The only applicants authorized to apply for local planning financial assistance are local governments or public agencies and designated regional planning commissions. Where the local plan is to cover a geographical area larger than the area of one city, then the application and any resulting contract shall be made by one of the cities, counties, or public agencies which has all or part of its jurisdiction within the area to be considered in the plan, and which is authorized by all public agencies with jurisdictions included in the area considered to act as their agent; or the designated regional planning commission which has jurisdiction over the geographical area to be considered in the plan.

[(c) Regional planning financial assistance.

[(1) Applications and contracts

[(A) Requests for state financial assistance for regional plans shall be made on forms furnished by the department and shall include a work program and budget for a defined period in which the tasks described in the work program are to be completed.

[(B) All state planning assistance contracts shall not exceed one year in term, and shall terminate on or before the earliest August 31 date following the beginning date of the contract.

[(C) The only applicant eligible to apply for regional planning financial assistance shall be the regional planning agency designated as responsible for the planning region for which a plan is considered.

[(D) At its discretion, the department may utilize a panel or committee to assist in evaluating applications for funding assistance.

[(2) Funding amounts.

[(A) The minimum funding provided by the state, for development of any regional solid waste management plan, in a single state fiscal year shall be $60,000.

[(B) Except as provided in subparagraph (C) of this paragraph, additional state funds may be authorized based on:

[(i) population ($.10 per capita);

[(ii) number of counties affected ($1,000 each); and

[(iii) number of incorporated cities affected ($400 each).

[(C) The maximum annual funding provided by the state, for development of any regional solid waste management plan, in a single state fiscal year shall not exceed $500,000.

[(d) Local planning financial assistance.

[(1) Applications and contracts.

[(A) Requests for state financial assistance for local plans shall be made on forms furnished by the department and shall include a work program and budget for a defined period in which the tasks described in the work program are to be completed.

[(B) All state planning assistance contracts shall not exceed one year in term, and shall terminate on or before the earliest August 31 date following the beginning date of the contract.

[(C) The only applicants authorized to apply for local planning financial assistance are local governments or public agencies, and designated regional planning agencies. Where the local plan is to cover a geographical area larger than the area of one city, then the application and any resulting contract shall be made by one of the cities, counties, or public agencies which has all or part of its jurisdiction within the area to be considered in the plan, and which is authorized to act as agent by all public agencies with jurisdictions included in the area considered; or the designated regional planning agency which has jurisdiction over the geographical area to be considered in the plan.

[(D) At its discretion, the department may utilize a panel or committee to assist in evaluating applications for funding assistance requests.

[(2) Funding amounts.

[(A) The minimum funding provided by the state, for development of any local solid waste management plan, in a single state fiscal year shall be $5, 000.

[(B) Except as provided in subparagraph (C) of this paragraph, additional state funds may be authorized based on $.20 per capita.

[(C) The maximum annual funding provided by the state for development of any local solid waste management plan in a single state fiscal year shall not exceed $200,000.]

§330.568. Approved State, Regional, and Local Solid Waste Management Plans.

(a) Purpose. This section identifies state, regional, and local solid waste management plans which have been approved by the commission.

(b) State plan. The state solid waste management plan may be amended and updated from time to time as conditions warrant and as may be directed by state law. For the purposes of this subchapter, the current state plan is the latest plan, including any plan updates and amending materials, which has been issued by the commission.

(c) Plans approved. The current effective regional solid waste management plan for each region or local solid waste management plan for a local government is the latest plan, including plan amendments, which has been adopted by the commission. Copies of approved plans shall be kept on file and available for public review at the commission library. Those plans, and any adopted amendments thereto, are hereby incorporated by reference into this subchapter. Updates to an approved regional or local plan which do not require official adoption by the commission, as specified under §330.566(f) of this title (relating to Procedures for Regional and Local Plan Submission and Approval), may be incorporated into an approved plan for informational purposes, as each update is approved by the executive director. Each plan's effectiveness applies only for the geographical area described in the plan and for the period designated in the plan.

(d) Conflicting provisions. By adopting a regional or local plan, the commission has determined that the plan has been developed according to commission rules and does not conflict with the state plan. If it should later be determined that provisions of an adopted plan do conflict with provisions of the state plan, then provisions of the state plan shall prevail.

(e) Agency responsibilities. It shall be the responsibility of the regional planning commission to coordinate the implementation of regional policies and recommended actions in an approved regional plan and coordinate local planning efforts. It shall be the responsibility of affected local governments to implement the policies and recommended actions of adopted regional and local plans and to maintain policies and activities that do not conflict with provisions in current state, regional, and local solid waste management plans.

§330.569. Regional Solid Waste Grants Program.

(a) Authority. Funds are dedicated under the Health and Safety Code, §361.014, for the development and updating of regional and local solid waste management plans, and for implementing regional and local projects consistent with approved regional solid waste management plans and the state solid waste management plan. This regional solid waste grants program is separate from the financial assistance program outlined under §330.567 of this title (relating to Financial Assistance for Regional and Local Plans).

(b) Administration of regional solid waste grants program. The executive director shall administer the regional solid waste grants program under the direction of the commission.

(c) Funding allocation. Funds for local and regional projects under the regional solid waste grants program shall be allocated to municipal solid waste geographic planning regions according to a formula established by the commission that takes into account population, area, solid waste fee generation, and public health needs.

(d) Public/private cooperation. A project or service funded under the regional solid waste grant program must promote cooperation between public and private entities and may not be otherwise readily available or create a competitive advantage over a private industry that provides recycling or solid waste services.

(e) Pass-through grants. The executive director may establish procedures to make grant funds available to authorized local entities through pass-through grants administered by each regional planning commission.

(f) Applications.

(1) Requests for state financial assistance provided directly by the commission shall be made on forms furnished by the commission.

(2) Requests for financial assistance made available through pass-through grants administered by a regional planning commission shall be made on forms developed jointly by the commission and the regional planning commission, and furnished by the regional planning commission.

(g) Application procedures. Applicants for financial assistance from the commission shall follow the procedures set forth in the application instructions and guidelines issued by the commission. Applicants for pass-through grant assistance from a regional planning commission shall follow the procedures set forth in the pass-through grant application instructions issued by the regional planning commission.

(h) Grant contracts. Grants shall be provided through contractual agreement between the commission and the grant recipient. If a regional planning commission provides financial assistance to local entities through a pass-through grant arrangement, the regional planning commission shall enter into an appropriate contractual agreement with the local grant recipient. The contractual agreement between the regional planning commission and the local grant recipient shall adhere to all applicable provisions of the main grant contract between the regional planning commission and the commission.

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

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

TRD-9512623

Lydia Gonzalez Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 239-6087

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Subchapter O. Guidelines for Regional and Local Solid Waste Management Plans

• 30 TAC §330.568

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

The repeal is proposed under the Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission (TNRCC) with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Comprehensive Municipal Solid Waste Management, Resource Recovery, and Conservation Act (the Conservation Act), Texas Health and Safety Code, §363.021, which gives the TNRCC the authority to adopt and promulgate rules to implement the Conservation Act.

§330.568. Approved State, Regional, and Local Solid Waste Management Plans.

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

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

TRD-9512622 Lydia Gonzalez Gromatzky
Acting Director, Legal Services Division
Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

Part IX. Texas Bond Review Board

Chapter 190. Allocation of the State's Limit on Certain Private Activity Bonds

Subchapter A. Program Rules

- **34 TAC §§190.1-190.3, 190.6, 190.8**

The Texas Bond Review Board proposes amendments to §§190.1-190.3, 190.6, and 190.8. The program rules are amended to comply with changes in Texas Civil Statutes, Article 5190.9a, as amended. Generally, the amendments will allow more applications to receive a reservation.

Albert L. Bacarisse, Executive Director of the Bond Review Board, has determined that for the first five-year period the sections are in effect there will be negligible fiscal implications for state and local government as a result of enforcing or administering the sections.

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

Comments on the proposal may be submitted to Albert L. Bacarisse, Texas Bond Review Board, P.O. Box 13292, Austin, Texas 78711-3292.

The amendments are proposed under Texas Civil Statutes, Article 5190.9a, as amended, which give the Texas Bond Review Board the authority to adopt rules governing the implementation and administration of the allocation of the state's ceiling on private activity bonds.

Texas Civil Statutes, Article 5190.9a is affected by these proposed amendments.

§190.1. General Provisions.

(a) Introduction. Pursuant to the authority granted by **Chapters 2001 and 2002, Government Code, as amended** [the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a], and Texas Civil Statutes, Article 5190.9a, **as amended,** the Bond Review Board prescribes the following sections regarding practice and procedure before the board in the administration of the allocation of the authority in the state to issue private activity bonds.

(b) (No change.)

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

(1) Act-Texas Civil Statutes, Article 5190.9a **as amended.**

(2)-(52) (No change.)

(53) Tax-exempt enterprise zone facility bonds-An issue of bonds for an enterprise zone facility, as that term is defined under the Code, §1394.

(54)[(53)] Unexpended proceeds-Proceeds remaining from a prior issue of bonds, including, in the case of qualified mortgage bonds, any unused portion of mortgage credit certificates.

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

(f) Examination of records. Any party requesting the examination of records pursuant to **Chapter 552, Government Code, as amended** [the Open Records Act, Texas Civil Statutes, Article 6252-17a], shall indicate in writing the specific nature of the document to be viewed, and if photocopying is desired, the appropriate fee must accompany the request.

§190.2. Allocation and Reservation System.

(a) (No change.)

(b) On or after January 2, the board will accept applications for reservation from issuers authorized to issue private activity bonds. The board shall not grant a reservation to any issuer prior to January 10. If two or more issuers file an application for reservation of the state ceiling in any of the categories described in the Act, §2(b), the board shall conduct a lottery establishing the order of priority of each such application for reservation. Once the order of priority for all applications for reservation filed on or before January 10 is established, reservations for each issuer within the categories described in the Act, §2(b)(2)-(5) shall be granted in the order of priority established by such lottery. Each issuer of state voted issues granted a reservation initially shall be granted a reservation date which is the business day immediately following the date of such lottery. If more than ten applications by issuers, other than issuers of state voted issues, are granted a reservation initially, an additional lottery will be held immediately to determine staggered reservation dates for such issuers. The order of priority for reservations in the category described in the Act, §2(b)(1), shall further be determined as provided in the Act, §3(c).

(1) The first category of priority shall include those applications for a reservation filed by housing finance corporations which filed an application for a reservation on behalf of the same local population prior to September 1 of the previous calendar year, but which did not receive a reservation during such year. **Any such priority of an issuer composed of more than one jurisdiction is not affected by the issuer's loss of a sponsoring governmental unit and that unit's population base if the dollar amount of the application has not increased.**

(2)-(4) (No change.)

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

(e) An application for a reservation may not be submitted **and a reservation may not be granted** after December 1 [14].

(f) An issuer may refuse to accept a reservation for any amount if the reservation is granted after September 23.

(g)[(f)] The amount of the state's ceiling that has not been reserved prior to December 1 [15] and any amount previously reserved that becomes available on or after that date because of the cancellation of a reservation or any other reason, may be designated, by the board, as carryforward for the carryforward purposes outlined in the code through submission of the application for carryforward and any other required documentation.

(h)[(g)] An issuer may submit an application for carryforward to the board at any time during the year through the last business day in December.

(i)[(h)] Issuers will be eligible for carryforward according to the priority classifications listed in the Act.

§190.3. Filing Requirements for Applications for Reservation.

(a) (No change.)

(b) Application Filing. The issuer shall submit one original and two copies of the application for reservation. Each application must be accompanied by the following:

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

(6) a statement by the issuer, other than an issuer of a state-voted issue or **the Texas Department of Housing and Community Affairs,** that the bonds are not being issued for the same stated purpose for which the issuer has received sufficient carryforward during a prior year or for

which there exists unexpended proceeds from a prior issue or issues of bonds issued by the same issuer;

(7) if unexpended proceeds exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by the **Texas Department of Housing and Community Affairs**, issued by the issuer or on behalf of the issuer for the same stated purpose for which the bonds are the subject of this application, a statement by the trustee as to the current amount of unexpended proceeds that exists for each such issue. The issuer shall certify to the current amount of unexpended proceeds that exists for each issue should a trustee not administer the bond issues;

(8) if unexpended proceeds other than prepayments exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by the **Texas Department of Housing and Community Affairs**, issued by issuer or on behalf of issuer for the same stated purpose for which the bonds are the subject of this application, a definite and binding financial commitment agreement which must accompany the application in such form as the board finds acceptable, to expend the unexpended proceeds within 12 months after the date of receipt by the board of an application for reservation. For purposes of this paragraph, the commitment by lenders to originate and close loans within a certain period of time shall be deemed a definite and binding agreement to expend bond proceeds within such period of time and any additional period of time during which such origination period may be extended under the terms of such agreement; provided however, that any such extension provision may be amended, prior to date on which the bond authorization requirements described in subsection (c) of this section must be satisfied, to provide that such period shall not be extended beyond 12 months after the date of receipt by the board of an application for reservation;

(9) if unexpended proceeds exist from a prior issue or issues of bonds, other than a state-voted issue or an issue by the **Texas Department of Housing and Community Affairs**, issued by the issuer or on behalf of the issuer for the same stated purpose for which the bonds are the subject of the pending application, a written opinion of legal counsel, addressed to the board, to the effect, that the board may rely on the representation contained in the application to fulfill the requirements of the Act and that the agreement referred to in paragraph (8) of this subsection constitutes a legal and binding obligation of the issuer, if applicable, and the other party or parties to the agreement;

(10)-(12) (No change.)

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

(e) Closing documents. Not later than the fifth business day after the day on which the bonds are closed the issuer shall file with the board:

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

(6) the document evidencing compliance with the Act, §3(g);

(7)[(6)] other documents relating to the issuance of bonds, including a statement of the bonds':

(A) principal amount;

(B) interest rate or the formula by which the interest is calculated;

(C) maturity schedule;

(D) purchaser or purchasers; and

(8)[(7)] an official statement;

(9)[(8)] for mortgage credit certificates the issuer shall file item (1) of subsection (e) and the following:

(A) a certified copy of the issuer's resolution electing to convert state ceiling to mortgage credit certificates;

(B) issuer's mortgage credit certificate election; and

(C) program plan.

(f) (No change.)

(g) Application restrictions.

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

(4) For any one project, no issuer, prior to September 1, may exceed the following maximum application limits:

(A) $25,000,000 for issuers described by the Act, §2(b)(1) other than the Texas Department of Housing and Community Affairs;

(B) $50,000,000 for issuers described by the Act, §2(b)(2) other than the Texas Higher Education Coordinating Board;

(C) an amount as limited by the code for issuers described by the Act, §2(b)(3);

(D) $15,000,000 for issuers described by the Act, §2(b)(4);

(E) $25,000,000 for issuers described by the Act, §2(b)(5) except higher education authorities authorized by the Education Code, §53.47; and

(F) $35,000,000 for higher education authorities authorized by the Education Code, §53.47.

[(4) No issuer may submit an application for reservation in excess of $50,000,000 except for the housing finance division of the Texas Department of Housing and Community Affairs and the Texas Higher Education Coordinating Board.]

(5) The board may not accept applications for more than one project located at, or related to, a business operation at a particular site in any one calendar year.

§190.6. Expiration Provisions.

(a) **A certificate of reservation shall expire at the close of business on** [The expiration date for a certificate of reservation shall be the first business day which occurs on or after] the 90th calendar day after the date on which the reservation [date] is given.

(b) (No change.)

§190.8. Notices, Filings, and Submissions.

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

(c) **Fees must be made payable to the Texas Bond Review Board.**

(d)[(c)] Fees should be sent by overnight delivery and addressed as follows: Texas State Treasury, Item Processing-Lockbox Section, 200 East Tenth Street, Austin, Texas 78701.

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

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

TRD-9512607 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-1741

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 261. Existing Construction Rules

The Commission on Jail Standards proposes amendments to §§261.121, 261. 221 and 261.316, concerning Existing Construction Rules. The amendments are being proposed to delete the requirement for jails built prior to 1977 to provide seating for visitors and inmates in the visiting areas.

Jack E. Crump, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to avoid county expenditure to add seating in the visitation area of existing jails.

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

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Existing Jail Design, Construction and Furnishing Requirements

- **37 TAC §261.121**

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

§261.121. Visiting Areas. Visiting areas shall be provided and shall be designed to provide adequate visitation for the capacity of the facility. Visitation areas shall be designed for the degree of security sought to be achieved. Audible communications shall be provided between the inmate and visitor. Visiting areas for high and medium-risk inmates shall be designed to prevent passage of contraband. Provisions shall be made for disabled visitors and inmates. Seating **should** [shall] be provided for both inmates and visitors. A secure visiting area should be provided for contact visits from law enforcement officers, attorneys, clergy, and probation and parole officers. Provisions shall be made for passage of legal paper between inmates and attorneys.

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

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

TRD-9512523 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-5505

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Existing Lockup Design, Construction and Furnishing Requirements

- **37 TAC §261.221**

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

§261.221. Visiting Areas. Visiting areas shall be provided. Visitation areas shall be designed for the degree of security sought to be achieved. Audible communications shall be provided between the visitor and inmate. Provisions shall be made for disabled visitors and inmates. Seating **should** [shall] be provided for both visitors and inmates. A secure visiting area should be provided for contact visits from law enforcement officers, attorneys, clergy, and probation and parole officers. Provisions shall be made for passage of legal paper between inmates and attorneys.

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

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

TRD-9512524 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-5505

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Existing Low-Risk Design, Construction and Furnishing Requirements

- **37 TAC §261.316**

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The statute that is affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

§261.316. Visiting Areas. Visiting areas shall be provided. Audible communications shall be provided between the inmate and visitor. Provisions shall be made for disabled visitors and inmates. Seating **should** [shall] be provided for both visitors and inmates. A visiting area may be provided for contact visits from law enforcement officers, attorneys, clergy, and probation and parole officers. Provisions shall be made for passage of legal paper between inmates and attorneys.

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

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

TRD-9512525 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-5505

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Chapter 269. Records and Procedures

- **37 TAC §269.2**

The Commission on Jail Standards proposes an amendment to §269.2, concerning Records and Procedures. The section is being amended to add the requirement that counties submit an annual financial audit of the general operations of the jail. This amendment serves to make the commissions' administrative rules consistent with statute.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide state level review of county audits of jail operations to ensure operations are in compliance with the law.

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

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction. equipment, maintenance, and operation of county jails

The statute that is affected by this rule is the Local Government Code, Chapter 351, §351 002 and §351.015.

§269.2. Fiscal. Each sheriff/operator should maintain fiscal records which will clearly indicate the costs for the facility. Such records should include feeding and clothing outlay and other program costs **Each county auditor shall submit to the commission a copy of the annual financial audit of general operations of the jail not later than ten days after completing the audit.**

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

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

TRD-9512526 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-5505

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Chapter 271. Classification and Separation of Inmates

• 37 TAC §271.1

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

The Commission on Jail Standards proposes the repeal of §271.1, concerning Classification and Separation of Inmates. The section is being repealed to allow adoption of new classification rules as allowed by recent changes in legislation.

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

Mr. Crump also has determined that for each year of the first five years the repeal is in effect the public benefits anticipated as a result of enforcing the repeal as proposed will be to allow adoption of new objective inmate classification standards.

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

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The repeal is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statute that is affected by this repeal is the Local Government Code, Chapter 351, §351 002 and §351.015.

§271.1. Classification Plan.

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

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

TRD-9512527 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-5505

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Chapter 271. Classification and Segregation of Inmates

• 37 TAC §§271.1-271.6

The Commission on Jail Standards proposes new §§271.1-271.6, concerning Classification and Segregation of Inmates. The new sections are being proposed to create objective inmate classification standards as allowed by recent changes in legislation during the 74th Legislative Session.

Jack E. Crump, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Crump also has determined that for each year of the first five years the sections are in effect the public benefits anticipated as a result of enforcing the sections as proposed will be to provide a structured, efficient classification scheme for determining inmates' risk levels to reduce the number of inmate incidents and provide an objective means of classification

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

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The new sections are proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statute that is affected by these rules is the Local Government Code, Chapter 351, §351.002 and §351 015

§271.1. Objective Jail Classification Plan.

(a) Each sheriff/operator shall develop and implement an objective jail classification plan approved by the commission by January 1, 1997. The plan shall include principles, procedures, instruments and instructions for classification, housing assignments and addressing inmate needs. Classification plans on file and approved by the commission shall remain valid until a new plan is approved and implemented. The following principles and procedures shall be addressed:

(1) inmates shall be classified and housed in the least restrictive housing available without jeopardizing staff, inmates or the public after considering factors such as:

(A) seriousness of offense;

(B) prior criminal record;

(C) history of violence;

(D) escape history;

(E) known institutional behavior;

(F) age; and

(G) other objective factors.

(2) classification criteria shall not include race, ethnicity or religious preference;

(3) custody levels and special housing needs shall be assessed to include minimum, medium and maximum custody levels and the placement and release of inmates to special housing to include protective custody, administrative separation, disciplinary separation and mental and medical health housing;

(4) minimum and maximum custody level inmates shall be housed separately at all times;

(5) juveniles shall be separated from adults in accordance with the Family Code, §51.12, requiring sight and sound separation from adults;

(6) female inmates shall be separated by sight and sound from male inmates. When under direct, visual and proximate supervision, males and females may simultaneously participate in group activities;

(7) persons assigned to a detoxification cell shall be transferred to a housing or holding area as soon as they can properly care for themselves;

(8) violent cells shall not be used for disciplinary purposes. The status of persons confined to a violent cell shall be reviewed and documented at least every 24 hours;

(9) inmates who require protection or those who require separation to protect the safety and security of the facility may be housed in administrative separation. The status of inmates placed in administrative separation shall be reviewed and documented at least every 14 days for continuance of status. Inmates housed in administrative separation shall retain access to services and activities as defined under Chapter 291 of this title (relating to Services and Activities), unless the continuance would adversely affect the safety and security of the facility; and

(10) single cells may be utilized for disciplinary or administrative separation provided inmates are allowed access to a shower at least once each day.

(b) The following instruments and instructions for completing those instruments shall be provided:

(1) Initial Screening Instrument. To be completed immediately on all inmates admitted for purposes of identifying any medical, mental health or other special needs that require placing inmates in special housing units;

(2) Initial Classification Instrument. To be completed on all newly admitted inmates prior to general housing assignment to determine the inmate custody level. This shall be accomplished within 72 hours of admission. Supervisory override capability with written justification shall be provided as a part of this instrument; and

(3) Reclassification Instrument. To be completed within 30-90 days of the initial classification and every 30-90 days thereafter. This form relies upon criteria that emphasize inmate in-custody behavior. Supervisory override capability with written justification shall be provided as a part of this instrument.

(c) The following instrument and instructions for completing this instrument may be provided: Needs Assessment Instrument. To be used to assess the needs and qualifications of inmates for participation in facility vocational, educational, mental health, substance abuse and other treatment or work programs.

§271.2. Housing Scheme. Each sheriff/operator shall establish a housing scheme designating the construction security level (minimum, medium, maximum) of each facility, housing unit and bed. Inmates with a custody level of medium or maximum shall not be housed in facilities or housing units designed and approved for minimum custody level inmates only.

§271.3. Training. All staff whose duties include inmate classification, housing and work or program assignments shall undergo at least four hours of training on the principles, procedures and instruments for classification, housing assignments and inmate needs.

§271.4. Appeals. A documented appeals process shall be provided for inmate classification, housing and work or program assignments.

§271.5. Records. Records shall be maintained on classifications, assessments, reviews, appeals, assignments and the annual audit.

§271.6. Audit. An annual audit shall be conducted on the classification system. The audit shall assess the following features of the jail's objective classification system:

(1) inmates are being classified within 72 hours;

(2) inmates are housed according to their assigned custody levels;

(3) the override rate is not excessive; and

(4) staff is completing classification forms in an accurate and timely manner.

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

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

TRD-9512528

Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-5505

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Chapter 273. Health Services

• 37 TAC §273.6

The Commission on Jail Standards proposes an amendment to §273.6, concerning Health Services. The section is being amended to add the requirement that the Tuberculosis Screening Plan be implemented.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide proper screening of inmates, employees and volunteers for tuberculosis.

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

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners.

The statute that is affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

§273.6. Tuberculosis Screening Plan.

(a) Each facility, having a capacity of 100 or more inmates, shall develop and implement a plan for tuberculosis screening tests of employees, volunteers, and inmates. Inmates confined in the jail for more than 14 days shall be tested on or before the 14th day after the day of confinement. Inmates may be exempt from the screening test when the test conflicts with the tenets of an organized religion to which the individual belongs or when the test is contraindicated based on an examination by a physician. An inmate is not required to be retested at each rebooking if the inmate is booked into the facility more than once during a 12-month period, unless the inmate shows symptoms of or is known to have been exposed to tuberculosis.

(b) The tuberculosis screening plan shall be developed and implemented in accordance with 25 TAC §§97.171-97.180 (relating to Communicable Diseases) and the Texas Health and Safety Code, §§89.001-89.073 and shall be approved by the Tuberculosis Elimination Division, Texas Department of Health prior to use. The plan shall be made available to the commission upon request. A copy of an inmate's medical records or documentation

of screenings or treatment received during confinement shall accompany an inmate transferred from one correctional facility to another or to TDCJ-ID and be available for medical review upon arrival of the inmate.

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

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

TRD-9512529 Jack E. Crump
Executive Director
Commission on Jail Standards

Earliest possible date of adoption: November 10, 1995

For further information, please call: (512) 463-5505

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Chapter 281. Food Service

• 37 TAC §281.5

The Commission on Jail Standards proposes an amendment to §281.5, concerning Food Service. The section is being amended to delete the recommendation that inmates who prepare or serve food obtain a Doctor's Certificate.

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

Mr. Crump also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide food service standards that are consistent with the Texas Department of Health regulations.

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

Comments on the proposal may be submitted to Rhonda C. Long, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care, and treatment of prisoners. The statute that is affected by this rule is the Local Government Code, Chapter 351, §351.002 and §351.015.

§281.5. Staff Supervision. Food shall be prepared under the supervision of a staff member or contract employee and shall be served only under the immediate supervision of a staff member. Care shall be taken that hot foods are served reasonably warm and that cold foods are served reasonably cold. [Inmates who prepare or serve food should have a Doctor's Certificate.]

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

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

TRD-9512530 Jack E. Crump
Executive Director
Commission on Jail Standards

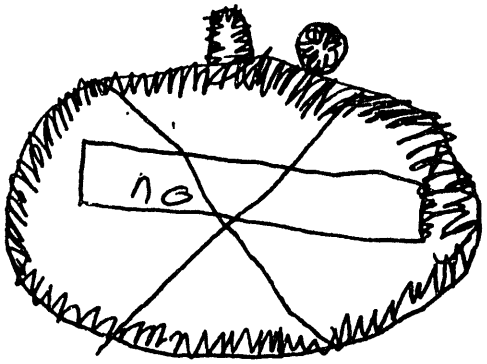
Earliest possible date of adoption: November 10, 1995

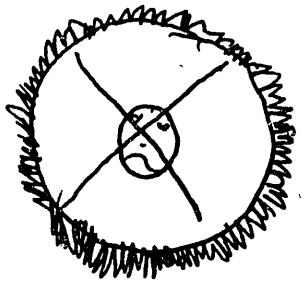
For further information, please call: (512) 463-5505

♦ ♦ ♦

Name: Debra Warden
Grade: 4
School: Malakoff Elementary School, Malakoff ISD

Say no to Drugs





Drugs can Kill You

WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register***.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

New Jail Design, Construction and Furnishing Requirements

• **37 TAC §259.135**

The Texas Commission on Jail Standards has withdrawn from consideration for permanent adoption a proposed amendment to §259.135, which appeared in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5208). The effective date of this withdrawal is October 2, 1995.

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

TRD-9512538 Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: October 2, 1995

For further information, please call: (512) 463-5505

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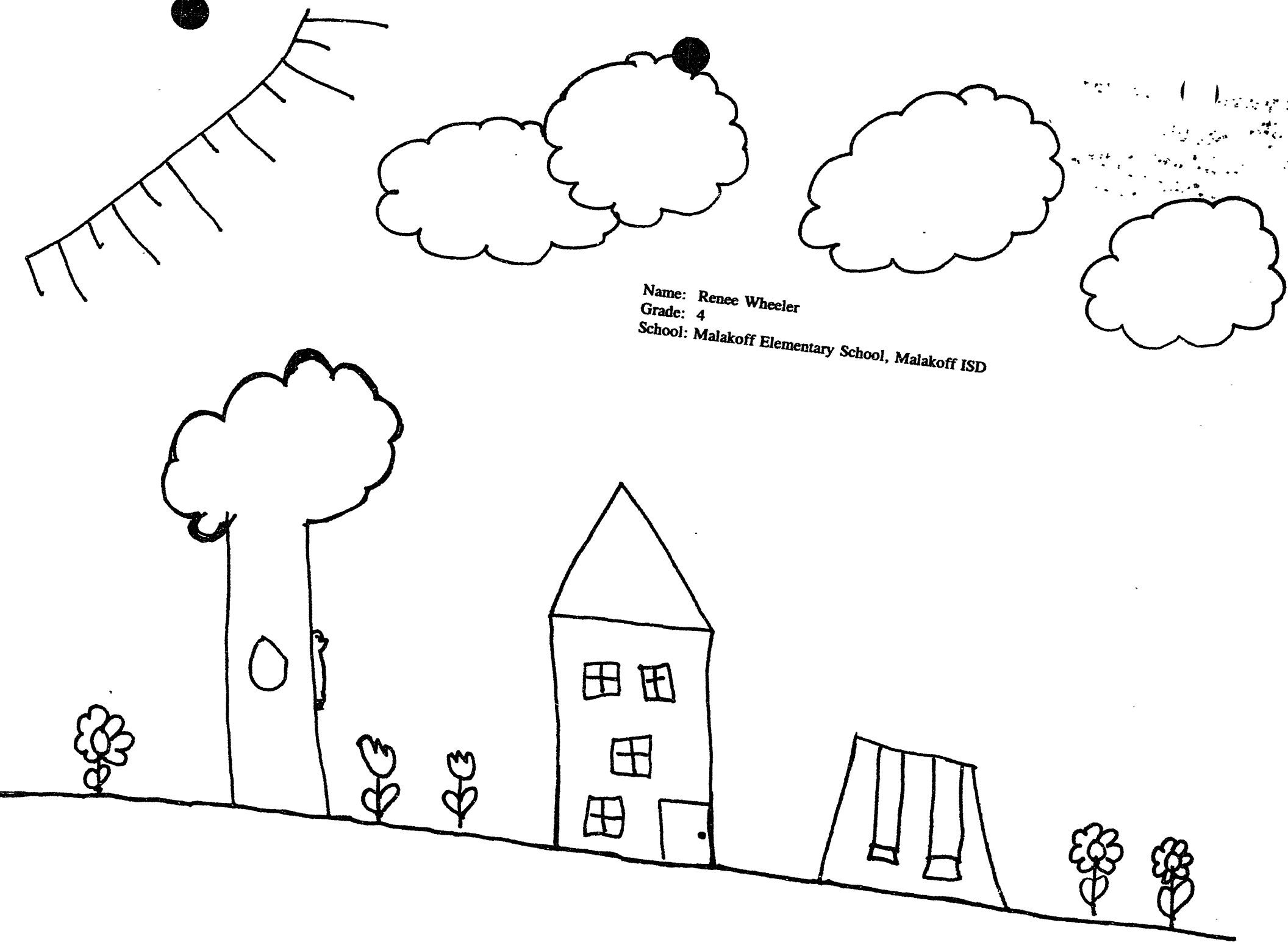

Name: Renee Wheeler
Grade: 4
School: Malakoff Elementary School, Malakoff ISD

ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

Part XII. Advisory Commission on State Emergency Communications

Chapter 251. Regional Plans-Standards

• 1 TAC §251.3

The Advisory Commission on State Emergency Communications (ACSEC) adopts an amendment to §251.3, concerning Guidelines for Addressing Funds, without changes to the proposed text as published in the May 9, 1995, issue of the *Texas Register* (20 TexReg 3405).

The amendment to §251.3 proposes to offer a choice to local governments participating in addressing projects through this amendment.

If the addressing can be completed within 75% of eligible costs, then local government match is waived. If the project cannot be completed within 75% of eligible cost, then match is required. Three effects of this adoption are expected: the total estimated addressing cost to a county may decrease by 25%, local funds may not be needed for addressing activities, and last, addressing may experience fewer delays toward completion.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Health and Safety Code, Chapter 771, §§771.051, 771.056, and 771.057, which provides the Advisory Commission on State Emergency Communications with the authority to develop and amend a regional plan that meets standards set for the operation of prompt and efficient 9-1-1 services throughout a region. Street addresses are essential to E9-1-1 systems utilizing the Automatic Location Identifier feature which displays locations of 9-1-1 callers.

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 October 4, 1995.

TRD-9512591 Mary A. Boyd
Executive Director
Advisory Commission on State Emergency Communications

Effective date: October 25, 1995

Proposal publication date: May 9, 1995

For further information, please call: (512) 305-6911

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

The Commission on Jail Standards adopts amendments to §§259.135, 259. 136, 259.330, 259.331, 259.430, 259.431, 259.510, and 259.610, concerning New Construction Rules, with changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6804).

Adoption of these rules will make the standards consistent with newly adopted statutes regarding congegration of inmates in dormitories and day rooms.

The rules function to allow up to 48 inmates to congregate in one cell/day room.

No comments were received regarding adoption of the amendments.

New Jail Design, Construction and Furnishing Requirements

• 37 TAC §259.135, §259.136

The amendments are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§259.135. Dormitories. Dormitories shall contain 9 to 48 bunks. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories. Dormitories with contiguous day rooms in direct supervision facilities may exceed 40% of the facility capacity.

§259.136. Day Rooms. All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

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

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

TRD-9512531 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: October 23, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5505

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New Medium-Risk Design, Construction and Furnishing Requirements

• **37 TAC §259.330, §259.331**

The amendments are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§259.330. Dormitories. Dormitories shall contain 9 to 48 bunks. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories.

§259.331. Day Rooms. All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

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

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

TRD-9512532 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: October 23, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5505

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New Low-Risk Design, Construction and Furnishing Requirements

• **37 TAC §259.430, §259.431**

The amendments are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§259.430. Dormitories. Dormitories shall contain 9 to 48 bunks. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories.

§259.431. Day Rooms. All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with inmate living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided.

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

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

TRD-9512533 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: October 23, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5505

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Temporary Housing–Tents

• **37 TAC §259.510**

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§259.510. Capacity. Maximum capacity of a tent shall not exceed 48 inmates.

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

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

TRD-9512534 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: October 23, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5505

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Temporary Housing–Buildings

• **37 TAC §259.610**

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§259.610. Capacity. Maximum capacity of any living area shall not exceed 48 inmates.

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

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

TRD-9512535 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: October 23, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5505

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Chapter 260. County Correctional Centers

• **37 TAC §260.131, §260.132**

The Commission on Jail Standards adopts amendments to §260.131 and §260.132, regarding New Construction Rules, with changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6806).

Adoption of these rules will make the standards consistent with newly adopted statutes regarding congegration of inmates in dormitories and day rooms.

The rules function to allow up to 48 inmates to congregate in one cell/day room.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§260.131. Dormitories. Dormitories shall contain 9 to 48 bunks. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets and lavatories.

§260.132. Day Rooms. All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 offenders. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first offender plus 18 square feet of clear floor space for each additional offender; adequate toilets, lavatories, mirrors, showers, seating, and tables. A utility sink should be provided. Day rooms may be contiguous with offender living areas provided that space requirements for living areas and day rooms are met. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the cell.

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

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

TRD-9512536 Jack E. Crump
Executive Director
Commission on Jail Standards

Effective date: October 23, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5505

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Chapter 291. Services and Activities

• 37 TAC §291.3

The Commission on Jail Standards adopts an amendment to §291.3, concerning Services and Activities, with changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6806).

Adoption of this rule will make the standards consistent with a newly adopted statute changing the required frequency of commissary audits. It will also require counties submit commissary audits to the commission.

The rule functions to require commissary audits be conducted and submitted to the commission on a yearly basis instead of quarterly.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§291.3. Inmate Commissary Plan. Each facility shall have and implement a written plan, approved by the commission, governing the availability and use of an inmate commissary which allows for the purchase of hygiene items and sundries. The plan shall:

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

(4) provide for yearly audits by the county auditor in accordance with the Local Government Code, §351.0415. The audits shall be submitted to the commission not later than ten days following completion; and

(5) (No change.)

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

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

TRD-9512537 Jack E Crump
Executive Director
Commission on Jail Standards

Effective date: October 23, 1995

Proposal publication date: September 1, 1995

For further information, please call: (512) 463-5505

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

1915(c) Medicaid Home and Community-based Waiver Services for Aged and Disabled Adults Who Meet Criteria for Alternatives to Nursing Facility Care

• 40 TAC §§48.6003, 48.6009, 48.6015

The Texas Department of Human Services (DHS) adopts amendments to §48. 6003 and §48.6009, and new §48.6015. Section 48.6003 is adopted with changes to the proposed text as published in the August 22, 1995, issue of the *Texas Register* (20 TexReg 6402). Section 48.6009 and §48.6015 are adopted without changes and will not be republished.

The justification for the amendments and new section is that more applicants will quality for the program, and the program will be able to serve the number of clients projected in the Appropriations Act.

The amendments and new section will function by allowing greater flexibility in the development of the care plan, to clarify that the term "level of care" criteria means "medical necessity" criteria for nursing facility care, to delete the requirements that are more stringent than nursing facility criteria, to clarify the method of copayment calculation for couples, and to specify the method of calculation of room and board amounts.

No comments were received regarding adoption of the amendments and new section. The department, however, has initiated a change in the proposed text of §48.6003 to correct references to §19.2409, relating to general qualifications for medical necessity determinations, and §19.2410, relating to criteria specific to a medical necessity determination.

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs; and under Texas Civil Statutes, Article 4413(502), §16, which provide the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendments and new section implement the Human Resources Code, §§22. 001-22.024 and §§32.001-32.040.

§48.6003. Client Eligibility Criteria.

(a) To be determined eligible by the Texas Department of Human Services (DHS) for the 1915(c) Medicaid waiver program provided as an alternative to care in a nursing facility, an applicant must:

(1) (No change.)

(2) meet the level-of-care criteria for medical necessity for nursing facility care in accordance with §19.2409 and §19.2410 of this title (relating to General Qualifications for Medical Necessity Determinations and Criteria Specific to a Medical Necessity Determination);

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

(5) have an individual plan of care for waiver services as specified in §48.6006 of this title (relating to Individual Plan of Care for Waiver Services) whose cost does not exceed 95% of the individual's actual Texas Index for Level of Effort payment rate;

(6) meet the financial eligibility criteria for waiver services as specified in §48.6007 of this section (relating to Financial Eligibility Criteria); and

(7) have ongoing needs for waiver services whose projected costs, as

indicated on the Individual Plan of Care, do not exceed the maximum service ceilings set for those services as listed below:

(A) Adaptive Aids and Medical Supplies service category cannot exceed $10,000 per individual per Individual Plan of Care year without approval by the waiver manager;

(B) minor home modifications service category cannot exceed $7500 per individual without approval by the waiver manager;

(C) respite care cannot exceed 30 days per individual per Individual Plan of Care year without approval by the waiver manager; and

(8) receive waiver services within 30 days after waiver eligibility is established.

(b)-(c) (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 October 3, 1995.

TRD-9512576 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Human Services

Effective date: October 24, 1995

Proposal publication date: August 22, 1995

For further information, please call: (512) 438-3765

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OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the ***Texas Register***.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the ***Texas Register***.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Tuesday, November 14, 1995, 9:00 a.m. (Rescheduled from: October 24, 1995.)

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

The hearing on the merits has been rescheduled to the above date and time in SOAH Docket Number 473-95-1206: Application of Southwestern Electric Power Company for approval of agreement for electric service to Eastman Chemical Company (PUC Docket Number 14435).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: October 5, 1995, 8:24 a.m.

TRD-9512672

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Texas Department of Agriculture

Wednesday, October 11, 1995, 7:00 p.m.

Holiday Inn, 2865 West Washington

Stephenville

Texas Peanut Producers Board

AGENDA:

Roll call

Discussion and action: On minutes; election of officers; and research project of high oleio variety of Spanish peanuts.

Discussion: Harvest tour; peanut program

Adjourn

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2853.

Filed: October 3, 1995, 1:08 p.m.

TRD-9512566

Thursday, October 12, 1995, 10:30 a.m.

Texas Department of Agriculture, 1720 Regal Row, Suite 118

Dallas

Office of Hearings

AGENDA:

Note: This is a change of location from notice previously filed on September 21, 1995.

Alleged violation of Texas Agriculture Code Annotated, §§101.001-101.021 and/or §§102.001-102.172 (Vernon 1995) by Goldman-Hayden Company, Incorporated as petitioned by The Produce Cellar, Incorporated.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: October 4, 1995, 3:01 p.m.

TRD-9512649

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The State Bar of Texas

Thursday-Friday, October 12-13, 1995, 8:30 a.m.

The Texas Law Center, 1414 Colorado, Room 206

Austin

The Commission for Lawyer Discipline

AGENDA:

Call to order/introductions/review and discuss: minutes of prior meetings; matters unresolved at prior meetings; approval of representation of respondent attorneys by Special Counsel Robert Hinton; statistical reports; commission's compliance with the State Bar Act, Orders of the Supreme Court, and provisions of the Texas Rules of Disciplinary Procedure; budget and operations of the General Counsel's office and the Commission for Lawyer Discipline; organization and operations of grievance committees; Special Counsel Program; mediation of disciplinary matters/presentations by trial staff/closed session to discuss: pending litigation and matters pending before evidentiary panels of grievance committees; assignment of special counsel; personnel matters/public session to discuss and take appropriate action with respect to those matters discussed in closed session/discuss future meetings; discuss other matters as appropriate come before the commission/receive public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12847, Austin, Texas 78711, 1-800-204-2222.

Filed: October 4, 1995, 1:16 p.m.

TRD-9512669

Thursday-Friday, October 12-13, 1995, 8:30 a.m.

The Texas Law Center, Suite 206, 1414 Colorado

Austin

Revised Agenda

The Commission for Lawyer Discipline

AGENDA:

Add: The case of Manuel Almagauer for discussion and action to Item Numbers 14 and 19.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, (512) 463-1463.

Filed: October 4, 1995, 4:31 p.m.

TRD-9512670

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Texas Education Agency (TEA)

Wednesday, October 11, 1995, 1:00 p.m.

Room 1-104, William B. Travis, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

On Wednesday, October 11, 1995, from 1:00 p.m. until 3:00 p.m., the SBOE Committee of the Whole will have a briefing on performance standards and review of revised draft of the Articles of Incorporation and Bylaws of the Texas Permanent School Fund Management Company, Inc.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 483-9701.

Filed: October 3, 1995, 1:07 p.m.

TRD-9512562

Wednesday, October 11, 1995, 3:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

On Wednesday, October 11, 1995, from 3:00 p.m. until 5:00 p.m., the SBOE Committee of the Whole will have a briefing on the proposed application and criteria for selection of open-enrollment charters.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 3, 1995, 1:07 p.m.

TRD-9512561

Thursday, October 12, 1995, 8:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

Briefing on standard setting for statewide tests (to the extent necessary, the discussion of individual assessment instruments and assessment items is confidential and not open to the public; and the discussion will be held in executive session in accordance with the Texas Education Code, §39.030 in Room 1-103).

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-9701.

Filed: October 4, 1995, 9:35 a.m.

TRD-9512613

Thursday, October 12, 1995, 10:00 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee of the Whole

AGENDA:

Public testimony; commissioner's overview of the October 1995 State Board of Education (SBOE) meeting; and discussion of pending litigation, this discussion will be held in executive session in accordance with §551.071(1) (A), Texas Government Code, and will include a discussion of Edgewood ISD et al v. Meno and related school finance litigation, Angel G. et al v. Meno, et al, T.E.A. et al v. Gary W. Leeper et ux, et al relating to home schooling Maxwell, et al v. Pasadena ISD relating to Texas Assessment of Academic Skills (TAAS) testing, and Casias, et al v. Moses, et al relating to accountability intervention. NOTE: The Committee of the Whole will meet in Room 1-103 to discuss pending program.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701 (512) 463-9701.

Filed: October 4, 1995, 9:35 a.m.

TRD-9512614

Thursday, October 12, 1995, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on School Finance

AGENDA:

Public testimony; school finance update; proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; discussion of the proposed repeal and/or readoption of the following of 19 TAC Chapters: Chapter 68, Transportation; Chapter 105, Foundation School Program; Chapter 109, Budgeting, Accounting, and Auditing; Chapter 113, Federal Funds to Support Public Education in Texas; Chapter 121, Public School Finance-Personnel; Chapter 176, Minimum Standards for Operation of Licensed Texas Driver Training Programs; review of the annual Administrative and Program strategic budget for the 1995-1996 fiscal year; and discussion of Proclamation 1995 of the SBOE advertising for bids on instructional materials.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 4, 1995, 9:36 a.m.

TRD-9512617

Thursday, October 12, 1995, 1:00 p.m.

Room 1-100, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Students

AGENDA:

Public testimony; setting standards on the Algebra I end-of-course test (to the extent necessary, the discussion of individual assessment instruments and assessment items is confidential and not open to the public, and the discussion will be held in executive session in accordance with the Texas Education Code, §39.030); discussion of proposed repeal and readoption of 19 TAC Chapter 78, Vocational and Applied Technology Education; update on the clarification of essential knowledge and skills process; Proclamation 1995 of the SBOE advertising for bids on instructional materials.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 4, 1995, 9:36 a.m.

TRD-9512616

Thursday, October 12, 1995, 1:00 p.m.

Room 1-111, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Personnel

AGENDA:

Public testimony; proposed application, procedures, and criteria for selection of open-enrollment charters; adoption of test frameworks for the Examination for the Certification of Educators in Texas (ExCET); adoption of tests for the ExCET (to the extent necessary, the discussion of individual assessment instruments and assessment items is confidential and not open to the public, and the discussion will be held in executive session in accordance with the Texas Education Code, §21.048 and conforming amendment to Senate Bill 1, 74th Texas Legislature, §63); discussion of proposed repeal and readoption of 19 TAC Chapter 97, Planning and Accreditation; discussion of proposed school board member training requirements; discussion of ongoing communications activities; status report on the accreditation, interventions, and sanctions of school districts.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 4, 1995, 9:35 a.m.

TRD-9512615

Friday, October 13, 1995, 8:30 a.m.

Room 1-109, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on the Permanent School Fund (PSF)

AGENDA:

Public testimony; election of chairperson of the Committee on the PSF resulting from the vacancy created by the resignation of Esteban Sosa; approval of the articles of incorporation and the bylaws of the Texas PSF Management Company, Inc.; authorize the executive administrator of the Texas PSF to proceed with the incorporation of the Texas PSF Management Company, Inc. ; recommended approval of purchases/sales in the investment portfolio of the PSF for September; discussion of the contract for the investment of funds under control and management of the SBOE, including the Texas PSF, as designated by the board; review of PSF securities trademark transactions and the investment portfolio; and report of the PSF executive administrator.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 4, 1995, 9:36 a.m.

TRD-9512619

Friday, October 13, 1995, 8:30 a.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE) Committee on Long-Range Planning

AGENDA:

Public testimony; adoption of Long-Range Plan for Public Education, 1996-2000; discussion of proposed repeal and readoption of 19 TAC Chapter 65, Technology; revision of the Long-Range Plan for Technology, 1988-2000; discussion of federal governmental relations activities.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 4, 1995, 9:36 a.m.

TRD-9512618

Friday, October 13, 1995, 1:00 p.m.

Room 1-104, William B. Travis Building, 1701 North Congress Avenue

Austin

State Board of Education (SBOE)

AGENDA:

Approval of September 8, 1995 SBOE minutes; public testimony; SBOE resolutions; proposed application, procedures, and criteria for selection of open-enrollment charters; adoption of test frameworks for the Examination for the Certification of Educators in Texas (ExCET); adoption of tests for the ExCET (to the extent necessary, the discussion of individual assessment instruments and assessment items is confidential and not open to the public, and the discussion will be held in executive session in accordance with the Texas Education Code, §21.048 and conforming amendment to Senate Bill 1, 74th Texas Legislature, §63); setting standards on the Algebra I end-of-course test (to the extent necessary, the discussion of individual assessment instruments and assessment items is confidential and not open to the public, and the discussion will be held in executive session in accordance with the Texas Education Code, §39.030 in Room 1-103; proposed new 19 TAC Chapter 66, State Adoption and Distribution of Instructional Materials; adoption of the Long-Range Plan for Public Education, 1996-2000; approval of the articles of incorporation and the bylaws of the Texas Permanent School Fund (PSF) Management Company, Inc.; authorize the executive administrator of the Texas PSF to proceed with the filing of the articles of incorporation of the Texas PSF Management Company, Inc.; recommended approval of purchases/sales in the investment portfolio of the PSF for September; information on agency administration.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701.

Filed: October 4, 1995, 9:37 a.m.

TRD-9512620

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Employees Retirement System of Texas

Monday, October 16, 1995, 2:00 p.m.

18th and Brazos, Auditorium, First Floor

Austin

Group Benefits Advisory Committee

AGENDA:

1. Call to order
2. Introduction of GBAC members
3. Recognition of visitors and guests
4. Office nomination and election:

a. Chair

b. Co-chair

c. Parliamentarian

5. Approval of minutes from previous meeting
6. Announcements/updates
7. ERS update and briefing on revisions to the Uniform Group Insurance Program Strategic Plan
8. Standing subcommittee reports
9. Other related benefits business
10. Adjournment

Contact: James W. Sarver, 18th and Brazos, Austin, Texas 78701, (512) 867-3217.

Filed: October 3, 1995, 4:00 p.m.

TRD-9512581

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Office of the Governor

Friday-Saturday, October 27-28, 1995, 1:00 p.m. and 9:00 a.m., respectively.

Building 11199, Fort Bliss, Texas, The Centennial Club

El Paso

Texas Governor's Committee on People with Disabilities

AGENDA:

Regular Quarterly Meeting

1. Full committee meeting, call to order, introductions, and approval of minutes.
2. Public comment.
3. Organization reports.
4. Member reports.
5. Executive director's report.

6. Discussion regarding involvement of small businesses and minority-owned businesses in employment of people with disabilities.

7. Proposal for co-sponsorship of Conference on Insurance and Disability.

8. Recess.

9. Call to order.

10. Concurrent subcommittee meetings.

11. Subcommittee action items.

12. Adjournment.

Contact: Virginia Roberts, 1100 San Jacinto, Austin, Texas 78701, (512) 463-5739.

Filed: October 3, 1995, 2:28 p.m.

TRD-9512571

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State Independent Living Council

Friday-Saturday, October 20-21, 1995, 8:00 a.m.

The Omni Hotel, 701 East Campbell

Richardson

AGENDA:

Call to order, introduction, election ballots, meet with RSA, standards and indicators, finance report, TRC and TCB reports, subcommittee work.

Contact: Brenda Shaw, 8610 Broadway, Suite 420, San Antonio, Texas 78217, (210) 805-9013.

Filed: October 3, 1995, 3:38 p.m.

TRD-9512573

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Texas Department of Licensing and Regulation

Wednesday, October 11, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of administrative penalties against respondent, Karl Frey, owner of Park Apartments, for failure to remit inspection fees to obtain a Certificate of Operation for boiler Number TX-100889, which was inspected on October 23, 1992, and November 17, 1994, a violation of the Texas Health and Safety Code, §755.021 and 16 TAC §65.20(c)(1)(C)-two counts.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: October 3, 1995, 4:03 p.m.

TRD-9512582

Wednesday, October 11, 1995, 9:00 a.m.

920 Colorado, E.O. Thompson Building, First Floor, Room 108

Austin

Enforcement Division, Boilers

AGENDA:

According to the complete agenda, the Department will hold an administrative hearing to consider the possible assessment of administrative penalties against respondent, Karl Frey, owner of Park Apartments, for failure to remit inspection fees to obtain a Certificate of Operation for Boiler Number TX-100889, which was inspected on October 23, 1992, and November 17, 1994, a violation of the Texas Health and Safety Code, §775.021 and 16 TAC §65.20(c)(1)(C)-two counts.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: October 3, 1995, 4:03 p.m.

TRD-9512583

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Texas State Board of Medical Examiners

Thursday, October 12, 1995, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Ad Hoc Committee on Non-Profit Health Organizations

AGENDA:

1. Call to order

2. Roll call

3. Consideration, discussion, and possible action on rules related to the certification of non-profit health organizations

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:51 p.m.

TRD-9512650

Thursday, October 12, 1995, 1:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Disciplinary Process Review Committee

AGENDA:

1. Call to order

2. August 1995 Enforcement Report

3. September 1995 Enforcement Report

4. Fiscal Year 1995 Annual Enforcement Report

5. Discussion of utilization of District Review Committees

6. Discussion, recommendations, and possible action on recusal of board members

7. Discussion, recommendations, and possible action on revision of Disciplinary Guidelines

8. Discussion of Memorandum of Understanding with Texas Department of Mental Health/Mental Retardation

9. Discussion of procedures for granting or denying continuances of Informal Settlement Conference/show compliance proceedings

10. Discussion of procedures for selection of Informal Settlement Conference/show compliance panels

11. Executive session to review selected files and cases recommended for dismissal by Informal Settlement Conferences

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Civil Statutes, §2.07(b) and 2.09(o) to discuss pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:51 p.m.

TRD-9512651

Thursday, October 12, 1995, 1:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Joint Meeting/Reciprocity and Examination Committees

AGENDA:

Call to order

Roll call

Discussion and possible action on proposed rules/information on Administrative Medicine

Discussion and possible action on the Medical Practice Act, §3.04(g)(3) pertaining to eligibility for licensure in the country of graduation (formerly §5.035(a)(4))

Discussion and possible action on the use of rehabilitation orders for licensure applicants

Discussion and possible action on proposed rules regarding NBOME/COMLEX examination

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:51 p.m.

TRD-9512652

Thursday, October 12, 1995, 2:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Examination Committee

AGENDA:

Agenda includes review of licensure, review of letters of eligibility, review of letter regarding John Hopkins fellowship, review of the June 1995 USMLE Step 3 and Texas medical Jurisprudence Examination results, and review of the new Texas Medical Jurisprudence Examination

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 Civil Statutes, to review applicant files for licensure. Executive session under the authority of Article 4495b, §3.05(d), Texas Civil Statutes; and Attorney General Opinion H-484, to review the new jurisprudence examination.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:52 p.m.

TRD-9512653

Thursday, October 12, 1995, 2:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Reciprocity Committee

AGENDA:

2:00 p.m. Call to order

Roll call

Review of licensure applicants referred to the Reciprocity Committee by the Executive Director for determinations of eligibility for licensure:

2:00 p.m. Mark Tyree Byram, M.D., Lloyd K. Everson, M.D., Nagy H. Morsi, M. D., Marcus Eric Hinkle, M.D.

3:00 p.m. Marise Kelly, M.D., Richard Leff, M.D., Virginia Irene Stark-Vances, M.D., Monte Mark Mitchell, D.O.

4:00 p.m. Roger J. Belbel, D.O.

Executive sessions 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 Civil Statutes.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:52 p.m.

TRD-9512654

Friday, October 13, 1995, 8:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Finance Committee

AGENDA:

Call to order

Roll call

Review financial statements

Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:52 p.m.

TRD-9512655

Friday, October 13, 1995, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Standing Orders Committee

AGENDA:

Call to order

Discussion, recommendation, and action on proposed Acupuncture Rules related to licensure and acupuncture schools, §183.2 and §183.20

Discussion and action on proposed agreed order for issuance of the acupuncture license with restrictions, Gary Richard Stier

Review and consideration for approval of acupuncture licensure applications as recommended by Board of Acupuncture Examiners

Recommendation from Physician Assistant Board concerning Physician Assistants certified in obstetrics

Adjourn

Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and Article 4495b, and Article 4495b-1, §4(h), Texas Civil Statutes, and Article 22 of the Texas Administrative Code, Chapter 185. 3(h).

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:52 p.m.

TRD-9512656

Friday, October 13, 1995, 9:30 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Joint Meeting/Medical School and Public Information Committees

AGENDA:

Call to order

Roll call

Review of medical school visit slide presentation

Discussion, consideration, and possible action on the year-end Legislative brochure

Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:52 p.m.

TRD-9512657

Friday, October 13, 1995, 10:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

Executive Committee

AGENDA:

Call to order

Roll call

Review of Texas retired physician referred to the Executive Committee by the Executive Director for a determination of eligibility to return to the active practice of medicine*:

Edward V. Stalzer, M.D.

Adjourn

*Executive session under the authority of the Open Meetings Act, §551.071 of the Government Code and the Medical Practice Act, Article 4495b, Texas Civil Statute §2.07(b) and §2.09(o) to discuss pending or contemplated litigations.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:52 p.m.

TRD-9512658

Friday, October 13, 1995, 4:00 p.m.

1812 Centre Creek Drive, Suite 300

Austin

Ad Hoc Committee on Telemedicine

AGENDA:

Call to order

Roll call

Consideration, discussion, and possible action on issues related to telemedicine

Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext. 402, Fax (512) 834-4597.

Filed: October 4, 1995, 3:52 p.m.

TRD-9512659

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Texas Natural Resource Conservation Commission

Wednesday, October 11, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

Revised Agenda

AGENDA:

Addendum submitted to add an additional rule, executive session, and corrected caption.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: October 3, 1995, 1:44 p.m.

TRD-9512568

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Public Utility Commission of Texas

Wednesday, October 11, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action on: Agency restructuring; D. 12065; D. 13727 (SOAH Docket Number 473-95-1184); D. 14500; P. 14068-PUC filing reply comments in the FERC Mega-NOFR, FERC Docket Number RM95-8-000 and Docket Number RM94-7-001; PURA §2.056(b); P. 14604-Evaluation of customer complaints related to Energy Corporation and GSU; P. 14045; certification to Securities Exchange Commission; comments to the Railroad Commission regarding Union Pacific Corporation's proposed acquisition of Southern Pacific Rail Corporation; D. 13575; D. Numbers 14031, 14032; P. 13219 and 13220; standards for intervention and participation in joint EAS petitions; P. 13220 dealing with competitive EAS issues and EAS access; P. 14563-Petition for rulemaking relating to N-1-1; P. 14732-amendment to 23.41; P.14440-new rule concerning interconnection; D. 12541; D. 12549, D. 14279; D. 14310; D. 14390; D. 14346; D. 12817; staff's evaluation of the earnings reports; procedure for issuing final orders; agency administrative procedures; approval of the 1996 operating budget; budget and fiscal matters; adjournment for closed session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in closed session.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: October 3, 1995, 3:46 p.m.

TRD-9512574

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Texas Senate

Wednesday, October 11, 1995, 9:30 a.m.

1100 Congress Avenue, Senate Chamber

Austin

Interim Committee on Juvenile DWI Laws

AGENDA:

I. Call to order

II. Roll call and opening remarks

III. Committee business

A. Adoption of committee rules

B. Discussion of charges and issues

C. Approval of timeline, committee hearing dates and locations

IV. Invited testimony

V. Other business

VI. Adjourn

Contact: Janna Burleson, P.O. Box 12068, Austin, Texas 78703, (512) 463-0123.

Filed: October 4, 1995, 2:19 p.m.

TRD-9512635

Thursday, October 19, 1995, 3:00 p.m.

1100 Congress Avenue, Senate Chamber

Austin

Intergovernmental Relations Committee

AGENDA:

I. Organizational meeting

Contact: Amy Kelley, P.O. Box 12068, Austin, Texas 78701, (512) 463-0385.

Filed: October 4, 1995, 2:18 p.m.

TRD-9512634

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State Board of Examiners for Speech-Language Pathology and Audiology

Thursday, October 12, 1995, 11:00 a.m.

Jim Hogg Room, Driskill Hotel, 604 Brazos

Austin

AGENDA:

The board will meet to discuss and possibly act on: approval of the minutes from the April 22, 1995 question and answer session and meeting with universities' staff; minutes of the Rule Changes Committee, Speech-Language Scope of Practice Committee, Audiology Scope of Practice Committee and public hearing on proposed repeal of existing §741.32 and new §741.32 held on July 27, 1995; approval of the minutes of the July 28, 1995 board meeting; complaints (all active complaints; update on closed complaints; review memo from Ed Matsis, Complaints Management and Investigation Section, regarding duties and responsibilities); Rules Changes Committee report (comments on proposed rules as published in Volume 20, #67 of the *Texas Register*; adoption of final rules; Speech-Language Pathology Scope of Practice Committee report; Audiology Scope of Practice Committee Report (early identification of hearing impaired infants); Ethics Committee report; fees/budget report (travel expenses to Texas Speech-Language Hearing Association questions and answers session to be held in Dallas in 1996; and review Texas Department of Health accounting detail and fee activity charts); applications/renewal report (attorney general's letter regarding suspension of license for failure to pay child support; and renewal of licensee who lives in a foreign country); Continuing Education report (American Audiology Association's request to become a continuing education sponsor); exemption to Act report; scope of practice report (speech-language pathology); scope of practice report (audiology); supervision of support personnel report (caseload limit; and communication helper); public relations report; Health Professions Council report; Fitting and Dispensing of Hearing Instruments report (discuss the Board of Examiners for Fitting and Dispensing of Hearing Instruments' position regarding Texas Civil Statutes, Article 4566-1.16A, on surety bonding; comment on their proposed rules; and request an attorney general's opinion on the surety bonding matter); and legislative review report (telephone conference call meetings); set next meeting date; and other matters relating to licensing and regulation of speech-language pathologists and audiologists not requiring board action.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. For ADA assistance, call Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 3, 1995, 3:58 p.m.

TRD-9512580

Thursday, October 12, 1995, 2:00 p.m.

Jim Hogg Room, Driskill Hotel, 604 Brazos

Austin

Audiology Scope of Practice Committee

AGENDA:

The committee will prepare a draft on how to implement a program for early identification of hearing-impaired infants.

Contact: Dorothy Cawthon, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6627. For ADA assistance, call Richard Butler (512) 458-6410 or T.D.D. (512) 458-7708 at least two days prior to the meeting.

Filed: October 3, 1995, 3:58 p.m.

TRD-9512579

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Teacher Retirement System of Texas

Thursday, October 12, 1995, 1:00 p.m.

1000 Red River, Room 514

Austin

Board of Trustees Policy Committee

AGENDA:

Approval of minutes of July 20, 1995, and September 14, 1995, meetings; consideration of proposed changes to the investment policy statement.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411. For ADA assistance, contact Mary Godzik (512) 397-6411 or T.D. D. (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: October 3, 1995, 4:07 p.m.

TRD-9512587

Friday, October 13, 1995, 7:45 a.m.

1000 Red River, Room 514

Austin

Board of Trustees Nominations Committee

AGENDA:

Approval of minutes of June 16, 1995, meeting; consideration of nomination of vice chairman of the board of trustees; and consideration of nomination of trustee representative on the Texas Growth Fund Board of Trustees.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411. For ADA assistance, contact Mary Godzik (512) 397-6411 or T.D. D. (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: October 3, 1995, 4:08 p.m.

TRD-9512588

Friday, October 13, 1995, 8:00 a.m.

1000 Red River, Henry M. Bell Jr. Boardroom

Austin

Board of Trustees

AGENDA:

Introduction of new board members; roll call of board members; consideration of board members' absence from September 15, 1995, meeting; report of Nominations Committee; consideration of proposed changes to TRS approved stock lists; report of Policy Committee and consideration of proposed changes to the investment policy statement; discussion of the employment of the executive director and interview of candidates for position; consideration of the employment of the executive director; consideration of signature authorization to approve and sign vouchers.

Contact: Mary Godzik, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6411. For ADA assistance, contact Mary Godzik (512) 397-6411 or T.D. D. (512) 397-6444 or (800) 841-4497 at least two days prior to the meeting.

Filed: October 3, 1995, 4:07 p.m.

TRD-9512586

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Texas Woman's University

Friday-Saturday, October 13-14, 1995, 2:00 p.m. and 8:00 a.m., respectively.

15201 Dallas Parkway, Grand Kempinski Hotel, Metroplex Room

Dallas

Board of Regents' Retreat

AGENDA:

Friday, October 13

2:00 p.m.-Welcome reception

2:30 p.m.-Program presentation and discussions on effective governance

Facilitator: Dr. David Johnson

6:30 p.m.-Questions and answers on above program material

Saturday, October 14

8:00 a.m.-Continental breakfast

8:30 a.m.-Program presentation and discussions on effective governance continued

12:30 p.m.-Lunch; open discussions on materials presented in morning session

1:30 p.m.-Special topics discussions led by regents or staff

(a) Centennial-led by Dr. Carol Surles

(b) University investment policy/procedure (including discussion of financial advisor)-led by Jayne Lipe

(c) Presidential evaluation process-led by Nan Bailey

(d) Legislative affairs and university representation-led by Dr. Carol Surles

(e) Memorial designations-led by Sheila Whitaker-Kellagher

(f) Closing comments

Estimated adjournment-4:00 p.m.

This is an educational retreat. No formal action will be taken.

Contact: Dr. Carol D. Surles, P.O. Box 23925, Denton, Texas 76204, (817) 898-3201.

Filed: October 3, 1995, 3:46 p.m.

TRD-9512575

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Texas Department of Transportation

Saturday, October 21, 1995, 10:30 a.m.

200 Riverside, Room 102

Austin

Aviation Advisory Committee

AGENDA:

Convene service awards. Approval of minutes from August 18, 1995 meeting. Report on General Accounting Office visit. Update on project awarded to City of Edinburg. Report on airport programming and continuous cost management. Update of fiscal year 1996 Airport Improvement Program. Report of request for qualifications and request for proposals issued in September. Review of approved Aviation Division operating budget for 1996. Report on State Block Grant Program. Public comment. Adjourn.

Contact: Suetta Murray, 150 East Riverside Drive, Austin, Texas 78704, (512) 416-4504.

Filed: October 3, 1995, 4:59 p.m.

TRD-9512590

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Texas Worker's Compensation Commission

Wednesday, October 11, 1995, 11:00 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Hearing

AGENDA:

1. Call to order

2. Transfer of APA hearings to the State Office of Administrative Hearings including Rules 114.15, 164.2, 164.5, 164.10, 164.15, 133.206, 145.1, 180.8, 120.2, 120.3, 124.1, Chapter 148 and Chapter 149

Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: October 4, 1995, 1:35 p.m.

TRD-9512630

Wednesday, October 11, 1995, 2:00 p.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Hearing

AGENDA:

1. Call to order

2. Public comments taken on: Rule 134.1002, Upper Extremity Treatment Guideline

3. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: October 4, 1995, 1:35 p.m.

TRD-9512631

Thursday, October 12, 1995, 9:00 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Public Meeting

AGENDA:

1. Call to order

2. Approval of minutes for the public meeting of September 6-7, 1995

3-6. Discussion and possible action on proposal of new or amended rules resulting from issues identified in House Bill 1089, 74th Legislature, 1995: Rules 109.1, 147.11, 134.100, 160.2

7. Discussion and possible action on proposal of new rule: Rule 108.1

8. Discussion and possible action on Texas Workers' Compensation Commission Procedure: C-5.000

9-10. Discussion and possible action on proposal of new rules: Rules 134. 201, 134.601, 134.602

11-13. Discussion and possible action on proposal of repeal of rules: Rules 108.1, 134.201, and 134.600

14-19. Discussion and possible action on rules for possible adoption of new or amended rules: Rules 102.6, 120.2, 120.3, 124.1, 114.2, 110.110, and 166.8

20-21. Discussion and possible action on adoption of repeal of rules: Rule 102.6 and 166.109

22. Discussion and possible action on selection of vice-chairman

23. Discussion and possible action on Medical Advisory Committee bylaws and appointments to fill vacancies

24. Executive session

25. Action on matters considered in executive session

26. Discussion and possible action on subcommittee assignments

27. General reports, discussion and possible action on issues relating to commission activities

28. Confirmation of future public meetings and hearings

29. Adjournment

Contact: Todd K. Brown, 4000 South IH-35, Austin, Texas 78704, (512) 440-5690.

Filed: October 4, 1995, 1:35 p.m.

TRD-9512629

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Texas Workers' Compensation Insurance Fund

Thursday, October 12, 1995, 7:00 p.m.

The Radisson Resort, 500 Padre Boulevard

South Padre Island

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 Thursday, October 12, 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) 484-7142.

Filed: October 4, 1995, 2:17 p.m.

TRD-9512635

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Texas Workforce Commission

Wednesday, October 11, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; executive session to discuss qualifications and duties of executive director; actions, if any, resulting from executive session; consideration and possible approval of bid for roof repairs at the Texas City agency-owned building; staff report; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 41; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 3, 1995, 4:06 p.m.

TRD-9512585

Thursday, October 12, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; executive session to discuss qualifications and duties of executive director; actions, if any, resulting from executive session; consideration and possible approval of bid for roof repairs at the Texas City agency-owned building; 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 41; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 4, 1995, 4:05 p.m.

TRD-9512665

Friday, October 13, 1995, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; executive session to discuss qualifications and duties of executive director; actions, if any, resulting from executive session; consideration and possible approval of bid for roof repairs at the Texas City agency-owned building; 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 41; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: October 4, 1995, 4:05 p.m.

TRD-9512666

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Regional Meetings

Meetings Filed October 3, 1995

The Bexar-Medina-Atascosa Counties Water Control and Improvement District #1 Board of Directors met at 221 Highway

132, Natalia, October 9, 1995, at 8:00 a.m. Information may be obtained from John W. Ward III, BMA #1, P.O. Box 170, Natalia, Texas 78059, (210) 665-2132. TRD-9512570.

The Blanco County Appraisal District 1995 Board of Directors will meet at 200 North Avenue G, Johnson City, October 10, 1995, at Noon. Information may be obtained from Hollis Boatright, P.O. Box 338, Johnson City, Texas 78636, (210) 868-4013. TRD-9512572.

The Central Plains Center for MHMR and SA Board of Trustees met at 208 South Columbia, Plainview, October 7, 1995, at 2:00 p.m. Information may be obtained from Gail P. Davis, 2700 Yonkers, Plainview, Texas 79072; (806) 293-2636. TRD-9512560.

The Concho Valley Council of Governments Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, October 11, 1995, at 7:00 p. m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9512578.

The Concho Valley Quality Work Force Planning Labor Market Information and Management Task Force Subcommittee met at Howard College at San Angelo, Room 2, 3197 Executive Drive, San Angelo, October 6, 1995, at 3:00 p.m. Information may be obtained from Catherine Cordova, 3197 Executive Drive, San Angelo, Texas 76904, (915) 944-9856, Fax: (915) 947-9529. TRD-9512563.

The Concho Valley Quality Work Force Planning Executive Committee will meet at Howard College at San Angelo, Room 2, 3197 Executive Drive, San Angelo, October 10, 1995, at 3:00 p.m. Information may be obtained from Catherine Cordova, 3197 Executive Drive, San Angelo, Texas 76904, (915) 944-9856, Fax: (915) 947-9529. TRD-9512564.

The Concho Valley Quality Work Force Planning Full Committee will meet at Howard College at San Angelo, Room 2, 3197 Executive Drive, San Angelo, October 10, 1995, at 4:00 p.m. Information may be obtained from Catherine Cordova, 3197 Executive Drive, San Angelo, Texas 76904, (915) 944-9856, Fax: (915) 947-9529. TRD-9512565.

The North Central Texas Council of Governments Workforce Development Board will meet at Centerpoint Two, 616 Six Flags Drive, Third Floor Board Room, Arlington, October 13, 1995, at 1:00 p.m. Information may be obtained from Cassandra J. Vines, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 695-9176. TRD-9512589.

The San Patricio County Appraisal District Board of Directors will meet at 1146 East Market, Sinton, October 12, 1995, at 10:00 a.m. Information may be obtained from Kathryn Vermillion, P.O. Box 938, Sinton, Texas 78387, (512) 364-5402. TRD-9512584.

The South Franklin Water Supply Corporation Board of Directors will meet at the office of South Franklin Water Supply Corporation, 4430 Highway 115, South of Mount Vernon, October 10, 1995, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 860-3400. TRD-9512567.

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Meetings Filed October 4, 1995

The Austin Transportation Study Policy Advisory Committee met at the Joe C. Thompson Conference Center, 26th and Red River, Room 2.102, Austin, October 9, 1995, at 6:00 p.m. Information may be obtained from Michael R. Aulick, P.O. Box 1088, Austin, Texas 78701, (512) 499-2569. TRD-9512624.

The Deep East Texas Private Industry Council Inc. will meet in Room 102, Lufkin City Hall, 300 East Shepherd Street, Lufkin, October 10, 1995, at 2:30 p.m. Information may be obtained from Charlene Meadows, P.O. Box 1423, Lufkin, Texas 75901, (409) 634-4432. TRD-9512621.

The Gregg Appraisal District Board of Directors will meet at 2010 Gilmer Road, Longview, October 10, 1995, at 11:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9512648.

The Hamilton County Appraisal District Board will meet at 119 East Henry, Hamilton, October 10, 1995, at 7:00 a.m. Information may be obtained from Doyle Roberts, 119 East Henry, Hamilton, Texas 76531, (817) 386-8945. TRD-9512661.

The High Plains Underground Water Conservation District Number 1 Board will meet at 2930 Avenue Q, Board Room, Lubbock, October 10, 1995 at 10: 00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181. TRD-9512660.

The Lometa Rural Water Supply Corporation Board of Directors met at 506 West Main Street, Lometa, October 9, 1995, at 7:00 p.m. Information may be obtained from Levi G. Cash or Tina L. Hodge, P.O. Box 158 Lometa, Texas 76853, (512) 752-3505. TRD-9512664.

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee will meet at 434 South Main, Suite 205, San Antonio, October 10, 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-9512628.

The San Jacinto River Authority Board of Directors will meet at 2301 North Millbend Drive, Woodlands, October 10, 1995, at 8:45 a.m. Information may be obtained from P.O. Box 329, Conroe, Texas 77305, (409) 588-1111. TRD-9512671.

The South Plains Association of Governments Executive Committee will meet at 1323 58th Street, Lubbock, October 10, 1995, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9512663.

The South Plains Association of Governments Board of Directors will meet at 1323 58th Street, Lubbock, October 10, 1995, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Freedom Station, Lubbock, Texas 79452-3730, (806) 762-8721. TRD-9512662.

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Meetings Filed October 5, 1995

The Nueces River Authority Nominating Committee will meet at the Plaza San Antonio Hotel, 555 South Alamo Street, San Antonio, October 13, 1995, at 10:30 a.m. Information may be obtained from Con Mims P.O. Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9512680.

The Nueces River Authority Board of Directors will meet at the Plaza San Antonio Hotel, 555 South Alamo Street, San Antonio, October 13, 1995, at 11:00 a.m. Information may be obtained from Con Mims P.O. Box 349, Uvalde, Texas 78802-0349, (210) 278-6810. TRD-9512681.

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Name: Angela Hazell
Grade: 4
School: Malakoff Elementary School, Malakoff ISD

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Education Agency

Request for Proposals for Production and Broadcast of Live Programming for the T-STAR Network.

Filing Authority. Request for Proposals (RFP) #701-96-001 is authorized under the Texas Education Code, §32.033.

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals from independent producers, private for-profit companies, individuals, institutions of higher education, regional education service centers, public television stations, and nonprofit corporations to produce live interactive television programming for the T-STAR Network. The programming may be comprised of live panel-to-audience discussion based on pre-produced instructional and educational video segments, as well as additional creative components, for the purposes of increasing educational staff awareness and developing selected TEA public education initiatives. All programming will be delivered by the contractor to the T-STAR Network via satellite uplink. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The selected contractor will produce a series of programs based on a selected topic contained in the RFP, subject to conditions and specifications outlined therein. The topic selected for this RFP is: teacher appraisal systems. The contractor will work closely with the TEA topic-specific division liaison in determining the scope and structure of each program to be produced in the series, as well as determining panel members to be included in live interactive discussion with members of the viewing audience.

Dates of Project. All services and activities related to this proposal will be conducted during the 1995-1996 school year. Proposers should plan for a starting date of no earlier than January 10, 1996, and an ending date of no later than May 25, 1996.

Project Amount. One contractor may be selected to receive funding from $75, 000 to $100,000 during the contract period. The final funding total will vary depending on the amount of in-kind contributions offered by a proposer. Project funding in the 1996-1997 school year will be based on the satisfactory progress of the 1995-1996 objectives and activities and general budget approved by the State Board of Education and the commissioner of education.

Selection Criteria. A proposal will be selected based on the ability of the proposer to carry out all the requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer and the reasonableness of the proposed budget. Special consideration will be given to proposers that form cooperative ventures with educational entities to produce the programming. The TEA reserves the right to select from the highest ranking proposals those that address all the requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-96-001 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Please refer to the RFP number in your request.

Further Information. For clarifying information about the RFP, contact Jackie Ginsberg or Robert Young, Division of Technology Services, Texas Education Agency, (512) 463-9400.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m., Central Standard Time, Monday, November 27, 1995.

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

TRD-9512608 Criss Cloudt
Associate Commissioner for Policy Planning and Research
Texas Education Agency

Filed: October 4, 1995

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Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Brownwood	Brownwood Regional Medical Center	L02322	Brownwood	26	09/22/95
Brownwood	Brownwood Regional Medical Center	L04765	Brownwood	3	09/26/95
Dallas	Methodist Hospitals of Dallas	L00659	Dallas	31	09/28/95
Dallas	St. Paul Medical Center	L01065	Dallas	37	09/26/95
Donna	E. I. du Pont de Nemours and Company	L04566	Donna	2	09/25/95
Fannin	Central Power and Light Company	L02519	Corpus Christi	12	09/26/95
Fort Worth	Osteopathic Medical Center of Texas	L00730	Fort Worth	41	09/25/95
Harlingen	Valley Baptist Medical Center	L01909	Harlingen	37	09/26/95
Houston	Memorial Care System	L00439	Houston	49	09/25/95
Houston	Ben Taub General Hospital	L01303	Houston	41	09/20/95
Houston	Longview Inspection	L01774	Houston	96	09/15/95
Houston	HVJ Associates, Inc.	L03813	Houston	14	09/15/95
Lubbock	Saint Mary of the Plains Hospital and Rehabilitation	L01547	Lubbock	43	09/22/95
Mount Vernon	East Texas Medical Center - Mt. Vernon	L03013	Mount Vernon	10	09/25/95
Nacogdoches	AMI Nacogdoches Medical Center	L02853	Nacogdoches	11	09/25/95
Temple	Scott and White Memorial Hospital	L00331	Temple	49	09/25/95
Temple	Ralph Wilson Plastics Company	L02857	Temple	9	09/28/95
Texas City	Sterling Chemicals Incorporated	L03952	Texas City	9	09/27/95
Throughout Texas	Century Inspection, Inc.	L00062	Dallas	72	09/15/95
Throughout Texas	Mobil Oil Corporation	L00603	Beaumont	56	09/28/95
Throughout Texas	Longview Inspection	L01774	Houston	97	09/15/95
Throughout Texas	H & G Inspection Company, Inc.	L02181	Houston	95	09/15/95
Throughout Texas	Panhandle N.D.T. & Inspection, Inc.	L02627	Borger	33	09/20/95
Throughout Texas	Lower Colorado River Authority	L02738	Austin	15	09/15/95
Throughout Texas	METCO	L03018	Houston	44	09/26/95
Throughout Texas	Applied Standards Inspection, Inc.	L03072	Beaumont	44	09/21/95
Throughout Texas	TN Technologies Inc.	L03524	Round Rock	37	09/26/95
Throughout Texas	Global X-Ray & Testing Corp.	L03663	Aransas Pass	44	09/22/95
Throughout Texas	Petroleum Industry Inspectors	L04081	Houston	47	09/20/95
Throughout Texas	Guardian NDT Services Inc.	L04099	Corpus Christi	0	09/27/95
Throughout Texas	M W Inspection	L04494	Mineral wells	2	09/15/95
Throughout Texas	Gilbert Texas Construction Corporation	L04569	Fort Worth	11	09/15/95
Throughout Texas	Rhodes Testing	L04702	Longview	1	09/25/95
Throughout Texas	Quarry Materials Corporation	L04816	San Antonio	1	09/25/95

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Tyler	East Texas Medical Center	L00977	Tyler	62	09/18/95
Victoria	Occidental Chemical Corporation	L04101	Victoria	6	09/21/95
Waco	Texas State Technical College at Waco	L01926	Waco	28	09/28/95
Wadsworth	Houston Lighting and Power Company	L04222	Wadsworth	9	09/21/95
Waxahachie	Baylor Medical Center - Ellis Count	L04536	Waxahachie	6	09/26/95
Wharton	Gulf Coast Medical Center	L01388	Wharton	29	09/22/95
Wichita Falls	Bethania Regional Health Care Center	L01844	Wichita Falls	42	09/26/95

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Alvin	GAMX	L04375	Friendswood	6	09/22/95
La Porte	The Geon Company	L02469	La Porte	13	09/28/95

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend-ment #	Date of Action
Fort Worth	The Lorimer Clinic	L01891	Fort Worth	6	09/26/95
Fort Worth	City of Fort Worth	L02888	Fort Worth	10	09/25/95

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or person affected may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, from 8:00 a.m. to 5:00 p.m., Monday-Friday (except holidays).

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

TRD-9512569 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: October 3, 1995

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Texas Department of Insurance

Notice of Application by Dental Benefits, Inc. doing business as BlueCare Dental HMO, Richardson, Texas for Issuance of a Certificate of Authority to Establish and Operate a Dental HMO in the State of Texas

Notice is given to the public of the application of DENTAL BENEFITS, INC., doing business as BLUECARE DENTAL HMO, Richardson, Texas for the issuance of a

certificate of authority to establish and operate a single service health maintenance organization (HMO) offering a dental care plan 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 DENTAL BENEFITS, INC., doing business as BLUECARE DENTAL HMO without a public hearing.

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

TRD-9512604 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: October 4, 1995

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Texas Department of Mental Health and Mental Retardation

Request for Proposal/Consulting Contract

The Texas Department of Mental Health and Mental Retardation (TDMHMR) requests, pursuant to the provisions of the Texas Government Code, Chapter 2254, the submission of proposals leading to the award of a contract for an organization that specializes in quality improvement of services and supports for persons with mental retardation. The organization must possess qualifications and references indicating a full understanding of the operations of comprehensive mental retardation community service systems and methods effective in enhancing outcomes.

TDMHMR's objectives for this project are to improve the quality of services and supports as quality is defined by persons with mental retardation and their families; assure that resources are used to achieve outcomes of value to persons receiving services and supports; and improve the efficiency and effectiveness of state and local authority oversight of an increasingly decentralized system.

The awarded organization will be responsible for:

- developing a handbook to assist in implementation of the TDMHMR's Quality Assurance and Improvement System for Mental Retardation Services and Supports.

- on-site training of department staff and the staff of 47 local mental retardation authorities and their contract providers, and any department designated providers in the measurement of outcomes for people with mental retardation and outcomes for organizations which provide services and supports for persons with mental retardation;

- achieving reliability among staff in the measurement of outcomes for people and outcomes for organizations; and

- providing training and technical assistance in methods for using outcome measures in conducting self-assessments and plans of improvement consistent with continuous quality improvement principles and technology.

TDMHMR reserves the right to accept or reject any or all proposals submitted.

The organization awarded a contract, if any, will be the organization whose proposal conforming to this request is deemed to be the most advantageous by TDMHMR. Other factors in awarding a contract will include, but not limited to, demonstrated competence, qualifications, experience, and reasonableness in the cost. Proposals must remain valid for acceptance and may not be withdrawn for a period of 180 days after the proposal closing date.

An original and two copies of the full proposal must be submitted to TDMHMR no later than noon, Monday, November 13, 1995. Proposals received thereafter will not be considered and will be returned unopened. Proposals must be sent to Gretchen Claiborne, Managed Care Administration, TDMHMR, 909 West 45th Street, Room 367, Austin, Texas 78751.

For further information or to obtain a complete proposal package, please contact Ms. Claiborne at the address previously mentioned or call (512) 206-4614.

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

TRD-9512595 Ann K. Utley
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation

Filed: October 4, 1995

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Texas Natural Resource Conservation Commission

Notices of Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 116 and the SIP.

The proposal includes the following revisions: amendments to §116.10, concerning General Definitions and §116.116, concerning Amendments and Alterations; the repeal of §116.117, concerning Distance Limitations; and new §116.112, concerning Distance Limitations, §116.117, concerning Notification for Changes at Qualified Facilities, §116.118, concerning Qualified Facilities, and §116.119, concerning Demonstrating Compliance with Allowable Emission Rate. The TNRCC permit amendment and alteration criteria and procedures are being modified pursuant to Senate Bill 1126 (74th Legislature).

A public hearing on the proposal will be held November 6, 1995, at 2:00 p.m. in Room 131E of TNRCC Building C, located at 12100 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30

days after the date of publication of the proposal in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. Please mail comments to Lisa Martin, Office of Policy and Regulatory Development, MC 202, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95144-116-AI. Please fax comments to (512) 239-5687. Copies of the revision are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, please contact Thomas Ortiz at (512) 239-1054.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on September 5, 1995.

TRD-9512606 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: October 4, 1995

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Notice is hereby given that pursuant to the requirements of the Texas Health and Safety Code, §382.017; Texas Government Code, Subchapter B, Chapter 2001; and 40 Code of Federal Regulations, §51.102 of the United States Environmental Protection Agency regulations concerning State Implementation Plans (SIP), the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning revisions to Chapter 116 and the SIP.

The TNRCC proposes amendments to 30 TAC Chapter 116, Subchapter F, §116. 610, concerning Applicability; and §116.617, concerning Standard Permit List. In addition, the TNRCC proposes new §116.620, concerning Installation and/or Modification of Oil and Gas Facilities, and §116.621, concerning Municipal Solid Waste Landfill. The amendments and new sections would reorganize the numbering of the standard permits. New §116.621 would establish a standard air permit for a Municipal Solid Waste Landfill with new, amended, or modified municipal solid waste permits. The sections are proposed to allow increased efficiency in proposing new standard permit provisions. Comment is specifically solicited on §116.621, concerning Municipal Solid Waste Landfill.

A public hearing on the proposal will be held November 6, 1995, at 10:00 a. m. in Room 254S of TNRCC Building E, located at 12118 North IH-35, Park 35 Technology Center, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments not presented at the hearing may be submitted to the TNRCC central office in Austin. The deadline for submission of written comments will be 30 days after the date of publication of the proposed rules in the *Texas Register*. Material received by the TNRCC Office of Policy and Regulatory Development by 4:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. Please mail comments to Lisa Martin, Office of Policy and Regulatory Development, MC 202, P.O. Box 13087, Austin, Texas 78711-3087, and reference Rules Tracking Log #95103-116-AI. Please fax comments to (512) 239-5687. Copies of the revision are available at the central office of the TNRCC, Air Policy and Regulations Division, located at 12118 North IH-35, Park 35 Technology Center, Building E, Austin, and at all TNRCC regional offices. For further information, please contact Monica Pesek at (512) 239-1971.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

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

TRD-9512605 Kevin McCalla
Director, Legal Services Division
Texas Natural Resource Conservation Commission

Filed: October 4, 1995

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Texas Department of Protective and Regulatory Services

Correction of Error

The Texas Department of Protective and Regulatory Services published an invitation for Consultant Proposal Request in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8091). The contact person, Deborah Williams, phone number was published incorrectly. The phone number for Deborah Williams is (512) 438-3367, Mail Code E-559.

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

TRD-9512577 Nancy Murphy
Section Manager, Media and Policy Services
Texas Department of Protective and Regulatory Services

Filed: October 3, 1995

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Request for Information

The Texas Department of Protective and Regulatory Services (PRS) is seeking information regarding the availability of qualified service providers to conduct an economic impact and cost/benefit study of recent changes to the minimum standards for licensed day-care centers in Texas.

The minimum standards are rules that facilities must follow to obtain and maintain their license to provide child care. These rules focus on conditions that impact the health, safety, and well-being of children. The study will examine changes in the child/staff ratios, group sizes, and square footage requirements of the minimum standards that were adopted in 1994.

The goals of the economic impact aspect of the study are to determine the differential and actual economic impact of the changes for facilities, the average cost increase for centers which are impacted and how that cost is recouped, the profile of centers that are impacted, the impact on

centers with small profit margins or those with marginal economic viability, the cost to parents as a percentage of family income in those areas affected, and the impact on children and families if centers close, including estimates on the number of children who may be excluded from care because of the cost of these changes to parents who cannot afford it.

The goal of the cost/benefit aspect of the study is to weigh the economic impact of the changes against the cumulative value of the minimum standards in reducing risk and preventing negative developmental outcomes, such as lack of school readiness, dropout rates, juvenile crime, loss of parent productivity, and loss of the children's future productivity.

It is expected that a request for proposal will be issued by November 30, 1995, and the contract will be issued by February 15, 1996. The study must be completed and the results submitted in writing by September 1, 1996. Up to $100,000 is allotted to fund the study with the payment schedule to be negotiated.

Interested parties are requested to provide PRS with the following information: an outline of the study design, including expected sampling, data sources, data collection, and data analysis methods. Information about the expected principal investigators/project managers of the study. Information on the qualifications of the parties to manage the project and any linkages to child-care and child-care organizations. Information on the cost of the study and preferred payment schedule.

This information should be sent to Robert Morris, Contract System Administrator, Mail Code E-669, Texas Department of Protective and Regulatory Services, P.O. Box 149030, Austin, Texas 78714, by October 27, 1995.

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

TRD-9512625

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

Filed: October 4, 1995