

# TEXAS REGISTER

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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Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date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 TRID 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
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The Table of TAC Titles Affected is cumulative for each volume of the Texas Register (calendar year).

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

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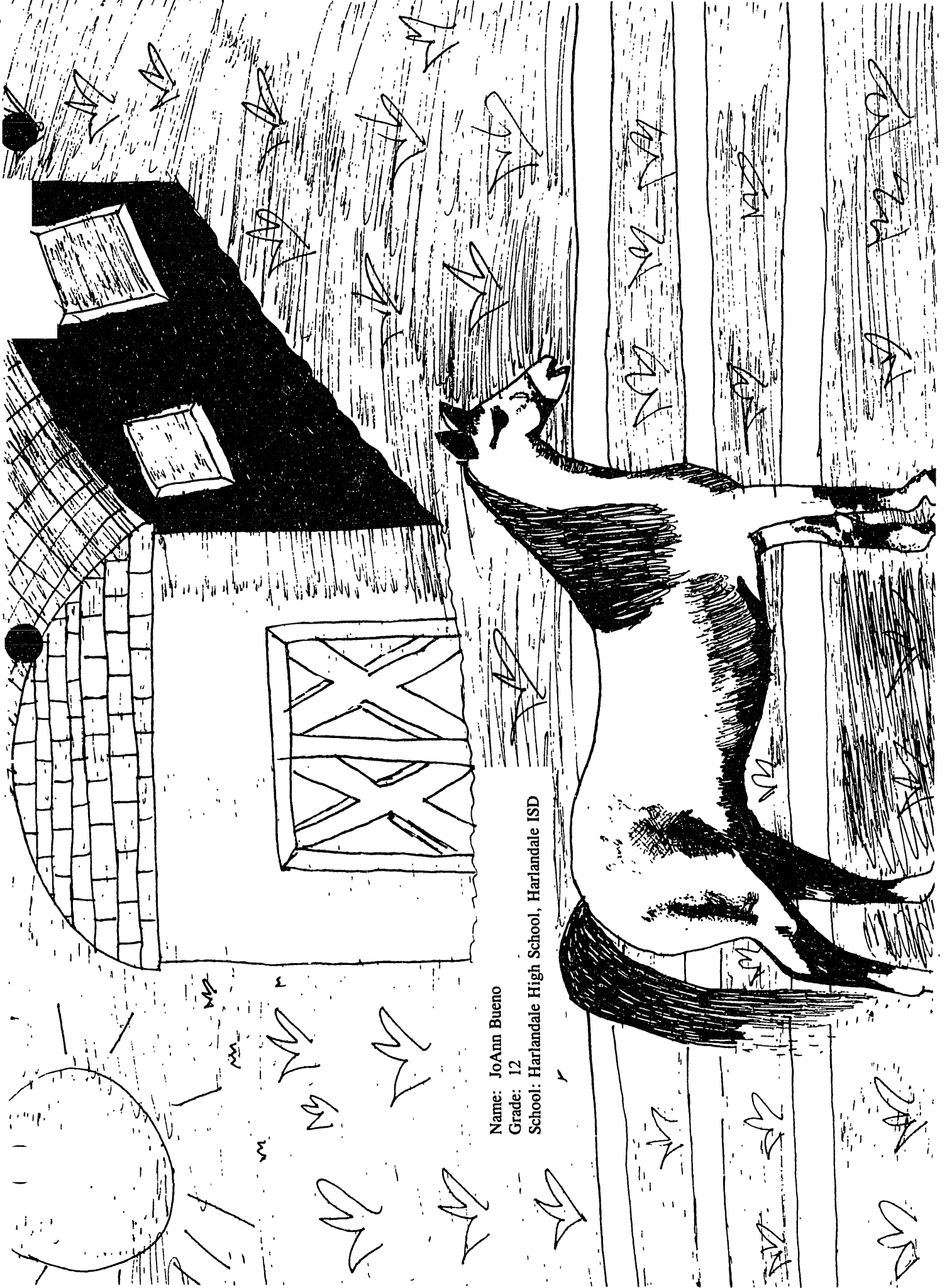
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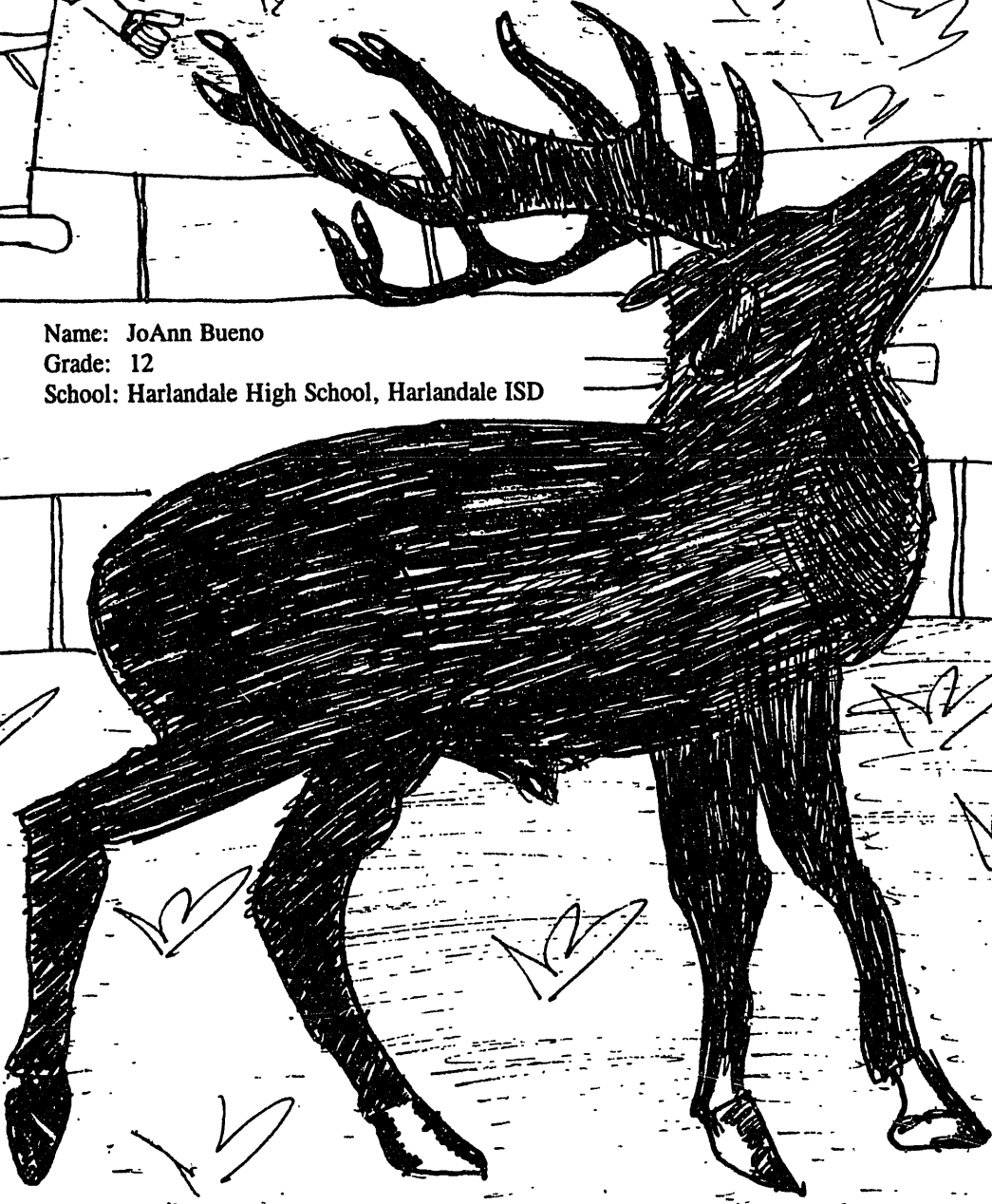
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# ATTORNEY GENERAL

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

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## Requests for Opinions

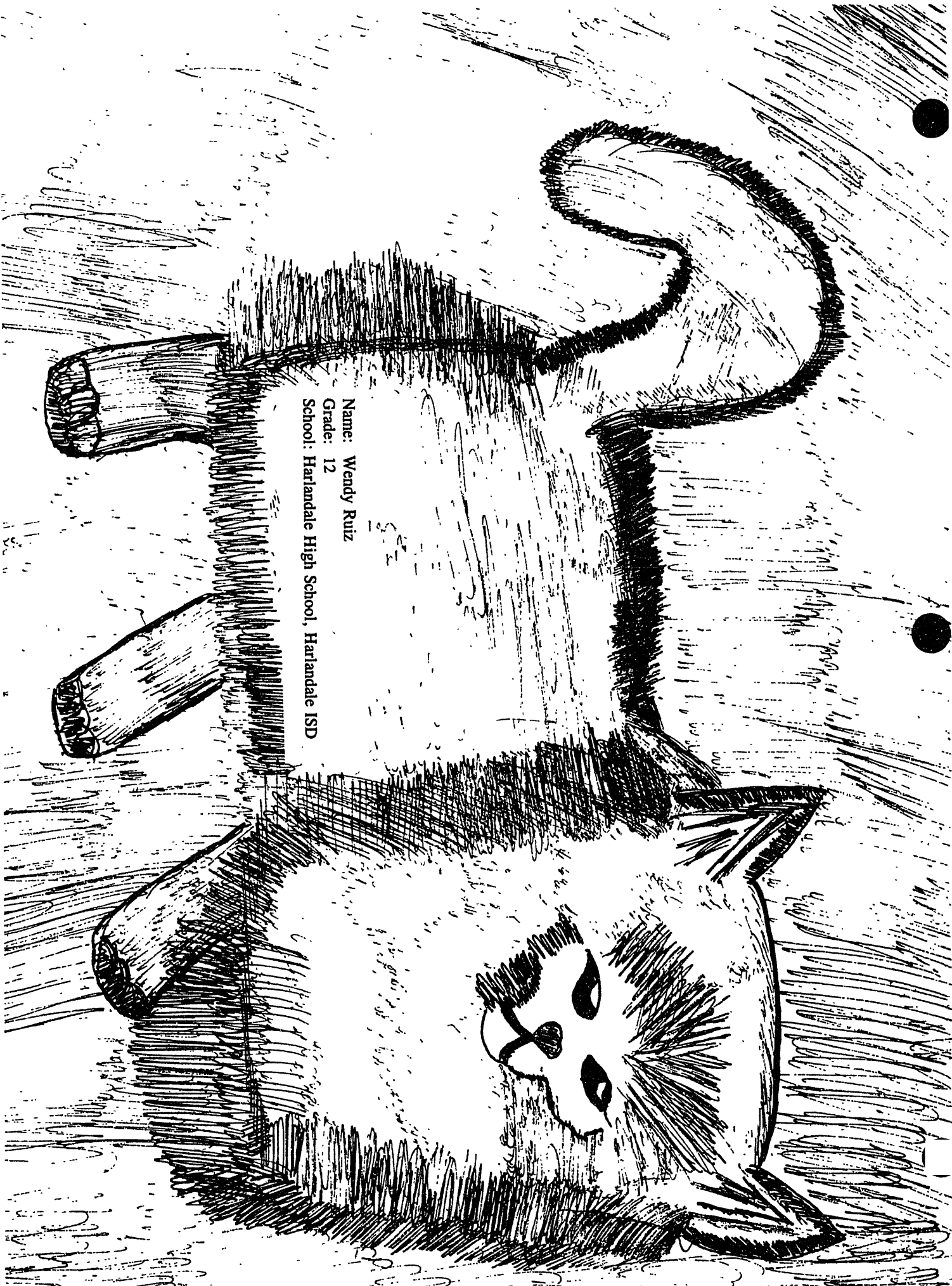
(RQ-856). Requested by Don Gilbert, Commissioner, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-3761, concerning Applicability of Senate Bill 646, Act of May 27, 1995, 74th Legislative, Regular Session, Chapter 854, 1995 Texas Session Law Service 4287, which relates to veterans' employment preference.

(RQ-857). Requested by Honorable Warren Chisum, Chair, Committee on Environmental Regulation, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether an independent school district may be required by a municipality within which the district is partially located to use a vendor selected by the city for exclusive collection of the district's garbage, and related questions.

(RQ-858). Requested by Honorable Don Henderson, Chair, Jurisprudence, Texas House of Representatives, P.O. Box 12068, Austin, Texas 78711-2068, concerning whether a municipality is required by Article I, §19, Texas Constitution, to provide to a newly annexed area the same level of regulation of "sexually oriented business" as existed in the area prior to annexation.

TRD-9515260

◆     ◆     ◆



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# PROPOSED RULES

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

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

## TITLE 4. AGRICULTURE Part II. Texas Animal Health Commission

### Chapter 35. Brucellosis

#### Subchapter A. Eradication of Brucellosis in Cattle

##### • 4 TAC §§35.1, 35.2, 35.6

The Texas Animal Health Commission proposes amendments to §§35.1, 35.2, and 35.6, concerning branding of cattle and movement of card-test positive, supplemental test negative cattle from market.

The amended rules are necessary to amend §§35.1, 35.2(h)(1), (2), (m)(3), (o), and §35.6 to eliminate the option of jaw-branding in order to comply with federal requirements for interstate movement. The amended rules are also necessary to amend §35.2(i) to clarify that card-negative cattle in a market consignment with a card-test positive, supplemental-test negative animal may move from the market without restriction. Section 35.2(i) is also amended to remove the reference to "designated" pens; this change is to avoid confusion with feedlot designated pens.

Victor Gonzalez, Assistant Executive Director for Support Services, 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.

Robert L. Daniel, Director of Program Records, 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 is to conform to Federal requirements in regard to moving the brand from the jaw to the hip. No restriction will be placed on cattle at markets in consignments with card positive and supplemental negative animals. There will be no effect on small businesses.

Comments on the proposal may be submitted to Jo Anne Conner, Executive Secretary, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The amendments are proposed under the Texas Agriculture Code, Texas Civil Statutes, §163.061, which provides the Commission with the authority to adopt rules regarding testing, vaccination, and movement.

The amendment implements the Agriculture Code, Chapters 161 and 163, which provides the Commission with the authority to act to eradicate brucellosis.

The amendment implements the Agriculture Code, §§163.002, 163.061, 163.064, 163.065, 163.066, and 163.069, which provides the Commission with the authority to regulate and require testing, branding, and movement; and to classify cattle.

No other code or article is affected by these amendments.

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

Spayed Heifer—A heifer which has been neutered by an accredited veterinarian and identified with an official eartag and hot iron brand applied high on the left hip near the tailhead with [to the left jaw with] an open spade design ( ) not less than three inches high. The heifer shall be identified on a TAHC Spaying Certificate form completed by an accredited veterinarian or a Texas Animal Health Commission representative.

**§35.2. General Requirements.**

(a)-(g) (No change.)

(h) Identification of brucellosis affected cattle.

(1) Reactor cattle. A' reactor cattle shall be permanently identified within 15 days of classification by hot iron branding with the letter "B" (at least 2 x 2 inches), placed high on the left hip near the tailhead [on the left jaw] An approved reactor tag shall be placed in the left ear. Identification shall be prior to movement.

(2) Exposed Cattle. All exposed cattle moving to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter shall be identified by branding with a hot iron the letter "S" (at least 2 x 2 inches) placed high on the left hip near the tailhead. [on the left jaw, or high on the tailhead so as to be visible from ground

level] Identification shall be prior to movement, except exposed cattle on the premise of origin may be "S" permitted to a livestock market where they shall be identified by "S" brand upon arrival. Exposed cattle returned from the livestock market to the herd of origin are exempt from such identification.

(3) (No change.)

(i) Movement of cattle classified as reactors, exposed or suspects. There shall be no diversion from the permitted destination. When moved, the cattle must be maintained separate and apart from all other classes of livestock in [designated] pens reserved for this purpose at livestock markets or trucking facilities. These pens must be thoroughly cleaned and disinfected before reuse.

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

(3) Suspects. Suspects will be moved the same as exposed cattle, except a vaccinated suspect(s) at a livestock market in a consignment of otherwise negative cattle, (where the suspect is card positive on the presumptive test and negative to supplemental tests) [the CF or Rivanol Test(s)] may move as follows: In a single consignment of cattle, which are from a producer's herd of origin, the owner shall either return the vaccinated suspect(s) under quarantine to the herd of origin until the suspect(s) is negative to the card test, declared a stabilized suspect by an epidemiologist after subsequent test(s) conducted in not less than 30 days, or classified as a reactor on a subsequent test; or sell the suspect(s) to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter, identified with an "S" brand. Card negative cattle in this consignment may move from the market unrestricted, [return to the herd of origin or move to another premise within the State or move interstate] Consignments containing a card positive but supplemental [CF or Rivanol] negative nonvaccinated suspect(s) may move from the market unrestricted. [shall be identified and moved as exposed cattle or returned to the premises of origin under quarantine.]

(j)-(l) (No change.)

(m) Official vaccination requirements.

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

(3) Adult vaccinated cattle shall be permanently identified as vaccinates by tattoo or by hot "V" brand and by official eartag. Tattoos will be applied to the right ear. The tattoo will include the letters AV, which will be preceded by a number indicating the quarter of the year and will be followed by a number corresponding to the last digit of the year in which the vaccination was done. Hot "V" brands will be applied [to the right jaw, or] high on the hip near the tailhead, open end of the "V" up. An official eartag will be placed in the right ear.

(4) (No change.)

(n) (No change.)

(o) Requirements for a quarantined feedlot. All parturient and postparturient cattle must be officially tested for brucellosis within 30 days prior to entry into a quarantined feedlot. All cattle except steers and spayed heifers in a quarantined feedlot shall be classified as exposed to brucellosis. The quarantined feedlot shall be maintained for finish feeding of cattle in drylot with no provisions for pasturing or grazing except in adjacent quarantined pastures. Negative exposed and untested test-eligible cattle must be permanently identified with a hot iron "S" brand [either on the left jaw or] high on the tailhead upon entering the quarantined feedlot. All cattle except steers and spayed heifers located in feedlots adjacent to quarantined pastures must be permanently identified with a hot iron "S" brand [either on the left jaw or] high on the tailhead upon entering such feedlots. All cattle except steers and spayed heifers leaving such feedlot must go directly to slaughter; or may be moved directly to another quarantined feedlot or designated pen with an "S" permit; or may be "S" branded at the feedlot and move to a market to be sold for movement with an "S" permit issued at the market directly to another quarantined feedlot, to designated pens or directly to slaughter.

(p)-(u) (No change.)

*§35.6. Indemnity Payments to Owners of Cattle Exposed to Brucellosis.*

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

(c) General Requirements.

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

(5) Depopulated cattle shall be branded with the letter "B" high on the left hip near the tailhead [on the left jaw] and identified with a reactor eartag within the specified time intervals according to appli-

cable state/federal requirements and prior to movement from the premise.

(6)-(8) (No change.)

(d) (No change.)

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

Issued in Austin, Texas, on November 28, 1995.

TRD-9515300

Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Earliest possible date of adoption: January 5, 1996

For further information, please call: (512) 719-0714

## Chapter 41. Fever Ticks

### • 4 TAC §41.1

The Texas Animal Health Commission proposes an amendment to §41.1, concerning Tick Eradication.

The proposed amendment is necessary to amend the definition of an adjacent premise in §41.1(a)(1) to clarify its meaning and in §41.1(h)(5) to remove ambiguous language concerning the starting date for dipping infested cattle when live ticks are found.

Victor Gonzalez, Assistant Executive Director for Support Services, 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.

Robert L. Daniel, Director of Program Records, 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 is to provide more certainty that all exposure to fever ticks is included in the eradication effort. There will be no effect on small businesses.

Comments on the proposal may be submitted to Jo Anne Conner, Executive Secretary, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 167, which provides the Commission with the authority to adopt rules to eradicate ticks.

The amendment implements the Agriculture Code, §167.003 and §167.029, which authorizes the Commission to adopt necessary rules to eradicate ticks and to provide conditions for the handling and movement of livestock.

No other code or article is affected by this amendment.

#### *§41.1. Tick Eradication.*

(a) Definition of Terms. The following words and terms, when used in this

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

(1) **Adjacent premise**—A premise that borders [located contiguous to] an exposed or infested premise, [ ] including premises separated by roads, double fences, or fordable streams. A premise that would normally be classified as adjacent may be exempted from adjacent premise requirements by an epidemiologist if the premise is separated from the exposed or infested premise by double fencing sufficient to prevent the spread of ticks with one of the fences being game-proof.

(2)-(21) (No change.)

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

(h) **Required Dipping of Livestock.**

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

(5) The starting date for infested premises for Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90), is the date of the first clean dipping of 100% of the livestock. The starting date for exposed premises for Table I and Table II is [last scratch inspection and dip when live ticks are discovered, or] when 100% of the livestock on the premise have been dipped. Copies of Table I (Pasture Vacation Schedule, South of Highway 90) and Table II (Pasture Vacation Schedule, North of Highway 90) may be obtained from the Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

(6) (No change.)

(i)-(o) (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 November 28, 1995.

TRD-9515301

Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Earliest possible date of adoption: January 5, 1996

For further information, please call: (512) 719-0714

## Chapter 51. Interstate Shows and Fairs

### • 4 TAC §51.2

The Texas Animal Health Commission proposes an amendment to §51.2, concerning General Requirements.

The proposed amendment is necessary to amend §51.2(d)(2)(A) to provide that equine must have a negative test for equine infectious anemia within 12 months of entering any show, fair or exhibition.

Victor Gonzalez, Assistant Executive Director for Support Services, 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.

Robert L. Daniel, Director of Program Records, 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 is to provide assurance to show participants that Texas origin horses have been tested negative to EIA. There will be no effect on small businesses.

Comments on the proposal may be submitted to Jo Anpe Corner, Executive Secretary, Texas Animal Health Commission, Post Office Box 12966, Austin, Texas 78711-2966.

The amendment is proposed under the Texas Agriculture Code, Texas Civil Statutes, Chapter 161, which provides the Commission with the authority to adopt rules to act to eradicate or control diseases that affect livestock.

The amendment implements the Agriculture Code, §161.041 and §161.046, which authorizes the Commission to adopt necessary rules to protect livestock from disease, including equine infectious anemia, and §161.043, which authorizes the Commission to regulate entry of livestock into exhibitions, shows and fairs.

No other code or article is affected by this amendment.

#### §51.2. General Requirements.

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

(d) Entering Shows, Fairs, and Exhibitions.

(1) (No change.)

(2) In-state origin.

(A) Equine. Must have had a negative EIA test within the past 12 months if entering a show, fair or exhibition [an interstate show, fair or exhibition where equine remain on the grounds for 48 hours or longer. Equine entered in all other events other than race tracks where paramutual wagering has been authorized by the Texas Racing Commission may enter without restriction.] Horses entering a paramutual track must have a negative EIA test within the past 12 months and a Certificate of Veterinary Inspection.

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

(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 November 28, 1995.

TRD-9515303

Terry Beals, DVM  
Executive Director  
Texas Animal Health  
Commission

Earliest possible date of adoption: January 5, 1996

For further information, please call: (512) 719-0714

## TITLE 22. EXAMINING BOARDS

### PART XVIII. Texas State Board of Podiatric Medical Examiners

#### Chapter 378. Continuing Education

##### • 22 TAC §§378.2-378.4

The Texas State Board of Podiatric Medical Examiners proposes amendments to §§378.2-378.4, concerning Continuing Education. The amendments are being proposed to change dates to agree with statute and to explain the method of approval for hours.

Allen M. Hymans, Executive Director, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Hymans has also determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be having the correct dates and knowing how and what hours are approved. No additional cost is anticipated for the podiatrists or the public.

Comments of the proposal may be submitted to Janie Alonzo, Staff Services Officer I, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, Texas 78711-2216.

The amendments are proposed under Texas Civil Statutes, Articles §4568(j) and §4590(e), which provide the Texas State Board of Podiatric Medical Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatric medicine, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatric medicine, and the enforcement of the law regulating the practice of podiatric medicine.

The proposed amendments affect the Podiatric Medical Practice Act, Article 4571(c).

#### §378.2. Exceptions and Allowances.

(a) (No change.)

(b) Any practitioner not actively practicing podiatric medicine shall be exempt from these requirements; however, upon resuming the practice of podiatric medicine [podiatry], that person shall fulfill the requirements of the preceding year from the effective date prior to the [his] resumption of practice.

(c) All cases not covered by the above shall be considered individually by the Board [board] for continuing education.

#### §378.3. Method of Approval of Hours.

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

(d) Holders of current cardiopulmonary resuscitation certificates expiring after December 31, of the current year] are eligible for three hours credit of continuing education or, current Advance Life Support Course certificates are eligible for six hours credit of continuing education.

[(e) Advance Life Support Course Certificate after December 31, of the current year are eligible for six hours credit of continuing education.]

#### §378.4. Methods of Reporting Continuing

*Education Requirements.* Hours of continuing education are to be reported prior to the date of annual license renewal [September 1, of each year], to the office of the Texas State Board of Podiatric Medical [Podiatry] Examiners, P.O. Box 12216 Austin, Texas 78711-2216. Each separate occurrence must include a certificate of attendance or a letter from the sponsoring organization that includes the practitioner's name, course attended, date, location and number of CME hours credited. Reproduced copies of verification of an individual's attendance of each program shall be presented to the board. It is the responsibility of the Licensee to provide this to the State Board Office.

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 November 28, 1995.

TRD-9515288

Janie Alonzo  
Staff Services Officer I  
Texas State Board of  
Podiatric Medical  
Examiners

Earliest possible date of adoption: January 5, 1996

For further information, please call: (512) 305-7000

## Part XXII. Texas State Board of Public Accountancy

### Chapter 501. Professional Conduct

#### Professional Standards

##### • 22 TAC §501.25

The Texas State Board of Public Accountancy proposes an amendment to §501.25, concerning Mandatory Continuing Education Program.

The proposed amendment will subject a licensee's Certificate to revocation for at least 12 months upon the licensee's third suspension for failing to satisfy the continuing professional education requirements.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be improved compliance with continuing professional education requirements and more severe consequences for repeated failures to comply. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas. 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §15A which requires licensees to complete continuing professional education.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §15A.

*§501.25. Mandatory Continuing Professional Education.* Each certificate or registration holder shall comply with the mandatory continuing professional education reporting and the mandatory continuing professional education attendance requirements of Chapter 523 of this title (relating to Mandatory Continuing Education Program). Once an individual's license has been suspended a third time by the board for failing to complete the 120 hours of continuing professional education required by §523.63 of this title (relating to Mandatory CPE Attendance), the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

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 November 9, 1995.

TRD-9515346

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: January 5, 1996

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

#### Other Responsibilities and Practices

##### • 22 TAC §501.37

The Texas State Board of Public Accountancy proposes new §501.37, concerning Practicing Without a License or Through an Unregistered Entity.

The proposed section will subject a Certificate to revocation for at least 12 months upon the Certificate holder's third occasion of practicing without a license or through an unregistered entity.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be improved compliance with the licensing and registration requirements and more severe consequences for repeated refusals to license and register. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The new section is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, §8 which prohibits the practice of accountancy without a license, and §10 which requires individuals and practice units to register with the Board.

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 8, and 10.

*§501.37. Practicing Without a License or Through an Unregistered Entity.* Practicing without a License or through an Unregistered Entity on the third determination by the board that a certificate holder has practiced without a license or through an unregistered entity in violation of §501.40 of this

title (relating to Registration Requirements), the individual's certificate shall be subject to revocation and may not be reinstated for at least 12 months from the date of the revocation.

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 November 9, 1995.

TRD-9515347

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: January 5, 1996

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

### Chapter 505. The Board

##### • 22 TAC §505.10

The Texas State Board of Public Accountancy proposes an amendment to §505.10, concerning Board Committees.

The proposed amendment will increase the number of board members on committees to at least two board members.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be increased board member participation on board committees. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

##### *§505.10. Board Committees.*

(a)-(d) (No change.)

(e) Standing committee structure and charge to committees. The standing committees shall consist of the following individuals and shall be charged with the following responsibilities.



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

(8) The board rules committee shall be comprised of at least two [one] board members [member], one of whom shall serve as chairman, assisted by any number of non-board members who shall serve in an advisory capacity. The committee shall make recommendations to the board regarding board rules defined by the board chairman as requiring action.

(9)-(11) (No change.)

(f)-(h) (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 November 9, 1995.

TRD-8515351

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: January 5, 1996

For further information, please call: (512) 505-5568



### Chapter 519. Practice and Procedure

#### • 22 TAC §519.5

The Texas State Board of Public Accountancy proposes an amendment to §519.5, concerning Rulemaking Proceedings.

The proposed amendment corrects the citation to the Administrative Procedure Act, requires a request for a public hearing on a proposed rule to be filed with the Board at least ten working days before the rulemaking meeting and requires persons wishing to testify at a rulemaking meeting to provide written copies of their testimony at least five working days before the rulemaking meeting.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be enhanced scheduling of Board meeting agendas and will allow Board members more time to consider witnesses' oral comments. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which pro-

vide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §2001.029, Government Code, which requires state agencies to hold public hearings in rulemaking if properly requested.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §2001.029, Government Code.

#### §519.5. [Service in] Rulemaking Proceedings.

(a) Service of a proposed section or amendment of any existing section shall be governed by [Section] Sections [5(a), et seq] 2001.023 and 2001.024[,] of the Administrative Procedure [and Register] Act.

(b) A request for a public hearing to receive comments on a proposed rulemaking must be received in the offices of the board no later than 5:00 p.m. of the tenth working day prior to the board meeting scheduled to consider the adoption of the proposed rule.

(c) A person wishing to testify at a public hearing to receive comments on a proposed rulemaking or revision must file a written copy of his or her testimony in the offices of the board by no later than 5:00 p.m. of the fifth working day prior to the public hearing unless the board announces a different filing date.

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 November 9, 1995.

TRD-8515348

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: January 5, 1996

For further information, please call: (512) 505-5568



#### • 22 TAC §519.26

The Texas State Board of Public Accountancy proposes an amendment to §519.26, concerning Informal Conferences.

The proposed amendment states the two choices the Board has when it considers agreed consent orders and removes the prohibition against using as evidence information discovered or disclosed in an informal conference.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be a better understanding of the options available to the Board when it considers agreed consent orders, and allowing the use as evidence in contested hearings information which was discovered or disclosed during an informal conference. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, §2001.054, Government Code, which requires licensees be afforded an opportunity to show their compliance with the law, and §2001.056, Government Code, which allows for the informal disposition of contested cases.

The rule implements Texas Civil Statutes, Article 41a-1, §§6, 2001.054, and 2001.056.

#### §519.26. Informal Conferences.

(a)-(d) (No change.)

(e) Ratification by the board. An agreed consent order [orders] shall be submitted to the board for ratification and the board may:

(1) adopt the order, at which time it becomes final; or

[(2) reject the order and order a hearing; or]

[(3) reject the order and order an en banc hearing; or]

[(2)[(4)] reject remand the order [and remand; or] to the committee.

[(5) reject the order and order the disciplinary action dismissed.]

[(f) Proceedings inadmissible. Proceedings at an informal conference are inadmissible in a subsequent hearing; however, evidence otherwise discoverable shall not be excluded from a hearing merely because it is presented in the course of an informal conference.]

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

Issued in Austin, Texas, on November 9, 1995.

TRD-9515349

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: January 5, 1996

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

◆ ◆ ◆  
• 22 TAC §519.27

The Texas State Board of Public Accountancy proposes an amendment to §519.27, concerning Hearings in Disciplinary Actions.

The proposed amendment requires requests for oral argument before the Board to be filed with the Board at least five working days before the meeting.

William Treacy, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this rule.

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be allowing the Board to be better able to schedule its meeting agenda. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Rande! (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§519.27. Hearings in Disciplinary Action.

(a)-(e) (No change.)

(f) Oral argument before the board.

Any party may request oral argument before the board before the final determination of any proceeding, but the request must be filed in the offices of the board by no later than 5: 00 p.m. of the fifth working day prior to the board meeting. Oral [oral] argument shall be allowed only at the discretion of the board. A request for oral argument may be incorporated in the exception, reply to exceptions, or in a separate pleading. In the event oral argument is granted by the board, each party who has filed exceptions and replies may be limited to a maximum of 20 minutes for presentation thereof. The board shall require one spokesman per party and position.

(g)-(i) (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 November 9, 1995.

TRD-8515350

William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Earliest possible date of adoption: January 5, 1996

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

◆ ◆ ◆  
Part XXVIII. Executive  
Council of Physical  
Therapy and  
Occupational Therapy  
Examiners

Chapter 651. Fees

• 22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes an amendment to §651.2, concerning Physical Therapy Board Fees. This amendment sets fees for the inactive status established by the Texas Board of Physical Therapy Examiners.

John Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no effect on local or state government as a result of enforcing or administering the rule.

Mr. Maline 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 provision of better physical therapy licensing services. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Nina Hurter, Executive Council of Physical Therapy and Occupational Therapy Examiners, 3001 South Lamar, Suite 101, Austin, Texas 78704.

The amendment is proposed under Texas Civil Statutes, Article 4512e-1, which provide the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to promulgate rules.

Texas Civil Statutes, Article 4512e, is affected by this amendment.

§651.2. Physical Therapy Board Fees.

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

(c) License.

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

(3) Inactive to Active Status.

(A) Physical therapist-\$50;

(B) Physical therapist assistant-\$25.

(d)-(k) (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 November 27, 1995.

TRD-8515245

John P. Maline  
Executive Director  
Executive Council of  
Physical Therapy and  
Occupational Therapy  
Examiners

Earliest possible date of adoption: January 5, 1996

For further information, please call: (512) 305-6900

◆ ◆ ◆  
TITLE 25. HEALTH SER-  
VICES

Part I. Texas Department  
of Health

Chapter 41. Utilization Review

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits proposed amendments to §§41.104, 41.108, and 41.110 and the repeal of §41.106, concerning utilization and review procedures. Specifically, the sections cover the Texas Medical Review Program (TMRP) review process; denials and recoupments for TMRP and Tax Equity and Fiscal Responsibility Act (TEFRA) hospitals; appeal requirements under TMRP and TEFRA and hospital notification; and attestation statements for TMRP hospitals. The amendments and repeal remove the requirement for the physician attestation statement to be kept in the hospital medical record.

Gary Bego, health care financing budget 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. Bego also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a reduction in the administrative burden for physicians and hospitals. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated effect on local employment.

Comments on the proposal may be sent to Brenda Salisbery, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

## Waiver for Utilization Review Procedures

### • 25 TAC §§41.104, 41.108, 41.110

The amendments are proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature.

The amendments affect Chapter 32 of the Human Resources Code.

#### §41.104. Texas Medical Review Program (TMRP) Review Process.

(a) For all Medicaid admissions identified for review, the TMRP review process includes, but is not limited to, the following:

(1) (No change.)

(2) diagnosis-related group (DRG) validation, which consists of a determination that the critical elements necessary to assign a DRG are present in the medical record. Hospital staff are responsible and held accountable for the accuracy of the required critical elements. Those elements are age, sex, discharge status, principal diagnosis, principal procedures, and any complications or comorbidities. This process is also a determination that the principal and secondary diagnoses and procedures are sequenced correctly. The principal diagnosis is the diagnosis (condition) established after study to be chiefly responsible for occasioning the admission of the patient to the hospital for care. The secondary diagnoses are conditions that affect the patient care in terms of requiring: clinical evaluation, therapeutic treatment, diagnostic procedures, extended length of hospital stay, or increased nursing care and/or monitoring, or in case of a newborn, one which the physician deems to have clinically significant implications for future health care needs. Normal newborn conditions or routine procedures are not to be considered as complications or comorbidities for DRG assignment. If the principal diagnosis, secondary diagnoses, or procedures are not substantiated in the medical record, are not sequenced correctly, or have been omitted, codes may be changed, added, or deleted. When it is determined that the diagnoses and procedures are substantiated and sequenced correctly, the information will be entered into the applicable version of the Grouper software for a DRG determination. The Health Care Financing Administration (HCFA) approved DRG Grouper software considers each diagnosis and procedure and

the combination of all codes and makes a determination of the final DRG assignment;

(3)-(7) (No change.)

(b) The department or its contractor shall review the complete medical record to make decisions on all aspects of the review process including but not limited to the medical necessity of the admission, DRG validation, and quality of care. The complete medical record must include but is not limited to: medical/surgical history and physical examination, discharge summary, physicians' progress notes, physicians' orders, lab reports, x-ray reports, operative reports, pathology reports, nurses' notes, medication sheets, vital signs sheets, therapy notes, specialty consultation reports, and special diagnostic and treatment records[, and completed attestation statements]. If the complete medical record is not available or is not made available during the review, a preliminary technical denial is issued and the facility is notified.

(c) (No change.)

#### §41.108. Denials and Recoupments for Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA) Hospitals.

(a) The following denials are issued as a result of the review process.

(1) (No change.)

(2) Technical denials. A technical denial shall be issued when a hospital fails to make available for review a complete medical record [including a properly completed physician attestation statement,] on the date of an onsite review or, for mail-in hospitals, within specified time frames. [A technical denial also shall be issued when the physician attestation statement is not available for review, is dated after the claim was submitted, or is not properly completed. A properly completed attestation statement must include a narrative description of the diagnoses and procedures, the initials of the physician changing the sequencing of diagnoses or procedures, the certification statement, the physician's signature, and the date (month, day, year) the physician signed the statement.

[(A) If the properly completed attestation statement is not available or is not made available during the onsite review, a final technical denial shall be issued, and the payment shall be permanently recouped. For mail-in hospitals, a final technical denial shall be issued if the properly completed physician attestation statement is not included in the medical record submitted for review, and the payment shall be permanently recouped.]

(A)[(B)] If the complete medical record [(other than the properly completed attestation statement)] is not available or is not made available during the onsite review or, for mail-in hospitals, within the specified time frames, a preliminary technical denial shall be issued. Preliminary technical denials shall be issued onsite for onsite reviews. The facility must submit a complete medical record within 60 calendar days from the exit conference date. For mail-in hospitals, preliminary technical denials shall be issued by certified mail or FAX machine, and the facility shall have 60 calendar days from the receipt date of the notice to submit a complete medical record.

(B)[(C)] If the complete medical record[, including the properly completed attestation statement in the case of a TMRP hospital,] is received by the department or its contractor within 60 days after the preliminary technical denial, a final technical denial shall not be issued, and the case will be reviewed. If the complete medical record[, including the properly completed attestation statement in the case of a TMRP hospital,] is not received by the department or its contractor within the 60 calendar days, a final technical denial shall be issued, and payment shall be recouped. Medical records not received by the department or its contractor within the 60 calendar days must be denied review on the merits, and any claim the hospital has to the Medicaid funds at issue must be barred. Extensions of time are not granted for the filing of a medical record beyond the 60 calendar days.

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

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

§41.110. Appeals Requirements under the Texas Medical Review Program (TMRP) and Tax Equity and Fiscal Responsibility Act (TEFRA), and Hospital Notification. Beginning October 1, 1990, hospitals may appeal adverse decisions made under the TMRP and TEFRA review programs under the following guidelines.

(1) If a hospital receives notification from the Texas Department of Health (department) or its contractor of an adverse decision regarding: medical necessity of admission and/or continued stay, or diagnosis [diagnostic] related group (DRG) validation, the methods for appealing the decisions are as follows.

(A) If a hospital is dissatisfied with the original utilization review decision made by the department or the department's contractor, the hospital may submit a written request for a desk review to the Texas Department of Health, Bureau of Medical Appeals, 1100 West 49th Street,

Austin, Texas 78756-3172. The request should indicate the reason the decision by the department was incorrect and must include a copy of the complete medical record; the original signed, properly completed, and notarized affidavit in the format provided or approved by the department, which allows the hospital to certify the record as a business record; and a properly completed physician attestation statement in the case of a TMRP hospital.] If the written request for a desk review is not received by the department within 180 days from the date the hospital received the original utilization review decision, the desk review shall not be conducted. No appeal of any type is thereafter available on the merits and the previous decision by the department shall be final. Any claim the facility may have to the Medicaid funds at issue shall be barred. Extensions of time shall not be granted for the filing of a written request for a desk review, submission of the complete medical record, the notarized business record affidavit[, or the completed physician attestation.]

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

(2) The hospital may appeal a technical denial to the department if the hospital determines that the department or the contractor issuing the denial made an incorrect denial or did not provide proper notification of the technical denial.

(A) The hospital must submit a written request for a desk review, accompanied by the complete medical record; an original signed, properly completed and notarized business record affidavit in the format provided by or approved by the department, which allows the hospital to certify the record as a business record; and a properly completed physician attestation statement in the case of a TMRP hospital; and should state the reason the decision by the department or its contractor was incorrect. The hospital must submit copies of any supporting documentation at the time of filing the appeal. Appeals of final technical denials must be received no later than 180 days from the date the hospital receives the final technical denial notice from the department or its contractor and must be sent to the Texas Department of Health, Bureau of Medical Appeals, 1100 West 49th Street, Austin, Texas 78756-3172. Receipt by the Bureau of Medical Appeals of the written appeal request within the 180 days is a jurisdictional prerequisite. Any such requests received beyond the 180 days is subject to dismissal for want of jurisdiction and the entry of an order sustaining the previous decision by the department or its contractor.

(B)-(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 November 28, 1995.

TRD-9515280

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: January 5, 1996

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

◆ ◆ ◆  
• 25 TAC §41.106

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

The repeal is proposed under the Human Resources Code, §32.021 and Texas Civil Statutes, Article 4413 (502), §16, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature.

The repeal affects Chapter 32 of the Human Resources Code.

§41.106. Attestation Statement for Texas Medical Review Program (TMRP) Hospitals.

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 November 28, 1995.

TRD-9515289

Susan K. Steeg  
General Counsel  
Texas Department of  
Health

Earliest possible date of adoption: January 5, 1996

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

◆ ◆ ◆  
**Part II. Texas Department  
of Mental Health and  
Mental Retardation**

**Chapter 401. System  
Administration**

**Subchapter A. Advisory Com-  
mittees**

• 25 TAC §401.27

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes

new §401.27 of Chapter 401, Subchapter A, concerning advisory committees.

The proposed new section allows for the formation and reimbursement of member expenses for the Ad Hoc Committee on Mental Retardation and Managed Care.

Don Green, chief financial officer, has determined that for the first five-year period the rule is in effect there will be no significant fiscal cost for state or local government as a result of administering the rule. There will be no local economic impact. There will be no effect on small businesses.

Karen Hale, assistant commissioner, 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 the adoption of department rules that reflect legislative intent. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Linda Logan, Director, Policy Development, Texas Department Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The rule is proposed under the Texas Health and Safety Code, Title 7, §532.015, which provides the Texas Board of Mental Health and Mental Retardation with rulemaking powers.

The proposal would affect the Texas Health and Safety Code, Chapters 533, 552, and 593.

§401.77. Ad Hoc Committee on Mental Retardation and Managed Care.

(a) The purpose of the Ad Hoc Committee on Mental Retardation and Managed Care is to provide recommendations to the Texas Board of Mental Health and Mental Retardation to guide the design of pilots to test a system of services and supports for persons with mental retardation that best balances access, quality, cost, and choice to produce desired outcomes for people with mental retardation.

(b) Tasks of the Ad Hoc Committee on Mental Retardation and Managed Care include recommendations in at least the following areas:

- (1) a method to obtain broad-based input from all stakeholders;
- (2) values and principles that are consistent with the 1994 Recommendations from the Quality of Life Project;
- (3) management of initial and on-going consumer access, (e.g., case management, individual service coordination, continuity of services, waiting lists, utilization review, etc.);
- (4) resources that should be included in the system, (e.g., federal, state and local (ICF-MR, HCS, targeted case management, general revenue, required local match, etc.));

(5) consumer eligibility criteria, (e.g., all or some subset of persons with mental retardation, pervasive developmental disabilities, other developmental disabilities, etc.);

(6) benefit packages that are based on person-centered planning and emphasize prevention and building on strengths and resources rather than deficits;

(7) role of the local authority, as defined in the Texas Health and Safety Code, Chapters 531 and 533, (i.e., assembling a network of service providers and determining whether to become a provider of a service or to contract that service to another organization);

(8) managing provider networks and performing utilization management;

(9) assurance of consumer and provider appeals and grievances;

(10) evaluating local authority and provider network performance based on outcomes that include participation of consumers, their families, and advocates; and

(11) variables to be considered in designing the pilots required by the Texas Health and Safety Code, Chapters 531 and 533, and Senate Concurrent Resolutions 55 and 58, (e.g. types of geographic areas, such as urban and/or rural; separate pilots or combining both pilots in the same area; mix of participants such as local authorities which are both Community MHMR Centers and state-operated community service divisions; providers which include private-for-profit, private-not-for-profit, public entities, etc.).

(c) The advisory committee shall be abolished on September 1, 1996, unless re-authorized.

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 November 29, 1995.

TRD-9515342

Ann Utley  
Chairman, Texas MHMR  
Board  
Texas Department of  
Mental Health and  
Mental Retardation

Earliest possible date of adoption: January 5, 1996

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

◆ ◆ ◆

Name: Alex Arambula

Grade: 12

School: Harlandale High School, Harlandale ISD



# WITHDRAWN RULES

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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**.

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## TITLE 4. AGRICULTURE Part III. Texas Feed and Fertilizer Control Service

### Chapter 61. Commercial Feed Rules

#### Licensing

- 4 TAC §61.14

The Office of the Texas State Chemist, Feed and Fertilizer Control Service, has withdrawn from consideration for permanent adoption a proposed new §61.14, concerning Licensing, which appeared in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8042). The effective date of this withdrawal is January 1, 1996.

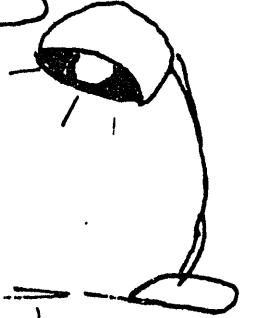
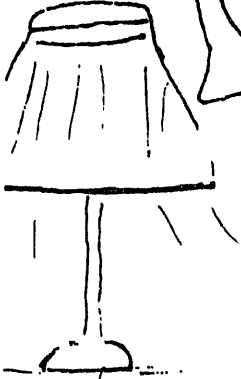
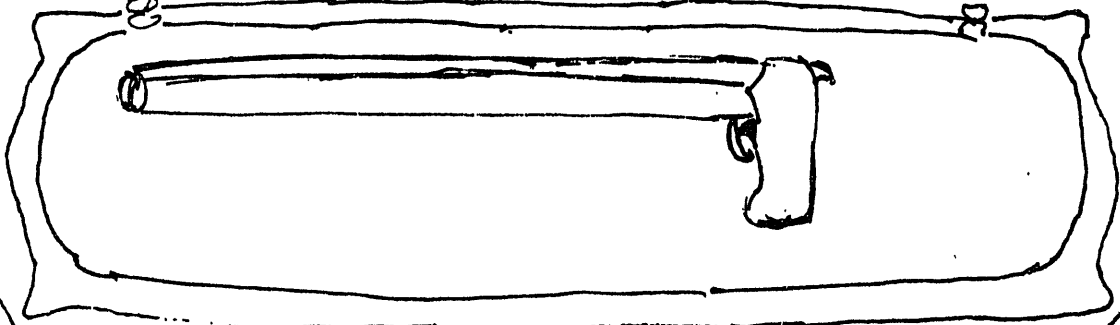
Issued in College Station, Texas, on November 29, 1995.

TRD-9515326      Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

For further information, please call: (512)  
845-1121





Name: Alex Arambula  
Grade: 12  
School: Harlandale High School, Harlandale 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 4. AGRICULTURE Part III. Texas Feed and Fertilizer Control Service

### Chapter 61. Commercial Feed Rules

#### General Provisions

##### • 4 TAC §61.1, §61.2

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts amendments to §61.1 and §61.2, without changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8041).

The amendments are being amended to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

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 College Station, Texas, on November 29, 1995.

TRD-9515324

Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

#### Licensing

##### • 4 TAC §61.11

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts an amendment to §61.11, without changes to the

proposed text in §61.11(a) and (b) as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8042). Section 61.11(c) is adopted with changes because much of it is subsumed by §61.11(a).

This rule is being amended to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

The names of groups and associations making comments for and against the rule are as follows: For—None; Against—American Feed Industry Association, Texas Grain and Feed Association, Cargill, and Marshall Minerals. Witnesses objected to the inclusion of the phrase "and other information necessary to the conduct of the Service's business" in §61.11(a)(1) on the grounds that "this requirement could be an open-ended situation for the Service to request any and all information it desired and the license would not be granted until such information was submitted." Another comment was that the rule needed to be more specific. The Service is clearly entitled under §141.021(c) to require a license applicant to provide "other information that the Service by rule requires." Since the Service does not know beforehand what information may be required, it cannot enact a rule which limits its ability to obtain vital information at the time of application or else force it to engage in rule-making each time information not specified in the rule is required. The phrase "necessary for the conduct of the Service's business" allows maximum flexibility to the Service, but also allows a firm to demonstrate that the information requested is not "necessary to the Service's business."

Witnesses recommended that "either originally or as amended" be removed from §61.11(b) which reads "No facility shall distribute commercial feed until it has received affirmative notification of its licensing either originally or amended." The Commercial Feed Control Act clearly contemplates the need to amend a license (§141.023(1)); there are situations, e.g., change in ownership, which have historically required a new license. The rule makes it clear that distribution without affirmative authorization in cases where licenses must be amended is not permitted. Section 61.11(c) has been rewritten to incorporate the witness's comment that the distribution of additional annual products should be accomplished through submission of the Feed Facility Small Package Registration form, thus not creating a need to amend the license.

The amendment is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

#### §61.11. Application for Licensing.

(a) A facility shall not be granted a license unless and until:

(1) it has filed a completed application form and other information necessary for the conduct of the Service's business; and

(2) paid the appropriate fees.

(b) No facility shall distribute commercial feed in Texas until it has received affirmative notification of its licensing either originally or as amended.

(c) The Service may require the applicant to submit evidence satisfactory to the Service respecting the safety and efficacy of any of its commercial feeds, including, but not limited to, labels and labeling, prior to approval of a license application:

(1) if any feed contains an additive (including drugs, special purpose and/or non-nutritive additives) not previously recognized as safe and effective by the United States Food and Drug Administration for its labeled use or does not possess GRAS animal status; or

(2) if any feed normally exempt, but adulterated, so special control by the Service is necessary, including, but not limited to, those feeds incorporating mycotoxin-contaminated ingredients, ammoniated ingredients or animal litter.

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 College Station, Texas, on November 29, 1995.

TRD-9515325

Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

## Labeling

### • 4 TAC §61.21

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts an amendment to §61.21, with changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8043).

The rule is being amended to implement the changes enacted by the 74th Texas Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

No comments were received for or against subsections (a)-(f). However, the Service agrees with comments on §61.22 that a portion of (5)(E) was misplaced. Believing the section necessary but agreeing it was misplaced, the Service adds §61.21(g), (h) and (i).

A possible objection to §61.21(i) might be that it implies the Service could require labeling in a language other than standard commercial English. The Legislature has not mandated such a requirement; thus, the Service does not. If for business reasons a firm wishes to provide a label in a language other than English, it still must provide a label in standard commercial English.

The amendment is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

#### §61.21. General Label Restrictions.

(a) All labeling information required by §141.051 or §141.052 of the Act or by this title shall appear in its entirety on one side of the label or one side of the feed container, except directions for use or precautionary statements, which shall appear in a prominent place on the label or container, but not necessarily on the same side of such label or container as other required label information. When directions for use or cautionary statements appear on a different side of the label or container than its principal display panel, such principal display panel shall bear a reference to such information (e.g., "See back for directions for use").

(b) No labeling information required by the Act or this title shall be obscured or subordinated by other statements or designs.

(c) A trademark or trade name owned by another person may form part of the labeling of a commercial feed provided that:

(1) the trademark, in the opinion of the Service, contributes significantly in conveying to the purchaser important information respecting a distinctive characteristic of the product;

(2) the display of the trademark or trade name is no more conspicuous than the display of the name of the registrant or guarantor of the product or other required information, i.e., its style, size and color of print makes it no more likely to be read than the accompanying/surrounding word(s), statement(s) or other required information;

(3) the user of the trademark has permission from the "owner" to use the trademark.

(4) No declaration of content shall appear in the ingredient statement or other part of a proprietary feed unless the declaration is made for each and all ingredients, except:

(1) when required by law; or

(2) when necessary to conform to good manufacturing or feeding practices.

(e) When the label of a commercial feed declares the common name of a component or ingredient or a combination of components or ingredients and emphasis is placed on such ingredients or combinations thereof without reference to a percentage value, the Service may require a showing of scientific data that the ingredient or combination of ingredients is present in sufficient quantities to impart a distinctive characteristic to the product. If reference is made to a percentage value for such ingredient or combination of ingredients, the Service, in addition, may require:

(1) that the percentage reference be determinable by accepted laboratory methods; and

(2) that the applicant provide, upon request, an analysis of the ingredient or combination of ingredients made by a private laboratory.

(f) The labeling of animal feeds and intended use must be consistent with the intended purpose of the product.

(g) All guaranteed analyses must be in the same size and style.

(h) The name of each and every ingredient must be shown in letters or type of the same size and style.

(i) Any and all words or statements or other label information required by the Act shall appear in a size and style easily read by the average person under ordinary conditions.

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 College Station, Texas, on November 29, 1995.

TRD-9515327

Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

### • 4 TAC §61.22

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts an amendment to §61.22, with changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8043).

The rule is amended to clarify the Feed and Fertilizer Control Service's responsibilities under the amended Texas Commercial Feed Control Act.

The rule functions to clarify the proposed language and to correct editorial errors.

Prior to adoption, the Service received comments of an editorial nature from the American Feed Industry Association (AFIA). The Service agrees with those suggested changes and has made those and other editorial changes.

Additionally, the comment was made that the phrase in §61.22(5)(E) "and all guaranteed analyses must be in the same size and style, but not necessarily in the same size and style as the ingredients. Both ingredients and guarantees must be of a size easily read by the average person under ordinary conditions" is not consistent with AAFCO. The Service agrees that the phrase is misplaced. A phrase similar to this appears in AAFCO's section 6. The Service believes the rule is necessary and has added it as §61.21(g)-(i).

The amendment is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

§61.22. Labeling of Commercial Feed. Commercial feed shall be labeled with the information prescribed in the Texas Commercial Feed Control Act (Act) and this chapter on the principal display panel of the product with the following general format, unless otherwise specifically provided.

#### (1) Purpose Statement

(A) A statement of purpose shall contain the specific species and animal class(es) for which the feed is intended. The purpose statement may be excluded from the label if the product name includes a

description of the species and animal class(es) for which the product is intended.

(B) The manufacturer shall have flexibility in describing in more specific and common language the defined animal class, specie and purpose while being consistent with the category of animal class defined in this subparagraph which may include, but is not limited to including, the weight range(s), sex or ages of the animal(s) for which the feed is manufactured.

(i) Poultry.

(I) Layers—chickens that are grown to produce eggs for food, i.e., table eggs:

(-a-) Starting/Growing—from day of hatch to approximately ten weeks of age;

(-b-) Finisher—from approximately ten weeks of age to time first egg is produced. (Approximately 20 weeks of age);

(-c-) Laying—from time first egg is laid throughout the time of egg production;

(-d-) Breeders—chickens that produce fertile eggs for hatch replacement layers to produce eggs for food, table eggs, from time first egg is laid throughout their productive cycle.

(II) Broilers—chickens that are grown for human food:

(-a-) Starting/Growing—from day of hatch to approximately five weeks of age;

(-b-) Finisher—from approximately five weeks of age to market (42 to 52 days);

(-c-) Breeders—hybrid strains of chickens whose offspring are grown for human food (broilers), any age and either sex.

(III) Broilers, Breeders—chickens whose offspring are grown for human food (broilers):

(-a-) Starting/Growing—from day of hatch until approximately ten weeks of age;

(-b-) Finishing—from approximately ten weeks of age to time first egg is produced, approximately 20 weeks of age;

(-c-) Laying—fertile egg producing chickens (broilers/roasters) from day of first egg throughout the time fertile eggs are produced.

(IV) Turkeys:

(-a-) Starting/Growing—turkeys that are grown for human food from day of hatch to approximately 13 weeks of age (males);

(-b-) Finisher—turkeys that are grown for human food, females from approximately 17 weeks of age; males from 16 weeks of age to 20 weeks of age. (or desired market weight);

(-c-) Laying—female turkeys that are producing eggs; from time first egg is produced, throughout the time they are producing eggs;

(-d-) Breeder—turkeys that are grown to produce fertile eggs, from day of hatch to time first egg is produced (approximately 30 weeks of age), both sexes.

(V) Ducks:

(-a-) Starter—0 to 3 weeks of age;

(-b-) Grower—3 to 6 weeks of age;

(-c-) Finisher—6 weeks to market;

(-d-) Breeder Developer—8 to 19 weeks of age;

(-e-) Breeder—22 weeks to end of lay.

(VI) Geese:

(-a-) Starter—0 to 4 weeks of age;

(-b-) Grower—4 to 8 weeks of age;

(-c-) Finisher—8 weeks to market;

(-d-) Breeder Developer—10 to 22 weeks of age;

(-e-) Breeder—22 weeks to end of lay.

(ii) Swine.

(I) Pre-Starter—2 to 11 pounds;

(II) Starter—11 to 44 pounds;

(III) Grower—44 to 110 pounds;

(IV) Finisher—110 to 242 pounds (market);

(V) Gilts, Sows and Adult Boars;

and Sows.

(VI) Lactating Gilts

(iii) Beef Cattle.

(I) Calves (birth to weaning);

(II) Cattle on Pasture (may be specific as to production stage, i.e., stocker, feeder, replacement heifers, brood cows, bulls, etc.);

(III) Feedlot Cattle.

(iv) Dairy Cattle.

(I) Veal Milk Replacer—milk replacer to be fed for veal production;

(II) Herd Milk Replacer—milk replacer to be fed for herd replacement;

(III) Starter—approximately 3 days to 3 months;

(IV) Growing Heifers, Bulls, and Dairy Beef:

(-a-) Grower 1-3 months to 12 months of age;

(-b-) Grower 2—more than 12 months of age;

(V) Lactating Dairy Cattle;

(VI) Non-Lactating Dairy Cattle.

(v) Fish (Species shall be declared in lieu of class).

(I) Trout;

(II) Catfish;

(III) Species other than trout or catfish.

(vi) Rabbit.

(I) Grower—4 to 12 weeks of age;

(II) Breeder—12 weeks of age and over.

(vii) Equine.

- (I) Foal.
- (II) Mare;
- (III) Breeding;
- (IV) Maintenance.
- (viii) Goat and Sheep.

- (I) Starter;
- (II) Grower;
- (III) Finisher;
- (IV) Breeder;
- (V) Lactating.

(C) The indication for animal classes(es) and specie(s) is not required on single ingredient products if the ingredient is not intended, represented, or defined for a specific animal classes(es) or specie(s).

(D) A purpose statement of a premix limited to use in the further manufacture of commercial feed may state "For the Manufacture of Commercial Feed" if the nutrients contained in the premix are guaranteed and sufficient for formulation into various animal species feeds.

(E) The purpose statement of single purpose ingredient blend limited to use in the further manufacture of commercial feed, such as a blend of animal protein products, milk products, fat products, roughage products or molasses products may state "For Further Manufacturing of Feed" if the label guarantees of the nutrients contained in the single purpose nutrient blend are sufficient to provide for formulation into various animal species feeds.

(2) Product name and brand name, if any.

(A) The brand and product name shall be appropriate for the intended use of the feed and must not be misleading. If the name indicates the feed is made for a specific use, the character of the feed must conform therewith.

(B) The word "protein" shall not be permitted in the product name of a feed that contains non-protein nitrogen.

(C) The word "vitamin," or a contraction thereof, or any word suggesting vitamin, shall be used only in the name of a

feed which is represented to be a vitamin supplement and which is labeled with the minimum content of each vitamin declared, as specified in paragraph (9)(E) of this section.

(D) The term "mineralized" shall not be used in the name of a feed, except for when contained in the expression "trace mineralized salt." When this phrase is displayed on the label, the product must contain significant amounts of trace minerals which are recognized as essential for animal nutrition.

(E) The term "meat" or "meat by-products" shall be qualified on the label to designate the type of animal from which the meat or meat by-products are derived unless the meat or meat by-products are from cattle, swine, sheep, and goats.

(F) When the product name or brand name of a feed carries a percentage value, it shall be understood to signify the protein and/or equivalent protein of the feed content only, even though such percentage value is not explicitly modified by the word "protein." Other percentage values are permitted in the product name or brand name of a feed if such percentages are followed by a proper description and conform with good labeling practices.

(G) Digital numbers shall not be used in the product name or brand name of a feed in such a manner as to be misleading or confusing to a consumer.

(H) Unless otherwise specified, single ingredient feeds shall have a product name which comports with the ingredient name assigned to such product by the Association of American Feed Control Officials in its official publication, adopted by reference in §61.1 of this title (relating to Definitions), and shall meet the standard of identity and, where required, list the guarantees of that standard.

(3) Drug additives, when present.

(A) The word "medicated" shall be placed directly following and below the product name in type size no smaller than one-half the size of the product name.

(B) The purpose of the medication (claim statement) shall be stated.

(C) The label shall state any warning or cautionary statement relating to such drug additive required by paragraph (6) of this section, or reference to where

such warning or cautionary statement may be found.

(D) The label shall display active drug ingredient statement listing:

(i) each drug ingredient by its common or usual name; and

(ii) the amount of each ingredient.

(4) Guarantees—Crude Protein, Non-Protein Nitrogen, Amino Acids, Crude Fat, Crude Fiber, Acid Detergent Fiber, Calcium, Phosphorus, Salt and Sodium shall be the sequence of nutritional guarantees when such guarantee is stated. Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, International Units, etc.) are listed in a sequence that provides a consistent grouping of the units of measure.

(A) Poultry.

(i) Chickens and Turkeys—complete feeds and supplements for all animal classes:

(I) Minimum percentage of crude protein;

(II) Minimum percentage of lysine;

(III) Minimum percentage of methionine;

(IV) Minimum percentage of crude fat;

(V) Maximum percentage of crude fiber;

(VI) Minimum and maximum percentage of calcium;

(VII) Minimum percentage of phosphorus;

(VIII) Minimum and maximum percentage of salt (if added);

(IX) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(ii) Ducks and Geese—complete feeds and supplements for all animal classes:

(I) Minimum percentage of crude protein;

(II) Minimum percentage of crude fat;

(III) Maximum percentage of crude fiber;

(IV) Minimum and maximum percentage of calcium;

(V) Minimum percentage of phosphorus;

(VI) Minimum and maximum percentage of salt (if added);

(VII) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee.

(B) Swine—complete feeds and supplements for all animal classes:

(i) Minimum percentage of crude protein;

(ii) Minimum percentage of lysine;

(iii) Minimum percentage of crude fat;

(iv) Maximum percentage of crude fiber;

(v) Minimum and maximum percentage of calcium;

(vi) Minimum percentage of phosphorus;

(vii) Minimum and maximum percentage of salt (if added);

(viii) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) Minimum selenium in parts per million (ppm);

(x) Minimum zinc in parts per million (ppm).

(C) Beef Cattle.

(i) Complete Feeds and Supplements—all animal classes:

(I) Minimum percentage of crude protein;

(II) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(III) Minimum percentage of crude fat;

(IV) Maximum percentage of crude fiber;

(V) Minimum and maximum percentage of calcium;

(VI) Minimum percentage of phosphorus;

(VII) Minimum and maximum percentage of salt (if added);

(VIII) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(IX) Minimum percentage of potassium;

(X) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(ii) Mineral Feeds (if added):

(I) Minimum and maximum percentage of calcium;

(II) Minimum percentage of phosphorus;

(III) Minimum and maximum percentage of salt;

(IV) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(V) Minimum percentage of magnesium;

(VI) Minimum percentage of potassium;

(VII) Minimum copper in parts per million (ppm);

(VIII) Minimum selenium in parts per million (ppm);

(IX) Minimum zinc in parts per million (ppm);

(X) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

(D) Dairy Cattle.

(i) Complete Feeds and Supplements—all animal classes:

(I) Minimum percentage of crude protein;

(II) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(III) Minimum percentage of crude fat;

(IV) Maximum percentage of crude fiber;

(V) Maximum percentage of acid detergent fiber (ADF);

(VI) Minimum and maximum percentage of calcium;

(VII) Minimum percentage of phosphorus;

(VIII) Minimum selenium in parts per million (ppm);

(IX) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(ii) Mixing and Pasture Mineral Feeds (if added):

(I) Minimum and maximum percentage of calcium;

(II) Minimum percentage of phosphorus;

(III) Minimum and maximum percentage of salt;

(IV) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(V) Minimum percentage of magnesium;

(VI) Minimum percentage of potassium;

(VII) Minimum selenium in parts per million (ppm);

(VIII) Minimum vitamin A, other than precursors of vitamin A, in international units per pound.

(E) Veal & Herd Replacement Milk Replacer.

(i) Minimum percentage of crude protein;

(ii) Minimum percentage of crude fat;

(iii) Maximum percentage of crude fiber;

(iv) Minimum and maximum percentage of calcium;

(v) Minimum percentage of phosphorus;

(vi) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(F) Fish Complete Feeds and Supplements.

(i) Minimum percentage of crude protein;

(ii) Minimum percentage of crude fat;

(iii) Maximum percentage of crude fiber;

(iv) Minimum percentage of phosphorus.

(G) Rabbit Complete Feeds and Supplements—all animal classes:

(i) Minimum percentage of crude protein;

(ii) Minimum percentage of crude fat;

(iii) Minimum and maximum percentage of crude fiber (the maximum crude fiber shall not exceed the minimum by more than 5.0 percentage units);

(iv) Minimum and maximum percentage of calcium;

(v) Minimum percentage of phosphorus;

(vi) Minimum and maximum percentage of salt (if added);

(vii) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(viii) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(H) Equine.

(i) Complete Feeds and Supplements—all animal classes:

(I) Minimum percentage of crude protein;

(II) Minimum percentage of crude fat;

(III) Maximum percentage of crude fiber;

(IV) Minimum and maximum percentage of calcium;

(V) Minimum percentage of phosphorus;

(VI) Minimum copper in parts per million (ppm);

(VII) Minimum selenium in parts per million (ppm);

(VIII) Minimum zinc in parts per million (ppm);

(IX) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(ii) Mineral—all animal classes:

(I) Minimum and maximum percentage of calcium;

(II) Minimum percentage of phosphorus;

(III) Minimum and maximum percentage of salt (if added);

(IV) Minimum and maximum percentage of sodium (guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee);

(V) Minimum copper in parts per million (ppm);

(VI) Minimum selenium in parts per million (ppm);

(VII) Minimum zinc in parts per million (ppm);

(VIII) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(I) Goat and Sheep Complete Feeds and Supplements—all animal classes:

(i) Minimum percentage of crude protein;

(ii) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) Minimum percentage of crude fat;

(iv) Maximum percentage of crude fiber;

(v) Minimum and maximum percentage of calcium;

(vi) Minimum percentage of phosphorus;

(vii) Minimum and maximum percentage of salt (if added);

(viii) Minimum and maximum percentage of total sodium shall be guaranteed only when total sodium exceeds that furnished by the maximum salt guarantee;

(ix) Minimum and maximum copper in parts per million (ppm) (if added, or if total copper exceeds 20 ppm);

(x) Minimum selenium in parts per million (ppm);

(xi) Minimum vitamin A, other than precursors of vitamin A, in international units per pound (if added).

(J) Feeds for Other Animal Classes and Species not specifically mentioned above:

(i) Minimum percentage of crude protein;

(ii) Maximum percentage of equivalent crude protein from non-protein nitrogen (NPN) when added;

(iii) Minimum percentage of crude fat;

(iv) Maximum percentage of crude fiber;

(v) Minimum and maximum percentage of calcium;

(vi) Minimum percentage of phosphorus;

(vii) Minimum and maximum percentage of salt (if added);

(viii) Minimum and maximum percentage of total sodium shall be guaranteed when total sodium exceeds that furnished by the maximum salt guarantee;

- (ix) Other Minerals;
- (x) Vitamins;
- (xi) Total sugars as inverted;
- (xii) Microorganisms.

(K) Grain Mixtures with or without Molasses.

- (i) Minimum percentage of crude protein;
- (ii) Minimum percentage of crude fat;
- (iii) Maximum percentage of crude fiber;
- (iv) Total sugars as inverted.

(L) A commercial feed (e.g., vitamin/mineral premix, base mix, etc.) intended to provide a specialized nutritional source for use in the manufacture of other feeds, must state its intended purpose and guarantee those nutrients relevant to such stated purpose.

(5) Feed ingredients.

(A) The feed ingredients statement for a commercial feed shall include the name of each ingredient in the feed or the collective term for each grouping of feed ingredients contained in the feed, unless exempted under subparagraph (I) of this paragraph.

(B) The name of each ingredient or grouping of ingredients listed shall be:

- (i) the official term for the ingredient or grouping of ingredients adopted by the Association of American Feed Control Officials in its official publication, adopted by reference in §61.1 of this title (relating to Definitions);
- (ii) the common or usual name for the ingredient; or
- (iii) a name approved by the Service.

(C) When a collective term for a group of ingredients is used on the label of a feed:

- (i) individual ingredients within that group shall not be listed on the label; and
- (ii) the Service may require the manufacturer to provide a listing of the individual ingredients within the group that are or have been used in the product as distributed in this state.

(D) Tentative definitions for feed ingredients shall not be used until adopted as an official definition by the Association of American Feed Control Officials, unless no official definition exists or the ingredient has a commonly accepted name that requires no definition (e.g., sugar).

(E) The sources of added vitamins may be stated in the ingredients statement.

(F) No reference to quality or grade of an ingredient shall appear in the ingredients statement.

(G) The term "dehydrated" may precede the name of any product that has been artificially dried.

(H) When the term "iodized" is used in connection with a feed ingredient, the ingredient shall contain not less than 0.007% iodine uniformly distributed.

(I) Exemptions:

(i) Carrier ingredients in products used solely as drug and vitamin premixes need not be named in the ingredients statement if:

(I) any changes in the carrier will not affect the purposes of the premix;

(II) the carrier ingredient is recognized by the Service as being safe;

(III) the carrier will not affect the safety, potency or efficacy of the finished product.

(ii) Single ingredient feeds are not required to have an ingredient statement.

(6) Directions for use and cautionary statements.

(A) All feeds containing additives (including drugs, special purpose additives, or non-nutritive additives) shall have included on their label directions for use and cautionary statements which shall:

(i) be adequate to enable safe and effective use of the product for its intended purposes by users with no special knowledge of the purposes and use of such articles; and

(ii) include, but not limited to, all information prescribed by the Code of Federal Regulations, Title 21.

(B) All feeds supplying particular dietary needs or for supplementing or fortifying the diet or ration with any vitamin, mineral, or other dietary nutrient or compound shall have included on their label adequate directions for use and any cautionary statement necessary for their safe and effective use.

(i) All mixed feeds containing urea or other non-protein nitrogen products shall have included on their label:

(I) the statement "Warning: (or "Caution:") Use as Directed" followed by adequate directions for the safe use of the feed if the equivalent protein from non-protein nitrogen in the feed exceeds one-third of the total crude protein, or more than 8.75% of the equivalent protein is from non-protein nitrogen; and

(II) a separate maximum guarantee for non-protein nitrogen originating from the addition of a mineral.

(ii) Premixes, concentrates or supplements containing more than 1.25% equivalent crude protein from all forms of non-protein nitrogen, added as such, must contain adequate directions for use and a prominent statement: "WARNING: This feed must be used only in accordance with directions furnished on the label."

(iii) All directions for use required by this subparagraph shall be printed in a size of type such that the directions will be read and understood by ordinary persons under customary conditions of purchase and use.

(iv) This subparagraph shall apply to all invoiced, labeled customer-formula and labeled feeds.

(v) Feeds, such as medicated feeds, which are required to be labeled with adequate feeding directions and cautionary statements irrespective of the provisions of this subparagraph, shall not be required to bear duplicate feeding directions or cautionary statements on their labels if such statements as are otherwise required are sufficient to ensure the safe and effective use of the product due to the presence of non-protein nitrogen.

(C) Fluorine bearing phosphatic materials shall have included on their label the statement: "Caution-Mix at the rate to not raise the fluorine content in a total ration (exclusive of roughage) above the following levels:

(i) 0.004% for breeding and dairy cattle;

- (ii) 0.009% for slaughter cattle;
- (iii) 0.006% for sheep;
- (iv) 0.01% for lambs;
- (v) 0.015% for swine; and
- (vi) 0.03% for poultry."

(7) The name and principal mailing address of the person responsible for distributing the feed.

(A) The principal mailing address shall include the street address, city, state, and zip code; provided, however, that the street address may be omitted if the address is listed in a current city directory or telephone directory.

(B) The labeling may bear the name of the purchaser as well as the manufacturer, provided the product is for in-plant use and not for resale.

(C) The labeling may bear the name of the distributor as well as the manufacturer, provided that the guarantor of the product is specifically stated.

(8) Quantity Statement

(A) Net weight and/or net liquid volume must be expressed both in English and in SI units:

(i) when the quantity statement is expressed in net pounds, the corresponding SI units shall be in kilograms and vice-versa;

(ii) when the quantity statement is expressed in net quarts or gallons, the corresponding SI unit shall be in liters and vice-versa;

(iii) when the quantity statement is expressed in net avoirdupois ounces or net fluid ounces, the corresponding SI units shall be in grams and milliliters respectively and vice-versa;

(iv) any fractional number which arises expressing the net weight in both systems shall be limited to two decimal places and the number rounded down.

(B) All dry and liquid bulk shipments shall declare net weight only.

(C) Net contents other than net weight or net volume shall be expressed as the sum total of the smallest individual unit in the container going to the final customer.

(D) Measurement.

(i) Net weights of packages dry and liquid bulk shall be determined directly from scales or for bulk liquids only as calculated from volume and specific gravity/density.

(ii) Conformance to weight guarantee shall be judged solely by use of certified scale defined in accordance with Texas Department of Agriculture standards.

(iii) Dip-sticks, uncertified/uncalibrated meters or sight gauges shall not be used to estimate volume. Scales not certified in accordance with the Texas Department of Agriculture standards shall not be used for net weights.

(iv) Net weights shall meet both the English and SI statements on the label.

(v) Conformance to guarantee of number shall be judged by count of intact individual units.

(9) Expression of Guarantees

(A) The guarantees for crude protein, amino acids and crude fat shall be in terms of minimum percentage.

(B) The guarantees for crude fiber and acid detergent fiber shall be in terms of maximum percentage.

(C) The percentage of equivalent protein from non-protein nitrogen shall be guaranteed as follows:

(i) In feeds designated for ruminants-

(I) Complete feeds, supplements, and concentrates containing more than 5.0% protein from natural sources shall bear the following statement of guarantee: "Crude protein, minimum \_\_\_% (This includes not more than \_\_\_% equivalent protein from non-protein nitrogen.)"

(II) Mixed feed concentrates and supplements containing less than 5.0% protein from natural sources may bear the following statement of guarantee: "Equivalent crude protein from non-protein nitrogen, minimum \_\_\_%."

(III) Ingredient sources of non-protein nitrogen, such as urea, diammonium phosphate, ammonium polyphosphate solution, ammoniated rice hulls, or any other basic non-protein nitrogen ingredient shall bear the following statement of guarantee: "Nitrogen, minimum \_\_\_%. Equivalent crude protein from non-protein nitrogen, minimum \_\_\_%."

(IV) Liquid feed supplements shall bear the following statement of guarantee: "Crude protein not less than \_\_\_% (This includes not more than \_\_\_% equivalent protein from non-protein nitrogen.)"

(ii) Feeds distributed to non-ruminant animals as a source of nutrients other than equivalent crude protein containing urea or other non-protein nitrogen products shall be labeled as follows: Complete feeds, supplements and concentrates containing crude protein from all forms of non-protein nitrogen, added as such. Crude protein, minimum \_\_\_%. (This includes not more than \_\_\_% equivalent crude protein which is not nutritionally available to \_\_\_\_\_ (species of animal for which feed is intended)).

(D) The guarantees for minerals shall be expressed as follows.

(i) Commercial feeds containing calcium, phosphorus and/or salt shall include a guaranteed analysis of the following minerals in the following order:

(I) minimum and maximum percentage of calcium (Ca);

(II) minimum percentage of phosphorus (P);

(III) minimum and maximum percentages of salt (NaCl), when required; and

(IV) such other minerals as may be required by clause (ii) in this subparagraph.

(ii) Other minerals shall be expressed as follows:

(I) If the quantity statement is by weight:

(-a-) guarantees for minimum potassium, magnesium and maximum fluoride when used shall be stated in terms of percentage.

(-b-) Other minimum mineral guarantees shall be stated in percentage when used when the concentration is 1.00% (10,000 ppm) or greater; below 10,000 ppm these guarantees shall be expressed in ppm.

(II) If the quantity statement is in tablet, capsules, granules, liquids or boluses, then the guarantee is in mg per unit consistent with quantity statement and directions for use.



(III) When calcium, salt and sodium guarantees are given in the guaranteed analysis, such guarantees shall conform to the following.

(-a-) When the minimum is 5.0% or less, the maximum shall not exceed the minimum by more than one percentage point.

(-b-) When the minimum is above 5.0%, the maximum shall not exceed the minimum by more than 20% and in no case shall the maximum exceed the minimum by more than five percentage points.

(IV) Naturally occurring mineral phosphatic materials for feeding purposes shall be labeled with a guaranteed analysis of the minimum and maximum percentage of calcium (when present), the minimum percentage of phosphorus, and the maximum percentage of fluorine.

(E) If made, the guarantees for vitamins shall be expressed as follows.

(i) The minimum vitamin content of commercial feeds and feed supplements shall be stated on the label in milligrams per pound or units consistent with the quantity statement and with the directions for use, except that:

(I) vitamin A, other than precursors of vitamin A, shall be stated in international units per pound;

(II) vitamin D<sub>3</sub>, in products offered for poultry feeding, shall be stated in international chick units per pound;

(III) vitamin D, for other uses, shall be stated in terms of international units per pound;

(IV) vitamin E shall be stated in international units per pound;

(V) vitamin B<sub>12</sub> shall be stated in milligrams or micrograms per pound;

(VI) oils and premixes containing vitamins A, D and/or E may be labeled to show vitamin content in terms of units per gram.

(ii) Guarantees for vitamin content on the label of a commercial feed shall state the guarantees as menadione, riboflavin, d-pantothenic acid, thia-

mine, niacin, vitamin B<sub>6</sub>, folic acid, choline, biotin, inositol, p-amino benzoic acid, ascorbic acid and/or carotene.

(F) The guarantees for antibiotics shall be expressed in terms of percent by weight, except that:

(i) antibiotics present at less than 2,000 grams per ton (total) of commercial feed shall be stated in grams per ton (total) of commercial feed;

(ii) antibiotics present at more than 2,000 grams per ton (total) of commercial feed shall be stated in grams per pound of commercial feed;

(iii) labels for commercial feeds containing growth promotion and feed efficiency levels of antibiotics which are to be fed continuously as the sole ration are not required to make quantitative guarantees, except as specifically noted in the Code of Federal Regulations (CFR), Title 21;

(iv) the amount of a drug or antibiotic may be expressed in terms of milligrams per pound where the dosage given in the feeding directions is given in milligrams.

(G) The analysis shall include the minimum percentage total sugars as invert on products being sold for their molasses content or products containing more than 16% sugars.

(H) The analysis shall include the maximum percent moisture on liquid feed supplements and liquid ingredients containing more than 20% moisture.

(I) Microorganisms need not be guaranteed when the commercial feed is intended for a purpose other than to furnish these substances and no other specific label claims are made. When guaranteed, the units shall be colony forming units (CFU) per gram if directions for use are in grams or in CFU per pound when directions for use are in pounds. A parenthetical statement following the guarantee shall list each species in order of predominance.

(J) Other required and voluntary guarantees should follow in a general format such that the units of measure used to express guarantees (percentage, parts per million, international units, etc.) are listed in a sequence which provides a consistent grouping of the units of measure.

(K) The sliding scale method of expressing guarantees (e.g., "protein is 15-18%, etc.") is prohibited.

(L) Unless otherwise provided by this section, guarantees for crude protein, equivalent protein from non-protein nitrogen, crude fat, and crude fiber will be in terms of percentage by weight.

(M) Commercial, registered brand, or trade names are not permitted for use in a statement of guarantee, unless followed by a parenthetical statement giving the technical name of the ingredient.

(N) Exemptions are as follows.

(i) Guarantees for vitamins are not required for commercial feed which is neither formulated nor in any manner represented as a vitamin supplement.

(ii) Guarantees for crude protein, crude fat, and crude fiber are not required for commercial feed not intended to furnish these substances, or for feeds in which these substances are of minor significance to the primary purpose of the product (e.g., drug premixes, mineral or vitamin supplements, or molasses).

(iii) Liquid ingredients need not be guaranteed to show maximum moisture content when moisture is the difference between the guarantee element and 100% or when the moisture content of the ingredient is less than 20%.

(iv) Whole feed-grain, unprocessed in any manner save mechanical blending or mixing with other batches of the same whole kernel feed-grade grain, need not provide guarantees for protein, fat, and fiber.

(v) A mineral guarantee is not required:

(I) when the feed or feed ingredient is intended for non-food producing animals and contains less than 6.5% total minerals; and

(II) when the feed or feed ingredient is not represented nor does it serve as a principle source of that mineral to the animal.

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 College Station, Texas, on November 29, 1995.

TRD-9515391 Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

◆ ◆ ◆  
• 4 TAC §61.23

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts an amendment to §61.23, without changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8053).

The rule is being amended to implement the changes enacted by the 74th Legislature to the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

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 College Station, Texas, on November 29, 1995.

TRD-9515328

Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

◆ ◆ ◆  
Changes in Licensing

• 4 TAC §61.25

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts an amendment to §61.25, concerning changes in licensing with changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8053).

The rule is being amended to implement the changes enacted by the 74th Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

There were no comments received in favor of the amendment. Comments against the amendment were from the American Feed Industry Association, Texas Grain and Feed Association, Cargill, Inc., and Marshall Minerals.

The following comments were received: §61.25(a)(1) appears to link licensing with annual product registration. The Service agrees. That paragraph has been deleted and §61.25(b) reworded. With this change §61.25(c) and (d) have been amended and §61.25(c)(1), (2) and 61.25(e) are not adopted. These changes are editorial and

done to make the paragraph coherent after the changes in §61.25(a)(1). Another comment was that §61.25(a)(2) could require that firms submit data for safety and efficacy to the Service which had already been approved by FDA/AAFCO. The Service agrees; that paragraph has been reworded.

The amendment is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

§61.25. Redesignation of Facility.

(a) A facility shall notify the Service to amend its license if, after licensing, it wishes:

(1) to distribute an ingredient or commercial feed not previously distributed in the state for which safety and efficacy data have not previously been approved by FDA, AAFCO or the Service;

(2) to distribute products normally exempt, but subject to control by the Service, including, but not limited to, aflatoxin-containing corn above 20 ppb; products incorporating poultry litter;

(3) to change ownership; (4) to change physical location; or (5) to change name.

(b) Facilities distributing new annual products must complete the Small Package Registration form provided by the Service for products before distribution, but do not need an amended license.

(c) Facilities subject to subsection (a)(1) and (2) of this section must provide a copy of the label.

(d) The Service will amend the license and may require the licensee to verify corrections and provide additional information:

(1) at no additional license fee to those subject to subsection (a)(1)-(2) of this section if response is received within 30 calendar days of the notification by the Service;

(2) at \$75:

(A) for those subject to subsection (a)(1)-(2) and (b) if response is more than 31 calendar days after notification by the Service;

(B) for those subject to subsection (a)(3)-(5) of this section.

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

Issued in College Station, Texas, on November 29, 1995.

TRD-9515329

Dr. George W. Latimer, Jr.  
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the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

◆ ◆ ◆  
Label Review

• 4 TAC §61.29

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts new §61.29, without changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8054).

The new rule is necessary to implement the changes enacted by the 74th Legislature in the Texas Commercial Feed Control Act, such changes to take effect January 1, 1996.

No comments were received regarding adoption of the new section.

The new section is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

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 College Station, Texas, on November 29, 1995.

TRD-9515330

Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

◆ ◆ ◆  
Adulterants

• 4 TAC §61.61

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts an amendment to §61.61, with changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8054).

The rule is amended to clarify the Feed and Fertilizer Control Service's responsibilities under the Texas Commercial Feed Control Act.

Prior to adoption, the Service received adverse comments on this subsection from the American Feed Industry Association and the Texas Grain and Feed Association. Witnesses noted that, as written, this paragraph could "allow the Service to request and

judge data previously submitted to FDA\* or would allow the Service to require additional evidence above that required by the FDA. While it was not the Service's intent to require credible evidence beyond that normally expected for safety and efficacy, the wordings suggested by witnesses are not sufficiently flexible nor inclusive. The Service, therefore, adopts an alternate language which appears in the text in §61.61(d).

The amendment is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

**§61.61. Poisonous or Deleterious Substances.**

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

(d) The Service may require evidence satisfactory to the Service of:

(1) the safety of any commercial feed if such feed includes ingredients not approved either by the FDA or AAFCO (the Association of American Feed Control Officials); or

(2) the efficacy of any commercial feed when such feeds do not meet minimum standards of nutrition for the targeted animal as set forth by recognized authorities on animal nutrition.

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 College Station, Texas, on November 29, 1995.

TRD-9515332 Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

**Appeals and Rehearings**

• 4 TAC §61.85

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts the repeal of §61.85, concerning Appeals and Rehearings, without changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8055).

The rule is being repealed as it is unnecessary because it repeats a section of the Texas Commercial Feed Control Act.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Texas Agricultural Code, Chapter 141, §141.004, which provides the Feed and Fertilizer Control Ser-

vice with the authority to adopt rules relating to the distribution of commercial feeds.

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 College Station, Texas, on November 29, 1995.

TRD-9515333 Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

**Good Manufacturing Practices**

• 4 TAC §61.86

The Office of the Texas State Chemist, Feed and Fertilizer Control Service adopts §61.86, without changes to the proposed text as published in the October 3, 1995, issue of the *Texas Register* (20 TexReg 8055).

This new rule is being adopted to implement the changes enacted by the 74th Legislature, such changes to take effect January 1, 1996.

No written comments were received. One witness at the open meeting on November 1 (American Feed Industry Association) commented in favor of the rule. None were against.

The new section is adopted under Texas Agriculture Code, Chapter 141, §141.004 which provides the Feed and Fertilizer Control Service with the authority to adopt rules relating to the distribution of commercial feeds.

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 College Station, Texas, on November 29, 1995.

TRD-9515334 Dr. George W. Latimer, Jr.  
State Chemist, Office of  
the Texas State  
Chemist  
Texas Feed and Fertilizer  
Control Service

Effective date: January 1, 1996

Proposal publication date: October 3, 1995

For further information, please call: (409) 845-1121

**TITLE 22. EXAMINING  
BOARDS**

**Part XI. Board of Nurse  
Examiners**

**Chapter 215. Nurse Education**

• 22 TAC §215.2

The Board of Nurse Examiners adopts an amendment to §215.2, concerning Defini-

tions, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8556).

During the 73rd Legislative Session, changes were made in the Nursing Practice Act by Senate Bill 519 which amended Article 4525a by adding language to require the reporting of students in professional nursing programs that may be impaired by chemical dependency. The language further states that in lieu of reporting the student to the board, an RN may report the student to the professional nursing educational program in which the student is enrolled.

The Board has determined that the law will be fulfilled if the institution or the RN suspecting the student is impaired reports that student to the professional nursing education program in which that student is enrolled.

The amendment will support nursing programs to deal internally with students who have chemical dependency problems. It will clarify that the individual nursing program will determine when a student is a "professional nursing student". The adopted new section will bring the agency into compliance with Senate Bill 519.

There were no comments received regarding adoption of the amendment.

The amendment is adopted under the Nursing Practice Act, (Texas Civil Statutes), Article 4514, §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on November 28, 1995.

TRD-9515358 Katherine A. Thomas, MN,  
RN  
Executive Director  
Board of Nurse Examiners

Effective date: December 20, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 305-6811

**Chapter 217. Licensure and  
Practice**

• 22 TAC §217.7

The Board of Nurse Examiners adopts an amendment to §217.7, concerning Failure to Renew License, without changes to the proposed text as published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8556).

During the 72nd Legislative Session, changes were made in the Nursing Practice Act by House Bill 2180 which amended Article 4526 by adding language to require a licensee who has allowed his or her license to expire and

has not been practicing professional nursing for a specified period of time to retest. In addition, the language states that the board by rule may establish additional requirements that apply to the renewal of a license that has been expired for more than one year but less than the time limit set by the board beyond which a license may not be renewed.

Currently, there are more than 47,000 delinquent licenses on the Board's files. However, some of those licensees may be currently licensed in another jurisdiction. The Board's Nursing Practice Advisory Committee has met and recommended a draft rule amendment. The Board concurred and authorized adoption.

The amendment will require reexamination of a licensee who has been delinquent four or more years; however reexam will not apply to the nurse who holds a current license in another state and has been practicing in that jurisdiction. This amendment will bring the agency into compliance with House Bill 2180.

There were no comments received regarding adoption of the amendment.

The amendment is adopted under the Nursing Practice Act (Texas Civil Statutes, Article 4514), §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on November 28, 1995.

TRD-9515359 Katherine A. Thomas, MN,  
RN  
Executive Director  
Board of Nurse Examiners

Effective date: December 20, 1995

Proposal publication date: October 20, 1995

For further information, please call: (512) 305-6811

## Chapter 222. Advanced Nurse Practitioners Carrying out Prescription Drug Orders

### • 22 TAC §§222.1-222.4

The Board of Nurse Examiners adopts the repeal of §§222.1-222.4, concerning Advanced Practice Nurses Carrying Out Prescription Drug Orders, without changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7783).

During the 74th Legislative Session, Senate Bill 673 was passed which expanded limited prescriptive authority for Advanced Practice Nurses. Amendments to the Nursing Practice Act require the board to adopt rules. Extensive rewrite of the rules was necessary; therefore, the board felt that repealing the current rules would allow for the adoption of

rules to implement the requirements of Senate Bill 673.

The repeals will allow the adoption of new sections.

No comments were received regarding adoption of the repeals.

The repeals are adopted under the Nursing Practice Act, (Texas Civil Statutes), Article 4514, §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on November 28, 1995.

TRD-9515360 Katherine A. Thomas, MN,  
RN  
Executive Director  
Board of Nurse Examiners

Effective date: December 20, 1995

Proposal publication date: September 26, 1995

For further information, please call: (512) 305-6811

## Chapter 222. Advanced Practice Nurses with Limited Prescriptive Authority

### • 22 TAC §§222.1-222.7

The Board of Nurse Examiners adopts new §§222.1-222.7, concerning Advanced Practice Nurses with Limited Prescriptive Authority. Section 222.2 and §222.4 are adopted with changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7784). Sections 222.1, 222.3, 222.5-222.7 are adopted without changes and will not be republished.

Changes were made in §222.2(a) relating to Application for Approval, and 222.4(a)(3) and 222.4(e) relating to Functions.

During the 74th Legislative Session, Senate Bill 673 was passed which expanded limited prescriptive authority for Advanced Practice Nurses. Amendments to the Nursing Practice Act require the board to adopt rules. The Board's staff met with key representatives of other nursing and health related agencies to arrive at the draft rules which were reviewed by the Board. Due to extensive rewrite of the rules pertaining to Prescription Drugs, it was necessary to repeal the existing rule and propose a new rule.

The adopted new section will bring the agency into compliance with Senate Bill 673.

The Texas Nurses Association submitted comments in relation to §222.2, Application for Approval and 222.4, Functions. Their concern in relation to §222.2 (a) addressed the addition of the words "or sign" prescription drug orders.... The Board did not disagree as

this language was inadvertently omitted from the original filing.

In relation to 222.4(a)(3), the Association recommended additional language clarifying that the Board of Medical Examiners has established additional requirements for physician supervision of APNs carrying out or signing prescription drug orders. The Board agreed with the comment and added the recommended language.

Under 222.4 (e) the Association recommended the addition of new language clarifying the APN's need to be compliant with all requirements to sign prescription drug orders. The Board agreed with the comment and modified 222.4 to reflect that change.

The new sections are adopted under the Nursing Practice Act, (Texas Civil Statutes), Article 4514, §1, which provides the Board of Nurse Examiners with the authority and power to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

### §222.2. Application for Approval.

(a) To be approved by the board to carry out or sign prescription drug orders and issued a prescription authorization number, a Registered Nurse (RN) shall satisfactorily complete the following requirements:

(1) the RN shall be approved by the board as an APN; and

(2) the APN shall submit to the board the application for Limited Prescriptive Authority and the appropriate documentation of the necessary education, training, and current skills, to include pharmacotherapeutics, as determined by the board to carry out or sign prescription drug orders.

(b) The APN shall renew the privilege to carry out or sign prescription drug orders in conjunction with the RN license renewal application.

### §222.4. Functions.

(a) The APN with a valid prescription authorization number may carry out or sign prescription drug orders under the following conditions:

(1) The APN carries out or signs prescription drug orders in an eligible site.

(2) The prescription drug order is carried out or signed in accordance with protocols, standing delegation orders, standing medical orders, practice guidelines or other physician orders for medical aspects of patient care including prescription drug orders.

(3) The APN carries out or signs prescription drug orders under physician supervision which consists of the following and the additional supervision requirements set out in Board of Medical Examiners

(BME) Rule §193.8 (relating to Delegation of the Carrying Out or Signing of Prescription Drug Orders to Physician Assistants and Advanced Practice Nurses):

(A) at a site serving medically underserved populations, the physician visits the site at least once a week; the physician receives daily reports from the APN regarding complications encountered; and the physician is available for consultation by direct telecommunications;

(B) at a physician's primary practice site, the physician is limited to delegation to three full time equivalent APNs; the physician may delegate the carrying out or signing of a prescription drug order for patients with whom the physician has established or will establish a physician-patient relationship but no time period to establish this relationship is required;

(C) at a facility-based practice, where the delegating physician is the medical director, chief of staff, credentialing committee chair, department chair or physician who consents to a request by the medical director or chief of staff; protocols or other orders must be developed in accordance with policies approved by the medical staff; the APN writing prescriptions for patients of physicians, other than the delegating physician, must have the approval of the patient's physician; delegation in long term care facilities is limited to three full time equivalent APNs; and the physician must have the approval of the BME to delegate at more than one licensed hospital or more than two long term care facilities.

(4) The APN maintains appropriate documentation of physician supervision, patient records, and protocols which should comply with rules adopted by the BME.

(b) The APN with a valid prescription authorization number may carry out or sign prescription drug orders by providing the following information on the prescription:

- (1) the patient's name and address;
- (2) the drug to be dispensed;
- (3) directions to the patient in regard to the taking and the dosage;
- (4) the intended use of the drug, if appropriate;
- (5) the name, address, and telephone number of the physician;
- (6) the name, address, telephone, and identification number of the APN completing or signing the prescription drug order;

- (7) the date; and
- (8) the number of refills permitted.

(c) The format and essential elements of the prescription shall comply with the requirements of the rules of the Board of Pharmacy.

(d) The medications which can be carried out or signed by the APN through prescription drug orders shall be those drugs classified as dangerous drugs and shall be limited to those categories of drugs identified in protocol or other order.

(e) The APN with a valid prescription authorization number may request, receive, possess and distribute prescription drug samples provided:

(1) protocols or other physician orders authorize the APN to sign the prescription drug orders;

(2) all requirements for the APN to sign prescription drug orders are met;

(3) the samples are dangerous drugs only; and

(4) a record of the sample is maintained and samples are labeled as specified in the Dangerous Drug Act (Health and Safety Code, Chapter 483).

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 November 28, 1995.

TRD-9515361 Katherine A. Thomas, MN,  
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Executive Director  
Board of Nurse Examiners

Effective date: December 20, 1995

Proposal publication date: September 26, 1995

For further information, please call: (512) 305-6811

## Part XXII. Texas State Board of Public Accountancy

### Chapter 511. Certification as a CPA

#### Examination Hearings

##### • 22 TAC §511.106

The Texas State Board of Public Accountancy adopts an amendment to §511.106, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7019).

The amendment allows the elimination of the current confusing provision allowing a candidate to sit for the CPA examination while

awaiting a Board determination as to whether the candidate's application to sit for the examination should be approved.

The amendment will function by causing an eligibility determination to be made prior to allowing a candidate to sit for the CPA examination.

No comments were received concerning adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; §12, which requires the board to ascertain whether applicants are of good moral character or have a criminal history; §21A, which authorizes the Board to deny an application to take the examination for any of the grounds therein; and §21B, which authorizes the board to investigate an applicant's criminal history.

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 November 9, 1995.

TRD-9515344 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: December 20, 1995

Proposal publication date: September 8, 1995

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

## Chapter 527. Quality Review

### • 22 TAC §527.4

The Texas State Board of Public Accountancy adopts an amendment to §527.4, without changes to the proposed text as published in the September 8, 1995, issue of the *Texas Register* (20 TexReg 7019).

The amendment allows the recognition of the continuation of three year increment periods for the Quality Review Program and to establish a deadline by which the Board is to be notified of assigned quality review dates.

The amendment will function by requiring firms to schedule their Quality Review every three years and requiring the firms to notify the Board of the scheduled review dates within 30 days of learning of the review date.

No comments were received concerning adoption of the rule.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law; and §15B, which authorizes the Board to adopt rules regarding the Quality Review program.

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 November 9, 1995

TRD-9515345 William Treacy  
Executive Director  
Texas State Board of  
Public Accountancy

Effective date: December 20, 1995

Proposal publication date: September 8, 1995

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

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part I. General Land Office

#### Chapter 9. Exploration and Leasing of Oil and Gas

##### • 31 TAC §9.3, §9.4

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts amendments to §9.3 and §9.4, concerning consistency with the Coastal Management Program (CMP) goals and policies, without changes to the proposed text as published in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3817).

Section 501.10 of this title (relating to Compliance with Goals and Policies) requires state agencies to comply with the CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. Contemporaneously with the adoption of §9.3(g), the GLO is adopting new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with the CMP goals and policies regarding coastal natural resource areas. Because Chapter 9 (relating to Exploration and Leasing of Oil and Gas) already addresses certain actions that could also affect coastal natural resource areas, §9.3(g) is necessary to ensure that GLO and SLB rules are consistent with CMP goals and policies. Section 9.3(g) specifies that the rules in Chapter 9 will be read in harmony with the GLO's goals and policies set out in the new Chapter 16 of this title (relating to Coastal Protection). Section 9.3(g) clarifies the relationship between the operation of Chapter 9 and the CMP goals and policies as reflected in Chapter 16 of this title (relating to Coastal Protection).

The term "coastal wetlands" was defined in §9.4(b)(3), and used only in §9.4(e)(2)(C). However, the definition of "coastal wetlands"

in §9.4(b)(3) did not conform to the CMP definition of this term in §501.3(b)(5) of this title (relating to Definitions and Abbreviations). Further, the GLO believes that the concept represented by the term as previously defined could be expressed more clearly. The GLO is replacing the term "coastal wetlands" in §9.4(e)(2)(C) with the phrase "areas of tidal sand or mud flats, submerged aquatic vegetation, or coastal wetlands", as those terms are defined in §501.3(b) of this title (relating to Definitions and Abbreviations). The terms "tidal sand or mud flats", "submerged aquatic vegetation", and "coastal wetlands" are defined in the CMP. The GLO believes that the identification in §9.4(e)(2)(C) of specific areas using terms defined in the CMP makes the rule clearer and, therefore, more effective to protect the sensitive areas the rule is intended to protect. As a result of the revision to §9.4(e)(2)(C), the definition of "coastal wetlands" in §9.4(b)(3) is unnecessary, and so has been deleted. The deletion requires the renumbering of subsequent definitions.

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

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

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Natural Resources Code, §33.064, which authorizes the SLB to adopt and enforce necessary rules, consistent with CMP goals and policies, and §31.051, which provides that the commissioner of the GLO shall make and enforce suitable rules consistent with the law.

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 November 27, 1995.

TRD-9515264 Garry Mauro  
Commissioner  
General Land Office

Effective date: December 18, 1995

Proposal publication date: May 23, 1995

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

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

### • 31 TAC §10.10

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts new §10.10, concerning consistency with the Coastal Management Program (CMP) goals and policies, without changes to the proposed text as published in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3818).

Section 501.10 of this title (relating to Compliance with Goals and Policies) requires state agencies to comply with the CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. Contemporaneously with the adoption of §10.10, the GLO is adopting new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with the CMP goals and policies regarding coastal natural resource areas. Because Chapter 10 (relating to Exploration and Development of State Minerals Other Than Oil and Gas) already addresses certain actions that could also affect coastal natural resource areas, §10.10 is necessary to ensure that GLO and SLB rules are consistent with CMP goals and policies. Section 10.10 specifies that the rules in Chapter 10 will be read in harmony with the GLO's goals and policies set out in the new Chapter 16 of this title (relating to Coastal Protection). Section 10.10 clarifies the relationship between the operation of Chapter 10 and the CMP goals and policies as reflected in Chapter 16 of this title (relating to Coastal Protection).

No comments were received regarding adoption of the new rule.

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

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 November 27, 1995.

TRD-9515261 Garry Mauro  
Commissioner  
General Land Office

Effective date: December 18, 1995

Proposal publication date: May 23, 1995

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

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**Chapter 13. Land Resources**  
**Administration and Management of Public Free School Lands and Coastal Public Lands**

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**• 31 TAC §13.54**

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts new §13.54, concerning consistency with the Coastal Management Program (CMP) goals and policies, without changes to the proposed text as published in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3819).

Section 501.10 of this title (relating to Compliance with Goals and Policies) requires state agencies to comply with the CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. Contemporaneously with the adoption of §13.54, the GLO is adopting new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with the CMP goals and policies regarding coastal natural resource areas. Because Chapter 13 (relating to Land Resources) already addresses certain actions that could also affect coastal natural resource areas, §13.54 is necessary to ensure that GLO and SLB rules are consistent with CMP goals and policies. Section 13.54 specifies that the rules in Chapter 13 will be read in harmony with the GLO's goals and policies set out in the new Chapter 16 of this title (relating to Coastal Protection). Section 13.54 clarifies the relationship between the operation of Chapter 13 and the CMP goals and policies as reflected in Chapter 16 of this title (relating to Coastal Protection).

No comments were received regarding adoption of the new rule.

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

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 November 27, 1995.

TRD-9515263 Garry Mauro  
Commissioner  
General Land Office

Effective date: December 18, 1995

Proposal publication date: May 23, 1995

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

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**Chapter 16. Coastal Protection**

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**• 31 TAC §§16.1-16.4**

The General Land Office (GLO), with the approval of the School Land Board (SLB), adopts new Chapter 16, §§16.1-16.4, concerning goals and policies relating to coastal natural resource areas (CNRAs), with changes to the proposed text as published in the May 30, 1995, issue of the *Texas Register* (20 TexReg 3954).

The adopted rules ensure that the relevant actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) taken by the GLO and the SLB comply with the goals and policies in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), contained in Part XVI of this title (relating to Coastal Coordination Council).

Pursuant to §33.204(a) of the Coastal Coordination Act (Texas Natural Resources Code, Chapter 33, Subchapter F, §§33.201-33.208), the Coastal Coordination Council (council) promulgated rules adopting Coastal Management Program (CMP) goals and policies, Part XVI of this title (relating to Coastal Coordination Council). Chapter 16 is adopted as required by the rules of the council as set out in Part XVI of this title (relating to Coastal Coordination Council), which consists of Chapters 501, 503, 505 and 506 (relating to Coastal Management Program; Coastal Management Program Boundary; Council Procedures for State Consistency with Coastal Management Program Goals and Policies; and Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies, respectively). Chapters 501, 505 and 506 were originally published in the September 27, 1994, issue of the *Texas Register* (19 TexReg 7606); Chapter 503 was originally published in the November 9, 1993, issue of the *Texas Register* (18 TexReg 8221), and amended in the December 13, 1994, issue of the *Texas Register* (18 TexReg 9887).

After Chapter 16 was proposed and published for comment in the May 30, 1995, issue of the *Texas Register* (20 TexReg 3954), House Bill 3226, enacted during the 74th Legislature, 1995, amended the Coastal Coordination Act. (House Bill 3226 will be codified at Texas Natural Resources Code, Chapter 33.) The council proposed amended CMP rules to Chapters 501, 503, 505 and 506 in the July 18, 1995, issue of the *Texas Register* (20 TexReg 5171) to reflect the statutory changes made by the 74th Legislature and to make other changes desired by the council. Those amended rules were adopted and published in the October 20, 1995, issue of the *Texas Register* (20 TexReg 8643). Therefore, this preamble addresses changes adopted by the GLO and the SLB as the result of the council's amendments as adopted.

The new rules are consistent with the council's CMP goals and policies as those goals and policies relate to CNRAs, and establish thresholds (typically based on quantitative measurements) for certain actions taken by the GLO or the SLB. The House Bill 3226 amendment of the Coastal Coordination Act, and the council's amended CMP rules, do not substantially affect the adopted Chapter 16 rules as they were proposed on May 30, 1995. The changes to the Chapter 16 rules as proposed are identified in this preamble. There are no new persons or subjects affected by the Chapter 16 rules as adopted with changes.

Chapter 16 shall be implemented and become enforceable at such time as the council implements and makes enforceable its CMP rules, a date to be established by the council in the future. The council will publish notice of the implementation date(s) of the CMP provisions in the *Texas Register* at least 30 days prior to such implementation date(s).

Part XVI of this title (relating to Coastal Coordination Council) describes the council's coordinated approach to managing coastal natural resources by establishing the CMP goals and policies based on council findings about coastal natural resources and their competing uses. That part is designed to ensure that agencies and subdivisions exercise their current authority within the framework of the CMP goals and policies to encourage better government management practices affecting coastal natural resources. The CMP goals and policies established in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively) only apply to the agencies, municipalities, counties, activities, and actions identified in the part and are the basis for council consistency review under Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies).

Because the CMP is a networked, not a centralized, program, front line agencies must determine how the CMP goals and policies apply to their own actions. For that reason, §501.10(a) of this title (relating to Compliance with Goals and Policies) requires the GLO and the SLB, among other agencies, to comply with the goals and policies of §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively) when proposing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a CNRA.

New §§16.1-16.4 ensure that the relevant actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) proposed by the GLO and the SLB comply with the CMP goals and policies in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively).

Changes were made to chapter and section titles referenced in §§16.1(a)(2), 16.1(c),

16.3(e)(7), 16.3(e)(7)(C), and 16.4(a) to reflect changes in the council's rules.

Throughout Chapter 16, the phrase "coastal area" was changed to "coastal zone", and the phrase "shore area" was changed to "coastal shore area", to reflect changes in the council's rules. Also, references in this chapter to §16.2 are clarified to indicate which such references relate to §16.2(c) (relating to Policy for Major Actions).

Section 16.1(a) defines certain terms used in the new chapter. The following definitions are adopted with changes to reflect changes in the council's rules: §16.1(a)(3), "CNRA"; §16.1(a)(3)(H), "hard substrate reef"; §16.1(a)(3)(J), "coastal shore areas"; §16.1(a)(3)(O), "coastal historic areas"; §16.1(a)(5), "Coastal wetlands"; §16.1(a)(7), "Critical areas"; and §16.1(a)(14), "Water-dependent use or facility".

Other definitions in §16.1(a) are adopted with changes which reflect the meaning intended and agreed upon by the task force established by the council, discussed more fully in this preamble with regard to §16.4 (relating to Thresholds for Referral). For example, §16.1(a)(9) defining "Lower coast" and §16.1(a)(13) defining "Upper coast". Section 16.1(c) clarifies the scope of new Chapter 16. The second sentence of §16.1(c) provides that the chapter applies only to actions listed in subsection (b) of this section for which an application was filed after the effective date of either this chapter or Chapters 501 and 505 of this title (relating to Coastal Management Program and Council Procedures for State Consistency with Coastal Management Program Goals and Policies), whichever is later. This subsection is adopted without changes.

New §16.2 establishes general goals and policies regarding the actions listed in §16.1(b). Section 16.2(a)(8) is adopted with a change, clarifying one of the GLO/SLB goals. The change incorporates the GLO and SLB geographic information system of maps of the coastal zone and CNRAs as a method of accomplishing the GLO/SLB goal to provide effective decision-making through valuable information and data.

Section 16.2 also establishes the GLO and SLB goals regarding major actions, which are those authorizing an activity involving a federal action for which a federal environmental impact statement is required. Section 16.2(c) (regarding Policy for Major Actions) was reworded and substantially shortened in accordance with the council's CMP. Section 16.2(c)(1)(A)-(F) and §16.2(c)(2) were deleted and/or modified. Despite the modifications to the language of this subsection, these changes will not affect any person or subject not affected by the subsection as proposed. Finally, §16.2(d)-(g) describe certain determinations, explanations, statements, and records that the GLO and the SLB must include or maintain in connection with documents proposing an action listed in §16.1(b). For consistency between Chapter 16 and the council's CMP, §16.2(d)-(g) are adopted with the following changes in terminology: (1) with regard to GLO/SLB actions, the words "approving", "authorizing", or "actions taken" are replaced with the words "proposing" or "proposed", and (2) the phrase "no adverse ef-

fect" was replaced with the phrase "no direct and significant adverse effect".

New §16.3 establishes specific policies for certain activities that may adversely affect CNRAs. For consistency between the language of this section and the language of the council's CMP, this section is adopted with the following changes:

In §16.3(a), the words "oil, gas, and other" are added prior to phrase "mineral lease plans of operation". Also, with regard to Texas Water Code, Chapter 61, the phrase "governing oil and gas exploration and production on state submerged lands" is replaced with the phrase "for dredging and dredged material disposal and placement." In §16.3(c)(3), the GLO or SLB shall consider "cumulative and secondary adverse effects" of a proposed project, rather than "the practicability of alternatives." Section 16.3(c)(1)(B)(ii) and (ii) were revised to clarify certain factors in the analysis to be made when a person proposes a non-water dependent development in a critical area. In §16.3(e)(4)(A)(i), the phrase "environmental gains and losses that will result" is replaced with more detailed, explanatory language as follows: "environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits". These changes merely clarify or more specifically illustrate the intent of the section as proposed. Minor editorial changes or corrections were made to §§16.3(d)(2)(F)(iii), 16.3(d)(2)(l), 16.3(d)(2)(j), 16.3(e)(1), 16.3(e)(1)(B), 16.3(e)(1)(C)(iii), 16.3(e)(2)(H)(ii), 16.3(e)(3), and 16.3(e)(6). Section 16.3(d)(2)(Q), regarding mitigation of erosion of Gulf beaches, was added pursuant to the council's revision of §501.14(i)(1) of this title (relating to Construction of Waterfront Facilities and Other Structures on Submerged Lands). Finally, §16.3(e)(4) was modified in accordance with council changes to §501.14(j)(4) (relating to Dredging and Dredged Material Disposal and Placement), which explain and clarify the cost/benefit analysis used to determine when dredged material may be used beneficially.

New §16.4 establishes thresholds for referral of certain GLO or SLB actions for the council's consistency review. One of the stated CMP goals is that, when an agency proposes a listed action that may adversely affect a CNRA, the action comply with the CMP goals and policies. The CMP describes a process by which the agency can, in the first instance, determine whether its own action is consistent with the CMP. Pursuant to §505.10(a)(2) of this title (relating to Purpose and Policy), the council has made a policy decision to solicit and ensure adequate review at the agency level. Only those actions that present unique or significant consistency issues are expected to be reviewed by the council. As a result, the council anticipates reviewing fewer agency actions than if it were not requiring agencies to monitor their own actions for consistency with CMP goals and policies. Similarly, under certain circumstances, the council has decided to forego review of agency actions of smaller scope and/or less impact to allow it to expend its limited resources on actions likely to have major impacts on CNRAs. To implement that policy, an agency

may develop thresholds relating to agency actions that otherwise could be referred to the council for review. Agency actions falling below a threshold may only be referred for consistency review under certain limited circumstances described in §505.32(b)(1)(B) of this title (relating to Requirements for Referral of a Proposed Agency Action).

New §16.4 identifies thresholds for certain GLO and SLB actions that may adversely affect CNRAs, including hard mineral lease plans of operations, geophysical and geochemical permits, miscellaneous easements, surface leases, coastal easements, cabin permits, leases to navigation districts, and coastal leases. The GLO and the SLB authorize many different activities under these instruments. Hard mineral lease plans of operations describe and authorize coordinated hard mineral exploration and production activities under a lease of state-owned lands. Geophysical and geochemical permits authorize surveys and other investigations in connection with exploration for oil, gas, or other minerals on state-owned lands. Miscellaneous easements authorize activities such as construction or placement of pipelines, transmission lines, roads, and other linear facilities on state-owned lands. Surface leases permit construction of commercial facilities, artificial reefs, and other structures on state-owned uplands. Coastal easements authorize activities such as dredging of basins and channels, filling, or construction of structures on state-owned submerged land by an owner of adjacent littoral property. Cabin permits allow construction of certain private recreational structures on state submerged land. Leases to navigation districts authorize activities such as channel dredging and construction of facilities on submerged land for port purposes. Coastal leases authorize creation of coastal preserves and construction by local governments of public recreational facilities on submerged land.

Although the GLO and the SLB authorize a variety of activities under the described instruments, for purposes of establishing thresholds, those activities are divided into two general categories: energy-related activities and real estate-related activities. Energy activities include activities related to the exploration or production of oil, gas, or other minerals on state-owned lands. Real estate activities include activities related to commercial, residential, recreational, or other use of the surface of state-owned lands. Because the nature and scope of typical energy and real estate activities differ substantially from each other, different thresholds are adopted for the two categories. Further, because of topography, bathymetry, and vegetation differences, which both reflect and cause different vulnerabilities among CNRAs, the GLO and the SLB establish different thresholds for energy activities affecting the Texas upper coast versus the Texas lower coast.

At its June 29, 1995, meeting, the council directed that a task force be established to resolve disparities between the various thresholds for review that had been proposed by various state agencies with overlapping authority or jurisdiction. Based upon task force discussions and a coordinated effort to provide uniformity between various agency



thresholds, the GLO and the SLB modified the definition of "upper coast" and "lower coast" in §16.1(a) (relating to Definitions and Scope). Chapter 16 identifies the coastal areas to the northeast of Cavallo Pass in Matagorda Bay as the "upper coast", and the coastal areas to the southwest of Pass Cavallo in Matagorda Bay as the "lower coast". Thus, the boundary between the upper and lower coasts is Pass Cavallo in Matagorda Bay, Calhoun County, Texas.

The GLO and the SLB distinguish between the upper and lower coasts because of the differing topography, bathymetry, and vegetation of the two areas, and the differing impact of authorized energy activities on CNRAs in the two areas. For example, seagrasses are not prevalent in the upper coast. While an average energy project in the upper coast may affect less seagrass than a comparably-sized project in the lower coast, the amount of seagrass affected will constitute a larger percentage of all seagrasses in a given area of the upper coast. Therefore, in order to take into account the relative scarcity of seagrass in the upper coast, the seagrass threshold for the upper coast is among the smaller adopted thresholds. On the other hand, seagrasses are prevalent in the Laguna Madre and elsewhere on the lower coast. While an average energy project in the lower coast may affect a large area of seagrass, the amount of seagrass affected will constitute a relatively low percentage of all seagrasses in a given area of the lower coast. (Further, a typical energy activity in either the upper or the lower coast will largely affect a relatively narrow linear swath of seagrass, as opposed to a single block of seagrass, lessening the affect of the activity on any one area.) Because of the prevalence of seagrass in the lower coast, the seagrass threshold for the lower coast is higher than the threshold for the upper coast.

The GLO and the SLB intend that an action's impact on CNRAs, rather than geographic location alone, determine whether the action is subject to council review. If a single set of thresholds were established for the entire Texas coast, a disproportionate number of energy activities on the lower coast would exceed the thresholds, regardless of the impact on CNRAs.

The thresholds also derive from certain assumptions developed by the GLO on the basis of experience.

Oil and gas exploration and production activities may include dredging of channels and slips for the purpose of drilling a well, construction of a pad for placement of a drilling barge, construction of pipelines, the placement of production platforms, and the location of access to and from that land by equipment and product.

Threshold limits for seismic activities governed by a geophysical permit are based on the assumption that the following represent typical seismic activities: In submerged area geophysical operations, where airguns are the primary source of energy, shot lines and receiver lines generally run parallel to each other. Line densities of 56 lines per square mile with a width of 15 feet are average and were used to establish threshold limits. In upland and shallow submerged area geo-

physical operations, where dynamite or Vibroseis are the primary sources of energy, shot and receiver lines generally run perpendicular to each other. Line densities of 20 lines per square mile with a width of 15 feet are average and were used to establish threshold limits.

The threshold for non-seismic geophysical and geochemical surveys is based on the assumption that such surveys typically have a data point grid with 165 feet or greater between points on the grid. This typical grid spacing was used to establish threshold limits.

Both the GLO and the Texas Railroad Commission (RRC) proposed thresholds for actions relating to oil and gas exploration, production, and development. In accordance with the council directive that agencies with overlapping authority coordinate thresholds, the task force worked for eight weeks to develop criteria that could be used to produce uniform thresholds. Based upon agency agreement resulting from this effort, the GLO and SLB adopt the following uniform thresholds for development in critical areas in connection with oil and gas exploration, production, and development: Actions authorizing permanent disturbance of five acres or more of a critical area or removal of more than 10,000 cubic yards of material from a critical area exceed the threshold for all critical areas except submerged aquatic vegetation and tidal mud or sand flats in the lower coast. In the lower coast, a GLO and SLB action will exceed the adopted thresholds if the action authorizes permanent disturbance of ten acres or more of submerged aquatic vegetation or tidal sand or mud flats. The higher, ten-acre threshold for the lower coast is based on the widespread occurrence of submerged aquatic vegetation and tidal sand or mud flats in this coastal area.

It is difficult to estimate precisely how many energy activities will exceed the thresholds for several reasons. First, the energy activities listed in §16.4 occur intermittently. Second, there is a trend in the energy exploration industry towards deeper drilling, which requires larger, heavier equipment. Larger, heavier equipment will, of course, affect larger areas than the smaller equipment used for shallower drilling. Finally, it is difficult to anticipate whether future energy activities will occur more or less frequently in the upper or lower coast. All of these factors were considered in developing the energy thresholds. The thresholds chosen for the CNRAs identified in §16.4 were based on the best scientific data currently available to the GLO and the SLB. Analyzing both existing activities and anticipated future activities, the proposed energy thresholds are designed to give the GLO and the SLB responsibility to review most of their own actions, in accordance with the council's policy contained in §505.10(a)(2) of this title (relating to Purpose and Policy). These thresholds will result in only those GLO or SLB actions that present unique or significant consistency issues exceeding the thresholds and being eligible for consistency review by the council.

The GLO and the Texas Natural Resources Conservation Commission (TNRCC) are currently working together to coordinate thresh-

olds where the agencies have overlapping authority (specifically regarding real estate activities). Since no modification of GLO/SLB thresholds is anticipated, the thresholds are adopted for real estate activities without change and without regard to the location of the real estate on the upper or lower coast. While energy activities generally occur in the open bays where there are topographic, bathymetric, and vegetative differences up and down the coast, real estate activities are authorized on the shore, where CNRAs are distributed fairly evenly all along the coast. Real estate activities authorized by the actions listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) occur more often than energy activities. Therefore, the real estate thresholds are lower than the energy thresholds in order to account for their cumulative impacts. Of the 225 existing instruments authorizing real estate activities covered by §16.4, 11 exceed the thresholds. It is anticipated that a similar proportion of the real estate instruments issued each year will exceed the thresholds.

The adopted rule will not affect any subject or person not affected by the rule as proposed. Instead, the modifications to the proposed rule merely explain, define, or clarify the proposed rules and/or conform GLO and SLB rules to the Texas CMP.

No comments were received regarding adoption of the new rules.

The rules are adopted under the Texas Natural Resources Code, §31.051 and §33.064, which provide, respectively, that the commissioner of the GLO shall make and enforce suitable rules consistent with the law and that the SLB may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce Texas Natural Resources Code, Chapter 33.

#### *§16.1. Definitions and Scope.*

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

(1) CCC or council—the Coastal Coordination Council.

(2) CMP—the rules of the Texas Coastal Management Program in Chapters 501, 503, 505 and 506 of this title (relating to Coastal Management Program; Coastal Management Program Boundary; Council Procedures for State Consistency with Coastal Management Program Goals and Policies; and Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies, respectively).

(3) CNRA—coastal natural resource area—an area as defined in Texas Natural Resources Code, §33.203(1) that is located within the coastal zone, defined as follows:

(A) waters in the open Gulf of Mexico—waters in the state as defined in

Texas Water Code, §26.001(5), that are part of the open waters of the Gulf of Mexico inside the territorial limits of the state;

(B) waters under tidal influence—water in the state as defined in Texas Water Code, §26.001(5), that is subject to tidal influence according to the Texas Natural Resource Conservation Commission's Stream Segment Maps, including coastal wetlands;

(C) state submerged lands—land underlying waters under tidal influence or waters of the open Gulf of Mexico that is owned by the state;

(D) coastal wetlands;

(E) submerged aquatic vegetation—rooted aquatic vegetation growing in permanently inundated areas in estuarine and marine systems;

(F) tidal sand or mud flat—silt, clay, or sand substrates, unvegetated or vegetated by algal mats, that occur in the intertidal zone and that are regularly or intermittently exposed and flooded by wind and water induced tides;

(G) oyster reefs—natural or artificial formations in intertidal or subtidal areas that are composed of oyster shell, live oysters, and other organisms that are discrete, contiguous, and clearly distinguishable from scattered oysters;

(H) hard substrate reefs—naturally occurring hard substrate formations, such as rock outcrops or serpulid worm reefs (living or dead), in intertidal or subtidal area;

(I) coastal barriers—undeveloped areas on barrier islands and peninsulas or otherwise protected areas, as mapped by the United States Department of the Interior, Fish and Wildlife Service (Coastal Barrier Resource System Units);

(J) coastal shore areas—all areas within 100 feet landward of the high water mark on state submerged land;

(K) Gulf beaches—beaches bordering on the Gulf of Mexico that extend inland from the line of mean low tide to the natural line of vegetation bordering on the seaward shore of the Gulf of Mexico, or such larger contiguous area to which the public has acquired a right of use or easement to or over by prescription, dedication, or estoppel, or has retained a right by virtue

of continuous right in the public since time immemorial;

(L) critical dune areas—protected sand dune complexes on the Gulf shoreline within 1,000 feet of mean high tide as designated by the commissioner of the GLO under the Texas Natural Resources Code, Chapter 63, Subchapter E, §63.121;

(M) special hazard areas—areas designated by the administrator of the Federal Insurance Administration under the National Flood Insurance Act, 42 United States Code Annotated, §§4001 et seq, as having special flood, mudslide (i.e., mudflow) and/or flood-related erosion hazards, and shown on a Flood Hazard Boundary Map or Flood Insurance Rate Map as Zone A, AO, A1-30, AE, A99, AH, VO, V1-30, VE, V, M, or E;

(N) critical erosion areas—areas designated by the commissioner of the GLO under the Texas Natural Resources Code, §33.601(b);

(O) coastal historic areas—a site that is specially identified in rules adopted by the Texas Historical Commission as being coastal in character and that is on the National Register of Historic Places, designated pursuant to 16 United States Code Annotated, §470a, and Code of Federal Regulations, Title 36, Chapter 1, Part 63, or is a state archaeological landmark, as defined in the Texas Natural Resources Code, Chapter 191, Subchapter D; and

(P) coastal parks, wildlife management areas, and preserves—any land owned by the state that is subject to the Texas Parks and Wildlife Code, Chapter 26, by virtue of its designation and use as a park, recreation area, scientific area, wildlife refuge, or historic site and that is designated by the Texas Parks and Wildlife Commission as being coastal in character.

(4) Coastal zone—the area within the CMP boundary established in §503.1 of this title (relating to Coastal Management Program Boundary).

(5) Coastal wetlands—Wetlands as defined in Texas Water Code, Chapter 11, Subchapter J, that:

(A) lie seaward of the Coastal Facility Designation Line established by rules adopted under Texas Natural Resources Code, Chapter 40; or

(B) lie within rivers and streams to the extent of tidal influence, as follows:

(i) Arroyo Colorado from FM Road 1847 to 110 yards downstream of Cemetery Road south of the Port of Harlingen;

(ii) Nueces River from U.S. Highway 77 to the Calallen Dam, 1.1 miles upstream of U.S. Highway 77 in Nueces/San Patricio County;

(iii) Guadalupe River from State Highway 35 to the Guadalupe-Blanco River Authority Salt Water Barrier at 0.4 miles downstream of the confluence with the San Antonio River in Calhoun/Refugio County;

(iv) Lavaca River and Navidad River from FM Road 616 to a point to 5.3 miles downstream of U.S. Highway 59 and to Palmetto Bend Dam, respectively, in Jackson County;

(v) Tres Palacios Creek from FM Road 521 to a point 0.4 miles upstream of the confluence with Wilson Creek in Matagorda County;

(vi) Colorado River from FM Road 521 to a point 1.3 miles downstream of the Missouri-Pacific Railroad in Matagorda County;

(vii) San Bernard River from FM Road 521 to a point two miles upstream of State Highway 35 in Brazoria County;

(viii) Chocolate Bayou from FM Road 2004 to a point 2.6 miles downstream of State Highway 35 in Brazoria County;

(ix) Clear Creek from Interstate Highway 45 to a point 110 yards upstream of FM Road 528 in Galveston/Harris County;

(x) Buffalo Bayou (Houston Ship Channel) from Interstate Highway 610 to a point 440 yards upstream of Shepherd Drive in Harris County;

(xi) San Jacinto River from Interstate Highway 10 upstream to the Lake Houston dam in Harris County;

(xii) Trinity River from Interstate Highway 10 to a point 1.9 miles downstream of U.S. Highway 90 in Liberty County;

(xiii) Cedar Bayou from Interstate Highway 10 to a point 1.4 miles upstream of Interstate Highway 10 in Chambers/Harris County;

(xiv) Neches River from Interstate Highway 10 to a point seven miles upstream of Interstate Highway 10 in Orange County;

(xv) Sabine River from Interstate Highway 10 upstream to Morgan Bluff in Orange County; or

(C) within one mile from the mean high tide line of those rivers and streams, except for the Trinity and Neches rivers. On the Trinity River, the geographic scope includes wetlands between the mean high tide line on the western shoreline to FM Road 565 and FM Road 1409 and between the mean high tide line on the eastern shoreline to FM Road 563. On the Neches River, the geographic scope includes wetlands within one mile from the mean high tide line on the western shoreline and between the mean high tide line on the eastern shoreline and FM Road 105.

(6) Commissioner—the commissioner of the General Land Office.

(7) Critical areas—a coastal wetland, area of submerged aquatic vegetation, tidal sand or mud flat, oyster reef, or hard substrate reef.

(8) GLO—the General Land Office.

(9) Lower coast—the coastal zone southwest of Cavallo Pass at the eastern end of Matagorda Island, Calhoun County, Texas, so as to exclude the Matagorda Bay system.

(10) Major action—an individual agency or subdivision action authorizing an activity involving a federal action for which a federal environmental impact statement under the National Environmental Policy Act, 42 United States Code Annotated, §§4321, et seq, is required.

(11) SLB—the School Land Board.

(12) State submerged land—land underlying waters under tidal influence or waters of the open Gulf of Mexico that is owned by the state.

(13) Upper coast—the coastal zone northeast of Cavallo Pass at the eastern end of Matagorda Island, Calhoun County, Texas, so as to include the Matagorda Bay system.

(14) Water-dependent use or facility—an activity or facility that must be located in coastal waters or on state submerged lands or that must have direct access to coastal waters in order to serve its basic purpose and function. Facilities that are water-dependent include, but are not limited to, public beach use and access facilities, boat slips, docks, breakwaters, marinas, wharves and other vessel loading or off-loading facilities, utility easements, boat ramps, navigation channels and basins, bridges and bridge approaches, revetments, shoreline protection structures, culverts, groins, saltwater barriers, navigational aids, mooring pilings, simple access channels, fish processing plants, boat construction and repair facilities, offshore pipelines and constructed wetlands below mean high water.

Activities that are water-dependent include, but are not limited to, marine recreation (fishing, swimming, boating, wildlife viewing), industrial uses dependent on marine transportation or requiring large volumes of water that cannot be obtained at inland sites, mariculture, exploration for and production of oil and gas under coastal waters or submerged lands, and certain meteorological and oceanographic activities.

(b) For purposes of this chapter, the following is an exclusive list of actions taken or authorized by the GLO or SLB that may adversely affect a CNRA, and that therefore must be consistent with the goals and policies stated in this chapter:

- (1) a mineral lease plan of operations;
- (2) a geophysical or geochemical permit;
- (3) a miscellaneous easement;
- (4) a surface lease;
- (5) a structure registration;
- (6) a coastal easement;
- (7) a coastal lease;
- (8) a cabin permit and
- (9) a navigation district lease.

(c) An action to renew, amend, or modify an existing permit, certificate, lease, easement, approval or other form of authorization shall not be considered an action otherwise subject to the rules in this chapter if the action only extends the time period of the existing authorization without authorizing new or additional work or activities or is not otherwise directly relevant to the policies in §16.3 of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas). This chapter applies only to actions listed in subsection (b) of this section for which an application was filed after the effective date of either this chapter or Chapters 501 and 505 of this title (relating to Coastal Management Program and Council Procedures for State Consistency with Coastal Management Program Goals and Policies, respectively), whichever is later.

#### §16.2. Goals and Administrative Policies.

(a) Goals. Subject to §16.1(c) of this title (relating to Definitions and Scope), when taking or authorizing an action identified in §16.1(b) of this title (relating to Definitions and Scope) that may adversely affect a CNRA, the goals of the GLO and SLB are:

- (1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs;
- (2) to ensure sound management of all coastal resources by allowing for

compatible economic development and multiple human uses of the coastal zone;

(3) to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs;

(4) to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone;

(5) to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone;

(6) to coordinate GLO and SLB decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs;

(7) to make GLO and SLB decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts between GLO and SLB regulatory and other programs for the management of CNRAs;

(8) to make GLO and SLB decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date;

(9) to make coastal management processes visible, coherent, accessible, and accountable to the people of Texas by providing for public participation in the ongoing development and implementation of the rules in this chapter; and

(10) to educate the public about the principal coastal problems of state concern and technology available for the protection and improved management of CNRAs.

(b) Administrative Policies. Subject to §16.1(c) of this title (relating to Definitions and Scope), when taking or authorizing an action identified in §16.1(b) of this title (relating to Definitions and Scope) that may adversely affect a CNRA, the GLO and the SLB:

(1) shall require applicants to provide information necessary for the GLO or the SLB to make an informed decision regarding the proposed action;

(2) shall identify the monitoring established to ensure that activities authorized by such actions comply with all applicable GLO or SLB requirements;

(3) may waive a requirement if such waiver is in the best interests of the Permanent School Fund and is consistent with the statutory policies for management of coastal public lands in the Coastal Public Lands Management Act, Texas Natural Resources Code, Chapter 33; and

(4) shall take into account the national interest.

(c) Policy for Major Actions.

(1) Prior to taking a major action, as defined in §16.1 of this chapter (relating to Definitions and Scope), the GLO and the SLB shall meet with other agencies or subdivisions with jurisdiction over the activity and coordinate their major actions relating to the activity. The GLO and the SLB shall, to the greatest extent practicable, consider the cumulative and secondary adverse effects, as described in the federal environmental impact assessment process, of each major action relating to the activity.

(2) The GLO and the SLB shall not take a major action that is inconsistent with the goals and policies of this chapter. In addition, the GLO and the SLB shall avoid and otherwise minimize the cumulative adverse effects to CNRAs of each of its major actions relating to the activity.

(d) The GLO or the SLB, as appropriate, shall include in a permit or other document proposing an action listed in §16.1(b) of this title (relating to Definitions and Scope) to which this chapter applies, either a consistency determination or a determination of no adverse effect as follows:

(1) Consistency Determination. The (GLO or SLB) has reviewed this proposed action for consistency with the Texas Coastal Management Program goals and policies, in accordance with the regulations of the Coastal Coordination Council, and has determined that the proposed action is consistent with the Texas CMP goals and policies applicable to the proposed action.

(2) Determination of No Direct and Significant Adverse Effect. The (GLO or SLB) has reviewed this proposed action for consistency with the Texas CMP goals and policies, in accordance with the regulations of the Coastal Coordination Council, and has found that the proposed action will not have a direct and significant adverse effect on the coastal natural resource areas identified in the applicable policies.

(e) For actions that exceed the thresholds for referral as set out in §16.4 of this title (relating to Thresholds for Referral), the GLO or the SLB, as appropriate, shall provide a written explanation supporting the determination made under subsection (d) of this section. The explanation shall describe the basis for the agency's determination, include a description of the

action and its probable impacts on CNRAs, identify the CMP goals and policies applied to the action, and explain how the action is consistent with the applicable goals and policies or why the action does not adversely affect any CNRAs.

(f) When publishing notice of receipt of an application or request for agency action, the GLO or the SLB, as appropriate, shall include a statement that the application or requested action is subject to the CMP and must be consistent with the CMP goals and policies. The agency shall include the council secretary on any public notice list maintained by the agency for actions subject to the CMP. Upon proposal of an action listed in §16.1(b) of this title (relating to Definitions and Scope) to which this chapter applies, the agency shall provide to the council secretary a one-page notice that an action subject to the CMP has been proposed.

(g) The GLO and the SLB shall maintain a record of all proposed actions that are subject to the CMP and provide such record to the council on a quarterly basis.

*§16.3. Policies for Specific Activities and Coastal Natural Resource Areas.*

(a) The GLO and the SLB shall comply with the policies in this section when approving oil, gas, and other mineral lease plans of operation, granting surface leases, easements, and permits, and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51-53, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement. To the extent applicable to the public beach, as public beach is defined in Texas Natural Resources Code, §61.013(c), the policies in this section are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public, including Texas Natural Resources Code, Chapter 61 (relating to Use and Maintenance of Public Beaches) and Chapter 15 of this title (relating to Coastal Area Planning).

(b) Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities.

(1) Oil and gas exploration and production on state submerged lands shall comply with the policies in this subsection.

(2) Policies.

(A) In or near critical areas, facilities shall be located and operated and geophysical and other operations shall be located and conducted in such a manner as to avoid and otherwise minimize adverse effects, including those from the disposal of solid waste and disturbance resulting from

the operation of vessels and wheeled or tracked vehicles, whether on areas under lease, easement, or permit or on or across access routes thereto. Where practicable, buffer zones for critical areas shall be established and directional drilling or other methods to avoid disturbance, such as pooling or unitization, shall be employed.

(B) Lessees, easement holders, and permittees shall construct facilities in a manner that avoids impoundment or draining of coastal wetlands, if practicable, and shall mitigate any adverse effects on coastal wetlands impounded or drained in accordance with the sequencing requirements in this subsection.

(C) Upon completion or cessation of operations, lessees, easement holders, and permittees shall remove facilities and restore any significantly degraded areas to pre-project conditions as closely as practicable, unless facilities can be used for maintenance or enhancement of CNRAs or unless restoration activities would further degrade CNRAs.

(c) Development in Critical Areas.

(1) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this subsection. In implementing this subsection, cumulative and secondary adverse effects of these activities will be considered.

(A) The policies in this subsection shall be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.

(B) Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available.

(i) The person proposing the activity shall demonstrate that the activity is water-dependent. If the activity is not water-dependent, practicable alternatives with less adverse effects are presumed to exist, unless the person clearly demonstrates otherwise.

(ii) The analysis of alternatives shall be conducted in light of the activity's overall purpose. For an integrated project (i.e., one which combines more than one use within a single operation or project), the activity's "overall purpose" refers to the overall purpose of the entire integrated project.

(iii) "Alternatives" may include different operation or maintenance techniques or practices or a different location, design, configuration, or size. Among the factors that may be considered in the

analysis is the ability of the person proposing the activity to obtain an alternative site, including, if the overall purpose of the activity is marine, that person's ability to obtain an alternative site within the coastal zone.

(C) In evaluating practicable alternatives, the following sequence shall be applied:

(i) Adverse effects on critical areas shall be avoided to the greatest extent practicable.

(ii) Unavoidable adverse effects shall be minimized to the greatest extent practicable by limiting the degree or magnitude of the activity and its implementation.

(iii) Appropriate and practicable compensatory mitigation shall be required to the greatest extent practicable for all adverse effects that cannot be avoided or minimized.

(D) "Compensatory mitigation" includes restoring adversely affected critical areas or replacing adversely affected critical areas by creating new critical areas. Compensatory mitigation should be undertaken, when practicable, in areas adjacent or contiguous to the affected critical areas (on-site). If on-site compensatory mitigation is not practicable, compensatory mitigation should be undertaken in close physical proximity to the affected critical areas if practicable and in the same watershed if possible (off-site). Compensatory mitigation should also attempt to replace affected critical areas with critical areas with characteristics identical to or closely approximating those of the affected critical areas (in-kind). The preferred order of compensatory mitigation is:

- (i) on-site, in-kind;
- (ii) off-site, in-kind;
- (iii) on-site, out-of-kind;

and

- (iv) off-site, out-of-kind.

(E) Mitigation banking is acceptable compensatory mitigation if use of the mitigation bank has been approved by the agency authorizing the development and mitigation credits are available for withdrawal. Preservation through acquisition for public ownership of unique critical areas or other ecologically important areas may be acceptable compensatory mitigation in exceptional circumstances. Examples of this include areas of high priority for preservation or restoration, areas whose functions and values are difficult to replicate, or areas not adequately protected by regulatory programs. Acquisition will normally be al-

lowed only in conjunction with preferred forms of compensatory mitigation.

(F) In determining compensatory mitigation requirements, the impaired functions and values of the affected critical area shall be replaced on a one-to-one ratio. Replacement of functions and values on a one-to-one ratio may require restoration or replacement of the physical area affected on a ratio higher than one-to-one. While no net loss of critical area functions and values is the goal, it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits. It is also important to recognize that there are circumstances where the adverse effects of the activity are so significant that, even if alternatives are not available, the activity may not be permitted regardless of the compensatory mitigation proposed.

(G) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(i) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531-1544;

(ii) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under §501.14(f) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas);

(iii) the activity violates any applicable toxic effluent standard or prohibition established under §501.14(f) of this title (relating to Policies for Specific Activities and Coastal Natural Resource Areas);

(iv) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 27; or

(v) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subparagraphs (C) and (D) of this subsection, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(I) human health and welfare, including effects on water supplies,

plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(II) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(III) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(IV) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

(2) The GLO and the SLB will coordinate with one another, with other agencies required to comply with §501.14(h) of this title (relating to Development in Critical Areas), and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. In connection with authorizations for development in critical areas, the GLO and the SLB shall require a demonstration that the requirements of paragraph (1)(A)-(G) of this subsection have been satisfied.

(3) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the requirements of §16.2(c) of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse effects of the project need not be produced or evaluated to comply with this subsection if such data and information is produced and evaluated in compliance with §16.2(c)(1)(F) of this title (relating to Policy for Major Actions).

(d) Construction of Waterfront Facilities and Other Structures on State Submerged Lands.

(1) Development on state submerged lands shall comply with the policies in this subsection.

(2) Policies.

(A) Marinas shall be designed and, to the greatest extent practicable, sited so that tides and currents will aid in flushing of the site or renew its water regularly.

(B) Marinas designed for anchorage of private vessels shall provide fa-

cilities for the collection of waste, refuse, trash, and debris.

(C) Marinas with the capacity for long-term anchorage of more than ten vessels shall provide pump-out facilities for marine toilets, or other such measures or facilities that provide an equal or better level of water quality protection.

(D) Marinas, docks, piers, wharves and other structures shall be designed and, to the greatest extent practicable, sited to avoid and otherwise minimize adverse effects on critical areas from boat traffic to and from those structures.

(E) For purposes of providing access to coastal waters, construction of docks, piers, wharves, and other structures shall be preferred over dredging of channels or basins or filling of submerged lands, if such construction is practicable, environmentally preferable, and will not interfere with commercial navigation.

(F) Piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs (including artificial reefs for compensatory mitigation) shall be limited to the minimum size necessary to serve the project purpose and shall be constructed in a manner that:

(i) does not significantly interfere with public navigation;

(ii) does not significantly interfere with the natural coastal processes which supply sediments to coastal shore areas or otherwise exacerbate erosion of coastal shore areas; and

(iii) avoids and otherwise minimizes shading of critical areas and other adverse effects.

(G) Facilities shall be located at sites or designed and constructed to the greatest extent practicable to avoid and otherwise minimize the potential for adverse effects from:

(i) construction and maintenance of other development associated with the facility;

(ii) direct release to coastal waters and critical areas of pollutants from oil or hazardous substance spills or stormwater runoff; and

(iii) deposition of airborne pollutants in coastal waters and critical areas.

(H) Where practicable, pipelines, transmission lines, cables, roads, causeways, and bridges shall be located in

existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects and if it does not result in unreasonable risks to human health, safety, and welfare

(I) To the greatest extent practicable, construction of facilities shall occur at sites and times selected to have the least adverse effects on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial and aquatic wildlife.

(J) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of subsection (c) of this section. To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(K) Where practicable, piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs shall be constructed with materials that will not cause any adverse effects on coastal waters or critical areas.

(L) Developed sites shall be returned as closely as practicable to pre-project conditions upon completion or cessation of operations by the removal of facilities and restoration of any significantly degraded areas, unless:

(i) the facilities can be used for public purposes or contribute to the maintenance or enhancement of coastal water quality, critical areas, beaches, state submerged lands, or coastal shore areas; or

(ii) restoration activities would further degrade CNRAs.

(M) Water-dependent uses and facilities shall receive preference over those uses and facilities that are not water-dependent.

(N) Nonstructural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods.

(O) Major residential and recreational waterfront facilities shall to the greatest extent practicable accommodate public access to coastal waters and preserve the public's ability to enjoy the natural aesthetic values of coastal submerged lands.

(P) Activities on state submerged land shall avoid and otherwise minimize any significant interference with the public's use of and access to such lands.

(Q) Erosion of Gulf beaches and coastal shore areas caused by construction or modification of jetties, breakwaters, groins, or shore stabilization projects shall be mitigated to the extent the costs of mitigation are reasonably proportionate to the benefits of mitigation. Factors that shall be considered in determining whether the costs of mitigation are reasonably proportionate to the cost of the construction or modification and benefits include, but are not limited to, environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits.

(e) Dredging and Dredged Material Disposal and Placement.

(1) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, state submerged lands, critical areas, coastal shore areas, and Gulf beaches (as those terms are defined in §16.1 of this title relating Definitions and Scope) to the greatest extent practicable. In implementing this subsection, cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and the unique characteristics of affected sites shall be considered.

(A) Dredging and dredged material disposal and placement shall not cause or contribute to, after consideration of dilution and dispersion, violation of any applicable surface water quality standards established under §501.14(f) of this title (relating to Discharge of Municipal and Industrial Wastewater to Coastal Waters).

(B) Except as otherwise provided in subparagraph (D) of this paragraph, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with subsection (c) of this section.

(C) Except as provided in subparagraph (D) of this paragraph, dredging and the disposal and placement of dredged material shall not be authorized if:

(i) there is a practicable alternative that would have fewer adverse effects on coastal waters, state submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative

does not have other significant adverse effects;

(ii) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, state submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(iii) significant degradation of critical areas under subsection (c)(1)(G)(v) of this section would result.

(D) A dredging or dredged material disposal or placement project that would be prohibited solely by application of subparagraph (C) of this paragraph may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic impacts on navigation and maintenance of commercially navigable waterways.

(2) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in paragraph (1) of this subsection. Adverse effects can be minimized by employing the techniques in this paragraph where appropriate and practicable.

(A) Adverse effects from dredging and dredged material disposal and placement can be minimized by controlling the location and dimensions of the activity. Some of the ways to accomplish this include:

(i) locating and confining discharges to minimize smothering of organisms;

(ii) locating and designing projects to avoid adverse disruption of water inundation patterns, water circulation, erosion and accretion processes, and other hydrodynamic processes;

(iii) using existing or natural channels and basins instead of dredging new channels or basins, and discharging materials in areas that have been previously disturbed or used for disposal or placement of dredged material;

(iv) limiting the dimensions of channels, basins, and disposal and placement sites to the minimum reasonably required to serve the project purpose, including allowing for reasonable overdredging of channels and basins, and taking into account the need for capacity to accommodate future expansion without causing additional adverse effects;

(v) discharging materials at sites where the substrate is composed of material similar to that being discharged;

(vi) locating and designing discharges to minimize the extent of any plume and otherwise control dispersion of material; and

(vii) avoiding the impoundment or drainage of critical areas.

(B) Dredging and disposal and placement of dredged material shall comply with applicable standards for sediment toxicity. Adverse effects from constituents contained in materials discharged can be minimized by treatment of or limitations on the material itself. Some ways to accomplish this include:

(i) disposal or placement of dredged material in a manner that maintains physiochemical conditions at discharge sites and limits or reduces the potency and availability of pollutants;

(ii) limiting the solid, liquid, and gaseous components of material discharged;

(iii) adding treatment substances to the discharged material; and

(iv) adding chemical flocculants to enhance the deposition of suspended particulates in confined disposal areas.

(C) Adverse effects from dredging and dredged material disposal or placement can be minimized through control of the materials discharged. Some ways to accomplish this include:

(i) use of containment levees and sediment basins designed, constructed, and maintained to resist breaches, erosion, slumping, or leaching;

(ii) use of lined containment areas to reduce leaching where leaching of chemical constituents from the material is expected to be a problem;

(iii) capping in-place contaminated material, or selectively discharging the most contaminated material first and then capping it with the remaining material;

(iv) properly containing discharged material and maintaining discharge sites to prevent point and nonpoint pollution; and

(v) timing the discharge to minimize adverse effects from unusually high water flows, wind, wave, and tidal actions.

(D) Adverse effects from dredging and dredged material disposal or placement can be minimized by controlling the manner in which material is dispersed. Some ways of accomplishing this include:

(i) where environmentally desirable, distributing the material in a thin layer;

(ii) orienting material to minimize undesirable obstruction of the water current or circulation patterns;

(iii) using silt screens or other appropriate methods to confine suspended particulates or turbidity to a small area where settling or removal can occur;

(iv) using currents and circulation patterns to mix, disperse, dilute, or otherwise control the discharge;

(v) minimizing turbidity by using a diffuser system or releasing material near the bottom;

(vi) selecting sites or managing discharges to confine and minimize the release of suspended particulates and turbidity and maintain light penetration for organisms; and

(vii) setting limits on the amount of material to be discharged per unit of time or volume of receiving waters.

(E) Adverse effects from dredging and dredged material disposal or placement operations can be minimized by adapting technology to the needs of each site. Some ways of accomplishing this include:

(i) using appropriate equipment, machinery, and operating techniques for access to sites and transport of material, including those designed to reduce damage to critical areas;

(ii) having personnel on site adequately trained in avoidance and minimization techniques and requirements; and

(iii) designing temporary and permanent access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement.

(F) Adverse effects on plant and animal populations from dredging and dredged material disposal or placement can be minimized by:

(i) avoiding changes in water current and circulation patterns that would interfere with the movement of animals;

(ii) selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species that have a competitive edge ecologically over indigenous plants or animals;

(iii) avoiding sites having unique habitat or other value, including habitat of endangered species;

(iv) using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher

ecological value by displacement of some or all of the existing environmental characteristics;

(v) using techniques that have been demonstrated to be effective in circumstances similar to those under consideration whenever possible and, when proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiating their use on a small scale to allow corrective action if unanticipated adverse effects occur;

(vi) timing dredging and dredged material disposal or placement activities to avoid spawning or migration seasons and other biologically critical time periods; and

(vii) avoiding the destruction of remnant natural sites within areas already affected by development.

(G) Adverse effects on human use potential from dredging and dredged material disposal or placement can be minimized by:

(i) selecting sites and following procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the site, particularly with respect to water quality;

(ii) selecting sites which are not valuable as natural aquatic areas;

(iii) timing dredging and dredged material disposal or placement activities to avoid the seasons or periods when human recreational activity associated with the site is most important; and

(iv) selecting sites that will not increase incompatible human activity or require frequent dredge or fill maintenance activity in remote fish and wildlife areas.

(H) Adverse effects from new channels and basins can be minimized by locating them at sites:

(i) that ensure adequate flushing and avoid stagnant pockets; or

(ii) that will create the fewest practicable adverse effects on CNRAs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; or

(iii) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRAs;

(iv) provided that, for any dredging of new channels or basins subject

to the requirements of §16.2(c) of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this subparagraph if such data and information is produced and evaluated in compliance with §16.2(c)(1)(A) of this title (relating to Policy for Major Actions).

(3) Disposal or placement of dredged material in existing contained dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed to comply with the requirements of paragraph (1) of this subsection unless modified in design, size, use, or function.

(4) Dredged material from commercially navigable waterways is a potentially reusable resource and must be used beneficially in accordance with this policy. If the costs of the beneficial use of dredged material are reasonably comparable to the costs of disposal in a non-beneficial manner, the material shall be used beneficially. If the costs of the beneficial use of dredged material are significantly greater than the costs of disposal in a non-beneficial manner, the material shall be used beneficially unless it is demonstrated that the costs of using the material beneficially are not reasonably proportionate to the costs of the project and benefits that will result.

(A) Factors that shall be considered in determining whether a beneficial use project is appropriate include:

(i) environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits;

(ii) the proximity of the beneficial use site to the dredge site; and

(iii) the quality of the dredged material and its suitability for beneficial use.

(B) Examples of the beneficial use of dredged material include, but are not limited to:

(i) projects designed to reduce or minimize erosion or provide shoreline protection;

(ii) projects designed to create or enhance public beaches or recreational areas;

(iii) projects designed to benefit the sediment budget or littoral system;

(iv) projects designed to improve or maintain terrestrial or aquatic wildlife habitat;

(v) projects designed to create new terrestrial or aquatic wildlife habitat, including the construction of marshlands, coastal wetlands, or other critical areas;

(vi) projects designed and demonstrated to benefit benthic communities or aquatic vegetation;

(vii) projects designed to create wildlife management areas, parks, airports, or other public facilities;

(viii) projects designed to cap landfills or other waste disposal areas;

(ix) projects designed to fill private property or upgrade agricultural land, if cost-effective public beneficial uses are not available; and

(x) projects designed to remediate past adverse impacts on the coastal zone.

(5) If dredged material cannot be used beneficially as provided in paragraph (4) of this subsection, to avoid and otherwise minimize adverse effects as required in paragraph (1) of this subsection, preference will be given to the greatest extent practicable to disposal in:

(A) contained upland sites;

(B) other contained sites; and

(C) open water areas of relatively low productivity or low biological value.

(6) For new sites, dredged materials shall not be disposed of or placed directly on the boundaries of state submerged lands or at such location so as to slump or migrate across the boundaries of state submerged lands in the absence of an agreement between the affected public owner and the adjoining private owner or owners that defines the location of the boundary or boundaries affected by the deposition of the dredged material.

(7) Emergency dredging shall be allowed without a prior consistency determination as required in the applicable consistency rule set out in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) when:

(A) there is an unacceptable hazard to life or navigation;

(B) there is an immediate threat of significant loss of property; or

(C) an immediate and unforeseen significant economic hardship is



likely if corrective action is not taken within a time period less than the normal time needed under standard procedures. The GLO or the SLB, as appropriate, shall notify the council secretary at least 24 hours prior to commencement of any emergency dredging operation. The notice shall include a statement demonstrating the need for emergency action. Prior to initiation of the dredging operations representatives of the project sponsor, the GLO, or the SLB shall, if possible, make all reasonable efforts to meet with council's designated representatives to ensure consideration of and consistency with applicable policies in this section. Compliance with all applicable policies in this section shall be required at the earliest possible date. The GLO or the SLB, as appropriate, and the applicant shall submit a consistency determination to the council, as described in Chapter 505 of this title (relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies) within 60 days after the emergency operation is complete.

*§16.4. Thresholds for Referral.*

(a) Pursuant to §505.32 of this title (relating to Requirements for Referral of a Proposed Agency Action), the thresholds for potential referral of GLO or SLB actions to the council for consistency review are as follows:

(b) Real Estate Activities.

(1) Except for energy-related activities (i.e., activities related to oil, gas, or other mineral exploration and production), the GLO's or SLB's issuance of the following instruments exceeds the threshold if the authorized activities would adversely affect CNRA acreage greater than that in paragraph (2) of this subsection:

(A) a coastal easement pursuant to the Texas Natural Resources Code, §33.111, for dredging of basins and channels or construction of piers, docks, marinas, bulkheads, seawalls, and other waterfront structures on state-owned submerged land;

(B) a miscellaneous easement pursuant to the Texas Natural Resources Code, §51.291, for construction of pipelines, transmission lines, roads, and other linear facilities on state-owned land;

(C) a cabin permit pursuant to the Texas Natural Resources Code, §33.103, for the construction or use of fishing cabins on state-owned submerged land; or

(D) a surface lease pursuant to the Texas Natural Resources Code, §51.121, for construction of commercial facili-

ties, artificial reefs, and other non-waterfront structures on state-owned land.

(2) The acreage thresholds for real estate activities are as follows:

(A) one-half acre of oyster reef;

(B) one acre of submerged aquatic vegetation;

(C) one acre of coastal wetland;

(D) one acre of algal flat;

(E) five acres of tidal mud flat;

(F) ten acres of tidal sand flat;

(G) ten acres of state submerged land; or

(H) ten acres of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal park, wildlife management area, or preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(c) Energy-Related Activities (activities related to oil, gas, or other mineral exploration and production).

(1) The GLO's or SLB's approval of a mineral lease plan of operations for hard mineral exploration and production exceeds the threshold if the authorized activities would adversely affect CNRA acreage greater than the following:

(A) In the upper coast:

(i) one-half acre of oyster reef;

(ii) five acres of submerged aquatic vegetation;

(iii) five acres of coastal wetland;

(iv) five acres of algal flat;

(v) five acres of tidal mud flat;

(vi) ten acres of tidal sand flat;

(vii) 40 acres of waters in the open Gulf of Mexico;

(viii) 40 acres of open bay waters under tidal influence; or

(ix) 40 acres of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal park, wildlife management area, or preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(B) In the lower coast:

(i) one-half acre of oyster reef;

(ii) 40 acres of submerged aquatic vegetation;

(iii) five acres of coastal wetland;

(iv) 20 acres of algal flat;

(v) 20 acres of tidal mud flat;

(vi) 40 acres of tidal sand flat;

(vii) 40 acres of waters in the open Gulf of Mexico;

(viii) 40 acres of open bay waters under tidal influence; or

(ix) 40 acres of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal park, wildlife management area, or preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(2) The GLO's or SLB's issuance of a geophysical or geochemical permit for exploration for oil, gas, or other minerals on state-owned lands exceeds the threshold if the authorized activities would adversely affect CNRA acreage greater than the following:

(A) In the upper coast:

(i) one-half acre of oyster reef;

(ii) 20 acres per square mile of submerged aquatic vegetation;

(iii) 40 acres per square mile of coastal wetland;

(iv) 20 acres per square mile of algal flat;

(v) 20 acres per square mile of tidal mud flat;

(vi) 20 acres per square mile of tidal sand flat;

(vii) 40 acres per square mile of waters in the open Gulf of Mexico;

(viii) 40 acres per square mile of open bay waters under tidal influence; or

(ix) 40 acres per square mile of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal park, wildlife management area, or preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(B) In the lower coast:

(i) one-half acre of oyster reef;

(ii) 40 acres per square mile of submerged aquatic vegetation;

(iii) 40 acres per square mile of coastal wetland;

(iv) 40 acres per square mile of algal flat;

(v) 40 acres per square mile of tidal mud flat;

(vi) 40 acres per square mile of tidal sand flat;

(vii) 40 acres per square mile of waters in the open Gulf of Mexico;

(viii) 40 acres per square mile of open bay waters under tidal influence; or

(ix) 40 acres per square mile of upland area fitting the definition of coastal barrier, coastal shore area, Gulf beach, critical dune area, special hazard area, critical erosion area, coastal historic area, or coastal park, wildlife management area, or preserve, as defined in §16.1 of this title (relating to Definitions and Scope).

(3) With respect to energy-related activities not covered within the scope of a hard mineral plan of operations, the GLO's or SLB's issuance of a miscellaneous easement (pursuant to the Texas Natural Resources Code, §51.291), a surface lease (pursuant to the Texas Natural Resources Code, §51.121), or a coastal easement (pursuant to the Texas Natural Resources Code, §33.111), exceeds the threshold only if the instrument authorizes:

(A) permanent disturbance of five acres or more of a critical area or removal of more than 10,000 cubic yards of material from a critical area, except with respect to submerged aquatic vegetation and tidal mud or sand flats in the lower coast; or

(B) permanent disturbance of ten acres or more of submerged aquatic vegetation or tidal mud or sand flats in the lower coast.

(d) Any GLO or SLB action described in §16.1 of this title (relating to Definitions and Scope) that may adversely affect a CNRA that has not been specifically

addressed in this section, exceeds the threshold if the action would adversely affect greater than 40 acres of any such CNRA.

(e) Any GLO or SLB action described in §16.1 of this title (relating to Definitions and Scope) that may adversely affect a CNRA must be consistent with the goals and policies in §16.2 and §16.3 of this chapter (relating to Policy for Major Actions, and Policies for Specific Activities and Coastal Natural Resource Areas), whether above or below the applicable threshold.

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 November 27, 1995.

TRD-9515262

Gary Mauro  
Commissioner  
General Land Office

Effective date: December 18, 1995

Proposal publication date: May 30, 1995

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

## Part IV. School Land Board

### Chapter 153. Exploration and Development

#### Oil, Gas, and Mineral Lease Sales

##### • 31 TAC §153.4

The School Land Board (SLB), adopts new §153.4, concerning consistency with the Coastal Management Program (CMP) goals and policies, without changes to the proposed text as published in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3819).

Section 501.10 of this title (relating to Compliance with Goals and Policies) requires state agencies to comply with the CMP goals and policies, as set out in §§501.12-501.15 of this title (relating to Goals; Administrative Policies; Policies for Specific Activities and Coastal Natural Resource Areas; and Policy for Major Actions, respectively), when taking or authorizing an action listed in §505.11 of this title (relating to Actions and Rules Subject to the Coastal Management Program) that may adversely affect a coastal natural resource area. Contemporaneously with the adoption of §153.4, the General Land Office (GLO), with the approval of the SLB, is adopting new Chapter 16 of this title (relating to Coastal Protection), which is comprised of rules to ensure GLO and SLB consistency with the CMP goals and policies regarding coastal natural resource areas. Because Chapter 153 (relating to Exploration and Development) already addresses certain actions that could also affect coastal natural resource

areas, §153.4 is necessary to ensure that SLB rules are consistent with CMP goals and policies. Section 153.4 specifies that the rules in Chapter 153 will be read in harmony with the GLO's goals and policies set out in the new Chapter 16 of this title (relating to Coastal Protection). Section 153.4 clarifies the relationship between the operation of Chapter 153 and the CMP goals and policies as reflected in Chapter 16 of this title (relating to Coastal Protection).

No comments were received regarding adoption of the new rule.

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

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 November 27, 1995.

TRD-9515265

Gary Mauro  
Chairman  
School Land Board

Effective date: December 18, 1995

Proposal publication date: May 23, 1995

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

### Chapter 155. Land Resources Coastal Public Lands

#### • 31 TAC §155.1

The School Land Board (SLB), adopts an amendment to §155.1, concerning consistency with the Coastal Management Program (CMP) goals and policies, without changes to the proposed text as published in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3820).

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

with the GLO's goals and policies set out in the new Chapter 16 of this title (relating to Coastal Protection). Section 155.1 clarifies the relationship between the operation of Chapter 155 and the CMP goals and policies as reflected in Chapter 16 of this title (relating to Coastal Protection).

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Natural Resources Code, §33.064, which authorizes the SLB to adopt and enforce necessary rules, consistent with CMP goals and policies.

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 November 27, 1995.

TRD-9515266 Garry Mauro  
Chairman  
School Land Board

Effective date: December 18, 1995

Proposal publication date: May 23, 1995

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

### • 31 TAC §155.8

The School Land Board (SLB), adopts an amendment to §155.8, concerning certain permits required from the Texas Parks and Wildlife Commission (commission), without changes to the proposed text as published in the May 23, 1995, issue of the *Texas Register* (20 TexReg 3823).

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

On July 25, 1990, after the original promulgation of §155.8(c), the Attorney General issued Open Texas Attorney General Number JM-1190 (1990), which clarified that certain easements issued by the SLB, including those for dredging, are actions taken "under state or

federal authority" as that phrase is used in Texas Parks and Wildlife Code, §86.002. Actions taken under state or federal authority that result in a disturbance or taking of the listed materials are not subject to the permitting authority of the commission. Amended §155.8 incorporates the opinion in JM-1190, and states that a permit is required from the commission for the disturbance or taking of marl, sand, gravel, shell, or mudshell unless the disturbance or taking is necessary or incidental to navigation or dredging under a lease, easement, permit, or other authority issued by the SLB.

No comments were received regarding adoption of the amendment.

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

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 November 27, 1995.

TRD-9515267 Garry Mauro  
Chairman  
School Land Board

Effective date: December 18, 1995

Proposal publication date: May 23, 1995

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part III. Texas Youth Commission

#### Chapter 87. Treatment

##### Program Planning

### • 37 TAC §87.25

The Texas Youth Commission (TYC) adopts an amendment to §87.25, concerning Title IV-E foster care youth, without changes to the proposed text as published in the October 24, 1995, issue of the *Texas Register* (20 TexReg 8785).

The justification for amending the section will be a more efficient process for individual case plan reviews.

The amendment will require the primary service worker to review and reauthorize a youth's level of care when the individual case plan is updated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the au-

thority to make rules appropriate to the proper accomplishment of its functions.

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

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

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

TRD-9515250 Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 24, 1995

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

## Chapter 91. Discipline and Control

### Disciplinary Practices

### • 37 TAC §91.10

The Texas Youth Commission (TYC) adopts an amendment to §91.10, concerning protective custody for treatment, without changes to the proposed text as published in the October 24, 1995, issue of the *Texas Register* (20 TexReg 8785).

The justification for amending the section is to ensure that when it is necessary, youth receive specialized treatment and protection.

The amendment will clarify the reasons why a youth may be placed in a residential treatment center or psychiatric hospital.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

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

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

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

TRD-9515256 Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date: January 1, 1996

Proposal publication date: October 24, 1995

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

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance, at a public hearing under Docket Number 2180 held at 1:30 p.m., November 9, 1995 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual), to implement changes required by Senate Bill 3, adopted by the 74th Legislature. Amendments are made to Manual Rule 33, Rule 55, Rule 58, Rule 85, Rule 87, Endorsement TE 23 30B, and Endorsement TE 24 03A, to be redesignated TE 23 30C and TE 24 03B, respectively. Staff's petition (Reference Number A-0995-33-1) was published in the September 29, 1995, issue of the Texas Register (20 TexReg 7968).

The changes bring the Manual into compliance with Senate Bill 3, which relates to the regulation of motor carriers and transfers the responsibility from the Railroad Commission to the Department of Transportation. Where appropriate, Manual references to the Railroad Commission are replaced by references to the Department of Transportation, whose staff has concurred in these proposals. Statutory references in the previous stated endorsements have been updated.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0995-33-1, which are incorporated by reference into Commissioner's Order Number 95-1243.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.03-3, 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it

from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective on the 60th day after notification of this action is published in the Texas Register.

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 November 29, 1995.

TRD-9515352 Alicia M. Fecthel, General Counsel and Chief Clerk, Texas Department of Insurance

Effective date: February 3, 1996

For further information, please call: (512) 463-6327

The Commissioner of Insurance, at a public hearing under Docket Number 2181 held at 1:30 p.m., November 9, 1995 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by staff to the Texas Automobile Rules and Rating Manual (the Manual). The amendments consist of new and/or adjusted 1991 through 1995 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0995-34-1) was published in the September 29, 1995, issue of the Texas Register (20 TexReg 7968).

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the various model years of the listed vehicles. The deletions shown in the exhibit attached to staff's petition are symbols used by Insurance Services Office (ISO) for multi-purpose and utility type vehicles for 1994 and prior year models, which will continue to be rated ac-

ording to the traditional method set forth in the Manual, page 2 of the Symbol and Identification Section. For 1995 and later year models, excluding customized vehicles, the symbol for each multi-purpose and utility type vehicle must be used in the same manner as the symbol for a private passenger auto, as required by Commissioner's Order Number 95-0607, effective September 1, 1995. The operative provisions of that order have been printed in the Manual.

The amendments as adopted by the Commissioner of Insurance are shown in exhibits on file with the Chief Clerk under Reference Number A-0995-34-1, which are incorporated by reference into Commissioner's Order Number 95-1242.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the Commissioner's action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective on the 60th day after notification of this action is published in the Texas Register.

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 November 29, 1995.

TRD-9515355 Alicia M. Fecthel, General Counsel and Chief Clerk, Texas Department of Insurance

Effective date: February 3, 1996

For further information, please call: (512) 463-6327

# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department on Aging

Friday, December 8, 1995, 9:30 a.m.

1949 South IH-35, Third Floor, Large Conference Room

Austin

Options for Independent Living Advisory Committee

### AGENDA:

Consider and possibly act on: Call to order. Minutes of September 22, 1995 meeting. Reports. Consider preliminary plan for achieving statewideness of Options program-Blend options program requirements and Access and Assistance program requirements/compare requirements; identify changes needed for consistency, effective "blending"; Develop increased local commitments to options-dollars and services; Seek foundation "challenge" grants for statewide program; identify other funding alternatives in managed care arena; make finding sources (or potential sources) aware of benefits of options program. Consider future Option Advisory committee agenda items-issues referred by board for study and recommendations (i.e. competitive process, duration of options grants, length of eligibility to receive options grant, etc.); Public awareness campaign consistent with level of expansion; other items. Adjourn.

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas (512) 444-2727.

Filed: November 29, 1995, 9:47 a.m.

TRD-9515343

## Texas Department of Agriculture

Thursday-Friday, December 7-8, 1995, 1:00 p.m. and 8:30 a.m., respectively.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Texas Agricultural Finance Authority

### AGENDA:

Thursday, December 7, 1995

Introduction of new board members, training on: Texas Open Meetings Act, Chapter 551, Government Code; Texas Open Records Act, Chapter 552, Government Code; Texas Administrative Procedures Act, Chapter 2001, Government Code, ethics laws and policies, conflict of interest laws, and other laws relating to public officials, lender liability issues, standards of conduct for board members, travel policies and procedures.

Friday, December 8, 1995

Training on: Texas Agricultural Finance Authority enabling legislation, Texas Agricultural Finance Authority Loan Guaranty Program, Farm and Ranch Finance Program, Young Farmer Loan Guarantee Program, Linked Deposit Program, Agricultural Diversification Grant Program,

Revenue Bond Program, and budget for fiscal year 1996.

Contact: Robert Kennedy, P.O. Box 12847, Austin, Texas 78711, (512) 463-7639.

Filed: November 29, 1995, 10:00 a.m.

TRD-9515356

Tuesday, December 12, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Office of Hearings

### AGENDA:

Administrative hearing to review alleged violation of Texas Agriculture Code, §13.035(b), by United Supermarket #506.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: November 28, 1995, 4:16 p.m.

TRD-9515319

Tuesday, December 12, 1995, 2:00 p.m.

Board Room, Texas Sheep and Goat Raisers, 233 West Twohig

San Angelo

Texas Sheep and Goat Commodity Board

### AGENDA:

Opening remarks and welcome

Review and approval on minutes of last meeting

Review and approval of fiscal affairs

Reports of officers and directors

Discussion and action: new business-review of telephone messages; annual report of Rio Grande Wildlife Club; review "hot spots" procedures; review "hot spots" proposals.

Unfinished business-review status on various projects; Castleberry referral to Attorney General's Office; Coyotes in Texas symposium; reprinting publication; reports from "hot spot hunting" projects; progress of predators in the classroom project; review reports from Gary Nunley on Animal Damage Control; scheduling of next meeting.

Discussion: other business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76902-3543, (915) 659-8777.

Filed: November 29, 1995, 11:03 a.m.

TRD-9515378

Thursday, December 14, 1995, 10:00 a.m.

Texas Department of Agriculture, 1700 North Congress Avenue, Room 924A

Austin

Office of Hearings

AGENDA:

Administrative hearing to review alleged violation of Texas pesticide laws or regulations by Homer Youngblood doing business as Associated Aerial Applicators.

Contact: Joyce C. Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: November 29, 1995, 8:50 a.m.

TRD-9515322

## The State Bar of Texas

Thursday-Friday, December 7-8, 1995, 8:30 a.m.

The Texas Law Center, Room 206, 1414 Colorado Street

Austin

The Texas Commission for Lawyer Discipline

AGENDA:

Public session: call to order/introductions/swearing in of new member/review minutes of prior meetings/Closed session: discuss authorization of the general counsel to make, accept or reject offers or take other appropriate action with respect to pending litigation matters and matters pending before evidentiary panels of grievance committees; discuss special counsel assign-

ments; discuss personnel matters/Public session: discuss and authorize the general counsel to take appropriate action on those matters discussed in closed session; report on those matters unresolved in prior meetings; review statistical reports; discuss the commission's compliance with provisions of the State Bar Act, the Texas Disciplinary Rules of Professional Conduct and Orders of the Texas Supreme Court; discuss budget and operations of the general counsel's office and the commission; discuss matters concerning grievance committees; discuss the Special Counsel Program; discuss mediation of disciplinary matters; presentations by trial staff; discuss dates of future meetings; discuss other matters as may appropriately come before the commission; receive public comment/adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, 1-800-204-2222.

Filed: November 29, 1995, 2:13 p.m.

TRD-9515388

## Texas Catastrophe Property Insurance Association

Friday, December 15, 1995, 8:30 a.m.

Marriott Bayfront Hotel, 900 North Shoreline Boulevard

Corpus Christi

Board of Directors

AGENDA:

I. Call to order and reading of antitrust statement

II. Approval of minutes of board meeting on September 19, 1995

III. Chairman's report

IV. Budget review

V. Treasurer's report

VI. Participation Committee report

VII. Underwriting Committee report

VIII. Any other items

IX. Executive session

A. Attorney Review Committee report

X. Adjourn

Contact: Charles F. McCullough, 2028 East Ben White Boulevard, Suite 200, Austin, Texas 78741, (512) 444-9612.

Filed: November 29, 1995, 1:03 p.m.

TRD-9515387

## Texas Board of Chiropractic Examiners

Friday, December 8, 1995, 3:00 p.m.

5912 Spencer Highway (Elsik Room)

Pasadena

Technical Standards Committee

AGENDA:

The Technical Standards Committee of the Texas Board of Chiropractic Examiners will meet on Friday, December 8, 1995, at 3:00 p.m. to consider, discuss, take any appropriate action and/or approve: 1) evaluation of needle EMG qualifications and standards; 2) acupuncture; 3) physical examinations including school physicals; 4) procedures (three-part criteria) to assist in determination of scope of practice; and, 5) Manipulation Under Anesthesia. The committee will meet with representatives from Texas Chiropractic College and Parker Chiropractic College to solicit input regarding needle EMG.

Contact: Pate B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: November 30, 1995, 8:03 a.m.

TRD-9515426

## Texas Department of Criminal Justice

Wednesday, December 13, 1995, 1:00 p.m.

Price Daniel Sr. Building, Fifth Floor

Austin

Programs Committee

AGENDA:

I. Volunteers

a) General discussion

b) Report on Volunteer Coordination Committee

c) Update on Governor's Volunteer Awards Banquet

II. Victims

a) View victim mediation videotape

b) Update on Crime Stoppers Program (view videotape)

c) Discussion of victim services for Travis County Community Justice Facility-Vincent Torres and Ann Hutchison

III. Voyager Program implementation

a) General discussion

b) Administrative segregation closed circuit television system

IV. Discussion of next meeting

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact Amanda Ogden (512) 463-9472 at least two work days prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 30, 1995, 9:13 a.m.

TRD-9515432

### Texas School for the Deaf

Thursday, December 7, 1995, Noon.

1102 South Congress Avenue

Austin

Governing Board Budget and Audit Committee

AGENDA:

- I. Consideration of 1996 audit plan
- II. Consideration of overtime audit report

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: November 29, 1995, 4:30 p.m.

TRD-9515399

Thursday, December 7, 1995, 3:15 p.m.

1102 South Congress Avenue

Austin

Governing Board Policy Committee

AGENDA:

- I. Policy amendments
- II. Policy review

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: November 29, 1995, 4:30 p.m.

TRD-9515398

Friday, December 8, 1995, 8:30 a.m.

601 Airport Boulevard

Austin

Governing Board Curriculum Committee

AGENDA:

- I. Requirement of Senate Bill 1 regarding Human Sexuality Instruction
- II. Review of TSD curriculum
  - a. Content
  - b. Instructional design
- III. Review of materials

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: November 29, 1995, 4:29 p.m.

TRD-9515396

Friday, December 8, 1995, 10:00 a.m.

601 Airport Boulevard

Austin

Governing Board Meeting

AGENDA:

1. Call to order
2. Approval of minutes of October 13, 1995
3. Business for information purposes
4. Business requiring board action
5. Comments by board members
6. Adjournment

Contact: Marvin B. Sallop, P.O. Box 3538, Austin, Texas 78764, (512) 440-5332.

Filed: November 29, 1995, 4:30 p.m.

TRD-9515397

### Texas Historical Commission

Friday, December 8, 1995, 10:00 a.m.

State Capitol Building, Agricultural Museum/Conference Room, West Wing, First Floor

Austin

Meeting (Goal Setting/Work Session)

AGENDA:

1. Review of THC Mission statement
2. Review of improving governance (10-93) and policy directions workshop (8-94) reports
3. Resolution from Cultural Diversity Task Force
4. State cemetery specialist staff position
5. Setting goals for 1996-1997
6. Discussion of quarterly meeting pattern for committees and full commission
7. Review and approval of THC proposed rules
8. Updates on other significant projects

Contact: Marlene Casarez, P.O. Box 12276, Austin, Texas 78711, (512) 463-5768.

Filed: November 28, 1995, 4:16 p.m.

TRD-9515320

### Texas Department of Insurance

Wednesday, December 13, 1995, 9:00 a.m.

Tom C. Clark Building, 201 West 14th Street, Room 703

Austin

AGENDA:

To consider whether disciplinary action should be taken against James Edward Elridge, Hurst, Texas, and Bedford, Texas, who holds a Group I Legal Reserve Life Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance (cont. from November 15, 1995).

Contact: Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328.

Filed: November 28, 1995, 2:08 p.m.

TRD-9515304

### Texas Juvenile Probation Commission

Friday, December 8, 1995, 9:00 a.m.

Wyndham Anatole Hotel, 2201 Stemmons Freeway

Dallas

Construction Bond Committee

AGENDA:

Call to order; Construction Bond Committee report-approval of TDCJ contract; adoption of pre- and post-adjudication standards for publication in the *Texas Register*; public comments; adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: November 29, 1995, 11:02 a.m.

TRD-9515366

Friday, December 8, 1995, 9:45 a.m.

Wyndham Anatole Hotel, 2201 Stemmons Freeway

Dallas

Internal Audit Committee

AGENDA:

Call to order; excuse absences; Internal Audit Committee report-review of proposals and selection of fiscal year 1996 internal auditor; public comments; adjourn.

Contact: Vicki Wright, P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: November 29, 1995, 11:02 a.m.

TRD-9515367

Friday, December 8, 1995, 10:30 a.m.  
Wyndham Anatole Hotel, 2201 Stemmons  
Freeway  
Dallas

Board Meeting

**AGENDA:**

Call to order; excuse absences; approve minutes; Construction Bond Committee report-approval of TDCJ contract; adoption of pre- and post-adjudication standards for publication in the *Texas Register*; approval of construction bond RFP; Internal Audit Committee report-review of proposals and selection of fiscal year 1996 internal auditor; consideration of Texas Mental Health Association proposal; Harris County request for waiver; appointment of TJPC Board Committee members; update on interagency activities; director's report; public comments; schedule next meeting; adjourn.

Contact: Vicki Wright, P.O. Box 12547,  
Austin, Texas 78711, (512) 443-2001.

Filed: November 29, 1995, 11:02 a.m.

TRD-9515368

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**Texas Commission on Law  
Enforcement Officer Stan-  
dards and Education**

Thursday, December 7, 1995, 1:30 p.m.  
Room E2.014, Capitol Extension

Austin

**AGENDA:**

Work Session Meeting

Call to order, invocation, Pledge of Allegiance, and welcoming remarks; recognition of employees for service awards; executive director's report; status of Law Enforcement Memorial Committee; update on firearms training specialization study; Basic Peace Officer Curriculum Standing Revisions Committee report; Ad Hoc Rules Review Committee report; discussion of drafts of proposed new rules, amendments or repeal of existing rules-§211.81-Agency and Chief Administrator Report Responsibilities, §221.1-Responsibilities of Agency Chief Administrators, §221.3-Application for License and Initial Report of Appointment, §221.5-Reporting the Appointment of a Licensee, §221.7-Reporting the Resignation or Termination of a Licensee, §221.9-Reporting Continuing Education, §221.100-In-service Training Requirements for Agencies that Appoint Peace Officers, Reserve Law Enforcement Officers, County Jailers, and Public Security Officers, §217.9-Continuing Education for License Holders, §211.87-Suspension of License; and adjourn.

Contact: Vera Kocian, 1033 LaPosada,  
Suite 240, Austin, Texas 78752, (512)  
450-0188.

Filed: November 29, 1995, 10:09 a.m.

TRD-9515363

Thursday, December 7, 1995, 1:30 p.m.  
Room E2.014, Capitol Extension

Austin

Revised Agenda

**AGENDA:**

Work Session Meeting (Revised to delete agenda item)

Call to order, invocation, Pledge of Allegiance, and welcoming remarks; recognition of employees for service awards; executive director's report; update on firearms training specialization study; Basic Peace Officer Curriculum Standing Revisions Committee report; Ad Hoc Rules Review Committee report; discussion of drafts of proposed new rules, amendments or repeal of existing rules-§211.81-Agency and Chief Administrator Reporting Responsibilities, §221.1-Responsibilities of Agency Chief Administrators, §221.3-Application for License and Initial Report of Appointment, §221.5-Reporting the Appointment of a Licensee, §221.7-Reporting the Resignation or Termination of a Licensee, §221.9-Reporting Continuing Education, §221.100-In-service Training Requirements for Agencies that Appoint Peace Officers, Reserve Law Enforcement Officers, County Jailers, and Public Security Officers, §217.9-Continuing Education for License Holders, §211.87-Suspension of License; and adjourn.

Contact: Vera Kocian, 1033 LaPosada,  
Suite 240, Austin, Texas 78752, (512)  
450-0188.

Filed: November 29, 1995, 4:05 p.m.

TRD-9515394

Friday, December 8, 1995, 9:30 a.m.  
Room E2.014, Capitol Building

Austin

**AGENDA:**

Quarterly Meeting

Call to order, invocation, Pledge of Allegiance, and welcoming remarks; election of chairman, vice-chairman and secretary (if new commissioner(s) appointed; approval of minutes of the September 11-12, 1995, commission meetings; discussion of and action on adoption of drafts of proposed new rules, amendments or repeal of existing rules-§211.81-Agency and Chief Administrator Report Responsibilities, §221.1-Responsibilities of Agency Chief Administrators, §221.3-Application for License and Initial Report of Appointment, §221.5-Reporting the Appointment of a Licensee, §221.7-Reporting the Resignation or Termination of a Licensee, §221.9-Reporting Continuing Education, §221.100-In-service Training Requirements for Agencies that Appoint Peace Officers, Reserve Law Enforcement Officers, County Jailers, and Public Security Officers, §217.9-Continuing Education for License Holders, §211.87-Suspension of License; and adjourn.

porting the Appointment of a Licensee, §221.7-Reporting the Resignation or Termination of a Licensee, §221.9-Reporting Continuing Education, §221.100-In-service Training Requirements §217.9-Continuing Education for License Holders, §211.87-Suspension of License; set meeting date and location of March 1996 Commission meeting; take license action on final orders and agreed final orders for revocation, suspension, and cancellation of licenses; receive report on permanent voluntary surrenders of licenses; receive comments on any subject without discussion; adjourn.

Contact: Vera Kocian, 1033 LaPosada,  
Suite 240, Austin, Texas 78752, (512)  
450-0188.

Filed: November 29, 1995, 10:10 a.m.

TRD-9515364

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**Texas State Board of Medi-  
cal Examiners**

Friday, December 1, 1995, 10:00 a.m.  
333 Guadalupe, Tower 3, Suite 610

Austin

Hearings Division

Emergency

**AGENDA:**

Modification Request, 10:00 a.m.-Frank A.  
Vickers, MD, Huntsville, Texas

Executive session under 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, regarding pending or contemplated litigation.

Reason for Emergency: Information has come to the attention of the agency and requires prompt consideration.

Contact: Pat Wood, P.O. Box 149134,  
Austin, Texas 78714-9134, (512) 834-7728,  
Ext. 402, Fax Number: (512) 834-4597.

Filed: November 28, 1995, 3:17 p.m.

TRD-9515315

Thursday-Saturday, December 7-9, 1995,  
8:30 a.m. (Thursday, Saturday) and 1:30  
p.m. (Friday)

333 Guadalupe, Tower Two, Suite 220

Austin

**AGENDA:**

The agenda includes executive session to consult with counsel; presentation by representatives of the Federation of State Medical Boards; discussion, recommendation, and possible action on electromyographic and nerve conduction velocity studies; requests for termination of suspension; public hearing and final action on cancellation of



licenses for nonpayment of annual registration fees or at the request of the physician; approval of orders and minutes; request for reinstatement; public hearing and consideration of final adoption of rule changes; and a report from the executive director.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7008.

Filed: November 29, 1995, 4:51 p.m.

TRD-9515406

Thursday, December 7, 1995, 9:00 a.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Standing Orders Committee

AGENDA:

1. Call to order
2. Roll call
3. Review and consideration for approval of acupuncture licensure applications as recommended by Board of Acupuncture Examiners.
4. Discussion, recommendation, and possible action on acupuncture rules related to the practice of auricular acupuncture, §183.17 and extension of February 2, 1996 deadline date for completion of examination required for automatic licensure applicants, §183.18.
5. Report from staff regarding monitoring the compliance of continuing medical education requirements.
6. 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) 305-7016, Fax (512) 305-7007.

Filed: November 29, 1995, 4:51 p.m.

TRD-9515407

Thursday, December 7, 1995, 10:00 a.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Disciplinary Process Review Committee

AGENDA:

1. Call to order
2. October 1995 enforcement report
3. November 1995 enforcement report
4. Discussion, recommendations, and possible action on proposed disciplinary guidelines

5. Discussion, recommendation and possible action on proposed rules related to fees for medical records

6. Discussion, recommendation and possible action on proposed clarification of probationary term requiring participation in the activities of TOMA

7. Executive session to review selected files and cases recommended for dismissal by informal settlement conferences.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7007.

Filed: November 29, 1995, 4:51 p.m.

TRD-9515408

Thursday, December 7, 1995, 10:00 a.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Joint Meeting-Endorsement and Examination Committees

AGENDA:

Call to order

Roll call

Proposed changes to Board Rule 163.12, Relicensure

Letters of eligibility to practice in the country of graduation relating to §3.04(g)(3) of the Medical Practice Act (formerly §5.035(a)(4))

Executive session under 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) 305-7016, Fax (512) 305-7008.

Filed: November 29, 1995, 4:51 p.m.

TRD-9515409

Thursday, December 7, 1995, 1:30 p.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Examination Committee

AGENDA:

1. Call to order
2. Roll call
3. Review of licensure applicant Anthony O. Gambrah-Sampaney, M.D.
4. Review of USMLE statistics
5. Review of examination applicants complete for consideration of licensure

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7008.

Filed: November 29, 1995, 4:51 p.m.

TRD-9515410

Thursday, December 7, 1995, 1:30 p.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Endorsement Committee

AGENDA:

Call to order

Roll call

Review of licensure applicants referred to the Endorsement Committee by the executive director for determinations of eligibility for licensure, Gino Sedillo, M.D.

Discussion/action items: Request for withdrawal of application by Monte Mark Mitchell, D.O.; and review of endorsement applicants to be considered for permanent licensure

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.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7708.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515411

Thursday, December 7, 1995, 2:30 p.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Medical School Committee

AGENDA:

1. Call to order

2. Roll call

3. Discussion, recommendation, and possible action on slide presentation for medical school visits, and update on medical school visit schedule.

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7007.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515412

Thursday, December 7, 1995, 3:00 p.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Public Information Committee

AGENDA:

1. Call to order

2. Roll call

3. Discussion, recommendation, and possible action on legislative brochure.

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7007.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515413

Thursday, December 7, 1995, 3:30 p.m.

333 Guadalupe, Tower Three, Suite 610  
Austin

Executive Committee

AGENDA:

1. Call to order

2. Roll call

3. Annual performance evaluation of executive director.

Executive session under the authority of the Open Meetings Act, §551.074 of the Government Code to discuss personnel matters.

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7007.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515414

Friday, December 8, 1995, 8:30 a.m.

333 Guadalupe, Tower Three, Suite 610

Austin

Finance Committee

AGENDA:

1. Call to order

2. Roll call

3. Review financial statements

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, (512) 305-7007.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515415

Friday, December 8, 1995, 9:00 a.m.

333 Guadalupe, Tower Three, Suite 610

Austin

Ad Hoc Committee

AGENDA:

1. Call to order

2. Roll call

3. Discussion, recommendation, and possible action on ethics courses for referral of

physicians disciplined by the Board for ethical reasons.

4. Discussion, recommendation, and possible action on the use of mail order lists of accident victims by physician subscribers.

5. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, (512) 305-7007.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515416

Friday, December 8, 1995, 9:30 a.m.

333 Guadalupe, Tower Two, Suite 220

Austin

Ad Hoc Committee on Telemedicine

AGENDA:

1. Call to order

2. Roll call

3. Discussion, recommendation, speakers, and possible action on House Bill 2669 and related telemedicine issues.

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7007.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515417

Friday, December 8, 1995, 5:00 p.m.

333 Guadalupe, Tower Three, Suite 610

Austin

Ad Hoc Committee on Non-Profit Health

AGENDA:

1. Call to order

2. Roll call

3. Discussion, recommendation, and possible action on an application for certification of non-profit health organizations and update on proposed rules.

4. Adjourn

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 305-7016, Fax (512) 305-7007.

Filed: November 29, 1995, 4:52 p.m.

TRD-9515418

**Texas Natural Resource Conservation Commission**

Wednesday, December 6, 1995, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

Revised

AGENDA:

Addendum to agenda rule, and Agriculture permit review.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: November 8, 1995, 2:09 p.m.

TRD-9515307

**State Pension Review Board**

Tuesday, December 12, 1995, 10:15 a.m.  
(Telephone Conference Call)

300 West 15th Street-Room 406, William Clements Building-Fourth Floor, Pension Review Board Conference Room

Austin

Nomination Committee

AGENDA:

1. Nomination of PRB officers for calendar year 1996

"Additional telephones will be available for conference call"

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: November 29, 1995, 4:05 p.m.

TRD-9515395

Wednesday, December 13, 1995, 10:30 a.m.

William Clements Building, Committee Room 5, Fifth Floor, 300 West 15th Street

Austin

AGENDA:

1. Meeting called to order

2. Roll call

3. Reading and adoption of minutes of previous meeting

4. Chairman's report

5. Committee reports

A. Planning, research, and policy development committee

Approval for working committee of PRB members and others to conduct work of committee

B. Other committees

6. Executive director's report

7. Compliance update:

Ginger Smith

8. Election of pension review board officers for calendar year 1996

9. Discussion and possible action on old business

10. Announcements and invitation for audience participation

11. Adjournment-announce schedule of board meetings

Contact: Lynda Baker, P.O. Box 13498, Austin, Texas 78711, (512) 463-1736.

Filed: November 28, 1995, 12:00 p.m.

TRD-9515299

## Texas State Board of Plumbing Examiners

Tuesday-Wednesday, December 14-15, 1995, 8:30 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

8:30 a.m.-Call to order and roll call (December 14 and 15, 1995).

Consideration of minutes of September 19, 1995 enforcement committee meeting for adoption as recorded (December 14, 1995)

Review of citation list and possible action (December 14 and 15, 1995)

Informal conferences (December 14, 1995 only):

The committee will discuss the following cases with the individuals who have agreed to appear. Possible action by the committee on these cases.

9:00 a.m.-Case #96-0001, 10:30 a.m.-Case #96-0002 and 96-0051, 1:30 p.m. -Case #96-0051

Review of applicants with criminal backgrounds/possible action (December 14 and 15, 1995)

Complaint cases for review:

The following cases will be reviewed by and possibly acted upon by the committee as time allows before, between and after the scheduled informal conferences on December 14 and 15, 1995:

Numbers 95-0519, 96-0078, 95-0287, 95-0343, 95-0297, 95-0361, 95-349, 95-0357, 95-0315, 95-0383, 95-0340, 95-0258, 95-0356, 95-0337, 95-0251, 95-0373, 95-0312, 95-0313, 95-0414, 95-0339, 95-0192, 95-0374, 95-0352, 95-0280, 95-0372, 95-0353, 95-0395, 95-0381, 95-0394, 95-0388, 95-0360, 95-0379, 95-0363, 95-0239.

Contact: Robert L. Maxwell, 929 East 41st Street, Austin, Texas 78751, (512) 458-2145, Ext. 233.

Filed: November 28, 1995, 10:54 a.m.

TRD-9515296

## Texas Department of Protective and Regulatory Services

Friday, December 8, 1995, 10:00 a.m.

Texas A&M System Office, Hirshfeld-Moore House, 814 Lavaca

Austin

Texas Board of Protective and Regulatory Services

AGENDA:

1. Call to order.

2. Executive session. The Texas Board of Protective and Regulatory Services will meet in closed executive session to interview and consider applicants for the position of executive director pursuant to §551.074 of the Texas Government Code. At the conclusion of the executive session, the board will return to open session to adjourn.

3. Adjournment.

Contact: Marty Chung, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030, (512) 438-4435.

Filed: November 28, 1995, 11:22 a.m.

TRD-9515297

## Public Utility Commission of Texas

Wednesday, December 6, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action on: Docket Number 11014 (SOAH Number 473-95-1165); Docket Number 13988 (SOAH Number 473-95-1178); Docket Number 14174 (SOAH Number 473-95-1191); Docket Number 13979, 14343, 14374, 14414, and 14609; Discussion and possible action regarding referral to SOAH and issuance of Preliminary Orders in Docket Numbers 13650, 14980 and 15015; Project Number 14613; Project 14045, 15000, 15001 and 15002; Docket Number 14152 (SOAH Number 473-95-1002); Docket Number 14651 (SOAH Number 473-95-1200); Docket 14884 and 14650; Docket Number 14648 (SOAH Number 473-95-1193); Docket 14647 (SOAH Number 473-95-1198); Docket 14649 (SOAH Number 473-95-1199); Docket Number 14676; Discussion and possible action regarding referral to SOAH and issuance of Preliminary orders in Project Numbers 14458 and 14646; Docket Numbers 14383,

14465 and 14485; Project Number 14555 (Rule 23.99); Project Number 14557 (Rule 23.96); Project Number 14357 (Rule 23.95); Project Number 14418 (Rule 23.49); Project Number 14358 (Rule 23.94); Project 14696 (Rule 22.71); Project 14793 (Rule 22.123); Project Number 13499; Project Assignments; Agency Administrative Procedures; Budget and Fiscal Matters; Adjournment for closed session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in closed.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: November 28, 1995, 3:59 p.m.

TRD-9515318

Wednesday, December 6, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Emergency Revised Agenda

AGENDA:

In addition to the previously submitted agenda, the commission will also consider for referral to the State Office of Administrative Hearings, Docket Number 15060-Complaint of David E. Conway against Houston Lighting and Power Company.

Reason for emergency: Complainant's electricity has been disconnected by the utility.

Contact: Paula Mueller, 7800 Shoal Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 30, 1995, 9:05 a.m.

TRD-9515431

Friday, December 8, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

The commissioners will have a work session at the above date and time for discussion and possible action on agency administrative procedures; project assignments; and budget and fiscal matters. There will also be discussion of electric industry competition issues and telecommunications industry competition issues, including Project Number 15000 (electric industry restructuring); Project Number 15001 (stranded costs or excess costs over market); and Project Number 15002 (scope of competition in the electric industry in Texas). The commission may also discuss Project Number 14045 (rulemaking on transmission access and pricing and stranded investment).

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: November 29, 1995, 11:47 a.m.

TRD-9515386

Friday, December 15, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

**AGENDA:**

A hearing on the merits will be held by the State Office of Administrative Hearings in Docket Number 15050-Application of Cable and Wireless, Inc. for a Service Provider Certificate of Operating Authority. This application was filed on November 28, 1995. Applicant plans to provide calling service as an add-on to the interexchange services that the CWI currently provides to its core market of small to medium-size business customers. CWI proposes to offer monthly recurring, flat-rate local exchange service including extended area service, toll restriction, call control options, tone dialing, custom calling services, Caller ID and any other services which are available on a resale basis from the underlying incumbent local exchange carrier or other certificated carrier within the service area of CWI as a service provider. CWI plans to provide local exchange service to Texas purely on a resale basis. Applicant intends to serve the geographic regions currently served by: Southwestern Bell Telephone, GTE Southwest, Inc., Central Telephone Company of Texas, United Telephone Company, Inc., Sugarland Telephone Company of Texas, and Lufkin-Conroe Telephone Exchange, Inc. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by December 8, 1995.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 29, 1995, 11:47 a.m.

TRD-9515385

**Texas Real Estate Commission**

Monday, December 11, 1995, 9:30 a.m.

TREC Headquarters Office, 1101 Camino La Costa

Austin

**AGENDA:**

Call to order; minutes of October 30, 1995 commission meeting; staff reports for September and October 1995; committee reports; comments from visitors; discussion of the following possible rule changes: (a) advertising guidelines for residential rental locators; (b) waiver of some or all requirements for real estate license applicants licensed within a five-year period prior to

the filing of the application; discussion and possible final action to adopt: (a) amendment to 22 TAC §535.61, concerning acceptance of courses; (b) amendment to 22 TAC §635.51, concerning general requirements for real estate licensure (application forms) and §535.208, concerning application for an inspector license (application forms); (c) amendment to 22 TAC §537.11 and new §537.43 and §535.44, concerning standard contract forms; executive session to discuss pending litigation pursuant to §551.071, Texas Government Code; discussion and possible action to authorize payments from recovery funds; discussion and possible action to approve request for proposals from testing services and to establish process for considering proposals and awarding a contract; discussion and possible action to approve education providers, courses or instructors; consideration of complaint information concerning Shirley Lynn Pearce; Dwight Decil Scott; Kyle England Gibbons; Garrett Robert Gibbons, Lorenza Williams, Jr., Steven Marcus Hill, and Joseph Charles Johnson; entry of orders in contested cases; scheduling of future meetings.

For ADA assistance, call Nancy Guevremont at (512) 465-3923 at least two days prior to meeting.

Contact: Mark A. Moseley, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3900.

Filed: November 28, 1995, 2:09 p.m.

TRD-9515309

**Office of the Secretary of State**

Thursday, December 14, 1995, 10:00 a.m.

James Earl Rudder Building, Fourth Floor, 1019 Brazos Street

Austin

Elections Advisory Committee

**AGENDA:**

Welcoming remarks; roll call and introduction of members; introductory remarks; demonstration/overview of Secretary of State Election Night Returns windows system; overview of process/introduction of key personnel, programming, features of the system, data entry procedures, charges for Election Night Returns Services; Internet discussion; approval of operations manual; observer's report from the November 7, 1995 constitutional amendment election; designation of one or more committee members to be present for March 12, 1996 primaries; closing remarks.

Contact: Kim Sutton, P.O. Box 12060, Austin, Texas 78711, (512) 463-5650.

Filed: November 28, 1995, 3:37 p.m.

TRD-9515317

**Texas Woman's University, Board of Regents**

Thursday, December 7, 1995, 9:00 a.m.

304 Administration Drive, 12th Floor ACT Denton

Academic Affairs Committee

**AGENDA:**

I. Consider approval of the minutes of the committee meeting of August 25, 1995.

II. Consider recommending that the University request approval from the Texas Higher Education Coordinating Board to establish a special, reduced, non-resident tuition rate for students from Oklahoma.

III. Presentation on clinical services at Texas Woman's University.

IV. Consider recommending approval for the Houston Center College of Nursing to establish a Nurse Practitioner Clinic.

V. Report on the Strategic Planning Task Forces.

VI. Report on enrollment trends.

VII. Report on academic vision by the Office of Academic Affairs.

VIII. Report of the committee chair.

IX. Tour of selected academic facility, if time permits.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1995, 4:31 p.m.

TRD-9515401

Thursday, December 7, 1995, 9:00 a.m.

304 Administration Drive, 14th Floor ACT Denton

Committee on Institutional Advancement

**AGENDA:**

I. Consider approval of the minutes of the committee meeting of August 25, 1995.

II. Consider recommending approval of a resolution in memory of Robert O. Benfield, former Vice President for Fiscal Affairs.

III. Report on alumnae relations, development, and public information activities of the Office of Institutional Advancement.

IV. Report of the committee chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1995, 4:31 p.m.

TRD-9515402

Thursday, December 7, 1995, 1:30 p.m.  
304 Administration Drive, 14th Floor ACT  
Denton

Student Affairs Committee

**AGENDA:**

I. Consider approval of the minutes of the committee meeting of August 25, 1995.

II. Report on activities of the Office of Student Life.

III. Report of the committee chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1995, 4:31 p.m.

TRD-9515404

Thursday, December 7, 1995, 1:30 p.m.  
304 Administration Drive, 11th Floor ACT  
Denton

Finance and Audit Committee

**AGENDA:**

I. Consider approval of the minutes of the committee meetings of August 25, 1995 and November 20, 1995.

II. Consider recommending approval of personnel additions and changes.

III. Consider recommending acceptance of gifts and grants.

IV. Consider recommending approval of contracts and agreements.

V. Consider recommending approval of allocation of federal funds.

VI. Consider recommending approval of the renewal, extension, and acquisition of insurance.

VII. Consider recommending approval to accept a change order for \$9,130.92 for the Nursing Lab at the Dallas Parkland campus approved by Page Southerland Page. Total contract price \$301,130.92.

VIII. Consider recommending approval of the installation of sprinkler systems in Stark and Guinn Halls at a cost of approximately \$1.2 million from 1995 Combined Fee Revenue Bond funds.

IX. Consider recommending approval of a resubmission of the request to the Coordinating Board for the renovation of Hubbard Hall.

X. Receive the first quarter 1995-1996 internal audit report.

XI. Consider recommending approval of the investment policy for the university.

XII. Report of the committee chair.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1995, 4:31 p.m.

TRD-9515403

Friday, December 8, 1995, 9:00 a.m.

304 Administration Drive, 16th Floor ACT  
Denton

Board of Regents

**AGENDA:**

I. Executive session: Real estate, litigation, and personnel matters under Texas Civil Statutes, Government Code, §§551.072, 551.071, and 551.074.

II. Consider approval of the minutes of the Board of Regents meetings of August 25, 1995, September 7, 1995, and October 13-14, 1995.

III. Academic Affairs Committee items: Consider requesting approval from the Texas Higher Education Coordinating Board to establish a special, reduced tuition rate for student from Oklahoma; summary of earlier presentation for the Committee on Clinical Services at TWU; consider approval for the Houston Center College of Nursing to establish a Nurse Practitioner Clinic; report of the committee chair.

IV. Committee on Institutional Advancement items: Consider approval of a resolution in memory of Robert O. Benfield, former Vice President for Fiscal Affairs; report of the committee chair.

V. Finance and Audit Committee items: Consider approval of personnel additions and changes; acceptance of gifts and grants; approval of contracts and agreements, allocation of federal funds; renewal, extension and acquisition of insurance; a change order for the Nursing Lab at the Dallas Parkland campus by Page Southerland Page; the installation of sprinkler systems in Stark and Guinn Halls from 1995 Combined Fee Revenue Bond funds; a resubmission of the request to the Coordinating Board for the renovation of Hubbard Hall; the investment policy for the university; report of the committee chair.

VI. Student Affairs Committee items: Report of the committee chair.

VII. Review of new committee meetings format.

VIII. Report from the president.

Contact: Carol D. Surles, P.O. Box 425587, Denton, Texas 76204, (817) 898-3201.

Filed: November 29, 1995, 4:31 p.m.

TRD-9515400

## Texas State Treasury

Tuesday, December 12, 1995, 9:00 a.m.  
(Rescheduled from: December 5, 1995.)

200 East Tenth Street, Room 227

Austin

State Depository Board

**AGENDA:**

1. Approval of minutes of August 7, 1995 meeting

2. Approval of state depository applications

3. Contingent approval of state depository applications

4. Designation of centrally located depositories and authorization for rapid deposit network.

5. Approval of proposed rule changes regarding acceptable collateral

6. Discussion of placement of time deposits based on capital-to-asset ratios

7. Discussion of agenda for next meeting

Contact: Ellen Rathgeber, 200 East Tenth Street, Suite 309, Austin, Texas 78701, (512) 463-5971.

Filed: November 30, 1995, 8:54 a.m.

TRD-9515430

## University of Houston System

Monday, December 4, 1995, 9:00 a.m.

Melcher Board Room (1008), Athletics,  
University of Houston, 3100 Cullen

Houston

Board of Regents

**AGENDA:**

Executive session; report and action from executive session; to discuss and/or approve the following: establishment of UHS at Fort Bend as a Multi-Institution Teaching Center; December 1995 personnel recommendations; addendum to Fall 1995 Merit Increase Program; investment policy for non-endowed funds; resolution for the purchase and sale of securities and similar investments for all funds of the University of Houston System except endowment funds; Houston Athletics Foundation; naming the Student Life Building the Jesse H. Jones Student Life Center; award of construction contract for the Academic/Student Service Building; award contract for project management services for the LeRoy and Lucile Melcher Center for public broadcasting and distance learning; University of Houston System administration budget amendment; agreement with Heidrick and Struggles; selection of a financial management system-project status report; report on student infor-

mation systems evaluation project; and selection of a timekeeping system.

**Contact:** Peggy Cervenka, 1600 Smith, Suite 3400, Houston, Texas 77002, (713) 754-7440.

**Filed:** November 28, 1995, 3:17 p.m.

TRD-9515316

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**University Interscholastic League**

**Monday, December 4, 1995, 1:00 p.m.**

University Interscholastic League, Thompson Conference Center, Suite 2.120, 26th and Red River

Austin

Waiver Review Board

**AGENDA:**

AA. Request for waiver of Parent Residence Rule by Derrick Price, Northbrook High School in Houston

**Contact:** Sam Harper, 23001 Lake Austin Boulevard, Austin, Texas 78713, (512) 471-5883.

**Filed:** November 29, 1995, 11:04 a.m.

TRD-9515379

◆ ◆ ◆  
**The University of Texas at El Paso**

**Tuesday, December 5, 1995, 3:30 p.m.**

500 University, Administration Building, Room 310

El Paso

Institutional Animal Care and Use Committee

**AGENDA:**

I. Call to order by Chairman James V. Devine

II. Approval of April 26, 1995 meeting minutes

III. Annual report of Research Facility

IV. Animal Care Person

V. Other business

**Contact:** James V. Devine, Ph.D., 500 University, The University of Texas at El Paso, El Paso, Texas 79968-0500, (915) 747-5551.

**Filed:** November 28, 1995, 2:09 p.m.

TRD-9515308

**Regional Meetings**

**Meetings Filed November 28, 1995**

**The Education Service Center, Region VI Board** will meet at 1929 Country Club Drive, Bryan, December 7, 1995, at 5:00 p.m. Information may be obtained from Bobby Roberts, 332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161. TRD-9515295.

**The Education Service Center, Region VIII Board of Directors** will meet at 1000 Country Club Lane, Mt. Pleasant, December 15, 1995, at 11:30 a.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894. TRD-9515305.

**The Millersview-Doole Water Supply Corporation Board of Directors** met One Block West of FM Highway 765 and FM Highway 2134, Millersview, December 4, 1995, at 7:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862-1005, (915) 483-5438. TRD-9515314.

**The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee** met at 434 South Main, Suite 205, San Antonio, December 1, 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-9515298.

◆ ◆ ◆  
**Meetings Filed November 29, 1995**

**The Brazos Valley Development Council Brazos Valley Local Workforce Development Board** will meet at the Brazos Center, 3232 Briarcrest Drive, Bryan, December 5, 1995, at 2:30 p.m. Information may be obtained from Paul Hillers, 1706 East 29th Street, Bryan, Texas 77805, (409) 775-4244 or Fax: (409) 775-3466. TRD-9515392.

**The Brazos Valley Development Council Brazos Valley Regional Advisory Committee on Aging** will meet at 1706 East 29th Street, Bryan, December 5, 1995, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 775-4244. TRD-9515389.

**The Dewitt County Appraisal District Appraisal Review Board** will meet at 103 Bailey Street, Cuero, December 13, 1995, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753. TRD-9515338.

**The Education Service Center, Region XV Board** will meet at 612 South Irene Street, San Angelo, December 7, 1995, at

1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571. TRD-9515323.

**The Falls County Appraisal District Agricultural Advisory Board** will meet at Int. of Highway 6 and 7, Falls County Courthouse-First Floor, Marlin, December 5, 1995, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543. TRD-9515381.

**The Gregg Appraisal District Board of Directors** will meet at 2010 Gilmer Road, Longview, December 5, 1995, at 11:00 a.m. Information may be obtained from William T. Carroll, 2010 Gilmer Road, Longview, Texas 75604, (903) 759-0015. TRD-9515393.

**The Kendall Appraisal District Appraisal Review Board** will meet at 121 South Main Street, Boerne, December 14, 1995, at 9:00 a.m. Information may be obtained from Mick Mikulenska or Tammy Johnson, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012 or Fax: (210) 249-3975. TRD-9515362.

**The Lavaca County Central Appraisal District Appraisal Review Board** will meet at 113 North Main Street, Hallettsville, December 14, 1995, at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9515405.

**The Texas Regional Planning Commissions' Employee Benefit Plan Agency Board of Trustees** will meet at 6000 Middle Fiskville Road, Austin, December 6, 1995, at 2:30 p.m. Information may be obtained from Gary Pitner, P. O. Box 9257, Amarillo, Texas 79105, (806) 372-3381. TRD-9515337.

**The Rusk County Appraisal District Appraisal Review Board** will meet at 107 North Van Buren, Henderson, December 7, 1995, at 9:45 a.m. Information may be obtained from Melvin R. Cooper, P.O. Box 7, Henderson, Texas 75653-0007, (903) 657-3578. TRD-9515341.

**The Trinity River Authority of Texas Board of Directors** will meet at 5300 South Collins Street, Arlington, December 6, 1995, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9515390.

**The West Central Texas Council of Governments West Central Texas Regional Housing Finance Corporation Board of Directors** met at 158 Cypress Street, Abilene, December 4, 1995, at 11:30 a.m. Information may be obtained from Alison Benton, P.O. Box 3195, Abilene, Texas 79604-3195, (915) 672-8544. TRD-9515419.

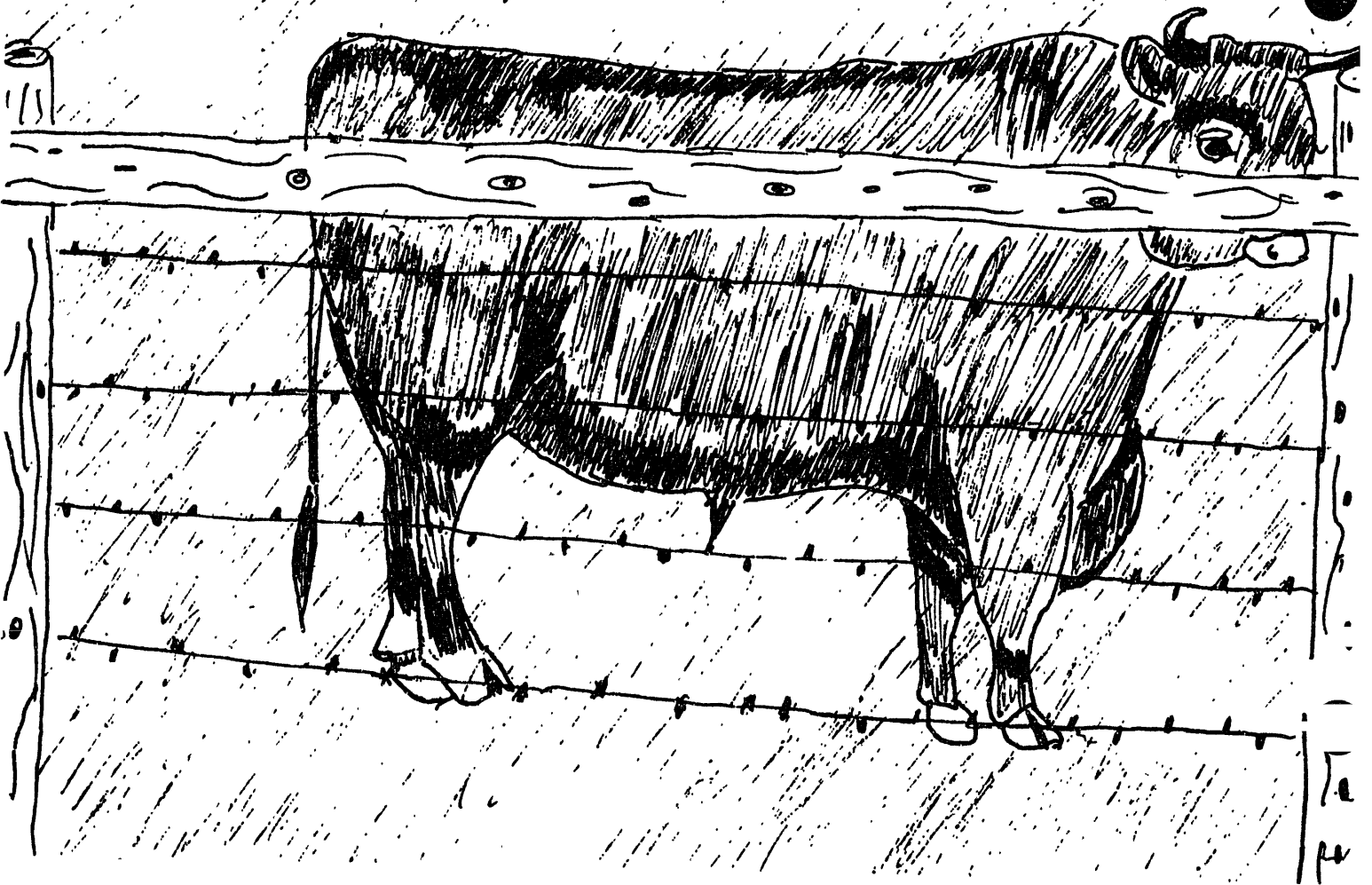
**Meetings Filed November 30,  
1995**

**The Dallas Central Appraisal District Board of Directors' (Regular Meeting) will meet at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, December 6, 1995, at 7:30 a.m. Information may be obtained from Rick Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9515428.**

**The 50th Judicial District Juvenile Board will meet in the District Courtroom, King County Courthouse, Guthrie, December 7, 1995, at 12:30 p.m. Information may be obtained from David W. Hajek, P.O. Box 508, Seymour, Texas 76380, (817) 888-2852. TRD-9515429.**



Name: Alex Arambula  
Grade: 12  
School: Harlandale High School, Harlandale 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.

## The Advisory Commission on State Emergency Communications

### Request for Proposal

The Advisory Commission on State Emergency Communications (herein called "ACSEC") is soliciting proposals from qualified entities to provide internal auditing services to the ACSEC. The intent of this request is to select a provider of internal audit services which will enable the ACSEC to comply with the Texas Internal Auditing Act pursuant to the Texas Government Code Annotated, §2102.001. The ACSEC intends to renew its contract for these services with whom they contracted in fiscal year 1995, unless a proposer can show substantial reason to select another consultant.

Primary factors in the evaluation process will include:

- (1) Proposer's approach to providing the required services.
- (2) Proposer's experience in providing similar services, and a list of state agencies with contact person for which proposer has provided similar services will be required.
- (3) Reasonableness of the fee and man-hour estimate.
- (4) The response will serve as the primary basis for selecting an entity to provide required services to the ACSEC.
- (5) Be free of any operational management responsibilities.

The Commission desires services which represent the best combination of price and quality.

Questions about the Request for Proposal and requests for a copy of the bid package should be directed to: Brian Millington, Business Manager at (512) 305-6923. Parties interested in making a proposal should request a full bid package and not rely on this summary notice for their proposal.

Written proposals must be received by the ACSEC by 5:00 p.m., central standard time on December 28, 1995 to be considered. Proposals should be sent to: Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Hobby Building, Suite 2-212, Austin, Texas 78701-3942.

Issued in Austin, Texas, on November 28, 1995.

TRD-9515321

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

Filed: November 29, 1995

## Office of Consumer Credit Commissioner

### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (3)/Agricultural/ Commercial (4) thru \$250,000</u>	<u>Commercial(4) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/04/95-12/10/95	18.00%	18.00%
Monthly Rate - Art. 1.04 (c)(1)	12/01/95-12/31/95	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	01/01/96-03/31/96	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11(3)	01/01/96-03/31/96	18.00%	N.A.
Lender Credit Card Quarterly Rate - Art. 15.02(d)(3)	01/01/96-03/31/96	14.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2)(2)	01/01/96-03/31/96	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11(3)	01/01/96-03/31/96	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	12/01/95-12/31/95	10.00%	10.00%

(1)For variable rate commercial transactions only. (2)Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S. (3)Credit for personal, family or household use. (4)Credit for business, commercial, investment or other similar purpose.

TRD-9518357

Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner

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

Filed: November 29, 1995

◆ ◆ ◆  
**Office of the Governor Criminal  
Justice Division**  
**Notices of Invitation for Applications**

The Criminal Justice Division, Office of the Governor, announces the availability of grant funds for statewide projects under its Governor's Criminal Justice Plan for 1997 (Plan). Funding is available under the State Criminal Justice Planning (421) Fund, the Juvenile Justice and Delinquency Prevention (JJDP) Fund, the Texas Narcotics Control Program, and the Safe and Drug-Free Schools and Communities Act Fund. Detailed specifications are in Plan. The Plan and Application Kits are available from the Criminal Justice Division, Office of the Governor.

Contact person: If additional information is needed, contact Camille Cain at (512) 463-1789.

**Closing Date for Receipt of Applications:** The original and one copy of the application must be received by mail or hand delivered by 5:00 p.m. on March 1, 1996. Applications may be hand delivered or sent express mail to Criminal Justice Division, 221 East 11th Street, First Floor, Austin, Texas 78701. Applications may be mailed to Criminal Justice Division, Office of the Governor, Attention: Joelle Tedford, Post Office Box 12428, Austin, Texas 78711.

**Selection Process:** All applications will be reviewed for eligibility and rated competitively according to funding source by a group of staff members at CJD selected by the executive director. Those staff members will make recommendations to the executive director of CJD. The Governor or his designee will make all final funding decisions.

Issued in Austin, Texas, on November 21, 1995.

TRD-9515254      Pete Wassdorf  
Deputy General Counsel  
Office of the Governor

Filed: November 27, 1995

◆ ◆ ◆  
The Criminal Justice Division, Office of the Governor, announces the availability of grant funds for local and regional projects under its Governor's Criminal Justice Plan for 1997 (Plan). Funding is available under the State Criminal Justice Planning (421) Fund, the Juvenile Justice and Delinquency Prevention (JJDP) Fund, the Title V Delinquency Prevention Fund, the Crime Stoppers Assistance Fund, the Texas Narcotics Control Program, the Victims of Crime Act Fund, and the Safe and Drug-Free Schools and Communities Act Fund. Interested applicants should call or write to the regional council of governments for their county for information on application deadlines and submission requirements. Detailed specifications are in the Plan. The Plan and Application Kits are available from the Criminal Justice Division, Office of the Governor or the criminal justice planners at the regional councils of governments.

Contact person: If additional information is needed, contact Camille Cain at (512) 463-1789.

**Closing Date for Receipt of Applications:** Application deadlines are set by the regional councils of governments. Prospective applicants should contact the criminal justice planner for relevant deadlines.

**Selection Process:** All applications will be prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on the extent of local coordination documented in a community plan. Priority listings will be approved by the Executive Committees of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

Issued in Austin, Texas, on November 21, 1995.

TRD-9515255      Pete Wassdorf  
Deputy General Counsel  
Office of the Governor

Filed: November 27, 1995

◆ ◆ ◆  
**Texas Department of Human Services**  
**Notice of Public Hearing**

The Texas Department of Human Services (DHS) will conduct a public hearing to receive comments on proposed rules that revise the type of license required to comply with amendments to Chapter 142 of the Health and Safety Code which require that, in order to contract with DHS for the Primary Home Care Program, a legal entity must be licensed by the Texas Department of Health as a home and community support services agency. The public hearing will be held on December 11, 1995, at 10:00 a.m. in Room 651 on the sixth floor of the West Tower of the John H. Winters Center, 701 West 51st Street, Austin, Texas. If you are unable to attend the hearing, but wish to comment on the proposed rules, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Written comments may be mailed to Maria Montoya, MC W-521, P.O. Box 149030, Austin, Texas 78714-9030, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 438-5133.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Maria Montoya, (512) 438-3155 by December 8, 1995, so that appropriate arrangements can be made.

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

TRD-9515340      Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: November 29, 1995

◆ ◆ ◆  
**Texas Department of Insurance**  
**Notice of Public Hearing**

The Commissioner of Insurance will hold a public hearing under Docket Number 2193 on December 14, 1995 at 2:30 p.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider the adoption of proposed amendments to 28 TAC §§3.1-3.21, concerning requirements for filing of policy forms, riders, amendments, and endorsements for life,

accident, and health insurance and annuities and proposed amendments to 28 TAC §§3.4004-3.4020, relating to the exemption of certain life, accident, health and annuity forms from review and approval requirements.

The proposed amendments and the statutory authority for the proposed amendments to 28 TAC §§3.1-3.21 were published in the October 20, 1995 issue of the *Texas Register* (20 TexReg 8561). The proposed amendments and the statutory authority for the proposed amendments to 28 TAC §§3.4004-3.4020 were published in the October 17, 1995 issue of the *Texas Register* (20 TexReg 8396).

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

TRD-9515354      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: November 29, 1995

### Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of Human Affairs International, Inc., a foreign third party administrator. The home office is Sandy City, Utah.

Application for admission to Texas of Student Assurance Services, Inc., a foreign third party administrator. The home office is Stillwater, Minnesota.

Application for admission to Texas of Principal Behavioral Health Care, Inc., a foreign third party administrator. The home office is Des Moines, Iowa.

Application for admission to Texas of Americaid, Inc., a foreign third party administrator. The home office is Dover, Delaware.

Application for admission to Texas of Fringe Benefits Management Company (doing business as FBMC, Inc.) a foreign third party administrator. The home office is Tallahassee, Florida.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

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

TRD-9515353      Alicia M. Fechtel  
General Counsel and Chief Clerk  
Texas Department of Insurance

Filed: November 29, 1995

### Texas Department of Protective and Regulatory Services

#### Request for Proposals-Economic Impact and Cost/Benefit Analyses

Pursuant to Chapter 2254, Subchapter B, Title 10, Government Code, the Department of Protective and Regulatory Services is seeking to hire a consultant 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 increased 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. Risk is defined as situations and conditions in which children are in danger of immediate and long term negative impact to their health, safety, and well-being, including, but not limited to, physical and emotional abuse and neglect. Negative developmental outcomes, include, but are not limited to such things as lack of school readiness, dropout rates, juvenile crime, loss of parent productivity, and loss of the children's future productivity.

The contractor will deliver a report to DPRS with analyses and recommendations addressing the topics identified previously.

Offerers must submit their proposals to the Department prior to 4:00 p.m., January 16, 1996. It is expected that a 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.

Responsive proposals will be reviewed and ranked by a group of Department employees and other individuals with knowledge of day care licensing standards. A contract will be awarded to the offerer who is deemed by the Department to have demonstrated through the proposal the requisite competence, knowledge, and qualifications necessary to conduct the study within the budgeted amount.

The complete Request for Proposals instructions can be obtained by contacting Robert Morris, Contract System Administrator, Mail Code E-672, Texas Department of Protective and Regulatory Services, P.O. Box 149030, Austin, Texas 78714-9030.

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

TRD-9515339      Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Protective and  
Regulatory Services

Filed: November 29, 1995

## Texas State Board of Examiners of Psychologists

### Notice of Correction of Error

A Notice of Public Hearing was issued by the Texas State Board of Examiners of Psychologists and was published in the November 7, 1995, issue of the *Texas Register*, 20 TexReg 9305, advising that a public hearing would be held on Monday, December 11, 1995, from 1:00 p.m. to 5:00 p.m. concerning new Board Rules §463.32 and §465.38. We inadvertently stated that the proposed rules would appear in the November 24, 1995, issue of the *Texas Register*. However, they were published in the November 21, 1995, issue on Pages 9667-9670.

In addition, errors were found in the publication of the rules in the November 21, 1995, issue of the *Texas Register*. At the beginning of Board Rule 463.32, the words "Section 21.003(b)," should be added prior to Education Code (20 TexReg 9668). Under Board Rule 463.32(1)(D)(i), line 9, the symbol "TM" should be replaced with the symbol "§" (20 TexReg 9668). Under Board Rule 465.38(f), line 17, the word "designed" should be changed to "designated" (20 TexReg 9670).

Issued in Austin, Texas, on November 28, 1995.

TRD-9515335      Rebecca E. Fortner  
Executive Director  
Texas State Board of Examiners of  
Psychologists

Filed: November 29, 1995

## Public Utility Commission of Texas Notices of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 9, 1995, to amend a certificate of convenience and necessity pursuant of the Public Utility Regulatory Act of 1995 (PURA), Texas Civil Statutes, Article 1446c-O (Vernon Supp. 1995), §§1. 101, 3.051(b), 3.251, 3.253, and 3.254. A summary of the application follows.

Docket Title and Number: APPLICATION OF SOUTHWESTERN BELL TELEPHONE COMPANY TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY WITHIN FREESTONE COUNTY, Docket Number 14978, before the Public Utility Commission of Texas.

The Application: In Docket Number 14978, Southwestern Bell Telephone Company seeks approval to amend the exchange area boundary between its Teague exchange and Contel of Texas, Inc.'s Donie exchange in order to reflect the manner in which telecommunications services are currently being administered.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before December 21, 1995.

Issued in Austin, Texas, on November 28, 1995.

TRD-9515312

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: November 28, 1995

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 15, 1995, to amend a certificate of convenience and necessity pursuant of the Public Utility Regulatory Act of 1995 (PURA), Texas Civil Statutes, Article 1446c-0 (Vernon Supp. 1995), §§1.101, 3.051(b), 3.251, 3.253, and 3.254. A summary of the application follows.

Docket Title and Number: APPLICATION OF UNITED TELEPHONE COMPANY OF TEXAS, INC. TO AMEND CERTIFICATE OF CONVENIENCE AND NECESSITY WITHIN HENDERSON COUNTY, Docket Number 15012, before the Public Utility Commission of Texas.

The Application: In Docket Number 15012, United Telephone Company of Texas, Inc. seeks approval to amend the exchange area boundary between its Athens and Malakoff exchanges. The revision will allow United to serve all of a new mobile home subdivision from the Athens exchange.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before December 21, 1995.

Issued in Austin, Texas, on November 28, 1995.

TRD-9515313      Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: November 28, 1995

## Notice of Application for Approval of a Special Amortization

Notice is given to the public of filing with the Public Utility Commission of Texas an application on November 17, 1995, for approval of a special amortization pursuant to the Public Utility Regulatory Act of 1995 (PURA), Texas Civil Statutes, Article 1446c-0, §2.151(a) and §3.151(b) (Vernon Supp. 1995). The following is a summary of the nature of the application.

Docket Title and Number: APPLICATION OF CENTURY TELEPHONE OF LAKE DALLAS, INC. FOR APPROVAL OF A SPECIAL AMORTIZATION, Docket Number 15021, before the Public Utility Commission of Texas.

The Application: Century Telephone of Lake Dallas, Inc. requests approval to amortize a projected reserve deficiency in its digital switching account over a five-year period.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512)

458-0256, or (512) 458-0221 for teletypewriter for the deaf on or before December 19, 1995.

Issued in Austin, Texas, on November 28, 1995.

TRD-8515311 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: November 28, 1995

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**Notice of Intent to File Pursuant to  
Substantive Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for City of Bedford in Bedford, Texas.

**Tariff Title and Number.** Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for City of Bedford pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15033.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a 241-station addition to the existing PLEXAR-Custom service for City of Bedford. The geographic service market for this specific service is the Bedford, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on November 28, 1995.

TRD-8515310 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: November 28, 1995

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**Notice of Request for Comments**

The Public Utility Regulatory Act (PURA), §3.452 addresses the unbundling of the local exchange company network and services. Specifically, subsection (a) directs an incumbent local exchange company to unbundle its network, at a minimum, to the extent ordered by the Federal Communications Commission. The requirements under subsection (a) are being addressed through a rulemaking proceeding in Project Number 14555. Subsections (b) and (c) require the commission to hold a hearing and adopt an order on the issue of further unbundling of local exchange company services, before the adoption of the pricing rules required by PURA, §3.457. The statute authorizes the Commission to proceed either by rulemaking or, if requested by a party, by evidentiary hearing.

In order to facilitate its decision regarding whether to proceed by rulemaking or by evidentiary hearing, the commission invites comments from interested parties on the following questions:

(1) Should the Commission order further unbundling through its regular rulemaking proceeding, through an evidentiary rulemaking proceeding, or through a contested case?

(2) Would an evidentiary rulemaking proceeding comply with the requirements of PURA, §3.452?

(3) If so, what should be the elements of an evidentiary rulemaking proceeding?

Responses to the above questions (15 copies) may be submitted to Paula Mueller, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. All comments should refer to Project Number 14959.

Issued in Austin, Texas, on November 28, 1995.

TRD-8515235 Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: November 28, 1995

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**Texas Department of Transportation  
Request for Proposals**

**Notice of Invitation:** The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC, §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

**Contract(s):** #19-645P5001-Off-System Bridge Inspection in Bowie, Camp, Cass, Harrison, Marion, Morris, Panola, Titus and Upshur Counties; #19-645P5002-On-System Bridge Inspection in Bowie County; #19-645P5003-On-System Bridge Inspection in Camp, Morris and Titus Counties; and #19-645P5004-On-System Bridge Inspection in Cass and Marion Counties.

**Deadline:** A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by Fax at (903) 799-1288; hand-delivered to TxDOT, Atlanta District Office, FM 249 and Park Street, Atlanta, Texas; or mailed to TxDOT Atlanta District Office, P.O. Box 1210, Atlanta, Texas 75551. Letters of interest will be received until 5:00 p.m. on Friday, January 5, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and number of TxDOT contract. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet.) TxDOT will not issue Request for Proposal packet without receipt of letter of interest.

**Pre-proposal Meeting:** A pre-proposal meeting will be held on Tuesday, January 9, 1996, at the TxDOT Atlanta District Office, FM 249 and Park Street, Atlanta, Texas, at 10:00 a.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory pre-proposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact David W. Orr, (903) 799-1286 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline:** Proposals for contract #19-645P5001 thru 19-645P5004 will be accepted until 5:00

p.m. on Friday, January 19, 1996, at the TxDOT, Atlanta District Office addresses.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to David W. Orr., P.O. Box 1210, Atlanta, Texas 75551, (903) 799-1286, FAX (903) 799-1288.

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

TRD-8515336      Robert E. Shaddock  
General Counsel  
Texas Department of Transportation

Filed: November 29, 1995

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**University of Houston System  
Consultant Contract Award**

Pursuant to the provisions of the Government Code, Chapter 2254, the University of Houston announces award of a consultant contract for program management services. The consultant request for proposal was published in the April 7, 1995, issue of the *Texas Register* (20 TexReg 2666).

The program manager will manage the University of Houston's Capital Renewal and Deferred Maintenance Program, including contracting with consultants, architects, engineers, and the construction contractors; prepare documents to seek approval by University of Houston System Board of Regents and the Texas Higher Education Coordinating Board; and overall management of the capital program including programming, budgeting, scheduling, and project management.

The contract was awarded to 3D/International, Inc., 1900 West Loop South, Suite 400, Houston, Texas 77027.

The contract amount is \$242,640 for the first year's fees. Work started on September 1, 1995 and should be completed by August 31, 2000.

Issued in Houston, Texas, on November 17, 1995.

TRD-8515385      James R. Berry  
Associate Vice Chancellor  
University of Houston System

Filed: November 29, 1995

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# TAC Titles Affected

The following is a list of the administrative rules that were published in the November, 1995 issues.

## TITLE 1. ADMINISTRATION

### Part I. Office of the Governor

1 TAC §3.105.....9405

### Part IV. Office of the Secretary of State

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# PUBLICATION SCHEDULE

The following is the 1995 Publication Schedule for the Texas Register. Listed below are the deadline dates for the June-December 1995 issues of the Texas Register. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the Texas Register are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 7, November 10, November 28, and December 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
75 Tuesday, October 3	Wednesday, September 27	Thursday, September 28
76 Friday, October 6	Monday, October 2	Tuesday, October 3
Tuesday, October 10	Wednesday, October 4	Thursday, October 5
77 Friday, October 13	THIRD QUARTERLY INDEX	
78 Tuesday, October 17	Wednesday, October 11	Thursday, October 12
79 Friday, October 20	Monday, October 16	Tuesday, October 17
80 Tuesday, October 24	Wednesday, October 18	Thursday, October 19
81 Friday, October 27	Monday, October 23	Tuesday, October 24
82 Tuesday, October 31	Wednesday, October 25	Thursday, October 26
83 Friday, November 3	Monday, October 30	Tuesday, October 31
84 Tuesday, November 7	Wednesday, November 1	Thursday, November 2
Friday, November 10	No Issue Published	
85 Tuesday, November 14	Wednesday, November 8	Thursday, November 9
86 Friday, November 17	Monday, November 13	Tuesday, November 14
87 Tuesday, November 21	Wednesday, November 15	Thursday, November 16
88 Friday, November 24	Monday, November 20	Tuesday, November 21
Tuesday, November 28	NO ISSUE PUBLISHED	
89 Friday, December 1	Monday, November 27	Tuesday, November 28
90 Tuesday, December 5	Wednesday, November 29	Thursday, November 30
91 Friday, December 8	Monday, December 4	Tuesday, December 5
92 Tuesday, December 12	Wednesday, December 6	Thursday, December 7
93 Friday, December 15	Monday, December 11	Tuesday, December 12
94 Tuesday, December 19	Wednesday, December 13	Thursday, December 14
95 Friday, December 22	Monday, December 18	Tuesday, December 19
96 Tuesday, December 26	Wednesday, December 20	Thursday, December 21
Friday, December 29	NO ISSUE PUBLISHED	