

TEXAS REGISTER



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

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The Texas Register is published under the Government Code, Title 10, Chapter 2002. Second class postage is paid at Austin, Texas.

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

How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

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

Secretary of State - opinions based on the election laws.

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

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

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

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

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

Open Meetings - notices of open meetings.

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

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

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

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

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

Texas Administrative Code

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

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

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

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

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

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

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

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

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

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

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

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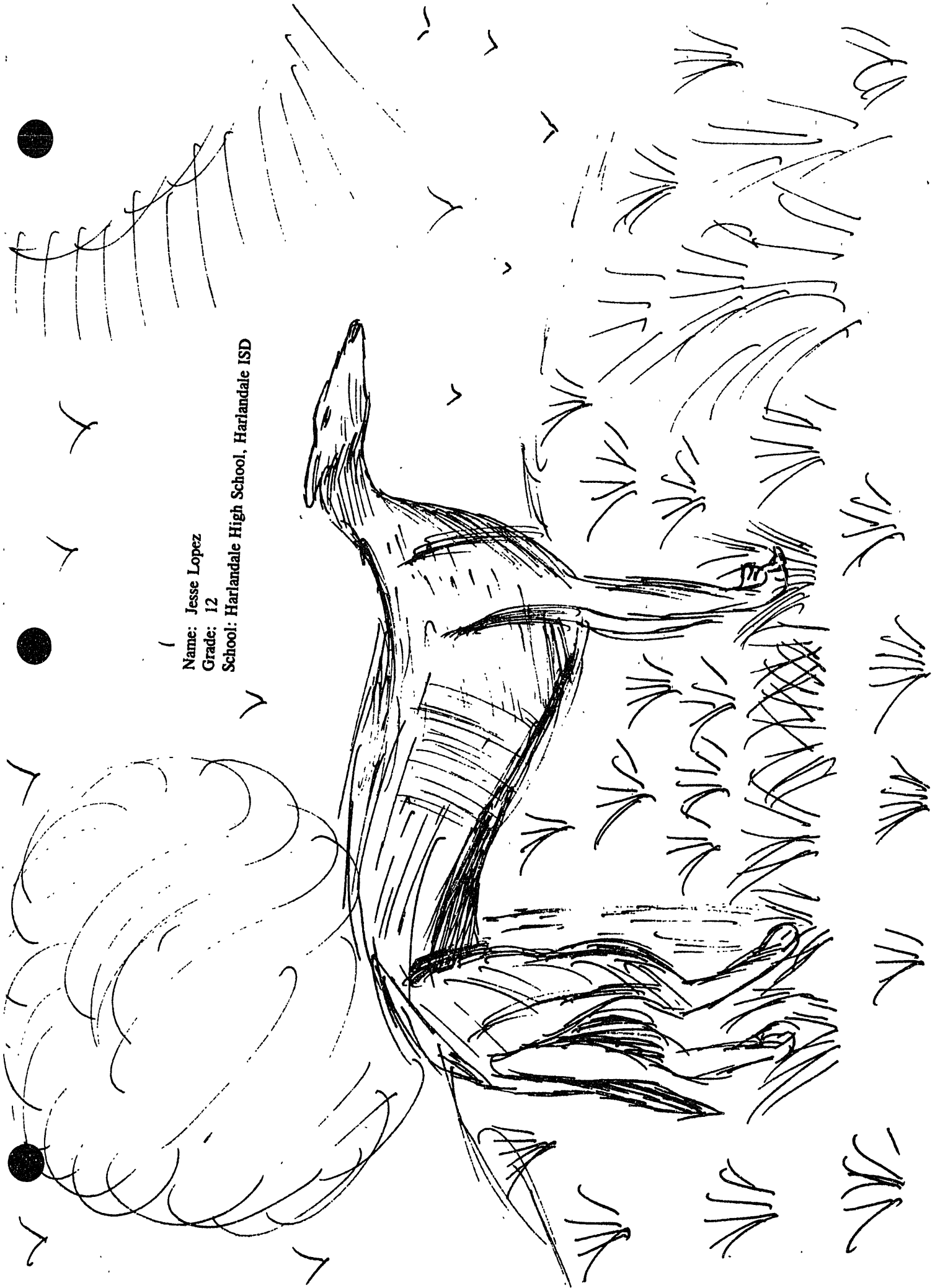
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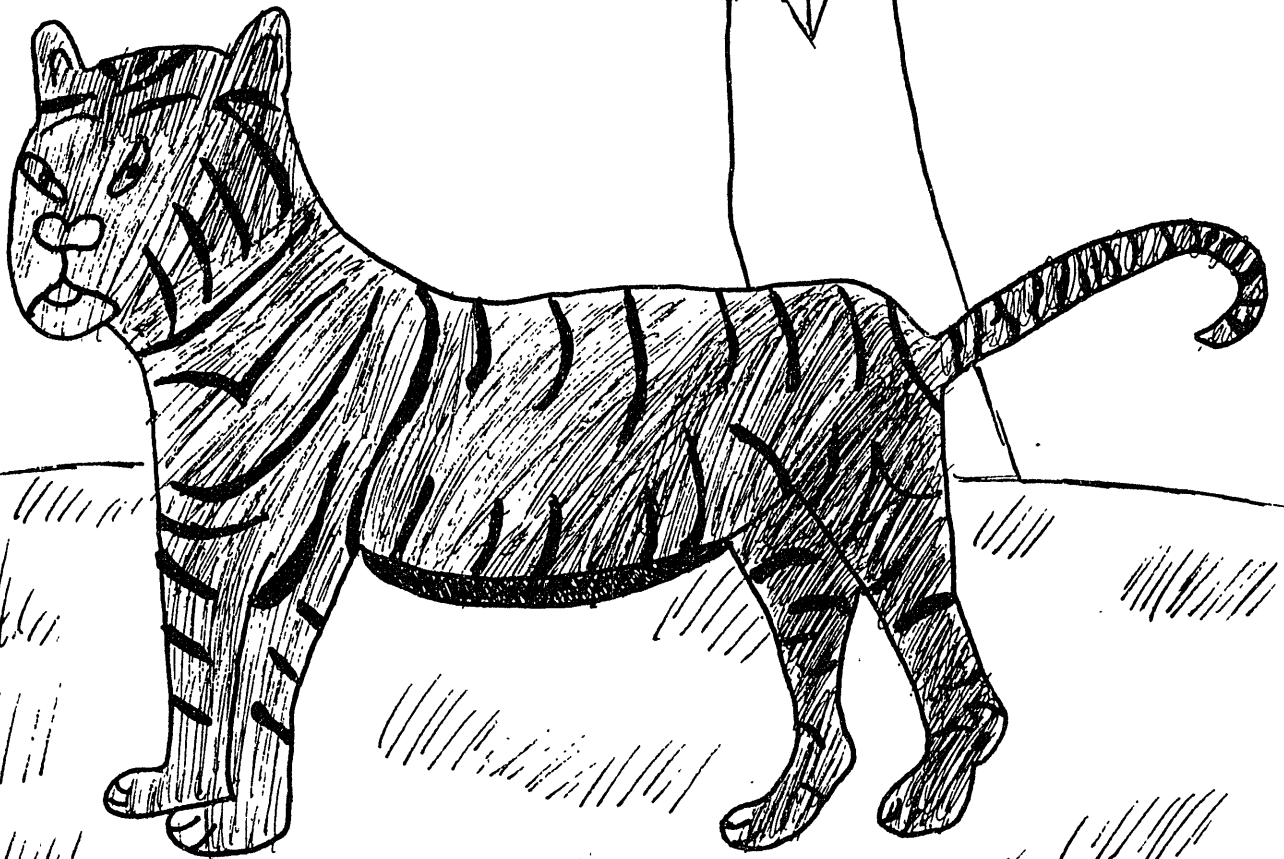
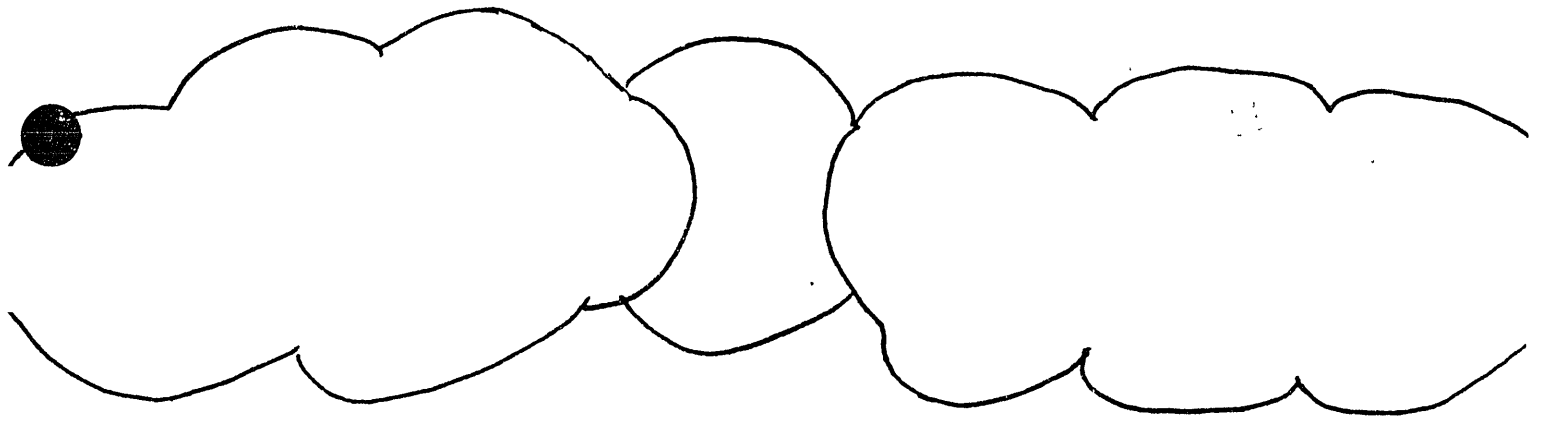
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Name: Jesse Lopez
Grade: 12
School: Harlandale High School, Harlandale ISD



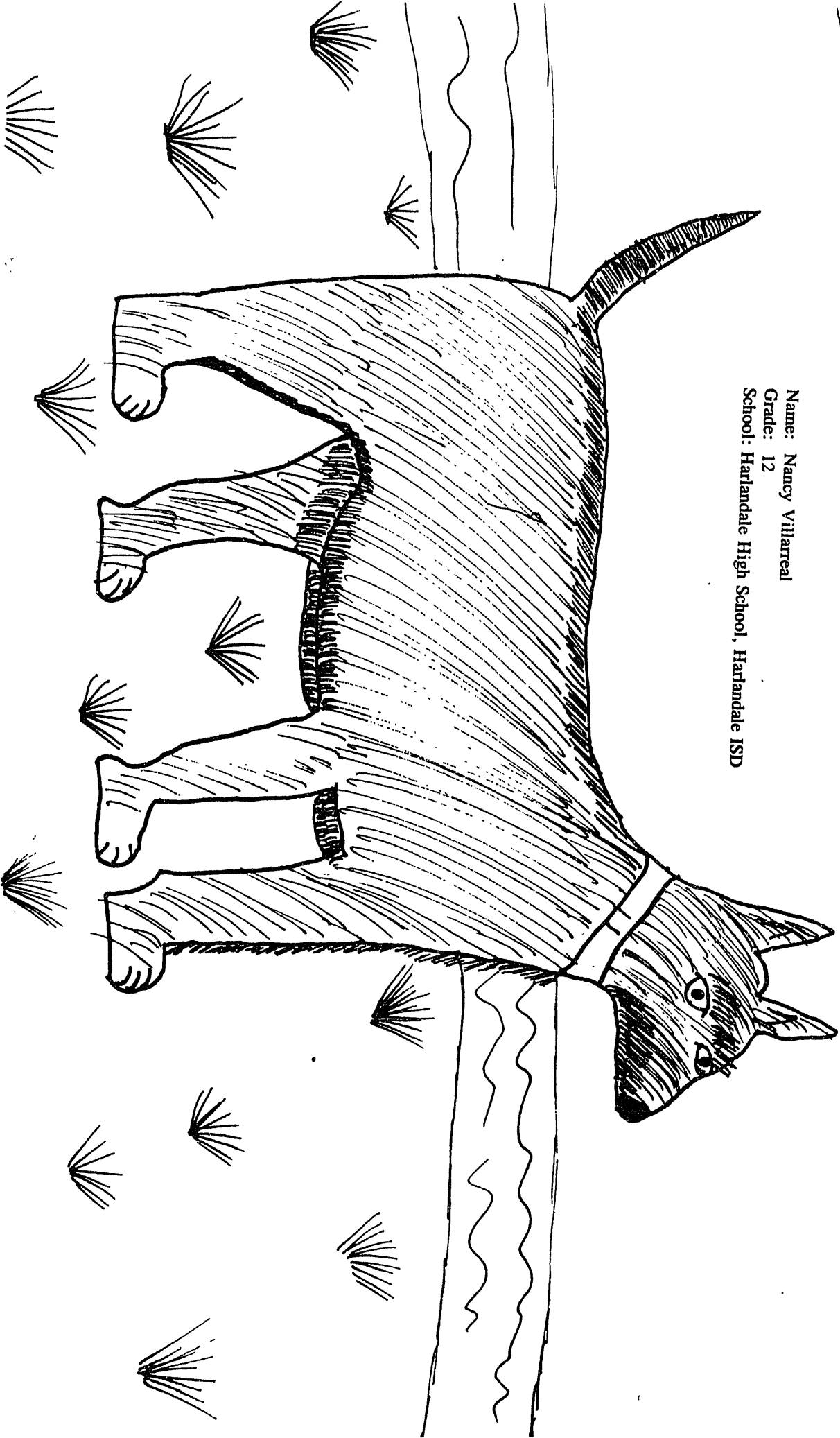


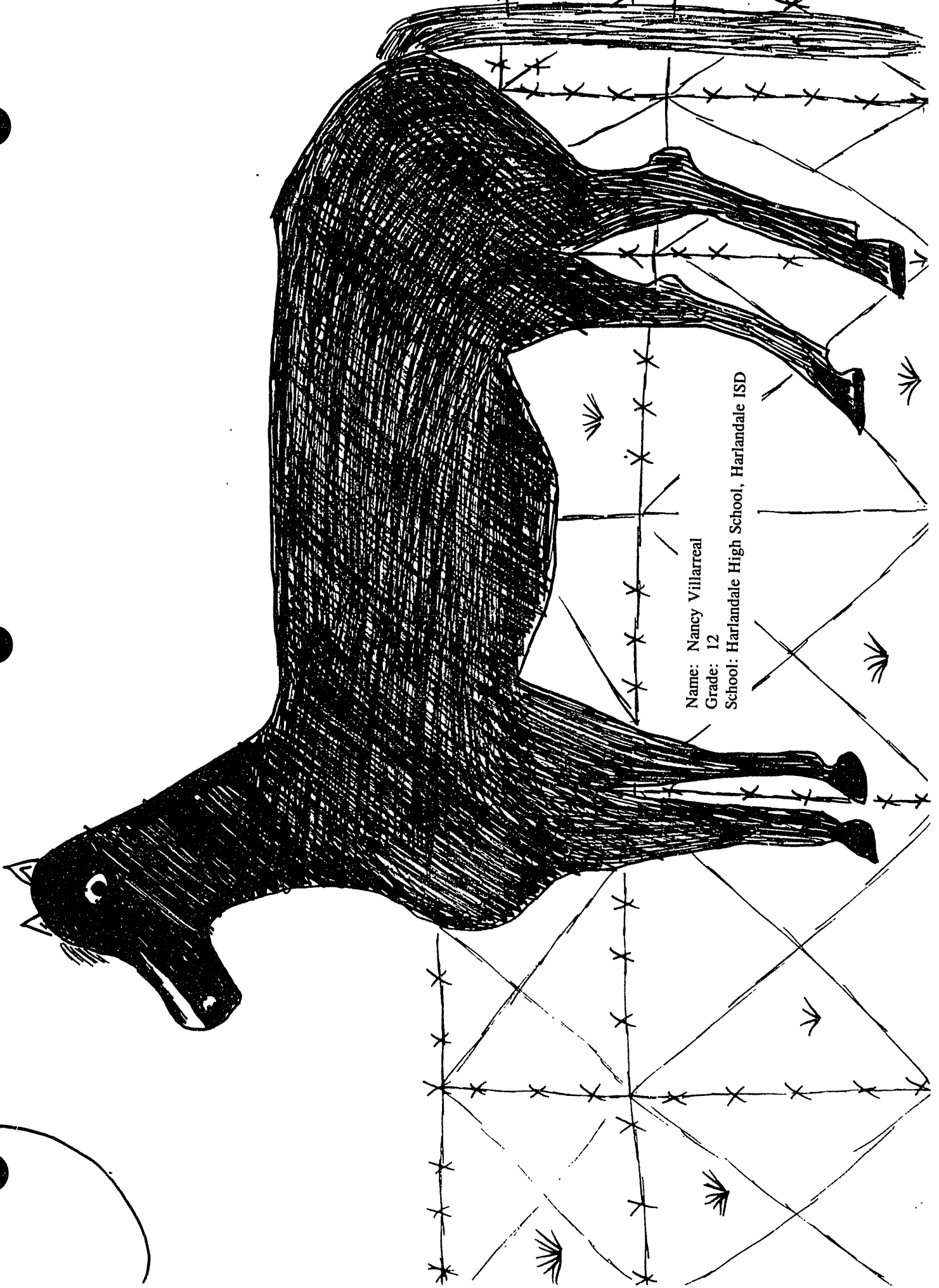
Name: Jesse Lopez
Grade: 12
School: Harlandale High School, Harlandale ISD



Name: Nancy Villarreal
Grade: 12
School: Harlandale High School, Harlandale ISD

Name: Nancy Villarreal
Grade: 12
School: Harlandale High School, Harlandale ISD





Name: Nancy Villarreal
Grade: 12
School: Harlandale High School, Harlandale ISD

Name: Robert Lopez

Grade: 12

School: Harlandale High School, Harlandale ISD



THE GOVERNOR

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

Appointments Made December 6, 1995

To be a members of the Southwest Travis County Water District Board of Directors pursuant to House Bill Number 3193, 74th Legislature:

For terms to expire September 1, 1997:

D. Jarrett Bates (non-Circle C Ranch), 107 Parkwood Court, Austin, Texas 78746-5486; Colin G. Haza, 6509 Needham Lane, Austin, Texas 78739; Ken Levine, 6601 Haswell Lane, Austin, Texas 78749;

For terms to expire September 1, 1999:

Kevin Cromack, 5904 Aylford Court, Austin, Texas 78739; Kirby L. Brown, 10901 Medfield Court, Austin, Texas 78739; Stephanie A. Madison, 5714 Van Winkle Lane, Austin, Texas 78739;

For terms to expire September 1, 2001:

Duncan C. Norton (non-Circle C Ranch), 611 Westbrook Drive, Austin, Texas 78746; John F. Williams, 6307 Walebridge Lane, Austin, Texas 78739; Darlene Rojas-Wilson, 11221 Readville Lane, Austin, Texas 78739.

Appointments Made December 8, 1995

To be a member of the Texas Commission of Licensing and Regulation for a term to expire February 1, 2001: William Fowler, P.O. Box 5692, Valley Spring, Texas 76885. Mr. Fowler will be filling the unexpired term of Wil Galloway of Beeville who resigned.

To be a member of the Executive Council of Physical Therapy and Occupational Therapy Examiners for a term to expire February 1, 1997: Martha Rodriguez, 9117

Bridlewood, #51-4, San Antonio, Texas 78240. Ms. Rodriguez will be replacing Dr. Charles Paul Turco of Beaumont whose term expired.

To be a member of the College Opportunity Act Committee for a term to expire February 1, 2001: Joe Munoz, 525 Preusser, San Angelo, Texas 76903. Mr. Munoz will be replacing Ted Shaw of Dallas whose term expired.

To be a member of the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2001: Emily G. Sutter, Ph. D., 2110 Airline Drive, Friendswood, Texas 77546. Dr. Sutter is being reappointed.

To be a member of the Texas State Board of Examiners of Psychologists for a term to expire October 31, 2001: Barry E. Dewlen, Ph. D., 14115 Fairway Oaks, San Antonio, Texas 78217. Dr. Dewlen will be replacing Kenneth F. Kopel of Houston whose term expired.

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1997: Lt. Darrell W. Bush, 1308 Jackson Avenue, Nederland, Texas 77627. Lt. Bush is being reappointed.

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1997: Thomas E. Dunn, 2501 Hanks, Lufkin, Texas 75904. Mr. Dunn will be replacing Todd Varner of Paris whose term expired.

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1997: Susan R. Johnson, 1164 East Blue Diamond, Odessa, Texas 79766. Mrs. Johnson will be replacing Elma Barrera of Houston whose term expired.

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1997: Carolyn Leyendecker, 110 Delaware, Laredo, Texas 78041. Mrs. Leyendecker will be replacing Linda Gayle Thompson of Aransas Pass whose term expired.

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1997: Jane H. Romine, 2908 Owenwood Drive, Fort Worth, Texas 76109. Mrs. Romine will be replacing Leroy J. Wormley, Jr. of Austin whose term expired.

Appointments Made December 11, 1995

To be a member of the Polygraph Examiners Board for a term to expire June 18, 2001: Horacio Ortiz, 4170 Monaco Drive; Corpus Christi, Texas 78411. Mr. Ortiz is being reappointed.

To be a member of the Polygraph Examiners Board for a term to expire June 18, 1999: Brad Alan Rogers, P.O. Box 10533, Killeen, Texas 76547-0533. Mr. Rogers will be filling the unexpired term of Jack Driscoll of Sherman who was not confirmed by the Senate.

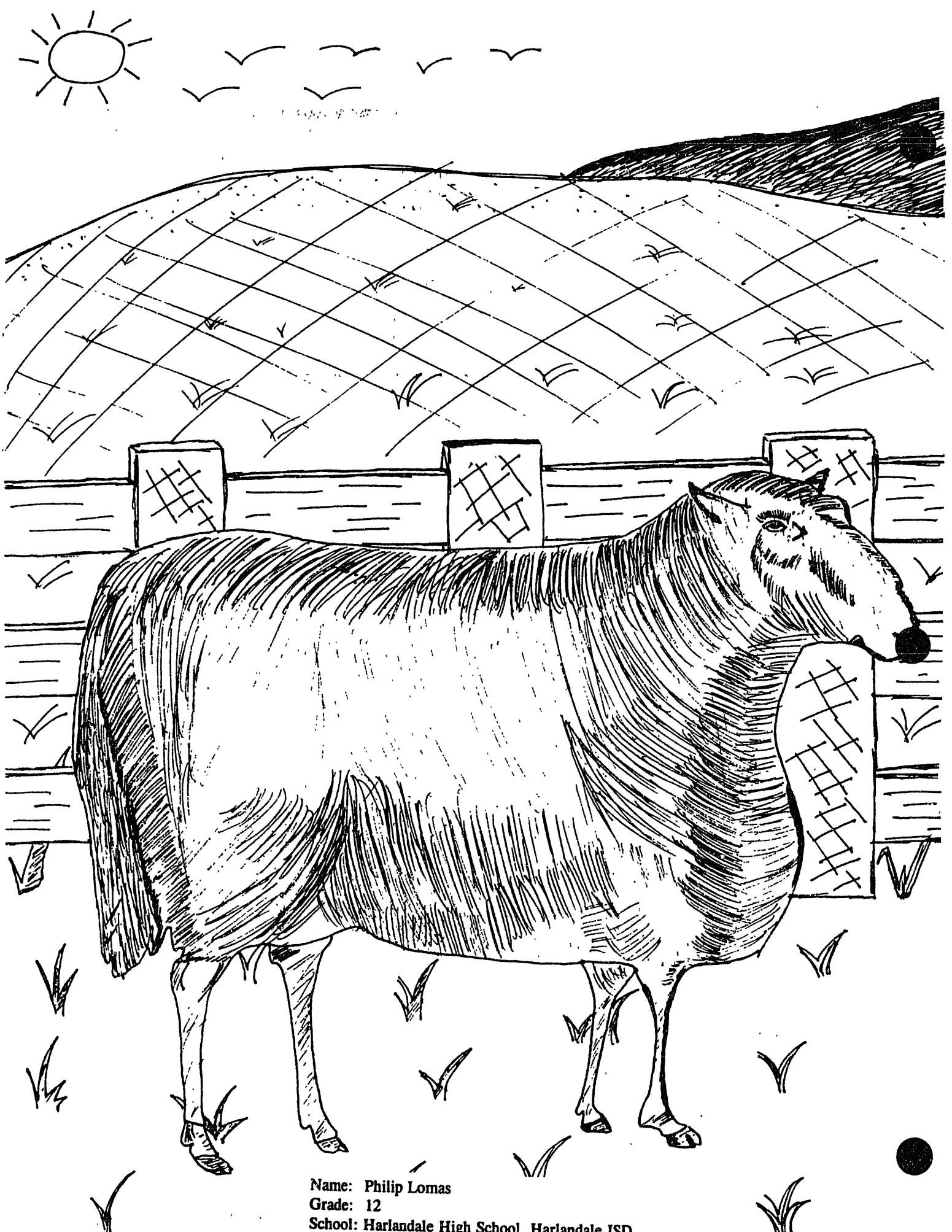
To be a member of the Polygraph Examiners Board for a term to expire June 18, 2001: The Honorable Janet L. (Jan) Blacklock, 3110 21st Street, Lubbock, Texas 79410. Judge Blacklock will be replacing Rob L. Kimmons of Houston whose term expired.

Issued in Austin, Texas, on December 13, 1995.

TRD-9516254

George W. Bush
Governor of Texas





Name: Philip Lomas
Grade: 12
School: Harlandale High School, Harlandale ISD

ATTORNEY GENERAL

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

Open Records Request

ORQ-4 (ID #33610). Request from Rick Perry, Commissioner, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, concerning whether attorney work-product regarding civil litigation may be excepted from disclosure under Chapter 552 of the Government Code once the litigation for which the requested information was created has concluded.

ORQ-5 (ID #32804)(ID #34268). Request from Nora Linares, Executive Director, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630, concerning whether the commission's disaster recovery plan and certain information contained in its lottery retailer database or in its lottery winners databases are confidential under §466.022 of the Government Code and related questions.

TRD-9516209



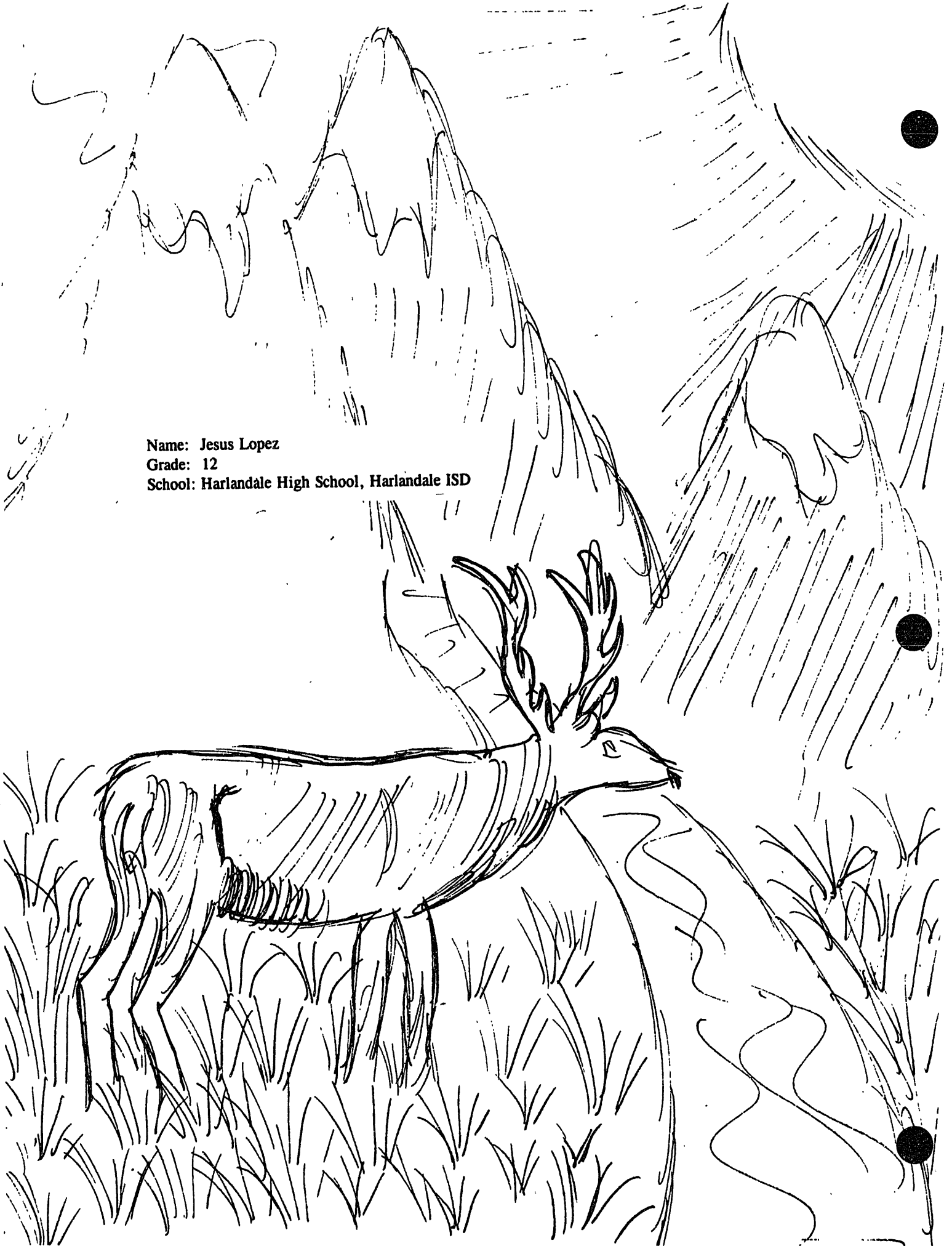
Requests for Opinions

(RQ-860). Request from Honorable George W. Bush, Governor of Texas, P.O. Box 12428, Austin, Texas 78711, concerning whether a pardonable conviction exists after the completion of "regular" or "shock" probation under Texas Code of Criminal Procedure, Article 42.12, §20.

TRD-9516176



Name: Jesus Lopez
Grade: 12
School: Harlandale High School, Harlandale ISD



PROPOSED RULES

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

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

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 1. Administration

Subchapter A. General Policies and Procedures

• 10 TAC §1.3

The Texas Department of Housing and Community Affairs (the Department) proposes new §1.3, concerning general eligibility for the Department's programs. The new section is proposed to provide procedures for holding certain applicants ineligible to receive funds from the Department if a required audit report is past due or if there are unresolved audit issues.

Anne O. Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

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

Comments on the proposal may be submitted to Anne O. Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941.

The new section is proposed under §2306.053(b)(4), the Texas Government, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs.

The Texas Government Code, Chapter 2306 is affected by this new section.

§1.3. Delinquent Audits and Related Issues.

(a) Definitions. The following words and terms, when used in this

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

(1) CSBG—The Community Services Block Grant, 42 United States Code, §9901 et seq.

(2) Department—The Texas Department of Housing and Community Affairs.

(3) Low-income housing tax credit—The credit against federal income tax as provided for in §42 of the Internal Revenue Code (42 United States Code, §42).

(4) Past due audit—An audit report required by the department that has not been received by the department on or before its due date.

(5) Person—Any individual, partnership, corporation, association, unit of government, community action agency, or public or private organization of any character.

(b) A person is not eligible to apply for funds or any other assistance from the department unless any past due audit has been submitted to the department in a satisfactory format on or before the application deadline for the funds or other assistance.

(c) Except as provided in this subsection, a person is not eligible to receive funds, a new contract, loan, or allocation of low-income housing tax credits from the department until any unresolved audit finding or questioned or disallowed cost is resolved. This section does not apply to the receipt of CSBG or energy assistance funds.

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 December 12, 1995.

TRD-9516258

Larry Paul Manely
Executive Director
Texas Department of
Housing and
Community Affairs

Earliest possible date of adoption: January 19, 1996

For further information, please call: (512) 475-3916

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter A. Organization of the Commission

• 16 TAC §303.3

The Texas Racing Commission proposes an amendment to §303.3, concerning the commission's offices. The amendment changes the physical address, phone number, and fax number of the commission's main office in Austin to reflect an office relocation scheduled for January 1996.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the public and the commission's licensees will have accurate information regarding the commission's location. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before January 24, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.3 Offices.

(a) The commission's main office [commission] is located at 8505 Cross Park Drive, #110, [9420 Research, Suite 200.] Austin, Texas, 78754-4594 [78759]. The commission mailing address is P.O. Box 12080, Austin, Texas 78711-2080. The telephone number is (512) 833-6699 [794-8461]. The fax number is (512) 833-6907. Office hours are 8:00 a.m. to 5:00 p.m., Monday-Friday.

(b) (No change.)

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

Issued in Austin, Texas, on December 12, 1995.

TRD-9516248 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: January 19, 1996

For further information, please call: (512) 794-8461

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Subchapter B. Powers and Duties of the Commission.

• 16 TAC §303.41

The Texas Racing Commission proposes an amendment to §303.41, concerning the allocation of live race dates. The amendment would permit the commission to allocate live race dates for up to five years at a time.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that a pari-mutuel racetrack could advertise to its patrons some regularity in racing schedule for the racetrack and participate in multi-year strategic planning. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before January 24, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §8.01, which authorizes the commission to allocate live race dates for horse racetracks; and §10.01, which authorizes the commission to allocate live race dates for greyhound racetracks

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.41. Allocation of Race Dates.

(a) The commission shall allocate live race dates, including charity days, to each association in accordance with the Act and this section. An association shall apply to the commission not later than July 1 of each year for live race dates not previously granted to such association on which it desires to conduct live racing during [to be conducted in] the next calendar year. An association may also apply for and the commission may grant live race dates for a period of up to five years from the end of the calendar year during which such application is submitted. The application must be on a form prescribed by the commission. After the request is filed, the executive secretary may require the association to submit additional information if the executive secretary determines the additional information is necessary to effectively evaluate the request.

(b)-(f) (No change.)

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

Issued in Austin, Texas, on December 12, 1995.

TRD-9516249 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: January 19, 1996

For further information, please call: (512) 794-8461

◆ ◆ ◆
• 16 TAC §303.43

The Texas Racing Commission proposes an amendment to §303.43, concerning the allocation of live race dates to Class 1 racetracks. The amendment would permit the commission to grant a limited number of overlapping live race dates for the same breed of horse to Class 1 racetracks.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that a pari-mutuel racetrack will have more flexibility in planning its racing schedule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before January 24, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which au-

thorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §8.01, which authorizes the commission to allocate live race dates for horse racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.43. Allocation of Live Race Dates for Class 1 Racetracks.

(a) The commission may not grant more than 20 overlapping live race dates per year for the same breed of horse at any two Class 1 racetracks unless the overlapping is agreed to in writing by the affected Class 1 racetracks.

(b) (No change.)

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

Issued in Austin, Texas, on December 12, 1995.

TRD-9516292 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: January 19, 1996

For further information, please call: (512) 794-8461

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Subchapter D. Texas Bred Incentive Programs

Programs for Horses

• 16 TAC §303.95

The Texas Racing Commission proposes an amendment to §303.95, concerning races for accredited Texas-bred horses. The amendment clarifies the requirements of a racetrack regarding the conducting of races for accredited Texas-bred horses and deletes language that, due to an expiration date, is no longer applicable.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the commission's rules will be consistent with state law. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before January 24, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §8.01, which authorizes the commission to allocate live race dates for horse racetracks.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§303.95. Races for Accredited Texas-Bred Horses

[(a)] The commission finds that, pursuant to the Texas Racing Act, Texas Civil Statutes, Article 179e, §9.03, [except as otherwise provided by this section.] on each race day, an association shall provide for the running of at least two races limited to accredited Texas-bred horses, one of which shall be restricted to maidens. [Before January 1, 1994, if on any race day not enough horses are entered in an accredited Texas-bred race to provide sufficient competition, the association shall provide for the running of two races in which accredited Texas-bred horses are preferred.] An association may defer, with the approval of the executive secretary, the running of one or both of the two races required by this section for each race day, but the association must provide that the total number of accredited Texas-bred races conducted in a race meeting is equal to or greater than twice the total number of race dates in the race meeting.

[(b)] For purposes of this section, there is sufficient competition in a race if there are at least seven single wagering interests received by the racing office at the time entries close.]

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 December 12, 1995.

TRD-9516250 Paula Cochran Carter
General Counsel
Texas Racing Commission

Earliest possible date of adoption: January 19, 1996

For further information, please call: (512) 794-8461

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

Chapter 21. Student Services
Subchapter B. Determining
Residence Status

• 19 TAC §21.31

The Texas Higher Education Coordinating Board proposes an amendment to Subchapter B §21.31, concerning Competi-

tive Scholarship Recipients. The rules are being changed to implement changes required by passage of House Bill 1792. The rule provides guidance on implementing the expansion of the competitive scholarship program to include nonacademic scholarships.

Sharon Cobb, Assistant Commissioner for Student Services, has determined that for the first five-year period the rule is in effect the fiscal impact will be the amount of tuition waived plus the administrative cost of making the waiver determination.

Ms. Cobb 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 rules will be that it extends eligibility for the competitive scholarship to additional students. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The amendment is proposed under Texas Education Code, §54.084, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Competitive Scholarship Recipients.

There were no other sections affected by this rule.

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

(1) Approved Procedures for Awarding Scholarships. Each institution awarding nonresident tuition waivers based on competitive scholarships shall have in the appropriate office of the institution a memo from the institution's administration granting the scholarship committee the authority to award scholarships which hold a nonresident tuition waiver option. In addition, the scholarship committee shall maintain records which verify that residents as well as non-residents were eligible to compete for the scholarship and the criteria used to select scholarship recipients.

(2)[(1)] To qualify for exemption from paying nonresident tuition rates a student must be awarded a competitive [academic] scholarship in the amount set out below in this subparagraph [of \$200 or more] for the academic year, the summer session or both by an official scholarship committee or committees of the public institution of higher education they are attending. If nonresidents or foreign students in competition with other students, including Texas residents, obtain these competitive [academic] scholarships, the students may pay the same tuition as a resident of Texas during the registration period in which the competitive [academic] scholarship is in ef-

fect. At the time the competitive [academic] scholarship is made, the institution must designate the term or terms in which the scholarship will be in effect. [A competitive academic scholarship that qualifies the holder for waiver of the difference between the tuition charged to resident and nonresident students shall be awarded for the purpose of encouraging academic excellence in the academic program in which the student is enrolled. Effective in the 1989-1990 academic year] An [an] institution shall not waive nonresident tuition on the basis of competitive [academic] scholarships for more than five percent of its total enrollment in the corresponding semester or term of the previous academic year. If the recipient of the scholarship is concurrently enrolled at more than one institution, the waiver of nonresident tuition is only effective at the institution awarding the scholarship.

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

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

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

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

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 December 8, 1995.

TRD-9516164 James McWhorter
Assistant Commission for
Administration
Texas Higher Education
Coordinating Board

Earliest possible date of adoption. January 19, 1996

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

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**TITLE 22. EXAMINING
BOARDS**
**Part XXV. Structural Pest
Control Board**

Chapter 593. Licenses

• **22 TAC §593.23**

The Texas Structural Pest Control Board proposes an amendment to §593.23, concerning Continuing Education Requirements. The amendments eliminate the requirements for the year in which a certified applicator license is issued and requirements that one third of the credits be obtained each year of the cycle during the cycle. They also create a procedure for obtaining some credit for non-approved courses.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

Roger B. Borgelt, General Counsel has determined the public benefits anticipated as a result of enforcing the rule as proposed will be greater compliance with continuing education requirements due to the simplification of the requirements. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

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

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

The following are the statutes affected by this rule: Article 135b-6.

§593.23. Continuing Education Requirements for Certified Applicators.

(a) (No change.)

(b) Each certified applicator is required to gain a certain number of continuing education points during a three-year recertification period, beginning January 1, 1990, and for each three year period thereafter. Applicants who are certified and licensed after January 1, 1996 will not be required to obtain any points during the calendar year in which their license is issued. They are required to obtain a pro-rated number of points for each year remaining in the recertification period. [January 1, 1990, will be permitted to obtain a prorated number of points for each year remaining in the existing three year recertification period] Upon written request, the Board or the Executive Director may grant a hardship to a certified applicator due to extenuating circumstances. The length of

the hardship is at the discretion of the Board or the Executive Director.

(c) No courses may be repeated for credit during the same recertification period. [No more than one half of the total continuing education points required for the three year period may be required for credit in any one year, and]

(d) The number of continuing education points required for each three years is six points in general training and three points in each category in which the applicator is certified. Applicants who become certified in additional categories during their three year recertification period will be permitted to obtain a prorated number of points in those categories for each year remaining in the period. Each certified applicator licensed at the beginning of the period must obtain two general points and one point in each licensed category each year of the recertification period. Certified applicators licensed after the beginning of a recertification period must obtain two general points and one point per licensed category for each of the remaining year(s) prior to the end of the period. Any certified applicators not meeting the requirement will have their licenses suspended in the category(ies) in which they are deficient until they make up all deficiencies and retest in those categories.

(e)-(k) (No change.)

(l) A certified applicator may submit the information required in §593.23(f)(2), (4) and (7), the names of instructors and verification of attendance for any course attended by the certified applicator which was not previously approved. The Executive Director will notify the certified applicator of any points awarded.

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-9516196

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

Earliest possible date of adoption: January 19, 1996

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

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**Chapter 595. Compliance and
Enforcement**

• **22 TAC §595.2**

The Texas Structural Pest Control Board proposes an amendment to §595.2, concerning

Employee Registration. The amendments reinsert the requirement that the Board be notified in writing of the termination of non-certified employees.

Benny M. Mathis, Executive Director has determined there will not be fiscal implications as a result of enforcing or administering the rule.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be better records regarding the numbers and location of the licensed population. The anticipated economic cost to individuals who are required to comply with the rule as proposed will be possible additional communications to the Agency.

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

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

The following are the statutes affected by this rule: Article 135b-6.

§595.2. Employee Registration.

(a) It shall be the duty of the business licensee or certified noncommercial applicator to inform the Board in writing of the employment and termination of all technicians and apprentices.

(b)-(c) (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 29, 1995.

TRD-9516187

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

Earliest possible date of adoption: January 19, 1996

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

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• **22 TAC §595.11**

The Texas Structural Pest Control Board proposes an amendment to §595.11, concerning Schools. The amendments re-classify products to the green and yellow lists, define the areas from which students must be excluded and clarify the duties of the IPM Coordinator.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years

the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be easier implementation of and better compliance with the Texas IPM in Schools Program. The anticipated economic cost to persons who are required to comply with the rule as proposed will be none expected from the proposed amendments.

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

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

The following are the statutes affected by this rule: Article 135b-6.

§595.11. Schools.

(a) Pesticide applications shall not be made within a school building if such an application will expose students to pesticide fumes or drift within the next 12 hours.

(1) Green list products may be applied at any time if students are not present in the room at the time the treatment is occurring. Green list products may be applied to an open area or multipurpose room if the area within ten feet of the application site is secured and no students are present within the secured area during the time of application.

(2) Yellow list products may be applied to a room if students are not expected to be present for the next 12 hours.

(3) All other products may be applied only if students are not expected to be present in the building for the next 12 hours. [Pesticide applications shall not be made to an area within or outside a school building if students are expected to be present in the area treated within the next 12 hour period immediately following treatment. Emergency treatments will be permitted in the localized area of infestation when there is an imminent threat to health or property or an infestation is imminent. Records of the reasons for emergency treatments shall be kept in the pest control use records of the business or certified noncommercial applicator performing the treatment.]

(b) Pesticide applications shall not be made to an area on school grounds if such an application will expose students to pesticide fumes or drift within the next 12 hours.

(1) Green list products may be applied if the area within ten feet of the location is secured and students are not expected to be present in the secured area at the time of application.

(2) Yellow list products may be applied in a spot application if the area within ten feet of the application site is secured and students are not expected to be present in the secured area for the next 12 hours.

(3) All other products may be applied in a low pressure spot application if there are no wind conditions which would disperse the chemical, the area within 50 feet of the application site is secured and students are not expected to be present within the secured area for the next 12 hours.

(c) Emergency treatments will be permitted in the localized area of infestation when there is an imminent threat to health or property or an infestation is imminent. Records of the reasons for emergency treatments shall be kept in the pest control use records of the business or certified noncommercial applicator performing the treatment.

(d)[(b)] Each school district shall develop a written pest management policy for all structural pest control activities conducted on school property based on the most current Structural Pest Control Board IPM document. The pest management policy must be adopted by the school board and kept on file by the district superintendent and IPM Coordinator. The policy shall be based on generally accepted tenets of integrated pest management, as defined by the Environmental Protection Agency. Such tenets include, but are not limited to:

(1) strategies that rely on the best combination of pest management tactics that are compatible with human health and environmental protection;

(2) proper identification of pest problems;

(3) monitoring programs to determine when pests are present or when pest problems are severe enough to justify corrective action;

(4) use of non-chemical management strategies whenever practical; and

(5) preferential use of least-toxic chemical controls when pesticides are needed.

(e) [(c)] Each school district shall designate IPM Coordinator(s) on or before September 1, 1995. The District is responsible for the IPM Coordinator(s) compliance with regulations and school district policy. The person(s) so designated shall attend a Structural Pest Control Board approved IPM Coordinator training course within 12 months of designation as IPM Coordinator. The IPM Coordinator(s) shall oversee and be responsible for:

(1) assisting in the coordination of pest management personnel, ensuring that all school employees who perform pest

control have the necessary training, are equipped with the appropriate personal protective equipment, and have the necessary licenses for their pest management responsibilities;

(2) maintaining a prioritized list of needed structural and landscape improvements;

(3) for school districts that opt to conduct some or all pest management work through independent contractors, working with the district administrators to ensure that pest control contract bid specifications are compatible with IPM principles, and that pest control contractors work under guidelines of the district's IPM policy;

(4) ensuring that all pesticides used on school district property are in compliance with the school districts policies;

(5) authorizing and/or reviewing least hazardous, effective emergency treatments with the approval of the certified applicator as provided for under §§595.6(d), 595.7(d), and 595.8(d) and this title (relating to Compliance and Enforcement) as this section of the Structural Pest Control Board regulations.

(6) handling requests and inquiries relating to pest problems, and maintain records of any pesticide-related complaints;

(7) maintaining files of pesticide application records, pesticide labels, and Material Safety Data Sheets (MSDS);

(8) informing school district administrators and other personnel about IPM requirements (e.g., training requirements, pre-notification and posting requirements, sanitation, and pesticide storage).

(9) maintaining a copy of the school's IPM policy.

(f)[(d)] Each school district shall employ or contract with a certified applicator, who may, if an employee, also be the IPM Coordinator. The certified applicator shall:

(1) over-see day to day pest management needs of the district;

(2) provide written approval/justification for use of products on the Yellow List;

(3) handle and forward records of any complaints relating to pest problems, IPM activities, or pesticides to the IPM Coordinator;

(4) ensure that proper pesticide application records are maintained;

(5) participate in IPM training courses approved for school IPM personnel by the SPCB;

(6) consult with the IPM Coordinator concerning use of products not on the green or yellow list;

(7) authorize emergency treatments as provided for in subsection (c)(5) of this section.

(g)[(e)] Licensed technicians must obtain written approval from the certified applicator to apply yellow or red list products.

(h)[(f)] Pesticides approved for use on school property must be mixed off-site or outside student-occupied areas of buildings and are classified as follows:

(1) Green List. All products must be from the following list: Inorganic pesticides (i.e., boric acid, silica gels, diatomaceous earth, disodium octoborate tetrahydrate); Non-containerized baits and gels for crack and crevice use only; Insect growth regulators with a caution label for crack and crevice use only; Insect and rodent baits in tamper-resistant containers or bait stations; Microbe or fungus-based insecticides; granular baits used in void areas; Biological (living) control agents; insecticidal soaps and oils. Green list products may be used at the discretion of the licensee.

(2) Yellow List. All EPA Category III and IV pesticides (i.e., products carrying a CAUTION signal word) and insect growth regulators with a WARNING signal word which are formulated as dusts, wettable powders, micro-encapsulated products, and granular products for indoor crack and crevice and spot application and for use outdoors in spot applications only, Botanical insecticides with a caution label, other than synthetic pyrethroids, containing not more than 5.0% synergists. Use of Yellow List Products require written approval from the certified applicator. A copy of the approval must be sent to the IPM Coordinator. Yellow List approvals shall have a duration no longer than three months or three applications per site, whichever occurs first.

(3) Red List. Category I and II pesticides (i.e., products carrying a WARNING or DANGER signal word not included in the green list, or any Category III or IV (Caution signal word) pesticides not included in the green or yellow lists or restricted-use pesticides or state-limited use pesticides as defined under the Federal Insecticide, Fungicide, Rodenticide Act and/or the Texas Agriculture Code. Use of Red List products require written approval from the certified applicator and IPM Coordinator. A copy of the approval for the Category I or II Red List Product applied indoors must be sent to the Board no later than 14 days after the application. Red List approvals shall have a duration no longer than three months or three applications per site, whichever is first. [Pesticides ap-

proved for use on school property are classified as follows:

[(1)] Green List. All products must be EPA category III and IV pesticides and any of the following: Inorganic pesticides (i.e., boric acid, silica gels, diatomaceous earth, disodium octoborate tetrahydrate); Insect growth regulators (IGR's); Insect and rodent baits in tamper-resistant containers or for crack and crevice placement only; Microbe or fungus-based insecticides; Botanical insecticides, other than synthetic pyrethroids, containing not more than 5.0% synergists; Biological (living) control agents. Green List products may be used at the discretion of the licensee.

[(2)] Yellow List. All EPA Category III and IV pesticides (i.e., products carrying a CAUTION signal word) not included in the Green List. Use of Yellow List Products require written approval from the certified applicator. A copy of the approval must be sent to the IPM Coordinator. Yellow List approvals shall have a duration of no longer than three months or three applications per site, whichever occurs first.

[(3)] Red List. Category I and II pesticides (i.e., products carrying a WARNING and DANGER signal word) or restricted-use pesticides or state-limited use pesticides as defined under the Federal Insecticide, Fungicide, and Rodenticide Act and/or the Texas Agriculture Code. Use of Red List products require written approval from the certified applicator and IPM Coordinator. A copy of the approval must be sent to the Texas Structural Pest Control Board no later than 14 days after the application. Red List approvals shall have a duration no longer than three months or three applications per site, whichever is first].

(i)[(g)] Written approvals for use of yellow and red list products shall be made on a form developed by the Structural Pest Control Board. The approvals shall include a description of the problem and justification for use of the yellow and red list product. Approvals shall be kept by the IPM Coordinator of the district for a minimum of two years.

(j)[(h)] All contracts for pest control services executed on or after the effective date of this regulation must be consistent with the school district's written pest management policy.

(k)[(i)] Any person found not in compliance with the Act or this Section is subject to administrative penalties under Section 10B. Such persons may include the school district or certified commercial applicator.

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

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

TRD-9516198

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

Earliest possible date of adoption: January 19, 1996

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

Chapter 597. Unlawful Acts and Grounds for Revocation

• 22 TAC §597.1

The Texas Structural Pest Control Board proposes an amendment §597.1 concerning, Unlawful Acts and Grounds for Revocation. The amendments add grounds relating to failure to comply with a Board order, conspiracy, termite standards and disciplinary actions taken outside Texas.

Benny M. Mathis, Jr., Executive Director has determined there will be no fiscal implications as a result of enforcing or administering the rule.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be increased enforcement capability with respect to licensees found in non-compliance. The anticipated economic cost to persons who are required to comply with the rule as proposed will be none expected.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Structural Pest Control Board, 9101 FM1325, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 135b-6, by the Texas Structural Pest Control Board with the authority to license and regulate persons who provide structural pest control services.

The following are the statutes affected by this rule: Article 135b-6.

§597.1. Grounds for Revocation, Suspension, Penalties, Reprimanding, Refusal to Examine, Refusal to Issue or Renew Licenses. Any such action may be accomplished by a vote of the Board, after notice and hearings, as provided for by Texas Civil Statutes, Article 135b-6, and the Administrative Procedure Act. No revocation, suspension, annulment, or withdrawal of any license is effective unless prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given the opportunity to show compliance with all requirements of law for the retention of the license. The following are grounds for revocation, suspension, penal-

ties, reprimanding, refusal to examine, refusal to issue or renew licenses:

(1)-(25) (No change.)

(26) Failure to comply with a final order of the Texas Structural Pest Control Board.

(27) Permitting, aiding, abetting or conspiring with a person to violate or circumvent a law or regulation enforced by the Texas Structural Pest Control Board.

(28) Denial, suspension, revocation, probation, fine or other license restriction or discipline against a licensee by a state, territory, or Indian tribal government or the federal government.

(29) Any violation of the regulations promulgated under Section 599 relating to treatment standards.

(30)[(26)] Failure to comply with any section of the Act or Regulations.

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

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

TRD-9516199

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

Earliest possible date of adoption: January 19, 1996

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

Chapter 599. Treatment Standards

• 22 TAC §599.4

The Texas Structural Pest Control Board proposes an amendment to §599.4 concerning termite treatment disclosure documents. The amendments create mandatory requirements for the disclosure of definitions of full and partial treatments for drywood termites and related insects.

Benny M. Mathis, Jr., Executive Director has determined there will be no fiscal implications as a result of enforcing or administering the rule.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be increased public understanding of the differences between types of termite treatments. The anticipated economic cost to persons who are required to comply with the rule as proposed will be inclusion of the additional information in service proposals.

Comments on the proposal may be submitted to Roger B. Borgelt, General Counsel, Struc-

tural Pest Control Board, 9101 FM1325, Suite 201, Austin, Texas 78758.

The amendment is proposed under Texas Civil Statutes, Article 135b-6, by the Structural Pest Control Board with the authority to license and regulate persons who provide structural pest control services.

The following are the statutes affected by this rule: Article 135b-6.

§599.4. Termite Treatment Disclosure Documents.

(a) (No change.)

(b) Each termite treatment disclosure document shall include, but is not limited to:

(1)-(8) (No change.)

(9) For drywood termite and related insect treatments the following statements and definitions in at least eight point type: A drywood termite or related insect treatment may be a full treatment or spot treatment. These types of treatments are defined as follows: FULL TREATMENT-Generally defined as a treatment to control 100% of the insect infestation by tarpaulin fumigation. A full treatment by fumigation is designed to eliminate every insect colony, both accessible and inaccessible. It should include the infested structure and all attached structures. Tarpaulin fumigation reaches every part of a structure that may not be reached by other approved methods. SPOT TREATMENT-Any treatment less than full treatment. A treatment which has a limited and defined area that is intended to protect a specific location or "spot". Often there are adjacent areas susceptible to drywood termite or related insect infestations which are not treated. Because of the nature of wood destroying insects, these untreated areas may continue to harbor drywood termites and unrelated insects throughout the structure without detection.

(c) (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 29, 1995.

TRD-9516200

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

Earliest possible date of adoption: January 19, 1996

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

• 22 TAC §599.11

The Structural Pest Control Board proposes an amendment to §599.11 concerning Structural Fumigation requirements. The amendment clarifies the fact that structural fumigations are subject to the provisions of termite treatment disclosure.

Benny M. Mathis, Executive Director has determined that there will not be fiscal implications as a result of enforcing or administering the rule.

Roger B. Borgelt, General Counsel has determined that for each year of the first five years the rule as proposed is in effect, the public benefits anticipated as a result of enforcing the rule as proposed will be better understanding of the existing requirements by licensed fumigators. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

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

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

The following are the statutes affected by this rule: Article 135b-6.

§599.11. Structural Fumigation Requirements.

(a)-(j) (No change.)

(k) Fumigations for the purpose of controlling wood destroying insects are subject to the provisions of §599.4 of this title (relating to disclosure).

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-9516201

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

Earliest possible date of adoption: January 19, 1996

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 229. Food and Drug

The Texas Department of Health (department) proposes amendments to §§229.431-229.436, and §§229.439-229.441, and the repeal of existing §229.438, concerning the li-

censure of wholesale device distributors. House Bill 2550, 74th Texas Legislature, 1995, amended Health and Safety Code, Chapter 431, by repealing licensure requirements for wholesale device distributors located outside the State of Texas. Additionally, the definition for "wholesale distribution" was deleted and new definitions for "distributor" and "manufacturer" were adopted.

The amendments and repeal will update and clarify the sections for device distributors and manufacturers and bring the sections into conformance with the statutory amendments passed during the 74th Texas Legislature. Those persons in the State of Texas who hold valid wholesale device distributor licenses that were issued prior to the effective date of these amendments will not be required to obtain new device distributor or manufacturer licenses until the expiration of those wholesale device distributor licenses.

Cynthia T. Culmo, R.Ph., Director, Drugs and Medical Devices Division, Bureau of Food and Drug Safety, has determined that for the first five-year period the amendments and repeal will be in effect, there will be fiscal implications for state government as a result of enforcing and administering the sections as proposed. The effect on state government will be an estimated annual loss of \$250,000 in fee-generated revenue. There are no anticipated fiscal implications for local government.

Ms. Culmo also has determined that for each year of the first five years the sections are in effect the public benefit will be clarification of the licensure requirements for device distributors and manufacturers. There are no anticipated economic costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There will be no effect on local employment.

Comments on the proposed amendments may be submitted to Thomas E. Brinck, Drugs and Medical Devices Division, Bureau of Food and Drug Safety, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Telephone inquiries may also be made to Mr. Brinck, at (512) 719-0237. Comments will be accepted for 30 days following the date of publication of this proposal in the *Texas Register*.

Licensure of [Wholesale] Device Distributors and Manufacturers

- 25 §§229.431-229.436, 229.439-229.441

The amendments are proposed under Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The amendments will affect Health and Safety Code, Chapter 431.

§229.431. *Purpose.* These sections provide for the minimum licensure standards necessary to ensure the safety and efficacy of devices distributed by [wholesale] device distributors and manufacturers.

§229.432. *Applicable Laws and Regulations.*

(a) (No change.)

(b) Copies of these laws and regulations are indexed and filed in the office of the **Drugs and Medical Devices Division** [of Food and Drugs], Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, and are available for inspection during normal working hours.

(c) (No change.)

§229.433. *Definitions.* The following words and terms, when used in these sections, shall have the following meanings, unless the context clearly indicates otherwise.

Distributor-A person who furthers the marketing of a finished domestic or imported device from the original place of manufacture to the person who makes final delivery or sale to the ultimate user. The term includes an importer or an own-label distributor. The term does not include:

(A) a person who repackages a finished device or who otherwise changes the container, wrapper, or labeling of the finished device or the finished device package.

(B) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a device for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

(C) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

(D) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device for emergency medical reasons. For purposes of

this definition, "emergency medical reasons" includes transfers of prescription devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

(E) the sale, purchase, or trade of a device, an offer to sell, purchase, or trade a device, or the dispensing of a device pursuant to a prescription; or

(F) the distribution of device samples by manufacturers' representatives or distributors' representatives.

Manufacture [Manufacturing]-The making by chemical, physical, biological, or other procedures of any article that meets the definition of device. The term includes the following activities:

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

Manufacturer-A person who manufactures, fabricates, assembles, or processes a finished device. The term includes a person who repackages or relabels a finished device. The term does not include:

(A) a person who only distributes a finished device;

(B) the manufacture of raw materials or components to be used in the manufacture or assembly of a device who would otherwise not be required to license under the provisions of these sections;

(C) the manufacture of general purpose articles such as chemical reagents or laboratory equipment whose uses are generally known by persons trained in their use and which are not labeled or promoted for medical uses;

(D) the manufacture or otherwise altering of devices by licensed practitioners, including physicians, dentists, and optometrists solely for use in their practice; or

(E) the manufacture, preparation, propagation, compounding, or processing of devices used solely in research, teaching, or analysis and which are not introduced into commercial distribution.

Place of business-Each location at which a device is manufactured or held for [wholesale] distribution [is located].

Reconditioning-Has the meaning given in the Texas Food, Drug, Device, and Cosmetic Salvage Act, Health and Safety

Code, Chapter 432, as interpreted in the rules of the board in §229.192 of this title (relating to Definitions [Regulation of Food, Drug, Device and Cosmetic Salvage Establishments and Brokers]) and judicial decision.

[Wholesale distribution—Distribution to a person other than a consumer or patient, including, but not limited to, distribution to any person by a manufacturer, repacker, own label distributor, jobber, importer, or wholesaler. The term does not include:

[(A) the manufacture of raw materials or components to be used in the manufacture or assembly of a device who would otherwise not be required to license under the provisions of these sections;

[(B) the manufacture of general purpose articles such as chemical reagents or laboratory equipment whose uses are generally known by persons trained in their use and which are not labeled or promoted for medical uses;

[(C) the manufacture or otherwise altering of devices by licensed practitioners, including physicians, dentists, and optometrists solely for use in their practice;

[(D) the manufacture, preparation, propagation, compounding, or processing of devices used solely in research, teaching, or analysis and which are not introduced into commercial distribution;

[(E) the purchase or acquisition by a hospital or other health care entity that is a member of a group purchasing organization of a device for its own use from the group purchasing organization or from other hospitals or health care entities that are members of such organizations;

[(F) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device among hospitals or other health care entities that are under common control. For the purpose of this subsection, "common control" means the power to direct or cause the direction of the management and policies of a person or an organization, whether by ownership of stock, voting rights, contract, or otherwise;

[(G) the sale, purchase, or trade of a device or an offer to sell, purchase, or trade a device for emergency medical reasons. For purposes of this definition, "emergency medical reasons" includes transfers of prescription devices by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage;

[(H) the sale, purchase, or trade of a device, an offer to sell, purchase, or trade a device, or the dispensing of a device pursuant to a prescription; or

[(I) the distribution of device samples by manufacturers' representatives or distributors' representatives.]

§229.434. Exemptions.

(a) A person is exempt from licensing under these sections if the person engages only in the following types of [wholesale] device distribution:

(1) intracompany sales; [or]

(2) distribution from a place of business located outside the State of Texas; or

(3)[(2)] the sale, purchase, or trade of a distressed or reconditioned device by a salvage broker or a salvage operator licensed under §229.203 of this title (relating to License [Regulation of Food, Drug, Device, and Cosmetic Salvage Establishments and Brokers]).

(b) An exemption from the licensing requirements under these sections does not constitute an exemption from other applicable provisions of the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act) or the rules adopted by the Texas Board of Health to administer and enforce the Act.

§229.435. Licensure Requirements.

(a) General. Except as provided by §229.434 of this title (relating to Exemptions), a person may not engage in the [wholesale] distribution or manufacture of devices in Texas unless the person has a valid license from the Commissioner of Health (commissioner) for each place of business.

(b) (No change.)

(c) Existing place of business. Each person involved in the [wholesale] distribution or manufacture of devices in Texas on the effective date of these sections must apply for a [wholesale] device distributor manufacturer license no later than 60 days following the effective date of these sections.

(d) New place of business. Each person acquiring or establishing a place of business for the purpose of [wholesale] device distribution or manufacturing after the effective date of these sections shall apply to the Texas Department of Health (department) for a license of such business prior to beginning operation.

(e) Two or more places of business. If the [wholesale] device distributor or manufacturer operates more than one place of business, the [wholesale] device distributor or manufacturer shall license each place of business separately.

(f) Issuance of license. The department may license a [wholesale] distributor or manufacturer of devices who meets the requirements of this section and §229.441 of this title (relating to Minimum Standards for Licensure).

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

(i) Renewal of license.

(1) Each year prior to the anniversary date, the [wholesale] distributor or manufacturer of devices shall renew its license following the requirements of this section and §229.436 of this title (relating to Licensing Procedures).

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

(4) Failure to submit the renewal application prior to the current licensure expiration date may subject the [wholesale] device distributor or manufacturer to the enforcement provisions under the Act and also to the provisions of §229.440 of this title.

(j)-(k) (No change.)

§229.436. Licensing Procedures.

(a) License application forms. License application forms may be obtained from the Texas Department of Health, Drugs and Medical Devices Division [of Food and Drugs], 1100 West 49th Street, Austin, Texas, 78756.

(b) License application. The [wholesale] device distributor or manufacturer license application shall be signed and verified, shall be made on a license application form furnished by the Texas Department of Health (department), and shall contain the following information:

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

§229.439. Licensure Fees.

(a) License fee. All [wholesale] device distributors or manufacturers who distribute devices in Texas shall obtain a license annually and must apply for a license no later than 60 days following the effective date of these sections with the Texas Department of Health (department) and shall pay a licensure fee for each place of business operated as follows:

(1) \$100 per [wholesale] distributor or manufacturer having gross annual sales of \$0-\$19,999.99;

(2) \$400 per [wholesale] distributor or manufacturer having gross annual sales of \$20,000-\$199,999.99;

(3) \$900 per [wholesale] distributor or manufacturer having gross annual sales of \$200,000-\$19,999,999.99; and

(4) \$1,500 per [wholesale] distributor or manufacturer having gross annual sales greater than or equal to \$20,000,000.

(b) Exemption from licensure fees. A person is exempt from the licensure fees required by this section if the person is:

(1) licensed under §289.252 [§289.121] of this title (relating to Licensing of Radioactive Material[Materials]) or registered under §289.122 of this title (relating to Registration of Radiation Machine Use [Machines] and Services) and engages only in the following types of [wholesale] device distribution or manufacturing:

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

(2) (No change.)

§229.440 *Refusal, Cancellation, Suspension, or Revocation of License.*

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

(c) The Texas Department of Health (department) may, after providing opportunity for hearing, refuse to license a [wholesale] distributor or manufacturer of devices, or may suspend or revoke a license for violations of the requirements in these sections or for any of the reasons described in the Act.

(d) Any hearings for the refusal, revocation or suspension of a license are governed by the department's formal hearing procedures in Chapter 1 of this title (relating to the Texas Board of Health) and the Administrative Procedure [and Texas Register] Act, the Government Code, Chapter 2001.

(e) A license issued under these sections shall be returned to the department if the [wholesale] device distributor's or manufacturer's place of business:

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

§229.441. *Minimum Standards for Licensure*

(a) Minimum requirements. All [wholesale] distributors or manufacturers of devices engaged in manufacturing, packing, storage, or installation of devices must comply with the minimum standards of this section in addition to the statutory requirements contained in the Texas Food, Drug, and Cosmetic Act, Health and Safety Code, Chapter 431 (Act). For the purpose of this section, the policies described in the United States Food and Drug Administration's (FDA's) Compliance Policy Guides as they apply to devices shall be the policies of the Texas Department of Health (department).

(b) Federal establishment registration and device listing. All persons who operate as [wholesale] device distributors or manufacturers in Texas shall meet the applicable requirements in 21 Code of Federal Regulations (CFR), Part 807, titled "Establishment Registration and Device Listing for Manufacturers and Distributors of Devices." Devices distributed by [wholesale] device distributors or manufacturers shall have met, if applicable, the premarket notification requirements of 21 CFR, Part 807 or the premarket approval provisions of 21 CFR, Part 814, titled "Premarket Approval of Medical Devices."

(c) Good manufacturing practices. Device [Wholesale device] distributors or manufacturers engaged in the manufacturing, packing, storage, or installation of finished devices shall be in compliance with the applicable requirements of 21 CFR, Part 820, titled "Good Manufacturing Practice For Medical Devices: General." This regulation sets forth the current good manufacturing practices for methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of all finished devices intended for human use.

(d) (No change.)

(e) Device labeling. Devices distributed by [wholesale] device distributors or manufacturers shall meet the labeling requirements of the Act and 21 CFR, Part 801, titled "Labeling."

(f)-(g) (No change.)

(h) Medical device reporting. Device [Wholesale device] distributors or manufacturers shall meet the medical device reporting requirements of 21 CFR, Part 803, titled "Medical Device Reporting" or 21 CFR, Part 804, titled "Medical Device Distributor Reporting."

(i) Radiation emitting devices. Devices which emit electronic product radiation and are distributed by [wholesale] device distributors or manufacturers shall meet the applicable requirements of the Act and 21 CFR, Subchapter J, titled "Radiological Health."

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 December 12, 1995.

TRD-9516267

Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Earliest possible date of adoption: January 19, 1996

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

• 25 TAC §229.438

(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 Health and Safety Code, §431.241, which provides the department with the authority to adopt necessary regulations pursuant to the enforcement of this Chapter; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

The repeal will affect Health and Safety Code, Chapter 431.

§229.438. *Licensure Requirements for Wholesale Device Distributors Located in Other Jurisdictions.*

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 December 12, 1995.

TRD-9516268

Susan K Steeg
General Counsel, Office of
General Counsel
Texas Department of
Health

Earliest possible date of adoption: January 19, 1996

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

Subchapter X. Requirements for Medicaid-Certified Facilities

• 40 TAC §19.2322

The Texas Department of Human Services (DHS) proposes an amendment to §19.2322, concerning additional participation requirements, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendment is to give the commissioner of DHS the authority to grant waivers to the existing moratorium rules allowing additional Medicaid-certified

beds. The new waivers allow additional Medicaid-certified beds to serve persons under the supervision of the Department of Criminal Justice, in facilities affiliated with a medical school doing research on Alzheimer's disease and to meet the demand in underserved minority communities. The rule change is in response to a rider to the General Appropriations Act, passed in the 74th Texas Legislature.

Burton F. Raiford, commissioner, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Raiford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to allow minority communities long term care in their own neighborhoods; to allow greater research on Alzheimer's disease for medical schools; and to allow aged and ill, special-paroled prisoners to be cared for less costly in a long term care facility rather than a prison hospital. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of this proposal may be directed to Sharon Balcezak at (512) 438-3529 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Media and Policy Services-112, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The amendment is proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs, and under Texas Civil Statutes, Article 4413(502), §16, which provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment implements the Human Resources Code, §§22.001-22.024 and §§32.001-32.042.

§19.2322. Additional Participation Requirements.

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

(c) If the provider meets all criteria, DHS may exempt the following facilities from the policy stated in subsection (b) of this section.

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

(8) Facilities that apply for participation under the special DHS commissioner's waiver authority.

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

(D) The commissioner may grant a waiver of these restrictions for a contract if the Commissioner determines

that beds are necessary for the following circumstances:

(i) to meet the need identified and determined by the Texas Department of Criminal Justice as necessary to serve persons under the supervision of the Department of Criminal Justice who have been released on parole, mandatory supervision, or special needs parole under the Code of Criminal Procedure, Article 42.18;

(ii) for a facility which is affiliated with a medical school operated by the state which is participating in research programs for the care and treatment of persons with Alzheimer's disease and is designed to separate and treat Alzheimer's disease by stage and functional level; or

(iii) to meet the documented demand in underserved minority communities where beds are not available from existing resources. For purposes of this waiver, the term minority shall mean all persons who are Black, Hispanic, Asian or Pacific islander, American Indian, or Alaskan native. The facility must:

(I) be located in a county with a total population of at least 1,000,000, according to the 1990 U.S. census;

(II) serve a zip code whose minority population is greater than 50%, according to the 1990 U.S. census;

(III) document that minority residents in the zipcode in which facility is located are unable to attain Medicaid long term care services in that specific location; and

(IV) be the only waived facility, as defined under subparagraph (D) of this paragraph, in that county.

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 December 12, 1995.

TRD-9516216 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Earliest possible date of adoption: January 19, 1996

For further information, please call: (512) 438-3765

Part II. Texas Rehabilitation Commission

Chapter 115. Memoranda of Understanding with Other State Agencies

• 40 TAC §115.4

(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 Rehabilitation Commission or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Rehabilitation Commission (TRC) proposes the repeal of §115.4, concerning coordinated services for multiproblem children and youth.

David McKay, Assistant Commissioner for Financial Services, has determined that for the first five-year period there will not be any fiscal implications for state or local government as a result of this proposed repeal.

Mr. McKay also has determined that for each year of the first five years the proposed repeal is in effect the public benefit anticipated as a result of enforcing the rule will be to replace the repealed Memorandum of Understanding with a new version entitled coordinated services for children and youths which will better ensure that children and youths with multi-agency needs receive effective coordinated services from the agencies involved. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Questions about the content of the proposed repeal may be directed to Larry Lotmann, Program Specialist, Programs Administration at (512) 483-4983, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 5637, Austin, Texas 78751, during a 30 day period beginning on the date of publication in the *Texas Register*.

The repeal is proposed for adoption under Texas Human Resources Code Annotated, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purpose of this chapter.

The repeal would implement Texas Civil Statutes, Article 4413 (503) historical note (Ver-non Supplement 1993), 72nd Legislature.

§115.4. Coordinated Services for Multiproblem Children and Youth

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 December 11, 1995.

TRD-9516189

Charles W. Schlessner
General Counsel, Office of
the General Counsel
Texas Rehabilitation
Commission

Earliest possible date of adoption: January
19, 1996

For further information, please call: (512)
483-4051



The Texas Rehabilitation Commission (TRC) proposes to adopt by reference new §115.4, concerning coordinated services for children and youths.

David McKay, Assistant Commissioner for Financial Services, has determined that for the first five-year period the proposed adoption by reference will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. McKay also has determined that for each year of the first five years the new rule in effect, the public benefit anticipated as a result of enforcing the section will be to ensure that children and youths with multi-agency needs receive effective coordinated services from multiple agencies.

Questions about the content of the proposed adoption by reference may be directed to Larry Lottmann, Program Specialist, Programs Administration at (512) 483-4983, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 5637, Austin, Texas 78751, within 30 days of publication in the *Texas Register*.

The new rule is adopted under Texas Human Resource Code Annotated, Title 7, which provides the Texas Rehabilitation Commission with the authority to make regulations governing personnel standards, the protection of records and confidential information, the manner and form of filing applications, eligibility, investigation, and determination for rehabilitation and other services, procedures for hearings, and other regulations subject to this section as necessary to carry out the purpose of this chapter.

The new rule implements the Human Resources Code, Title 2, Chapter 41 which authorizes TRC to enter into a memorandum of understanding with the TCB, TDH, TDHS, TXMHMR, TEA, ECI, TJPC, TDPRS, and TYC regarding the coordination of services to children and youths.

§115.4. Coordinated Services for Children and Youths.

(a) The Texas Rehabilitation Commission adopts by reference an amendment to a joint memorandum of understanding dated May 21, 1993 (40 TAC §736.701) as amended in a proposal published on January 27, 1995, (20 TexReg 43) and adopted on March 10, 1995 (20 TexReg 1765).

(b) Copies of the memorandum of understanding are available from the Texas Rehabilitation Commission, Attention: Larry Lottman, 4900 North Lamar Boulevard, Austin, Texas 787851.

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 December 11, 1995.

TRD-9516324

Charles W. Schlessner
General Counsel, Office of
the General Counsel
Texas Rehabilitation
Commission

Earliest possible date of adoption: January
19, 1996

For further information, please call: (512)
483-4051



WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the **Texas Register**. The notice is effective immediately upon filing or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the **Texas Register**, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the **Texas Register**.

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 2. Enforcement Procedures

Subchapter B. Miscellaneous Provisions

- 4 TAC §2.20

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new to §2.20, submitted by the Texas Department of Agriculture has been automatically withdrawn, effective December 1, 1995. The new section as proposed appeared in the May 30, 1995, issue of the *Texas Register* (20 TexReg 3941).

TRD-9515510

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part VI. Texas Department of Criminal Justice

Chapter 152. General Allocation Provisions

- 37 TAC §152.2, §152.4

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new to §152.2, and §152.4, submitted by the Texas Department of Agriculture has been automatically withdrawn, effective November 17, 1995. The new sections as proposed appeared in the May 16, 1995, issue of the *Texas Register* (20 TexReg 3633).

TRD-9515508

TITLE 22. EXAMINING BOARDS

Part XXV. Structural Pest Control Board

Chapter 593. Licenses

- 22 TAC §593.23

The Structural Pest Control Board has withdrawn from consideration for permanent adoption a proposed amendment to §593.23 which appeared in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7789). The effective date of this withdrawal is December 12, 1995.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516195

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

Effective date: December 12, 1995

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

Name: Hilda Garcia

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 16. ECONOMIC REGULATION

Part II. Public Utility Commission

Chapter 23. Substantive Rules

Customer Service and Protection

• 16 TAC §23.49

The Public Utility Commission of Texas adopts an amendment to §23.49, concerning telephone extended area service (EAS) and expanded local calling service (ELC), with changes to the proposed text as published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6571).

The purpose of the amendments is to implement §44 of House Bill 2128, which amends §3.304 of the Public Utility Regulatory Act of 1995 relating to telephone expanded local calling service. The amendments apply certain provisions to incumbent local exchange carriers, prescribe the points from which distances are measured to determine eligibility for ELC service, require a community of interest demonstration be made in a petition, and reflect charges for obtaining ELC to more than five exchanges.

The persons who filed comments are Southwestern Bell Telephone Company (SWB), Texas Statewide Telephone Cooperative, Inc. (TSTCI), and Texas Telephone Association (TTA). All of the commenters generally approved of the rule as drafted, but each had suggestions as to its details.

SWB proposed that under (c)(5)(B)(iv)(II) and (c)(6)(B), which states that customers in the petitioning exchange will be charged up to \$3.50 per residential line and \$7.00 per business line, depending upon the costs incurred by the company in providing the service, the commission add and toll revenue projected to be lost. The commission agrees that adding the reference to toll revenue lost in (c)(5)(B)(iv)(II) would clarify that the rate additive is designed to recover both lost revenue and costs incurred and thus added this language to the rule. In addition, under (c)(3)(B)(iii), wherein it states that toll-free calling service shall not include an area where the affected central offices are more than 50 miles apart, SWB proposed that language be added that would set out the type of

measurement staff will utilize, that is, utilizing the vertical and horizontal geographic coordinates of the central switching office of the exchange requested. The commission agrees that adding this language would clarify the type of measurement used by staff and has added that language to the rule.

TSTCI proposed that prior to the filing a petition, the Petitioners should be required to contact the affected LEC before the petition process begins so that the Petitioners do not invest time in gathering signatures if the LEC is eligible to exempt itself from the rule. The commission rejects this proposal. Contacting the LEC beforehand may be helpful, but it should not be required. The petition enables customers to indicate the services they would like to receive. Nothing in the rule or the statute requires a LEC to exempt itself from providing ELC service. Petitioners should not be required to obtain prior approval from the LEC before filing a petition. Additionally, TSTCI proposes that besides the commission staff, the rule also provide for LECs to investigate whether petitioners have a community of interest and to present additional facts regarding community of interest assertions made by Petitioners. The commission likewise rejects this proposal as unnecessary for the reason that the rule allows any party to challenge an assertion made at any time during the process by requesting that the case be docketed.

TTA proposed minor language changes to clarify the rule. Those minor changes included the correct spelling of a word and the use of Expanded Local Calling Service as opposed to Expanded Toll-Free Calling Areas. The commission agrees that these changes would clarify the rule and has made the changes as proposed.

All comments submitted, including those not specifically referenced herein, were fully considered by the commission.

The amendment is adopted under the Public Utility Regulatory Act of 1995, §1.101, which provides the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in the exercise of its powers and jurisdiction, and §3.304 which requires the commission to implement rules relating to the provision of expanded local calling service.

§23.49 Telephone Extended Area Service (EAS) and Expanded Local Calling Service.

(a) Purpose. This section is intended to establish consistent procedures for the processing of requests for extended area service (EAS) and to provide for an expedited hearing allowing the expansion of two-way toll-free local calling (ELCS) for rural areas, as enacted in Senate Bill 632 by the 73rd Legislature and amended by House Bill 2128 by the 74th Legislature.

(b) (No change.)

(c) Expanded local calling service.

(1) Petition for expanded local calling service.

(A) Filing a petition. In order to be considered by the commission, a request for expansion of two-way toll-free local calling areas may be initiated by filing a petition with the commission. The petition shall be initiated by one or more of the following actions:

(i) a petition signed by the lesser of 5.0% or 100 subscribers in the exchange from which the petition originates;

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

(B) Other filing requirements. When submitted for filing, the petition shall be accompanied by a filing letter. The petition and the accompanying filing letter shall contain the information described in subparagraph (C) of this paragraph. When filed, the petition shall be assigned a project number. A presiding officer shall be assigned and the petition shall be reviewed administratively, under the provisions of Chapter 22, Subchapter C, §22.32 (relating to Administrative Review), unless the presiding officer, for good cause, determines at any point during the review that the petition should be docketed. Within five working days of receipt by the Office of Regulatory Affairs of a filed petition, the Office of Regulatory Affairs shall send a copy of the petition and letter by certified mail to each incumbent local exchange company (incumbent LEC) serving either a petitioning or petitioned exchange.

(C) Contents of a petition and filing letter.

(i) (No change.)

(ii) Petition.

(I) (No change.)

(II) Signature pages.

Each signature page of the petition for expanded local calling service shall include:

(-a)-(-d) (No

change.)

(-e-) a clear statement that subscribers in the petitioning exchange will be required initially to pay a monthly expanded local calling fee of up to \$3.50 per residential line and \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained in one or more petitions in addition to basic local exchange service rates;

(-f-) (No change.)

(-g-) if more than one exchange is petitioned, a clear statement that the \$3.50 charge per residential line and \$7.00 charge per business line is for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained in one or more petitions; and

(III) (No change.)

(2) (No change.)

(3) Geographic proximity or community of interest requirement.

(A) (No change.)

(B) The geographic proximity requirement is satisfied as to each petitioned exchange if:

(i) the central switching office of the petitioning exchange is located within 22 miles of the petitioned exchange as measured by utilizing vertical and horizontal geographic coordinates of the nearest central switching office of the exchange(s) requested for expanded local calling service; or

(ii) the petitioning exchange demonstrates in its petition that it shares a community of interest with the exchange requested for expanded local calling service.

(iii) expanded local calling service shall not include an area where

the affected central offices are more than 50 miles apart as measured by utilizing vertical and horizontal geographic coordinates of the central switching offices of the exchanges.

(C)-(D) (No change.)

(4) Request for exemption.

(A) An incumbent LEC serving either the petitioning or petitioned exchange may file a request for exemption from the provisions of this subsection. Such requests must be filed no later than 20 days after the filing of the petition. The request for exemption shall be accompanied by an affidavit identifying with particularity which of the conditions described in this subparagraph exist. If the petition includes more than one petitioned exchange, the request for exemption shall clearly identify which conditions apply to which exchanges. Exemptions shall be granted and the petition shall be dismissed by the presiding officer, in the manner described in subparagraphs (B) and (C) of this paragraph, if:

(i) the incumbent LEC serves fewer than 10,000 lines;

(ii)-(v) (No change.)

(B) If the incumbent LEC's affidavit described in subparagraph (A) of this paragraph identifies one of the conditions described in subparagraph (A) (i)-(iv) of this paragraph, the presiding officer shall, by order issued no later than 40 days after the filing of the petition, grant the exemption and dismiss the petition (in whole, if appropriate, or in relevant part).

(C) If the incumbent LEC has requested an exemption based on subparagraph (A) (v) of this paragraph, the presiding officer shall, by order issued no later than 40 days after the filing of the petition, determine whether the incumbent LEC has made a good and sufficient showing in its affidavit that technology is not available in the marketplace to make the expansion of local calling service feasible. If the presiding officer determines that the incumbent LEC in its affidavit has failed to establish that such technology is not available in the marketplace, the exemption request shall be denied. If the presiding officer determines that the incumbent LEC in its affidavit has made a good and sufficient showing that such technology is not available to the marketplace, the exemption shall be granted. If the exemption request is granted, the presiding officer shall dismiss the petition (in whole, if appropriate, or in relevant part).

(D) (No change.)

(5) Balloting. If all applicable requirements contained in paragraphs (1)-(3) of this subsection have been met, and no exemption has been granted pursuant to paragraph (4) of this subsection, the presiding officer shall, by order issued no later than 40 days after determining that the petition and accompanying cover letter are sufficient or that any deficiencies have been cured, direct the incumbent LEC serving the petitioning exchange to begin balloting the subscribers in that exchange, and shall notify the designated contact person that balloting will take place.

(A) The cost of preparing and distributing the ballots shall be borne by the incumbent LEC serving the petitioning exchange, as a regulatory case expense.

(B) No later than 30 days after the presiding officer's order directing the incumbent LEC serving the petitioning exchange to begin balloting, that incumbent LEC shall distribute a ballot, in English and Spanish, to each subscriber in the petitioning exchange. The ballot shall require a separate vote for each petitioned exchange. The ballot must be in a standard form approved by general counsel and each ballot shall include:

(i)-(iii) (No change.)

(iv) a statement that if at least 70% of those subscribers responding vote yes as to any petitioned exchange:

(I) subscribers in the petitioning exchange will be temporarily required, in addition to the company's local exchange service rates, to pay in addition to the company's local exchange service rates, a monthly fee of [up to] not more than \$3.50 per residential line and \$7.00 per business line for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five;

(II) the amount of the temporary monthly additional fee for each subscriber in the petitioning exchange will depend on the toll revenue lost and the costs incurred by the company in providing the service, but cannot exceed the maximum specified above; and

(III) the temporary additional fee will be charged to all subscribers in the petitioning exchange until the company's next general rate case;

(v)-(ix) (No change.)

(x) a unique identification number assigned by the incumbent LEC serving the petitioning exchange to each

subscriber in that exchange.

(C) No later than 35 days after the presiding officer's order to the incumbent LEC serving the petitioning exchange to begin balloting, that incumbent LEC shall submit to the commission staff a master list of all subscribers within the petitioning exchange in an electronic spreadsheet format prescribed by the commission staff. The incumbent LEC shall classify the master list as confidential, and the list will be treated as such by the commission under the provisions of the Government Code, Title 5, Chapter 552. The master list shall be arranged sequentially by billing number and shall include for each subscriber in the petitioning exchange:

(i)-(v) (No change.)

(vi) the unique identification number assigned to the subscriber by the incumbent LEC.

(D) The Office of Regulatory Affairs shall, by written pleading filed no later than 15 days after the final date stated on the ballot for return of the ballot, notify the presiding officer, the contact person, and the affected incumbent LEC of the results of the ballot. The pleading shall specify the results of the ballot for each petitioned exchange

(i) If at least 70% of those subscribers responding vote affirmatively as to any petitioned exchange, the incumbent LEC serving the petitioning exchange shall file with the Commission, no later than 30 days after the filing of the Office of Regulatory Affairs' pleading notifying the incumbent LEC of the results of the ballot, the incumbent LEC's proposed implementation schedule and its proposed schedule of fees described in paragraph (6)(B) of this subsection. The filing shall include a study justifying all of the costs incurred by the petitioning incumbent LEC in providing the requested expansion of local calling service. The implementation schedule shall be expeditious, and shall explain and justify the reasons for the time required. No later than 15 days after the incumbent LEC's filing of its proposed fees and costs, the presiding officer shall issue an order granting interim approval of the incumbent LEC's proposed fees as temporary fees, which may be charged by the incumbent LEC no sooner than the first billing cycle following implementation of expanded local calling service from the petitioning exchange. All fees given interim approval are subject to refund. No later than 30 days after the incumbent LEC's filing of its implementation plan, the presiding officer shall issue an order approving, modifying, or denying the incumbent LEC's implementation schedule.

(ii) (No change.)

(6) Fees.

(A) Notwithstanding the provisions of subparagraph (B) of this paragraph, an incumbent LEC may not recover regulatory case expenses under this subsection by surcharging subscribers.

(B) An incumbent LEC serving either a petitioning or petitioned exchange, or serving as a transporting incumbent LEC, shall recover all of its costs incurred and all loss of revenue from any expansion of toll-free local calling service. Clause (i) of this subparagraph applies only to the incumbent LEC serving the petitioning exchange. Clause (ii) of this subparagraph applies to incumbent LECs serving either petitioning or petitioned exchanges, and to incumbent LECs serving as transporting incumbent LECs in connection with the provision of expanded local calling service. An incumbent LEC may recover its costs and lost revenue by:

(i) imposing a monthly fee for expanded local calling service of not more than \$3.50 per line for residential customers nor more than \$7.00 per line for business customers for the first five petitioned exchanges granted, with an additional \$1.50 per line for each exchange in excess of five, whether obtained in one or more petitions, to be collected from all such residential or business customers in the petitioning exchange and only until the incumbent LEC's next general rate case. In the event a monthly fee for expanded local calling service for all of the incumbent LEC's local exchange service customers in the state is imposed, the fee imposed under this clause (i) shall, to the extent necessary, be reduced by the amount required to ensure that in no case shall a residential line in the petitioning exchange be surcharged a total of more than \$3.50 or a business line a total of more than \$7.00 if the petitioner has requested five or less exchanges; and/or

(ii) (No change.)

(C) Applications filed pursuant to subsection (c)(6)(B)(ii) by incumbent LECs serving petitioned exchanges, or by transporting incumbent LECs, to recover their costs and lost of revenue shall not delay implementation of expanded local calling service to the petitioning exchange. Paragraph (12) of this subsection provides the applicable procedure for the recovery of costs and lost revenue by incumbent LECs serving petitioned exchanges and by transporting incumbent LECs.

(7) Proceedings After Interim Approval. Within 30 days of the issuance of

an order under paragraph (5)(D)(i) of this subsection granting interim approval of temporary fees to be charged by the incumbent LEC serving the petitioning exchange, any interested person, including the Office of Regulatory Affairs, may request that the presiding officer docket the petition in order to allow the parties to further investigate the fees proposed by the incumbent LEC or the cost underlying such fees. Upon receipt of any such request, the presiding officer shall establish a procedural schedule that allows for the issuance of an order finally approving or modifying such fees no later than 210 days after the interim approval of the temporary fees. If no such request for further investigation is timely filed, the presiding officer shall, within 60 days after the order granting interim approval of temporary fees, issue an order finally approving or modifying the fees to be charged by the incumbent LEC serving the petitioning exchange.

(8) Notice. Notice of the filing of the petition must be given to all subscribers in the petitioning exchange by publishing, one time in a newspaper of general circulation in the petitioning exchange, not less than 15 days before any ballots are mailed, all of the information to be included on the ballot, except for the information described in paragraph (5)(B)(v), (vi), and (viii)-(x) of this subsection. Notice must be given in both English and Spanish. The incumbent LEC serving the petitioning exchange shall bear the cost of notice, as a regulatory case expense.

(9)-(10) (No change.)

(11) Petitions filed prior to April 15, 1995. Any petition that was filed with the Commission prior to April 15, 1995 will continue to be processed under the requirements of Senate Bill 632, (73rd Legislature, 1993) and the provisions of this rule that were in effect on April 15, 1995. The prior version of this rule is continued in effect for only this limited purpose. [A petition for expanded toll free local calling that was filed with the Commission before the effective date of this subsection, shall not be dismissed solely because it does not comply with the requirements of paragraphs (1) and (2) of this subsection. The presiding officer shall ensure compliance with all requirements of Senate Bill 632, 73rd Legislature, 1993, and may require such information from the person filing the petition as is necessary and appropriate to assure such compliance. The presiding officer assigned to such a petition shall establish a procedural schedule for such a petition that allows for interim approval within 205 days after the presiding officer obtains from the contact person all of the information necessary and appropriate to ensure the requirements of Senate Bill 632 as set forth in paragraphs (1) and (2) of this subsection have been met].

(12) Separate proceeding for incumbent LECs other than the incumbent LEC serving the petitioning exchange. An incumbent LEC, other than the incumbent LEC serving the petitioning exchange, that incurs costs or loses toll revenue from any expansion of local calling areas may request Commission approval to impose the monthly fee described in subsection (c)(6)(B)(ii) of this section. Such an application shall not require a revenue requirement showing. The incumbent LEC shall file with the Commission its proposed schedule of fees. The filing shall include a study justifying all of the costs incurred, and all revenue lost, by the incumbent LEC in providing the expansion(s) of local calling areas. The filing shall be assigned a project number. A presiding officer shall be assigned and the filing shall be reviewed administratively, under the provisions of Chapter 22, Subchapter C, §22.32 (relating to Administrative Review), unless the presiding officer, for good cause, determines at any point during the review that the petition should be docketed. No later than 45 days after the incumbent LEC's filing of its proposed fees and costs, the presiding officer shall issue an order granting interim approval of the incumbent LEC's proposed fees as temporary fees, which may be charged by the incumbent LEC no sooner than the first billing cycle following implementation of the relevant expansion(s) of local calling service. All fees given interim approval are subject to refund. Within 30 days of the issuance of an order granting interim approval of temporary fees to be charged by the incumbent LEC, any interested person, including the Office of Regulatory Affairs, may request that the presiding officer docket the filing in order to allow the parties to further investigate the fees proposed by the incumbent LEC or the underlying costs of such fees. Upon receipt of any such request, the presiding officer shall docket the filing and establish a procedural schedule that allows for the issuance of an order finally approving or modifying such fees no later than 210 days after the interim approval of the temporary fees. If no such request for further investigation is timely filed, the presiding officer shall, within 60 days after the order granting interim approval of temporary fees, issue an order finally approving or modifying the fees to be charged by the incumbent LEC serving the petitioning exchange.

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 December 11, 1995.

TRD-9516133

Paula Mueller
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: January 1, 1996

Proposal publication date: August 25, 1995

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

Telephone

• 16 TAC §23.94

The Public Utility Commission of Texas adopts an amendment to §23.94, concerning incumbent small local exchange carriers, with changes to the proposed text as published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6574). By following the procedures of amended §23.94, a small local exchange carrier may request approval of minor rate changes and may request approval to offer, on an optional basis, extended local calling services, new services and experimental services. A small local exchange carrier, also known as a SLEC, is defined as any incumbent certificated telecommunications utility as of September 1, 1995 that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to Texas Civil Statutes, Article 1528c. The proposed rule provides definitions of terms used in the section, filing requirements and timelines, notice requirements, new or experimental service requirements, rate change guidelines, and docketing directives.

The primary public benefit anticipated as a result of the section will be the availability of new and experimental services in a more timely manner to the subscribers of incumbent small local exchange carriers. A second anticipated benefit is that incumbent small local exchange carriers that choose to use the expedited practices allowed by the rule will experience a decrease in the economic cost of compliance; expenditures which are ultimately passed on to consumers.

The rule is adopted pursuant to the following procedures. The proposed rule was published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6574). Following the publication of the proposed rule, the Commission conducted a workshop on September 28, 1995 to discuss issues involving the proposed amendments.

Comments submitted in response to the August 25, 1995 *Texas Register* publication were received from Consumers Union and Texas Statewide Telephone Cooperative, Inc. (TSTCI). Texas Telephone Association (TTA) filed a letter with the Commission concurring with the comments submitted by TSTCI.

Generally, the parties support the rule amendments, but suggest several modifications.

TSTCI seeks clarification of the word "small local exchange company" and recommends an additional definition for "affected local service customer." The Commission agrees that "affected local service customer" should be defined within the context of the rule and has made the necessary addition to the rule. The

commission believes the legislature has sufficiently defined the term "small local exchange company" and concludes that no further clarification of the term is warranted.

TSTCI also seeks clarification with regard to the interpretation of "affiliated incumbent local exchange companies" and suggests that the word "incumbent" be removed as it relates to affiliates of SLECs. TSTCI is concerned that the term "incumbent" will preclude a SLEC subsidiary from using the provisions of the rule if it did not hold a CCN on September 1, 1995. TSTCI contends that this is an unintended interpretation of the language in §3.213 of PURA 1995. The commission declines to strike the term "incumbent" as it relates to affiliates of SLECs, because the legislature specifically refers to affiliated incumbent local exchange companies in the statute. The commission is sensitive, however, to TSTCI's concern that newly created LECs will be precluded from utilizing the provision of the rule if they did not hold a CCN as of September 1, 1995. Section 3.213(j)(2) of PURA '95 grants the commission significant general power to regulate the business of small local exchange companies. Pursuant to this authority, the commission amends the current rule in order to make the rule applicable to companies not holding CCNs as of September 1, 1995, but having less than 31,000 access lines in service, if the commission finds following a hearing that use by the company accomplishes the rule's purpose.

Addressing filing requirements, TSTCI requests that the word "may request approval" be changed to "may offer" to more closely track the content and intent of PURA. No change was made based on this comment.

TSTCI also expressed concern about the rule provision limiting extended local calling services to optional services. TSTCI believes that the rule unreasonably limits the extended local calling options for the SLEC by requiring that the service be offered only as an optional service. TSTCI contends that the SLEC should not be precluded from offering non-optional extended calling services under the rule as long as the application complies with the definition of a minor rate change as defined in subsection (b)(3) of the rule.

The commission disagrees that the rule unreasonably limits the extended local calling options for the SLEC and finds that its interpretation of the statute is reasonable. A LEC may choose to offer optional extended local calling under this rule or may choose to offer mandatory extended local calling under §23.49 of this title (concerning Telephone Extended Area Service and Expanded Toll-Free Local Calling Areas). In order to maintain uniform treatment for all eligible exchanges, the commission believes that mandatory extended local calling should comply with §23.49.

Addressing the documentary requirements of the statement of intent, TSTCI believes the rule should allow an officer or general manager of a SLEC to certify the proposed change rather than requiring the SLEC to file a resolution by its board of directors approving the proposed change. TSTCI contends that the manager or officer are accountable to the board for their actions, that certification is

an operational matter for the SLEC, and that expediency and ease of administration are realized when the officer or manager certifies the proposed change rather than the board.

Section 3.213 of PURA 1995 specifically requires a SLEC to file with its statement of intent a resolution of the board of directors approving the proposed change. The commission declines to extend this provision to allow a manager or officer of a SLEC to certify a proposed minor rate change, because this would conflict with the express statutory language.

TSTCI seeks clarification of the time table used for filings and notification under the rule and recommends adding the word "calendar" to clarify that the time table is based on calendar days rather than business days.

The commission adds the word "calendar" to clarify that filing and notification deadlines are based on calendar days and not business days.

TSTCI recommends that the published notice requirement be eliminated and in the alternative, that publication be required for two weeks rather than four. TSTCI believes that customers are more fully informed by direct mailings or bill inserts than published notice, and that this is particularly true in the rural community. TSTCI also contends that the cost of published notice can outweigh the perceived benefits, especially given that rate increases under the rule are limited to minor rate changes. Finally, TSTCI notes that requiring four weeks published notice will extend every filing for which there is a rate increase beyond 90 days.

The commission declines to eliminate or reduce the four week published notice requirement in the rule. Rates established under the rule are subject to the rate-setting principles of Subtitle E of PURA '95. Section 3.211(a) of PURA, Subtitle E, requires four week publication of a proposed rate increase in a newspaper of general circulation. Therefore, the commission believes that the publication requirement set out in subsection (d)(1)(B)(ii) of the proposed rule is statutorily mandated and declines to make any change to eliminate or reduce the publication requirements of the rule. The commission recognizes that the four week publication requirement will extend every filing for which there is a rate increase beyond 90 days if the SLEC is required to complete notice at least 61 days prior to the proposed effective date. However, the commission believes that this result is unavoidable when balanced against the public interest in providing reasonable notice of proposed rate increases. For changes other than rate increases, the commission agrees to provide SLECs the option of providing published notice or direct notice pursuant to subsection (d)(1)(A) and (B)(i).

Consumers Union objects to the proposed changes to notice subsection (d)(4)(D). Specifically, Consumers Union objects to the requirement that a customer file its petition for review within 20 days following completion of notice. Consumers Union contends that 20 days is inadequate for a community to review a proposed rate change, gather the required number of signatures, and petition the com-

mission for review of the proposed change.

The commission agrees that 20 days is no longer an adequate time period within which to review a proposed rate change application. In order to alleviate the new burdens placed on consumers and safeguard the public interest, the commission believes that 30 calendar days is a more reasonable time period within which consumers may review a proposed rate change, gather the required number of signatures, and petition the commission for review. The commission makes the necessary change to subsections (d)(4)(D) and (g)(2).

Addressing the customer's right to petition the commission, Consumers Union also recommends that the word "affected" remain in the rule and that customers be informed as to the correct number and class of customers required to trigger a commission review of the proposed change.

The commission agrees that the term "affected" should be retained in order to clarify which customers may petition the commission for review of a proposed change. The commission makes the necessary modifications to the rule to clarify that petitioning customers must be within an affected class and that the five percent requirement shall be calculated based upon the total number of customers of record as of the calendar month preceding receipt of the complaint.

TSTCI requests clarification on who may certify completion of notice by publication. TSTCI states that it is often difficult for SLECs to obtain affidavits from their publishers and that the rule should authorize a SLEC representative to certify completion of notice. Consumers Union agrees that such clarification is reasonable.

The commission agrees and modifies subsection (d)(5) of the rule to clarify that a SLEC representative may certify completion of notice.

Consumers Union believes that the rule does not sufficiently describe the rate setting principles of Subtitle E and recommends adding the phrase "[r]ates adopted under this rule shall also be in accordance with Subtitle E of PURA" where appropriate. The Commission believes the rate setting principles stated in the rule are sufficient and declines to add the suggested language.

Consumers Union believes that a verification requirement in the rule should be maintained and that such a requirement is consistent with the requirements of PURA. The commission has necessarily deleted certain verifying filing requirements from the rule that §3.213 does not impose. The commission believes that the proposed rule adequately ensures that the information and supporting documentation filed with the commission to support a proposed rate change is accurate and consistent with the requirements of Subtitle E of PURA. Accordingly, no change has been made to the proposed rule based on this comment.

TSTCI contends that the 12-month restriction on rate filings is overly restrictive and goes beyond the revenue limitations set forth in the legislation. TSTCI believes the legislation has established necessary protections against un-

reasonable rate increases through its revenue limitations, and in particular, the 10% cap on the basic local access line rate increases. TSTCI also believes that the restrictive provisions in subsection (f)(2) and (3) will cause the SLEC to incur unnecessary filing, notice and other processing costs by requiring separate filings for rate changes that should otherwise be combined. TSTCI urges the commission to eliminate these filing limitations.

Consumers Union supports a once per year restriction on rate increase applications. Consumers Union believes the restriction obligates SLECs to use sound management, reasonable planning, and is in accordance with the legislative intent to give SLECs rate flexibility in order to encourage service in a prompt, efficient, and economical manner.

The commission finds that the revenue restrictions of the rule and the restriction limiting rate increase applications to once per year, except for good cause shown, are sufficient to encourage SLECs to use sound management and reasonable planning in formulating their overall rate strategy. Amendments to the rule have been proposed to foster flexibility and encourage prompt, efficient, and economical service to customers. The commission believes that deletion of the restriction in proposed subsection (f)(2) will accomplish these goals and makes the necessary deletion.

Addressing extended local calling services, TSTCI recommends the deletion of this subsection. TSTCI states that the subsection is unnecessary since the service is clearly referenced in subsection (c) of the rule. The commission agrees and deletes this subsection as published in the *Texas Register*.

All comments, including those not specifically referenced herein, were fully considered by the Commission.

The amendment is adopted under Texas Civil Statutes, Article 1446c-o, §1, 101, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, §3.051, which provides that the public interest requires that new rule, policies, and principles be formulated and applied to protect the public interest and to provide equal opportunity to all telecommunications utilities in a competitive marketplace and §3.213(j) etc.

§23.94. Small Local Exchange Carrier Regulatory Flexibility.

(a) Purpose and Application.

(1) Purpose. The provisions of this section establish structured procedures and pricing guidelines that incumbent small local exchange carriers, because of their special characteristics, may use to expedite commission approval of services and rates. Through this section the commission strives also to provide to all of the state's citizens adequate and efficient telecommunications service by facilitating the small carriers' abilities to offer, in a more timely manner,

to subscribers those technologically advanced services that are available in metropolitan areas from large carriers.

(2) Application. This section applies to any incumbent small local exchange carrier (SLEC), as that term is defined in subsection (b) of this section. Nothing in this section precludes a SLEC from utilizing any other applicable section of the Public Utility Regulatory Act of 1995 or this chapter. Nor does anything in this section exempt a SLEC from complying with any section of the Public Utility Regulatory Act of 1995 or this chapter not addressed by this section nor prohibit the commission from conducting a review in accordance with the Act, §3.210. Notwithstanding the limitations contained within subsection (b) of §23.57 of this title (relating to Telecommunications Privacy), §23.57 applies to all applications filed under this section.

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

(1) Custom calling-type services—Call management services available from a central office switching system including, but not limited to, call forwarding, call waiting, caller ID, or automatic recall.

(2) Experimental service—That definition given in §23.26(b)(2) of this title (relating to New and Experimental Services).

(3) Minor Change—A change, including the restructuring of rates of existing services, that decreases the rates or revenues of the SLEC or that, together with any other rate or proposed or approved tariff changes in the 12 months preceding the date on which the proposed change will take effect, results in an increase of the SLEC's total regulated intrastate gross annual revenues by not more than five percent. Further, with regard to a change to a basic local access line rate, a minor change may not, together with any other change to that rate that went into effect during the 12 months preceding the proposed effective date of the proposed change, result in an increase of more than 10%.

(4) New service—That definition given in §23.26(b)(1) of this title (relating to New and Experimental Services).

(5) Small Local Exchange Carrier—Also referred to as SLEC, any incumbent certificated telecommunications utility as of September 1, 1995, that has fewer than 31,000 access lines in service in this state, including the access lines of all affiliated incumbent local exchange companies within the state, or a telephone cooperative organized pursuant to Texas Civil Statutes, Article 1528c.

(6) Affected local service customer—A customer that is in the class of customers, and in the exchange or exchanges, that is affected by the proposed action filed in accordance with the provisions of this subsection.

(c) Filing. By following the procedures outlined in this section, a SLEC may request approval of minor rate changes and may request approval to offer, on an optional basis, extended local calling services, new services, and experimental services.

(1) At least 91 calendar days before the effective date of the proposed change, the SLEC shall file six copies of a statement of intent with the commission and serve a copy upon the Office of Public Utility Counsel. Such statement of intent shall provide:

(A) a copy of the notice it will provide as required by subsection (d) of this section;

(B) a sufficient description of how notice will be provided to allow the presiding officer to rule on the sufficiency of the notice;

(C) any request for a good cause waiver to the notice requirements of subsection (d) of this section. The letter shall provide sufficient justification for the good cause exception to the notice requirements to allow the presiding officer to rule on the request;

(D) a copy of the resolution by the SLEC's board of directors approving the proposed change;

(E) the effective date of the proposed change;

(F) a description of the services and the category of customers affected by the proposed change;

(G) a copy of the proposed tariff;

(H) the number of access lines the SLEC and each of its affiliates has in service in the state;

(I) the amount by which the SLEC's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed change, and, if the proposal is one for a rate change, sufficient information to justify that the proposed change is a minor change;

(J) a statement affirming that the rates are just and reasonable, are not unreasonably preferential, prejudicial, or discriminatory, and are sufficient, equitable, and consistent in application to each class of customers;

(K) information required by §23.57(c) of this title (relating to Telecommunications Privacy); and

(L) any other information the SLEC wants considered in connection with the proposed change.

(2) No later than ten calendar days after the SLEC files the statement of intent, the presiding officer assigned to the project shall notify the SLEC of any notice deficiencies, that notice is approved, and/or that a waiver has been granted.

(3) Notice of the SLEC's filing of the statement of intent shall be submitted to the Texas Register immediately following the presiding officer's approval of the notice. The SLEC shall complete notice as required by subsection (d) of this section no later than 61 calendar days before the effective date of the proposed change. Any notice that is not completed as required by subsection (d) of this section shall result in the effective date of the proposed change being postponed for as many days as completion of notice is delayed.

(d) Notice. A SLEC satisfies the notice requirements of this section by completing notice pursuant to the following requirements:

(1) Notice must be provided as set forth in subparagraphs (A) and (B) of this paragraph:

(A) Extended local calling service, new service and experimental service require either two weeks published notice in a newspaper of general circulation in each county affected by this application or direct notice or, in the case of a cooperative, publication in the cooperative's newsletter and by mail to nonmember customers.

(B) Rate changes require that:

(i) for a rate decrease, notice be published for two weeks in a newspaper of general circulation in each county affected by the proposed change or direct notice or, in the case of a cooperative, publication in the cooperative's newsletter and by mail to nonmember customers; and

(ii) for a rate increase that affects any ratepayer, notice be published for four weeks in a newspaper of general circulation in each county affected by the proposed change and direct notice.

(2) Newspaper notice for paragraph (1) of this subsection shall be provided in a newspaper of general circulation in the particular area(s) affected by the proposed change if a newspaper with general circulation in the entire county does not exist.

(3) The presiding officer may require for good cause that notice be provided in addition to that notice proposed by the SLEC or may waive for good cause the publication of notice requirement prescribed by this section for a proposed new service or an experimental service or proposed change that involves a rate decrease for all affected customers.

(4) Each notice must include:

(A) a description of the service(s) affected by the proposed change;

(B) a list of rates that are affected by the proposed application and how the rates affect each affected category of customers;

(C) the proposed effective date of the change;

(D) an explanation of the affected customer's right to petition the commission for review under subsection (h) of this section, including the number of affected persons required to petition before commission review will occur and the date by which the petition must be received by the commission, which date must be 30 calendar days following the completion of notice;

(E) an explanation of the affected customer's right to obtain from the SLEC a copy of the proposed tariff and instructions on how to do so; and

(F) the amount by which the SLEC's total regulated intrastate gross annual revenues will increase or decrease as a result of the proposed service or change.

(5) Within seven calendar days following the completion of notice the SLEC must submit a publishers affidavit or an affidavit from a representative of the SLEC establishing the proof of publication required by this subsection and a copy of the published notice.

(e) New or Experimental Service. The following requirements shall apply to a new service or an experimental service as the terms are defined in subsection (b) of this section:

(1) Availability. If the proposed change concerns a service that will not be

offered systemwide initially, the SLEC shall explain separately for each exchange in which that service will not be offered why the SLEC's facilities in that exchange do not have the technical capability to handle the service. This requirement does not apply to experimental services, but the SLEC shall specify the exchanges in which it proposes to offer the experimental service.

(2) Expiration. Any experimental service may be offered for no more than a 12-month period. Prior to or at the conclusion of this period, the SLEC may offer the experimental service as a new service. Such proposed change may be filed pursuant to this section or to any other applicable section of this chapter.

(f) Rate Changes and Limitations on Revenues. The following requirements shall apply to rate changes:

(1) The proposed rate change must be a minor change as defined in subsection (b) of this section.

(2) Except for good cause shown, any rate shall not be changed under this section more than once in any 12 month period, provided that rate decreases are not so limited.

(g) Review of Proposed Change.

(1) A proposed change considered under this section shall be effective on its proposed date, unless docketed.

(2) Within 35 calendar days of the filing of the affidavit of completion of notice the presiding officer shall docket the proposed change if within 30 calendar days following completion of notice:

(A) the commission receives a complaint(s) relating to the proposed change signed by the lesser of 5.0% or 1,500 of the affected local service customers to which the proposed change applies. Five percent shall be calculated based upon the total number of customers of record as of the calendar month preceding receipt of the complaint, or

(B) the commission receives a complaint relating to the proposed change from an affected intrastate access customer or group of affected intrastate access customers that in the preceding 12 months the SLEC billed and from which the SLEC received more than 10% of its total regulated intrastate gross access revenues; or

(C) the presiding officer determines that the proposed change is not a minor change; or

(D) the presiding officer determines that the SLEC's proposed change

is not consistent with the commission's written substantive policies; or

(E) the presiding officer determines that the SLEC has not complied with the procedural requirements of this section.

(h) Review upon docketing. If the proposed change is docketed, the effective date of the proposed change shall be automatically suspended to a date 150 calendar days after the proposed effective date. The commission shall review the proposed change in accordance with the commission's procedural rules applicable to docketed cases.

(i) Applicability of the rule to other LECs. The commission may extend application of this section to local exchange companies having 31,000 or fewer access lines in service, including access lines of affiliates of such utilities providing local exchange service within the state, on a company by company basis, if the commission determines, following a hearing, that the purpose of this section would be served.

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 December 11, 1995.

TRD-9516134

Paula Mueller
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: January 3, 1996

Proposal publication date: August 25, 1995

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

◆ ◆ ◆
• 16 TAC §23.95

The Public Utility Commission of Texas adopts new §23.95, with changes to the proposed text as published in the August 11, 1995 issue of the *Texas Register* (20 TexReg 6069).

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

The public benefit anticipated as a result of enforcing the new section will be an increased assurance in the integrity of the voting process utilized by cooperatives. Further, cooperatives whose members vote for partial deregulation under the Public Utility Regula-

tory Act of 1995, §3.2135 will be encouraged to offer new services to its members with a minimum of delay and should also be more responsive to member customers in the provision of existing services

The following submitted comments in response to the August 11, 1995, Texas Register publication: Consumers Union (CU); Texas Telephone Association (TTA); and Texas Statewide Telephone Cooperative, Inc. (TSTCI)

Following the publication of the proposed rule, the Commission conducted a public hearing on September 19, 1995, at which the commenting parties further discussed the issues raised in their comments. On September 28, 1995, TSTCI filed additional written comments in response to matters raised at the public hearing.

All parties who commented or attended the public hearing are generally supportive of the proposed rule. All of the parties are in favor of either the rule prescribing standard language to be used in the ballot and ballot instructions or of the Commission approving a generic specimen ballot and instructions to be maintained by the Central Records department of the Commission for use by the cooperatives.

TTA endorses the comments of TSTCI, while CU has concerns beyond those of TSTCI. TSTCI focuses its comments on having standard ballot and instruction language in the rule or having the Commission adopt a generic specimen ballot and instructions. The Commission agrees that a standard generic specimen ballot and instructions will facilitate the voting and reduce challenges to the language used by the cooperatives. The Commission will establish a generic ballot and instructions as part of a separate project.

TSTCI also wants the rule to provide for personal delivery of the ballot and in-person voting at the cooperative's annual meeting if the partial deregulation vote coincides with the meeting. The Commission believes that by requiring that the ballots be returned only by U.S. mail will there be assurance of the integrity of the voting process. Requiring actual delivery or postmark via the U.S. mail within the 45 days following mailing to the cooperative's members will provide ready evidence of the validity of the vote taken. The Commission believes this is especially important since the cooperative that will be seeking partial deregulation will also be counting the votes. Further, the rule also contains a 90-day retention period provision which requires a cooperative to keep for 90 days and make available for inspection at the request of the Commission all ballots and envelopes returned by the members during voting. The Commission believes this provision will provide increased integrity to the voting process.

TSTCI also recommends giving the cooperatives the option to use a postcard ballot which would be less expensive for the cooperatives than would a ballot to be returned in an envelope. The printing and return postage for the postcard ballot are less costly than for a standard ballot and envelope with return postage. The Commission agrees with TSTCI and has revised the rule to allow the use of a postcard ballot

CU does not oppose the use of a postcard ballot and agrees with TSTCI that a generic specimen ballot and instructions should be approved by the Commission and kept on file in Central Records. CU also recommends that if a cooperative wants to deviate from the Commission approved generic ballot or instructions it should have to first file its proposed ballot and instructions with the Commission where the Legal Administration Division would either approve, modify or deny the cooperative's proposed language. The Commission agrees and has established a procedure for a cooperative to propose alternative language for the ballot and/or instructions.

CU recommends greater clarification in the definitions and the inclusion of a definition for "reversal of partial deregulation". The Commission agrees and has added the requested definition.

All comments, including those not specifically referenced herein, were fully considered by the commission.

The rule is authorized by §3.2135(i) of the Public Utility Regulatory Act of 1995 which requires the Public Utility Commission of Texas to promulgate rules prescribing the voting procedures an incumbent local exchange company that is a cooperative corporation must use in order to achieve partial deregulation or to reverse partial deregulation

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

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

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

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

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

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

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

(4) Reversal of partial deregulation—The ability of a minimum of 10% of the members of a partially deregulated co-

operative to request, in writing, that a vote be conducted to determine whether members prefer to reverse partial deregulation. Ten percent shall be calculated based upon the total number of members of record as of the calendar month preceding receipt of the request from members for reversal of partial deregulation.

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

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

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

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

(4) Ballots shall be written in English and in Spanish if §23.6 of this title (relating to Spanish Language Requirements) is applicable.

(5) The ballot shall be entitled:

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

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

(6) Each ballot shall:

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

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

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

(Name of the Cooperative)" if the ballot is one to reverse partial deregulation.

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

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

(9) The commission shall keep a generic ballot in the Commission's Central Records department for use by a cooperative A cooperative that chooses to deviate from the generic ballot must obtain approval from the Legal Administration Division.

(10) If generic ballot language is not used, a cooperative shall file its proposed language with the Commission's Central Records clerk. A project number shall be established for administrative review of the ballot language. Within 15 days of the filing, the Legal Administration Division shall notify the cooperative whether the proposed language is approved, modified or rejected.

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

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

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

(3) Instructions shall be entitled:

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

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

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

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

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

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

(6) Instructions shall explain that a ballot must be returned for tabulation via U.S. mail.

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

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

(9) The commission shall keep generic voting instructions for the partial deregulation of cooperatives and for reversal of partial deregulation of cooperatives in the Commission's Central Records department for use by a cooperative. A cooperative that chooses to deviate from the generic instructions must obtain approval from the Legal Administration Division.

(10) If generic voting instruction language is not used, a cooperative shall file its proposed language with the Commission's Central Records clerk. A project number shall be established for administrative review of the voting instruction language. Within 15 days of the filing, the Legal Administrative Division shall notify the cooperative whether the proposed language is approved, modified or rejected.

(e) Tabulation of ballots.

(1) A ballot will be tabulated if it:

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

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

(C) is returned via U.S. mail

(2) The following votes will not be tabulated:

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

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

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

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

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

(F) a ballot that represents a vote from a non-member customer.

(G) a ballot which represents a proxy vote.

(H) a ballot for which the envelope or postcard bears no legible postmark from the U.S. Postal Service unless it is received by the cooperative via the U.S. mail within 45 days following the date the ballot or postcard was mailed to the member.

(f) Retention of Ballots

(1) A cooperative shall retain for 90 days after the end of the 45 day voting period all ballots and envelopes returned by the members in the voting process.

(2) During the 90 day retention period a cooperative shall produce the ballots and envelopes to the commission for inspection if so requested by the commission. This agency hereby certifies that the Section as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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 December 11, 1995.

TRD-9516140

Paula Mueller
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: January 1, 1996

Proposal publication date: August 11, 1995

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

◆ ◆ ◆
• 16 TAC §23.96

The Public Utility Commission of Texas adopts new §23.96, concerning Telephone Directories, with changes to the proposed text as published in the September 29, 1995 issue of the *Texas Register* (20 TexReg 7911).

The new rule is intended to implement the requirements of the Public Utility Regulatory Act of 1995 (PURA 95) §§3.309, 3.310. Section 3.309 of the Act requires that residential telephone directories published by private for-profit publishers must contain toll-free numbers and local telephone numbers for state agencies, state public services, and elected state officials who represent all or part of the geographical area for which the directory contains listings. The rule provides requirements for the inclusion of such listings in the directory and specifies the format. Section 3.310 of the Act requires that telecommunications utilities or their affiliates that publish telephone directories must include the names, addresses, and telephone numbers of state senators and representatives who represent all or part of the geographical area for which the directory contains listings. The new section also contains general directory requirements that are applicable to telecommunications utilities that are dominant as to local exchange telephone service, or their affiliates.

The Commission received written comments on the proposed rule from Southwestern Bell Telephone Company (SWBT), the Office of Public Utility Counsel, Consumers Union, GTE Southwest Incorporated and Centel of Texas, Inc., Southwestern Bell Yellow Pages, Inc., and the Texas Telephone Association. A public hearing on this proposal was held November 7, 1995 and oral comments were received from SWBT and Consumers Union. None of the commenters were opposed to the rule as a whole, although SWBT opposed the annual publication and extra copy requirements of subsection (b)(1) and (2), respectively. Commenters generally had suggestions as to detail or asked clarifying questions.

Two commenters generally suggested that the Commission take an active role in ensuring that consumers have access to all telephone numbers within a calling scope from a singular source, regardless of the provider, so that consumers will not have to access multiple directories in order to have all numbers. They also state that absence of a phone number from a directory decreases the value of the entire network. Another commenter disagreed on this point and recommended that subsection (b)(1) be modified to make it clear that the publishing, listing and delivery obligations of telecommunications utilities run only to their own customers and not to the competing customers of a Certificate of Operating Authority (COA) or a Service Provider Certificate of Operating Authority (SPCOA). The Commission agrees that all customers should be listed in the directories of dominant certificated telecommunications utilities. By listing just directories of its own customers the utility will be unjustly punishing its own customers by withholding phone numbers of subscribers to other telecommunications utilities. A directory containing just the phone numbers of a particular utility would be virtually worthless. Subsection (b)(1) requires utilities to list the names, addresses, and telephone numbers of all customers other than those who request that the information be unlisted, and this section has been clarified to include the customers of other providers of local exchange

service. However, the rule has also been clarified to state the utility only has the obligation to distribute its directory to its own customers unless the utility has reached an agreement with a COA or SPCOA to distribute the directory to the COA or SPCOA's customers. Although not referenced in the rule, an agreement between a telecommunications utility and other providers of local exchange service for the distribution of directories is contemplated by the Commission's proposed new §23.97, relating to Interconnection, Project 14440.

One commenter suggested that the rule be clarified to ensure that the rule's application to affiliates extend only those affiliates which publish the directories on the utilities behalf. The Commission concurs with these comments and has added clarifying language to subsection (b).

One commenter objected to subsection (b)(2) of the proposed rule which would require an extra copy of the directory to be provided free upon request. The commenter alternatively suggests that an extra copy be delivered only at a reasonable charge. The Commission disagrees that one directory per access line is adequate when a customer has determined another copy is necessary. The requirement of a free additional copy of a directory upon a customer's request is an existing requirement of the Commission's current directory rule, and the comments did not persuade that this requirement has been unduly burdensome. Because dominant certificated telecommunications utilities can charge for operator-provided directory assistance, reasonable access to free published directory assistance should be maintained at its current levels. Furthermore, for those incumbent local exchange companies that have elected incentive regulation, the current provisioning of directories is an element of basic network services for which rates have been frozen.

One commenter opposed the requirement in subsection (b)(2) that directories be published annually, and proposes that directories be published on a regular basis. The Commission disagrees with this comment because directories are essentially obsolete as soon as they are published and to put off republication even further would not be in the public interest.

One commenter requested that subsection (a) be modified so that the obligations placed upon private for-profit publishers are not imposed on telecommunications utilities. The Commission disagrees with this comment. In effect, telecommunications utilities are private for-profit publishers and it is the Commission's intention to have the obligations of this rule apply equally to telecommunications utilities and private for-profit publishers.

One commenter stated that provisions of this rule should apply to all telecommunications utilities, not just dominant certificated telecommunications utilities. The Commission disagrees. Because of the expense of publishing a directory this obligation should only be placed on telecommunications utilities that have been declared dominant.

Two commenters believed there was a possible conflict between the provisions of the pro-

posed rule and the Commission's proposed new §23.97, concerning Interconnection. While there are provisions relating to telephone directories in §23.97, the Commission disagrees that there is a conflict. The adopted rule sets forth the minimum directory requirements applicable to dominant certificated telecommunications utilities and other private for-profit publishers. The proposed §23.97 sets forth requirements for cooperation between all certificated telecommunications utilities in the provisioning of directory listings and distribution of directories, which is necessary in order for dominant certificated telecommunications utilities or private for-profit publishers to comply, in part, with the adopted rule.

One commenter questioned whether directory listing requirements under subsection (d)(4) also apply to telecommunications utilities. The Commission intends for the requirements of subsection (d)(4) to apply to telecommunications utilities that publish directories because they are, in essence, private for-profit publishers. This commenter also questioned the status of existing 23.61(b) with the presumed adoption of the new 23.96. Section 23.61(b) should be viewed as superseded by the approval of §23.96. However, a repeal of §23.61(b) will need to be accomplished by the Commission, with a corresponding relettering of §23.61.

One commenter requested that regarding the sample long distance rates in subsection (b)(4), a statement be included that such Rates are subject to change. The Commission does not believe that additional language is necessary because the rule states that the published rates are effective as of the date of compilation. This commenter also requested that flexibility be granted when distinguishing state government listings from other listings. The Commission agrees and has modified subsection (d)(4)(C) accordingly.

One commenter requested that the rule be modified to allow for a nongeographically specific listing of numbers for state agencies, state public services, and state officials. Although this comment may not have been completely understood, the Commission declines to make this change as it believes that it would be contrary to the mandates of PURA 95 which this rule is designed to implement.

One commenter suggested that the rule be amended to require telecommunications utilities to make directory listing information (name, address, and telephone number) available to all publishers on reasonable terms. However, this would subject all certificated telecommunications utilities to a wholly new requirement not contained in the proposed rule. As such, this new requirement would require republication of this rule. Because of the time-sensitivity of directory publication deadlines, the Commission believes it is the public interest to go forward with adoption of this rule, and will consider this comment as a future amendment.

The new rule is adopted under the Public Utility Regulatory Act of 1995, §1.101, which provides the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, §3.309 which au-

thorizes the Commission to promulgate rules applicable to private for-profit publishers of directories containing residential listings, and §3.310 which requires the inclusion of listings for state representatives and state senators in the directories of telecommunications utilities or affiliates.

The following statute is affected by this rule: the Public Utility Regulatory Act of 1995, §§1.101, 3.265, 3.309, and 3.310.

§23.96. *Telephone Directories.*

(a) When used in this section, the term private for profit publisher shall mean a publisher of a telephone directory that contains residential listings and that is distributed to the public at minimal or no cost. This term shall also include a telecommunications utility which publishes a directory, or its affiliate which publishes a directory on behalf of the telecommunications utility.

(b) This subsection applies to any telecommunications utility found to be dominant as to local exchange telephone service or its affiliate which publishes a directory on behalf of such telecommunications utility.

(1) Telephone directories shall be published annually. Except for customers who request that information be unlisted, directories shall list the names, addresses, and telephone numbers of all customers receiving local phone service, including customers of other certificated telecommunications utilities in the geographic area covered by that directory. Numbers of pay telephones need not be listed.

(2) Upon issuance, a copy of each directory shall be distributed at no charge for each customer access line served by the telecommunications utility in the geographic area covered by that directory and, if requested, one extra copy per customer access line shall be provided at no charge. A telecommunications utility shall also distribute copies of directories pursuant to any agreement reached with another certificated telecommunications utility. A copy of each directory shall be furnished to the commission.

(3) The name of the telecommunications utility, an indication of the area included in the directory, and the month and the year of issue shall appear on the front cover. Information pertaining to emergency calls such as for the police and fire departments shall appear conspicuously in the front part of the directory pages.

(4) The directory shall contain instructions concerning placing local and long distance calls on the network of the telecommunications utility for which the directory is issued, calls to the telecommunications utility's repair and directory assistance services, and locations and tele-

phone numbers of the business offices of the telecommunications utility as may be appropriate to the area served by the directory. It shall also contain a section setting out sample long distance rates within the long distance service area, if any, on the network of the telecommunications utility for which the directory is issued, applicable at the time the directory is compiled for publication, with a clear statement that the published rates are effective as of the date of compilation.

(5) Each telecommunications utility shall list each customer with its directory assistance within 72 hours after service connection (except those numbers excluded from listing in paragraph (1) of this subsection) in order that the directory assistance operators can provide the requested telephone numbers based on customer names and addresses.

(6) All nonassigned telephone numbers in central offices serving more than 300 customer access lines shall be intercepted unless otherwise approved by the commission.

(7) Disconnected residence telephone numbers shall not be reassigned for 30 days and disconnected business numbers shall not be reassigned, unless requested by the customer, for 30 days or the life of the directory, whichever is longer, unless no other numbers are available to provide service to new customers.

(8) If a customer's number is incorrectly listed in the directory and if the incorrect number is a working number and if the customer to whom the incorrect number is assigned requests, the number of the customer to whom the incorrect number is assigned shall be changed at no charge. If the incorrect number is not a working number and is a usable number, the customer's number shall be changed to the listed number at no charge if requested.

(9) When additions or changes in plant or changes to any other certificated telecommunications utility's operations necessitate changing telephone numbers to a group of customers, at least 30 days' written notice shall be given to all customers so affected even though the addition or changes may be coincident with a directory issue.

(10) At the customer's option the directory shall list either the customer's street address or post office box number. A charge can be imposed upon those customers who desire both listings.

(c) A telecommunications utility or an affiliate of that utility that publishes a residential or business telephone directory that is distributed to the public shall publish the name, address, and telephone number of each state senator or representative who

represents all or part of the geographical area for which the directory contains listings.

(d) Any private for-profit publisher that publishes a residential telephone directory shall comply with the following requirements:

(1) A telephone directory shall contain a listing of each toll-free and local telephone number for each of the following:

(A) state agencies;

(B) state public services; and

(C) elected state officials who represent all or part of the geographical area for which the directory contains listings.

(2) The directory shall include the information required in paragraph (1) of this subsection from the most current edition of the State of Texas Telephone Directory prepared and issued by the General Services Commission of the State of Texas and those modifications to the State of Texas Telephone Directory that are available upon request from the Public Utility Commission of Texas.

(3) Private for-profit publishers shall contact the secretary of the Public Utility Commission of Texas in writing to determine which issue of the State of Texas Telephone Directory is most current and to obtain the modifications referred to in paragraph (2) of this subsection. The contact shall refer to Project Number 14606. The commission shall respond within 30 days of receiving the request.

(4) The listings required by paragraph (1) of this subsection:

(A) may be located at the front of the directory or, if not located at the front of the directory, shall be referenced clearly on the inside page of the cover or on the first page following the cover before the main listing of residential and business telephone numbers;

(B) shall be labeled GOVERNMENT OFFICES - STATE in 24 point type;

(C) shall be bordered or shaded in such a way [on the three unbound sides with a border] that will distinguish the state listings from the other listings;

(D) need not exceed a length equivalent to two 8-1/2-inch by 11-inch pages, single-spaced in eight point type, provided that if space does not permit

the listing of all local telephone numbers for those agencies and officials with more than one local telephone number, the publisher shall list one local telephone number that the caller can use to access other local telephone numbers of the same agency or official; and

(E) shall be included in the directory at no cost to the agency or official.

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 December 11, 1995.

TRD-9516141 Paula Mueller
Secretary of the
Commission
Public Utility Commission
of Texas

Effective date: January 1, 1996

Proposal publication date: September 29, 1995

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

TITLE 22. EXAMINING BOARDS

Part XXIII. Texas Real Estate Commission

Chapter 535. Provisions of the Real Estate License Act

Requirements for Licensure

• 22 TAC §535.51

The Texas Real Estate Commission adopts an amendment to §535.51, concerning general requirements for licensure, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (20 TexReg 8299). The amendment adopts by reference a series of application forms used by persons applying for a real estate broker license or for a real estate salesman license. Adoption of the amendment was necessary to revise the forms to clarify the requirement of each applicant to provide the commission with the applicant's social security number under the provisions of House Bill Number 433, 74th Legislature (1995), to state increased fees collected by the commission for the Texas Real Estate Research Center and to request the applicant's electronic mail number or facsimile machine number for easier communication with the commission. On final adoption, nonsubstantive changes were made to the forms used by individuals applying for a broker license to clarify that assumed business names are filed with the county clerk's office.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on December 12, 1995.

TRD-9516255 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: January 3, 1996

Proposal publication date: October 10, 1995

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

Licensed Real Estate Inspectors

• 22 TAC §535.208

The Texas Real Estate Commission adopts an amendment to §535.208, concerning application for an inspector license, without changes to the proposed text as published in the October 10, 1995, issue of the *Texas Register* (22 TexReg 8300).

The amendment adopts by reference a series of application forms used a person in obtaining a license as an apprentice inspector, as a real estate inspector, or as a professional inspector. Adoption of the amendment was necessary to revise the forms to clarify the requirement of each applicant to provide the commission with the applicant's social security number under the provisions of House Bill Number 433, 74th Legislature (1995) and to request the applicant's electronic mail number or facsimile machine number for easier communication with the commission. On final adoption a nonsubstantive change was made to the form used by applicants for a professional inspector license to clarify that assumed names are filed with the county clerk's office.

No comments were received regarding adoption of the amendment.

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

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

Issued in Austin, Texas, on December 12, 1995.

TRD-9516256 Mark A. Moseley
General Counsel
Texas Real Estate
Commission

Effective date: January 3, 1996

Proposal publication date: October 10, 1995

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

Chapter 537. Professional Agreements and Standard Contracts

• 22 TAC §§537.11, 537.43, 537.44

The Texas Real Estate Commission proposes an amendment to §537.11, new §537.43, and §537.44, concerning standard contract forms, with changes to the proposed text as published in the October 10, 1995, issue of *Texas Register* (20 TexReg 8300).

The amendment to §537.11 would add two forms to the list of standard contract forms promulgated by the commission. The forms were developed by the Texas Real Estate Broker-Lawyer Committee, a committee of six real estate brokers appointed by the commission and six attorneys appointed by the State Bar of Texas. Licensed real estate brokers and salesmen are generally required to use contract forms promulgated by the commission when negotiating the sale of real property. The two new forms are TREC Number 36-0, Addendum for Property Subject to Mandatory Membership in an Owner's Association, and TREC Number 37-0, Resale Certificate for Property Subject to Mandatory Membership in an Owner's Association.

New §537.43 would adopt TREC Number 36-0 by reference. The form is an addendum for use with other TREC contract forms. The form would be used to specify whether the buyer requires the seller of the property to deliver a resale certificate or other documents to the buyer; if the resale certificate is required but is not timely delivered, the buyer may terminate the contract within three days after time for the certificate to have been delivered. If the resale certificate is required and is timely delivered, the buyer may terminate the contract upon reasonable objection to the resale certificate within 72 hours after the certificate is delivered. The buyer would waive the right of termination if it is not exercised within 72 hours after the certificate is delivered. The addendum also addresses repairs to the property which are the obligation of the owners' association. The addendum sets up a process for the buyer to obtain the assurance of the owners' association that required repairs to such property will be performed or the buyer may terminate the contract. Transfer fees and current assessments may also be disclosed to the buyer in the addendum.

New §537.44 would adopt TREC Form Number 37-0 by reference. The form is a resale certificate to be completed by or on the behalf of the owners' association. The form would be used to provide the buyer with information concerning rights of first refusal held by the association, assessments, unpaid obligations of the seller, capital expenditures, reserves, pending law suits, insurance coverage, violations of by-laws, rules of the association or material physical defects in the property, violations of health of building codes, transfer fees and leasehold estates affecting the property.

Mark A. Moseley, general counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. Any revenue received by the Texas Real Estate Commission from the sale of copies of the forms would be offset by the costs of making the copies available. There is no anticipated impact on local or state employment as a result of implementing the section.

Mr. Moseley also has determined that for each year of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections other than the cost of the forms, estimated at \$5.00 per pad of 50 copies.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

The amendment and new sections are proposed under Texas Civil Statutes, Article 6573a, §16(e), which authorize the Texas Real Estate Commission to adopt rules requiring real estate brokers and salesmen to use contract forms which have been prepared by the Texas Real Estate Broker-Lawyer Committee and promulgated by the Texas Real Estate Commission.

The proposed sections affect Texas Civil Statutes, Article 6573a, §16.

§537.11. Use of Standard Contract Forms.

(a) Standard Contract Form TREC Number 2-4 is promulgated for use as an addendum only to another promulgated standard contract form. Standard Contract Form TREC Number 9-2 is promulgated for use in the sale of unimproved property where intended use is for one to four family residences. Standard Contract Form TREC Number 10-2 is promulgated for use as an addendum concerning sale of other property by a buyer to be attached to promulgated forms of contracts. Standard Contract Form TREC Number 11-3 is promulgated for use as an addendum to be attached to promulgated forms of contracts which are second or "back-up" contracts. Standard Contract Form TREC Number 12-1 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is a Veterans Administration release of liability or restoration entitlement. Standard Contract Form TREC Number 13-1 is promulgated for use as an addendum concerning new home insulation to be attached to promulgated forms of contracts. Standard Contract Form TREC Number 15-2 is promulgated for use as a residential lease when a seller temporarily occupies property after closing. Standard Contract Form TREC Number 16-2 is promulgated for use as a

residential lease when a buyer temporarily occupies property prior to closing. Standard Contract Form 20-2 is promulgated for use in the resale of residential real estate where there is all cash or owner financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC Number 21-2 is promulgated for use in the resale of residential real estate where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC Number 23-1 is promulgated for use in the sale of a new home where construction is incomplete. Standard Contract Form TREC Number 24-1 is promulgated for use in the sale of a new home where construction is completed. Standard Contract Form TREC Number 25-1 is promulgated for use in the sale of a farm or ranch. Standard Contract Form TREC Number 26-2 is promulgated for use as an addendum concerning seller financing. Standard Contract Form TREC Number 27-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where there is an inspection with a right to terminate. Standard Contract Form TREC Number 28-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where reports are to be obtained relating to environmental assessments, threatened or endangered species, or wetlands. Standard Contract Form TREC Number 29-0 is promulgated for use as an addendum to be attached to promulgated forms of contracts where an abstract of title is to be furnished. Standard Contract Form TREC Number 30-0 is promulgated for use in the resale of a residential condominium unit where there is all cash or seller financing, an assumption of an existing loan, or a conventional loan. Standard Contract Form TREC Number 31-0 is promulgated for use in the resale of a residential condominium unit where there is a Veterans Administration guaranteed loan or a Federal Housing Administration insured loan. Standard Contract Form TREC Number 32-0 is promulgated for use as a condominium resale certificate. Standard Contract Form TREC Number 33-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property adjoining and sharing a common boundary with the tidally influenced submerged lands of the state. Standard Contract Form TREC Form Number 34-0 is promulgated for use as an addendum to be added to promulgated forms of contracts in the sale of property located seaward of the Gulf Intracoastal Waterway. Standard Contract Form Number 35-0 is promulgated for use as an addendum to be added to promulgated forms of contracts as an agreement for mediation. Standard Contract Form TREC Form Number 36-0 is promulgated for use as an addendum to be added to promulgated forms in the sale of property sub-

ject to mandatory membership in an owners' association. Standard Contract Form TREC Form Number 37-0 is promulgated for use as a resale certificate when the property is subject to mandatory membership in an owners' association.

(b)-(j) (No change.)

§537.43. *Standard Contract Form TREC Number 36-0.* The Texas Real Estate Commission adopts by reference standard contract form TREC Number 36-0 approved by the Texas Real Estate Commission in 1995. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

§537.44. *Standard Contract Form TREC Number 37-0.* The Texas Real Estate Commission adopts by reference standard contract form TREC Number 37-0 approved by the Texas Real Estate Commission in 1995. This document is published by and available from the Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188.

This agency hereby certifies that the 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 December 12, 1995.

TRD-95126257

Mark Moseley
General Counsel
Texas Real Estate
Commission

Effective date: January 3, 1996

Proposal publication date: October 10, 1995

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

Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Other Provisions

• 22 TAC §573.72

The Texas Board of Veterinary Medical Examiners adopts new §573.72, concerning Animal Reproduction, with changes to the proposed text as published in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6581).

This new rule is adopted to define procedures utilized in animal reproduction that constitute the practice of veterinary medicine. The rule as adopted differs from the published text in that subsection (2) was deleted. This change was made in response to public comment.

The board emphasizes that, pursuant to §3(a)(1) of the Veterinary Licensing Act, Article 8890, the provisions of the Act and this rule do not apply to the treatment or caring for animals in any manner, either personally by the owner, by any employee of the owner or a designated caretaker, unless ownership, employment, or designation was established with the intent of circumventing this Act. Enactment of this rule limits performance of certain animal reproduction procedures to licensed veterinarians. Some persons who are not licensed veterinarians may currently be performing the animal reproduction activities covered by this rule. The effect of this rule will require that such persons continue these activities only under the direct supervision of a veterinarian or cease the activities. The rule clarifies which animal reproduction activities constitute the practice of veterinary medicine. It does not reclassify previously exempt activities.

In order to obtain input other than that received in writing, the Board held a public hearing on October 4, 1995. Additional comments were received during the Board's October 5, 1995 meeting.

The Board believes that in order to protect the public from costly diagnostic or surgical mistakes made by untrained individuals, prevent transmission of disease, and ensure reliable diagnoses of breeding soundness, a veterinarian must be involved in certain animal reproduction activities. Veterinarian supervision is required in embryo transfer because of the use of drugs which cannot be legally prescribed for use on animals by non-veterinarians. Their use also requires a veterinarian/client/patient relationship.

The Veterinary Licensing Act defines diagnosis, surgery, and the prescription or administration of drugs as the practice of veterinary medicine, all of which are involved in animal reproduction. In order to protect the public, individuals performing surgical invasion of the reproductive tract of an animal must be licensed veterinarians or under the direct supervision of a licensed veterinarian. Groups supporting adoption of the rule were the Texas Veterinary Medical Association and the Texas Veterinary Association of General Practitioners. Both commented that regulation of reproductive practices would help ensure quality treatment and prevent disease transmission. Comments were also received from three individuals and nine licensed veterinarians supporting the rule as proposed in part or in full.

Groups opposed to the rule as published were the Texas Southwestern Cattle Raisers Association, the Texas Farm Bureau and the Independent Cattlemen's Association. These groups were especially concerned that a prohibition against non-veterinarians making pregnancy diagnosis by rectal palpation would greatly increase the cost of cattle breeding. An individual also expressed these concerns. The Board determined further study of this issue was necessary and amended the proposed rule to delete subsection (2) referring to pregnancy diagnosis by rectal palpation.

Several commenters questions whether "needle entry" into an animal's reproductive tract

was consistent with the definition of surgery. Two individuals also asserted that some technicians were better trained to perform laproscopic surgery than veterinarians. Due to the ever increasing sophistication in surgical techniques available in veterinary medicine, the Board believes "needle entry" is consistent with the definition of surgery. However, the Board agrees with the need to allow trained technicians to perform this procedure under the direct supervision of veterinarians and amended the rule as proposed to permit this practice.

The new section is adopted under Texas Civil Statutes, Article 8890, §7(a), which provide the Texas Board of Veterinary Medical Examiners with the authority to make, alter, or amend such rules and regulations as may be necessary or desirable to carry into effect the provisions of this Act.

This section affects § 2(2) and (11) of the Veterinary Licensing Act, Article 8890.

§573.72. *Animal Reproduction.* Pursuant to the Act, §2(2) and §(11), any of the following activities constitute the practice of veterinary medicine:

(1) surgical invasion of the reproductive tract of an animal, including laparoscopy and needle entry unless performed under the direct supervision of a veterinarian; or

(2) obtaining, possessing or administering prescription or legend drugs for use in an animal without a valid prescription from a licensed veterinarian or in a properly labeled container dispensed by a licensed veterinarian. Nothing in this rule shall affect those activities exempted from the Act as defined in article 8890, §3.

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

Issued in Austin, Texas, on December 11, 1995.

TRD-9516171

Ron Allen
Executive Director
Texas Board of Veterinary
Medical Examiners

Effective date: January 1, 1996

Proposal publication date: August 25, 1995

For further information, please call: (512) 447-1183

Part XXV. Structural Pest Control Board

Chapter 591. General Provisions

• 22 TAC §591.9

The Texas Structural Pest Control Board adopts an amendment to §591.9, concerning Board Hearings, without changes to the proposed text as published in the September 26,

1995, issue of the *Texas Register* (20 TxReg 7788).

The justification for the rule is the amendments will reduce the costs of hearing for the Agency.

How the rule will function is the amendments will allow default judgements to be taken in administrative hearings if no respondent is present.

No comments were received regarding the amendment.

There were no comments received from any groups or associations for or against the rule.

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

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-9516202

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

Effective date: January 2, 1996

Proposal publication date: September 26, 1995

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

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 317. Design Criteria for Sewerage Systems

• 30 TAC §317.1, §317.4

The Texas Natural Resource Conservation Commission (TNRCC or commission) adopts amendments to §317.1 and §317.4, relating to the general provisions of the design criteria for domestic sewerage systems. The amendment to §317.1 is adopted with changes to the proposed text as published in the July 21, 1995, issue of the *Texas Register* (20 TxReg 5363). The amendment to §317.4 is adopted without changes and will not be republished.

The purpose of the amendments is to clarify which plans and specifications for domestic wastewater collection, treatment, and disposal systems are required to be submitted to the TNRCC for review and approval in accordance with Texas Water Code §26.034, as amended by House Bill (HB) 1826 (1995). The rule amendments also allow a qualified municipality which has its own engineering review staff to review and approve collection

system plans for facilities within the city's jurisdiction if the municipality elects to do so.

Section 26.034 of the Texas Water Code provides that every person who proposes to construct or materially alter the efficiency of a domestic waste treatment facility, sewer system, or disposal system that transports, treats, or disposes of such waste must submit completed plans and specifications to the commission prior to commencement of construction. Section 26.034, as amended by HB 1826, further provides that the commission may, on a case-by-case basis, review and approve such plans and specifications as a pre-condition of authorization to commence construction.

Plans and specifications for which the commission has generally excluded from the commission's review and approval process must be submitted by a registered professional engineer with the engineer's express finding that the plans and specifications are in substantial compliance with commission standards and that any deviation from those standards is based upon the best professional judgement of the registered professional engineer.

The commission may not require plans and specifications to be submitted by a municipality to the commission for review and approval if: the municipality has its own engineering review staff; or the plans and specifications are prepared by private engineering consultants; and the review is conducted by a registered professional engineer who is an employee of or consultant to the municipality separate from the private engineering consultant charged with the design of the plans and specifications.

An exception to this exemption may be provided for a capital improvement project funded wholly or in part by the municipality.

Regardless of whether a municipality may be qualified to perform the review and approval of plans and specifications, nothing in these rules requires a municipality to undertake the review and approval function.

Plans and specifications are not required to be submitted by a person to the commission for review and approval if the person is required by local ordinance or other law to submit the plans and specifications to a qualified municipality for review and approval.

The rules provide the conditions a municipality must meet to qualify to perform the review and approval function. The rules also provide for a commission audit program to ensure that the municipality is conducting its review and approval in accordance with commission rules. If the commission finds that a municipality's review and approval process does not provide for substantial compliance with commission standards, the municipality's review authority is voided and the commission shall require that applicable plans and specifications be submitted to the commission for review and approval.

The rules provide that plans and specifications for the following projects will not, generally, be subject to commission review and approval: projects within the jurisdictional boundaries of a qualified, participating munic-

ipality; service lateral piping or single lot service grinder pump lift stations which are not a part of a low pressure sewer system; conventional gravity lines, pressure lines, or lift stations which will transport primarily domestic waste and will be constructed on privately-owned land and operated and maintained by private funds, conventional gravity sanitary sewer collection lines which are extensions to existing systems, are less than 1500 feet in length, and the line to which the extension is being added has been completed and in operation at least six months; and duplex lift stations that have a firm pumping capacity of less than 100 gallons per minute.

Notwithstanding a general exclusion from the commission's review and approval process, the commission may subject the plans and specifications for the above-listed projects to review and approval by the commission on a case-by-case basis. Factors to be used to determine which projects will be reviewed include, but are not limited to, the environmental sensitivity of potentially impacted water bodies, the use of innovative or alternative technologies, past compliance history, and the availability of agency resources.

The rules also provide that the commission may approve innovative and nonconforming (i.e. alternative) technologies if certain informational requirements and criteria are met. Additionally, the commission may condition any approval by providing testing, reporting, operational, installation, and design requirements, as well as any other condition necessary to ensure compliance with applicable commission standards.

A public hearing on these rules was held in Austin, Texas, on August 7, 1995. No comments were received at the public hearing. The comment period closed on August 21, 1995. The following entities submitted written comments on the proposed amendments: City of Amarillo; City of Arlington; City of Fort Worth; Texas Water Development Board; and Consulting Engineers Council of Texas. These comments were generally favorable to the adoption of the proposed rules.

All comments received by the public in writing on the proposed rules have been considered and have been incorporated into the rules where appropriate.

Two commenters indicated that these regulations would impose an unfunded mandate on municipalities. The commission disagrees with these comments. The rules allow qualified municipalities to voluntarily assume the responsibility to review plans and specifications for sewage collection and transport systems and, therefore, this rule does not constitute a "mandate."

One commenter stated that the term "consultation services" in §317.1(a)(2) was not an accurate description of the services provided by the TNRCC. The commission agrees and the proposed rule has been clarified to indicate that the role of agency technical staff is to review, rather than assist in the design, of facility plans and specifications.

One commenter stated that the requirement that engineers certify "the plans and specifications are in substantial compliance with the

rules in Chapter 317 and that any deviations from Chapter 317 are based on the professional judgement of the registered professional sealing the cover letter and will not result in a threat to the public health or the environment," in §317.1(a)(3) is overly broad and is not properly descriptive of the engineer's responsibility. In response, the language has been modified to reflect the exact language of §26.034 of the Texas Water Code.

One commenter suggested that the length of sewer line which would be exempted by §317.1(a)(3)(D)(i) from routine review by the commission should be increased from 1500 feet to 2,500 feet or 100 connections, whichever is smaller. The commission has insufficient information at this time to justify extending the exemption to sewer lines up to 2,500 feet or 100 connections, whichever is smaller. However, in its current, more comprehensive review of Chapter 317, additional information will be sought and this issue will be reexamined. For this same reason, §317.1(a)(3)(E) has been deleted, making clear that future policy changes will be made by rule.

One commenter stated that the requirement in §317.1(a)(4)(C) that the system owner and the design engineer shall be responsible for ensuring that approval conditions outlined by the commission or review authority have been met places requirements on the design engineer which are outside the exclusive control of the design engineer. The commission agrees and has changed the rule to read, "...both the sewage system owner and the design engineer, as appropriate, shall be responsible..."

Two commenters had concerns that the proposed rule in §317.1(a)(5) placed increased liability on the review authority. These commenters recommended language to address this concern. The commission agrees and modified §317.1(a)(2) to incorporate these suggestions.

One commenter stated that the details regarding the amount of money paid to the private review engineer is irrelevant to the goal of these rules in §317.1(a)(5)(D). The commission agrees and has modified the rule accordingly.

One commenter stated that municipalities should not be required to issue approval letters in §317.1(a)(5)(E), and that municipalities should be allowed to demonstrate evidence of approval through the signature of an authorized reviewer on the engineering drawings. The commission disagrees and believes that a detailed written approval letter will provide a more efficient and more easily maintained recordkeeping system that is necessary for the agency to properly conduct review process audits. These detailed approval letters will also allow the agency to respond to inquiries regarding specific projects approved by the municipal review authorities. The requirement for a written letter is the same standard that the agency had set for itself in the past and will continue to use upon passage of these rules. The agency will provide sample TNRCC letters that can be used by a municipality under its authorization process.

The commenter also stated that the rules should make clear that the phrase "within the boundaries of the jurisdiction of the municipality" in §317.1(a)(5)(E) includes extraterritorial jurisdiction. The commission disagrees since such authority may not apply uniformly with every city in the state. Rather, the rule will be broad enough to allow each municipality the appropriate flexibility to review collection system plans within the corporate limits or other boundaries of jurisdiction of that municipality.

Several commenters opposed the requirement in §317.1(a)(5)(F) of submittal to the TNRCC of comment and approval letters on projects reviewed by a review authority. One of these commenters suggested that only approval letters or approved drawings should be submitted. The commission agrees that comment letters can be kept in the municipal files and are not needed by the TNRCC and has modified the language accordingly. However, approval letters are needed by the agency to adequately monitor a municipality's review process.

One commenter stated that if a random audit review is performed on a capital improvement project as described in §317.1(a)(5)(G) and (I), there is the possibility of significant delay between plan approval and the random audit review. To address this concern, the commenter suggested that the commission notify the municipality in writing within ten working days of the receipt of the materials. The commission agrees and has revised the rule accordingly.

One commenter objected to the TNRCC's ability to perform audits on both capital improvement projects and on a municipality's audit process as provided by §317.1(a)(5)(G) and (I). The commission disagrees because the ability to perform audits for both the projects and the audit process is necessary to ensure compliance with §26.034(e) of the Texas Water Code.

Two commenters objected to the TNRCC's ability to perform random audit reviews on capital improvement projects as provided by §317.1(a)(5)(G). One of these commenters also objected to the requirement that an engineering report, plans, and specifications be submitted for all capital improvement projects. The commission believes that because municipalities will potentially be reviewing their own work and writing themselves approval letters for capital improvement projects, it is necessary for the TNRCC to be able to perform random review audits of these projects. However, the commission has made modifications to this requirement to exclude some smaller capital improvement projects and to include notification deadlines with regard to these random audit reviews.

Two commenters were concerned that commission review of capital improvement projects provided by §317.1(a)(5)(H) would unnecessarily delay these projects. Both commenters suggested a time limit for the TNRCC review comments to be forwarded to the municipalities. The commission agrees and has made the appropriate modifications by providing in §317.1(a)(5)(G) for a notification to the submitter if a review will occur.

One commenter stated that the notification process outlined in §317.1(a)(6) was essentially an application process by municipalities and that the process should be a simple one. The commission agrees that the process should be simple and straightforward and believes that the notification process outlined in the proposed rule is consistent with this goal.

One commenter stated that §317.1(a)(7) served as a catch-all in case any other paragraph failed to encompass a wastewater system component. The commission disagrees with this assessment. The purpose of this paragraph is to allow design engineers the option of obtaining waivers of review in cases not covered in the rest of §317.1(a). This paragraph has not been changed substantively from the previous version. This paragraph has generally been used previously by design engineers to obtain waivers of review for routine maintenance, rehabilitation or replacement of existing equipment.

One commenter stated that the proposed changes to Chapter 317 were characterized by "unwarranted oversight of professional engineering judgement." In order to allow some additional flexibility to municipal professional engineers, §317.1(a)(5)(A) was amended to allow for professional engineers employed by municipalities to obtain variances from the state's criteria in a municipality's standard specifications.

Section 317.1(a)(3)(D) is also amended to clarify submittal and review requirements and options for state agencies.

References in the rules to Watershed Management Division have been changed to Wastewater Permits Section to reflect the recent reorganization of the Office of Water Resource Management within the commission.

This section is adopted under the Texas Water Code, §26.023 and §26.034, which provide the TNRCC with the authority to make rules setting water quality standards for all water in the state and to review and approve the plans and specifications for domestic sewerage systems, respectively. The sections are also adopted under the Texas Water Code, §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of this state.

§317.1 General Provisions.

(a) Purpose. These design criteria are minimum guidelines to be used for the comprehensive consideration of domestic sewerage collection, treatment, or disposal systems and establish the minimum design criteria pursuant to existing state statutes pertaining to effluent quality necessary to meet state water quality standards. These criteria are intended to promote the design of facilities in accordance with good public health and water quality engineering practices. These criteria include the minimum requirements for a preliminary engineering report which provides the general engineering concepts underlying the proposed project as well as the final engineering report

detailing the fully developed project along with related plans and specifications.

(1) Authority for Requirement. The Texas Water Code prescribes the duties of the Texas Natural Resource Conservation Commission (commission) relating to the control of pollution including the review and approval of plans and specifications for sewage disposal systems. This authority is found in Texas Water Code §§5.013, 12.081-12.083, 15.104, 15.114, 26.023, 26.034, 49.181-49.182, 54.024, and 51.333.

(2) Review of plans and specifications. Plans and specifications shall meet the design criteria and the operation, maintenance, and safety requirements for the proposed project as provided by this chapter. Approval given by the executive director, or a participating municipality with review authority as provided for in paragraphs (5) and (6) of this subsection, shall not relieve the sewerage system owner or the design engineer of any liabilities or responsibilities with respect to the proper design, construction, or authorized operation of the project in accordance with applicable commission rules.

(3) Submittal requirements. Except as provided for in subparagraphs (A)-(D) of this paragraph, plans, specifications, and engineering reports for all wastewater projects shall be submitted to the commission's Wastewater Permits Section. All submittals shall be subject to discretionary review of the executive director. If the executive director chooses to review any submitted project, the design engineer will be notified in writing not later than ten days from the receipt by the commission of completed plans and specifications. If a review of a project is performed by the executive director, any approvals granted for these submittals shall correspond to one of the approval types detailed in paragraph (4) of this subsection. All submittals to the commission shall include a cover letter which has the signed and dated seal of a professional engineer registered in the State of Texas. The cover letter shall state that the plans and specifications are in substantial compliance with the rules in Chapter 317 and that any deviations from Chapter 317 are based on the best professional judgment of the registered professional engineer sealing the cover letter. Also, the cover letter shall include information regarding the project scope, specifics of the project, details of any deviations from this chapter's requirements, and an explanation of reasons for any deviations. Subparagraphs (A)-(D) of this paragraph specify the following variety of project categories for which submittal requirements are reduced:

(A) Those projects which will be constructed within the jurisdiction of a qualified municipality which has review

authority in accordance with paragraphs (5) and (6) of this subsection are not subject to the submittal requirements except as provided by subparagraphs (G) and (I) of paragraph (5);

(B) Submittal of plans and specifications for service lateral piping or single lot service grinder pump lift stations, which are not a part of a low pressure sewer system, will not be required;

(C) Submittals of plans, specifications, and engineering reports for any conventional gravity lines, pressure lines, or lift stations which will transport primarily domestic waste, will not routinely be required if the project will be constructed on privately owned lands and will be operated and maintained with private funds. If a submittal of plans and specifications for projects which fall into this category is desired by the executive director, a written request for plans and specifications will be sent to the design engineer by the executive director within ten days of receipt of this plans and specifications.

(D) Except as otherwise specified in subparagraph (B) or (C) of this paragraph, for a wastewater project described in clauses (i), (ii) or (iii) of this subparagraph, a copy of the plans and specifications shall be submitted to the commission's regional office for the region which the proposed project is to be located. Except as otherwise provided, projects in the categories listed in clauses (i)-(iii) of this subparagraph will not routinely be reviewed by the executive director. If the executive director chooses to review a project which is covered in one of these categories, the executive director's review notification letter may include a request for the design engineer to submit an additional copy of the materials for review to the commission's Wastewater Permits Section. The categories include:

(i) any conventional gravity sanitary sewer collection lines which are extensions to existing systems and which are less than 1500 feet in length. This condition applies only in cases where the line to which the extension is being added has been completed and in operation at least six months;

(ii) all duplex lift stations that have a firm pumping capacity of less than 100 gallons/minute;

(iii) any domestic wastewater projects which receive a technical review and approval from a state agency other than the commission, if the following requirements of subclauses (I)-(III) of this clause or subclause (IV) of this subparagraph are met:

(I) the review is performed under the supervision of a professional engineer registered in the State of Texas;

(II) the review shall ensure that the project substantially complies with this chapter;

(III) the state agency has officially requested that the commission not perform a technical review of a wastewater project or category of projects; and

(IV) the state agency has been granted review authority pursuant to state law in lieu of the commission. In this case, submittal of plans and specifications to the commission is not required. Also, in this case the executive director will not perform reviews of these projects.

(4) Types of approval. Regardless of the type of approval, constructed facilities when in operation are required to produce the quality of effluent specified in their discharge permit(s). The types of approvals described in subparagraphs (A)-(C) of this paragraph will be utilized by the commission or any other review authority. The following case-by-case approvals described in subparagraph (D) of this paragraph apply only to commission approvals:

(A) Standard approval. Plans and specifications found to comply with all applicable parts of these criteria and to conform to commonly accepted sanitary engineering design practices shall be approved for construction.

(B) Approvals of innovative and nonconforming technologies.

(i) Technologies considered to be nonconforming or innovative include ones not conforming to or addressed in the design criteria of this chapter.

(ii) If an approval for nonconforming or innovative technologies is requested, engineering proposals for processes, equipment, or construction materials not covered in these criteria shall be fully described in the submitted planning materials and the reasons for their selection clearly outlined. Processes considered to be nonconforming or innovative should also be supported by results of pilot or demonstration studies. Where similarly designed full scale processes exist and are known to have operated for a reasonable period of time under conditions similar to those suggested for the proposed design, performance data from these existing full scale facilities shall be required to be submitted to the executive

director in addition to, or in lieu of, pilot or small scale demonstration studies. Any warranties or performance bond agreements offered by the process, equipment, or material manufacturers shall be fully described in the request.

(iii) Approvals of processes, equipment, or construction materials which are considered to be innovative or nonconforming will be granted only in cases where the commission or review authority determines, after an engineering evaluation of the supporting information provided in the submitting engineer's design report, that the technology will not result in a threat to public health or the environment.

(iv) The executive director or review authority may require the manufacturer or supplier to obtain and furnish evidence of an acceptable two-year performance bond from an approved surety which insures the performance of the innovative or nonconforming technology. The performance bond shall cover the cost of removal or abandonment of the innovative or nonconforming facility and equipment, replacement with previously agreed upon facilities or equipment, and all associated engineering fees necessary for the removal and replacement.

(v) Approval of innovative and nonconforming technologies may include a condition which states that after some predetermined period of time after the installation and startup of the innovative or nonconforming technology, requiring an engineering report to be submitted after startup, detailing the performance of the nonconforming or innovative technology. The engineering report shall include unbiased calculations and data supporting the technology's performance; and written submittals from the design engineer and permittee which state that the nonconforming or innovative technology has satisfied its manufacturer's claims.

(C) Conditional approval. The executive director or review authority may grant approvals which contain detailed conditions, stipulations or restrictions. Examples of such conditions and stipulations include, but are not limited to, testing requirements, reporting requirements, operational requirements, and additional installation and design requirements which may be necessary to ensure compliance with this chapter. Any conditional approval granted may be issued for a specific set of flow situations, wastewater characteristics, and/or required effluent quality. If a conditional approval is granted, both the sewage system owner and design engineer, as appropriate, shall be responsible for ensuring that the approval conditions outlined by the commission or review authority have been met.

(D) Case-by-case reviews.

Upon submittal of plans, specifications, and engineering reports (including commission-approved application forms) to the commission as required by this subsection, the executive director may approve of the submitted materials without a technical review of the submitted materials. In those cases where a review will not be conducted, a written approval will be sent to the design engineer who submitted the materials with a notice indicating the plans were not reviewed. Such approval is conditioned upon the design being in substantial compliance with the rules in this chapter. Any deviations from this chapter shall be disclosed and stated to be based on the best professional judgement of the registered professional engineer sealing the plans and the engineer's judgement that the design would not result in a threat to public health or the environment.

(5) Review and approval of collection system designs by municipalities. The review and approval of plans, specifications, and engineering reports prepared by private engineering consultants for sewer systems which transport primarily domestic wastewater will not be required when a municipality elects to perform certain project reviews. Any municipality with its own internal engineering review staff which performs domestic wastewater project reviews is eligible to perform certain reviews and grant approvals, in lieu of the commission. Any entity which is required by local ordinance to submit engineering reports, plans, and specifications for sewer systems which transport primarily domestic waste to an eligible municipality which provides the review and approval, is not required to submit these review materials to the commission. The commission will not require submission of plans, specifications, and engineering reports for executive director approval so long as the executive director finds through the notification process described in paragraph (6) of this subsection that a municipality's approval procedures will provide substantial compliance with commission standards and all of the following conditions are met by the municipality:

(A) The standard specifications of the municipality performing the plans and specifications reviews shall be modified as needed for full compliance with the minimum standards for sewage collection and transport systems, as detailed in this chapter. As an alternative, a municipality's standard specifications may be allowed to vary from these design criteria if the municipality first demonstrates to the executive director that the variance would not result in a threat to water quality or public health. Requests for variances must be sub-

mitted in writing, along with the notification required in paragraph (6) of this subsection, by a professional engineer registered in the state of Texas, who is under the full-time employment of the municipality requesting the variance.

(B) The municipality shall be capable of timely review and approval of all collection system plans, specifications, and engineering reports it receives for review and approval.

(C) All reviews performed by an employee of the municipality shall be conducted by a professional engineer, registered in the State of Texas, or the employee conducting the review shall be under the direct supervision of a professional engineer, registered in the State of Texas, who is ultimately responsible for the review and approval of each collection system submitted and installed in the municipality's jurisdiction.

(D) The responsible review engineer shall be either an employee of the reviewing municipality or a consultant to the municipality separate from the private consulting firm charged with the design work under review. For purposes of this section, the term "separate" shall mean that the responsible review engineer is not employed by and does not receive compensation from the private consulting firm (or from any of its parent companies, subsidiaries or affiliates) charged with the design. If the responsible review engineer is a private consultant, a contract shall be maintained by the municipality which details all agreements that allow the private consultant to act as the responsible review engineer for the municipality. At a minimum, the contract shall be signed by an authorized representative of the municipality and the private consultant and include the period of time that the private consultant will act as the municipality's responsible review engineer.

(E) A participating municipality may review and approve engineering reports, plans and specifications only for projects which transport primarily domestic waste within the boundaries of jurisdiction of that municipality. For each project approved for construction, the municipality shall issue an approval letter which clearly details the project being approved. The letter should be issued to the design engineer and the system owner.

(F) To ensure adequate coordination and communication with the commission, copies of all approval letters, for all projects reviewed under the authority of the municipality shall be submitted to the

commission's Wastewater Permits Section in Austin. Any variances from this chapter granted for projects approved under the authority of a municipality shall be clearly described and justified in the construction approval letter which is written for the project requiring the variance. These approval letters shall be submitted to the commission at least on a quarterly basis, i.e., by March 31, June 30, September 30, and December 31 of each year. The municipality shall maintain complete files of all review activities carried out under its authority and shall make these files available to the commission upon request or during audits performed in accordance with subparagraph (I) of this paragraph. The files shall include, at a minimum, copies of: submittal documents, correspondence related to the review and approval of the project, construction inspection reports, and testing results.

(G) If a municipality that has review authority approves its own fully or partially funded capital improvement project, the capital improvement project shall be subject to the same submittal requirements detailed in paragraph (3) of this subsection with the exception that the cover letter shall include the signed and dated seal of a professional engineer registered in the State of Texas, who is under the full-time employment of the municipality which has review authority. The executive director may perform random audit reviews on these capital improvement projects and shall have final decision authority in cases where conflict arises between a review by the executive director and the municipality proposing to construct the capital improvement project. If the executive director determines, upon receiving a submittal of plans and specifications for a capital improvement project, that an audit review of this project will be performed, and that approval will be required before construction may begin on this project, the executive director will notify the municipality within ten working days of the receipt of the plans and specifications that this review will occur. Additionally, the executive director will make every attempt to send either an approval letter or a comment letter within 30 days of receipt of the plans and specifications.

(H) Construction cannot begin on any project until approval has been granted by the municipality with review authority, and if it is a project described in subparagraph (G) of this paragraph, any approval required from the commission, should the executive director perform an audit review.

(I) The executive director may perform periodic audits of the municipality's review and approval process. If the

executive director decides to perform an audit of the municipality's review and approval process, the executive director will provide the municipality with a minimum of five working days advance notice of the pending audit. The executive director may, for auditing purposes only, review specific projects which have previously been approved by the review authority. If, after a municipality begins to exercise review and approval authority, the executive director finds through reviews of specific projects or through audits of the municipality's review and approval process that a municipality's review and approval process does not provide for substantial compliance with the minimum design and installation requirements detailed in this chapter, the review and approval authority shall be voided for that municipality. If such authority is voided for a municipality, the executive director shall notify the municipality in writing and shall include the justification for voiding the authority of the municipality. If the authority of a municipality is voided, the commission shall require all plans and specifications to be submitted to the executive director for review and approval.

(6) Notification. At least 45 days prior to commencing design reviews as described in paragraph (5) of this subsection, a municipality shall submit a notification to the commission's Wastewater Permits Section. The purpose of the notification is to ensure coordination between the commission and municipality on matters of common jurisdiction and design review authority and to allow the executive director to make a finding that the municipality is in substantial compliance with this chapter. The notification shall include a description of the municipality's proposed program sufficient for the executive director to determine whether the review and approval process meets the provisions of paragraph (5)(A)-(D) of this subsection. Additionally, the notification shall specify the beginning date of the municipality's reviews and it shall include a detailed map showing the boundaries of its review authority. The exemption from submission to and approval by the executive director, provided in paragraph (5) of this subsection shall commence 45 days after notification or upon the written concurrence of the executive director, whichever is sooner, unless the executive director:

(A) requests additional information from the municipality if it believes it has received incomplete information on which to base a finding; or

(B) notifies the municipality that it finds that the municipality's review and approval process does not provide for substantial compliance with commission standards.

(7) Waiver of submittal or review requirements. When minor upgrade, rehabilitation, or maintenance work is planned for existing systems, a waiver of submittal or review may be granted at the discretion of the executive director or the review authority. If a waiver of submittal or review is desired, written notification to the commission, or the appropriate review authority, shall be made and shall include sufficient information to describe the significance of such modifications. If a waiver of submittal or review is requested, it shall be submitted by a professional engineer registered in Texas, and shall include the signed and dated seal of the engineer submitting the waiver request. The executive director or the appropriate review authority will determine whether a submittal or review of engineering plans and specifications will be required following this initial notification of the extent of the planned modifications. Replacement of equipment, piping or materials with like equipment, piping, or materials for purposes of maintenance and repair only, will not routinely require a submittal or a technical review by the executive director, and also will not routinely require a request for a waiver of submittal or a request for a waiver of review.

(8) Federal guidelines. Any project constructed with federal financial assistance may be required to conform to federal design criteria or guidelines if such criteria or guidelines are more stringent than those contained herein.

(b)-(f) (No change.)

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

Issued in Austin, Texas, on December 11, 1995.

TRD-9516131

Kevin McCalla
Director, Legal Division
Texas Natural Resource
Conservation
Commission

Effective date: January 1, 1996

Proposal publication date: July 21, 1995

For further information, please call: (512) 239-4640

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 76. Criminal History Check of Employees in Facilities for Care of the Aged and Persons with Disabilities

The Texas Department of Human Services (DHS) adopts the repeal of §§76.101-76.108 and new §§76.101-76.106, without changes. DHS adopts §76.102 with a change to the proposed text as published in the October 31, 1995, issue of the *Texas Register* (20 TexReg 8995).

Justification for the repeals and new sections is a demonstration of the department's compliance with the criminal history check statute in the Health and Safety Code.

The repeals and new sections will function by complying with changes made by the 74th Texas Legislature amending the criminal history check statute in Chapter 250 of the Health and Safety Code.

The department received a comment from the Texas Health Care Association (THCA) and is responding as follows.

Comment: In §76.101(b)(4), the definition of an emergency requiring immediate employment concludes with a clause, "thus putting the client's health and safety at risk," that places a negative conclusion on a nursing facility employee who is hired on an emergency basis. This clause should be deleted. There is no need to qualify or restrict emergency employment of nursing facility staff for any position unless the state can expedite the process of responding to a criminal history check. When there is a request for acknowledging criminal convictions on an employment application, a nursing facility should be able to proceed with the hiring and training of an applicant who denies, in writing, past criminal convictions.

Response: DHS agrees with THCA's suggestion to remove "thus putting the client's health and safety at risk" from the emergency employment definition.

Policy and Procedures

• 40 TAC §§76.101-76.108

The repeals are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and under the Health and Safety Code, Title 4, Chapter 250, which requires the department to perform criminal history checks on persons employed by certain types of facilities.

The repeals implement the Human Resources Code, §§22.001-22.024, and the Health and Safety Code, §§250.001-250.009.

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 December 12, 1995.

TRD-9516214 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 438-3765

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• 40 TAC §§76.101-76.106

The new sections are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs, and under the Health and Safety Code, Title 4, Chapter 250, which requires the department to perform criminal history checks on persons employed by certain types of facilities.

The new sections implement the Human Resources Code, §§22.001-22.024, and the Health and Safety Code, §§250.001-250.009.

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§76.102. Pre-employment Criminal History Check.

(a) A facility may not employ a person in a position with duties involving direct contact with a consumer in the facility if the:

(1) facility determines as a result of a criminal history check that a person has been convicted of an offense that is listed in Health and Safety Code, §250.006, barring employment or that a conviction is a contraindication to employment with the consumers a facility serves; and

(2) applicant is a nurse aide, until the facility further verifies that the applicant is listed in the nurse aide registry and verifies that the applicant is not designated in the registry as having a finding entered into the registry concerning abuse, neglect or mistreatment of a consumer of a facility, or misappropriation of a consumer's property. A person licensed under another law of this state is exempt from the criminal history check requirements of this chapter.

(b) If a facility believes that a conviction under Health and Safety Code, §250.006, bars a person from employment in the facility or believes that a criminal conviction may be a contraindication to a person's employment, a facility shall notify the applicant or employee.

(c) A facility will immediately discharge any employee whose duties involve direct contact with a consumer in the facility if his criminal history check reveals

conviction of a crime that bars employment or a criminal conviction that the facility determines is a contraindication to employment as provided in this chapter or who is designated in the nurse aide registry as having committed an act of abuse, neglect or mistreatment of a consumer of a facility or misappropriation of a consumer's property.

(d) Applicants to provide adult foster care are subject to criminal history checks before enrollment in the adult foster care 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 December 12, 1995.

TRD-9516215 Nancy Murphy
Section Manager, Media
and Policy Services
Texas Department of
Human Services

Effective date: January 1, 1996

Proposal publication date: October 31, 1995

For further information, please call: (512) 438-3765

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Part IV. Texas
Commission for the
Blind

Chapter 159. Administrative
Rules and Procedures

The Texas Commission for the Blind adopts the repeal of §159.13 and adopts new §159.13, concerning public opportunities to appear before the Commission's board, without changes to the proposed text as published in the October 24, 1995, issue of the *Texas Register* (20 TexReg 8786).

The Commission adopts the repeal and new section to expand from once a year to several times a year the opportunities persons may speak to the board in regular meetings without giving advance notice. The new section will serve as notice to the public that public comments will be a regular agenda item on each regular meeting.

The Commission received no comments regarding the proposed repeal and new section.

• 40 TAC §159.13

The repeal is adopted under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its program and requires the agency to implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the commission.

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

Issued in Austin, Texas, on December 11, 1995.

TRD-9516252 Pat D. Westbrook
Executive Director
Texas Commission for the
Blind

Effective date: January 3, 1996

Proposal publication date: October 24, 1995

For further information, please call: (512) 459-2611

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The new section is adopted under the Human Resources Code, Title 5, Chapter 91, which authorizes the commission to adopt rules prescribing the policies and procedures followed by the commission in the administration of its program and requires the agency to implement policies that will provide the public with a reasonable opportunity to appear before the board and to speak on any issue under the jurisdiction of the commission.

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

Issued in Austin, Texas, on December 11, 1995.

TRD-9516251 Pat D. Westbrook
Executive Director
Texas Commission for the
Blind

Effective date: January 3, 1996

Proposal publication date: October 24, 1995

For further information, please call: (512) 459-2611

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Part XII. Texas Board of
Occupational Therapy
Examiners

Chapter 362. Definitions

• 40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §362.1, concerning Definitions, without changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6007).

This amended section is being adopted to clarify requirements for two types of licenses which are issued by the board.

This amended section allows a provisional license to be issued to an individual who is AOTCB certified and who has either been employed in a non-licensing state or foreign country, or who has been employed in a licensing state and holds a valid license in good standing from that state. It also specifies that one kind of temporary license can be issued to an individual with AOTCB certification who has not worked within five years of receipt of current, complete application for licensure.

No comments were received regarding amendment of this section.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 December 11, 1995.

TRD-9516182

John P. Malline
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: January 1, 1996

Proposal publication date: August 8, 1995

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

Chapter 365. Types of Licenses

• 40 TAC §365.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §365.1, concerning Types of Licenses, without changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6007).

This amended section is being adopted to specify requirements for licensure for two categories of licensure.

This amended section specifies that an applicant for an Extended Temporary License must be AOTCB certified but has not been employed for five years or more from receipt date of current, complete application. It also specifies that a Provisional License may be issued to individuals who are AOTCB certified and who have either been employed in a licensing state within five years of receipt of current, complete application, or who have been employed in a non-licensing state or foreign country within six months or five years of receipt of current complete application.

No comments were received regarding amendment of this section.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 December 11, 1995.

TRD-9516183

John P. Malline
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: January 1, 1996

Proposal publication date: August 8, 1995

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

Chapter 366. Application for License

• 40 TAC §366.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §366.1, concerning Application for License, without changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6008).

This amended section is being adopted to clarify which documents are sent to applicants of the board.

This amended section no longer requires the board to send a copy of the Occupational Therapy Practice Act and a copy of the current TBOTE rules to every applicant to the board; only an instruction sheet, an application form, and any other information deemed necessary by the board.

No comments were received regarding amendment of this section.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 December 11, 1995.

TRD-9516184

John P. Malline
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: January 1, 1996

Proposal publication date: August 8, 1995

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

Chapter 367. Continuing Education

• 40 TAC §367.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §367.1, concerning Continuing Education, without

changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6008).

This amended section is being adopted to clarify the time frames during which licensees must earn continuing education contact hours for annual and biennial renewals.

This amended section specifies for annual renewals continuing education must be earned in the 12 months immediately preceding the licensee's renewal month, and for biennial renewals continuing education must be earned in the 24 months immediately preceding the licensee's renewal month.

No comments were received regarding amendment of this section.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 December 11, 1995.

TRD-9516185

John P. Malline
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: January 1, 1996

Proposal publication date: August 8, 1995

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

Chapter 369. Display of License

• 40 TAC §369.2

The Texas Board of Occupational Therapy Examiners adopts an amendment to §369.2, concerning Changes of Name or Address of Licensees, without changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6009).

This amended section is being adopted to require supporting documentation of change in name of a licensee or applicant.

This amended section requires that a licensee or applicant to the board must submit a court document evidencing a legal change in name along with any written request notifying the board of a name change.

No comments were received regarding amendment of this section.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 December 11, 1995

TRD-9516186

John P. Maline
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: January 1, 1996

Proposal publication date: August 8, 1995

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

Chapter 370. License Renewal

• 40 TAC §370.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §370.1, concerning License Renewal, without changes to the proposed text as published in the August 11, 1995, issue of the *Texas Register* (20 TexReg 6108).

This amended section is being adopted to establish a biennial license renewal system, including continuing education requirements, for all regular license holders.

This amended section establishes a biennial renewal system to be implemented in two phases beginning with January 1996 license renewals. Licensees with even license numbers will renew licenses for two years; submit 15 contact hours of continuing education in 1996; and submit 30 contact hours of continuing education in 1998 and each subsequent biennial renewal. Licensees with odd license numbers will initially renew licenses for one

year, submit 15 contact hours of continuing education in 1996; submit 15 contact hours of continuing education in 1997; and submit 30 contact hours of continuing education in 1999 and each subsequent biennial renewal.

No comments were received regarding amendment of this section.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 December 11, 1995.

TRD-9516187

John P. Maline
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: January 1, 1996

Proposal publication date: August 8, 1995

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

Chapter 374. Disciplinary Actions/Complaints

• 40 TAC §374.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §374.1, concerning Disciplinary Actions, without

changes to the proposed text as published in the August 8, 1995, issue of the *Texas Register* (20 TexReg 6009).

This amended section is being adopted to define illegal remuneration as it relates to detrimental practice.

This amended section specifies that direct or indirect payment or receipt of remuneration of any kind is prohibited and constitutes detrimental practice, unless the business arrangement or payment is acceptable under either state or federal statute.

No comments were received regarding amendment of this section.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, which provide the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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 December 11, 1995.

TRD-9516188

John P. Maline
Executive Director
Texas Board of
Occupational Therapy
Examiners

Effective date: January 1, 1996

Proposal publication date: August 8, 1995

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

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

State Office of Administrative Hearings

Thursday, December 21, 1995, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A prehearing conference will be held at the above date and time in SOAH Docket Number 473-95-1708—Application of Southwestern Public Service Company regarding proposed business combination with Public Service Company of Colorado (PUC Docket Number 14980).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 12, 1995, 10:09 a.m.

TRD-9516207

Thursday, January 4, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

Utility Division

AGENDA:

A second prehearing conference will be held at the above date and time in SOAH Docket Numbers 473-95-1563 and 473-95-1709—Application of Central Power and Light Company for authority to change rates (PUC Docket Number 14965) and ap-

plication of Central Power and Light Company to reconcile fuel costs (PUC Docket Number 13650).

Contact: J. Kay Trostle, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0233.

Filed: December 12, 1995, 10:07 a.m.

TRD-9516206

Texas Bond Review Board

Thursday, December 21, 1995, 10:00 a.m.

300 West 15th Street, Committee Room #5, Clements Building, Fifth Floor

Austin

AGENDA:

I. Call to order

II. Approval of minutes

III. Consideration of proposed issues

A. Stephen F. Austin State University—Consolidated Revenue Bonds

B. Stephen F. Austin State University—Constitutional Appropriation Bonds

C. Texas Higher Education Coordinating Board—College Student Loan Bonds, Series 1996

D. Texas Veterans Land Board—Veterans' Land Bonds, Taxable Series 1996

E. Texas Veterans Land Board—Veterans' Land Bonds, Series 1996 (including College Savings Bonds)

F. Texas Veterans Land Board—Veterans' Housing Assistance Program, Fund II, Series 1996 Taxable Refunding Bonds

G. Texas Department of Housing and Community Affairs—Variable Rate Demand Multi-Family Housing Revenue Refunding Bonds, Series 1996A and Series 1996B

IV. Other business

A. Discussion of staff recommendation regarding approval of applications

B. Report on pricing study

V. Adjourn

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: December 13, 1995, 3:52 p.m.

TRD-9516308

Texas Department of Health

Wednesday, December 20, 1995, 3:00 p.m.

William P. Hobby Airport, Cloud Room, Main Lobby, 7800 Airport Boulevard

Houston

Texas Board of Health

AGENDA:

The board will meet to consider and adopt: a resolution approving the interagency financing agreement in connection with the issuance of special revenue bonds (Texas

Department of Health laboratory project), Series 1996 B, by the Texas Public Finance Authority; approving the official statement; approving and authorizing the delegation to the Commissioner of Health of approval of the transfer of funds; and approving other matters with respect thereto.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. To request an accommodation under the ADA, please contact Renee Rusch, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or T.D.D. at (512) 458-7708 at least two days prior to the meeting.

Filed: December 12, 1995, 11:34 a.m.

TRD-9516220

Texas Lottery Commission

Wednesday, December 20, 1995, 10:00 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

Bingo Advisory Committee

AGENDA:

December 20, 1995, at 10:00 a.m.

According to the complete agenda, the Bingo Advisory Committee will call the meeting to order; consideration and possible action regarding draft rules relating to bingo; consideration and possible action on items to be placed on the agenda of future Bingo Advisory Committee meetings; consideration and possible action on providing advice and/or recommendations on rulemaking petitions filed with the Texas Lottery Commission regarding cardminding devices, pull-tab dispensers, and instant bingo; consideration and possible action regarding designation of future Bingo Advisory Committee meetings; and, adjournment.

For ADA assistance, call Rene McCoy at (512) 371-4823 at least two days prior to meeting.

Contact: Kimberly L. Kiplin, P.O. Box 16630, Austin, Texas 78761-6630, (512) 323-3791.

Filed: December 12, 1995, 11:31 a.m.

TRD-9516218

Thursday, December 21, 1995, 9:30 a.m.

6937 North IH-35, American Founders Building, First Floor Auditorium

Austin

Texas Lottery Commission

AGENDA:

According to the agenda summary, the Texas Lottery Commission will call the meeting to order; approval of minutes of the November 22, 1995 meeting; presentation by FIRS Team on its activities and possible discussion and/or action relating to the presentation; consideration and possible action on the renewal of the lottery operator contract; consideration and possible action on the appointment, employment, or duties of the Internal Auditor; commission may meet in executive session with its attorneys to receive legal advice regarding pending litigation pursuant to §551.071(1) of the Texas Government Code; to receive legal advice from its attorneys pursuant to §551.071(2) of the Texas Government Code; to deliberate the appointment, employment, or duties of the Internal Auditor pursuant to §551.074 of the Texas Government Code; and, to deliberate the deployment, or specific occasions for implementation, of security personnel or devices pursuant to §551.076 of the Texas Government Code; return to open session for further deliberation and possible action on any matter discussed in executive session; consideration of the status and possible entry of an order in any time period has lapsed for the filing of exceptions and replies; report by the executive director and possible discussion on the financial status of the agency, the operation of the agency, and the proposed amendment to lease, creating a lease with option to purchase (Lottery headquarters).

Beginning at 1:00 p.m., report by the Bingo Advisory Committee and possible action on its activities; consideration and possible action, including proposal, on new bingo rules; consideration and possible action, including proposal, on amendments to existing bingo rules; consideration and possible action on three rulemaking petitions relating to cardminding devices, pull-tab dispensers, and instant bingo; consideration and possible action regarding system service providers; and, adjournment.

For ADA assistance, call Michelle Guerrero at (512) 323-3791 at least two days prior to meeting.

Contact: Michelle Guerrero, 6937 North IH-35, Austin, Texas 78752, (512) 323-3791.

Filed: December 13, 1995, 3:52 p.m.

TRD-9516307

Texas Natural Resource Conservation Commission

Tuesday, January 9, 1996, 10:00 a.m.

Jackson Volunteer Fire Department, 1968 Island View Road

Jefferson

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by C & C Water Works, Inc. for a water rate increase effective August 25, 1995, for its service area located in Marion County, Texas. SOAH Docket Number 582-95-1639.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: December 12, 1995, 2:33 p.m.

TRD-9516230

Thursday, January 11, 1996, 10:00 a.m.

Upshur County Courthouse, County Court Room, Highway 154 or West Tyler Street

Gilmer

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by M. D. Williamson doing business as Raintree Lakes Water Company for a water rate increase effective November 1, 1995, for its service area located in Upshur County, Texas. SOAH Docket Number 582-95-1640.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: December 12, 1995, 2:34 p.m.

TRD-9516232

Thursday, January 11, 1996, 10:00 a.m.

Building C, Room 107W, 12124 Park 35 Circle (TNRCC Complex)

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by Malone Water System for a water rate increase effective October 1, 1995, for its service area located in Travis County, Texas. SOAH Docket Number 582-95-1641.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: December 12, 1995, 2:34 p.m.

TRD-9516231

Thursday, January 18, 1996, 10:00 a.m.

Grayson County Courthouse, West Courtroom, 100 West Houston

Sherman

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by W. C. Morris doing business as Western Water System for an increase in water rates effective October 6, 1995, for its service area located in Grayson County, Texas. SOAH Docket Number 582-95-1642.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: December 12, 1995, 2:34 p.m.

TRD-9516233

Tuesday, January 23, 1996, 10:00 a.m.

Building E, Room 201S, 12118 North IH-35 (TNRCC Complex)

Austin

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application made by Abraxas Utility with the Texas Natural Resource Conservation Commission for an increase in water and sewer rates effective September 1, 1995, for its service area located in Tarrant County, Texas. SOAH Docket Number 582-95-1644.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: December 12, 1995, 2:34 p.m.

TRD-9516234

Thursday, January 25, 1996, 10:00 a.m.

Administration Building, Commissioner's Courtroom, 301 North Thompson

Conroe

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by Henry Steitz for Proposed Permit Number 03727 to authorize the storage, processing and disposal of wastewater treatment sludge, water treatment sludge and domestic septage. The site is approximately 25 acres with 18.25 acres used for land applying sludge and/or septage. The proposed permit also authorizes a variance to the buffer zone requirements. No discharge of pollutants into the waters of the State is authorized by this permit. The facilities and disposal site are adjacent to the west side of the Missouri Pacific railroad and 3,300 Feet east of the intersection of State Highway 75 and Camp Silver Springs Road, five miles

north of Conroe, Montgomery County, Texas. The site is in the drainage area of Stewarts Creek in Segment Number 1004 (West Fork San Jacinto River) of the San Jacinto River Basin. SOAH Docket Number 582-95-1655.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: December 12, 1995, 2:33 p.m.

TRD-9516228

Tuesday, January 30, 1996, 10:00 a.m.

Burleson Area Chamber of Commerce, Chamber Board Room, 1044 Southwest Wilshire

Burleson

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by Johnson County Fresh Water Supply District Number One for an amendment to Permit Number 10532-01 to authorize an increase the discharge of treated domestic wastewater effluent from a final phase volume not to exceed an average flow of 450,000 gallons per day to a final phase volume not to exceed an average flow of 700,000 gallons per day, and add an interim II phase discharge at a volume not to exceed an average flow of 450,000 gallons per day. The permit currently authorizes the discharge of treated domestic wastewater effluent at an interim I phase volume not to exceed an average flow of 450,000 gallons per day, which will remain the same. The Johnson County FWSD Number One wastewater treatment facilities are approximately 3.6 miles southeast of the City of Burleson at a location approximately one mile upstream of the crossing of Village Creek and FM Road 731 in Johnson County, Texas. SOAH Docket Number 582-95-1638.

Contact: Susan Prior, Mail Code 102, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4100.

Filed: December 12, 1995, 2:33 p.m.

TRD-9516229

Public Utility Commission of Texas

Wednesday, December 20, 1995, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action on

D. 14447 (SOAH Number 473-95-1003); D. 14940 (SOAH Number 473-95-1564); Project 14372 and 14359; letter to FCC concerning Study Area Waivers for Transactions involving the sale of certain GTE and Contel Exchanges; D. 13990, 14874, 14875, 14876, 14919, 14485, 14665, and 14666; D. 13943 (SOAH Number 473-95-1172); Project 14400; Project 14045 and consideration for publication of new §23.70 concerning Terms and Conditions for Open-Access Transmission Service; Project Numbers 15000, 15001, and 15002; Project 12123; D. 14609, 14965 (appeal of Order Number 3 and Preliminary Order) ; D. 14819, 14653, 14652, 15100; Project Number 14992 and report on certification of electric cooperative deregulation; proposed revisions to the annual earnings report; project assignments and 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 session.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: December 12, 1995, 2:37 p.m.

TRD-9516235

Texas Department of Transportation

Thursday, December 21, 1995, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building

Austin

Texas Transportation Commission

AGENDA:

Approve minutes. Establish reasonable and safe prima facie speed limits. Department premises weapons policy. Rulemaking: 43 TAC Chapters 9, 21, and 29. District/division/special office reports. Programs: revision to 1996 El Paso project development plan; and funding authorization for 1996 Governor's community achievement awards. Multimodal transportation: Texas Turnpike Authority feasibility study; and Bicycle Advisory Committee appointments. Delegation of authority: concurrence in contract awards by Texas Turnpike Authority and Texas Parks and Wildlife. Contract awards/rejections/defaults/assignments. Routine minute orders. Executive session for legal counsel, land acquisition, and personnel matters. Open comment period.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: December 13, 1995, 2:45 p.m.

TRD-9516299

◆ ◆ ◆
Texas Turnpike Authority

Wednesday, December 20, 1995, 9:30 a.m.

Dallas Marriott Quorum, 14901 Dallas Parkway

Dallas

Board of Directors

AGENDA:

The agenda includes: approval of minutes of Board meeting of September 13, 1995, committee meetings of September 6, 1995 and December 14, 1995; consider final approval of proposed operating budgets for calendar year 1996: (a) Dallas North Tollway project, (b) Mountain Creek Lake Bridge project, and (c) feasibility study fund; consideration of President George Bush Highway (Turnpike) (SH190T) matters: (a) consider interlocal agreement with Irving for investment grade feasibility studies of 190T-W, (b) consider requests to the Texas Transportation Commission to expend TTA feasibility study fund monies for investment grade feasibility studies of 190T-W and a request to the commission to participate in the cost of such studies, (c) consider award of Contract DNT-265, (d) consider award of Contract DNT-268 for toll plaza/operation building design services for 190T and Addison Airport Toll Tunnel, and (e) briefing on results of investment grade traffic and revenue study of 190T-E; executive session: (a) advice from counsel concerning: (i) Open Records Request of MFS, (ii) settlement of offer for Parcel 10-2, (iii) negotiations concerning Laredo Bridge Number IV, and (iv) personnel terminations and litigation, (b) deliberation concerning real property value, purchase, exchange, lease, donation, negotiated settlement, and/or legal advisor fees included in ROW Appraisal/Offer/Purchase List Number 65, and advice from counsel concerning negotiations/settlement and offers related to the President George Bush Turnpike and/or The Addison Airport Toll Tunnel; (c) deliberation concerning appointment, employment, evaluation, reassignment of duties, discipline, and/or dismissal of various staff persons and positions, and (d) briefing from and conference with staff concerning (i) issuance of Series 1995 190T Revenue Bonds, (ii) matters related to the financing and construction of 190T as an extension and enlargement of DNT, (iii) VIVID acquisition, (iv) agreements and negotiations concerning investment grade feasibility studies of 190T-W and 190T-E, and (v) DNT and MCLB speed limits; consider acceptance of ROW Appraisal/Offer/Pur-

chase List Number 65; consider report of Legislative Committee and action the committee may recommend concerning adoption of 1997 policy/legislation goals; discussion and consideration of retaining a special TTA Legislative Advisory Counsel; consider resolution honoring Steve Van for his services as Director of the TTA; consider interlocal agreement with Addison; approval of TTA document signature authority, activity summary of the executive director; receive public comments and receive comments from TTA directors.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: December 12, 1995, 3:47 p.m.

TRD-9516238

Wednesday, December 20, 1995, 9:30 a.m.

Dallas Marriott Quorum, 14901 Dallas Parkway

Dallas

Revised Agenda

Board of Directors

AGENDA:

The agenda includes: approval of minutes of Board meeting of September 13, 1995, committee meetings of September 6, 1995 and December 14, 1995; consider final approval of proposed operating budgets for calendar year 1996: (a) Dallas North Tollway project, (b) Mountain Creek Lake Bridge project, and (c) feasibility study fund; consideration of President George Bush Highway (Turnpike) (SH190T) matters: (a) consider actions relating to the design, construction, and financing of 190T, (b) consider interlocal agreement with Irving for investment grade feasibility studies of 190T-W, (c) consider requests to the Texas Transportation Commission to expend TTA feasibility study fund monies for investment grade feasibility studies of 190T-W and a request to the commission to participate in the cost of such studies, (d) consider award of Contract DNT-265, (e) consider award of Contract DNT-268 for toll plaza/operation building design services for 190T and Addison Airport Toll Tunnel, and (f) briefing on results of investment grade traffic and revenue study of 190T-E; executive session: (a) advice from counsel concerning: (i) Open Records Request of MFS, (ii) settlement offer for Parcel 10-2, (iii) negotiations concerning Laredo Bridge Number IV, and (iv) personnel terminations and litigation, (b) deliberation concerning real property value, purchase, exchange, lease, donation, negotiated settlement, and/or legal advisor fees included in ROW Appraisal/Offer/Purchase List Number 65, and advice from counsel concerning negotiations/settlement and offers related to

the President George Bush Turnpike and/or The Addison Airport Toll Tunnel; (c) deliberation concerning appointment, employment, evaluation, reassignment of duties, discipline, and/or dismissal of various staff persons and positions, and (d) briefing from and conference with staff concerning (i) issuance of Series 1995 190T Revenue Bonds, (ii) matters related to the financing and construction of 190T as an extension and enlargement of DNT, (iii) VIVID acquisition, (iv) agreements and negotiations concerning investment grade feasibility studies of 190T-W and 190T-E, and (v) DNT and MCLB speed limits; consider acceptance of ROW Appraisal/Offer/Purchase List Number 65; consider report of Legislative Committee and action the committee may recommend concerning adoption of 1997 policy/legislation goals; discussion and consideration of retaining a special TTA Legislative Advisory Counsel; consider resolution honoring Steve Van for his services as Director of the TTA; consider interlocal agreement with Addison; approval of TTA document signature authority, activity summary of the executive director; receive public comments and receive comments from TTA directors.

Contact: Jimmie G. Newton, 3015 Raleigh Street, Dallas, Texas 75219, (214) 522-6200.

Filed: December 13, 1995, 9:42 a.m.

TRD-9516260

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**University of Texas M. D.
Anderson Cancer Center**

Tuesday, December 19, 1995, 9:00 a.m.

1515 Holcombe Boulevard, Room AW7.707

Houston

Institutional Animal Care and Use Committee

AGENDA:

Review of protocols for animal care and use and modifications thereof

Contact: Anthony Mastromarino, Ph.D., Box 101, Houston, Texas 77030, (713) 792-3220.

Filed: December 13, 1995, 1:08 p.m.

TRD-9516291

◆ ◆ ◆
Regional Meetings

**Meetings Filed December 12,
1995**

The Brown County Appraisal District Board of Directors will meet at 403 Fisk Avenue, Brownwood, December 19, 1995,

at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76801, (915) 643-5676. TRD-9516219.

The Education Service Center, Region XII ESC Board of Directors will meet at 2101 West Loop 340, Waco, December 20, 1995, at 10:00 a.m. Information may be obtained from Harry J. Beavers or Vivian L. McCoy, P.O. Box 23409, Waco, Texas 76702-3409, (817) 666-0707. TRD-9516208.

The Education Service Center, Region XIII Board of Directors met at 5701 Springdale Road, Room H, Austin, December 18, 1995, at 1:00 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 919-5300. TRD-9516237.

The Ellis County Appraisal District Appraisal Review Board will meet at 400 Ferris Avenue, Waxahachie, December 19, 1995, at 8:30 a.m. Information may be obtained from Dorothy Phillips, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552. TRD-9516224.

The Gonzales County Appraisal District (Revised Agenda.) Appraisal Review Board will meet at 928 St. Paul, Gonzales, December 20, 1995, at 9:00 a.m. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879 or Fax: (210) 672-8345. TRD-9516227.

The Gonzales County Appraisal District Appraisal Review Board will meet at 928 St. Paul, Gonzales, December 21, 1995, at 9:00 a.m. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879 or Fax: (210) 672-8345. TRD-9516226.

The Gonzales County Appraisal District Board of Directors will meet at 928 St. Paul, Gonzales, December 21, 1995, at 6:00 p.m. Information may be obtained from Connie Barfield or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879 or Fax: (210) 672-8345. TRD-9516225.

The Houston-Galveston Area Council Projects Review Committee will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, December 19, 1995, at 8:30 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627-3200. TRD-9516244.

The Houston-Galveston Area Council Projects Review Committee will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, December 19, 1995, at 8:30 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, (713) 627-3200. TRD-9516240.

The Houston-Galveston Area Council Board of Directors will meet at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, December 19, 1995, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9516243.

The Lower Neches Valley Authority Board of Directors will meet at 7850 Eastex Freeway, Beaumont, December 19, 1995, at 10:30 a.m. Information may be obtained from A. T. Hebert, Jr., P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9516223.

The North Plains Ground Water Conservation District Number Two Board (Special Meeting) met at 603 East First, Dumas, December 18, 1995, at 3:00 p.m. Information may be obtained from Richard S. Bowers, P.O. Box 795, Dumas, Texas 79029-0795, (806) 935-6401. TRD-9516222.

The Northeast Texas Rural Rail Transportation District (Emergency Meeting.) Board met at 2821 Washington Street, Administrative Conference Room, Greenville, December 14, 1995, at 5:00 p.m. (Reason for emergency: This special meeting agenda was required due to emergency or urgent public necessity that arose after the 72-hour time limit had passed.) Information may be obtained from Sue Ann Harting, P.O. Box 306, Commerce, Texas 75428-0306. TRD-9516236.

◆ ◆ ◆ Meetings Filed December 13, 1995

The Cash Water Supply Corporation Board of Directors met at the Corporation Office, FM 1564 at Highway 34, Greenville, December 18, 1995, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. TRD-9516297.

The Dallas Central Appraisal District Appraisal Review Board met at 2949 North Stemmons Freeway, Second Floor Community Room, Dallas, December 20, 1995, at 10:00 a.m. Information may be obtained from Rich Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9516290.

The Gray County Appraisal District Board of Directors met at 815 North Sumner, Pampa, December 18, 1995, at 7:30 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791. TRD-9516309.

The Harris County Appraisal District Appraisal Review Board will meet at 21001

North IH-35, Kyle, December 19, 1995, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522. TRD-9516301.

The LRGV Development Council (LRGVDC) Board of Directors will meet at the McAllen City Hall, 1300 West Houston Avenue, McAllen, December 21, 1995, at 12:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas 78504, (210) 682-3481. TRD-9516246.

The North Central Texas Council of Government Executive Board will meet at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, December 21, 1995, at 11:00 a.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9516302.

The Pecan Valley MHMR Region Board of Trustees will meet at 104 Pirate Drive, Granbury, December 20, 1995, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9516303.

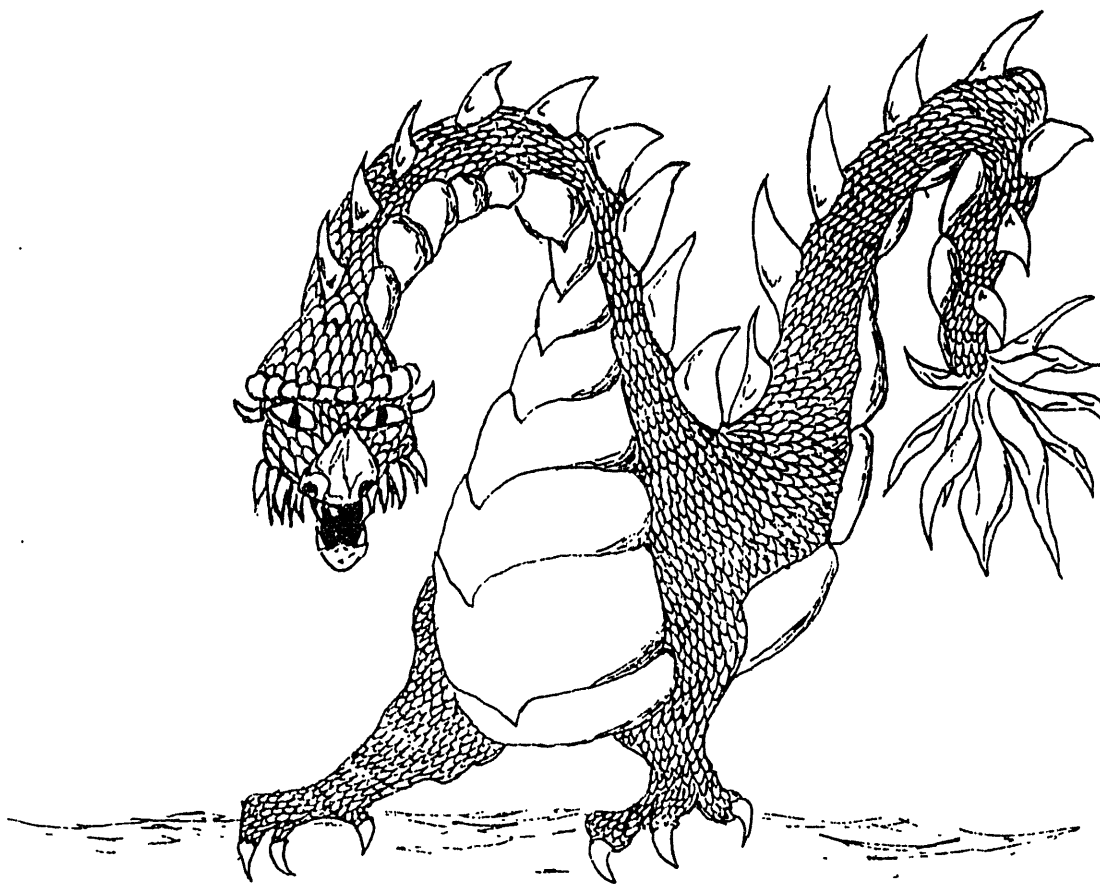
The Swisher County Appraisal District Appraisal Review Board will meet at 130 North Armstrong, Tulia, December 19, 1995, at 9:00 a.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118. TRD-9516298.

The Wood County Appraisal District Board of Directors will meet at 210 Clark Street, Quitman, December 21, 1995, at 1:30 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9516262.

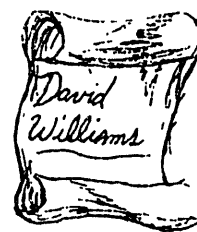
◆ ◆ ◆ Meetings Filed December 14, 1995

The Education Service Center, Region I Region I ESC Board will meet at 202 West Highway 83 (Holiday Inn), McAllen, December 19, 1995, at 7:00 p.m. Information may be obtained from Dr. Roberto Zamora, 1900 West Schunior, Edinburg, Texas 78539, (210) 383-5611. TRD-9516310.

The Harris County Appraisal District Board of Directors will meet at 2800 North Loop West, Eighth Floor, Houston, December 20, 1995, at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9516323.



Name: David Williams
Grade: 8
School: Buffalo Jr. High School, Buffalo ISD



IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission for the Blind Notice of Consultant Contract Award

The Texas Commission for the Blind (TCB), in accordance with provisions of Government Code, Chapter 2254, announces the awarding of a consultant contract to a consulting firm based in Dallas, Texas. The solicitation for proposals was published in the June 6, 1995, issue of the *Texas Register* (20 TexReg 4147).

The consultant will assist TCB in identifying and developing a comprehensive job description for each individual job classification. TCB has approximately 160 individual job descriptions. The consultant will:

- (1) review each job in the agency for the purpose of determining the number of job descriptions to be developed;
- (2) develop an individualized job description for each job which must include essential job functions and marginal job functions according to ADA standards;
- (3) develop a job description guide (a-how-to-guide) explaining how to write a job description, include ADA and EEO guidelines, how to determine essential and marginal job functions, and how to modify job descriptions for future use;
- (4) guide the agency in the development of mission statements for each unit/department that tie into the agency's mission and assure that all agency job descriptions have those mission statements included in the job descriptions;
- (5) develop potential performance measures and tools for each job agency description, i. e., "what measures does a supervisor use to evaluate the job performance of their subordinates, and;
- (6) provide training to agency managers and selected staff in implementing the completed job descriptions and mission of each unit/department and purpose of each position, how to use the job description guide and how to write job descriptions.

Eight proposals were received in response to the solicitation for proposals. The consultant awarded the contract

was David M. Griffith and Associates, Limited, 13601 Preston Road, Suite 400W, Dallas Texas 75240.

The total cost of this contract is \$33,140, with a beginning date of September 12, 1995, and an ending date of January 31, 1996.

Reports and documents required will be submitted upon completion of the project.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516253

Pat D. Westbrook
Executive Director
Texas Commission for the Blind

Filed: December 11, 1995

Comptroller of Public Accounts Correction of Error

The Comptroller of Public Accounts proposed an amendment to §9.403, concerning miscellaneous exemptions. The rule appeared in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10575).

Section 9.403, subsection (a) contained an error as submitted, it should show NO change. Subsection (a) should read: "(a) Each appraisal office shall prepare applications for the exemptions provided by the Tax Code, §§11.111, 11.17, 11.22, 11.23(a)-(k), 11.24, 11.271, 11.28, 11.29, and 11.30, and make copies of each form available to the public."

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer ⁽¹⁾/Agricultural/ Commercial ⁽²⁾ thru \$250,000</u>	<u>Commercial⁽²⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	12/18/95-12/24/95	18.00%	18.00%

(1) Credit for personal, family or household use. (2) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on December 11, 1995.

TRD-9516263 Lealle L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner

Filed: December 11, 1995

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Texas Education Agency
Correction of Error

The Texas Education Agency proposed new §§176.1-176.21 and §§176.101-176.122. The rules appeared in the November 21, 1995 issue of the *Texas Register* (20 TexReg 9638).

An error as submitted appeared on page 9638 in the preamble, in the second sentence of the first paragraph, the preamble states that the rules establish minimum standards of operation for driver training schools and for driving safety schools and course providers, including definitions, requirements, and procedures related to, among other topics, "the uniform certificate of course completion." The topic is not included in these rules. It is discussed, instead, in new 19 TAC §176.1102, which was proposed in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9363).

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Texas Department of Health
Correction of Error

The Texas Department of Health adopted an amendment to §29.601. The rule appeared in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9851).

Due to typographical error the effective date was published as "January 1, 1996" instead of "December 7, 1995".

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**Notice of Availability of Responses to
RFA Questions and Addenda Managed
Health Care Delivery Systems for
Travis, Bexar, Lubbock and Tarrant
County Service Areas**

The Texas Department of Health (TDH) published a notice in the November 17, 1995, issue of the *Texas Register* requesting applications from Health Maintenance Organizations (HMOs) for the provision of health care services to

certain Medicaid eligible individuals in pilot programs to be conducted in the Travis, Bexar, Lubbock, and Tarrant County service areas. The notice indicated that the specific requirements of the application process are detailed in the Request for Application (RFA) and identified how to obtain a copy of the RFA.

Sections 1.3 and 5.2 of the RFA indicate a timetable and submission requirements for Applicants to submit written questions regarding the RFA and indicate that a notice of the availability of TDH's responses to the questions and addenda to the RFA would be published in the December 19, 1995, issue of the *Texas Register*.

The purpose of this notice is to announce the availability of TDH's responses to applicants' questions and addenda regarding the RFA. A complete copy of TDH's written response to Applicants' questions and addenda to the RFA may be obtained in person or by submitting a written request to TDH at the following address: Bureau of Managed Care, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3168, Facsimile Transmission Number (512) 794-6818.

A copy of the responses and addenda will be sent by overnight delivery if the request is submitted by facsimile transmission at the number noted previously and the Federal Express billing number of the recipient is included in the request.

Issued in Austin, Texas, on December 12, 1995.

TRD-9516241 Susan K. Steeg
General Counsel, Office of General
Counsel
Texas Department of Health

Filed: December 12, 1995

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**Health and Human Services
Commission**
Public Notices

The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 95-05, Amendment Number 470.

The amendment revises the plan to withdraw the section of the plan regarding voucher payments which are reimbursed to Nursing Facilities (NFs) for certain costs of Hepatitis B inoculations for facility personnel. The amendment is effective January 1, 1995.

If additional information is needed, please contact Geri Bischoff, Texas Department of Human Services, at (512) 438-3171.

Issued in Austin, Texas, on December 7, 1995.

TRD-9515955 Michael D. McKinney, M.D.
Commissioner
Health and Human Services Commission

Filed: December 7, 1995

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The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 95-06, Amendment Number 471.

The amendment revises the plan to withdraw the section of the plan regarding voucher payments which are reimbursed to Nursing Facilities (NFs) for mandatory oxygen costs for NF residents. The amendment is effective January 1, 1995.

If additional information is needed, please contact Geri Bischoff, Texas Department of Human Services, at (512) 438-3171.

Issued in Austin, Texas, on December 7, 1995.

TRD-9515954 Michael D. McKinney, M.D.
Commissioner
Health and Human Services Commission

Filed: December 7, 1995

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The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 95-32, Amendment Number 497.

The amendment indicates that Michael D. McKenney, M.D. is officially authorized to submit State Plan amendments and serve in the capacity of State Medicaid Director. The amendment is effective September 14, 1995.

If additional information is needed, please contact Catherine Rossberg, Health and Human Services Commission, at (512) 502-3224.

Issued in Austin, Texas, on December 7, 1995.

TRD-9515958 Michael D. McKinney, M.D.
Commissioner
Health and Human Services Commission

Filed: December 7, 1995

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The Health and Human Services Commission State Medicaid Office has received approval from the Health Care Financing Administration to amend the Title XIX Medical Assistance Plan by Transmittal Number 95-31, Amendment Number 496.

The amendment clarifies the Plan to clearly reflect coverage of treatment services provided by optometrists, and deletes coverage of prior-authorized dental plans of treatment when the recipient loses Medicaid eligibility. The amendment is effective January 1, 1996.

If additional information is needed, please contact Genie DeKneef, Texas Department of Health, at (512) 338-6905.

Issued in Austin, Texas, on December 7, 1995.

TRD-9515957 Michael D. McKinney, M.D.
Commissioner
Health and Human Services Commission

Filed: December 7, 1995

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Texas Higher Education Coordinating Board

Criteria for State Consideration of School-to-Work Urban/Rural Opportunities Grant Applications

The U.S. Departments of Education and Labor have published the solicitation for School-to-Work Urban/Rural Opportunities Grants authorized under Title III of the School-to-Work Opportunities Act of 1994 (see *Federal Register*, Volume 60, Number 219, Tuesday, November 14, 1995, pages 57276-57301). The closing date for receipt of applications is January, 29, 1996, at 2:00 p.m. (Eastern time). Applications must be mailed to: U.S. Department of Education, Application Control Center, Attention: CFDA #84.278D, Washington, DC 20202-4725. All questions about the federal application criteria should be directed to Karen Clark, National School-to-Work Office, (202) 401-6222. Under the terms of the federal application, a local School-to-Work partnership must submit its application to the State for review and comment at least 30 days before submitting the application to the U.S. Department of Education. The local partnership must include the State's comments in the final application. In its review, the State must confirm that the plan submitted by the local partnership is in accordance with the approved State School-to-Work Opportunities Plan. References in the *Federal Register* to State comments may be found on pages 57277 and 57278. References in the *Federal Register* to collaboration with the State may be found on page 57281. The State will use the following six criteria to determine if the plan submitted by the local partnership is in accordance with the approved State School-to-Work Opportunities Plan. 1. Comprehensive plan to develop or expand career pathways, with participation of employers, in targeted priority (high-skill, high-wage) industries, including the sequences of services to be provided. 2. Plan for comprehensive career development strategies that will provide all youth in targeted schools with knowledge of possible careers, salary levels, and the educational requirements or pathways to those careers along with the decision making tools to choose a career option. 3. Ability to leverage in kind resources and a plan showing how the area will assume the cost of the system when federal funds are depleted. 4. Participation in the statewide student and adult learner follow-up system to measure results achieved by participants in career pathways and related State evaluation/feedback activities and meetings. 5. Development of a plan to address fully the needs of special targeted populations, including dropouts, youth with disabilities, welfare recipients, students with limited English proficiency, and students who are economically and educationally disadvantaged. 6. Extent to which the School-to-Work strategies or model can be replicated for dissemination statewide among other partnerships. A local partnership must submit two copies of its grant application to the State for review and comment by 1:00 p.m., Friday, December 29, 1995. Comments will be provided by mail to local partnerships during the week of January 15, 1996. The two

copies of the grant application must be delivered to: Mark Butler, Community and Technical Colleges Division, Texas Higher Education Coordinating Board, Building V, Room 5.320, 7745 Chevy Chase Drive, Austin, Texas 78752. Questions about the process for State review and comment only may be directed to Mark Butler at (512) 483-6250.

Issued in Austin, Texas, on December 7, 1995.

TRD-8516165

James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Filed: December 11, 1995

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**Texas Department of Housing and
Community Affairs**
Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the Department) at 507 Sabine Street, Ninth Floor, Room 910, Austin, Texas 78704 at 10:00 a.m. on January 4, 1996, with respect to two issues of variable rate demand multi-family housing revenue refunding bonds to be issued as follows by the Department: \$16,900,000 Texas Department of Housing and Community Affairs Variable Rate Demand Multi-Family Revenue Bonds (Carpenter-Oxford Development) Series 1996A (the "series 1996A Bonds") and \$17,500,000 Texas Department of Housing and Community Affairs Variable Rate Demand Multi-Family Revenue Refunding Bonds (Dallas-Oxford Development) Series 1996B (the "Series 1996B Bonds," and, together with the Series 1996A Bonds, the "Series 1996 Bonds").

The proceeds of the Series 1996A Bonds will be loaned to Carpenter-Oxford Associates Limited Partnership ("Carpenter-Oxford") to refund the outstanding principal amount of the Texas Housing Agency Adjustable Rate Demand Multi-Family Housing Revenue Bonds 1984 Series A (Carpenter-Oxford Development) (the "Series 1984A Bonds") all of which remain outstanding. The project financed with the proceeds of the Series 1984A Bonds and to be refinanced with the proceeds of the Series 1996A Bonds is a 368-unit apartment complex located at 7301-B Alma Drive, Plano, Texas 75025 (the "Series A Project"). Carpenter-Oxford is the original and current owner of the Series A Project.

The proceeds of the Series 1996B Bonds will be loaned to Dallas-Oxford Associates Limited Partnership ("Dallas-Oxford") to refund the outstanding principal amount of the Texas Housing Agency Adjustable Rate Demand Multi-Family Revenue Bonds 1984 Series B (Dallas-Oxford Development) (the "Series 1984B Bonds") all of which remain outstanding. The project financed with the proceeds of the Series 1984B Bonds and to be refinanced with the proceeds of the Series 1996B Bonds is a 372-unit apartment complex located at 12660 Jupiter Road, Dallas, Texas 75238 (the "Series B Project"). Dallas-Oxford is the original and current owner of the Series B Project.

All interested persons are invited to attend such public hearing to express their views with respect to the Series A Project and Series B Project and the issuance of the Series 1996 Bonds. Questions or requests for additional information may be directed to Mario Aguilar at the Texas Department of Housing and Community Affairs, 507 Sabine Street, Austin, Texas 78711, (512) 475-2121.

Persons who intend to appear at the hearing and express their views are invited to contact Mario Aguilar in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Mario Aguilar prior to the date scheduled for the hearing.

This notice is published and the previously described hearing is to be held in satisfaction of the requirements of the Internal Revenue Code of 1986, §147(f), as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Series 1996 Bonds.

Individuals who requires auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1 (800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on December 12, 1995.

TRD-9516259

Larry Paul Manley
Executive Director
Texas Department of Housing and
Community Affairs

Filed: December 13, 1995

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Texas Department of Human Services
Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following programs: Nursing Facilities, Swing Bed, Hospice-Nursing Facilities, and Bienvivir Waiver. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursements for medical assistance programs. The public hearing will be held on January 8, 1996 at 1:30 p.m. in the Public Hearing Room of the John H. Winters Center (701 West 51st Street, Austin, Texas, First Floor, East Tower, Room 125E). If you are unable to attend the hearing, but wish to comment on the reimbursements, written comments will be accepted if received by 5:00 p.m. on the day of the hearing. Please address written comments to the attention of Sonya Battle. Written comments may be mailed to the following address noted, delivered to the receptionist in the lobby of the John H. Winters Center, or faxed to (512) 438-3014. Interested parties may request to have mailed to them or pick up a briefing package concerning the proposed reimbursements on or after December 20, 1995 by contacting Sonya Battle, M/C W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sonya Battle (512) 438-4817 by January 2, 1996 so that appropriate arrangements can be made.

Issued in Austin, Texas, on December 12, 1995.

TRD-9516217

Nancy Murphy
Section Manager, Media and Policy
Services
Texas Department of Human Services

Filed: December 12, 1995

Texas Department of Insurance 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 incorporation in Texas of Harrison County Hospital Association (doing business under the assumed name of Marshall Memorial Hospital), a domestic third party administrator. The home office is Marshall, Texas.

Application for incorporation in Texas of Registered Plan Services Corporation (doing business under the assumed name of Plan Administrators, Inc.), a domestic third party administrator. The home office is Waco, Texas.

Application for admission to Texas of Dental Network of America, Inc., a foreign third party administrator. The home office is Dover, Delaware.

Application for incorporation in Texas of Southwestern Health Development Corporation, a domestic third party administrator. The home office is Abilene, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on December 13, 1995.

TRD-9516261 Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance

Filed: December 13, 1995

Texas Juvenile Probation Commission Secure Juvenile Facilities Construction Request

Pursuant to Texas Human Resources Code, §141.086, the Texas Juvenile Probation Commission invites proposals to allot funds to counties to develop secure facilities for juvenile offenders.

Description of Purpose. Counties will use the funds allotted to acquire, renovate, equip, and construct secure residential and non-residential facilities for juveniles who have been found to have engaged in delinquent conduct and been placed on probation by a juvenile court or committed to the care, custody and control of the Texas Youth Commission.

Person to be Contacted. Detailed specifications are contained in a request for proposal available December 12, 1995 from the Deputy Executive Director, First Floor, 2015 South IH-35, Austin, Texas between the hours of 8:00 a.m. and 5:00 p.m., Monday-Friday. For additional information, contact Keith Rudeseal, Director of Special Projects at (512) 912-2410.

Closing Date. Responses will be accepted only if actually received in writing in the Deputy Executive Director's office no later than 5:00 p.m. March 15, 1996. Proposals should be submitted with an original and five copies. FAX submissions will not be accepted. The Texas Juvenile Probation Commission reserves the right to reject any or all proposals.

Procedures for Selection. Applications will be reviewed and selected according to the description of the services to be provided, the completeness of the proposal, and the economics and efficiencies of the proposed construction. The Texas Juvenile Probation Commission has the sole discretion and reserves the right to cancel the request for proposals if it is considered in the best interest of the state to do so.

Issued in Austin, Texas, on December 12, 1995.

TRD-9516239 Vicki Wright
Executive Director
Texas Juvenile Probation Commission

Filed: December 12, 1995

Lower Colorado River Authority Public Notice

Pursuant to the requirements of the federal Environmental Protection Agency (EPA) Acid Rain Program (Program) (40 Code of Federal Regulation 72), the Lower Colorado River Authority (LCRA) and the City of Austin by agreement have selected Dudley Piland as the Designated Representative for the Fayette Power Project (also known as the "FPP" or the "Sam Seymour Power Plant"), located seven miles east of La Grange, Fayette County, Texas. Joe Bricker has been selected as the Alternate Designated Representative for FPP.

Dudley Piland also has been selected by LCRA to be the Designated Representative for the Sim Gideon Steam Plant, located four miles northeast of Bastrop, Bastrop County, Texas, and the Thomas C. Ferguson Power Plant, located seven miles west of Marble Falls, Llano County, Texas. William Thomas Higgins has been selected as the Alternate Designated Representative for the Sim Gideon Steam Plant, and Marion W. Nichols has been selected as the Alternate Designated Representative for the Thomas C. Ferguson Power Plant. These designated officials have certain responsibilities for compliance with the Program, including compliance with air quality monitoring regulations and the management and trading of sulfur dioxide allowances, which will be allocated by EPA for compliance with the Program. For more information, call 1-800-776-5272 for Mark Walker at Ext. 3378 or Joe Bentley at Ext. 3272.

Issued in Austin, Texas, on December 12, 1995.

TRD-9516242 Glen E. Taylor
General Counsel
Lower Colorado River Authority

Filed: December 12, 1995

Public Utility Commission of Texas Notices 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 Fiesta Mart Inc. in Houston, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for

Fiesta Mart Inc. pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15099.

The Application. Southwestern Bell Telephone Company is requesting approval of a 860-station addition to the existing PLEXAR-Custom service for Fiesta Mart Inc. The geographic service market for this specific service is the Houston, 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 December 12, 1995.

TRD-9516210 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1995

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 Southwestern Bell Corporation in San Antonio, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Southwestern Bell Corporation pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15098.

The Application. Southwestern Bell Telephone Company is requesting approval of a new PLEXAR-Custom service for Southwestern Bell Corporation. The geographic service market for this specific service is the San Antonio, 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 December 12, 1995.

TRD-9516211 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1995

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 Incarnate Word College in San Antonio, Texas.

Tariff Title and Number. Application of Southwestern Bell Telephone Company for PLEXAR-Custom Service for Incarnate Word College pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 15105.

The Application. Southwestern Bell Telephone Company is requesting approval of a 15-station addition to the

existing PLEXAR-Custom service for Incarnate Word College. The geographic service market for this specific service is the San Antonio, 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 December 12, 1995.

TRD-9516212 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1995

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Notice of Intent to File Pursuant to Substantive Rule §23.94

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 23.94 for approval of a decrease in Custom Calling Features monthly rates.

Tariff Title and Number: Application of Ganado Telephone Company, Inc. for a Rate Decrease in Custom Calling Features Pursuant to Public Utility Commission Substantive Rule 23.94. Tariff Control Number 15056.

The Application: Ganado Telephone Company, Inc. seeks approval to decrease the monthly rates charged to residence and business customers for Custom Calling Features. These features include, but are not limited to, Call Forwarding, Call Waiting, Three-Way Calling, and Speed Calling. Custom Calling Features are not available to public and semi-public coin telephone users, or with customer owned pay telephones.

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 December 12, 1995.

TRD-9516213 Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas

Filed: December 12, 1995

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Texas Workers Compensation Commission

Correction of Error

The Texas Workers' Compensation Commission adopted §120.2 and §120.3. The rules appeared in the November 21, 1995, issue of the *Texas Register* (20 TexReg 9698).

In subsection (h) on page 9702, there is an error as submitted. The "10, 000" should have a dollar sign (\$) preceding it, not a section symbol (§).