

# TEXAS REGISTER

## IN THIS ISSUE

Volume 19, Number 46 June 21, 1994

Page 4785-4844

### Office of the Governor

#### Appointments Made June 10, 1994

Crime Stoppers Advisory Council.....4795

Governor's Committee on People with Disabilities...4795

#### Proposed Sections

#### Texas Department of Agriculture

##### Enforcement Procedures

4 TAC §§2.1-2.6.....4797

##### Texas Agricultural Finance Authority: Loan Guaranty Program

4 TAC §28.7.....4799

#### Texas Department of Commerce

##### Rural Industrial Development Finance Plan

10 TAC §161.91.....4799

10 TAC §186.204.....4799

#### Railroad Commission of Texas

##### Transportation Division

16 TAC §5.613.....4800

16 TAC §5.617.....4800

16 TAC §5.619.....4801

16 TAC §5.622.....4801

16 TAC §5.623.....4801

##### Alternative Fuels Research and Education Division

16 TAC §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.155, 15.160, 15.165.....4802

##### Administration

16 TAC §20.1.....4805

Contents Continued Inside



The Texas Register is printed on recycled paper



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

Secretary of State  
Ronald Kirk

Director  
Dan Procter

Assistant Director  
Dee Wright

Circulation/Marketing  
Roberta Knight  
Jill S. Ledbetter

TAC Editor  
Dana Blanton

TAC Typographer  
Madeline Chrimer

Documents Section  
Supervisor  
Patty Webster

Document Editors  
Janice Allen  
Robert Macdonald

Open Meetings Clerk  
Jamie Alworth

Production Section  
Supervisor  
Ann Franklin

Production Editors/  
Typographers  
Carla Carter  
Roy Felpe  
Mimi Sanchez

*Texas Register*, ISSN 0362-4781, is published semi-weekly 100 times a year except March 11, July 22, November 11, and November 29, 1994. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 73701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy.

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

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

### How to Use the Texas Register

**Information Available:** The 10 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.

**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 19 (1994) is cited as follows: 19 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 "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 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*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

The *TAC* volumes are arranged into Titles (using

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

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

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

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

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

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

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE  
*Part 1. Texas Department of Human Services*  
40 TAC §3.704.....950, 1820

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

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

## **Texas Education Agency**

### **Curriculum**

19 TAC §75.62 ..... 4806

### **Adaptations for Special Populations**

19 TAC §89.331 ..... 4810

## **Polygraph Examiners Board**

### **Polygraph Examiner Internship**

22 TAC §391.3 ..... 4810

## **Texas Worker's Compensation Commission**

### **General Medical Benefits**

28 TAC §§133.200-133.205 ..... 4811

### **Adopted Sections**

## **Texas Department of Agriculture**

### **Pesticides**

4 TAC §§7.1, 7.4, 7.8, 7.10, 7.25, 7.26, 7.35 ..... 4813

### **Agricultural Hazard Communication Regulations**

4 TAC §§8.1-8.5, 8.7, 8.11 ..... 4814

## **Texas State Library and Archives Commission**

### **General Policies and Procedures**

13 TAC §§2.11, 2.51, 2.52 ..... 4814

## **Texas Commission on Human Rights**

### **General Provisions**

40 TAC §§321.1, 321.2, 321.6 ..... 4816

### **Commission**

40 TAC §§323.1-323.4 ..... 4817

### **Local Commissions**

40 TAC §§325.2, 325.3, 325.5 ..... 4817

### **Administrative Review**

40 TAC §327.1 ..... 4818

40 TAC §§327.2-327.14 ..... 4818

40 TAC §§327.2-327.13 ..... 4819

40 TAC §§327.21-327.31 ..... 4820

### **Judicial Action**

40 TAC §329.1 ..... 4823

## **Reports and Recordkeeping**

40 TAC §331.1 ..... 4823

## **Conformity**

40 TAC §333.1 ..... 4823

## **Open Meetings Sections**

Texas Department of Agriculture ..... 4825

Texas Appraiser Licensing and Certification Board ..... 4825

State Bar of Texas ..... 4826

Texas Bond Review Board ..... 4826

Texas State Board of Dental Examiners ..... 4826

Texas Education Agency (TEA) ..... 4826

Texas Department of Health ..... 4827

Department of Information Resources ..... 4827

Texas Juvenile Probation Commission ..... 4828

Texas Department of Licensing and Regulation ..... 4828

Texas National Guard Armory Board ..... 4828

Texas Natural Resource Conservation Commission ..... 4828

Public Utility Commission of Texas ..... 4828

Texas Department of Transportation ..... 4829

Texas Commission on Children and Youth ..... 4829

Regional Meetings ..... 4829

## **In Addition Sections**

## **Office of the Attorney General**

Notice of Public Hearing ..... 4833

## **Texas Cancer Council**

Notice of Invitation ..... 4833

## **Texas Education Agency**

Notice of Public Hearings ..... 4833

## **Texas Department of Health**

Grant Applications for Local EMS Projects ..... 4834

Notice of Emergency Cease and Desist Order ..... 4836

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation ..... 4836

## **Texas Department of Housing and Community Affairs**

Comments Related to the Proposed 1994 Final Statement ..... 4836

## **Texas Department of Human Services**

Public Hearing ..... 4840

## **Texas Department of Insurance**

Notice of Public Hearings ..... 4840

## **Texas Low-Level Radioactive Waste Disposal Authority**

Consultant Proposal Request ..... 4841

**Texas Natural Resource  
Conservation Commission**

Notice of Opportunity to Comment on Permitting Ac-  
tions.....4841

Request for Proposal.....4842

**Public Utility Commission of Texas**

Notice of Application.....4842

Notice of Intent to File Pursuant to Public Utility Com-  
mission Substantive Rule 23.27..... 4842

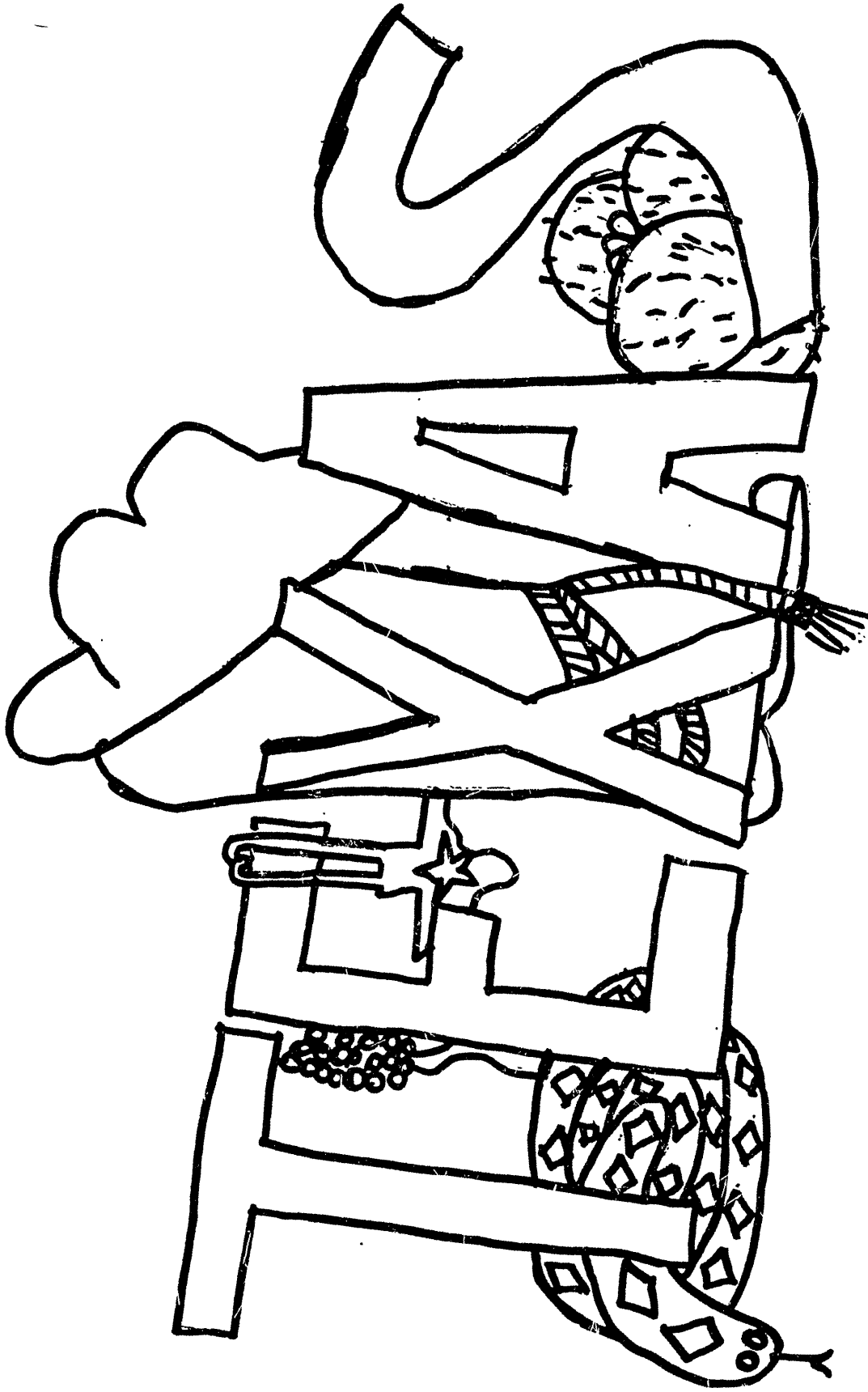
Order to Interexchange Telecommunications Carri-  
ers.....4843

Order to Local Exchange Companies..... 4843

Order to Providers of Competitive Exchange Ser-  
vice.....4844

**Office of Public Utility Counsel**

Charges for Copies of Public Records..... 4844



Name: Emily Reiman  
Grade: 5  
School: Woodrow Wilson Elementary, Denton ISD

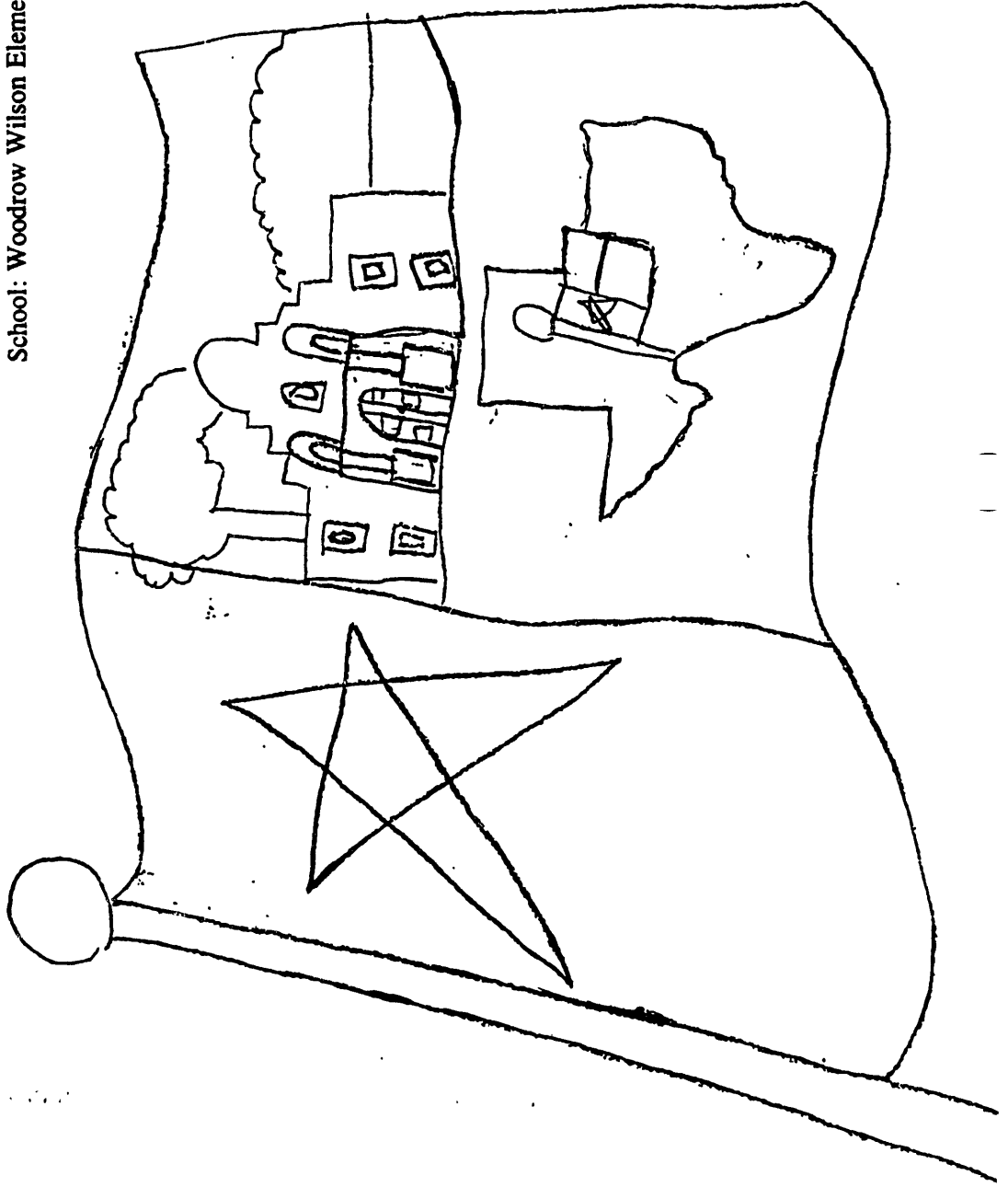
T E X A S

0 0 0 0

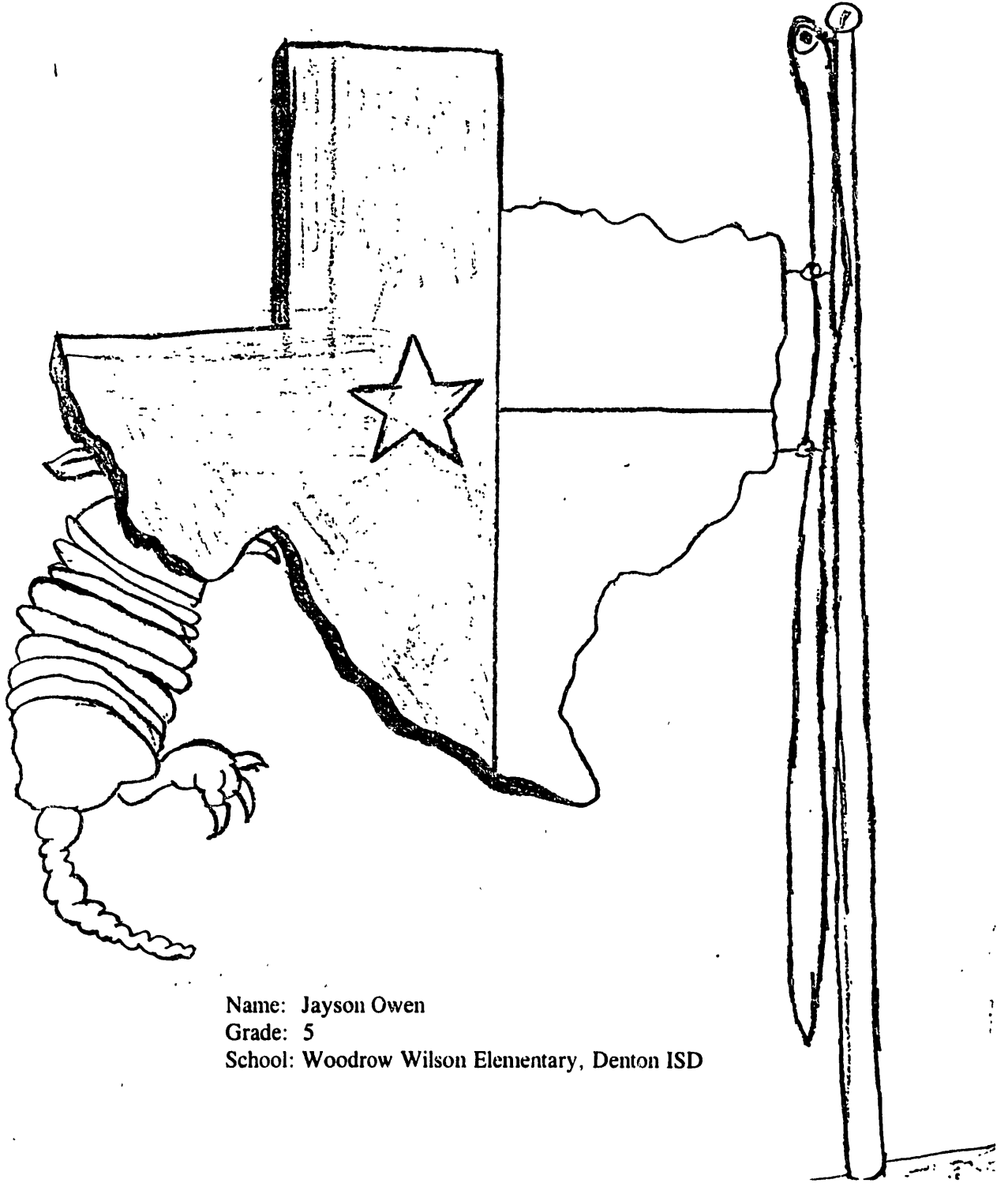
Name: Marli Stidham

Grade: 3

School: Woodrow Wilson Elementary, Denton ISD



# Lone Star State

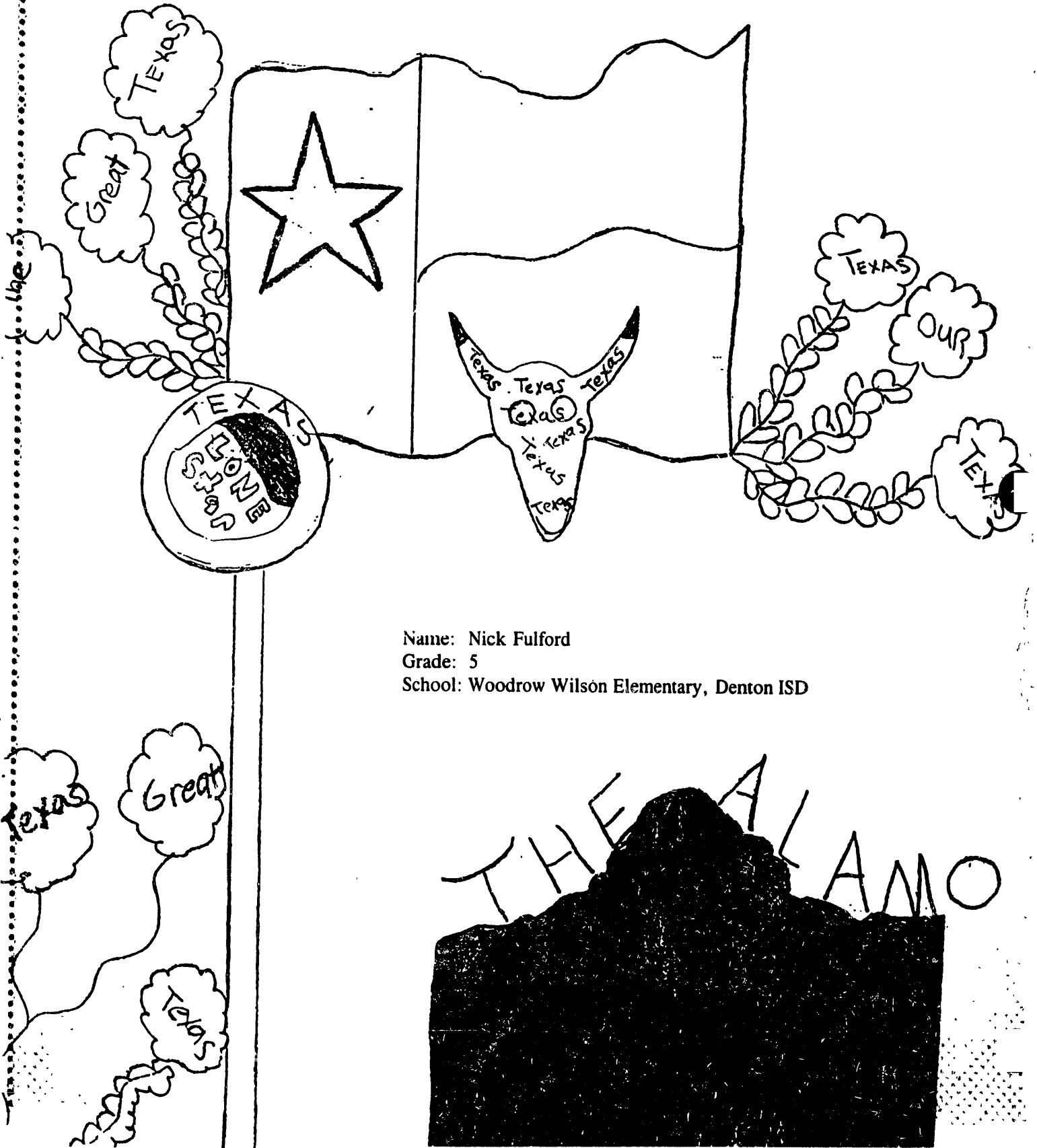


Name: Jayson Owen

Grade: 5

School: Woodrow Wilson Elementary, Denton ISD

# T E X A S

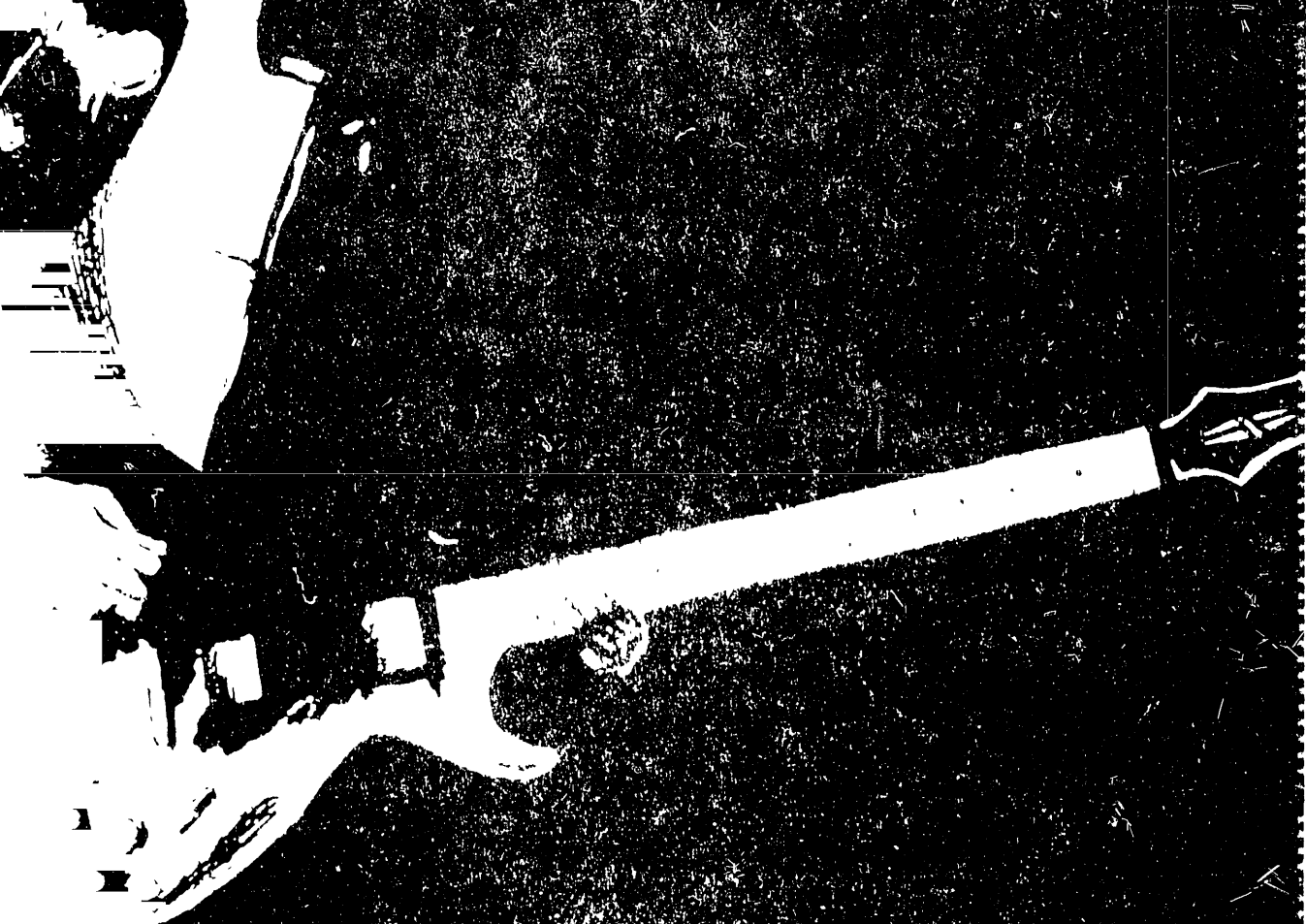


Name: Nick Fulford

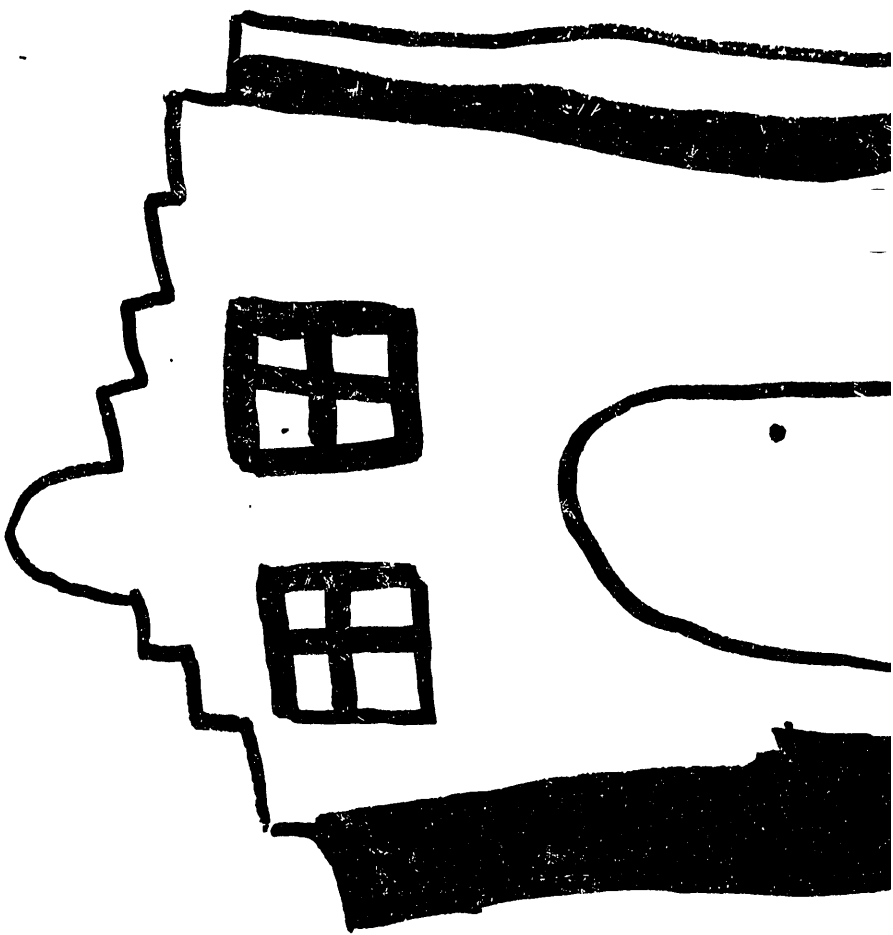
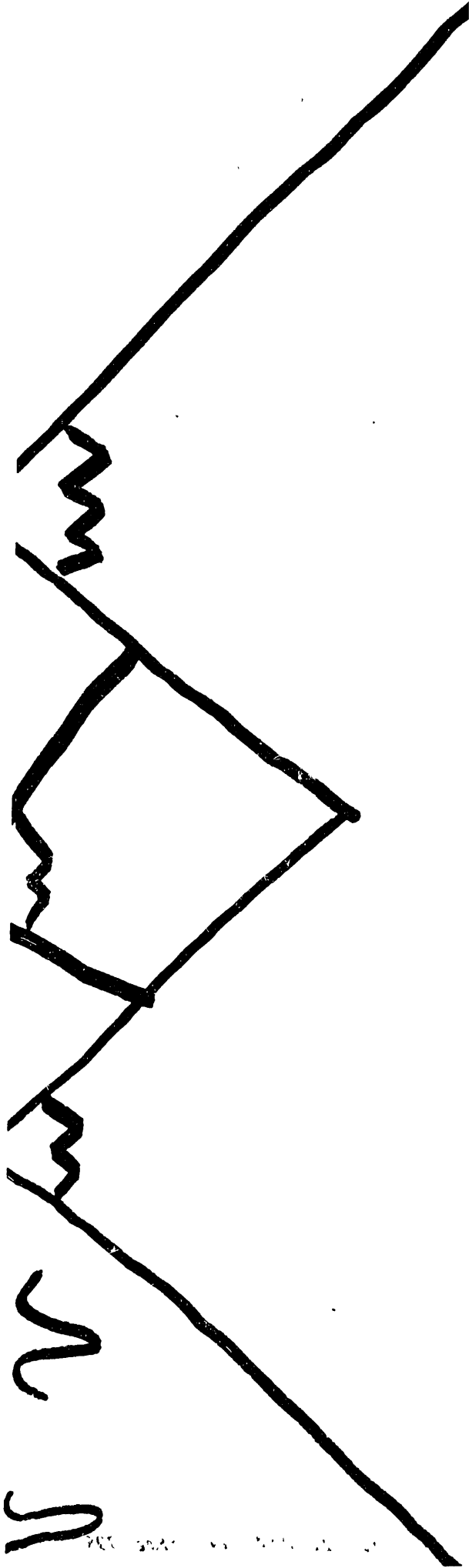
Grade: 5

School: Woodrow Wilson Elementary, Denton ISD





Rock  
Guitar  
Sells  
...  
1967-1970



# 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 June 10, 1994

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1995: Lieutenant Darrell W. Bush, Nederland Police Department, P.O. Box 1165, Nederland, Texas 77627. Lieutenant Bush will be replacing Donald Ray Geen of Beaumont whose term expired.

To be a member of the Crime Stoppers Advisory Council for a term to expire September 1, 1995: Kelton Todd Varner, Paris Police Department, 811 Bonham Street, Paris, Texas 75460. Officer Varner will be replacing Ramona Hibbetts of College Station whose term expired.

To be a member of the Governor's Committee on People with Disabilities for a

term to expire February 1, 1996: Cynthia Ann Ford, P.O. Box 1295, Marshall, Texas 75671. Ms. Ford is being reappointed.

To be a member of the Governor's Committee on People with Disabilities for a term to expire February 1, 1996: Eric Reed, 10111 Hedgerow, Apartment 38, El Paso, Texas 79925. Mr. Reed will be replacing Ralph Dean Rouse, Jr. of Dallas whose term expired.

To be a member of the Governor's Committee on People with Disabilities for a term to expire February 1, 1996: Shirley Ann Smith Pacetti, 2601 Bellefontaine A-301, Houston, Texas 77025. Ms. Pacetti is being reappointed.

To be a member of the Governor's Committee on People with Disabilities for a term to expire February 1, 1996: Joseph M.

Jarke, 6407 Fair Valley Trail, Austin, Texas 78749. Mr. Jarke is being reappointed.

To be a member of the Governor's Committee on People with Disabilities for a term to expire February 1, 1996: John D. Hardin, P.O. Box 301, Jasper, Texas 75951. Mr. Hardin will be replacing Peter Moore of Galveston whose term expired.

To be a member of the Governor's Committee on People with Disabilities for a term to expire February 1, 1996: Barry Green, Ed.D., 4801 Richmond Road, Tyler, Texas 75703. Dr. Green will be replacing Samuel L. Bean of Beaumont whose term expired.

Issued in Austin, Texas on June 13, 1994

TRD-9442256

Ann W. Richards  
Governor of Texas





Name: Rachel Simpson

Grade: 5

School: Woodrow Wilson Elementary, Denton 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 4. AGRICULTURE

### Part I. Texas Department of Agriculture

#### Chapter 2. Enforcement Procedures

##### Subchapter A. Field Citation Program

###### • 4 TAC §§2.1-2.6

The Texas Department of Agriculture (the department) proposes new §§2.1-2.6, concerning the establishment of a field citation program for assessment of administrative penalties for certain minor violations of the Texas Agriculture Code (the Code). The department may, in accordance with the Code, §12.020 and §76.1555, assess administrative penalties for certain violations of the Code. The new sections are proposed in order to establish procedures for the issuance of citations by the department's field inspectors for certain minor violations for which administrative penalties may be assessed. The new sections provide definitions to be used in Chapter 2; provide the procedure for issuance of a warning or a citation by an inspector and the contents of such a warning and citation; provide for the requesting of a hearing on a proposed penalty and/or the occurrence of a violation; set base penalties for certain violations of the Code; and provide for adjustment of such penalties.

Kevin Zaring, assistant general counsel, has determined that there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first five-year period the sections are in effect will be an estimated increase in revenue of \$87,500 per year. There will be no effect on local government as a result of enforcing or administering the sections. There will be fiscal implications to small and large businesses as a result of enforcing or administering the sections. These costs will depend on the number and nature of violations and resulting penalty assessed against a business.

Mr. Zaring also has determined that for each of the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections as proposed will be a more timely and efficient enforcement of pesticide and regulatory pro-

grams by the assessment of administrative penalties. There will be an anticipated economic cost to persons who are required to comply with the sections. The cost will depend on the number and nature of violations and resulting penalties assessed against an individual.

Comments on the proposal may be submitted to Esther Hajdar, Assistant General Counsel and Chief of Enforcement, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The new sections are proposed under the Texas Agriculture Code, §12.020 and §76.1555, which provides the department with the authority to seek and assess administrative penalties for violations of the Texas Agriculture Code, Chapters 13, 14, 61, 71, 75, 76, 101-102, and 132, and Texas Government Code, §2001.004, which requires that the department adopt rules setting forth the nature and requirement of all formal and informal procedures available.

The code affected by the new sections is the Texas Agriculture Code, §12.020 and §76.1555 and Chapters 13, 14, 61, 71, 75, 76, 101-102, and 132.

**§2.1 Purpose and Applicability.** The Texas Department of Agriculture (the department) has been authorized under the Texas Agriculture Code (the Code), §12.020 and §76.1555 to assess administrative penalties for certain violations of the Code. These rules are intended to provide procedures for issuance of citations by the department's field inspectors for certain minor violations for which administrative penalties may be assessed. These rules provide proposed administrative penalties that are applicable to certain minor violations of the Code, Chapters 75 and 76, and other departmental programs for which the department has authority to assess administrative penalties, including the weights and measures (the Code, Chapter 13), egg (the Code, Chapter 132), plant quality (the Code, Chapter 71), seed quality (the Code, Chapter 61), grain warehouse (the Code, Chapter 14), and agricultural protective act (the Code, Chapters 101-103) programs. In addition, in accordance with the provisions of

the Code, §76.1555, the department has published at (15 TexReg 6679), a penalty schedule for violations of the Code, Chapters 75 and 76. The penalties provided in these rules at §2.5 of this title (relating to Assessment of Administrative Penalties) are intended to amend the department's existing penalty schedule for violations of the Code, Chapters 75 and 76, only to the extent noted, and are not designed to affect amounts assessed in that penalty schedule for other violations.

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

Code The Texas Agriculture Code, as amended

Department The Texas Department of Agriculture

Inspector An employee of the department who conducts inspections and investigations

Person Unless otherwise provided herein, any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency

##### §2.3 Inspection

(a) Access Department inspectors shall have access to businesses and premises for purposes of inspections required for issuance of a license or permit and/or for purposes of determining compliance with the Texas Agriculture Code

(b) Finding of violation The department inspector shall conduct an inspection in accordance with the appropriate program procedures and document results of that inspection on the appropriate inspection report, attaching any supporting documentation. If a violation is found, the inspector shall determine whether a warning or citation should be issued, and if so, the amount of the penalty to be assessed in accordance with §2.5 of this title (relating to Assessment of Administrative Penalties).

**§2.4. Issuance of Warnings and Citations**

(a) General violations Except as provided in subsection (b) of this section, if a violation is, or violations are found by a department inspector in the course of conducting an inspection, the person in control of the business or premises may be issued a citation or, at the discretion of the inspector conducting the inspection, may be given a written warning. The written warning shall advise him or her that an alleged violation or violations have been found, that a reinspection may be made no sooner than 14 calendar days from the date the warning is issued to ensure that corrective action has been taken, and that failure to take corrective action may result in the assessment of an administrative penalty by the department. If, on reinspection, the inspector determines that the alleged violation or violations have not been remedied, the inspector shall issue a citation to the person in control of the business or premises.

(b) Repeat violators

(1) Repeat warnings If a person has had two warnings issued by the department on the same violation within a two year period, the finding of the same violation for the third time, shall result in the issuance of a citation.

(2) Repeat citations If a person has had two citations issued on the same violation within a two year period, the finding of the same violation for the third time shall result in the issuance of a citation. The amount of the penalty on a citation issued under this subsection shall be double the amount of the penalty provided for that violation in §2.5 of this title (relating to Assessment of Administrative Penalties). The finding of the same violation by a person for the fourth time shall result in the case being referred to the department's legal division for further action.

(c) Content of citation A citation issued under this section shall contain

(1) a brief summary of the alleged violation including a statement of facts which are the basis of the alleged violation;

(2) a statement of the amount of the penalty recommended, and

(3) a statement of the right of the person charged to a hearing on the occurrence of the violation or the amount of the penalty, or both the occurrence of the violation and the amount of the penalty.

(d) Request for hearing Not later than the 20th day after the date on which a citation is received, a person charged may accept the department's determination and pay the recommended penalty or make a written request for a hearing. If no timely response to the citation is made by the

person charged, the department shall set a hearing and give notice of the hearing. A hearing held under the provisions of this section shall be held in accordance with the Texas Agriculture Code, §12.020 and §76.1555, and Chapter 1 of this title (relating to General Practice and Procedure).

**§2.5 Assessment of Administrative Penalties**

(a) Authority In accordance with the Code §12.020 and §76.1555, the department may assess administrative penalties for certain violations of the Code or rules adopted thereunder. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessments.

(b) Criteria considered The department has considered the following criteria in setting the base penalties in subsection (c) of this section:

(1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public, and

(2) the economic damage to property or the environment caused by the violation.

(c) Penalty schedules The following base penalties shall be assessed for the violations described:

(1) Pesticide Programs Violation Description

(A) failure to obtain a herbicide spray permit-\$50,

(B) dealer failing to maintain information on sales of state-limited-use and restricted-use pesticides-\$50

(2) Regulatory Programs

(A) Weights and Measures Failure to register devices-100% of the registration fee/device

(B) Plant Quality

(i) Operating without a registration certificate-\$50 per location

(ii) Operating without a proper per registration certificate-\$50 per location

(C) Grain Warehouse Failure to maintain complete and correct records-\$50 per record

(D) Seed Quality. Failure to pay appropriate inspection fee-\$50 per lot.

(E) Agricultural Protective Act (APA)

(i) Operating without a license-\$50

(ii) Operating without a proper license-\$50.

(F) Egg Quality. Operating without a license-\$50

(3) Adjustments to penalties. The department may make adjustments to the base penalties listed in paragraphs (1) and (2) of this subsection for any one of the following factors.

(A) history of previous violations,

(B) the amount necessary to deter future violations,

(C) efforts to correct the violations, and

(D) any other matter that justice may require.

(4) Citations for more than \$500 In the event that an inspector determines that the total penalty for a violation or violations found exceeds \$500, the inspector shall not issue a citation. The documentation that serves as the basis for the violation or violations shall be forwarded to the department's enforcement program in Austin for further action.

**§2.6 Other Penalties** Where appropriate, the department may refer violations for local prosecution or civil action, such as where the administrative penalties available for the violation do not reflect the egregiousness or number of violations.

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 June 14, 1994.

TRD-9442364 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: July 22, 1994

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



## Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

### • 4 TAC §28.7

The Board of Directors of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture proposes an amendment to §28.7, concerning the level of equity required for loans to be made under the TAFA Loan Guaranty Program. Section 28.7 currently requires that an applicant must provide at least 20% of the total cost of a project for a start-up business. The amendment will increase the required equity to 25% for a start-up business. The amendment is proposed in order to ensure greater compliance with Texas Agriculture Code, §58.023(a), which requires that the board provide financial assistance to agricultural businesses that present a reasonable risk and have a sufficient likelihood of repayment.

Robert Kennedy, deputy assistant commissioner for finance and agribusiness development, 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. Kennedy 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 compliance with statutory authority by increasing the likelihood of repayment of financial assistance under the loan guaranty program and ensuring a reasonable risk. 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 Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposed amendment in the *Texas Register*.

The amendment is proposed under the Texas Agriculture Code, §58.021, which provides that the TAFA shall design and implement programs to provide financial assistance to eligible agricultural businesses; Texas Agriculture Code, §58.022, which provides the TAFA with the authority to adopt rules and procedures as necessary for the administration of its programs; and Texas Agriculture Code, §58.023, which provides the TAFA Board with the authority to adopt rules to establish criteria for eligibility of applicants and lenders under the TAFA Loan Guaranty Program.

The sections which will be affected by the amendment include the Code, Chapter 58

#### §28.7. Project Eligibility Requirements

(a) Projects. An applicant is eligible for assistance from the Texas Agricultural Finance Authority (the Authority) if the proposed project meets the following criteria:

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

(3) there is a reasonable level of equity in the project, which is determined on a case-by-case basis by the Authority and the lender; provided that the applicant must provide at least 10% of the total cost of the project for an existing business and at least 25 [20]% of the total costs of the project for a start-up;

(4)-(8) (No change.)

(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 June 14, 1994.

TRD-9442363 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Earliest possible date of adoption: July 22, 1994

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part V. Texas Department of Commerce

#### Chapter 161. Rural Industrial Development Finance Plan

#### Closing Procedures

### • 10 TAC §161.91

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

The Department of Commerce proposes the repeal of §161.91 concerning Instruments Needed for Closing, of the Rural Industrial Development Finance Plan Rules. The repeal is necessary, because the Texas Department of Commerce no longer has statutory authority to administer the Rural Industrial Development Finance Plan program. Repeal of the rule may alleviate confusion on the part of public with regard to the program and rules.

Renee Mauzy, staff attorney, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

The public benefit of the repeal is that confusion may be eliminated through the repeal of a rule which no longer has any viability due to the Texas Department of Commerce no longer having statutory authority to administer the program to which the rule applied. There will be no effect on small businesses. There

is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Written comments on the proposed repeal should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 316 Congress Avenue, Suite 1130, Austin, Texas 78701, within 30 days of the publication of the proposed repeal.

The repeal is proposed under the authority of the Texas Government Code, §5481.021(a)(1), which authorizes the Texas Department of Commerce to promulgate rules and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993), which prescribes the standards for agency rulemakings.

#### §161.91. Instruments Needed for Closing.

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 June 13, 1994.

TRD-9442395 Deborah C. Kestrin  
Executive Director  
Texas Department of  
Commerce

Earliest possible date of adoption: July 22, 1994

For further information, please call: (512) 320-9401

### Subchapter B. Methodologies for Determining Certain Variables

### • 10 TAC §186.204

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

The Department of Commerce proposes the repeal of §186.204 of the Smart Jobs Fund Program rules. The repeal is necessary, because the Texas Department of Commerce does not need to have information relating to the "positive growth to replacement ratio" in the rules implementing the Smart Jobs Fund Program Act in order to administer the program. Repeal of this section may alleviate confusion on the part of some members of the public.

Richard Hall, director of Smart Jobs Fund Program, has determined that there will be no fiscal implications on state or local governments for the first five-year period that the repeal is in effect. He has also determined that there will be no impact on small businesses. No economic cost is anticipated to persons from the repeal of §186.204.

Written comments on the proposed repeal should be submitted to Renee Mauzy, Staff Attorney, Texas Department of Commerce, 816 Congress Avenue, Suite 1180, Austin,

Texas 78701, within 30 days of the publication of the proposed repeal.

The repeal is proposed under the authority of the Texas Government Code, §§481.0044(a), 481.005(d) and 481.153, and the Administrative Procedure Act, Subchapter B, Rulemaking (Vernon's Session Laws 1993).

*§186.204. Positive Growth to Replacement Ratio.*

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 June 13, 1994.

TRD-9442396

Deborah C. Kastrin  
Executive Director  
Texas Department of  
Commerce

Earliest possible date of adoption: July 22, 1994

For further information, please call: (512) 320-9401

◆ ◆ ◆  
**TITLE 16. ECONOMIC REGULATIONS**

**Part I. Railroad Commission of Texas**

**Chapter 5. Transportation Division**

**Subchapter AA. Rail Safety**

• **16 TAC §5.613**

The Railroad Commission of Texas proposes an amendment to §5.613, concerning railroad safety requirements. The amendment updates references to Title 49 of the Code of Federal Regulations and applicable state law so that the appropriate, current federal and state safety regulations will become the minimum railroad safety requirements of the Railroad Commission of Texas, governing all railroads operating within the State of Texas.

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing the section.

Carrie L. McLarty, hearings examiner, Legal Division, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of administering the section will be to establish and delineate minimum railroad safety requirements, equal to the federal railroad safety regulations, thus notifying the public and railroads of the minimum railroad safety standards that will govern railroads in Texas. There will be no effect on small businesses as a result of enforcing the section. There is no anticipated cost of compliance for persons who are required to comply with the proposed section.

Comments may be submitted to Carrie L. McLarty, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed pursuant to Texas Civil Statutes, Article 6448a (Vernon Supplement 1994), which authorize the commission to adopt regulations to ensure railroad safety.

The following is the statute affected by this rule: §5.613-Texas Civil Statutes, Article 6448a (Vernon Supplement 1994).

*§5.613. Railroad Safety Requirements.*

(a) Governing statutes. Railroads operating within the State of Texas are subject to safety requirements contained in or adopted pursuant to the following statutes:

(1) the Federal Railroad Safety Act of 1970, as amended (45 United States Code, §§421, 431-441);

(2) the Safety Appliance Acts, as amended (45 United States Code, §§1-16);

(3) the Locomotive Inspection Act, as amended (45 United States Code, §§22-34);

(4) the Signal Inspection Act, as amended (49 United States Code, §26);

(5) the Accident Reports Act, as amended (45 United States Code, §§38-42);

(6) the Hours of Service Act, as amended (45 United States Code, §§61-64b); [and]

(7) the Hazardous Materials Transportation Act, as amended (49 United States Code, §1801 et seq) [Texas Civil Statutes, Article 6444, et seq];

(8) Texas Civil Statutes, Article 6448a; and

(9) Texas Civil Statutes, Article 6492a.

(b) Federal regulations adopted by reference. The following federal railroad safety regulations[, as they exist on September 30, 1985,] are hereby adopted as the minimum railroad safety requirements of the Railroad Commission of Texas, and all railroads operating within the State of Texas shall be governed thereby:

(1) track safety standards codified at 49 Code of Federal Regulations, Part 213;

(2) rules, standards, and instructions for railroad signal systems codified at 49 Code of Federal Regulations, Part 236;

(3) freight car safety standards codified at 49 Code of Federal Regulations, Part 215;

(4) safety glazing standards codified at 49 Code of Federal Regulations, Part 223;

(5) locomotive safety standards codified at 49 Code of Federal Regulations, Part 229;

(6) safety appliance standards codified at 49 Code of Federal Regulations, Part 231;

(7) power brake standards codified at 49 Code of Federal Regulations, Part 232; [and]

(8) federal operating practice regulations codified at 49 Code of Federal Regulations, Parts 217, 218, 220, 221, 225, and 228;

(9) transportation workplace drug testing programs codified at 49 Code of Federal Regulations, Part 40;

(10) bridge-worker safety standards codified at 49 Code of Federal Regulations, Part 214;

(11) control of alcohol and drug use codified at 49 Code of Federal Regulations, Part 219;

(12) qualification and certification of locomotive engineers codified at 49 Code of Federal Regulations, Part 240; and

(13) hazardous materials regulations codified at 49 Code of Federal Regulations, Parts 171-179.

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 June 14, 1994.

TRD-9442387

Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas-Section  
Railroad Commission of  
Texas

Earliest possible date of adoption: July 22, 1994

For further information, please call: (512) 463-7095

◆ ◆ ◆  
• **16 TAC §5.617**

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

The Railroad Commission of Texas proposes the repeal of §5.617, concerning safety equipment. The repeal is proposed pursuant to *Missouri Pacific Railroad Company vs. Railroad Commission of Texas*, 833 F.2d 570 (5th Cir. 1987), which held that the rule's requirement that first aid kits and fire extinguishers be maintained on a locomotive is preempted



by federal law. In addition, since cabooses are not generally utilized and are no longer required, the commission desires to repeal the entire rule.

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Carrie L. McLarty, hearings examiner, Legal Division, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the repeal will be to eliminate a rule which has been held partially invalid and which is obsolete, making the railroad rules easier for the public and the railroads to follow and apply. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments may be submitted to Carrie L. McLarty, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed pursuant to Texas Civil Statutes, Article 6448a (Vernon Supplement 1994), which authorize the commission to adopt regulations to ensure railroad safety.

The following is the statute affected by this rule: §5.617-Texas Civil Statutes, Article 6448a (Vernon Supplement 1994)

#### §5.617. Safety Equipment.

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 June 14, 1994

TRD-9442388      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas-Section  
Railroad Commission of  
Texas

Earliest possible date of adoption. July 22, 1994

For further information, please call: (512) 463-7095

#### • 16 TAC §5.619

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

The Railroad Commission of Texas proposes the repeal of §5.619, concerning walkways requirements. The repeal is proposed pursuant to Missouri Pacific Railroad Company vs Railroad Commission of Texas, 948 F2d 179 (5th Cir. 1991), which held that state

regulation of walkways is preempted by federal law.

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Carrie L. McLarty, hearings examiner, Legal Division, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the repeal will be to eliminate a rule which has been held invalid, making the railroad rules easier for the public and the railroads to follow and apply. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments may be submitted to Carrie L. McLarty, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days following publication in the *Texas Register*

The repeal is proposed pursuant to Texas Revised Statutes, Article 6448a (Vernon Supplement 1994), which authorize the commission to adopt regulations to ensure railroad safety.

The following is the statute affected by this rule: §5.619-Texas Revised Statutes, Article 6448a (Vernon Supplement 1994)

#### §5.619. Walkways Requirements

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

Issued in Austin, Texas, on June 14, 1994

TRD-9442389      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas-Section  
Railroad Commission of  
Texas

Earliest possible date of adoption July 22, 1994

For further information, please call (512) 463-7095

#### • 16 TAC §5.622

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

The Railroad Commission of Texas proposes the repeal of §5.622, concerning requirement of cabooses on trains operating in Texas. The repeal is proposed pursuant to Missouri Pacific Railroad Company vs. Railroad Commission of Texas, 850 F2d 264 (5th Cir. 1988), which held that the state is preempted from requiring cabooses on trains in Texas.

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five year period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Carrie L. McLarty, hearings examiner, Legal Division, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the repeal will be to eliminate a rule which has been held invalid, making the railroad rules easier for the public and the railroads to follow and apply. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments may be submitted to Carrie L. McLarty, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed pursuant to Texas Civil Statutes, Article 6448a (Vernon Supplement 1994), which authorize the commission to adopt regulations to ensure railroad safety.

The following is the statute affected by this rule: §5.622-Texas Civil Statutes, Article 6448a (Vernon Supplement 1994).

#### §5.622. Requirement of Cabooses on Trains operating in Texas.

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 June 14, 1994.

TRD-9442390      Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas-Section  
Railroad Commission of  
Texas

Earliest possible date of adoption July 22, 1994

For further information, please call. (512) 463-7095

#### • 16 TAC §5.623

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

The Railroad Commission of Texas proposes the repeal of §5.623, concerning hazardous materials regulations adopted by reference. The repeal is proposed because the federal regulations are being adopted by reference in an amendment to §5.613, relating to railroad safety requirements.

Jackye Greenlee, assistant director-central operations, Transportation/Gas Utilities Division, has determined that for the first five year

period the proposed section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing the repeal.

Carrie L. McLarty, hearings examiner, Legal Division, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of administering the repeal will be to place all references to federal safety rules within one rule, making the railroad rules easier for the public and the railroads to follow and apply. There will be no effect on small businesses as a result of enforcing the repeal. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments may be submitted to Carrie L. McLarty, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 30 days following publication in the *Texas Register*.

The repeal is proposed pursuant to Texas Civil Statutes, Article 6448a (Vernon Supplement 1994), which authorize the commission to adopt regulations to ensure railroad safety.

The following is the statute affected by this rule: §5.623-Texas Civil Statutes, Article 6448a (Vernon Supplement 1994).

#### §5.623. Hazardous Materials Regulations Adopted by Reference.

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 June 14, 1994.

TRD-9442391 Mary Ross McDonald  
Assistant Director, Legal  
Division-Gas Utilities/LP  
Gas-Section  
Railroad Commission of  
Texas

Earliest possible date of adoption: July 22, 1994

For further information, please call: (512) 463-7095

## Chapter 15. Alternative Fuels Research and Education Division

### Propane Water Heater Rebate Program

- 16 TAC §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.155, 15.160, 15.165

The Railroad Commission of Texas proposes new §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.155, 15.160, and 15.165, concerning the establishment of a two-year, \$1 million pilot consumer rebate program for water heaters fueled by propane (liquefied

petroleum gas; LPG). The program implements House Bill 2822, 73rd legislature, 1993. The purpose of these sections is to establish for purchasers of propane water heaters a consumer rebate program that achieves energy conservation and efficiency and improves the quality of air in this state. These sections outline the commission's mechanisms for implementing and administering this program.

Texas Natural Resources Code §113.2435(a) and §113.2435(b), authorize the commission to establish consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state. Texas Natural Resources Code, §113.2435(c)(5), limits the proportion of the Alternative Fuels Research and Education Fund usable for the rebate program to not more than 25% of the funds available. Since annual revenue available from LPG fees to the Alternative Fuels Research and Education fund is now approximately \$2 million, it is anticipated that approximately \$500,000 will be available for use during each year of the two-year pilot LPG water heater rebate program. The Alternative Fuels Research and Education Fund consists of loading rack fees paid by the propane industry and includes no general revenue or other taxpayer funds.

Participation in the program is voluntary, and rebate payments are entirely at the discretion of the Railroad Commission of Texas. No person has a legal entitlement or other right to a rebate under this program.

Texas Natural Resources Code, §113.2435(c)(1), requires the commission to set rebate levels for eligible equipment such that the rebates achieve an amount of public good comparable to the rebate amount. An LPG water heater conserves enough energy and increases energy efficiency sufficiently to reduce a family's energy cost by approximately \$75 to \$300 a year compared to the cost of operating an electric water heater, with typical energy savings in the range of \$100 to \$170 a year. Actual savings experienced by individual consumers will depend on the capacity of the water heater, the amount of hot water required, water heater efficiency, and other factors. These savings are based on reasonable estimates of water use, heater efficiency, and energy cost reported in published reports from the American Society of Heating, Refrigerating and Air Conditioning Engineers (ASHRAE), the United States Department of Energy, and the American Gas Association. In addition, some market information was gathered and used in the estimates. Commission engineering staff is prepared to meet with interested parties to review in further detail the methodology, source materials, and assumptions underlying the cost, efficiency, and emissions estimates made in this preamble.

The commission expects to set the initial rebate level at \$200 per water heater. This amount would benefit a typical rebate recipient by providing energy savings approximately equal in value to the amount of the rebate within two years, and savings of

\$1,100 to \$1,870 over the expected 11-year useful life of the water heater. These lifetime costs are not discounted and are simply the sum of the yearly savings. The life of the water heater is estimated from information from the natural gas industry and assume propane water heaters have a similar useful life. Actual water heater life may be longer or shorter depending on water quality and usage conditions.

The program will offer substantial air quality benefits by reducing emissions of oxides of nitrogen (NO<sub>x</sub>), carbon monoxide, sulfur dioxide, and carbon dioxide, the main "greenhouse" gas. Compared to a typical electric hot water heater with a 0.93 energy efficiency factor, a propane hot water heater with a 0.58 energy efficiency factor reduces NO<sub>x</sub> emissions by approximately 90%, CO emissions by approximately 70%, sulfur dioxide by 99%, and carbon dioxide by approximately 60%. These air pollution reduction estimates represent the difference between emissions from power plants utilizing a typical fuel mix and emissions expected from the combustion of propane in a properly adjusted water heater in good condition, as listed in United States Environmental Protection Agency publications on air pollution. The water heater energy factors were selected as representative of high efficiency propane water heaters and good quality electric water heaters. Commission technical staff is available to discuss these estimates in further detail with interested parties.

If the rebate program resulted in the replacement of 2,500 such electric water heaters with propane water heaters per year, the result for each year the program was in operation would be to reduce NO<sub>x</sub> emissions by about 130,000 pounds, carbon monoxide emissions by about 3,600 pounds, sulfur dioxide emissions by about 250,000 pounds, and carbon dioxide emissions by about 16 million pounds. Total emissions reductions were determined by multiplying the number of water heaters by the emissions reductions from each individual water heater.

Under the program as proposed, the commission may change the rebate amount and minimum water heater efficiency requirements. Consumers may assign their rebates to participating propane dealers. Rebates, whether assigned or not, will be paid at whatever rebate amount is in effect at the time the application is approved.

Dan Kelly, director, Alternative Fuels Research and Education Division, has determined that the estimated cost to state government will be \$500,000 from the Alternative Fuels Research and Education Fund for each year of the two years that the new sections are in effect. Actual cost, including the cost of commission employees' time spent in preparation, administration, inspections, and enforcement of the program, will not exceed 25% of funds available in the Alternative Fuels Research and Education Fund during each year of the proposed two-year pilot program. There will be no fiscal implications for state government thereafter, since the program will expire after two years unless reauthorized by the commission through an amendment to this rule. If the

commission reauthorized the program at the same level, the annual cost to state government would be approximately \$500,000 from the Alternative Fuels Research and Education Fund, for a total cost of approximately \$2.5 million to state government for the first five-year period the program is in effect

Mr. Kelly also has determined that income from the program would offset part of the cost each program year. The Alternative Fuels Research and Education Fund receives approximately \$0.005 (1/2 cent) per gallon on odorized propane sold in Texas. Over their expected lifetime of 11 years, the 2,500 propane water heaters anticipated to be rebated through each year of this program will consume eight million gallons of propane. At \$0.005 per gallon, this consumption would generate \$40,000 of fee revenue to the Fund.

Mr. Kelly has determined that there will be no fiscal implications for local governments as a result of enforcing or administering the sections. Mr. Kelly has determined that there will be fiscal implications for certain small businesses that choose to participate in the voluntary program. Participating propane dealers will be required to process applications and perform safety inspections. The extent to which the cost of performing these services will be offset by increased propane sales and cost-recovery practices cannot be determined.

Mr. Kelly also has determined that for the first five years the sections as proposed are in effect, the first year public benefit anticipated as a result will be increased energy conservation, reduced air pollution, and an estimated \$350,000 in energy cost savings to consumers, assuming average annual savings of \$140 per customer. Individual consumers' savings may vary. For the second year the sections are in effect the public benefit will be the same, except that consumers will save \$700,000 in energy costs (i.e., \$350,000 in additional savings for Year 1 rebate recipients, plus \$350,000 in savings for Year 2 rebate recipients). Over the 11-year expected life of the water heaters, consumers will save a total of \$7.7 million.

If the commission reauthorized the program at the same level of funding, annual energy cost savings would be \$1.1 million the third year, \$1.4 million the fourth year and \$1.8 million the fifth year, for cumulative energy cost savings to consumers of \$5.4 million to consumers for the first five-year period the program is in effect.

There will be no anticipated economic cost to persons who would be required to comply with the sections as proposed, since participation is voluntary.

Comments on the proposal may be submitted to Dan Kelly, Director, Alternative Fuels Research and Education Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Comments will be accepted for 15 days after publication in the *Texas Register*.

The new sections are proposed under the Texas Natural Resources Code, §§113.2435(a) and §113.2435(b), which authorize the commission to adopt rules relating to

the establishment of consumer rebate programs for purchasers of appliances and equipment fueled by LPG or other environmentally beneficial alternative fuels for the purpose of achieving energy conservation and efficiency and improving the quality of air in this state. Texas Natural Resources Code, §113.243(c)(6), authorizes the commission to use money in the Alternative Fuels Research and Education Fund to pay the direct and indirect cost of such programs. Texas Natural Resources Code, §§113.248, 113.249, and 113.250, prescribe civil and criminal penalties and establish an enforcement mechanism for violations of the Texas Natural Resources Code or commission rules.

The following is the statute, article, or code affected by the proposed new sections §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.155, and 15.165 Texas Natural Resources Code, §§113.2435 and 113.243(c)(6) Section 15.160, Texas Natural Resources Code, §§113.248, 113.249, and 113.250.

**§15.101 Purpose.** The purpose of §§15.101-15.165 of this chapter (relating to the Alternative Fuels Research and Education Division) is to establish for purchasers of propane water heaters a consumer rebate program that achieves energy conservation and efficiency and improves the quality of air in this state. These sections outline the commission's mechanisms for determining the eligibility of equipment and consumer applicants, application requirements, administrative procedures, rebate amounts and adjustments, terms of compliance, penalties for violations, and program termination.

**§15.105 Definitions.** The following words and terms, when used in §15.101-15.165 of this chapter (relating to the Alternative Fuels Research and Education Division), shall have the following meanings, unless the context clearly indicates otherwise:

**Applicant** - A consumer who has submitted a complete and timely application.

**Application** - That set of forms prescribed by the commission for the purpose of applying for and/or assigning a rebate and participating in the rebate program as a propane dealer, including all required supporting documentation.

**Available funds** - Money available in the Alternative Fuels Research and Education Fund in the state treasury, consisting of fees charged under Texas Natural Resources Code, §113, Subchapter I, the penalties for the late payment of the fee charged under Texas Natural Resources Code, §113, Subchapter I, and interest earned on amounts in the Fund.

**Commission** - The Railroad Commission of Texas.

**Consumer** - A person who is the legal owner of eligible equipment installed in an eligible installation.

**Delivery date** - The date of postmark of a mailed application or the date that a hand-delivered application is stamped in at the Austin offices of the division.

**Division** - The Alternative Fuels Research and Education Division of the Railroad Commission of Texas.

**Eligible equipment** - A propane-fueled water heater, either a storage-type water heater rated by its manufacturer at not less than 30 gallons water capacity or an instantaneous-type water heater rated by its manufacturer at not less than 50,000 BTU/hour input, that meets the applicable standards of the federal Energy Policy and Conservation Act, as amended (42 United States Code §6291 et seq.) and regulations adopted thereunder (10 Code of Federal Regulation §430.32(d)), is approved and listed by the American Gas Association, and is listed in the most recent edition of the Gas Appliance Manufacturers Association's (GAMA) "Consumer Directory of Certified Efficiency Ratings for Residential Heating and Water Heating Equipment."

**Eligible installation** - An installation of eligible equipment that takes place on real property owned by the applicant and located in this state and that occurs no earlier than the effective date of this rule and no later than the date of termination of the program established under this rule.

**Person** - An individual, sole proprietorship, partnership, corporation or other legal entity.

**Program year** - Each of two consecutive one-year periods beginning on the effective date of §§15.101-15.165 of this chapter (relating to the Alternative Fuels Research and Education Division) and ending on the same month and day two years afterwards.

**Propane Liquefied petroleum gas (LPG)** - as that term is defined in Texas Natural Resources Code, Chapter 113.

**Propane dealer** - A person who

(A) has been issued a current Category E license from the LP-Gas Division of the commission, or is an active company representative or operations supervisor on file with the LP-Gas Division, and

(B) operates or manages a retail business, including any branch outlet or outlets, delivering odorized propane to consumers, and

(C) has completed and submitted the form prescribed by the commission for dealer participation in the rebate program, and

(D) is a regular supplier or a potential regular supplier of propane, to an applicant.

Safety inspection - An on-site inspection, including any necessary pressure tests, of an operating eligible installation by a propane dealer or a propane dealer's designated agent, for the purpose of verifying that the LP-gas system, including all equipment, is or was installed in compliance with the propane water heater rebate program rules and with all applicable commission LP-Gas safety rules and is in safe operating condition.

**§15.110. Establishment, Duration** The rebate program is hereby established on the effective date of §§15.101-15.165 of this chapter (relating to the Alternative Fuels Research and Education Division). The commission may terminate this rebate program at any time. The program shall terminate two years after the effective date of this rule unless the commission amends this section to continue it in effect past that date.

**§15.115 Availability of Funds** The commission may not use more than 25% of the funds available in the Alternative Fuels Research and Education Fund for purposes of consumer incentive or rebate programs. If funds become unavailable during a program year, the commission may carry over applications until the next program year.

#### **§15.120 Eligibility**

(a) To be eligible for a rebate under this program, a consumer must document, using forms prescribed by the commission for the purpose, that

(1) an eligible installation has been performed,

(2) the eligible installation for which application is made either replaced an existing electric water heater or occurred in new construction, and

(3) a safety inspection of the eligible installation has been performed.

(b) Installations performed on motor vehicles, travel trailers, mobile homes or manufactured homes that are not in permanent residential or commercial use in this state are not eligible for rebates under this program.

(c) No more than one rebate may be paid for each eligible installation.

(d) An applicant may apply for a rebate for any number of eligible installations.

(e) The commission may limit the total amount of rebates that may be paid to any applicant.

#### **§15.125 Application**

(a) Forms Application for a rebate shall be made by a consumer on forms prescribed for that purpose by the commission.

(b) Payment. The commission may approve payment of a rebate to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive rebates under this program, and receipt of a complete and correct application does not bind the commission to approve payment of a rebate to any applicant.

(c) Priority Applications shall be considered on a first-come, first-served basis according to the receipt dates of complete and correct applications.

(d) Acceptance. Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application must be received at the commission no later than 60 days following the date of the eligible installation to be eligible for rebates. Applications may be mailed or hand-delivered to the Railroad Commission of Texas, Alternative Fuels Research and Education Division, 1701 North Congress Avenue, Room 10-115, P.O. Box 12967, Austin, Texas 78711-2967. Applications may not be submitted electronically or by facsimile transmission (FAX).

(e) Installation date Applications must pertain to eligible installations made not earlier than the effective date of this rule and not later than the program termination date.

(f) Completeness Applicants must furnish completely and correctly all information required on the official rebate application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by the division.

(g) Incomplete applications. Applicants have 30 days from the date the division sends notice to correct any errors or omissions on the application. If a complete, correct application is not received in the division within 30 days after notice has been sent, the application shall be void.

**§15.130 Conditions of Receipt of Rebate** The application forms prescribed by the commission shall include conditions that the consumer agrees

(1) to practice environmentally sound operating principles,

(2) not to modify the equipment for a period of five years from the date of installation in any way that would materi-

ally impair the equipment's performance with respect to energy conservation, energy efficiency or air quality;

(3) not to remove the equipment from this state; and

(4) not to remove eligible equipment permanently from service for a period of five years from the date of installation; and

(5) to allow commission inspection of the installation pursuant to §15.145 of this chapter (relating to verification; safety; disallowance; refund).

**§15.135. Selection of Equipment and Installer** Selection of a water heater and an installer is solely the responsibility of the consumer. The commission will not recommend equipment, dealers or installers.

#### **§15.140. Rebate Amount; Minimum Efficiency Factor.**

(a) The commission shall establish the rebate amount and the minimum energy efficiency factor for an eligible installation. The commission may change this amount and efficiency factor at any time. If the commission changes the rebate amount or the minimum energy efficiency factor, an applicant whose application is approved will receive the amount that is in effect for the eligible installation at the time of approval of the application.

(b) In setting the amount of the rebate or the energy efficiency factor, the commission may consider any or all of the following:

- (1) availability of funds;
- (2) the effectiveness of the program in increasing propane use;
- (3) dealer participation;
- (4) consumer acceptance;
- (5) administrative cost; and
- (6) energy-conservation, energy-efficiency, or air-quality benefits.

#### **§15.145. Verification; Safety; Disallowance; Refund.**

(a) Upon reasonable notice and at any reasonable time, an inspector, employee or agent of the commission may enter premises where an eligible installation has taken place, to verify compliance with the requirements of the rebate program and/or commission LP-gas safety rules. The commission may perform such inspection prior to approving payment of a rebate.

(b) No rebate will be paid for any installation inspected and found to be out of compliance. If an installation found to be out of compliance is not brought into com-

pliance within 30 days, the rebate will be disallowed.

(c) If an installation is inspected by the commission after payment of a rebate and found not to be in compliance, the consumer shall have 30 days to bring the installation into compliance. If the installation is not brought into compliance at the end of 30 days, the consumer shall refund the full amount of the rebate to the commission.

**§15.150 Assignment of Rebate.** The commission may authorize payment of a rebate to a propane dealer only by assignment from a consumer. Rebate amounts assigned shall be those in effect at the time an application is approved. A consumer may apply to assign a rebate to a propane dealer by completing and submitting the form prescribed for that purpose by the commission. A propane dealer or applicant who submits false information pertaining to the assignment of a rebate is subject to criminal and civil penalties under §15.165 of this title (relating to penalties)

#### **§15.155 Compliance.**

(a) An applicant or propane dealer may be suspended from or declared ineligible to participate in the rebate program if, in the judgment of the division director, the applicant or dealer has submitted false information or otherwise violated rebate program rules.

(b) Within 30 days after the division director mails a notice of suspension or ineligibility to an applicant or propane dealer, the applicant or propane dealer may appeal the suspension or declaration of ineligibility in writing to the commission. Actions taken by the commission with respect to such appeals are final

#### **§15.160. Complaints**

(a) Any person may file a complaint about an applicant, a propane dealer or another person regarding alleged violations of the rebate program rules. Complaints should be sent in writing to the division director at the address set forth in §15.125(e) of this chapter (relating to application).

(b) Complaints that an installation does not comply with the commission's LP-gas safety rules should be sent in writing to the director of the LP-Gas Division of the commission at the same address.

**§15.165. Penalties.** Violations of propane water heater rebate program rules are subject to civil and criminal prosecution and penalties prescribed under Texas Natural Resources Code, §§113.248, 113.249, and 113.250.

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 June 13, 1994

TRD-9442296

Mary Ross McDonald  
Assistant Director, Legal  
Division Gas  
Utilities/LP-Gas  
Railroad Commission of  
Texas

Earliest possible date of adoption: July 22, 1994

For further information, please call. (512) 463-7110

## Chapter 20. Administration

### Subchapter A. Contracts and Purchases

#### • 16 TAC §20.1

The Railroad Commission of Texas proposes new §20.1, concerning Administration, with new Subchapter A, concerning Contracts and Purchases Subchapter A contains proposed new §20.1, concerning the resolution of protests by certain persons who have a complaint about the solicitation or award of a contract by the commission. Proposed new §20.1 defines the procedures by which these protests may be filed with the commission, and the manner in which they will be resolved.

Roger Dillon, director of administrative services, has determined that for each year of the first five years the section as proposed will be in effect, there will be no fiscal implication for state or local governments as a result of enforcing or administering the section.

Boyd Johnson, staff attorney, has determined that for each year of the first five years that the section is in effect, the public benefit anticipated as a result of the section will be that persons who have a complaint about the solicitation or award of a contract will have an established method by which they may present their complaint to the commission. The anticipated economic cost to persons who file a complaint under the proposed section cannot be determined because the cost will vary based on the complexity of relevant issues, and preparation time. Costs are in the control of the complaining party. The effect on small businesses cannot be determined because the cost also will vary depending on the complexity of relevant issues, and preparation time

Comments on the proposal may be submitted to Boyd Johnson, Staff Attorney, Office of Special Counsel, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register*.

The new section is proposed under Texas Civil Statutes, Article 6447, which authorizes the commission to make all rules necessary for its government and proceedings; and under Texas Civil Statutes, Article 601b,

§3.06(b), which require an agency to comply with State Purchasing and General Services Commission procedures regarding competitive bidding. The State Purchasing and General Services Commission Procedures Manual, §5, requires an agency acting under the delegation of authority to establish and maintain review procedures to handle complaints and protests regarding vendor selection actions.

The following statute is implemented by this rule: §20.1-Texas Civil Statutes, Article 601b, §3.06(b).

#### **§20.1. Protest/Dispute Resolution Procedures.**

(a) Any actual or prospective bidder, offeror, or contractor who has a complaint about the solicitation or award of a contract by the commission may file a protest with the Office of Special Counsel of the commission. Failure to be awarded a contract without specific factual allegations of a violation of statutes or rules is not grounds for filing a protest. A protest shall be submitted in writing within seven calendar days after the protestant knows, or should have known, of the occurrence of the action which is protested. A protest is considered filed when received by the Office of Special Counsel. A late-filed protest shall not be considered. Copies of the protest shall be mailed or delivered by the protestant to all other bidders and the affected division director.

(b) In the event of a timely protest under this section, the commission shall not proceed further with the solicitation or award of the contract unless the special counsel, after consultation with the affected division director, makes a written determination that the award of contract without delay is necessary to protect substantial interests of the commission.

(c) A protest shall contain:

(1) the name and address of the protestant;

(2) appropriate identification of the procurement;

(3) a specific identification of the statutory or regulatory provision that was allegedly violated;

(4) a precise statement of the relevant facts;

(5) an identification of the issue(s) to be resolved;

(6) argument and authorities, if any, in support of the protest;

(7) a sworn, notarized statement that the contents of the protest are true and accurate; and

(8) a certification that copies of the protest have been mailed or delivered to all other bidders and the affected division director.

(d) The special counsel shall review protests filed under this section. Upon re-

quest, the special counsel may allow the protestant an opportunity to make an oral presentation. The special counsel shall make a determination whether a violation of rules or statutes has occurred. The special counsel shall set forth the reasons for that determination and provide the commission a written recommendation concerning the protest. The protestant and other interested parties shall be provided a copy of the special counsel's determination and recommendation.

(e) The commission shall consider the protest and the special counsel's recommendation in a regularly scheduled open meeting. The special counsel shall notify the protestant and other interested parties of the date on which the commission shall consider this matter. The decision of the commission shall be final.

(f) The special counsel shall inform the protestant, all bidders, and the affected division director of the commission, in writing, of the commission's decision.

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

Issued in Austin, Texas, on June 13, 1994.

TRD-9442295

Mary Ross McDonald  
Assistant Director, Legal  
Division Gas  
Utilities/L.P.-Gas  
Railroad Commission of  
Texas

Earliest possible date of adoption: July 22, 1994

For further information, please call: (512) 463-6717

## TITLE 19. EDUCATION Part II. Texas Education Agency

### Chapter 75. Curriculum

#### Subchapter D. Essential Elements—Grades 9-12

Essential Elements for English Language Arts; Other Languages; Mathematics; Science; Health; Physical Education; Fine Arts; Social Studies; Texas and United States History; Economics with Emphasis on the Free Enterprise System and its Benefits; and Business Education

#### • 19 TAC §75.62

The Texas Education Agency (TEA) proposes an amendment to §75.62, concerning the essential elements for languages other than English.

With the implementation of the recommended high school program and the increase in the amount of foreign language recommended for graduation to three years, essential elements are needed for a third year of American Sign Language (ASL). The amendment adds these essential elements to accompany the current essential elements for ASL I and II.

J. R. Cummings, executive deputy commissioner for education of special populations and adults, has determined that for the first five-year period the rule is in effect there will be fiscal implications as a result of enforcing or administering the rule.

There will be no effect on state government. Because ASL III is an optional course, the effect on local government (school districts) cannot be accurately determined at this time. If a school district chooses to teach the course, it is obligated to provide textbooks from local funds. In most low enrollment subject areas, no state adopted textbooks are provided.

Mr. Cummings and Criss Cloutd, associate commissioner for policy planning and evaluation, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that students who are deaf and other students who may want to become interpreters for the deaf will be allowed to take ASL as a foreign language and graduate under the recommended high school program.

There will be no effect on small businesses. 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 Criss Cloutd, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rule has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §21.101, which authorizes the State Board of Education to designate by rule the essential elements of each subject comprising a well-balanced curriculum.

#### §75.62. Other Languages.

(a)-(i) (No change.)

(j) American Sign Language (ASL), Level III (one unit). American Sign Language, Level III, shall include in a sequential program the following essential elements.

(1) Receptive signing. Skills and concepts that result in the understanding of various styles, regional signs, and idioms used in given conversations. The student shall be given opportunities to:

(A) distinguish variations in signs and subtle nonmanual communication and other grammatical features of ASL in meaningful conversation;

(B) comprehend more complex grammatical features of ASL, idioms, expressions and nonspecific vocabulary (including fingerspelled loan signs);

(C) comprehend short ASL stories, jokes, and narratives;

(D) recognize unfamiliar material in context, including poetry and drama;

(E) comprehend the basic meaning of announcements, reports, and other messages signed on television; and

(F) interpret body language and context to aid comprehension.

(2) Expressive signing. Skills and concepts that result in the ability to respond to casual conversation and routine questions, to sign intelligently, fingerspell clearly, and use vocabulary sufficient to express self-generated stories and narrations in ASL and discuss a variety of situations. The student shall be provided opportunities to:

(A) reproduce signs and nonmanual communication and other grammatical features of ASL in meaningful conversation;

(B) use words, phrases, and idioms as appropriate;

(C) participate successfully in noncontext specific discussion;

(D) use classifiers and gestures as alternate means of communicating ideas; and

(E) demonstrate ability to initiate, conduct, follow, and terminate context specific conversations of medium length.

(3) Interactive communication. Skills and concepts that result in the ability to communicate in a variety of situations on a give-and-take basis. The student shall be provided opportunities to:

(A) express and receive signed information in a one-to-one situation, both formal and informal;

(B) express and receive signed information in a group setting;

(C) express and receive signed information in a variety of situations;

(D) receive and understand signed information from a variety of media;

(E) be aware of physical influences on signed communication, such as visual noise (lighting, glare, clothing) and seating/sight lines; and

(F) discuss attention-getting strategies for normal and emergency situations.

(4) Culture. Concepts that result in knowledge and awareness of the history and culture of Deaf people within a range of situations. The student shall be provided opportunities to:

(A) understand that behavior is conditioned by culture and values;

(B) become aware of cultural connotations of common signs, phrases, and idioms;

(C) become familiar with culturally significant topics and issues of the Deaf community;

(D) review and discuss cultural information, including rules, identity, language, traditions, and social behaviors;

(E) experience various aspects of deaf culture such as art, literature, poetry, and drama;

(F) understand the historical perceptions of signing and deaf individuals;

(G) recognize the roles and responsibilities of interpreters; and

(H) become familiar with communication and signaling devices (TDD/TTY, relay systems, captioning, door bell/telephone/alarm lights, hearing ear dogs).

(5) Language. Concepts that result in generalizations about applica-

tion of the language learning process to the study of other languages. The student shall be provided opportunities to:

(A) recognize strategies for signing in different social contexts (secrets, one-to-one, small group, in front of audience);

(B) understand grammatical features of ASL (including basic classifiers; modifications to signs indicating degree, time, or space; nonmanual modifiers for adjectives and adverbs; and features of various sentence types);

(C) recognize sign language as an evolving system of communication that can be conditioned by social pressures;

(D) recognize the interrelationship of languages, including other sign systems;

(E) compare alphabets and basic vocabulary of the sign language of other countries;

(F) recognize dialectal, regional, and other variations in ASL;

(G) recognize errors and self-correction in learning a language; and

(H) develop language learning techniques.

(k)[(j)] Languages, Level I (one unit). Essential elements for languages, Level I, as described in this subsection shall be effective September 1996. Languages, Level I, shall include the following essential elements in a sequential program for modern and classical languages. The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of sentence-length utterances, including recombinations of learned material on a variety of topics. The student shall be provided opportunities to

(i) discriminate sounds in meaningful contexts;

(ii) distinguish variations in sounds and intonation patterns;

(iii) comprehend basic structures, expressions, and common vocabulary; and

(iv) comprehend short familiar utterances.

(B) Skills and concepts that result in the handling of a limited number of spoken communicative tasks and situations. The student shall be provided opportunities to:

(i) reproduce sounds and intonation patterns in meaningful contexts;

(ii) use words, phrases, and sentences as appropriate;

(iii) use expressions needed for classroom and/or daily life situations; and

(iv) restate familiar material.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in the comprehension of main ideas and/or some facts from simple connected texts. The student shall be provided opportunities to:

(i) read familiar material orally, approximating correct pronunciation and intonation;

(ii) read familiar material with comprehension; and

(iii) use word recognition skills.

(B) Skills and concepts that result in meeting limited practical writing needs. The student shall be provided opportunities to:

(i) write familiar material using spelling, capitalization, and punctuation conventions; and

(ii) write from dictation.

(3) Culture and language.

(A) Concepts that result in knowledge and awareness of the culture of another people within a range of situations. The student shall be provided opportunities to:

(i) experience various aspects of another culture such as contemporary life, the arts, geography, history, and literature; and

(ii) understand that behavior is conditioned by culture.

(B) Concepts that result in generalizations about how a language operates and skills that result in the application of the language learning process to the study of other languages. The student shall be provided opportunities to:

- (i) recognize the interrelationship of languages;
- (ii) recognize the role of nonlinguistic elements in communication;
- (iii) recognize the role of errors and the process of self-correction in learning a language; and
- (iv) develop language learning techniques.

(l)(k) Languages, Level II (one unit). Essential elements for languages, Level II, as described in this subsection shall be effective September 1996. Languages, Level II, shall include the following essential elements in a sequential program for modern and classical languages. The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of sentence-length utterances, including recombinations of learned material on a variety of topics. The student shall be provided opportunities to:

- (i) distinguish variations in sounds and intonation patterns;
- (ii) comprehend basic structures, expressions, and common vocabulary;
- (iii) comprehend short familiar utterances; and
- (iv) recognize familiar material in unfamiliar context

(B) Skills and concepts that result in the handling of a limited number of spoken communicative tasks and situations. The student shall be provided opportunities to:

- (i) reproduce sounds and intonation patterns in meaningful contexts,
- (ii) use words, phrases, and sentences as appropriate,
- (iii) use expressions needed for classroom and/or daily life situations;
- (iv) restate familiar material; and
- (v) use alternate means of communicating an idea.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in the comprehension of main ideas and/or some facts from simple connected texts. The student shall be provided opportunities to:

- (i) read familiar material orally, approximating correct pronunciation and intonation;
- (ii) read familiar material with comprehension;
- (iii) use word recognition skills; and
- (iv) understand unfamiliar material in context

(B) Skills and concepts that result in meeting limited practical writing needs. The student shall be provided opportunities to:

- (i) write familiar material using spelling, capitalization, and punctuation conventions;
- (ii) write from dictation; and
- (iii) write familiar memorized material with some recombinations.

(3) Culture and language.

(A) Concepts that result in knowledge and awareness of the culture of another people within a range of situations. The student shall be provided opportunities to:

- (i) experience various aspects of another culture such as contemporary life, the arts, geography, history, and literature,
- (ii) understand that behavior is conditioned by culture;
- (iii) become aware of the cultural connotations of common words and phrases, and
- (iv) locate and organize cultural information.

(B) Concepts that result in generalizations about how a language operates and skills that result in the application of the language learning process to the study of other languages. The student shall be provided opportunities to:

- (i) recognize the interrelationship of languages,
- (ii) recognize that some language features are unique;

(iii) recognize the role of errors and the process of self-correction in learning a language; and

(iv) develop language learning techniques.

(m)(l) Languages, Level III (one unit). Essential elements for languages, Level III, as described in this subsection shall be effective September 1996. Languages, Level III, shall include the following essential elements in a sequential program for modern and classical languages. (The essential elements for listening, speaking, and writing will not be as fully developed in classical languages as in modern languages.) The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of sentence-length utterances, including recombinations of learned material on a variety of topics. (For classical languages, clauses (iv)-(vii) of this subparagraph may be inappropriate.) The student shall be provided opportunities to:

- (i) comprehend basic structures, expressions, and common vocabulary,
- (ii) comprehend short familiar utterances;
- (iii) recognize familiar material in unfamiliar context;
- (iv) comprehend native speakers in controlled situations;
- (v) understand face-to-face speech in a standard dialect on everyday topics,
- (vi) comprehend simple telephone messages and uncomplicated announcements and reports over the media; and
- (vii) interpret body language and context to aid comprehension.

(B) Skills and concepts that result in the handling of a limited number of spoken communicative tasks and situations. (For classical languages, clauses (v), (vii), and (viii) of this subparagraph may be inappropriate.) The student shall be provided opportunities to:

- (i) reproduce the sounds and intonation patterns in meaningful contexts;
- (ii) use expressions needed for classroom and/or daily life situations;



(iii) retell familiar material;

(iv) use alternate means of communicating an idea;

(v) initiate and respond to simple statements;

(vi) ask and answer questions;

(vii) sustain face-to-face conversations on familiar subjects; and

(viii) describe particular interests.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in the comprehension of main ideas and/or some facts from simple connected texts. The student shall be provided opportunities to:

(i) use word recognition skills;

(ii) understand unfamiliar material in context;

(iii) identify main idea and supporting details; and

(iv) read selections of simple prose and/or poetry.

(B) Skills and concepts that result in meeting limited practical writing needs. (For classical languages, clauses (ii)-(v) of this subparagraph may be inappropriate.) The student shall be provided opportunities to:

(i) write familiar or memorized material with some recombinations;

(ii) supply information on simple forms and documents;

(iii) create statements and questions relating to familiar topics;

(iv) write short messages; and

(v) apply the writing process to plan and generate writing for a variety of purposes in a variety of formats.

(3) Culture and language.

(A) Concepts that result in knowledge and awareness of the culture of another people within a range of situations. The student shall be provided opportunities to:

(i) experience various aspects of another culture such as contemporary life, the arts, geography, history, and literature;

(ii) understand that behavior is conditioned by culture;

(iii) become aware of the cultural connotations of common words and phrases; and

(iv) study cultural generalizations.

(B) Concepts that result in generalizations about how a language operates and skills that result in the application of the language learning process to the study of other languages. The student shall be provided opportunities to:

(i) recognize appropriate language for different social situations;

(ii) recognize language as a structured and evolving system of communication;

(iii) recognize the role of errors and the process of self-correction in learning a language; and

(iv) develop language learning techniques.

(n)[(m)] Modern Languages, Levels IV, V, VI, VII (one unit). Essential elements for modern languages, Levels IV, V, VI, VII, as described in this subsection shall be effective September 1996. Modern languages, Levels IV, V, VI, VII, shall include the following essential elements in a sequential program. The sequence provides for an integration of skills and a spiraling of content throughout the learning process. Culture is taught as an integral part of oral and written communication skills.

(1) Oral communication: listening and speaking.

(A) Skills and concepts that result in the understanding of main ideas and most details of stretches of connected speech of a native speaker on a number of topics beyond the immediacy of the situation. The student shall be provided opportunities to:

(i) understand face-to-face speech in a standard dialect on everyday topics;

(ii) follow the essential points of a discussion, speech, and/or explanation on social and work-related topics;

(iii) understand some main ideas and supporting detail; and

(iv) comprehend telephone conversations, announcements and reports over the media, and/or short interviews.

(B) Skills and concepts that result in handling most uncomplicated spo-

ken communicative tasks and social situations when interacting with a native speaker. The student shall be provided opportunities to:

(i) ask and answer questions;

(ii) participate in casual conversations about current events, school, work, family, and/or autobiographical information;

(iii) initiate, sustain, and close a conversation;

(iv) narrate and describe topics of current public and/or personal interests in connected discourse;

(v) express opinions; and

(vi) expand the use of fundamental grammatical constructions.

(2) Written communication: reading and writing.

(A) Skills and concepts that result in being able to read and comprehend connected, authentic texts dealing with a variety of basic personal and social needs and interests. The student shall be provided opportunities to:

(i) understand social notes and personal and business letters;

(ii) read news items describing current events;

(iii) do intensive and extensive reading, including simple fiction and/or nonfiction;

(iv) read selections of prose and/or poetry of moderate difficulty with attention given to style;

(v) identify main idea and supporting details; and/or

(vi) use reference works such as dictionaries, encyclopedias, and atlases.

(B) Skills and concepts that result in being able to meet most practical writing needs. The student shall be provided opportunities to:

(i) take notes on familiar topics;

(ii) do simple original composition, including social notes and personal letters;

(iii) express personal preferences and observations in some detail;

(iv) describe and narrate in paragraphs;

(v) write simple summaries, brief synopses, and paraphrases relating to personal experiences;

(vi) apply the writing process to plan and generate writing for a variety of purposes in a variety of formats;

(vii) understand and use the forms and conventions of written language appropriately;

(viii) use reference works such as dictionaries, encyclopedias, and atlases; and/or

(ix) expand the use of fundamental grammatical constructions.

(o)[(n)] Classical languages, Levels IV, V, VI, VII (one unit). Essential elements for classical languages, Levels IV, V, VI, VII, as described in this subsection shall be effective September 1996. Classical languages, Levels IV, V, VI, VII, shall include the following essential elements in a sequential program. The sequence provides for an integration of skills and a spiraling of content throughout the learning process.

(1) Reading.

(A) Skills and concepts that result in the ability to read and comprehend connected, authentic texts of prose and poetry. The student shall be provided opportunities to:

(i) do intensive and extensive reading;

(ii) understand ordinary prose which may include such items as personal letters and inscriptions; and/or

(iii) read selections of prose and/or poetry of moderate difficulty with attention given to style.

(B) Listening, speaking, and writing. The student shall be provided opportunities to use the skills of listening, speaking, and writing to reinforce the continuing development of the skill of reading.

(2) Culture. Culture is taught as an integral part of the skill of reading.

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 June 13, 1994

TRD-9442267  
Crisis Cloudt  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency

Earliest possible date of adoption: July 22, 1994

For further information, please call. (512) 463-9701

## Chapter 89. Adaptations for Special Populations

### Subchapter J. Migrant Education Program

#### • 19 TAC §89.331

The Texas Education Agency (TEA) proposes an amendment to §89.331, concerning the State Parent Advisory Council for Migrant Education. The rule establishes the council, describes its responsibilities, and specifies procedures for appointing members.

Currently, the rule states that council members are appointed by the State Board of Education (SBOE) for three-year terms based on the recommendation of the commissioner of education. To comply with House Bill 2585, the amendment changes procedures for appointing members so members will be appointed by the commissioner of education subject to confirmation by SBOE for four-year terms. The amendment also includes minor editorial changes.

J. R. Cummings, executive deputy commissioner for education of special populations and adults, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Cummings and Criss Cloudt, associate commissioner for policy planning and evaluation, have determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be that it will comply with statute. There will be no effect on small businesses. 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 Criss Cloudt, Policy Planning and Evaluation, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the rule has been published in the *Texas Register*.

The amendment is proposed under Public Law 100-297, 34 Code of Federal Regulations, §201.35(b) and (c), which requires a state agency implementing programs extending for the duration of the school year to establish a parent advisory council; and the Texas Education Code, §11.215(d) and §11.957(a) and (b), which authorizes the commissioner of education to appoint advisory committees subject to confirmation by SBOE and to establish the durations of advisory committees.

§89.331. *State Parent Advisory Council for Migrant Education.*

(a) A parent advisory council for migrant education shall be responsible for advising the Texas Education Agency (TEA) in planning, implementing, and evaluating the state program designed to meet the educational needs of migrant children.

(b) The State Parent Advisory Council for Migrant Education [Membership of the advisory council] shall consist of 15 members. The majority of members shall be parents of identified migrant students served in a migrant project. All council members [of council] shall be knowledgeable of the needs of migratory children. Because of the high concentration of migrant education programs in a few areas of the state, the council [committee] may have more than one representative from the same State Board of Education (SBOE) district.

(c) Council members [Members of the council] shall be appointed by the commissioner of education [State Board of Education] for a term of four [three] years upon confirmation by the SBOE [recommendation of the commissioner of education]. Members shall be eligible for reappointment once.

(d) The commissioner of education shall solicit recommendations from local district-wide advisory councils for members to be nominated to [for] the State Parent Advisory Council for Migrant Education.

(e) The [state] council shall meet at least [no less than] three times annually. In scheduling meetings, the chair [chairman] shall consider [take into consideration] the mobility patterns of migrants.

(f) A [state] council member who does not [fails to] attend two of the three regularly scheduled meetings in one calendar year shall automatically vacate membership on the council. (Reference Public Law 100-297; 34 Code of Federal Regulations, §201.35(c) and (d) [95-651, §142(a)(4) and §125(a)]).

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 June 13, 1994

TRD-9442268  
Crisis Cloudt  
Associate Commissioner,  
Policy Planning and  
Evaluation  
Texas Education Agency

Earliest possible date of adoption July 22, 1994

For further information, please call (512) 463-9701

## TITLE 22. EXAMINING BOARDS

### Part XIX. Polygraph Examiners Board

#### Chapter 391. Polygraph Examiner Internship

##### • 22 TAC §391.3

The Polygraph Examiners Board proposes an amendment to §391.3, concerning internship training schedule. The amendment is proposed for the ultimate benefit of the public by

insuring that only qualified polygraph schools will be approved by the Board.

Bryan M. Perot, executive officer, 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. Perot also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that the polygraph industry will be more closely regulated in areas that the Board determines to be critical. 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 Bryan M. Perot, Polygraph Examiners Board, P.O. Box 4087, Austin, Texas 78773.

The amendment is proposed under Texas Civil Statutes, Article 4413(29cc), which provide the Polygraph Examiners Board with the authority to regulate persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation.

**§391.3. Internship Training Schedule.** The following internship schedule has been approved and adopted by the board as a minimum type and number of hours of an internship training program to be utilized in a course of supervised instruction of not less than 32 hours per week.

(1)-(12) (No change.)

(13) Approved polygraph schools include the following:

(A)-(H) (No change.)

(I) Coastal Institute of Forensic Science;

(J)(I) Any other polygraph school or institution the board may approve from time to time.

(14)-(16) (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 June 10, 1994.

TRD-9442279 Bryan M. Perot  
Executive Officer  
Polygraph Examiners  
Board

Earliest possible date of adoption: July 22, 1994

For further information, please call: (512) 465-2058

## TITLE 28. INSURANCE

### Part II. Texas Workers' Compensation Commission

#### Chapter 133. General Medical Benefits

##### Subchapter C. Second Opinions for Spinal Surgery

###### • 28 TAC §§133.200-133.205

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

The Texas Workers' Compensation Commission proposes the repeal of §§133.200-133.205, concerning the second opinion process for spinal surgery. The repeals are proposed in order to delete existing rules that are being replaced by one proposed new rule, §133.206, entitled Spinal Surgery Second Opinion Process (the proposed new rule was published in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2467)).

The repeals allow for the adoption of new §133.206, which carries out the commission's statutory duty to draft rules to assure that second opinions are rendered without undue delay and that liability for non-emergency spinal surgery is determined timely. This duty is placed on the commission by the Texas Labor Code, §408.026. The processes the proposed new rule establishes will allow determination of the insurance carrier's liability for any spinal surgery that is recommended as a non-emergency procedure by the treating doctor, with procedures to resolve any dispute. The deadlines the proposed new rule establishes for various responses and examinations are necessary to meet the statutory requirement that the commission adopt a rule to require that second opinions be rendered without undue delay.

Janet Charness, chief of budget, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals.

Ms. Charness also has determined that for each year of the first five years the repeals as proposed are in effect the public benefit anticipated as a result of enforcing the repeals will be objective and more rapid resolution of the issues when a treating doctor recommends spinal surgery, and certainty of timely decisions regarding spinal surgery liability. This benefit will be the result of repealing the existing rules that regulate the spinal surgery second opinion process, and replacing them with new §133.206, which carries out the commission's statutory duty to draft rules to assure

that second opinions are rendered without undue delay and that liability for non-emergency spinal surgery is determined timely.

There will be no anticipated economic costs to persons who are required to comply with the repeals as proposed.

There will be no costs of compliance for small businesses.

Comments on the proposal will be accepted for at least 30 days after publication of this document in the *Texas Register* and may be submitted to Elaine Crease, Office of the General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH-35, Austin, Texas 78704-7491.

The repeals are proposed under the Texas Labor Code, §402.061, which authorizes the commission to adopt rules necessary to administer the Act, and the Texas Labor Code, §408.026, which requires the commission to adopt rules as necessary to assure that the second opinion examination is obtained without undue delay and that liability is determined timely.

These proposed repeals affect the Texas Labor Code, §402.061 and §408.026.

**§133.200. Carrier's Liability for Medical Costs of Spinal Surgery.**

**§133.201. Required Medical Report: Spinal Surgery Recommendation.**

**§133.202. Carrier's Waiver of or Request for Second Opinion on Spinal Surgery.**

**§133.203. Employee's Request for Commission Approval of Second Opinion.**

**§133.204. Required Medical Report: Second Opinion on Spinal Surgery.**

**§133.205. Commission Action When Opinions Do Not Concur.**

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 June 14, 1994.

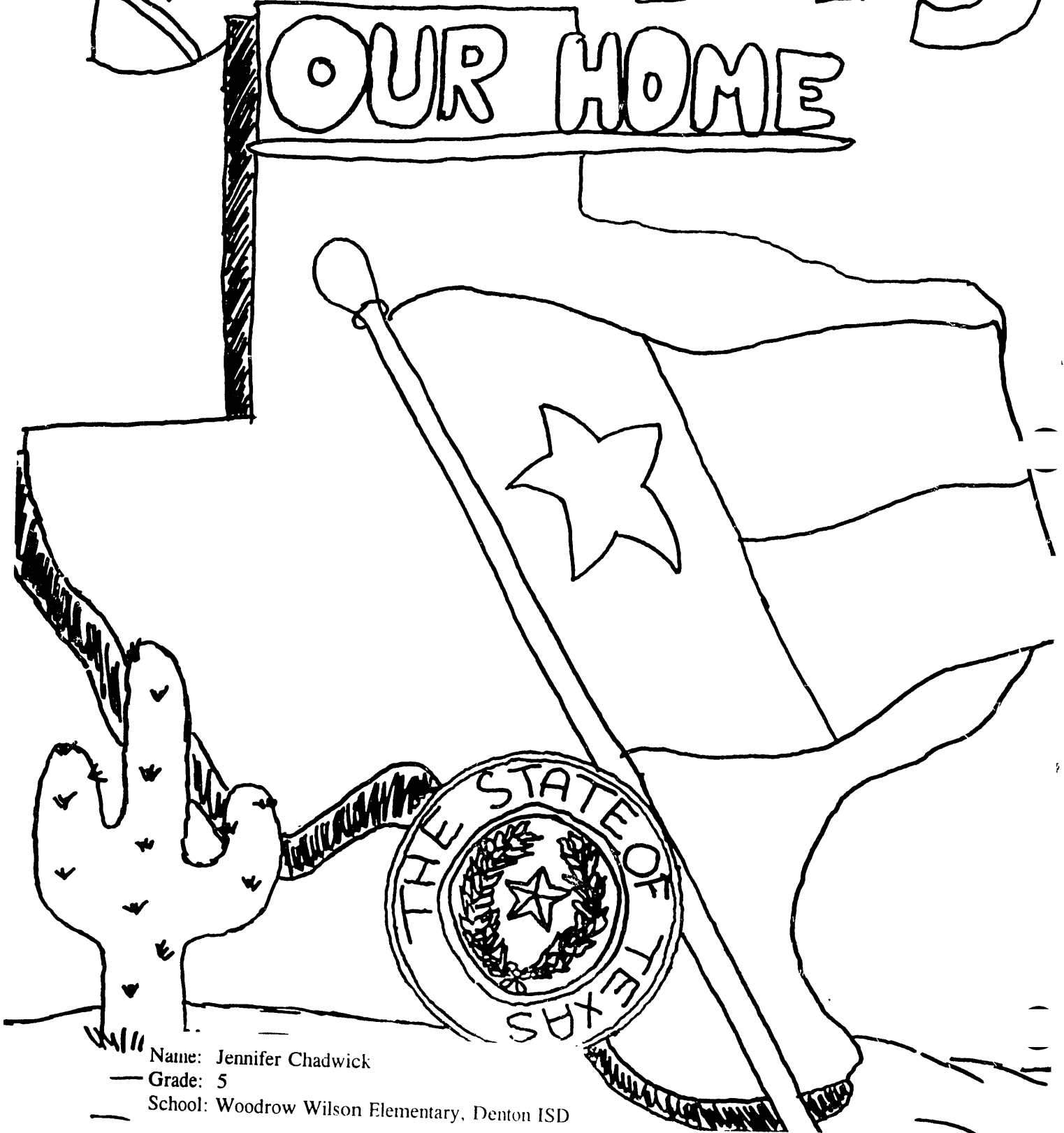
TRD-9442351 Susan Cory  
General Counsel  
Texas Workers'  
Compensation  
Commission

Earliest possible date of adoption: July 22, 1994

For further information, please call: (512) 440-3700

# TEXAS

## OUR HOME



Name: Jennifer Chadwick

Grade: 5

School: Woodrow Wilson Elementary, Denton ISD

# ADOPTED RULES

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

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

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

### Chapter 7. Pesticides

#### • 4 TAC §§7.1, 7.4, 7.8, 7.10, 7.25, 7.26, 7.35

The Texas Department of Agriculture (the department) adopts amendments to §§7.1, 7.4, 7.8, 7.10, 7.25, and 7.26 and new 7.35, concerning the regulation of the use, registration and sale of pesticides. Section 7.26 is adopted with changes to the proposed text as published in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2455). Sections 7.1, 7.4, 7.8, 7.10, and 7.35 are adopted without changes and will not be republished.

The amendments and new section are adopted to clarify the sections, to add definitions, to clarify requirements for the registration of pesticides, to make the sections consistent with the requirements of the Federal Worker Protection Standard, 40 Code of Federal Regulations 170 (WPS), which was adopted by the United States Environmental Protection Agency (EPA) in October of 1992, and to clarify coverage under these regulations and the WPS in regards to training.

Section 7.26 is adopted with changes. The time by which a flag or sign must be removed has been changed from the application time to the expiration of the reentry interval. The change in terms was made in order to be consistent with §7.27(d)(2).

The amendment to §7.1 adds definitions for Service, WPS, and Trained trainers. The amendment to §7.4 clarifies what materials applicants for registration of pesticides are required to submit with their application. The amendment to §7.8 clarifies where distribution records are to be kept. The amendment to §7.10 clarifies that the department's pesticide inspectors and pesticide program staff may conduct up to two hours of training for recertification courses without prior approval from the department's certification and training staff. The proposed amendment to §7.25 clarifies coverage under the WPS and these regulations and subsection (d)(9) changes the type of flag or sign that may be used to indicate a danger due to pesticide application. This change makes it consistent with the sign used under the WPS. The amendment to §7.26 makes that section consistent with the

WPS and adds an additional method of giving notification of a scheduled pesticide application. New §7.35 requires a trainer to issue EPA approved verification training cards. Further, new §7.35 requires all trainers to maintain records of all training performed by them for a five year period.

General comments in support of the regulations as proposed were submitted by the Texas Corn Producers Board, Plains Cotton Growers, Jones Produce, Texas Citrus Mutual, Cotton and Grain Producers of the Lower Rio Grande Valley and the Texas Vegetable Association. The Texas Farm Bureau also submitted comments generally in support of the proposed regulations. In addition, the Texas Farm Bureau submitted specific comments regarding training.

In regard to §7.35, the Texas Farm Bureau commented that requiring trainers to maintain records for five years and issue training cards would be burdensome on the trainers. The department believes that requiring trainers to issue cards and keep a record of that training for five years will allow farm workers more freedom to work for different agricultural employers. If trainees have documentation that they have been trained, the trainee will not be subjected to multiple trainings, and he or she will be able to work with different agricultural employers. The five year recordkeeping requirement is consistent with the WPS for the issuance of an EPA WPS training verification card.

The amendments and new section are adopted under the Texas Agriculture Code, §76.004, which provides the Texas Department of Agriculture with the authority to adopt rules for carrying out the provisions of this chapter.

#### §7.26. Notification Requirements.

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

(h) Notification. The following methods may be used for giving notification of a scheduled pesticide application.

(1) Adjoining neighbor. If the request for notification is made pursuant to subsection (c)(1) of this section, the notification may be made by:

(A) raising a flag/sign.

(i) The EPA WPS posted warning flag/sign shall be raised to a height of at least approximately five feet, with the bottom of such flag/sign always at least two feet above the top of the crop, in or about the field to which pesticides are scheduled to be applied so that the flag/sign is located no farther than 650 yards from the nearest property line of any adjoining neighbor requesting notification.

(ii) In the event of unusually tall crops, such as citrus, corn, or sugar cane, or limited access fields, the farm operator may raise a flag/sign at a distance greater than 650 yards from an adjoining neighbor, if such neighbor is given written notice of the location of such flag/sign and the flag/sign is raised on a permanent pole to a height visible to the adjoining neighbor.

(iii) The telephone number of the farm operator shall be on or near the flag/sign, and the flag/sign shall be raised on the border of the field at a location to which the public has access for the purpose of reading the telephone number. The farm operator shall provide the name of the pesticide and the intended date and approximate time of the scheduled application when requested by the requesting party.

(B) giving notification in writing, in person, or by telephone in English or, when appropriate, Spanish; or

(C) other means mutually agreed upon by both parties. This agreement must be in writing and a copy filed with the department.

(2) (No change.)

(3) Licensed day-care centers, primary and secondary schools, hospitals, inpatient clinics, nursing homes. If the request for notification is made pursuant to subsection (c)(2) of this section, notification may be given in person or by telephone in English or, when appropriate, Spanish. Alternatively, if mutually agreed by the farm operator and the person in charge of any such facility, notification may be given to such facilities by posting a flag/sign at a designated location.

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

(i) (No change.)

(j) Time and receipt of notice. Notice shall be given not later than on the day previous to a scheduled pesticide application.

(1) Notice shall be deemed given pursuant to subsection (h)(l) and (3) of this section:

(A) at the time of delivery (in person, in writing, or by telephone) to the requesting person or at the time of delivery to the address provided in the request for prior notification;

(B) when the required flag/sign is raised; or

(C) as mutually agreed upon pursuant to an agreement authorized by subsection (h)(l)(c).

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

(k) (No change.)

(l) Removal of flags/signs. Flags/signs raised under this section should be removed or lowered within 24 hours after the reentry interval expires. However, in no event shall such flags/signs be left posted for more than 72 hours after the reentry interval has expired. In the event that a pesticide application is not made when scheduled, the flag/sign may be left posted until after the reentry interval has expired.

(m)-(n) (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 June 14, 1994

TRD-9442366 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: July 5, 1994

Proposal publication date: April 8, 1994

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

## Chapter 8. Agricultural Hazard Communication Regulations

### • 4 TAC §§8.1-8.5, 8.7, 8.11

The Texas Department of Agriculture (the department) adopts amendments to §§8.1-8.5, 8.7, and 8.11, concerning agricultural hazard communication regulations, without changes to the proposed text as published in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2457).

The amendments to the aforementioned sections make the regulations consistent with the United States Environmental Protection Agency (EPA) Worker Protection Standard, 40 Code of Federal Regulations (CFR), Part 170 (WPS), and clarify coverage of employers under the WPS, the Agricultural Hazard Communication Act, Texas Agriculture Code, Chapter 125 (the Act) and other parts of this chapter. Additionally, changes made to Chapter 8 make it consistent with the Act and are adopted for purposes of clarification. New subsection (c) in §8.1 lists the additional requirements a covered employer will have to meet in order to comply with WPS and these regulations and addresses the more stringent aspects of the Act and these regulations. A definition of "trained trainer" has been added to the definitions of "agricultural or horticultural commodity in its unmanufactured state," "covered pesticide chemical," "employer," and "threshold amount" in §8.2 are also being adopted for purposes of clarification. The amendment to the definition of "member of the community" makes it consistent with the Act, the WPS and the Texas pesticide law and regulations. The definition of "handle, handling" has been deleted due to conflicting meanings under the WPS. The amendments to §§8.3-8.5 are made for purposes of clarification. In addition, the amendment to §8.5 updates the cite to the Administrative Procedure Act. The amendment to §8.7 makes grammatical changes to subsections (a) and (c), substitutes the term "regional" for "district" offices in subsection (b)(8), and makes subsection (c)(5) consistent with the Act by adding "treating medical personnel" to the list of persons entitled to notify the department of an employer's refusal to provide a workplace chemical list. New subsection (e) of §8.11 regarding training provides that employers can train agricultural laborers and allows agricultural laborers trained in other states to be considered trained for purposes of the Act. This new subsection will allow agricultural laborers to work for different employers without having to be retrained, and defines the categories of workers and approved training programs. New subsection (f)(1) of §8.11 requires a trainer to issue EPA approved WPS training verification cards. Further, new §8.11(f)(2) requires all trainers to maintain records of all training performed by them for a five-year period. New §8.11(g)(1) allows agricultural laborers to be trained by employers, their managers, or their labor contractors as long as the trainer is utilizing an approved EPA WPS training program. This new subsection is also being adopted to define the categories of training programs.

General comments of support for the regulations, as proposed, were submitted by the Cotton and Grain Producers of the Lower Rio Grande Valley, Texas Citrus Mutual, Texas Vegetable Association, Texas Farm Bureau, Plains Cotton Growers, Jones Produce and Texas Corn Producers. Texas Rural Legal Aid (TRLA) also submitted comments generally in support of the proposed regulations. TRLA submitted comments regarding some specific provisions.

In regard to §8.2, TRLA commented that reducing the distance in the definition of "member of the community" would exclude

significant portions of the population to prior notification. The concern about the amended definition is misplaced because the only area in which the change will make a difference is in §8.7(c), Workplace Chemical List. This amended definition has no bearing on prior notification, which is found at §7.26 of the department's Pesticide Regulations. TRLA also commented on §8.11 raising a concern about workers being trained in other states, and those workers not being adequately trained before coming to Texas to work. TRLA believes it is necessary to provide out of state workers with supplemental training. TRLA also commented on §8.11(f) pertaining to abuse of issuance of EPA training verification cards. The department believes that the training regulation is sufficient to protect workers coming from other states to work in Texas, and that the abuse of issuance of EPA training verification cards will be curtailed through the enforcement provisions of a cooperative agreement by and between the department and the EPA.

The amendments are adopted under the Texas Agriculture Code, §125.014, which provides the department with the authority to adopt rules and administrative procedures reasonably necessary to carry out the purpose of Chapter 125.

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 June 14, 1994

TRD-9442365 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: July 5, 1994

Proposal publication date: April 8, 1994

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

## TITLE 13. CULTURAL RESOURCES

### Part I. Texas State Library and Archives Commission

#### Chapter 2. General Policies and Procedures

#### • 13 TAC §§2.11, 2.51, 2.52

The Texas State Library and Archives Commission adopts new §§2.11, 2.51, and 2.52. Section §2.52 is adopted with changes in the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2811). Sections §2.11 and §2.51 are adopted without change and will not be republished.

These new sections concern fees for providing copies of public records and other services, registration requirements for customers, and the provisions under which services are provided. The fee schedule

adopted is consistent with guidelines for fees to provide public records proposed by the General Services Commission to implement the provisions of House Bill 1009, Acts 73 Legislature except the charge for over-size paper copies is less.

The new sections set related fees for services other than the provision of public records. The sections also describe who is eligible for specific services and under what conditions service would be denied.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Government Code, §441.006 and §603.004(b), which provides the Texas State Library and Archives Commission with the authority to govern the State Library and to establish copy fees.

#### §2.52 Customer Service Policies

##### (a) Registration

(1) Texas state employees and persons affiliated with state or local governments in Texas, staff of public, academic, special, or school libraries, and faculty or students of graduate schools of library and information science in Texas must register each year in person, by telecommunications or mail. Registration includes providing the following information:

(A) place of employment or study, address and telephone number,

(B) home address and telephone number; and

(C) driver's license or date of birth

(2) Others must register each year in person, presenting current photo identification with an address, sign a registration agreement, and provide the information detailed in paragraph (1) of this subsection. The signed registration is kept on file

(3) No corporations, libraries, or groups may register; only individuals who are 16 years or older may register. However, persons under age 16 are welcome to use the services if supervised by a registered customer. Persons age 12 or younger are not admitted in the State Archives reference room; however, they may use other services and facilities of the Library under supervision of an adult

(4) Customers without acceptable photo identification or other information may be registered temporarily for supervised use of materials at the Library; however, customers without a work or home address in Texas may not check out circulating materials

##### (b) Loan Periods.

(1) Loans of circulating items are four weeks with the following exceptions.

(A) Current issues of journals and newspapers are loaned for two hours during periods of low demand, and library science journals are loaned for four weeks; otherwise journals do not circulate.

(B) Video materials are loaned for three weeks.

(C) Materials are loaned to other libraries for five weeks

(D) Collection development materials are loaned for eight weeks

##### (2) Renewal of Loans

(A) Loans may be renewed twice for two weeks each time if there are no reserves on the item

(B) Customers may renew loans in person, by telecommunications or mail.

(C) Libraries may renew interlibrary loans once if there are no reserves on the item.

(D) Overdue materials may be renewed.

(3) Number of Items Per Customer.

(A) The number of circulating items that may be borrowed at one time is not limited, except that a customer may only borrow 6 reels of microfilm at one time.

(B) Additional restrictions apply to the State Archives. Only one box, one pension application, case file, bill file, or map may be used at a table at a time. No more than five volumes may be on a table at a time. Only one folder may be removed from a box at a time. Added materials may be requested and kept on a book truck or at a research assistants' desks.

##### (c) Overdue and Lost Items.

(1) Each customer is responsible for items checked out in their name until they are returned to the circulation desk of the collection from which they were borrowed. Items may be returned by either of the following:

(A) United States mail services to Texas State Library, Box 12927, Austin, Texas 78711-2927;

(B) interagency mail or commercial delivery services to Texas State Library, Lorenzo de Zavala State Archives and Library Building, 1201 Brazos, Austin, Texas 78701-1938.

(2) There is no fine for overdue items.

(3) The costs of replacement are assessed for lost items.

(4) An invoice for the value of an item is sent when it is six weeks overdue

(5) For government publications the replacement cost is the current price or \$0.10 per page.

(d) Exhibition of State Archives. No archival material, historical items, artifacts, or museum pieces will be loaned for public exhibition except that items may be loaned to the State Preservation Board for display in the Capitol Complex Visitors Center under conditions specified in writing by the Director and Librarian.

(e) Services Requiring Registration. Customers must be registered to check out materials, request interlibrary loans of materials, use password services, or receive services for fees.

(f) Password Services. Some information services provided by telecommunications are limited to state employees or to staff of participating libraries and require a valid password for access.

##### (g) Suspension of Service.

(1) Borrowing privileges may be suspended permanently for failures to return materials on time more than four times a year.

(2) Services at the Library may be suspended for six months for smoking in a facility of the Commission or eating or drinking in a reading or reference room.

(3) Services at the Library may be suspended for behavior that is threatening, harassing, or obscene toward staff or other customers. If the service can be provided through an alternate method that eliminates the problem behavior, for example mail instead of telephone or telephone rather than at the Library, the service will be provided.

(4) Theft or destruction of state resources or property will result in suspension of all services immediately.

(5) Prior to a permanent suspension of service, a customer will be notified in writing of the problem and provided an opportunity to respond by a certain date if the customer has a known mailing address.

(h) Confidential Records. Records that identify a person who requested, obtained, or used an library item or service Article 6252-17A).

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 June 13, 1994.

TRD-9442286 Raymond Hitt  
Assistant State Librarian  
Texas State Library

Effective date: July 4, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512) 463-5460

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part XI. Texas Commission on Human Rights

#### Chapter 321. General Provisions

##### • 40 TAC §§321.1, 321.2, 321.6

The Texas Commission on Human Rights adopts amendments to §§321.1, 321.2, and 321.6, concerning general provisions. Section 321.1 is adopted with changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899), and as corrected in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3597). Section 321.2 and §321.6 are adopted without changes and will not be republished.

Section 321.1 defines terms used by the Commission. The amendment merely updates definitions to conform with the new statutory language set forth in House Bill 860.

Section 321.2 corrects typographical errors found in the original text of the rule and it replaces references to the APTRA with its new government code cite.

Section 321.6 replaces references to the APTRA with its new government code cite.

The rules function merely to update definitions and citations which had been superseded by changes in federal and state statutes.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules.

§321.1. *Definitions.* The following words and terms, when used in these chapters, shall have the following meanings, unless

the context clearly indicates otherwise.

Act—The Texas Commission on Human Rights Act, Texas Civil Statutes, Article 5221k, as amended by House Bill 860, Acts 1993, 73rd Legislature, Chapter 276, effective September 1, 1993. The 1993 codification of the Act in the Texas Government and Labor Codes did not incorporate the 1993 legislative amendments to Article 5221k. Therefore, these rules refer to provisions of the amended Act rather than the unamended Government and Labor Codes. The use of references to the Act is preferred when conducting commission business.

Age—"Because of" or "on the basis of age" refers only to discrimination because of age or on the basis of age against an individual 40 years of age or older. Nothing in this Act prohibits the compulsory retirement of any employee who has attained 65 years of age, and who, for the two-year period immediately before retirement, is employed in a bona fide executive or high policy-making position, if the employee is entitled to an immediate, nonforfeitable annual retirement benefit from a pension, profit-sharing, savings, or deferred compensation plan, or any combination of plans, of the employer of the employee, that equals, in the aggregate, at least \$27,000. For purposes of the Act, §5.04(b), "because of age" refers only to discrimination because of age against an individual who is at least 40 years of age but younger than 56 years of age.

Alternative dispute resolution—Mediation in which an impartial person facilitates communications between parties to promote voluntary settlement of the dispute.

Bona fide occupational qualification—A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no persons of the excluded group would be able to perform satisfactorily the duties of the job with safety and efficiency.

Chairman—That member of the commission designated by the governor, pursuant to the Act, Article 3, §3.01(a).

Commission—The Texas Commission on Human Rights.

Commissioner—Any one of the duly appointed members of the commission, including the chairman, pursuant to the Act, Article 3, §3.01(a).

Complainant—A person claiming to be aggrieved by an unlawful employment practice, or that person's agent who brings an action or proceeding under the Act.

Complaint—A written statement made under oath or affirmation stating that an unlawful employment practice has been committed, setting forth the facts on which

the complaint is based, including the dates, places, and circumstances of the alleged unlawful employment practice, and setting forth facts sufficient to enable the commission to identify the person charged.

Court—The district court in a county in which the alleged unlawful employment practice that is subject of the complaint occurred or in a county in which the respondent resides.

Deferral or referral—The same meaning pursuant to the Act, Article 4, §4.04.

Demonstrates—To meet the burdens of production and persuasion.

Designee—An employee of the commission authorized to execute such duties, powers, and authority as may be conferred by the executive director subject to the provisions of the Act or these sections.

Disability—With respect to an individual, a mental or physical impairment that substantially limits at least one major life activity of that individual, a record of such a mental or physical impairment, or being regarded as having such an impairment.

(A) The term does not include a person with a current condition of addiction to the use of alcohol or any drug or illegal or federally controlled substance.

(B) The term does not include a person with a currently communicable disease or infection, including, but not limited to, acquired immune deficiency syndrome or infection with the human immunodeficiency virus, that constitutes a direct threat to the health or safety of other persons or that makes the affected person unable to perform the duties of the person's employment.

(C) "Because of disability" or "on the basis of disability" refers to discrimination because of or on the basis of a physical or mental condition that does not impair an individual's ability to reasonably perform a job.

(D) Disabled is a person having a disability.

Employee—An individual employed by an employer, including an individual subject to the civil service laws of the state or a political subdivision of the state; except that the term employee does not include an individual elected to public office in the state or a political subdivision of the state.

Employer—A person engaged in an industry affecting commerce who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in this state or a political subdivision of this state, or a political subdivision and any state



agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed.

**Employment agency**—A person regularly undertaking, with or without compensation, to procure employees for an employer or to procure for employees opportunities to work for an employer, including an agent of that person.

**Executive director**—The chief executive officer employed by the commission to execute such duties, powers, and authority as may be conferred by the commission subject to the provisions of the Act or these rules.

**Federal government**—The United States Equal Employment Opportunity Commission or any agency of the federal government enforcing the Rehabilitation Act of 1973.

**Federal law**—The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991, the Age Discrimination in Employment Act, as amended, the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act.

**Government Code**—The Texas Government Code, Title 10, Subtitle A, Chapter 2001, §§2001.001-2001.902, as enacted by Senate Bill 248, Acts 1993, 73rd Legislature, Chapter 268, effective August 30, 1993, relating to the codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act, Texas Civil Statutes, Article 5221k (1992).

**Labor Code**—The Texas Labor Code, Title 2, Subtitle A, Chapter 21, §§21.001-21.306, as enacted by House Bill 752, Acts 1993, 73rd Legislature, Chapter 269, effective August 30, 1993, relating to the codification and adoption of nonsubstantive revisions of the Texas Commission on Human Rights Act, Texas Civil Statutes, Article 5221k (1992).

**Labor organization**—A labor organization engaged in an industry affecting commerce and includes:

(A) any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment;

(B) any conference, general committee, joint or system board, or joint council so engaged that is subordinate to a national or international labor organization; and

(C) an agent of a labor organization.

**Local commission**—Created by a political subdivision or two or more political subdivisions acting jointly pursuant to the Act, Article 4, and recognized as a deferral agency by the United States Equal Employment Opportunity Commission pursuant to the United States Civil Rights Act, Title VII, §706(c), as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans with Disabilities Act.

**Local ordinance**—An ordinance adopted and enforced by a local political subdivision that prohibits practices designated as unlawful under the Act or otherwise declared unlawful under federal or state law.

**National origin**—The national origin of an ancestor.

**Person**—One or more individuals or an association, corporation, joint stock company, labor union, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

**Political subdivision**—A county or municipality.

**Religion**—All aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable reasonably to accommodate the religious observance or practice of an employee or applicant without undue hardship on the conduct of the employer's business.

**Respondent**—An employer, employment agency, labor organization, or joint labor-management committee that controls an apprenticeship or other training or retraining program, including on-the-job training programs, or other person who is alleged to have committed an unlawful employment practice in a complaint filed with the commission or deferred by the federal government or the federal government has deferral jurisdiction over the subject matter of the complaint.

**Sex**—"Because of" or "on the basis of sex" includes, but is not limited to, discrimination because of or on the basis of pregnancy, childbirth, or related medical conditions. Women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment related purposes, including receipt of benefits under fringe benefit programs, as other individuals not so affected but similar in their ability or inability to work. An employer is not required by this Act to pay for health insurance benefits for abortion, except if the life of the mother would be endangered were the fetus carried to term. This Act does not preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

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 June 10, 1994.

TRD-9442352

William M. Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date: July 5, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512) 837-8534

## Chapter 323. Commission

### • 40 TAC §§323.1-323.4

The Texas Commission on Human Rights adopts amendments to §§323.1-323.4, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899), and as corrected in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3597).

The rules amendments are justified due to the codification of the Texas Open Meetings Act. Additionally, the amendments were necessary to correct typographical errors in the original text of the rule.

There will be no change in how the amended rules will function or be applied as compared to the original rules.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules.

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 June 10, 1994.

TRD-9442353

William M. Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date: July 5, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512) 837-8534

## Chapter 325. Local Commissions

### • 40 TAC §§325.2, 325.3, 325.5

The Texas Commission on Human Rights adopts amendments to §§325.2, 325.3, and 325.5. Section 325.2 is adopted with changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899), and as corrected in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3597). Section 325.3 and §325.5 are adopted without changes and will not be re-published.

The amendments are justified due to errors contained in the text of the rule as originally adopted.

The amended rules will function the same as the original rules

No comments were received regarding adoption of the amendments.

The amendments are adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules.

### §325.2. Deferral Procedures

(a) For a complaint filed with the commission over which the federal government has deferred jurisdiction, timeliness of the complaint shall be measured by the date on which the complaint is received by the commission for the purpose of satisfying the filing requirements of the Act, Article 6, §6 01(a).

(b) For a complaint deferred to the commission by the federal government, timeliness of the complaint shall be measured by the date on which the complaint is received by the federal government for the purpose of satisfying the filing requirements of the Act, Article 6, §6 01(a)

(c) For a complaint deferred to the commission by a local commission, timeliness of the complaint shall be measured by the date on which the complaint is received by the local commission for the purpose of satisfying the filing requirements of the Act, Article 6, §6 01(a)

(d) To encourage the maximum degree of effectiveness by local commissions, the commission shall endeavor to maintain close communication with respect to all matters forwarded to them and shall provide such assistance to local commissions as permitted by law and as is practicable.

(e) The Act grants a local commission the exclusive right to take appropriate action within the scope of its powers and jurisdiction to process a complaint deferred by the commission pursuant to the requirements of the Act, Article 4, §4.04, and this chapter.

(f) A local commission may waive its right to the period of exclusive processing of a complaint provided by the Act with respect to any complaint or category of complaints by deferring a matter under its jurisdiction to the commission pursuant to the Act, Article 4, §4.04(c)

(g) All complaints received by the commission subject to deferral to a local commission shall be dated and time stamped upon receipt.

(h) The original complaint shall be retained in a suspense file by the commission until the local commission has submitted a copy of its final determination to the

commission; the commission has reassumed responsibility for the complaint after affording the local commission a reasonable time, but not less than 60 days, to remedy the practice alleged to be discriminatory in the deferred complaint; or the local commission has deferred the matter under its jurisdiction to the commission.

(i) A copy of a complaint received by the commission subject to deferral to a local commission shall be transmitted by registered mail, return receipt requested, to the appropriate local commission. Proceedings by the local commission are deemed to have commenced on the date such complaint is mailed.

(j) A copy of a complaint deferred to a local commission by federal government over which the commission has deferred jurisdiction shall be transmitted by registered mail, return receipt requested, to the commission by the local commission

(k) The complainant and respondent shall be notified in writing that the complaint received by the commission has been forwarded to the local commission.

(l) For purposes of satisfying the requirements of the Act, Article 4, §4.04, the commission shall not assume jurisdiction over a complaint deferred to a local commission, except as follows:

(1) where the local commission may defer a complaint under its jurisdiction to the commission;

(2) where the complaint is received by the commission within 180 days of the alleged violation but beyond the period of limitation of the appropriate local commission;

(3) where the local commission has not acted on the complaint pursuant to the requirements of the Act, Article 4, §4.04(b), and this chapter.

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 June 10, 1994

TRD-9442354

William M. Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date: July 5, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 837-8534



## Chapter 327. Administrative Review

### Subchapter A. Administrative Investigation and Review

#### • 40 TAC §327.1

The Texas Commission on Human Rights adopts an amendment to §327.1, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899), and as corrected in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3597).

House Bill 860 required an amendment to subsection (i) regarding notice to respondents of perfected complaints

The rule clarifies that a respondent should receive notice of a perfected complaint within ten days of its receipt by the Commission

The Texas Association of Business suggested subsection (f) be amended to require notice to all parties before a complaint is withdrawn because respondents should receive an administrative determination once an investigation begins

The agency disagreed and voted to leave subsection (f) as it is since no amendment was proposed on April 19, 1994 because it was not required by House Bill 860 or for clarification. The change would also result in delay because it would require republication of the rule before final adoption

The amendment is adopted under Article 5221k, §3 02(10), which provides the commission with the authority to promulgate rules

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 June 10, 1994

TRD-9442356

William M. Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date: July 5, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 837-8534

◆ ◆ ◆  
• 40 TAC §§327.2-327.14

The Texas Commission on Human Rights adopts the repeal of §§327.2-327.14, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899)

These sections are repealed for the reason that they are being submitted as adopted sections which are renumbered and, in part, amended

No comments were received regarding adoption of the repeals

The repeals are adopted under Article 5221k, §3 02(10), which provides the commission with the authority to promulgate rules

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 June 10, 1994

TRD-9442355

William M Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date July 5, 1994

Proposal publication date. April 19, 1994

For further information, please call (512) 837-8534

◆ ◆ ◆  
• 40 TAC §§327.2-327.13

The Texas Commission on Human Rights adopts new §§327.2-327.13. Sections 327.2, 327.3, 327.5, 327.6, and 327.9 are adopted with changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899). Sections 327.4, 327.7, 327.8, and 327.10-327.13 are adopted without changes and will not be republished

Sections 327.2-327.13 are justified since these rules were not substantively amended but were only renumbered to accommodate new rules dealing with alternative dispute resolution procedures required by House Bill 860. Also, the rules as adopted incorporate government code references that supercede APTRA references.

Sections 327.2-327.13 will function the same as the originally adopted rules since the amended rules only clarify and renumber the prior rules

Section 327.2--The Texas Employment Law Council objected to the amendments to subsection (h) which broaden the forms of discovery available to the Commission during its investigation because it could increase the costs of investigations to all parties and detracts from efforts to resolve the complaint through alternative dispute resolution.

Section 327.3--No comments were received

Section 327.4--The Texas Association of Business suggested that the rule be amended to require greater detail in the documents dismissing a complaint because the Commission's dismissal may become evidence in a trial and greater detail is important for the fact finder

Sections 327.5-327.8--No comments were received.

Section 327.9--The Texas Association of Business requested an amendment to require that a federal action must have already been filed before case records can be released to a party because the time limits may operate as a bar to access in some cases

Sections 327.10-327.13--No comments were received

Section 327.2--The agency believes that the expanded discovery tools will be helpful when dealing with recalcitrant complainants and respondents, these tools are only available for

use by the Commission and not the parties; while discovery costs may increase, resolution rates of the cases will be enhanced.

Section 327.4--The agency disagreed and adopted the rule as it is since no substantive change was proposed on April 19, 1994. It is not required by House Bill 860 or for clarification. Republication would be required. Further, the level of detail in a dismissal is a matter of administrative discretion and not proper for regulation.

Section 327.9--The agency disagreed and adopted the rule as it is since no substantive amendment was proposed April 19, 1994. House Bill 860 does not require this change and it is not needed for clarification. Substantively, the amendment would not change current practice since the Commission must provide the file to a party after any suit is filed.

The new rules are adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules.

§327.2. *Investigation of a Complaint.*

(a) After attempting alternative dispute resolution pursuant to §§327.21-327.31 of this title (relating to Alternative Dispute Resolution), the executive director or his or her designee shall promptly investigate a complaint filed with the commission.

(b) The executive director or his or her designee shall promptly investigate the allegations set forth in a complaint if the federal government has referred the complaint to the commission or has deferred jurisdiction over the subject matter of the complaint to the commission.

(c) During the course of such investigation, the commission may utilize the services of local commissions or the federal government and may utilize the information gathered by such authorities or agencies.

(d) As part of each investigation, the commission may accept any statement of position or evidence with respect to the allegations of the complaint which the complainant or the respondent wishes to submit.

(e) As part of each investigation, the commission may require a fact-finding conference with the complainant and the respondent prior to a determination on a complaint

(f) A fact-finding conference is primarily an investigative forum intended to define the issues, to determine which elements are undisputed, and to solicit information and evidence with respect to the allegations in the complaint.

(g) The executive director or his or her designee shall conduct the fact-finding conference and determine who shall present information and evidence for the respondent and the complainant during the conference.

(h) In connection with the investigation of a complaint, the executive director or his or her designee may request from any person evidence relevant to the investigation of alleged violations of this Act. Requests for evidence may be made in the following manner:

(1) oral and video interviews and depositions;

(2) written interrogatories;

(3) production of documents and records;

(4) requests for admissions;

(5) on-site inspection of respondent's facilities;

(6) written statements on affidavits; or

(7) other forms of discovery authorized by Texas Government Code, §§2001.081-2001.103 or the Texas Rules of Civil Procedure.

(i) In connection with a request for evidence relevant to an investigation of alleged violations of this Act, the commission may establish time requirements for any person responding to such request for evidence. For good cause shown, the executive director or his or her designee may extend such time requirements for a reasonable time.

(j) The executive director or his or her designee shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint or amended complaint.

(k) In connection with the investigation of a complaint, the executive director or his or her designee shall at all reasonable times have access to necessary witnesses for examination under oath or affirmation, and the production of records, documents, and other evidence relevant to the investigation of alleged violations of this Act, for inspection and copying.

(l) In connection with an investigation of a complaint, any written statement of position submitted by the respondent to the commission setting forth the facts and circumstances relevant to an investigation of alleged violations of this Act shall be under oath or affirmation.

§327.3. *Subpoena.*

(a) To effect the purposes of this Act pursuant to the Act, Article 3, §3.02(a)(7), any commissioner, the Executive Director, or his or her designee, shall have the authority to sign and issue a subpoena to compel attendance of necessary witnesses for examination or testimony under oath or affirmation, and the production of records, documents, and other evidence

relevant to the investigation of alleged violations of this Act, for inspection and copying. The issuance of subpoenas shall be governed by Texas Government Code, Chapter 268, Subchapter D, §2001.089 and §2001.103. The commission authorizes the executive director, or his or her designee, or a commissioner to exercise this power on behalf of the commission.

(b) Notwithstanding the requirements pursuant to any other state law, the subpoena shall state the name and address of its issuer, identify the person or evidence subpoenaed, the person to whom and the place, date, and the time at which it is returnable, or the nature of the evidence to be examined or copied and the date and time when access is requested. A subpoena shall be returnable to the executive director. Neither the complainant nor the respondent shall have the right to demand that a subpoena be issued.

(c) Notwithstanding the requirements of any other state law, any person served with a subpoena issued by the commission who intends not to comply therewith shall petition in writing the commission to revoke or modify the subpoena within five working days after receipt of the subpoena. Such petition shall separately identify each portion of the subpoena with which the petitioner does not intend to comply, and shall state, with respect to each such portion, the grounds upon which the petitioner relies. A copy of the subpoena shall be attached. The commission or its designee shall review the petition and make a final determination on revoking or modifying the subpoena. The commission or its designee shall serve a copy of the final determination of the petition upon the petitioner by registered mail, return receipt requested.

(d) On a failure to comply with a subpoena, the commission shall apply to the district court of the county in which the person is found, resides, or transacts business, for an order directing compliance pursuant to the Act, §8.02(b).

#### §327.5. Reasonable Cause Determination.

(a) Upon completion of the investigation, if a complaint has not been dismissed or voluntarily resolved through mediation, the commission employee conducting the investigation shall prepare a record of the evidence, including an investigative report with recommendations in the form of a complaint file for review by the executive director.

(b) If, after review, the executive director determines that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice as alleged in the complaint, the executive director shall review the complaint file with a panel of three commissioners.

(c) If, after review, at least two of the three commissioners determine that there is reasonable cause to believe that the respondent has engaged in an unlawful employment practice, the executive director shall issue a written determination in the form of a letter of determination. This letter of determination shall incorporate the executive director's finding that the evidence supports the complaint and include an invitation to participate in conciliation.

(d) The executive director shall serve a copy of the letter of determination to the complainant and respondent and other agencies as required by law by registered mail, return receipt requested.

#### §327.6. Conciliation.

(a) Where the commission determines that there is reasonable cause to believe that an unlawful employment practice has occurred or is occurring, it shall endeavor to eliminate such unlawful employment practice by informal methods of conference, conciliation, and persuasion. This authority shall be delegated to the executive director or his or her designee by the commission.

(b) Where a determination of reasonable cause has been made, the commission shall attempt to achieve a just resolution of all violations found and to obtain agreement that the respondent will eliminate the unlawful employment practice and provide appropriate relief to the complainant.

(c) The executive director or his or her designee shall prepare a written draft of a conciliation agreement that incorporates provisions eliminating the unlawful employment practices and providing appropriate relief for the complainant. The commission shall provide a copy of the draft conciliation agreement to the complainant and respondent.

(d) Where practical, the executive director or his or her designee shall conduct the conciliation conference in person with the respondent, but this does not preclude conducting such conciliation conferences by telephone with the respondent or complainant.

(e) Where such conciliation attempts are successful, the terms of the conciliation agreement shall be reduced to writing and signed by the respondent, complainant, and the executive director on behalf of the commission.

(f) The executive director shall report to the commission the results of successful and unsuccessful conciliation attempts.

(g) Where the commission has not successfully negotiated a conciliation agreement between the respondent and complainant, the commission shall so notify in

writing the complainant and respondent by registered mail, return receipt requested. Such notification shall inform the complainant of his or her right to file a civil action against the respondent named in the complaint pursuant to the Act, Article 7, §7.01(a). The executive director is authorized to issue this notification on behalf of the commission.

(h) Proof of compliance with the terms of the conciliation agreement by the respondent shall be obtained by the executive director before the case is closed.

§327.9. Access to Commission Records. Pursuant to the limitations established by the Texas Commission on Human Rights Act, §8.02(a), the executive director shall, on written request of a party to a complaint filed under the Act, §6.01(a), allow the party access to the commission records, unless the complaint has been resolved through a voluntary settlement or conciliation agreement, if:

(1) following the final action of the commission, a party to the complaint or the party's attorney certifies in writing that a civil action is to be filed under the Act within 60 days from the date of receipt of the commission's notice of right to file a civil action or a civil action under the Act is pending in state court; or

(2) a party to the complaint or the party's attorney certifies in writing that a civil action relating to the complaint is pending in federal court alleging a violation of federal law.

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

Issued in Austin, Texas, on June 10, 1994.

TRD-9442357

William M Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date: July 5, 1994

Proposal publication date: April 19, 1994

For further information, please call (512) 837-8534

### Subchapter B. Alternate Dispute Resolution

#### • 40 TAC §§327.21-327.31

The Texas Commission on Human Rights adopts new §§327.21-327.31. Sections 327.21, 327.23, 327.25-327.27, and 327.29 are adopted with changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899), as amended in the May 10, 1994, issue of the *Texas Register* (19 TexReg 3597). Sections 327.22, 327.24, 327.28, 327.30, and 327.31

are adopted without changes and will not be republished.

Sections 327.21-327.31 are justified because the statutory amendments contained in House Bill 860 required the Commission to promulgate rules governing the use of alternative dispute resolution procedures for complaints filed with the Commission

Sections 327.21-327.31 will function to provide for mediation of certain complaints filed with the Commission. Within ten days of a perfected complaint being filed with the Commission, the Executive Director may refer a case to the Office of Alternative Dispute Resolution for mediation. Any party to a complaint may file objections within five days of receiving notice of the referral to mediation. If the parties are unable to mediate the case within 30 days from the date the matter is referred for mediation, the case will be transferred to a Commission investigator. Commission mediators will be trained in accordance with the Texas Civil Practice and Remedies Code, Chapter 154 and shall not be assigned any duties other than mediation. Information gathered during the course of mediation shall not be disclosed to any person who is not a party to the complaint and shall not be made available to any other Commission personnel should ADR be unsuccessful. In cases where the mediator has a conflict of interest, the Executive Director shall appoint another mediator to handle the case. The rules further provide that the mediator is not a proper party or witness in any subsequent administrative or civil action, including discovery requests, arising from the mediator's participation in mediation. Settlements resulting from mediation may be incorporated in any dispositive documents and may be enforced in the same manner as any other written contract.

Section 327.21--The Texas Association of Business wanted the Commission ADR procedures to be available for complaints being processed by EEOC and local commissions based on public policy considerations.

The Texas Natural Resource Conservation Commission noted a conflict between §327.21 and §327.24 regarding voluntariness of ADR because there is no statutory authority to require use of ADR.

Section 327.22--No comments were received.

Section 327.23--The Texas Natural Resource Conservation Commission noted conflicting language in the rules regarding voluntariness because of the agency's statutory authority. Further, the time limits were not clear.

The Center for Public Policy Dispute Resolution would like the Commission to expand the ADR available beyond mere mediation because House Bill 860 authorizes a broad range of ADR, not just mediation.

The Center for Public Policy Dispute Resolution would amend the rules to allow use of ADR at any time because of the statutory language and public policy considerations.

Section 327.24--The Texas Natural Resource Conservation Commission and the Center for Public Policy Dispute Resolution noted that the statute requires only voluntary ADR participation.

Section 327.25--The Texas Employment Law Council and the Center for Public Policy Dispute Resolution noted that the statute requires only voluntary ADR participation.

The Texas Association of Business would amend the rule to allow use of ADR at any time because of the statutory language and policy considerations.

Section 327.26--The Center for Public Policy Dispute Resolution suggested that the rule provide that mediators not also be assigned to investigate complaints in order to ensure strict neutrality of the mediators.

The Texas Natural Resource Conservation Commission would amend the rule to provide for outside mediators or swapping mediators with other agencies when a party objects to a TCHR mediator in order to ensure neutrality and to give parties an alternative to using TCHR mediators.

The Center for Public Policy Dispute Resolution would amend the rule to provide for outside mediators or swapping mediators with other agencies when a party objects to a TCHR mediator, also, the Center suggested that mediators have the qualifications set forth in the Texas Civil Practice and Remedies Code, Chapter 154.

Section 327.27--The Center for Public Policy Dispute Resolution and the Texas Association of Business believe the rule should be changed to eliminate the possibility of disclosure to the Executive Director or his or her designee, of information relative to mediations in order to conform rules with the ADR statute and public policy, and to encourage frank discussions among the parties.

The Texas Association of Business requested that the rule substitute "alternative dispute resolution" for "settlement" in subsection (c), line 4, for consistency.

The Texas Natural Resource Conservation Commission suggested that subsection (c) be amended to permit mediators to have access to evidence so the mediator can be prepared prior to the mediation.

Section 327.28--The Texas Natural Resource Conservation Commission suggested dividing §327.28 and §327.29 and renaming the proposed sections for clarification.

The Texas Natural Resource Conservation Commission suggested that subsection (f) be amended to remove the need for the mediator's approval of third parties being present to ensure mediator's appearance of neutrality.

The Texas Natural Resource Conservation Commission suggested adding, "The parties agree that mediators shall not be subjected to requests for discovery, deposition or live testimony, in any subsequent administrative or legal proceeding arising from the subject matter of the mediation," to ensure mediators will not be vulnerable to litigation because of their participation in TCHR mediation proceedings.

Section 327.30--The Texas Natural Resource Conservation Commission suggested that agreements resulting from mediation remain confidential based on policy grounds.

The Center for Public Policy Dispute Resolution requested that subsections (a) and (b) be

amended to mandate that the settlement terms be incorporated into the final disposition papers of the Commission if the parties agree based on policy grounds.

Section 327.31--The Texas Natural Resource Conservation Commission suggested amendments to ensure confidentiality of the ADR process.

Section 327.21--The Commission cannot enact the Texas Association of Business proposal because the Commission has no statutory authority over EEOC or local commissions.

The agency agreed to amend §327.21 and §327.24 to reflect voluntary participation.

Section 327.23--The Commission amended all rules to reflect that participation is voluntary and clarified the time limits as recommended by the Texas Natural Resource Conservation Commission.

While all forms of ADR are encouraged by House Bill 860, nothing in the Act mandates that the Commission use all forms. The Commission has discretion to implement the amendments and mediation is the form selected. Nothing in the Act, however, prevents the parties from using other forms of ADR outside the Commission processes. Therefore, the Commission declined to adopt the proposal of the Center for Public Policy Dispute Resolution.

The agency believes that use of mediation should be available at the beginning of the complaint process before any investigation begins. By putting this procedure at the front end of the process, it will not be confused with the subsequent investigation on the merits of the complaint. The parties remain free under the statute to settle voluntarily a case after opportunity for mediation but before a finding of cause or no cause. After a cause finding, the statute requires attempts at conciliation. Moreover, nothing would prohibit the use of ADR procedures outside the commission process. The process contemplated is within the reasoned discretion of the Commission and takes into account the Commission's limited resources and need to complete investigations if the parties fail to negotiate a resolution in the early stages after a complaint is filed. Thus, the proposal of the Texas Association of Business and the Center for Public Policy Dispute Resolution was rejected.

Section 327.24--The agency agreed and the proposed amendment accomplishes what the Texas Natural Resource Conservation Commission and the Center for Public Policy Dispute Resolution proposed in terms of voluntary participation.

Section 327.25--The agency agrees that participation in ADR is voluntary and the proposed amendment accomplishes what the Texas Employment Law Council and the Center of Public Policy Dispute Resolution propose.

The agency disagreed with the Texas Association of Business and believes that use of mediation should be available at the beginning of the complaint process before any investigation begins. By putting this procedure

at the front end of the process, it will not be confused with the subsequent investigation on the merits of the complaint. The parties remain free under the statute to settle voluntarily a case after opportunity for mediation but before a finding of cause or no cause. After a cause finding, the statute requires attempts at conciliation. Moreover, nothing would prohibit the use of ADR procedures outside the commission process. The process contemplated is within the reasoned discretion of the Commission and takes into account the Commission's limited resources and need to complete investigations if the parties fail to negotiate a resolution in the early stages after a complaint is filed.

Section 327.26—The agency agreed with the Center for Public Policy Dispute Resolution's suggestion and the language is so amended to provide that TCHR mediators will perform no other duties.

The agency does not agree with the Center for Public Policy Dispute Resolution and the Texas Natural Resource Conservation Commission concerning the use of outside mediators at this time. Outside mediators will not be as accountable to the Commission and will increase the costs to the agency and the parties. The statute does not prohibit the parties to a complaint from using other ADR programs at their own expense. The amendments clarify that the TCHR mediators will be trained to state standards as requested by the Center for Public Policy Dispute Resolution.

Section 327.27—The agency agreed with the Center for Public Policy Dispute Resolution and the Texas Association of Business and the amendments prohibit disclosure of information to any other commission personnel.

The agency accepted the Texas Association of Business' recommendation regarding subsection (c).

The agency rejected the Texas Natural Resource Conservation Commission's recommendation about mediator's access to evidence because the Commission believes that mediators are not fact finders and should not sit in judgment on the evidence. Rather, mediators should seek resolution without assigning blame in the process. Obviously, basic information about the parties will be available.

Section 327.28—The Texas Natural Resource Conservation Commission recommendation to revise this section is not substantive and is unnecessary.

Section 327.29—The Texas Natural Resource Conservation Commission recommendation to revise this section is not substantive and is unnecessary.

The agency disagreed with the Texas Natural Resource Conservation Commission suggestion that mediator's not be able to approve third party access to mediation because the mediator must be able to maintain some control of the mediation process.

The agency agreed with the Texas Natural Resource Conservation Commission's proposed amendment that mediators not be subject to discovery requests.

Section 327.30—No change is necessary as suggested by the Texas Natural Resource

Conservation Commission because the statute already makes this information confidential.

The agency agreed with the Center for Public Policy Dispute Resolution's proposal regarding the incorporation of settlement terms in final documents and the final rule reflects this change.

Section 327.31—The Texas Natural Resource Conservation Commission's suggestion is not necessary because the TCHRA already provides for confidentiality of case files and settlement attempts.

The new rules are adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules.

§327.21. *Policy.* It is the policy of this State to encourage the peaceable resolution of alleged unlawful employment practices, including alternative dispute resolution of issues and the early settlement of complaints through voluntary settlement procedures.

§327.23. *Voluntary Settlement Through Alternative Dispute Resolution.*

(a) Within ten days of the commission's receiving a perfected complaint and prior to the completion of an investigation, the executive director or his or her designee may invite both the complainant and the respondent to attempt voluntarily to resolve their dispute through alternative dispute resolution. If alternative dispute resolution efforts are not successful within 30 days of the complaint being referred to the office of alternative dispute resolution, the case will be forwarded to appropriate commission personnel for completion of an investigation.

(b) The executive director or his or her designee shall have the authority to sign on behalf of the commission any voluntary agreement to resolve the dispute which is agreeable to both the complainant and the respondent.

(c) Any voluntary agreement to resolve the dispute to which the commission is a party shall contain a provision that the commission has made no judgment on the merits of the complaint and that such agreement shall not affect the processing of any other complaint, including, but not limited to, allegations which are like or related to the individual allegations resolved.

(d) The commission shall limit its undertaking in such voluntary agreement to an agreement not to process that complaint further.

§327.25. *Notification and Objection.*

(a) If the commission or its designee determines that a pending complaint is

appropriate for mediation under §327.24 of this title (relating to Referral of Pending Complaints for Alternative Dispute Resolution), the commission or its designee shall mail notice to the parties of its determination within ten days of receiving a perfected complaint.

(b) Any party may, within five days after receiving the notice under subsection (a) of this section, file a written objection to the referral.

(c) If the commission or its designee finds that there is a reasonable basis for an objection filed under subsection (b) of this section, the commission or its designee shall withdraw the dispute from mediation.

§327.26. *Appointment of Mediators.* The commission or its designee shall assign such impartial commission personnel to the office of alternative dispute resolution as are necessary to mediate the complaints referred to that unit. Commission personnel assigned to serve as mediators shall not otherwise be involved with investigating complaints filed with the Commission. Commission personnel assigned as mediators shall have the qualifications prescribed in Texas Civil Practice and Remedies Code, Chapter 154.

§327.27. *Standards and Duties of Mediators.*

(a) A person appointed to facilitate an alternative dispute resolution procedure under this subchapter shall encourage and assist the parties in reaching a settlement of their dispute but may not compel or coerce the parties to enter into a settlement agreement. Mediators shall.

(1) utilize the mediation process voluntarily to resolve complaints of employment discrimination filed with the commission,

(2) conduct on-site mediation of complaints pursuant to appropriate procedures, including phone and mail contact with the respondent and complainant regarding the dispute resolution process within 30 days from the date of referral to the office of alternative dispute resolution; and

(3) issue and maintain all appropriate documents during the 30-day period in accordance with all statutory and procedural requirements.

(b) Unless expressly authorized by the disclosing party, the mediator may not disclose to either party information given in confidence by the other and shall at all times maintain confidentiality with respect to communications relating to the subject matter of the dispute.

(c) Unless the parties agree otherwise, all matters, including the conduct and demeanor of the parties and their counsel during the alternative dispute resolution process, are confidential and may never be disclosed to anyone. Any evidence received by the commission from the complainant or respondent shall not be provided to the mediators assigned to the office of alternative dispute resolution

#### §327.29 Conduct and Decorum

(a) Whenever the parties have agreed to mediation they shall be deemed to have made these rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement to mediate

(b) The mediator shall not serve as a mediator in any dispute in which he has any financial or personal interest in the result of the mediation. Prior to accepting an appointment, the mediator shall disclose to the Executive Director and the parties any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. In such an event, the Executive Director shall immediately appoint another mediator to the case

(c) The mediator does not have the authority to decide any issue for the parties, but will attempt to facilitate the voluntary resolution of the dispute by the parties

(d) Party representatives must have authority to settle and all persons necessary to the decision to settle shall be present. The names and addresses of such persons shall be communicated in writing to all parties and the mediator

(e) The mediator shall fix the time of each mediation session. The mediation shall be held at the office of the commission, or at any other convenient location agreeable to the mediator and the parties, as the mediator shall determine

(f) Mediation sessions are private. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator

(g) There shall be no stenographic record of the mediation process and no person shall tape record any portion of the mediation session

(h) No subpoenas, summons, complaints, citations, writs or other process may be served upon any person at or near the site of any mediation session upon any person entering, attending or leaving the session

(i) The mediation shall be terminated

(1) by the execution of a settlement agreement by the parties;

(2) by declaration of the mediator to effect that further efforts at mediation are no longer worthwhile; or

(3) after the completion of one full mediation session, by a written declaration of a party or parties to the effect that the mediation proceedings are terminated

(j) The mediator is not a necessary or proper party in judicial proceedings relating to the mediation. Neither the mediator nor the commission or its designees shall be liable to any party for any act or omission in connection with any mediation conducted under these rules

(k) Commission mediators shall not be subjected to requests for discovery, deposition or live testimony, in any subsequent administrative or legal proceeding arising from the subject matter of the mediation

(l) The mediator shall interpret and apply these rules

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 June 10, 1994.

TRD-9442358

William M. Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date July 5, 1994

Proposal publication date April 19, 1994

For further information, please call (512) 837-8534

#### Chapter 329. Judicial Action

##### • 40 TAC §329.1

The Texas Commission on Human Rights adopts an amendment to §329.1, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899)

The change is justified to correct grammatical errors in the rule as originally adopted

There will be no change in how the rule will function as compared to the original rule

No comments were received regarding adoption of the amendment

The amendment is adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules

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 June 10, 1994.

TRD-9442359

William M. Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date: July 5, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512) 837-8534

#### Chapter 331. Reports and Recordkeeping

##### • 40 TAC §331.1

The Texas Commission on Human Rights adopts an amendment to §331.1, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899).

The change is justified to correct grammatical errors in the rule as originally adopted.

There will be no change in how the rule will function as compared to the original rule

No comments were received regarding adoption of the amendment.

The amendment is adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules

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 June 10, 1994.

TRD-9442360

William M. Hale  
Executive Director  
Texas Commission on  
Human Rights

Effective date July 5, 1994

Proposal publication date: April 19, 1994

For further information, please call (512) 837-8534

#### Chapter 333. Conformity

##### • 40 TAC §333.1

The Texas Commission on Human Rights adopts an amendment to §333.1, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2899).

The change is justified to correct grammatical errors in the rule as originally adopted.

There will be no change in how the rule will function as compared to the original rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Article 5221k, §3.02(10), which provides the commission with the authority to promulgate rules.

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 June 10, 1994.

TRD-9442361      William M. Hale  
                         Executive Director  
                         Texas Commission on  
                         Human Rights

Effective date: July 5, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512)  
837-8534





# OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

**Emergency meetings and agendas.** Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

**Posting of open meeting notices.** All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

**Meeting Accessibility.** Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

## Texas Department of Agriculture

Wednesday, June 22, 1994, 10:00 a.m.

Courtyard by Marriott-Love Field, 2383 Stemmons

Dallas

According to the agenda summary, the Texas Boll Weevil Eradication Foundation will call to order; opening remarks and introductions; discussion and action: minutes, financial report, oath of office, chairman's report, program director's report, approval of 1994 budget, TDA report, referendums, next meeting date and place; discussion: other business; and adjourn.

Contact: Frank Myers, Route 1, Box 7, Reydon, Oklahoma 73660, (405) 655-4621.

Filed: June 14, 1994, 4:04 p.m.

TRD-9442368

Thursday, June 23, 1994, 8:00 a.m.

Schleicher County Courthouse Annex

Eldorado

According to the complete agenda, the Schleicher County Cotton Producers Board will consider discussion and action: minutes of previous meeting, approve 1994 operating budget, determine courses of action for Tri-State lawsuit; discussion: other business and comments; and adjourn.

Contact: Mitch Jurecek, Route 1, Eldorado, Texas 76936, (915) 853-2231

Filed: June 14, 1994, 4:05 p.m.

TRD-9442369

Thursday, June 30, 1994, 1:00 p.m.

Worthington Hotel, 200 Main Street  
Fort Worth

According to the complete agenda, the Texas Peanut Producers Board will call roll, introduction of guests; discussion and action: minutes; oath of office to newly elected directors; election of officers; discussion: export markets, promotion activities, other business; and adjourn.

Contact: Mary Webb, P.O. Box 398, Gorman, Texas 76454, (817) 734-2017.

Filed: June 14, 1994, 4:04 p.m.

TRD-9442367

## Texas Appraiser Licensing and Certification Board

Thursday, June 23, 1994, 7:30 a.m.

Executive Conference Room 235-A, 1101 Camino La Costa

Austin

According to the complete agenda, the Education Committee will call to order, consideration of the minutes of the April 21, 1994, Education Committee meeting; discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board concerning approval of courses for meeting

qualifying (pre-licensure) education and appraiser continuing education (ACE) requirements; discussion and possible recommendations to the Texas Appraiser Licensing and Certification Board on other education matters; and adjourn

Contact: Renil C. Liner, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: June 14, 1994, 11:26 a.m.

TRD-9442330

Thursday-Friday, June 23-24, 1994, 9:00 a.m.

Conference Room 235-A, 1101 Camino La Costa

Austin

According to the agenda summary, the Texas Appraiser Certification Board will: Thursday-call to order, consideration of the April 22, 1994, TALCB minutes; discussion with representatives of the Appraisal Subcommittee, members of the Texas Legislative, and other interested parties concerning Title XI, FIRREA, and possible action; public hearing concerning proposed amendments to the rules of the TALCB 22 TAC §153.5(a)(1), (11), (12), and (b), §153.9(b) and new §153.20(a)(14), §153.1, §153.20(a), (4)-(7), (12), (13), and new (15), §153.21(a), §153.35, §153.37, Chapter 155 (retitled chapter heading), and new Chapter 157; discussion and possible action to adopt amendments to the Rules of TALCB 22 TAC §153.5(a)(1), (11), (12), and (b), §153.9(b), and new §153.20(a)(14); discussion and possible action to adopt

amendment to the Rules of TALCB 22 TAC §153.1, §153.20(a)(4)-(7), (12), (13), and new (15), §153.2(a), §153.35, §153.37, Chapter 155 (retitled chapter heading), and new Chapter 157; discussion and possible action concerning licensure and certification by reciprocity; discussion and possible action concerning the application, certification/licensing or other board procedures, policies and interpretations; report from the Education Committee on discussion and possible action concerning recommendations regarding approval of courses and other education matters; discussion and possible action concerning the operating budget and other fiscal matters; discussion and possible action concerning filed complaints; staff reports; comments and presentation from visitors; selection of date of subsequent meetings; and adjourn. Friday—call to order; discussion and possible action on agenda items from previous day still requiring action; and adjourn.

Contact: Renil C. Lenir, P.O. Box 12188, Austin, Texas 78711-2188, (512) 465-3950.

Filed: June 14, 1994, 11:30 a.m.

TRD-9442331

## State Bar of Texas

Wednesday-Thursday, June 22-23, 1994, 10:00 a.m. and 8:30 a.m. respectively.

The Austin Convention Center, Mezzanine I, 500 Cesar Chavez

Austin

According to the agenda summary, the Commission for Lawyer Discipline will call to order, introductions, review; minutes; statistical reports; commission's compliance with provisions of State Bar Act, Texas Rules of Disciplinary Procedure, and Orders of the Supreme Court; Office of the General Counsel; grievance committees; Special Counsel Program; adoption of internal operating rule to permit oral presentations by respondents and/or their counsel; budget and organization of commission; collection of attorney's fees in disciplinary lawsuits, presentation by Association of Attorney-Mediators, presentation by trial staff. Closed Executive Session: discuss pending litigation; cases pending before evidentiary panels of grievance committees; special counsel assignments; personnel matters; public session: discuss and authorize action on matters discussed in closed executive session; discuss: future meetings; other matters as appropriate, public comment, and adjourn.

Contact: Anne McKenna, P.O. Box 12487, Austin, Texas 78711, (800) 204-2222.

Filed: June 14, 1994, 4:00 p.m.

TRD-9442362

Thursday, June 23, 1994, 8:30 a.m.

The Austin Convention Center, Mezzanine 7 and 8

Austin

According to the agenda summary, the Board of Directors will call to order/roll call/invocation/reports from: chair of the board; president; president-elect; Texas Young Lawyer's Association president; executive director; office of general counsel, closed executive session: discuss personnel matters; public session: reports from: board committees; reports from State Bar committees/elections/divisions; Texas Legal Protection Plan; commission for lawyer discipline, board of disciplinary appeals; immediate past president; Supreme Court Liaison; Court of Criminal Appeals Liaison; Federal Judicial Liaison; Judicial Section Liaison/announcement/recess/reconvene with incoming board: call to order/roll call/invocation/installation of officers/swearing in of president-elect and new directors/reports from incoming chair and incoming president; continuing legal education committee, Texas Young Lawyer's Association president/remarks from general public/adjourn, consent agenda: reports from chair/president/president-elect/executive director.

Contact: Pat Hiller, P.O. Box 12487, Austin, Texas 78711, 1-(800) 204-2222

Filed: June 15, 1994, 3:56 p.m.

TRD-9442458

## Texas Bond Review Board

Thursday, June 23, 1994, 10:00 a.m.

300 West 15th Street, Committee Room #5, Fifth Floor, Clements Building

Austin

According to the agenda summary, the Board will call to order, approval of minutes, consideration of proposed issues, other business, and adjourn.

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite, 409, Austin, Texas 78701, (512) 463-1741. TRD-9442462

Filed: June 15, 1994, 4:18 a.m.

TRD-9442462

## Texas State Board of Dental Examiners

Friday-Saturday, June 24-25, 1994, 8:00 a.m.

Austin Stouffer Hotel, 9721 Arboretum Boulevard

Austin

According to the agenda summary, the Board will call to order; roll call; approval

of past minutes; approval of sedation/analgesia permits; discussion and approval of anesthesia review process following June board meeting; approval/denial of applicants for licensure by credentials, approval of settlement orders, modification of board orders—Koslen, Sears, Hanson, Otto, appearances before the board—Robinson, Roach, Garza, Norris, Idriss, Williams, Bowman, Zurita, Bennett, Kratz, discussion, consideration, and nominations to Specialty Advisory Committee—Periodontics; discussion, consideration, and nominations to Dental Hygiene Advisory Committee—Cooper, Crawford, Sample, Koonce, Palermo, Heiman, Meachum, King, Glick, DeSpain, discussion of phase out plan—status of work to date, executive session—to discuss pending litigation Adair, Blake, Bhatti, VS State of Texas and the TSBDE and Dental Laboratory Association of Texas and Gary D Morgan, doing business as Morgan Dental Laboratory VS State of Texas, reports presidents, Committee—Administration, Enforcement, Examination, Credentialing, AADE, announcements, and adjournment.

Contact: C. Thomas Camp, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78701, (512) 463-6400 or Fax (512) 463-7452

Filed: June 15, 1994, 9:41 a.m.

TRD-9442414

## Texas Education Agency

Thursday-Friday, June 23-24, 1994, 9:30 a.m. and 8:30 a.m. respectively.

William B Travis Building, Room #1-110, 1701 North Congress Avenue

Austin

According to the agenda summary, the Education Technology Advisory Committee (ETAC) will Thursday—Introductions, swearing in of all members, election of chairman, report and vision for state technology issues, discussion of concepts for the work of this committee, and adjourn at 5:00 p.m. Friday—Distribute, read and study information from previous day's work, discussion of long-range technology plan for the state, subcommittee appointments, work and develop concepts from previous discussions, wrap-up and final consensus, and adjourn at 3:30 p.m.

Contact: Lane Scott, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9719

Filed: June 15, 1994, 1:56 p.m.

TRD-9442440

Friday, July 8, 1994, 9:00 a.m.

Room 5501, Brown-Heatly Building, 4900 North Lamar Boulevard

Austin

According to the complete agenda, the Special Education Effectiveness Studies Project Advisory Committee will convene: welcome and membership updates; report on project activities from TEA staff; Dr. Thomas Grayson, Associate Director of the Transition Research Institute, "Interpretive Context for the Study Findings"; group discussion of Dr. Grayson's presentation and of draft of report materials; lunch break; Dr. Jose Blackrorby, SRI International/National Longitudinal Transition Study, "Interpretive Context for Study Findings and Generating Policy Recommendations from the Findings"; break; debriefing for the group and final opportunity for discussion; and adjourn.

Contact: Criss Cloudt, 1701 North Congress Avenue, Austin, Texas (512) 463-9701.

Filed: June 15, 1994, 9:40 a.m.

TRD-9442413

## Texas Department of Health

Thursday, June 23, 1994, 1:00 p.m.

Room M-741, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health, Board Briefing Committee will discuss and possibly act on: items posted for the June 24, 1994 meeting agenda of the Texas Board of Health; and briefing by the Commissioner on current activities of the Texas Department of Health.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484 For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 15, 1994, 4:24 p.m.

TRD-9442465

Thursday, June 23, 1994, 2:30 p.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the agenda summary, the Texas Board of Health, Health and Clinical Services Committee will discuss approval of the minutes of May 27, 1994 and discuss and possibly act on: proposed and emergency rules concerning the Texas HIV

Medication formulary and amend eligibility criteria; proposed rules (surveillance and control of birth defects; midwifery rules concerning fee increase, standards of practice, and compliant procedures; repeal of children's vision advisory committee; children's speech-language and hearing advisory committee; children with special health care needs advisory committee; establishment of a family planning advisory council; and oral health services advisory committee); adoption rules (fees for clinical services); Chronically Ill and Disabled Children's Services (CIDC) recommendation to postpone two site visits to the San Antonio Pediatric Cardiovascular Diagnostic and Treatment Centers; recommendations to the 74th Texas Legislature for repeal of Health and Safety Code, §26.015; CIDC budget issues for fiscal years 1995-1997; poison control coordinating committee and update on contracts criteria; and continuation and consolidation of the CIDC health service systems advisory committee and the CIDC community advisory committee.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 15, 1994, 4:24 p.m.

TRD-9442466

Thursday, June 23, 1994, 3:00 p.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health, Human Resources Committee will discuss approval of the minutes of May 26, 1994 meeting, and discuss and possibly act on: approval for continuation and consolidation of the Chronically Ill and Disabled Children's (CIDC) health service systems advisory committee and the CIDC services community advisory committee; proposed rules concerning the children's speech-language and hearing advisory committee; proposed rules concerning the children with special health care needs advisory committee; proposed rules concerning the establishment of a family planning advisory council; proposed rules concerning oral health services advisory committee; final adoption of rules concerning the relationship between the Texas Department of Health (department) and private donors and private organizations which exist to further the duties and purposes of the department; and approval of Senate Bill 383 review of group 3 advisory committees.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512)

458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 15, 1994, 4:24 p.m.

TRD-9442464

Thursday, June 23, 1994, 4:30 p.m.

Room M-739, Texas Department of Health, 1100 West 49th Street

Austin

According to the complete agenda, the Texas Board of Health, Regulatory Committee will discuss and possibly act on: approval of the minutes of the May 26, 1994 meeting; proposed rules concerning the definition, treatment and disposition of special waste from healthcare-related facilities; proposed rules concerning licensure of wholesale device distributors; final adoption of rules concerning restroom facilities where the public congregates; discussion concerning name change for associateship of special health services; and comments and announcements not requiring committee action.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484. For ADA assistance, call Richard Butler (512) 458-7695 or T.D. D. (512) 458-7708 at least two days prior to the meeting.

Filed: June 15, 1994, 4:24 p.m.

TRD-9442463

## Department of Information Resources

Thursday, June 23, 1994, 1:30 p.m.

300 West 15th Street, Fifth Floor, Room 5

Austin

According to the agenda summary, the Board will discuss adoption of April meeting minutes; agency strategic plan approval; delegation of authority to executive director; update on actions related to the Council on Competitive Government; update on activities of the Telecommunications Planning Group; Angelo State University Project update; financial statements; and other business.

Contact: John Hawkins, 300 West 15th Street, Suite 1300, Austin, Texas 78701, (512) 475-4714.

Filed: June 15, 1994, 5:40 p.m.

TRD-9442471

## Texas Juvenile Probation Commission

Thursday, June 23, 1994, 1:00 p.m.

Courtroom, Juvenile Justice Center, 6400 Delta Drive

El Paso

According to the complete agenda, the Public Hearing will call to order; welcome, overview of process and ground rules for public testimony; begin public testimony; and recess.

Contact: Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: June 15, 1994, 4:59 p.m.

TRD-9442470

Thursday, June 23, 1994, 6:30 p.m.

Courtroom, Juvenile Justice Center, 6400 Delta Drive

El Paso

According to the complete agenda, the General Juvenile Justice Issues will reconvene meeting; welcome, overview of process and ground rules for testimony; general public testimony including the following issues: delinquency prevention; funding for Juvenile Probation Services; probation/school interaction; community corrections; detention overcrowding; detention standards waivers; and adjourn.

Contact: Bernard Licarione, Ph.D., P.O. Box 13547, Austin, Texas 78711, (512) 443-2001.

Filed: June 15, 1994, 4:59 p.m.

TRD-9442469

## Texas Department of Licensing and Regulation

Thursday, June 23, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Manufactured Housing Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Louis Perrow doing business as D & B Mobile Home Transport for violation of the Texas Revised Civil Statutes, Annotated Article 5221f, §7(d), Article 9100, 16 TAC §69.125(e)(1), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 14, 1994, 2:42 p.m.

TRD-9442343

Thursday, June 23, 1994, 10:30 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Air Conditioning Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Patrick Presley doing business as Presley A/C for violation of the Texas Revised Civil Statutes, Annotated Article 8861, §8, Article 9100, 16 TAC §75.22, and the Texas Government Code, Chapter 2001

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 14, 1994, 2:42 p.m.

TRD-9442342

Thursday, June 28, 1994, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Boxing Inspections and Investigations Committee will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension, or revocation of the license for Jose (Rocky) Galarza for violation of the Texas Revised Civil Statutes, Annotated Article 8501, §§8(a), 9(a), and 11(a), Article 9100, 16 TAC §61.20(a), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192

Filed: June 14, 1994, 2:43 p.m.

TRD-9442344

## Texas National Guard Armory Board

Friday, June 24, 1994, 11:00 a.m.

Armory Board Headquarters, Conference Room, 2200 West 35th, Building 64, Camp Mabry

Austin

According to the agenda summary, the Texas National Guard Armory Board will discuss administrative matters, executive director's update, construction/renovation/maintenance update, property/leases, and establish date of next meeting

Contact: Sandra Hille, P.O. Box 5426, Austin, Texas 78763, (512) 406-6907

Filed: June 16, 1994, 9:42 p.m.

TRD-9442482

## Texas Natural Resource Conservation Commission

Wednesday, June 29, 1994, 8:00 a.m.

12118 Park 35 Circle, Room 201S, Building E

Austin

According to the complete agenda, the Compost Regulations Development Ad Hoc Group was originally scheduled to review and discuss the draft compost regulations end-product standards. The meeting has been cancelled and will be rescheduled at a later date.

Contact: Clark Talkington, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6750

Filed: June 16, 1994, 9:53 a.m.

TRD-9442487

## Public Utility Commission of Texas

Monday, June 27, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 11027-complaint of the City of McKinney against Southwestern Bell Telephone Company

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 14, 1994, 4:20 p.m.

TRD-9442373

Tuesday, June 28, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing conference in Docket Number 13100-application of Texas Utilities Electric Company for authority to implement economic development service, general service competitive pricing, wholesale power competitive pricing, and environmental technology service

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 14, 1994, 4:22 p.m.

TRD-9442384

Wednesday, June 29, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a prehearing

conference in Docket Number 11027—complaint of the City of McKinney against Southwestern Bell Telephone Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 15, 1994, 3:32 p.m.

TRD-9442457

Tuesday, October 4, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12362—Tex-La Electric Cooperative of Texas, Inc. complaint against Texas Utilities Electric Company.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 14, 1994, 4:20 p.m.

TRD-9442371

## Texas Department of Transportation

Thursday, June 23, 1994, 9:00 a.m.

815 Brazos, Suite 302, Brazos Building

Austin

According to the agenda summary, the Motor Vehicle Board will call to order; roll call; approval of minutes of motor vehicle board meeting on April 14, 1994; argument on proposal for decision; argument on agreed order of dismissal; agreed orders; orders of dismissal; consideration of proposed new Texas Motor Vehicle Board Rule of Practice and Procedure §103.13; other: recognition of employees, review of litigation status report, review of consumer complaint recap report including decisions made by examiners, division director and board members, review of Article 6686 (P-number) contested cases, division budget status, future meetings schedule; and adjournment.

Contact: Brett Bray, 815 Brazos, #300, Austin, Texas 78701, (512) 476-3587.

Filed: June 14, 1994, 2:43 p.m.

TRD-9442345

## Texas Commission on Children and Youth

Tuesday, June 28, 1994, 9:00 a.m.

300 West 15th Street, One Capitol Square, Committee Room One

Austin

According to the agenda summary, the Juvenile Justice Advisory Group will meet on Advisory Work Group Meeting.

Contact: Paul Donnelly, P.O. Box 13016, Austin, Texas 78711, (512) 305-9056.

Filed: June 16, 1994, 9:14 a.m.

TRD-9442476

## Regional Meetings

Meetings Filed June 14, 1994

The Central Texas MHMR Center Board of Trustees met at 408 Mulberry Drive, Brownwood, Monday, June 20, 1994, at 5:00 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, Ext. 102. TRD-9442374.

The Colorado River Municipal Water District Board of Directors will meet at 400 East 24th Street, Big Spring, June 21, 1994, at 2:00 p.m. Information may be obtained from O. H. Ivie, Box 869, Big Spring, Texas 79721, (915) 267-6341. TRD-9442327.

The Education Service Center, Region III Board of Directors met at the Ramada Inn, 3901 Houston Highway, Victoria, June 20, 1994, at 11:30 a.m. Information may be obtained from Dr. Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0731. TRD-9442392.

The Education Service Center, Region III Board of Directors met at 1905 Leary Lane, Victoria, June 20, 1994, at 1:30 p.m. Information may be obtained from Dr. Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, (512) 573-0371. TRD-9442393.

The Lee County Appraisal District Appraisal Review Board will meet at 289 South Main Street, Giddings, June 22, 1994, at 9:00 a.m. Information may be obtained from Delores Shaw, 218 East Richmond Street, Giddings, Texas 78942, (409) 542-9618. TRD-9442386.

The North Central Texas Council of Governments Executive Board will meet at 616 Six Flags Drive, Centerpoint Two, Second Floor, Arlington, June 23, 1994, at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5588, Arlington, Texas 76005-5888, (817) 640-3000 TRD-9442372.

The Sabine River Authority of Texas Executive Committee Workshop will meet at the Fredonia Hotel, Nacogdoches, June 28, 1994, at 10:00 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3600. TRD-9442385.

Meetings Filed June 15, 1994

The Bandera County Appraisal District Board of Directors will meet at 1116 Main Street, the former Bandera Bulletin Building, Bandera, June 23, 1994, at 3:00 p.m. Information may be obtained from P. H. Coates, P.O. Box 1119, Bandera, Texas 78003, (210) 796-3039, Fax (210) 796-3672 TRD-9442453.

The Cash Water Supply Corporation Board of Directors will meet at the Corporation Office, FM 1564 and Highway 348, Greenville, June 20, 1994, at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas, 75404, (903) 883-2695 TRD-9442443

The Central Appraisal District of Nolan County Appraisal Review Board will meet at the Nolan County Courthouse, Third Floor, 100 East Third Street, Sweetwater, June 22-23, 1994, at 9:00 a.m. Information may be obtained from Ansa Lee Lane, P.O. Box 1256, Sweetwater, Texas 79556, (915) 235-8421 TRD-9442402

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway, Abilene, June 27, 1994, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381 TRD-9442459.

The Central Appraisal District of Taylor County Appraisal Review Board will meet at 1534 South Treadaway, Abilene, June 28, 1994, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381 TRD-9442460.

The Central Counties Center for MHMR Services Board of Trustees will meet at 304 South 22nd Street, Temple, June 21, 1994, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301. TRD-9442421.

The Central Counties Center for MHMR Services (Revised agenda.) Board of Trustees will meet at 304 South 22nd Street, Temple, June 21, 1994, at 7:00 p.m. Information may be obtained from Eldon Tietje, 304 South 22nd Street, Temple, Texas 76501, (817) 778-4841, Ext. 301 TRD-9442454

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street, #102, New Braunfels, June 22-23, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597 TRD-9442450

The Comal Appraisal District Appraisal Review Board will meet at 178 East Mill Street, #102, New Braunfels, June 27-30, 1994, at 9:00 a.m. Information may be ob-

tained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9442451.

**The Comal Appraisal District Appraisal Review Board** will meet at 178 East Mill Street, #102, New Braunfels, July 12-13, 1994, at 9:00 a.m. Information may be obtained from Lynn E. Rodgers, P.O. Box 311222, New Braunfels, Texas 78131-1222, (210) 625-8597. TRD-9442449

**The Dewitt County Appraisal District Board of Directors** will meet at 103 Bailey Street, Cuero, June 21, 1994, at 7:30 p.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753 TRD-9442410

**The Dewitt County Appraisal District Appraisal Review Board** will meet at 103 Bailey Street, Cuero, June 22-23, 1994, at 9:00 a.m. Information may be obtained from Kay Rath, P.O. Box 4, Cuero, Texas 77954, (512) 275-5753 TRD-9442467

**The Education Service Center, Region VIII Board of Directors** will meet at 2230 North Edwards (FM Road 1734), Mt Pleasant, June 23, 1994, at 7:00 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt Pleasant, Texas 75456-1894, (903) 572-8551 TRD-9442431

**The Education Service Center, Region XIII Board of Directors Workshop** met in Conference Room B, 5701 Springdale Road, Austin, June 20, 1994, at Noon. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300 TRD-9442397

**The Education Service Center, Region XIII Board of Directors** met in Conference Room B, 5701 Springdale Road, Austin, June 20, 1994, at 1:15 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 929-1300 TRD-9442398

**The Education Service Center, Region XX (Revised Agenda.) Board of Directors** will meet at 1314 Hines Avenue, San Antonio, June 22, 1994, at 2:00 p.m. Information may be obtained from Dr. Judy M. Castleberry, 1314 Hines Avenue, San Antonio, Texas 78208-1899, (210) 299-2471 TRD-9442425

**The Ellis County Appraisal District Board of Directors** will meet at 406 Sycamore Street, Waxahachie, June 21, 1994, at 7:00 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552 TRD-9442433

**The Fisher County Appraisal District Fisher County Appraisal Review Board** will meet at the Fisher County Courthouse-District Clerk Court Room, Roby, July 7,

1994, at 7:30 a.m. Information may be obtained from Betty Mize, Fisher County Appraisal District, Roby, Texas 79543. TRD-9442461.

**The Garza County Appraisal District Appraisal Review Board** will meet at the Appraisal District Office, 124 East Main, Post, June 29, 1994, at 9:00 a.m. Information may be obtained from Billie Y. Windham, P.O. Drawer F, Post, Texas 79356, (806) 495-3518. TRD-9442399.

**The Gillespie Central Appraisal District Board of Review** will meet in the County Courtroom, the Gillespie County Courthouse, Fredericksburg, June 23, 1994, at 9:00 a.m. Information may be obtained from Mary Lou Smith, P. O. Box 429, Fredericksburg, Texas 78624, (210) 997-9807. TRD-9442446

**The Gillespie Central Appraisal District Board of Review** will meet in the County Courtroom, Gillespie County Courthouse, Fredericksburg, June 23, 1994, at 10:00 a.m. Information may be obtained from Mary Lou Smith, P.O. Box 429, Fredericksburg, Texas 78624, (210) 997-9807. TRD-9442447

**The Hays County Appraisal District Appraisal Review Board** will meet at 21001 North IH-35, Kyle, June 21, 1994, at 9:00 a.m. Information may be obtained from Lynnell Sedlar, 21001 North IH-35, Kyle, Texas 78640, (512) 268-2522 or Fax (512) 268-1945. TRD-9442423.

**The Henderson County Appraisal District Appraisal Review Board** will meet at 1751 Enterprise Street, Athens, July 1, 1994, at 8:30 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens 75751, (903) 675-9296. TRD-9442412.

**The Henderson County Appraisal District Appraisal Review Board** will meet at 1751 Enterprise Street, Athens, July 13, 1994, at 8:30 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD-9442411.

**The Lamar County Appraisal District Appraisal Review Board** will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, June 21, 1994, at 8:30 a.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9442427

**The Lamar County Appraisal District Regular Board** will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, June 21, 1994, at 4:00 p.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822 TRD-9442426

**The Lamar County Appraisal District Appraisal Review Board** will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, June 22, 1994, at 8:30 a.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9442428.

**The Lamar County Appraisal District Appraisal Review Board** will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, June 23, 1994, at 8:30 a.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9442429

**The Lamar County Appraisal District Appraisal Review Board** will meet at the Lamar County Appraisal District Office, 521 Bonham Street, Paris, June 24, 1994, at 8:30 a.m. Information may be obtained from Joe Welch, 521 Bonham Street, Paris, Texas 75460, (903) 785-7822. TRD-9442430.

**The Lamb County Appraisal District Appraisal Review Board** will meet at 331 LFD Drive, Littlefield, July 7, 1994, at 8:00 a.m. Information may be obtained from Vaughn E. McKee, P.O. Box 950, Littlefield, Texas 79339-0950, (806) 385-6474 or Fax: (806) 385-6944. TRD-9442441.

**The Leon County Central Appraisal District Appraisal Review Board** met at the corner of Highway 7 and 75, Leon County Central Appraisal District Office, Gresham Building, Centerville, June 20, 1994, at 9:00 a.m. Information may be obtained from Donald G. Gillum, P.O. Box 536, Centerville, Texas 75833, (903) 536-2252 TRD-9442424.

**The Lower Rio Grande Valley Development Council Board of Directors** will meet at the Harlingen Chamber of Commerce, 311 East Tyler, Harlingen, June 23, 1994, at 1:30 p.m. Information may be obtained from Kenneth N. Jones, Jr., 4900 North 23rd Street, McAllen, Texas (210) 682-3481 TRD-9442444.

**The Martin County Appraisal District Board of Directors** met at the Appraisal Office, 308 North St. Peter, Stanton, June 20, 1994, at 7:00 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 79782, (915) 756-2823 TRD-9442401.

**The Mills County Appraisal District** will meet in the Jury Room, Mills County Courthouse, Goldthwaite, June 23, 1994, at 6:30 p.m. Information may be obtained from Cynthia Partin, P.O. Box 565, Goldthwaite, Texas 76844, (915) 648-2253. TRD-9442400.

**The Panhandle Regional Planning Commission Board of Directors** will meet in the PRPC Board Room, 415 West Eighth

Street, Amarillo, June 23, 1994, at 1:30 p.m. Information may be obtained from Rebecca Rusk, P.O. Box 9257, Amarillo, Texas 79105-9257, (806) 372-3381. TRD-9442422.

**The Pecan Valley Mental Health Mental Retardation Center (Revised Agenda.)** Board of Trustees will meet at the Pecan Valley MHMR Region Clinic Office, 104 Pirate Drive, Granbury, June 22, 1994, at 8:30 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401, (817) 965-7806. TRD-9442416.

**The Surplus Lines Stamping Office of Texas Board of Directors** will meet at Hughes and Luce, L.L.P., 111 Congress Avenue, Suite 900, Austin, June 21, 1994, at 10:00 a.m. Information may be obtained from Charles L. Tea, Jr., P.O. Box 9906, Austin, Texas 78766, (512) 346-3274. TRD-9442442.

**The Tax Appraisal District of Bell County Board of Directors** will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, June 22, 1994, at 7:00 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext. 29. TRD-9442445.

**The Trinity River Authority of Texas Board of Directors** will meet at 6500 West Singleton Boulevard, Grand Prairie, June 22, 1994, at 10:00 a.m. Information may be obtained from James L. Murphy, 5300 South Collins, Arlington, Texas 76018, (817) 467-4343. TRD-9442455.

**The Tyler County Appraisal District Appraisal Review Board** will meet at 806 West Bluff, Woodville, June 21, 1994, at 9:00 a.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9442420.

**The Tyler County Appraisal District Appraisal Review Board** will meet at 806 West Bluff, Woodville, June 22, 1994, at 9:00 a.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9442419.

**The Tyler County Appraisal District Appraisal Review Board** will meet at 806 West Bluff, Woodville, June 23, 1994, at 9:00 a.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9442418.

**The Tyler County Appraisal District Appraisal Review Board** will meet at 806 West Bluff, Woodville, June 24, 1994, at 9:00 a.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9442417.

**The University of Houston Animal Care Committee** met in Room 75, S&R II Building, University of Houston, 4800 Calhoun Boulevard, Houston, June 20, 1994, at 2:00 p.m. Information may be obtained from Julie T. Norris, 4800 Calhoun Boulevard, Houston, Texas 77204, (713) 743-9222. TRD-9442432.

◆ ◆ ◆

### Meetings Filed June 16, 1994

**The Bastrop Central Appraisal District Appraisal Review Board** will meet at 1200 Cedar Street, Bastrop, June 21, 1994, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925. TRD-9442477.

**The Deep East Texas Council of Governments DETR Economic Development Committee** will meet in Room 102, Liberal Arts Building, Stephen F. Austin State University, 1936 North Street, Nacogdoches, June 23, 1994, at 9:30 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas 75951, (409) 384-5704. TRD-9442480.

**The Deep East Texas Council of Governments Grants Application Review** will meet in Room 102, Liberal Arts Building, Stephen F. Austin State University, 1936 North Street, Nacogdoches, June 23, 1994, at 11:00 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar, Jasper, Texas (409) 384-5704. TRD-9442481.

**The Fisher County Appraisal District Fisher County Appraisal Review Board** will

meet at the Fisher County Courthouse-District Clerk Jury Room, July 18, 1994, at 7:30 a.m. Information may be obtained from Betty Mize, Box 516, Roby, Texas 79543, (915) 776-2733, or Fax (915) 776-2815. TRD-9442473.

**The Houston-Galveston Area Council Projects Review Committee** will meet in Conference Room A, Second Floor, 3555 Timmons Lane, Houston, June 21, 1994, at 8:30 a.m. Information may be obtained from R. Ballas, 3555 Timmons Lane, Houston, Texas 77027-6478, (713) 993-4555. TRD-9442484.

**The Houston-Galveston Area Council Board of Directors** will meet in Conference Room A, Second Floor, 3555 Timmons Lane, Houston, June 21, 1994, at 10:00 a.m. Information may be obtained from Cynthia Marquez, P.O. Box 22777, Houston, Texas 77227, (713) 627-3200. TRD-9442483.

**The Lampasas County Appraisal District Appraisal Review Board** will meet at 109 East Fifth, Lampasas, June 21 and 23, 1994, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9442485.

**The Lampasas County Appraisal District Board of Directors** will meet at 109 East Fifth, Lampasas, June 23, 1994, at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058. TRD-9442486.

**The North Texas Private Industry Council Nortex Regional Planning Commission** will meet at 4309 Jacksboro Highway, Suite 200, Wichita Falls, June 29, 1994, at 12:15 p.m. Information may be obtained from Earl Nunneley, 601 West Cedar, Nocona, Texas 76255, (817) 825-3222. TRD-9442478.

**The Tarrant Appraisal District Tarrant Appraisal Review Board** will meet at 2329 Gravel Road, Fort Worth, June 20-25, 1994, at 8:00 a.m. Information may be obtained from Suzanne Williams, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9442475.



# TEXAS



Name: Justin Mayer  
Grade: 5  
School: Woodrow Wilson Elementary, Denton 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.

## Office of the Attorney General Notice of Public Hearing

The Crime Victims' Compensation Division of the Office of the Attorney General will hold a public hearing on Wednesday, July 13, 1994, at 9:00 a.m. in Room 5 on the Fifth Floor of the One Capitol Square building, 300 West 15th Street in Austin, Texas, for the purpose of soliciting further comment on the proposed administrative rules for the agency.

The public is invited to attend the hearing and present oral or written testimony.

This hearing will be held pursuant to Texas Government Code, Subchapter B, Chapter 2001, which states that the agency shall provide an opportunity for a public hearing upon request before it adopts a substantive rule.

Issued in Austin, Texas, on June 14, 1994.

TRD-9442329      Jerry Benedict  
Assistant Attorney General  
Office of the Attorney General

Filed: June 14, 1994

## Texas Cancer Council Notice of Invitation

**NOTICE OF INVITATION:** The Texas Cancer Council hereby solicits Baylor College of Medicine to submit an application for Fiscal Year 1995 funds, for an amount not to exceed \$50,000. The Baylor College of Medicine is uniquely qualified for this funding opportunity because it is the only entity in Texas that is eligible for the 1994 National Cancer Institute State Matching Supplement Application and is designated a Specialized Program of Research Excellence (SPORE) for Prostate Cancer by the National Cancer Institute.

**CONTACT PERSON:** For further information, contact Emily Untermeyer, Executive Director, Texas Cancer Council, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

**CLOSING DATE:** The application must be received in the Texas Cancer Council office by 5:00 p.m. on Friday, July 8, 1994. Final funding is contingent upon approval by the National Cancer Institute.

**BACKGROUND INFORMATION:** The Texas Cancer Council was designated by the National Cancer Institute (NCI) to coordinate Texas' 1994 National Cancer Institute State Matching Supplement Application. Texas cancer researchers who are eligible for supplemental funding are

those who currently have NCI funds for breast, lung, or prostate cancer research and have been deemed eligible by the NCI. Applicants must provide state matching funds to be eligible for a federal award. A maximum of \$50,000 in federal funds will be awarded to successful applicants.

**APPLICATION REQUIREMENTS:** Baylor College of Medicine's application for state matching funds for the 1994 NCI State Matching Supplement Application is to be submitted by Peter Scardino, M.D., director of the SPORE for prostate cancer. The application shall seek to establish and evaluate a prostate cancer screening and tracking program for low-income, minority residents served by Harris County Hospital District community health centers. The supplemental project may include provider assessment, community outreach, patient education, and scientific research components. The project application also may include activities such as:

an analysis of physicians' knowledge, attitudes, and practices regarding prostate cancer screening;

implementation of prostate screening protocols in community health centers;

community outreach to men who do not use clinics regularly;

tracking and follow-up of all men with positive prostate cancer screening tests;

development and pilot-testing of educational interventions to increase screening utilization and to assist men with treatment decisions; and

collection of specimens to permit research on ethnic differences in tumor stage at diagnosis and tumor biology.

Issued in Austin, Texas, on June 13, 1994.

TRD-9442275      Emily F. Untermeyer, M.P.H.  
Executive Director  
Texas Cancer Council

Filed: June 13, 1994

## Texas Education Agency Notice of Public Hearings

The State Board of Education (SBOE) Committee on Long-Range Planning will hold a series of public hearings to obtain input on the development of the Long-Range Plan for Public Education, 1995-1999. The hearings will be held at the times and places listed as follows. Hearings may adjourn before the stated ending time if all who pre-registered or registered on-site have been called to give testimony.

Hearings will be held at the following locations.

Monday, June 27, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 19 Education Service Center, Rooms 616 and 618, 6611 Boeing Drive, El Paso, Texas;

Tuesday, June 28, 1994 from 3:00 p.m. until 5:00 p.m., at Harris County Department of Education, Room 100 (A, B, and C), 6300 Irvington Boulevard, Houston, Texas;

Tuesday, June 28, 1994, from 6:30 p.m. until 8:30 p.m., at Region 4 Education Service Center, 7145 West Tidwell, Room J, Houston, Texas;

Thursday, August 18, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m., at Region 2 Education Service Center, 209 North Water Street, Room 2D, Corpus Christi, Texas;

Tuesday, August 23, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m. at Region 13 Education Service Center, 5701 Springdale Road, Rooms 202 and 203, Austin, Texas,

Thursday, August 25, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m. at Region 17 Education Service Center, 1111 West Loop 289, Room 229 North, Lubbock, Texas; and

Tuesday, August 30, 1994, from 3:00 p.m. until 5:00 p.m. and from 6:30 p.m. until 8:30 p.m. at Region 5 Education Service Center, 2295 Delaware Street, Rooms A & B, Beaumont, Texas.

The State Board of Education periodically reviews the educational needs of the state, establishes goals for Texas public education, and adopts and promotes a long-range plan for meeting those goals. The goals developed for this Long-Range Plan will carry Texas public education to the next century. The hearings are conducted to gather comment about the educational needs of the state, proposed goals for Texas public education, and how those goals can best be achieved.

In order to allow the committee to hear from as many groups as possible, professional associations and education advocacy organizations are encouraged to coordinate proposals within their memberships and make one presentation on behalf of the group.

Individuals desiring to present testimony to the Committee on Long-Range Planning are asked to register for the hearing by calling the Texas Education Agency Office of Policy Planning and Evaluation, at, (512) 463-9701, by 5:00 p.m. on the last working day prior to the public hearing at which they wish to speak. To accommodate as many speakers as possible, individuals are asked to limit their testimony to the committee to three minutes. Speakers will be asked to testify in the order in which their calls were received.

Individuals may also register on-site the day of the hearing. These individuals will be allowed to give testimony on a first-come, first-served basis following those who have pre-registered.

Speakers needing translation services or other special accommodations should notify the Office of Policy Planning and Evaluation by 5:00 p.m. at least five working days prior to the public hearing at which they wish to speak.

Speakers are encouraged to provide 15 written copies of their testimony for distribution to the committee. Written information for the committee can be sent to the Office of

Policy Planning and Evaluation at any time.

Additional information concerning these hearings may be obtained from the Division of Policy Planning and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, or at (512) 463-9701.

Issued in Austin, Texas, on June 14, 1994.

TRD-9442370

Lionel R. Meno  
Commissioner of Education  
Texas Education Agency

Filed: June 14, 1994

◆ ◆ ◆  
**Texas Department of Health**  
**Grant Applications for Local EMS**  
**Projects**

I. Project Description. The EMS Local Projects grant program was implemented in 1990 as a way to improve the Emergency Medical Services (EMS) throughout Texas by providing money and technical assistance to eligible organizations. This program is administered by the Bureau of Emergency Management (Bureau) of the Texas Department of Health (Department). This grant provides reimbursement for costs incurred for a specific project completed during a specified contract period, October 1, 1994-August 31, 1995. Project costs must be approved by the Department in order for the organization to receive reimbursement.

II. Project Goals. The TDH is inviting applications for local EMS projects to increase the availability and quality of prehospital healthcare. An applicable project is considered to be one which, at its completion, is able to demonstrate that it had a positive impact on the delivery of emergency prehospital healthcare in the area that it was administered. Types of projects that are applicable for funding include, but are not limited to EMS certification training, specialty training related to prehospital health management, EMS equipment, research topics related to the delivery of prehospital medicine, computers, public information and education programs, continuing education programs, ambulances, and system development.

III. Performance Requirements. Contracts will be developed between the Department and successful applicants. The contract will be for one year and will detail specifics such as budget, reporting requirements, and any other specifics that might apply to the award. All registered, licensed, or certified organizations (e.g., EMS providers, First Responder groups) must maintain the appropriate credentials throughout the specified contract period. Grants require a series of regular reports throughout the contract period, including project summary reports and a final narrative report detailing the effectiveness of the grant and the project itself. Reports are required for all organizations receiving funding within 45 days following the end of the stated contract period. In addition, it will be the responsibility of the grant recipient to maintain a record of all costs and activities related to the administration of the project. The grant provides reimbursement for an approved project and associated costs incurred after the award is made, and during the stated contract period only. Reimbursement may be withheld and a request for return of funds may occur if any of the stated requirements of this grant are not met. For EMS certification, proof of successful certification must be submitted within 45 days following the end of the contract period. Projects must

start on or after October 1, 1994, and be completed prior to August 31, 1995.

IV. Applicant Eligibility. Proposals will be accepted from nonprofit organizations directly or indirectly responsible for providing or impacting emergency prehospital healthcare (e.g., licensed EMS providers, EMS training programs, local governments, and registered first responder organizations). In order to be considered as a registered first responder organization, the proper TDH First Responder paperwork, based on 25 Texas Administrative Code, <sup>TM</sup>157.21, First Responder Organization Registry, must be filed and notification of acceptance by TDH of entry into the network must be received by October 1, 1994. Failure to comply with this requirement of the grant constitutes grounds for revocation of any award made as part of the Local Projects program.

V. Application Procedure. Applicants must submit, in duplicate, a typewritten or computer generated letter of intent on letter sized paper. The letter of intent should not exceed five pages in length and should include the following information:

(A) A description of the organization, and description of the service area;

(B) A complete, specific description of the problem,

(C) A detailed explanation of what the proposed project is, how much it will cost, what the TDH share of the project will be and what the benefits will be following completion of the project,

(D) Provision of an itemized budget as it applies to the proposed project,

(E) The willingness and ability of the organization to provide 50% matching funds on applicable items as specified in Section VII. Range of Financial Assistance,

(F) How the benefits will be measured

In addition, a cover page will be included with each packet that must be fully completed and returned with each application. The letter of intent should be submitted by mail or fax directly to the following location: Gene Weatherall, Chief, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin Texas 78756, Attention: Local Projects Grants Program. The fax number is (512) 834-6736. **Any application that is faxed, will still require the original to be sent by mail to the previous address noted.** Once an application is received, a confirmation notice will be sent out within two weeks that will note receipt, and if necessary request further information concerning details such as budgets, medical direction, and contact information.

VI. Deadlines. The deadline for submitting the letter of intent will be 5:00 p.m., August 1, 1994. Only those applications that are received in the office or postmarked by this date will be reviewed, regardless of the circumstances. The applications will be received by any mail delivery method, fax, or hand deliveries. If hand delivered, the letter of intent must be taken to the Exchange Building, Second floor-Bureau of Emergency Management, 8407 Wall Street, Suite S220, Austin, Texas, no later than the previously specified deadline. A letter of intent that is to be faxed may be sent to (512) 834-6736 to meet the previous deadline noted. An additional application must be mailed or faxed pursuant to the guidelines specified in Section V. Application Process. Any organization that receives tentative funding approval will be informed of additional deadlines at a later point in the process.

VII. Range of Financial Assistance/Matching Requirements/Special Considerations. In previous years the average individual award was approximately \$7,800 with a range of \$618 to \$82,000. The maximum grant award for Fiscal Year 1993-1994 funding period was \$31,000. For this funding period there will be approximately \$700,000 available for distribution.

Organizations that receive funding will be required to provide 50% matching funds for individual equipment items with a useful life of more than one year and a cost greater than \$1,000, including shipping costs with the following exceptions: fax machines, cameras, video recorders/players, microcomputers, and printers. These items are considered equipment and require 50% matching funds if individual cost is greater than \$500 and the useful life is more than one year. These matching funds may come from, but are not limited to, bank notes, private donations, and other state, federal, or private foundation grant sources. Any project that involves the provision of Advanced Life Support (ALS) will require a medical director. This includes, but is not limited to, automated external defibrillator (AED) projects, purchase of monitor/defibrillator/pacer units, and ALS training. The willingness of a physician to act in this capacity should be included in the letter of intent.

VIII. Types of Assistance. The program provides reimbursement only for approved costs associated with the implementation of the approved project. The following are examples of costs that are not applicable for funding: salaries/fringe benefits, disposable supplies, and day-to-day operating expenses (e.g., fuel, insurance, etc.)

Projects will be funded until the funds are exhausted or preset limits are reached. Should conditions prevent completion of a project, the Department may redistribute funds at its discretion. The Department reserves the right to fund a project at any level that it feels appropriate, according to availability of funds, and justification for need as presented in the letter of intent. Any costs incurred prior to October 1, 1994, will not be eligible for reimbursement.

IX. Evaluation Process. Letters of intent will be reviewed and scored based on information provided by the applicants. Furthermore, if applicable, consideration will be given to the organization's previous contract experiences with this grant program. Each applicant will be given a cumulative score based on the letters of intent. Tentative approval will be given by the Bureau Chief, Bureau of Emergency Management, and the Associate Commissioner, Special Health Services. Further information may be requested from the organizations that have been approved for tentative funding. The requested information will be reviewed by members of the Bureau staff to ensure that

(1) all budget items requested are applicable and appropriate;

(2) matching funds are available, and

(3) implementation of the proposed project is possible.

After all available information has been reviewed, final approval will be given by the Commissioner of Health or his appointed agent. All projects that are not funded may be resubmitted the next available funding period for reconsideration.

X. Evaluation Criteria. The evaluation criteria includes, but is not limited to, service area, type of organization, type of project, total cost of the project, the impact on

prehospital health care by the project, and the ability of the project to be completed in the required period of time. Priority for funding will be given to the following non-profit organizations. EMS agencies (licensed providers or registered first responders, see Section IV. Applicant Eligibility) that is staffed with volunteers (less than five paid employees), EMS agencies participating in their Regional Advisory Council, groups providing satellite training programs (training conducted at remote sites other than the main campus), EMS providers or first responders that are upgrading their capabilities, EMS agencies in rural or frontier areas of the state that are implementing a new service or expanding an existing service, organizations that have been funded less than three times through this program, and groups teaching continuing education programs.

XI. Agency Office and Contact For additional information contact John Singleton, EMS System Development, Bureau of Emergency Management, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6700

Issued in Austin, Texas, on June 13, 1994.

TRD-9442297 Susan K Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed June 13, 1994

### Notice of Emergency Cease and Desist Order

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered James E. Cummins, M.D. (registrant-R02398) of Kingsland to cease and desist using any sources of radiation at any location in Texas until all health-related violations found during a recent inspection of his facility have been corrected. The bureau determined that the combination of health-related violations and the failure of the registrant to correct previously reported violations constitute an immediate threat to public health and safety. The registrant is further required to provide evidence satisfactory to the bureau regarding the actions taken to correct all violations and the methods to prevent their recurrence.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 14, 1994.

TRD-9442304 Susan K Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed June 14, 1994

### Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation

Notice is hereby given that the Bureau of Radiation Control (bureau) issued a notice of violation and proposal to assess an administrative penalty to Applied Standards Inspection, Inc. (licensee-L03072) of Beaumont. A penalty

of \$4,000 is proposed to be assessed the licensee for violations of the Texas Regulations for Control of Radiation. The violations contributed to an incident that caused a significant threat to the health and safety of the public and the environment. The delay by the licensee to notify the bureau of the loss of the radiographic exposure device containing a radiation source demonstrated a deficiency in the licensee's radiation safety program.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on June 14, 1994.

TRD-9442303 Susan K. Steeg  
General Counsel, Office of General  
Counsel  
Texas Department of Health

Filed: June 14, 1994

## Texas Department of Housing and Community Affairs

### Comments Related to the Proposed 1994 Final Statement

On April 4, 1994, the Texas Department of Housing and Community Affairs (TDHCA) submitted the Final Statement of its community development objectives and projected use of Community Development Block Grant (CDBG) non-entitlement area funds for Federal Fiscal Year 1994 to the United States Department of Housing and Urban Development (HUD). TDHCA submitted a summary of the Texas Community Development Program to each eligible applicant in the state of Texas along with a schedule of six public hearings, which were announced in the February 25, 1994, issue of the *Texas Register* (19 TexReg 1414). The six public hearings were held at different locations across the state in March 1994 to solicit comments on the proposed Final Statement.

TDHCA received 155 letters containing specific comments or recommendations from cities and counties, organizations, consultants, and other concerned citizens. Each of the letters received included recommendations that TDHCA make one or more changes to the 1994 proposed Final Statement. Based on the number and frequency of comments received for the different areas of the program outlined in the Final Statement, TDHCA made changes as noted in the following information and submitted the Final Statement to HUD for approval.

In accordance with Texas Government Code, Chapter 2105, the categories of comments received are summarized as follows.

#### 1. Ineligible Activities.

The proposed Final Statement included provisions that restrict the use of Texas Capital Fund grants for projects that address job creation/retention through a state-supported facility and for the relocation of an existing business from one unit of local government to another. One consultant recommended that exceptions to the moratorium on projects assisting state-supported facilities be expanded to include projects in the commuting areas of communities in which a federal military installation has been either closed, or listed for closure, or whose military personnel has been reduced in number by 50% or more

since 1992 One county, two cities, and one consultant opposed the proposed exclusion of using TCF funds for business relocating from one Texas location to another and recommended that the relocation rules remain unchanged.

Based on a review of the comments received, the Final Statement was changed to allow relocation from one unit of local government to another unless formal notification of disapproval is received from the city/county the business is leaving. A written agreement between the two local governments involved in the business relocation is preferred.

## 2 Allocation System

The proposed Final Statement included six separate funding categories including the Community Development Fund, Texas Capital Fund, Colonia Fund (with three separate components), Planning/Capacity Building Fund, Disaster Relief/Urgent Need Fund, and a new funding category, the Young v Cisneros Fund, which was proposed for program year 1994 to address the activities required in desegregation plans and plan amendments submitted by HUD to the court presiding in the Young v Cisneros lawsuit. Two cities, one council of governments, and one consultant expressed support for the Young v Cisneros Fund as proposed. One consultant suggested that the fund be eliminated, they stated that this is another program designed to favor a selected part of the state. One consultant suggested that a special fund be established to address activities required by the Americans with Disabilities Act (ADA). They stated that the scoring system currently in place effectively eliminates ADA projects from the possibility of being funded.

Based on the number and frequency of comments received, the allocation system in the Final Statement was not changed.

## 3 Definition of Funds

The proposed Final Statement included a definition for each of the six funding categories. The following comments were received regarding the definitions of the funding categories.

Young v Cisneros Fund--One state representative wrote on behalf of his constituents affected by the Young v Cisneros lawsuit that due to eligibility requirements, funding limits, and other programmatic structures of this set aside fund, future accessibility to CDBG funds could be adversely affected if their PHA's desegregation plans contain expanded or unresolved activities. He requested that additional public hearings be held regarding these issues at locations within reasonable proximity to the 70 East Texas communities and Housing Authorities affected by Young v Cisneros. One consultant stated that this is a "special interest" fund and they now represent 11.32% of the Texas Community Development Program allocation. One city recommended that cities affected by the Young v Cisneros lawsuit have the right to choose their highest community development priority when applying for TCDP funds without being penalized. One consultant also supported the creation of the Young v Cisneros Fund, but would like to expand the definition of eligible activities to include incidental improvements that have not been classified as "required" by HUD. They further suggested that the use of matching funds as a competitive scoring factor under this Fund be dropped since it will discourage submission of applications. They also suggested that TDHCA should consider awarding localities with fewer than ten employees (instead of five as proposed) the average score under

the Young v Cisneros Fund without regard to the communities' minority population percentage. It is also recommended that the benefit to low and moderate income persons not be used as a scoring factor. For some "required" activities, it is possible that the 51% threshold may not be able to be achieved.

Texas Capital Fund--One consultant recommended that a funded applicant under the Real Estate Development Program be allowed to keep 10-20% of the lease payments made by a business. They also recommended that the provision of TCF funding be extended for nonentitlement state designated enterprise zones as well as nonentitlement federally-designated empowerment zones and enterprise communities. One county and one consultant opposed the prohibition of improvements on private property under the Infrastructure Program and requested that the restrictions be clearly defined. One city recommended that railroad spur construction be allowed on private property under the Infrastructure Program.

Colonia Fund--One consultant recommended that the Colonia Construction Fund, Planning Fund, and Demonstration Fund be eliminated since these Funds are discriminatory to other parts of the state. They are opposed to the Colonia Demonstration Fund because eight or more worthy applicants could be funded for the amount of money dedicated to this special funding category.

Colonia Planning Fund--One county suggested that provisions be made to allow for the platting of illegal subdivisions for basic improvements.

Planning/Capacity Building Fund--One consultant recommended that a separate planning activity be established for GIS mapping. Currently, the cost of preparing or updating the base map is included as part of the base activities. The costs of these other base activities does not leave sufficient funds to undertake computerized mapping. Southwest Consultants recommended greater flexibility by increasing the range of opportunities to justify "special projects". Many communities have particular problems which require more funds than allowed under the matrix of allowable costs for this program. They suggest that a higher match level be required under the special projects category to ensure that the community is seriously committed to this activity.

Based on the number and frequency of comments received, the definition of funds in the Final Statement was not changed.

## 4. Distribution of Funds.

The proposed Final Statement included the allocation for each of the six funding categories as well as priorities for the reobligation of funds recaptured from previous program years. One consultant recommended that Texas Capital Fund projects receive priority for reallocated funds over special targeted activities. One consultant recommended that the funds designated for the Colonia Fund be combined into the Community Development Fund through which every eligible applicant in the state would have the opportunity to compete for these funds.

Based on the number and frequency of comments received, the distribution of funds in the Final Statement was not changed.

## 5. Pre-committed Funds.

The proposed Final Statement included a provision for Texas Capital Fund project awards pre-committed prior to the execution of the Grant Agreement and Funding Ap-

proval documents between HUD and the state or May 30, 1994, whichever comes first. One consultant recommended that pre-agreement expenses for all TCF programs be allowed during the program year not just the applicants that have submitted a TCF pre-application by May 30, 1994.

Based on a review of the comment received, the Final Statement was not changed.

#### 6. Application Cycles.

The proposed Final Statement included the provision for a two-year funding cycle through which TDHCA will award program year 1994 and 1995 funds for the Community Development Fund, Young v. Cisneros Fund, Colonia Fund, and Planning/Capacity Building Fund using the same selection criteria and data. The proposed Final Statement also limited applicants with activities required in the desegregation plans and plan amendments submitted by HUD to the court in the Young v. Cisneros lawsuit to submitting an application only to the Young v. Cisneros Fund. Twenty-four cities, two regional councils, and one consultant expressed support for the two-year funding cycle. Two cities and one consultant expressed concern regarding the two-year funding cycle, specifically with the potential erosion of their region's allocation due to the "Gentlemen's Agreement" method of allocation. They recommended that TDHCA include an identified method of addressing funding adjustments after the first year's allocation is disbursed. One consultant also suggested that any applicant that submits a Young v. Cisneros Fund application addressing "required" activities should also be allowed to submit a Community Development Fund application in 1994.

Based on a review of the comments received and the proposed limitations imposed on applicants from the regions affected by the Young v. Cisneros lawsuit, the Final Statement was changed to allow the submission of a Community Development Fund application from an applicant with activities required in the desegregation plans and plan amendments submitted by HUD provided that a Young v. Cisneros Fund application is also submitted with local matching funds committed.

#### 7. Contract Awards.

Contract award maximum and minimum amounts for each of the six proposed funding categories were included in the proposed Final Statement.

One consultant suggested that the maximum single applicant contract award for the Community Development Fund be reduced to \$350,000 and the multi-jurisdiction award amount be reduced to \$500,000 in order to maximize the distribution of funds. One city suggested that a Community Development Fund single applicant project be limited to \$250,000. One consultant expressed support for the minimum Young v. Cisneros Fund award of \$30,000, but stated that the maximum contract award should be raised to \$500,000 under this funding category similar to the Colonia Construction Fund. This consultant also expressed support for the continued provisions for large amount high-impact Texas Capital Fund (TCF) projects. One consultant recommended that the TCF Infrastructure and Real Estate Development Program be limited to a maximum of \$1.5 million rather than \$2.5 million provided that the cost per job is \$5,000 or less or when 200 or more jobs are created. One consultant suggested that TCF contract awards be limited to \$800,000.

Based on the number and frequency of comments received, the Final Statement was not changed.

#### 8. Public Hearing Provisions.

Provisions were included in the proposed Final Statement for public hearings scheduled and conducted by TCDP applicants or recipients. Two consultants expressed support for allowing applicants to conduct one of the two required public hearings before 5:00 p.m. One consultant suggested that the local government body should have the right to decide the location of the public hearing, in the event there are no facilities available in or near the target area, the governing body should hold the meeting in either the city hall or county courthouse.

Based on a review of the comments received, the Final Statement was not changed.

#### 9. Regional Review Committees (RRC)-Composition and Role.

Regional Review Committees are established in each of the 24 state planning regions to review and score applications from within their respective regions. One regional council recommended that TDHCA staff work more closely with the Governor's Office to ensure that appointments to the RRC are made in a timely manner. One state senator expressed support for Regional Review Committees comprised entirely of all local elected officials. One city suggested that an alternate member be designated and trained to score for each county member of an RRC in the event of resignations or illness. This city stated that in small regions comprised of three or four counties, representation of communities in those counties is adversely affected when committee members are absent for scoring meetings. One city expressed opposition for the regional review process and requested that the Regional Review Committee process be reconsidered. One consultant suggested that continuation of need be eliminated as a scoring criteria at the regional level since this rewards an applicant's persistence and not the merits of the project.

Based on the number and frequency of comments received, the Final Statement was not changed, however, the comments will be considered when the 1994 Regional Review Committee Guidebook is prepared.

#### 10. Performance Requirements.

The proposed Final Statement included several requirements that must be met in order to submit a TCDP application. The following comments were received on the performance requirements.

One county suggested that waivers be granted to entities for the timely expenditure rules on a case-by-case basis to prevent an entity from being ineligible for the two-year funding cycle. They expressed concern that an applicant may be deemed ineligible due to factors that may not be within their control. One consultant recommended that the obligation, expenditure, and closeout threshold requirements for applicants through the Young v. Cisneros Fund be deleted since these requirements may unduly delay some communities from addressing their "required" activities. One county and two consultants opposed the threshold requirement for completing TCF projects within 30 months of the contract start date and recommended that the time limit be increased to 36 months.

Based on the number and frequency of comments received, the time limit for expending Texas Capital Fund funds was increased from 30 months to 36 months.

## 11 Fair Housing Plan

The proposed Final Statement included a threshold requirement that each 1994 applicant prepare and submit a fair housing plan with its application. Nineteen cities, three regional councils, and eight consultants opposed the requirement for a fair housing plan. Most of the respondents suggested that this requirement be placed only on those applicants that receive funding since considerable time and resources are involved in the collection of this data. Since public housing authorities, not cities and counties, are responsible for ensuring the kind of compliance stated in the final statement, applicants for TCDP funds may have no legal means to address the issues raised in the fair housing plans. In addition, most of the respondents requested that TDHCA clarify the intent of the fair housing plan.

Based on a review of the comments received, a fair housing plan will only be required from funded applicants rather than in the application phase as originally proposed.

## 12 Selection Criteria-Community Development Fund.

The proposed Final Statement included the criteria used to select applicants for funding for the six proposed funding categories. Changes to the minority hiring scoring factor as described under the Community Development Fund are similar for the Texas Capital Fund, Colonia Fund, and Planning/Capacity Building Fund. Comments were received for individual funding categories as follows.

Two cities and one consultant recommended that the community distress score for the percentage of persons living in poverty criteria be eliminated as it is currently used. They recommend using a combination of percentage and number of persons living in poverty.

Four cities and five consultants recommended that the minority hiring scoring factor be eliminated. One consultant suggested that the state award points in the minority hiring category in a positive manner by awarding extra points to projects that further the tenets of equal opportunity hiring. One consultant suggested that communities with a large population in group quarters (e.g., prisons, institutions, etc.) not be penalized for the persons not available for employment. Since many prisons have a disproportionately higher percentage of minorities, a community in this position is never able to reflect its minority employment percentage compared to its minority population percentage because of this statistical skewing. One city suggested that the number of points associated with minority hiring be reduced from 25 points by at least ten points and the time frame used to report full-time employees be made more flexible. One consultant recommended that the minimum number of employees be increased from five to ten in order to receive the regional average score.

Six counties, 92 cities, one regional council, and three consultants expressed support for the retention of the ten additional points awarded to applicants not funded in the prior year. One county, one city, one state senator, and two consultants opposed the ten points being used for the 1995 grant competition. The consensus was that a community will be penalized for two years if they received funding during the 1993 grant competition. One city suggested that program years 1994-1997 be funded at one time or apply ten points to unfunded applicants each year cumulatively until this amount reaches 50 points. One city suggested that a community should be given an additional five points if they have never been funded, then each time you are funded you lose one of those points. This would

help to emphasize the number of times a city has been funded over the years.

One county and one city stated that basic human needs projects (e.g., water, sewer, and housing) should be scored in the same range as designated empowerment zones or enterprise communities. One city recommended that state enterprise zones be recognized since TDHCA recognizes federal designations. One consultant expressed concern about the scoring range for street paving, drainage, and flood control projects. They stated that these types of projects provide as much benefit to the community from health and safety standards as the water and sewer projects. One consultant suggested that TDHCA elevate street improvement projects to a level comparable to water, sewer, and housing activities. HUD as well as the state could become the target of future civil rights complaints and lawsuits on the basis that community-wide water, sewer, and housing projects, while needed, are closing the gap that exists in the public facilities found in minority neighborhoods compared to non-minority neighborhoods. One city suggested that stormwater drainage projects be assigned a higher scoring range for project impact.

One city and one regional council recommended that the marginal fund competition be eliminated. If the marginal applicant in a region does not accept the reduced funding, then the next applicant should be given the opportunity to accept the funding. If that applicant does not accept the funding, then you would just go down the list until some locality accepts the funding. This will ensure that each region will receive their full allocation.

Based on a review of the comments received, the Community Development Fund selection criteria was changed so that applicants with seven or fewer full-time employees, 10% or less minority population or 3.0% or more persons living in group quarters or institutions will receive the regional average score on the minority hiring scoring factor. In addition, additional consideration for activities included in the Young v. Cisneros lawsuit was eliminated since a set aside fund was established for those activities.

## 13. Selection Criteria-Texas Capital Fund (Main Street Improvements Program.

One of the programs established under the Texas Capital Fund is the Main Street Improvements Program. One regional council and one consultant recommended that the Texas Capital Fund Main Street Improvements Program not be limited to cities participating in the Texas Historical Commission's Main Street Program.

Based on the number and frequency of comments received, no changes were made to the selection criteria in the Final Statement.

A complete copy of the 1994 Final Statement and a summary of comments are available upon request. Contact: Vicki Gossett, Texas Community Development Program, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711, (512) 475-3909.

Issued in Austin, Texas, on June 15, 1994.

TRD-9442394  
Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed: June 15, 1994



## 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 reimbursement rates for the Medically Dependent Children's Waiver program. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on July 6, 1994, at 1:00 p.m. in the Board Room (125E) of the John H. Winters Center (701 West 51st Street, Austin, Texas, first floor, East tower). If you are unable to attend the hearing, but wish to comment on the rates, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sherri Williams. Written comments may be mailed to the following address noted, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 450-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after June 21, 1994, by contacting Sherri Williams, M/C W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sherri Williams (512) 450-4817 by June 29, 1994, so that appropriate arrangements can be made.

Issued in Austin, Texas, on June 14, 1994

TRD-9442328 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed June 14, 1994

## Texas Department of Insurance Notice of Public Hearings

The Commission of Insurance will hold a public hearing under Docket Number 2102 on Monday, July 18, 1994, 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, for the purpose of soliciting comments and recommendations concerning changes to the rating classification system for private passenger automobile insurance in Texas, as contained in Rule 74 of the Texas Automobile Rules and Rating Manual. The Commissioner is seeking comments on the basis and principles for grouping risks, and objections to and support of existing rating factors and classifications.

The public is invited to attend the hearing and present oral or written testimony. The Department requests that all exhibits and written comments to be provided at least two weeks before the hearing to the Office of the Chief Clerk, Mail Code 113-2A, P.O. Box 149104, Austin, Texas 78714-9104. An additional copy should be sent to Birny Birnbaum, Mail Code 113-1A, P.O. Box 149104, Austin, Texas 78714-9104.

This hearing will be held pursuant to Texas Insurance Code, Articles, 1.04C, 5.10, 5.96, and 5.98. Article 1.04C provides that the commissioner shall provide an opportunity for the public to address the commissioner on any

subject within the Department's jurisdiction. Article 5.10 authorizes the Department to make and enforce all necessary rules to carry out the provisions of Subchapter A of Chapter 5 of the Insurance Code. Article 5.96 authorizes the Department to adopt uniform manual rules, rating plans, and classification plans for automobile insurance. Article 5.98 authorizes the Department to adopt rules to accomplish the purposes of Chapter 5 of the Insurance Code, which purposes include the regulation of automobile insurance rates. No rules will be promulgated in this hearing, but the information obtained may be used for the promulgation of rules in the future.

Issued in Austin, Texas, on June 14, 1994.

TRD-9442305 D. J. Powers  
Legal Counsel of the Commissioner  
Texas Department of Insurance

Filed: June 14, 1994

The Department of Insurance, through the Commissioner's delegatee David Birnbaum, Associate Commissioner for Policy and Research, will hold a public hearing under Docket Number 2103, June 30, 1994, at 8:30 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas for the purpose of soliciting comments and recommendations concerning a draft of the Texas Commercial Lines Statistical Plan. This hearing is intended only to obtain public comment on the draft plan. Consideration of adoption of the Texas Commercial Lines Statistical Plan will occur at a public hearing in the future.

Copies of the draft Plan are available for John Gleba, Texas Department of Insurance, MC 104-4A, P.O. Box 149104, Austin, Texas 78714-9104, (512) 463-6393, or (512) 463-6122 FAX. Parties interested in commenting on the draft plan should provide written comments on the draft module, in writing, by June 27, 1994 to Mr. Gleba. Interested parties are asked to address any issue of concern or satisfaction, including: Does the statistical plan provide for the collection of data that will be useful to you-for pricing an insurance product of any other purpose? For insurers, are you able to report the requested data elements? Which data elements, if any, will be difficult to report and why? Are the instructions clear and understandable? If not, what instructions are confusing or require more classification? Are there any other features of the draft module that cause you concern or difficulty?

This hearing will be held pursuant to Texas Insurance Code, Articles, 1.04C, 5.10, 5.96, and 5.98. Article 1.04C provides that the commissioner shall provide an opportunity for the public to address the commissioner on any subject within the Department's jurisdiction. Article 5.96 authorizes the Department to adopt uniform statistical plans. Article 5.98 authorizes the Department to adopt rules to accomplish the purposes of Chapter 5 of the Insurance Code. No rules will be promulgated in this hearing, but the information obtained may be used for the promulgation of rules in the future.

Issued in Austin, Texas, on June 14, 1994.

TRD-9442306 D. J. Powers  
Legal Counsel of the Commissioner  
Texas Department of Insurance

Filed: June 14, 1994



## Texas Low-Level Radioactive Waste Disposal Authority

### Consultant Proposal Request

This request for consulting services is filed under the provisions of Texas Civil Statutes, Government Code, Chapter 2254.

The Texas Low Level Radioactive Waste Disposal Authority is charged with the responsibility of siting, constructing and operating a facility for the disposal of low-level radioactive waste. The Authority is required to develop procedures relating to waste disposal operations, radiological safety, emergency response, and security. The Authority is interested in securing a health physics consultant to advise the Authority on the management of low-level radioactive waste operations, with specific attention to compliance with the rules and regulations of the Texas Natural Resource Conservation Commission. This consultant will also be responsible for reviewing and commenting on plans and procedures developed by the Authority staff in support of the licensing and operations process.

Further information may be obtained from Robert V. Avant, Jr., P.E., at the Texas Low-Level Radioactive Waste Disposal Authority, 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752, or by calling (512) 451-5292.

This RFP will close on Friday, July 22, 1994, at 5:00 p.m.

These services have been previously performed by Hugh Bryant, Austin, Texas. The Authority intends to continue with and to award the contract for consulting services to Hugh Bryant for fiscal year 1995 unless a better proposal is submitted in response to this request.

Proposals received in response to this request will be evaluated according to the following criteria: prior experience in working with state and federal regulations related to the handling and disposal of low-level radioactive waste with specific emphasis on the rules and regulations of the United States Nuclear Regulatory Commission, the Texas Department of Health, and the Texas Natural Resource Conservation Commission; knowledge of Texas low-level radioactive waste characteristics; demonstrated competence and qualifications directly related to licensing, procedures development, and processing and storage operations of low-level radioactive waste; specific knowledge of and experience with the Authority's radiation protection and environmental monitoring programs; understanding of the work to be performed; and reasonableness of the fee for services.

The Authority reserves the right to accept or reject any or all proposals submitted. The Authority is under no legal requirement to execute a consultant contract on the basis of this notice. The Authority intends the material herein only as a general description of the services desired.

The proposal should be for a period of one year, beginning September 1, 1994.

Three copies of the proposal are requested. They should be sent by mail, or delivered in person marked "Proposal for Radiological Consulting Services" addressed to Robert V. Avant, Jr., P.E., 7701 North Lamar Boulevard, Suite 300, Austin, Texas 78752. Proposals shall be received at this address not later than 5:00 p.m. Friday, July 22, 1994. The proposal should be typed, preferably double spaced and completed on 8 1/2 by 11 inch paper with all pages

sequentially numbered and either stapled or bound together.

Issued in Austin, Texas, on June 10, 1994.

TRD-9442375

Lee H. Mathews  
Deputy General Manager and General  
Counsel  
Texas Low-Level Radioactive Waste  
Disposal Authority

Filed: June 14, 1994

## Texas Natural Resource Conservation Commission

### Notice of Opportunity to Comment on Permitting Actions

The following applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within ten days of the date notice concerning the application(s) is published in the *Texas Register*.

If you wish to request a public hearing, you must submit your request in writing. You must state: your name, mailing address and daytime phone number; the permit number of other recognizable reference to this application; the statement "I/we request a public hearing", a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed conditions which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit ten days after publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Requests for a public hearing on this application should be submitted in writing to the Chief Clerk's Office, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

The Texas Natural Resource Conservation Commission has initiated a minor amendment to Permit Number 11290-01, issued to Jackrabbit Road Public Utility in order to add a Whole Effluent Toxicity (WET) Limit via Outfall 001. The permit currently authorizes a discharge of treated domestic wastewater effluent at an final volume not to exceed an average flow of \$5.1 million gallons per day, which will remain the same. The proposed amendment will enforce more stringent effluent limitations as needed, in order to meet existing applicable rules and regulations. The Jackrabbit Road Wastewater Treatment Facilities are approximately three miles north of the intersection of Interstate Highway 10 and State Highway 6, 0.8 miles west of the intersection of State Highway 6 (Addicks-Satsuma Road) and Clay Road, adjacent to the intersection

of Pine Forest Lane and Trey Lane in Harris County, Texas.

Issued in Austin, Texas, on June 10, 1994.

TRD-9442282

Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: June 13, 1994

◆ ◆ ◆  
**Request for Proposal**

The Corpus Christi Bay National Estuary Program (CCBNEP) is soliciting proposals for a project or projects to demonstrate technologies or management approaches which could be included in the Comprehensive Conservation and Management Plan (CCMP). These projects are known as "Action Plan Demonstration Projects" (APDP) and are to begin implementation during fiscal year 1995 starting September 1, 1994.

The CCBNEP is funded through a Cooperative Agreement between the Texas Natural Resource Conservation Commission (TNRCC) of the State of Texas and the United States Environmental Protection Agency (EPA). The EPA provides for 75% of the Program's funding and requires a 25% match of non-Federal funds. All contracts will be with the TNRCC. The CCBNEP and TNRCC anticipate receiving funds totalling \$75,000 that will fund one or more Action Plan Demonstration Projects for FY 1995. Contractors are encouraged, but not required, to provide cost sharing. However, provision of cost sharing will be an evaluation factor. Proposal Work Plans will be considered which request CCBNEP funds ranging up to but not exceeding, \$75,000.

To be eligible for funding, projects must meet the following requirements. The project must address at least one of the CCBNEP Priority Problems and must be implemented in the study area. The project must involve the demonstration of specific management strategies; APDP funding cannot be applied toward project planning assessment activities.

Results of the project must be available in time to be factored into the final CCMP; the projects Final Report must be delivered no later than January 1998.

Potential contractors must submit 40 copies of a Proposal Work Plan. The Proposal Work Plan should describe the potential contractor's approach to the project and should be submitted to the CCBNEP Program Office by no later than 5:00 p.m., July 28, 1994. It is the responsibility of the potential contractor to verify that the Proposal Work Plan has been received by the Program Office by the deadline. Faxed Proposal Work Plans will not be accepted.

Appropriate Management Conference Committees will review the Proposal Work Plans and forward initial recommendations to the Management Committee for award. The Management Committee will then require verbal summary presentations of Proposal Work Plans which meet the minimum requirements as described in the "Contract For Consulting Services" and the Guidelines for Proposal Work Plans. Presentations to the Management Committee are scheduled to occur during their August 1994 meeting.

Copies of the Contract For Consulting Services, Guidelines for Proposal Work Plans, and Guidelines for Verbal Presentation may be obtained by contacting the Program

Office. Any and all expenses incurred during the development and/or presentation of Proposal Work Plans shall be the responsibility of the potential contractor. Contract execution is contingent upon funding appropriation to the granting agency.

Send copies of Proposal Work Plan by 5:00 p.m., July 28, 1994, to Corpus Christi Bay National Estuary Program, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, Attention: Proposal Work Plan (FY 1995).

Any questions regarding these projects or the review process should be directed to Richard Volk, CCBNEP Program Director, at (512) 985-6767.

Issued in Austin, Texas, on June 15, 1994.

TRD-9442415

Mary Ruth Holder  
Director, Legal Division  
Texas Natural Resource Conservation  
Commission

Filed: June 15, 1994

◆ ◆ ◆  
**Public Utility Commission of Texas**

**Notice of Application to Amend  
Certificate of Convenience and  
Necessity**

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on June 3, 1994, to amend a certificate of convenience and necessity pursuant to the Public Utility Regulatory Act, §§18(b), (b), 50, 52, and 54. A summary of the application follows

**Docket Title and Number.** Application of Lufkin-Conroe Telephone Exchange, Inc. to amend Certificate of Convenience and Necessity within Montgomery and Grimes Counties, Docket Number 13096, before the Public Utility Commission of Texas.

**The Application.** In Docket Number 13096, Lufkin-Conroe Telephone Exchange, Inc. seeks approval of the application to amend the existing exchange area boundary between its Montgomery exchange and United Telephone Company of Texas' Richards exchange in order to establish telecommunication service to the area.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0256, or (512) 458-0221 teletypewriter for the deaf on or before July 5, 1994.

Issued in Austin, Texas, on June 14, 1994.

TRD-9442346

John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 14, 1994

◆ ◆ ◆  
**Notices of Intent to File Pursuant to  
Public Utility Commission Substantive  
Rule 23.27**

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application

pursuant to Public Utility Commission Substantive Rule 23.27 for approval of a customer-specific service for GTE Supply.

**Tariff Title and Number.** Application of GTE Southwest Incorporated for Approval to Provide CentraNet Service for GTE Supply Pursuant to Public Utility Commission Substantive Rule 23.27. Tariff Control Number 13117.

**The Application.** GTE Southwest Incorporated is requesting approval to provide an additional 250 CentraNet lines to GTE Supply's existing 750 lines. The geographic service market for this specific service is within GTE Southwest Incorporated's Irving exchange to the business operations of GTE Supply in Irving, Texas.

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 Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 14, 1994.

TRD-9442348      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 14, 1994



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 the State of Texas Juvenile Probation Commission, Austin, Texas.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of a New Plexar-Custom Service for the State of Texas Juvenile Probation Commission pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13116.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for the State of Texas Juvenile Probation Commission. The geographic service market for this specific service is the Austin, 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 Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 14, 1994.

TRD-9442347      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 14, 1994



### Order to Interexchange Telecommunications Carriers

In connection with the biennial scope of competition report to be submitted to the Legislature by the Public Utility Commission of Texas (Commission) pursuant to the Public Utility Regulatory Act, Texas Civil Statutes,

Article 1446c (PURA), §18(k) and (p), and pursuant to the Commission's authority under PURA, §18(c)(2) and (3), the Commission, for the reasons stated in open meeting at its offices in Austin, Texas on this date, hereby orders that each interexchange telecommunications carrier (as that term is defined in Public Utility Commission Substantive Rule 23.29(b)(8)) (IXC) file with the Commission's Telephone Division by August 15, 1994 complete answers to all of the questions posed to it in the Interexchange Telecommunications Carrier Data Report (the Report) attached to this Order; provided, however, that an IXC that is not a facilities-based interexchange carrier may have its responses to questions 4, 5, and 6 of the Report consolidated with the answers to those questions generated by one or more other IXCs that also are not facilities-based interexchange carriers, which consolidated answers may be reported to the Commission in the manner and by an agent approved by the Commission's General Counsel.

The Commission will consider requests made by August 1, 1994 for extensions of the filing deadline to no later than September 15, 1994, which requests may be granted upon good cause shown.

If a responding IXC believes that specific information provided by it pursuant to this Order is not subject to disclosure under the Texas Open Records Act, Texas Government Code, §552.001 et seq (Vernon 1994) (the Act), then the IXC may label that information as confidential, citing the applicable provisions of the Act. Notwithstanding the preceding sentence, information contained on page one of the Report will not be treated by the Commission as confidential information. Information labeled confidential, other than that contained on page one of the Report, will be treated as such by the Commission, subject to the provisions of the Act, and will be kept in a locked file cabinet with access restricted to Commission personnel working on this Project. If an IXC's Report is consolidated, the IXC and/or the agent, as necessary, shall make the IXC's separate Report information available to Commission staff upon request. If a responding IXC, whose report was initially consolidated, believes that specific information provided by it pursuant to this Order is not subject to disclosure under the Act, then the IXC may label that information as confidential, citing the applicable provisions of the Act. Information labeled confidential, other than information contained on page one of the Report, will be treated by the Commission as confidential in the manner described previously in this paragraph, subject to the Act.

A copy of this Order shall be sent to each IXC at the time the Report is sent to that IXC. A copy of this Order, without the Report attached, shall also be published in the *Texas Register*.

This order was signed by the Commissioners on June 9, 1994.

Issued in Austin, Texas, on June 13, 1994.

TRD-9442291      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 13, 1994



### Order to Local Exchange Companies

In connection with the biennial scope of competition report to be submitted to the Legislature by the Public

Utility Commission of Texas (Commission) pursuant to the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (PURA), §18(k) and (p), and pursuant to the Commission's authority under PURA, §§16(a), 18(e), and 28(a), the Commission, for the reasons stated in open meeting at its offices in Austin, Texas on this date, hereby orders that each local exchange company (as that term is defined in Public Utility Commission Substantive Rule 23.61(a)(24)) file with the Commission's Telephone Division by August 15, 1994 complete answers to all of the questions posed to it in the Local Exchange Company Data Report (the Report) attached to this Order.

The Commission will consider requests made by August 1, 1994 for extensions of the filing deadline to no later than September 15, 1994, which requests may be granted upon good cause shown.

If a responding local exchange company believes that specific information provided by it pursuant to this Order is not subject to disclosure under the Texas Open Records Act, Texas Government Code, §552.001 et seq (Vernon 1994) (the Act), then the company may label that information as confidential, citing the applicable provisions of the Act. Notwithstanding the preceding sentence, information contained on page one of the Report will not be treated by the Commission as confidential information. Information labeled confidential, other than that contained on page one of the Report, will be treated as such by the Commission, subject to the provisions of the Act, and will be kept in a locked file cabinet with access restricted to Commission personnel working on this Project.

A copy of this Order shall be sent to each local exchange company at the time the attached Report is sent to that company. A copy of this Order, without the Report attached, shall also be published in the *Texas Register*.

This order was signed by the Commissioners on June 9, 1994

Issued in Austin, Texas, on June 13, 1994

TRD-9442289      John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed June 13, 1994

◆      ◆      ◆  
**Order to Providers of Competitive  
Exchange Service**

In connection with the biennial scope of competition report to be submitted to the Legislature by the Public Utility Commission of Texas (Commission) pursuant to the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c (PURA), §18(k) and (p), and pursuant to the Commission's authority under PURA §18(c)(2) and (3), the Commission, for the reasons stated in open meeting at its offices in Austin, Texas on this date, hereby orders that each provider of competitive exchange service (as that term is defined in Public Utility Commission Substantive Rule 23.61(a)(10)), which is not also a local exchange company or an interexchange telecommunications carrier (as those terms are defined in Public Utility Commission

Substantive Rule 23.61(a)(24) and Public Utility Commission Substantive Rule 23.28(b)(8), respectively), file with the Commission's Telephone Division by August 15, 1994 complete answers to all of the questions posed to it in the Provider of Competitive Exchange Service Data Report (the Report) attached to this Order

The Commission will consider requests made by August 1, 1994 for extensions of the filing deadline to no later than September 15, 1994, which requests may be granted upon good cause shown.

If a responding provider of competitive exchange service believes that specific information provided by it pursuant to this Order is not subject to disclosure under the Texas Open Records Act, Texas Government Code, §552.001 et seq (Vernon 1994) (the Act), then the provider may label that information as confidential, citing the applicable provisions of the Act. Notwithstanding the preceding sentence, information contained on page one of the Report will not be treated by the Commission as confidential information. Information labeled confidential, other than that contained on page one of the Report, will be treated as such by the Commission, subject to the provisions of the Act, and will be kept in a locked file cabinet with access restricted to Commission personnel working on this Project

A copy of this Order shall be sent to each provider of competitive exchange service at the time the attached Report is sent to that provider. A copy of this Order, without the Report attached, shall also be published in the *Texas Register*.

This order was signed by the Commissioners on June 9, 1994

Issued in Austin, Texas, on June 13, 1994

TRD-9442290      John M. Rentrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 13, 1994

◆      ◆      ◆  
**Office of Public Utility Counsel  
Charges for Copies of Public Records**

The charge to any person requesting copies of any public record of the Office of Public Utility Counsel will be the charge established by the General Services Commission.

Copies of public records shall be furnished without charge or at a reduced charge if the Public Counsel determines that waiver or reduction of the fee is in the public interest because furnishing the information can be considered as primarily benefiting the general public

Issued in Austin, Texas, on June 14, 1994

TRD-9442307      Walter Washington  
Public Counsel  
Office of the Public Utility Counsel

Filed: June 14, 1994