

# TEXAS REGISTER

## IN THIS ISSUE

Volume 19, Number 49 July 1, 1994

Page 5067-5128

### Office of the Attorney General

#### Letter Opinions

LO94-46 (ID#-24861) . . . . .	5077
LO94-47 (ID#-24971) . . . . .	5077
LO94-48 (ID#s-24827, 22252) . . . . .	5077
LO94-49 (ID#-23394) . . . . .	5077
LO94-50 (RQ-506) . . . . .	5077

#### Opinions

DM-293 (RQ-582) . . . . .	5078
DM-294 (RQ-628) . . . . .	5078

### Texas Ethics Commission

#### Opinions

AOR-246 . . . . .	5079
-------------------	------

### Proposed Sections

#### Texas Real Estate Commission

Practice and Procedure 22 TAC §533.29	5081
--	------

#### Provisions of the Residential Service Company Act

22 TAC §539.101 . . . . .	5082
22 TAC §539.121 . . . . .	5082

### Texas Department of Insurance

Notification Pursuant to the Texas Insurance Code, Chapter 5, Subchapter L . . . . .	5083
--	------

### Withdrawn Sections

#### Texas State Board of Podiatry Examiners

#### Examinations

22 TAC §371.2 . . . . .	5085
-------------------------	------

#### Identification of Practice

22 TAC §373.2 . . . . .	5085
-------------------------	------

### Center for Rural Health Initiatives

#### Executive Committee for the Center for Rural Health Initiatives

22 TAC §500.61-500.73	5085
-----------------------	------

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 Christner

Documents Section  
Supervisor  
Patty Webster

Document Editors  
Janiene 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 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy.

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 I. Texas Department of Human Services*  
40 TAC §3.704.....950, 1820

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

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

**Comptroller of Public Accounts**

Property Tax Administration  
34 TAC §9.401 ..... 5085

**Adopted Sections**

**Texas Department of Agriculture**

Quarantines  
4 TAC §5.170-5.179 ..... 5087

Boll Weevil Control  
4 TAC §6.3, §6.4 ..... 5087

**Texas Department of Commerce**

Enterprise Zone Program Rules  
10 TAC §176.5 ..... 5087

**Texas State Board of Podiatry  
Examiners**

Examinations  
22 TAC §371.2 ..... 5088

Identification of Practice  
22 TAC §373.2 ..... 5088

Continuing Education  
22 TAC §378.2, §378.4 ..... 5088

Fees and License Renewal  
22 TAC §379.1 ..... 5088

**Texas Real Estate Commission**

Provisions of the Real Estate License Act  
22 TAC §535.51 ..... 5089  
22 TAC §535.91 ..... 5089

Provisions of the Residential Service Company  
Act  
22 TAC §539.61 ..... 5089  
22 TAC §539.81 ..... 5089  
22 TAC §539.137 ..... 5089  
22 TAC §539.231 ..... 5090

**Texas State Board of Examiners of  
Professional Counselors**

Professional Counselors  
22 TAC §681.40 ..... 5090  
22 TAC §681.52 ..... 5090  
22 TAC §681.81-681.84 ..... 5090

22 TAC §681.92, §681.94 ..... 5090

**Interagency Council on Early  
Childhood Intervention**

Early Childhood Intervention Service Delivery  
25 TAC §621.3, §621.4 ..... 5091  
25 TAC §621.3 ..... 5091  
25 TAC §621.62 ..... 5091

**Texas Department of Insurance**

General Administration  
28 TAC §§1.1301-1.1317 ..... 5091  
28 TAC §§1.1501-1.1506 ..... 5097

Corporate and Financial Regulation  
28 TAC §§7.201-7.205, 7.209-7.211, 7.213 ..... 5098

**Texas Department of Public Safety**

Drivers License Rules  
37 TAC §15.44 ..... 5104

**Texas Youth Commission**

Administrative Provisions  
37 TAC §81.31 ..... 5104

**Texas Department of Human  
Services**

Long Term Care Nursing Facility Requirements  
for Licensure and Medicaid Certification  
40 TAC §19.1104 ..... 5105  
40 TAC §19.1807 ..... 5105

Community Care for Aged and Disabled  
40 TAC §48.2924 ..... 5105

Personal Care Facilities  
40 TAC §92.41 ..... 5105

**Open Meetings Sections**

Texas Department on Aging ..... 5107  
Bill Blackwood Law Enforcement Management Institute  
of Texas ..... 5107  
Texas Commission for the Blind ..... 5108  
Texas Board of Chiropractic Examiners ..... 5108  
Texas Office for Prevention of Developmental  
Disabilities ..... 5108  
Texas State Board of Examiners of Dietitians ..... 5108  
Texas Education Agency ..... 5109  
Advisory Commission on State Emergency Communica-  
tions ..... 5109

Texas General Land Office. . . . .	5110
Texas Department of Health . . . . .	5110
Texas Historical Commission . . . . .	5111
Texas House of Representatives. . . . .	5111
Texas Department of Housing and Community Affairs. . . . .	5111
Texas State Affordable Housing Corporation . . . . .	5111
Texas Department of Insurance . . . . .	5111
Legislative Budget Board. . . . .	5112
Texas Department of Licensing and Regulation . . . . .	5112
Texas Council on Offenders with Mental Impairments . . . . .	5112
Texas Natural Resource Conservation Commission. . . . .	5112
Board of Nurse Examiners . . . . .	5112
Texas State Board of Examiners of Psychologists . . . . .	5112
Public Utility Commission of Texas . . . . .	5112
Teacher Retirement System of Texas . . . . .	5113
The Texas A&M University System, Board of Regents . . . . .	5113
Texas Southern University . . . . .	5113
University of North Texas, Board of Regents . . . . .	5113
The University of Texas at Austin. . . . .	5113
Regional Meetings . . . . .	5113

***In Addition Sections***

<b>Texas Department of Agriculture</b>	
Correction of Error. . . . .	5117
<b>Texas Board of Architectural Examiners</b>	
Correction of Error . . . . .	5117
<b>Texas Department of Banking</b>	
Notice of Application . . . . .	5117
<b>Comptroller of Public Accounts</b>	
Notice of Consultant Contract Award . . . . .	5118
Notice of Request for Proposals . . . . .	5118
<b>Office of Consumer Credit Commissioner</b>	
Notice of Rate Ceilings . . . . .	5119
<b>Texas Education Agency</b>	
Notice of Public Hearing Goals 2000 Educate America Act . . . . .	5119

**Employees Retirement System of Texas**

Consultant Contract Award. . . . .	5120
------------------------------------	------

**Texas Employment Commission**

Public Announcement. . . . .	5120
------------------------------	------

**Texas Department of Health**

Correction of Errors . . . . .	5120
--------------------------------	------

**Texas Department of Housing and Community Affairs**

Notice of Clarification to 1994 Final Statement Amendment . . . . .	5120
---	------

**Texas Department of Human Services**

Notice of Public Hearing. . . . .	5121
-----------------------------------	------

**Texas Department of Insurance**

Correction of Error . . . . .	5121
Notices of Public Hearing. . . . .	5121

**Texas Natural Resource Conservation Commission**

Correction of Error . . . . .	5125
Notice of Application for Waste Disposal Permits . . . . .	5125
Notice of Opportunity to Comment on Permitting Actions. . . . .	5125
Notice of Receipt on a Municipal Solid Waste Application, Proposed Permit Number MSW2236. . . . .	5126

**State of Texas Board of Pardons and Paroles**

Correction of Errors . . . . .	5126
--------------------------------	------

**Texas State Board of Podiatry Examiners**

Public Notice . . . . .	5127
-------------------------	------

**Texas Public Finance Authority**

Request for Proposal for Accounting Services . . . . .	5127
--	------

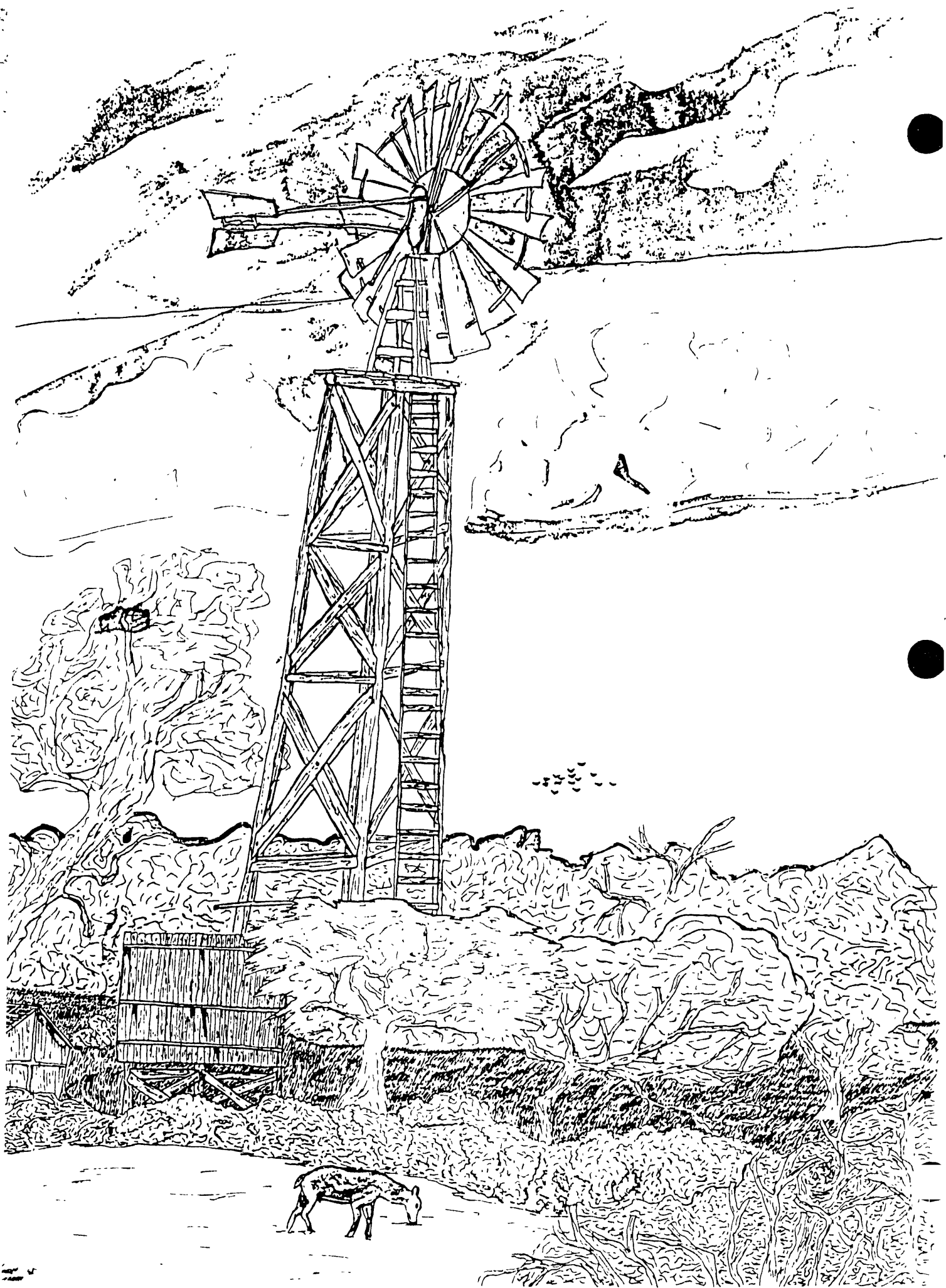
**Public Utility Commission of Texas**

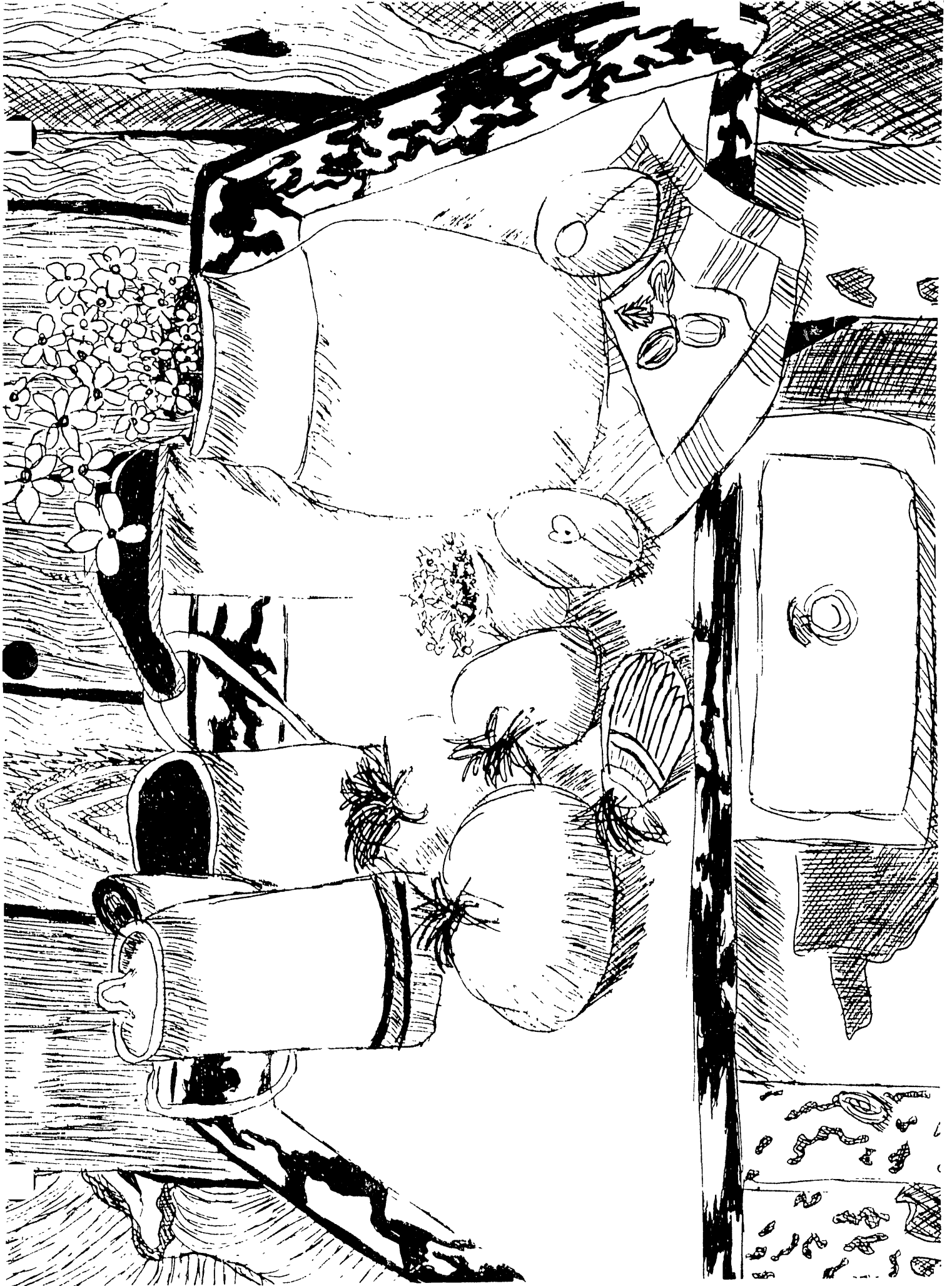
Correction of Error . . . . .	5127
Notices of Application to Amend Certificate of Convenience and Necessity . . . . .	5127
Notices of Intent to File Pursuant to Public Utility Commission Substantive Rule 23.27. . . . .	5127

**Texas Rehabilitation Commission**

Intent to Award Grant . . . . .	5128
---------------------------------	------















# ATTORNEY GENERAL

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

## Letter Opinions

**LO-94-46 (ID#-24861).** Request from Honorable David W. Wallace, Sutton County Attorney, P.O. Box 1508, Sonora, Texas 76950-1508, concerning whether the Sutton County Judge also may serve as administrator of the Sutton County Emergency Medical Service and related questions

**Summary of Opinion.** The administrator of the Sutton County emergency medical services is not an officer for purposes of the constitutional prohibition against dual office holding, Article XVI, §40 of the Texas Constitution. Thus, Article XVI, §40 does not preclude the Sutton County Judge from simultaneously serving as the Sutton County emergency medical services administrator. However, the common-law doctrine of incompatibility precludes the county judge from simultaneously serving as the emergency medical services administrator. Because the county commissioners court appoints the EMS administrator, it may not appoint one of its members to the position. Furthermore, the position of EMS administrator is subordinate to the county commissioners court. Pursuant to the Local Government Code, §153.013(a), the county commissioners court may not provide the county judge with additional remuneration for performing some of the EMS administrator's tasks until the start of the county's new fiscal year. Because no statute requires Sutton County to appoint an emergency medical services administrator, the commissioners court may abolish the position and absorb the functions that the emergency medical services administrator previously performed. If the commissioners court does so, it must make administrative decisions for the EMS only as a body at a meeting subject to the Open Meetings Act.

TRD-9442381

**LO-94-47 (ID#-24971).** Request from Honorable Ciro D. Rodriguez, Chair, Committee on Local and Consent Calendars, Texas House of Representatives, P.O. Box 2910,

Austin, Texas 78768-2910, concerning whether under *Allgeyer v. Louisiana*, 165 United States 578 (1897), and *Murdock v. Pennsylvania*, 319 United States 105 (1943), it is constitutional for the State of Texas to impose a certification or licensing fee for a person to pursue his or her chosen profession.

**Summary of Opinion.** The State of Texas generally may impose a certification or licensing fee for a person to pursue his or her chosen profession.

TRD-9442380

**LO-94-48 (ID#-24827, 22252).** Request from Honorable John Sharp, Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711-3528 and Honorable Tracey Bright, Ector County Attorney, Ector County Courthouse, Room 218, Odessa, Texas 79761, concerning whether the Government Code, §51.702, requires a participating county commissioners court to adopt a new resolution annually to continue participating in the program and related questions.

**Summary of Opinion.** On its face, the Government Code, §51.702(f), requires the commissioners court of a county that desires to continue participating in the program §51.702 establishes annually to adopt a resolution authorizing the clerk of the statutory county court to collect the fees and costs §51.702 authorizes. Furthermore, the county must file its resolution with the comptroller "not later than June 1 immediately preceding the 12-month period during which" the county will collect fees and costs under §51.702. Failure to adopt an appropriate resolution and to file that resolution with the comptroller's office by June 1 results in the county's exclusion from the program beginning July 1. Because Ector County does not collect fees and costs pursuant to the Government Code, §51.702, it need not comply with the Government Code, §25.0005(a), which requires counties collecting such fees and costs to pay certain statutory county court judges "an amount

that is at least equal to the amount that is \$1,000 less than the total annual salary" that a district judge in the county receives. Rather, Ector County may set the annual salaries of its statutory county court judges in accordance with the Government Code, §25.0005(b), which does not stipulate a minimum annual salary.

TRD-9442379

**LO-94-49 (ID#-23394).** Request from Honorable Ben Campbell, Chairman of Committee on County Affairs, House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a municipality lying within the territory of a municipal utility district is authorized to require the district to obtain its permission before commencing construction or maintenance work within the area of both entities.

**Summary of Opinion.** Generally, a municipal utility district ("MUD") must comply with municipal police regulations that do not unreasonably impede the MUD's activities within its sphere of authority. However, a MUD's exercise of police power that state law vests solely in it is not subject even to reasonable municipal regulation. Furthermore, a municipality's exercise of police power by ordinance must yield to a MUD's conflicting reasonable exercise of police power if the latter relates to a paramount public concern and if the MUD's determination that the municipal regulation would threaten public health, safety, and welfare is supported by substantial evidence.

TRD-9442378

**LO-94-50 (RQ-506).** Request from Honorable Mike Driscoll, Harris County Attorney, 1001 Preston, Suite 634, Houston, Texas 77002-1891, concerning whether a commissioners court is authorized to require a county purchasing agent to make purchases by and for a county-wide hospital district.

**Summary of Opinion.** The Commissioners Court of Harris County is authorized to require the purchasing agent of Harris County to make purchases by and for the

Harris County Hospital District pursuant to the Health and Safety Code, §281.049. The court may also transfer the purchasing and management functions of the district to the purchasing agent.

TRD-9442377



### Opinions

**DM-293 (RQ-582).** Request from Doyne Bailey, Administrator, Texas Alcoholic Beverage Commission, P.O. Box 13127, Austin, Texas 78711-3127, concerning whether a holder of a permit to sell alcoholic beverages may possess a firearm for purposes of self defense.

**Summary of Opinion.** A holder of a retail license or permit authorizing the sale and on- or off-premise consumption of alcoholic beverages may possess a firearm for the purpose of self defense. Whether the circumstances which you describe involving the sale of firearms violate the Alcoholic Beverage Code, §61.71(f) and §11.61(e), concerns questions which are beyond the purview of the opinion process.

TRD-9442383

**DM-294 (RQ-628).** Request from Honorable Carl E. Lewis, Nueces County Attorney, Nueces County Courthouse, 901 Leopard, Corpus Christi, Texas 78401-3680, concerning what information a law enforcement agency is authorized to give to a

public school district or private school under Article 15.27 of the Code of Criminal Procedure.

**Summary of Opinion.** The Code of Criminal Procedure, Article 15.27, authorizes a law enforcement agency to communicate to the proper school official the nature of the charges against an arrested or detained student, the identities of any alleged victims who are students or school personnel, and all other information about the arrest or detention of a student that will enable the school official to take appropriate action to prevent violence, protect students and school personnel, and further educational purposes.

TRD-9442382



# TEXAS ETHICS COMMISSION

---

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

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

---

## Texas Ethics Commission

### Opinions

**AOR-246.** The Texas Ethics Commission has been asked to consider whether a person may use political contributions to pay the expenses of responding to a sworn complaint filed with the Ethics Commission.

Questions on particular submissions should be addressed to the Texas Ethics Commission, P O Box 12070, Austin, Texas 78711-2070, (512) 463-5800.

Issued in Austin, Texas, on June 21, 1994

TRD-9442891

Sarah Woelk  
Director, Advisory Opinions  
Texas Ethics Commission

Filed June 22, 1994

◆     ◆     ◆



# 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 22. EXAMINING BOARDS

### Part XXIII. Texas Real Estate Commission

#### Chapter 533. Practice and Procedure

##### • 22 TAC §533.29

The Texas Real Estate Commission proposes an amendment to §533.29, concerning motions for rehearing, modification of order, or probation. The proposed amendment provides procedural guidelines for parties appearing before the members of the Texas Real Estate Commission in contested cases.

Contested cases before the Texas Real Estate Commission are heard by a staff hearings officer who has the authority to render final decisions. Parties may file a motion for a rehearing to be conducted before the members of the Texas Real Estate Commission and may request the members to modify or probate the order entered by the hearings officer. The proposed amendment would clarify the grounds for granting such motions and establish a procedure for hearings on the motions. The amendment would also establish terms and conditions for probation that may be imposed by the members of the commission.

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

Mr. Moseley 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 a orderly process of considering motions in contested cases before the agency. 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 Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorize the Texas Real Estate Commission

to make and enforce all rules and regulations necessary for the performance of its duties.

#### §533.29 *Contested Case Prerequisite to Judicial Review, Motions for Rehearing, Modification of Order, or Probation*

(a) Except in the case of an emergency decision or order, a motion for rehearing is prerequisite to judicial review. A motion for rehearing must set forth the particular finding of fact, conclusion of law, ruling, or other action which the complaining party asserts was error, such as a violation of a constitutional or statutory provision, lack of authority, unlawful procedure, lack of substantial evidence, abuse of discretion or other error of law specifically described in the motion in the absence of specific grounds in the motion for rehearing, the presiding officer, or the members of the commission, as the case may be, shall presume that the motion for rehearing should be overruled [specific grounds upon which the motion is based and must be sufficiently definite to appraise the agency of any error claimed]. If the party filing the motion for rehearing desires the rehearing to be conducted [is entitled to request a rehearing] by the members of the commission [itself, and the party desires to make such a request], the party shall include in the motion for rehearing a request for a rehearing conducted by the members of the commission. A motion for rehearing by the members of the commission shall be submitted to the members of the commission for consideration and appropriate action. A motion for rehearing that does not include an express request for a rehearing conducted by the members of the commission shall be [is] deemed to be a request for a rehearing conducted by a presiding officer, and [if the party filing the motion for rehearing is entitled to request a rehearing by the commission itself but does not include such a request in the motion for rehearing] the party need not file any additional motions for rehearing as a prerequisite for judicial review. A motion for rehearing must be filed within 20 days after the date the party or his attorney of record is notified of the final decision or order. Replies to a motion for

rehearing must be filed with the agency within 30 days after the party or his attorney of record is notified of the final decision or order. The presiding officer or the commission itself, as appropriate, must act on the motion within 45 days after the party or his attorney of record is notified of the final decision or order. The presiding officer or the members of the commission [itself], as appropriate, may, by written order, extend the time for filing, replying to, and taking action on a motion for rehearing, not to exceed 90 days after the date the party or his attorney of record is notified of the final decision or order. In the event of an extension of time, the motion for rehearing is overruled by operation of law on the date fixed by the written order of extension, or in the absence of a fixed date, 90 days after the party or his attorney of record is notified of the final decision or order. The presiding officer or the members of the commission [itself], as appropriate, may modify this schedule with the consent of the parties.

(b) A motion for rehearing to be conducted by the members of the commission shall be heard in accordance with the following procedure.

(1) The chairman or the member appointed by the chairman to preside ("the presiding member") shall announce the motion for rehearing. Upon the request of any party, the presiding member shall conduct a prehearing conference with the parties and their attorneys of record. The presiding member shall announce reasonable time limits for any oral arguments to be presented by the parties. Hearings on the motion shall be limited to a consideration of the grounds upon which a rehearing is sought. Testimony by affidavit or documentary evidence such as excerpts of the record before the presiding officer may be offered in support of the grounds for rehearing: provided, however, a party offering affidavit testimony or documentary evidence must provide the other party with copies of the affidavits or documents at the time the motion for rehearing is filed.

(2) In presenting oral arguments, the party filing the motion for rehearing shall have the burden of proof and persuasion and shall open and close. The party responding to the motion for rehearing may offer rebuttal arguments. Parties may request an opportunity for additional rebuttal subject to the discretion of the presiding member.

(3) After being recognized by the presiding member, the members of the commission may ask questions of the parties. If a party is represented by counsel, the questions shall be directed to the party's attorney. Questions shall be limited to the grounds asserted for a rehearing and to the arguments made by the parties.

(4) Upon the conclusion of oral arguments and questions by the members of the commission, the presiding officer shall call for a vote on the motion for rehearing. It shall not be necessary for a member of the commission to make a separate motion or to second a motion for rehearing filed by a party. The presiding member may vote on the motion. A motion may be granted only if a majority of the members present and voting vote in favor of the motion. In the event of a tie vote, the presiding member shall announce that the motion is overruled. The granting of a motion for rehearing vacates any prior order in the contested case.

(c) The members of the commission may on the motion of a party only consider modification or probation of a prior order entered in a contested case. An order may be modified or probated only upon good cause shown by the party requesting the modification or probation. For the purposes of this section, "good cause" includes those matters which could be asserted as a ground for rehearing or a matter, such as a hardship, relating to the impact of the disciplinary action to be imposed. Motions for modification or probation filed by a party shall be heard before the members of the commission in the manner required for the consideration of motions for rehearing by this section. If a motion is granted, the members of the commission shall enter an appropriate order showing the basis for the modification or probation.

(d) In addition to the terms and conditions for probation which are set forth in the Real Estate License Act (the Act), Texas Civil Statutes, Article 6573a, §15B(d), the members of the commission or a commission employee acting as presiding officer may require a licensee:

(1) to comply with the provisions of the Act and the rules of the Texas Real Estate Commission;

(2) to cooperate with the Enforcement Division of the Texas Real Es-

tate Commission in the investigation of any complaints filed during the probation;

(3) to complete courses of education relevant to the matter which is the basis of the probation;

(4) to repay money belonging to another person or to the State of Texas; or

(5) to comply with such other reasonable terms and conditions as the members of the commission or commission employee acting as presiding officer may impose.

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 21, 1994

TRD-9442959

Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption August 1, 1994

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

◆ ◆ ◆  
Chapter 539 Provisions of the  
Residential Service Company  
Act

Subchapter K Prohibited Prac-  
tices

• 22 TAC §539.101

The Texas Real Estate Commission proposes new §539.101, concerning advertising and marketing by residential service companies. The new section would obligate a residential service company licensed by the Texas Real Estate Commission to file with the commission a copy of any consumer related advertising concerning the company's service contracts within ten days after the advertisement is first used in this state. The new section also would obligate the company to provide to the commission on request copies of marketing materials such as brochures given to brokers or marketing representatives for use in explaining the company's business to consumers or soliciting business.

Residential service companies are licensed by the commission to offer contracts under which the companies undertake to maintain, repair, or replace the structural components, appliances, or systems of residential property. Service contracts are typically offered by real estate brokers in connection with the sale of homes listed for sale with the brokers. Adoption of the new section would provide the commission with a ready means of ensuring that consumers receive accurate information about residential service contracts offered by licensees of the commission.

Brian E. Francis, assistant administrator, 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. Francis also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be the availability of accurate information about residential service contracts offered to consumers. There will be no effect on small businesses. The anticipated economic cost to persons who are required to comply with the section will vary with the type of advertisement or brochure used by the company and provided to the commission, the cost should not be significant since the advertisements and marketing materials would be reproduced in volume by the company.

Comments on the proposal may be submitted to Brian E. Francis, Assistant Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of the Residential Service Company Act.

§539.101 Advertising and Marketing

(a) Each residential service company licensed by the commission shall file with the commission a copy of any consumer related advertisement concerning the service contracts offered by the company within ten days after the advertisement is first used in this state.

(b) Within ten days following receipt of a written request by the commission, a residential service company licensed by the commission shall provide the commission with a copy of any marketing materials the company provides to real estate brokers or marketing representatives. The term "marketing materials" means those materials such as brochures or booklets, which the company provides to brokers or marketing representatives for use in explaining the company's business to consumers or soliciting business.

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 22, 1994

TRD 9443042

Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption August 1, 1994

For further information, please call (512) 463-3900

◆ ◆ ◆  
Subchapter M Examinations

• 22 TAC §539.121

The Texas Real Estate Commission proposes new §539.121, concerning financial ex-



aminations of licensed residential service companies. The new section obligates the commission to examine the affairs of each licensed residential service company as the commission deems necessary but no less than once every three years. The new section also would clarify that a failure to provide access to the company's books and records is a violation of Texas Civil Statutes, Article 6573a, §13(b).

Residential service companies are licensed by the commission to offer contracts under which the companies undertake to maintain, repair, or replace the structural components, appliances, or systems of residential property. Service contracts are typically offered by real estate brokers in connection with the sale of homes listed for sale with the brokers. Adoption of the new section would formalize the commission's commitment to the prevention of harm to consumers due to failure of a licensed company by establishing a minimum examination period.

Brian E. Francis, assistant administrator, 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. Francis also has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing or administering the section will be the establishment of a minimum period for the examination of licensed residential service companies. 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 Brian E. Francis, Assistant Administrator, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711.

The new section is proposed under Texas Civil Statutes, Article 6573b, §5, which authorize the Texas Real Estate Commission to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of the Residential Service Company Act.

§539 121. *Examinations.* The commission shall examine the affairs of each licensed residential service company as the commission deems necessary, but no less than once every three years. A company's failure to provide access to the commission to the books and records of the company is a violation of Texas Civil Statutes, Article 6573b, §13(b) (the Act) and may subject the company to the penalties provided in the Act.

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 22, 1994.

TRD-9443043

Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Earliest possible date of adoption August 1, 1994.

For further information, please call (512) 463-3900.

## Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter I.

*(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter I, of the Code. Certain actions taken under these articles is not subject to the Administrative Procedure Act.)*

*The text of the material being adopted will not be published, but may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe, Austin.)*

The Commissioner of Insurance will hold a public hearing on August 22, 1994, at 9:00 a.m. under Docket Number 7104 in Room 100 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition by a consumer and an alternative staff proposal to address the problem of insufficient coverage in residential property policies for business personal property. According to the petition filed on May 18, 1994, the current business personal property coverage of \$2,500 in residential property policies, even with the ability to increase that coverage to \$5,000 by endorsement, does not provide sufficient coverage to the policyholder in the event of losses to property used in the policyholder's residence for business purposes. The petitioner's three proposals for addressing this problem, in order of preference, are: simplify the definition of personal property in both the homeowner's and renter's policies to cover all personal property used by the policyholder personally on the premises, whether or not

this property is used for income generation, remove the ceiling on Endorsement Number HO-111 coverage or permit purchase of multiple Endorsement Number HO-111 riders to cover additional business personal property insurance needs, or expand Endorsement Number HO-126 (personal computer coverage) to include all electronic and media equipment used for business purposes in the home. The Commissioner will consider at the same time a staff proposal to amend Rule IV A.5 in the Homeowner's Section of the Texas Personal Lines Manual to remove the \$5,000 limit on the available coverage for business personal property under residential property policies and to provide, instead, that this coverage may be increased as needed by the policyholder by attachment of Endorsement Number HO-111 with additional premium charge. The staff is also proposing amending the business personal property rating rule (Premium Chart Number 7 in the Homeowner's Section of the Texas Personal Lines Manual) to provide that the premiums for this additional coverage be 40 cents per \$100 of insurance. In addition, the staff is proposing an amendment to the residential property statistical plan to add codes in the plan to require insurers to report premium and loss information relating to business property located in a residence and insured under a homeowners insurance policy.

Currently, a residential property policy in Texas provides coverage for residential dwelling property used in part for business purposes if the business purposes are in the form of an office, studio or school and if the total area used for the office, studio, or school does not exceed 500 square feet of the total

area of the dwelling. Coverage for business property in the dwelling is limited to \$2,500, and such coverage is provided at no additional premium charge. This coverage may be increased an additional \$2,500 to a maximum of \$5,000 by endorsement for \$10 in premium. Residential property policies that would be eligible under the staff proposal for the increased coverage for business personal property include the Homeowner's Policy (Forms HO-B and HO-C), the Homeowner's Tenant Policy (Forms HO-BT and HO-CT), and the Homeowner's Condominium Policy (HO-B-CON and HO-C-CON).

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Articles 5.101, 5.35, 5.96, and 5.98.

Copies of the full text of the proposals are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies, please contact Angie Arizpe at (512) 322-4147 (refer to Reference Number P-0594-13).

Comments on the proposal must be submitted in writing within 30 days after publication of the proposal in the *Texas Register* to the Office of the Chief Clerk, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Lyndon Anderson, Associate Commissioner for Property and Casualty Division, P.O. Box 149104, MC 103-1A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure Act.

This agency hereby certifies that the rule as proposed 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 23, 1994.

TRD-9442953

D. J. Powers  
Legal Counsel to  
Commissioner  
Texas Department of  
Insurance

For further information, please call: (512)  
463-6327



# WITHDRAWN RULES

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

## TITLE 22. EXAMINING BOARDS

### Part XVIII. Texas State Board of Podiatry Examiners

#### Chapter 371. Examinations

##### • 22 TAC §371.2

The Texas State Board of Podiatry Examiners has withdrawn the emergency effectiveness of an amendment to §371.2, concerning examinations. The text of the emergency amendment to §371.2 appeared in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3306). The effective date of this withdrawal is July 15, 1994.

Issued in Austin, Texas, on June 23, 1994.

TRD-9442982

Janie Alonzo  
Staff Services Officer I  
Texas State Board of  
Podiatry Examiners

Effective date: July 15, 1994

For further information, please call (512)  
794-0145

#### Chapter 373. Identification of Practice

##### • 22 TAC §373.2

The Texas State Board of Podiatry Examiners has withdrawn the emergency effectiveness of an amendment to §373.2, concerning identification of practice. The text of the emergency amendment to §373.2 appeared in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3306). The effective date of this withdrawal is July 15, 1994.

Issued in Austin, Texas, on June 23, 1994

TRD-9442984

Janie Alonzo  
Staff Services Officer I  
Texas State Board of  
Podiatry Examiners

Effective date: July 15, 1994

For further information, please call. (512)  
794-0145

## TITLE 25. HEALTH SER- VICES

### Part V. Center for Rural Health Initiatives

#### Chapter 500. Executive Committee for the Center for Rural Health Initiatives

#### Subchapter C. Community Scholarship Program

##### • 25 TAC §§500.61-500.73

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed new §§500.61-500.73, concerning Community Scholarship Program submitted by the Center for Rural Health Initiatives has been automatically withdrawn, effective June 22, 1994. The new sections as proposed appeared in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9817).

TRD-9442914

## TITLE 34. PUBLIC FI- NANCE

### Part I. Comptroller of Public Accounts

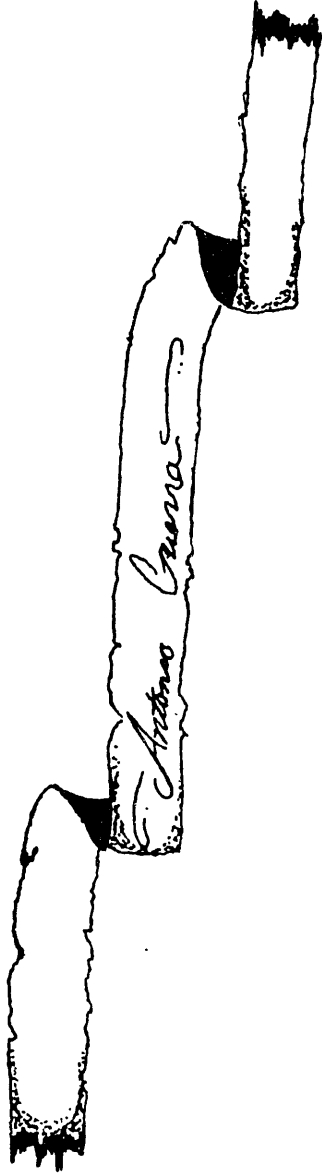
#### Chapter 9. Property Tax Administration

#### Subchapter C. Appraisal Dis- trict Administration

##### • 34 TAC §9.401

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.24(b), the proposed amendment to §9.401, concerning Appraisal District Administration submitted by the Comptroller of Public Accounts has been automatically withdrawn, effective June 22, 1994. The amendment as proposed appeared in the December 21, 1993, issue of the *Texas Register* (18 TexReg 9832)

TRD-9442913



Antonio Guerra



# 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 5. Quarantines

#### Pink Bollworm Quarantine

##### • 4 TAC §§5.178, §5.179

The Texas Department of Agriculture (the department) adopts amendments to §5.178 and §5.179, concerning the pink bollworm quarantine, without changes to the proposed text as published in the April 22, 1994, issue of the *Texas Register* (19 TexReg 3043).

The amendments are made to bring El Paso and Hudspeth counties under the pink bollworm quarantine. This area is currently included in a pest management zone in 4 TAC Chapter 6, for boll weevil control. The department has determined that pink bollworm, not boll weevil, is the significant economic pest in the area and accordingly has determined that the area should be covered by the pink bollworm quarantine.

The sections establish a pink bollworm quarantine zone for El Paso County and a portion of Hudspeth County and establish destruction methodology for the zone.

Most comments received were general and supported the amendments. Some individuals, concerned with the imposition of new requirements, were assured that all regulations they follow at this time are consistent with or similar to the new amendments to §5.178 and §5.179.

The amendments are adopted under the Texas Agriculture Code, §74.054, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the control and eradication of the pink bollworm.

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 22, 1994.

TRD-9442961 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: July 14, 1994

Proposal publication date: April 22, 1994

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

## Chapter 6. Boll Weevil Control

### Boll Weevil Control

#### • 4 TAC §6.3, §6.4

The Texas Department of Agriculture (the department) adopts amendments to §6.3 and §6.4, concerning boll weevil control, without changes to the proposed text as published in the April 22, 1994, issue of the *Texas Register* (19 TexReg 3043).

The amendments are made in order to delete the El Paso Valley Pest Management Zone from these regulations because the boll weevil is not a significant economic pest in this area. However, because the pink bollworm is a significant economic pest in this area, the department has, in a separate submission, included the El Paso Valley in a pink bollworm quarantine zone.

The amendments will eliminate the El Paso Valley as a regulated Boll Weevil Pest Management Zone and will eliminate the planting dates and the cotton destruction date previously established for the El Paso Valley Pest Management Zone.

All comments received were general and supported the amendments. The comments supported the fact that there was no need for the El Paso Valley to operate under boll weevil regulations since the boll weevil is not a significant economic pest.

The amendments are adopted under the Texas Agriculture Code, §74.006, which provides the Texas Department of Agriculture with the authority to adopt rules necessary for the control and eradication of the boll weevil.

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 22, 1994

TRD-9442962 Dolores Alvarado Hibbs  
Chief Administrative Law  
Judge  
Texas Department of  
Agriculture

Effective date: July 14, 1994

Proposal publication date: April 22, 1994

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part V. Texas Department of Commerce

#### Chapter 176. Enterprise Zone Program Rules

##### • 10 TAC §176.5

The Texas Department of Commerce adopts an amendment to §176.5 of the rules implementing the Texas Enterprise Zone Act, Chapter 2303, Texas Government Code and §§481.371-481.375 of Chapter 481 of the Texas Government Code, without changes to the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3871).

No comments were received regarding adoption of the amendment.

Section 176.5 sets forth the requirements for designation of recycling market development zones and for loans and grants for such zones. Adoption of the rule is necessary to inform the public of the requirements for designation of a recycling market development zone and to provide information to the public concerning loans and grants which may be available for such zones.

The Texas Government Code, §§481.371-481.375, are affected by the amendment of §176.5. The amendment is adopted under the authority of §481.375 of Chapter 481 of the Texas Government Code, which directs the Texas Department of Commerce to adopt rules to implement and administer the recycling market development subchapter of Chapter 481 of the Texas Government Code. It is also adopted under the Texas Government Code, §2001.033, which sets forth the requirements for a state agency order adopting final 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 23, 1994.

TRD-9445029

Deborah C. Kastrin  
Executive Director  
Texas Department of  
Commerce

Effective date: July 18, 1994

Proposal publication date: May 20, 1994

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

◆ ◆ ◆  
**TITLE 22. EXAMINING  
BOARDS**

**Part XVIII. Texas State  
Board of Podiatry  
Examiners**

**Chapter 371. Examinations**

• **22 TAC §371.2**

The Texas State Board of Podiatry Examiners adopts an amendment to §371.2, concerning application of license, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3329).

The Texas State Board of Podiatry Examiners adopts the amendment to conform with the examination fee changes that have already been adopted in §379.1.

The section will function by instructing the applicants how much the fee is to take the examination and the types of payment we will accept.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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 23, 1994.

TRD-9442983

Janie Alonzo  
Staff Services Officer I  
Texas State Board of  
Podiatry Examiners

Effective date: July 15, 1994

Proposal publication date: May 3, 1994

For further information, please call: (512)  
794-0145

**Chapter 373. Identification of  
Practice**

• **22 TAC §373.2**

The Texas State Board of Podiatry Examiners adopts an amendment to §373.2, concerning practitioner identification, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3329)

The Texas State Board of Podiatry Examiners amends this section to delete the reference to clinic, which can now be used in advertising

The section will function by giving podiatrists better guidelines to follow when identifying their practice

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry

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 23, 1994

TRD-9442985

Janie Alonzo  
Staff Services Officer I  
Texas State Board of  
Podiatry Examiners

Effective date: July 15, 1994

Proposal publication date: May 3, 1994

For further information, please call (512)  
794-0145

◆ ◆ ◆  
**Chapter 378. Continuing  
Education**

• **22 TAC §378.2, §378.4**

The Texas State Board of Podiatry Examiners adopts an amendments to §378.2, and §378.4, concerning continuing education, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3330)

The justification for the amendments to this section is to describe the requirements for sending in proof of attendance for continuing education seminars attended

The section will function by allowing them detailed instructions for the methods of reporting continuing education requirements

No comments were received regarding adoption of the amendments

The amendments are adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations,

and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry

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 23, 1994

TRD-9442986

Janie Alonzo  
Staff Services Officer I  
Texas State Board of  
Podiatry Examiners

Effective date: July 15, 1994

Proposal publication date: May 3, 1994

For further information, please call: (512)  
794-0145

◆ ◆ ◆  
**Chapter 379. Fees and License  
Renewal**

• **22 TAC §379.1**

The Texas State Board of Podiatry Examiners adopts an amendment to §379.1, concerning fees, without changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* (19 TexReg 3330)

The justification for the amendment to this section is to change the charge for copies of public records to comply with the charges established by the General Services Commission

The section will function by charging uniform rates for copies of public records

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States, to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry

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 23, 1994

TRD-9442987

Janie Alonzo  
Staff Services Officer I  
Texas State Board of  
Podiatry Examiners

Effective date: July 15, 1994

Proposal publication date: May 3, 1994

For further information, please call: (512)  
794-0145

## Part XXIII. Texas Real Estate Commission

### Chapter 535. Provisions of the Real Estate License Act

#### Requirements of Licensure

##### • 22 TAC §535.51

The Texas Real Estate Commission adopts an amendment to §535.51 concerning general requirements for real estate licensure, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2180). The amendment adopts by reference a series of application forms which a person may use to apply for a real estate broker or salesman license or for a determination of moral character for licensing. The application forms have been revised to eliminate requests for unnecessary information and to clarify that applicants are not required to reveal their social security numbers. One new form can be used by a currently used broker to obtain a real estate salesman license.

No comments were received regarding the adoption of the amendment.

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

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

Issued in Austin, Texas, on June 22, 1994.

TRD 9443038 Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Effective date: July 18, 1994

Proposal publication date: March 29, 1994

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

#### Licenses

##### • 22 TAC §535.91

The Texas Real Estate Commission adopts an amendment to §535.91, concerning license renewal applications, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2180). The amendment adopts by reference a revised license renewal form. Requests for unnecessary information have been removed from the form, and a question has been added relating to defaults on loans guaranteed by the Texas Guaranteed Student Loan Corporation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573a, §5(h), which provide the Texas Real Estate Commission with the

authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on June 22, 1994.

TRD-9443037 Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Effective date: July 18, 1994

Proposal publication date: March 29, 1994

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

### Chapter 539. Provisions of the Residential Service Company Act

#### Subchapter G. Application for License

##### • 22 TAC §539.61

The Texas Real Estate Commission adopts an amendment to §539.61, concerning applications for a residential service company license, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2181). The amendment adopts by reference an application form which would be used by a person to obtain a residential service company license. Questions on the form have been revised for clarity and to obtain a copy of any management agreement relating to services to be provided by another company to the applicant. The amendment also obligates the commission to assign a license number to each company it licenses. Adoption of the amendment ensures that the commission obtains necessary information about a company wishing to be licensed.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573b, §5, which provide the Texas Real Estate Commission with the authority to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act.

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

Issued in Austin, Texas, on June 22, 1994.

TRD 9443040 Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Effective date: July 18, 1994

Proposal publication date: March 29, 1994

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

### Subchapter I. Funded Reserves

##### • 22 TAC §539.81

The Texas Real Estate Commission adopts an amendment to §539.81, concerning funded reserves held by residential service companies, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2181). The amendment requires a residential service company licensed by the commission to maintain a level of liquidity equal to or greater than the amount of the company's funded reserves. Funded reserves ensure the performance of the company's contracts with homeowners. The amendment also clarifies that any securities held as funded reserves must be rated BBB or above by a nationally recognized securities rating organization. Adoption of the amendment is necessary to ensure that residential service companies hold funded reserves which are sufficient to meet their obligations to the public.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573b, §5, which provide the Texas Real Estate Commission with the authority to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act.

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

Issued in Austin, Texas, on June 22, 1994.

TRD-9443041 Mark A. Moseley  
General Counsel  
Texas Real Estate  
Commission

Effective date: July 18, 1994

Proposal publication date: March 29, 1994

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

### Subchapter N. Hazardous Financial Condition

##### • 22 TAC §539.137

The Texas Real Estate Commission adopts an amendment to §539.137, concerning semi-annual reports filed by licensed residential service companies, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2181). The amendment adopts by reference a revised semi-annual report to be filed with the commission by each company. A number of questions were added to the report so that the commission can obtain information about past due accounts, active lawsuits against the company, funded reserves and stockholder's equity and statement of cash flow. Adoption of the amendment is necessary to develop a more efficient reporting system for residential service companies.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 6573b, §5, which provide the Texas Real Estate Commission with the authority to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act

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

Issued in Austin, Texas, on June 22, 1994

TRD-9443044 Mark A Moseley  
General Counsel  
Texas Real Estate  
Commission

Effective date July 18, 1994

Proposal publication date: March 29, 1994

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

◆ ◆ ◆  
**Subchapter X. Fees**

◆ ◆ ◆  
• 22 TAC §539.231

The Texas Real Estate Commission adopts an amendment to §539.231, concerning filing fees charged by the agency for license applications, annual reports, evidences of coverage, and schedules of charges by residential service companies, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2182) The amendment restates the existing fees that are charged by the agency. Adoption of the amendment is necessary to clarify the filing fees for the companies

No comments were received regarding adoption of the amendment

The amendment is adopted under Texas Civil Statutes, Article 6573b, §5, which provide the Texas Real Estate Commission with the authority to adopt, promulgate, and enforce rules and regulations necessary to effectuate the intent and provisions of The Residential Service Company Act

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

Issued in Austin, Texas, on June 22, 1994

TRD-9443039 Mark A Moseley  
General Counsel  
Texas Real Estate  
Commission

Effective date July 18, 1994

Proposal publication date: March 29, 1994

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

◆ ◆ ◆  
**Subchapter D. Application Procedures**

◆ ◆ ◆  
• 22 TAC §681.52

The amendment is adopted under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

**Part XXX. Texas State Board of Examiners of Professional Counselors**

**Chapter 681. Professional Counselors**

The Texas State Board of Examiners of Professional Counselors (board) adopts amendments to §§681.40, 681.52, 681.81-681.84, 681.92, and 681.94, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2825).

The amendments clarify the requirements for advertising and announcements; require supervisors to state on board forms any reservations a supervisor may have about an intern; allow interns to count supervised experience hours accumulated after January 1, 1994 if the hours were obtained in a setting exempt under Texas Civil Statutes, Article 4512g, §3; ensure that licensed professional counselor interns receive quality supervision, ensure that appropriate relationships are established and maintained between supervisors and interns, and clarify language concerning examination process

Four individuals commented in favor of §681.81(b)(2). No other comments were received

**Subchapter C. Code of Ethics**

◆ ◆ ◆  
• 22 TAC §681.40

The amendment is adopted under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

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 24, 1994

TRD-9443005 James O Mathis, Ed D  
Chair  
Texas State Board of  
Examiners of  
Professional Counselors

Effective date July 15, 1994

Proposal publication date: April 19, 1994

For further information, please call (512) 834-6658

◆ ◆ ◆  
**Subchapter D. Application Procedures**

◆ ◆ ◆  
• 22 TAC §681.52

The amendment is adopted under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

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 24, 1994.

TRD-9443006 James O Mathis, Ed D  
Chair  
Texas State Board of  
Examiners of  
Professional Counselors

Effective date: July 15, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512) 834-6658

◆ ◆ ◆  
**Subchapter E. Experience Requirements for Examination and Licensure**

◆ ◆ ◆  
• 22 TAC §681.81, §681.84

The amendments are adopted under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors

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 24, 1994.

TRD-9443007 James O Mathis, Ed D  
Chair  
Texas State Board of  
Examiners of  
Professional Counselors

Effective date: July 15, 1994

Proposal publication date: April 19, 1994

For further information, please call: (512) 834-6658

◆ ◆ ◆  
**Subchapter G. Licensure Examinations**

◆ ◆ ◆  
• 22 TAC §681.92, §681.94

The amendments are adopted under Texas Civil Statutes, Article 4512g, §6, which authorize the Texas State Board of Examiners of Professional Counselors to adopt rules concerning the regulation and licensure of professional counselors.

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 24, 1994

TRD-9443008 James O Mathis, Ed D  
Chair  
Texas State Board of  
Examiners of  
Professional Counselors

Effective date: July 15, 1994

Proposal publication date: April 19, 1994



For further information, please call (512) 834-6658

**TITLE 25. HEALTH SERVICES**

**Part VIII. Interagency Council on Early Childhood Intervention**  
**Chapter 621. Early Childhood Intervention Service Delivery**

The Interagency Council on Early Childhood Intervention (ECI) adopts the repeal of §621 3 and §621 4, and adopts new §621 3, without changes to the proposed text as published in the February 18, 1994, issue of the *Texas Register*

The repeals allow for reorganization of the rules. The new section combines existing §621 3 and §621 4 to include policies and procedures, and adds a new subsection that clarifies reimbursement procedures for the Council for child care and attendant care when on official ECI business.

The section ensures that the Council will have the necessary financial support to attend Council and/or Advisory Committee meetings.

No comments were received regarding adoption of the repeals and new section.

**Conduct of Council Meetings**

**• 25 TAC §621.3, §621.4**

The repeals are adopted under the Human Resources Code, §73 003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays.

The amendments will effect the Health and Safety Code, Chapter 73.

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

Issued in Austin, Texas, on June 23, 1994

TRD-9442943 Tammy Tiner, Ph D  
Chairperson  
Interagency Council on  
Early Childhood  
Intervention

Effective date July 14, 1994

Proposal publication date February 18, 1994

For further information, please call (512) 502-4900

**• 25 TAC §621.3**

The new section is adopted under the Human Resources Code, §73 003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays.

The amendments will effect the Health and Safety Code, Chapter 73.

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

Issued in Austin, Texas, on June 23, 1994

TRD-9442944 Tammy Tiner, Ph D  
Chairperson  
Interagency Council on  
Early Childhood  
Intervention

Effective date July 14, 1994

Proposal publication date February 18, 1994

For further information, please call (512) 509-4900

**Early Childhood Intervention Advisory Council**

**• 25 TAC §621.62**

The Interagency Council on Early Childhood Intervention (ECI) adopts an amendment to §621 62 without changes to the proposed text as published in the February 22, 1994, issue of the *Texas Register* (19 TexReg 1317).

The section concerns policies and procedures on the size, composition and the terms of office for Advisory Committee members. The amendment deletes the length of the term of office for the Chairperson of the Early Childhood Intervention Advisory Committee. The amendment will allow for increased participation of lay members in the governance of the committee.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Human Resources Code, §73 003, which provides the Interagency Council on Early Childhood Intervention with the authority to establish rules regarding services provided for children with developmental delays.

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

Issued in Austin, Texas, on June 23, 1994

TRD-9442945 Tammy Tiner, Ph D  
Chairperson  
Interagency Council on  
Early Childhood  
Intervention

Effective date July 14, 1994

Proposal publication date February 22, 1994

For further information, please call (512) 509-4900

**TITLE 28. INSURANCE**  
**Part I. Texas Department of Insurance**

**Chapter 1. General Administration**

**Subchapter L. Rules of Practice and Procedure for Industry-Wide Rate Cases**

**• 28 TAC §§1.1301-1.1317**

The Texas Department of Insurance adopts new §§ 1.1301-1.1317, concerning Rules of Practice and Procedure Sections 1.1301, 1.1302, 1.1304, 1.1305, 1.1307, 1.1309, 1.1310, 1.1315, and 1.1317 are adopted with changes to the proposed text as published in the May 3, 1994, issue of the *Texas Register* at 19 TexReg 3357-3359. Sections 1.1303, 1.1306, 1.1308, 1.1311, 1.1312, 1.1313, 1.1314, and 1.1316 are adopted without changes and will not be republished.

This subchapter is necessary to streamline industry-wide insurance rate cases. The objective of these sections is to obtain a just, fair and equitable determination of insurance rates with the greatest expedition and at the least expense possible to the parties and the state by streamlining the process of rate cases.

The adopted sections will shorten the length of the hearing of rate cases, eliminate repetitious testimony and cumulative evidence, eliminate the need for decisions on certain procedural matters, and otherwise streamline the administrative process for rate cases. The sections will ensure due process, provide understandable procedures for those persons who participate in proceedings before the department, give appropriate notice of required filings, and provide the Administrative Law Judge and parties notice of certain policy positions of the commissioner. These sections will also insure that rate cases before the department are conducted in an efficient and economical manner by providing uniform procedures.

This adoption includes several changes to the proposed text as published.

In §1.1301 and §1.1302, the adopted sections eliminate the applicability of the sections to title rate cases to permit the department to further consider whether procedures for title rate cases should differ from procedures for other rate cases.

In §1.1304(b)(2), the deadline for Motions to Intervene has been changed to two working days before the first pre-hearing conference. This change was made to give parties adequate time to review and prepare objections to Motions to Intervene of other parties. The date of the first pre-hearing conference was changed from 15 days after the notice to 17 days to maintain the 15-day period in which a party may file a Motion to Intervene.

In §1.1305, changes were made to correct grammatical errors.

In § 1307, the term "first-class service" was changed to "first class mail" to correct an error in the original publication of the section. Also, the adopted section permits filing by facsimile. The adopted section also eliminates the reference to § 190. That section remains applicable, but the sentence was eliminated to avoid duplication and possible conflict if § 190 is amended. Finally, the section was amended to provide that filings must be made by 5:00 p.m. on the date due if applicable.

In § 1309(a), the requirement that pre-filed testimony be in question-and-answer format has been removed to permit testimony in narrative format. In addition, the adopted section contains a requirement to identify the witness as a fact witness, so that parties will know whether they need to request that the witness appear at the hearing.

In § 1309(e), a provision has been added to allow the ALJ, on the ALJ's own motion, to require the attendance of a fact witness. This change permits the ALJ to ask a fact witness questions even if no party to the rate case requests the right to cross-examine the witness. In addition, the provision for fact witnesses was limited to instances where the party who provided the testimony disclosed their position that the testimony was fact testimony. Finally, the word "if" was changed to "is" to correct a typographical error.

In § 1310(a), inadvertent repetition of the words "the responding party to supply" in the published section has been eliminated. The adopted section also limits the requirement of responding on computer diskette to items or materials which the party, its representative or its witness maintains in computer format.

In § 1310(b), the date for objections to discovery has been changed to run from the date of receipt of service of the discovery requests. In addition, the adopted section clarifies that the ALJ may, for good cause, change the times to respond or object to discovery requests.

In § 1310(d), a provision has been added to clarify that workpapers are discoverable, subject to valid objections.

In § 1315(a), the adopted section provides that the ALJ may ask any witness questions prior to, during or after cross-examination. This change makes it clear that the ALJ may ask a witness questions at any time. The term "good cause" is defined to guide the parties and the ALJ in determining whether additional testimony should be permitted. The adopted section also clarifies that redirect examination is permitted on issues raised during cross-examination. The adopted section also reflects the change to section 1309(a) which permits narrative testimony. Finally, provisions have been added to permit a witness to take up to 15 minutes to summarize his or her prefiled testimony.

In § 1317(1), the due date for post-hearing briefs has been changed to run from the date the transcript is made available to the parties to ensure that parties have access to the transcript prior to the filing of briefs.

In § 1317(1) and (2), the date for reply briefs has been changed to run from the date of

receipt of the initial brief, rather than the date of filing.

In § 1317(3), a sentence has been added to provide that rates will not go into effect until 60 days after a final order by the commissioner.

The new sections as adopted establish rules of practice and procedure for industry wide rate hearings held at the State Office of Administrative Hearings, including bench mark/flexibility band hearings held under Article 5.101 of the Texas Insurance Code, rate cases for assigned risk automobile insurance, rate cases for the Texas Catastrophe Insurance Pool, and credit insurance presumptive rate cases. Section 1301 establishes the scope of the subchapter. Section 1302 provides definitions of terms used in the sections. Section 1303 provides for rules of construction for interpreting the sections. Section 1304 provides that notice of the hearing shall be provided at least 60 days prior to the hearing and 17 days prior to the first prehearing conference. Section 1305 provides the requirements for pleadings. Section 1306 establishes the department's policy of liberal intervention rights in rate cases. Section 1307 provides the methods and requirements of service and filing. Section 1308 provides for prehearing conferences. Section 1309 provides for prefiled direct and rebuttal testimony of fact and expert witnesses and related procedures for each. Section 1310 provides procedures for discovery requests, responses and objections. Section 1311 requires agreements to be in writing. Section 1312 governs pre-hearing rulings by the ALJ and appeals from those. Section 1313 provides the order of presentation for both the presentation of witnesses and cross-examination. Section 1314 provides for the alignment of parties. Section 1315 sets out the procedures for presentation of witnesses and non-party statements. Section 1316 provides the requirements for exhibits. Section 1317 establishes post-hearing procedures and deadlines.

Written or oral comments were received from American National Insurance Company, the Texas Legal Reserve Officials Association, USAA Insurance Company, State Farm Insurance Companies, the National Association of Independent Insurers, Texas Farmers and Millers Insurance Companies, the Texas Automobile Insurance Plan, the Texas Land Title Association and the Texas Automobile Insurance Service Office. Each had specific provisions for which objections were raised. Consumers Union and the Office of Public Insurance Counsel testified orally in support of the sections.

General Comments: A commenter urged that the somewhere the proposed sections need to clarify that the new rates are not effective until at least 60 days after insurers have been notified of the new rate by final order or if later, the date the department provides insurers the appropriate documentation which spreads the new rate among the applicable classifications and territories. The department agrees that the rates should not go into effect until 60 days after the commissioner's written order is prepared. This has been added to § 1317(3) to clarify the requirement.

Comments Relating to § 1301 and § 1302: One commenter objected to the applicability of the sections to title insurance. The commenter claimed there are practical and legal limitations of the advisability of applying the proposed sections to title insurance rate cases. The department has withdrawn the applicability of the sections to title rate cases.

Comments Relating to § 1304: Commenters objected to the provision in § 1304(b)(2) that the deadline for intervention of parties is to be no sooner than the date set for the first prehearing conference, on the basis that it is possible, if not probable, that the date of the first prehearing conference would coincide with the deadline for intervention by parties. Since § 1308 provides that the ALJ must rule on all motions to intervene at the first prehearing conference, parties under the proposal as published would not be provided with an appropriate opportunity to file possible objections to intervention. The commenter suggested revising § 1304(b)(2) to provide that the deadline for intervention is two days before the date set for the first prehearing conference. The department agrees. In § 1304(b)(2) the deadline for Motions to Intervene has been changed to two working days before the first pre-hearing conference. The date of the first pre-hearing conference was changed from 15 days after the notice to 1 day to maintain the 15 day period in which a party may file a Motion to Intervene.

Comments Relating to § 1307: Commenters noted that although § 1307 provides for service of any document on any party by "hand delivery, first class service, or by certified mail or by facsimile," the intention was probably to provide for service by first class mail. The comment recommended changing the term "first-class service" to "first class mail." A commenter recommended that original filing of a document be permitted by facsimile. A commenter recommended that original filing of a document and service of copies also be permitted through use of a common carrier of envelopes or parcels such as Federal Express, DHL, UPS or others. The department's intention was to provide for service by hand-delivery, first class mail, or certified mail or by facsimile, and the department concurs with this editorial clarification. With respect to the second recommendation, the department agrees that filing of documents with SOAH or IDI may be by facsimile in rate cases, but only if the filing and attachments are 20 pages or less. Otherwise the agency's fax machines will be unnecessarily burdened. The department also disagrees that the section should expressly state that filing by common carrier is permitted because filing by common carrier comes within the meaning of "hand delivery."

Comments Relating to § 1309: Commenters objected to the provisions of proposed § 1309 which in conjunction with proposed § 1315, provide that prefiled written direct and rebuttal testimony shall be offered as an exhibit by the party rather than having the witness read or summarize the testimony. Commenters objected to the requirement for direct and rebuttal testimony to be in writing as bad policy which will not result in the streamlining of rate case as intended. The board as a result of the proposed

violation of the Rules of Evidence, 28 TAC §1.44, Government Code §§ 2001.51(2), 55, 81, 85, 88 and 89, and the Insurance Code Articles 1.33B (c)(2) and 21.81, §5. More specifically, the commenters objected to the provisions on the basis that it is important to allow a party to present its witnesses—particularly expert witnesses—in person, so that the ALJ has the opportunity to fully understand the prefiled testimony, ask questions to clarify the testimony, and judge witness credibility. The commenters also objected to the fact that a party opponent's intention to cross-examine a particular witness appears to control whether that witness is to provide oral testimony. The commenters urged that the proposed §1.1309 be changed to permit discretion to the ALJ to receive additional testimony, direct and/or rebuttal, to help summarize, explain or more fully develop prefiled testimony. Commenters also objected that pre-filed testimony should be permissive only for fact witnesses. Commenters claimed that the provisions of proposed §1 1309, in conjunction with those of proposed §1.1315, defeat the requirement in the Insurance Code, Article 1.33B, which provides that "...[o]pportunity must be afforded all interested parties to respond to and present evidence and argument concerning all issues involved in the proceeding." The commenters objected that such provisions are also contrary to that portion of Article 1. 33B(c)(2) which provides that the testimony of a witness, other than an expert witness, may be presented either orally by the witness at the hearing or by affidavit. The commenters argued that the provisions in proposed §1 1309 are inconsistent with portions of the APA and other agency sections which they asserted are permissive with respect to entering written testimony by affidavit, but which do not allow the agency or an ALJ to restrict testimony only to writing. The commenters continued by asserting that Article 1.33B(c)(2) contemplates that an expert witness will testify at the hearing because of the words "to be called" in the statute. They also urged that the prefiling requirements do not reflect an intention that the witness would not be called at the hearing to testify in person. The department disagrees with these comments. The department has, however, amended §1 1315 to provide witnesses with an optional opportunity to provide a summary of the prefiled testimony but limits the summary to 15 minutes. The procedure adopted through these sections limits oral direct and rebuttal testimony for three reasons. First, permitting oral direct testimony by an expert witness that was not pre-filed would be in direct violation of Insurance Code, Article 1.33B §(c)(2) which states that the direct testimony of an expert witness must be pre-filed. Second, because all testimony is pre-filed, all parties and the ALJ will review the testimony prior to the hearing. Limitation of repetitious oral testimony will streamline the hearing and reduce the costs of rate cases for parties and the state. Third, limitation of oral direct and rebuttal testimony forecloses the possibility that witnesses will provide testimony that has not been disclosed in pre-filed testimony, which has been a problem in past rate cases at the department. Oral testimony, by necessity, must either be repetitious of written testimony

or outside the scope of the written testimony. Therefore, the department has determined that a fairer, less expensive, more orderly and more streamlined hearing will result from the limitation of oral direct and rebuttal testimony. The procedure for written testimony in lieu of oral testimony is an accepted practice at other state agencies. For example, the Public Utility Commission has followed this procedure for several years. Witnesses simply identify pre-filed testimony and swear to its truth. The witness is then tendered for cross-examination. Other insurance departments across the country use a similar procedure. One commenter claims the need for oral testimony is so that "the ALJ has the opportunity to more fully understand the witness' detailed pre-filed testimony, ask questions to clarify his or her understanding of the pre-filed testimony, and most importantly, make judgments as to the credibility of the witness." The adopted sections permit up to a 15-minute summary and permit the ALJ to ask a witness all questions the ALJ finds necessary to clarify testimony or judge the credibility of the witness. Oral testimony can only offer greater insights into the written testimony if the witness offers testimony that was not included in the written prefiled testimony. Allowing an expert witness to provide testimony that was not prefiled would violate Article 1.33B and be unfair to the other parties. The department has the statutory authority to promulgate this section. First, the department has the general power to prescribe the procedure under which rate cases will be held. Second, Article 5. 121 gives the department authority to adopt sections to streamline rate cases and this section will streamline rate cases. Third, Government Code, §2001. 081 incorporates the Texas Rules of Evidence, including Rule 403. That rule allows the department to exclude testimony that would cause undue delay or needless presentation of cumulative evidence. Since the prefiled testimony will be entered as an exhibit, further oral testimony would cause undue delay and be needlessly cumulative. The section is not unconstitutional because parties are permitted to submit sworn testimony and argument on any relevant issue. The section simply requires that testimony be in written form and filed prior to the hearing. If good cause is shown, additional testimony may be offered. Parties are provided with all due process rights. The procedure set out in these adopted sections for pre-filed testimony do not conflict with the Texas Rules of Evidence. The commenters fail to cite any provision of the Texas Rules of Evidence which is violated by this section. Nor does the section conflict with 28 TAC §1.44. That section is not applicable to rate cases. Moreover, §1.44 does not vest the authority over the procedure of presentation of testimony to the parties. That discretionary power always remains with the department. Therefore, even if §1.44 applied to rate cases, it would not be in conflict with the adopted sections. Finally, the department has the authority to promulgate rules to amend the application of existing rules in certain circumstances. The section complies with Government Code, §2001 51(2), because parties are provided the opportunity to present direct and rebuttal testimony on all issues. It complies with Government Code, §2001 55,

because there is no denial of the right to an interpreter. It complies with Government Code, §2001.81, because there is no violation of the Rules of Evidence. It complies with Government Code, §2001.85, which expressly states that evidence may be received in writing; it does not prohibit an agency from requiring that evidence is received in writing. The section complies with Government Code, §2001.88, because witnesses are required to be sworn and testify to the truth of their testimony. The section complies with Government Code, §2001.89, because witnesses must attend the hearing, except for certain fact witnesses pursuant to Insurance Code, Article 1.33B. The section complies with the Insurance Code, Article 1.33B(c)(2), because no limitation is placed on parties to present evidence or argument concerning any issue in a rate case. Direct and rebuttal testimony may address any issue in the rate case. Post-hearing briefs may present any argument concerning the rate case. If new evidence is raised in cross-examination and the party can show good cause, the ALJ may permit the party to offer further rebuttal testimony pursuant to Sections 1.1309(f) or 1.1315. Thus, the section does not violate the statutory requirement. Insurance Code, Article 1 33B(c)(2) , provides that the testimony of a non-expert witness may be presented either orally by the witness at the hearing or by affidavit. The sections do permit the fact witness to provide oral testimony. However, that oral testimony is limited to identification and adoption of the prefiled testimony and a summary of no more than 15 minutes. The sections could provide that the fact witness also be allowed to read the prefiled testimony. However, the department has determined to exercise its discretion to adopt the procedure that best streamlines the hearing of rate cases. Moreover, the right to present oral testimony is not unlimited; all testimony is subject to the Rules of Evidence, including Rule 403. That rule allows the department to exclude testimony that would cause undue delay or needless presentation of cumulative evidence. Because the prefiled testimony will be entered as an exhibit, further oral testimony would cause undue delay and may be needlessly cumulative. Accordingly, oral testimony is limited to identification of the prefiled testimony and a 15-minute summary. Nor does the section conflict with Insurance Code, Article 1.33B(c)(2), related to expert witness testimony. That statute simply requires the testimony of an expert witness to be pre-filed. The section complies with that requirement. Nor does the section conflict with the statutory requirement that the expert witness "be called." The section requires the expert witness to be called and swear to the truth of the testimony. Thus, the section comports with the statute. Nor do the adopted sections violate Article 21.81. Section 5 of that statute simply provides that the Texas Automobile Insurance Plan Association "shall be permitted as a party to present testimony at the hearing." The sections comply with this statutory requirement: TAIPA is permitted to present testimony at the hearing. That testimony, however, will be in written form and live testimony is limited to identification of the prefiled testimony and a 15-minute summary. Rather than have the witness read the pre-

filed testimony, the sections seek to streamline the case by having the written testimony entered as an exhibit. The filing of pre-filed testimony by fact witnesses will streamline the rate case, provide greater notice and fairness to the parties, and reduce the expense of depositions of fact witnesses. The department recognizes that adverse fact witnesses may not be willing to provide written testimony. To ensure notice of such testimony for all parties and to streamline the hearing of the rate case, the department has determined that the party should depose an adverse fact witness who is unwilling to provide pre-filed written testimony. This will eliminate surprise, streamline the actual hearing of the rate case, and eliminate arguments as to whether a fact witness is a "friendly witness" who should have prefiled testimony.

Commenters recommended that live testimony be permitted in response to testimony received on cross-examination or in response to pre-filed rebuttal testimony. The department agrees that a party should be permitted to offer re-direct testimony on issues raised during cross-examination of the witness and has clarified §1 1315 accordingly. Further, the sections already permit additional testimony for good cause. Good cause is defined in the section and includes instances in which a party responds to late-filed discovery responses that were not filed in time to discuss in prefiled testimony.

A commenter recommended that the requirement that pre-filed testimony be in question and answer format be omitted so as to permit pre-filed testimony in narrative format. The department agrees that testimony should be permitted in narrative format and has changed this section accordingly. Section 1 1315 has been amended to reflect this change.

One commenter objected that the deadline set out in subsections (b) and (c) violate the Insurance Code, Article 1 33B(c)(2). The department disagrees with this comment. This statute does not prevent the department from promulgating sections for the ALJ to follow in establishing the deadlines for pre-filed written testimony. In addition, the adopted sections provide that the ALJ may amend the deadlines pursuant to §1 1309(f) and §1 1315.

A commenter objected that the ALJ should be permitted to change the substantive provisions of the section because such a requirement is mandated by Article 1 33B. The department disagrees with this comment. The statute does not give the ALJ the authority to change substantive provisions of an agency's rules.

Comments Relating to §1 1310. One commenter observed that in §1 1310(a) the words "the responding party to supply" are printed twice consecutively. The department has removed the unintentional redundant wording.

A commenter objected to time limits for responding to and objecting to discovery requests that differ from those set out in the Texas Rules of Civil Procedure. The commenter argued that these provisions are contrary to the Texas Rules of Civil Procedure and, therefore, violate Article 1 33B(2).

The department disagrees with this comment. A commenter incorrectly asserts that Article 1 33B "guarantees the applicability of the provisions of the Texas Rules of Civil Procedure." That is incorrect. The statute merely provides that the Civil Rules shall be used as a guide. The legislature chose not to require the exact provisions of the Civil Rules because they may not all be appropriate. The department has determined that some of the provisions are not appropriate for rate cases.

Commenters objected to the requirement in §1 1310 that parties provide responses to discovery in specific computer formats, on the basis that such request may be burdensome, costly or impractical under particular circumstances. A commenter urged that the ALJ should have express discretion to determine whether such a request is burdensome, costly or unnecessary in ruling on an objection to such a request. A commenter urged that the requirement should apply only to items/materials which the party maintains in computer or database format that can be translated into an Apple- or DOS-based spreadsheet, and then only to the extent that it is not unduly burdensome, unnecessarily expensive, or subject to other valid discovery objections. A commenter suggested alternatively that the requirement apply only to expert witnesses and only to the extent that data or calculations upon which their testimony is to be based is maintained on a computer or is based on data which has been provided to them in a format that can be translated to an Apple- or DOS-based spreadsheet or database. The department agrees in part and disagrees in part. The department agrees that the provision should be limited to items or materials which the party, its representative, or its witness maintains in computer format and has changed the provision accordingly. The department disagrees that the sections do not give the ALJ authority to sustain objections to burdensome discovery requests, including those made under this section. The section provides that limitations on discovery set out in the Texas Rules of Civil Procedure shall apply to discovery requests in rate cases. This would include objections that the requested discovery is burdensome. Therefore, there is no reason to eliminate the right to discovery provided in this section, as recommended by the commenter. Finally, the department disagrees that the requirement should be limited to expert witnesses. All data a party or its witnesses have reviewed or relied on should be made available in computer format under the section.

A commenter objected that proposed §1 1310(c) will not help streamline the rate proceeding because it permits unlimited numbers of interrogatories, the commenter also argued that the provision is contrary to TRCP Number 168 limitations on the number of interrogatories, subject to good cause exception. The commenter argued Rule 168 guidelines provide for better practice and would result in a disciplined and efficient discovery process. It also raised the impracticality of receiving an inordinate number of interrogatories and having little time to file objections while simultaneously preparing responses to all of the discovery. The commenter recom-

mended revising the proposed section to embrace limits similar to those of Rule 168. The department disagrees with this comment. The statute sets the Texas Rules of Civil Procedure as a guide, but the legislature chose not to make the provisions of the Civil Rules mandatory. The use of interrogatories reduces the need for depositions. Depositions are expensive and time-consuming for the parties. This provision is intended to offer parties a less expensive alternative to depositions in order to streamline hearings and reduce the costs to the parties and the state. If discovery becomes burdensome and the ten-day requirement is too short, the ALJ may extend the time for responding.

A commenter suggested adding a new subsection to proposed §1.1310 to specifically provide that data or practices of an individual insurer are not reasonably calculated to lead to discovery of evidence relevant to the rate case unless the data or practices are part of, form the basis for, or have been reviewed by a testifying expert in connection with testimony or other evidence to be presented on behalf of that party. The department disagrees with this comment. Industry-wide rates are normally based, at least in part, on the expenses and losses of all insurers. Thus, the expenses and losses of individual insurers are relevant to the rate determination because a determination that losses or expenses for an individual insurer are inappropriate would reduce the industry-wide rate indication. This issue has been litigated and the commenter's argument has been rejected in district court.

A commenter objected to proposed subsection §1 1310(d) on the basis that it should be limited only to expert witnesses, and that it should be parallel to and consistent with Texas Rule of Civil Procedure 166b. The commenter urged that the subsection provide that only information or documents reviewed by the expert witness which are relevant to the opinion testimony of the expert should be discoverable. The department disagrees with this comment. If a fact witness has workpapers, those workpapers should be discoverable. Discovery should not be limited to facts relevant to the specific expert's testimony. If the information is prepared by or for the expert and is relevant to the rate case, that information should be discoverable even if not relevant to that expert's testimony.

A commenter objected to the incorporation of discovery provisions contained in the Texas Rules of Civil Procedure. The commenter argued that some procedures for discovery set out in the Rules of Civil Procedure differ from those in the Texas Administrative Procedure Act. The department disagrees with this comment. The Administrative Procedure Act only sets minimum standards for discovery; it does not prohibit additional discovery procedures. Insurance Code, Article 1.33B(c)(1), provides that procedures before the commissioner shall be guided by both the Administrative Procedure Act and the Texas Rules of Civil Procedure. Therefore, the department has the authority to adopt discovery procedures that are contained in the Rules of Civil Procedure but not in the Administrative Procedure Act. Moreover, Article 5.121 specifically authorizes the department to adopt and

implement procedures for streamlining rate proceedings

A commenter objected to the time when objections to discovery are due because time begins running from the date of service of the discovery requests, rather than date of receipt. The department agrees with this comment and has changed the section accordingly.

A commenter objected to the requirement that discovery responses be provided within 10 days. The commenter argued that ten days may not be sufficient in certain circumstances. The department believes that 10 days is adequate in most cases. However, the section has been amended to resolve the concern raised by this comment, the ALJ may extend the time for response upon a showing of good cause.

A commenter objected to the requirement that workpapers are discoverable without the right to raise valid objections to the discovery request for workpapers. The department agrees with this comment and has changed the section accordingly.

Comments Relating to §1 1311. One commenter recommended deletion of the second sentence of proposed §1 1311, based on the liberal intervention provisions of proposed §1 1306. The commenter urged that the ALJ or commissioner should at least be permitted to consider a settlement regarding an ultimate or underlying fact or conclusion of law even in the absence of unanimous agreement by the parties, because of the potentially large number of parties there might be under proposed §1 1306. The department disagrees with this comment. The commissioner is required to set rates based on factors set out in the applicable statutes. The fact that some parties may have settled disputes is not relevant to the underlying facts upon which the commissioner is required to set rates. The right of non-settling parties to have the commissioner set rates based solely on factors permitted by the statute should not be abridged because some parties to the rate case have settled. Nothing in this section prohibits the settling parties from jointly presenting their case.

Comments Relating to §1 1313. A commenter objected to proposed §1 1313, on the basis that the ALJ must be able to understand and evaluate the evidence. For these reasons, the commenter argued, the ALJ should be permitted to organize and decide the order of presentation of the evidence, rather than be constrained by the static order provided in proposed §1 1313, which the commenter argues may be confusing in some circumstances. The department disagrees with this comment. The purpose of determining the order of presentation in the sections is to eliminate arguments regarding the order of presentation at the hearing. The elimination of the need to argue and decide the order of presentation will streamline the hearing and save time and money for the parties and the state.

Commenters objected to the requirement that a witness must offer both direct and rebuttal pre-filed testimony at the same time. The commenters argued that this procedure pro-

vides an unfair advantage to parties who offer their witnesses after other parties because they have the advantage of knowing what evidence has been elicited during cross examination. A commenter suggested language be added to the subsection entitling a party to present additional rebuttal testimony or evidence following presentation of evidence or testimony by other parties that was not prefiled. The commenter suggested rebuttal testimony be presented in the same order as provided in proposed §1 1313(a)(1)-(4). The department disagrees with these comments. Parties that present their testimony after other parties are limited to presenting their pre-filed direct and rebuttal testimony and a summary of the prefiled testimony not to exceed 15 minutes. Thus, the party may not respond to prior evidence elicited through cross examination. The problem raised by the commenter applies whether a party presents its direct and rebuttal testimony together or separately because there will always be the possibility that evidence will be elicited during cross-examination after the presentation of rebuttal testimony. The solution is to limit live direct or rebuttal testimony except for good cause shown. The department's rules do so and provide greater fairness and due process to all parties than the commenter's suggestion. If new evidence is raised in rebuttal testimony or cross-examination and the party can show good cause, the ALJ may permit the party to offer further rebuttal testimony pursuant to §1 1309(f) and 1 1315.

One commenter objected to the failure of the proposed sections to provide for presentation of closing arguments, on the basis that the ALJ would benefit from oral argument even if followed by posthearing briefs. The commenter suggested adding a subsection (c) to proposed §1 1313 providing essentially that after all evidence has been received, parties may argue the case to the ALJ in the same order as provided in proposed §1 1313(a)(1)-(4). The department disagrees with this comment. The sections do not prohibit an ALJ from taking oral arguments at the conclusion of the hearing. The department believes that post-hearing briefs are a better method for parties to present their arguments to the ALJ and, therefore, has not required closing arguments. However, if an ALJ desires to receive oral arguments, he or she may do so without a specific provision in these rules.

A commenter argued that the sections do not prohibit the introduction of testimony that was not prefiled. The commenter further argued that parties can not be prohibited from offering testimony in response to new evidence raised in rebuttal testimony or cross-examination. The department disagrees with this comment. Section 1 1315 specifically prevents parties from introducing evidence that was not pre-filed, except for good cause shown. The ALJ is expressly authorized to permit additional testimony in §1 1309(f) and 1 1315 for good cause shown. Parties should only be allowed to present new evidence if they could not have reasonably anticipated the need for such testimony in direct or rebuttal testimony and would not gain an unfair advantage.

Comments Relating to §1 1314. A commenter urged that an individual party should be permitted under proposed §1 1314 to align voluntarily and sponsor and present evidence and testimony jointly and share costs with other parties, unless expressly disapproved by the ALJ, to help ease the burden of participating in a rate case and to help streamline proceedings. The department disagrees with this comment. The ALJ should determine whether the alignment of parties is appropriate. The proposed section grants that discretion to the ALJ.

A commenter objected to this section on the basis that it may violate certain statutory rights of the parties, including the right to cross-examine witnesses and to be represented by counsel. The department disagrees that any change to this section is necessary. The section provides for the alignment of participants but does not provide that the ALJ shall violate any statutes in doing so.

Comments Relating to §1 1315. Comments and objections to proposed §1 1315(a), relating to prohibition of live testimony except for good cause, were quite similar to objections about proposed §1 1309 and were founded on the same bases. Many of the comments made in response to §1 1309 were repeated for this section and no additional comments were made. The department disagrees with these comments for the reasons set out previously in response to the same comments against §1 1309.

A commenter objected to the last sentence of §1 1315(b). The commenter argued that trade associations and advisory organizations should be permitted to offer comments which are included as part of the evidentiary record, including those entities which are prohibited in certain circumstances from participating as a party. The commenter argued that the proposed section provides meaningless testimony. The department disagrees with this comment. This provision is intended to ensure the due process rights of the parties, it is not directed only at trade associations or advisory organizations. If the person or entity seeking to offer testimony is not a party to the case subject to discovery and pre-filing of testimony, it would be unfair to the parties to permit the testimony to be part of the evidentiary record. Moreover, allowing non party experts to testify without pre-filing their direct testimony would violate Article 1 133B (c)(2) which requires the direct testimony of each expert witness to be pre-filed. Nor is the testimony meaningless under this section, the purpose of non-party testimony, identified in the section, is to raise issues for the ALJ and the parties.

One commenter recommended that "good cause" be defined in subsection (a). The department agrees with this comment and has added a definition.

Comments Relating to §1 1316. One commenter objected to the requirement that large exhibits be rolled up or folded for inclusion in the record because this detracts from the convenience and utility of such exhibits. The department disagrees with this comment. To be included in the record, large exhibits must be folded or rolled up. This does not prevent the party from unfolding or unrolling the exhibit at the hearing.

Comments Relating to §1 1317. Commenters urged that time limits for submitting posthearing briefs under 1 1317(1) should be determined subject to availability of transcripts of the proceeding and that the time period for reply briefs should run from the time of receipt of the initial brief. The department agrees with these comments and has changed the section accordingly. A commenter argued that the ALJ should be given the discretion to set the deadlines for post-hearing briefs rather than set the deadlines in the rule. The department disagrees with this comment. The section sets out reasonable time periods for briefs to ensure that contested cases are decided in a reasonable time period.

The new sections are adopted under the Insurance Code, Articles 1 03A and 5. 121 Article 1 03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. Article 5.121 authorizes the department to adopt procedures to streamline insurance rate proceedings.

The following are the articles of the Insurance Code that are affected by these sections: Article 1 33B, Article 1 33C, Article 3 53, Article 5 101, Article 5 121, Article 21 49, and Article 21 81.

*§1 1301 Scope* This subchapter applies to all industry-wide rate cases, benchmark/flexibility band rate cases held under the Insurance Code, Article 5 101, rate cases for assigned risk automobile insurance (Texas Automobile Insurance Plan Association), rate cases for the Texas Catastrophe Insurance Pool, and credit insurance presumptive rate cases. This subchapter does not apply to proceedings to approve the rates of an individual insurer.

*§1 1302 Definitions* The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Administrative Procedure Act—Texas Government Code, Title 10, Subtitle A

Article 5 101—Texas Insurance Code, Article 5 101, Subchapter M Flexible Rating Program For Certain Insurance Lines, as amended from time to time.

Department—The Texas Department of Insurance

ALJ—The Administrative Law Judge, an employee of the State Office of Administrative Hearings, who presides over a rate case

Rate case—Any proceeding for the promulgation of industry-wide insurance rates in which the hearing is held at SOAH benchmark/flexibility band rate cases held under the Insurance Code, Article 5 101, rate cases for assigned risk automobile insurance (Texas Automobile Insurance Plan Association), rate cases for the Texas Catastrophe Insurance Pool, and credit insurance presumptive rate cases

Register—The Texas Register established by the Texas Register and Administrative Code

SOAH—State Office of Administrative Hearings

*§1 1304 Notice of Hearing.*

(a) The department will publish notice of a rate case in the Register no later than 60 days prior to the commencement date of a rate case hearing, with a copy of the notice to any person entitled to such notice by statute. The department shall provide copies of the notice by first-class mail to all parties to the last rate case in that line of insurance and to all persons who requested notice of the rate case, but failure to give notice to these parties or persons shall not invalidate the notice in the Register or be the basis for a continuance of the hearing or extension of any deadlines.

(b) In addition to those items required by statute, the notice shall include:

(1) the style and docket number of the case;

(2) an establishment of a deadline for intervention no sooner than two working days before the date set for the first pre-hearing conference.

(3) the time, date and place set for a pre-hearing conference, no sooner than 17 days after publication of the notice in the Register.

(4) a statement that the rate making data to be used in the rate case is currently available from the department, and

(5) such other matters deemed necessary by the department to insure that all affected parties have a fair and reasonable opportunity to participate in the rate case hearing.

*§1 1305. Pleadings* Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding. No technical form of pleadings or motions is required, however, a pleading which sets forth a claim for relief shall contain a short and plain statement of the grounds and of the claim showing that the pleader is entitled to relief. Unless dictated into the record during a proceeding at which an actual record is made, a motion must be in writing and must state the request sought and the reasons for the motion. A copy of all pleadings must be served on all parties.

*§1 1307 Filing and Service*

(a) Filing of any document filed in connection with a rate case may be accomplished by hand delivery, first-class mail, facsimile (if the filing, including attach-

ments, is 20 pages or less and the original document is mailed or hand-delivered on the same day as the filing by facsimile), or by certified mail. All filings shall be filed by 5:00 p.m. on the date due and include certificate of service certifying that a copy of the filing has been served on all parties to the rate case or their representatives. Service of any document on the parties may be accomplished by hand delivery, first-class mail or by certified mail, or by facsimile if the original document is mailed or hand-delivered on the same day as the service by facsimile.

(b) The department shall maintain an indexed, central record of all documents filed in the case. All filings shall be open to public inspection unless stated otherwise in a protective order entered in the case.

*§1 1309 Pre-filed Testimony and Exhibits*

(a) The ALJ shall require parties to prepare their direct and rebuttal testimony in writing for incorporation into the record in lieu of live direct and rebuttal testimony at the hearing. Testimony shall be pre-filed for both fact and expert witnesses. All pre-filed testimony shall include an affidavit verifying the truth and accuracy of the testimony. The party offering the testimony of a fact witness must identify the witness as a fact witness at the time the testimony is filed.

(b) The deadline for the filing of direct testimony shall be no later than 20 calendar days prior to the date of the hearing. The deadline for the filing of rebuttal testimony shall be no later than ten calendar days prior to the date of the hearing. Pre-filed testimony shall include any exhibits referred to in the testimony or that will be offered by the party as part of its direct or rebuttal case. No late-filed or supplemental direct or rebuttal testimony shall be permitted without a showing good cause and a showing that the party will not gain an unfair advantage if the late-filed or supplemental testimony is permitted.

(c) Objections to pre-filed direct testimony shall be filed by the date set for the filing of rebuttal testimony. Objections to pre-filed rebuttal testimony shall be filed no later than two working days prior to the hearing.

(d) Parties who do not present direct or rebuttal testimony shall file a statement of position on the date pre-filed rebuttal testimony is due.

(e) Subject to any objections sustained by the ALJ, pre-filed testimony of a fact witness who was identified as a fact witness in the prefiled testimony shall be admitted without the necessity of having the witness present and subject to cross-examination unless a party or the ALJ files

a written request at least two working days before the hearing to cross-examine the witness. If such a request is filed, the testimony shall not be admitted unless the witness appears at the hearing and all parties are given the opportunity to cross-examine the witness.

(f) The ALJ, upon good cause shown or upon agreement of all parties, may amend the deadlines set out in this rule.

#### §1.1310 Discovery

(a) Permissible forms of discovery and discovery procedures shall be governed by the Texas Rules of Civil Procedure, except that the time for responses to written discovery requests shall be governed by this rule. Discovery requests may require the responding party to supply the requested information on computer diskette in a format that can be translated into any Apple- or DOS-based computer spreadsheet or database, in addition to responses on paper, if the party, its witness, or representative maintains the information in computer format. Unless otherwise limited by the commissioner or the ALJ, the scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure 166b, and shall be subject to such limitations as provided therein.

(b) Responses to written discovery requests shall be served no later than ten working days after receipt of service of the request. Objections to discovery shall be filed no later than five working days after receipt of service of the request. The ALJ is not required to rule on objections to discovery unless a motion to compel the discovery is filed by the party who propounded the discovery. The ALJ, for good cause shown, may extend the time for responding or objecting to specific discovery requests.

(c) In order to reduce the need for and expense of depositions, there shall be no limit on the number of sets or questions for interrogatories. Upon good cause shown, the ALJ may limit the number of interrogatories in the interests of justice.

(d) Subject to valid objections, workpapers shall be discoverable. Workpapers consist of all documents prepared by or for a witness in preparation or anticipation of the witness' testimony and evaluation of rates, including, but not limited to, the following: a list of articles, studies, transcripts, reports, law, and other documents reviewed by or relied upon by the witness, computer diskettes containing any data reviewed by or relied upon by the witness in a format that can be translated into any Apple- or DOS-based computer spreadsheet or database, and all notes, memos, data summaries, data analyses and other documents reviewed by or relied upon by the witness.

#### §1.1315 Presentation of Evidence

(a) Each witness may take up to 15 minutes to summarize his or her prefiled testimony. No other live direct or rebuttal testimony shall be permitted, unless for good cause shown. Good cause exists when the party could not have reasonably anticipated the need for the testimony and shows that the party will not gain an unfair advantage if the testimony is permitted. A party offering a witness shall be permitted to allow the witness to identify himself or herself, identify the pre-filed direct and/or rebuttal testimony, state that the statements made in the prefiled testimony are true, and provide a summary of the prefiled testimony of no longer than 15 minutes. Objections to pre-filed testimony shall be ruled on at that time. The witness shall then be offered for cross-examination. The ALJ may ask the witness questions at any time prior to, during, or after cross-examination. At the completion of all cross-examination and questions by the ALJ, the party calling the witness may re-examine the witness only on issues raised during cross-examination of the witness or in questions raised by the ALJ.

(b) Members of the public who are not parties or employees or agents of a party shall be allowed to present a statement either orally or in writing prior to the presentation of evidence by the parties or at any other time convenient for the member of the public, the parties and the ALJ. The purpose of a statement by a non party shall be solely to raise issues for the ALJ and commissioner. Non-party statements shall not be made part of the evidentiary record or used to form the basis of a finding of fact or conclusion of law.

§1.1317 Post hearing Procedures. The ALJ shall set deadlines for post-hearing pleadings as follows:

(1) Parties shall be entitled to file initial post hearing briefs within ten working days after the date the transcript is made available to the parties and reply briefs within five working days after the receipt of the initial briefs.

(2) Parties shall be entitled to file exceptions to the proposal for decision within ten working days after receipt of the proposal and replies to exceptions within five working days after the receipt of exceptions.

(3) The commissioner shall consider the proposal for decision in an open meeting and permit parties to make oral argument. The commissioner may place time limits on oral argument as the commissioner deems necessary. The commissioner shall set rates by a written order and set in effect the date of the order. The order of no more

than 60 days after the date the written order is mailed to the parties.

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

Issued in Austin, Texas, on June 23, 1994

TRD-9442952

D. J. Powers  
Legal Counsel to the  
Commissioner  
Texas Department of  
Insurance

Effective date July 14, 1994

Proposal publication date May 3, 1994

For further information, please call (512) 463-6327

### Subchapter M. Probation of Agents Based on Certain Disabilities

#### • 28 TAC §§1.1501-1.1506

The Texas Department of Insurance adopts new §§1.1501-1.1506, without changes to the proposed text as published in the March 29, 1994, issue of the *Texas Register* (19 TexReg 2189).

Sections 1.1501-1.1506 will enable the Department to place insurance agents on disability probation if the Department finds that the agent is suffering from a disability in accordance with provisions of the Insurance Code, Article 21.15-6, which was passed by the 72nd Legislature through House Bill 62. Article 21.15-6 requires that an agent be placed on disciplinary probation if the agent can competently demonstrate that the disability can be successfully arrested and treated. These sections will provide for adequate supervision of the agent during the probationary period to ensure that the agent will be able to discharge his professional duties in a competent manner.

The adoption of §§1.1501-1.1506 will result in the agents receiving the appropriate treatment in dealing with drugs or controlled substance abuse problems without jeopardizing their continued employment.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Insurance Code, Articles 21.15-6 and 1.03A, and the Government Code, §2001.004, et seq. Article 21.15-6 authorizes the Board to promulgate rules to carry out the provisions of this article, however, this authority is interpreted to be delegated to the Commissioner of Insurance under Article 1.02 of the Insurance Code, as amended by the 73rd Legislature in House Bill 1461. Article 1.02 provides that a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, consistent with the respective powers and duties of the Commissioner and the Department. Under §1.23 of House Bill 1461 as enacted by the 73rd Legislature, effective

September 1, 1993, the Commissioner of Insurance shall assume authority over any area of activity of the Texas Department of Insurance not subject to the authority of the State Board of Insurance. Section 1.23 provides also that on September 1, 1993, the Board shall relinquish authority over all areas of activity of the Texas Department of Insurance except for the promulgation and approval of rates, policy forms and endorsements, and hearings, proceedings, and rules related to these activities, such authority shall be exercised by the Board until no later than September 1, 1994. New Article 1.03A, as enacted in House Bill 1461, provides that the Commissioner may adopt rules and regulations, which must be for general and uniform application, and for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute. New Article 1.04C of the Insurance Code, as enacted in House Bill 1461, requires the Commissioner of Insurance to develop and implement policies that provide the public with a reasonable opportunity to appear before the Commissioner and to speak on any issue under the Commissioner's jurisdiction. The Government Code, §2001.004, et seq authorize and require each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribe the procedures for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on June 23, 1994

TRD-9442951      D. J. Powers  
                            Legal Counsel to the  
  Commissioner  
                            Texas Department of  
  Insurance

Effective date: July 14, 1994

Proposal publication date: March 29, 1994

For further information, please call (512) 463-6327

◆                    ◆                    ◆  
**Chapter 7. Corporate and  
Financial Regulation**

**Subchapter B. Insurance Holding  
Company System Regu-  
latory Act**

• **28 TAC §§7.201-7.205,  
7.209-7.211, 7.213**

The Texas Department of Insurance adopts amendments to §§7.201-7.205, 7.209-7.211 and 7.213, concerning administrative regulation under the Insurance Code, Article 21.49-1, also known as the Insurance Holding Company System Regulatory Act (the Act). Sections 7.201-7.204, 7.209, and 7.210 are adopted with changes to the proposed text as published in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1012). Sections 7.205, 7.211 and 7.213 are adopted without changes and will not be republished. Pursuant to Texas Government Code,

§2001.029, a request for a public hearing on the proposed changes was made, and a public hearing was held on May 16, 1994.

The amendments are necessary to implement amendments to Insurance Code, Article 21.49-1, enacted by the passage of House Bill 1461, 73rd Legislature, 1993. This adoption includes several changes to the proposed text as published. Sections 7.201(a)(1) and (2) are amended to include the current mailing address for Financial Monitoring. In §7.202(a)(9), the definition of "domestic insurer" is not adopted since it was not properly noticed as a proposed new definition in the publication of the proposed rule. The term "domestic insurer" is similarly defined in the Act, and will be used to define the term when used in these sections. The existing definition of "director" was inadvertently omitted in the publication of the proposed section and is renumbered as (9) in the adopted subsection. In §7.202(b)(2), the paragraph has been modified to make it clear that a commercially domiciled insurer must satisfy only one of the criteria specified in the section in order to be granted an exemption, the order granting the exemption will specify the criteria on which the exemption is based, that the insurer, not the officer of the insurer, promises to notify the department if the insurer no longer meets the criteria on which the exemption was granted, and the current mailing address for Financial Monitoring. In §7.203(a), language is added to make it clear that a commercially domiciled insurer exempted under §7.202(b) is not exempted from filing a registration statement. In §7.203(n), language has been added clarifying that if documentation supporting the standards of the Act, §4(b), has previously been provided during the current calendar year and the person to whom such documentation was sent is identified, then the documentation need not be provided again, and the mailing address for Financial Monitoring has been updated. In §7.204, the adopted section deletes the proposed subparagraph (D) in §7.204(a)(2) which added "payment of a bonus to a control person" to that paragraph. The word "satisfaction" in §7.204(d)(1)(B) is changed to "documentation to support each" based on an oral comment. Section 7.204(f) and (g) are deleted from the adopted sections to avoid duplication with the Act. In §7.209(d), the adopted section sets forth the current mailing address for Financial Monitoring. In §7.210, the adopted section provides the current mailing address for Financial Monitoring and deletes the proposed subparagraph (E) in §7.210(f)(1), which added "all bonuses paid to a control person" to that paragraph and renumbers the remaining subparagraphs.

The adopted amendments will provide for effective and efficient administrative regulation under the Insurance Holding Company System Regulatory Act which will now include the regulation of commercially domiciled insurers that are subject to the Act and stronger regulatory oversight of the payment of dividends. The adopted sections also include adoption by reference of revised Form HCDividend to be utilized pursuant to §7.203(n). The department has filed a copy of the revised form with the Secretary of State's Office, Texas Register Section, as part of this adoption. Persons

desiring copies of these forms can obtain them from the Texas Department of Insurance, Financial Monitoring Unit, P.O. Box 149099, Mail Code 303-1D, Austin, Texas 78714-9099 or at the Financial Monitoring Unit office at 333 Guadalupe, Austin, Texas.

A commenter indicated that certain language contained in proposed §7.201(a)(1) was not highlighted as new language. The commented upon language is required by the Texas Register Manual of Style and is merely stylistic, therefore staff does not believe there is any lack of notice to the public even though the language was not indicated as new language.

A commenter indicated that the definition for "director" contained in §7.202(a)(9) was deleted, however, the deletion was not indicated in the proposed text. The definition was omitted in the proposed text in error. Since there is no change to the existing definition, staff does not believe the omission failed to provide notice to the public.

The commenter also indicated that the proposed definition for "domestic insurer" was not shown as a new definition in the proposed text. Staff agrees and the proposed definition has been deleted. A substantially similar definition is contained in the Act and the department will use it in applying these sections.

A commenter indicated that "if it does not have a current registration statement on file with the Commissioner" was being added to §7.203(l) but no indicator was made that the text was new. That phrase was repealed from the rule in 1992 and inadvertently included in the text of the proposed rule. Staff does not believe the inadvertent inclusion of the phrase is misleading since there is no proposal to add that phrase back to the regulation. The text should read as follows:

"The insurer shall, within 15 business days after receipt thereof, unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer."

Comments regarding proposed amendments to §7.202(b)(2) raised the question of whether the four specified criteria are conjunctive or disjunctive. Section 2(s) of the Act authorizes the commissioner to exempt a commercially domiciled insurer if it has assets in this state or an asset to liability ratio which justifies the commissioner's conclusion that there is no reasonable danger that the insurer could present a danger of loss to Texas policyholders. Subparagraphs (A) and (B) establish the guidelines for assets in this state and asset to liability ratios which a commercially domiciled insurer can use in evaluating whether to apply for an exemption. If a commercially domiciled insurer does not meet or exceed the guidelines, it may bring to the commissioner's attention other positive matters under subparagraph (D) which may otherwise justify that the commercially domiciled insurer has assets in Texas or an asset to liability ratio that would justify the commissioner to exempt the commercially domiciled insurer. On the other hand, a commercially domiciled insurer which meets or exceeds the guidelines may still not justify a conclusion that there is no reasonable danger to Texas policyholders.



when the financial conditions mentioned in subparagraph (C) are considered

Commenters suggested that subparagraph (D) of §7 202(b)(2) be clarified to reflect other positive factors that would be considered. Staff believes such clarification would unnecessarily lengthen the regulation due to the multitude of positive factors that could be listed.

A commenter suggests that a criteria be added to §7 202(b)(2) for use in the case of a financially sound parent holding company providing a guarantee to the commercially domiciled insurer. Staff believes this additional criteria is unnecessary since it is within the scope of the other positive factors the commissioner may consider.

A commenter suggests that proposed §7 202(b)(2) set forth the specific criteria under which an exemption to a commercially domiciled insurer is granted. Clarifying language has been added.

A commenter suggests that the signed and notarized affidavit of an executive officer of the insurer required by §7 202(b)(2) is inappropriate since the officer is swearing to an act which may occur in the future. Staff does not agree, however, the adopted rule is amended to require the insurer to notify the Department within ten days should the insurer no longer meet the criteria under which the exemption was granted.

A commenter suggests that an automatic exemption be included in proposed amendments to §7 202(b) which would automatically exempt a commercially domiciled insurer from the Act if it meets specific criteria. Staff disagrees. The Act grants the Commissioner the authority to exempt from the Act any commercially domiciled insurer if the commissioner determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state. Automatic exemption would diminish the commissioner's ability to exercise appropriate judgment in granting exemptions.

A commenter indicates that a commercially domiciled insurer granted an exemption under §7 202(b)(2) is exempt from the filing of a registration statement under §7 203(a). Staff disagrees. Section 7 203(a) requires a commercially domiciled insurer to file a registration statement. An exemption granted under §7 202(b)(2) exempts a commercially domiciled insurer from the provisions of the Act, §4 and §5.

A commenter suggests language be added setting forth how a registration or exemption is terminated in the event a commercially domiciled insurer no longer meets the definition of commercially domiciled insurer. Staff agrees with the comment and has added language to §7 203(a) to provide that the commissioner shall terminate the registration of a commercially domiciled insurer when it no longer meets the definition.

A commenter indicates that a commercially domiciled insurer would be required to file a

registration statement separate and apart from the registration statement filed with its state of domicile. Pursuant to §7 203(j)(1), a licensed insurer may file a copy of the registration statement or similar report which it is required to file in its state of domicile provided the report contains substantially similar information as specified in §7 210 and the filing insurer is the principal insurer in the insurance holding company system or, in the case of a consolidated statement, the statement is in the form required by the principal insurer's domicile.

Commenters suggested adding language to §7 203(n) that prepayment notices are for informational purposes only to more closely follow the Act. Staff believes this recitation would be duplicative and unnecessarily lengthen the regulation.

Commenters suggested that for the purposes of §7 203(n) a statement from an insurer declaring a dividend attesting to the adequacy of surplus would be more appropriate than providing documentation to support the standards contained in the Act, §4(b). Staff disagrees. An ordinary dividend is payable ten days after receipt by the Department. Some of the standards contained in the Act, §4(b), are not readily determinable by Staff. Therefore, Staff believes it appropriate to place the burden on the insurer to provide documentation of meeting the standards contained in the Act, §4(b). Language has been added to §7 203(n) clarifying that if documentation supporting the standards specified in the Act, §4(b), has previously been provided during the current calendar year and the person to whom such documentation was sent is identified, then documentation need not be provided again.

Commenters indicated that proposed amendments to §7 204(a)(2)(D) and §7 210(f)(1)(E) refer to "control person," however, no definition is provided. Additionally, the commenters felt that "bonus" should be defined. Commenters suggested that most bonuses are contractual obligations subject to other provisions of these sections. However, salaries of persons in control are not specifically regulated by these sections unless there is a contractual arrangement. Commenters suggested that the usage of the payment of a bonus to an employee or an officer is a common and usual practice. Commenters indicated that the notice requirements of a bonus should be measured by a materiality limit. A commenter indicated that as far as Chapters 3 and 22 companies are concerned, compensation is established by the board of directors. The adopted rule deletes the provisions regarding bonuses for control persons. Staff will give the matter further consideration.

Commenters suggested clarification in the proposed language in §7 204(d) (1)(B) regarding when an application for the payment of an extraordinary dividend is complete. The required written notice is to be provided in accordance with §7 212. Although a response is given to an interrogatory contained in that section, the information provided is often-times not sufficient. Similar language to that commented upon is contained in other sections of these rules. A commenter also inquired regarding §7 204(d)(1)(B) and what

constitutes "satisfaction" of the standards set forth in the Act, §4(b), and suggested that "satisfaction" be changed to "documentation to support each" of the standards set forth in the Act, §4(b). Staff has modified the language commented upon.

One commenter pointed out that proposed §7 204(f) and (g) are copied from the Act. Staff has deleted these from the adopted rule to eliminate unnecessary duplication.

One commenter responding to revisions to Form HCDividend commented that providing the analysis of surplus form as of a date not earlier than 90 days prior to the date of the dividend notice rather than as filed for the calendar year immediately preceding the declaration date was burdensome, suggested that providing a balance sheet and statement of income and expenses for the period intervening from the last annual statement and the end of the month preceding the month in which the notice is provided was burdensome, the requirement of the insurer to provide documentation to support the standards specified in the Act, §4(b) was not specific as to what is to be provided, and interrogatory 3(B) of the Form HCDividend was more appropriate for a property and casualty insurer rather than a life insurer. Interrogatory 2 of Form HCDividend has been revised to provide for the filing of an analysis of surplus form as of a date not earlier than the most recently filed monthly, quarterly, or annual statement, and, to provide a copy of pages 2-4 of the most recently filed monthly, quarterly, or annual statement.

The Texas Department of Insurance received written comments from the Texas-Legal Reserve Officials Association, a trade association composed of Texas domiciled life, health and accident insurance companies, Landmark Life Insurance Company, a domestic stipulated premium insurance company, the firm of Clark, Thomas and Winters, the American Council of Life Insurance, a national trade association of legal reserve life insurance companies, the American Insurance Association, a national trade association of property and casualty insurance companies, American General Corporation, Security Union Title Insurance Company, a commercially domiciled insurer, IDS Life Insurance Company, sole shareholder of American Enterprise Life Insurance Company, a commercially domiciled insurer, the firm of Long, Burner, Parks and Sealy, The Reliable Life Insurance Company, a commercially domiciled insurer, and American National Insurance Company.

The amendments are adopted under the authority of Insurance Code, Articles 21 49-1 and 1 03A. Article 21 49-1 Section 11 authorizes the commissioner to issue such rules, regulations, and orders as shall be consistent with and shall carry out the provisions of the Insurance Holding Company System Regulatory Act and to govern the conduct of its business and proceedings under the Act. Article 1 03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions by the department.

The following articles of the Insurance Code are affected by these rules: 1 10, 1 10A,

§7.201. *Forms Filings.*

(a) General requirements.

(1) The forms that are specified in §§7.209-7.213 of this title (relating to Form A, Form B, Form C, Form D, and Form E) are intended to be guides in the preparation of the statements, notices, and applications required by the Insurance Code, Article 21.49-1. They are to provide notice of the information required and the location in which it will be expected to be found. In preparing any statement, notice, or application, the text of the form need not be repeated so long as there is clear identity of the matter to which the answer or material applies. Unless expressly provided otherwise, if any item is inapplicable or the answer thereto is in the negative, an appropriate statement to that effect shall be made. The forms specified in §§7.209-7.213 of this title (relating to Form A, Form B, Form C, Form D, and Form E) are also referred to in this subchapter as Forms A-E. Form A is also referred to as the acquisition statement, Form B as the registration statement, Form C as a disclaimer, Form D as an extraordinary dividend, and Form E as an exemption statement. For use in accordance with §7.209(d) and (f) of this title (relating to Form A) and §7.210(e) of this title (relating to Form B), the Texas Department of Insurance adopts by reference the biographical affidavit form published by and available from the Texas Department of Insurance. Copies of this form may be obtained from Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099.

(2) Three complete originally signed copies of each statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, in connection with any acquisition statement filed under §7.209 of this title (relating to Form A), and one complete originally signed copy of every other statement, notice, or application, including exhibits and all other papers and documents filed as a part thereof, shall be filed with the commissioner by personal delivery or by mail addressed to: Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099. Each statement, notice, or application shall be subject to the appropriate filing fee provided for in §7.1301 of this title (relating to Regulatory Fees). The appropriate filing fee shall be forwarded to Financial Monitoring of the Texas Department of Insurance under separate cover along with a copy of the letter transmitting the statement, notice, or application.

(3)-(4) (No change)

(b)-(e) (No change.)

§7.202. *Definitions.*

(a) The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

(1)-(2) (No change)

(3) Commercially domiciled insurer—A foreign or alien insurer authorized to do business in this state that during its three preceding fiscal years taken together, or any lesser period if it has been licensed to transact business in this state only for that lesser period, has written an average of more gross premiums in this state than it has written in its state of domicile during the same period, and such gross premiums constitute 20% or more of its total gross premiums everywhere in the United States for that three-year or lesser period, as reported in its three most recent annual statements. To determine if an insurer is a commercially domiciled insurer, the annual average ratio for premium receipts addressed in subparagraphs (A) and (B) of this paragraph shall be calculated, as follows:

(A) total Texas premium for the preceding three fiscal years (or any lesser period if licensed in Texas less than three years) divided by total premium countrywide for the preceding three years, and

(B) total premium in the state of domicile for the preceding three years divided by total premium countrywide for the preceding three years

(4) Commissioner—The Commissioner of Insurance of the State of Texas, the Commissioner's associates or deputies, or their designees, as appropriate.

(5) Control—The term "control," including the terms "controlling," "controlled by," and "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person. Control shall be presumed to exist if any person, directly or indirectly, or with members of the person's immediate family, owns, controls, or holds with the power to vote, or if any person other than a corporate officer or director of a person holds proxies representing 10% or more of the voting securities or authority of any other person,

or if any person by contract or agreement is designated as an attorney-in-fact for a Lloyd's plan insurer under the Insurance Code, Article 18.02, or for a reciprocal or interinsurance exchange under the Insurance Code, Articles 19.02 and 19.10. This presumption may be rebutted by a showing made in the manner provided by the Act, §3(j), that control does not exist in fact. The commissioner may determine, after furnishing all persons in interest notice and opportunity to be heard and making specific findings of fact to support such determination, that control exists in fact, notwithstanding the absence of a presumption to that effect, where a person exercises directly or indirectly either alone or pursuant to an agreement with one or more other persons such a controlling influence over the management or policies of an authorized insurer as to make it necessary or appropriate in the public interest or for the protection of the policyholders of the insurer that the person be deemed to control the insurer.

(6) Controlled insurer—An insurer controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(7) Controlled person—Any person, other than a controlled insurer, who is controlled directly or indirectly by a holding company (as a holding company is defined in this section).

(8) Controlling producer—An insurance broker or brokers or any person, firm, association or corporation domiciled, licensed, or operating in a state other than Texas, when, for any compensation, commission or other thing of value, such person, firm, association or corporation acts or aids in any manner in soliciting, negotiating or procuring the making of any insurance contract on behalf of an insured other than such person, firm, association or corporation, and who, directly or indirectly

(A) controls or seeks to control a property and casualty insurer as the term control is defined in paragraph (5) of this subsection, and

(B) writes or places, in any calendar year, an aggregate amount of gross written premiums with such controlled property and casualty insurer which is equal to or greater than 5.0% of the admitted assets of such insurer as reported in such insurer's quarterly statement filed as of September 30th of the prior year. The term "producer" or "controlling producer" as used in these sections is not intended to include an agent or any independent agent acting on behalf of the controlled insurer, licensed pursuant to the Insurance Code, Chapter 21, Subchapter A, and any sub-agent or representative of the agent, who

acts as such in the solicitation of, negotiation for, or procurement or making of an insurance contract, if the agent is not also acting on behalf of an insured as set forth in this paragraph, in the transaction in question. The term "producer" or "controlling producer" as used in these sections is not intended to include an attorney-in-fact acting on behalf of a licensed Lloyds or licensed reciprocal or interinsurance exchange.

(9) Director—A person elected or appointed as a member of a board of directors responsible for the management of an insurer. The term shall also include an attorney-in-fact of a Lloyds or reciprocal interinsurance exchange who is charged with responsibility for the management of an insurer.

(10) Executive officer—The chairman of the board of directors, the president, any vice-president of an applicant in charge of a principal business unit, division, or function (such as sales, administration, finance, or underwriting), any other officer who performs a policy-making function, or any other person who performs similar policy making functions for an applicant. Executive officers of subsidiaries may be deemed executive officers of an applicant if they perform such policy making functions for an applicant.

(11) Foreign insurer—Includes an alien insurer.

(12) Holding company—Any person who directly or indirectly controls any insurer except that it shall not be deemed to include the United States, a state or any political subdivision, agency or instrumentality thereof or any corporation which is wholly-owned, directly or indirectly, by one or more of the foregoing.

(13) Immediate family—A person's spouse, father, mother, children, brothers, sisters, and grandchildren, the father, mother, brothers, and sisters of the person's spouse, and the spouse of the person's child, brother or sister, mother, father, or grandparent.

(14) Insurance holding company system—Consists of two or more affiliated persons, one or more of which is an insurer.

(15) Insurer—Includes all insurance companies organized or chartered under the laws of this state, commercially domiciled insurers, or insurers licensed to do business in this state, including capital stock companies, mutual companies, farm mutual insurance companies, title insurance companies, fraternal benefit societies, local mutual aid associations, local mutual burial associations, statewide mutual assessment companies, county mutual insurance companies, Lloyds' plan companies, reciprocal or interinsurance exchanges, stipulated pre-

mium insurance companies and group hospital service companies, and any other entity which is made subject to the Insurance Code, Article 21.49-1, by applicable law, except that it shall not include agencies, authorities, or instrumentalities of the United States, its possessions and territories, the Commonwealth of Puerto Rico, the District of Columbia, or a state or political subdivision of a state.

(16) Person—An individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, any similar entity or any combination of the foregoing acting in concert, but shall not include any securities broker performing no more than the usual and customary broker's function.

(17) Security holder—Of a specified person is one who owns any security of such person, including common stock, preferred stock, debt obligations, and any other security convertible into or evidencing the right to acquire any of the foregoing. The term "debt obligation" shall not include trade, commercial, or open accounts, matured claims, or agents' commissions.

(18) Subsidiary—Of a specified person is an affiliate controlled by such person directly or indirectly through one or more intermediaries.

(19) Ultimate controlling person—That person which is not controlled by another person (as defined in this subsection).

(20) Voting security—Any security or other instrument giving or granting to the holder the power to vote at a meeting of shareholders of a person for or against the election of directors or any other matter involving the direction of the management and policies of such person, or any other security or instrument which the Texas Department of Insurance deems to be of similar nature including, but not limited to, those described in such rules and regulations as the Texas Department of Insurance may prescribe in the public interest as a voting security.

(b) Exemption

(1) Certain insurance holding company systems of the type specified in the Act, §2(r), may be exempted or partially exempted from the Act and these sections in the manner provided in the Act, §2(r).

(2) The commissioner may exempt from the provisions of the Act and these sections, except the registration requirement, any commercially domiciled insurer if the commissioner determines that the insurer has assets physically located in this state or an asset to liability ratio sufficient to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could

present a danger of loss to the policyholders of this state. The order granting the exemption under this subsection shall set forth the specific criteria under which it is granted and shall be subject to annual review. The commissioner may, after notice and hearing, rescind an exemption granted to a commercially domiciled insurer under the provisions of the Act and these sections. A rescission of an exemption shall set forth the rationale for the rescission. Requests for an exemption under this subsection shall be filed with Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099. The request must contain a signed and notarized affidavit of an executive officer of the insurer that, should the exemption be granted, the insurer has agreed to notify Financial Monitoring within 10 days after it no longer meets the criteria set out in this section on which the exemption is based. In determining that a commercially domiciled insurer has sufficient assets to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger or loss to policyholders of this state, the commissioner shall give consideration to the matters contained in subparagraphs (A)-(D) of this paragraph in connection with an exemption requested under the Act, §2(s), and these sections.

(A) Assets in Texas, which are either

(i) permanent, free, and unencumbered and physically located in Texas in an amount equal to the total unpaid losses attributable to Texas risks; or

(ii) qualifying authorized investments under the Insurance Code comprising 20% of the insurer's admitted assets and physically located in Texas.

(B) Adequacy of policyholder surplus, based upon:

(i) an asset-to-liability ratio of two to one, if the insurer is a property and casualty insurer;

(ii) an asset-to-liability ratio of one and one-half to one, if the insurer is a life, accident and health insurer;

(iii) the insurer having capital and surplus equal to 250% of the minimum risk-based capital described in §7.410 of this title (relating to Minimum Risk-Based Capital and Surplus Requirements for Stock Property/Casualty Insurers) or §7.401 of this title (relating to Minimum Risk-Based Capital and Surplus Requirements for Life, Accident and Health Insurers), or

(iv) the insurer having total capital and surplus of at least \$50 million.

(C) Consideration may be given to financial conditions specified in §83 of this title (relating to Hazardous Conditions) to justify the conclusion that there is no reasonable danger that the operations or conduct of the business of the insurer could present a danger of loss to the policyholders of this state

(D) Consideration may be given to other positive factors regarding an insurer's operations or conduct

#### §7 203 Registration of Insurers

(a) Except as provided by the Act, every insurer which is authorized or incorporated to do business in this state and which is a member of an insurance holding company system shall register in accordance with the Act, §3. The exemption from registration for a foreign insurer does not apply to a commercially domiciled insurer doing business in this state, nor to a commercially domiciled insurer granted an exemption under §7 202 of this title (relating to Definitions). The Commissioner shall terminate the registration of a commercially domiciled insurer when it is demonstrated that it no longer meets the definition of commercially domiciled insurer in subparagraph (3) of §7 202 of this title (relating to Definitions)

(b)-(d) (No change)

(e) Amendments to registration statements. Each registered insurer shall keep current the information required to be disclosed in its registration statement by reporting all material changes or additions (whether single transactions or cumulative in total). Such amendment shall be in accordance with §7 210 of this title (relating to Form B), the registration statement, the cover page requirements of §7 201(d) of this title (relating to Forms Filings), and with a positive statement as to the items of the form not being amended instead of setting out such unamended portions. Such amendment shall be filed within 15 days after the end of the month in which the registered insurer learns of each such change or addition. Within 60 days after the effective date of these sections, each insurer shall amend its registration statement to comply with these sections. Any transaction that is formally approved by official order of the commissioner under any of the following enumerated provisions shall be deemed to be an amendment to the registration statement without further action or filing.

(1)-(9) (No change)

(10) the Insurance Code, Article 22 15, provided that all requirements of the article are met,

(11) the Insurance Code, Article 22 19, provided that the reinsurance is a total direct reinsurance, and

(12) any other transaction formally approved by official order of the commissioner under authority authorized by any other provisions of the Insurance Code

(f) (No change)

(g) Annual amendment. Within 120 days after the end of each fiscal year of the ultimate controlling person (that person which is not controlled by another person) of the insurance holding company system, the registrant shall file an amendment to the registration statement which shall make the registration statement current. Within 120 days of the end of each calendar year ending in a five or a zero, the registrant shall file a completely restated up-to-date registration statement as set out in §7 210 of this title (relating to Form B), with amendments consolidated therein. The registrant is not required to file an annual amendment to its registration statement under this subsection in the year that it files a completely restated up-to-date registration statement. The registration statement referred to in §7 1301(d)(23) of this title (relating to Regulatory Fees) includes each annual amendment to the registration statement and the completely restated up-to-date registration statement.

(h)-(j) (No change)

(k) Exemptions. The provisions of this section shall not apply to any insurer, information, or transaction if and to the extent that the commissioner by rule, regulation, or order shall exempt the same.

(l) Disclaimer. Any person may file with the commissioner a disclaimer of control or affiliation with any insurer, or such a disclaimer may be filed by such insurer or any member of an insurance holding company system. The disclaimer shall be in accordance with §7 211 of this title (relating to Form C) and shall disclose all material relationships and bases for affiliation between such persons and such insurer as well as the basis for disclaiming such affiliation. A copy of any disclaimer filed with the commissioner, if the affected insurer is not a party thereto, shall also be furnished by the applicant to the insurer at the same time it is filed with the commissioner. The insurer shall, within 15 business days after receipt thereof, unless the time is extended by the commissioner for good cause, respond to the matters raised in the disclaimer. After a disclaimer has been filed, the insurer shall be relieved of any duty to register or report under subsection (a) of this section which may arise out of the insurer's relationship with such person unless and until the commissioner disallows such a disclaimer. Unless disallowed by the commissioner, a disclaimer filed under this

subsection relieves a person of the duty to comply with the requirements of the Act, §5(a)-(c). The commissioner shall disallow such a disclaimer only after furnishing all parties in interest with notice and opportunity to be heard and after making specific findings of fact to support such disallowance. After a disclaimer of control or affiliation has been filed by any person, any acquisition, in any manner, directly or indirectly, of a voting security of the domestic insurer by such person shall be subject to the Act, §5, in absence of the filing, within five business days, of an amendment which shall make current the disclaimer of control or affiliation previously filed pursuant to this subsection.

(m) (No change)

(n) Dividends and distributions. Each registered insurer shall, by personal delivery or by mail addressed to: Financial Monitoring, Mail Code 303-1D, Texas Department of Insurance, P O Box 149099, 333 Guadalupe, Austin, Texas 78714-9099, provide notice to the commissioner of all dividends and other distributions to shareholders within two business days following the declaration thereof and at least 10 days prior to payment in the form prescribed by the commissioner and adopted herein by reference as Form HCDividend and such notice shall be deemed an amendment to the registration statement without further action or filing. Prepayment notices will be considered promptly. Each prepayment notice shall be accompanied by documentation supporting each of the standards specified in the Act, §4(b), unless such documentation has previously been provided during the current calendar year and the person to whom such documentation was sent is identified. Dividends and distributions, including those declared by property and casualty insurers where the dividend exceeds the net income as of the preceding December 31, shall be reviewed by the Commissioner and, if the standards in the Act, §4(b) are not met, the Commissioner shall take appropriate action, including but not limited to that provided under the Insurance Code, Articles 1 10, 1 10A, 1 32, 21 28, 21 28-A, 21 31, and 21 32. All reported dividends and distributions shall be reviewed annually in the registration statement filed pursuant to §7 210 of this title (relating to Form B). See §7 204(d) of this title (relating to Commissioner's Approval Required) for requirements regarding extraordinary dividends and distributions.

#### §7 204 Commissioner's Approval Required

(a) Prior approval and notice

(1) (No change)

(2) The following transactions between a domestic insurer and any person

in its holding company system may not be entered into unless the insurer has notified the commissioner in writing of its intention to enter into any such transaction at least 30 days prior thereto, or such shorter period as he may permit, and he has not disapproved it within such period:

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

(D) management or service agreements, cost sharing agreements, rental or leasing agreements,

(E) agreements to consolidate federal income tax returns, which agreements shall provide that a domestic insurer will be adequately indemnified in the event the Internal Revenue Service levies upon the insurance company's assets for unpaid taxes in excess of the amount paid under the agreement,

(F) transactions with affiliated financial institutions, other than fully insured deposits; and

(G) any material transactions which the commissioner has determined after notice may adversely affect the interest of the insurer's policyholders or of the public

(3)-(6) (No change.)

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

(d) Extraordinary dividends and other distributions

(1) No insurer subject to registration under §7.203(a) of this title (relating to Registration of Insurers) shall pay any extraordinary dividend or make any other extraordinary distribution to its shareholders until

(A) 30 days after the commissioner has received written notice in accordance with §7.212 of this title (relating to Form D) of the declaration thereof, including the applicable filing fee pursuant to §7.1301(d)(24) of this title (relating to Regulatory Fees), and the commissioner has not within such period disapproved such payment, or

(B) the commissioner shall have approved such payment within such 30-day period. The written notice required under this paragraph shall be deemed filed with the commissioner only when all material sufficient to constitute a complete filing, including documentation to support each of the standards set forth in the Act, §4(b), and the payment of any required filing fee pursuant to §7.1301(d)(24) of this

title (relating to Regulatory Fees) have been provided.

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

(e) (No change.)

#### §7.209. Form A.

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

(d) Identity and background of individuals associated with the applicant. Furnish biographical data for the applicant if such person is an individual, or for all persons who are directors, executive officers, or owners of 10% or more of the voting securities of the applicant if the applicant is not an individual, with such biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). Copies of this form are available from Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P. O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099

(e) Nature, source, and amount of funds or other consideration

(1) (No change.)

(2) If the source of the consideration is provided by a commercial lender in the ordinary course of business and if the applicant wishes the identity to remain confidential, he must specifically request that the identity be kept confidential. When confidentiality is requested such identity shall be provided by a separate instrument filed with, but not forming a part of, the acquisition statement

(3) If the consideration is to consist in whole or in part of the insurance business and assets of the insurer or of a person controlled by the insurer, state the value thereof and how such value was arrived at.

(f) Future plans for insurer.

(1) Provide a business plan which describes any plans or proposals which the applicant may have or may contemplate making to cause the insurer to pay dividends or make other distributions, to liquidate such insurer, to sell any of its assets, to merge or consolidate it with any person or persons, to make any other material change in its business operations or corporate structure or management, or to cause the insurer to enter into material agreements, arrangements, or transactions of any kind with any party, and describe any financial or employment guarantees given to present and contemplated management

(2) (No change.)

(3) For the domestic insurer, provide the full name of each individual

who will be responsible for major areas of operations of the domestic insurer, including but not limited to, supervision of agents, underwriting, advertising, production of business through agents and through reinsurance, policyholder services, premium accounting, claims processing and litigation, reinsurance cessions, investments, and financial accounting and reporting. For each area, evidence such individual's ability and experience to perform same by providing biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings).

(4) (No change.)

(g)-(l) (No change.)

(m) Financial statements and exhibits

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

(3) File as exhibits copies of all tender offers for, requests or invitations for, tenders of, exchange offers for, and agreements to acquire or exchange any voting securities of the insurer and (if distributed) of additional soliciting material relating thereto, and proposed employment, consultation, advisory, or management contracts concerning the insurer, budget projections of the domestic insurer and the applicant for a period equal to the greater of three years or the succeeding length of time of debt service required by applicant in its acquisition of control, and any additional document or papers required by regulation

(4) (No change.)

(n) (No change.)

#### §7.210 Form B.

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

(e) Biographical information. Furnish biographical data for the ultimate controlling person(s) if such person is an individual, or for the directors and executive officers of the ultimate controlling person if the ultimate controlling person is not an individual, with such biographical data in the form of the biographical affidavit form adopted by reference under §7.201(a)(1) of this title (relating to Forms Filings). Copies of this form are available from Financial Monitoring, Mail Code 303-1A, Texas Department of Insurance, P.O. Box 149099, 333 Guadalupe, Austin, Texas 78714-9099

(f) Transactions, relationships, and agreements

(1) Briefly describe the following agreements in force, relationships subsisting, and transactions currently outstanding between the registrant and its holding company, its subsidiaries, and its affiliates

(A)-(D) (No change.)

(E) all management and service contracts and all cost-sharing arrangements;

(F) reinsurance agreements covering all or substantially all of one or more lines of insurance of the ceding company;

(G) all dividends and other distributions to shareholders;

(H) agreements with affiliates to consolidate federal income tax returns;

(I) all transactions with affiliated financial institutions;

(J) the amount of commissions paid to the controlling producer, the percentage such amount represents of the net premium written, and comparable amounts and percentages paid to noncontrolling producers for placements of the same kinds of insurance.

(K) all surplus debentures, surplus notes, premium income notes, bonds, or debentures, and other contingent evidences of indebtedness outstanding.

(L) any affiliated transaction not disclosed in subparagraphs (A)-(K) of this paragraph which is subject to the Act, §4(d), and

(M) any pledge of an insurer's stock, including stock of any subsidiary or controlling affiliate, for a loan made to any member of its insurance holding company system.

(2) (No change.)

(g)-(j) (No change.)

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

Issued in Austin, Texas, on June 23, 1994

TRD-9442954 D J Powers  
Legal Counsel to the  
Commissioner  
Texas Department of  
Insurance

Effective date July 14, 1994

Proposal publication date February 11, 1994

For further information, please call (512) 463-6327

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 15. Drivers License Rules

##### Application Requirements Original, Renewal, Duplicate, Identification Certificates

###### • 37 TAC §15.44

The Texas Department of Public Safety adopts new §15.44, concerning application requirements original, renewal, duplicate, identification certificates, without changes to the proposed text as published in the April 19, 1994, issue of the *Texas Register* (19 TexReg 2897)

The adoption of this section will allow applicants to receive their drivers license or identification certificate within five to seven days, allows for correcting a drivers license or identification certificate without the applicant returning to the drivers license office, improves quality of the photograph, additional security features are added to drivers license or identification certificate to help prevent fraudulent reproduction, information on back of license will be specific to licensee, and addition of magnetic stripe will be beneficial to retailers in the future

The department adopts this section which provides that a color photograph of a licensee may be obtained through any medium which produces a retrievable visual image including, but not limited to, film, video tape, digital or visual imagery, or any other technology which may be approved by the director

No comments were received regarding adoption of this section.

The new section is adopted under Texas Civil Statutes, Article 6687b, §1A and Texas Government Code, §411.006(4), which provides the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer this act

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

Issued in Austin, Texas, on June 16, 1994

TRD-9442921 James R Wilson  
Director  
Texas Department of  
Public Safety

Effective date July 14, 1994

Proposal publication date. April 19, 1994

For further information, please call (512) 465-2000

## Part III. Texas Youth Commission

### Chapter 81. Administrative Provisions

#### General

##### • 37 TAC §81.31

The Texas Youth Commission (TYC) adopts new §81.31, concerning TYC involvement in family in reducing recidivism advisory committee, without changes to the proposed text as published in the May 13, 1994, issue of the *Texas Register* (19 TexReg 3633).

The new section is justified to implement participation by TYC in the Role of the Family in Reducing Recidivism Advisory Committee as established under Government Code, §501.011.

The new rule will outline procedures for TYC participation in the study of programs in TYC juvenile facilities.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, §61.034, which provides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

The proposed rule implements the Human Resource Code, §61.034

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

Issued in Austin, Texas, on June 22, 1994.

TRD-9442939 Steve Robinson  
Executive Director  
Texas Youth Commission

Effective date. July 14, 1994

Proposal publication date: May 13, 1994

For further information, please call: (512) 483-5244

## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Services

#### Chapter 19. Long-Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) adopts amendments to §19.1104 and §19.1807, concerning the rehabilitative services system and reimbursement methodology for nursing facilities, in its Long Term Care Nursing Facility Requirements rule chapter, without changes to the proposed text as published in the May 17, 1994, issue of the *Texas Register* (19 TexReg 3821).

The justification for the amendment to §19 1807 is to strengthen qualifications for the rehabilitative clinical group. To qualify for the rehabilitative clinical group, there must be a documented restorative treatment plan for the resident and documentation of a resident's response to the treatment plan. The amendment to §19 1104 adds a cross reference to §19 1807.

The amendments will function by providing documentation that nursing facility residents require a treatment plan designed to help them attain a certain level of rehabilitation, and their response to that treatment.

No comments were received regarding adoption of the amendments.

## Subchapter L Specialized Rehabilitative Services

### • 40 TAC §19.1104

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

The amendment implements the Human Resources Code, §§2021(c) and §32 024.

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

Issued in Austin, Texas, on June 23, 1994.

TRD 9442946 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date August 15, 1994

Proposal publication date May 7, 1994

For further information, please call (512) 450-3765.



## Subchapter S Reimbursement Methodology for Nursing Facilities

### • 40 TAC §19.1807

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

The amendment implements the Human Resources Code, §§2021(c) and §32 024.

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

Issued in Austin, Texas, on June 23, 1994.

TRD-9442946 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date August 15, 1994

Proposal publication date May 7, 1994

For further information, please call (512) 450-3765.



## Chapter 48. Community Care for Aged and Disabled

### Eligibility

#### • 40 TAC §48.2924

The Texas Department of Human Services (DHS) adopts an amendment to §48 2924, without changes to the proposed text as published in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3444).

The justification for the amendment is to change the term "handicapped person" to "person with a disability."

The amendment will function by emphasizing the individual and discontinuing use of the word "handicapped."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Human Resources Code, Title 2, Chapter 22, which provides the department with the authority to administer public assistance programs.

The amendment implements the Human Resources Code, §§22 001-22 024.

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 27, 1994.

TRD 9443033 Nancy Murphy  
Section Manager, Media  
and Policy Services  
Texas Department of  
Human Services

Effective date August 1, 1994

Proposal publication date May 6, 1994

For further information, please call (512) 450-3765.



## Chapter 92 Personal Care Facilities

### Subchapter C Standards for Licensure

#### • 40 TAC §92.41

The Texas Department of Human Services (DHS) adopts an amendment to §92 41, concerning standards for personal care facilities, in its Personal Care Facilities rule chapter. The amendment is adopted with changes to

the proposed text as published in the May 20, 1994, issue of the *Texas Register* (19 TexReg 3909).

The justification for the amendment is to clarify staffing requirements on the night shift in personal care facilities.

The amendment will function by providing clearer rules concerning the availability of staff to care for residents of personal care facilities during the night shift.

During the public comment period, DHS received comments from the Texas Association of Homes for the Aging. The commenter expressed support for the amendment, stating that the proposal appears to correct the uncertainty and to conform the rule to the interpretation that has been in effect since the current rule was adopted.

DHS is adopting subsection (a)(2)(B) with a correction to delete the reference to "other shift designations" which is no longer needed.

The amendment is adopted under the Health and Safety Code, Chapter 247, which provides the department with the authority to regulate personal care facilities, Chapter 22 of the Human Resources Code, and under Texas Civil Statutes, Article 4413 (502), which transferred all functions, programs, and activities related to long-term care licensing, certification, and surveys from the Texas Department of Health to the Texas Department of Human Services.

The amendment implements the Health and Safety Code, §§247 001-247 066.

#### §92.41 Standards for Personal Care Facilities

##### (a) Staffing

(1) (No change.)

(2) Attendants

(A) (No change.)

(B) The staff-resident ratios described in this subparagraph must be maintained in a Type A or Type B facility. The facility management has the authority to define day, evening, and night shift start and end times:

(i) day = 1 to 15,

(ii) evening = 1 to 20;

and

(iii) night = 1 to 40.

(I) Type A facility:

Night shift staff in a 40 or fewer licensed bed capacity facility must be immediately available. In a 41+ licensed bed capacity facility, the staff must be immediately available and awake.

(II) Type B facility:

Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(C) (No change.)

(b)-(i) (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 27, 1994.

TRD-9443032      Nancy Murphy  
                         Section Manager, Media  
                         and Policy Services  
                         Texas Department of  
                         Human Services

Effective date: August 15, 1994

Proposal publication date: May 20, 1994

For further information, please call: (512)  
450-3765





# OPEN MEETINGS

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

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

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

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

## Texas Department on Aging

Wednesday, July 6, 1994, 9:30 a.m.

1949 South IH-35, Third Floor Large Conference Room

Austin

According to the agenda summary, the Area Agency on Aging (AAA) Operations Committee will consider and possibly act on call to order, minutes of April 13, 1994 meeting, final adoption of new, revised, relocated, and repealed administrative rules, recommendation from the Citizens Advisory Council on how to achieve compliance with requirement of Senate Bill 383 that advisory committees have no more than 24 members; and adjourn

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727

Filed: June 28, 1994, 9:55 p.m.

TRD-9443115

Wednesday, July 6, 1994, 1:00 p.m.

1949 South IH-35, Third Floor Small Conference Room

Austin

According to the complete agenda, the Audit and Finance Committee will consider and possibly act on call to order, minutes of April 13, 1994 meeting, internal audit of the TDoA Nutrition Services Programs, 1996-1997 Legislative Appropriations Re-

quest, amendments to fiscal year 1994 internal audit plan, proposed fiscal year 1995 internal audit plan, possible budget amendment/s, progress report on State Auditor's 1993 financial and compliance audit, prior audit update, budget report; and adjourn

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727

Filed: June 28, 1994, 9:55 a.m.

TRD-9443111

Wednesday, July 6, 1994, 2:00 p.m.

1949 South IH-35, Third Floor Small Conference Room

Austin

According to the complete agenda, the Networking/Advocacy/Legislation Committee will consider and possibly act on. Call to order, minutes of the April 13, 1994 meeting, White House Conference on Aging/Texas activities; update on Texas Senior Advocacy Coalition activities, update on Long Term Care Task Force, report on June 22, 1994 meeting with Texas Association of Area Agencies on Aging and Texas Association of Regional Councils and plans for future action, and adjourn

Contact: Mary Sapp, P.O. Box 12786, Austin, Texas 78711, (512) 444-2727

Filed: June 28, 1994, 9:55 a.m.

TRD-9443111

## Bill Blackwood Law Enforcement Management Institute of Texas

Thursday, July 14, 1994, 9:00 a.m.

Regents Room, 16th Floor, ACT Building, Texas Woman's University

Denton

According to the agenda summary, the Advisory Board will call to order; opening remarks and introductions, overview of agenda, approve minutes of last meeting; issues for board consideration (old business); financial report; quarterly activities report (exc GMI); report on the graduate management institute, upcoming events, activities, and programs in the next quarter; issues for board consideration (new business), TAMU issues, TWU issues, SHSU issues, and other, open discussion, board, audience; set date for next board meeting; closing remarks, and adjourn.

Contact: Dr. Gerald Williams, CJC Box 2296, Huntsville, Texas 77341, (409) 294-1694

Filed: June 24, 1994, 2:17 p.m.

TRD-9443001

◆ ◆ ◆

## Texas Commission for the Blind

Thursday, July 14, 1994, 2:00 p.m.

4800 North Lamar Boulevard, Administrative Building, Suite 320

Austin

According to the complete agenda, the Finance and Legislative Committee will meet in work session on the Texas Commission for the Blind's Legislative Appropriations Request.

Contact: Diane Vivian, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 459-2600.

Filed: June 24, 1994, 11:03 a.m.

TRD-9442992

Friday, July 15, 1994, 8:30 a.m.

4800 North Lamar Boulevard, Criss Cole Rehabilitation Center, Administrative Conference Room

Austin

According to the complete agenda, the Policy Committee will meet in work session on Texas Commission for the Blind internal board policies.

Contact: Diane Vivian, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 459-2600.

Filed: June 24, 1994, 11:03 a.m.

TRD-9442993

Friday, July 15, 1994, 9:30 a.m.

4800 North Lamar Boulevard, Criss Cole Rehabilitation Center, Staff Training Room

Austin

According to the complete agenda, the Governing Board will meet to approve minutes from May 6, 1994; discussion and approval: legislative appropriations request; discussion and approval: rules on public access to documents and records; and discussion and decision: date and location for next regular meeting.

Contact: Diane Vivian, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 459-2600.

Filed: June 24, 1994, 10:55 a.m.

TRD-9442991

## Texas Board of Chiropractic Examiners

Friday, July 22, 1994, 8:30 a.m.

333 Guadalupe, Tower Three, Suite 825  
Austin

According to the complete agenda, the Enforcement Committee will conduct informal conferences on cases #94-62, #94-84, #94-90, #94-97, #94-118, #94-133, #94-129,

#94-70, #94-71, #94-100, #94-110, and #94-116 regarding possible violations of its licensees.

Contact: Patte B. Kent, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, (512) 305-6700.

Filed: June 27, 1994, 1:00 a.m.

TRD-9443056

## Texas Office for Intervention of Developmental Disabilities

Wednesday, July 13, 1994, 1:00 p.m.

Capitol Extension, Hearing Room, E2-014  
Austin

According to the complete agenda, the Executive Committee Quarterly Meeting will call to order/roll call, discuss meeting notes, introductions; task force reports, surveillance reports; project director's report, next meeting; and adjournment.

Contact: Jerry Ann Roberts, 4900 North Lamar Boulevard, Austin, Texas 78756, (512) 483-5042.

Filed: June 27, 1994, 4:00 p.m.

TRD-9443091

## Texas State Board of Examiners of Dietitians

Thursday, July 7, 1994, 4:00 p.m.

Jot Gunter Room, Sheraton Gunter Hotel, 205 East Houston Street  
San Antonio

According to the complete agenda, the Program Approval Committee will discuss and possibly act on review reports (Steven Kilpatrick and LeAnn C. ... of the next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601. For ADA assistance, call Richard Butler (512) 458-7695 or TDD (512) 458-7708 at least two days prior to the meeting.

Filed: June 23, 1994, 3:27 p.m.

TRD-9442968

Thursday, July 7, 1994, 4:00 p.m.

Jot Gunter Room, Sheraton Gunter Hotel, 205 East Houston Street  
San Antonio

According to the complete agenda, the Complaint Committee will discuss and possibly act on complaint #DT94-03, and setting of the next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512)

834-6601. For ADA assistance, call Richard Butler (512) 458-7695 or TDD (512) 458-7708 at least two days prior to the meeting.

Filed: June 23, 1994, 3:27 p.m.

TRD-9442967

Friday, July 8, 1994, 9:00 a.m.

Traildrivers Room, Sheraton Gunter Hotel, 205 East Houston Street  
San Antonio

According to the complete agenda, the Consumer Information Committee will discuss and possibly act on newsletter, continuing education mailout, and consumer information activities.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601. For ADA assistance, call Richard Butler (512) 458-7695 or TDD (512) 458-7708 at least two days prior to the meeting.

Filed: June 23, 1994, 3:27 p.m.

TRD-9442969

Friday, July 8, 1994, 9:30 a.m.

Traildrivers Room, Sheraton Gunter Hotel, 205 East Houston Street  
San Antonio

According to the agenda summary, the Texas State Board of Examiners of Dietitians will discuss the approval of the agenda, and the minutes of the January 21, 1994 meeting, and discuss and possibly act on chairman's report, executive secretary's report (ratification of applications approved by the executive secretary), standing committee reports (rules, complaint, program approval (ratification of program of Antonio Elefano, LeAnn Cisneros, and Stephen Kilpatrick), and consumer information), applications for licensure, provisional licensure, examination eligibility, preplanned professional experience program and license renewal), course work for persons who failed the examination (Nancy Berry), order relating to Tracy Waguespack Tippitt, 1994 Council on licensure, enforcement and regulation conference, liability insurance for board members, officers and executive secretary, board appreciation resolution to Robert Watkins, election of officers, announcement and comments not requiring board action, and setting of next meeting date.

Contact: Becky Berryhill, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6601. For ADA assistance, call Richard Butler (512) 458-7695 or TDD (512) 458-7708 at least two days prior to the meeting.

Filed: June 23, 1994, 3:27 p.m.

TRD-9442968

## Texas Education Agency

Monday, July 11, 1994, 8:30 a.m.

Room 1-104, William B Travis Building,  
1701 North Congress Avenue

Austin

According to the complete agenda, the Social Studies Committee will hold a joint hearing before the Commissioner of Education and the 1994 State Textbook Social Studies Committee Testimony at the hearing is limited to residents of Texas who submitted written requests to appear on or before the June 15, 1994, deadline Representatives of publishing companies will be allowed time to respond to testimony at the hearing State Textbook Social Studies Committee members remain under no-contact rules until the close of the discussion and balloting meeting in August 1994

Contact: Ann Smisko, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463 9601

Filed: June 27, 1994, 11 24 a m

TRD-9443049

Tuesday, July 12, 1994, 8:30 a.m.

Room 1-100, William B Travis Building,  
1701 North Congress Avenue

Austin

According to the complete agenda, the Science Committee will hold a joint hearing before the Commissioner of Education and the 1994 State Textbook Science Committee Testimony at the hearing is limited to residents of Texas who submitted written requests to appear on or before the June 15, 1994, deadline Representatives of publishing companies will be allowed time to respond to testimony at the hearing State Textbook Science Committee members remain under no-contact rules until the close of discussion and balloting meeting in August 1994

Contact: Ann Smisko, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9601

Filed: June 27, 1994, 11 31 a m

TRD-9443054

Thursday-Friday, July 30-31, 1992, 9 a.m. The Texas Education Agency will meet at 1701 North Congress Avenue, William B Travis Building, Room 1-110, Austin According to the agenda, on Thursday the agency will take roll call, discuss approval of minutes of April 30, 1992, meeting, information items, Texas Christian University-request for pilot program for student teaching in Puebla, Mexico, hear reports from the following institutions East Texas State University, Marshall, Sam Houston State University, Huntsville, Schreiner College, Kerrville, Southern

Methodist University, Dallas, Texas A&M University, College Station, Texas Tech University, Lubbock, the University of Texas at Arlington, the University of Texas at Austin, the University of Texas at Dallas, the University of Texas at El Paso, and the University of North Texas, Denton, \*presentation of design for staffing the instructional delivery team for the Texas public schools (professional development continuum) by Dr Nolan Wood, lunch, \*progress report from consortium of state organizations for teacher education on outcomes-based standards for teachers, \*progress report from Texas Professors of Educational Administration on outcomes-based standards for school administrators July 31, 1992 discussion of suggestions for rule governing commission on standards for the teaching profession, assignment of commission members, and review of outcomes

Contact: Edward Vodicka, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9337

Filed: July 22, 1992, 3 49 p m

TRD-9210050

## Advisory Commission on State Emergency Commu- nications

Tuesday, July 5, 1994, 9:00 a.m.

1101 Capital of Texas Highway South,  
Suite B-100

Austin

According to the agenda summary, the Addressing Committee will call the meeting to order and recognize guests, hear public comment, hear reports and discuss and take Commission action on items as necessary, addressing pool funds reallocation, funding for addressing projects, addressing plan amendments, proposed amendments to rule §251 3, and adjourn

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911

Filed: June 27, 1994, 4 07 p m

TRD-9443084

Tuesday, July 5, 1994, 10:30 a.m.

1101 Capital of Texas Highway South,  
Suite B-100

Austin

According to the agenda summary, the Planning and Implementation Committee will call the meeting to order and recognize

guests, hear public comment, hear reports and discuss and take Commission action on items as necessary, proposed new rule §251 6, proposed amendments to rules §§251 2-251 4, repeal of rule §252 2, and adjourn

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911

Filed: June 27, 1994, 4 07 p m

TRD-9443086

Tuesday, July 5, 1994, 1:30 p.m.

1101 Capital of Texas Highway South,  
Suite B-100

Austin

According to the agenda summary, the Administration Committee will call the meeting to order and recognize guests, hear public comment, hear reports and discuss and take Commission action on items as necessary, 9-1-1 administrative budgets for councils of governments, proposed rule §252 4, and adjourn

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911

Filed: June 27, 1994, 4 08 p m

TRD-9443090

Tuesday, July 5, 1994, 3:00 p.m.

1101 Capital of Texas Highway South,  
Suite B-100

Austin

According to the agenda summary, the Poison Control Implementation Committee will call the meeting to order and recognize guests, hear public comment, hear reports and discuss and take Commission action on items as necessary, current status of program, financial report, implementation schedule, grant parameters, memorandum of understanding with Texas Department of Health, and adjourn

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911

Filed: June 27, 1994, 4 08 p m

TRD-9443088

Wednesday, July 6, 1994, 9:00 a.m.

1101 Capital of Texas Highway South,  
Suite B-100

Austin

According to the agenda summary, the Commission will call the meeting to order and recognize guests, hear public comment, discuss and take action on strategic plan review and related issues, hear report and discuss and take action on items administration, planning and implementation, addressing and poison control, consideration and approval of May and June meeting minutes, and adjourn

Persons requesting interpreter services for the hearing- and speech-impaired should contact Velia Williams at (512) 327-1911 at least two working days prior to the meeting

Contact: Jim Goerke, 1101 Capital of Texas Highway South, Suite B-100, Austin, Texas 78746, (512) 327-1911

Filed: June 27, 1994, 4:08 p.m.

TRD-9443092

◆ ◆ ◆  
**Texas General Land Office**

Monday, June 27, 1994, 3:30 p.m.

1700 North Congress Avenue, SFA Building, Room #831

Austin

Emergency Revised Agenda

According to the complete agenda, the Veterans Land Board added consideration of a resolution to approve the Bond Purchase Contract for the sale of the State of Texas Veterans Housing Assistance Bonds, Series 1994 B-4, in the aggregate principal amount of \$35,000,000 (the "Series 1994B-4 Bonds"), to the following underwriting syndicate (the "Underwriters") CS First Boston Corporation, Artemis Capital Group, Inc., Grigsby Brandford and Company, Inc., Lehman Brothers, Prudential Securities Incorporated, and Walton Johnson and Company

Reason for emergency: Rapidly changing market conditions that were not reasonably foreseeable resulted in the Underwriters offering to purchase the Series 1994B-4 Bonds pursuant to terms that did not comply with the Resolution of the Board adopted on January 20, 1994, which authorized the issuance of the Series 1994B-4 Bonds. The terms offered by the Underwriters produced a proper matching of cash flows for, and a best service savings to, the Board. Due to the changing market conditions, terms complying with the January 20 Resolution would have resulted in a poor matching of cash flows and an increased debt service cost. Immediate action

was required by the Board to accept the terms offered by the Underwriters. Otherwise, closing of the sale of the Series 1994B-4 Bonds would have been delayed at least 30 days past the currently scheduled closing date of June 29, 1994. Such a delay could have resulted in a period in which Board would have had no funds for which to commit to making home loans to eligible Texas veterans, and such a lapse in funding could have had detrimental long-term effect on the Veterans Housing Assistance Program

Contact: Karen Pratt, 1700 North Congress Avenue, Room 700, Austin, Texas 78701, (512) 463-5171

Filed: June 24, 1994, 12:10 p.m.

TRD-9442996

Tuesday, July 5, 1994, 10:00 a.m.

SFA Building, 1700 North Congress Avenue, Room 831

Austin

According to the complete agenda, the School Land Board will discuss approval of previous board meeting minutes; opening and consideration of bids received for the July 5, 1994 special oil and gas lease sale, pooling applications, Buck Ranch Strawn Field, Parker County, Wildcat Field, Calhoun County; Jack Starr (Yegua Y-4), Jackson County, Red Fish Reef, SW Field, Chambers County, Aggieldand Field, Bureson and Brazos Counties, Giddings (Austin Chalk-3) Bureson and Brazos Counties; applications to lease highway rights of way for oil and gas, Bureson County, Lynn County, Matagorda County; Fayette County and Robertson County, direct land sales, Bexar County, and Harris County; Coastal public lands, commercial lease renewals, amendments, assignments, lease substitution, forfeiture/reinstatement, and terminations, Aransas Bay, Aransas County; Clear Lake, Galveston County; Bernard River, Brazoria County; structure (cabin) permit rebuilding requests, terminations, applications, and renewals, Laguna Madre, Cameron County; Laguna Madre, Willacy County; Laguna Madre, Kleberg County; Bastrop Bay, Brazoria County; Laguna Madre, Kenedy County; lease applications, renewals, and assignments, Corpus Christi Bay, Nueces County; Galveston Bay, Chambers County; Neches River, Jefferson County; and Offats Bayou, Galveston County; executive session-pending and proposed litigation; executive session-discussion of ratification of partial settlement in the State v. Lynn D. Durham et al. lawsuit, cause number 438,554-A in the 345th Judicial District Court of Travis County, open session-consideration of ratification of partial settlement of the State v. Lynn D. Durham et al. lawsuit, cause number 438,554-A in the 345th Judicial District

Court of Travis County, and consideration of termination or other appropriate action on coastal easement, Laguna Madre, Cameron County

Contact: Linda K Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016

Filed: June 27, 1994, 4:07 p.m.

TRD-9443083

Thursday, July 14, 1994, 3:00 p.m.

1700 North Congress Avenue, SFA Building, Room #831

Austin

According to the complete agenda, the Veterans Land Board will discuss approval of the June 27, 1994, minutes of the Veterans Land Board emergency meeting, approval of the May 13, 1994, minutes of the Veterans Land Board meeting; consideration to order for sale forfeited land accounts, consideration to extend the three and four interest rate to February 28, 1995, and consideration of October 26 1994, as the date for the next Type I forfeited land sale

Contact: Karen Pratt, 1700 North Congress Avenue, Room 700, Austin, Texas 78701, (512) 463-5171.

Filed: June 27, 1994, 11:31 a.m.

TRD-9443053

◆ ◆ ◆  
**Texas Department of Health**

Saturday, June 25, 1994, 10:45 a.m.

Sixth Floor Conference Room, Doubletree Hotel, 6505 IH-35 North

Austin

Emergency Meeting

According to the complete agenda, the Credential Committee of the Medical Radiologic Technologist Advisory Board discussed and possibly acted on application of Claude Roger Rhem for disapproval by the program administrator

Reason for emergency: A complaint investigation has just been completed and action to disapprove is needed to proceed with the due process hearing. The next meeting is not scheduled until October, 1994

Contact: Donna Hardin, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6617 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 24, 1994, 8:41 a.m.

TRD-9442976

**Thursday, July 7, 1994, 10:00 a.m.**

Laguna Madre Room, The Bayfront Marriott, 990 North Shorelines Boulevard  
Corpus Christi

According to the complete agenda, the Respiratory Care Practitioners Advisory Board will discuss approval of the minutes of the February 4, 1994 meeting, and discuss and possibly act on reports of chairperson and program administrator, review of budget, proposed amendments to Title 25, Texas Administrative Code, Chapter 123, relating to respiratory care practitioners, letters from concerned individuals, other matters not requiring board action, and setting of the next meeting date

**Contact:** Jeanette A Hilsabeck, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6632 For ADA assistance, call Richard Butler (512) 458-7695 or TDD (512) 458-7708 at least two days prior to the meeting

**Filed:** June 23, 1994, 3:37 p.m.

TRD-9442970

### **Texas Historical Commission**

**Friday, July 1, 1994, 1:30 p.m.**

Texas Parks and Wildlife Commission Hearing Room, 4200 Smith School Road  
Austin

Emergency Meeting

According to the agenda summary, the Governor's Task Force for Los Caminos will discuss briefing on Los Caminos del Rio, briefing on National Heritage Areas Program, and incorporation of Los Caminos with National Heritage Areas Program

Reason for Emergency No other date available to have entire committee meet

**Contact:** Curtus Tunnell, Box 12276, Austin, Texas 78711, (512) 463-6100, or Mario Sanchez, (512) 463-5754

**Filed:** June 27, 1994, 12:28 p.m.

TRD-9443058

### **Texas House of Representatives**

**Wednesday, June 29, 1994, 9:00 a.m.**

One Capitol Square, Committee Room 1  
Austin

According to the agenda summary, the Select Committee on Qualified Health Providers called to order, public testimony from health care providers, other business, and adjourned

**Contact:** Lisa Edmondson, P O Box 2910, Austin, Texas 78703, (512) 463-0480

**Filed:** June 23, 1994, 2:45 p.m.

TRD-9442957

**Wednesday, July 6, 1994, 9:00 a.m.**

UT Arlington, School of Social Work, 211 South Cooper, Room 109

Arlington

According to the agenda summary, the Special Committee on Small Business Access to Capital (this hearing, the second for the committee) will focus of be on banks and other lending insitutions

**Contact:** Mance Bowden or Gloria Rogers, P O Box 2910, Austin, Texas 78768-2910, (512) 463-0766 or (512) 463-0794

**Filed:** June 27, 1994, 9:10 a.m.

TRD-9443030

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

**Thursday, July 7, 1994, 9:00 a.m.**

Stephen F Austin Building, 1700 North Congress Avenue, Room 118

Austin

According to the agenda summary, the Board will meet to consider and possibly act upon the following: Housing Assistance Fund Project--sale of Archways Joint Venture, funding recommendations for Housing Trust Fund for fiscal year 1994; Low Income Housing Tax Credit Allocation Plan for 1994, HOME funding recommendations for rental project specifications for fiscal year 1993; proposed rules for charges for public records, El Cenizo Offer to bankruptcy court, purchase of HUD Properties, Bennett Plaza and Golden Helmet; purchase of RTC Properties, Shadow Brook, Sleep Hollow and Presidents Corner; purchase of insurance, professional services contracts for due diligence for several projects, executive session--General Counsel to give report on litigation under §551.071 and §551.103, Texas Government Code litigation exception; executive directors report on budget for 1994-1995 and other executive directors report items as deemed necessary

**Contact:** Henry Flores, 811 Barton Springs Road, Suite 500, Austin, Texas 78711, (512) 475-3934

**Filed:** June 27, 1994, 3:21 p.m.

TRD-9443081

### **Texas State Affordable Housing Corporation**

**Thursday, July 7, 1994, 11:30 a.m.**

Stephen F Austin Building, 1700 North Congress Avenue, Room 118

Austin

Revised agenda

According to the complete agenda, the Board of Directors (Organizational Meeting) will consider and possibly act on the election of chairperson, approval of the articles of incorporation, adoption of bylaws, election of officers, chairman, vice chairman, secretary, treasurer, president and other officers, and general organization corporate matters. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822 or Relay Texas at 1-(800) 735-2989 at least two days before the meeting so that appropriate arrangements can be made

**Contact:** Henry Flores, 811 Barton Springs Road, Austin, Texas 78704, (512) 475-3916

**Filed:** June 27, 1994, 1:42 p.m.

TRD-9443060

### **Texas Department of Insurance**

**Friday, July 15, 1994, 9:00 a.m.**

333 Guadalupe Street, Room 1264, Tower I  
Austin

According to the complete agenda, the Texas HMO Solvency Surveillance Committee will call to order, approval of May 13, 1994 minutes, staff report, discussion of legislative recommendations regarding the detection and prevention of HMO insolvency problems for the January 1995 session, review of overall HMO industry, discussion regarding report from staff on how other states deal with corporate guarantee, and how other states handle contingent liabilities, executive session consultation with attorney regarding contemplated litigation, Texas Government Code, §551.071, reconvene in open session, and adjourn

**Contact:** Bernice Ross, 333 Guadalupe Street, Mail Code #113-2A, Austin, Texas 78701, (512) 463-6328

**Filed:** June 27, 1994, 2:14 p.m.

TRD-9443067

## Legislative Budget Board

Thursday, July 7, 1994, 10:00 a.m.

William P. Clements Building, Committee Room One Fifth Floor

Austin

According to the agenda summary, the Legislative Budget Board will approve minutes, consider LBB budget execution initiatives pertaining to Texas Education Agency for textbook funding and Texas Department of Criminal Justice for additional funding to pay for authorized prison and jail beds and payment to counties, and any other business.

Contact: John Keel, Third Floor, John H. Reagan Building, 105 West 15th Street, Austin, Texas 78701, (512) 463-1200

Filed: June 27, 1994, 2:35 p.m.

TRD-9443077

## Texas Department of Licensing and Regulation

Tuesday, July 12, 1994, 1:00 p.m.

920 Colorado, Tenth Floor, Room 1012

Austin

According to the agenda summary, the Policies and Standards Division will discuss department update and evaluation of request for proposals received. Representatives of submitters of proposals will be given an opportunity to speak and answer Board member questions regarding their proposals.

Contact: Jimmy G. Martin, 920 Colorado, Austin, Texas 78711, (512) 463-7348

Filed: June 27, 1994, 11:31 a.m.

TRD-9443055

## Texas Council on Offenders with Mental Impairments

Monday, July 11, 1994, 1:30 p.m.

Texas Department on Aging, 1949 IH-35 South

Austin

According to the complete agenda, the Full Council will call the meeting to order, hear introductions/roll call, public comments, approve minutes from the previous meeting, hear presentations on State Jail Senate Bill 1067, committee reports, executive director's report, discuss old business and new business, and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406

Filed: June 28, 1994, 9:13 a.m.

TRD-9443104

## Texas Natural Resource Conservation Commission

Wednesday, July 27, 1994, 9:00 a.m.

Stephen F. Austin State Office Building, Room 118, 1700 North Congress Avenue  
Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will hold a hearing on an application for Dissolution of Friendship Ranch Water Control and Improvement District, submitted by the Board of Directors of the District and the major developer and landowner in the District, Friendship Ranch, Ltd.

Contact: Water Utilities District Administration, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-6161

Filed: June 24, 1994, 3:58 p.m.

TRD-9443016

## Board of Nurse Examiners

Monday, July 11, 1994, 1:30 p.m.

9101 Burnet Road, Suite 104

Austin

According to the complete agenda, the Strategic Planning Committee will call to order, roll call, minutes of March 7 and May 9, 1994 meetings, old business review strategic plan for 1995-1999 period, review report of status of fiscal year 1994 action, new business discuss report to full board on July 12, 1994, and adjourn.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675

Filed: June 28, 1994, 9:55 a.m.

TRD-9443113

Monday, July 11, 1994, 4:00 p.m.

9101 Burnet Road, Suite 104

Austin

According to the complete agenda, the Executive Committee will call to order, roll call, minutes of May 9, 1994 meeting, old business informal hearing process, August strategic planning retreat, proposed protocols for board member activities, new business executive session pursuant to Government Code, §551.074(a)(1) to conduct annual performance review of executive director, and adjourn.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 835-8675.

Filed: June 28, 1994, 9:55 a.m.

TRD-9443114

## Texas State Board of Examiners of Psychologists

Wednesday-Friday, July 20-22, 1994, 8:30 a.m.

9101 Burnet Road, Suite 212

Austin

According to the agenda summary, the Texas State Board of Examiners of Psychologists will meet to consider public comments, minutes; reports from the Executive Director, the Chair, and the Budget, Written Examination, Oral Examination, Personnel, Opinion Letter and Tone, Newsletter, Continuing Education, Reciprocity, Public Information, NAFTA, Rules, Applications, and Complaint and Enforcement Committees; applications, proposed rules; agreed orders and complaints; opinion letters; policies and procedures; legislative and legal matters; planning issues; to seek legal advice in Executive Session pursuant to Title 5, Chapter 551, Government Code, §551.071; and to conduct interviews with applications for the Executive Director position in Executive Session pursuant to Title 5, Chapter 551, Government Code, §551.074.

Contact: Rebecca E. Forkner, 9101 Burnet Road, Suite 212, Austin, Texas 78758, (512) 835-2036.

Filed: June 23, 1994, 3:49 p.m.

TRD-9442971

## Public Utility Commission of Texas

Friday, July 1, 1994, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the agenda summary, the Public Utility Commission of Texas will consider the following dockets: P-13008, P-12334, 12508, 11840, P-13000, P-13149 (P-11365), 12145, 12585, 12461, 12535, 11292, 12700, and 11870.

Contact: John M. Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: June 23, 1994, 3:26 p.m.

TRD-9442964

Friday, July 1, 1994, 9:05 a.m.

7800 Shoal Creek Boulevard  
Austin

According to the agenda summary, the Administrative will discuss reports, discussion and action on commitment to Southwest Power Pool's Regional Transmission Group Proposal, interaction with Legislative Committees and/or Sunset Commission, 1995 operating budget, budget and fiscal matters, adjournment for executive session to consider litigation and personnel matters, reconvene for discussion and decisions on matters discussed in executive session, set time and place for next meeting, and final adjournment

Contact: John M Rentrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: June 23, 1994, 3 26 p m

TRD-9442963

◆ ◆ ◆  
**Teacher Retirement System  
of Texas**

Tuesday, July 12, 1994, Noon.

1000 Red River  
Austin

According to the complete agenda, the Medical Board will consider discussion of the files of members who are currently applying for disability retirement and the files of disability retirees who are due a re-examination report

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701-2698, (512) 370-0506

Filed: June 28, 1994, 9 13 a m

TRD-9443105

◆ ◆ ◆  
**The Texas A&M University  
System, Board of Regents**

Wednesday, June 29, 1994, 11:00 a.m.

Port Aransas Mariculture Lab, Port Street West

Port Aransas

According to the complete agenda, the purpose of the meeting, Committee for Service Units, is to tour the Port Aransas Mariculture Laboratory

Contact: Vickie Running, The Texas A&M University System, College Station, Texas 77843, (409) 845-9600

Filed: June 24, 1994, 4 06 p m

TRD-9443019

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

Texas A&M University-Corpus Christi,  
Corpus Christi Hall, Room 215

Corpus Christi

According to the complete agenda, the Board of Regents (Campus Visit) received briefings and presentations on Texas A&M University-Corpus Christi as follows: goals and accomplishments, student recruiting student accomplishments, faculty/staff recruiting, faculty projects, financial issues and update, legislative issues, new projects. After the briefings and presentations the Board toured the campus

Contact: Vickie Running, Texas Texas A&M University System, College Station Texas 77843, (409) 845-9600

Filed: June 24, 1994, 4 19 p m

TRD-9443023

◆ ◆ ◆  
**Texas Southern University**

Wednesday, July 6, 1994, 3:00 p.m.

Texas Southern University, University Library, Fifth Floor

Houston

According to the complete agenda, the Special Meeting of the Board of Regents and Finance Committee will meet to consider approval of the University's Legislative Appropriation Request for the 1996-1997 biennium

Contact: Everett O Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911

Filed: June 24, 1994, 2 16 p m

TRD-9442998

◆ ◆ ◆  
**University of North Texas,  
Board of Regents**

Tuesday, July 12, 1994, 10:30 a.m.

3333 Camp Bowie Boulevard, Kimbell Museum, Director's Office

Fort Worth

According to the complete agenda, the Advancement Committee will discuss Chancellor's Advisory Committee plans for Fort Worth

Contact: Jan Dobbs, P O Box 13737, Denton, Texas 76201, (817) 369-8515

Filed: June 28, 1994, 9 12 a m

TRD-9443103

**The University of Texas at  
Austin**

Monday, June 27, 1994, 10:00 a.m.

21st and San Jacinto Streets, Ex Students' Association

Austin

According to the agenda summary, the Council for Intercollegiate Athletics for Women called to order, approval of minutes of previous meeting, old business, new business, announcements/information reports, executive session, and adjournment

Contact: Jody Conradt, Belmont Hall 718, Austin, Texas 78712-1286, (512) 471-7693

Filed: June 23, 1994, 10 10 a m

TRD-9442938

◆ ◆ ◆  
**Regional Meetings**

Meetings Filed June 23, 1994

The Ark-Tex Council of Governments Board of Directors met at Access Road South of I-30, Sulphur Springs, June 30, 1994, at 5 30 p m Information may be obtained from Pam Plummer, P O Box 5307, Texarkana, Texas 75505-5307, (903) 832-8683 TRD-9442950

The Central Appraisal District of Rockwall County Appraisal Review Board met at the Rockwall County Appraisal Office, 106 North San Jacinto, Rockwall, June 28, 1994, at 8 30 a m Information may be obtained from Ray E Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034 TRD-9442941

The Guadalupe-Blanco River Authority (Revised agenda.) Legal Committee met at the First Lockhart National Bank 111 South Main Street, Lockhart, June 27 1994, at 9 30 a m Information may be obtained from W E West, Jr., P O Box 271, Seguin, Texas 78156-0271, (210) 379-5822 TRD-9442955

The Lubbock Regional MHMR Center Board of Trustees met at 1602 Tenth Street, Board Room, Lubbock, June 27, 1994, at Noon Information may be obtained from Gene Menefee, P O Box 2828, Lubbock, Texas 79408, (806) 766-0202 TRD-9442940

The Middle Rio Grande Development Council Texas Review and Comment System met at the Holiday Inn, Sage Room, 920 East Main, Uvalde, June 29, 1994, at 9 30 a m Information may be obtained from Dora T Flores, P O Box 1199 Carrizo Springs, Texas 78834, (210) 876-3533 TRD-9442973

**The Middle Rio Grande Development Council (Revised Agenda)** Board of Directors met at the Holiday Inn, Sage Room, 920 East Main, Uvalde June 29, 1994, at 1:00 p.m. Information may be obtained from Teodoro Martinez, P.O. Box 1199, Carrizo Springs, Texas, 78834, (210) 876-3533 TRD-9442974

**The Pecan Valley Mental Health Mental Retardation Region** Board of Trustees will meet at the Pecan Valley MHMR Region Clinical Office, 104 Pirate Drive, Granbury, July 6, 1994, at 9:00 a.m. Information may be obtained from Dr. Theresa Mulloy, P.O. Box 973, Stephenville, Texas 76401 (817) 965-7806 TRD-9442972

**The Permian Basin Regional Planning Commission** Metropolitan Planning Organization will meet at the PBRPC Offices, 2910 La Force Boulevard, Midland, July 11, 1994, at 2:00 p.m. Information may be obtained from Fern Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061 TRD-9442960

**The Sharon Water Supply Corporation** Board of Directors met at the Office of Sharon Water Supply Corporation, Route 5, Box 50361, Winnboro, June 27, 1994, at 7:00 p.m. Information may be obtained from Gerald Brewer, Route 5, Box 50361, Winnboro, Texas 75494, (903) 342-3525 TRD-9442965

**The South Plains School Workers' Compensation Program** met at the Spot Restaurant, Fourth and College, Levelland, June 29, 1994, at 10:30 a.m. Information may be obtained from Russ Edwards, 1205 Lakeshore Drive, Marble Falls, Texas 78654, (210) 693-2508 TRD-9442942

◆ ◆ ◆  
**Meetings Filed June 24, 1994**

**The Andrews Center** Board of Trustees met at 2323 West Front Street, Board Room, Tyler, June 30, 1994, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351 TRD-9442995

**The Archer County Appraisal District** Appraisal Review Board-Real Estate met at 101 South Center, Archer City, June 27, 1994, at 9:00 a.m. Information may be obtained from Edward H. Trigg, III, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172 TRD-9442975

**The Atascosa County Appraisal District** Appraisal Review Board met at Fourth and Avenue J, Poteet, June 29, 1994, at 8:00 a.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591 TRD-9442989

**The Atascosa County Appraisal District** Board of Directors met at Fourth and Avenue J, Poteet, June 30, 1994, at 1:30 p.m. Information may be obtained from Vernon A. Warren, P.O. Box 139, Poteet, Texas 78065, (210) 742-3591 TRD-9442994

**The Comal Appraisal District** Appraisal Review Board will meet at 178 East Mill Street #102, New Braunfels, July 19 and 21, 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-9442979

**The Dallas Area Rapid Transit** Committee of the Whole met in the Conference Room "C", 1401 Pacific Avenue, Dallas, June 28, 1994, at 1:00 p.m. Information may be obtained from Vanessa A. Knight, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3371 TRD-9443020

**The Dallas Area Rapid Transit** Board of Directors met in the Board Room, 1401 Pacific Avenue, Dallas, June 28, 1994, at 6:30 p.m. Information may be obtained from Vanessa A. Knight, P.O. Box 660163, Dallas, Texas 75266-0163 TRD-9443017

**The Golden Crescent Regional Review Committee** Regional Review Committee will meet at the Regional Airport, Building 102, Victoria, July 6, 1994, at 1:30 p.m. Information may be obtained from Rhonda Stastny, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587 TRD-9443025

**The Gray County Appraisal District** Appraisal Review Board will meet at 815 East Sumner, Pampa, July 6, 1994, at 9:00 a.m. Information may be obtained from Sherri Schaible, P.O. Box 836, Pampa, Texas 79066-0836, (806) 665-0791 TRD-9443003

**The Heart of Texas Region MHMR Center** Board of Trustees met at 110 South 12th Street, Waco, June 30, 1994, at 11:45 a.m. Information may be obtained from Helen Jasso, P.O. Box 890, Waco, Texas 76703, (817) 752-3451, Ext 290 TRD-9443021

**The Hockley County Appraisal District** Appraisal Review Board met at 1103-C Houston, Levelland, June 30, 1994, at 8:00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654 TRD-9443004

**The Lampasas County Appraisal District** Appraisal Review Board met at 109 East Fifth Street, Lampasas, June 28-29, 1994, at 9:00 a.m. Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058 TRD-9443002

**The Martin County Appraisal District** Martin County Appraisal District Board of Directors met at the Appraisal Office, 308

North St. Peter, Stanton, June 30, 1994, at 7:00 p.m. Information may be obtained from Elaine Stanley, P.O. Box 1349, Stanton, Texas 78782, (915) 756-2823 TRD-9442980

**The Region VII Education Service Center** Board of Directors will meet at Elizabeth's New Orleans Restaurant, 2344 Old Longview Road, Henderson, July 7, 1994, at Noon. Information may be obtained from Eddie J. Little, 818 East Main, Kilgore, Texas 75662, (903) 934-3071 TRD-9442290

**The Tax Appraisal District of Bell County** Appraisal Review Board will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, July 5-8, 11, 1994, at 9:00 a.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext 29 TRD-9443000

**The Tax Appraisal District of Bell County** Board of Directors met at the Tax Appraisal District Building, 411 East Central Avenue, Belton, June 29, 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-9443024

◆ ◆ ◆  
**Meetings Filed June 27, 1994**

**The Andrews Center (Revised Agenda)** Board of Trustees met in the Board Room, 2323 West Front Street, June 30, 1994, at 3:00 p.m. Information may be obtained from Richard J. DeSanto, P.O. Box 4730, Tyler, Texas 75712, (903) 597-1351 TRD-9443078

**The Bastrop Central Appraisal District** Appraisal Review Board met at 1200 Cedar Street, Bastrop, June 30, 1994, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925 TRD-9443036

**The Burnet County Appraisal District** Appraisal Review Board will meet at 223 South Pierce, Burnet, July 11-12, 1994, at 8:30 a.m. Information may be obtained from Barbara Ratliff, P.O. Drawer E, Burnet, Texas 78611, (512) 756-8291 TRD-9443050

**The Central Appraisal District of Rockwall County** Appraisal Review Board met at the Rockwall County Appraisal Office, 106 North San Jacinto, Rockwall, June 30, 1994, at 9:00 a.m. Information may be obtained from Ray E. Helm, 106 North San Jacinto, Rockwall, Texas 75087, (214) 771-2034 TRD-9443052

**The Central Appraisal District of Taylor County** Board of Directors met at 1534 South Treadaway, Abilene, June 30, 1994, at 11:00 a.m. Information may be obtained



from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381 TRD-9443094

The Central Appraisal District of Taylor County Board of Directors will meet at 1534 South Treadaway, Abilene, July 6, 1994, at 11 00 a.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381 TRD-9443101

The Dallas Central Appraisal District Appraisal Review Board will meet at 2949 North Stemmons Freeway, Dallas, July 1, 1994, at 11 30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520 TRD-9443059

The Falls County Appraisal District Board of Directors will meet at the Courthouse, First Floor, intersection of Highway 6 and 7, Marlin, July 1, 1994 at Noon. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, (817) 883-2543 TRD-9443089

The Gonzales County Appraisal District Appraisal Review Board will meet at 928 St. Paul Street, Gonzales, July 1, 1994, at 9 00 a.m. Information may be obtained from Glenda Strackbein, P.O. Box 867, Gonzales, Texas 78629, (210) 672-2879 TRD-9443096

The Hockley County Appraisal District (Revised Agenda) Appraisal Review Board met at 1103-C Houston, Levelland, June 30, 1994, at 8 00 a.m. Information may be obtained from Nick Williams, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654 TRD-9443027

The Jack County Appraisal District Appraisal Review Board will meet in the JCAD Conference Room, 210 North Church Street, Jacksboro, July 1, 1994, at 7 30 a.m. Information may be obtained from Gary L. Zeitler or Vicky L. Easter, P.O. Box 958, Jacksboro, Texas 76458, (817) 567-6301 TRD-9443098

The Lavaca County Central Appraisal District Appraisal Review Board will meet at 113 North Main Street, Hallettsville, July 6, 1994, at 9 00 a.m. Information may be obtained from Diane Munson, P.O. Box

386, Hallettsville, Texas 77964, (512) 798-4396 TRD-9443087

The Lavaca County Central Appraisal District Board of Directors will meet at 113 North Main Street, Hallettsville, July 11, 1994, at 4 00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396 TRD-9443085

The Local Government Investment Cooperative Board of Directors will meet at 7001 Preston Road, Suite 300, Dallas, July 7, 1994, at 2 00 p.m. Information may be obtained from Richard E. Scott, 7001 Preston Road, Suite 300, Dallas, Texas 75205, (214) 522-8830, Fax (214) 522-7667 TRD-9443095

The Middle Rio Grande Development Council (Emergency revised agenda.) Texas Review and Comment System met at the Holiday Inn, Sage Room, 920 East Main, Uvalde, June 29, 1994, at 9 30 a.m. The emergency revised agenda was needed to review applications in order to meet required deadline. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533 TRD-9443028

The Middle Rio Grande Development Council (Emergency revised agenda.) Texas Review and Comment System met in the Sage Room, Holiday Inn, 920 East Main, Uvalde, June 29, 1994, at 9 30 a.m. (Reason for emergency Needed to include an additional application for review and comment, prior to board approval.) Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533 TRD-9443079

The Middle Rio Grande Development Council (Emergency Meeting.) Nominating Committee Meeting met at Holiday Inn, 920 East Main, Uvalde, June 29, 1994, at 10 30 a.m. (Reason for emergency Due to unforeseen circumstances, it became necessary to meet prior to the board meeting to make recommendation.) Information may be obtained from Leodoro Martinez, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533 TRD-9443080

The Millersview-Doole Water Supply Corporation Board of Directors will meet

at the Corporation's Business Office, one block west of FM 765 and FM 2134, Millersview, July 5, 1994, at 8 00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box E, Millersview, Texas 76862 1005, (915) 483-5438 TRD-9443046

The San Antonio Bexar County Metropolitan Planning Organization Technical Advisory Committee will meet at the Metropolitan Planning Organization, Conference Room 434 South Main, Suite 205, San Antonio, July 1, 1994 at 9 00 a.m. Information may be obtained from Charlotte A. Roszelle, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651 TRD-9443061

The Tax Appraisal District of Bell County Board of Directors met at the Tax Appraisal District building, 411 East Central Avenue, Belton, June 29, 1994, at 7 00 p.m. The emergency revised agenda was due to changed wording of item under Action Items (A). Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, Ext 29 TRD-9443057

◆ ◆ ◆  
Meetings Filed June 28, 1994

The Brazos River Authority Water Resource Development Committee Board of Directors will meet at 4400 Cobbs Drive, Waco, July 6, 1994, at 10 00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441 TRD-9443106

The Brazos River Authority Water Quality Committee Board of Directors will meet at 4400 Cobbs Drive, July 6, 1994 at 11 00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, (817) 776-1441 TRD-9443107

The Lampasas County Appraisal District (Emergency Revised Agenda.) Appraisal Review Board met at 109 East Fifth, Lampasas, June 29, 1994, at 9 00 a.m. (Reason for emergency Had to approve appraisal records.) Information may be obtained from Janice Henry, P.O. Box 175, Lampasas, Texas 76550 TRD-9443102

◆ ◆ ◆



# IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

## Texas Department of Agriculture Correction of Error

The Texas Department of Agriculture proposed amendments to §§15.42-15.47, 15.49-15.50, and 15.53-15.55, concerning the Texas Egg Law. The rules appeared in the June 14, 1994, issue of the *Texas Register* (19 TexReg 4601).

Due to a typographical error a large portion of §15.42, all of §15.43, and a portion of §15.44 were omitted in the publication. The missing text should read as follows.

"construed as a retail carton and must be stamped or marked with all the information required on a retail carton.

(B) If a paper bag is filled by the consumer or customer from a display of eggs properly identified according to law, then the paper bag is not a retail carton and is exempt from all labeling provisions [provision].

Stock carton—A retail carton that does not bear any commercially printed information required by §15.44(a) of this title (relating to Labeling).

Texas Egg Law—The Texas Agriculture Code, Chapter 132 (§§132.001-132.084).

[Undue deterioration—Quality impairment resulting from temperatures in excess of 60 degrees Fahrenheit and relative humidity below 75%.]

Ungraded—A classification of eggs which are marketed by a bona fide producer as defined in this Act and which have [has] not been handled, graded, or packed by a licensed grader/packer.

§15.43. *Who Must Obtain a License.*

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

(c) Processors must obtain [have] a license for each separate facility from which eggs are processed, with the fee set according to the volume of eggs handled at each separate facility.

(d) Brokers must obtain a \$350 [\$7.50] license.

15.44. *Labeling.*

(a) Commercially printed [retailed] cartons.

(1) General requirements. All commercially printed retail cartons [in which eggs for human consumption are offered for sale within the channels of trade or to the ultimate consumer in the State of Texas] must set out that information as designated in subparagraphs (A)-(D), except as stated in paragraph (2) of this subsection:

(A) state the size, grade, and quantity of the eggs. This information must be legibly printed on the top principal display panel of the carton in [1/4 inch] boldface type. No reference may be made to any grade or size other than that claimed;

(B) state the Texas Egg License number of the dealer/wholesaler, which is the person that places or packs the eggs in the retail container. This license number shall be displayed in legibly printed boldfaced capital letters [of at least 12 points, as "PACKED BY TEXAS LICENSEE NO."] and be placed on the top or either of the two sides of the egg carton in the same vicinity and type size as the address, city, and state of the grader/packer. This must be the license number of the actual packer rather than that of the second party for whom the eggs may be packed;

(C) state the post office, street address, or route number, and city and state in legibly printed boldface capital letters [of at least 12 points] of the Texas licensed facility where the eggs were actually graded, labeled, and/or packed. This information shall be displayed on the carton in the same vicinity and type size as the Texas Egg License number; and

(D) be labeled "ungraded" followed by "produced by (producer's name)" and the producer's address in legibly printed [1/4 inch] boldface type only when packed by a bona fide producer and sold directly to the consumer or through a retailer whose total egg sales of graded eggs do not exceed four"

## Texas Board of Architectural Examiners

### Correction of Error

The Texas Board of Architectural Examiners proposed an amendment to §3.84, concerning annual registration and renewal fee. The rule appeared in the June 7, 1994, issue of the *Texas Register* (19 TexReg 4375)

Section 3.84, column three, second paragraph, eighth line "1988" should read "1998".

## Texas Department of Banking Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to acquire control of a state bank to file an application with the Banking Commissioner for the Commissioner's approval to purchase control of a particular

bank. A hearing may be held if the application is denied by the Commissioner.

On June 21, 1994, the Banking Commissioner received an application to acquire control of Provident Bank, Dallas, Texas, by Messrs. Bob Scott and Donald Horton, Fort Worth, Texas.

Additional information may be obtained from: Lynda A. Drake, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 465-1300.

Issued in Austin, Texas, on June 22, 1994.

TRD-9442999 Lynda A. Drake  
Director of Corporate Activities  
Texas Department of Banking

Filed: June 24, 1994

◆ ◆ ◆

### Comptroller of Public Accounts Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of the award of a contract to provide services relating to the performance of a statewide disparity/capacity study. Since no better proposal was received than that of the current consultant, National Economic Research Associates, Inc. (NERA), the award reflects a decision to amend and extend NERA's current contract.

The notice of amendment and extension of the consultant contract (unless a better offer was received) published in the May 31, 1994, issue of the *Texas Register* (19 TexReg 4275)

The consultant will perform additional data collection and analysis to supplement the work already completed on the statewide disparity/capacity study. Additional work will be conducted during the period of June 1-December 2, 1994.

NERA's address is One Main Street, Cambridge, Massachusetts 02142. The total dollar value of the extension is not to exceed \$50,000. The contract was executed April 26, 1994, and its term extends through December 2, 1994. NERA is to present a final report on or about December 2, 1994, on conclusions reached from the services performed under said contract.

Issued in Austin, Texas, on June 24, 1994.

TRD-9443026 Arthur F. Lorton  
Senior Legal Counsel  
Comptroller of Public Accounts

Filed: June 27, 1994

◆ ◆ ◆

### Notice of Request for Proposals

**Notice of Request for Proposals.** The Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) for consultant services to assist the Comptroller in analyzing the efficiency and potential areas of improvement for state programs which purchase insurance and programs that pay for direct services. The successful proposer will be expected to begin performance of the contract on or about August 1, 1994.

**Contact.** Parties interested in submitting a proposal should contact the Comptroller of Public Accounts, Senior Legal Counsel's Office, 111 East 17th Street, Room 113, Austin, Texas 78774, (512) 475-0866, to obtain a complete copy of the RFP. The RFP will be available for pick-up at the above referenced address on Friday, July 1, 1994, between 4:00 p.m. and 5:00 p.m. Central Zone Time (CZT), and during normal business hours thereafter.

**Closing Date.** Proposals must be received in the Senior Legal Counsel's Office no later than 4:00 p.m. (CZT), on Friday, July 22, 1994. Proposals received after this time and date will not be considered.

**Award Procedure.** All proposals will be subject to evaluation by a committee based on the evaluation criteria set forth in the RFP. The committee will determine which proposal best meets these criteria and will make a recommendation to the deputy comptroller, who will make a recommendation to the comptroller. The Comptroller will make the final decision. A proposer may be asked to clarify its proposal, which may include an oral presentation prior to final selection.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits the Comptroller to pay for any costs incurred prior to the execution of a contract.

The anticipated schedule of events is as follows: Issuance of RFP-July 1, 1994; Mandatory Letter of Intent and Questions Due-July 8, 1994, 4:00 p.m. (CZT); Proposals Due-July 22, 1994, 4:00 p.m. (CZT); and Contract Execution-July 28, 1994, or as soon thereafter as possible.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443035 Tres Lorton  
Senior Legal Counsel  
Comptroller of Public Accounts

Filed: June 27, 1994

◆ ◆ ◆

**Office of Consumer Credit  
Commissioner  
Notice of Rate Ceilings**

79, Articles 1.04 and 1.05, as amended (Texas Civil Statutes, Articles 5069-1.04 and 1.05).

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	06/27/94-07/03/94	18.00%	18.00%
Judgment Rate - Art. 1.05, Section 2	07/01/94-07/31/94	10.00%	10.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on June 20, 1994.

TRD-9442892 Al Endesley  
Consumer Credit Commissioner

Filed: June 22, 1994

◆ ◆ ◆  
**Texas Education Agency  
Notice of Public Hearing—Goals 2000:  
Educate America Act**

The State Board of Education (SBOE) Committee of the Whole will hold a public hearing on Thursday, July 7, 1994, to solicit comments related to the Goals 2000: Educate America Act. The hearing will be held in conjunction with the board's July meeting and will be held from 8:00 a.m. until 9:30 a.m. The hearing will be held in Room 1-104 of the William B. Travis Building located at 1701 North Congress Avenue in Austin, Texas.

The board is seeking a wide range of input concerning the Goals 2000: Educate America Act, including the National Education Goals and the state education improvement planning efforts called for in the legislation.

The Goals 2000 legislation codifies the six national education goals endorsed by President Bush and the nation's governors in 1988, and establishes two new goals. The act provides a framework for state and local educational reform; promotes research, consensus building, and systemic changes for improved educational equity; and provides a framework for the re-authorization of federal programs. The Goals 2000 national education goals are: school readiness; school completion; student achievement and citizenship; teacher education and professional development; mathematics and science; adult literacy and lifetime learning; safe, disciplined, and alcohol- and drug-free schools; and parental participation.

The legislation authorizes the governor and the commissioner to appoint members to a state panel which will develop a state improvement plan to address the act's goals. The panel will be responsible for conducting a statewide, grassroots outreach process, including public hearings, to involve all stakeholders in the success of

students and their education systems, in the development of the state improvement plan, and in the continuing dialogue regarding the need for and development of standards. The panel will then monitor progress on the development improvement plan through the year 2000.

Funds to support this planning effort are authorized by the legislation. In federal fiscal year 1995, Texas is scheduled to receive approximately \$7.7 million as a planning grant. Of that amount, \$4.1 million will be distributed to districts on a competitive basis. Depending on budget levels established in the following federal fiscal year, \$30 million to \$50 million can be expected.

In order to allow the board 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. Appropriate action will be taken to avoid unduly repetitive testimony and to assure that different members of the public with differing points of view have reasonable access to the board.

Anyone wishing to testify should register in advance beginning July 1, 1994, by contacting the Texas Education Agency Office of Policy Planning and Evaluation, at (512) 463-9701, and ending at 5:00 p.m. on Wednesday, July 6, 1994. To accommodate as many speakers as possible, testimony will be limited to three minutes in an order established by the chair.

Individuals may 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, if time permits.

Speakers needing translation services or other special accommodations should notify the Office of Policy Planning and Evaluation at the time of registration.

It is recommended that 25 copies of written testimony, including the name and address of the speaker, be provided at the time of the hearing. Written information for the committee can be sent to the Office of Policy Planning and Evaluation.

Additional information concerning this hearing may be obtained from the Office of Policy Planning and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, or by calling (512) 463-9701.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443045

Lionel R. Meno  
Commissioner of Education  
Texas Education Agency

Filed: June 27, 1994

◆ ◆ ◆  
**Employees Retirement System of Texas  
Consultant Contract Award**

This award for consulting services is being filed pursuant to the Government Code, §2254.024(a)(6). The consultant will perform consulting services for the Employees Retirement System of Texas concerning the administration of state programs, the analysis of organizational structure, the operation of customer-oriented public sector organizations, and the operation of programs designed to serve an aging population. The consultant is Tonn and Associates, Arbor-Plaza One, Suite 770, 9442 Capital of Texas Highway North, Austin, Texas 78759. The total cost of the contract is not to exceed \$29,500 and is effective from June 1-August 31, 1994.

Issued in Austin, Texas, on June 22, 1994

TRD-9442978

Charles D. Travis  
Executive Director  
Employees Retirement System of Texas

Filed: June 24, 1994

◆ ◆ ◆  
**Texas Employment Commission  
Public Announcement**

The Texas Employment Commission (TEC), in partnership with the Texas Council on Workforce and Economic Competitiveness (TCWEC) and the Texas Department of Commerce (TDOC), announces its intent to issue a Request for Information, Qualifications and Proposals (RFIQP). The purpose of this RFIQP is to select a slate of qualified educational specialists to initiate, plan and facilitate the Workplace Scholar program in selected businesses in several areas of Texas. Interested parties should contact TEC in writing to request a copy of the RFIQP at the Texas Employment Commission, TEC Building, Austin, Texas 78778-0001, JSO Department, Room 440T, Attention: Don Snow, RFIQP.

RFIQPs may be requested via Fax at (512) 463-9994. FAX requests should be addressed to the attention of Don Snow, RFIQP. No telephone inquiries or requests for the RFIQP will be accepted. A mandatory bidder's conference will be held on July 15, 1994 at the Texas Employment Commission, 1117 Trinity, Austin, Texas 78701, Room 304T.

In order to be eligible for consideration, potential bidders must be in attendance at this bidder's conference. Potential bidders should take note that parking is limited and plan accordingly. Additional copies of this RFIQP will be available at this bidder's conference.

Issued in Austin, Texas, on June 23, 1994

TRD-9442949

C. Ed Davis  
Deputy Administrator for Legal Affairs  
Texas Employment Commission

Filed: June 23, 1994

**The Texas Department of Health  
Correction of Errors**

The Texas Department of Health adopted the repeal of §§133.1-133.7. The rules appeared in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2518).

On page 2519, third column, second paragraph (response), the last sentence should stand alone as a leadin sentence for all comments relating to §133.3. Also the leadin sentence for all comments relating to §133.13 was tagged on to the end of the last response for comments relating to §133.12.

On page 2520, second column, second paragraph, the leadin sentence for comments relating to §133.51, in the parenthesis the word "to" should be added to read "relating to."

On page 2522, first column, fifth paragraph from the bottom, relating to the leadin sentence for comments on §133.113, the word "Orders" should be "Order." In addition, the first comment under that sentence state "§133.13(b) -(c)", which should be corrected as "§133.113(b)-(c)."

◆ ◆ ◆  
The Texas Department of Health adopted §§133.1-133.3. The rules appeared in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2522).

On page 2523, third column, definitions for "Governing body" and "Hospital" are combined. These definitions should be separated.

◆ ◆ ◆  
The Texas Department of Health adopted new §§133.11-133.14. The rules appeared in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2525).

On page 2526, first column, §133.11(c), there should not be a comma between the words "property" and lessors.

◆ ◆ ◆  
The Texas Department of Health adopted new §133.101 and §133.102. The rules appeared in the April 8, 1994, issue of the *Texas Register* (19 TexReg 2539).

On page 2539, third column, concerning §133.101(b)(4)(B), the semi-colon after the word "made" should be a comma.

The title for Subchapter H is incorrect: the correct title is "Internal Investigation."

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

**Notice of Clarification to 1994 Final  
Statement Amendment**

The Texas Department of Housing and Community Affairs (TDHCA) announces a clarification of the Notice of Amendment to 1994 Final Statement published in the *Texas Register* on June 24, 1994. The clarification of the amendment to the final statement is as follows:

The section entitled "SELECTION CRITERIA TEXAS CAPITAL FUND, LOAN, REAL ESTATE GRANT, INFRASTRUCTURE GRANT" is clarified to include grants to units of local government to provide loans for improvements on private property. The portion of the heading entitled "INFRASTRUCTURE GRANT" is changed to "INFRASTRUCTURE GRANT/LOAN." In addition, the leverage ratio and the cost per job ratio scoring factors as revised in the Notice of Amendment to 1994 Final Statement applies to the Texas Capital Fund, Loan, Real Estate Grant, and Infrastructure Grant/Loan Programs.

A copy of the final statement as amended is available for review at Texas Department of Housing and Community Affairs, Texas Community Development Office, 811 Barton Springs Road, Suite 740, Austin. Written comments concerning this amendment will be accepted through July 5, 1994, and should be submitted to Anne Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Suite 500, Austin, Texas 78711-39411.

Issued in Austin, Texas, on June 23, 1994

TRD-9442977 Henry Flores  
Executive Director  
Texas Department of Housing and  
Community Affairs

Filed June 24, 1994

## Texas Department of Human Services Notice of Public Hearing

The Texas Department of Human Services (TDHS) and the Texas Department of Mental Health and Mental Retardation (TXMHMR) will conduct a public hearing to receive comments on the departments' proposed cost determination rules for the following programs: Nursing Facility, Intermediate Care Facilities for the Mentally Retarded, Day Activity and Health Services, Primary Home Care, Family Care, Client-Managed Attendant Services, Residential Care, Congregate and Home Delivered Meals, Community Living Assistance and Support Services, Emergency Response Services, Shared Attendant Care Services, Nursing Facility Waiver, Medically Dependent Children, Case Management for Persons With Chronic Mental Illness, Case Management for Individuals With Mental Retardation or Related Condition, Diagnostic Services, Rehabilitative Services, Home and Community Based Services-OBRA Waiver, and Home and Community Based Services Waiver. The public hearing will be held on July 18, 1994, at 1:00 p.m. in the Auditorium (first floor) of the TXMHMR Central Office Building, 909 West 45th Street, Austin, Texas. If you are unable to attend the hearing, but wish to comment on the rules, 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 Steve Lorenzen. Written comments may be mailed to the address noted below, delivered to the receptionist in the lobby in the TDHS John H. Winters Center (701 West 51st Street, Austin, Texas), or faxed to (512) 450-3014. Interested parties may request to have mailed to them or may pick up a copy of the proposed cost determination rules 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 July 11, 1994, so that appropriate arrangements can be made.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443031 Nancy Murphy  
Section Manager, Media and Policy  
Services  
Texas Department of Human Services

Filed: June 27, 1994

## Texas Department of Insurance Correction of Error

The Texas Department of Insurance submitted an Exempt Filing in the adopted section which was published in the June 10, 1994, issue of the *Texas Register* (19 TexReg 4521). Due to typographical error in publishing the exempt filing was published under the proposed section instead of the adopted section of the *Texas Register*.

## Notice of Public Hearing Private Passenger and Commercial Automobile Insurance Benchmark Rate and Flexible Bands Setting

Notice is hereby given that a hearing under Docket Number 454-94-1054.g will be held before an administrative law judge (ALJ) of the State Office of Administrative Hearings at 10:00 a.m. on September 6, 1994, and continuing thereafter at dates, times and places designated by the ALJ until conclusion. The purpose of the hearing is to establish benchmark rates and flexibility bands for private passenger and commercial automobile insurance, including the spreading of the benchmark rates among relevant classifications and territories. The hearing will be held at the State Office of Administrative Hearings, Suite 502 of the William Clements State Office Building at 300 West 15th Street, Austin, Texas 78701.

Authority, Jurisdiction and Statutes and Rules Involved.

The hearing is being held under the statutory authority of the Insurance Code, Article 5.101 (Flexible Rating Program for Certain Insurance Lines). Pursuant to Insurance Code, Article 1.33B(b), the State Office of Administrative Hearings shall conduct the hearing. Statutes involved include Article 5.101, the Insurance Code, Chapter 5, Subchapter A.

The procedure of the hearing will be governed by the Rules of Practice and Procedure For Industry-Wide Rate Cases before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter L), the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A), the Memorandum of Understanding between the Department and the State Office of Administrative Hearings (Texas Administrative Code, Title 28, Chapter 1, §1.90) and the Administrative Procedure Act (Government Code, Chapter 2001).

Matters to be Considered.

The commissioner will consider testimony presented and information filed by insurers, the Office of Public Insurance Counsel and other interested parties relating to the determination of benchmark rates and flexibility bands for private passenger and commercial automobile insurance, including the spreading of the benchmark rate among

relevant classifications and territories, rates for miscellaneous types identified in the Texas Automobile Rules and Rating Manual, and the increase to rental reimbursement coverages established by the Department in 1993. The Department of Insurance has the statutory authority and duty pursuant to the Texas Insurance Code, Article 5.101 to promulgate a benchmark rate and a flexibility band for each line of insurance subject to Article 5.101, including private passenger and commercial automobile insurance, after notice and hearing. Relevant data to be used in the rate case are currently available from the department.

The Department of Insurance must set the benchmark rate and the flexibility bands for each subject line of insurance in a range that promotes stability and that will produce rates that are just, reasonable, adequate and not excessive for the risks to which they apply, and not confiscatory. In determining the benchmark rate and the flexibility bands, the Department of Insurance may give due consideration to the factors listed in Article 5.101, §3(b).

#### Motions for Admission as a Party.

Anyone who wishes to participate in the hearing as a party must file a motion for admission as a party by 5:00 p.m. on July 22, 1994.

#### Pre-Hearing Conference.

An initial prehearing conference will be held before the ALJ at 1:30 p.m. on July 28, 1994, at the State Office of Administrative Hearings, Suite 502 of the William Clements State Office Building at 300 West 15th Street, Austin, Texas 78701. The prehearing conference will be held for the following purposes:

- (1) ruling on the motions for admission of parties,
- (2) setting the procedural deadlines for discovery, motions, and prefiled testimony; and
- (3) such other matters as may aid in the simplification of the proceedings.

Subsequent prehearing conferences will be scheduled as necessary to rule on other matters as may aid in the simplification of the proceedings.

#### Commissioner's Policies.

Pursuant to Government Code, §2001.058(c), the Commissioner is required to provide the administrative law judge with a written statement of applicable rules and policies. The applicable procedural rules are set out previously. The Commissioner's policies regarding the setting of benchmark rates and flexibility bands under Texas Insurance Code, Article 5.101 are set out as follows. Evidence regarding alternatives to the Commissioner's policies as set out herein shall be permitted. The purpose of this policy statement is to put the ALJ and parties on notice regarding the commissioner's policies to provide advance notice of the type of evidence parties should present in the hearing. This policy statement, however, is not intended to limit the type of evidence a party may offer at the hearing.

The setting of a benchmark rate and flexibility bands is a two-step process: first the actuarial indication is determined, then the benchmark rates and flexibility bands are set. While the actuarial indication is a factor to be considered in determining the benchmark rates and flexibility bands, the factors set out in Article 5.101, §3(b) shall be used in determining the benchmark rates and flexibility bands. While the benchmark may, by chance, be close to the actuarial indication, the goal of the hearing is the setting of the range in which companies may file and use

rates; the commissioner's policy is to disassociate the benchmark rates from the industry average rate.

#### Actuarial indication.

The Commissioner's policy regarding the determination of the actuarial indication is as follows:

1. Assume that the current discount for defensive driving classes under Texas Automobile Rules and Rating Manual Rule 74 (E)(2) will be eliminated.

2. The expense level should be set based on the expense percentage of the most efficient insurer in this line of insurance in Texas which has a premium level of at least \$25 million and which does not have an excessive number of complaints in relation to the amount of policies written. The expense level shall be adjusted to exclude any disallowed expenses for that insurer under Article 5.101, §3(h). For purposes of Article 5.101, §3(h)(9), expenses which are not used and useful for the transfer of risk are unreasonably incurred expenses.

3. Premium taxes should be based on the average premium taxes actually paid by insurers in this line of insurance in the last year for which data are available.

4. Income and expenses from installment plan fees on voluntary auto business shall be included in the determination.

5. The profit margin shall be based on a total rate of return methodology. The calculation shall include:

a. the selection of an expected return on investment of assets that includes net investment income, realized capital gains or losses, and unrealized capital gains or losses. The expected return from net investment income shall reflect both the embedded yield for the latest year for which data are available and yields more recently available in the marketplace. Any yields stated in terms of invested assets shall be restated in terms of total assets, i.e., the sum of admitted assets plus non-admitted assets;

b. the selection of a target return on equity based largely on analysis of the historical rates of return earned by insurers, with such analysis including a consideration of changes in interest rates; and

c. the allocation of assets and equity to specific coverages and lines of insurance to convert the returns on assets and equity into a percentage of premium based on the model developed by David Eley as described in Department Staff's Exhibit in the 1991 Texas Private Passenger Auto Rate Hearing. The amount of equity to be allocated will be either actual equity or such alternative amount of equity determined to be appropriate to support the writing of property/casualty insurance.

6. The evidence regarding historical profitability should include the results shown in the most recent NAIC Report on Profitability by Line By State.

7. Trending should:

a. include consideration of the safety and anti-fraud efforts of the Department, the Advocates for Highway Safety, and others on future losses;

b. use straight lines unless an exponential line shows a better fit;

c. use the same analysis and projection period for frequency and severity;

d. be based only on voluntary auto trended losses to the extent separate data are available.



Conduct of the Hearing.

Each page of any exhibit offered in evidence at a hearing before the Department of Insurance, including prefiled testimony, must be numbered consecutively at the center of the bottom margin, be on 8 inches by 11 inches paper, and must be three-hole-punched along the left margin. The front page of each exhibit should indicate that the exhibit would be part of the record of a public hearing before the Department of Insurance and should identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit should also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Department of Insurance Subject of Hearing Benchmark Rate and Flexibility Band for Private Passenger and Commercial Automobile Insurance Docket Number 454-94-1054.g.

Date \_\_\_\_\_

Party: \_\_\_\_\_

Exhibit # \_\_\_\_\_

Description of Exhibit \_\_\_\_\_

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to furnish the following.

1. the original exhibit, which will be tendered to the ALJ for marking and retention for the official record, after which the attorneys shall use an exact photocopy of such marked exhibit in the examination of the witness,
2. one copy each for every other party admitted to the hearing.

All deadlines in this notice are subject to change at the ALJ's discretion to the extent permitted by statute and rule.

In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Issued in Austin, Texas, on June 27, 1994.

TRD-9443048 D J Powers  
Legal Counsel to the Commissioner  
Texas Department of Insurance

Filed June 27, 1994

◆ ◆ ◆  
**Notice of Public Hearing for Private Passenger and Commercial Automobile Insurance Rates Concerning the Texas Automobile Insurance Plan Association**

Notice is hereby given that a hearing under Docket Number 454-94-1055 g will be held before an administrative law judge (ALJ) of the State Office of Administrative Hearings at 10:00 a.m. on September 19, 1994, and continuing thereafter at dates, times and places designated by the ALJ until conclusion. The purpose of the hearing will be consideration of adoption of the manual rates for private passenger and commercial classes of risks provided through the Texas Automobile Insurance Plan Association (Association). The hearing will be held at the State Office of Administrative Hearings, Suite 502 of the William Clements State Office Building at 300 West 15th Street, Austin, Texas 78701.

Authority, Jurisdiction and Statutes and Rules Involved.

The Department of Insurance has jurisdiction and legal authority over the subject matter of this hearing pursuant to the Insurance Code, Article 21.81, §5. Pursuant to Insurance Code, Article 1.33B(b), the State Office of Administrative Hearings shall conduct the hearing. Statutes involved include Article 21.81 and the Insurance Code, Chapter 5, Subchapter A.

The procedure of the hearing will be governed by the Rules of Practice and Procedure For Industry-Wide Rate Cases before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter L), the Rules of Practice and Procedure before the Department of Insurance (Texas Administrative Code, Title 28, Chapter 1, Subchapter A), the Memorandum of Understanding between the Department and the State Office of Administrative Hearings (Texas Administrative Code, Title 28, Chapter 1, §1.90) and the Administrative Procedure Act (Government Code, Chapter 2001).

Matters to be Considered.

The commissioner will consider testimony presented and information filed by the Association, the Office of Public Insurance Counsel and other interested parties relating to the determination of rates for private passenger and commercial automobile insurance provided through the Association, including the spreading of the rates among relevant classifications and territories. The Department of Insurance has the statutory authority and duty pursuant to the Texas Insurance Code, Article 21.81, §5 to promulgate the rates to be charged for insurance provided through the Association, including private passenger and commercial automobile insurance, after notice and hearing. Relevant data to be used in the rate case are currently available from the department.

Motions for Admission as a Party.

Anyone who wishes to participate in the hearing as a party must file a motion for admission as a party by 5:00 p.m. on July 22, 1994.

Prehearing Conference.

An initial prehearing conference will be held before the ALJ at 1:30 p.m. on July 29, 1994, at the State Office of Administrative Hearings, Suite 502 of the William Clements State Office Building at 300 West 15th Street, Austin, Texas 78701. The prehearing conference will be held for the following purposes:

- (1) ruling on the motions for admission of parties;
- (2) setting the procedural deadlines for discovery, motions, and prefiled testimony; and
- (3) such other matters as may aid in the simplification of the proceedings.

Subsequent prehearing conferences will be scheduled as necessary to rule on other matters as may aid in the simplification of the proceedings.

Commissioner's Policies.

Pursuant to Government Code, §2001.058(c), the Commissioner is required to provide the administrative law judge with a written statement of applicable rules and policies. The applicable procedural rules are set out previously. The Commissioner's policies regarding the setting of rates for insurance provided through the Association are set out below. Evidence regarding alternatives to the Commissioner's policies as set out herein shall be permitted. The

purpose of this policy statement is to put the ALJ and parties on notice regarding the commissioner's policies to provide advance notice of the type of evidence parties should present in the hearing. This policy statement, however, is not intended to limit the type of evidence a party may offer at the hearing.

The Commissioner's policy regarding the determination of the actuarial indication is as follows:

1. Assume that the current discount for defensive driving classes under Texas Automobile Rules and Rating Manual Rule 74 (E)(2) will be eliminated.

2. The expense level should be set based on an industry-wide average expense level. The expense level shall be adjusted to exclude any disallowed expenses under Article 5.101, §3(h). For purposes of Article 5.101, §3(h) (9), expenses which are not used and useful for the transfer of risk are unreasonably incurred expenses. Although that statute is not directly applicable to insurance provided through the Association, rates that include the expenses identified in that statute would be excessive and fail to meet the statutory criteria under Article 21.81, §5.

3. Premium taxes should be based on the average premium taxes actually paid by insurers in this line of insurance in the last year for which data are available.

4. Income and expenses from installment plan fees on assigned risk business shall be included in the determination.

5. The profit margin shall be based on a total rate of return methodology. The calculation shall include:

a. the selection of an expected return on investment of assets that includes net investment income, realized capital gains or losses, and unrealized capital gains or losses. The expected return from net investment income shall reflect both the embedded yield for the latest year for which data are available and yields more recently available in the marketplace. Any yields stated in terms of invested assets shall be restated in terms of total assets, i.e., the sum of admitted assets plus non-admitted assets;

b. the selection of a target return on equity based largely on analysis of the historical rates of return earned by insurers, with such analysis including a consideration of changes in interest rates; and

c. the allocation of assets and equity to specific coverages and lines of insurance to convert the returns on assets and equity into a percentage of premium based on the model developed by David Eley as described in Department Staff's Exhibit in the 1991 Texas Private Passenger Auto Rate Hearing. The amount of equity to be allocated will be either actual equity or such alternative amount of equity determined to be appropriate to support the writing of property/casualty insurance.

6. The evidence regarding historical profitability should include the results shown in the most recent NAIC Report on Profitability by Line By State.

7. Trending should:

a. include consideration of the safety and anti-fraud efforts of the Department, the Advocates for Highway Safety, and others on future losses;

b. use straight lines unless an exponential line shows a better fit;

c. use the same period for frequency and severity,

d. be based only on assigned risk trended losses to the extent separate data are available

8. A determination should be made of which zero point drivers in the assigned risk plan are good drivers and which are high risk. The data show that approximately two-thirds of the drivers assigned through the plan have no tickets or accidents in the last three years. Some of those drivers are high risk and are causing higher than average losses. The ALJ should take evidence to determine how to identify which of those drivers are good drivers and an appropriate rate for those drivers as opposed to those no point drivers who are the high risk drivers. The evidence should include information on the reliability of Motor Vehicle Reports, CLUE reports, and other data used by insurers in determining whether no point drivers should have surcharge points.

#### Conduct of the Hearing

Each page of any exhibit offered in evidence at a hearing before the Department of Insurance, including prefiled testimony, must be numbered consecutively at the center of the bottom margin, be on 8-inch by 11-inch paper, and must be three-hole-punched along the left margin. The front page of each exhibit should indicate that the exhibit would be part of the record of a public hearing before the Department of Insurance and should identify the subject of the hearing, the docket number, the date of the hearing, and the party offering the exhibit. On the front page, the party offering the exhibit should also describe the exhibit and leave a space for numbering the exhibit. For example:

Public Hearing before the Department of Insurance Subject of Hearing: Texas Automobile Insurance Plan Association Rate Hearing Docket Number 454-94-1055 g

Date \_\_\_\_\_

Party \_\_\_\_\_

Exhibit # \_\_\_\_\_

Description of Exhibit \_\_\_\_\_

Parties offering exhibits into evidence at the hearing should be prepared with sufficient copies of each proposed exhibit to furnish the following:

1. the original exhibit, which will be tendered to the ALJ for marking and retention, for the official record, after which the attorneys shall use an exact photocopy of such marked exhibit in the examination of the witness;

2. one copy each for every other party admitted to the hearing.

All deadlines in this notice are subject to change at the ALJ's discretion to the extent permitted by statute and rule.

In contested cases, all parties are entitled to the assistance of their counsel before administrative agencies. This right may be expressly waived.

Issued in Austin, Texas, on June 27, 1994

TRD-9443047

D. J. Powers  
Legal Counsel to the Commissioner  
Texas Department of Insurance

Filed June 27, 1994



## Texas Natural Resource Conservation Commission Correction of Error

The Texas Natural Resource Conservation Commission adopted amendment and new sections to §§117.203, 117.205, 117.207-117.209, 117.211, 117.213, 117.215, 117.217, 117.219, 117.221, and 117.223. The rules appeared in the June 10, 1994, issue of the *Texas Register* (19 TexReg 4541).

In (3)(B)(i) the text reads "...in accordance with paragraph (A) of this paragraph." It should read "...in accordance with subparagraph (A) of this paragraph."

In §117.213(f)(2) should read "...The system shall be accurate to within 5.0%..."



## Notice of Application for Waste Disposal Permits

Attached are Notices of Application for waste disposal permits. These notices were issued during the period of June 13-24, 1994.

These applications are subject to a Commission resolution adopted August 18, 1993, which directs the Commission's Executive Director to act on behalf of the Commission and issue final approval of certain permit matters. The Executive Director will issue the permits unless one or more persons file written protests and/or requests for hearing within 30 days of the date of newspaper publication of notice concerning the application(s).

If you wish to request a public hearing, you must submit your request in writing. You must state your name, mailing address, and daytime phone number; the permit number or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed adjustment to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If one or more protests and/or requests for hearing are filed, the Executive Director will not issue the permit and will forward the application to the Office of Hearings Examiners where a hearing may be held. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 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 on 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 Kerry Sullivan, Assistant Chief Hearings Examiner, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7908.

Jan Pieter De Vries; a diary; on the east side of an unnamed county road near the community of Purves, approximately three miles north of the Intersection of unnamed county road and FM Road 2823 in southern Erath County; Texas; new; 03679.

City of Miami; wastewater treatment facilities; just northeast of the intersection of Houston Street and Austin Street in the City of Miami in Roberts County; Texas; renewal; 11027-01.

PWT Enterprises Inc.; the King Kleen Car Wash, an automatic car wash; at 1956 North Park Drive (in the rear of the Kingwood subdivision) which is about 1.5 miles east of U.S. Highway 59, Montgomery County; Texas; renewal; 02642.

Sparkman Cattle Co.; a feedlot; on a private road approximately one half mile west of FM Road 1055 in Castro County; Texas; new; 03695.

Spring Cypress Water Supply Corporation; wastewater treatment facilities; approximately 600 feet northeast of the intersection of Interstate Highway 45 and FM Road 2920 (Spring Cypress Road) in Harris County; Texas; new; 13711-01.

City of Wichita Falls; the River Road Wastewater Treatment Facilities; immediately south of River Road and approximately 1,000 feet northeast of the intersection of River Road and Rosewood Street in the City of Wichita Falls in Wichita County; Texas; renewal; 10509-01.

Town of Woodloch; wastewater treatment facilities; approximately 3.25 miles southeast of the intersection of Interstate Highway 45 and FM Road 1488 and approximately 2.75 miles east-northeast of the intersection of Interstate Highway 45 and Needham Road in Montgomery County; Texas; amendment; 11580-01.

Gulf Chemical and Metallurgical Corporation; a commercial industrial hazardous waste storage facility for the management of Class I hazardous and Class I non-hazardous industrial solid wastes; the facility stores hazardous and non-hazardous spent refinery catalysts, received from off-site sources on a commercial basis, prior to recovering metal values from the catalysts; on a 33-acre tract of land at 302 Midway Road in the City of Freeport, Brazoria County; Texas; amendment; HW50204-001; 45 days.

Issued in Austin, Texas, on June 24, 1994.

TRD-9443015  
Gloria A Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: June 24, 1994



## 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 or other recognizable reference to this application; the statement "I/we request a public hearing"; a brief description of how you, or the persons you represent, would be

adversely affected by the granting of the application; a description of the location of your property relative to the applicant's operations; and your proposed 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.

Application Number 19-2175A by Welma R. Kirchoff, Forrest W. Kelman, and Phillip M. Kelman for an Amendment to Certificate of Adjudication Number 19-2175, pursuant to Texas Water Code, §11.122. For Executive Director's Consideration. Certificate currently authorizes diversion and use of 38 acre-feet of water per annum from the San Antonio River, San Antonio River Basin, to irrigate a maximum of 38 acres of land out of a tract in the Heirs of Luis Manchaca Grant, Abstract 18, Wilson County, Texas, at a maximum rate of 2 cfs (900 gpm). The applicants seek to increase to total diversion volume to 98 acre-feet per annum; increase the irrigated area to 97,638 acres out of two contiguous tracts totalling 97,638 acres; and increase the maximum diversion rate to 4.5 cfs (2,000 gpm).

Application of Gerard Ortiz doing business as River Oaks Water System to amend Water Certificate of Convenience and Necessity Number 11172 in Burnet County, Texas (Application #30274-C).

Application Number 5490 by Billy J. Boles and Karan R. Boles for a Water Use Permit pursuant to Texas Water Code, §11.121, et seq For Executive Director's Consideration. Applicants seek a water use permit to divert ten acre-feet of water per annum from the Guadalupe River, Guadalupe River Basin, to irrigate eight acres of land out of 32.9 acres in the John Sweeney, Jr. Survey 12, Abstract 432, in Kendall County, approximately 12.3 miles north-northwest of Boerne, Texas. Water will be diverted from a point on the south bank of the Guadalupe River at a rate of 2.23 cfs (1,000 gpm). The availability of water is based on a Subordination Agreement between the applicant and the Guadalupe-Blanco River Authority.

Issued in Austin, Texas, on June 24, 1994.

TRD-9443013 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: June 24, 1994

◆ ◆ ◆  
**Notice of Receipt on a Municipal Solid  
Waste Application, Proposed Permit  
Number MSW2236**

Attached is a Notice of Receipt of Application and Declaration of Administrative Completeness for a municipal

solid waste permit issued during the period of June 20-24, 1994.

This application has been determined to be administratively complete, and will now be subject to a technical evaluation by the staff of the Texas Natural Resource Conservation Commission. Persons should be advised that the application is subject to change based on such evaluation.

Notices are issued pursuant to the Texas Health and Safety Code §361.0665. Any person who may be affected by the facility is entitled to request a hearing from the Commission. The Commission will issue further notice of the application and the terms of any proposed draft permit once the technical evaluation is completed.

Information concerning permit applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Dr. Henry B. Curtis, DVM; Houston; Type V; 14749 Memorial Drive, Houston; Harris County; Texas; new ; MSW2236.

Issued in Austin, Texas, on June 24, 1994.

TRD-9443014 Gloria A. Vasquez  
Chief Clerk  
Texas Natural Resource Conservation  
Commission

Filed: June 24, 1994

◆ ◆ ◆  
**State of Texas Board of Pardons and  
Paroles**

**Correction of Errors**

The State Board of Pardons and Paroles proposed new §149.11, concerning the Release Order to be issued in granting Mandatory Supervision. The rule appeared in the May 6, 1994, issue of the *etix* Texas Register (19 TexReg 3436).

Section 149.11, fifth line should read ". Criminal Procedure, Article 42. 18, §8(c) (amended 1993), and the rules of this oard."

◆ ◆ ◆  
The State Board of Pardons and Paroles proposed new §150.56, concerning Policies Pertaining to the Administration of the Agency. The rule appeared in the May 6, 1994, issue of the *Texas Register* (19 TexReg 3437).

Section 150.56(a), third line should read "...promulgating and investigating policies on parole...."

Section 150.56(b), first and second lines should read "The chairman of the board or the chairman's designee acts as the agency's..."

Section 150.56(c), first and second lines should read "The chairman of the board or the chairman's designee shall serve as..."

**Texas State Board of Podiatry  
Examiners**

**Public Notice**

The Texas State Board of Podiatry Examiners is pleased to announce that Allen M. Hymans has been chosen as the new Executive Director effective June 1, 1994. Mr. Hymans replaces Robert A. Lansford who retired on May 31, 1994.

Issued in Austin, Texas, on June 23, 1994

TRD-9442981     Janie Alonzo  
                      Certifying Officials, Staff Services Officer I  
                      Texas State Board of Podiatry Examiners

Filed: June 24, 1994

◆           ◆           ◆  
**Texas Public Finance Authority**  
**Request for Proposal for Accounting  
Services**

The Texas Public Finance Authority is requesting a proposal for Accounting Services. The deadline for proposal submission is noon, Friday, August 5, 1994. Selection will be based on the qualifications and experience of the firms in utilizing MIP Software, USAS and experience with State agencies, as well as the reasonableness of the hourly rate, provided that all criteria and specifications are met or exceeded.

Copies of the Request for Proposal may be obtained by calling or writing Michell Conner or Patricia Logan, Texas Public Finance Authority, P.O. Box 12906, Austin, Texas 78711, (512) 463-5544.

Issued in Austin, Texas, on June 23, 1994

TRD-9442988     John Hernandez  
                      Chief Accountant  
                      Texas Public Finance Authority

Filed June 24, 1994

◆           ◆           ◆  
**Public Utility Commission of Texas**  
**Correction of Error**

The Public Utility Commission of Texas proposed new §23.94, concerning Small Local Exchange Carrier Regulatory Flexibility. The rule appeared in the June 17, 1994, issue of the *Texas Register* (19 TexReg 4681).

Due to an editing error §29.94(j) was misprinted. It should read "Privacy Considerations Notwithstanding the applicability limitations of subsection (b) of §23.57 of this title (relating to Telecommunications Privacy), §23.57 of this title applies to all applications filed under this section."

◆           ◆           ◆  
**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 16, 1994, to amend a certificate of convenience and necessity pursuant to §§16(a), 18(b), 50, 52, and 54 of the Public

Utility Regulatory Act. A summary of the application follows.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company to Amend Certificate of Convenience and Necessity Within Nolan County, Docket 127, before the Public Utility Commission of Texas.

**The Application.** In Docket Number 13127, Southwestern Bell Telephone Company seeks approval of the application to amend the existing exchange area boundary between its Sweetwater and Roscoe exchanges to provide service to a single potential subscriber in the most efficient manner.

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 21, 1994.

Issued in Austin, Texas, on June 24, 1994.

TRD-9443009     John M. Renfrow  
                      Secretary of the Commission  
                      Public Utility Commission of Texas

Filed June 24, 1994

◆           ◆           ◆  
Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on June 21, 1994, to amend a Certificate of Convenience and Necessity pursuant to §§16(a), 17(e), 50, 52, and 54 of the Public Utility Regulatory Act. A summary of the application follows.

**Docket Title and Number.** Application of Texas Utilities Electric Company to Amend Certificated Service Area Boundaries within Williamson County, Docket Number 13146 before the Public Utility Commission of Texas.

**The Application.** In Docket Number 13146, Texas Utilities Electric Company requests approval of its application to revise current certificated service area boundaries with Pedernales Electric Cooperative, Inc. in Williamson County.

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 Public Information Division at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Issued in Austin, Texas, on June 24, 1994

TRD-9443012     John M. Renfrow  
                      Secretary of the Commission  
                      Public Utility Commission of Texas

Filed June 24, 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 customer-specific PLEXAR-Custom

Service for General Services Administration, Houston, Texas.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of a new Plexar-Custom Service for General Services Administration pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13138.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for General Services Administration. The geographic service market for this specific service is the Houston, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0388, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on June 24, 1994.

TRD-9443010      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 24, 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 Texas Department of Public Safety, Austin, Texas.

**Docket Title and Number.** Application of Southwestern Bell Telephone Company for Approval of a new Plexar-Custom Service for the Texas Department of Public Safety pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 13140.

**The Application.** Southwestern Bell Telephone Company is requesting approval of a new Plexar-Custom Service for the Texas Department of Public Safety. 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 24, 1994.

TRD-9443011      John M. Renfrow  
Secretary of the Commission  
Public Utility Commission of Texas

Filed: June 24, 1994



## Texas Rehabilitation Commission Intent to Award Grant

The Texas Rehabilitation Commission announces its intention to award a grant on behalf of the Texas Planning Council for Developmental Disabilities to Advocacy, Inc., 7800 Shoal Creek Boulevard, Austin, Texas, to continue the activities of the Texas Transition Task Force Project. On November 1, 1989, Advocacy, Inc. was awarded a grant to provide support to the Texas Transition Task Force for up to five years. That authorization ends August 31, 1994.

**Description of Project.** The goal of the project is to promote the effective transition of students with disabilities from school to adult life so they will have maximum opportunities to live and work in the community with their friends and neighbors. The project will provide education and training of students and parents on the transition planning process. Trainings will be conducted across the state in several regions. The project will develop a statewide network of parents and others who will participate at the local level to impact policy pertaining to transition. Project staff will continue activities which influence policy decisions at the state level. An ad hoc group will meet to develop training materials and position papers related to transition issues.

**Terms and Funding.** The project will be funded for three years not to exceed \$225,000 per year. The initial budget period will begin September 1, 1994, and end May 31, 1995. Continuation of funding is reviewed annually and is contingent upon availability of funds.

For information on any aspect of this announcement, contact: Lester Sanders, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 483-4084.

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

TRD-9442997      Charles Schiesser  
Associate Commissioner for Legal Services  
Texas Rehabilitation Commission

Filed: June 24, 1994

