

Texas Register

Volume 18, Number 27, April 6, 1993

Page 2233-2331

In This Issue...

Governor's Office

Appointments Made March 29, 1993

Fire Ant Advisory Board.....	2243
Texas Animal Health Commission.....	2243
Public Utility Commission.....	2243
Board of Protective and Regulatory Services.....	2243

Judge of the Eighth Administrative Judicial Region.....	2243
---	------

Texas Structural Pest Control Board.....	2243
--	------

Radiation Advisory Board.....	2243
-------------------------------	------

State Seed and Plant Board.....	2243
---------------------------------	------

Appointments Made March 30, 1993

Texas Ethics Commission.....	2243
------------------------------	------

Southern States Energy Board.....	2243
-----------------------------------	------

State Human Rights Commission.....	2243
------------------------------------	------

Texas School For the Deaf.....	2243
--------------------------------	------

Texas Commission For the Deaf and Hearing Impaired.....	2243
---	------

Texas Board of Human Services.....	2243
------------------------------------	------

Texas Ethics Commission

Requests for Opinions

AOR 163-170.....	2245
------------------	------

Emergency Sections

Texas Department of Transportation

Division of Maintenance and Operations

43 TAC §25.62.....	2247
--------------------	------

Proposed Sections

State Finance Commission

Banking Section

7 TAC §3.91.....	2249
------------------	------

Public Utility Commission of Texas

Practice and Procedure

16 TAC §§22.1-22.5.....	2250
-------------------------	------

16 TAC §22.21, §22.22.....	2253
----------------------------	------

16 TAC §§22.31-22.34.....	2253
---------------------------	------

16 TAC §§22.51-22.56.....	2254
---------------------------	------

16 TAC §§22.71-22.80.....	2257
---------------------------	------

16 TAC §§22.101-22.105.....	2260
-----------------------------	------

16 TAC §§22.121-22.126.....	2261
-----------------------------	------

16 TAC §§22.141-22.145.....	2262
-----------------------------	------

16 TAC §22.161.....	2265
---------------------	------

16 TAC §§22.181-22.182.....	2265
-----------------------------	------

16 TAC §§22.201-22.205.....	2266
-----------------------------	------

16 TAC §§22.221-22.228.....	2267
-----------------------------	------

16 TAC §§22.241-22.246.....	2269
-----------------------------	------

16 TAC §§22.261-22.264.....	2271
-----------------------------	------

16 TAC §§22.281-22.284.....	2273
-----------------------------	------

Substantive Rules

16 TAC §23.32.....	2273
--------------------	------

16 TAC §23.91.....	2274
--------------------	------

Table of TAC Titles Affected....Page 2327



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CONTENTS CONTINUED INSIDE



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 John Hannah, Jr. Director Dan Procter

Assistant Director Dee Wright

Circulation/Marketing Jill S. Dahnert Roberta Knight

TAC Editor Dana Blanton

TAC Typographer Madeline Christer

Documents Section Supervisor Patty Webster

Document Editors Janiene Allen Lisa Martin

Open Meetings Clerk Jamie Alworth

Production Section Supervisor Ann Franklin

Production Editors/Typographers Carla Carter Janice Rhea Mimi Sanchez

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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 Sections - sections adopted by state agencies on an emergency basis.

Proposed Sections - sections proposed for adoption.

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

Adopted Sections - 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 18 (1993) is cited as follows: 18 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 "18 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 18 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
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 22, April 16, July 13, and October 12, 1993). 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.

Texas Department of Licensing and Regulation

Auctioneers
 16 TAC §§67.10, 67.21, 67.22..... 2282

Texas State Board of Dental Examiners

Dental Licensure
 22 TAC §101.1..... 2283
 22 TAC §101.7..... 2283

Board of Nurse Examiners

Licensure and Practice
 22 TAC §217.1, §217.3..... 2284
 22 TAC §217.3..... 2284

Texas Department of Public Safety

Organization and Administration
 37 TAC §1.32..... 2284

Vehicle Inspection

37 TAC §§23.1, 23.8, 23.15, 23.16..... 2285
 37 TAC §23.61..... 2286
 37 TAC §23.91, §23.92..... 2287

Texas Youth Commission

Youth Rights and Remedies
 37 TAC §89.15..... 2289

Discipline and Control

37 TAC §91.56..... 2290

Texas Department of Human Services

Purchased Health Services
 40 TAC §§29.302, 29.304, 29.308, 29.309, 29.311..... 2291

Early and Periodic Screening, Diagnosis, and Treatment
 40 TAC §33.140..... 2292

Texas Department of Transportation

Division of Maintenance and Operations
 43 TAC §25.62..... 2293

Withdrawn Sections

Public Utility Commission of Texas

Practice and Procedure
 16 TAC §21.181..... 2295

Adopted Sections

General Services Commission

Executive Administration Division
 1 TAC §111.4..... 2297

Central Purchasing Division

1 TAC §§113.1-113.18..... 2297

Facilities, Planning, and Construction

1 TAC §§123.31-123.34..... 2299

Texas State Board of Dental Examiners

Dental Licensure
 22 TAC §101.1..... 2300

Board of Nurse Examiners

Licensure and Practice
 22 TAC §217.1, §217.6..... 2301

Texas Department of Public Safety

Standards for an Approved Motorcycle Operator Training Course

37 TAC §§31.1-31.8..... 2301
 37 TAC §§31.1-31.11..... 2301

Texas Commission on Jail Standards

Definitions

37 TAC §253.1..... 2302

Texas Department of Human Services

Food Distribution and Processing

40 TAC §11.103, §11.105..... 2302
 40 TAC §11.6008, §11.6009..... 2302

Special Nutrition Programs

40 TAC §12.3, §12.24..... 2303
 40 TAC §12.103, §12.121..... 2303
 40 TAC §12.205, §12.209..... 2303
 40 TAC §12.305, §12.309..... 2303
 40 TAC §12.405, §12.409..... 2303

Long Term Care Nursing Facility Requirements for Licensure and Medicaid Certification

40 TAC §19.217..... 2303
 40 TAC §§19.502-19.504..... 2305
 40 TAC §19.504..... 2305
 40 TAC §§19.1911, 19.1912, 19.1923..... 2305

Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)
40 TAC §§27.601, 27.603, 27.605.....2305

Purchased Health Services
40 TAC §29.1001.....2307
40 TAC §29.2103.....2308
40 TAC §§29.2501-29.25032309

Texas Department of Transportation

Division of Travel and Information
43 TAC §23.1, §23.2.....2309
43 TAC §§23.10-23.122309

Open Meetings
Texas Department of Aging.....2313
Texas Department of Agriculture2313
Texas Commission for Deaf and Hearing Impaired....2313
Texas Education Agency2314
Advisory Commission on State Emergency Communica-
tions.....2314
Texas Employment Commission2314
Texas Commission of Fire Protection.....2314
Health and Human Services Commission.....2315
Texas Department of Housing and Community Af-
fairs.....2315
Texas Department of Licensing and Regulation.....2315
Texas Life, Accident, Health, and Hospital Service Insur-
ance Guaranty Association.....2315

Texas State Board of Medical Examiners 2316
Public Utility Commission of Texas..... 2316
Texas Rehabilitation Commission..... 2317
Texas National Research Laboratory Commission.....2317
Board for Lease of State-owned Lands 2317
Structural Pest Control Board..... 2317
Texas Guaranteed Student Loan Corporation..... 2317
Teacher Retirement System of Texas..... 2317
Texas Southern University 2318
Texas Department of Transportation..... 2318
Texas Turnpike Authority..... 2318
The University of Texas at El Paso 2318
Texas Water Commission..... 2318
Regional Meetings 2318

In Addition Sections

State Banking Board

Notice of Hearing 2321

Texas Bond Review Board

Bi-Weekly Report on the 1993 Allocation of the State
Ceiling on Certain Private Activity Bonds..... 2321

General Services Commission

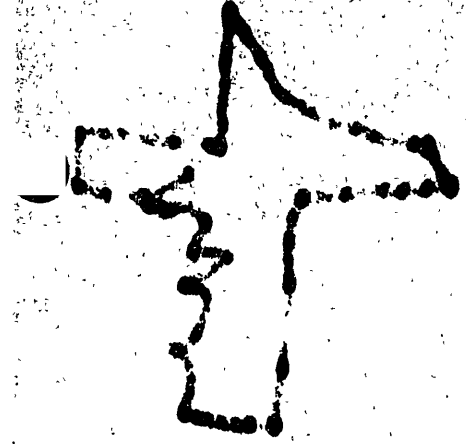
Summary of Other State Bidder Preference Laws.. 2321

Texas Department of Health

Licensing Actions for Radioactive Materials 2322

Public Utility Commission of Texas

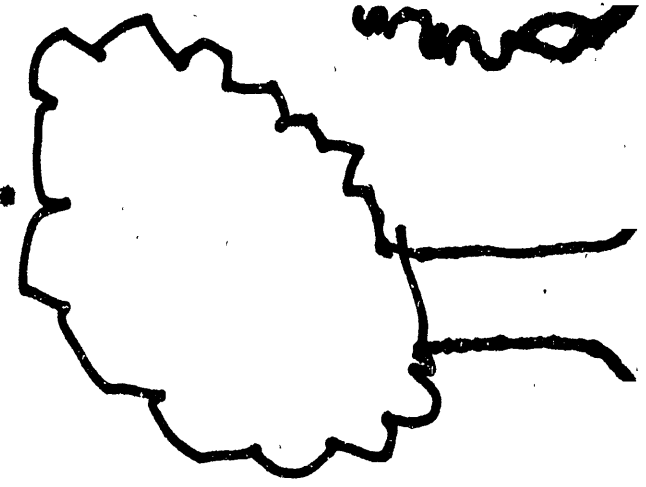
Notice of Intent to File Pursuant to PUC Substantive Rule
23.28 2326
TAC 2327

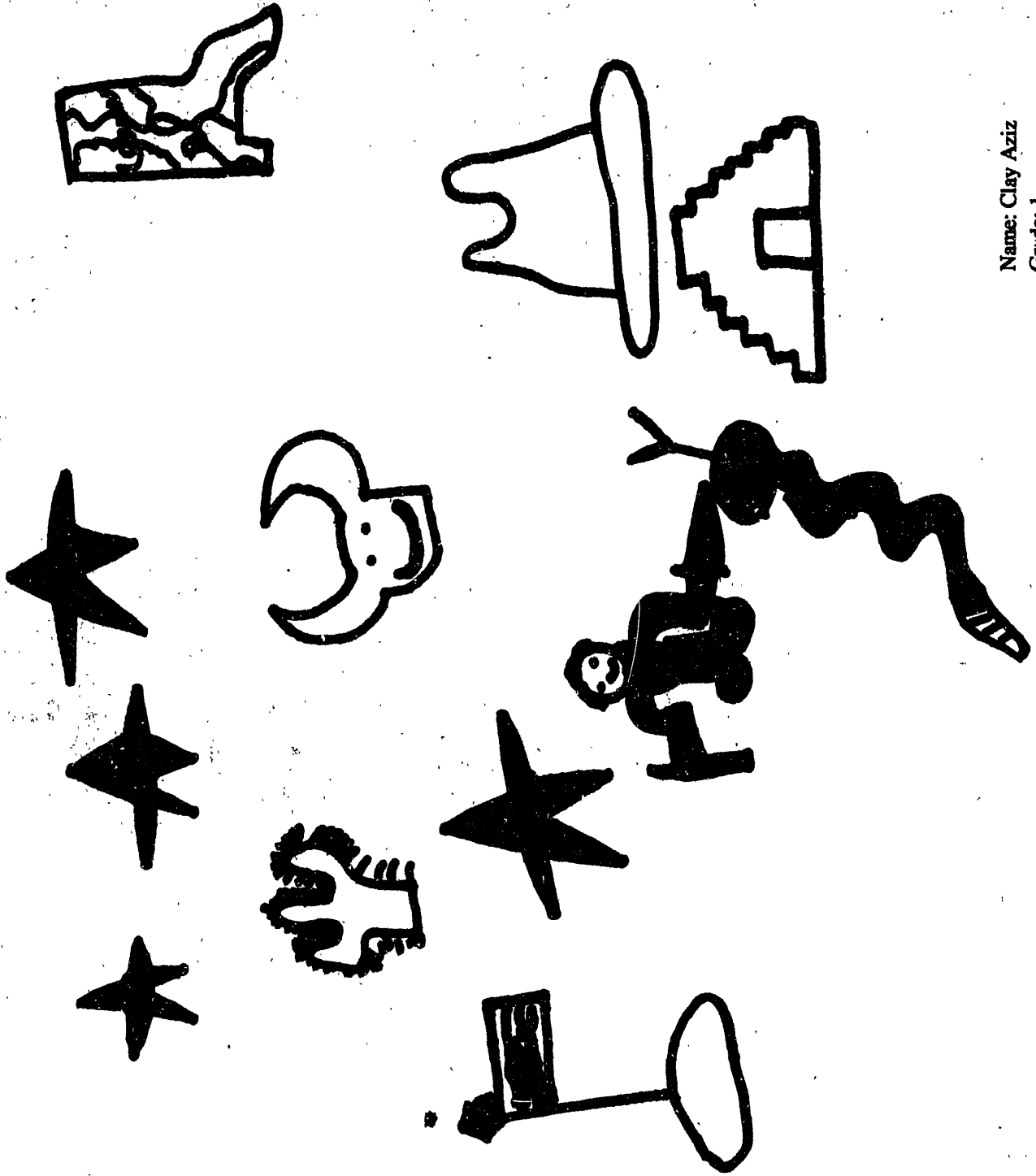


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Grade: 1

School: Buda Primary Elementary School





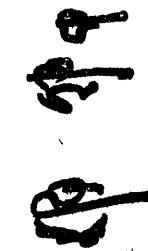
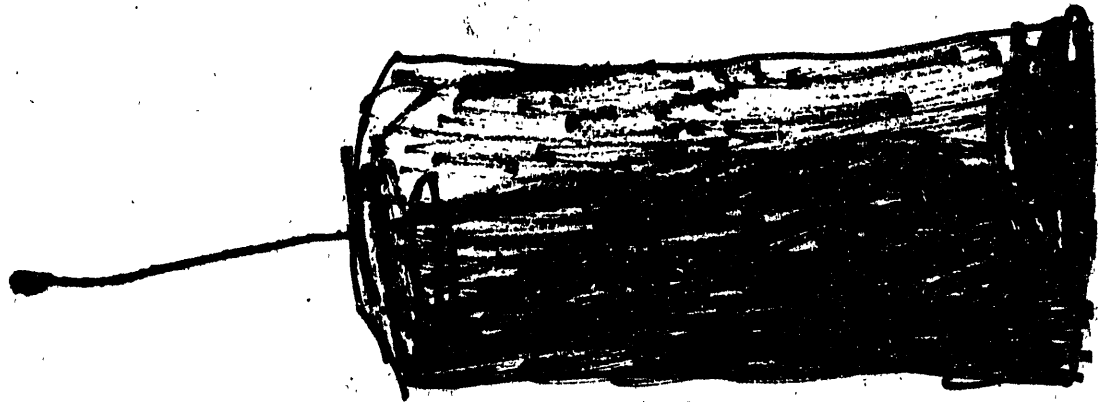
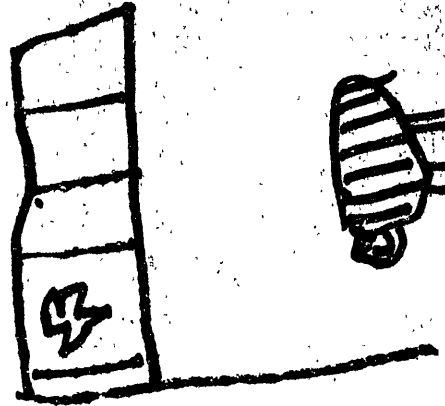
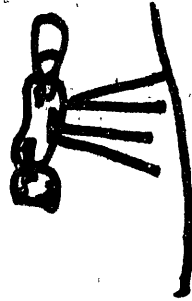
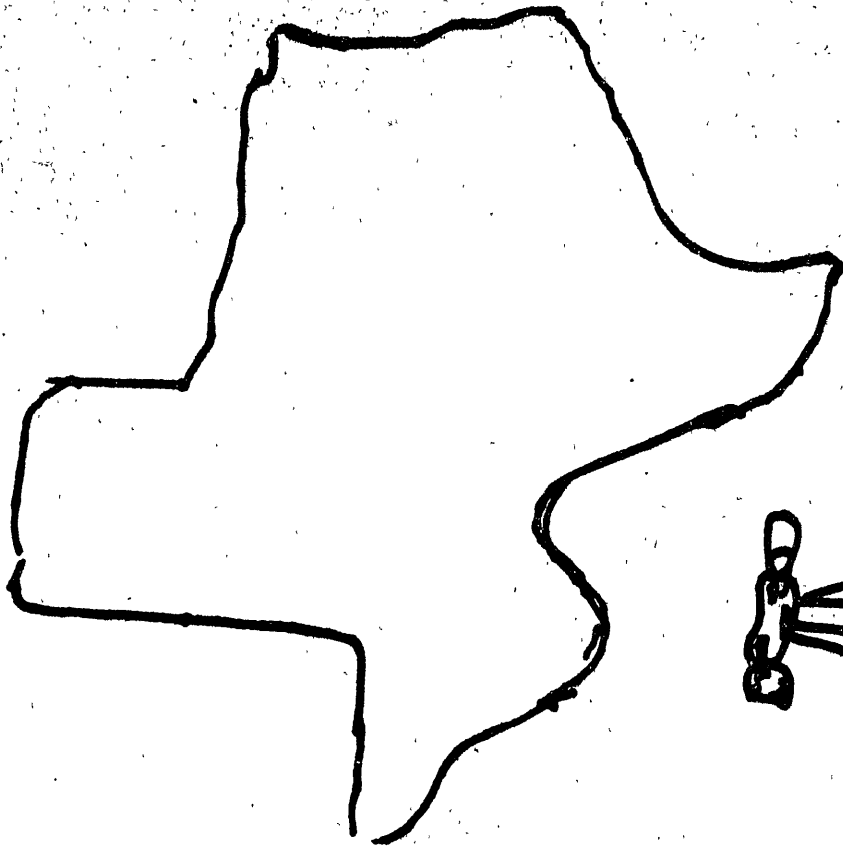
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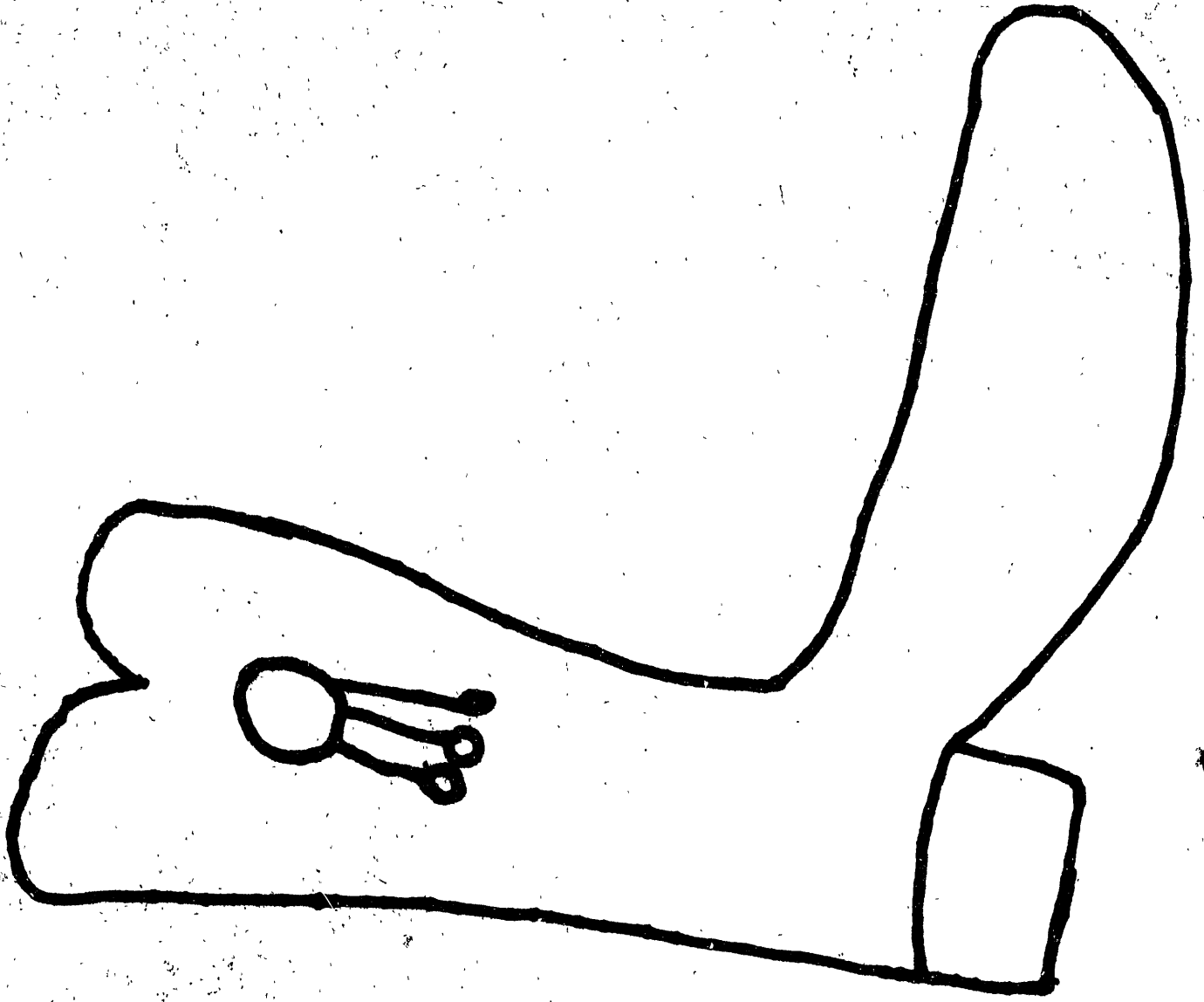
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School: Buda Primary Elementary School

David Powell

Name: David Powell
Grade: 1
School: Buda Primary Elementary School

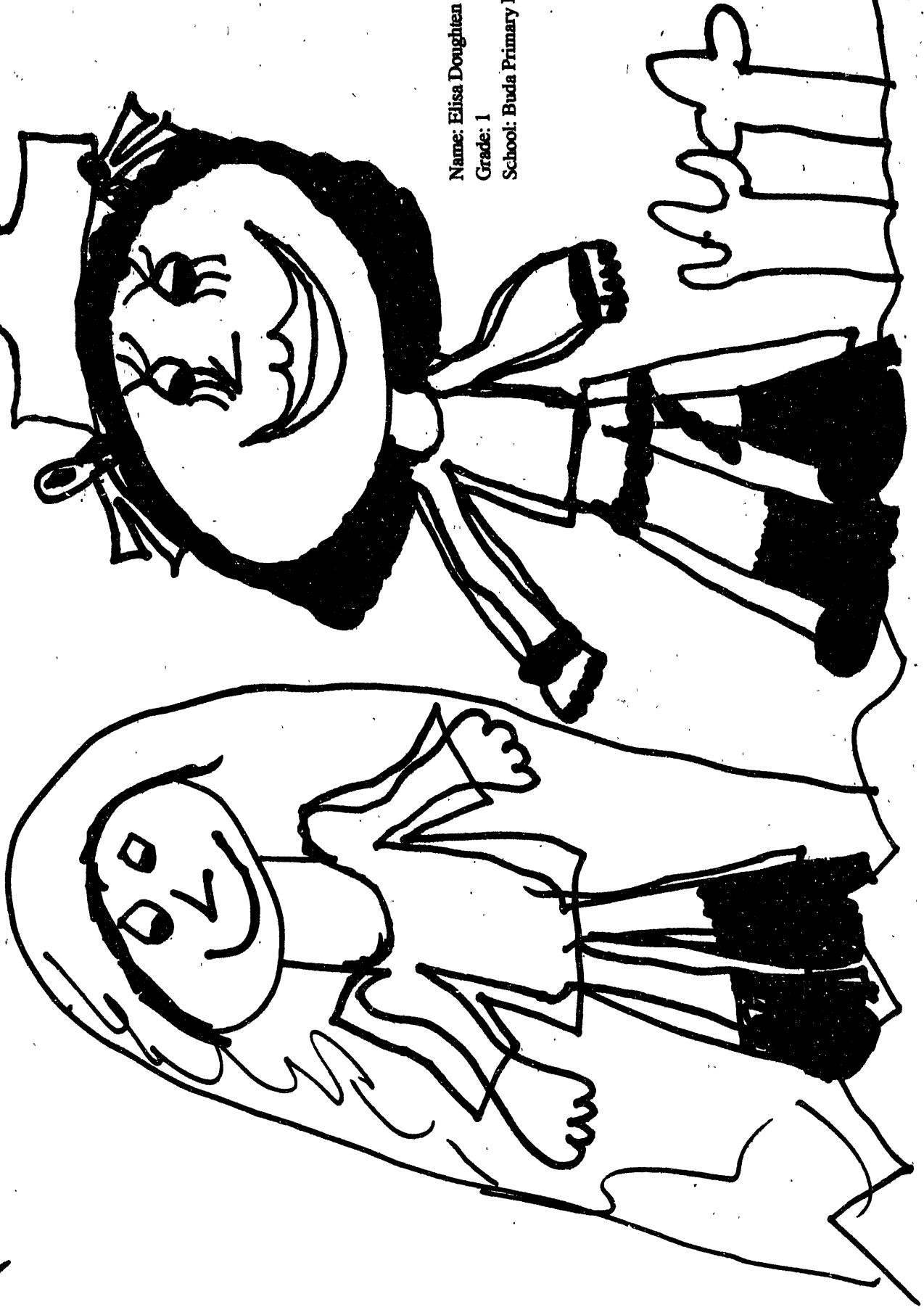
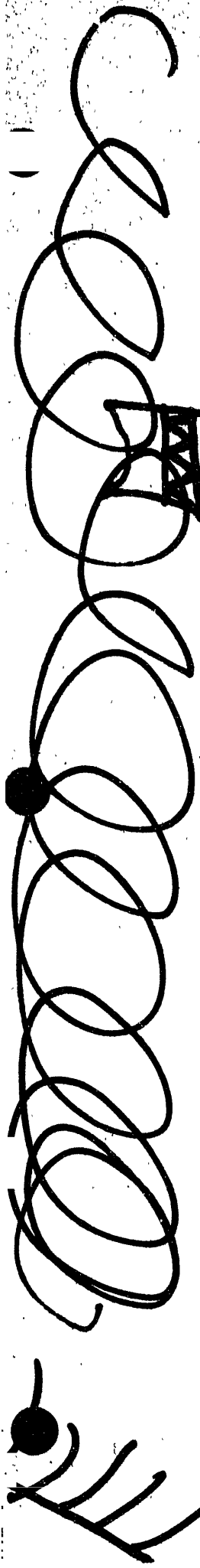




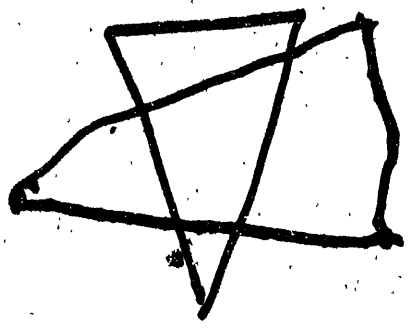
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Grade: 1

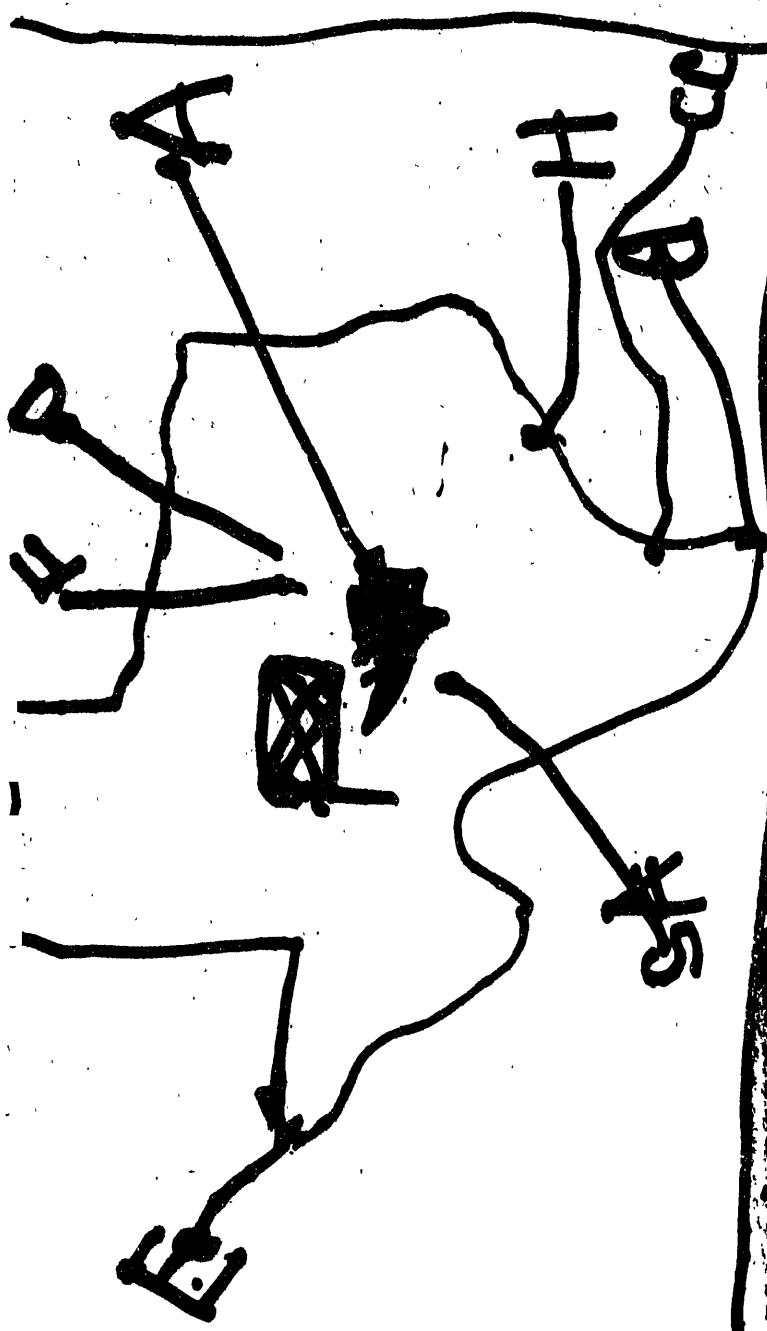
School: Buda Primary Elementary School



Name: Elisa Doughtien
Grade: 1
School: Buda Primary Elementary School



Name: Darren West
Grade: 1
School: Buda Primary Elementary School



The Governor

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

Appointments Made March 29, 1993

To be a member of the Fire Ant Advisory Board for a term to expire January 1, 1999: Stanley Carter Haddock, 6403 Blanch Circle, Dallas, Texas 75214. Mr. Haddock will be replacing Thomas W. Powell of Houston, whose term expired.

To be a member of the Fire Ant Advisory Board for a term to expire January 1, 1995: Wayne R. Snodgrass, M.D., 18527 Point Lookout, Nassau Bay, Texas 77058.

To be Chairman of the Texas Animal Health Commission for a term at the pleasure of the Governor: Charles R. Sherron, M.D. of Beaumont. Dr. Sherron will be replacing Allan C. Oltjen, DVM as chairman. Dr. Oltjen will remain on the commission.

To be Public Counsel of the Office of Public Utility Counsel for a term to expire February 1, 1995: Luis A. Wilmot, 7800 Shoal Creek Boulevard, Suite 290E, Austin, Texas 78757. Mr. Wilmot is being reappointed.

To be a member of the Board of Protective and Regulatory Services for a term to expire February 1, 1999: Judge Bill H. Sheehan, Box 821, Dumas, Texas 79029. Judge Sheehan is being reappointed.

To be a member of the Board of Protective and Regulatory Services for a term to expire February 1, 1999: Jean P. Beaumont, 2002 Briar Oaks, Bryan, Texas 77802. Ms. Beaumont is being reappointed.

To be Presiding Judge of the Eighth Administrative Judicial Region for a term to expire four years from the date of qualification: Clyde R. Ashworth, 3 Homeplace Court, Arlington, Texas 76016-3913. Judge Ashworth will be replacing Judge R. Jeffrey Walker of Arlington, whose term expired.

To be a member of the Texas Structural Pest Control Board for a term to expire February 1, 1999: Charles G. Coyle, Route 1, Box 492, Fresno, Texas 77545. Mr. Coyle will be replacing David Melass of Lake Jackson, whose term expired.

To be a member of the Texas Structural Pest Control Board for a term to expire February 1, 1997: Pat Graves, 33 Pebble Beach, Abilene, Texas 79606. Ms. Graves will be filling the unexpired term of Ray Patrick Thompson of Pasadena, who resigned.

To be a member of the Texas Structural Pest Control Board for a term to expire February 1, 1999: Kathleen St. John, 5711 Ridgetown Circle, Dallas, Texas 75230. Ms. St. John will be replacing Rayford G. Kay of Houston, whose term expired.

To be a member of the Radiation Advisory Board for a term to expire April 16, 1997: Doris C. Bryan, 3702 Terrina Road, Unit #14, Austin, Texas 78759. Ms. Bryan will be replacing William G. Hendrick of Austin, whose term expired.

To be a member of the Radiation Advisory Board for a term to expire April 16, 1997: Donald G. Ludlum, 611 James Street, Sweetwater, Texas 79556. Mr. Ludlum will be replacing Ralph Buell of Lake Jackson, whose term expired.

To be a member of the State Seed and Plant Board for a term to expire October 6, 1994: Charles A. Leamons, Box 184, Columbus, Texas 78934. Mr. Leamons is being reappointed.

To be a member of the State Seed and Plant Board for a term to expire October 6, 1994: G. F. "Buz" Poage, 318 Parkwood, Levelland, Texas 79336. Mr. Poage will be replacing Gary T. Ivey of Ralls, whose term expired.

To be a member of the State Seed and Plant Board for a term to expire October 6, 1994: Alfred L. Martin, Route 1, Box 130, Hubbard, Texas 76648. Mr. Martin will be replacing Romeo M. Villarreal of Edinburg, whose term expired.

Appointments Made March 30, 1993

To be a member of the Texas Ethics Commission for a term to expire November 19, 1995: John E. Clark, 11414 Whisper Bluff, San Antonio, Texas 78230. Mr. Clark will be filling the unexpired term of George S. Bayoud, Jr. of Dallas, who resigned.

To be a member of the Southern States Energy Board for a term at the pleasure of the Governor: Susan Rieff, Governor's Office, P.O. Box 12428, Austin, Texas 78711. Ms. Rieff will be replacing Auburn L. Mitchell of Austin, whose term expired.

To be a member of the State Human Rights Commission for a term to expire September 24, 1997: L. Maxine Lee, 7630 Parkview Circle, Austin, Texas 78731. Ms. Lee is being reappointed.

To be a member of the Governing Board of The Texas School For The Deaf for a term to expire January 31, 1999: Larry M. Correu, 16302 Clouded Crest, San Antonio, Texas 78247. Mr. Correu will be replacing Trena Baxley of Livingston, whose term expired.

To be a member of the Governing Board of the Texas School For The Deaf for a term to expire January 31, 1999: Robert Edward Parrish, 3003 Rambling Drive, Dallas, Texas 75228. Mr. Parrish will be replacing Gary Utley of Baytown, whose term expired.

To be a member of the Governing Board of the Texas School For The Deaf for a term to expire January 31, 1997: Johnelle M. Cortner, 7723 DeMoss, Houston, Texas 77036. Ms. Cortner will be filling the unexpired term of Ralph White of Austin, who resigned.

To be a member of the Governing Board of the Texas School For The Deaf for a term to expire January 31, 1999: Angel M. Ramos, 8210 Columbia Drive, Rowlett, Texas 75088. Mr. Ramos will be replacing Robert Neely of Dallas, whose term expired.

To be a member of the Texas School For The Deaf and Hearing Impaired for a term to expire January 31, 1999: Delores Erlandson, 803 West 15th Street, Big Spring, Texas 79720. Ms. Erlandson is being reappointed but will be serving in a different category. She is replacing Clyde S. Black of Temple, whose term expired.

To be a member of the Texas Commission For the Deaf and Hearing Impaired for a term to expire to expire January 31, 1995: Milburn L. Coleman, III, D.O., 4321 Overhill Drive, Dallas, Texas 75205. Dr. Coleman will be filling the unexpired term of Mary Helen Lancaster of Fort Worth, who resigned.

To be a member of the Texas Commission For the Deaf and Hearing Impaired for a term to expire January 31, 1999: Linda Phillips Thune, 7407 Potters Trail, Austin, Texas 78729. Ms. Thune will be replacing Thalia Munoz of Rio Grande City, whose term expired.

To be a member of the Texas Board of Human Services for a term to expire January 20, 1999: Cassandra Colvin Carr, 4230 Hidden Canyon Cove, Austin, Texas 78746. Ms. Carr is being reappointed.

To be a member of the Texas Board of Human Services for a term to expire January 20, 1999: Karen Heltzel, 702 Villa Creek, Duncanville, Texas 75137. Ms. Heltzel is being reappointed.

Issued in Austin, Texas, on March 30, 1993.

TRD-9321021

Ann W. Richards
Governor of Texas



Texas Ethics Commission

The Texas Ethics Commission is authorized by Texas Civil Statutes, Article 6252-9d.1, §1.29, to issue advisory opinions in regard to the following statutes: Texas Civil Statutes, Article 6252-9b; the Government Code, Chapter 302; the Government Code, Chapter 305; 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

Requests for Opinions

AOR-163. The Texas Ethics Commission has been asked about the interpretation of the Election Code, §253.100. The specific questions is whether an incorporated trade association may pay the expenses of hosting a meal for the purposes of raising funds for a general-purpose political committee. The payments for the meal and any other proceeds would go to the political committee.

AOR-164. The Texas Ethics Commission has been asked to consider the following two questions:

Can a state legislator receive a salary from a city to work in some capacity for that city (not lobbying) while the state legislature is in session?

Can a state legislator receive a fee from a public college and/or university for teaching at that institution if the fee comes from a private, rather than a public, funding source.

AOR-165. The Texas Ethics Commission has been asked to consider whether members of the Texas Judicial Council are required to file annual financial disclosure statements pursuant to Article 6252-9b.

AOR-166. The Texas Ethics Commission has been asked to consider whether surplus political contributions may be used to make a donation to a tax-exempt, non-profit organization that serves mentally retarded citizens.

AOR-167. The Texas Ethics Commission has been asked to consider whether members of the Texas Board of Irrigators are required to file financial disclosure statements under Texas Civil Statutes, Article 6252-9b.

AOR-168. The Texas Ethics Commission has been asked to consider whether an educational institution may make a donation to charity in honor of a state senator who is invited to give an address on education issues. No advance notice would be given that there will be a charitable donation made in honor of the appearance, and the senator would not choose the charity.

AOR-169. The Texas Ethics Commission has been asked whether a former member of the legislature may use political contributions accepted before 1981 to reimburse himself for personal political contributions.

AOR-170. The Texas Ethics Commission has been asked to consider a series of questions about the Texas Certified Self-Insurer Guaranty Association (TCSGA). The specific questions are as follows:

1. Are the voting members of the TCSGA board of directors required to file financial disclosure forms under Article 6252-9b, §3?

2. Is the non-voting member of the TCSGA board of directors required to file a financial disclosure form under Article 6252-9b, §3?

3. Are the voting members of the TCSGA board of directors required under Article 6252-9b, §6, to disclose private interests in measures, proposals, or decisions pending before the board?

4. Is the non-voting member of the TCSGA board of directors required under Article 6252-9b, §6, to disclose private interests in measures, proposals, or decisions pending before the board?

5. Are the self-insurer members of the TCSGA board of directors prohibited by Article 6252-9b, §7A, from appearing before the board on behalf of their employer after their service on the board?

6. How does the prohibition in Article 6252-9b, §8(c), affect the self-insurer members of the TCSGA board of directors who are by necessity employed in positions which may affect their independence of judgment?

Issued in Austin, Texas, on March 29, 1993.

TRD-9320965

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: March 30, 1993

For further information, please call: (512) 463-5800

◆ ◆ ◆

AOR-167. File closed. No opinion issued.

The Texas Ethics Commission is authorized by §1.29 of Texas Civil Statutes, Article 6252-9d.1, to issue advisory opinions in regard to the following statutes: (1) Texas Civil Statutes, Article 6252-9b; (2) Chapter 302, Government Code; (3) Chapter 305, Government Code; (4) Title 15, Election Code; (5) Chapter 36, Penal Code; and (6) Chapter 39, Penal Code.

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 March 29, 1993.

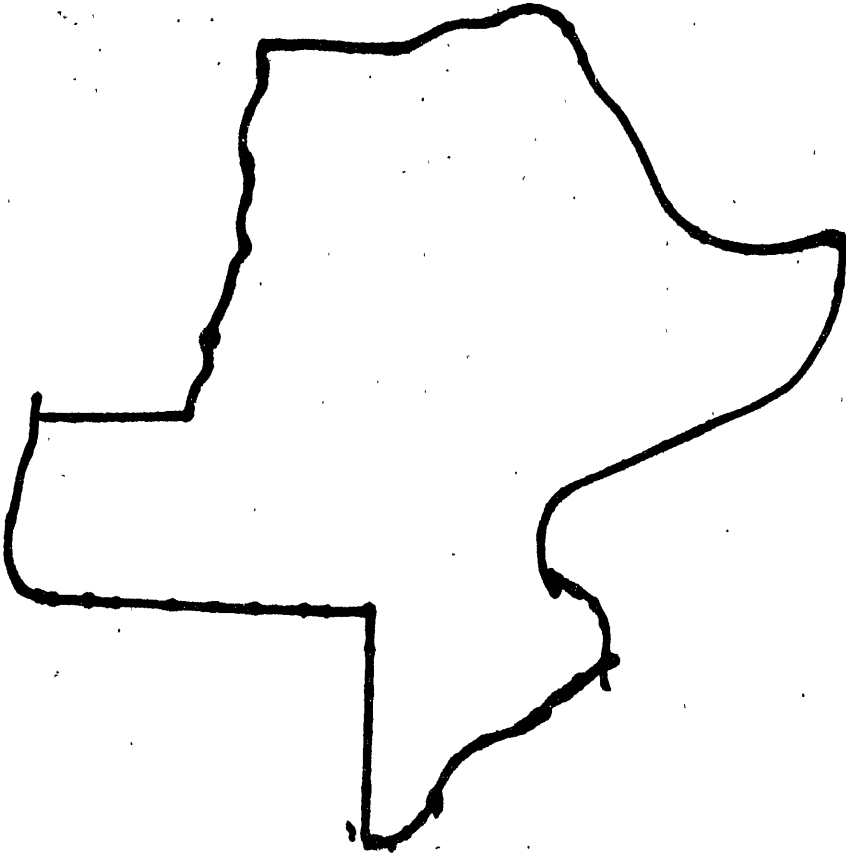
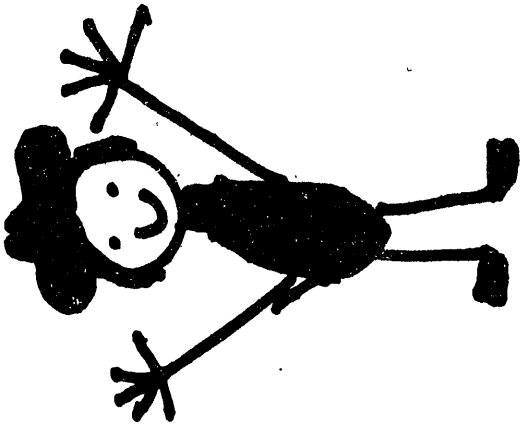
TRD-9320966

Sarah Woelk
Director, Advisory Opinions
Texas Ethics Commission

Filed: March 30, 1993

For further information, please call: (512) 463-5800

◆ ◆ ◆



Name: Richard Chapa
Grade: 1
School: Buda Primary Elementary School

Emergency Sections

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

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

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 25. Division of Maintenance and Operations

Oversize and/or Overweight Permits

• 43 TAC §25.62

The Texas Department of Transportation adopts on an emergency basis an amendment to §25.62, concerning Permit Issuance Requirements and Procedures. The amendment delays the expiration date of subsection (f)(1)(B)(vii) from June 1, 1993, to December 31, 1994. Section 25.62 prescribes the procedure for securing a permit pursuant to Texas Civil Statutes, Article 6701a to operate overweight or oversize vehicles on the state highway system. Statutory limits on the width, length, height, and weight of such vehicles are established in Texas Civil Statutes, Article 6701d-11. Texas Civil Statutes, Article 6701a authorize the department to issue special permits when those statutory limits are exceeded, but only on condition that the commodities to be transported cannot be reasonably dismantled and that the department determines that operation will be without material damage to the highway. The statute contains other provisions for permit application, fees, form, content, special conditions, and penalties.

The Texas Transportation Commission by Minute Order Number 100714, dated March 25, 1992, acknowledged advice from the Texas Department of Commerce, the Chairman of the Railroad Commission of Texas, the Office of the Governor, and other officials that the economic health and welfare of Texas at that time required the consideration of certain economic factors when issuing oversize permits, and therefore amended §25.62 to allow the issuance of an oversize permit when the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height. That amendment will expire on June 1, 1993. The commission has now determined that conditions underlying the amendment continue to exist and are likely to continue for an indefinite future period, thereby requiring the continued effectiveness of the rule at least through December 31, 1994.

Adoption on an emergency basis is necessary in order to avoid impending adverse economic impact on the state's economy during a period when the public policy of state government is to foster, encourage, and enhance the state's economic growth and its continued recovery from depressed economic conditions and high unemployment rates of recent years.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Articles 6666 and 6701a, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically to issue permits for the movement of oversize and/or overweight loads over the state highway system.

§25.62. Permit Issuance Requirements and Procedures.

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

(f) General provisions.

(1) Multiple commodities.

(A) (No change.)

(B) When the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height the department may issue an oversize permit for such load subject to each of the following conditions.

(i)(vi) (No change.)

(vii) The provisions of this subparagraph will expire on December 31, 1994 [June 1, 1993].

(2)-(7) (No change.)

(g) (No change.)

Issued in Austin, Texas, on March 31, 1993.

TRD-9321022

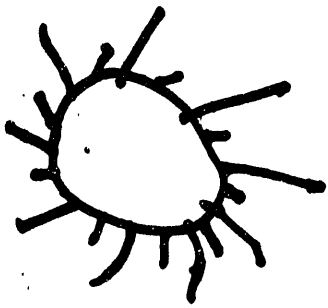
Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: March 31, 1993

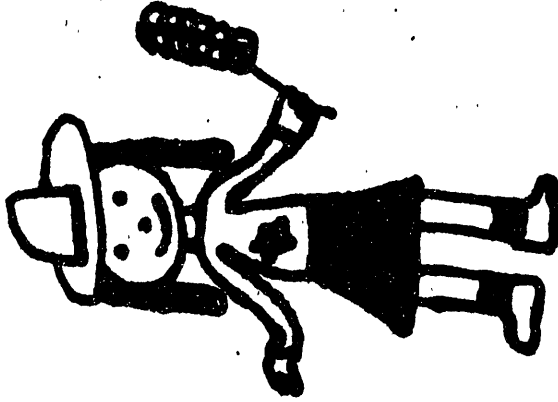
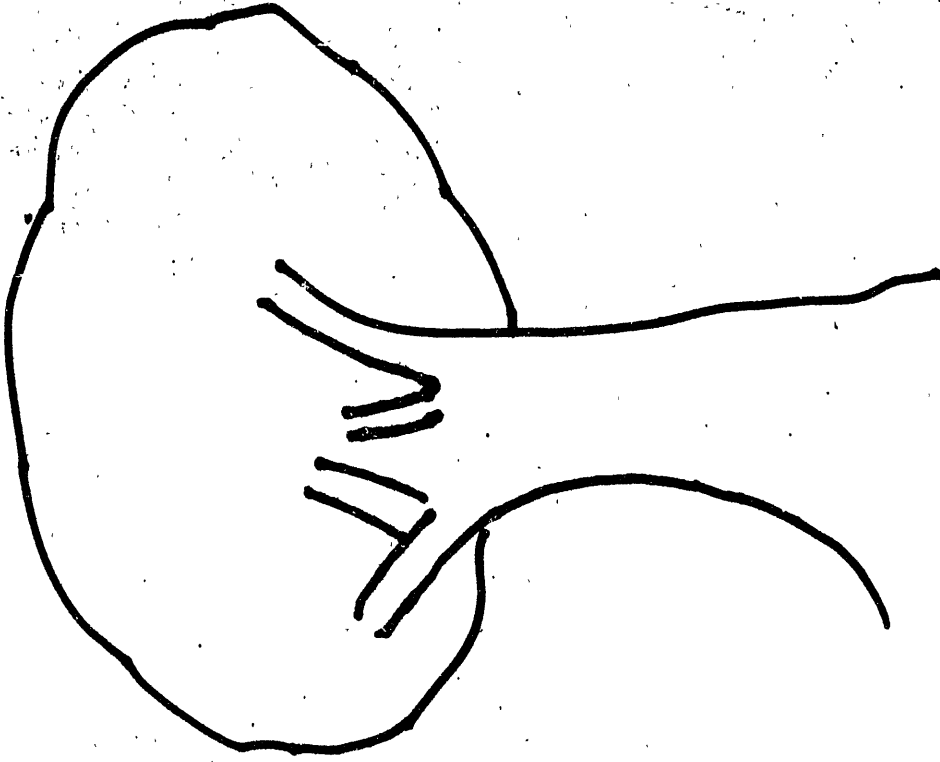
Expiration date: July 29, 1993

For further information, please call: (512) 463-8630





Brianna Allen I-A



Name: Brianna Allen

Grade: 1

School: Buda Primary Elementary School



Proposed Sections

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 any action may be 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 sections, 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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter E. Banking House and Other Facilities

• 7 TAC §3.91

The Finance Commission of Texas proposes new §3.91, concerning establishment and closing of branch banks by state chartered banks. A repeal of the old language was previously proposed in the March 30, 1993, issue of the *Texas Register* (18 TexReg 1985).

Ann Graham, 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.

Ms. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of procedures and standards to be applied to branch application following a change to the branching statute. 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.

Ms. Graham has determined that the proposed rule will have no local employment impact.

Comments on the proposal may be submitted to Ann Graham, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Articles 342-113 and 342-903, which provide the State Finance Commission with the authority to promulgate rules relating to the establishment of branching.

§3.91. Establishment of Branch Bank (Including Automated or Unmanned Teller Machines) and Drive-in Facilities.

(a) Forms. Applicants shall complete and file a branch application on forms promulgated by the Department of Banking. Application forms and instructions are available from the Department on request.

(b) Filing. The Department will advise the applicant when a form has been reviewed and found to be complete. If it is reviewed and found to be incomplete, the Department will advise the applicant as to what further information needs to be furnished before the application will be deemed complete and accepted for filing. The Department will accept an application for filing after it has determined that the application is complete and has received the proper filing fee.

(c) Investigation. The Department may investigate facts in connection with any application. The Department will assess fees to cover the costs of these investigations which will be in addition to the standard application fee. The Department may require an applicant to submit information in addition to the information required on the application form.

(d) Public Notice. When it is notified of the acceptance of its application for filing, the applicant shall publish notice of its filing. The notice shall be published once in a form prescribed by the Department. Publication will be in a newspaper of general circulation in the community where the proposed branch is to be located. The applicant will furnish the Department with a copy of the notice and a publisher's affidavit attesting to the date of its publication.

(e) Public Comments and Protests. There shall be a 14-day period after publication of notice for the public to submit comments regarding the application. Within the 14 days, any state or national bank or state or federal savings association that contends it would be adversely affected if the application were granted may protest the application and request a hearing. Parties other than state or national banks or state or federal savings associations that wish to protest an application and request a hearing on the application may also do so within 14 days after publication of notice if they can establish standing. All protestants shall clearly state the grounds for the protest. A copy of the protest shall be furnished to the applicant who shall reply to it within 10 days after it is received. The reply shall be addressed to the Department of Banking and a copy of the reply shall be furnished to the protestant.

(f) Community Credit Needs. Consistent with their safe and sound operation, state chartered banks have a continuing and affirmative obligation to meet the credit needs of the entire local communities within their designated service areas, including low- and moderate-income neighborhoods, as required under the federal Community Reinvestment Act, 12 United States Code, §§2901-2909.

(g) Unprotested applications. If no protest is received by the Department within 14 days following notice by publication in a newspaper of general circulation where the proposed bank will be located, and if the applicant has waived a hearing, the Commissioner may rule on the application based on information contained in the application and the Department of Banking's files without a hearing, or, in the Commissioner's discretion, the Commissioner may order a hearing even though the application has not been protested.

(h) Protested applications. If a protest of the application is received within the 14-day period a hearing will be held on the application.

(i) Review with Hearing. If a hearing is held on the application, the Commissioner shall rule on the application based solely on the information elicited in the hearing. The burden shall be on the applicant to establish the truth of the information required in the branch bank application form. Protestants may cross examine the applicant and present evidence and argument on all matters put in issue by the protest. Protestants shall have the burden of pleading and proving any facts that might be cause for a significant supervisory or regulatory concern which contradict or which tend to contradict the statements in the application. The Departmental Examiner may support or oppose the application or may assume a neutral role. If the Departmental Examiner knows of any basis for a significant supervisory or regulatory concern regarding the proposed branch, the applicant, or its affiliates, the Departmental Examiner shall file a report, shall submit to cross examination thereon, and shall make the information on which that report is based available for inspection by all parties to the hearing under such protective orders as may be appropriate.

(j) Appeals. Appeals from the hearing decisions of the Commissioner on branching applications will be to the District Court of Travis County under the substantial evidence rule pursuant to APTRA, §19 and the Texas Supreme Court case of *Chemical Bank & Trust Co. v. Falkner*, 369 S.W. 2d 427 (Tex. 1963).

(k) Beginning Operations. Any branch approved under this section must begin operations within 12 months from the date of approval unless the Commissioner extends that date. Approval will automatically expire 12 months from the date of approval if no extension is granted by the Department in writing.

(l) Unmanned Teller Machines. The procedure outlined in this section for approval of branches shall not apply to unmanned teller machines. State chartered banks wishing to establish unmanned teller machine locations may do so at will upon notifying the Texas Department of Banking with written notification of such locations.

(m) Emergency Branches. The procedure outlined in this section for approval of branches shall not apply to emergency transactions approved by the Commissioner such as the acquisition of a branch as the result of the purchase of assets and the assumption of liabilities of a failed or distressed financial institution.

(n) Branch Relocation. A bank may, with prior written approval of the Commissioner, relocate an approved branch to a location within the community served by the branch. The procedures outlined in this section for approval of branches shall not apply to the relocation of an approved branch.

(o) Closing a Branch. At least 60 days before closing an approved branch, the bank shall provide the Department with a copy of a resolution concurred in by a majority of the board of directors authorizing the branch to be closed. Notice of the closing shall be conspicuously posted in the lobby of the branch continuously for at least 30 days prior to the date of closing. The bank shall notify the Department of Banking when the branch location has been officially closed. The bank cannot thereafter reopen the branch without going through the same application and approval process that a new branch would require.

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 March 10, 1993.

TRD-9320946

Ann Graham
General Counsel
Texas Department of
Banking

Earliest possible date of adoption: May 7, 1993

For further information, please call: (512) 475-1300

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter A. General Provi- sions and Definitions

The Public Utility Commission of Texas proposes new §§22.2-22.5, 22.21, 22.22, 22.31-22.34, 22.51-22.56, 22.71-22.80, 22.101-22.105, 22.121-22.126, 22.141-22.145, 22.161, 22.181, 22.182, 22.201-22.205, 22.221-22.228, 22.241-22.246, 22.261-22.264, and 22.281-22.284, concerning rules of practice and procedure before the Public Utility Commission. The new sections constitute a major revision to the current rules of practice and procedure, and, if adopted, would replace existing Chapter 21.

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

Ms. Mueller also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater procedural consistency among proceedings, reduction of workload and expense associated with disputes on procedural issues, and provision of guidance for persons who participate in proceedings at the Public Utility Commission. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Mueller also has determined that for each of the first five years the sections are in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the sections.

Comments on the proposal (14 copies) may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 10782.

• 16 TAC §§22.1-22.5

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.1. Purpose and Scope.

(a) Purpose. The purpose of this chapter is to provide a system of procedures for practice before the Public Utility Com-

mission of Texas that will promote the just and efficient disposition of proceedings and public participation in the decision-making process. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.

(b) Scope.

(1) This chapter shall govern the initiation, conduct, and determination of commission proceedings required or permitted by law, whether instituted by order of the commission or by the filing of an application, complaint, petition, or any other pleading.

(2) This chapter shall not be construed so as to enlarge, diminish, modify, or otherwise alter the jurisdiction, powers, or authority of the commission, the authority or duties of the commission general counsel or commission staff, or the substantive rights of any person.

(3) To the extent that any provision of this chapter is in conflict with any statute or substantive rule of the commission, the statute or substantive rule shall control.

§22.2. Definitions. The following terms, when used in this chapter, shall have the following meanings, unless the context or specific language of a section clearly indicates otherwise.

Administrative Review-Process under which an application may be approved by a hearings examiner without a hearing and without formal action by the commission.

Affected Person-The definition of affected person is that definition given in the Public Utility Regulatory Act (PURA), §3(h).

Applicant-A person, including the commission general counsel, who seeks action from the commission by written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

Application-A written application, petition, complaint, notice of intent, appeal, or other pleading that initiates a proceeding.

APTRA-The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, as it may be amended from time to time.

Authorized Representative-A person who enters an appearance on behalf of a party, or on behalf of a person seeking to be a party or otherwise to participate, in a commission proceeding. The appearance may be entered in person or by subscribing the representative's name upon any pleading filed on behalf of the party or person seeking to be a party or otherwise to participate in the proceeding. The authorized representative shall be considered to remain a representative of record unless a statement

or pleading to the contrary is filed or stated in the record.

Chairman—The commissioner elected by the commissioners to serve as chairman.

Commission—The Public Utility Commission of Texas.

Commissioner—One of the members of the Public Utility Commission of Texas.

Complainant—A person, including the commission general counsel, who files a complaint intended to initiate a proceeding with the commission regarding any act or omission by the commission or any person subject to the commission's jurisdiction.

Control Number—Number assigned by the director of hearings to a docket, project, or tariff.

Days—Calendar days, not working days, unless otherwise specified by this chapter or the commission's substantive rules.

Director of Hearings—The individual employed by the commission and charged with the duties of director of hearings as specified under PURA and the commission rules as they may be amended from time to time. The director of hearings may designate individuals to perform his or her duties as necessary.

Docket—A proceeding handled as a contested case under APTRA.

Final Order—The whole or part of the final disposition by the commission of the issues before the commission in a proceeding, rendered in compliance with §22.263 of this title (relating to Final Orders).

Financial Interest—Any legal or equitable interest, or any relationship as officer, director, trustee, advisor, or other active participant in the affairs of a party. An interest as a taxpayer, utility ratepayer, or cooperative member is not a financial interest. An interest a person holds indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of that person's control is not a financial interest.

General Counsel—The individual employed by the commission and charged with the duties of the general counsel under PURA. The general counsel may designate individuals to perform his or her duties as necessary.

Hearing—Any commission proceeding at which evidence is taken on the merits of the matters at issue, not including prehearing conferences.

Hearing Day—A day of hearing on the merits under PURA, §43(d).

Hearings Examiner—When used in this chapter, the term "hearings examiner" includes an administrative law judge.

Intervenor—A person, other than the applicant, respondent, or the commission general counsel, who is permitted by this

chapter or by ruling of the presiding examiner, to become a party to a proceeding.

Licensing Proceeding—The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, including a proceeding regarding a notice of intent to build a new electric generating unit.

Major Rate Proceeding—Any proceeding filed pursuant to PURA, §43 involving an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or 2.5%. In addition, a major rate proceeding is any rate proceeding initiated pursuant to PURA, §42 in which the respondent utility is directed to file a rate filing package.

Municipality—A city, incorporated village, or town, existing, created, or organized under the general, home-rule, or special laws of Texas. A municipality is a "person" as defined in this section.

Party—A party under §22.72 or §22.73 of this title (relating to Formal Requisites of Pleadings To Be Filed with the Commission; Contents of Pleadings, Generally).

Person—An individual, partnership, corporation, association, governmental subdivision, entity, or public or private organization.

Pleading—A written document submitted by a party, or a person seeking to participate in a proceeding, setting forth allegations of fact, claims, requests for relief, legal argument, and/or other matters relating to a commission proceeding.

Prehearing Conference—Any conference or meeting of the parties, prior to the hearing on the merits, on the record and presided over by the presiding examiner.

Presiding Examiner—The commission, any commissioner, the director of hearings, or any administrative law judge or hearings examiner assigned by the director of hearings to preside over a commission proceeding or any portion thereof.

Proceeding—Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint.

Project—A rulemaking or other proceeding that is not a docket or a tariff.

Protestant—A person who is not a party to the case who submits oral or written comments. A person classified as a protestant does not have rights to participate in a proceeding other than by providing oral or written comments.

PURA—The Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c, as it may be amended from time to time.

Relative—An individual (or spouse of an individual) who is related to the individual in issue (or the spouse of the individual in issue) within the second degree of con-

sanguinity or relationship according to the civil law system.

Respondent—A person under the commission's jurisdiction against whom any complaint or appeal has been filed or who is under formal investigation by the commission.

Rulemaking—A proceeding pursuant to APTRA, §5 conducted to adopt, amend, or repeal a commission rule.

Tariff Filing—A proceeding initiated by an application filed pursuant to §§24, 25, 26, 27, or 28 of Chapter 23, or PURA, §43A and §43B, which is not handled as a docket, or a rulemaking.

Working Day—A day on which the commission is open for the conduct of business.

§22.3. Standards of Conduct.

(a) Standards of Conduct for Parties.

(1) Every person appearing in any commission proceeding shall comport himself or herself with dignity, courtesy, and respect for the commission, the presiding examiner and all other persons participating in the proceeding. Professional representatives shall observe and practice the standard of ethical and professional conduct prescribed for their professions.

(2) Upon a finding of a violation of paragraph (1) of this subsection, any party, witness, attorney, or other representative may be excluded by the presiding examiner from any proceeding for such period and upon such conditions as are just, or may be subject to other just, reasonable, and lawful disciplinary action as the commission may prescribe.

(b) Communications.

(1) Personal Communications. Communications in person by public utilities, their affiliates or representatives, or any person with the commission or any employee of the commission shall be governed by Texas Civil Statutes, Article 6252-23, §§2, 3, 3A, and 4. Records shall be kept of all such communications and shall be available to the public on a monthly basis. The records of communications shall contain the following information:

(A) name and address of the person contacting the commission;

(B) name and address of the party or business entity represented;

(C) case, proceeding, or application, if available;

(D) subject matter of communication;

(E) the date of the communication;

(F) the action, if any, requested of the commission; and

(G) whether the person has received, or expects to receive, a financial benefit in return for making the communication.

(2) **Ex Parte Communications.** Unless required for the disposition of ex parte matters authorized by law, members or employees of the commission assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of law or fact with any agency, person, party, or their representatives, except on notice and opportunity for all parties to participate. Members or employees of the commission assigned to render a decision or to make findings of fact or conclusions of law in a contested case may communicate ex parte with employees of the commission who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the commission and its staff in evaluating the evidence. Number running procedures conducted pursuant to written commission policy do not constitute impermissible ex parte communications, provided memoranda memorializing such procedures are preserved and made available to all parties of record in the proceeding to which the number running procedures relate.

(c) **Standards for Recusal of Presiding Examiners.** A presiding examiner shall recuse herself or himself from sitting in a proceeding, or from deciding one or more issues in a proceeding, in which any one or more of the following circumstances exist:

(1) the presiding examiner in fact lacks impartiality, or the presiding examiner's impartiality has been reasonably questioned;

(2) the presiding examiner, or any relative of the presiding examiner, is a party or has a financial interest in the subject matter of the issue or in one of the parties, or the presiding examiner has any other interest that could be substantially affected by the determination of the issue; or

(3) the presiding examiner or a relative of the presiding examiner has participated as counsel, advisor, or witness in the proceeding or matter in controversy.

(d) **Motions for Disqualification or Recusal of a Hearings Examiner.**

(1) Any party may move for disqualification or recusal of a hearings examiner stating with particularity the grounds why the hearings examiner should not sit. The grounds may include any disability or matter, not limited to those set forth in subsection (c) of this section. The motion shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence.

(2) The motion shall be filed within 10 working days after the facts that are the basis of the motion become known to the party, or within 15 working days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmittal, or by overnight courier delivery.

(3) Written responses to motions for recusal shall be filed within three working days after the filing of the motion. The hearings examiner may require that responses be made orally at a prehearing conference or hearing.

(4) The hearings examiner shall rule on the motion for recusal not less than four and not more than six working days after the filing of the motion.

(5) The hearings examiner shall not rule on any issues that are the subject of a pending motion for recusal or disqualification. The director of hearings shall appoint another hearings examiner to preside on all matters that are the subject of the motion for recusal until the issue of disqualification is resolved.

(6) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

(7) If the commission determines that a motion for recusal was frivolous or capricious, or filed for purposes of delaying the proceeding, the movant may be sanctioned in accordance with §22.161 of this title (relating to Sanctions).

(8) Recusal of a hearings examiner, in and of itself, has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.

(e) **Motion for Disqualification or Recusal of a Commissioner.**

(1) Any party may move for disqualification or recusal of a commissioner stating with particularity grounds why the commissioner should not sit. Such a motion must be filed prior to the date the commission is scheduled to consider the matter unless the information upon which the motion is based was not known or discoverable with reasonable effort prior to that time.

The grounds may include any disability or matter not limited to those set forth in subsection (c) of this section. The motion shall be made on personal knowledge and shall set forth such facts as would be admissible in evidence.

(2) The motion shall be filed within 10 working days after the facts that are the basis of the motion become known to the party or within 15 days of the commencement of the proceeding, whichever is later. The motion shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

(3) Parties may file written responses to the motion within seven working days from the date of filing the motion. The commission may require that responses be made orally at an open meeting.

(4) The commissioner sought to be disqualified shall issue a decision as to whether he or she agrees that recusal or disqualification is appropriate or required before the commission is scheduled to act on the matter for which recusal is sought, or within 15 days after filing of the motion, whichever occurs first.

(5) The parties to a proceeding may waive any ground for recusal or disqualification after it is fully disclosed on the record, either expressly or by their failure to take action on a timely basis.

(6) Recusal of a commissioner has no effect upon the validity of rulings made or orders issued prior to the time the motion for recusal was filed.

§22.4. *Computation of Time.*

(a) **Counting Days.** In computing any period of time prescribed or allowed by this chapter, by order of the commission or any presiding examiner, or by any applicable statute, the period shall begin on the day after the act, event, or default in question. The period shall conclude on the last day of the designated period unless that day is a day the commission is not open for business, in which event the designated period runs until the end of the next day on which the commission is open for business.

(b) **Extensions.** Unless otherwise provided by statute, the time for filing any documents may be extended, upon the filing of a motion, prior to the expiration of the applicable period of time, showing that there is good cause for such extension of time and that the need for the extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion.

§22.5. *Suspension of Rules.*

(a) **Suspension.** The commission may suspend the operation of one or more

of the sections in this chapter if there exists a public emergency or imperative public necessity and the commission ascertains that suspension will best serve the public interest and will not prejudice the rights of any party.

(b) **Good Cause Exception.** Notwithstanding any other provision of this chapter, the presiding examiner may grant exceptions to any requirement in this chapter or in a commission-prescribed form for good cause.

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 March 29, 1993.

TRD-9320936 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 7, 1993

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

Subchapter B. The Organization of the Commission

• 16 TAC §§22.21, §22.22

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.21. Meetings.

(a) The commission shall meet at times and places to be determined either by the chairman of the commission or by agreement of any two of the commissioners.

(b) The chairman of the commission shall preside over any proceeding or meeting of the commission, unless some other person is designated by the chairman to preside.

(c) Notice of all commission meetings shall be provided in accordance with the Open Meetings Act, Texas Civil Statutes, Article 6252-17, as amended, and APTRA.

§22.22. *Service on the Commission.* The secretary of the commission shall have the authority to accept service of all papers or other legal documents served on the commission or any of its members if served in their individual capacity and not individually.

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 March 29, 1993.

TRD-9320963 John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 7, 1993

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

Subchapter C. Classification of Applications or Other Documents Initiating a Proceeding

• 16 TAC §§22.31-22.34

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.31. *Classification in General.*

(a) **Classification and Assignment of Control Number.** The director of hearings shall determine whether an application or other document initiating a proceeding should be designated as a docket, tariff, or project. The director of hearings shall assign an appropriate control number to each docket, tariff, or project.

(b) **Control Numbering System.** The director of hearings shall establish and maintain a control numbering system.

(c) **Control Number Log.** The director of hearings shall maintain a record or log of all applications or other documents assigned a control number, which shall include the style, the date the application or other document was filed or the proceeding initiated, the nature of the proceeding, and the presiding examiner assigned to the proceeding, if any. The log shall be accessible to the public.

§22.32. *Administrative Review.*

(a) **Applications Qualified for Administrative Review.** An application, other than a major rate proceeding, may be approved by a hearings examiner without a hearing or action by the commission, under the following conditions:

(1) at least 30 days have passed since the completion of all notice requirements;

(2) the commission has received no motion to intervene or notice of intervention, or the matter has been fully stipulated so that there are no issues of fact or law disputed by any party; and

(3) the hearings examiner finds that no hearing or commission action is

necessary and that administrative review is warranted.

(b) **Hearings Examiner's Order.** If an application qualifies for administrative review, the hearings examiner shall issue an order with findings of fact and conclusions of law as soon as is reasonably practicable. The order shall be countersigned by the director of hearings and shall be served upon each commissioner and all parties.

(c) **Finality of Order.** At the request of a majority of the commissioners, the order shall be placed on the agenda to be considered by the commission in open meeting. The commission may approve the order of the hearings examiner, vacate the order of the hearings examiner and remand the docket for hearing or other additional proceedings, or modify the order with the agreement of all parties. If, within 20 days after issuance of the hearings examiner's order, the commission has not scheduled the application to be considered at an open meeting, the order becomes final.

(d) **Notice Requirements.** Nothing in this section shall be construed to alter any notice requirement imposed on any proceeding by statute, rule, or order.

(e) **Time Limits.** Nothing in this section shall be construed to alter any time limit imposed on any proceeding by a statute, rule, or order.

(f) **Exceptions to Examiner's Order.** Nothing in this section shall be construed to preclude any party from filing exceptions to the presiding examiner's order, provided such exceptions are filed with the commission within 15 days after the issuance of the presiding examiner's order.

§22.33. *Tariff Filings.*

(a) **Applicability and Classification.** This section shall apply to undocketed applications by utilities to change their tariffs. Such tariff filings shall be classified as "electric tariff filings," "regular telephone tariff filings," or "special telephone tariff filings." Electric tariff filings and regular telephone tariff filings shall be those applications filed pursuant to §23.24 of this title (relating to Form and Filing of Tariffs). Special telephone tariff filings shall be those applications filed by telecommunications utilities pursuant to §§23.25, 23.26, 23.27 or 23.28 of this title (relating to Rates) or PURA, §43A or §43B. This section shall apply unless it is inconsistent with Chapter 23 of this title, or PURA.

(b) **Standards for Docketing.** Tariff filings, other than a tariff filing made in compliance with a rule or final order of the commission, shall be docketed under the following circumstances:

(1) if an electric or regular telephone tariff filing would change the reve-

nues received by the utility for an existing service;

(2) if an electric or regular telephone tariff filing would allow the utility to begin charging for a service previously available but for which there was not a separate charge;

(3) if an electric or regular telephone tariff filing would eliminate an existing service to which one or more customers actually subscribe;

(4) if an electric or regular telephone tariff filing would increase a customer's bill even though the rate for a particular service is not being changed;

(5) if the commission's staff recommends docketing, or if the commission's staff recommends disapproval or approval with modification and the utility requests a hearing;

(6) if the commission receives a request to intervene;

(7) if the fairness of the tariff filing or its compliance with law or a Commission policy adopted in an open meeting is questionable; or

(8) if the tariff filing poses a difficult or unusual policy question or a controversial topic of significant public interest.

(c) **Effective Date.** Except for tariffs required to be filed pursuant to a commission rule specifying the effective date of such tariffs and for tariffs filed in compliance with a final order of the commission, no electric or regular telephone tariff filing may take effect prior to 35 days after filing unless approved by the presiding examiner. The requested effective date will be assumed to be 35 days after filing unless the applicant requests a different date in its application. The presiding examiner may suspend the operation of the electric or regular telephone tariff filing for 150 days beyond the effective date, or, with the agreement of the applicant, to a later date.

(d) **Duties of Presiding Examiner.** The presiding examiner may establish reasonable deadlines for comments or recommendations, may issue other orders as necessary to facilitate the processing of the tariff filing, and shall issue a notice of approval, approval with modification, denial, or docketing.

(e) **Appeal of Interim Orders and Notices of Docketing.** Interim orders and notices of docketing regarding tariff filings shall be appealable to the Commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order).

(f) **Effect of Notices of Approval, Approval with Modification, and Denial.** A notice of approval, approval with modification, or denial of a tariff filing shall be the

final determination of the commission regarding the tariff filing, and shall be subject to motions for rehearing pursuant to §22.264 of this title (relating to Rehearing).

§22.34. Consolidation and Severance.

(a) **Consolidation.** A motion for consolidation of proceedings shall be in writing. With prior notice to the parties, the presiding examiner may order the consolidation of proceedings on his or her own initiative. Proceedings may be consolidated if the presiding examiner finds that: the proceedings involve common questions of law or fact; consolidation would serve the interest of efficiency or prevent unwarranted expense and delay; and, the applicant's ability to present its case and other parties' ability to respond to the applicant's case are not unduly prejudiced. Proceedings shall be consolidated if requested based on the agreement of all parties, and if such consolidation would not unreasonably curtail the time available to process one or more of the proceedings proposed for consolidation.

(b) **Severance.** A motion for severance of a proceeding or issue within a proceeding shall be in writing. With prior notice to the parties, the presiding examiner may order the severance of proceedings on his or her own initiative. Proceedings or issues may be severed if the presiding examiner finds that severance would serve the interest of efficiency or prevent unwarranted expense and delay; and the applicant's ability to present its case and other parties' ability to respond to the applicant's case would not be unduly prejudiced. Proceedings or issues within a proceeding shall be severed if requested based on the agreement of all parties.

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 March 29, 1993.

TRD-9320984

John M. Rentrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 7, 1993

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

Subchapter D. Notice

• 16 TAC §§22.51-22.56

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.51. Notice for Public Utility Regulatory Act §43 and §42 Proceedings.

(a) Notice in a PURA, §43 Proceeding Seeking a Rate Increase. In proceedings under PURA, §43 involving the commission's original jurisdiction over a utility's proposed increase in rates, the applicant shall give notice in the following manner.

(1) **Publication of Notice.** The applicant shall publish notice of its statement of intent to change rates in conspicuous form and place at least once a week for four consecutive weeks prior to the effective date of the proposed rate change, in a newspaper having general circulation in each county containing territory affected by the proposed rate change. The published notice shall contain the following information:

(A) the effect the proposed change is expected to have on the revenues of the company, expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues;

(B) the effective date of the proposed rate change;

(C) the classes and numbers of utility customers affected by the rate change;

(D) a description of the service for which a change is requested;

(E) whenever possible, the established intervention deadline; and

(F) the following language: "Persons who wish to intervene in or comment upon these proceedings should notify the commission as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission's Public Information Office at (512) 458-0256, or (512) 458-0221 for text telephone. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

(2) **Notice By Mail.** The applicant shall mail notice of its statement of intent to change rates to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed in

prominent lettering: "Notice of Rate Change Request." The notice must meet the requirements of paragraph (1) of this subsection. Whenever possible, the established intervention deadline shall be included in the notice.

(3) Notice to Municipalities. The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate change.

(b) Notice in a PURA, §43 Proceeding Seeking a Rate Decrease. In proceedings initiated pursuant to PURA, §43 in which a rate reduction that does not involve a rate increase for any customer is sought, the applicant shall give notice in the following manner.

(1) Publication not Required. The applicant may not be required to publish notice of its statement of intent to change rates in any newspaper when the utility is seeking to reduce rates for all affected customers.

(2) Notice by Mail to Affected Customers. The applicant shall mail notice of the proposed rate decrease to all of the applicant's affected customers. This notice may be mailed separately or may be mailed with customer billings. At the top of this notice, the following language shall be printed in prominent lettering: "Notice of Rate Decrease Request." The notice shall contain the following information:

(A) the effect the proposed change is expected to have on the revenues of the applicant, expressed as an annual dollar decrease from adjusted test year revenues and as a percent decrease from adjusted test year revenues;

(B) the effective date of the proposed rate decrease;

(C) the classes and numbers of utility customers affected by the rate decrease;

(D) a description of the service for which a rate change is requested;

(E) whenever possible, the established intervention deadline; and

(F) the following language: "Persons who wish to intervene or comment upon these proceedings should notify the commission as soon as possible, as an intervention deadline will be imposed. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boule-

vard, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission's Public Information Office at (512) 458-0256, or (512) 458-0221 for text telephone. The deadline for intervention in the proceeding is 45 days after the date the application was filed with the commission."

(3) Notice to Municipalities. The applicant shall mail or deliver a copy of the statement of intent to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed rate decrease.

(c) Notice in a PURA, §42 Rate Investigation. In an investigation into a utility's rates pursuant to PURA, §42, the presiding examiner may require the utility under investigation to provide reasonable notice to its customers and affected municipalities. Reasonable notice may include notice of the type set forth in subsection (a) of this section.

(d) Affidavits Regarding Notice. The applicant shall submit affidavits attesting to the provision of the notice required or ordered pursuant to this section within a reasonable time and by such date as may be established by the presiding examiner.

(1) Publisher's Affidavits. Proof of publication of notice shall be made in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published.

(2) Affidavit for Notice to Affected Customers. If notice to affected customers has been provided, an affidavit attesting to the provision of notice to affected customers shall specify the dates of the provision of such notice; the means by which such notice was provided; and the number of affected customer classes to which such notice was provided.

(3) Affidavit for Notice to Municipality. An affidavit attesting to the provision of notice to municipalities shall specify the dates of the provision of notice and the identity of the individual cities to which such notice was provided.

§22.52. Notice in Licensing Proceedings.

(a) Notice in Electric Licensing Proceedings. In all electric licensing proceedings except minor boundary changes and notice of intent and certification proceedings for new electric generating plants, the applicant shall give notice in the following ways.

(1) Applicant shall publish notice of the applicant's intent to secure a certificate of convenience and necessity in a newspaper having general circulation in the

county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks beginning with the week after the application is filed with the commission. This notice shall identify in general terms the type of facility if applicable, and the estimated expense associated with the project. The notice shall further describe in clear, precise language the geographic area for which the certificate is being requested and the location of all preferred and alternative routes of the proposed facility. This description should refer to area landmarks, including, but not limited to, geographic landmarks, municipal and county boundary lines, streets, roads, highways, railroad tracks, and any other readily identifiable points of reference. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). 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, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256 or (512) 458-0221 for the text telephone. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall, upon or before filing an application; also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection and a map which clearly and conspicuously illustrates the location of the area for which the certificate is being requested, including the preferred location and any alternative locations of the proposed facility, to cities and neighboring utilities providing the same utility service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. The notice provided to county government(s) shall be identical to that provided to cities and neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to cities,

neighboring utilities and county governments who have not already received such notice.

(3) Applicant shall, upon or before filing an application, mail notice of its application to the owners of land, as stated on the current county tax roll(s), who would be directly affected by the requested certificate, including the preferred location and any alternative location of the proposed facility. The notice must contain all information required in paragraph (1) of this subsection and a clear and conspicuous statement that the owner's land may be directly affected by the preferred route or one of the alternative routes if the certificate is granted. A map which clearly and conspicuously illustrates the preferred and any alternative locations of the facility proposed in the application shall be included. Applicants may provide either a map of the entire proposed route or maps for each county. Before final approval of any modification in the applicant's proposed route(s), applicant shall provide notice as required under this paragraph to all directly affected landowners who have not already received such notice. For the purposes of this paragraph, land is directly affected if an easement would be obtained over all or a portion of it, or if it contains a habitable structure that would be within 200 feet of the proposed facility. Proof of notice may be established by an affidavit affirming that the applicant sent notice by first-class mail to each of the persons listed as an owner of directly affected land on the current county tax roll(s). Upon the filing of such proof, the lack of actual notice to any individual landowner will not in and of itself support a finding that the requirements of this paragraph have not been satisfied.

(4) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention and for commission action on the application.

(b) Notice by Applicants for New Electric Generating Plant. Persons planning to apply for a certificate of convenience and necessity for a new electric generating plant shall file a notice of such intent with the commission pursuant to PURA, §54(d). Applicants for new electric generating plants shall give notice in the following ways.

(1) Applicants for a Notice of Intent shall provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant will be located, if known, and in each county containing territory served by the utility, once each week for two consecutive weeks beginning the week after the notice of intent is filed with the commission. This notice shall identify the site of the facility, if known. This notice shall further identify in general terms

the type of facility, including at a minimum the fuel to be used, basic technology, size of the plant and estimated service date, and the estimated expense associated with the project. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility contact) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission Public Information Office at (512) 458-0256 or 458-0221 for the text telephone. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicants for a certificate of convenience and necessity for a new electric generating plant shall provide notice of the application by publishing in a newspaper having general circulation in the county or counties in which the generating plant will be located, and in each county containing territory served by the utility, once each week for two consecutive weeks beginning the week after the application is filed with the commission. Applicant shall also provide notice to the county government(s) of all counties in which any portion of the proposed facility or requested territory is located. This notice shall contain the same information as required in paragraph (1) of this subsection. Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention. Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(c) Notice in Telephone Licensing Proceedings. In all telephone licensing proceedings, except minor boundary changes, the applicant shall give notice in the following ways.

(1) Applicant shall publish in a newspaper having general circulation in the county or counties where a certificate of convenience and necessity is being requested, once each week for two consecutive weeks, beginning the week after the application is filed, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in

general terms the types of facilities, if applicable, the area for which the certificate is being requested, and the estimated expense associated with the project. The notice shall also include the following statement: "Persons with questions about this project should contact (name of utility) at (utility contact telephone number). Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Office at (512) 458-0256, or (512) 458-0221 for the text telephone. The deadline for intervention in the proceeding is 70 days after the date the application was filed with the commission." Proof of publication of notice shall be in the form of a publisher's affidavit which shall specify the newspaper(s) in which the notice was published; the county or counties in which the newspaper(s) is or are of general circulation; and the dates upon which the notice was published. Proof of publication shall be submitted to the commission as soon as available.

(2) Applicant shall also mail notice of its application, which shall contain the information as set out in paragraph (1) of this subsection, to cities and neighboring utilities providing the same service within five miles of the requested territory or facility. Applicant shall also provide notice to the county government of all counties in which any portion of the proposed facility or territory is located. The notice provided to county governments shall be identical to that provided to cities and to neighboring utilities. An affidavit attesting to the provision of notice to counties shall specify the dates of the provision of notice and the identity of the individual counties to which such notice was provided.

(3) Failure to provide notice in accordance with this section shall be cause for day-for-day extension of deadlines for intervention.

§22.53. Notice of Regional Hearings. The presiding examiner may require the utility that is the subject of a proceeding to publish conspicuous notice of a regional hearing in newspapers of general circulation in the general area of the hearing and to provide other reasonable notice to customers and affected municipalities.

§22.54. Notice To Be Provided by the Commission.

(a) Notice in Original or Appellate Jurisdiction Proceedings. In any proceeding, other than a petition for rulemaking, invoking the commission's original or appellate jurisdiction, the commission shall provide notice in accordance with APTRA in addition to any other notice required by law.

Ten days' notice shall be given of the initial prehearing conference in a proceeding. After the initial prehearing conference, reasonable notice of subsequent prehearing conferences may be provided on the record in a prehearing conference or by written notice to the parties.

(b) Notice in Rulemaking Proceedings. The commission shall provide notice of the proposed adoption of any rule pursuant to APTRA, §5.

§22.55. Notice in Other Proceedings. In proceedings other than those governed by §§22.51, 22.52, and 22.53 of this title (relating to Notice), the presiding examiner may require a party to provide reasonable notice to affected persons.

§22.56. Notice of Unclaimed Funds. The applicant shall notify the State Treasurer of proceedings in which there may be a specific amount of money to be refunded to ratepayers who may need to be located. This rule shall not apply in fuel refund proceedings.

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 March 29, 1993.

TRD-9320985

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 7, 1993

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

Subchapter E. Pleadings

• 16 TAC §§22.71-22.80

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.71. Filing of Pleadings and Other Materials.

(a) File with the Commission Filing Clerk. All pleadings, rate filing packages, written testimony, and any other document required to be filed with the commission shall be filed with the commission filing clerk, and shall state the control number on the heading, if known.

(b) Number of Documents to be Filed. Unless otherwise provided by this chapter or ordered by the presiding examiner, the number of documents to be filed are as follows:

(1) exceptions, replies, interim appeals, requests for oral argument, and other documents addressed to the commissioners: 18 copies;

(2) testimony and briefs: 16 copies;

(3) rate filing package: 16 copies;

(4) applications for certificates of convenience and necessity: four copies;

(5) discovery requests and responses: five copies; and

(6) other pleadings and documents: eight copies.

(c) Receipt by the Commission. Pleadings and any other documents shall be deemed filed when the proper number of legible copies are presented to the commission filing clerk for filing. The commission filing clerk shall be required to accept pleadings and documents if the person seeking to make a filing is in the office of the commission filing clerk with the required number of copies by the time the pleading or document is required to be filed.

(d) No Filing Fee. No filing fee is required to file any pleading or other document with the commission.

(e) Office Hours of the Commission Filing Clerk. For the purpose of filing pleadings and other documents, including examiner's reports, the office hours of the commission filing clerk are from 8 a.m. to 5 p.m., Monday-Friday, on working days.

(f) Filing a Copy or Facsimile Copy in Lieu of an Original. Subject to the requirements of subsection (c) of this section, a copy of an original document or pleading, including a copy that has been transmitted through a telecopier, may be filed, so long as the party or the attorney filing such copy maintains the original for inspection by the commission or any party to the proceeding.

(g) Filing Deadline. All documents shall be filed by 3 p.m. on the date due, unless otherwise ordered by the presiding examiner.

(h) Filing Deadlines for Documents Addressed to Commissioners.

(1) Except as provided in paragraph (2) of this subsection, all documents addressed to the commissioners relating to any proceeding that has been placed on the agenda of a final order meeting shall be filed with the commission filing clerk no later than 11 a.m., two working days prior to the final order meeting at which the proceeding will be considered provided that no party is prejudiced by the timing of the filing of the documents. Documents that are not filed before the deadline and do not meet one of the exceptions in paragraph (2)

of this subsection, will be considered untimely filed.

(2) The deadline established in paragraph (1) of this subsection does not apply if:

(A) the documents have been specifically requested by one of the commissioners;

(B) the parties are negotiating and such negotiation requires the late filing of documents; or

(C) good cause for the late filing exists. Good cause must clearly appear from specific facts shown by written pleading that compliance with the deadline was not reasonably possible and that failure to meeting the deadline was not the result of the negligence of the party. The finding of the existence of good cause lies within the discretion of the commission.

§22.72. Formal Requisites of Pleadings To Be Filed with the Commission.

(a) Requirements of Form.

(1) Unless otherwise authorized or required by the presiding examiner, filings shall be typewritten or printed on paper measuring approximately 8 1/2 by 11 inches; shall include the style and number of the docket or project in which they are submitted, if available; shall identify by heading the nature of the pleading submitted and the name of the party submitting the same; and shall be signed by the party, or the party's authorized representative.

(2) Any log, graph, map, drawing, or chart submitted as part of a filing will be accepted on paper larger than provided in paragraph (1) of this subsection, if it cannot be provided legibly on letter-size paper.

(b) Format. Any filing with the Commission must:

(1) have double-spaced print with left margins not less than 1 1/2 inch wide, except that any tariff or rate filing may be single-spaced;

(2) indent and single-space any quotation which exceeds 50 words;

(3) be bound or stapled at the left side only, if the filing exceeds one page; and

(4) be printed in not less than 10-point type with double-leaded text and single-leaded quotations, if the filing is printed.

(c) Citation form. Any filing with the Commission should comply with the rules of citation, except Rule 1.1, set forth

in the most current edition of *A Uniform System of Citation*, published by The Harvard Law Review Association.

(d) Signature. Every pleading shall be signed by the party or the party's authorized representative, and shall include the party's address, telephone number, and, if available, telecopier number. If the person signing the pleading is an attorney licensed in Texas, the attorney's State bar number shall be provided.

(e) Page Limits. In major rate proceedings, proceedings initiated pursuant to PURA, §42, fuel reconciliations, market dominance proceedings, petitions to declare a market subject to significant competition, and applications for licensing of new generating plant, except for testimony and rate filing packages, no pleading shall exceed 100 pages in length, including attachments. In all other dockets, no pleading shall exceed 50 pages in length, including attachments. The page limitation shall not apply to courtesy copies of legal authorities cited in the pleading. A presiding examiner may for good cause enter a timely order establishing a larger or smaller page limit. In considering a request for a good cause exception, the presiding examiner shall consider such factors as which party has the burden of proof and the extent of opposition to a party's position that would need to be addressed in the pleading.

(f) Transmittal Letters. Transmittal letters may be attached to pleadings or any other document filed with the commission. If transmittal letters are submitted, they shall be considered part of the record.

§22.73. Contents of Pleadings, Generally.

(a) General Requirements For Applications. In addition to the requirements of form specified in §22.72 of this title (relating to Formal Requisites of Pleadings To Be Filed with the Commission), all applications shall contain the following, unless otherwise required by statute or commission rule:

(1) a statement of the jurisdiction of the commission over the parties and subject matter;

(2) a list of all the known parties, classes of customers, and territories, if applicable, which would be affected if the requested relief were granted;

(3) the name and address of each party against whom specific relief is sought;

(4) a concise statement of the facts relied upon by the pleading party;

(5) a concise statement of the specific relief, action, or order desired by the pleading party;

(6) any other matter required by statute or rule; and

(7) a certificate of service.

(b) Support By Affidavit. Pleadings containing allegations of fact not supported by the record shall be supported by affidavit.

§22.74. Service of Pleadings.

(a) Pleadings Submitted to a Presiding Examiner. At or before the time any document or pleading regarding a proceeding is submitted by a party to a presiding examiner, a copy of such document or pleading shall be filed with the commission filing clerk and served on all parties. These requirements do not apply to documents which are offered into evidence during a hearing or which are submitted to a presiding examiner for *in camera* inspection; provided, however, that the party submitting documents for *in camera* inspection shall file and serve notice of the submission upon the other parties to the proceeding. Pleadings submitted to a presiding examiner during a hearing, prehearing conference, or open meeting shall be filed with the commission filing clerk as soon as is practicable.

(b) Methods of Service. Except as otherwise expressly provided by order, rule, or other applicable law, service on a party may be made by delivery of a copy of the pleading or document to the party's authorized representative or attorney of record either in person; by agent; by courier receipted delivery; by first class mail; by certified mail, return receipt requested; or by registered mail to such party's address of record, or by facsimile transmission to the recipient's current telecopier number or facsimile transfer machine. Service by mail shall be complete upon deposit of the document, enclosed in a wrapper properly addressed, stamped and sealed, in a post office or official depository of the United States Postal Service. Service by agent or by courier receipted delivery shall be complete upon delivery to the agent or courier. Service by facsimile transmission shall be complete upon actual receipt by the recipient's telecopier or facsimile transfer machine.

(c) Evidence of Service. A return receipt or affidavit of any person having personal knowledge of the facts shall be prima facie evidence of the facts shown thereon relating to service. A party may present other evidence to demonstrate facts relating to service.

(d) Certificate of Service. Every document required to be served on all parties pursuant to subsection (a) of this section shall contain the following or similar certificate of service: "I, (name) (title) certify that a copy of this document was

served on all parties of record in this proceeding on (date) in the following manner: (specify method). Signed, (signature)". The certificate of service shall include a list of the parties, unless otherwise ordered by the presiding examiner.

§22.75. Examination and Correction of Pleadings.

(a) Construction of Pleadings. All pleadings shall be construed so as to do substantial justice.

(b) Procedural Sufficiency of Pleadings. Any pleading that does not comply in all material respects with this chapter, shall nevertheless be conditionally accepted for filing. Upon notification by the presiding examiner of a deficiency in pleadings, the pleading party shall correct or complete the pleading in accordance with the notification. If the pleading party fails to correct the deficiency, the pleading may be stricken from the record.

(c) Notice of Material Deficiencies in Rate Change Applications. This subsection applies to applications for rate changes filed pursuant to PURA, §43.

(1) Motions to find a rate change application materially deficient shall be filed no later than 21 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find a rate change application materially deficient shall be filed no later than five working days after such motion is received.

(2) If within 35 days after filing of a rate change application, the presiding examiner has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.

(3) If the presiding examiner determines that material deficiencies exist in an application, the presiding examiner shall issue a written order within 35 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. The effective date of the proposed change will be 35 days after the filing of a sufficient application. The statutory deadlines shall be calculated based on the date of filing the sufficient application.

(d) Notice of Material Deficiencies in Applications For Certificates of Convenience and Necessity for Transmission Lines. This subsection applies to applications for certificates of convenience and necessity for transmission lines.

(1) Motions to find an application for certificate of convenience and ne-

cessity for transmission line materially deficient shall be filed no later than 60 days after an application is filed. Such motions shall specify the nature of the deficiency and the relevant portions of the application, and cite the particular requirement with which the application is alleged not to comply. The applicant's response to a motion to find an application for certificate of convenience and necessity for transmission line materially deficient shall be filed no later than 15 days after such motion is received.

(2) If, within 90 days after filing of an application for certificate of convenience and necessity for transmission line, the presiding examiner has not issued a written order concluding that material deficiencies exist in the application, the application shall be deemed sufficient.

(3) If the presiding examiner determines that material deficiencies exist in an application, the presiding examiner shall issue a written order within 90 days of the filing of the application specifying a time within which the applicant shall amend its application and correct the deficiency. Any statutory deadlines shall be calculated based on the date of filing the sufficient application.

(e) Additional Requirements. Additional requirements as set forth in §22.76 of this title (relating to Amended Pleadings) apply.

§22.76. Amended Pleadings.

(a) Filing Amended Pleadings. Any pleading may be amended at any time before notice of the docket as required by §22.51 and §22.52 of this title (relating to Notice) is given. After notice of a proceeding has been provided, a pleading may be amended with leave of the presiding examiner, provided that the amended pleading is served upon all parties, is filed at least seven days before the hearing on the merits, and does not seek relief for which notice in accordance with this chapter has not been provided. If an amended pleading seeks a new type of relief for which notice in accordance with this chapter has not been provided, the presiding examiner may sever the issue from the proceeding. Any pleading offered for filing within seven days of the date of hearing or thereafter will be considered by the presiding examiner only if there is a showing of good cause for such filing and that consideration of such filing will not unduly delay the proceeding by injecting issues to which the remaining parties may be entitled to respond. If additional notice is required or additional time needed for opposing parties to respond to proposed pleadings, the presiding examiner may order such additional notice or time as is reasonable under the circumstances.

(b) Amendments to Conform to Issues Tried at Hearing Without Objection.

When issues not raised by the pleadings are tried or otherwise heard or argued at hearing by express consent of the parties or implied consent of the parties, upon a determination by the presiding examiner that no prejudice to any of the parties will occur, the issues shall be treated in all respects as if they had been raised in the pleadings. Amendment of the pleadings to conform them to the evidence may be made with leave of the presiding examiner upon any party's motion until the close of evidence, but failure to so amend shall not affect whether the issues may be properly considered by the presiding examiner.

§22.77. Motions.

(a) General Requirements. A motion shall be in writing, unless the motion is made on the record at a prehearing conference or hearing. It shall state the relief sought and the specific grounds supporting a grant of relief. If the motion is based upon alleged facts that are not a matter of record, the motion shall be supported by an affidavit. Written motions shall be served on all parties in accordance with §22.74 of this title (relating to Service of Pleadings).

(b) Time for Response. The time for responding to motions is governed by §22.78 of this title (relating to Responsive Pleadings and Emergency Action), unless otherwise provided by the presiding examiner, commission rule, or statute.

(c) Rulings on Motions. The presiding examiner shall serve orders ruling on motions upon all parties, unless the ruling is made on the record in a hearing or prehearing conference open to the public.

§22.78. Responsive Pleadings and Emergency Action.

(a) General Rule. Unless otherwise specified by statute, by this chapter, or by order of the presiding examiner, a responsive pleading, if made, shall be filed by a party within five working days after receipt of the pleading to which the response is made.

(b) Responses to Complaints. Unless otherwise specified by statute, by this chapter, or by order of the presiding examiner, responsive pleadings to complaints filed to initiate a proceeding need not be filed by the respondent. This subsection does not apply to complaints filed pursuant to PURA, §42.

(c) Emergency Action. Unless otherwise precluded by law or this chapter, the presiding examiner may take action on a pleading before the deadline for filing responsive pleadings when necessary to prevent or mitigate imminent harm or injury to persons or to real or personal property. Action taken pursuant to this subsection is

subject to modification based on a timely responsive pleading.

(d) Section 42 Investigations or Complaints. In a complaint proceeding filed pursuant to PURA, §42, the presiding examiner shall determine the scope of the response that the utility shall be required to file, up to and including the filing of a full rate filing package. The examiner shall also set an appropriate deadline for the utility's response. In no event shall the deadline for filing a response be less than 120 days if a full rate filing package is required, or less than 30 days if a full rate filing package is not required.

§22.79. Continuances.

Unless otherwise ordered by the presiding examiner, motions for continuance shall be in writing and shall be filed not less than five days prior to the hearing or other deadline for acts required or allowed to be done. Motions for continuance shall set forth the specific grounds for which the moving party seeks continuance and shall make reference to all other motions for continuance filed by the moving party in the proceeding. The moving party shall attempt to contact all other parties and shall state in the motion each party that was contacted and whether that party objects to the relief requested. The moving party shall have the burden of proof with respect to the need for the continuance at issue. Continuances will not be granted on the need for discovery if the party seeking the continuance previously had the opportunity to obtain discovery from the person from whom discovery is sought, except when necessary due to surprise or discovery of facts or evidence which could not have been discovered previously through reasonably diligent effort by the moving party. The presiding examiner shall grant continuances agreed to by all parties provided that any applicable statutory deadlines are extended as may be necessary. Nothing in this section precludes parties who have issued or who are responding to discovery requests from agreeing to extensions of time to respond or to object to the discovery.

§22.80. Commission Prescribed Forms.

The commission may require that certain reports and applications be submitted on standard forms. The commission filing clerk shall maintain a complete index to and set of all commission forms. All pleadings that are the subject of an official form shall contain all matters designated in the official form and shall conform substantially to the official form. Prior to the implementation of any new form or significant change to an existing form, the change or new form shall be referenced in the "In Addition Section" of the *Texas Register* for public comment. For good cause, new forms or significant changes to existing forms may be implemented on an interim

basis without publication for a period not to exceed 180 days.

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

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Subchapter F. Parties

• 16 TAC §§22.101-22.105

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.101. Representative Appearances.

(a) Generally. Any person may appear before the commission or in a hearing in person or by authorized representative. The presiding examiner may require a representative to submit proof of his or her authority to appear on behalf of another person. The authorized representative of a party shall specify the particular persons or classes of persons the representative is representing in the proceeding.

(b) Lead Counsel. A party represented by more than one attorney or authorized representative in a matter before the commission may be required to designate a lead counsel who is authorized to act on behalf of all of the party's representatives, but all other attorneys or authorized representatives for the party may take part in the proceeding in an orderly manner, as ordered by the presiding examiner.

§22.102. Classification of Parties.

(a) Parties. Parties to proceedings before the commission shall be classified into the following categories:

- (1) applicants, or complainants;
- (2) respondents;
- (3) intervenors; and
- (4) general counsel.

(b) Rights of Parties. Subject to the alignment of parties pursuant to §22.105 of this title (relating to Alignment of Parties), parties to proceedings have the right to present a direct case, cross-examine all witnesses, conduct discovery, make oral or written legal arguments, and otherwise fully

participate in any proceeding. The general counsel shall have no right to seek judicial review of any commission decision.

(c) Protestants. Any person that has not intervened in a proceeding, or who has been denied permission to intervene, shall not be considered a party. The presiding examiner may allow oral or written comments to be made by protestants.

§22.103. Standing to Intervene.

(a) General Counsel. The general counsel shall have standing in all proceedings before the commission, and need not file a notice of intervention.

(b) Standing to Intervene of Certain Persons. A person specified in this subsection has standing to intervene in certain commission proceedings as set forth in this section. In proceedings in which such person has standing and wishes to participate, the person shall file a notice of intervention within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule or order of the presiding examiner. A person that has standing to intervene but fails to timely file a notice of intervention may move to intervene pursuant to §22.104(d) of this title (relating to Motions to Intervene).

(1) Municipalities. A municipality shall have standing in all cases before the commission regarding utilities that provide service within the municipality's corporate limits or in any other case in which a statute confers a right to participate upon a municipality, subject to the right of the commission to determine standing in cases involving retail service area disputes involving two or more utilities and, as set forth in §22.105 of this title (relating to Alignment of Parties), to align municipalities for participation in hearings. In any other proceeding, a municipality must file a motion to intervene as set forth in §22.104 of this title.

(2) Office of Public Utility Counsel. The Office of Public Utility Counsel may appear or intervene in commission proceedings as provided in PURA, §15A.

(c) Standing to Intervene of Other Persons. Such persons must file a motion to intervene and be recognized as a party under §22.104 of this title in order to participate as a party in a commission proceeding. Any person not mentioned in subsection (b) of this section has standing to intervene if that person:

(1) has a right to participate which is expressly conferred by statute, commission rule or order or other law; or

(2) has a justiciable interest which may be directly affected by the outcome of the proceeding.

§22.104. Motions to Intervene.

(a) Necessity for Filing Motion to Intervene. Applicants, complainants, and respondents, as defined in §22.2 of this title (relating to Definitions), are necessary parties to proceedings which they have initiated or which have been initiated against them, and need not file motions to intervene or notices of intervention in order to participate as parties in such proceedings.

(b) Time for Filing Motion. Motions to intervene shall be filed within 45 days from the date an application is filed with the commission, unless otherwise provided by statute, commission rule, or order of the presiding examiner. The deadline for filing a motion to intervene in a licensing or notice of intent proceeding shall be 70 days after the application is filed. The motion shall be served upon all parties to the proceeding and upon all persons that have pending motions to intervene.

(c) Rights of Persons With Pending Motions to Intervene. Persons who have filed motions to intervene shall have all the rights and obligations of a party pending the presiding examiner's ruling on the motion to intervene.

(d) Late Intervention.

(1) A motion to intervene that was not timely filed may be granted. In acting on a late filed motion to intervene, the presiding examiner shall consider:

(A) any objections that are filed;

(B) whether the movant had good cause for failing to file the motion within the time prescribed;

(C) whether any prejudice to, or additional burdens upon, the existing parties might result from permitting the late intervention;

(D) whether any disruption of the proceeding might result from permitting late intervention; and

(E) whether the public interest is served by allowing the intervention.

(2) The presiding examiner may impose limitations on the participation of an intervenor to avoid delay and prejudice to the other parties.

(3) Except as otherwise ordered, an intervenor shall accept the procedural schedule and the record of the proceeding as it existed at the time of filing the motion to intervene.

§22.105. Alignment of Parties. Parties, except for the Office of Public Utility Counsel and the General Counsel, may be aligned for the purposes of participating in a hearing if the parties have the same positions on issues of fact or law. To the extent alignment is determined to be necessary, the presiding examiner shall order alignment of the parties at the earliest reasonable opportunity so as to avoid unnecessary duplication of effort and to allow aligned parties an adequate opportunity to prepare for hearing. The presiding examiner may limit the number of representatives of aligned parties who conduct cross-examination of any particular witness during the hearing on the merits.

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

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Subchapter G. Prehearing Proceedings

• 16 TAC §§22.121-22.126

The new sections are proposed under Texas Civil Statutes, Article 1448c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.121. Prehearing Conferences. The presiding examiner shall schedule prehearing conferences as necessary for the efficient management of the proceeding. The presiding examiner shall conduct prehearing conferences for any appropriate purpose, including consideration of the following:

- (1) motions and other preliminary matters related to the proceeding, including notice, discovery, and procedural schedules;
- (2) settlement of the case, or clarification and simplification of the issues;
- (3) the necessity or desirability of amended pleadings;
- (4) the possibility of obtaining stipulations that would avoid the unnecessary introduction of evidence;
- (5) evidentiary matters, including a request for interim relief;
- (6) the specific procedures to be followed at the hearing;

(7) the scheduling of the hearing on the merits; and

(8) any other matters as may assist in the disposition of the proceeding in a fair and efficient manner.

§22.122. Interim Orders.

(a) In General. The presiding examiner shall issue interim orders covering procedural and discovery matters, requests for interim relief, and such other matters as may aid in the conduct of the hearing and the efficient and fair disposition of the proceeding. Interim orders may be written or stated orally on the record.

(b) Interim and Bonded Rates. Interim and bonded rates are governed not by this section, but by §22.125 and §22.126 of this title (relating to Interim Rate Relief; Bonded Rates).

§22.123. Appeal of an Interim Order.

(a) Availability of Appeal. Appeals are available for any order of the presiding examiner that immediately prejudices a substantial or material right of a party, or materially affects the course of the hearing, other than evidentiary rulings. Interim orders shall not be subject to exceptions or application for rehearing prior to issuance of an examiner's report.

(b) Procedure for Appeal. If the presiding examiner intends to reduce an oral ruling to a written order, the presiding examiner shall so indicate on the record at the time of the oral ruling and shall promptly issue the written order. Any appeal to the commission from an interim order shall be filed within 10 days of the issuance of the written order or the appealable oral ruling. The appeal shall be served on all parties by hand delivery, facsimile transmission, or by overnight courier delivery.

(c) Contents. An appeal shall specify the reasons why the interim order is unjustified or improper.

(d) Responses. Any response to an appeal shall be filed within five working days of the filing of the appeal.

(e) Motion for Stay. Pending a ruling by the commissioners, the presiding examiner may, upon motion, grant a stay of the interim order. A motion for a stay shall specify the basis for a stay. Good cause shall be shown for granting a stay. The mere filing of an appeal shall not stay the interim order or the procedural schedule.

(f) Agenda Ballot. Upon filing of an appeal, the director of hearings shall send separate ballots to each commissioner to determine whether they will consider the appeal at an open meeting. The presiding examiner shall notify the parties by tele-

phone and letter that a majority of the commission by individual ballot has added the appeal to a final order meeting agenda.

(g) Denial. If after 10 days of the filing of an appeal, the commissioners have not, by agenda ballot, placed the appeal on the agenda of an open meeting, the appeal is deemed denied. The commissioners shall rule on the interim order within 20 days of the filing of the appeal. If the commissioners do not rule on the appeal within 20 days of its filing, or extend the time for ruling, the interim order is deemed approved and any granted stay is lifted.

(h) Reconsideration. The presiding examiner may treat an appeal as a motion for reconsideration and may withdraw or modify the order under appeal prior to a commission decision on the appeal.

§22.124. Prehearing Statements.

(a) Prehearing Statements Required. Each party shall file a prehearing statement no later than three days before the start of a hearing unless the presiding examiner determines that such a requirement would add unjustified burden and expense to the proceeding, or that a different deadline should be imposed. In accordance with §22.161 of this title (relating to Sanctions), the presiding examiner may, pursuant to §22.161 of this title, sanction any party who fails to comply with the requirement that a prehearing statement be filed.

(b) Contents of Prehearing Statement. Unless otherwise provided by order of the presiding examiner, the prehearing statement shall contain the following information:

- (1) a concise statement of the party's position in the proceeding;
- (2) a concise statement of each question of fact, law, or policy the party considers at issue;
- (3) a concise statement of the party's position on each issue identified pursuant to paragraph (2) of this subsection;
- (4) a statement of issues that have been resolved by agreement of the parties, including agreements that do not include all parties;
- (5) a statement of all pending motions or other matters upon which the party seeks action;
- (6) a statement as to any requirement set forth in the prehearing order that cannot be complied with, and the reasons therefore; and
- (7) such other information as will aid in achieving an orderly disposition of the proceeding.

§22.125. Interim Rate Relief.

(a) Availability. Interim rate relief is not available for tariff filings.

(b) Requests for Interim Rates. A request for interim rates shall be filed no later than 30 days before the interim rates are proposed to take effect, unless all parties agree to a later filing date.

(c) Consideration of Request for Interim Rates. Interim rate relief may be granted based on the agreement of all parties. The presiding examiner may, after notice and opportunity for hearing, grant a contested request for interim rate relief only on a showing of good cause. In determining whether good cause exists, the presiding examiner shall take into account:

(1) the utility's ability to anticipate the need for and obtain final approval of rate relief prior to the time relief is reasonably needed;

(2) other remedies, such as bonded rates, available under law;

(3) changed circumstances indicating that the utility's current rates may no longer be just and reasonable;

(4) the effect of granting the request on the parties and the public interest; and

(5) any other relevant factors as determined by the presiding examiner.

(d) Standard and Burden of Proof. Pursuant to PURA, §40, in any proceeding involving a proposed interim change in rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable, shall be on the utility. In any proceeding at which a local exchange company's rate or rates are at issue, the burden of proof that such rate or rates are just and reasonable shall be on the local exchange company.

(e) Refunds and Surcharges. Interim rates shall be subject to refund or surcharge to the extent the rates ultimately established differ from the interim rates.

§22.126. Bonded Rates. During the pendency of its rate proceeding, a utility seeking to implement rates under bond pursuant to PURA, §43(e) shall file an original and 10 copies of its application for approval of bond at least two weeks prior to the date the bonded rates are to be effective. The application shall conform to the requirements of Subchapter B, regarding Pleadings. The bond shall be in an amount equal to or greater than one-sixth of the annual difference between the utility's current rates and the bonded rates. The bond must be approved by the director of hearings as to sufficiency based on the commission staff's

review of the utility's application. Any decision by the director of hearings either approving or disapproving a bond is appealable to the commission pursuant to §22.123 of this title (relating to Appeal of an Interim Order).

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

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Subchapter H. Discovery Procedures

• 16 TAC §§22.141-22.145

The new sections are proposed under Texas Civil Statutes, Article 1448c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.141. Forms and Scope of Discovery.

(a) Scope. Parties may obtain discovery regarding any matter, not privileged or exempted under the Texas Rules of Civil Evidence, the Texas Rules of Civil Procedure, or other law or rule, that is relevant to the subject matter in the proceeding. Discoverable matters include the existence, description, nature, custody, condition, location, and contents of any documents, including papers, books, accounts, drawings, graphs, charts, photographs, electronic or videotape recordings, and any other data compilations from which information can be obtained and translated, if necessary, by the person from whom information is sought, into reasonably usable form, and any other tangible things which constitute or contain matters relevant to the subject matter in the action, and the identity and location of persons having any knowledge of any discoverable matter. Discovery is not limited to tangible things, but may extend to knowledge, mental impressions, and opinions of persons who will testify; explanations of documents or tangible things, or information contained therein; and other relevant information within the knowledge or control of the entity from whom discovery is sought. A person is not required to produce a document or tangible thing unless it is within that person's constructive or actual possession, custody, or control. A person has possession, custody, or control of a

document or tangible thing as long as the person has a superior right to compel the production from a third party and can obtain possession of the document or tangible thing with reasonable effort.

(b) Discovery Methods. Parties may obtain discovery by requests for information, which include requests for inspection or production of documents or things, requests for admissions, and depositions by oral examination.

(c) Stipulations Regarding Discovery Procedure. The parties may, by written agreement:

(1) provide that depositions may be taken at any time or place, upon any notice, and in any manner and when so taken may be used like other depositions;

(2) agree to extensions of time in which to respond to or object to a discovery request; and

(3) modify the procedures provided by this chapter for other methods of discovery.

§22.142. Limitations on Discovery and Protective Orders.

(a) Limitation of Discovery Requests. The presiding examiner may limit discovery, by order, to protect a party against unreasonable or unwarranted discovery requests.

(1) The presiding examiner may issue an order limiting discovery requests for good cause, including the following purposes:

(A) prevention of undue delay in the proceeding;

(B) protection from a request to provide information which is readily available to the requesting party at a reasonable cost;

(C) protection from unreasonably cumulative or duplicative discovery requests; or

(D) protection of a party or other person from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.

(2) Any person from whom discovery is sought may file a motion for a protective order, specifying the grounds on which a protective order is justified. Motions or responses shall include affidavits, discovery pleadings, or other pertinent documents to support the allegations made therein.

(3) The presiding examiner may order that:

(A) specific discovery not be sought in whole or in part, or that the extent or subject matter of discovery be limited, or that it not be undertaken at the time or place specified;

(B) discovery be undertaken only by such method or upon such terms and conditions or at the time and place directed by the presiding examiner;

(C) for good cause shown, results of discovery be sealed or otherwise adequately protected, that its distribution be limited, or that its disclosure be restricted;

(D) information or material be protected by any means consistent with the intent of this chapter; or

(E) information or material be protected in the interest of justice if necessary to protect the party from undue burden, unnecessary expense, harassment or annoyance, or invasion of personal, constitutional, or property rights.

(b) Protection of Confidential or Proprietary Information. The presiding examiner may issue a protective order governing the production of confidential or proprietary information as is appropriate in each proceeding before the commission. In addition, the parties may enter into agreements regarding protection of confidential or proprietary information. Entry of a protective order is not a determination that any documents produced under the protective order are proprietary or confidential.

§22.143. Depositions.

(a) Governing Statute. The taking and use of depositions in any proceeding shall be governed by APTRA. A request to issue a commission for deposition shall be filed no later than five working days before the date of the deposition. Issuance of a commission for deposition is a ministerial act and does not preclude requests for issuance of a protective order pursuant to §22.142 of this title (relating to Limitations on Discovery and Protective Orders).

(b) Deposition By Agreement. Upon agreement of the parties, parties may waive the requirement of issuance of a commission. All parties shall be given no less than three working days notice of depositions, including the person to be deposed, the date, time, and place of the deposition, and the subject of the deposition.

(c) Copy to Be Provided. Upon receipt of a transcript of the deposition by the

party, the party conducting the deposition shall provide a copy of the transcript to the general counsel.

(d) Agreements. An agreement affecting a deposition upon oral examination is also enforceable if the agreement is recorded in the deposition transcript.

§22.144. Requests for Information and Requests for Admission of Facts.

(a) Availability. At any time after an application is filed, and subject to the provisions of §22.141 of this title (relating to Forms and Scope of Discovery), any party may serve upon any other party written requests for information and requests for admission of fact.

(b) Making Requests for Information.

(1) Contents. A request under this section shall identify with reasonable particularity the information, documents or material sought. A request seeking inspection of documents or property shall describe with reasonable particularity the documents to be produced or the property to which access is requested, and shall set forth the items to be inspected by individual item or by category.

(2) Service. A copy of each request for information shall be served upon all parties to the proceeding. Requests for information may be served by facsimile transmittal only by agreement of the party from whom discovery is sought or if authorized by the presiding examiner. Requests for information that are received after 3 p.m. shall be deemed to have been received the following business day. Responses to requests for information shall be served on the requesting party and any party that has requested, in writing, to be served.

(c) Responding to Requests for Information.

(1) Time for Response. The party upon whom a request is served shall serve a full written response to the request within 20 days after receipt of the request. The presiding examiner, on motion and for good cause shown, may extend or shorten the time for providing responses.

(2) Requirements of Response.

(A) Each response to discovery under this subsection shall identify the preparer or person under whose direct supervision the response was prepared, and the sponsoring witness, if any.

(B) Each request for information shall be answered separately. Responses to requests for information shall be preceded by the request to which the answer pertains.

(C) Responses to requests for production of documents, property, or other items, shall state, for each item or category of items for which an objection has not been raised, that inspection or other requested action will be permitted at a mutually convenient time at the location where the documents, property, or other items are maintained. If compliance with the request is impossible, a written response shall be filed stating the reasons for the unavailability of the information.

(D) Where the response to a request for information may be derived or ascertained from public records, the responding party shall not be obligated to produce the documents for the requesting party. It shall be sufficient answer to identify with particularity the public records that contain the requested information.

(E) Where a request may be answered by production of or reference to information that currently exists in the form of a document, computer record, or other existing tangible thing that is voluminous, as defined in subsection (h) of this section, it is a sufficient answer to the request to specify the records from which the answer may be derived or ascertained and to afford a reasonable opportunity to the requesting party to examine, to audit or to inspect such records and to allow the requesting party to make copies, compilations, abstracts, or summaries from such records. The specification of records provided shall include sufficient detail to permit the requesting party to locate and to identify, as readily as can the responding party, the records from which the answers may be ascertained.

(F) Responses to requests for information shall be filed under oath, unless the responding party stipulates in writing that responses to requests for information can be treated by all parties as if the answers were filed under oath.

(d) Objections to Requests for Information. Objections to requests for information, if any, shall be filed within five working days of receipt of the request for information. The objections shall state the date the request for information was received.

(1) The objections shall be a separate pleading and entitled "Objections of (name of objecting party) to (style of RFI objected to)." The request for information to which an objection is being filed shall be stated and the specific grounds for the objection shall be separately listed for each question. If an objection pertains only to a part of a question, that part shall be clearly identified. All arguments upon which the

objecting party relies shall be presented in full in the objection.

(2) If the objection is founded upon a claim of privilege or exemption under Rule 166(b)(3) of the Texas Rules of Civil Procedure, the objecting party shall file within two working days of the filing of the objections, an index that lists, for each document: the date and title of the document; the preparer or custodian of the information; to whom the document was sent and from whom it was received; and the privilege(s) or exemption(s) that is claimed. A full and complete explanation of the claimed privilege or exemption shall be provided. The index shall be sufficiently detailed to enable the presiding examiner to identify the documents from the list provided. The index and explanations shall be public documents and shall be served on all parties who are entitled to receive copies of responses to requests for information under subsection (b)(2) of this section. If a document is to be provided pursuant to the terms of a protective order, the responding party need not comply with the procedures of this paragraph.

(3) A party raising objections on the grounds of relevance as well as grounds of privilege or exemption is not required to file an index to the privileged or exempt documents at the time the objections are filed. A party may instead include an objection to the filing of the index. The objections shall show good cause for postponement of the filing of the index. An index to the privileged or exempt documents shall be due within five working days of receipt of an order denying the relevance objection or overruling the objection to the filing of an index.

(4) The requirement to respond to those requests, or portions thereof, to which objection is made shall be postponed until the objections are ruled upon and for such additional time thereafter as the presiding examiner may direct.

(5) In the interests of narrowing discovery disputes, the responding party may agree to provide certain information sought by a request while objecting to the provision of other information sought by the request.

(e) Motions to Compel. Parties shall negotiate diligently and in good faith concerning any discovery dispute. If negotiation fails, the party seeking discovery shall file a motion to compel no later than seven working days after the objection is received. The motion to compel shall be supported by an affidavit stating that negotiations were conducted diligently and in good faith. Absence of a motion to compel will be construed as an indication that the parties have resolved their dispute. The presiding examiner may rule on the motion to compel

based on written pleadings without allowing additional argument.

(f) Responses to Motions to Compel. Responses to a motion to compel shall be filed within three working days after receipt of the motion, and shall include all factual and legal arguments the respondent wants to present regarding the motion.

(g) *In Camera* Inspection. If an objection is founded on a claim of privilege or an exemption under Rule 166(b)(3) of the Texas Rules of Civil Procedure, the burden is on the objecting party to request an *in camera* inspection and to provide the documents for review. Any request shall be filed within three working days of the receipt of the motion to compel. The request shall contain the factual and legal basis to support the claimed exemption or privilege. The objecting party shall provide the documents to the presiding examiner, under seal, no later than one working day after it requests an *in camera* inspection. Documents submitted for *in camera* review shall not be filed with the commission filing clerk. The objecting party shall review the documents and note with specificity any portions to which the claimed privilege or exemption claim does not apply.

(h) Production of Voluminous Material. The following procedures shall apply to production of voluminous materials.

(1) Responses to particular questions that consist of less than 100 pages are not voluminous and shall be provided in full.

(2) Subject to paragraph (3) of this subsection, the responding party shall make available all voluminous information provided in response to a request for information at a designated location in Austin.

(3) A party will be released from its obligation to make available the requested voluminous data at a designated location in Austin, only if the volume of the data exceeds eight linear feet of documents. In that event, the party shall make the information available where the documents are located.

(4) The party providing the voluminous material shall organize the responses and material to enable parties to efficiently review the documents, including labelling of material by request for information number and subparts.

(i) Duty to Supplement. A responding party is under a continuing duty to supplement its discovery responses if that party acquires information upon the basis of which the party knows or should know that the response was incorrect or incomplete when made, or though correct or complete when made, is materially incorrect or incomplete. The responding party shall amend its prior response within five working days of acquiring the information.

(j) Limitations on Number of Request. This subsection applies to dockets filed after the effective date of these rules. In major rate proceedings, proceedings initiated pursuant to PURA §42, fuel reconciliations, market dominance proceedings, petitions to declare a market subject to significant competition, and applications for licensing of new generating plant, no party may submit more than 500 Requests for Information to any other party. Where a docket involves more than one of the types of cases listed in this section, no party may submit more than 500 Requests for Information to any other party with respect to each such type of case included in the docket. In all other dockets, no party may submit more than 250 Requests for Information to any other party. Each subpart or subdivision calling for a response in a Request for Information shall be counted as a Request for Information. The presiding examiner may permit a party additional requests for information only on a showing of good cause.

(k) Requests for Admission of Facts. Requests for admission of facts shall be made in accordance with Rule 169 of the Texas Rules of Civil Procedure.

§22.145. Subpoenas.

(a) Issuance. Pursuant to APTRA, §14, the presiding examiner may issue a subpoena for the attendance of a witness or for the production of books, records, papers, or other objects. Motions for subpoenas to compel the production of books, records, papers, or other objects shall describe with reasonable particularity the objects desired and the material and relevant facts sought to be proved by them.

(b) Service and return. A subpoena may be addressed to the sheriff or any constable, who may serve the subpoena in any manner authorized by the Texas Rules of Civil Procedure; and service thereof may be accepted by any witness by a written memorandum, signed by such witness, attached to the subpoena, or by any other method authorized by the Texas Rules of Civil Procedure.

(c) Fees. Subpoenas shall be issued by the presiding examiner only after sums have been deposited to ensure payment of expense fees incident to the subpoenas. Payment of any such fees or expenses shall be made in the manner prescribed in APTRA §14.

(d) Motions to Quash. Motions to quash subpoenas shall be filed at least three working days before the date the witness is ordered to appear or the documents or other objects are ordered to be produced, unless the party ordered to respond to the subpoena shows that it was justifiably unable to file objections at that time.

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

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Subchapter I. Sanctions

• 16 TAC §22.161

The new section is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.161. Sanctions.

(a) Enforcement of Subpoenas or Commissions for Depositions. If a person fails to comply with the subpoena or commission for deposition issued by the presiding examiner, the commission or the party requesting the subpoena or commission for deposition may seek enforcement pursuant to APTRA.

(b) Imposition of Sanctions By A Hearings Examiner. If, after notice and opportunity for hearing, the hearings examiner finds a party violated §22. 3(d)(7) of this title (relating to Standards of Conduct), or abused the discovery process in seeking, making, or resisting discovery, or that any request, response, or answer is unreasonably frivolous, oppressive, harassing, or made for the purposes of delay, then the hearings examiner may impose sanctions for such abuse. Sanctions may include the following:

(1) recess or continue the hearing;

(2) disallow any further discovery of any kind or a particular kind by the disobedient party;

(3) disallow, in part or in whole, the disobedient party's presentation of evidence on issues that were the subject of the discovery request;

(4) rule that particular facts shall be regarded as established for the purposes of the proceeding in accordance with the claim of the party obtaining the discovery order;

(5) limit the disobedient party's right to participate in the proceeding;

(6) recommend to the commission that all or part of rate case expenses, including attorneys fees, be disallowed; and

(7) recommend to the commission for dismissal of the proceeding, institution of civil action, or any other sanction available to the commission by law.

(c) Imposition of Sanctions By The Commission. In addition to the sanctions listed in subsection (b) in this section that may be imposed by a hearings examiner, the commission, after notice and opportunity for hearing, may impose sanctions including:

(1) disallow the disobedient party's rights to participate in the proceeding;

(2) dismiss the application with or without prejudice;

(3) institute civil action; or

(4) impose any other sanction available to the commission by law.

(d) Imposition of Sanctions Against Representative of a Party. If the person disobeying an order compelling discovery is an agent, officer, employee, attorney, partner, or director of a party, the presiding examiner may take any of the actions described in subsections (b) or (c) of this section against that party based on the conduct of the agent, officer, employee, attorney, partner, or director, regardless of whether the person had actual authority to engage in the disobedient conduct.

(e) Procedure. A motion for sanctions may be filed at any time during the proceeding or may be initiated sua sponte by the presiding examiner. A motion to compel discovery is not a prerequisite to the filing of a motion for sanctions. A motion should contain all factual allegations necessary to apprise the parties and the hearings examiner or commission of the disobedient conduct and should request specific relief. A motion shall be served on all parties. Upon receipt of the motion, a hearing shall be held on the motion. Any order regarding sanctions issued by a hearings examiner shall be appealable pursuant to §22.123 of this title (relating to Appeal of an Interim Order).

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

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Subchapter J. Summary Proceedings

• 16 TAC §22.181, §22.182

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.181. Dismissal of a Proceeding.

(a) Motions for Dismissal.

(1) Upon the motion of the presiding examiner or the motion of any party, the presiding examiner may recommend that the commission dismiss, with or without prejudice, any proceeding without an evidentiary hearing, for any of the following reasons:

(A) lack of jurisdiction;

(B) moot questions or obsolete petitions;

(C) res judicata;

(D) collateral estoppel;

(E) unnecessary duplication of proceedings;

(F) failure to prosecute;

(G) failure to state a claim for which relief can be granted; or

(H) other good cause shown.

(2) The party that initiated the proceeding shall have 20 days to respond to a motion to dismiss. If a hearing on the motion to dismiss is held, that hearing shall be confined to the issues raised by the motion to dismiss.

(3) If the presiding examiner determines that the proceeding should be dismissed, the presiding examiner shall prepare an Examiner's Report to that effect and, if requested, shall set an expedited schedule for exceptions and replies. The commission shall consider the Examiner's Report as soon as is practicable.

(b) Withdrawal of application. An applicant, complainant, or other party that initiated a proceeding has the right to withdraw its application, petition, or complaint, without prejudice to refiling of same, at any time prior to the signing of a final order thereon by the commission. If an application is withdrawn, the presiding examiner shall issue an order of dismissal without prejudice.

§22.182. Summary Decision.

(a) Motion for Summary Decision. The presiding examiner may grant a motion for summary decision on any or all issues to the extent that the pleadings, affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record show that there is no genuine issue as to any material fact and that the moving party is entitled to a decision in its favor, as a matter of law, on the issues expressly set forth in the motion.

(b) Filing and Contents of Motion. Any party to a proceeding may move for summary decision on any or all of the issues. The motion may be filed at any time before the close of the hearing on the merits. The party filing the motion shall demonstrate that the issue or issues may be resolved by summary decision in accordance with the standard set forth in subsection (a) of this section. Affidavits in support of the motion shall be based on personal knowledge and shall set forth such facts as would be admissible in evidence. A motion for summary decision shall specifically describe the facts upon which the request for summary decision is based, the information and materials which demonstrate those facts, and the laws or legal theories that entitle the movant to summary decision.

(c) Response to Motion. Any response to a motion for summary decision shall be filed within the time set by the presiding examiner. A party opposing the motion shall show, by affidavits, materials obtained by discovery or otherwise, admissions, matters officially noticed, or evidence of record, that there is a genuine issue of material fact for determination at the hearing, or that summary decision is inappropriate as a matter of law.

(d) Hearing on the Motion. If appropriate, the presiding examiner shall set the motion for hearing.

(e) No Further Hearing. No further evidentiary hearing shall be held on issues for which summary decision has been granted. The presiding examiner will issue an Examiner's Report or interim order on the issues recommended to be resolved by summary decision. Parties may file exceptions and replies to exceptions to an Examiner's Report recommending resolution of issues by summary decision. An order granting or denying partial summary decision is appealable to the commission.

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

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Subchapter K. Hearings

• 16 TAC §§22.201-22.205

The new sections are adopted under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.201. *Place and Nature of Hearings.* All evidentiary hearings shall be held in Austin, unless the commission determines that it is in the public interest to hold a hearing elsewhere. The commission may, when it is in the public interest, hold regional hearings to obtain public comment.

§22.202. *Presiding Examiner.*

(a) Presiding Examiner to Conduct Hearings. Hearings in contested cases shall be conducted by one or more presiding examiners. The presiding examiner has the decision making authority set out in the commission rules, APTRA, and PURA.

(b) Commission May Preside Over Any Hearing. The commission has the authority to conduct any prehearing conference and hearing on any proceeding. The commission may conduct the entire hearing, or it may preside over a hearing in progress, in which case the commissioners shall read the record established to that date. Rulemaking hearings may be conducted by the commission or its designee.

(c) Authority of Presiding Examiner. The presiding examiner has broad discretion in conducting the course, conduct, and scope of the hearing. The presiding examiner's authority includes, but is not limited to, the power to administer oaths and affirmations; call and examine witnesses; receive evidence and testimony; rule upon the admissibility of evidence and amendments to pleadings; issue subpoenas; issue discovery, procedural, and scheduling orders; impose sanctions; compel the attendance of witnesses and the production of documents; authorize the taking of depositions; re-open the record, prior to the issuance of an examiner's report, for additional evidence where it is necessary to make the record correct, accurate, and complete; make proposed findings of fact and conclusions of law; make proposed orders; issue interim orders; recess any hearing from time-to-time; and take any other action not prohibited by law or by commission rule which is necessary for an efficient and fair hearing.

(d) Conduct of Hearing. The presiding examiner shall rule expeditiously on all motions and objections made at the hearing. The presiding examiner shall conduct the hearing in such a manner to secure fairness in administration, eliminate unjustifiable delay, and promote the development of the record consistent with the applicable laws. The presiding examiner shall endeavor to limit the presentation of evidence that creates an unfair prejudice, confuses the issues, or causes undue delay or needless presentation of cumulative evidence, and shall:

(1) set reasonable times for a party to present evidence, including oral testimony of its own witnesses and cross-examination of other party's witnesses;

(2) establish the order in which parties will present evidence and conduct cross-examination;

(3) limit the number of witnesses to avoid cumulative or repetitious testimony;

(4) limit the time allowed for cross-examination; and

(5) order the presentation of cumulative evidence discontinued.

(e) Replacement. If at any time a presiding examiner is unable to continue presiding over a case, the director of hearings may appoint a substitute presiding examiner who shall perform any function remaining to be performed without the necessity of repeating any previous proceedings. The substitute presiding examiner shall read the record of the proceedings that occurred prior to his or her appointment before issuing an Examiner's Report or recommended findings of fact and conclusions of law.

§22.203. *Order of Procedure.*

(a) Opening the evidentiary hearing. The presiding examiner shall open the hearing by making a concise statement of its scope and purposes and by taking appearances of each party or the party's authorized representative.

(b) Order of Procedure in Evidentiary Hearings.

(1) The party with the burden of proof on the whole proceeding shall be entitled to open and to close. Parties shall be allowed to make opening statements. Following opening statements, if any, the party with the burden of proof shall be allowed to proceed with its direct case. Opposing parties shall be allowed to cross-examine each witness, consistent with any order aligning parties. Each party shall then present its case and witnesses will be subjected to cross-examination. Unless otherwise ordered by the presiding examiner for

good cause, the general counsel shall be the last party to present a direct case.

(2) Redirect or recross examination will be limited to matters raised in the round of examination immediately preceding the redirect or recross examination.

(3) The party with the burden of proof may rebut evidence presented by opposing parties after all parties have presented their direct cases. Rebuttal may be afforded other parties at the presiding examiner's discretion, provided that the party with the burden of proof shall be entitled to make the closing presentation, which may include surrebuttal.

(4) The presiding examiner may allow supplemental rebuttal only to the extent that the party with the burden of proof could not have reasonably anticipated the need for such evidence in time to file it with the party's main rebuttal case. Oral supplemental rebuttal may be allowed, provided that the testimony is in response to matters first brought up in cross examination of a nonapplicant witness and only to the extent that the applicant could not have reasonably anticipated the need for such evidence in time to file it in written form. If a party intends to present supplemental rebuttal, it shall state in writing or on the record at the beginning of the presentation of its rebuttal case which witnesses will be presenting supplemental rebuttal, the general subject of the supplemental rebuttal, the evidence which the supplemental rebuttal is intended to rebut, and which rebuttal, if any, will be oral rather than written. Written supplemental rebuttal, if allowed, shall be filed no later than five working days after the date the evidence being rebutted was admitted. Oral supplemental rebuttal shall be limited to evidence offered to rebut evidence admitted less than five working days before the oral supplemental rebuttal is offered. Any exhibits offered during oral supplemental rebuttal shall be distributed to the presiding examiner and the parties at the beginning of the applicant's rebuttal case, unless otherwise ordered by the presiding examiner. A party may be exempted from the requirements of this subparagraph only upon a showing that compliance is not feasible.

(5) After parties have completed the presentation of evidence, and have been afforded the opportunity to cross-examine the other parties' witnesses, closing statements shall be allowed. Such statements shall be made either in writing or orally at the presiding examiner's discretion.

(6) The presiding examiner may question any witness testifying in a case. A party may raise an evidentiary objection to any question asked by the presiding examiner, and the presiding examiner shall rule on any such objection.

(7) Subject to the requirements of APTRA, the presiding examiner may call upon any party for further material or relevant evidence on any issue before issuing an examiner's report. The additional evidence shall not be admitted without an opportunity for inspection, objection, and cross-examination by all parties, and rebuttal by the party with the burden of proof on the whole proceeding.

§22.204. *Transcript and Record.*

(a) Preparation of Transcript. When requested by any party to a proceeding, a stenographic record of all proceedings before a presiding examiner in any prehearing conference or hearing, including all evidence and argument, shall be made by an official reporter appointed by the commission. It is the responsibility of the party desiring the stenographic record to arrange for the official reporter to be present.

(b) Purchase of Copies. A party may purchase a copy of the transcript from the official reporter at rates set by the commission.

(c) Corrections to Transcript. Proposed written corrections of purported errors in a transcript shall be filed and served on each party of record, the official reporter, and the presiding examiner within a reasonable time after the discovery of the error. The presiding examiner may establish time limits for proposing corrections. If no party objects to the proposed corrections within 12 days after filing, the presiding examiner may direct that the official reporter correct the transcript as appropriate. In the event that the presiding examiner or a party disagrees on suggested corrections, the presiding examiner may hold a posthearing conference and take evidence and argument to determine whether, and in what manner, the record shall be changed.

(d) Contents of Record. The record in a contested case comprises those items specified in APTRA.

§22.205. *Briefs.* Briefs shall conform, where practicable, to the requirements set forth for formatting pleadings in this chapter. Briefs in excess of 10 pages shall contain a table of contents with page numbers stated. The presiding examiner may require parties to address certain issues, or address issues in a specific order or format. If the legal authority cited in the briefs is not contained in the commission library, a copy of the legal authority shall be provided at the time the brief is filed.

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Subchapter L. Evidence and Exhibits in Contested Cases

• 16 TAC §§22.221-22.228

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.221. *Rules of Evidence in Contested Cases.*

(a) Rules of Civil Evidence Apply. The Texas Rules of Civil Evidence as applied in nonjury civil cases in the courts of Texas shall be followed in contested cases. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under the Texas Rules of Civil Evidence, evidence not admissible under those rules may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

(b) Rules of Privilege and Exemption. The rules of privilege and exemption recognized by Texas law shall apply.

(c) Objections. Objections to evidentiary offers may be made, shall be ruled upon, and shall be noted in the record. Failure to object to evidence at the time it is offered constitutes a waiver of all objections to the evidence.

(d) Formal Exceptions Not Required. Formal exceptions to rulings made by the presiding examiner during a hearing are not required. It shall be sufficient that the party notified the presiding examiner of the grounds for the objection and desired ruling.

(e) Public Comment. Public comment is not part of the evidentiary record of a contested case.

§22.222. *Official Notice.*

(a) Facts Noticeable. Official notice may be taken of judicially cognizable facts not subject to reasonable dispute in that they are generally known within the jurisdiction of the commission or capable of accurate and ready determination by resort to sources whose accuracy cannot reason-

ably be questioned. In addition, official notice may be taken of generally recognized facts within the area of the commission's specialized knowledge.

(b) **Motions for Official Notice and Opportunity to Respond.** If a party intends to rely on matters officially noticed as part of that party's direct case, the motion for official notice shall be made by the deadline established for that party to prefile direct testimony or as directed by the presiding examiner. Otherwise, a party's motion for official notice shall be made prior to the conclusion of the evidentiary hearing unless made pursuant to §22.226(d) of this title (relating to Exhibits). Motions for official notice may be written or oral. The motion shall state with specificity the facts, material, records, or documents of which official notice is requested, and copies of such materials, records, or documents shall be provided to the presiding examiner and all parties. A party who opposes the motion shall have the opportunity to contest the requested action.

(c) **Notification of Materials Proposed to be Noticed.** The presiding examiner may propose to take official notice of facts, material, records, or documents authorized by APTRA, §14(q). The parties shall be notified in advance of the facts, material, records, or documents proposed to be officially noticed and shall be given the opportunity to contest the proposed action.

(d) **Judicial and Administrative Decisions, Commission Orders, Examiner's Reports, and Hearings Examiner's Orders.** Official notice shall not be taken of judicial and administrative decisions, commission orders, examiner's reports, and hearings examiner's orders for the purpose of citing such documents as precedent or as legal support for a position. A party may cite any part of such decisions, orders, and reports in its pleadings. Official notice may be taken of judicial and administrative decisions, commission orders, examiner's reports, and hearings examiner's orders for evidentiary purposes.

§22.223. *Witnesses to be Sworn.* Oral testimony in contested cases shall be presented under oath or affirmation administered by the presiding examiner or an official reporter.

§22.224. *Documentary Evidence.* A copy of a document may be admitted as evidence if authenticity is not questioned or is established by competent evidence. On request, parties shall have the opportunity to compare the copy with the original, unless it is not practicable or reasonable to do so. When numerous documents of a similar nature are offered, the presiding examiner may limit those admitted to a number of

documents which are representative, provided no party's rights are prejudiced thereby. The presiding examiner may require a party to abstract or summarize data from documents and to present the abstract or summary in exhibit form. All parties shall have the opportunity to examine the documents from which the abstract or summary is prepared. Such abstract or summary shall be admitted into evidence in lieu of the documents from which it was prepared only if all parties agree that the abstract or summary is accurate.

§22.225. *Written Testimony and Accompanying Exhibits.*

(a) **Pre-filing of testimony, exhibits, and objections.**

(1) Unless otherwise ordered by the presiding examiner upon a showing of good cause, the written direct and rebuttal testimony and accompanying exhibits of each witness shall be prefiled. Deposition testimony and responses to requests for information by an opposing party that a party plans to introduce as part of its direct case shall be filed at the time the party files its written direct testimony. The presiding examiner shall establish a date for filing of deposition testimony and requests for information that an applicant plans to introduce as part of its direct case.

(2) Deposition testimony and responses to requests for information that a party plans to introduce in support of its rebuttal case shall be filed at the time the party files its written rebuttal testimony.

(3) A party is not required to prefile documents it intends to use during cross examination except that the presiding examiner may require parties to identify documents that may be used during cross examination if it is necessary for the orderly conduct of the hearing.

(4) Objections to prefiled direct testimony and exhibits, including deposition testimony and responses to request for information, shall be filed on dates established by the presiding examiner and shall be ruled upon before or at the time the prefiled testimony and accompanying exhibits are offered. Objections to prefiled rebuttal testimony shall be filed pursuant to the schedule ordered by the presiding examiner.

(5) Nothing in this section shall preclude a party from using discovery responses in its direct or rebuttal case to the extent such responses were not received prior to the applicable deadline for pre-filing written testimony and exhibits.

(6) The testimony pre-filing schedule in a major §43 rate proceeding shall be established as set out in this subsection.

(A) Any utility filing an application to change its rates in a major rate proceeding shall file the written testimony and exhibits supporting its direct case on the same date that such statement of intent to change its rates is filed with the commission. As set forth in §22.243(b) of this title (relating to Rate Change Proceedings), the prefiled written testimony and exhibits shall be included in the rate filing package filed with the application.

(B) Other parties in the proceeding shall prefile written testimony and exhibits according to the schedule set forth by the presiding examiner. Except for good cause shown or upon agreement of the parties, the commission general counsel may not be required to file earlier than seven days prior to hearing.

(C) The presiding examiner shall establish dates for filing of rebuttal testimony.

(7) The presiding examiner shall establish a pre-filing schedule for §42 rate cases and for cases other than major rate proceedings. In proceedings that are not major rate proceedings, market dominance proceedings filed pursuant to PURA, §100(f), notice of intent proceedings, applications for certificates of convenience and necessity for new generating plant, or applications for fuel reconciliations, the applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

(8) The times for pre-filing set out in this section may be modified upon a showing of good cause.

(9) Late-filed testimony may be admitted into evidence if the testimony is necessary for a full disclosure of the facts and admission of the testimony into evidence would not be unduly prejudicial to any party. A party that intends to offer late-filed testimony into evidence shall, at the earliest opportunity, inform the presiding examiner, who shall establish reasonable procedures and deadlines regarding such testimony.

(b) **Admission of Prefiled Testimony.** Unless otherwise ordered by the presiding examiner, direct and rebuttal testimony shall be received in written form. The written testimony of a witness on direct examination or rebuttal, either in narrative or question and answer form, may be received as an exhibit and incorporated into the record without the written testimony being read into the record. A witness who is offering written testimony shall be sworn and shall be asked whether the written testi-

mony is a true and accurate representation of what the testimony would be if the testimony were to be given orally at the time the written testimony is offered into evidence. The witness shall submit to cross-examination, clarifying questions, redirect examination, and recross-examination. The presiding examiner may allow voir dire examination where appropriate. Written testimony shall be subject to the same evidentiary objections as oral testimony. Timely prefilling of written testimony and exhibits, if required under this section or by order of the presiding examiner, is a prerequisite for admission into evidence.

(c) **Supplementation of Prefiled Testimony and Exhibits.** Oral or written supplementation of prefiled testimony and exhibits may be allowed prior to or during the hearing provided that the witness is available for cross-examination. The presiding examiner may exclude such testimony if there is a showing that the supplemental testimony raises new issues or unreasonably deprives opposing parties of the opportunity to respond to the supplemental testimony. The presiding examiner may admit the supplemental testimony and grant the parties time to respond.

(d) **Tender and Service.** On or before the date the prefiled written testimony and exhibits are due, parties shall file the number of copies required by §22.71 of this title (relating to Filing of Pleadings and Other Materials), or other commission rule or order, of the testimony and exhibits with the commission filing clerk and shall serve a copy upon each party.

(e) **Withdrawal of Evidence.** Any exhibit offered and admitted in evidence may not be withdrawn except with the agreement of all parties and approval of the presiding examiner.

§22.226. Exhibits.

(a) **Form.** Exhibits to be offered in evidence at a hearing shall be of a size which will not unduly encumber the record. Whenever practicable, exhibits shall conform to the size requirements established by §22.72 of this title (relating to Formal Requisites of Pleadings To Be Filed with the Commission) The pages of each exhibit shall be consecutively numbered.

(b) **Marking and Exchanging Exhibits.** Each exhibit offered in evidence shall be marked for identification by the presiding examiner or official reporter, if one is present. Copies of the exhibit shall be furnished to the presiding examiner and distributed to each party present at the hearing at the time the exhibit is offered in evidence, or at an earlier time if ordered by the presiding examiner for the orderly conduct of the hearing.

(c) **Excluded Exhibits.** If the party offering an exhibit that has been identified, objected to, and excluded wishes to withdraw the offer, the presiding examiner shall permit the return of the exhibit to the party.

(d) **Late Exhibits.** Except as may otherwise be agreed to by the parties on the record prior to the close of the hearing, no exhibit shall be received in evidence in any proceeding after the hearing has been concluded except on the motion of the presiding examiner or for good cause shown on written motion of the party offering the evidence. If the admission into evidence of a late-filed exhibit is proposed, copies shall be served on all parties of record. Parties shall file pleadings in opposition to admission of late-filed exhibits within five working days of the filing of the motion requesting admission of the exhibit.

§22.227. **Offers of Proof.** When the presiding examiner excludes testimony or documentary evidence, the party offering the excluded material shall be permitted to make an offer of proof prior to the close of the hearing. The party may make the offer by dictating into the record or submitting in writing the substance of the proposed testimony or by tendering the documentary evidence for inclusion in the record. Except for cross-examination concerning matters relating to the issue of the admissibility of the testimony or documentary evidence, cross-examination on offers of proof shall be deferred until such time, if any, that the testimony is admitted into evidence. The presiding examiner may direct that offers of proof be transcribed separately. Failure to make an offer of proof may constitute a waiver of any objection to the exclusion of the testimony or documentary evidence in question.

§22.228. **Stipulation of Facts.** No stipulation of facts between the parties or their authorized representatives shall be admitted into evidence unless it has been reduced to writing and signed by the parties or their authorized representatives or, upon leave of the presiding examiner, dictated into the record during a prehearing conference or hearing at which all parties to the agreement are present, have waived the right to be present, or have received reasonable notice that the settlement will be read into the record at that prehearing conference or hearing.

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Subchapter M. Procedures and Filing Requirements in Particular Commission Proceedings

• 16 TAC §§22.241-22.246

The new sections are proposed under Texas Civil Statutes, Article 1448c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.241. Investigations.

(a) Commission Investigations.

(1) The commission may at any time institute formal investigations on its own motion or on the motion of the commission general counsel. Orders and general counsel pleadings initiating investigations shall specify the matters to be investigated, and shall be served upon the person being investigated.

(2) Notice of commission-instituted investigations of specific persons subject to commission regulation and investigative proceedings affecting such persons as a class will be served upon all affected persons under investigation. The commission shall publish notice in the *Texas Register* of prehearing conferences and hearings. The presiding examiner may require additional notice.

(b) **Show Cause Orders in Complaint Proceeding.** The presiding examiner, either upon his or her own motion or upon receipt of written complaint, may, at his or her discretion, at any time after appropriate notice has been given, summon any person within the commission's jurisdiction to appear in a public hearing and show cause why such person should not be compelled to comply with any applicable statute, rule, regulation, or general order with which it is allegedly not in compliance. All hearings in such show cause proceedings shall be conducted in accordance with the provisions of this chapter.

(c) **No Limitations.** Nothing in this section shall be construed to limit the commission's or commission general counsel's authority to investigate persons subject to the commission's jurisdiction.

§22.242. Complaints.

(a) **Requirement to Present Complaint Concerning Electric Utility to a City.** If a person receives electric utility service

or has applied to receive such utility service within the limits of a city that has original jurisdiction over the electric utility providing service or requested to provide service, the person must present any complaint concerning the electric utility to the city before presenting the complaint to the commission. The person may present the complaint to the commission after:

- (1) the city issues a decision on the complaint; or
- (2) the city issues a statement that it will not consider the complaint or a class of complaints that includes the person's complaint.

(b) **Informal Resolution of Complaints.** A person who is required, under subsection (a) of this section, to present a complaint to a city before presenting it to the commission may, before presenting a complaint to the city, request that the public information division attempt to informally resolve the dispute.

(c) **Informal Resolution Required in Certain Cases.** A person who is aggrieved by the conduct of a utility or other person must present a complaint to the public information division for informal resolution before presenting the complaint to the commission, except in the following situations.

(1) A complainant may present a formal complaint to the commission, without first referring the matters to the public information division for informal resolution, if:

(A) the complainant is the general counsel, the office of public utility counsel, or any city;

(B) the complaint is filed by a qualifying facility and concerns rates paid by a utility for power provided by the qualifying facility, the terms and conditions for the purchase of such power, or any other matter that affects the relations between a utility and a qualifying facility;

(C) the complaint is filed by a person alleging that a utility has engaged in anti-competitive practices; or

(D) the complaint has been the subject of a complaint proceeding conducted by a city.

(2) For any complaint that is not listed in paragraph (1) of this subsection, the complainant may submit to the director of hearings a written request for waiver of the requirement for attempted informal resolution. The complainant shall clearly state the reasons informal resolution is not appropriate. The director of hearings may grant the request for good cause.

(d) **Termination of Informal Resolution.** The public information division shall attempt to informally resolve all complaints within 45 days of the date of receipt of the complaint. The public information division shall notify, in writing, the complainant and the person against whom the complainant is seeking relief of the status of the dispute at the end of the 45-day period. If the dispute has not been resolved to the complainant's satisfaction within 45 days, the complainant may present the complaint to the commission. The public information division shall notify the complainant of the procedures for formally presenting a complaint to the commission or to a city that has regulatory authority over electric utilities.

(e) **Information Required.** The director of hearings may permit a complainant to cure any deficiencies under this subsection and may waive any of the requirements of this subsection for good cause, if the waive will not materially affect the rights of any other party. A complaint shall include the following information:

(1) the name of the complainant or complainants;

(2) the name of the complainant's representative, if any;

(3) the address, telephone number, and facsimile transmission number, if available, of the complainant or the complainant's representative;

(4) the name of the utility or other person against whom the complainant is seeking relief;

(5) if the complainant is seeking relief against an electric utility, a statement of whether the complaint relates to service that the complainant is receiving within the limits of a city;

(6) if the complainant is seeking relief against an electric utility within the limits of a city, a description of any complaint proceedings conducted by the city, including the outcome of those proceedings;

(7) a statement of whether the complainant has attempted informal resolution through the public information division and the date on which the informal resolution was completed or the time for attempting the informal resolution elapsed;

(8) a description of the facts that gave rise to the complaint; and

(9) a statement of the relief that the complainant is seeking.

(f) **Copies to be Provided.** A complainant shall file eight copies of the complaint. A complainant shall provide a copy of the complaint to the person from whom relief is sought.

(g) **Docketing of Complaints.** The director of hearings shall docket any com-

plaint that substantially complies with the requirements of this section.

(h) **Continuation of Service During Processing of Complaint.** In any case in which a formal complaint has been filed and a utility or other person is threatening to discontinue a customer's service, the presiding examiner may issue an order requiring the utility or other person to continue to provide service during the processing of the complaint. The presiding examiner may issue such an order for good cause, on such terms as may be reasonable to preserve the rights of the parties during the processing of the complaint.

(i) **List of Cities Without Regulatory Authority.** The public information division shall maintain and make available to the public a list of the municipalities that do not have exclusive original jurisdiction over all electric rates, operations, and services provided by an electric utility within its city or town limits.

§22.243. *Rate Change Proceedings.*

(a) **Statements of Intent.** No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the utility, expressed as an annual dollar increase over adjusted test year revenues and as a percent increase over adjusted test year revenues, the effective date of the proposed rate change, the classes and numbers of utility ratepayers affected, and a description of the service for which a change is requested.

(b) **Rate Filing Package.** Any utility filing a statement of intent to change its rates in a major rate proceeding under PURA §43 shall file a rate filing package and supporting workpapers as required by the commission's current rate filing package at the same time it files a statement of intent. The rate filing package shall be securely bound under cover, and shall include all information required by the commission's rate filing package form in the format specified. Examination for sufficiency and correction of deficiencies in rate filing packages are governed by §22.75 of this title (relating to Examination and Correction of Pleadings).

(c) **Uncontested Applications Subject to Administrative Review.** If no opposition to the statement of intent is filed by the deadline for filing motions to intervene, the application may be considered pursuant to the procedure set forth in §22.32 of this title (relating to Administrative Review).

§22.244. Review of Municipal Rate Actions.

(a) Contents of Petitions. In addition to any information required by statute, petitions for review of municipal rate actions filed pursuant to PURA, §26(b) or (c) shall contain the original petition for review with the required signatures and following additional information.

(1) Each signature page of a petition shall contain in legible form above the signatures the following:

(A) a statement that the petition is an appeal of a specific rate action of the municipality in question;

(B) the date of and a concise description of that rate action;

(C) a statement designating a specific individual, group of individuals, or organization as the signatories' authorized representative; and

(D) a statement that the designated representative is authorized to represent the signatories in all proceedings before the commission and appropriate courts of law and to do all things necessary to represent the signatories in those proceedings.

(2) The printed or typed name, telephone number, street or rural route address, and facsimile transmission number, if available, of each signatory shall be provided. Post office box numbers are not sufficient. In appeals relating to PURA, §26(c), the petition shall list the address of the location where service is received if the address differs from the residential address of the signatory.

(b) Signatures. A signature shall be counted only once, regardless of the number of bills the signatory receives. The signature shall be of the person in whose name service is provided or such person's spouse. The signature shall be accompanied by a statement indicating whether the signatory is appealing the municipal rate action as a qualified voter of that municipality under PURA, §26(b), or as a customer of the municipality served outside the municipal limits under PURA, §26(c).

(c) Validity of Petition and Correction of Deficiencies. The petition shall include all of the information required by this section, legibly written, for each signature in order for the signature to be deemed valid. The presiding examiner may allow the petitioner a reasonable time of up to 30 days from the date any deficiencies are identified to cure any defects in the petition.

(d) Verification of Petition. Unless otherwise provided by order of the presiding examiner, the following procedures

shall be followed to verify petitions appealing municipal rate actions filed pursuant to PURA, §26(b) and (c).

(1) Within 15 days of the filing of an appeal of a municipal rate action, the director of hearings shall send a copy of the petition to the respondent municipality with a directive that the municipality verify the signatures on the petition.

(2) Within 30 days after receipt of the petition from the director of hearings, the municipality shall file with the commission a statement of review, together with a supporting written affidavit sworn to by a municipal official.

(3) The period for the municipality's review of the signatures on the petition may be extended by the presiding examiner for good cause.

(4) Failure of the municipality to timely submit the statement of review shall result in all signatures being deemed valid, unless any signature is otherwise shown to be invalid or is invalid on its face.

(5) Objections by the municipality to the authenticity of signatures shall be set out in its statement of review and shall be resolved by the presiding examiner.

(e) Disputes. Any dispute over the sufficiency or legibility of a petition shall be resolved by the presiding examiner by interim order.

§22.245. Notice of Intent Petitions.

(a) Filing Requirements. This section applies only to utilities filing a notice of intent to file an application for a certificate of convenience and necessity for a new generating plant. Utilities filing a notice of intent shall use the commission prescribed form. At the time of filing the notice of intent, in addition to the requirements of the form, the utility shall file its entire direct case, including testimony and exhibits, that the utility intends to offer to support the notice of intent. The utility shall address the issues under PURA, §54(d) and Chapter 23 of this title (relating to Substantive Rules) and provide the information necessary to allow the commission to make the required determinations it and to either approve or disapprove the notice of intent.

(b) Procedural Schedule. The presiding examiner shall establish a procedural schedule that allows for commission action on the application within the 180-day statutory deadline set forth in PURA, §54(d) (2). The 180-day statutory time period shall be established based on the date of filing a sufficient application, and shall not run during any delay in providing the required notice.

(c) Waiver of Deadline. The utility that filed the notice of intent may waive the 180-day statutory deadline.

§22.246. Market Dominance Applications.

(a) Filing Requirements. This subsection applies only to interexchange telecommunications carriers found dominant in any service market filing applications for a determination that they are no longer dominant under PURA, §100(f). Such carriers shall use the commission prescribed form, if any. At the time of filing the application, in addition to the requirements of the form, if any, the carrier shall file its entire direct case, including testimony and exhibits, that the carrier intends to offer to support its application. The utility shall address the issues under PURA and the commission rules and provide the information necessary to allow the commission to make the required determinations and either approve or disapprove the application.

(b) Procedural Schedule. The presiding examiner shall establish a procedural schedule that allows for commission action on the application within the 185-day statutory time period set forth in PURA, §100(f). The 185-day statutory time period shall not begin to run until the filing of a sufficient application under this section, and shall not run during any delay in providing the required notice.

(c) Waiver of Deadline. The carrier that filed the application may waive the 185-day statutory deadline.

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 March 29, 1993.

TRD-9320994

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 7, 1993

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

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Subchapter N. Decision and Orders

• **16 TAC §§22.261-22.264**

The new sections are proposed under Texas Civil Statutes, Article 1448c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.261. Examiner's Report.

(a) Requirement and Contents of Examiner's Report. If in a contested case a majority of the commissioners has not heard the case or read the record, the commission

may not issue a final order until an examiner's report is served on all parties. The examiner's report shall be prepared by the hearings examiner(s) who conducted the hearing or who have read the record. The examiner's report shall include a proposed final order, a statement of the reasons for the proposed decision, and proposed findings of fact and conclusions of law in support of the proposed final order. Any party may file exceptions to the proposed decision in accordance with subsection (d) of this section.

(b) **Procedures Regarding Proposed Orders.** If the presiding examiner's recommendation is not adverse to any party, the recommendation may be made through a proposed order containing findings of fact and conclusions of law. The proposed order shall be served on all parties, and the presiding examiner shall establish a deadline for submitting proposed corrections or clarifications.

(c) **Findings and Conclusions.** The presiding examiner may direct or authorize the parties to draft and submit proposed findings of fact and conclusions of law. The commission is not required to rule on findings of fact and conclusions of law that are not required or authorized.

(d) **Exceptions and Replies.**

(1) **Who may file.** Any party may file exceptions to the Examiner's Report within the time period specified by the presiding examiner. If any party files exceptions, the opportunity shall be afforded to all parties to respond within a time period set by the presiding examiner.

(2) **Presentation.** The presiding examiner may require that issues be addressed in a specified order or according to a specified format. Proposed findings and conclusions may be submitted in conjunction with exceptions and replies. The evidence and law relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions or replies to which they relate.

(3) **Request for Extension.** A request for extension of time within which to file exceptions or replies shall be filed with the commission filing clerk and served on all parties. The presiding examiner may allow additional time for good cause shown. If additional time is allowed for exceptions, reasonable additional time shall be allowed for replies.

(e) **Supplemental or Amended Examiner's Reports.**

(1) The presiding examiner may supplement or amend an examiner's report in response to the exceptions or replies submitted by the parties and upon the presiding examiner's own motion. Making corrections

or minor revisions of an examiner's report is not considered issuance of an amended or supplemental examiner's report.

(2) A supplemental or amended examiner's report shall be clearly labeled. If time permits, all parties shall have the right to file exceptions and replies. If parties are not allowed an opportunity to file written exceptions and/or replies to an amended or supplemental examiner's report, the parties shall be allowed an opportunity to orally respond to the amended or supplemental examiner's report when the commission considers the report at an open meeting.

§22.262. Commission Action after an Examiner's Report.

(a) **Commission Action.** The commission may adopt, or decline to adopt, the recommended decision in the examiner's report or proposed order in whole or in part. The commission is not restricted by the recommendations made by the presiding examiner.

(b) **Remand.** The commission may remand the proceeding for further consideration.

(1) The commission may direct that further consideration by a hearings examiner be accomplished with or without reopening the hearing and may limit the issues to be considered.

(2) If, on remand, additional evidence is admitted that results in a substantial revision of the proposed decision or the underlying facts, an amended or supplemental examiner's report or proposed order shall be prepared. If an amended or supplemental examiner's report is prepared, the provisions of §22.261(d) of this title (relating to Examiner's Report) apply. Exceptions and replies shall be limited to discussions, proposals, and recommendations in the supplemental examiner's report.

(c) **Oral Argument Before the Commission.**

(1) Any party may request oral argument before the commission prior to the final disposition of any proceeding.

(2) Oral argument shall be allowed at the discretion of the commission. The commission may limit the scope and duration of oral argument. The party bearing the burden of proof has the right to open and close oral argument.

(3) A request for oral argument shall be made in a separate written pleading, filed with the commission's filing clerk. The request shall be filed no later than 3 p.m. on the seventh working day preceding the date upon which the commission is scheduled to consider the case. Not more than two days before the commission is scheduled to consider the application, the

parties may contact the hearings division to determine whether a request for oral argument has been granted.

(4) Upon the filing of a motion for oral argument, the director of hearings shall send separate ballots to each commissioner to determine whether the commission will hear oral argument at an open meeting.

(5) The absence or denial of a request for oral argument shall not preclude the commissioners from asking questions of any party present at the open meeting.

(d) **Commission Not Limited.** This section does not limit the commission in the conduct of its meetings to the specific types of action outlined in this section.

§22.263. Final Orders.

(a) **Form and Content.**

(1) A final order of the commission shall be in writing and signed by a majority of the commissioners.

(2) A final order shall include findings of fact and conclusions of law separately stated and may incorporate findings of fact and conclusions of law proposed within an examiner's report.

(3) Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) **Notice.** Parties shall be notified of the commission's final order pursuant to the requirements of APTRA.

(c) **Effective Date of Order.** Unless otherwise stated, the date a final order is signed is the effective date of that order, and such date shall be stated therein.

(d) **Reciprocity of Final Orders Between States.** After reviewing the facts and the issues presented, a final order may be adopted by the commission even though it is inconsistent with the commission's procedural or substantive rules provided that the final order, or the portion thereof that is inconsistent with commission rules, is a final order, or a part thereof, rendered by a regulatory agency of some state other than the State of Texas and provided further that the number of customers in Texas affected by the final order is no more than the lesser of either 1,000 customers or 10% of the total number of customers of the affected utility.

§22.264. Rehearing.

(a) Motions for rehearing, replies thereto, and commission action on motions for rehearing shall be governed by APTRA.

(b) All motions for rehearing shall state the claimed error with specificity. If an ultimate finding of fact stated in statutory

language is claimed to be in error, the motion for rehearing shall state all underlying or basic findings of fact claimed to be in error and shall cite specific evidence which is relied upon as support for the claim of error.

(c) Upon the filing of a motion for rehearing, the director of hearings shall send separate ballots to each commissioner to determine whether they will consider the motion at an open meeting.

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 March 29, 1993.

TRD-9320995 John M. Renfrow
Secretary of the
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of Texas

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

Subchapter O. Rulemaking

• 16 TAC §§22.281-22.284

The new sections are proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§22.281. Initiation of Rulemaking.

(a) Petition for Rulemaking. Any interested person may petition the commission requesting the adoption of a new rule or the amendment of an existing rule.

(1) The petition shall be in writing and shall include a brief explanation of the rule, the reason(s) the new or amended rule should be adopted, the statutory authority for such a rule or amendment, and complete proposed text for the rule. The proposed text for the rule shall indicate by striking through the words, if any, to be deleted from the current rule and by underlining the words, if any, to be added to the current rule.

(2) Within 60 days after submission of a petition, the commission either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rulemaking proceedings.

(b) Commission Initiated Rulemaking. The commission may initiate rulemaking proceedings on its own motion or on the motion of the commission general counsel. Nothing in this section shall preclude the commission general counsel or commission staff from consideration or de-

velopment of new rules or amendments to existing rules without express direction from the commission.

§22.282. Notice and Public Participation in Rulemaking Procedures.

(a) Notice. The commission shall provide notice of the proposed adoption of a rule pursuant to APTRA, §5.

(b) Public Comments. Prior to the adoption of any rule, the commission shall afford all interested persons reasonable opportunity to submit data, views, or arguments orally or in writing. In the case of substantive rules, opportunity for public hearing shall be granted if requested by at least 25 persons, by a governmental subdivision or agency, or by an association having at least 25 members.

(c) Consideration of Comments. The commission shall consider fully all written and oral submissions concerning a proposed rule. On adoption of a rule, the commission, if requested to do so by an interested person either prior to adoption or within 30 days after adoption, shall issue a concise statement of the principal reasons for and against its adoption, incorporating in the statement the commission's reasons for overruling the considerations urged against its adoption.

§22.283. Emergency Adoption. Pursuant to APTRA, §5(d), if the commission finds that an imminent peril to the public health, safety, or welfare or a requirement of state or federal law requires adoption of a rule on fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or on any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. The commission shall set forth the requisite finding in the preamble to the rule. An emergency rule adopted under the provisions of this section, and the commission's written reasons for the adoption, shall be filed in the office of the secretary of state for publication in the *Texas Register*. All of the requirements of APTRA, §5(d) apply to this section.

§22.284. Informal Information Gathering.

(a) The commission, the general counsel, and the commission staff may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons concerning a contemplated rulemaking.

(b) The commission may create committees of employees, non-employees, or both to advise it with respect to any contemplated rulemaking or other issues of interest to the commission, utilities, ratepayers, or other members of the public.

Powers of these committees are advisory only.

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

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Secretary of the
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of Texas

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

Chapter 23. Substantive Rules

Certification

• 16 TAC §23.32

The Public Utility Commission of Texas proposes an amendment to §23.32, concerning automatic dial announcing devices. The purpose of the amendment is to conform §23.32, with federal regulations mandated by the Telephone Consumer Protection Act of 1991.

Suzi Ray, assistant 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.

Ms. Ray 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 include additional protections for telephone consumers. The amendment will also conform the PUC substantive rules with federal regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Ray also has determined that for each year of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

In addition to general comments concerning the amendment, the Commission specifically requests comments concerning any potential problems which may arise with regard to Spanish speaking consumers. Please include remedies to the problems which should be considered by the Commission.

Written comments (13 copies) on the proposal may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boulevard, Austin, Texas 78757 within 30 days after publication. Comments should refer to Project Number 11680.

The amendment is proposed under Texas Civil Statutes, Article 1446c, §16(a) and §118, which provide the Public Utility Commission of Texas with the authority to make and enforce the rules reasonably required in

the exercise of its powers and jurisdiction. The amendment is intended to conform §23.32 with federal regulations mandated by the Telephone Consumer Protection Act of 1991, Public Law Numbers 102-243, 105 Stat. 2394. See 47 United States Code Annotated, §227 (1992). See also 47 Code of Federal Regulations, §64.1200 (1992).

§23.32. Automatic Dial Announcing Devices.

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

(c) Requirements for use of an automatic dial announcing device. A person who operates an ADAD to make a telephone call in which the device plays a recorded message when a connection is completed to a telephone number must comply with the following requirements.

(1) (No change.)

(2) The device must not be used for random number dialing or to dial numbers by successively increasing or decreasing integers. In addition, the device must not be used in a way such that two or more telephone lines of a multi-line business are engaged simultaneously.

(3) At the beginning of the message, the message shall state clearly the identity of the business, individual, or other entity initiating the call. In addition, the message shall, during or after the message, state clearly the telephone number (other than that of the ADAD which placed the call) or address of such business, individual, or other entity. The entire message must be delivered in one language.

[(3) The message must state during the first 30 seconds of the call the nature of the call, the identity of the person, company, or organization making the call, and the telephone number from which the call was made.]

(4) The device must disconnect from the called person's line no later than 30 seconds after the call is terminated by either party or, if the device cannot disconnect within that period, a live operator must introduce the call and receive the oral consent of the called person before beginning the message. In addition, the device must comply with the line seizure requirements in 47 Code of Federal Regulations, §68.318(c)(2).

(5) (No change.)

(6) Calls may not be made to emergency telephone numbers of hospitals, fire departments, law enforcement offices, medical physician or service offices, health care facilities, poison control centers, "911" lines, or other entities providing emergency service. In addition, calls may not be made to telephone numbers of any quest room or patient room of a

hospital, health care facility, elderly home, or similar establishment, any telephone numbers assigned to paging service, cellular telephone service, specialized mobile radio service, or other radio common carrier, or any service for which the called party is charged for the call.

(7) (No change.)

(d) -(g) (No change.)

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9320979

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 7, 1993

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



Telephone

• 16 TAC §23.91

The Public Utility Commission of Texas proposes new §23.91, concerning a long run incremental cost methodology for local exchange carriers. All local exchange carriers with annual revenues from regulated telecommunications operations in Texas of \$100 million or more for five consecutive years will be required to comply with this proposed rule. The rule requires local exchange carriers to determine and provide to the Public Utility Commission the long run incremental costs incurred by such carriers in the provision of telecommunications services.

Dr. August H. Ankum, chief economist, 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.

Dr. Ankum 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 promotion of consistent ratemaking treatment, decreased litigation of issues in rate cases, and greater certainty regarding the economic costs of providing telecommunications services. 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.

Dr. Ankum has also determined that for each of the first five years the section is in effect there will be no impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposal (13 copies) may be submitted to John M. Renfrow, Secretary of the Commission, 7800 Shoal Creek Boule-

vard, Austin, Texas 78757, within 30 days after publication. Comments should refer to Project Number 9075.

The commission directs the general counsel to conduct two workshops in connection with this rulemaking project. The first workshop will be held on or about 60 days after publication and will focus on subsections (a)-(f) of the proposed rule. The second workshop will be held on or about 90 days after publication and will focus on subsections (g)-(o) of the proposed rule. All persons who file comments on the proposed rule will be notified of the time and date of these workshops. Persons who do not wish to file comments but who are interested in being notified of the time and date of the workshops must so notify the commission within 30 days after publication of the proposed rule by filing a letter to that effect with the commission under Project Number 9075.

The new section is proposed under Texas Civil Statutes, Article 1446c, §16, which provide the Public Utility Commission of Texas with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

§23.91. Long Run Incremental Cost Methodology for LEC Services.

(a) Application. This section shall apply to local exchange carriers (LECs), as that term is defined in §23.61 of this title (relating to Telephone Utilities), with annual revenues from regulated telecommunications operations in Texas of \$100 million or more for five consecutive years.

(b) Purpose. This section shall be used to determine the long run incremental costs incurred by LECs in the provision of telecommunications services. The costs determined in this section shall not be used to determine a company's revenue requirement during a proceeding pursuant to the Public Utility Regulatory Act, §42 or §43.

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

(1) Ancillary Services—The category of basic network functions (BNFs) (as defined in paragraph (2) of this subsection) that provide for certain activities that support other BNFs or finished services. This category of BNFs consists of three subcategories of BNFs: Billing and Collection; Measurement; and Operator Services.

(A) Billing and Collection—The subcategory of BNFs that provide for the function of compiling the information needed for customer billing, preparing the customer bill statement, disbursing the bill and collecting the customer payments.

(B) Measurement—The subcategory of BNFs that provide the func-

tions of assembling, collating and transmitting end office switch recorded call data (occurrence and duration).

(C) Operator Services—The subcategory of BNFs that provide for the provision of a number of live or mechanized assistance functions to aid customers in the following ways: obtaining customer telephone number, street address and ZIP code information (directory assistance); providing new telephone numbers or explanatory information to callers who dial numbers which have been changed or disconnected (intercepts); providing assistance to customers in completing operator handled toll or local calls (collect, credit card, third party, station-to-station, or person-to-person); checking busy lines to make sure the line is not out of service (busy verification); and interrupting busy lines (busy interruption). These Operator Services are provided to end user customers as well as local exchange and interexchange carriers.

(2) Basic network function (BNF) —The smallest bundle of network components, functions, or activities that feasibly may be tarified and offered as a service.

(3) Capital costs—The recurring costs that result from expenditures for plant facilities that are capitalized. The annual capital costs consist of depreciation, cost of money, and income taxes.

(4) Categories of BNFs—All BNFs shall fall into one of four categories of BNFs. The categories are: Network Access (as defined in paragraph (18) of this subsection); Switching and Switch Functions (as defined in paragraph (20) of this subsection); Dedicated and Switched Transport (as defined in paragraph (10) of this subsection); and Ancillary Services (as defined in paragraph (1) of this subsection).

(5) Common costs—Costs incurred in the provision of two or more services that do not vary with changes in the relative proportions of the outputs of those services. Common costs are not directly attributable to any one service individually but only to a group of services collectively. However, if the technological requirements for the provision of one service alter the least cost technology choice for common facilities, then the increase in costs caused by the requirements for more advanced technologies is not a common cost but a cost directly attributable to the service that alters the least cost technology choice.

(6) Cost causation principle—The principle that only those costs that are caused by an activity (such as network function, service, or group of services) in the long run are directly attributable to that activity. Costs are caused by an activity, in

the long run, if the costs are brought into existence as a direct result of the activity and are avoided when the activity ceases.

(7) Cost driver—A specific condition, under which a BNF is provided, whose change causes significant and systematic changes in the cost of providing a BNF. For example, if the cost of providing a Network Access Channel varies with the density and size of a wire center, then density and size are cost drivers for that BNF.

(8) Cost of debt—The rate of interest paid on borrowed money.

(9) Cost of money—The weighted annual cost to the LEC of the debt and equity capital invested in the company.

(10) Dedicated and Switched Transport—The category of BNFs that provide for dedicated or shared transmission transport between two or more LEC switching offices or wire centers. This BNF category consists of two subcategories of BNFs: Dedicated Transport and Switched Transport.

(A) Dedicated Transport—The subcategory of BNFs that provide for full period, bandwidth specific (e.g., DS-0, DS-1, DS-3) interoffice transmission paths between the originating and terminating points of channel connection.

(B) Switched Transport—The subcategory of BNFs that provide for temporary time-sensitive interoffice transmission paths between originating and terminating points of switching.

(11) Depreciation expenses—The charges based on the depreciation accrual rates designed to spread the cost recovery of the property over its economic life.

(12) Expenses—Costs incurred in the provision of services that are expensed, rather than capitalized, in accordance with the Uniform System of Accounts applicable to the carrier.

(13) Group of services—A number of separately tarified services that share significant common costs (as defined in paragraph (5) of this subsection) that are necessary and unique to the provision of those services and cannot be assigned to any one service individually. This term also refers to a situation in which two or more groups of services are part of a larger group of services because of significant common costs that are necessary and unique to the provision of all the services in the groups but can not be assigned to any one group or service individually.

(14) Least cost technology—The technology that would be chosen in the long run as the economically most efficient

choice.

(15) Long run—A time period long enough to be consistent with the assumption that the company is in the planning stage and all of its inputs are variable and avoidable.

(16) Long run incremental cost (LRIC)—The change in total costs of the company of producing an increment of output in the long run when the company uses least cost technology. The LRIC should exclude any costs that would not be avoided if the increment of output were not produced.

(17) Measure of unit cost—The measure of usage used to calculate unit cost for a particular BNF (for example, a minute of use of a switching function, or a quarter mile of a DS-1 Network Access Channel). The measure of unit costs may be multidimensional; for example, it may have both time and distance components. The measure of unit cost chosen for a BNF shall correspond to the basis upon which the costs of that BNF are incurred.

(18) Network Access—The category of BNFs that accommodate access to other network functions provided by LECs. Access is accomplished by transmission paths between customers and LEC wire centers. This category consists of three subcategories of BNFs: Network Access Channel; Network Access Channel Connection; and Channel Performance and Other Features and Functions.

(A) Network Access (NA) Channel—The subcategory of BNFs that provide the transmission path between the point of interface at the customer location and the main distribution frame, or equivalent (e.g., DSX-1, DSX-3), of a LEC wire center.

(B) Network Access (NA) Channel Connection—The subcategory of BNFs that provide the interface between the Network Access Channel and the LEC wire center switching equipment, subsequent dedicated transport equipment (dedicated interoffice circuits), or subsequent channel equipment (dedicated intraoffice circuits).

(C) Channel Performance and Other Features and Functions—The subcategory of BNFs that provide the channel functions associated with transmission or service type (e.g., analog, digital, coin, ISDN), bandwidth conversion, signaling, multiplexing, amplification, and channel performance.

(19) Subcategories of BNFs—Groupings of closely related BNFs in a category of BNFs.

(20) Switching and Switch

Function—The category of BNFs that provide for switched access between two or more Network Access Channels or between Network Access Channels and other BNFs, such as interoffice transport. This function is accomplished through the establishment of a temporary transmission path between Network Access Channels in the same switching office; between a Network Access Channel and the interoffice facilities that interconnect switching offices; or between a Network Access Channel and other BNFs. This BNF category shall cover the first point of switching for a customer. This BNF category consists of three subcategories of BNFs: Interoffice Switching; Intraoffice Switching; and Switching Features.

(A) **Interoffice Switching**—The subcategory of BNFs that provide for: switching between Network Access Channels and Switched Transport facilities which are connected to different wire centers; and switching between Network Access Channels and Switched Transport facilities when a tandem switch is used as the first point of interface to the LEC switched network (e.g., connection of facilities from an interexchange carrier's point of network interface).

(B) **Intraoffice Switching**—The subcategory of BNFs that provide for switching between two or more Network Access Channels within the same wire center.

(C) **Switching Features**—The subcategory of BNFs that provide added convenience or capabilities to other BNFs or finished services.

(21) **Unit cost**—A cost per unit of output calculated by dividing the total long run incremental cost of production by the total number of units.

(d) **General principles.**

(1) Underlying the construction and application of this section is the recognition that the LEC network consists of a finite number of BNFs that, when bundled in various combinations, can be used to deliver and market a vast variety of telecommunications services. Therefore, the determination of the cost of a service and the costs of a group of services under this section shall involve the identification and costing of BNFs.

(2) The LRIC studies that the LEC is required to file under this section shall assume that the company is operating in the long run and employs least cost technologies, as those terms are defined in subsection (c) of this section.

(3) In order to obtain accurate

LRIC study results, the LEC shall avoid the use of embedded cost data; when possible, expense items and capital costs shall reflect long run incremental costs. Further, the fact that the costs determined under this section may differ from the company's embedded costs as determined during proceedings under the Public Utility Regulatory Act, §42 or §43 should in no way cause the company to attribute any of this cost discrepancy to LRIC studies for BNFs, services, or groups of services.

(4) The appropriate methods for service pricing and recovery of the revenue requirement will be developed in the rulemaking proceeding mandated under subsection (o) of this section.

(5) When a BNF is used in the provision of two or more services and the cost of the BNF does not vary with changes in the relative proportions of the output of those services, then the cost of the BNF is a common cost.

(6) When services share significant common costs, none of the common costs shall be included in the LRIC studies for the services individually; instead, the company shall identify which services share the common costs and assign the common costs to the group of services collectively. Specifically, the LRIC studies for residential and business basic local exchange service shall exclude any costs associated with the use of the Network Access Channel Basic Level (as defined in subsection (e)(1)(A) of this section) and Network Access Channel Connection Basic Level (as defined in subsection (e)(2)(A) of this section).

(7) When two or more groups of services share common costs, none of the common costs shall be included in the LRIC studies for groups individually; instead, the company shall identify which groups share the common costs and assign the common costs to these groups collectively.

(e) **Identification of Basic Network Functions.** The LEC shall identify for each subcategory of BNFs the relevant and separately identifiable BNFs. The determination of the appropriate degree of aggregation of network components, functions, or activities into separately identifiable BNFs shall be consistent with the principles described in subsection (d) of this section. Furthermore, in choosing BNFs, the LEC shall seek to minimize the number of network components, functions, or activities that are not included in BNFs. In addition to BNFs the company identifies under this subsection, the company shall identify for each subcategory of BNFs the following prescribed BNFs.

(1) **Required BNFs for subcategory Network Access Channel.**

(A) **NA Channel Basic Level.** A transmission path which provides less than 1.544 Mbps digital capability. This includes 300 to 3,000 Hz analog voice service.

(B) **NA Channel DS-1 Level.** A transmission path which has 1.544 MBPS digital capability.

(C) **NA Channel DS-3 Level.** A transmission path which has 45 MBPS digital capability.

(2) **Required BNFs for subcategory Network Access Channel Connection.**

(A) **NA Channel Connection Basic Level.** An interface for channels which provide less than 1.544 Mbps digital capability. This includes the interface for 300-3,000 Hz analog voice service which is the basic interface for most voice grade services such as basic local residential and local business service, PBX trunks, Centrex-type access lines and voice grade dedicated transport service. In addition, this category includes the interface for four frequency bandwidths provided for audio channels such as: 200 to 3,500 Hz, 100 to 5,000 Hz, 50 to 8,000 Hz, and 50 to 15,000 Hz. Also included in this BNF are the interfaces for low speed data transmission at speeds of 2.4, 4.8, 9.6, 56 Kbps and all other speeds below the T-1 rate of 1.544 Mbps. This interface is for narrowband service.

(B) **NA Channel Connection DS-1 Level.** An interface for 1.544 MBPS digital transmission channels. This interface connects high capacity wideband transmission channels which operate in a full duplex, time division (digital) multiplexing mode.

(C) **NA Channel Connection DS-3 Level.** An interface for 45 MBPS digital transmission channels. This interface connects broadband transmission channels which operate in full duplex, time division (digital) multiplexing mode.

(3) **Required BNFs for subcategory Channel Performance and Other Features and Functions.**

(A) **Standard signalling and transmission level capabilities.** Signalling and transmission level capabilities suitable for a wide variety of network services and applications associated with the BNF NA Channel Basic Level, as defined in paragraph (1)(A) of this subsection.

(B) Nonstandard signalling and transmission level capabilities and other features. Signalling and transmission level capabilities and other features and functions, other than those defined in subparagraph (A) of this paragraph, such as high voltage protection, multiplexing, and bridging. The company is encouraged to disaggregate this BNF into smaller BNFs that capture the variety of features and functions available to customers.

(4) Required BNFs for subcategory Interoffice Switching. Interoffice Switching. The type of switching that provides for: switching between Network Access Channels and Switched Transport facilities which are connected to different wire centers; and switching between Network Access Channels and Switched Transport facilities when a tandem switch is used as the first point of interface to the switched network (e.g., connection of facilities from an interexchange carrier's point of network interface).

(5) Required BNFs for subcategory Intraoffice Switching. Intraoffice Switching. Switching between two or more Network Access Channels served from the same wire center.

(6) Required BNFs for subcategory Switching Features.

(A) Hunting Arrangements. An optional function available to customers with multiple local exchange access lines in service.

(B) Custom Calling Features. Various optional features which provide added calling convenience.

(C) Central Office Automatic Call Distribution. The provision of call distribution as an integrated function of certain electronic central offices equipped to provide this capability. This function permits an equal distribution of a large volume of incoming calls to predesignated groups of answering positions, referred to as agent positions.

(D) Central Office Based PBX-Type Functions. A business communications system furnished from stored program control central offices that provides the equivalent of customer premises PBX services through the use of central office hardware and software as well as through local transport facilities from the central office to the customer premises. Included in this BNF shall be only hardware specific to this type of service, processor or memory usage involved in special features for this type of service, and any software or soft-

ware right to use fees associated with this type of service. This BNF should exclude any network functions that are already identified as other BNFs.

(7) Required BNFs for subcategory Dedicated Transport.

(A) Dedicated Transport Termination. An interface which provides for the transmission conversions (e.g., multiplexing) required between channel connection and dedicated transport facilities.

(B) Dedicated Transport Facility. The full period, bandwidth specific (e.g., DS-0, DS-1, and DS-3), interoffice transmission paths established between two points of dedicated transport termination, using the economies of shared wideband digital fiber optic carrier systems.

(8) Required BNFs for subcategory Switched Transport.

(A) Switched Transport Termination. An interface which provides for the transmission conversion (e.g., multiplexing) required between the switching function and switched transport facilities.

(B) Switched Transport Facility. The temporary interoffice transmission paths established between two points of switched transport termination, using the economies of shared wideband digital fiber optic carrier systems.

(C) Switched Transport Tandem Switching. The intermediate points of switching used as an economic surrogate to direct routing of interoffice facilities in the provision of switched transport.

(9) Required BNFs for subcategory Billing and Collection: Billing and Collection. The function of compiling the information needed for customer billing, preparing the customer bill statement, disbursing the bill and collecting the customer payments (this includes any collection activities required for late payment or non-payment of billing amount due).

(10) Required BNFs for subcategory Measurement: Measurement. The function of assembling, collating and transmitting end office switch recorded call data (occurrence and duration).

(11) Required BNFs for subcategory Operator Services: Operator Services. The role of providing a number of live or mechanized assistance functions to aid customers in the following ways. obtaining customer telephone number, street address and ZIP code information (directory assistance); providing new telephone numbers or explanatory information to callers

who dial numbers which have been changed or disconnected (intercepts); providing assistance to customers in completing operator handled toll or local calls (collect, credit card, third party, station-to-station or person-to-person); checking busy lines to make sure the line is not out of service (busy verification); and interrupting busy lines (busy interruption). These Operator Services are provided to end user customers as well as local exchange and interexchange carriers.

(f) LRIC studies for individual BNFs. The LEC shall perform a LRIC study for each of the BNFs identified under subsection (e) of this section. The company shall perform the LRIC studies consistent with the principles described in subsection (d) of this section. Additionally, the company shall use the following guidelines in determining the LRIC for individual BNFs.

(1) Relevant increment of output. For the purposes of this subsection, the relevant increment of output, as that term is used in subsection (c)(16) of this section, shall be the level of output necessary to satisfy total current demand levels for all services using the BNF in question.

(2) Relating expenses to BNFs. To the extent it is possible, the company shall avoid the use of embedded cost data and shall determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the BNF shall be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities shall be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, shall be excluded from the LRIC study for individual BNFs. Specifically, taxes associated with the provision of services that use more than one BNF shall not be included in the BNF LRICs.

(3) Least cost technology. LRIC studies shall assume the use of least cost technology. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained; and

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question.

(4) Network topology. LRIC studies shall use the existing network topology.

(5) Cost of money. The company shall use the most recent commission approved rate of return for the company, as that term is used in §23.21(c)(1) of this title (relating to Cost of Service).

(6) Rate of depreciation. The company shall use the most recent commission approved rates of depreciation for the company.

(7) Measure of unit cost. LRIC studies shall identify the appropriate measure of unit cost for a BNF (e.g., minutes of use, access line). The measure of unit cost chosen for a BNF shall correspond to the basis upon the costs of the BNF are incurred. The measure of unit cost may be multidimensional; for example, it may have both time and distance components. In identifying the appropriate measure of unit cost, the company shall ignore the current rate structure for tariffed services using the BNF.

(8) Determination of unit cost. Using the measure of unit cost identified under paragraph (7) of this subsection, the company shall calculate unit cost for the BNF based on the assumption of full capacity utilization of the BNF, which should allow for engineered spare capacity.

(9) Cost drivers. LRIC studies shall identify and account for all relevant cost drivers. LRIC studies for certain BNFs shall at a minimum account for the cost drivers specified below.

(A) Cost drivers for NA Channel Basic Level, NA Channel DS-1 Level, and NA Channel DS-3 Level. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

- (i) the density of a wire center;
- (ii) the size of a wire center; and
- (iii) the distance.

(B) Cost drivers for NA Connection Basic Level, NA Connection DS-1 Level, and NA Connection DS-3 Level. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

- (i) the density of a wire center; and
- (ii) the size of a wire center.

(C) Cost drivers for Intraoffice Switching and Interoffice

Switching. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

- (i) the density of a wire center;
- (ii) the size of a wire center; and
- (iii) the time of day.

(D) Cost drivers for Dedicated Transport Facilities and Termination. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

- (i) the size of a wire center; and
- (ii) the distance.

(E) Cost drivers for Switched Transport Facilities, Termination and Tandem Switching. The LRICs for these BNFs shall systematically account for variations in costs caused by variations in:

- (i) the size of a wire center;
- (ii) the distance; and
- (iii) time of day.

(F) Cost drivers for Measurement. The LRIC for this BNF shall systematically account for variations in costs caused by variations in:

- (i) the density of a wire center;
- (ii) the size of a wire center;
- (iii) the time of day; and
- (iv) the duration of a call.

(G) Cost drivers for Operator Services. The LRIC for this BNF shall systematically account for variations in costs caused by variations in the type of operator services calls.

(g) LRIC studies for tariffed services. The LEC shall perform a service LRIC for each tariffed service. The service LRIC shall be calculated as the sum of the costs caused by a service's use of BNFs and any other service specific costs not identified as separate BNFs, such as expenses of billing, service specific advertising and marketing, and service specific taxes. The LRIC study for tariffed services shall be consistent with the principles described in subsection (d) of this section. Additionally, the company shall use the following guidelines in determining the LRIC for individual tariffed services.

(1) Mapping of BNFs and costs to tariffed services. The LRIC study shall identify the BNFs that are used in the provi-

sion of the tariffed service; the long run incremental costs for the tariffed service shall include the costs associated with this usage. The costs associated with the service's use of a BNF shall be calculated as the product of the unit cost for the BNF (as determined under subsection (f)(8) of this section) and the demand of the service for that BNF.

(2) Identification of other costs. The LRIC study shall include all service specific costs (e.g., expenses of billing, marketing, customer service or service specific taxes) related to the provision of the service that are not included in the costs for the BNFs.

(3) Exclusion of common costs. The LRIC study for an individual tariffed service shall exclude any costs that are common costs (as defined in subsection (c)(5) of this section). Specifically, the LRIC studies for residential and business basic local exchange service shall exclude any costs associated with the use of the Network Access Channel Basic Level (as defined in subsection (e)(1)(A) of this section) and Network Access Channel Connection Basic Level (as defined in subsection (e)(2)(A) of this section).

(4) Relevant increment of output. For the purposes of this subsection, the relevant increment of output, as that term is used in subsection (c)(16) of this section, shall be the level of output necessary to satisfy current demand levels for the service.

(5) Relating expenses to services. To the extent it is possible, the company shall avoid the use of embedded cost data and shall determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the service shall be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities shall be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, shall be excluded from the LRIC study for individual services.

(6) Least cost technology. LRIC studies shall assume the use of least cost technology. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained; and

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question.

(7) Network topology. LRIC studies shall use the existing network topology.

(8) Cost of money. The company shall use the most recent commission approved rate of return for the company, as that term is used in §23.21(c)(1) of this title (relating to Cost of Service).

(9) Rate of depreciation. The company shall use the most recent commission approved rates of depreciation for the company.

(h) Identification of groups of tariffed services that share significant common costs. The company shall identify all groups of services (as defined in subsection (c)(13) of this section) that share significant common costs. To the extent that two or more groups identified by the company share costs that are common and can not be assigned to any one group individually, the company shall identify which groups are responsible for the common costs and assign the common costs to these groups collectively. The company shall continue this identification process until a hierarchy of groups has been identified that accounts for the total long run costs of the company. Further, the LEC shall identify for each group of services the source of the common costs as follows.

(1) Identification of BNFs that are common. For each group of tariffed services identified under this subsection, the company shall identify the BNFs that are common and whose costs are common costs to those services.

(2) Identification of other sources of common costs. For each group of tariffed services identified under this subsection, the company shall identify any other sources of common costs, consistent with the principles described in subsection (d) of this section, that are not already identified under paragraph (1) of this subsection.

(i) LRIC studies for groups of tariffed services that share significant common costs. The LEC shall perform LRIC studies for each group of services identified under subsection (h) of this section. The group LRIC shall be calculated as the sum of the LRICs (as determined under subsection (g) of this section) for the services in the group and the common costs for those services (as identified under subsection (h) of this section). The group LRIC shall exclude any costs that remain if the entire output of the group were not produced. The LRIC study shall be consistent with the

principles described in subsection (d) of this section. Additionally, the company shall use the following guidelines in determining the LRIC for groups of services.

(1) Relevant increment of output. When the LRIC is computed for a group of services, the relevant increment of output, as that term is used in subsection (c)(16) of this section, shall be the level of output necessary to satisfy current demand levels for the services in the group.

(2) Relating expenses to groups of services. To the extent it is possible, the company shall avoid the use of embedded cost data and shall determine expenses consistent with the principles of long run incremental costing.

(A) Common expenses. Common expenses that are not directly attributable, using the cost causation principle, to the group of services shall be excluded.

(B) Nonrecurring expenses. The expenses of nonrecurring activities shall be separately identified.

(C) Taxes. Any tax expenses not directly attributable, using the cost causation principle, shall be excluded from the LRIC study for the group of services.

(3) Least cost technology. LRIC studies shall assume the use of least cost technology. The choice of least cost technologies, however, shall:

(A) be restricted to technologies that are currently available on the market and for which vendor prices can be obtained; and

(B) be consistent with the level of output necessary to satisfy current demand levels for all services using the BNF in question.

(4) Network topology. LRIC studies shall use the existing network topology.

(5) Cost of money. The company shall use the most recent commission approved rate of return for the company, as that term is used in §23.21(c)(1) of this title (relating to Cost of Service).

(6) Rate of depreciation. The company shall use the most recent commission approved rates of depreciation for the company.

(j) Filing requirements for LEC provided workplan. Within 45 days of the effective date of this section, the LEC shall file with the commission and the Office of Public Utility Counsel (OPUC) a plan for

compliance with the provisions of this section. The workplan shall be consistent with the principles, guidelines and requirements set forth in this section and shall be reviewed in accordance with the procedures established in subsection (m) of this section. The workplan submitted by the LEC shall include the following components.

(1) Identification of BNFs and cost methodology. The workplan submitted by the LEC shall discuss the BNFs identified under this section and include a detailed discussion of the cost methodology the LEC proposes to use for the studies required under this section. Additionally, the workplan shall meet the following requirements.

(A) List of BNFs. The workplan shall include a list of all BNFs that the LEC has identified pursuant to subsection (e) of this section.

(B) Additional BNFs. If the LEC proposes to identify BNFs in addition to the BNFs identified in subsection (e) (1)-(12) of this section, the workplan shall include a description of each of the BNFs that the LEC proposes to identify, and a discussion of why these BNFs should be identified in addition to the BNFs identified in subsection (e)(1) -(12) of this section.

(C) Definitions of BNFs. For each BNF identified under subsection (e) of this section, the workplan shall include, a precise definition of the BNF, including the points of demarcation in the LEC's network between each BNF and other BNFs.

(D) Diagrams. For each BNF identified under subsection (e) of this section, the workplan shall include a diagram that illustrates the BNF's role in the provision of LEC services.

(E) Least cost technology choices for BNFs. For each BNF identified under subsection (e) of this section, the workplan shall identify which technology or technologies (e.g., fiber optic cable, digital switching systems) will be considered the least cost technology (as defined in subsection (c)(14) of this section) for the BNF.

(F) Identification of investments. The workplan shall include a discussion of the methodology that the LEC proposes to use in identifying investments associated with each of the BNFs identified under subsection (e) of this section.

(G) Data sources. For each BNF identified under subsection (e) of this section, the workplan shall include a discus-

sion of the data sources to be used in developing the costs of the BNF.

(H) Service demand. For each BNF identified under subsection (e) of this section, the workplan shall include a discussion of the data sources to be used for service demand in developing the costs of the BNF.

(I) Automated cost models. The workplan shall include a description of any automated cost models which the LEC proposes to use in developing the cost of the BNF. For each such automated cost model, the workplan shall provide in detail the algorithm of the cost model and demonstrate that the methodology of the cost model is consistent with the long run incremental cost methodology described in this section.

(J) Flowcharts. For each type of cost study required under this section, the workplan shall include a detailed flowchart that identifies all models used in the study and the interrelationships between the inputs and outputs of the models.

(K) List of cost drivers. For each BNF identified under subsection (e) of this section, the workplan shall identify the cost drivers that the LEC has identified pursuant to subsection (f)(9) of this section.

(L) Additional cost drivers. If the LEC proposes to identify and account for cost drivers in addition to the cost drivers identified in subsection (f)(9)(A)-(G) of this section, the workplan shall include a description of each of the cost drivers that the LEC proposes to use, and a discussion of why these cost drivers should be used in addition to the cost drivers identified in subsection (f)(9)(A)-(G) of this section.

(M) Loading factors. The workplan shall include a discussion of the methodology that the LEC proposes to use in identifying operating expenses, depreciation and taxes relating to each of the BNFs identified under subsection (e) of this section.

(N) Categorization of BNFs. For each BNF identified under subsection (e) of this section, the workplan shall identify the category and subcategory of BNFs (as defined in subsection (c) of this section) under which the BNF is categorized.

(O) Mapping from BNFs to tariffed services. For each BNF identified under subsection (e) of this section, the workplan shall include a list of all tariffed services that use the BNF.

(P) Mathematical representation. The workplan shall include a formal mathematical statement describing the cost relationships between BNFs, tariffed services, and groups of tariffed services. This statement shall translate the principles, guidelines and requirements of this section into the traditional mathematical terms used in the economic literature. Specifically, the company shall include a mathematical statement that describes the functional relationship between the long run incremental costs for a tariffed service and a service's use of BNFs.

(2) Waiver requests.

(A) Waiver for required BNF. The workplan shall include a request for waiver if the company finds that a required BNF specified in subsection (e)(1)-(12) of this section is inappropriate for its network. The waiver request shall be accompanied by a statement demonstrating why the required BNF is inappropriate.

(B) Waiver for required cost driver. The workplan shall include a request for waiver if the company finds that a required cost driver specified in subsection (f)(9)(A)-(G) of this section is inappropriate for its network. The waiver request shall be accompanied by a statement demonstrating why the required cost driver is inappropriate.

(3) Identification of groups of services. The workplan submitted by the LEC shall include a list of all groups of services that the LEC has identified pursuant to subsection (h) of this section. The list shall meet the following requirements.

(A) Identification of services in groups. The list shall identify for each group the services that are included in the group. When the group contains smaller groups of services, the smaller groups that are included in the group shall be identified.

(B) Identification of BNFs that represent common costs. The list shall identify the BNFs that represent the common costs for the group of services (as identified under subsection (h)(1) of this section) and other sources of common costs for the group (as identified under subsection (h)(2) of this section).

(4) Proposed schedule for completion and filing of cost studies. The workplan submitted by the LEC shall include a proposed completion and filing date for the LRIC study for each BNF identified under subsection (e) of this section, including the required BNFs specified in subsec-

tion (e)(1)-(12) of this section; the LRIC study for each tariffed service offered by the LEC; and the LRIC study for each group of services identified under subsection (h) of this section. The proposed schedule submitted by the LEC shall meet the following requirements.

(A) If the schedule proposed by the LEC would result in completion of any cost study later than 18 months following the effective date of this section, the LEC should discuss in detail the reasons why the cost study may not be completed within 18 months.

(B) In no event should the schedule proposed by the LEC result in the completion of any cost study later than thirty months following the effective date of this section.

(C) The schedule proposed by the LEC should space the completion and filing of cost studies relatively evenly over the course of the period of time allowed for completing the studies and avoid, to the greatest degree possible, the filing of large quantities of studies at any one date.

(D) The schedule proposed by the LEC shall not result in completion of any LRIC study for a tariffed service before the completion of the LRIC studies for all the BNFs that are used in the provision of the tariffed service.

(5) Prototype LRIC studies for BNFs, tariffed services, and groups of tariffed services. The workplan shall provide prototype LRIC studies for BNFs, tariffed services, and groups of tariffed services, to serve as models for the studies filed pursuant to this section. In devising the prototype studies the LEC shall consider the following guidelines.

(A) Completeness. The prototype LRIC studies shall be structured to provide for all information (e.g., inputs, outputs, assumptions) necessary to understand the studies and to reasonably verify their accuracy.

(B) Consistency and efficiency. The company shall seek to organize the prototype studies in a manner that clearly demonstrates the relationships and consistencies between studies. To the extent that a number of studies use automated models, standardized loading factors or other standardized methods, the company shall propose a way of documenting these methods that reduces unnecessary duplication.

(C) PC-based spreadsheets and open algorithms. The company shall create the prototype studies both on paper and on personal computer based electronic spreadsheets. In designing the personal computer based electronic spreadsheet versions the company shall seek to create an open algorithm that can be used and modified by the commission staff and other users.

(k) Requirements for initial filings of LRIC studies. The LEC shall file with the commission and OPUC the LRIC studies required under this section. The LRIC studies shall be consistent with the principles, guidelines and requirements set forth in this section and shall be reviewed in accordance with the procedures established in subsection (n) of this section. In accordance with the workplan approved under subsection (m) of this section, the LEC shall file LRIC studies for.

(1) each BNF identified under subsection (e) of this section, including those that are specified as required BNFs under subsection (e)(1)-(12) of this section;

(2) each tariffed service; and

(3) each group of services identified under subsection (h) of this section.

(l) Requirements for subsequent filings of LRIC studies. The LRIC studies required by this subsection shall be consistent with the principles, guidelines and requirements set forth in this section and the workplan approved in subsection (m) of this section and shall be reviewed in accordance with the procedures established in subsection (n) of this section.

(1) Updated studies. Thirty-six months after the effective date of the section, and every six months thereafter, the LEC shall file with the commission and OPUC updated versions of all filings required under this section. The LEC is not required to update its filings for those studies where no significant changes have occurred.

(2) Provisions for new BNFs. When significant technological or other changes occur that necessitate a change in the definition of current BNFs or the identification of new BNFs, the LEC shall file with the commission and OPUC updated versions for all affected LRIC studies or new studies as appropriate.

(3) Provisions for new services. For each application for a service filed pursuant to this title, the LEC shall file with the commission and OPUC a LRIC study for the service consistent with the principles described in subsection (d) of this section and the specific requirements set forth in subsection (g) of this section.

(4) Unbundling of existing tariffed services. When an application filed pursuant to this title proposes a service that

previously had been bundled with other BNFs into a tariffed service, the LEC shall carefully reexamine the identification of groups of services that share significant common costs (as required under subsection (h) of this section). If the new service significantly changes the identification of groups of services and the identification of common costs, the LEC should update all studies required under this section that are affected by these changes.

(m) Review process for LEC workplan. An LEC workplan considered under this section shall be reviewed administratively to determine whether the LEC's workplan is consistent with the principles, guidelines and requirements set forth in this section.

(1) Sufficiency. The workplan shall be examined for sufficiency. To be sufficient, the LEC workplan shall include the components required by subsection (j) of this section. If the presiding examiner or the commission staff concludes that material deficiencies exist in the workplan, the LEC shall be notified within 15 days of the filing date of the specific deficiency in its workplan. The LEC shall have 15 days from the date it is notified of the deficiency to file a corrected workplan.

(2) Time Schedule.

(A) No later than 45 days after the filing date of the workplan, any party that demonstrates a justiciable interest may file with the presiding examiner written comments or recommendations concerning the workplan.

(B) No later than 55 days after the filing date of the workplan, OPUC may file with the presiding examiner written comments or recommendations concerning the workplan.

(C) No later than 65 days after the filing date of the workplan, the commission staff shall file with the presiding examiner written comments or recommendations concerning the workplan.

(D) No later than 75 days after the filing date of the workplan, any party that demonstrates a justiciable interest, OPUC, or the LEC may file with the presiding examiner a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the workplan, the presiding examiner shall complete an administrative review to determine whether the LEC's workplan is consistent with the principles, guidelines and requirements set forth in this section. The examiner shall

approve the workplan or approve the workplan with modification.

(3) Requests for Information. While the workplan is being administratively reviewed, the commission staff, OPUC, and any party that demonstrates a justiciable interest may submit requests for information to the LEC. Three copies of all answers to such requests for information shall be provided within 10 days after receipt of the request by the LEC to the commission staff, OPUC and any party that demonstrates a justiciable interest.

(4) Suspension. At any point within the first 45 days of the review process, the presiding examiner, the commission staff, OPUC, the LEC, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The examiner may grant a request for suspension only if he or she has determined that the party has demonstrated that good cause exists for such suspension.

(5) Effective date of the LEC workplan. The effective date of the LEC workplan shall be the date it is approved by the presiding examiner.

(n) Review process for LRIC studies. A LRIC study considered under this section shall be reviewed administratively to determine whether the LEC's LRIC study is consistent with the principles, guidelines and requirements set forth in this section.

(1) Sufficiency. The LRIC study shall be examined for sufficiency. To be sufficient, the LRIC study shall include the components required by the workplan approved under subsection (m) of this section. If the presiding examiner or the commission staff concludes that material deficiencies exist in the LRIC study, the LEC shall be notified within 15 days of the filing date of the specific deficiency in its LRIC study. The LEC shall have 15 days from the date it is notified of the deficiency to file a corrected LRIC study.

(2) Time Schedule.

(A) No later than 45 days after the filing date of the LRIC study, any party that demonstrates a justiciable interest may file with the presiding examiner written comments or recommendations concerning the LRIC study.

(B) No later than 55 days after the filing date of the LRIC study, OPUC may file with the presiding examiner written comments or recommendations concerning the LRIC study.

(C) No later than 65 days after the filing date of the LRIC study, the

commission staff shall file with the presiding examiner written comments or recommendations concerning the LRIC study.

(D) No later than 75 days after the filing date of the workplan, any party that demonstrates a justiciable interest, OPUC, or the LEC may file with the presiding examiner a written response to the commission staff's recommendation.

(E) No later than 85 days after the filing date of the LRIC study, the presiding examiner shall complete an administrative review to determine whether the LEC's LRIC study is consistent with the principles, guidelines and requirements set forth in this section. The examiner shall approve the LRIC study or approve the LRIC study with modification.

(3) Requests for Information. While the LRIC study is being administratively reviewed, the commission staff, OPUC, and any party that demonstrates a justiciable interest may submit requests for information to the LEC. Three copies of all answers to such requests for information shall be provided within 10 days after receipt of the request by the LEC to the commission staff, OPUC and any party that demonstrates a justiciable interest.

(4) Suspension. At any point within the first 45 days of the review process, the presiding examiner, the commission staff, OPUC, the LEC, or any party that demonstrates a justiciable interest may request that the review process be suspended for 30 days. The examiner may grant a request for suspension only if he or she has determined that the party has demonstrated that good cause exists for such suspension.

(5) Effective date of the LRIC study. The effective date of the LRIC study shall be the date it is approved by the presiding examiner.

(o) Pricing rule. Six months after the effective date of the workplan (as defined in subsection (m)(5) of this section), the commission shall initiate a rulemaking proceeding to develop a pricing methodology for LEC services that is consistent with the cost information obtained under this section.

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 March 30, 1993.

TRD-9320980

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

Earliest possible date of adoption: May 7, 1993

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

Part IV. Texas Department of Licensing and Regulation

Chapter 67. Auctioneers

• 16 TAC §§67.10, 67.21, 67.22

The Texas Department of Licensing and Regulation proposes amendments to §§67.10, 67.21, and 67.22, concerning the licensing of auctioneers.

Section 67.10 and §67.21 clarify the tasks an associate auctioneer must perform under supervision of a licensed auctioneer to qualify for an auctioneer license without examination; §67.22 establishes a cut-off date for receipt of an exam application and a time limit on eligibility for a license after passing an exam.

James D. Brush II, director, policies and standards division, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Brush also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that associate auctioneers will get more thorough training, which will increase consumer protection, and limiting eligibility will ensure that a license is not obtained without reexam after laws have had time to be changed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to James D. Brush II, Director, Policies and Standards Division, P.O. Box 12157, Austin, Texas 78711.

The amendments are proposed under Texas Civil Statutes, Article 8700, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules to assure compliance with the Act.

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

Employed by a licensed auctioneer—Participating in all aspects of the auction business under the supervision of a licensed auctioneer.

§67.21. License Requirements—Associate Auctioneers.

(a) (No change.)

(b) An associate auctioneer must participate in all aspects of the auction business involving the laws of this state.

He must bid-call in at least five auctions, and he must participate in, but not have sole responsibility for, each of the following tasks at least once: appraising, inventorying, advertising, property make ready, site selection and preparation, lotting, registration, clerking, cashing, bid calling, ring working, property check out, security, accounting, managing an escrow account.

(c)[(b)] Any change of employment by a licensed associate auctioneer must be submitted to the department's Austin office prior to such action, and a letter must be submitted by the former employer stating the areas in which the associate auctioneer participated and the number of auction sales at which the associate participated as bid-caller.

§67.22. License Requirements—Examinations.

(a) Applications for examinations must be complete and must be post-marked at least 52 days before the scheduled examination.

(b)[(a)] An applicant who wishes to reschedule his examination for a later date must notify the department in writing, post-marked no later than five working days before the exam date. Two free reschedules are allowed.

(c)[(b)] An applicant who does not take an examination for which he was scheduled, and does not notify the department that he will not take the exam, must pay another exam fee.

(d) An applicant who passes an examination may be licensed up to two years from the date on the grade notice sent by the department.

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 March 26, 1993.

TRD-9320920

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Earliest possible date of adoption: May 7, 1993

For further information, please call: (512) 463-3127

TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 101. Dental Licensure

General Qualifications

• 22 TAC §101.1

The Texas State Board of Dental Examiners proposes an amendment to §101.1, concerning general qualifications. Rule 101.1 states the general qualifications for any person desiring to practice dentistry in the State of Texas.

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

Mr. Camp also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure that applicants for dental licensure receive the highest standards and to assure that the people of the State of Texas receive the highest quality of dental care. Also, to allow access to dental licensure to as many applicants in order to serve the people of Texas. 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 Mei Ling Clendennen, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4544, §2, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§101.1. General Qualifications.

(a) (No change.)

(b) An applicant for licensure from the Texas State Board of Dental Examiners shall:

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

(3) Present proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association; or, pursuant to Texas Civil Statutes, Article 4544, §2, if an applicant is a foreign and/or non-accredited dental school graduate, the applicant shall present evidence satisfactory to the Board that the applicant is a graduate of a dental school and has

passed a qualifying clinical exam administered by Baylor College of Dentistry, The University of Texas Health Science Center at Houston, Dental Branch, or the University of Texas Health Science Center at San Antonio, Dental School.

(4) Present proof of having passed the examination for dentists in its entirety given by the National Board of Dental Examiners. Foreign and/or non-accredited graduates, as referenced in paragraph (3) of this subsection, must present proof of having passed the National Board Exam in its entirety to the Board prior to taking the qualifying exam.

(5)-(8) (No change.)

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321018

C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Proposed date of adoption: May 7, 1993

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

Licensure by Credentials- Dentists

• 22 TAC §101.7

The Texas State Board of Dental Examiners proposes new §101.7 concerning licensure by credentials-dentists. New §101.7 states that the Texas State Board of Dental Examiners may license applicants by credentials, without examination, who meet all TSBDE and State of Texas minimum applicant requirements and general licensure qualifications and all criteria as stated.

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

Mr. Camp 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 increased access to dental care. 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 Mei Ling Clendennen, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 3800, Austin, Texas 78701.

The new section is proposed under Texas Civil Statutes, Article 4545a which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws

of the state as may be necessary for the performance of its duties and/or to ensure compliance with the state laws relating to the practice of dentistry to protect the public health and safety.

§101.7. Licensure by Credentials-Dentists. The Texas State Board Dental Examiners may license applicants by credentials, without examination, who meet all TSBDE and State of Texas minimum applicant requirements and general licensure qualifications and all of the following criteria:

(1) has graduated from a dental school accredited by the Commission on Dental Accreditation;

(2) is currently licensed in another jurisdiction whose initial licensure examination is comparable to the TSBDE licensure examination;

(3) has been in practice or full-time dental education for a minimum of five continuous years immediately prior to applying for licensure;

(4) is endorsed by the state board of dentistry in the state of current practice;

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

(6) has not failed the Texas State Board of Dental Examiners licensing examination within the last three years;

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

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

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 March 30, 1993.

TRD-9321020

C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Earliest possible date of adoption: May 7,
1993

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

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §217.1, §217.3

The Board of Nurse Examiners proposes an amendment to §217.1 and new §217.3, concerning definitions and candidate with a disability. In 1992 the Americans with Disabilities Act (ADA) required that persons with disabilities be offered the opportunity to demonstrate competency in their chosen field of endeavor. The National Council has provided interpretations of this law as it relates to nursing licensure and examination. The proposed change and new section support language changes in applications and processing of requests from a candidate with a disability.

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

Ms. Waddill also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be bringing the rules and regulations into compliance with ADA simplifies procedures for providing reasonable accommodations based on documented need of the candidate with a disability. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The amendment and new section are proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

[Appropriate accommodations for testing—In general, those life style accommodations which candidates use to compensate for their disabilities, and which become accepted practice for the individual in his/her nursing education program.]

Auxiliary aids and services—Include, but are not limited to, technological devices, qualified interpreters or readers, materials in alternate formats, and acquisition or modification of equipment or devices.

Candidate with a disability—An individual with a disability who has successfully completed an accredited nursing program who may or may not require modifications in the NCLEX administration.

[Handicapped candidate—An individual who has successfully completed an accredited nursing program and requires modifications in the NCLEX-RN procedures because of a physical or sensory impairment and/or a specific learning disability.]

Individual with a disability—An individual with a physical or mental impairment that substantially limits one or more of the major life activities; has a record of such an impairment; or is regarded as having such an impairment.

Reasonable accommodations—Reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the board can demonstrate that making the modifications would fundamentally alter the measurement of the skills or knowledge that the examination is intended to test; or would result in undue burden and there is an equally effective alternative.

Testing accommodation—Reasonable modifications in administration of NCLEX which are necessary to provide accessibility to a qualified candidate with a disability.

§217.3. Candidate with a Disability.

(a) A candidate with a disability shall be provided reasonable accommodations for testing in order that competency in professional nursing may be demonstrated.

(b) A written request for reasonable accommodations for testing shall be submitted to the board by the NCLEX deadline.

(c) The request shall include documentation of the need for accommodations.

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 March 30, 1993.

TRD-9321032 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Proposed date of adoption: May 25, 1993

For further information, please call: (512) 835-8650

• 22 TAC §217.3

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the

Board of Nurse Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Board of Nurse Examiners proposes the repeal of §217.3, concerning Handicapped Candidate. Rewrite of the section is necessary to comply with the Americans with Disabilities Act (ADA); therefore, the section is being repealed and a new section is simultaneously being proposed.

Louise Waddill, Ph.D., R.N. executive director, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

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

Comments on the proposal may be submitted to Louise Waddill, R.N., Ph.D., Executive Director, Board of Nurse Examiners, Box 140466, Austin, Texas 78714.

The repeal is proposed under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321031 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Proposed date of adoption: May 25, 1993

For further information, please call: (512) 835-8650

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 1. Organization and Administration

Personnel and Employment Policies

• 37 TAC §1.32

The Texas Department of Public Safety proposes an amendment to §1.32, concerning basic requirements for employment as trooper. Language is deleted in subsection (a)(1) which removes the maximum hiring age for employment as a trooper. This

amendment will ensure department compliance with the Federal Age Discrimination in Employment Act.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mary Ann Courter, commander, Personnel Bureau, has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to ensure the public that the department complies with the Federal Age Discrimination in Employment Act in employment practices with regard to the hiring of troopers. 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 John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under the Texas Government Code, §411.006(4) and §411.004(3), which provides the director of the Texas Department of Public Safety with the authority to adopt rules necessary for the control of the department, subject to the Public Safety Commission's approval.

§1.32. Basic Requirements for Employment as Trooper.

(a) Application requirements.

(1) Applicants must be at least 20 years of age [and less than 36 years of age] on the date of probationary appointment to the position of trooper-trainee.

(2)-(11) (No change.)

(b) (No change.)

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

Issued in Austin, Texas, on March 12, 1993.

TRD-9320953 James R. Wilson
Director
Texas Department of
Public Safety

Proposed date of adoption: May 7, 1993

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

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Chapter 23. Vehicle Inspection
Vehicle Inspection Station Li-
censing

- 37 TAC §§23.1, 23.8, 23.15,
23.16

The Texas Department of Public Safety proposes amendments to §§23.1, 23.8, 23.15, and new §23.16, concerning vehicle inspec-

tion station licensing. The amendment to §23.1 adds subsections (e) and (f) regarding withdrawal of application and frequency of application for a station license. Subsection (d) is added to §23.8 requiring station owners to report an inspector's change in employment within three working days. Language is added and deleted in §23.15, subsection (a)(13) regarding denial of a station or inspector license for conviction of a crime which directly relates to the duties and responsibilities of a vehicle inspection station or inspector. Section 23.16 is added as a new section which promulgates the procedures and factors to be used in determining eligibility of persons with a criminal background to operate a vehicle inspection station and inspect vehicles.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

George C. King, chief of traffic law enforcement, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more efficient administration of the Motor Vehicle Inspection Program regarding frequency of station application, reporting, and eligibility of an inspector or a station. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendments and new section are proposed under Texas Civil Statutes, Article 6701d, Article XV, §§140-142, which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration of this Act.

§23.1. New Applications.

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

(e) Withdrawal of application. An application for a license as a vehicle inspection station may be withdrawn by the applicant at any time. No person may apply for a license as a vehicle inspection station within one year from the date of the withdrawal of the application by the applicant.

(f) Frequency of application. Except as provided in §23.13 of this title (relating to Reissue of Inspection Station License After Suspension), no person may apply for a license as a vehicle inspection station within one year from the date of denial by the director of an application from the same person.

§23.8. Manpower.

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

(d) Inspection station owners shall furnish information as may be required by the department pertaining to inspectors employed at that station on Form VI-3a within three working days of a change in the inspector's employment.

§23.15. Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings.

(a) The department may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station for the certificate or any person to inspect vehicles for any of the following reasons:

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

(13) a conviction under the laws of this state, another state, or the United States of any crime which directly relates to the duties and responsibilities of a vehicle inspection station or inspector, as set out in §23.16 of this title (relating to Persons with a Criminal Background). [a conviction under the laws of this state, another state, or the United States, of any felony, or an offense involving moral turpitude, or an offense involving tampering with a governmental record, or an offense under the Motor Vehicle Certificate of Title Act (Texas Civil Statutes, Article 6687-1), or an offense committed as a result of the person's criminally negligent operation of a motor vehicle, or an offense involving driving while intoxicated or driving under the influence of drugs.

[(A) These particular crimes relate to the licensing of inspectors and inspection stations because the licensees, as representatives of the Texas Department of Public Safety, are required to be of good reputation, character, moral conduct, and to deal honestly with members of the public. The inspection of vehicles requires the operation or control of citizens' vehicles, the verification of odometer readings, and accurate record keeping of inspection procedures.

[(B) The license of an inspection station will be subject to denial, revocation, or suspension in the event the owner is convicted of such an offense. In the event that an inspector or inspector applicant is convicted of such an offense, that person's license will be subject to revocation or suspension, or his application will be subject to denial.

[(C) A conviction for an offense other than a felony will not be considered by the Department, under this paragraph, if a period of more than five years has elapsed since the date of the

conviction or of the release of the person from the confinement or supervision imposed for that conviction, whichever is the later date. For the purposes of this section, a person is convicted of an offense when an adjudication of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not:

[(i) the sentence is subsequently probated and the person is discharged from probation;

[(ii) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

[(D) In determining the present fitness of a person who has been convicted of a crime and in determining whether a criminal conviction directly relates to an occupation, the Department shall consider those factors stated in Texas Civil Statutes, Article 6252-13c and d.]

(b)-(m) (No change.)

§23.16. *Persons with a Criminal Background.*

(a) In accordance with Texas Civil Statutes, Article 6252-13c and §23.15 of this title (relating to Inspection Station and Certified Inspector Denial, Revocation, Suspensions, and Administrative Hearings), the department may deny an application for a license or revoke or suspend an outstanding certificate of any inspection station or the certificate to inspect vehicles of any person who has been convicted of a crime which directly relates to the duties and responsibilities of a vehicle inspection station or inspector unless the department determines that the licensee or applicant is presently fit to perform such duties and responsibilities.

(b) In determining whether a criminal conviction directly relates to the performance of or whether the licensee or applicant is presently fit to perform the duties and responsibilities of a vehicle inspection station or inspector, the department will consider the factors listed in Texas Civil Statutes, Article 6252-13c(4) (b) and (c)(1)-(6).

(c) The department considers a crime directly related to the duties and responsibilities of a vehicle inspection station or inspector:

(1) when the crime violates the Uniform Act Regulating Traffic on Highways, Texas Civil Statutes, Article 6701d, Article XV;

(2) when the crime violates the Motor Vehicle Certificate of Title Act, Texas Civil Statutes, Article 6687-1;

(3) when the crime involves the criminally negligent operation of a motor vehicle or driving a motor vehicle while intoxicated or under the influence of drugs;

(4) when the crime involves driving a motor vehicle without the effective consent of the owner;

(5) when the crime involves any aspect of the business of inspecting vehicles;

(6) when the crime occurs wholly or in part on the property of an official vehicle inspection station;

(7) when the crime involves a motor vehicle which has been presented to the inspection station or inspector for inspection;

(8) when the crime involves any attempt by fraudulent or unauthorized means to obtain or alter or tamper with a governmental record;

(9) when the crime involves property of the government;

(10) when the crime involves a benefit or offer of a gift to a public servant as consideration for a violation of a duty imposed by law on the public servant;

(11) when the crime involves moral turpitude;

(12) when the criminal conduct involves violence; or

(13) when court costs, supervision fees, fines, and restitution as may have been ordered in the criminal cases in which he has been convicted remain outstanding.

(d) The license of an inspection station will be subject to denial, revocation, or suspension in the event the owner or operator is convicted of such an offense. In the event that an inspector or inspector applicant is convicted of such an offense, that person's license will be subject to revocation or suspension, or his application will be subject to denial.

(e) A conviction for a felony offense will not be considered by the department, under this subsection, if a period of more than 10 years has elapsed since the date of the conviction or the release of the person from confinement or supervision imposed for that conviction, whichever is the later date. An offense other than an felony will not be considered by the department, under this subsection, if a period of more than five years has elapsed since the date of the conviction or supervision imposed for that conviction, whichever is the later date. For the purposes of this section, a person is convicted of an offense when an adjudica-

tion of guilt on an offense is entered against the person by a court of competent jurisdiction, whether or not:

(1) the sentence is subsequently probated and the person is discharged from probation;

(2) the accusation, complaint, information, or indictment against the person is dismissed and the person is released from all penalties and disabilities resulting from the offense; or the person is pardoned for the offense, unless the pardon is expressly granted for subsequent proof of innocence.

(f) A dismissal and discharge in a deferred adjudication proceeding shall not be considered a conviction for the purposes of this section.

(g) Upon a licensee's felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision, his license shall be revoked.

(h) It shall be the responsibility of the licensee and applicant to furnish proof in such form as may be required by the department of his employment history, that he has supported his dependents, and that he has otherwise maintained a record of good conduct.

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 March 17, 1993.

TRD-9320950

James R. Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption: May 7, 1993

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

Certification of Inspectors

• 37 TAC §23.61

The Texas Department of Public Safety proposes an amendment to §23.61, concerning procedures for certification. The amendment to subsection (b) revises the minimum age to qualify as an inspector from 17 to 18 years and adds language requiring proof of present fitness, as may be required. Subsection (j) is added regarding certification after denial and renumbering the remaining subsections. Subsection (k) adds and deletes language regarding reinstatement after expiration of suspension. Subsection (m) adds language requiring station owners to furnish information to the department within three working days of a change in the inspector's employment. Subsection (n) adds language requiring an inspector to demonstrate to a department representative correct operation of testing equipment at an idle emission inspection and maintenance station upon change of employ-

ment and before an inspection can be performed. Subsection (p) is added regarding the time period and conditions for withdrawal of application for a license as a certified inspector. Subsection (o) is added regarding frequency of application from date of withdrawal.

Melvin C. Peebles, assistant chief of fiscal affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

George C. King, chief of traffic law enforcement, 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 that this section will be consistent with Federal Child Labor Standards regarding employment of minors and ensuring that inspectors are qualified for certification as an inspector. Administration of the Motor Vehicle Inspection Program will be more efficient. 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 John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6701d, Article XV, §§140-142, which provide the Texas Department of Public Safety with the authority to adopt rules necessary for the administration of this Act.

§23.61. Procedures for Certification.

(a) (No change.)

(b) Qualifications for certification as a certified inspector. To qualify as an inspector an applicant shall:

(1) be at least 18 [17] years of age;

(2)-(9) (No change.)

(10) submit a statutory fee of \$10 when the certification process by the trooper is completed and the person is ready for issuance of an inspector's certificate; [and]

(11) be exempt from the inspector certification fee if employed at a governmental inspection station. Dual authorization for another class of inspection station would require an inspector certification fee; [and]

(12) provide proof of present fitness as may be required by the department.

(c)-(i) (No change.)

(j) Certification after denial. Except as provided in subsection (k) of this section, no person may apply for a license as a certified inspector within one year

from the date of the denial by the director of an application from the same person.

(k)[(j)] Certification after suspension.

(1) After expiration of a period of suspension, a person desiring reinstatement may request reinstatement by notifying in writing the appropriate regional supervisor and: [If suspended, a certified inspector seeking recertification must:]

(A) make a written application for reinstatement;

(B) meet all qualifications for appointment;

(C) pass the complete written and demonstration test; and

(D) submit the inspector's certification fee if certification has expired during suspension.

(2) If the certified inspector passes all tests, the inspector certificate card, VI-66, will be reissued.

(l)[(k)] Reexamination; withdrawal of certification. The department representative may require the certified inspector to take all or part of the written and demonstration tests at any time or may require attendance at any training program. Failure to pass a required test disqualifies the certified inspector immediately.

(m)[(l)] Dual authorization. A certified inspector may be certified at more than one vehicle inspection station at the same time. [The department representative will evaluate each application and determine if circumstances permit approval.] Inspection station owners shall furnish information as may be required by the department pertaining to inspectors employed at that station on Form VI-13a within three working days of a change in the inspector's employment.

(n)[(m)] Changes in employment.

(1) If a certified inspector changes his place of employment, he shall prove his ability to correctly operate the testing equipment at such new vehicle inspection station, and may be required to take a complete written examination before he will be allowed to inspect at the new location.

(2) No inspections shall be performed by a certified inspector at an idle emission inspection and maintenance station [his new location] until he has demonstrated to the department representative supervising the station his ability to cor-

rectly operate the testing equipment at such station [recertified at the new place of employment by the department representative supervising the vehicle inspection station].

(3) The inspection station owner shall notify the department representative supervising the station within three working days of a change in employment of inspectors at that station. [The certified inspector shall notify the department representative supervising the vehicle inspection station immediately of a change in employment.]

(o)[(n)] Certified inspector schools. Schools are conducted on a regionwide schedule according to need at any time during the year.

(p) Withdrawal of application. An application for a license as a certified inspector may be withdrawn by the applicant at any time. An application will be deemed withdrawn when 60 days elapses:

(1) from the first failure of the inspector's written examination:

(2) after the department requests proof of present fitness from the applicant; or

(3) from the successful completion of the written idle emissions examination when the applicant has not requested that a demonstration test on the testing equipment be given.

(q) Frequency of application. No person may apply for a license as a certified inspector within one year from the date of the withdrawal of an application by the same person.

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

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James R. Wilson
Director
Texas Department of
Public Safety

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

Parameter Vehicle Emission Inspection and Maintenance Program

• 37 TAC §23.91, §23.92

The Texas Department of Public Safety proposes amendments to §23.91 and §23.92, concerning the parameter vehicle emission inspection and maintenance program and the vehicle idle emissions inspection and maintenance program.

nance program. The amendment to §23.91 adds and deletes language. Language is clarified for parameter vehicle emission inspections on all vehicles presented for inspection in any designated county. Language is deleted stating certified inspectors in any other county of the state may receive the training and certification to conduct the parameter vehicle emission inspection and maintenance inspections for vehicles required to be so inspected. Language regarding the rear license plate validation sticker is deleted and language added to read as registration sticker.

The amendment to §23.92 deletes language regarding a two-year vehicle inspection certificate. Language regarding the rear license plate validation sticker is deleted and language added to read as registration sticker.

Both sections are amended by adding language requiring that certified inspectors successfully complete required training, testing, and certification to conduct the parameter vehicle emission and the vehicle idle emission inspection.

Melvin C. Peeples, assistant chief of fiscal affairs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

George C. King, chief of traffic law enforcement, has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be to ensure the public that inspectors conducting parameter vehicle emission and vehicle idle emissions inspections are properly trained and certified to operate required equipment and perform such inspections as required. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, Box 4087, Austin, Texas 78773-0001, (512) 465-2000.

The amendments are proposed under Texas Civil Statutes, Article 6701d, §142(c)(1) and §142(d), which provide the Public Safety Commission with the authority to establish a Parameter Vehicle Emission Inspection and Maintenance Program for vehicles registered in any county in this state which does not meet national ambient air quality standards and for which the Texas Natural Resource Conservation Commission has adopted a resolution requesting the Department of Public Safety to institute such a program. See also Attorney General Opinion JM-138, dated March 16, 1984.

§23.91. Parameter Vehicle Emission Inspection and Maintenance Program.

(a) All 1968 and newer [later] year model passenger cars and light-duty trucks [currently] registered [and operated] in any designated county [counties] or presented for inspection in any designated county

must be inspected, as part of, and at the time of, the required annual vehicle inspection, under the Parameter Vehicle Emission Inspection and Maintenance Program and the rules of the department applicable to the particular year model. Provided, that a passenger car or light-duty truck that is sold in this state has not been previously registered in this or another state, and on the date of sale is of the current or the immediately preceding model year is not subject to an initial parameter vehicle emission inspection.

(b) Certified inspectors in designated counties must perform the parameter vehicle emission inspection and maintenance inspection on all 1968 and later model year passenger cars and light-duty trucks presented for inspection [which are currently registered in designated counties]. For the purpose of the Parameter Vehicle Emission Inspection and Maintenance Program described in this section, the term "designated counties" shall mean the counties of Collin, Dallas, Denton, Ellis, El Paso, Harris, Johnson, Kaufman, Parker, Rockwall, and Tarrant.

(c) (No change.)

(d) In order to determine whether a vehicle is currently registered in a designated county, registration [the rear license plate validation sticker] will be verified. Vehicles registered in designated counties will be identified by a distinguishing validation sticker as determined by the Texas Department of [Highways and Public] Transportation. Certified inspectors in the counties named in subsection (b) of this section and certified inspectors in counties adjoining designated counties will verify the rear license plate validation stickers of each 1968 or later model year passenger car or light-duty truck presented for inspection.

(e)-(g) (No change.)

(h) All certified inspectors in designated counties must successfully complete the training and testing for the Parameter Vehicle Emission Inspection and Maintenance Program and receive certification from the Texas Department of Public Safety for such training. [Certified inspectors in any other county of the state may receive the training and certification to conduct the parameter vehicle emission inspection and maintenance inspections for vehicles required to be so inspected.]

(i) Only those certified inspectors who have successfully completed the training and testing for the Parameter Vehicle Emission Inspection and Maintenance Program and who have received certification for such training and testing may perform the parameter vehicle emission inspection and maintenance inspections.

(j) Certified inspectors in any designated county in the state who have been certified to perform the parameter vehicle

emission inspection and maintenance inspections shall accurately complete forms provided by the department, including a notation of whether or not the inspected vehicle has had the emission inspection performed in a designated county. The form will also contain a space to note whether the inspected vehicle was bearing a previously issued inspection certificate with a colored numeral insert.

(k) (No change.)

(l) For purposes of the Parameter Vehicle Emission Inspection and Maintenance Program, the term "light-duty truck" means a motor vehicle with a manufacturer's gross weight of 8,500 pounds or less, which shall include, but not be limited to, pickup trucks, panel delivery trucks, and carry-all trucks, except that motor vehicles powered by diesel fuel or any fuel other than gasoline or gasohol are not included in the meaning of the term "light-duty truck" if their design precludes the use of gasoline or gasohol without modification.

(m) Specific inspection requirements for passenger cars and light-duty trucks in the Parameter Vehicle Emission Inspection and Maintenance Program are as follows.

(1) (No change.)

(2) 1980-1983 year models.

[(A) Inspection parameters, in addition to items in paragraph (1)(A) of this subsection, are choke system, heater, and rod. In addition, vehicles originally equipped with a catalytic converter at the time of manufacture shall be inspected by performing the lead detection test, by checking for the presence of the catalytic converter, and by checking for the presence and proper size opening of the fuel inlet restrictor.]

[(B) The certified inspector shall mark the back of the inspection certificate which is presently on a vehicle with a large "X," using a laundry marking pen, if a vehicle has failed the inspection because of an altered or removed fuel inlet restrictor, removed catalytic converter, or lead in the tailpipe, and the vehicle also failed any other item of inspection that would cause rejection of the vehicle.]

(3) 1984 and later year models.

(A) Inspection parameters, in addition to items in paragraphs (1)(A) and (2)[(A)] of this subsection, are misfire, oxygen sensor, emission-related recall, and emission-related maintenance. In addition, vehicles originally equipped with a catalytic converter at the time of manufacture shall be inspected by performing the lead detec-

tion test, by checking for the presence of the catalytic converter, and by checking for the presence and proper size opening of the fuel inlet restrictor.

(B) (No change.)

(C) The certified inspector shall mark the back of the inspection certificate which is presently affixed to the vehicle's windshield with a large "X," using a laundry marking pen, if the vehicle failed the inspection [because of a removed or altered fuel inlet restrictor, removed catalytic converter, or lead in the tailpipe, and the vehicle also failed any other item of inspection that would cause rejection of the vehicle].

(n)-(s) (No change.)

§23.92. Vehicle Idle Emissions Inspection and Maintenance Program.

(a) All 1975 and newer year model passenger cars and light-duty trucks registered in any designated county or presented for inspection in any designated county must be inspected, as part of, and at the time of, the required annual vehicle inspection and parameter vehicle inspection under the Vehicle Idle Emissions Inspection and Maintenance Program and the rules of the department applicable to the particular year model. [Provided, that a passenger car or light-duty truck that is sold in this state, has not been previously registered in this or another state, and on the date of sale is of the current or the immediately preceding year model, is subject to an initial inspection expiring at the end of two years.]

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

(d) In order to determine whether a vehicle is currently registered in a designated county, certified inspectors in designated counties and in adjoining counties shall verify the registration [rear license plate validation sticker]. Vehicles registered in designated counties will be identified by a distinguishing validation sticker as determined by the Texas Department of [Highways and Public] Transportation.

(e)-(g) (No change.)

(h) All certified inspectors in designated counties must successfully complete the training and testing for the Vehicle Idle Emissions Inspection and Maintenance Program and be trained, tested, and certified on the analyzer's operation by the analyzer manufacturer and receive certification from the Texas Department of Public Safety for such training. Certified inspectors in any other designated county of the state may be trained, tested, and certified [receive the training and certification] to conduct the vehicle idle emissions inspection and main-

tenance inspections for vehicles required to be so inspected.

(i) Only those certified inspectors who have successfully completed the training and testing for the Vehicle Idle Emissions Inspection and Maintenance Program and who have received certification for such training and testing may perform the vehicle idle emissions inspection and maintenance inspections.

(j) (No change.)

(k) For purposes of the Vehicle Idle Emissions Inspection and Maintenance Program, light-duty truck means a motor vehicle with a manufacturer's gross weight of 8,500 pounds or less, which shall include, but not be limited to, pickup trucks, panel delivery trucks, and carry-all trucks, except that motor vehicles powered by diesel fuel or any fuel other than gasoline or gasohol are not included in the meaning of [the term] light-duty truck if their design precludes the use of gasoline or gasohol without modification.

(l) (No change.)

(m) The vehicle idle emissions inspection and maintenance fee is established, for the purposes of this section, as \$6.00 which is in addition to the statutory inspection fee. The additional fee shall be charged upon completion of the vehicle idle emissions inspection and maintenance inspection, whether or not the vehicle passed the inspection. [For vehicles subject to an initial inspection that expires at the end of two years, as provided in subsection (a) of this section, the vehicle idle emissions inspection and maintenance inspection will not be conducted and no fee shall be charged.]

(n)-(q) (No change.)

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

Issued in Austin, Texas, on March 17, 1993.

TRD-9320948

James R. Wilson
Director
Texas Department of
Public Safety

Earliest possible date of adoption. May 7, 1993

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

Part III. Texas Youth Commission

Chapter 89. Youth Rights and Remedies

• 37 TAC §89.15

The Texas Youth Commission (TYC) proposes an amendment to §89.15, concerning

rules for reporting and investigating alleged mistreatment of youth committed to TYC. The amendment replaces the term "negligent supervision" with "inadequate supervision" in a list of improper child care practices.

John Franks, Director of Fiscal Affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks 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 more efficient procedure for maintaining adequate supervision of youth committed to TYC. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed 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.

§89.15. Alleged Mistreatment Rules and Definitions.

(a) Policy. The Texas Youth Commission (TYC) is committed to the protection of TYC youth through the reporting and investigation of alleged abuse, neglect and improper child care practices by TYC and contract program employees and to prescribe principles and methods for its prevention. All allegations of mistreatment (abuse, neglect, and improper child care practices) are investigated. TYC provides separate procedures for the reporting and investigation of allegations of mistreatment in TYC facilities, youth home and contract programs. For additional specific procedures for reporting, investigating and taking action when striking a youth is alleged, see General Operating Policy (GOP) 61.19, §89.19 of this title (relating to Alleged Mistreatment Procedure for Striking Incidents). See GOP.61.17, §89.17 of this title (relating to Alleged Mistreatment Procedure for TYC Operated Facilities); GOP.61.21, §89.21 of this title (relating to Alleged Mistreatment Procedure for Residential Contract Programs); and GOP.61.23, §89.23 of this title (relating to Alleged Mistreatment Procedure for Youth at Home).

(b) Rules.

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

(5) Definition and Examples of Improper Child Care Practices. Improper child care practice. The following are examples of acts of improper child care practices:

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

(C) engages in inadequate [negligent] supervision, i.e., failing to provide the quality of supervision that a reasonable and careful trained child care worker would have provided under similar circumstances, which results in:

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

(D) (No change.)

(E) uses force or restraints which violates GOP.67.09, §91.59 of this title (relating to Use of Force);

(F)-(K) (No change.)

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

Issued in Austin, Texas, on March 26, 1993.

TRD-9320922 Ron Jackson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: May 7, 1993

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

Chapter 91. Discipline and Control

Control

• 37 TAC §91.56

The Texas Youth Commission (TYC) proposes new §91.56, concerning a custody and supervision rating (CSR) system. The new rule will be used to assess the level of custody and supervision required to protect the youth and others.

John Franks, Director of Fiscal Affairs, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks 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 increased safety in TYC facilities. 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 Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.034, which pro-

vides the Texas Youth Commission with the authority to make rules appropriate to the proper accomplishment of its functions.

§91.56. Custody and Supervision Rating.

(a) Policy. A custody and supervision rating (CSR) system is used to assess the level of custody and supervision required to protect the youth and others. The risk rating affects a youth's movement and activities on and off campus at TYC operated maximum and high restriction facilities. Higher risk ratings require increased staff supervision, restriction of youth movement, and restriction of access to unauthorized program areas and potentially harmful materials. Staff supervision refers to supervision provided by a TYC employee or an adult serving in a capacity related to a TYC activity (e.g., an employer of TYC youth or a volunteer for a TYC sponsored activity).

(b) Rules.

(1) Restrictions.

(A) All staff are responsible for being aware of high risk youth and for constant supervision of those youth.

(B) Each facility administration shall develop and maintain a system whereby the rules and privileges of the program level system are made compatible with the CSR system.

(C) A youth with a high risk rating is ineligible to leave the grounds except for necessary medical services or emergencies. Constant supervision by staff is required.

(D) A youth with a medium risk rating is eligible to leave the grounds for routine activities that are not overnight under specific conditions recommended by the treatment team. Supervision by staff is required.

(E) A youth with a low risk rating is eligible to leave the grounds with or without direct staff supervision under specific conditions recommended by the treatment team. Activities may include overnight outings.

(2) Assessment. Risk level is based on a combination of past history, current behavior, and length of time in residential placement since commitment.

(A) Past history includes referrals and adjudications for felony offenses, and escapes/attempts prior to the current placement. Escapes/attempts from high restriction facilities are weighted more heavily than those from medium or minimum restriction facilities.

(B) Current behavior emphasizes major rule violations and admissions to security. Arson/attempts, suicide alert, and self-injury are special risk considerations. Only recent major incidents are included in the assessment.

(C) A youth who has completed less than half of the minimum length of stay will always receive a CSR risk rating of either medium or high, depending on the total score. Youth who have completed at least half of the minimum length of stay can receive a CSR risk rating of low, medium, or high, depending on the total score.

(D) It is possible that a youth will have an offense and escape history that is so extensive that he or she will always receive a high CSR risk rating, independent of current behavior.

(3) Waiver.

(A) The contribution of selected variables to the risk score can be reduced where a clinical review certifies that the youth poses a low risk to escape and low risk to harm self or others, and the superintendent/facility administrator approves.

(B) When the number of current major rule violations reaches a low level, the superintendent/facility administrator has the authority to waive the high risk restriction to a medium risk restriction.

(C) The superintendent/facility administrator may grant a waiver of the CSR risk restriction to allow a pre-placement visit if necessary. Such a waiver may be granted only within 30 days prior to the planned placement.

(D) A waiver of the CSR risk restriction may be requested from the deputy executive director when the superintendent/facility administrator believes that circumstances related to the youth's family or youth's behavior warrant special consideration.

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 March 26, 1993.

TRD-9320921 Ron Jackson
Executive Director
Texas Youth Commission

Proposed date of adoption: May 7, 1993

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

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 29. Purchased Health Services

Subchapter D. Medicaid Home Health Program

- 40 TAC §§29.302, 29.304, 29.308, 29.309, 29.311

The Texas Department of Human Services (DHS) proposes amendments to §§29.302, 29.304, 29.308, 29.309, and 29.311, concerning authorized home health services, limitations on home health services, written plan of care, time-limited authorizations, and additional claim information requirements, in its Purchased Health Services chapter. The purpose of the amendments is to modify certain administrative and procedural requirements to make authorization of services and claims filing easier.

The amendment to §29.302 modifies the prior-approval requirements to specify that the recipient must be essentially homebound and that the service must be reasonable and medically necessary.

The amendment to §29.304 specifies that home health aides may be supervised by a licensed physical therapist. Also, in §29.304(5) and (6) "current treatment plan" is replaced with "current physician's plan of care."

The amendments to §§29.308, 29.309, and 29.311 change certain administrative and procedural requirements concerning documentation and time frames to make prior authorization and claim filing easier. Also, in §29.309(a) "treatment" is replaced with "the need for home health services," and in §29.309(c)(d)(C) "any nursing" has been deleted from "observations."

The changes in terminology in §29.304 and §29.309 are intended to allow for reasonable and medically necessary home health services, prescribed by a physician's plan of care, to be available to essentially homebound recipients regardless of the need for skilled services.

Burton F. Raiford, commissioner, has determined that for the first five-year period the proposed amendments will be in effect there will be fiscal implications as a result of enforcing or administering the amendments. The effect on state government for the first five-year period the amendments will be in effect is an estimated additional cost of \$318,553 for fiscal year 1993; \$1,219,849 for fiscal year 1994; \$1,813,730 for fiscal year 1995; \$2,599,299 for fiscal year 1996; and \$3,726,770 for fiscal year 1997. There will be no fiscal implications for local government as a result of enforcing or administering the amendments.

Mr. Raiford also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that Medicaid recipients who are essentially homebound will be eligible to receive home health program benefits, including supplies and equipment, without continued skilled nurse services. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

Questions about the content of the proposal may be directed to Kay Sterling at (512) 339-6511 in DHS's Purchased Health Services Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-067, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

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

§29.302. Authorized Home Health Services. Subject to certain conditions, limitations, and exclusions, the Texas Department of Human Services (DHS) [department] will pay for home health services provided to an eligible Medicaid recipient who is considered essentially homebound if the services are:

(1) recommended in writing by the recipient's attending physician and described in the physician's written plan of care; [and]

(2) prior authorized as specified by DHS [the department] or its designee; and [.]

(3) considered by DHS or its designee to be reasonable and medically necessary for the patient's care.

§29.304. Limitations on Home Health Services. Home health services are limited to the following:

(1) (No change.)

(2) Personal care services of a home health aide who is under the supervision of a professional registered nurse or licensed physical therapist assigned by the home health agency. The primary objective of a home health aide visit and the majority of time spent in the home must be for the purpose of providing personal care services. Visits made primarily for the purpose of performing housekeeping services are not covered. Light housekeeping services are considered incidental and are not covered

for payment if they substantially increase the amount of time the aide spends in the home.

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

(5) The covered medical supplies listed below are those items considered most essential in the physician-prescribed treatment of an ill or injured patient in his own home. All of these items are primarily designed for therapeutic purposes. Items which are not listed may in selected instances be required for a particular patient. Consideration may be given to prior authorization of such items when the need can be medically documented on an individual case basis. Medical supplies are available only when provided in conjunction with a current physician's plan of care [treatment plan]. If the cost of an item exceeds the lowest charge level at which such item is consistently available in the locality, the provider will be requested to obtain a second bid from another supplier. Compensable items include:

(A)-(J) (No change.)

(6) Payment will be considered for purchase, rental, or repair of durable medical equipment prescribed by the physician and determined medically necessary in illness/injury or for treatment of a malformed body member, when provided in conjunction with a current physician's plan of care [treatment plan]. The health insuring agent reviews and approves the most appropriate plan and the most economical method (rental, purchase, or repair) of meeting the eligible recipient's needs on a planned basis. Periodic rental payment is made only for the period of time the equipment can be substantiated as medically necessary. Periodic rental payments will end when medical necessity for the equipment no longer exists or when the total monthly payments equal the reasonable purchase costs, whichever comes first. Equipment is purchased if it is determined that purchase is more practical or less costly than periodic payments. If the purchase, rental, or repair cost exceeds the lowest charge level at which such service is consistently available in the locality, the provider will be requested to obtain a second bid from another supplier. compensable medical appliances and equipment (rental, purchase, or repairs) include:

(A)-(F) (No change.)

(7)-(8) (No change.)

§29.308. Written Plan of Care. Home health care services are considered for reimbursement [available only] when provided upon recommendation of the attending physician in accordance with the

physician's signed and dated [detailed] plan of care which includes [the following]:

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

§29.309. Time Limited Authorizations.

(a) Prior authorizations for payment of home health benefits may be issued for a service period not to exceed 60 days on any given authorization. This does not mean that a specific authorization cannot be limited to a time period less than the established maximum. When the need for home health services exceeds 60 days, or when there is a change in the service plan, the provider must submit the physician's signed and dated revised plan of care. [When treatment exceeds 60 days, the home health agency is required to submit updated clinical record data and the physician's progress report or revised plan of care. The physician's progress report must be signed and dated and must outline the need for continued care and services. When there is a change in the service plan, the provider must submit the physician's signed and dated revised plan of care.]

(b) [Each home health care plan is evaluated on an individual case basis.] The provider is notified in writing of the authorization (or denial) of [payment for] requested services.

(c) Written [All] requests [submitted] for prior authorization of covered Medicaid home health benefits must include the information listed in paragraphs (1)-(3) of this subsection. [the following:] If inadequate or incomplete information is provided, the provider will be requested to furnish the following additional documentation as required to make a decision on the request:

(1) patient identification information (as it appears on the Medical Care Identification form [ID Card]);

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

(2) physician's signed and dated plan of care; [The plan must be in writing and signed and dated by the attending physician.]

(3) clinical record data (completed by provider);

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

(C) [any nursing] observations pertinent to the overall plan of care in the home;

(D) type of service the patient is receiving from other community or state agencies. [When the patient is receiving chore or homemaking services from the

State Department of Public Welfare, indicate date of contact with agency social worker to coordinate in-home services.]

[(4) In instances where inadequate or incomplete information is submitted, the provider will be requested to furnish additional documentation as required to make a decision on the request.]

§29.311. Additional Claim Information Requirements. In addition to the general requirements in §29.1 of this title (relating to Claim Information Requirements), the following information is required on or with claims for home health services:

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

(5) [written] prior authorization letter and/or number, invoice and/or bids obtained from or as specified by the health insuring agent;

(6)-(7) (No change.)

(8) plan of care signed and dated by the physician.

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 March 29, 1993.

TRD-9320954

Nancy Murphy
Section Manager
Texas Department of
Human Services

Earliest possible date of adoption: June 1, 1993

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

◆ ◆ ◆
Chapter 33. Early and Periodic Screening, Diagnosis, and Treatment

• 40 TAC §33.140

The Texas Department of Human Services (DHS) proposes an amendment to §33.140, concerning Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program Providers (EPSDT-CCP), in its EPSDT rule chapter. The purpose of the amendment is to clarify the reimbursement methodology for licensed dieticians and durable medical equipment.

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

Mr. Raiford also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be that Medicaid providers will have the methodology used to reimburse them for covered services under the EPSDT-CCP Medicaid program.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

Questions about the content of the proposal may be directed to Janet Kres at (512) 338-6465 in DHS's Purchased Health Services Section. Comments on the proposal may be submitted to Nancy Murphy, Agency Liaison, Policy and Document Support-060, Texas Department of Human Services E-503, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

DHS has scheduled a public hearing to accept comments on the proposed amendment. The hearing will begin at 9 a.m. on Monday, April 26, 1993, in the public hearing room on the first floor, east tower, of the John H. Winters Building, 701 West 51st Street, Austin.

The amendment is proposed 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.

§33.140. Early and Periodic Screening, Diagnosis, and Treatment-Comprehensive Care Program Providers (EPSDT-CCP). The following are approved EPSDT-CCP provider types and the approved Texas Medical Assistance (Medicaid) Program reimbursement methodology for each provider type.

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

(5) Reimbursement for durable medical equipment.

(A) Direct vendor payments. DHS or its designee makes direct vendor payments to providers of durable medical equipment participating in the Medicaid program. Participating providers are reimbursed within the limits of the maximum allowable fee schedule established by DHS. The maximum allowable fee schedule for durable medical equipment is based on the lesser of the following:

(i)-(ii) (No change.)

(iii) the durable medical equipment acquisition fee, as defined in subparagraph (B)(i) of this paragraph; or [.]

(iv) if no discount is provided, the incurred cost to the dealer plus a percentage to be determined by DHS.

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

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

(C) Ventilator Service Agreements. If the Medicaid client currently owns a ventilator, DHS may provide reimbursement for a service agreement, in accordance with DHS's policy, and at the lesser of the billed amount or a fee schedule developed by DHS.

(6)-(10) (No change.)

(11) Licensed Dietitians. These providers must be licensed by the Texas State Board of Examiners of Dietitians in accordance with the Licensed Dietitians Act, Article 4512h. Medicaid benefits under the EPSDT-CCP are for client nutritional services for the purpose of treating, preventing, or minimizing the effects of illness, injuries, or other impairments. Reimbursement is made according to the lesser of the billed amount or a fee schedule developed by DHS.

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 March 29, 1993.

TRD-9320955 Nancy Murphy
Section Manager
Texas Department of
Human Services

Earliest possible date of adoption: June 1, 1993

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

◆ ◆ ◆
TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 25. Division of Maintenance and Operations

Oversize and/or Overweight Permits

• 43 TAC §25.62

(Editor's Note: The Texas Department of Transportation proposes for permanent adoption the amended section it adopts on an emergency basis in this issue. The text of the amended section is in the Emergency Rules section of this issue.)

The Texas Department of Transportation proposes an amendment to §25.62, concerning Permit Issuance Requirements and Procedures. The amendment delays the expiration

date of subsection §(a)(B)(vii) from June 1, 1993, to December 31, 1994. Section 25.62 prescribes the procedure for securing a permit pursuant to Texas Civil Statutes, Article 6701a to operate overweight or oversize vehicles on the state highway system. Statutory limits on the width, length, height, and weight of such vehicles are established in Texas Civil Statutes, Article 6701d-11. Texas Civil Statutes, Article 6701a authorize the department to issue special permits when those statutory limits are exceeded, but only on condition that the commodities to be transported cannot be reasonably dismantled and that the department determines that operation will be without material damage to the highway. The statute contains other provisions for permit application, fees, form, content, special conditions, and penalties.

The Texas Transportation Commission by Minute Order Number 100714, dated March 25, 1992, acknowledged advice from the Texas Department of Commerce, the Chairman of the Railroad Commission of Texas, the Office of the Governor, and other officials that the economic health and welfare of Texas at that time required the consideration of certain economic factors when issuing oversize permits, and therefore amended §25.62 to allow the issuance of an oversize permit when the transport of more than one commodity in a single load creates or makes greater an illegal dimension of length, width, or height. That amendment will expire on June 1, 1993. The commission has now determined that conditions underlying the amendment continue to exist and are likely to continue for an indefinite future period, thereby requiring the continued effectiveness of the rule at least through December 31, 1994.

Gary K. Trietsch, P.E., director, Division of Maintenance and Operations, 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. Trietsch also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to foster, encourage, and enhance the state's economic growth and its continued recovery from depressed economic conditions and high unemployment rates of recent years. 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 Gary K. Trietsch, P.E., Director, Division of Maintenance and Operations, 125 East 11th Street, Austin, Texas 78701-2383, (512) 416-3200. The deadline for submitting comments is 5 p. m., May 7, 1993.

The Texas Department of Transportation will provide a public hearing pursuant to the Administrative Procedure and Texas Register

Act, Texas Civil Statutes, Article 6252-13a, §5, to receive data, comments, and views concerning the proposed amended section. The public hearing will be held on Monday, April 19, 1993, at 9 a.m. in the first floor hearing room of the Dewitt C. Greer State Highway Building, 11th and Brazos, Austin, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive comment. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Comments on the proposed text should include appropriate citations to sections, subsections, paragraphs, etc., for proper reference. Any suggestions or requests for alternative language or other revisions in the proposed text should be submitted in written form. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the chair or the presiding officer. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing may contact Al Zucha, public information officer, at 125 East 11th Street, Austin, Texas 78701-2383, (512) 463-8588.

The amendment is proposed under Texas Civil Statutes, Articles 6666 and 6701a, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and specifically to issue permits for the movement of oversize and/or overweight loads over the state highway system.

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

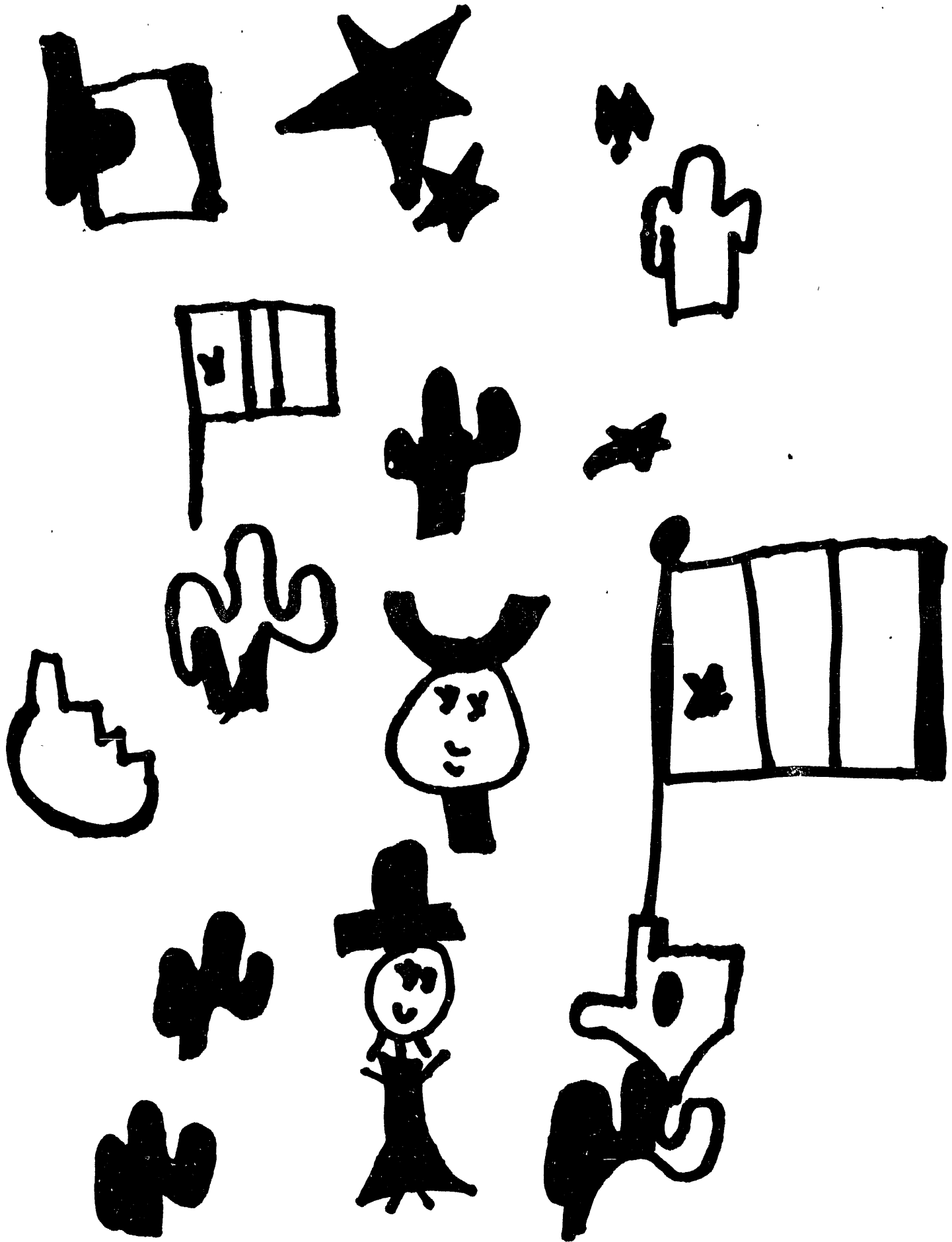
Issued in Austin, Texas, on March 31, 1993.

TRD-9321023 Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Earliest possible date of adoption: May 7, 1993

For further information, please call: (512) 463-8630





Name: Jessica Vick
Grade: 1
School: Buda Primary Elementary School

Withdrawn Sections

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a section by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing or 20 days after filing. If a proposal is not adopted or withdrawn six months after 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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 21. Practice and Procedure

Miscellaneous

• 16 TAC §21.181

The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption a proposed amendment §21.181 which appeared in the December 11, 1992, issue of the *Texas Register* (17 TexReg 8612). The effective date of this withdrawal is March 29, 1993.

Issued in Austin, Texas, on March 29, 1993.

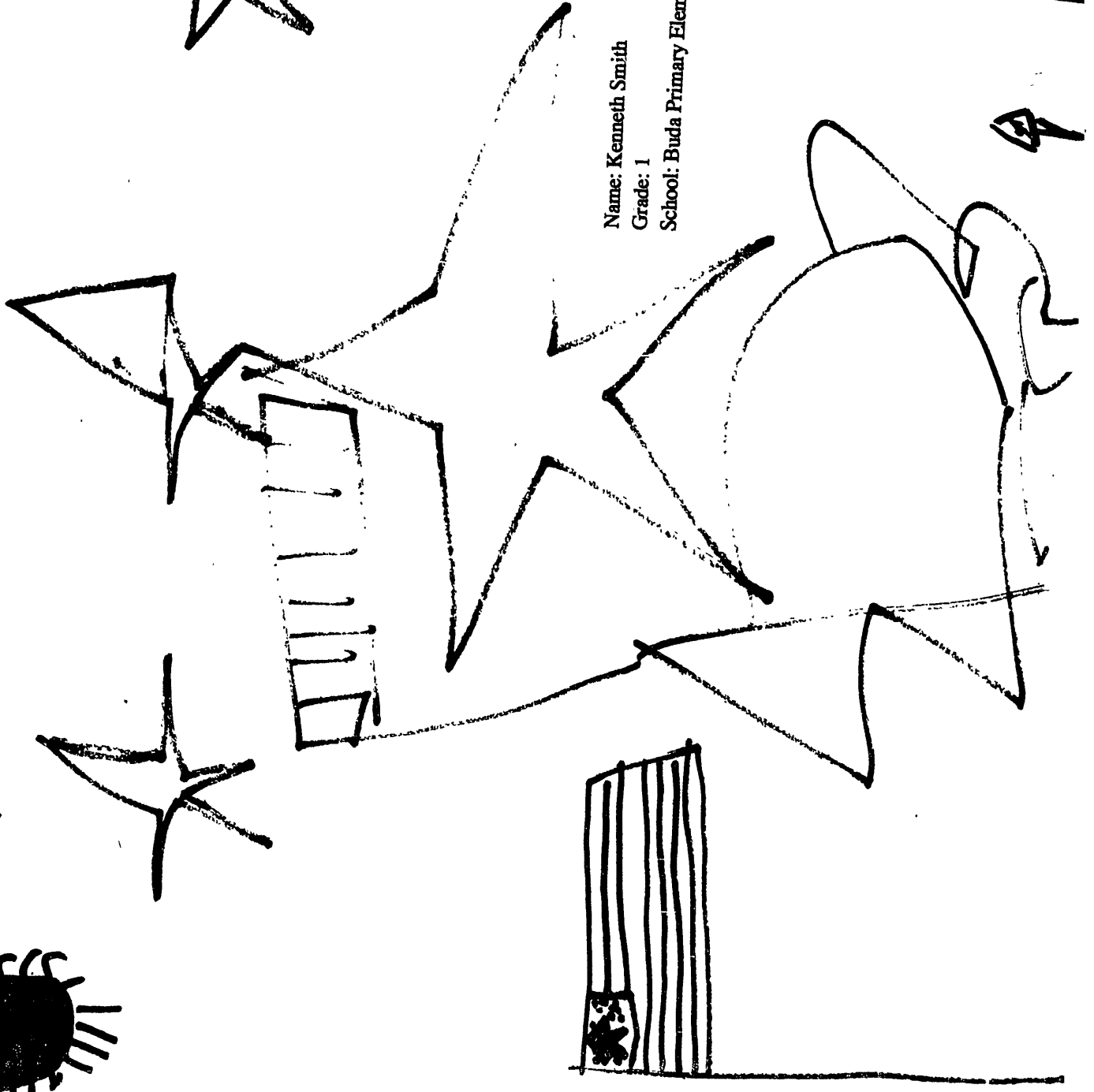
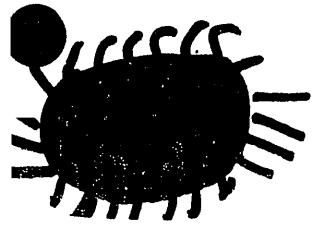
TRD-9320932

John M. Renfrow
Secretary of the
Commission
Public Utility Commission
of Texas

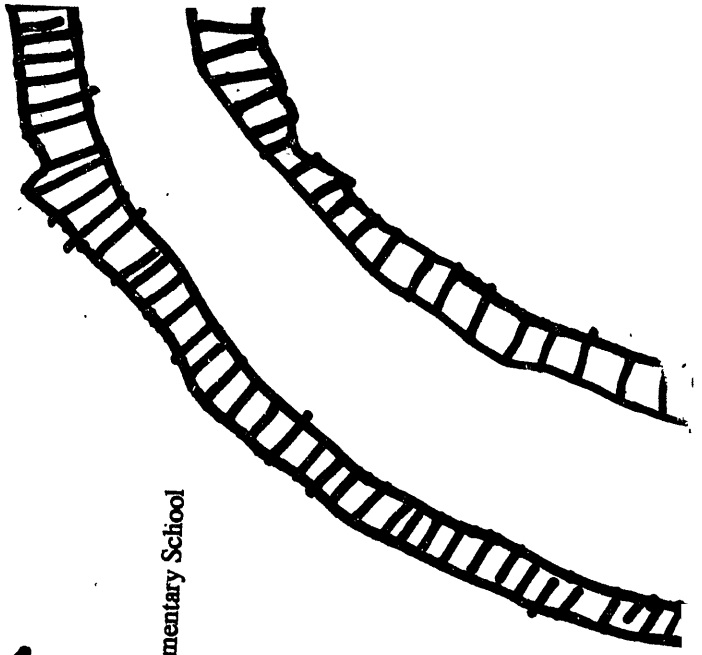
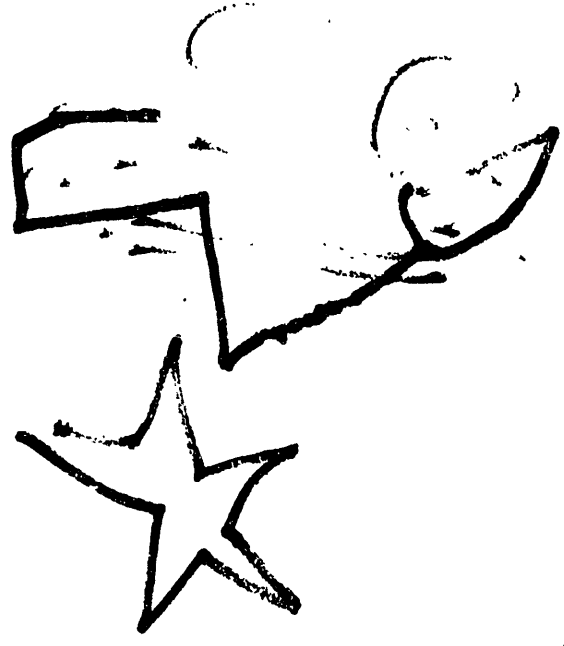
Effective date: March 29, 1993

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





Name: Kenneth Smith
Grade: 1
School: Buda Primary Elementary School



Adopted Sections

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

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

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 111. Executive Administration Division

• 1 TAC §111.4

The General Services Commission adopts the repeal of §111.4, concerning breach of ethical standards, without changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6845).

The section is repealed to be replaced with new §111.4.

The section is replaced with a new §111.4 which more clearly sets forth prohibited conduct of employees and vendors.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

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 March 30, 1993.

TRD-9321015 Judith M. Porras
Director of Legal
Information and Human
Resources
General Services
Commission

Effective date: April 20, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 463-3583

The General Services Commission adopts new §111.4, concerning ethical standards, with changes to the proposed text as published in the October 6, 1992, issue of the *Texas Register* (17 TexReg 6845).

The section is necessary to provide guidance concerning required ethical standards of conduct of employees and vendors.

The section sets forth prohibited actions for employees and vendors, and provides proce-

dures for preventing and remedying prohibited actions, and penalties.

No comments for or against the section were received. The one comment received questioned whether the phrase "any matter" contained in §111.4(c) may be broader than "particular matter" defined in Texas Civil Statutes, Article 6252-9b.

No one commented for or against the section. However, the Texas Department of Transportation submitted a question on the meaning of "any matter."

"Any matter" signifies a particular matter in which a former employee participated during his or her employment; there is no meaningful distinction between the two phrases. Additionally, the agency has reconsidered and deleted proposed subsections (b)(5) and (d)(2).

The new section is adopted under Texas Civil Statutes, Article 601b, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purpose of the Article.

§111.4. Ethical Standards.

(a) This section states the ethical standards of conduct required of commission employees, vendors, potential vendors, and employees of other agencies when acting under authority delegated from the commission.

(b) An employee may not:

(1) participate in work on a commission contract knowing that the employee, or member of their immediate family has an actual or potential financial interest in the contract, including prospective employment;

(2) solicit or accept anything of value from an actual or potential vendor;

(3) be employed by, or agree to work for, a vendor or potential vendor;

(4) knowingly disclose confidential information for personal gain.

(c) A former employee who had a pay classification of Group 17, Step 1 or higher may not represent or receive compensation concerning any matter in which the former employee participated during his or her employment with the state.

(d) A vendor or potential vendor may not offer, give, or agree to give an employee anything of value.

(e) When an actual or potential violation of subsections (b)-(d) is discovered, the person involved shall promptly file a written statement concerning the matter with an appropriate supervisor. The person may also request written instructions and disposition of the matter.

(f) If an actual violation of subsections (b)-(d) occurs or is not disclosed and remedied, the employee involved may be either reprimanded, suspended, or dismissed. The vendor or potential vendor may be barred from receiving future contracts and an existing contract may be canceled.

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 March 30, 1993.

TRD-9321014 Judith M. Porras
Director of Legal
Information and Human
Resources
General Services
Commission

Effective date: April 20, 1993

Proposal publication date: October 6, 1992

For further information, please call: (512) 463-3583

Chapter 113. Central Purchasing Division

• 1 TAC §§113.1-113.18

The General Services Commission adopts new §§113.1-113.18, concerning purchasing. Section 113.11 is adopted with changes to the proposed text as published in the December 15, 1992, issue of the *Texas Register* (17 TexReg 8785). Sections 113.1-113.10, and 113.12-113.18 are adopted without changes and will not be republished.

The sections are necessary to state purchasing procedures to implement Texas Civil Statutes, Article 601b, §3, for guidance to other agencies and vendors.

The sections provide definitions and procedures applicable to: requisitions, competitive bidding, competitive sealed proposals, bidding preferences, contract administration, delegated purchases, higher education research purchases, purchases from the Texas Department of Criminal Justice, invoicing and payment, term contracts, open market contracts, multiple awards, purchases for school

districts, unsolicited proposals, and information technologies purchases.

Six state agencies submitted written comments. Five commenters expressed support for the sections and requested technical clarifications or additional definitions. One commenter requested technical clarification on various points only; and one commenter asked that the threshold for delegated purchasing authority be increased to \$25,000.

Commenting in favor of the new sections were UT Health Science Center; San Antonio; Sam Houston State University; UT Health Science Center, Houston; Texas Department of Human Services; and Texas Department of Transportation.

The agency disagrees that additional clarification is necessary with respect to §113.1. These provisions are applicable to other agencies to the extent specific purchases are delegated under §113.11. Definitions deleted from §113.2 will be included in Chapter 111 to apply to all contracts under Texas Civil Statutes, Article 601b. A time limit should not be imposed for the receipt of requisitions under §113.3 because this would unnecessarily hinder agencies' purchases. Whether §113.3(d) continues to be necessary must be clarified by statute; until this is addressed by the legislature, the section must be retained. Section 113.4 authorizes agencies to use all or a portion of the commission's bidders' list as its own, additional clarification is not deemed to be necessary. Faxing IFBs to vendors is not authorized by statute and is therefore not addressed in the sections. Some of the preferences in §113.8 apply only to break ties; these are indicated by the requirements for equal cost and quality. The tiebreaker preference for Texas residents supersedes the tiebreaker preference for DBEs. With respect to §113.11, the requirement that agencies solicit bids from their entire bid list, subject to the commission's waiver where warranted, is dictated by statute for purchases over \$5,000. However, because the agency agrees that the bid list solicitation requirement for purchases over \$5,000 may be unnecessarily burdensome, it amends §113.11(c)(4) to allow for waiver of soliciting an entire bid list for purchases of 25,000 or less. The section conforms to statute. As stated in §113.11(e)(5), purchases of items listed as publications may be made from the publisher directly. Distributor purchases under §113.11(e)(7) do not include all OEM equipment. The agency does not disagree that the delegated purchase amount of \$10,000 may be unnecessarily low for some agencies. However, the agency disagrees that increasing this amount beyond \$10,000 would be appropriate for all agencies. Also, §113.11(f) permits higher specific delegations upon the request of an agency and the commission's approval. For improved administrative efficiency, such requests will be ruled on by the executive director and determinations will be based on the agency's past compliance experience. Space modifications ancillary to higher education research purchases under §113.12 are not covered by this section. Quotations from the TDCJ alone are required under §113.13. Eleven days are required to process payments under §113.15 to insure agencies' bills are paid without incur-

ring late charges under the Prompt Pay Act (Texas Civil Statutes, Article 601f.)

The new sections are adopted under Texas Civil Statutes, Article 601b, §3, which provide the General Services Commission with the authority to promulgate rules to implement that article.

§113.11. Delegated Purchases.

(a) General delegation. The following purchasing functions are delegated to agencies:

- (1) spot purchases;
- (2) emergency purchases;
- (3) purchases of perishable items;
- (4) purchases of services the estimated cost of which does not exceed \$100,000;
- (5) purchases of publications directly from the publisher;
- (6) fuel, oil and grease purchases, and
- (7) distributor purchases.

(b) Adherence to ethical standards. Employees of agencies who perform purchasing functions under delegated authority shall adhere to the same ethical standards required of commission employees, and shall avoid all conflict of interest in their purchasing activities.

(c) Provisions generally applicable to delegated purchases.

(1) Competitive bidding is not required for purchases of \$1,000 or less.

(2) All bids must be obtained from sources which normally offer for sale the merchandise being purchased.

(3) Items purchased under delegated authority may not include scheduled items, items available under a term contract (unless purchased in quantities less than minimum ordering quantities shown in contract), or any item required by law to be purchased from a particular source.

(4) agencies must solicit formal bids from all eligible vendors on the agency's bidders list when making purchases in excess of \$5,000. However, for purchases of \$25,000 or less, the commission may waive the requirement to solicit bids from all eligible vendors on the list if the agency certifies in writing that a solicitation of all eligible vendors is not warranted under the circumstances.

(5) Large purchases may not be broken down into small purchases in order to meet dollar limits specified in these rules. The commission may not require unrelated purchases to be combined into one purchase order to exceed dollar limits specified in these rules.

(d) Withdrawal of delegated purchase authority. The commission will verify compliance with established procedures and will withdraw delegated purchase authority from an agency for continued violations after giving adequate warning.

(e) Provisions applicable to particular delegated purchases.

(1) Spot purchases. Spot purchases may be made in accordance with the following provisions.

(A) Agencies must attempt to obtain at least three informal bids, including a minimum of two bids from disadvantaged businesses (including at least one bid each from a minority-owned business and a woman-owned business), on all spot purchases in excess of \$1,000 and not over \$5,000. Agencies must attempt to obtain at least three formal bids, including a minimum of two bids from disadvantaged businesses (including at least one bid each from a minority-owned business and a man-owned business), on all spot purchases in excess of \$5,000 and not over \$10,000. Agencies may refer to the commission's Disadvantaged Business Enterprise Directory, which is maintained and accessible electronically, to locate disadvantaged businesses. If an agency is unable to locate a minority-owned business and/or a woman-owned business from the commission's Disadvantaged Business Enterprise Directory or other available sources, the agency must make a written notation on the spot purchase form of all reference sources used.

(3) All information required by the commission must be furnished on the approved spot purchase form.

(2) Emergency purchases. The commission will approve payment for emergency purchases in accordance with the following provisions.

(A) At least three informal bids must be obtained whenever possible on all purchases in excess of \$5,000.

(B) The emergency purchase file, when forwarded to the commission, must contain a full written explanation of the emergency along with other documentation required by the commission.

(C) The agency may contact the commission for advice and assistance in the handling of emergency purchases. The commission may not approve an invoice for an emergency purchase unless the agency has complied with the foregoing requirements. This rule does not apply to purchases made in accordance with the Texas

Disaster Act of 1975 (Texas Civil Statutes, Article 6889-7).

(3) Perishable items. Purchases made under this authority must be obtained through competitive bids, and appropriate documentation must be forwarded to the commission for approval.

(4) Services. Purchases of services estimated to cost no more than \$100,000 per year are delegated and must be obtained through competitive bids, and appropriate documentation must be forwarded to the commission for approval. If an agency is certified under subsection (g) of this section, it is required to submit documentation only for proprietary purchases of services and for purchases expected to cost more than \$25,000. For purchases of services estimated to cost more than \$100,000 per year, the commission must review any proposed specifications or statements of work and determine whether the commission or the agency should make the advertisement and award. The commission may determine that the service should be advertised to the commission's bidders lists, in which case the commission will make the award in accordance with normal open market procedures. If no competitive advantage would be obtained by having the commission make the advertisement and award, the commission may permit the agency to do so.

(5) Publications. An agency may purchase publications directly from the publisher when such publications are not available through statewide contract or through competitive bidding. Direct publication orders shall be made by following guidelines suggested by the commission. Examples of direct publications include but are not limited to:

- (A) foreign publications;
- (B) out-of-print or rare publications;
- (C) back issues of magazines, journals, and newspapers;
- (D) publications of professional societies;
- (E) prepared films, tapes, and discs (audio, visual, or both);
- (F) computer software;
- (G) collections of any of the foregoing items, and microfilm or microfiche copies of any of the foregoing items; and

(H) Library of Congress cards.

(6) Fuel, oil, and grease. An agency may make fuel, oil, and grease purchases at service stations or in bulk. Fuel, oil, and grease purchases shall be made by following guidelines suggested by the commission. Spot and emergency purchase procedures apply to purchases at service stations.

(7) Distributor purchases. An agency may make distributor purchases by following guidelines suggested by the commission. An agency may not purchase any of the following on a distributor purchase basis: consumable items; labor of any kind (see "service"); "will fit" parts (non-OEM); parts for stock; contract items; electrical parts for electric motors; electrical switch panel boards; electrical accessories.

(f) Specific Delegations. The commission may delegate purchasing functions to agencies for specific open market purchases only by approval of the commissioners in open meeting. Requests for such approval should be made in writing to the executive director and signed by the chief executive officer of the requesting agency. All such requests should clearly set out the reasons and justifications for the request.

(g) Requirements for certification of delegated authority.

(1) Agencies are eligible for certification of delegated authority after maintaining a 90% compliance average or better, or a continuous six-month period. Notification of an agency's eligibility for certification will be made by the executive director of the commission to the agency head. An institution or other agency of higher education is eligible for immediate certification.

(2) The certification of an institution or agency is subject to acceptance by the institution or agency, and requires the designation of a chief purchasing officer plus an alternate to act in the chief purchasing officer's absence. A copy of the signatures of the two designees must be provided to the commission. To accept certification, the chief purchasing officer must supply complete supporting documents for sample vouchers if the commission so requests. In addition, the commission is authorized to send a field auditor to the institution or agency purchasing office to conduct a compliance audit.

(3) If an institution or agency is certified, the following statement signed by its chief purchasing officer must appear on or be attached to the duplicate copy of its payment vouchers: "I hereby certify that this payment complies with the statutes and all GSC rules and procedures pertaining to the delegation of purchasing authority."

(A) Facsimile signatures on the certification statement are acceptable.

(B) The institution's or agency's designated chief purchasing officer is responsible for compliance with the statutes and all commission rules and procedures.

(h) Retaining, certification.

(1) An institution or agency must maintain a minimal compliance level of 90% based upon commission sample audits to retain certification.

(2) If an institution or agency falls below 90% compliance, the commission will notify the agency head and its chief purchasing officer of the deficiency and reason for non-compliance. The institution or agency will be placed on a three-month probationary period and required to take remedial action. Certification will be revoked if the institution or agency fails to rectify the deficiency during the probationary period.

(3) The institution or agency may be recertified after it achieves 90% or better average compliance for a continuous six-month period.

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 March 30, 1993.

TRD-9321013
Judith M. Porras
Director, Legal Information
and Human Resources
Division
General Services
Commission

Effective date: April 20, 1993

Proposal publication date: December 15, 1992

For further information, please call: (512) 463-3583

◆ ◆ ◆
Chapter 123. Facilities,
Planning, and Construction

Prevailing Wage Rate Determination

• 1 TAC §§123.31-123.34

The General Services Commission adopts amendments to §§123.31, 123.33, 123.34, and new §123.32. The amendment to §123.31 is adopted with changes to the proposed text as published in the November 20, 1992, issue of the *Texas Register* (17 TexReg 8123). The amendments to §123.33 and §123.34 and new §123.32 are adopted without changes and will not be republished.

The amendments and new section are necessary to state the procedure the commission will use to determine prevailing wage rates for

construction contracts administered by the commission.

The amendments and new section define wages, explain how the commission will obtain prevailing wage data, and state how such data is to be used.

Four associations submitted written comments on one or more provisions of the sections. One comment was general and in support of the sections. Three commenters expressed concern as to how collective bargaining agreements would be considered. The commenters contend that bargaining agreements reflect wages rates that have been negotiated or proposed but not actually paid. Two commenters asked that "labor organizations and other interested parties" be deleted as sources of information on wages in a locality because labor organizations do not pay wages and the reported information cannot be verified. The same two commenters questioned the definition of wages; one commenter asked that the rules identify examples of fringe benefits instead of attempting to set forth an exhaustive list of fringes, and the other commenter asked that prospective bidders be given notice of the fringe benefits at the time the contract is advertised for bids. One commenter requested deletion of the requirement that a wage paid to more than 50% of reported workers will be the prevailing wage. This commenter also recommended that in the case of federal funding for a portion of a project, that the federal wage determination be used only for the portion of the project which is federally funded.

Commenting in favor of the amendments was the Independent Electrical Contractors of Texas. Commenting against the amendments were the Associated General Contractor-Texas Building Branch; Associated Builders and Contractors of Texas, Inc.; AGC of Texas, Highway, Heavy, Utilities and Industrial Branch.

The agency disagrees that a collective bargaining agreement can provide information on proposed or negotiated wages only. A collective bargaining agreement may be applicable to relevant construction projects; if so, it can and should be considered as a source of information on wages paid. The prevailing wage statute does not direct or restrict the agency's sources of information to employers only. The agency believes it is necessary to retain its ability to request and receive information about wages paid from any and all possible sources. The agency agrees with the comment concerning the need to clarify the definition of wages with respect to fringe benefits. In addition, the proposed definition inappropriately included unemployment and workers' compensation; these payments are mandated federal and state impositions and should not be included in a wage determination. The section is modified accordingly. Also, prospective bidders will be given notice of any fringe benefit inclusions at the same time they are given notice of the determined basic rate. The agency disagrees that the determinations of prevailing wages should be the weighted average in all cases rather than using the rate paid to 50% (or the weighted average of rates within

a dollar, if paid to at least 50%) of the reported workers for two reasons: these procedures are in the existing sections and are not affected by the amendments; and a rate experienced in one-half or more of all cases logically amounts to a prevailing rate. Further, the agency disagrees with the request that the federal wage determination be applied to only that portion of a project which is federally funded; splitting projects into federal and state funded parts is administratively impractical.

The amendments are adopted under Texas Civil Statutes, Article 601b, §5, which provide the General Services Commission with the authority to promulgate rules necessary to implement that article.

§123.31. Prevailing Wage Rate.

(a) The specifications and the contract for each project administered by the commission shall include a schedule of wages to be paid on the project.

(b) The wage scale will reflect wages ascertained by the commission as prevailing in the locality of the project for each craft or type of worker required thereon and not less than this rate shall be paid by any contractor on the project. "Wages" means the basic hourly rate of pay plus payments made to or on behalf of employees for benefits such as health insurance, pension plans, death benefits, and vacation pay.

(c) The determination made by the commission shall be final and will not be changed except as hereinafter provided.

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 March 30, 1993.

TRD-9321016

Judith M. Porras
Director of Legal
Information and Human
Resources Division
General Services
Commission

Earliest possible date of adoption: April 20, 1993

For further information, please call: (512) 463-3583

TITLE 22. EXAMINING BOARDS

Part V. Texas State Board of Dental Examiners

Chapter 101. Dental Licensure

General Qualifications

• 22 TAC §101.1

The Texas State Board of Dental Examiners adopts an amendment to §101.1, concerning general qualifications, with changes to the

proposed text as published in the February 23, 1993, issue of the *Texas Register* (18 TexReg 1128).

The amendment is needed in order to ensure that applicants for dental licensure receive the highest standards and to assure that the people of the State of Texas receive the highest quality of dental care. Also, to allow access to dental licensure to as many applicants in order to serve the people of Texas.

The amendment states the general qualifications for any person desiring to practice dentistry in the State of Texas.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4544, §2, which provide the Texas State Board of Dental Examiners with the authority to adopt and enforce such rules and regulations not inconsistent with the laws of the State as may be necessary for the performance of its duties and/or to ensure compliance with the State laws relating to the practice of dentistry to protect the public health and safety.

§101.1. General Qualifications.

(a) Any person desiring to practice dentistry in the State of Texas must possess a license issued by the Texas State Board of Dental Examiners as required by law.

(b) An applicant for licensure from the Texas State Board of Dental Examiners shall:

(1) make written application to the Board for each examination to be taken requesting to take either the general dental examination or a specialty examination in the area of orthodontics, oral, and maxillofacial surgery, oral pathology, pediatric dentistry, periodontics, prosthodontics, endodontics, or public health. The application shall contain all information as required for a completed application. A completed application shall contain all documentation required except for proof of dental school graduation and proof of having passed the National Board Examination as detailed below. Proof of graduation and of passing the National Board Examination may be submitted as they are available, but they must be submitted prior to sitting for the examination. The completed application must be received by the Board office not later than 30 days prior to the announced examination date. Applications received by the Board office after the 30-day deadline will not be accepted for the scheduled examination date requested. Permission to transfer to a future scheduled examination or a request to receive a refund shall be granted only in the event of the applicant's failure to graduate from dental school or failure to pass the National Board examination. A written request for refund or transfer must be received prior to the applicant's assigned State Board examination date;

(2) in the event of a question or dispute as to whether application has been made to the Board, applicant must provide a return receipt from certified mail of the United States Postal Service, or the application shall be deemed not to have been submitted to the Board;

(3) present proof of graduation from a dental school accredited by the Commission on Dental Accreditation of the American Dental Association;

(4) present proof of having passed the examination for dentists in its entirety given by the National Board of Dental Examiners;

(5) present proof of successful completion of a current course in basic life support given by the American Heart Association or the American Red Cross prior to the applicant's examination for licensure;

(6) pay an examination and licensure fee as required by law and the rules and regulations of the Board; and

(7) satisfactorily pass either an oral, written, or clinical practical examination or any combination thereof as may be determined by the Board.

(8) in addition to the above requirements, an applicant for specialty examination must meet the following additional requirements:

(A) present proof of current dental licensure in good standing from any state; and

(B) present proof of graduate training in the specialty area of requested examination by one of the following methods;

(i) certificate of completion from a dental specialty program approved by the American Dental Association Commission on Dental Accreditation;

(ii) documentation from the American Dental Association approved specialty Board that the Applicant was, at any time, recognized as "Board Eligible;" or

(iii) proof of graduate training acceptable to the Texas State Board of Dental Examiners.

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 March 30, 1993.

TRD-9321019 C. Thomas Camp
Executive Director
Texas State Board of
Dental Examiners

Effective date: April 21, 1993

Proposal publication date: February 23, 1993

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

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §217.1, §217.6

The Board of Nurse Examiners adopts amendments to §217.1 and §217.6, concerning licensure and practice, without changes to the proposed text as published in the January 29, 1993, issue of the *Texas Register* (18 TexReg 548).

Article 4523(b) of the Nurse Practice Act states that the board may issue a permit to a graduate nurse (GN) of an approved educational program and that the GN must work under the direct supervision of an RN. However, direct supervision had not previously been defined. The adoption of these amendments will outline the board's interpretation of direct supervision.

GN's and employers of GN's will know the type of supervision that is appropriate for the GN's practice, thus ensuring the public's protection by providing that experienced RNs are available to supervise the GN.

As of the close of the comment period, three letters of support were received; one letter of concern was received. The commenter expressing concerns asked the board to consider the close proximity of the RN even when not on the same unit for those practicing in rural hospitals. A public hearing was scheduled for March 23, 1993, however, no one appeared to testify either for or against the rules.

Tarrant County Junior College District, Midland College, and the Victoria College commented in favor of the amendments. Goodall-Witcher Hospital Foundation was not opposed; however they were concerned with the rural hospital setting.

The board did not disagree with commenters.

The amendments are adopted under Texas Civil Statutes, Article 4514, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it.

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

Issued in Austin, Texas, on March 30, 1993.

TRD-9321030 Louise Waddill, Ph.D., R.N.
Executive Director
Texas Board of Nurse
Examiners

Effective date: April 21, 1993

Proposal publication date: January 29, 1993

For further information, please call: (512) 835-8650

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 31. Standards for an Approved Motorcycle Operator Training Course

• 37 TAC §§31.1-31.8

The Texas Department of Public Safety adopts the repeals of §§31.1-31.8, concerning standards for an approved motorcycle operator training course, without changes to the proposed text as published in the February 9, 1993, issue of the *Texas Register* (18 TexReg 829).

The department is repealing existing standards for an approved motorcycle operator training course to change language in order to comply with existing statutory requirements.

The department is adopting repeal of these sections due to substantive amendments and additional sections. This action is being filed simultaneous with adopted of new sections concerning standards for an approved motorcycle operator training course. These sections contain provisions for student and teacher qualification and certification, course records and requirements, and suspension.

No comments were received regarding adoption of the repeals.

The repeals are adopted under Texas Civil Statutes, Article 6701c-4, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to administer this article effectively.

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 March 15, 1993.

TRD-9320951 James R. Wilson
Director
Texas Department of
Public Safety

Effective date: April 20, 1993

Proposal publication date: February 9, 1993

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

• 37 TAC §§31.1-31.11

The Texas Department of Public Safety adopts new §§31.1-31.11, concerning standards for an approved motorcycle operator training course, without changes to the proposed text as published in the February 9, 1993, issue of the *Texas Register* (18 TexReg 829).

Adoption of these sections upgrades the standards to ensure the public of quality motorcy-

cle operator training and expansion of the number of training facilities.

The department is proposing new standards for an approved motorcycle operator training course due to substantive amendments and adding new sections. This action is filed simultaneously with a proposal for repeal of existing sections concerning standards for an approved motorcycle operator training course. The new sections promulgate standards for program sponsors, instructors, definitions, student admission requirements and verification of course completion by minors, approved motorcycle training courses, motorcycle training requirements, notice and hearing requirements, suspension, quality assurance visits, and notification of legal actions.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 6701c-4, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to administer this article effectively.

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 March 15, 1993.

TRD-9320952 James R. Wilson
Director
Texas Department of
Public Safety

Effective date: April 20, 1993

Proposal publication date: February 9, 1993

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

Part IX. Texas Commission on Jail Standards

Chapter 253. Definitions

• 37 TAC §253.1

The Texas Commission on Jail Standards adopts an amendment to §253.1, concerning definitions, without changes to the proposed text as published in the February 12, 1993, issue of the *Texas Register* (18 TexReg 921).

Requirements were modified in classification and segregation standards last year to provide specific housing for inmates in "administrative segregation". Amendment will define administrative segregation for clarification.

The amendment will define administrative segregation.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards

for the custody, care, and treatment of prisoners.

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 March 24, 1993.

TRD-9321028 Jack E. Crump
Executive Director
Texas Commission on Jail
Standards

Effective date: April 21, 1993

Proposal publication date: February 12, 1993

For further information, please call: (512) 463-5505

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 11. Food Distribution and Processing

Food Distribution Program

The Texas Department of Human Services (DHS) adopts amendments to §§11.103, 11.105, 11.6008, and 11.6009 in its Food Distribution and Processing chapter. The amendment to §11.105 is adopted with a change to the proposed text as published in the February 23, 1993, issue of the *Texas Register* (18 TexReg 1153). The amendments to §§11.103, 11.6008, and 11.6009 are adopted without changes and will not be published.

The justification for the amendments is to establish compliance with the requirements of the Single Audit Act as a condition of eligibility for participation in the Special Nutrition Programs, and to establish sanctions for non-compliance with the requirements of the Act. Also in this issue of the *Texas Register*, DHS is adopting related amendments in Chapter 12 of this title (relating to Special Nutrition Programs).

The amendments will function by providing greater accountability for public funds.

During the public comment period, DHS received no written comments regarding adoption of the amendments. However, the United States Department of Agriculture requested DHS to make one change to the text of §11.105(b)(1)(C). The reference to "claim month" is changed to "allocation period."

• 40 TAC §11.103, §11.105

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

§11.103. Eligibility Determination for Recipient Agencies and Recipients.

(a) The Texas Department of Human Services (DHS) determines the eligibility of recipient agencies to receive donated foods according to 7 Code of Federal Regulations §250.11.

(b) DHS requires recipient agencies to submit documentation of compliance with the requirements of the Single Audit Act. Recipient agencies must submit as proof of eligibility one or more of the forms of documentation of compliance specified in paragraphs (1)-(3) of this subsection:

(1) a copy of an organization wide audit which has been determined to meet the requirements of the Single Audit Act;

(2) a copy of a contract or binding letter of engagement with an approved auditor to conduct an organization wide audit which will meet the requirements of the Single Audit Act; or

(3) documentation that the recipient agency is not subject to the Single Audit 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 March 31, 1993.

TRD-9321036 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 20, 1993

Proposal publication date: February 23, 1993

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

Emergency Food Assistance Program

• 40 TAC §11.6008, §11.6009

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

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 March 31, 1993.

TRD-9321037 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 20, 1993

Proposal publication date: February 23, 1993

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

Chapter 12. Special Nutrition Programs

Child and Adult Care Food Program

The Texas Department of Human Services (DHS) adopts amendments to §§12.3, 12.24, 12.103, 12.121, 12.205, 12.209, 12.305, 12.309, 12.405, and 12.409, without changes to the proposed text as published in the February 23, 1993, issue of the *Texas Register* (18 TexReg 1155).

The justification for the amendments is to establish compliance with the requirements of the Single Audit Act as a condition of eligibility for participation in the Special Nutrition Programs and to establish sanctions for non-compliance with the requirements of the Act. Also in this issue of the *Texas Register*, DHS is adopting related amendments in Chapter 11 of this title (relating to Food Distribution and Processing).

The amendments will function by providing greater accountability for public funds.

No comments were received regarding adoption of the amendments.

• 40 TAC §12.3, §12.24

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

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 March 31, 1993.

TRD-9321038 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 20, 1993

Proposal publication date: February 23, 1993

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

Summer Food Service Program

• 40 TAC §12.103, §12.121

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

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 March 31, 1993.

TRD-9321039 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 20, 1993

Proposal publication date: February 23, 1993

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

Special Milk Program

• 40 TAC §12.205, §12. 209

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

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 March 31, 1993.

TRD-9321040 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 20, 1993

Proposal publication date: February 23, 1993

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

School Breakfast Program

• 40 TAC §12.305, §12.309

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22 and 33, which provides the department with the authority to administer public and nutritional assistance programs.

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 March 31, 1993.

TRD-9321041 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 20, 1993

Proposal publication date: February 23, 1993

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

National School Lunch Program

• 40 TAC §12. 405, §12.409

The amendments are adopted under the Human Resources Code, Title 2, Chapters 22

and 33; which provides the department with the authority to administer public and nutritional assistance programs.

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 March 31, 1993.

TRD-9321042 Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
Human Services

Effective date: April 20, 1993

Proposal publication date: February 23, 1993

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

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

Subchapter C. Resident Rights

• 40 TAC §19.217

The Texas Department of Human Services (DHS) adopts the repeal of §19. 217 and §19.504, adopts new §19.217 and §19.504, and adopts amendments to §§19.502-19.503, 19.1911, 19.1912, and 19.1923, concerning directives and durable powers of attorney for health care, activities, social services general requirements, social services process, contents of the clinical record, additional clinical record service requirements, and incident or accident reporting. New §19.217 and §19.504 and amended §19.503 are adopted with changes to the proposed text as published in the December 22, 1992, issue of the *Texas Register* (17 TexReg 9021). The repeal of §19.217 and §19. 504, and amendments to §§19.502, 19.1911, 19.1912, and 19.1923 are adopted without changes and will not be published.

The justification for the repeals, new sections, and amendments is to incorporate technical changes in the Long Term Care Nursing Facility Requirements which will make the intent of the rules clearer and more compatible with requirements of the Health Care Financing Administration (HCFA).

The repeals, new sections, and amendments will function by ensuring that the Long Term Care Nursing Facility Requirements are in full compliance with the Omnibus Budget Reconciliation Act of 1987.

During the public comment period, DHS received comments from the Texas Health Care Association, two individuals who are nursing facility activities directors, and an individual who is a certified social worker. A summary of the comments and DHS's response to the comments follows:

COMMENT. One commenter expressed support for the requirement stated in §19.502(c) that activity directors must complete eight hours of approved continuing education or

equivalent continuing education units each year. The commenter recommended that DHS consider increasing the number of hours to "more like 12 to 15 hours per year."

RESPONSE: Because of budgetary constraints, DHS is unable to further increase the hours of required in-service training for activity directors.

COMMENT: One commenter requested an editorial change to add the word "staff" to §19.217(b)(5).

RESPONSE: DHS has added the word "staff" needed to complete the sentence.

COMMENT: Regarding §19.502(b)(1)(B), one commenter questioned whether the federal regulations recognize therapeutic recreation specialists.

RESPONSE: DHS has been assured by a representative of the Health Care Financing Administration (HCFA) that a therapeutic recreation specialist would be recognized as an activities professional. Therefore, DHS is adopting the language as proposed.

COMMENT: One commenter objected to the last sentence in §19.502(d), which requires an in-depth activities assessment if indicated by the Resident Assessment Instrument (RAI) and/or the resident's need. The commenter stated that the requirement is redundant considering that a comprehensive plan of care and assessment is already required.

RESPONSE: DHS's intention in adding this language is to emphasize to the nursing facility staff that completing an RAI does not fulfill the requirement for an activities assessment if the resident's condition indicates the need for a more in-depth assessment. DHS has retained the language in the adopted rule because it provides needed guidance to nursing facility staff.

COMMENT: One commenter suggested an editorial change to §19.503(a) to conform to the federal language.

RESPONSE: The language as proposed conforms to the federal regulations.

COMMENT: One commenter objected to the addition of the term "qualified" to the reference to social worker in §19.503(a)(2) because it is not required by federal regulations and "has a substantive cost to the program."

Another commenter asked whether social workers who were grandfathered at the bachelor's level in 1985 would be excluded from working in nursing facilities by this change.

RESPONSE: DHS acknowledges that this change is not a federal requirement; however, DHS believes that the size of a nursing facility should not determine the level of qualifications of its employees. The change will not require any additional hours of social services in smaller facilities. It will require, however, that a social worker in a nursing facility of 120 beds or less meet the same qualifications as a social worker in a facility of over 120 beds. Analysis of the cost reports for nursing facilities with fiscal years ending after October 1, 1991, indicates that facilities with 120 beds or less were paying social workers an average of \$12.35 per hour. The January 1992 Hospital Employees Salary Survey indi-

cates that the hospitals were paying an average starting wage of \$10 per hour for social workers with bachelor's degrees. The change in rules to require nursing facilities with 120 beds or less to employ qualified social workers, as defined in §19.503(b) of this title (relating to Social Services General Requirements), should have no cost impact on these facilities since they already are paying competitive social worker wages.

Section 19.503(a)(2) is being adopted with a change in response to the second commenter to allow social workers grandfathered at the bachelor's level to continue to provide social services in nursing facilities.

COMMENT: One commenter objected to the second sentence in §19.504(b) as being nebulous and unenforceable.

RESPONSE: In response to this comment, DHS is adopting the second sentence of the subsection with changes to read "If indicated by the Resident Assessment Instrument (RAI) and/or the resident's need, an in-depth social service assessment is required."

The repeal 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.

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 March 29, 1993.

TRD-9320956

Nancy Murphy
Section Manager
Texas Department of
Human Services

Effective date: May 15, 1993

Proposal publication date: December 22, 1992

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

The new section 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.

§19.217. Directives and Durable Powers of Attorney for Health Care.

(a) Competent adults may issue advance directives in accordance with applicable laws.

(b) The nursing facility must maintain policies and procedures regarding the following rules with respect to all adult

individuals receiving services provided by the facility.

(1) All individuals must be provided with the following written information:

(A) the individual's rights under Texas law (whether statutory or as recognized by the courts of the state) to make decisions concerning medical care, including the right to accept or refuse medical or surgical treatment and the right to formulate advance directives; and

(B) the nursing facility's policies respecting the implementation of such rights.

(2) The nursing facility must document in the resident's clinical record whether or not the individual has executed an advance directive.

(3) The nursing facility must not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive.

(4) The facility must ensure compliance with the requirements of Texas law, whether statutory or as recognized by the courts of Texas, respecting advance directives.

(5) The facility must provide, individually or with others, for education for staff and the community on issues concerning advance directives. For the community, this may include, but is not limited to, newsletters, articles in the newspaper, local news reports, or commercials. For educating staff, this may include, but is not limited to, in-service programs.

(6) The facility must provide the attending physician with any information relating to a known existing Directive to Physicians and/or Living Will or Durable Power of Attorney for Health Care, and assist with coordinating physicians' orders with any resident directive.

(7) When an individual is in a comatose or otherwise incapacitated state, and therefore is unable to receive information or articulate whether he has executed an advance directive, the family, surrogate, or other concerned person must receive the information concerning advance directives. The facility must provide this information to the resident once he is no longer incapacitated.

(8) When the resident or a relative, surrogate, or other concerned or related individual presents the facility with a copy of the individual's advance directive, the facility must comply with the advance directive including recognition of a durable power of attorney for health care, to the

extent allowed under state law. If no one comes forward with a previously executed advance directive and the resident is incapacitated or otherwise unable to receive information or articulate whether he has executed an advance directive, the facility must note that the individual was not able to receive information and was unable to communicate whether an advance directive existed.

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 March 29, 1993.

TRD-9320957 Nancy Murphy
Section Manager
Texas Department of
Human Services

Effective date: May 15, 1993

Proposal publication date: December 22, 1992

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

Subchapter F. Quality of Life

• 40 TAC §§19.502-19.504

The new and amended sections are 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.

§19.503. Social Services General Requirements.

(a) The facility must provide medically-related social services to attain the highest practicable physical, mental or psychosocial well-being of each resident. See also §19.701 of this title (relating to Quality of Care) for information concerning psychosocial functioning.

(1) (No change.)

(2) A facility of 120 beds or less must employ or contract with a qualified social worker (or in lieu thereof, a social worker who is certified by DHS as prescribed by the Human Resources Code, Chapter 50, §50.016(a), and who meets the requirements of subsection (b)(2) of this section) to provide social services a sufficient amount of time to meet the needs of the residents.

(b) (No change.)

§19.504. Social Services Process.

(a) The facility must ensure that psychosocial assessment and care planning

are completed and reviewed or updated as provided in §19.601 and §19.602 of this title (relating to Resident Assessment and Comprehensive Care Plans).

(b) Psychosocial assessment, intervention, and care planning require the appropriate participation of social work staff, according to the needs and condition of the resident. If indicated by the Resident Assessment Instrument (RAI) and/or the resident's need, an in-depth social services assessment is required. The relevant needs of each resident must be identified and addressed by the direct provision of services or by arranging access to services.

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

Issued in Austin, Texas, on March 29, 1993.

TRD-9320958 Nancy Murphy
Section Manager
Texas Department of
Human Services

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

• 40 TAC §19.504

The repeal 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.

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.

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Subchapter T. Administration

• 40 TAC §§19.1911, 19.1912, 19.1923

The amendments are 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.

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.

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Section Manager
Texas Department of
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For further information, please call: (512) 450-3765

Chapter 27. Intermediate Care Facilities for the Mentally Retarded (ICFs-MR)

Subchapter F. Personal Finances and Funds

• 40 TAC §§27.601, 27.603, 27.605

The Texas Department of Human Services (DHS) adopts amendments to §§27.601, 27.603, and 27.605, concerning personal funds, expenditures of personal funds, and protection of funds, in its Intermediate Care Facilities for the Mentally Retarded (ICFs-MR) rule chapter. The amendments to §27.601 and §27.605 are adopted with changes to the proposed text as published in the November 24, 1992, issue of the *Texas Register* (17 TexReg 8228). The amendment to §27.603 is adopted without changes and will not be republished.

The justification for the amendments is to clarify the documentation process required when a client chooses to spend personal funds for a specific type of item the facility is required to furnish; to clarify requirements related to the disclosure of service charges and account balances in facility-managed trust funds; and to allow facilities to establish a budgeted amount of money that can be given an individual based upon his ability to handle money.

The amendments will function by improving protection, management, and accounting of the personal funds of individuals served in ICF-MR facilities.

During the public comment period, DHS received comments from Advocacy, Incorporated; the Association for Retarded Citizens, Texas; the Austin State School; and the Lufkin State School. A summary of the comments and DHS's responses follows.

COMMENT: One commenter objected to the amendments as being too restrictive, stating that they would limit a client's control over personal funds and would limit a client's choice purchasing desired items.

RESPONSE: DHS is adopting §27.601(g)(3) with changes to clarify that these requirements apply only to facility-managed trust fund accounts. The client or guardian must give the facility written permission to manage their personal funds, and this authorization may be withdrawn at anytime. The facility must document the client's cognitive ability to make an informed choice regarding the management of personal funds. Additionally, the facility must document the client's request for each purchase of an alternate type or brand of a personal needs item that is normally provided by the facility. DHS does not consider the amendments as restricting a client's access to his funds. DHS proposed the amendments to protect clients from exploitation.

COMMENT: One commenter expressed concern regarding the requirement that the guardian must approve every expenditure from the client's trust fund. The commenter suggested that the rules allow the interdisciplinary team to determine an amount of money that the client can spend without guardian oversight.

RESPONSE: The guardian is responsible to the court to account for the income and expenses of the ward, and the guardian must approve disposition of the individual's funds. The rules do not prevent a guardian from giving written consent for the expenditure of a fixed amount by the individual.

COMMENT: Several commenters expressed concern about the amount of money that can be spent from the facility-managed trust fund account without requiring receipts to verify the expenditures. The current amount is \$1.00. The commenters suggested that this be increased to \$5.00.

RESPONSE: DHS is adopting §27.605(d)(5) with a change to increase the amount that can be withdrawn from the facility-managed account without receipts. DHS has increased the amount to \$3.00 not to exceed \$12 per month. Facilities must have receipts to verify expenditures that exceed \$12 per month, unless the individual has submitted a written request for the withdrawal or the interdisciplinary team has set a budgeted amount as a part of the individual's active treatment program.

The amendments are 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 provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

§27.601. Personal Funds.

(a)-(f) (No change.)

(g) If an individual makes an informed choice to use a specific type or brand of a personal needs item instead of the item that the facility furnishes under the provisions of subsection (f) of this section, the individual may use his personal funds to purchase the item, provided that at the time

the purchase is made the conditions listed in paragraphs (1)-(3) of this subsection are met. Each personal needs item that an individual purchases is reserved for that individual's sole use, regardless of how the individual makes the purchase. The facility must ensure that each such item is labeled inconspicuously with the individual's name. However, the facility is not responsible for labeling personal needs items that have been brought into the facility without being reported to the management. If the individual has a legal guardian, the guardian must authorize the purchase for the individual.

(1) The individual must be at least 18 years of age and must not have been adjudicated as incompetent.

(2) The facility interdisciplinary team has determined through a formal assessment process the degree to which an individual is capable of making financial decisions, including the amount of money that the individual can handle responsibly.

(3) The facility has documented:

(A) that the individual has the cognitive ability to make an informed choice concerning the management of personal funds;

(B) for each purchase of an alternate type or brand of a personal needs item, the specific type or brand and that the individual made an informed choice and requested the alternate type or brand; and

(C) the authorization by the individual and/or guardian for the facility to manage the individual's personal funds, as described in §27.605(b)(3)(D) of this title (relating to Protection of Funds).

(h)-(i) (No change.)

§27.605. Protection of Funds.

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

(1) Receipt—A cash register tape or seller's sales statement (other than a canceled check) which shows the following:

(A) the individual's name;

(B)-(E) (No change.)

(F) the individual's signature or witnessed mark.

(2) Witness—A third party who is present at a financial transaction and who attests to its having taken place. No person who is responsible for client trust funds or

who supervises anyone responsible for such funds may act as witness to a financial transaction that includes an individual's personal funds.

(3) Trust fund accounts—All accounts in the facility's control or safekeeping that contain the personal funds of individuals. This definition includes an individual's personal banking account if the facility's staff or consultants in any way help the individual to use it.

(4) Written request—A request for a specific amount of cash that is written and signed legibly by the individual, guardian, or responsible party. Such a request must be initiated by the individual, not by facility staff, and must be dated. Personal checks may be considered written requests for cash if they are written and signed by the individual. Dually signed checks do not meet this criteria.

(b) At the time of admission, the facility must provide to each individual, the individual's guardian, and/or other legally responsible parties a written statement that meets the following specifications:

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

(3) The statement explains the individual's right to decide how the individual's personal funds are to be handled. The explanation must include the options described in subparagraphs (A)-(D) of this paragraph, and the facility must document which options the individual, the legal guardian, or the legally responsible party selects. The facility must hold, safeguard, and account for the individual's personal funds upon receipt of the written authorization of the individual, the guardian, or other legally responsible party.

(A) The individual may receive, retain, and manage personal funds himself or have a legal guardian receive, retain, and manage such funds on the individual's behalf.

(B) The individual or the guardian may have the Social Security Administration appoint a representative payee for receipt of the individual's federal benefits, if any.

(C) The individual or the guardian may designate, in writing, another person to manage the individual's personal funds (except for the individual's federal benefits when a representative payee has been appointed).

(D) The individual may decide to allow the facility to hold, safeguard, and account for the individual's personal funds, and, if he chooses this option, the

individual may elect to have his funds kept in a separate account or may elect to have his funds pooled with those of other individuals residing in the facility.

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

(6) The statement declares that the facility is required to notify the Texas Department of Human Services' (DHS's) regional Medicaid eligibility worker if the individual:

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

(C) has no responsible party to manage the individual's personal funds on the individual's behalf.

(7) The statement declares that the facility will make available a complete accounting of facility-managed accounts upon the request of the individual, legal guardian, or other legally authorized individual, within 72 hours of receiving the request.

(c) The facility must provide updated lists of services and charges to the individual; guardian; and/or other legally responsible party, when applicable; and to responsible family members whenever there is a change in either services or charges during the individual's stay or upon the request of the individual, guardian, or family member.

(d) The facility must maintain a separate, current, written record of all financial transactions involving an individual's personal funds held in the facility's trust. The facility must keep this record according to the generally accepted accounting principles of the American Institute of Certified Public Accountants. At a minimum, the record must include the following information:

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

(5) The date and amount of each deposit and withdrawal, the name of the person accepting the withdrawn funds, and the balance after each transaction. Except as noted in this paragraph, the record must also include a written receipt for the expenditure of each withdrawal. This receipt must be signed by the individual and/or a witness. A witnessed receipt must show the witness's relationship to the individual. A written receipt is not required in any of the following circumstances:

(A) a written request for a specific amount to be withdrawn is submitted by the individual, by the individual's guardian or by another responsible party, or by a person who has the client's written authorization and is not employed by the facility;

(B) the withdrawn funds are used to make purchases from vending machines;

(C) the expenditure is \$3.00 or less, limited to four withdrawals per month not to exceed \$3.00 each (the total allowable withdrawals without receipts may not exceed \$12 per month); or

(D) the amount does not exceed a specific budget amount set by the facility interdisciplinary team, provided that:

(i) the individual has been formally assessed in the area of money management; and

(ii) it has been determined through formal assessment that the individual possesses the skills necessary to handle the sum of money independently; and

(iii) the facility interdisciplinary team, based on the formal assessment described in clauses (i) and (ii) of this subparagraph, has set a specific budget amount to be distributed to the individual on a weekly or monthly basis.

(e)-(l) (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.

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TRD-9321060

Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
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For further information, please call: (512) 450-3765

Chapter 29. Purchased Health Services

Subchapter K. Definitions

• 40 TAC §29.1001

The Texas Department of Human Services (DHS) adopts amendments to §§29.1001, 29.2103, and 29.2501-29.2503 concerning general definitions for purchased health services, reimbursement of certified registered nurse anesthetists, benefits and limitations, conditions for participation, and reimbursement of advanced nurse practitioners, without changes to the proposed text as published in the January 8, 1993, issue of the *Texas Register* (18 TexReg 157).

The justification for the amendments is to allow for greater access to primary health

care services for Medicaid recipients as provided by advanced nurse practitioners.

The amendments will function by allowing DHS to reimburse all categories of advanced nurse practitioners and adjust the reimbursement rate for advanced nurse practitioners from 70% to 85% of the rate paid to physicians for the same services provided under Texas Medicaid reimbursement methodology.

During the 30-day public comment period, comments favoring all or part of the proposal were received from: Texas Nurses Association, Legal Counsel; Texas Nurse Practitioners, President; Coalition for Nurses in Advanced Practice, Chair; Children's Defense Fund-Texas, Director; Texas Family Planning Association; Center for Rural Health Initiatives, Executive Director; Texas Medical Association, Chairman, Council on Socioeconomics; The University of Texas M.D. Anderson Cancer Center, Associate Director of Anesthesiology Services; North Texas Community Clinics, Administrative Director and staff; Harris County Hospital District, Chief Executive Officer; Baylor College of Medicine, Director of Maternal Fetal Medicine; Baylor College of Medicine, Director of Midwifery Section; Planned Parenthood Center of El Paso, Executive Director; Planned Parenthood of San Antonio and South Central Texas, Executive Director; Planned Parenthood Center of West Texas, Inc., Executive Director; Texas Association of Nurse Anesthetists, Inc., President; Rio Grande Anesthesia Associates; Rehabilitative Care Systems of America, Executive Vice President; and 40 individual practitioners

Comments from the individual practitioners were supportive. However, several practitioners suggested that increasing the rate to 85% is not adequate. The department does not recommend that the rate be increased above 85% of the physician rate at this time.

The Texas Medical Association expressed the following concerns and recommendations. The department's responses have been coordinated with the Health and Human Services Commission.

COMMENT: The commenter recommended that the department carefully review the Board of Nurse Examiners for the State of Texas Rules and Regulations to determine whether an advanced nurse practitioner can provide the services for which the proposed rules provide payment.

RESPONSE: The department does not define scope of practice. Coordination with the Board of Nurse Examiners for the State of Texas, the state regulatory agency, has determined that the proposed rules do not suggest or support practice outside of one's scope of practice as defined and determined by the board.

COMMENT: The commenter questioned whether advanced nurse practitioners can utilize Physicians' Current Procedural Terminology codes, as currently defined, for completing claims for billing. It was suggested that determining the level of evaluation and management codes to be used on a claim form requires medical decision making

RESPONSE: To expedite claims processing and payment as well as eliminate the paper billing of professional claims, enrolled physicians and other providers are encouraged to use Physicians' Current Procedural Terminology listings of descriptive terms and identifying codes for reporting. The purpose of the terminology is to provide a uniform language that can accurately describe services and provide an effective means for reliable nationwide communication among physicians, patients, and third parties since 1966. Revisions are prepared by physicians with contributions from third-party payors and governmental agencies.

In conjunction with the Physician Payment Advisory Committee (PPAC), the department developed the Texas Medicaid Reimbursement Methodology (TMRM) to be effective for dates of service on or after April 1, 1992. Providers were informed in a Texas Medicaid Special Bulletin, dated March 1992, that fees would apply when making payment for services whether they are provided by a physician or a nonphysician, e.g., independently practicing physical therapists, certified registered nurse anesthetists, optometrists, dentists, podiatrists, chiropractors, and nurse practitioners. The CPT code selected to report the contact depends on the extent of history and physical examination and the complexity of the medical decision making involved. The National Heritage Insurance Company (NHIC) began processing claims with dates of service on or after April 1, 1992, using the new CPT Evaluation and Management Codes. The department has determined that although the CPT coding system is based on the physician's medical practice model, it has been long recognized as the best uniform billing format to promote efficiency and reduce the paperwork burden of billing by physicians and other practitioners to third-party payors, such as Medicaid and Medicare. It should be noted that for coding diagnoses on Medicaid claims, the department uses the uniform diagnostic coding system, International Classification of Disease 9th Revision, Clinical Modification (ICD-9 CM). This diagnostic coding system is required by the Health Care Financing Administration (HCFA).

COMMENT: The commenter recommended that the proposed rules include language requiring a documented arrangement with a physician for referral or handling medical diagnoses and prescribing authority, as a condition of participation. It was mentioned that the definition of professional nursing does not include the word "diagnosis," comparing this definition to the practice of medicine definition.

RESPONSE: The proposed rules address the role and scope of practice of advanced nurse practitioners as defined by the Board of Nurse Examiners for the State of Texas, Rules and Regulations Relating to Professional Nurse Education, Licensure, and Practice, §221.1, which expands the definition of professional nurse to include "...who is prepared for advanced nursing practice by virtue of knowledge and skills obtained through a post-basic or advanced educational program of study acceptable to the board. The advanced nurse practitioner is prepared to prac-

tice in an expanded role to provide health care to individuals, families, and/or groups...". Section 221.8 of the Board of Nurse Examiners rules and regulations defines functions included in the advanced practice area of the advanced nurse practitioner appropriate to post-basic educational preparation.

COMMENT: The commenter expressed concern regarding the nurse practitioners' authority to prescribe medications.

RESPONSE: The department would not expect the advanced nurse practitioner to go beyond their scope of practice and authority as determined by the state's regulatory boards for medicine or nursing practice. Rule 222 of the Board of Nurse Examiners for the State of Texas defines "Carrying out a prescription drug order."

COMMENT: The commenter expressed that the major concern relates to increased payment of 85% of the physician rate, costing an additional \$2 million plus per year, with no assurance of increased access and no determination that the payment is in any way cost-based.

RESPONSE: The department has determined that it is appropriate to expand the provider base as allowed by HCFA to include all categories of advanced nurse practitioners to help ensure access to reasonable and appropriate primary health care services to Medicaid recipients. Entry into the health care system at an earlier time (such as school-based clinics; early prenatal care; Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) screening; chronic and/or long-term care situations) could easily offset the increase in expenditures that might occur with this limited number of practitioners.

COMMENT: The commenter suggested that increased reimbursement to advanced nurse practitioners sends an inappropriate and discouraging message to primary care physicians currently serving Medicaid recipients and to those physicians in training for primary care specialties.

RESPONSE: The department does not see this as a discouraging message or threat to other types of practitioners, given the number of Medicaid recipients in need of access to primary health care services.

COMMENT: The commenter recommended that the department not go forward with adoption of this rule until it can be determined that there is no other alternative for providing increased access to primary care. It was suggested that the attorney general issue an opinion on whether Medicaid funds can be expended for direct payments to nurse practitioners regarding the issue of ability to diagnose, prescribe, and treat patients; and the capability of advanced nurse practitioners to properly complete a valid claim for submission to Medicaid.

RESPONSE: The department has determined that it is appropriate to expand the provider base to include services provided by advanced nurse practitioners within their scope of practice as defined by the Board of Nurse Examiners for the State of Texas to help ensure access to health care services for Medicaid recipients. HCFA has deter-

mined that Medicaid payment can be made directly to advanced nurse practitioners for their services to Medicaid recipients and the established claims-filing guidelines are appropriate for this provider type.

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.

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.

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Agency Liaison, Policy and
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Texas Department of
Human Services

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

◆ ◆ ◆
Subchapter V. Certified Registered Nurse Anesthetists' Services

◆ ◆ ◆
• 40 TAC §29.2103

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 provides the Health and Human Services Commission with the authority to administer federal medical assistance funds.

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.

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TRD-9321082 Nancy Murphy
Agency Liaison, Policy and
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Texas Department of
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For further information, please call: (512) 450-3765

Subchapter Z. Certified Advanced Nurse Practitioner Services

• 40 TAC §§29.2501-29.2503

The amendments are 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.

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.

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Nancy Murphy
Agency Liaison, Policy and
Document Support
Texas Department of
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For further information, please call: (512) 450-3765

TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 23. Division of Travel and Information

Subchapter A. General Provisions

• 43 TAC §§23.1, §23.2

The Texas Department of Transportation adopts new §23.1 and §23.2, concerning purpose and definitions. Section 23.2 is adopted with changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 7051). Section 23.1 is adopted without changes and will not be republished.

Texas Civil Statutes, Article 6144e, empower the department, for the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto, to compile and publish, for free distribution, such pamphlets, bulletins, and documents as deemed necessary and expedient for informational and publicity purposes concerning the highways of the state. Article 6144e further empowers the department to publish a map showing thereon the highways of the state and the towns, cities, and other places of interest served and reached by the highways.

New Subchapter A, General Provisions contains two new sections. Section 23.1, Purpose, describes the purpose of the chapter and describes the responsibilities of the division of travel and information. Section 23.2, Definitions, provides definitions of terms used in the chapter.

In accordance with Texas Civil Statutes, Article 6252-13a, a public hearing was held on October 29, 1992, to receive public input on the proposed new sections and also on proposed new §§23.10-23.12. No comments were received on §23.1 and §23.2.

Section 23.2 defines travel literature to include "maps, pamphlets, brochures, documents, guidebooks, bulletins or other printed materials." In order to clarify the original intent and to prevent any misinterpretations, this definition is revised to explicitly exclude *Texas Highways* magazine.

The new sections are adopted under Texas Civil Statutes, Articles 6666 and 6144e, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to compile and publish pamphlets, bulletins, and documents necessary for informational and publicity purposes concerning the highways of the state.

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

Commission—The Texas Transportation Commission.

Department—The Texas Department of Transportation.

Director—The director of the division of travel and information.

Division—The division of travel and information of the Texas Department of Transportation.

Travel literature—Maps, pamphlets, brochures, documents, guidebooks, bulletins, or other printed materials and electronic media, except *Texas Highways* magazine, that are designed to inform the public, stimulate travel to and within the State of Texas, and publicize points of interest, recreational grounds, scenic places, historical facts, or other items of interest and value to the traveling public.

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.

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Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

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For further information, please call: (512) 463-8630

Subchapter B. Travel Information

• 43 TAC §§23.10-23.12

The Texas Department of Transportation adopts new §§23.10-23.12, concerning travel literature, infoBords, and the *Texas Official Highway Travel Map*. Section 23.10 is adopted with changes to the proposed text as published in the October 9, 1992, issue of the *Texas Register* (17 TexReg 7051). Section 23.11 and §23.12 are adopted without changes and will not be republished.

Texas Civil Statutes, Article 6144e, empower the department, for the purpose of dissemination of information relative to highway construction, repair, maintenance, and upkeep, and for the purpose of advertising the highways of this state and attracting traffic thereto, to compile and publish such pamphlets, bulletins, and documents as deemed necessary and expedient for informational and publicity purposes concerning the highways of the state. The statute mandates that literature published under Article 6144e be distributed free of charge. Article 6144e further empowers the department to publish a map showing thereon the highways of the state and the towns, cities, and other places of interest served and reached by the highways.

Senate Bill 797, 72nd Legislature, 1991, amended Article 6144e to authorize the department to contract with private entities for the production, marketing, and distribution of travel materials, and provides that such contracts may include cooperative strategies considered by the Department to be cost-beneficial, and further provides for the acceptance of paid advertising in travel materials if the quality and quantity of the travel materials are maintained.

New Subchapter B, Travel Information, contains three new sections. Section 23.10, Travel Literature, establishes policies and procedures governing the selection of subject matter to be included in department travel literature; providing for equitable free distribution of travel literature while maximizing the resources of the department available to advertise the highways of the state and to promote travel to and within the state; governing the acceptance of advertising in travel literature, including bidding and contract procedures, and governing cooperative contracts with commercial entities for the production, marketing, and distribution of department travel literature. Section 23.11, InfoBords, establishes policies and procedures relating to the design, placement, content, and development of travel scene poster panels, referred to as InfoBords, in comfort station highway rest areas. Section 23.12, *Texas Official Highway Travel Map*, establishes policies and procedures relating to the content of the *Texas Official Highway Travel Map*.

In accordance with Texas Civil Statutes, Article 6252-13a, a public hearing was held on

October 29, 1992, to receive public input on the proposed new sections. An individual representing the City of Fort Stockton spoke in favor of the proposed rules, provided literature is distributed free of charge to local tourism promotion groups for their redistribution to visitors. Many written comments were received after the hearing. Responses to all comments are summarized as follows.

Proposed §23.2 defines travel literature to include "maps, pamphlets, brochures, documents, guidebooks, bulletins or other printed materials." In order to clarify the original intent and to prevent any misinterpretations, this definition is revised to explicitly exclude *Texas Highways* magazine.

Many comments were received concerning §23.10(c), which provides for distribution of travel literature. A representative suggested that unlimited quantities would be appropriate for members of the legislature and other elected state officials. Keep Texas Beautiful, Inc. also asked that distribution of "Don't Mess With Texas" bumper stickers and litter bags not be limited. In Keep Texas Beautiful's opinion, this must be done to continue the effective work of the antilitter program. Many entities requested that local chambers of commerce and visitor centers be allowed to receive free multiple quantities of department travel literature for distribution to the visitors those offices serve. These entities include the Coastal Bend Regional Tourism Council, the Kleberg County Convention and Visitors Bureau, the Gateway Visitors Center in Galveston, the Corpus Christi Area Convention and Visitors Bureau, the Port Aransas Area Convention and Visitors Bureau, the Conroe Convention and Visitors Bureau, the Arlington Convention and Visitors Bureau, Fisherman's Wharf in Port Aransas, and the following chambers of commerce: Angelina County, Big Spring Area, Huntsville/Walker County, Aransas Pass, Portland, Sinton, Uvalde, and Jasper.

The purpose of the proposed rules is to ensure that department travel literature is placed in the hands of citizens, visitors, and potential visitors to furnish aid and assistance to the traveling public and stimulate travel to and within Texas. The funds and resources appropriated by the department cannot meet the demands of all of those who want travel literature, and therefore, the department must set practical limitations. The proposed rules were, therefore, designed and intended to provide for equitable distribution of travel literature, within those limitations, to meet as nearly as possible the varying needs of the traveling public. They also allow for the department to meet expanded needs if those cost limitations are resolved through contribution or reimbursement by those seeking excess numbers of publications. Keep Texas Beautiful raises the issue of free distribution of antilitter materials, i.e. litter bags and bumper stickers. The department goes to great lengths to have these materials used as automobile litter bags and bumper stickers displayed on vehicles to promote the antilitter message, "Don't Mess with Texas." This group has obtained materials previously and uses the material in a variety of promotional ways, i.e. meeting stuffer bags, party favors, and one community used them to cover park-

ing meters. The department has limited funds and resources, and this is especially true in regards to materials being used by others for purposes other than travel or travel promotion. Reimbursement of the department's costs is, therefore, appropriate for multiple quantities.

Section 23.10(c) also provides for certain exceptions to the limitation of one copy per individual. One of the exceptions authorizes the department to "provide multiple quantities of travel literature to the Texas Department of Commerce, the Texas Education Agency, local governmental entities involved in tourism, and other state and federal agencies, on such written terms and conditions as may be mutually agreed upon." The previously mentioned visitors bureaus and chambers of commerce asked to be included in this definition, especially if they are under contract with a local government and the contract is funded with local hotel/motel tax revenues. Difficulties in verification and administrative problems in utilizing funding source as eligibility criteria would be substantial and are unnecessary. The proposed rules authorize the department to contract with local governments for the provision of multiple quantities, thus private entities can meet their needs for travel literature through their local government with whom they can contract

Section 23 10(d), as proposed, provided for advertising in department travel literature. The department received various comments concerning this subsection. As a result of comments and after further review, the department is withdrawing the proposed subsection and revising the proposed text for proposal at a later date

The new sections are adopted under Texas Civil Statutes, Articles 6666 and 6144e, which provide the Texas Transportation Commission with the authority to promulgate rules and regulations for the conduct of the work of the Texas Department of Transportation, and to compile and publish pamphlets, bulletins, and documents necessary for informational and publicity purposes concerning the highways of the state.

§23.10. Travel Literature

(a) Purpose. The Texas Department of Transportation, pursuant to Texas Civil Statutes, Articles 4413(33) and 6144e, publishes travel literature for free distribution to the traveling public. This section sets forth department policies and procedures relating to the production, development, printing, advertising content, and distribution of that literature.

(b) Subject matter.

(1) The director, or the director's designee, may select subject matter concerning geographic locations, events, and other items or points of interest to the general traveling public for inclusion in department travel literature provided that:

(A) the subject matter is regularly accessible (open) to the general public; and

(B) the subject matter is not a routine commercial service, including, but not limited to:

- (i) car rentals;
- (ii) hospitals or medical facilities;
- (iii) retail stores or shopping centers; or
- (iv) commercial facilities such as theaters, bowling alleys, and gyms.

(2) The department may consider for inclusion in travel literature, subject matter submitted by a person or organization, with complete information to the division prior to the publishing deadline announced for each specific travel literature publication.

(c) Distribution.

(1) Policy. This subsection prescribes the policies and procedures of the department relating to the distribution and dissemination of travel literature to:

(A) provide for equitable free distribution, within budgetary constraints, of available travel literature; and

(B) maximize the resources of the department available to advertise the highways of the state and to promote travel to and within the state.

(2) Single copies. A single copy of a publication may be distributed free of charge to each individual requesting a publication.

(3) Multiple copies or bulk quantities.

(A) Except as provided in paragraph (4) of this subsection, the department may distribute multiple copies or bulk quantities of a publication to an individual or organization free of charge, provided that the recipient certifies in writing, in a form prescribed by the department, that all copies of publications will be redistributed to the public or end user free of charge.

(B) The maximum number of copies that the department may provide per fiscal year for each individual requesting a publication in accordance with subparagraph (A) of this paragraph is:

- (i) 400 current state "image" folders;
- (ii) 25 *Texas Official Highway Travel Maps*;
- (iii) six *Texas State Travel Guides*;

(iv) 25 other travel literature publications;

(v) 100 "Don't Mess with Texas" litter bags; and

(vi) 100 "Don't Mess with Texas" bumper stickers.

(4) Exceptions. The department may provide:

(A) free of charge, a maximum of 100 *Texas Official Highway Travel Maps*, *Texas State Travel Guides*, and other travel literature publications per year to each elected state and federal official; and

(B) multiple quantities of travel literature to the tourism division of the Texas Department of Commerce, the Texas Education Agency, local governmental entities involved in tourism, and other

state and federal agencies, on such written terms and conditions as may be mutually agreed upon.

(5) Reimbursement. The department may provide quantities exceeding the maximum authorized under paragraphs (3)(B) or (4)(A) of this subsection if the recipient reimburses the department for its costs to print the additional quantities and satisfies the requirements of paragraph (3)(A) of this subsection.

(d) Commercial cooperation. The department may, consistent with Texas Civil Statutes, Articles 601b and 601g, and Texas Constitution, Article XVI, §21, enter into cooperative contracts with commercial entities for production, marketing, and distribution of department travel literature to achieve:

- (1) greater volume;
- (2) reduced cost to the department;

(3) higher quality;

(4) wider circulation; and

(5) other considerations that will achieve more effective or more economical production and distribution of travel literature than could be attained by departmental efforts alone.

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 March 31, 1993.

TRD-9321035

Diane L. Northam
Legal Administrative
Assistant
Texas Department of
Transportation

Effective date: April 21, 1993

Proposal publication date: October 9, 1992

For further information, please call: (512) 463-8630



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 prior to 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 named 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. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the Office of the Secretary of State in lobby of 221 East 11th Street, Austin. These notices may contain 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

Thursday, April 8, 1993, 9:30 a.m. The Texas Board on Aging of the Texas Department on Aging will meet at 1949 South IH-35, Third Floor Conference Room, Austin. According to the agenda summary, the board will consider and possibly act on: call the meeting to order; discuss approval of the March 11, 1993 minutes; receive public testimony; hear executive director's report; citizens advisory council chair's report to include nominations to fill term from Dallas County region; discuss proposed policy to be published in the *Texas Register* for final adoption; distribution of Fiscal year 1993 ombudsman activity funds; distribution of Fiscal year 1993 Title VII Elder Abuse funds; status of proposed standards; status report on indirect costs; report on monthly operating expenditures; reports on discussion of TDoA internal audit of Area Agency on Aging administration and Texas Association of Regional Councils' indirect cost study; priority bills and issues relating to aging issues; action plans and assignments to board; make general announcements; and adjourn.

Contact: Mary Sapp, 1949 IH-35 South Skyline Building, Austin, Texas 78711, (512) 444-2727.

Filed: March 31, 1993, 10:10 a.m.

TRD-9321049



Texas Department of Agriculture

Thursday, April 8, 1993, 7:30 p.m. The Scurry County Cotton Producers Board of the Texas Department of Agriculture will meet at the Chamber of Commerce Board

Room, 2302 Avenue R, Snyder. According to the complete agenda, the board will discuss approval of minutes; discuss financial statements; approval of refund requests; and discuss other business.

Contact: Jon Derouen, P.O. Drawer CC, Snyder, Texas 79549, (915) 573-3558.

Filed: March 31, 1993, 1:52 p.m.

TRD-9321059



Monday, April 5, 1993, 9 a.m. The Board of Directors of the Texas Catastrophe Property Insurance Association held an emergency meeting at 2801 South Interregional, Austin. According to the complete agenda, the board discussed reminder of anti-trust statement; proposed legislation; and any other business that may have come before the board. The emergency status was necessary due to pending legislation and needed immediate attention.

Contact: F. R. "Buddy" Rogers, 2801 South Interregional, Austin, Texas 78741, (512) 444-9612.

Filed: April 1, 1993, 9:21 a.m.

TRD-9321092



Texas Commission for the Deaf and Hearing Impaired

Friday, April 16, 1993, 8 a.m. The Programs and Activities Committee of the Texas Commission for the Deaf and Hearing Impaired will meet at 1524 South IH-35, #200, Austin. According to the complete agenda, the committee will discuss responsibilities of the committee; review

agency policies and procedures; and develop upcoming recommendations to be presented to the full commission at the June meeting.

Contact: Ralph H. White, 1524 South IH-35, #200, Austin, Texas 78704, (512) 444-3323.

Filed: April 1, 1993, 9 a.m.

TRD-9321086

Friday, April 16, 1993, 8 a.m. The Policies and Procedures Committee of the Texas Commission for the Deaf and Hearing Impaired will meet at 1524 South IH-35, #200, Austin. According to the complete agenda, the committee will discuss responsibilities of the committee; review agency policies and procedures; and develop upcoming recommendations to be presented to the full commission at the June meeting.

Contact: Ralph H. White, 1524 South IH-35, #200, Austin, Texas 78704, (512) 444-3323.

Filed: April 1, 1993, 9:01 a.m.

TRD-9321087

Friday, April 16, 1993, 8 a.m. The Fiscal Affairs Committee of the Texas Commission for the Deaf and Hearing Impaired will meet at 1524 South IH-35, #200, Austin. According to the complete agenda, the committee will discuss responsibilities of the committee; review agency policies and procedures; and develop upcoming recommendations to be presented to the full commission at the June meeting.

Contact: Ralph H. White, 1524 South IH-35, #200, Austin, Texas 78704, (512) 444-3323.

Filed: April 1, 1993, 9:01 a.m.

TRD-9321088

Friday, April 16, 1993, 10 a.m. The Texas Commission for the Deaf and Hearing Impaired will meet at 1524 South IH-35, #200, Austin. According to the complete agenda, the commission will call the meeting to order; hear chairperson's report; discuss approval of minutes; subcommittee reports; interim executive director report to include HHSC update, legislative update and agency operations/policies, including printing of resource handbook, issuance of RFP for Bexar County, and request from Beaumont area; discuss budget/financial report; BEI report including recommendations for certification and applicants for BEI board vacancies; information items; next commission meeting; adjourn; and hold a public hearing.

Contact: Ralph H. White, 1524 South IH-35, #200, Austin, Texas 78704, (512) 444-3323.

Filed: April 1, 1993, 9:01 a.m.

TRD-9321089

Texas Education Agency

Tuesday, April 13, 1993, 10 a.m. The School Facilities Advisory Committee of the Texas Education Agency will meet at the William B. Travis Building, 1701 North Congress Avenue, Room 6-101, Austin. According to the agenda summary, the committee will discuss various items relating to school facilities issues: state facilities inventory (BETA), educational adequacy, long-range school facilities planning, and educational specifications and pending legislative impact on school districts. No final actions or voting of specific issues is anticipated.

Contact: Otto Grove, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9238.

Filed: March 30, 1993, 4:19 p.m.

TRD-9321012

Advisory Commission on State Emergency Communications

Wednesday, April 7, 1993, 1:30 p.m. The Executive Committee of the Advisory Commission on State Emergency Communications will meet at the ACSEC Office, 1101 Capital of Texas Highway South, B-100, Austin. According to the complete agenda, the committee will call the meeting to order; introduce guests; hear public comment; discuss updates on commission activities; legislative activities, strategic plan and forecast report, call box program, budget process; ACSEC committee chair appointments and structure; and adjourn. Persons requesting interpreter services for the hearing and

speech impaired should contact Velia Williams at (512) 327-1911 at least two work days prior to the meeting.

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

Filed: March 30, 1993, 3:57 p.m.

TRD-9320982

Texas Employment Commission

Wednesday, April 7, 1993, 9 a.m. The Texas Employment Commission will meet at the TEC Building, Room 644, 101 East 15th Street, Austin. According to the agenda summary, the commission will discuss approval of prior meeting notes; hear staff reports; consider and possibly approve bid for automatic door openers at the south entrance of the TEC Building, 101 East 15th Street, Austin; consider proposed or pending legislation and possibly take action with respect thereto; internal procedures of commission appeals; consider action on higher level appeals in unemployment compensation cases listed on Commission Docket 14; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: March 30, 1993, 2:58 p.m.

TRD-9320971

Texas Commission on Fire Protection

Tuesday, April 13, 1993, 10 a.m., Wednesday-Thursday, April 14-15, 1993, 9 a.m. The Fire Alarm Advisory Council of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the council will have orientation regarding reimbursement of expenses of members and procedures for meetings; discuss and possibly act regarding statutory role of advisory council, including any role in interpretations of rules; regarding possible present alarm rules adopted by the Texas Commission on Fire Protection under Article 5.43-2 of the Texas Insurance Code; on possible amendments to alarm rules; and regarding tests used in licensing of persons under Article 5.43-2 of the Texas Insurance Code.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: March 31, 1993, 2:19 p.m.

TRD-9321068

Wednesday-Thursday, April 14-15, 1993, 12:30 p.m. and 9 a.m. respectively. The

Volunteer Fire Fighter Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the committee will discuss approval of previous minutes; consider and discuss matters from members and public; discuss with Fire Protection Personnel Advisory Committee on areas of mutual concern; discuss and possibly act on proposed new rules and changes to 37 TAC Chapters 471, 473, 475, 477, 479, 481, 483, 485, 487, 489; hear public comments concerning rules pending before the commission regarding volunteer fire fighters and volunteer fire departments regulated under Government Code Chapter 419, Subchapter D; discuss rules recommended for further development relating to volunteer fire fighters and volunteer fire departments regulated under Government Code 419, Subchapter D; recommendation for the commission to seek approval for accreditation by IFSAC, and action on future meeting dates, times, and agenda items.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700

Filed: March 31, 1993, 2:18 p.m.

TRD-9321067

Wednesday-Friday, April 14-16, 1993, 9 a.m. The Funds Allocation Advisory Committee of the Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the committee will discuss approval of minutes of previous meeting; election of vice-chairman; discuss monitoring reports; discuss and possibly act on applications for assistance received by February 28, 1993 and applications received by November 30, 1992, which were considered at the January 12, 13, 1993 meeting, and for which no recommendations were made; discuss/recommend interest rate; discuss and possibly act on possible rule amendments; discuss and possibly act regarding changes to the application instructions; recommendations to the commission concerning assistance to fire departments in the acquisition of resources; act on previous awards by the commission under the Fire Department Emergency Program.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: March 31, 1993, 2:17 p.m.

TRD-9321065

Wednesday-Friday, April 14-16, 1993, 9 a.m. The Texas Commission on Fire Protection will meet at 3006B Longhorn Drive, Austin. According to the agenda summary, the commission will meet in executive sessions under 2(g) and 2(e) of Article 6252-17, Vernon's Texas Civil Statutes to discuss matters referred from the Volunteer

Fire Fighter Advisory Committee; matters referred from the Fire Protection Advisory Committee; discuss and possibly act on recommendations for funding from the Funds Allocation Advisory Committee; preamble for final adoption of amendments of existing rules under 37 TAC Chapter 531 relating to fire alarm systems regulated under Article 5.43-2, Texas Insurance Code; discuss and possibly act on Docket Number FM-060, appeal of State Fire Marshal Order Number FM-301; matters from the executive director; and new matters from the public not included in preceding agenda items which may be discussed in future commission meetings.

Contact: Jack Woods, 3006B Longhorn Boulevard, Austin, Texas 78759-6735, (512) 873-1700.

Filed: March 31, 1993, 2:18 p.m.

TRD-9321066

Health and Human Services Commission

Wednesday, April 7, 1993, 9:30 a.m. The Medical Care Advisory Executive Committee of the Health and Human Services Commission will meet at 1100 West 49th Street, Sixth Floor, Tower Building, Room T-607, Austin. According to the complete agenda, the committee will make opening comments; review state medicaid office update; hear deputy commissioner's comments; discuss approval of minutes; hear workgroup report; disproportionate share program rules; open discussion; plan next meeting; and adjourn.

Contact: Geri Willems, P.O. Box 13247, Austin, Texas 78711, (512) 502-3256.

Filed: March 30, 1993, 3 p.m.

TRD-9320974

Texas Department of Housing and Community Affairs

Wednesday, April 21, 1993, 10 a.m. The Texas Weatherization Policy Advisory Council of the Texas Department of Housing and Community Affairs will meet at 811 Barton Springs Road, Third Floor Conference Room, Austin. According to the agenda summary, the council will consider funding distribution formula for the Texas Weatherization Assistance Program. Individuals who require auxiliary aids or services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, (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: J. Al Almaguer, 811 Barton Springs Road, Austin, Texas 78711, (512) 475-3800.

Filed: March 31, 1993, 3:33 p.m.

TRD-9321078

Texas Department of Licensing and Regulation

Tuesday, April 13, 1993, 9 a.m. The Inspections and Investigations, Talent Agencies of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Third Floor Conference Room, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Gwendolyn Coffey Ceasar doing business as GCC Talent and Model Agency for violation of Texas Revised Civil Statutes Annotated, Article 5221a-9, §§2(a), 2(b), 4(a) and 5(a), 16 TAC §§78.20, 78.21(a), 78.40 and 78.76(a) and (c), Business and Commercial Code, Chapter 17 and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: March 30, 1993, 4:14 p.m.

TRD-9321005

Thursday, April 15, 1993, 9 a.m. The Inspections and Investigations, Tow Trucks of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Third Floor Conference Room, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for David Frederick Owen doing business as Ace's Wrecker Service for violation of Texas Revised Civil Statutes Annotated, Article 6687-9b, §2 and §8, Article 6252-13a and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: March 30, 1993, 4:14 p.m.

TRD-9321006

Tuesday, April 20, 1993, 9 a.m. The Inspections and Investigations, Vehicle Storage Facility of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Third Floor Conference Room, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for

Darrel Leazer doing business as D & C Auto Tow Service for violation of Texas Revised Civil Statutes Annotated, Article 6687-9a, 16 TAC §79.72(a)(7)(c), §79.72(a)(7)(d), §79.72(e)(3), §79.73(b)(3), §79.100(1) and §79.100(5) and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: March 30, 1993, 4:14 p.m.

TRD-9321008

Thursday, April 22, 1993, 9 a.m. The Inspections and Investigations, Vehicle Storage Facility of the Texas Department of Licensing and Regulation will meet at the E. O. Thompson Building, 920 Colorado Street, Third Floor Conference Room, Austin. According to the complete agenda, the department will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Joh W. Thompson doing business as Carthage Muffler and Tire Service for violation of Texas Revised Civil Statutes Annotated, Article 6687-9a, 16 TAC §79.20(a) and Article 9100.

Contact: Paula Hamje, 920 Colorado Street, Austin, Texas 78701, (512) 463-3192.

Filed: March 30, 1993, 4:14 p.m.

TRD-9321007

Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association

Thursday, April 8, 1993, 10 a.m. The Audit Committee of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association will meet at 301 Congress Avenue, Suite 500, Conference Room, Austin. According to the complete agenda, the committee will consider and possibly act on approval of the minutes; Independent auditor reports; agreed-upon procedures; meet in executive session; discuss matters in executive session; use of independent consultants to assist in development of internal policies and control procedures; review of classifications and methodology for 1993 Association budget; write off certain loans receivable; monthly financial statement formats; and agenda and timing of future audit committee meetings.

Contact: C. S. LaShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 476-5101.

Filed: March 30, 1993, 3 p.m.

TRD-9320972

Thursday, April 8, 1993, 1 p.m. The Assessment Committee of the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association will meet at 301 Congress Avenue, Suite 500, Conference Room, Austin. According to the complete agenda, the committee will consider and possibly act on prior assessments; policies, procedures, and planning for future assessments; meet in executive session; discuss matters in executive session; and set next meeting date.

Contact: C. S. LaShelle, 301 Congress Avenue, Suite 500, Austin, Texas 78701, (512) 476-5101.

Filed: March 30, 1993, 3 p.m.

TRD-9320973

Texas State Board of Medical Examiners

Tuesday, April 13, 1993, 9 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the division will hold probationary appearances and termination of probation requests. Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: March 31, 1993, 3:54 p.m.

TRD-9321081

Wednesday, April 14, 1993, 9 a.m. The Hearings Division of the Texas State Board of Medical Examiners will meet at 1812 Centre Creek Drive, Suite 300, Austin. According to the agenda summary, the division will hold probationary appearances; and requests for modification and termination of probation. Executive session under authority of Article 6252-17, as related to Article 4495b, 2.07, 3.05(d), 4.05(d), 5.06(s)(1) and Opinion of Attorney General 1974, Number H-484.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-4502.

Filed: March 31, 1993, 3:54 p.m.

TRD-9321080

Public Utility Commission of Texas

Thursday, April 8, 1993, 9 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the agenda summary, the commission will consider the following

dockets: 11563, 11118, 11544, 11571, 10935, 11538, 11735, P-11399, P-11434, P-11862, 11494, 10127, and 9981.

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

Filed: March 31, 1993, 3:04 p.m.

TRD-9321072

Thursday, April 8, 1993, 9:05 a.m. Administrative of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the agenda summary, the commission will discuss: reports, discuss and act on presentation on renewable energy working group; staff report on a PUC inquiry on electric transmission pricing and access issues; consider proposal of questions for publication in the *Texas Register* associated with possible rulemaking regarding Clean Air Act; discuss and possibly intervention regarding TU's filing with SEC for approval by SEC of TU's acquisition of Southwestern Electric Service Company; consideration and approval of comment to SEC on NOPRM relating to exempt wholesale generators and foreign utility companies; status report on five-state audit of SWB; consideration of proposed or pending legislation and possible action; presentation of monthly financial statements; discuss budget and fiscal matters; adjourn for executive session to consider litigation and personnel matters; reconvene for discussion and decisions on matters considered in executive session; set time and place for next meeting; and adjourn.

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

Filed: March 31, 1993, 3:04 p.m.

TRD-9321071

Tuesday, April 13, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will conduct a prehearing conference in Docket Number 11883-application of GTE Southwest, Inc., to establish rates for the provisioning of E911 Public Safety Answering Point (PSAP) equipment for the City of Gladewater, the City of Aransas Pass, and the Texoma Council of Governments.

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

Filed: March 30, 1993, 3:50 p.m.

TRD-9320978

Tuesday, April 13, 1993, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda,

the commission will hold a prehearing conference in Docket Number 11745-application of Houston Lighting and Power Company to revise general tariff to make the supplemental agreement for cool storage billing demand-CSB experimental a permanent rate.

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

Filed: March 31, 1993, 3:05 p.m.

TRD-9321075

Wednesday, April 14, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a prehearing conference in Docket Number 10029-petition of Bartonville Exchange for extended area service to the Dallas metropolitan exchange.

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

Filed: March 30, 1993, 3:49 p.m.

TRD-9320977

Monday, May 17, 1993, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the division will hold a hearing on the merits in Docket Number 11831-notice of intent and petition of Guadalupe Valley Electric Cooperative, Inc. to implement a load control device credit.

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

Filed: March 31, 1993, 3:04 p.m.

TRD-9321070

Friday, August 13, 1993, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a prehearing conference in Docket Number 11441-petitions of Infodial, Inc. and others for assignment of abbreviated N11 dialing codes.

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

Filed: March 31, 1993, 3:05 p.m.

TRD-9321074

Tuesday, August 17, 1993, 10 a.m. The Public Utility Commission of Texas will meet at 7800 Shoal Creek Boulevard, Suite 450, Austin. According to the complete agenda, the commission will hold a hearing on the merits in Docket Number

11441-petitions of Infodial, Inc. and others for assignment of abbreviated N11 dialing codes.

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

Filed: March 31, 1993, 3:05 p.m.

TRD-9321073

Texas Rehabilitation Commission

Thursday, May 6, 1993, 1:30 p.m. The Texas Rehabilitation Commission will meet at 301 Loop 11, Region IX Education Service Center, Wichita Falls. According to the agenda summary, the commission will review and discuss state plan for vocational rehabilitation services; welcome and introduce guests; discuss rehabilitation technology; statewide assessment of rehabilitation needs; transition from education to employment; expanding services to individuals with severe disabilities; order of selection; supported employment; and key issues of the Rehabilitation Act amendments. Persons who plan to attend this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille should contact Lena Jackson several days before the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78752, (512) 483-4113.

Filed: March 30, 1993, 4:18 p.m.

TRD-9321010

Monday, May 10, 1993, 4 p.m. The Texas Rehabilitation Commission will meet at the Wyndham Hotel, IH-35 South at Southpark, 4140 Governors Row, Austin. According to the agenda summary, the commission will review and discuss state plan for vocational rehabilitation services; welcome and introduce guests; discuss rehabilitation technology; statewide assessment of rehabilitation needs; transition from education to employment; expanding services to individuals with severe disabilities; order of selection; supported employment; and key issues of the Rehabilitation Act amendments. Persons who plan to attend this meeting who may need auxiliary aids or services such as interpreters, readers, large print or Braille should contact Lena Jackson several days before the meeting.

Contact: Lena Jackson, 4900 North Lamar Boulevard, Austin, Texas 78752, (512) 483-4113.

Filed: March 30, 1993, 4:18 p.m.

TRD-9321011

Texas National Research Laboratory Commission

Thursday, April 1, 1993, 2 p.m. The Texas National Research Laboratory Commission held an emergency meeting at the Dallas Love Field Airport Administrative Offices, Mezzanine Level, Conference Room A, Dallas. According to the agenda summary, the commission called the meeting to order; took roll call of members; hear chairman's report-Charles R. Perry; discussed approval of minutes; discussed committee appointments; discussion and action items; finance and audit report; research and education report; site acquisition and development report; heard public comment; met in executive session; reconvened in open meeting; and adjourned. The emergency status was necessary as an emergency existed to hold this meeting as it concerned the siting, construction, development, and operation of the Superconducting Super Collider project.

Contact: Karen L. Chrestay, 1801 North Hampton Road, #400, DeSoto, Texas 75115, (214) 709-3800.

Filed: March 31, 1993, 10:40 a.m.

TRD-9321050

Board for Lease of State-owned Lands

Wednesday, April 7, 1993, 10 a.m. The Board of Lease of Texas Department of Criminal Justice of the Board for Lease of State-owned Lands will meet at the General Land Office, Stephen F. Austin Building, Room 833, 1700 North Congress Avenue, Austin. According to the agenda summary, the board will discuss approval of the minutes of the previous board meeting; consider bids received for the April 6, 1993 oil, gas and other minerals lease sale.

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

Filed: March 30, 1993, 4:15 p.m.

TRD-9321009

Structural Pest Control Board

Monday, April 12, 1993, 9 a.m. The Continuing Education Committee of the Structural Pest Control Board will meet at the Joe C. Thompson Conference Center, 2405 East Campus Drive, Room 3.110, Austin. According to the complete agenda, the committee will review applications for CEU credit; and discuss CEU approval process.

Contact: Benny M. Mathis, Jr., 9101 Bur-

net Road, Suite 201, Austin, Texas 78758, (512) 835-4066.

Filed: March 30, 1993, 1:55 p.m.

TRD-9320967

Texas Guaranteed Student Loan Corporation

Wednesday, April 7, 1993, 3 p.m. The Finance Committee of the Texas Guaranteed Student Loan Corporation will meet at the R. L. Thornton Building, DCCCD Board Room, Fourth Floor, 701 Elm Street, Dallas. According to the complete agenda, the committee will discuss approval of minutes of January 21, 1993; meet in executive session to discuss litigation issues; discuss guarantee fee review; and pension plan.

Contact: Peggy Irby, P.O. Box 15996, Austin, Texas 78761, (512) 835-1900.

Filed: March 30, 1993, 2:04 p.m.

TRD-9320970

Thursday, April 8, 1993, 9 a.m. The Board of Directors of the Texas Guaranteed Student Loan Corporation will meet at the R. L. Thornton Building, DCCCD Board Room, Fourth Floor, 701 Elm Street, Dallas. According to the complete agenda, the board will discuss approval of the minutes of January 21-22, 1993; give corporate update: financial and performance statistics; discuss pension plan; guarantee fee review; plan future meeting dates; hear president's report: legislation, default management report, loan servicing phase out, management audit/strategic plan update; and meet in executive session to consult with attorney on litigation issue.

Contact: Peggy Irby, P.O. Box 15996, Austin, Texas 78761, (512) 835-1900.

Filed: March 31, 1993, 11:56 a.m.

TRD-9321052

Teacher Retirement System of Texas

Thursday, April 8, 1993, 10 a.m. The Board of Trustees of the Teacher Retirement System of Texas will meet at 1000 Red River Street, Fifth Floor Board Room, Austin. According to the complete agenda, the board will consider extension of contract with Coopers and Lybrand for forensic analysis of real estate portfolio; update on implementation of recommendations resulting from real estate review by Coopers and Lybrand; consider appointments to Ethics Committee; report of the audit committee; and consider expanding authorized real estate title-holding entities to include nonstock for-profit corporations, nonprofit

corporations, and business trusts. The board may enter into closed session as provided by the Texas Open Meetings Act, §2(e).

Contact: Mary Godzik, 1000 Red River Street, Austin, Texas 78701-2698, (512) 397-6400.

Filed: March 31, 1993, 3:44 p.m.

TRD-9321079

Texas Southern University

Tuesday, April 6, 1993, 4 p.m. The Building and Grounds Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne/School of Law, Room 221, Houston. According to the complete agenda, the committee will meet to consider construction change orders; payments to architects, contractors and engineers; authorization and ratification of contracts and awards; and status of on going construction and current contractual relations.

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

Filed: March 31, 1993, 9:21 a.m.

TRD-9321024

Tuesday, April 6, 1993, 5 p.m. The Personnel and Academic Affairs Committee of the Board of Regents of Texas Southern University will meet at Texas Southern University, 3100 Cleburne/School of Law Dean's Conference Room 221, Houston. According to the complete agenda, the committee will consider reports on progress of academic activities and programs; and personnel actions.

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

Filed: March 31, 1993, 9:21 a.m.

TRD-9321025

Friday, April 8, 1993, 8:30 a.m. The Board of Regents of Texas Southern University will meet at Texas Southern University, University Library, Fifth Floor, Houston. According to the complete agenda, the board will discuss approval of minutes; report of the president; report from standing committees; and meet in executive session.

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

Filed: March 31, 1993, 9:22 a.m.

TRD-9321026

Texas Department of Transportation

Friday, April 16, 1993, 10 a.m. The Bicycle Rules Advisory Committee of the Texas

Department of Transportation will meet at 200 East Riverside Drive, Room 102, Austin. According to the agenda summary, the committee will make opening remarks; introduce committee members; discuss approval of minutes; final review of proposed rulemaking concerning transportation enhancement program; and discuss future rulemaking regarding bicycle road use on the state highway system.

Contact: Paul Douglas, 125 East 11th Street, Austin, Texas 78701, (512) 416-3125.

Filed: April 1, 1993, 9:13 a.m.

TRD-9321091

Texas Turnpike Authority

Thursday, April 8, 1993, 10 a.m. The Board of Directors of the Texas Turnpike Authority will meet at the Guest Quarters Suite Hotel, 303 West 15th Street, Austin. According to the agenda summary, the board will discuss approval of minutes of prior board and committee meetings; Anzalduas Road Crossing; hear comments and presentation of officials of Dallas/Harris Counties; meet in executive session; election of officers; with respect to the Dallas North Tollway project, ratification of contract awards and supplemental agreement, acquisition of right-of-way and discussion of sound abatement policy; utilization of historically underutilized businesses policy; discuss legislative matters including Sunset Review; interagency agreement with TxDOT; DFW Airport East-West Connector Turnpike; and the results of board retreat and the executive director's report.

Contact: Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

Filed: March 31, 1993, 3:21 p.m.

TRD-9321077

The University of Texas at El Paso

Wednesday, April 7, 1993, 2 p.m. The Institutional Animal Care and Use Committee of the University of Texas at El Paso will meet at the Psychology Conference Room, Room 310, Psychology, El Paso. According to the complete agenda, the committee meeting will be called to order by Chairman James V. Devine; discuss approval of minutes of November 4, 1992 meeting; introduce new committee member; report on animal welfare assurance renewal; and discuss other business initiated by committee members.

Contact: Dr. James V. Devine, Department of Psychology, The University of Texas at

El Paso, El Paso, Texas 79968, (915) 747-5551.

Filed: March 31, 1993, 2:15 p.m.

TRD-9321063

Texas Water Commission

Wednesday, March 31, 1993, 9 a.m. The Texas Water Commission met at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the emergency revised agenda summary, the commissioners met in executive session under §2(g) of the Open Meeting Act to discuss the recent resignation of the executive director of the Texas Water Commission; and to discuss the appointment of an acting executive director. The emergency status was necessary due to the reasonably unforeseeable resignation of the executive director of the Texas Water Commission and the need for immediate action by the governing body to appoint an acting executive director.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 30, 1993, 3:39 p.m.

TRD-9320976

Friday, April 2, 1993, 8:30 a.m. The Texas Water Commission met at the Stephen F. Austin Building, Room 118, 1700 North Congress Avenue, Austin. According to the emergency revised agenda summary, the permit process task force of the Texas Water Commission, consisting of private industry and environmental groups continued to meet with the commissioners of the Texas Water Commission in a workshop-type setting. The emergency status was necessary as the Four Seasons Hotel was unavailable on April 2, 1993, and this posting was necessary for new meeting place.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Filed: March 30, 1993, 3:38 p.m.

TRD-9320975

Regional Meetings

Meetings Filed March 30, 1993

The Tax Appraisal District of Bell County Board of Directors will meet at the Tax Appraisal District Building, 411 East Central Avenue, Belton, April 8, 1993, at 7 p.m. Information may be obtained from Mike Watson, P.O. Box 390, Belton, Texas 76513-0390, (817) 939-5841, extension 29. TRD-9320969.

Meetings Filed March 31, 1993

The Bexar Appraisal District Appraisal Review Board will meet at 535 South Main Street, San Antonio, April 1-2, 5-9, 12-15, 19-23, 26-30, 1993, at 8:30 a.m. Information may be obtained from Beverly Houston, 535 South Main Street, San Antonio, Texas 78204, (512) 224-8511. TRD-9321029.

The Brazos Valley Development Council Regional Advisory Committee on Aging will meet at the Council Offices, 3006 East 29th Street, Suite Two, Bryan, April 6, 1993, at 2:30 p.m. Information may be obtained from Roberta Lindquist, P.O. Drawer 4128, Bryan, Texas 77805-4128, (409) 776-2277. TRD-9321027.

The Dawson County Central Appraisal District Board of Directors will meet at 1806 Lubbock Highway, Lamesa, April 7, 1993, at 7 a.m. Information may be obtained from Tom Anderson, P.O. Box 797, Lamesa, Texas 79331, (806) 872-7060. TRD-9321033.

The Hansford Appraisal District Appraisal Review Board will meet at 709 West Seventh Street, Spearman, April 6, 1993, at 9 a.m. Information may be obtained from Lovida Giblin, P.O. Box 567, Spearman, Texas 79081, (806) 659-5575. TRD-9321051.

The Middle Rio Grande Development Council Texas Review and Comment System Committee met at the Fort Clark Springs Restaurant, Highway 90,

Brackettville, March 31, 1993, at 4 p.m. The emergency status was necessary as committee needed to change budget allocations as recommended. Information may be obtained from Dora T. Flores, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9321053.

The South Orient Rural Rail Transportation District met at the Reagan County Courthouse, Big Lake, April 5, 1993, at 1 p.m. Information may be obtained from Paul Valenzuela, P.O. Box 10, Fort Stockton, Texas 79735, (915) 336-6281. TRD-9321055

The Tyler County Appraisal District Board of Directors will meet at 806 West Bluff, Woodville, April 6, 1993, at 5:30 p.m. Information may be obtained from Linda Lewis, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9321054.

Meetings Filed April 1, 1993

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Dallas, April 7, 1993, at 7:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9321085.

The Dallas Central Appraisal District Board of Directors will meet at 2949 North Stemmons Freeway, Dallas, April 7, 1993, at 8 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9321084.

The Dallas Central Appraisal District Board of Directors Budget Workshop will meet at 2949 North Stemmons Freeway, Dallas, April 7, 1993, at 8:30 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons Freeway, Dallas, Texas 75247, (214) 631-0520. TRD-9321083.

The Gregg Appraisal District Appraisal Review Board will meet at 2010 Gilmer Road, Longview, April 8, 1993, at 9 a.m. Information may be obtained from Bill Carroll, P.O. Box 6700, Longview, Texas 75608, (903) 759-0015. TRD-9321090.

The Hays County Appraisal District Appraisal Review Board will meet at 632 A East Hopkins Street, Municipal Building, San Marcos, April 8, 1993, at 9 a.m. Information may be obtained from Lynnell Sedlar, 632 A East Hopkins Street, San Marcos, Texas 78666, (512) 754-7400. TRD-9321093.

The Lavaca County Central Appraisal District Board of Directors will meet at the Lavaca County Central Appraisal District, 113 North Main Street, Hallettsville, April 12, 1993, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9321096.

The Sulphur River Basin Authority Board of Directors will meet at the Mt. Pleasant Chamber of Commerce Building, 1604 North Jefferson Street, Mt. Pleasant, April 13, 1993, at 3 p.m. Information may be obtained from William O. Morriss, P.O. Box 240, Texarkana, Texas 75504, (903) 793-5511. TRD-9321095.



Name: Edgar Guerrero
Grade: 3
School: North Loop Elementary, Ysleta ISD

In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

State Banking Board

Notice of Hearing

The Hearing Officer of the State Banking Board will conduct a hearing on May 7, 1993, at 1 p.m., at 2601 North Lamar Boulevard, Austin, Texas, on the charter application for First Bank Pearland, Pearland, Texas. The application is a conversion from First National Bank of Pearland, located in Pearland, Texas, to a state-chartered bank.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-1317.

Issued in Austin, Texas, on March 26, 1993.

TRD-8320923

William F. Aldridge
Director of Corporate Activities
Texas Department of Banking

Filed: March 29, 1993

Texas Bond Review Board

Bi-Weekly Report on the 1993 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of March 13, 1993-March 26, 1993. Since Congress did not act by March 1, 1993, to extend the provisions of the tax code which allow Mortgage Bonds and Small Issue Bonds to qualify for tax-exempt financing, the amount of state ceiling remaining for those purposes has been proportionately redistributed to the other categories, pursuant to §2(e) of Article 5190.9a. Currently, there are three categories within the allocation program.

Total amount of state ceiling remaining unreserved for the \$239,513,792 subceiling for state-voted issues under the Act as of March 26, 1993: \$129,513,792.

Total amount of state ceiling remaining unreserved for the \$68,428,035 subceiling for residential rental project issues under the Act as of March 26, 1993: \$8,253,035.

Total amount of state ceiling remaining unreserved for the \$574,858,173 subceiling for all other bonds requiring an allocation under the Act as of March 26, 1993: \$9,858,173.

Total amount of the \$882,800,000 state ceiling remaining unreserved as of March 26, 1993: \$147,625,000.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from March 13, 1993-March 26, 1993: Brazos Higher Education

Authority, Eligible Borrowers, Student Loans, \$50,000,000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from March 13, 1993-March 26, 1993: None.

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from March 13, 1993-March 26, 1993: El Paso HFC, Pecan Grove Limited, Residential Rental, \$4,554,000; Gulf Coast Waste Disposal Authority; American Envirotech, Solid Waste and Hazardous Waste Disposal, \$45,000,000.

Issued in Austin, Texas, on March 29, 1993.

TRD-8320941

Jim Thomassen
Executive Director
Texas Bond Review Board

Filed: March 29, 1993

General Services Commission

Summary of Other State Bidder Preference Laws

The General Services Commission publishes this list of other state bidder preference laws in accordance with Texas Civil Statutes, Article 601g(b)(2), which require the publication of a list of states which have laws or regulations regarding the award of contracts for general construction, improvements, services, or public works projects or purchases of supplies, materials, or equipment to non-resident bidders, together with a citation to and summary of the most recent law or regulation of each state relating to the evaluation of bids from and award of contracts to nonresident bidders.

ALABAMA: Alabama Code, §39-3-5 (1991)-Reciprocal preference in public works contracts; §41-16-27 and §41-16-57 (1991)-Products sold by residents preferred in tie bids.

ALASKA: Alaska Statutes, §36.30.170 (1992)-Preference of 5.0% to Alaska bidders.

ARIZONA: Arizona Revised Statutes, §34-243 (1992)-Preference of 5.0% to construction materials sold by residents.

ARKANSAS: Arkansas Code of 1987 Annotated, §19-11-259 (1992) -Preference of 5.0% to commodities sold by residents; §22-9-206 (1992) -Preference of 3.0% to residents in public works contracts for highway projects.

COLORADO: Colorado Revised Statutes, §8-18-101 (1991) -Reciprocal preference in purchases of goods and services; §8-19-101 (1991) -Reciprocal preference in public works contracts.

FLORIDA: Florida Statutes, §287.084 (1991)-Reciprocal preference.

GEORGIA: Georgia Code Annotated, §50-5-60 (1990)-Reciprocal preference.

IDAHO: Idaho Code, §60-103 (1992)-Preference of 10% for residents who perform printing, binding, engraving, and stationery work within the state.

ILLINOIS: Illinois Annotated Statutes, Title 127, §132.6 (1992) -Reciprocal preference.

IOWA: Iowa Code, §18.6 (1989)-Resident preference in tie bids; §23.21 (1989)-Reciprocal preference.

KANSAS: Kansas Statutes Annotated, §75-3740 (1990)-Resident preference in tie bids; §75-3740(a) (1990)-Reciprocal preference.

LOUISIANA: Louisiana Revised Statutes Annotated, §38:2225 (1993) -Reciprocal preference in public works contracts; §39:1595.1 (1993) -Reciprocal preference for all contracts except highway construction; §39: 1595.2 (1993)-Reciprocal preference in public works contracts; §39:1595.5 (1993)-Reciprocal preference; and preference of 5.0% for Louisiana retail dealers for retail purchases.

MAINE: Maine Revised Statutes Annotated, Title 26, §1301 (1988) -Resident preference in tie bids for public works contracts.

MARYLAND: Annotated Code of Maryland, State Finance and Procurement Article, §14-401 (1991)-Reciprocal preference.

MICHIGAN: Michigan Compiled Laws Annotated, §18.1261 (1992) -Resident preference in tie bids.

MINNESOTA: Minnesota Statutes Annotated, §16B.102 (1988) -Reciprocal preference.

MISSISSIPPI: Mississippi Code 1972 Annotated, §19-13-111 (1988) -Resident preference in tie bids for printing, stationery, and office supplies; §31-3-21 (1988)-Reciprocal preference for public works contracts; §31-7-15 (1988)-Resident preference in tie bids; §31-7-47 (1988) -Reciprocal preference; §31-7-77 (1988)-Reciprocal preference in purchases of meat products.

MISSOURI: Missouri Annotated Statutes, §34.070 (1992)-Resident preference in tie bids; §34.076 (1992)-Reciprocal preference.

MONTANA: Montana Code Annotated, §18-1-102 (1991)-Reciprocal preference; preference of 3.0% for residents in purchases of goods; and preference of 5.0% for residents offering Montana made goods; §18-1-111 (1991)-Reciprocal preference.

NEBRASKA: Nebraska Revised Statutes, §73-101.01 (1990) -Reciprocal preference.

NEW JERSEY: New Jersey Statutes Annotated, §52:32-1.4 (1986) -Reciprocal preference.

NEW MEXICO: New Mexico Statutes Annotated, §13-1-21 (1992) -Preference of 5.0% to resident manufacturers and resident businesses in purchases up to \$5,000,000; §13-4-1 (1992)-Preference for residents in public works contracts "whenever practicable"; §13-4-2 (1992)-Preference of 5.0% to resident contractors.

NORTH CAROLINA: North Carolina General Statutes, §143-59 (1991) -Resident preference in tie bids.

NORTH DAKOTA: North Dakota Century Code, §44-08-01 (1991) -Reciprocal preference.

OHIO: Ohio Revised Code Annotated, Title 1-State Government, §153.012 (1987)-Reciprocal preference in construction contracts. Ohio Administrative Code, §123:5-1-26 (1993)-Preference of 5.0% to residents for all goods and services.

OKLAHOMA: Oklahoma Statutes, Title 74, §85:17 (1992) -Reciprocal preference.

OREGON: Oregon Revised Statutes, §279.029 (1991)-Reciprocal preference.

PENNSYLVANIA: 73 Pennsylvania Statutes, §1645.5 (1991) -Reciprocal preference.

SOUTH CAROLINA: Code of Laws of South Carolina 1976, §11-35-1520 (1992)-Resident preference in tie bids; preference of 2.0% to residents on purchases up to \$2.5 million, and 1.0% on purchases over \$2.5 million. Preferences do not apply to construction contracts or to purchases of goods if any individual item is more than \$10,000.

SOUTH DAKOTA: South Dakota Codified Laws Annotated, §5-19-3 (1992)-Reciprocal preference; §5-23-13 (1992)-Resident preference in tie bids; §5-23-21.2 (1992)-Reciprocal preference.

TENNESSEE: Tennessee Code Annotated, §12-4-802 (1991) -Reciprocal preference.

TEXAS: Texas Civil Statutes, Article 601b, §3.28 (1992) -Resident preference in tie bids; Article 601g (1992)-Reciprocal preference.

UTAH: Utah Code Annotated, §63-56-20.6 (1992)-Reciprocal preference.

VIRGINIA: Virginia Code Annotated, §11-47 (1992)-Resident preference in tie bids; reciprocal preference.

WEST VIRGINIA: West Virginia Code, §5A-3-37 (1992)-Resident preference of 2.5%, and preference of 5.0% to resident bidders who employ at least 60% West Virginia residents, in construction contracts exceeding \$50,000; §5A-3-37a (1992)-Reciprocal preference in purchases of commodities.

WISCONSIN: Wisconsin Statutes Annotated, §16.75 (1991) -Resident preference in tie bids; §16.855 (1991)-Reciprocal preference.

WYOMING: Wyoming Statutes 1977, §16-6-102 (1992)-Resident preference of 5.0% in public works contracts; §16-6-301 (1992)-Resident preference of 10% in printing contracts.

Issued in Austin, Texas, on March 30, 1993.

TRD-8321017 Judith Monaco Porras
Director, Legal Information and Human
Resources Division
General Services Commission

Filed: March 30, 1993

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Texas Department of Health
Licensing Actions for Radioactive
Materials

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a

county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic

damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756-3189.

NEW LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Austin	Inland Laboratories, Inc.	L04620	Austin	0	03/03/93
Houston	Laboratory for Genetic Services, Inc.	L04658	Houston	0	03/09/93
Throughout Texas	Soiltech Testing Engineers	L04653	Houston	0	03/05/93

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
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Austin	Texas Research Institute, Inc.	L02632	Austin	10	02/26/93
Austin	Austin Radiological Association	L00545	Austin	66	03/04/93
Austin	Austin Diagnostic Clinic	L00868	Austin	42	03/08/93
Austin	The University of Texas at Austin	L00485	Austin	51	03/09/93
Beasley	Hudson Products Corporation	L02370	Beasley	33	03/04/93
Beaumont	Beaumont Medical Surgical Hospital	L02102	Beaumont	34	02/25/93
Bruni	Westinghouse Electric Corporation	L02537	Bruni	27	02/25/93
Bryan	St. Joseph Hospital and Health Center	L00573	Bryan	36	03/08/93
College Station	Brazos Valley Medical Center	L02559	College Station	16	03/08/93
Corpus Christi	Humana Hospital Corpus Christi	L02816	Corpus Christi	25	03/08/93
Dallas	Dallas Water Utilities	L01685	Dallas	8	03/05/93
Dallas	Dallas Diagnostic Imaging Center	L03989	Dallas	6	03/08/93
Dallas	Texas Instruments, Inc.	L00946	Dallas	64	03/08/93
Dallas	Texas Radiation Physics Associates, Inc.	L04152	Dallas	5	03/10/93
Deer Park	Quantum Chemical Corporation	L00204	Deer Park	33	02/26/93
Denton	Texas Woman's University	L00304	Denton	38	02/26/93
Denton	Denton Dialysis, Inc.	L03793	Denton	6	03/08/93
El Paso	Isomedix, Inc.	L04268	El Paso	4	03/04/93
El Paso	Healthcare Diagnostic Center	L03395	El Paso	15	03/10/93
Fort Worth	William C. Conner Research Center	L01281	Fort Worth	29	02/24/93
Fort Worth	Harris Methodist Fort Worth	L01837	Fort Worth	49	02/26/93
Fort Worth	Radiation Sterilizers, Inc.	L03851	Fort Worth	6	02/26/93
Fort Worth	Lockheed Fort Worth Company	L01866	Fort Worth	9	03/05/93
Fort Worth	All Saints Episcopal Hospital	L02212	Fort Worth	26	03/11/93
Galveston	The University of Texas Medical Branch	L01299	Galveston	38	02/25/93

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Gregory	Reynolds Metals Company	L00200	Corpus Christi	33	03/05/93
Harlingen	Heart Clinic, Inc.	L04514	Harlingen	3	02/25/93
Harlingen	Valley Co-op Oil Mill	L02908	Harlingen	3	03/11/93
Houston	West Houston Medical Center	L02224	Houston	21	02/26/93
Houston	Sunbelt Regional Medical Center	L03306	Houston	11	02/25/93
Houston	Simpro, Inc.	L04419	Houston	3	03/05/93
Houston	Houston Cancer Institute, P.A.	L04097	Houston	3	03/09/93
Houston	Memorial City Medical Center	L01168	Houston	37	03/11/93
Houston	The U.T. Health Science Center at Houston	L03685	Houston	12	03/11/93
Houston	River Oaks Imaging and Diagnostic	L04342	Houston	7	03/12/93
Humble	Northeast Medical Center Hospital	L02412	Humble	32	03/10/93
Jewett	Nucor Steel Corporation	L02504	Jewett	7	03/11/93
Lubbock	Syncor International Corporation	L02737	Lubbock	34	03/05/93
Panna Maria	Chevron Resources Company	L02402	Hobson	19	02/24/93
Pasadena	FINA Oil & Chemical Co	L04640	La Porte	1	02/24/93
San Antonio	Southwest Texas Medical Hospital	L00594	San Antonio	100	02/25/93
San Antonio	The U.T. Health Science Center at San Antonio	L01279	San Antonio	59	03/03/93
San Antonio	Cancer Therapy and Research Center	L01922	San Antonio	30	03/11/93
San Antonio	Beta Diagnostics Services, LTD.	L03574	San Antonio	20	03/10/93
San Antonio	Nix Medical Center	L03531	San Antonio	10	03/09/93
San Antonio	Metropolitan Hospital	L02232	San Antonio	25	03/09/93
San Marcos	Central Texas Medical Center	L03133	San Marcos	12	03/08/93
Texas City	Amoco Oil Company	L00254	Texas City	43	03/08/93
The Woodlands	LifeCell Corporation	L04232	The Woodlands	4	02/26/93
Throughout Texas	Corpus Christi Inspection & Engineering, Inc.	L04379	Corpus Christi	25	02/24/93
Throughout Texas	Tuboscope Vetco International	L00287	Houston	92	02/26/93
Throughout Texas	Berry Fabricators	L01575	Corpus Christi	22	02/25/93
Throughout Texas	Patterson Truck Line, Inc.	L03148	Channelview	16	02/26/93
Throughout Texas	Freese and Nichols, Inc.	L04301	Fort Worth	2	02/17/93
Throughout Texas	Davis Great Guns Logging, Inc.	L04604	Victoria	1	02/16/93
Throughout Texas	Isotag Specialist	L04498	Midland	2	02/26/93
Throughout Texas	Phoenix Non-Destructive Testing Co., Inc.	L04454	Channelview	10	03/05/93
Throughout Texas	AnAid, Inc.	L03171	Dickinson	29	03/05/93
Throughout Texas	Ultrasonic Specialists, Inc.	L01774	Houston	68	03/03/93
Throughout Texas	Maxim Engineers Inc.	L02653	Dallas	19	02/26/93
Throughout Texas	Mobile-Lab, Inc.	L04650	Houston	2	03/08/93
Throughout Texas	The Dia-Log Company	L01887	Houston	19	03/08/93
Throughout Texas	T.K. Matt and Associates	L04594	Dallas	1	03/05/93
Throughout Texas	Technical Welding Laboratory, Inc.	L02187	Pasadena	75	03/09/93
Throughout Texas	Professional Service Industries, Inc.	L00931	Lombard, Illinois	89	03/08/93
Throughout Texas	Southern Services, Inc.	L02683	Lake Jackson	36	03/11/93
Throughout Texas	Texas Nuclear Products	L03524	Round Rock	29	03/10/93
Tyler	NuTech Inc.	L04274	Tyler	7	03/04/93
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	5	03/04/93
Waco	Providence Health Center	L01638	Waco	31	03/08/93
Webster	Diagnostic Systems Laboratories, Inc.	L03084	Webster	13	02/26/93

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioac-

tive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Abilene	Hendrick Medical Center	L00021	Abilene	26	03/01/93
Fort Worth	Rosedale Radiology	L04131	Fort Worth	4	03/01/93
Greenville	E-Systems, Inc.	L00856	Greenville	17	03/11/93
Houston	Gulf Shore Electric Inc.	L02825	Houston	5	02/26/93
Houston	Red Oak Cardiovascular Center, P.A.	L04159	Houston	7	03/01/93
Mansfield	FTI Industries, Inc.	L02810	Mansfield	10	03/11/93
Port Arthur	AMI Park Place Medical Center	L01300	Port Arthur	20	03/03/93
Temple	King's Daughters Hospital	L00666	Temple	30	03/01/93
Texas City	Danforth Hospital, Inc.	L02805	Texas City	11	03/01/93
The Woodlands	BETZ Laboratories	L03377	The Woodlands	10	03/03/93
Throughout Texas	CBI NA-CON, Inc.	L01902	Houston	29	03/09/93
Throughout Texas	Computalog Wireline Products, Inc.	L00747	Fort Worth	50	03/10/93
Waco	Hillcrest Baptist Medical Center	L00845	Waco	52	03/01/93

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
San Antonio	Louis B. Levy, Ph.D.	L03410	San Antonio	3	03/03/93
Throughout Texas	ENCON International	L04528	El Paso	1	02/23/93

AMENDMENTS TO EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Houston	Schlumberger Technology Corporation	L01833	Houston	0	02/26/93

RENEWALS OF EXISTING LICENSES DENIED:

Location	Name	License#	City	Amend- ment #	Date of Action
-----	----	-----	----	-----	-----
Houston	York Plaza Hospital	L02779	Houston	0	03/04/93

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Texas Regulations for Control of Radiation in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the

public or the environment; and the applicants satisfy any applicable special requirements in the Texas Regulations for Control of Radiation.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or

person affected may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Radiation Control Program), 1100 West 49th Street, Austin, Texas, 78756-3189.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, The Exchange Building, 8407 Wall Street, Austin, Texas, from 8 a.m. to 5 p.m. Monday-Friday (except holidays).

Issued in Austin, Texas, on March 22, 1993.

TRD-9320968 Robert A. MacLean, M.D.
Deputy Commissioner
Texas Department of Health

Filed: March 30, 1993

◆ ◆ ◆
Public Utility Commission of Texas
Notice of Intent To File Pursuant To
Public Utility Commission Substantive
Rule 23.28

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 23.28 for approval of promotional rates for Optional Calling Plan.

Tariff Title and Number. Application of GTE Southwest Incorporated for Approval of Promotional Rates for its Optional Calling Plan pursuant to Substantive Rule 23.28(f). Tariff Control Number 11889.

The Application. GTE Southwest Incorporated is requesting approval of promotional rates for its Optional Calling Plan, for a three-month period beginning May 28, 1993, and ending August 28, 1993. Approval of the proposed promotion would allow GTE Southwest Incorporated to waive the \$5.00 nonrecurring subscription fee associated with the Optional Calling Plan (OCP) identified in Southwestern Bell Telephone Company's Long Distance Telecommunication Service Tariff.

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) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on March 30, 1993.

TRD-9320981 John M. Rentrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: March 30, 1993

TAC Titles Affected

The following is a list of the administrative rules that were published in the March, 1993.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

1 TAC §§3.201-3.246	159
1 TAC §§4.1-4.46	159
1 TAC §4.47	153, 1753
1 TAC §5.301	577

Part II. Texas Ethics Commission

1 TAC §8.1	1221
1 TAC §10.31	401
1 TAC §10.313	1349
1 TAC §20.131	1331
1 TAC §30.1	1331
1 TAC §§30.119, 30.121, 30.123, 30.127, 30.131, 30.133, 30.135, 30.137	1331
1 TAC §40.29	1333
1 TAC §§40.119, 40.121, 40.123, 40.127, 40.131, 40.133, 40.135, 40.137	1333

Part IV. Office of the Secretary of State

1 TAC §81.161	1749
1 TAC §102.1	61
1 TAC §102.1, §102.10	61
1 TAC §§102.10, 102.13, 102.15, 102.17	61
1 TAC §102.20	62
1 TAC §102.20, §102.30	62
1 TAC §§102.35, 102.40, 102.45	62
1 TAC §102.40, §102.41	62
1 TAC §102.50	62
1 TAC §§102.70, 102.71, 102.72, 102.73	62
1 TAC §102.80	62
1 TAC §102.90, §102.91	63

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

4 TAC §§11.3-11.10	577
4 TAC §§11.4-11.5, 11.7-11.10	580
4 TAC §§17.30-17.33	997
4 TAC §17.31, §17.32	998
4 TAC §§17.51-17.56	277

Part II. Texas Animal Health Commission

4 TAC §35.4	580
4 TAC §41.1	580
4 TAC §41.2	580
4 TAC §55.9	581

Part III. Texas Feed and Fertilizer Control Service

4 TAC §65.24	733
4 TAC §65.26	733
4 TAC §65.31	733

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

7 TAC §1.301	401
7 TAC §3.7	1409

Part II. Texas Department of Banking

7 TAC §25.18	15
7 TAC §25.19	15
7 TAC §25.20	351

Part VI. Credit Union Department

7 TAC §95.304	581
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Part VII. State Securities Board

7 TAC §109.3	793
7 TAC §115.1	835
7 TAC §115.4	835
7 TAC §123.3	793, 1310
7 TAC §124.1-124.6	794
7 TAC §131.1, §131.2	835
7 TAC §131.3, §131.4	836
7 TAC §133.26	798
7 TAC §133.27	798
7 TAC §133.28	799
7 TAC §139.4	799

TITLE 10. COMMUNITY DEVELOPMENT

Part IV. Texas Department of Housing and Community Affairs

10 TAC §§49.1-49.13	1089
10 TAC §§49.1-49.14	1335, 1473
10 TAC §§53.1-53.18	147, 153

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

13 TAC §1.21	1679
13 TAC §1.63	1679
13 TAC §1.64	1679
13 TAC §§3.1-3.10	1267
13 TAC §§6.91-6.99	1268
13 TAC §§7.71-7.79	1271
13 TAC §7.125	117

19 TAC §§9.239	1996
19 TAC §137.1	1851
19 TAC §137.1-137.6	1851
19 TAC §137.5	1998
19 TAC §§137.21-137.29	1852
19 TAC §137.31	1852
19 TAC §137.41	1852
19 TAC §137.61	1852
19 TAC §§137.61-137.72	1852
19 TAC §§137.62-137.65	1849
19 TAC §137.91	1852, 1853
19 TAC §§137.111-137.156	1853
19 TAC §137.121	1853
19 TAC §§137.151-137.161	1853
19 TAC §§137.171-137.176	1853
19 TAC §137.191, §137.192	1853
19 TAC §§137.191-137.199	1854
19 TAC §137.195	1998
19 TAC §137.200	1999
19 TAC §§137.201-137.205	1854
19 TAC §§137.211-137.216	1854
19 TAC §137.231	1854
19 TAC §§137.231-137.236	1854
19 TAC §137.251	1854
19 TAC §§137.261-137.271	1857
19 TAC §137.271	1857
19 TAC §137.281-137.285	1857
19 TAC §§137.291-137.297	1857
19 TAC §§137.301-137.304	1857
19 TAC §§137.301-137.318	1858
19 TAC §137.304	1999
19 TAC §§137.311-137.315	1857
19 TAC §137.319	1999
19 TAC §137.321	1858
19 TAC §§137.331-137.343	1858
19 TAC §§137.351-137.358	1858
19 TAC §137.361	1859
19 TAC §137.371	1858
19 TAC §§137.381-137.384	1858
19 TAC §137.391	1859
19 TAC §§137.391-137.393	1859
19 TAC §§137.401-137.406	1859
19 TAC §§137.411-137.414	2000
19 TAC §§137.421-137.427	1859
19 TAC §§137.431-137.438	2001
19 TAC §§137.461-137.463	2003

19 TAC §§137.481-137.484	2004
19 TAC §§137.501-137.511	1859
19 TAC §§137.501-137.512	2008
19 TAC §§137.531-137.541	1859
19 TAC §137.531, §137.532	2014
19 TAC §§137.551-137.559	1860
19 TAC §§137.551-137.560	2015
19 TAC §§137.581-137.587	2017
19 TAC §§141.1-141.3, 141.5	2018
19 TAC §§141.21-141.27	2018
19 TAC §§141.41, 141.43, 141.44	2019
19 TAC §§141.61-141.64	2019
19 TAC §§141.81-141.83	2019
19 TAC §§141.101-141.103	2019
19 TAC §141.121, §141.122	2020
19 TAC §141.141, §141.142	2020
19 TAC §141.162, §141.163	2020
19 TAC §§141.181-141.186	2020
19 TAC §§141.211-141.217	2020
19 TAC §§141.241-141.250	2021
19 TAC §§141.271-141.275	2021
19 TAC §§141.291-141.300	2021
19 TAC §§141.321-141.327	2022
19 TAC §141.341, §141.342	2022
19 TAC §§141.361-141.370	2022
19 TAC §141.421	2022
19 TAC §141.431, §141.434	2023
19 TAC §§141.441-141.443	2023
19 TAC §§141.451-141.455	2023
19 TAC §141.481, §141.482	1225
19 TAC §143.1	2023, 2024
19 TAC §143.11	2024

TITLE 22. EXAMINING BOARDS

Part I. Texas Board of Architectural Examiners

22 TAC §3.46	1409
22 TAC §5.31	1409

Part VIII. Texas Appraiser Licensing and Certification Board

22 TAC §153.9	1680
22 TAC §153.17	1680
22 TAC §153.19	1680
22 TAC §153.20	1681

Part XV. Texas State Board of Pharmacy

22 TAC §§291.5, 291.7, 291.12, 291.15-291.17	1613
22 TAC §291.12	2156

22 TAC §291.11.....	1615
22 TAC §§291.32, 291.34, 291.36.....	1616
22 TAC §291.34.....	2156
22 TAC §§291.72-291.76.....	1483
22 TAC §303.1, §303.2.....	1616
Part XVI. Texas State Board of Physical Therapy Examiners	
22 TAC §331.1.....	1682

Part XXI. Texas State Board of Examiners of Psychologists	
22 TAC §461.14.....	1409
22 TAC §463.6.....	1410
22 TAC §463.14.....	1410
22 TAC §465.18.....	1336, 1347
22 TAC §465.33.....	1337, 1347
22 TAC §471.2.....	1339

Part XXVII. Board of Tax Professional Examiners	
22 TAC §623.5.....	1584

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health	
25 TAC §38.11.....	1393
25 TAC §98.104, §98.105.....	1983, 2116
25 TAC §§115.2, 115.6-115.8, 115.10, 115.13-115.15, 115.17, 115.19.....	1339
25 TAC §128.2.....	1352
25 TAC §128.20.....	1352
25 TAC §128.143.....	1353
25 TAC §128.234, §128.237.....	1353
25 TAC §141.15.....	1450
25 TAC §145.91.....	2116, 2129
25 TAC §145.111.....	2132
25 TAC §145.235.....	2117, 2129
25 TAC §§151.7, 151.9, 151.11.....	1344
25 TAC §289.124.....	1728

Part II. Texas Department of Mental Health and Mental Retardation	
25 TAC §§402.151-402.153, 402.158-402.161, 1796	
25 TAC §402.15, §402.159.....	1801
25 TAC §§405.261-405.268, 405.271-405.274.....	105, 2133

25 TAC §§405.261-405.278, 405.279.....	2133
25 TAC §§407.1-407.6, 407.22-407.24.....	1617
25 TAC §407.21.....	1749

Part VIII. Interagency Council on Early Childhood Intervention Program	
25 TAC §§621.22-621.24.....	1354

25 TAC §621.46.....	1357
25 TAC §621.62, §621.63.....	1357

TITLE 28. INSURANCE

Part I. Texas Department of Insurance	
28 TAC §5.501.....	2124
28 TAC §§5.2001-5.2004.....	1411
28 TAC §7.51.....	1683
28 TAC §15.101.....	1683

Part II. Texas Workers' Compensation Commission	
28 TAC §51.65.....	1750
28 TAC §55.5, §55.15.....	1750
28 TAC §102.9.....	1357

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office	
31 TAC	
April 15.1-15.10.....	1449
31 TAC §§15.70-15.79.....	1684

Part III. Texas Air Control Board	
31 TAC §101.1.....	1396
31 TAC §101.1, §101.29.....	1411

Part IX. Texas Water Commission	
31 TAC §293.87, §293.88.....	2126
31 TAC §305.153.....	1584
31 TAC §§330.1-330.8.....	1485
31 TAC §§330.1-330.14.....	1488
31 TAC §§330.21-330.25.....	1502
31 TAC §§330.31-330.34.....	1503
31 TAC §330.41.....	1505
31 TAC §§330.41-330.42.....	1505
31 TAC §§330.50-330.65.....	1506
31 TAC §§330.51-330.67.....	1523
31 TAC §§330.111-330.139.....	1524
31 TAC §§330.112-330.114, 330.121-330.124, 330.131-330.155.....	1531
31 TAC §§330.150-330.159.....	1532
31 TAC §§330.171-330.180.....	1533
31 TAC §§330.200-330.206.....	1533
31 TAC §§330.230-330.231, 330.233-330.242.....	1537

31 TAC §330.231.....	1549
31 TAC §§330.241-330.243.....	1550
31 TAC §§330.250-330.256.....	1550
31 TAC §§330.271-330.282.....	1554
31 TAC §§330.280-330.286.....	1554
31 TAC §§330.300-330.305.....	1570

31 TAC §§330.900-330.909, 330.911-330.918.....1572

31 TAC §§330.1180-330.1191 1677

31 TAC §331.147 1733

31 TAC §§334.301, 334.302, 334.305, 334.308, 334.309, 334.310, 334.315, 334.317, 334.322 1621

31 TAC §§334.302, 334.306, 334.308, 334.310, 334.313, 334.314, 334.319, 334.321, 334.322 1687

31 TAC §334.481, §334.482 1691

31 TAC §§334.481-334.510 1691

31 TAC §334.560 1625

TITLE 34. PUBLIC FINANCE

Part II. Texas State Treasury Department

34 TAC §11.52 1611, 1659

Part X. Texas Public Finance Authority

34 TAC §§225.1, 225.3, 225.5, 255.7 2143

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

37 TAC §3.10 1860

Part III. Texas Youth Commission

37 TAC §85.1 1572

37 TAC §§85.25, 85.27, 85.29, 85.41, 85.43.....1573

37 TAC §85.31 1845

37 TAC §§87.15, 87.17, 87.19 1574

37 TAC §§87.27, 87.29, 87.30 1846

37 TAC §87.37 1575

37 TAC §87.55 1575

37 TAC §87.57 1576

37 TAC §87.141 1576

37 TAC §89.1 1577

37 TAC §91.9, §91.11 1577

37 TAC §91.31 1578

37 TAC §93.57 1578

37 TAC §§93.57, 93.58, 93.59 1578

Part IX. Texas Commission on Jail Standards

37 TAC §§259.214, 259.225, 259.229, 259.245-259.246, 259.249-259.250, 259.259-259.266 1730

Part XIII. Texas Commission on Fire Protection

37 TAC §421.1 1659

37 TAC §423.1 1659

37 TAC §425.5, §425.7 1660

37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.11, 429.13, 429.15, 429.17 1661

37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9, 429.111661

37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.111664

37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11, 431.131664

37 TAC §437.51667

37 TAC §439.13, §439.151667

37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9.....1668

37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.151668

37 TAC §§443.1, 443.7, 443.91670

37 TAC §§461.41, 461.43, 461.45, 461.47, 461.49, 461.51, 461.53, 461.55, 461.57, 461.59, 461.61.....1710

37 TAC §§463.31, 463.33, 463.351711

37 TAC §§463.51, 463.53, 463.55, 463.57, 463.59, 463.61, 463.631711

37 TAC §491.11670

37 TAC §493.11671

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §10.34141584

40 TAC §15.2011801

40 TAC §15.3051801

40 TAC §15.415, §15.4331847

40 TAC §35.4021585

40 TAC §35.6061585

40 TAC §§35.701, 35.702, 35.704, 35.705, 35.707, 35.708.....1585

40 TAC §§35.703-35.7081585

40 TAC §§46.2005, 46.2007, 46.20081793

40 TAC §46.40011794

40 TAC §47.19031400

40 TAC §47.49011401

40 TAC §48.21031401, 1820, 2154

40 TAC §48.27071402

Part IX. Texas Department on Aging

40 TAC §251.71802

40 TAC §255.351427

40 TAC §255.361427, 1428

40 TAC §255.371711

40 TAC §255.381754

40 TAC §255.411402

40 TAC §§273.1, 273.3, 273.51407

40 TAC §§273.1, 273.3, 273.5, 273.7, 273.9, 273.11, 273.13, 273.15, 273.17, 273.19, 273.21, 273.23, 273.25, 273.27, 273.291671

40 TAC §§289.1, 289.5, 289.7, 289.9, 289.11, 289.13, 289.171428

40 TAC §§291.1-291.61428

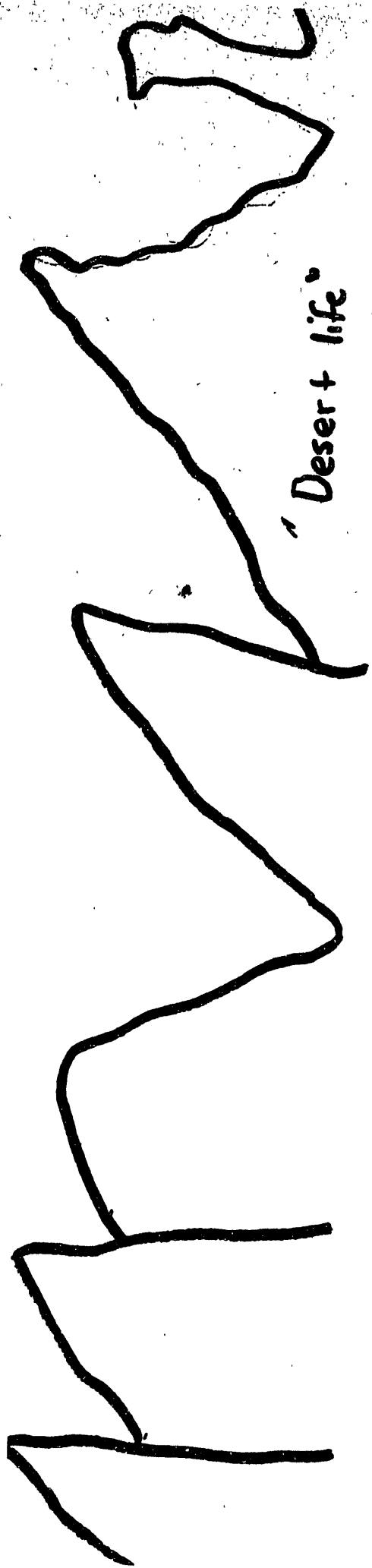
Part XVI. Interagency Council On Sex Offender Treatment

40 TAC §510.2, §510.3.....2143

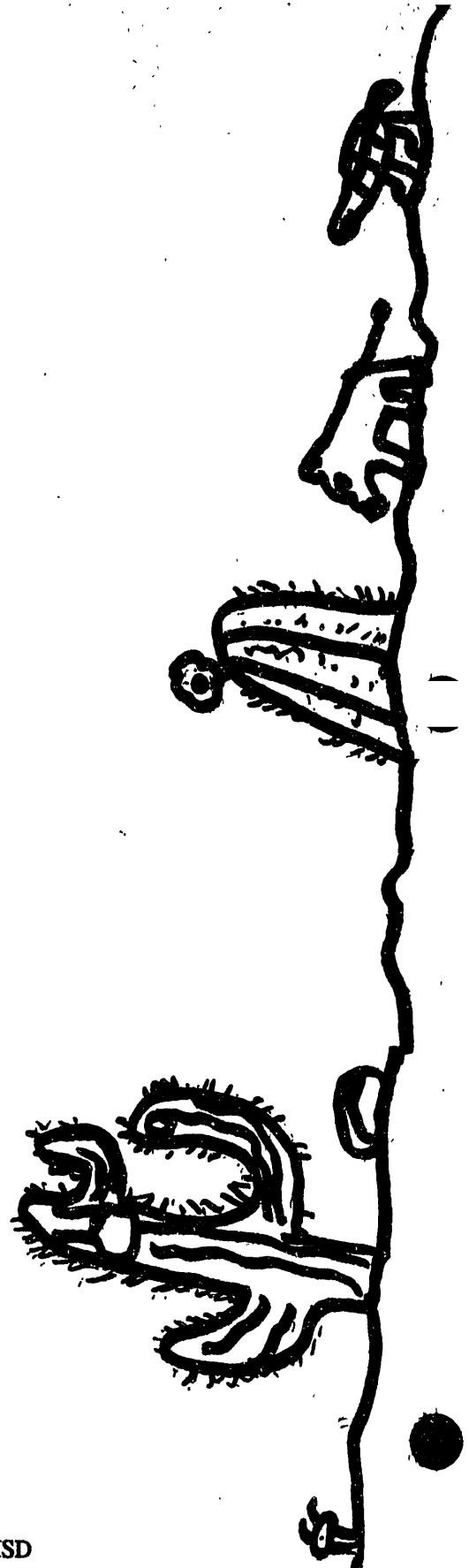
Part XIX. Texas Department of Protective and Regulatory Services

40 TAC §725.2046.....1848

40 TAC §736.902.....1711



Desert + life



Name: Javier E.
Grade: 3
School: North Loop Elementary, Ysleta ISD

1993 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1993 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on July 30, November 5, November 30, and December 28. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Friday, January 1	Monday, December 28	Tuesday, December 29
2 Tuesday, January 5	Wednesday, December 30	Thursday, December 31
3 Friday, January 8	Monday, January 4	Tuesday, January 5
4 Tuesday, January 12	Wednesday, January 6	Thursday, January 7
5 Friday, January 15	Monday, January 11	Tuesday, January 12
6 Tuesday, January 19	Wednesday, January 13	Thursday, January 14
Friday, January 22	1992 ANNUAL INDEX	
7 Tuesday, January 26	Wednesday, January 20	Thursday, January 21
8 Friday, January 29	Monday, January 25	Tuesday, January 26
9 Tuesday, February 2	Wednesday, January 27	Thursday, January 28
10 Friday, February 5	Monday, February 1	Tuesday, February 2
11 Tuesday, February 9	Wednesday, February 3	Thursday, February 4
12 Friday, February 12	Monday, February 8	Tuesday, February 9
13 Tuesday, February 16	Wednesday, February 10	Thursday, February 11
14 *Friday, February 19	Friday, February 12	Tuesday, February 16
15 Tuesday, February 23	Wednesday, February 17	Thursday, February 18
16 Friday, February 26	Monday, February 22	Tuesday, February 23
17 Tuesday, March 2	Wednesday, February 24	Thursday, February 25
18 Friday, March 5	Monday, March 1	Tuesday, March 2
19 Tuesday, March 9	Wednesday, March 3	Thursday, March 4
20 Friday, March 12	Monday, March 8	Tuesday, March 9
21 Tuesday, March 16	Wednesday, March 10	Thursday, March 11
22 Friday, March 19	Monday, March 15	Tuesday, March 16
23 Tuesday, March 23	Wednesday, March 17	Thursday, March 18
24 Friday, March 26	Monday, March 22	Tuesday, March 23
25 Tuesday, March 30	Wednesday, March 24	Thursday, March 25
26 Friday, April 2	Monday, March 29	Tuesday, March 30
27 Tuesday, April 6	Wednesday, March 31	Thursday, April 1
28 Friday, April 9	Monday, April 5	Tuesday, April 6
29 Tuesday, April 13	Wednesday, April 7	Thursday, April 8
Friday, April 16	FIRST QUARTERLY INDEX	
30 Tuesday, April 20	Wednesday, April 14	Thursday, April 15

31 Friday, April 23	Monday, April 19	Tuesday, April 20
32 Tuesday, April 27	Wednesday, April 21	Thursday, April 22
33 Friday, April 30	Monday, April 26	Tuesday, April 27
34 Tuesday, May 4	Wednesday, April 28	Thursday, April 29
35 Friday, May 7	Monday, May 3	Tuesday, May 4
36 Tuesday, May 11	Wednesday, May 5	Thursday, May 6
37 Friday, May 14	Monday, May 10	Tuesday, May 11
38 Tuesday, May 18	Wednesday, May 12	Thursday, May 13
39 Friday, May 21	Monday, May 17	Tuesday, May 18
40 Tuesday, May 25	Wednesday, May 19	Thursday, May 20
41 Friday, May 28	Monday, May 24	Tuesday, May 25
42 Tuesday, June 1	Wednesday, May 26	Thursday, May 27
43 *Friday, June 4	Friday, May 28	Tuesday, June 1
44 Tuesday, June 8	Wednesday, June 2	Thursday, June 3
45 Friday, June 11	Monday, June 7	Tuesday, June 8
46 Tuesday, June 15	Wednesday, June 9	Thursday, June 10
47 Friday, June 18	Monday, June 14	Tuesday, June 15
48 Tuesday, June 22	Wednesday, June 16	Thursday, June 17
49 Friday, June 25	Monday, June 21	Tuesday, June 22
50 Tuesday, June 29	Wednesday, June 23	Thursday, June 24
51 Friday, July 2	Monday, June 28	Tuesday, June 29
52 Tuesday, July 6	Wednesday, June 30	Thursday, July 1
53 Friday, July 9	Monday, July 5	Tuesday, July 6
Tuesday, July 13	SECOND QUARTERLY INDEX	
54 Friday, July 16	Monday, July 12	Tuesday, July 13
55 Tuesday, July 20	Wednesday, July 14	Thursday, July 15
56 Friday, July 23	Monday, July 19	Tuesday, July 20
57 Tuesday, July 27	Wednesday, July 21	Thursday, July 22
Friday, July 30	NO ISSUE PUBLISHED	
58 Tuesday, August 3	Wednesday, July 28	Thursday, July 29
59 Friday, August 6	Monday, August 2	Tuesday, August 3
60 Tuesday, August 10	Wednesday, August 4	Thursday, August 5
61 Friday, August 13	Monday, August 9	Tuesday, August 10
62 Tuesday, August 17	Wednesday, August 11	Thursday, August 12
63 Friday, August 20	Monday, August 16	Tuesday, August 17
64 Tuesday, August 24	Wednesday, August 18	Thursday, August 19
65 Friday, August 27	Monday, August 23	Tuesday, August 24
66 Tuesday, August 31	Wednesday, August 25	Thursday, August 26
67 Friday, September 3	Monday, August 30	Tuesday, August 31
68 Tuesday, September 7	Wednesday, September 1	Thursday, September 2
69 *Friday, September 10	Friday, September 3	Tuesday, September 7

70 Tuesday, September 14	Wednesday, September 8	Thursday, September 9
71 Friday, September 17	Monday, September 13	Tuesday, September 14
72 Tuesday, September 21	Wednesday, September 15	Thursday, September 16
73 Friday, September 24	Monday, September 20	Tuesday, September 21
74 Tuesday, September 28	Wednesday, September 22	Thursday, September 23
75 Friday, October 1	Monday, September 27	Tuesday, September 28
76 Tuesday, October 5	Wednesday, September 29	Thursday, September 30
77 Friday, October 8	Monday, October 4	Tuesday, October 5
Tuesday, October 12	THIRD QUARTERLY INDEX	
78 Friday, October 15	Monday, October 11	Tuesday, October 12
79 Tuesday, October 19	Wednesday, October 13	Thursday, October 14
80 Friday, October 22	Monday, October 18	Tuesday, October 19
81 Tuesday, October 26	Wednesday, October 20	Thursday, October 21
82 Friday, October 29	Monday, October 25	Tuesday, October 26
83 Tuesday, November 2	Wednesday, October 27	Thursday, October 28
Friday, November 5	NO ISSUE PUBLISHED	
84 Tuesday, November 9	Wednesday, November 3	Thursday, November 4
85 Friday, November 12	Monday, November 8	Tuesday, November 9
86 Tuesday, November 16	Wednesday, November 10	Thursday, November 11
87 Friday, November 19	Monday, November 15	Tuesday, November 16
88 Tuesday, November 23	Wednesday, November 17	Thursday, November 18
89 Friday, November 26	Monday, November 22	Tuesday, November 23
Tuesday, November 30	NO ISSUE PUBLISHED	
90 Friday, December 3	Monday, November 29	Tuesday, November 30
91 Tuesday, December 7	Wednesday, December 1	Thursday, December 2
92 Friday, December 10	Monday, December 6	Tuesday, December 7
93 Tuesday, December 14	Wednesday, December 8	Thursday, December 9
94 Friday, December 17	Monday, December 13	Tuesday, December 14
95 Tuesday, December 21	Wednesday, December 15	Thursday, December 16
96 Friday, December 24	Monday, December 20	Tuesday, December 21
Tuesday, December 28	NO ISSUE PUBLISHED	

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