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# Texas Register

TEXAS  
REGISTER

SEP 13 1983



## Highlights

- ★ The General Land Office adopts on an emergency basis new rules concerning fees charged by the land commissioner; effective date - September 1 ..... page 3543
- ★ The Texas Department of Human Resources adopts new rules concerning the Temporary Emergency Relief Program; effective date - September 1 ..... page 3544
- ★ The Veterans' Land Board adopts on an emergency basis amendments increasing fees charged for various services in conjunction with the Veterans' Land Program required by the increased costs of performing the services; effective date - September 1 ..... page 3546

# How To Use the Texas Register

## **Texas Register**

The *Texas Register* (ISN 0362-4781) is published twice a week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1983 with the exception of January 25, March 8, April 26, and November 29, by the Office of the Secretary of State, 201 East 14th Street, P.O. Box 13824, Austin, Texas 78711-3824, (512) 475-7886.

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

- Governor -- appointments, executive orders, and proclamations
- Secretary of State -- summaries of opinions based on election laws
- Attorney General -- summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules -- rules adopted by state agencies on an emergency basis
- Proposed Rules -- rules proposed for adoption
- Withdrawn Rules -- rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules -- rules adopted following a 30-day public comment period
- Legislature -- Bills submitted to, signed by, and vetoed by the Governor and bills that are submitted to the Governor and enacted without his signature
- Open Meetings -- notices of open meetings
- In Addition -- miscellaneous information required to be published by statute or provided as a public service

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes monthly, 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 a 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 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: page 2 in the lower left-hand corner of this page is written "8 TexReg 2" (issue date) while on the opposite page, in the lower right-hand corner, page 3 is written "issue date 8 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, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code* (explained below), rule number, or TRD number.

## **Texas Administrative Code**

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules currently being published by Shepard's/McGraw-Hill, in cooperation with this office.

**How To Cite:** Under the TAC scheme, each agency rule 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* (a listing of all the titles appears below).

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

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(Master Transmittal Sheet) No. 10, December 1982

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# Emergency Rules

An agency may adopt a new or amended rule, or repeal an existing rule on an emergency basis, if it determines that such action is necessary for the public health, safety, or welfare of this state. The rule 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.

An agency must submit written reasons, published in the *Register*, for emergency action on a rule. The submission must also include a statement of the legal authority under which the emergency action is promulgated and the text of the emergency adoption. Following each published emergency document is certification information containing the effective and expiration dates of the action and a telephone number from which further information may be obtained.

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

## TITLE 16. ECONOMIC REGULATION Part II. Public Utility Commission of Texas Chapter 23. Substantive Rules Rates

### 16 TAC §23.23

The Public Utility Commission of Texas adopts on an emergency basis amendments to §23.23, concerning rate structure. It has been determined by the commissioners that, due to the magnitude of expense involved for both consumers and utilities, emergency adoption of a rule assuring stricter scrutiny and prior approval of fuel costs is necessary to prevent imminent peril to the public welfare.

The amendments are adopted on an emergency basis 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 and to make decisions with respect to administering the provisions of the Act.

#### §23.23. Rate Design

- (a) (No change.)
- (b) Electric [Rate design].

- (1) (No change.)

(2) The provisions of this section apply to all investor-owned generating electric utilities. Beginning with the September 1983 billing period of each utility, respectively, no automatic fuel adjustment clause shall be allowed. Any revision of a utility's billings to its customers to allow for the recovery of additional fuel costs may be made only upon public hearing and order of the com-

mission. No later than August 15, 1983, each utility covered by this section shall file with the commission all information necessary to determine an interim fixed fuel factor, effective with its September 1983 billing period. On September 1, 1983, each utility shall file an application for an interim fixed fuel factor. After notice and hearing, the commission shall set such an interim factor. The interim fuel factor shall remain fixed until the utility's next general rate case or commission-ordered reconciliation, whichever occurs first. The monthly interim fuel factor shall be determined by dividing the actual, unadjusted fuel costs by actual, unadjusted sales for the 12-month period ending June 30, 1983. [An adjustment for recovering the cost of fuel used in the generation of electric power may be allowed in the tariff of electric utilities when approved by the commission provided that:]

(A)[(B)] All fuel costs shall be reviewed at the time of the utility's general rate case. All allowed fuel costs, including, if approved, a reconciliation of over- or under-recovery of fuel costs, shall be recovered through the energy portion of the utility's base rates. [The total cost of fuel per kilowatt-hour (fuel cost factor) and/or purchased power (purchased power adjustment factor) is shown on the bill (provided that the utility shall have the option of also showing on the bill the total cost of fuel);]

(B)[(A)] In determining allowable fuel costs, the commission may consider the cost of fuel for the utility's own generation, the cost of economy energy, hydroelectric energy, purchased power, cogeneration, wheeling, and other costs associated with generated or purchased power as approved by the commission. In making such determination, the commission shall consider revenues from these or other activities, including off-system sales, to assure that the ratepayers receive an appropriate portion of benefits associated with such revenues. [At the time of a rate hearing, the utility shall

have filed with the commission all requested fuel contracts and cost data upon which such total fuel costs are predicated with a schedule showing any adjustments anticipated under current contracts;]

(C) When approved by the commission, a utility's base rates may be designed to: [The items included in the cost of fuel are approved by the commission;]

(i) include seasonal differentiation of fuel costs; and

(ii) account for system losses and for differences in line losses corresponding to voltage level of service.

(D) For all third-party, nonaffiliated fuel contracts, the utility shall have the burden of demonstrating in each general rate case that its contract negotiations have produced the lowest reasonable cost of fuel to ratepayers. To the extent that the utility does not meet its burden of proof, the commission shall disallow the portion of fuel costs that it finds to be unreasonable. [Fuel costs billed shall be for fuel consumed in the generation of electric energy in the calendar month that most closely corresponds to the billing period; and]

(E) For all fuels acquired from or provided by affiliates of a generating utility, the utility shall have the burden of demonstrating in each general rate case that all fuel and fuel-related affiliate expenses are reasonable and necessary, and that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions or to unaffiliated persons or corporations for the same item or class of items. [The total fuel cost is applied equitably to each customer's bill and is proportional to the number of kilowatt-hours used. This shall be done by determining a fuel cost factor.]

(i) The affiliate fuel price shall be "at cost"; no return on equity or equity profit may be included in the affiliate fuel price. The commission may consider the inclusion of affiliate equity return in rate of return and rate base during the utility's general rate case; however, affiliate equity return or profit shall not be considered part of fuel cost.

(ii) Within 12 months of the implementation of this subsection and thereafter, as determined by the commission, the commission shall perform a full operational investigation of all affiliate fuel suppliers and fuel supply services. The commission may use the results of such investigations during a succeeding general rate case, fuel cost reconciliation proceedings, emergency request proceedings, and elsewhere as it deems appropriate.

(iii) The affiliated companies shall establish, maintain, and provide for commission audit all books and records related to the cost of fuel. These records shall explicitly identify all salaries, contract expenses, or other expenses paid or received among any affiliated companies, their employees, or contract employees.

(F) If an electric utility can demonstrate in an emergency request that fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have substantially changed the cost of fuel included in its base rates, the commission shall issue an interim order on such emergency request within 30 days. Such request shall state the nature of the emergency and the magnitude of change in fuel costs resulting from the emergency circumstances. If

within 120 days after implementation, after a full investigation of the emergency condition, the interim factor is found by the commission to have been excessive, the utility shall refund, with interest at the utility's composite cost of capital during the period the rates were in effect, all excessive collections. Such interest shall be calculated on the cumulative monthly over-recovery balance. If after full investigation the commission determines that no emergency condition existed, a penalty of up to 10% of such collections may be imposed. Any over- or under-recovery of fuel costs existing at the time of the emergency request shall be subject to reconciliation as provided for in subparagraph (I) of this paragraph.

(G) In the event of an unanticipated material decrease in fuel costs or unanticipated material increase in revenues from the sales of economy energy, wheeling, or other sources, such as off-system sales, the utility shall file, under the emergency provision of subparagraph (F) of this paragraph, a request to decrease the fuel portion of its base rates. The commission shall modify the base rates to assure that ratepayers receive an appropriate portion of such savings or revenues.

(H) Each utility shall maintain up-to-date monthly and cumulative records of fuel costs, fuel revenues, and the difference between them, and it shall report this information to the commission on a monthly basis.

(I) No less than 12 months after implementing a change in its base rates, a utility shall request reconciliation of any over-recovery of fuel cost revenues and may request an opportunity to reconcile any under-recovery of such fuel costs. Under-recovery reconciliation shall be granted only for that portion of fuel costs increased by conditions or events beyond the control of the utility, and upon demonstration of proof by the utility that such conditions or events could not have been predicted or foreseen at the time the rates were established. Interest to be paid by the utility or to the utility on such over- or under-recovery of fuel costs shall be at the utility's composite cost of capital during the period the rates were in effect. Such interest shall be calculated on the cumulative monthly over-under-recovery balance.

(i) The utility shall have the burden of showing in public hearing that it has operated plant and generated electricity efficiently and that it has maintained effective cost controls. Such burden of proof shall extend to affiliates in the case of affiliate fuel suppliers.

(ii) A utility may not request a fuel cost reconciliation if it has been granted a fuel cost reconciliation within the preceding 12 months. This subsection shall not preclude the reconciling of fuel costs and revenues in the general rate case as approved by the commission, and it shall not preclude the filing of an emergency request as provided in subparagraphs (F) and (G) of this paragraph.

(J) If upon audit or other finding, the commission determines that fuel cost revenue collections are excessive, it may initiate a fuel cost reconciliation hearing.

(K) Utilities covered by this section shall provide, in a format specified by the commission, monthly reports containing all information required by the commission to monitor and evaluate fuel-related activities,

including economy energy transactions, wheeling, off-system sales, or other similar transactions.

(3) The provisions of this section apply to all investor-owned electric distribution utilities, river authorities, and all cooperative-owned electric utilities. Beginning with the September 1983 billing period of each utility, respectively, an electric utility which purchases electricity at wholesale pursuant to rate schedules approved, promulgated, or accepted by a federal or state authority and/or purchases from qualifying facilities pursuant to a long-term contract may be allowed to include within its tariff a purchased power cost recovery factor (PCRF) clause which authorizes the utility to charge or credit its customers for the cost of power and energy purchased to the extent that such cost varies from the amount of purchased power cost utilized to fix the base rates of the utility. Purchased electricity cost includes all amounts chargeable for electricity under the wholesale tariffs pursuant to which the electricity is purchased. The terms and conditions of such clause shall be approved by an order of the commission.

(A) Any difference between the actual costs to be recovered through the PCRF and the actual PCRF revenues recovered shall be credited or charged to the customers in the second succeeding billing month.

(B) If such a utility purchases power from an unregulated entity, such as a political subdivision of the State of Texas, such utility shall submit the purchased power contract to the commission for approval of the terms, conditions, and price. If the commission issues an order approving the purchase, the purchasing utility may have a PCRF applicable to such purchases.

(C) If PCRF revenue collections exceed PCRF costs by 10% in any given month, and the total PCRF revenues have exceeded total PCRF costs by 5.0% or more for the most recent 12-month period:

(i) investor-owned electric utilities shall be subject to a 10% penalty on excess collection.

(ii) cooperative-owned electric utilities shall report to the commission the justification for excess collection.

(D) The utility shall maintain up-to-date monthly records of the costs to be recovered through the PCRF. Such records shall show at each month end the total estimated PCRF cost for that month, the actual PCRF cost on a cumulative basis, and the total dollar amount of revenues resulting from the PCRF portion of customer rates. These records and the calculation of the PCRF shall be reported to the commission on a most-current-month basis.

(E) Investor-owned electric distribution utilities, river authorities, and cooperative owned electric utilities which own generating facilities must demonstrate in the general rate case that they have made the lowest reasonable cost fuel purchases, generated electricity efficiently, and maintained adequate cost controls. All findings in the rate case concerning fuel purchases, generation efficiency, and cost controls shall be summarized fairly in plain language and reported within 60 days to the regular wholesale and retail customers who buy the power and energy. Beginning September 1, 1983, no automatic adjustment shall be allowed for the cost of fuel consumed by such generating utilities in the operation of generation

facilities owned by such utilities. Any revision of such a utility's billings to allow for the recovery of such fuel costs in excess of the cost of such fuel approved by the commission shall be made only upon public hearing and order of the commission. No later than September 9, 1983, each utility covered by this section shall file with the commission all information necessary to determine an interim fixed fuel factor effective with its September 1983 billing period. The interim fuel factor shall remain fixed until changed by order of the commission. In the case of utilities which own generation facilities the monthly interim fuel factor shall be determined by dividing actual unadjusted fuel costs incurred by such utility in its own generation facilities by actual, net generation sales from its own generation facilities for the 12-month period ending June 30, 1983, and subtracting the amount, if any, of the per kilowatt hour fuel cost of such generation included in the utility's existing energy rate. In the case of utilities which do not have 12 months of normal operational history at that time, such utilities shall file with the commission a requested factor together with all supporting information. The commission shall, after opportunity for a public hearing, enter its order approving an interim factor. The interim factor shall remain in effect until further order of the commission in a general rate proceeding, a reconciliation proceeding, or in an emergency proceeding.

(i) In the case of utilities which own generation facilities the cost of fuel consumed by such utilities in the operation of generation facilities owned by the utility shall be recovered through a fixed per kilowatt hour charge multiplied times the kilowatt hour sales generated by the utility and divided by the total kilowatt hour sales by the utility. All such fuel costs shall be reviewed at the time of the utility's general rate case. All allowed fuel costs, including a reconciliation of over-recovery or under-recovery shall be recovered through the fixed per kilowatt hour charge.

(ii) In determining allowable fuel costs, the commission may consider the cost of fuel for the utility's own generation, the cost of economy energy, hydroelectric energy, purchased power, cogeneration, wheeling, and other costs associated with generated power as approved by the commission. In making such determination, the commission shall consider revenues and costs from these or other activities, including off-system sales, to assure that the ratepayers receive an appropriate portion of benefits associated with such revenues.

(iii) When approved by the commission, a utility's rates may be designed to include seasonal differentiation of fuel costs and account for system losses and for differences in line losses corresponding to voltage level of service.

(iv) If the electric utility can demonstrate in an emergency request that fuel curtailments, equipment failure, strikes, embargoes, sanctions, or other reasonably unforeseeable circumstances have substantially changed the cost of fuel previously fixed by commission order, the commission shall issue an interim order on such emergency request within five days. Such order shall be effective for the period of the unforeseen circumstances. The request shall state the nature of the emergency and the magnitude of change in fuel costs resulting from the emer-

gency circumstances. If within 120 days after implementation, after a full investigation of the emergency condition, the interim factor is found by the commission to have been excessive, the utility shall refund all excessive collections. Any over- or under-recovery of fuel costs existing at the time of the emergency request or resulting from the emergency relief shall be subject to reconciliation as provided in clause (viii) of this subparagraph.

(v) In the event of an unanticipated material decrease in fuel costs or unanticipated material increase in revenues from the sales of economy energy, wheeling, or other sources, such as off-system sales, the utility shall file, under the emergency provision of clause (v) of this subparagraph, a request to decrease the fuel charge. The commission shall modify the charge to assure that ratepayers receive an appropriate portion of such savings or revenues.

(vi) Each utility shall maintain up-to-date monthly and cumulative records of fuel costs of its generation, fuel revenues by reason of fuel used in generation facilities owned by the utility, and the difference between them, and it shall report this information to the commission on a monthly basis.

(vii) Such a utility may request reconciliation of any over-recovery or under-recovery of fuel cost revenues annually. The utility shall have the burden of showing in public hearing that it has operated plant and generated electricity efficiently and that it has maintained effective cost controls.

(viii) If upon audit or other findings, the commission determines that fuel cost revenue collections are excessive it may initiate a fuel cost reconciliation hearing.

(ix) Utilities covered by this section shall provide, in a format specified by the commission, monthly reports containing all information required by the commission to monitor and evaluate fuel related activities including economy energy transactions, wheeling, off-system sales, or other similar transactions.

(F) For those cooperative utilities which own all or any part of, but do not operate, an electric generating facility or facilities, the results of all fuel purchase, generation efficiency, and cost control evaluations made in the operating partner's general rate case or fuel hearing must be summarized fairly in plain language and reported within 60 days from the final order to its regular retail customers who buy such power and energy. In addition, the cooperative shall report to the customers its percentage ownership in the facility or facilities and the approximate portion of the customer's bill affected by the ownership.

(3) Items included in the cost of fuel will be reviewed on a regular basis by the commission, and improper charges shall be disallowed. If such charges are disallowed, the utility shall provide appropriate refunds to affected customers as directed by order of the commission.

(4) Each electric utility shall maintain a monthly record of the cost of fuel used in the generation of electricity which is included or will be included in customer rates. Such record shall show at each month end the total cost (actual or estimate) of fuel consumed for that month and on a cumulative basis, and the total dollar amount of revenues resulting from the fuel cost component in customer rates. Any difference between total cost of fuel con-

sumed and the amount of revenues resulting from the fuel cost component in customer rates shall be credited or charged to the customers in the next billing month.

(5) An adjustment for recovering the cost of economy energy purchased pursuant to a sale between different electric utilities may, at the commission's discretion, be allowed in the tariff of the purchasing utility.

(6) If the fuel cost revenues exceed the fuel cost by 10% in any given month and the total fuel cost revenues have exceeded total fuel costs by the total of 5.0% or more for the most recent 12-month period, the utility shall so advise the commission.

(7) A 10% penalty shall be applied to excessive collections above the actual fuel costs for any given month. For any month in which a utility over-recovers actual fuel costs by 10% or more and has over-recovered by 5.0% or more for the 12-month period ending with such month, such over-collections shall be deemed to be excessive unless otherwise found by order of the commission.

(8) No penalties for excessive collections shall be applied to those electric utilities which have been granted a fuel adjustment clause which explicitly considers changes in the efficiency of generation. In addition, utilities applying such an efficiency based fuel adjustment clause shall be exempt from calculating adjustments for over- and under-collection in the manner set forth in paragraph (4) of this subsection.]

Issued in Austin, Texas, on September 1, 1983.

TRD-836882

Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Effective date, September 1, 1983

Expiration date, November 26, 1983

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

## **TITLE 31. NATURAL RESOURCES AND CONSERVATION**

### **Part I. General Land Office**

### **Chapter 1. Executive Administration**

#### **Fees**

#### **31 TAC §1.91**

The General Land Office adopts on an emergency basis new §1.91, setting fees charged by the land commissioner. This rule is adopted on an emergency basis because of a change in the law effective September 1, 1983.

This new section is adopted on an emergency basis under Senate Bill 288, 68th Legislature, 1983, Chapter 81, page 355, §21, which requires the land commissioner to set and collect reasonable fees for services performed by the General Land Office.

**§1.91. Fees and Deposits.** The commissioner is authorized and required to collect these fees when they are applicable:

- (1) Deed transferring one tract of land or a decree of court relating to one tract of land—for each file affected—\$5.00
- (2) Affidavit of ownership—\$5.00
- (3) Original field notes—\$10
- (4) Relinquishment Act oil and gas lease—\$10
- (5) Transfer or release of each mineral award, mineral prospect permit, grazing lease, easement, or mineral lease or part thereof—for each file affected—\$10
- (6) Servicing and filing easement—state-owned land—\$10
- (7) Servicing and filing grazing lease—state-owned land—\$10
- (8) Prospect permits—\$10
- (9) Geophysical exploration permits—\$10
- (10) Preparation of certificates of fact.
  - (A) Certificates of fact involving examination of one file—\$25
  - (B) Each additional file—\$7.50
  - (C) Each other certificate not otherwise provided for—\$7.50
- (11) Certified copies.
  - (A) Toby scrip certificate—\$4.00
  - (B) Patent—\$4.00
  - (C) Deed of acquittance—\$4.00
  - (D) Muster roll—\$4.00
  - (E) Copy of any record, document, or papers in the English language not otherwise provided for herein, per page—\$2.00
  - (F) Pages of a record, document, or paper, regardless of language, if the pages are larger than 8½ inches by 14 inches, per page—\$4.00
  - (G) Copy of any other paper, document, or record in any other language than the English—per page—\$2.00
  - (H) Records of the General Land Office and the Veterans' Land Board, except these specified, two pages or less—\$4.00
  - (I) Records of the General Land Office and the Veterans' Land Board, except those specified, that are more than two pages, per page—\$2.00
- (12) Maps.
  - (A) Blue print, white print, or other cloth map of any county—\$15.00
  - (B) Blue or white print paper map of any county—\$8.00
  - (C) Blue print, white print, or other cloth map of an inland bay—\$20
  - (D) Blue or white print paper map of an inland bay—\$7.50
  - (E) Blue print, white print, or other cloth map of Gulf of Mexico—\$20
  - (F) Blue or white print paper map of Gulf of Mexico—\$10
  - (G) Certificate on either cloth or paper map—\$1.00
  - (H) For a working sketch, the fee shall be determined by the amount of material used and the time consumed, at the rate of, per hour—\$8.00

(I) When an examination of the records of the General Land Office, other than maps or filed papers, is desired by one person or where search is necessary to compile information, minimum fee to be charged of \$1.00 and if the information is extended beyond 30 minutes, an additional sum shall be charged at the rate of, per hour (except where examination is made for the purpose of purchasing copies)—\$8.00

- (13) Reproduction of maps and sketches.
  - (A) 12 inches by 10 inches—\$2.00
  - (B) 12 inches by 15 inches—\$3.00
  - (C) 12 inches by 20 inches—\$4.00
- (14) Spanish translations.
  - (A) Translation of any Spanish document such as titles and field notes, \$.05 per word, provided that no charge shall be less than—\$5.00
  - (B) Certificate of fact concerning Spanish titles—\$10
- (15) Other services.
  - (A) Additional charge for maps or other instruments shipped in a mailing tube—\$.75
  - (B) Typed transcriptions of tapes or other sound recordings, per hour—\$8.00
  - (C) Typed copies of tapes or other sound recordings, for first cassette—\$7.50
  - (D) Typed copies of tapes or other sound recordings, for each cassette after the first—\$3.00
- (16) Patent and deed of acquittance fees.
  - (A) Patent fee—\$25
  - (B) Deed of acquittance fee—\$25

Issued in Austin, Texas, on September 1, 1983.

TRD-836898      Garry Mauro  
Commissioner  
General Land Office

Effective date, September 1, 1983  
Expiration date, December 30, 1983  
For further information, please call (512) 475-5661.

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **Part I. Texas Department of Human Resources Chapter 10. Family Self-Support Temporary Emergency Relief Program 40 TAC §§10.4301-4316**

The Texas Department of Human Resources adopts on an emergency basis new §§10.4301-10.4316 concerning the Temporary Emergency Relief Program. House Bill 1732, 68th Legislature, 1983, established the Temporary Emergency Relief Program (TERP). The program is a cooperative effort between the DHR and county commissioners courts to provide needy persons with food, utilities, housing, and clothing. If a county does not participate, other contractors, selected by a competitive bidding process, may contract



with the DHR. Procedures and criteria for selecting noncounty providers will be published at a later date.

The DHR adopts the rules on an emergency basis so that rules governing the program will be published by the effective date of the legislation, September 1, 1983. Failure to have adopted rules by the effective date would result in imminent peril to the public health, safety, and welfare of needy people in Texas.

The DHR is simultaneously proposing the rules for permanent adoption.

The new rules are adopted on an emergency basis under the Human Resources Code, Title 2, Chapters 22 and 34, which authorize the DHR to administer public assistance programs and the Temporary Emergency Relief Program.

#### §10.4301. *Program Overview.*

(a) The Temporary Emergency Relief Program is a cooperative effort between the DHR and county commissioners courts, other political subdivisions, or private nonprofit organizations to provide relief to needy persons. Contractors may provide food, utilities, housing, and clothing.

(b) The DHR approves only one program for each county. A single allocation to a county may not exceed \$100,000. Contractors must provide local matching funds that amount to 50% of the contract total.

§10.4302. *Demonstration of Need.* The DHR allocates funds to counties based on the following evidence of their demonstrated needs:

- (1) the most recent available statistics about unemployment in the county compared to unemployment in the state;
- (2) the most recent available statistics about impoverished persons in the county compared to impoverished persons in the state; and
- (3) the total amount of funds available for the program.

§10.4303. *Contractor Eligibility.* The DHR gives all counties an opportunity to apply for funds to operate this program in their county. If a county declines to provide services, the DHR may accept applications from political subdivisions or private nonprofit organizations. If a county submits an application that does not comply with the DHR requirements or fails to respond within 30 days of receiving a request for application, the DHR treats the county as if it declined. The DHR selects another contractor by a competitive bidding process and informs the county of the choice.

#### §10.4304. *Scope of Services.*

(a) The contractor may deliver the following services:

- (1) mass-feeding—purchasing food, supplies (utensils, pots, pans), and transportation (for distributing mobile meals or raw food supplies);
- (2) family and individual food assistance—distributing food vouchers or raw food supplies;
- (3) mass shelter—purchasing cots and blankets and renting space;

(4) emergency rent—paying for one month only to prevent eviction and to provide housing for the homeless;

(5) mortgage assistance—paying for one month only to prevent eviction or closure;

(6) utilities assistance—restoring or preventing the termination of services;

(7) clothing assistance—purchasing clothing to distribute to eligible persons; and

(8) other services that are integral but subordinate to the contractor's plan as approved by DHR.

(b) The contractor may expand services to include medical and transportation services if they are integral but subordinate.

§10.4305. *Application Requirements.* To participate in the program, the contractor must submit a completed application on a form provided by the DHR. In the application, the contractor must include:

- (1) minimum personnel practices prescribed by the DHR;
- (2) organizational details as specified on the application form;
- (3) a plan for providing services;
- (4) a budget; and
- (5) the name of the authority responsible for negotiating and signing the contract.

#### §10.4306. *Plan of Service.*

(a) In his application, the contractor submits to the DHR a plan for providing emergency relief services. In this plan, he includes:

- (1) a description of the target population;
- (2) eligibility criteria for clients;
- (3) program operation—process of determining eligibility, including who is responsible for determining eligibility and how the contractor verifies the information; procedures to notify prospective clients that they are eligible or ineligible; process to appeal the contractor's eligibility decision; method of keeping information confidential.

(b) The contractor may revise eligibility criteria for prospective clients. Before implementing the revised criteria, he must:

- (1) allow adequate notice and opportunity for public comment; and
- (2) notify the the DHR contract manager to obtain DHR approval of the revised criteria.

#### §10.4307. *Budget.*

(a) Local administrative costs may not exceed 25% of the local matching funds and may not be covered by state funds. Local administrative costs are expenses the contractor incurs in planning, organizing, and managing the program.

(b) In his application, the contractor outlines a budget that includes estimated local administrative costs and direct services costs, including:

- (1) sources and amounts of local matching funds available to cover the direct services costs, and
- (2) amount of state funds requested to cover direct services costs.

(c) Direct services costs are expenses the contractor incurs for services:

- (1) purchased for clients through subcontracts, and
- (2) purchased for clients through vouchers.

**§10.4308. Public Notice and Comment.**

(a) The contractor must allow adequate notice and opportunity for public comment. He must notify the public before establishing eligibility criteria and the scope, frequency, and duration of benefits he proposes to provide under the program. Public comment includes comments from public organizations, private nonprofit organizations, voluntary associations, representatives of low-income people, and other groups that assist the needy.

(b) In applying for funds, the contractor must describe how he will:

- (1) notify the public of the eligibility criteria and the scope, frequency, and duration of benefits;
- (2) obtain public comment;
- (3) use comments; and
- (4) respond to comments.

**§10.4309. Contractor Requirements for Establishing Client Eligibility.** The contractor must establish the client eligibility level at no less than 75% of the federal poverty level as of September 1, 1983. The eligibility criteria and operating procedures must include:

(1) client requirements—maximum income levels, based on family size, at which clients are eligible; need, family assets, residency; procedure to request services; and documentation that a prospective client must give the contractor.

(2) service delivery requirements—priorities for providing services when more people are eligible than the program's resources can support; frequency and duration of services.

**§10.4310. Contract Changes.** Amendments are processed in the same manner as the original contract.

**§10.4311. Contractor Reporting Requirements.** The DHR may deny payments or terminate a contract if the contractor does not submit departmental reports in the time frames required by the DHR.

**§10.4312. Payment.**

(a) The DHR pays contractors on a grant basis. The DHR may pay the contractor before he incurs expenses under the contract.

(b) The DHR and the contractor determine the need, time frames, and format of all requests for payment. The contractor must submit all requests for payment to the contract manager.

(c) The initial request for payment may not exceed 25% of the state funds allocated to the contract. Subsequent requests for payment may not exceed 25% of the state funds allocated to the contract or the remaining unpaid state funds allocated to the contract, whichever is less. The contractor submits subsequent requests for payment whenever the cumulative expenses covered by state funds are at least 90% of the cumulative payments made by the DHR.

(d) The contractor must return unspent or unmatched state funds to the DHR within 30 days of being notified by the contract manager.

**§10.4313. Records.** The contractor must keep all records pertaining to the contract for three years after the end of the federal fiscal year that he provided services. If an audit is begun during this time, the contractor must keep the records until the audit is completed and any audit exceptions are resolved. The contractor's accounting system must comply with accepted accounting principles established by the American Institute of Certified Public Accountants.

**§10.4314. Audit.** The contractor must make program information available to the DHR at the time and place requested by the DHR.

**§10.4315. Audit Resolution.** After receiving the audit report, the contractor has 10 days to request an informal review. Following the review, the DHR notifies the contractor of the audit decision. If the contractor requests to appeal the decision, the appeals hearing is conducted according to procedures in the *Fair Hearings, Fraud, and Civil Rights Handbook*.

**§10.4316. Contract Termination and Expiration.**

(a) the DHR may terminate a contract before the expiration date if:

- (1) the DHR and the contractor mutually agree to terminate the contract,
- (2) either the DHR or the contractor gives the other party 30 days written notice that he intends to terminate the contract,
- (3) federal or state laws are changed to reduce or terminate the program,
- (4) the contractor ceases to operate the program without the DHR's approval, or
- (5) the contractor does not comply with the terms of the contract or the negotiated service improvement agreement.

(b) The DHR sends the contractor a written notice when a contract is terminated. He has the right to appeal this action within 10 days of receiving the notice.

Issued in Austin, Texas, on September 1, 1983.

TRD-836901      Marlin W. Johnston  
Commissioner  
Texas Department of Human  
Resources

Effective date: September 1, 1983

Expiration date: December 30, 1983

For further information, please call (512) 441-3355,  
ext. 2037.

## **Part V. Veterans' Land Board Chapter 175. General Rules**

**40 TAC §§175.3, 175.9, 175.12,  
175.14-175.17**

The Veterans' Land Board adopts on an emergency basis amendments to §§175.3, 175.9, 175.12, and 175.14-175.17, concerning fees charged for various services performed in conjunction with the Veterans' Land Program. The amendments will increase the various fees charged by the agency required by the increased costs of performing the various services.

These amendments are adopted on an emergency basis because of a change in the law effective September 1, 1983. The amendments are being simultaneously proposed for permanent adoption.

The amendments are adopted on an emergency basis under Senate Bill 288, 68th Legislature, 1983, Chapter 81, page 355, §21, which authorizes the Veterans' Land Board to set and collect fees for various services provided by the board.

**§175.3. Land Selection.**

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

(c) In addition to the 5.0% down payment, and the payment of excess over the maximum agreed to be paid by the board, the veteran must also submit with his application the sum of **\$190** [\$70] to cover the appraisal fee and contract service fee, and the sum of \$130 for buyer's closing costs, title examination, and other expenses, such as telephone calls, photostats, postage, and recording the contract of sale between the board and the veteran and the deed to the board from the seller.

(d)-(s) (No change.)

**§175.9. Death of a Purchaser.**

(a) Upon the death of a purchaser, the board should be furnished with the following:

(1) If the account is insured under the group life insurance plan, the board should be notified at once, and furnished with a certified copy of the death certificate and an **\$80** [\$20] deed fee, which is not paid under the group insurance plan. If not covered, the materials listed in paragraphs (2) and (3) of this subsection should be furnished.

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

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

**§175.12. Obtaining a Deed to a Portion of the Land.**

(a) In order to release a portion on a veteran's tract from the terms and conditions of his contract of sale, it is necessary for the board to issue a deed in favor of the veteran to sever such portion. To obtain such a deed, the following steps should be taken:

(1) (No change.)

(2) The field notes and plat certified by the surveyor should then be submitted to the board, and if the severance is approved, and when the veteran is notified, he should then submit a **\$120** [\$35] appraisal fee and a fee of **\$80** [\$20] to cover issuance of the severance deed.

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

**§175.14. Mineral Leases.**

(a) (No change.)

(b) Each mineral lease executed must be submitted to the board in duplicate. The approved original will be returned for recording with the county clerk. One-half of the bonus consideration, in the form of cash, check, or money order, should accompany the lease, along with a service fee in the amount of **\$100** [\$10] made payable

to the board. If the veteran-purchaser is delinquent in semi-annual installment payments, all the bonus consideration, or as much as may be required, should be sent to the board to be applied to the delinquent account.

(c)-(f) (No change.)

**§175.15. Approval of Easements.**

(a)-(f) (No change.)

(g) With each easement submitted for examination and approval by the board, it is required by law that a **\$40** [\$10] fee payable to the board accompany the easement forms.

(h) All copies of the fully executed and acknowledged easement form should be transmitted to the board, accompanied by the consideration being paid therefor and the **\$40** [\$10] service fee.

(i) (No change.)

**§175.16. Payment in Full.**

(a) Upon payment in full of all monies due under the contract of sale and purchase, a deed will be drawn to the original veteran-purchaser or to the last assignee whose assignment has been approved by the board. If a deed is executed to other than the legal owner, the deed and the rights conveyed therein insure to the benefit of the legal owner. A fee of **\$80** [\$20] is required for issuance of the deed.

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

**§175.17. Fee and Deposits.** In addition to the fees cited in this section, the board is authorized and required to collect these fees when they are applicable:

(1) Fee for each appraisal for each application under the Texas Natural Resources Code, §161.362 [Texas Civil Statutes, Article 5421m, §16]—**\$120** [\$35].

(2) Contract of sale and purchase transfer fee for each transfer—**\$140** [\$35].

(3) Mineral lease service fee for each lease executed by the purchasers—**\$100** [\$10].

(4) Reappraisal fee, when required by the board—**\$120** [\$35].

(5) Fee for each loan of abstract, in addition to the \$1.00 per page deposit made for loan of an abstract—**\$40** [\$10].

(6) Fee for servicing and filing each easement—**\$40** [\$10].

(7) Service fee for each contract of sale and purchase—**\$70** [\$35].

(8) Fee for **homesite**, severance [deed] or pay-in-full deed—**\$80** [\$20].

Issued in Austin, Texas, on September 1, 1983.

TRD-836899

Garry Mauro  
Commissioner  
General Land Office

Effective date: September 1, 1983

Expiration date: December 30, 1983

For further information, please call (512) 475-5661.

# Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *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 rule. A public hearing on the proposal may also be granted if such a procedure is requested by a governmental subdivision or agency, or by an association consisting of at least 25 members.

The proposal, as published in the *Register*, must include a brief explanation of the proposed action; a fiscal statement indicating effect on state or local government; a statement explaining anticipated public benefits and possible economic costs to individuals required to comply with the rule; a request for public comments; a statement of statutory authority under which the proposed rule is to be adopted (and the agency's interpretation of the statutory authority); the text of the proposed action; and a certification statement. The certification information, which includes legal authority, the proposed date of adoption or the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

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

## TITLE 4. AGRICULTURE Part IV. State Entomologist Chapter 71. Bees

*(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the State Entomologist, Texas A&M University, College Station, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)*

The state entomologist proposes the repeal of §§ 71.1, 71.11, 71.21, and 71.31, concerning identification of apiaries, interstate permits for movement of bees, intrastate permits for movement of bees and apiary quarantine.

Substantial revision of the Texas Bee Law by House Bill 1511, 68th Legislature, 1983, has necessitated the repeal of extant bee regulations and the simultaneous adoption of new bee regulations as part of a complete revision of the Texas Administrative Code, Title 4, Chapter 71. The revision is sought not only to account for substantive changes made to the law, but to reorganize the chapter to correspond to the structure of the revised law, improve the style and architecture of the chapter, foster accuracy and clarity among its provisions, and effect general editorial changes. An outline of the rules proposed for repeal and the disposition thereof follows

Section 71.1, relating to identification of apiaries, is proposed for repeal without re adoption. The necessity for identification of apiaries has been adequately

addressed in Subchapter D of the revised Texas Bee Law, relating to branding and identification of apiary equipment.

Section 71.11, relating to interstate permits for movement of bees, is proposed for repeal without readoption. The interstate movement of bees has been adequately addressed in § 131.041 of the revised Texas Bee Law, relating to permit for importation.

Section 71.21, relating to intrastate permits for movement of bees, has been repealed without re adoption. The intrastate movement of bees has been adequately addressed by the revised Texas Bee Law, § 131.043, relating to permits for intrastate shipment.

Section 71.31, relating to apiary quarantine, has been repealed to allow reorganization and revision of the chapter. The substance of the present § 71.31 may now be found in new § 71.11, relating to apiary quarantine, simultaneously proposed

Dr. Dudley T. Smith, Texas Agricultural Experiment Station associate director, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of the repeal.

Paul Jackson, state entomologist, has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal will be clearer and more understandable bee regulations which are in accord with recent statutory revisions.

The anticipated economic cost to individuals who are required to comply with the new rules simultaneously proposed will be an inspection certificate: general, \$50 each year for 1983-1987; queen apiary, \$200 each year for 1983-1987; and additional queen apiary, \$50 each year for 1983-1987.

Comments on the proposal may be submitted to Paul Jackson, State Entomologist, Entomology Department, Texas A&M University, College Station, Texas 77843.

## Identification

### 4 TAC §71.1

The repeal is proposed under the Texas Agriculture Code, §131.021, 1981, as amended, which provides the state entomologist with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of contagious or infectious diseases of bees.

#### §71.1. *Identification of Apiaries.*

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 College Station, Texas, on August 30, 1983.

TRD-836873      Dr. Neville P. Clarke  
Director  
Texas Agricultural Experiment  
Station

Earliest possible date of adoption:  
October 10, 1983

For further information, please call (409) 845-3511.

## Interstate Permits

### 4 TAC §71.11

The repeal is proposed under the Texas Agriculture Code, §131.021, 1981, as amended, which provides the state entomologist with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of infectious or contagious diseases of bees.

#### §71.11. *Interstate Permits for Movement of Bees.*

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 College Station, Texas, on August 30, 1983.

TRD-836875      Dr. Neville P. Clarke  
Director  
Texas Agricultural Experiment  
Station

Earliest possible date of adoption:  
October 10, 1983

For further information, please call (409) 845-3511.

## Intrastate Permits

### 4 TAC §71.21

The repeal is proposed under the Texas Agriculture Code, §131.021, 1981, as amended, which provides the state entomologist with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of contagious or infectious diseases of bees.

#### §71.21. *Intrastate Permits for Movements of Bees.*

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 College Station, Texas, on August 30, 1983.

TRD-836877      Dr. Neville P. Clarke  
Director  
Texas Agricultural Experiment  
Station

Earliest possible date of adoption:  
October 10, 1983

For further information, please call (409) 845-3511.

## Quarantine

### 4 TAC §71.31

The repeal is proposed under the Texas Agriculture Code, §131.021, 1981, as amended, which provides the state entomologist with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of infectious or contagious diseases of bees.

#### §71.31. *Apiary Quarantine.*

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 College Station, Texas, on August 30, 1983.

TRD-836879      Dr. Neville P. Clarke  
Director  
Texas Agricultural Experiment  
Station

Earliest possible date of adoption:  
October 10, 1983

For further information, please call (409) 845-3511.

The state entomologist proposes new §§71.1, 71.11, 71.21, and 71.22, concerning definitions, apiary quarantine, inspection of queen apiary, and payment of fees.

Substantial revision of the Texas Bee Law by House Bill 1511, 68th Legislature, 1983, has necessitated the repeal of extant bee regulations and the simultaneous adoption of new bee regulations as part of a complete revision of the Texas Administrative Code, Title 4, Chapter 71. The revision is sought not only to account for substantive changes made to the law,

but to reorganize the chapter to correspond to the structure of the revised law, improve the style and architecture of the chapter, foster accuracy and clarity among its provisions, and effect general editorial changes. A brief summary of the rules proposed for adoption follows.

Section 71.1, relating to definitions, is proposed to clarify terminology used in this chapter. The new rule provides definitions for the terms Act, apiary, bee, colony, director, disease, equipment, honey, nucleus, person, pollen, queen apiary, and state entomologist.

Section 71.11, relating to apiary quarantine, readopts with editorial revision the substance of the present §71.31, relating to apiary quarantine, simultaneously proposed for repeal.

Section 71.21, relating to inspection of queen apiary, is a new rule detailing the requirements for obtaining an inspection of a queen apiary.

Section 71.22, relating to payment of fees, is a new rule relating the mechanics of the payment of inspection fees.

Dr. Dudley T. Smith, Texas Agricultural Experiment Station associate director, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Paul Jackson, state entomologist, has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be clearer and more understandable bee regulations which are in accord with recent statutory revisions.

The anticipated economic cost to individuals who are required to comply with the rules as proposed will be an inspection certificate: general, \$50 each year for 1983-1987; queen apiary, \$200 each year for 1983-1987; and additional queen apiary, \$50 each year for 1983-1987.

Comments on the proposal may be submitted to Paul Jackson, State Entomologist, Entomology Department, Texas A&M University, College Station, Texas 77843.

## **General Provisions**

### **4 TAC §71.1**

The new section is proposed under the Texas Agriculture Code, §131.021, 1981, as amended, which provides the state entomologist with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of infectious or contagious diseases of bees.

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

**Act**—Texas Bee Law, Texas Agriculture Code, Chapter 131, 1981, as amended.

**Apiary**—A place where six or more colonies of bees or nuclei of bees are kept.

**Bee**—Any stage of the common honeybee, *Apis mellifera* species.

**Colony**—The hive and its equipment and appurtenances, including bees, comb, honey, pollen, and brood.

**Director**—The director of the Texas Agriculture Experiment Station.

**Disease**—American foulbrood, European foulbrood, or any other contagious or infectious disease of bees, or parasite or pest that affects bees or brood.

**Equipment**—Hives, supers, frames, veils, gloves, tools, machines, or other devices for the handling and manipulation of bees, honey, pollen, wax, or hives, including storage or transporting containers for pollen, honey, or wax, or other apiary supplies used in the operation of an apiary or honey house.

**Honey**—The nectar of plants that has been transferred by, and is the natural product of, bees and that is in the comb or has been taken from the comb and is packaged in a liquid, crystallized, or granular form.

**Nucleus**—A small mass of bees and combs used in forming a new colony.

**Person**—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

**Pollen**—Dust-like grains formed in the anthers of flowering plants in which the male elements or sperm are produced.

**Queen apiary**—An apiary in which queen bees are reared or kept for sale, barter, or exchange.

**State entomologist**—The state entomologist appointed by the director or the designee of the state entomologist.

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 College Station, Texas, on August 30, 1983.

TRD-836874

Dr. Neville P. Clarke  
Director  
Texas Agricultural Experiment  
Station

Earliest possible date of adoption:  
October 10, 1983

For further information, please call (409) 845-3511.

## **Disease Control**

### **4 TAC §71.11**

The new section is proposed under the Texas Agriculture Code, §131.021, 1981, as amended, which provides the state entomologist with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of infectious or contagious diseases of bees.

**§71.11. Apiary Quarantine.**

(a) All apiaries wherein disease is known to exist may be quarantined by the state entomologist.

(b) A quarantine of an apiary by the state entomologist shall be established by:

- (1) notifying the person having custody or control of the apiary of the presence of disease; or
- (2) placing quarantine signs on the location quarantined.

(c) No bees, nuclei, combs, or equipment may be removed from a quarantined apiary except upon written authorization of the state entomologist

(d) A quarantine established by the state entomologist shall remain in force and effect until the state entomologist shall declare the quarantined apiary or location to be free from disease. The state entomologist shall review a quarantined apiary or location at least once every 30 days for the continued presence of disease

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 College Station, Texas, on August 30, 1983.

TRD-836876      Dr. Neville P. Clarke  
Director  
Texas Agricultural Experiment  
Station

Earliest possible date of adoption  
October 10, 1983

For further information, please call (409) 845-3511.

## Permits and Registration

### 4 TAC §§71.21, §71.22

The new sections are proposed under the Texas Agriculture Code, §131.021, 1981, as amended, which provides the state entomologist with the authority to adopt rules as necessary to control, eradicate, or prevent the introduction, spread, or dissemination of infectious or contagious diseases of bees.

**§71.21. Inspection of Queen Apiary.** A person desiring a certificate of inspection for a queen apiary must file a written request for such inspection with the state entomologist prior to January 1 of the calendar year in which the inspection is desired. An inspection fee, as specified by §131.044 of the Act, will be charged at the time of the request.

### **§71.22. Payment of Fees.**

(a) All checks or money orders remitted for the payment of any fees specified in Subchapter C of the Act, shall be made payable to the "Apiary Inspection Service."

(b) In the event of delinquent payment for such fees, the state entomologist may:

- (1) sue to collect the delinquent fee;
- (2) revoke or rescind the permit or registration; and/or

(3) require a \$10 penalty for delinquent payment from the registrant or permittee.

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 College Station, Texas, on August 30, 1983.

TRD-836878      Dr. Neville P. Clarke  
Director  
Texas Agricultural Experiment  
Station

Earliest possible date of adoption:  
October 10, 1983

For further information, please call (409) 845-3511.

## TITLE 16. ECONOMIC REGULATION

### Part II. Public Utility Commission of Texas

#### Chapter 21. Practice and Procedure

#### 16 TAC §§21.1-21.67

*(Editor's note: the text of the following rules being proposed for repeal will not be published. The rules may be examined in the offices of the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 450N, Austin, or in the Texas Register office, 503E, Sam Houston Building, 201 East 14th Street, Austin.)*

The Public Utility Commission of Texas proposes the repeal of Chapter 21, §§21.1-21.67, concerning practice and procedure. The proposed repeal of Chapter 21 and adoption of new Chapter 21, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel, the powers and duties of administrative law judges, the requiring of certain reports and forecasts by utilities and the commission, and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government as a result of the repeal.

Ms. Ryan 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 the repeal as proposed will be the assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and to make the rules of practice and procedure more readable and thereby more comprehensible. There is no anticipated economic cost to individuals as a result of the repeal.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800

Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The repeal 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, and to make decisions with respect to administering the provisions of this Act.

- §21.1. *Purpose and Scope of Rules.*
- §21.2. *Definitions.*
- §21.3. *Filing of Documents.*
- §21.4. *Computation of Time.*
- §21.5. *Agreements to be in Writing.*
- §21.6. *Conduct and Decorum.*
- §21.7. *Classification of Parties.*
- §21.8. *Parties Defined.*
- §21.9. *Alignment of Parties.*
- §21.10. *Appearances.*
- §21.11. *Representative Appearances.*
- §21.12. *Classification of Pleadings.*
- §21.13. *Form and Content of Pleadings.*
- §21.14. *Filing Fees.*
- §21.15. *Service of Pleadings.*
- §21.16. *Examination and Correction of Pleadings.*
- §21.17. *Written Motions.*
- §21.18. *Amended Pleadings.*
- §21.19. *Incorporation of Commission Records by Reference.*
- §21.20. *Time Limits for Filing Requests for Information and Prepared Testimony and Exhibits.*
- §21.21. *Docketing and Numbering of Causes.*
- §21.22. *Contents of Notice.*
- §21.23. *Publication of Notice.*
- §21.24. *Dismissal Without Hearing.*
- §21.25. *Prehearing Conference.*
- §21.26. *Postponements or Continuance.*
- §21.27. *Motion for Consolidation.*
- §21.28. *Place and Nature of Hearings.*
- §21.29. *Presiding Officer.*
- §21.30. *Order of Procedure.*
- §21.31. *Reporters and Transcripts.*
- §21.32. *Formal Exceptions.*
- §21.33. *Offer of Proof.*
- §21.34. *Interim Orders.*
- §21.35. *Briefs.*
- §21.36. *The Record.*
- §21.37. *Types of Hearings.*
- §21.38. *Witnesses to be Sworn.*
- §21.39. *Rules of Evidence.*
- §21.40. *Official Notice.*
- §21.41. *Documentary Evidence.*
- §21.42. *Evidence in Uncontested Proceedings.*
- §21.43. *Admissibility of Prepared Testimony and Exhibits.*
- §21.44. *Introduction of Exhibits.*
- §21.45. *Witnesses Limited.*
- §21.46. *Subpoenas.*
- §21.47. *Depositions.*
- §21.48. *Examiner's Report and Proposal for Decision.*
- §21.49. *Filing of Exceptions and Replies.*
- §21.50. *Form of Exceptions and Replies.*
- §21.51. *Countersignature by Director of Hearings.*

- §21.52. *Oral Argument Before the Commission.*
- §21.53. *Form, Content, and Service of Orders.*
- §21.54. *Administrative Finality.*
- §21.55. *Effective Date of Order.*
- §21.56. *Reciprocity of Final Orders between States.*
- §21.57. *Rehearing.*
- §21.58. *Emergency Order.*
- §21.59. *Show Cause Orders and Complaints.*
- §21.60. *Ex Parte Communications.*
- §21.61. *Organization of the Commission.*
- §21.62. *En Banc Proceedings or Meetings.*
- §21.63. *Commission Forms.*
- §21.64. *Communications.*
- §21.65. *Rate Changes by Water Utilities with Fewer than 150 Customers.*
- §21.66. *Form and Filing of Bonds.*
- §21.67. *Requests for Interim Rate Relief.*

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 August 29, 1983

TRD-836885      Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Earliest possible date of adoption.  
October 10, 1983

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

## Definitions and General Requirements

### 16 TAC §§21 1-21.7

The Public Utility Commission of Texas proposes new §§21 1-21 7, concerning definitions and general requirements. This undesignated head will contain sections concerning purpose and scope, definitions, filing of documents, computation of time, agreements to be in writing, conduct and decorum, and communications.

The proposed repeal of Chapter 21, and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges, the requiring of certain reports and forecasts by utilities and the commission, and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect



the public benefit anticipated as a result of enforcing the rules as proposed will be the assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and to make the rules of practice and procedure more readable and thereby more comprehensible. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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 and to make decisions with respect to administering the provisions of the Act.

#### **§21.1 Purpose and Scope**

(a) **Purpose**—The purpose of this chapter is to provide an orderly and efficient system of procedure before the Public Utility Commission of Texas in order to facilitate the administration of the laws of the state within the jurisdiction of the commission. The provisions of this chapter shall be given a fair and impartial construction to attain these objectives.

(b) **Scope**—This chapter shall govern the procedure for the institution, conduct, and determination of all causes and proceedings before the Public Utility Commission of Texas. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

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

**Act**—The Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c.

**Administrative law judge**—A licensed attorney with not less than five years' general experience or three years' experience in utility regulatory law employed by the commission to preside at hearings of major importance.

**Affected person**—Any public utility affected by any action of the regulatory authority, any person or cooperative corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a public utility with respect to any service performed by the utility, or that desires to enter into competition.

**Affiliated interest**—See the definition given in the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c, §3(i).

**Agency**—Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions of higher education) which makes rules or determines contested cases.

**Allocations**—For all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, where such items are used for providing public utility service in a municipality or for a municipality and unincorporated areas.

**Bulletin**—The commission's unofficial reporter, published once monthly. Final orders of significant interest are printed in full with headnotes, while less significant material appears as memorandum citations.

**Chair**—That commissioner elected by the commissioners to serve as chair.

**Commission**—The Public Utility Commission of Texas.

**Commissioner**—One of the members of the decision-making body defined as the commission.

**Contested proceeding or case**—A proceeding including, but not restricted to, rate-making and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the commission after an opportunity for adjudicative hearing.

**Cooperative corporation**—Any telephone or electric cooperative corporation organized and operating under the Telephone Cooperative Act, Texas Civil Statutes, Article 1528c, or the Electric Cooperative Corporation Act, Texas Civil Statutes, Article 1528b.

**Corporation**—Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Public Utility Regulatory Act.

**Director (division head or division director)**—The administrator in charge of one of the respective divisions within the commission.

**Examiner (hearings examiner)**—Any person, including an administrative law judge, appointed by the commission to conduct hearings.

**Facilities**—All the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility.

**Hearing**—Any proceeding based on an application, petition, or complaint.

**License**—The whole or part of any commission permit, certificate, approval, registration, or similar form of permission required by law.

**Licensing**—The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

**Municipality**—A city, incorporated village or town, existing, created, or organized under the general, home-rule, or special laws of the state.

**Municipally owned utility**—Any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

**Nonrule-making proceeding**—A proceeding other than rule-making proceeding, and proceedings concern-

ing exceptions to rules. This definition includes both contested and noncontested proceedings.

**Order**—The whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory, in form, of the commission in a matter other than rule-making, but including issuance of "certificates of convenience and necessity" and rate-setting.

**Party**—Each person or agency named or admitted as a party.

**Person**—Any natural person, partnership, municipal corporation, cooperative corporation, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

**Pleading**—A written allegation by the parties of their respective claims. Pleadings may take the form of applications or petitions, complaints, protests, exceptions, replies, motions, and/or answers.

**Proceeding**—Any hearing, investigation, inquiry, or other fact-finding or decision-making procedure, including the denial of relief or the dismissal of a complaint. It may be rule-making or nonrule-making; rate setting or nonrate setting.

**Public counsel**—The chief executive of the Office of Public Utility Counsel.

**Public utility**—See the definition given in the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c, §3(c).

**Rate**—Means and includes every compensation, tariff, charge, fare, fee, deposit, toll, rental, and classification, or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any public utility for any service, product, or commodity described in the Public Utility Regulatory Act, Texas Civil Statutes, Article 1446c, §3(c), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, fee, deposit, toll, rental, or classification.

**Register**—The *Texas Register* established by Acts of the 64th Legislature, 1975, Texas Civil Statutes, Article 6252-13a.

**Regulatory authority**—In accordance with the context where it is found, either the commission or the governing body of any municipality.

**Rule**—Any commission statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of the commission. The term includes the amendment or repeal of a prior rule, but does not include statements concerning only the internal management or organization of the commission and not affecting private rights or procedures.

**Rule-making proceeding**—A proceeding to adopt, modify, or interpret a rule as defined in this section, or to adopt, modify, or interpret a statement which has been published as a rule with the secretary of state.

**Separation**—For communications utilities only, the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

**Service**—In its broadest and most inclusive sense, includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and

all facilities used, furnished, or supplied by public utilities in the performance of their duties under the Public Utility Regulatory Act to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

**Test year**—The most recent 12 months for which operating data for a public utility are available, and shall commence with a calendar or fiscal quarter.

**Uncontested proceeding or case**—All proceedings other than contested proceedings.

### **§21.3. Filing of Documents.**

(a) Filing with director of hearings. All documents relating to any proceeding pending or to be instituted before the commission shall be filed with the director of hearings. An original and three copies shall be filed. Documents shall be deemed filed only when actually received, accompanied by the filing fee, if any, required by statute or commission rules.

(b) Service of documents. Unless specified otherwise by the commission, a copy of all documents relating to any proceeding pending or to be instituted before the commission shall be delivered in person or by mail to the following persons or parties:

(1) All parties to the proceedings. The copy may be sent to the party or his duly authorized representative.

(2) The general counsel of the Public Utility Commission of Texas. The party filing such documents shall certify to the commission as required by §21.64 of this title (relating to Service of Pleadings) that all copies have been sent or delivered to all known parties to the proceeding and the general counsel, and the date upon which they were sent or delivered.

(c) Office address of commission. The commission offices are located in Austin, Texas. Office hours are 8 a.m. to 5 p.m. Monday through Friday. Offices are closed on Saturdays and Sundays and on state observed holidays.

### **§21.4. Computation of Time.**

(a) Counting days. In computing any period of time prescribed or allowed by this chapter, by order of the commission, or by any applicable statute, the period shall begin on the day after the Act, event, or default in question and it shall conclude on the last day of that designated period, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a legal holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any of the documents mentioned in §21.3 of this title (relating to Filing of 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 extension is not caused by the neglect, indifference, or lack of diligence of the party making the motion. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing of it.

**§21.5. Agreements To Be in Writing.** No stipulation or agreement between the parties, their attorneys, or representatives, with regard to any matter involved in any proceeding before the commission shall be enforced unless it shall have been reduced to writing and signed by the parties or representatives authorized by these rules to appear for them, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated into an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by this chapter, unless precluded by law. In rate proceedings the commission shall not accept any stipulation other than on procedural matters, unless there is evidence in the record as to the effect of the stipulation on any class of customers not expressly represented in the proceeding.

**§21.6. Conduct and Decorum.**

(a) **Comportment.** Every party, witness, attorney, or other representative shall comport himself in all commission proceedings with dignity, courtesy, and respect for the commission, the hearings examiners, and all other parties and participants. Attorneys shall observe and practice the standards of ethical behavior prescribed for the profession by the Code of Professional Responsibility.

(b) **Compliance.** Upon violation of subsection (a) of this section, any party, witness, attorney, or other representative may be excluded by the hearings examiner from any hearing for such period and upon such conditions as are just, or may be subject to such other just, reasonable, and lawful disciplinary action as the commission may prescribe.

**§21.7. Communications.**

(a) **Personal communications.** Communications in person by public utilities, their affiliates or representatives, or any party with the commission or any employee of the commission shall be governed by Texas Civil Statutes, Article 6252-23, §§2, 3, 3(a), and 4. These communications shall be recorded at the commission. This record will contain the name of the person contacting the commission or employee of the commission, the name of the party, business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by same. This record shall be available to the public on a monthly basis.

(b) **Ex parte communications.** During the pendency of any proceeding before this commission, no communications by public utilities, their affiliates or representatives, or any party shall be made with the commissioners or hearings examiner concerning any issue of fact or law relative to the matter pending, to the exclusion of any other party to said proceedings. The commission and parties who may appear before the commission may not communicate with an administrative law judge concerning any issue of fact or law in a contested case that has not been finally decided by the commission, except on notice and opportunity for all parties to participate.

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 August 29, 1983

TRD-836886

Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Earliest possible date of adoption:  
October 10, 1983

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

**Docketing and Notice**

**16 TAC §§21.21-21.27**

The Public Utility Commission of Texas proposes new §§21.21-21.27, concerning docketing and notice. This undesignated head will contain sections on the following: docketing and numbering of causes; contents of notice for rate setting proceedings; contents of notice for rulemaking proceedings; contents of notice for licensing proceedings; contents of notice for proceedings other than rate setting, licensing, or rulemaking proceedings; contents of notice for water utilities with fewer than 150 customers; and contents of notice for regional hearings.

The proposed repeal of Chapter 21, and adoption of new Chapter 21, Practice and Procedure, is necessitated by revisions to the Public Utility Regulatory Act as amended and reenacted by the 68th Legislature of the State of Texas, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges; the requiring of certain reports and forecasts by utilities and the commission; and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, Secretary of the Commission, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Ryan also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be the assurance that commission rules are in accord with the Public Utility Regulatory Act as adopted by the 68th Legislature; and better readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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

**§21.21. Docketing and Numbering of Causes** When an application or other pleading which is intended to institute a proceeding before the commission is received, and it complies with this chapter as to form and content, the director of hearings shall docket it as a pending proceeding, number it in accordance with the established docket numbering system of the commission, assign an examiner, and see that notice is served.

**§21.22. Contents of Notice for Rate Setting Proceedings.**

(a) Commission notice in all rate proceedings. In all rate proceedings, whether the commission has original or appellate jurisdiction, the commission shall give notice by publication in the *Texas Register*, as well as by written notice to the parties, at least 10 days in advance of the hearings date.

(1) Notice shall contain the following information:

(A) A statement of the time, place, and nature of the hearing.

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(C) A reference to the particular sections of the statutes and rules involved.

(D) A short and plain statement of the matters asserted. If the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, a more definite and detailed statement shall be furnished not less than three days prior to the date set for the hearing.

(E) The classes and numbers of utility customers affected.

(F) Any other information considered necessary by the commission.

(b) Applicant notice. In all rate proceedings involving the commission's original jurisdiction, the applicant shall give notice in the following ways:

(1) The applicant shall publish a statement of intent to change rates in conspicuous form and place once each week for four consecutive weeks prior to the effective date of the rate change, in a newspaper having general circulation in each county containing territory affected by the proposed change. The published statement of intent shall contain the following information: the effective date of the proposed rate change, the increase or decrease requested over adjusted test year revenues, stated both as a dollar amount and as a percentage, and the classes and numbers of utility customers affected. The notice shall also include the following language:

Persons who wish to intervene or otherwise participate in these proceedings should notify the commission as soon as possible. A request to intervene, participate, or for further information should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also

be obtained by calling the Public Utility Commission Consumer Affairs Division at (512) 458 0223 or (512) 458 0227, or (512) 458 0221 teletypewriter for the deaf.

Proof of publication in the form of publisher's affidavits shall be submitted to the commission as soon as available. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(2) The applicant shall also give notice of the proposed rate change by mail or hand delivery to all affected utility customers. On this notice shall be printed in prominent lettering "notice of rate change request." The notice shall contain the same information as set forth in subsection (b)(1) of this section. Notices may be mailed separately, or may accompany customer billings, and shall be mailed so as to reach all customers no later than two weeks after the date the utility files its statement of intent with the commission. A copy of notice mailed to customers shall be forwarded to the commission as soon as available.

(3) The applicant shall mail or deliver a copy of the proposed rate schedule to the appropriate officer of each affected municipality at least 35 days prior to the effective date of the proposed change. The commission may also require that notice be mailed or delivered to other affected persons or agencies.

(4) For purposes of any proceeding which may involve only one element of cost of service, such as fuel expense, notice shall be given in the same manner as set forth in this subsection.

**§21.23. Contents of Notice for Rulemaking Proceedings.** Commission notice for rulemaking proceedings. In all proceedings involving rulemaking, the commission shall give notice in the following ways:

(1) Publication by the commission in the *Register* at least 30 days prior to the hearing date and simultaneous delivery to the lieutenant governor and speaker of the house of representatives. This notice must contain the following information:

(A) A brief explanation of the proposed rule.

(B) The text of the proposed rule, except any portion omitted as provided in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §6(c), prepared in a manner to indicate the words to be added or deleted from the current text, if any.

(C) A statement of the statutory or other authority under which the rule is proposed to be promulgated.

(D) A fiscal note stating the fiscal implication of the proposed rule to the state and to the units of local government of the state, including the total probable cost of enforcing or administering the rule and the amount of revenue that will need to be raised, or will be lost or spent, as a consequence of the rule, each year for the first five years; or stating that the proposed rule has no fiscal implications for the state or for units of local government.

(E) A request for comments on the proposed rule from any interested person.

(F) Any other statement required by law.

(2) Each notice of a proposed rule becomes effective as notice when published in the *Register*. The notice shall be mailed to all persons who have made timely written requests of the commission for advance notice of

its rulemaking proceedings. However, failure to mail the notice does not invalidate any actions taken or rules adopted.

**§21.24. Contents of Notice for Licensing Proceedings.**

(a) Commission notice in licensing proceedings. In all licensing proceedings, the commission shall give notice in the following ways:

(1) Publication by the commission in the *Register*.

(2) Written notice to the parties at least 10 days in advance of the hearing date.

(b) Contents of notice. These notices shall contain the following information:

(1) A statement of the time, place, and nature of the hearing.

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes and rules involved.

(4) A short and plain statement of the matters asserted. If the agency is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, a more definite and detailed statement shall be furnished not less than three days prior to the date set for the hearing.

(5) A statement identifying the area in which a license to operate is sought.

(6) A statement identifying the type of license sought.

(c) Applicant notice in licensing proceedings. In all 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 with the week after the application is made to the commission, notice of the applicant's intent to secure a certificate of convenience and necessity. This notice shall identify in general terms the type of facility 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 who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757, or call the Public Utility Commission Consumer Affairs Division at (512) 458-0223 or (512) 458-0227, or (512) 458-0221 for teletypewriter for the deaf within 15 days of this notice.

Proof of publication in the form of publisher's affidavit shall be submitted to the commission as soon as available. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

(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 within five miles of the requested territory.

(3) The commission may require the applicant to mail or deliver notice to other affected persons or agencies.

(d) Notice by applicants for new electric generating plant. Those planning to apply for a certificate of convenience and necessity for a new electric generating plant must file a notice of such intent with the commission pursuant to §54(d) of the Act. In addition, the potential applicant must give notice 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 four consecutive weeks beginning with the week after the notice of intent is filed with the commission. This notice shall contain the same information as required in subsection (c)(1) of this section. Proof of publication in the form of a publisher's affidavit shall be submitted to the commission as soon as available. The affidavit shall state with specificity each county in which the newspaper is of general circulation.

**§21.25. Contents of Notice for Proceedings Other Than Rate Setting, Licensing, or Rulemaking Proceedings.**

(a) Commission notice. In proceedings other than rate setting, licensing, or rulemaking, notice shall be given in the following ways:

(1) Publication by the commission in the *Register*.

(2) Written notice to the parties 10 days in advance of the hearing date.

(3) The commission may require notice to be delivered to other affected persons or agencies.

(b) Contents of notice. The notice shall contain the following information:

(1) A statement of the time, place, and nature of the hearing.

(2) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(3) A reference to the particular sections of the statutes and rules involved.

(4) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, a more definite and detailed statement shall be furnished not less than three days prior to the date set for the hearing.

**§21.26. Contents of Notice for Water Utilities with Fewer Than 150 Customers.**

(a) Utility notice to customers. A water or sewer utility that has fewer than 150 customers, is not a member of a group filing a consolidated tax return, and is not under common control or ownership with another water or sewer utility, shall notify its customers of any proposed change in rates at least 30 days prior to implementing the changed rates. The number of customers that a utility has shall be determined by ascertaining the number of separate residential dwelling units and businesses in any way connected to and being served by the utility, and shall include those who pay a periodic fee to the utility for the right to receive service at some future date. If a business has more than one connection to the utility, each connection shall be counted as a separate customer. Notice to customers may be in the form of a billing insert or a letter to each affected customer containing the date of the change, the present rates, and the proposed rates. The

company shall include in such notice a provision stating that protests may be filed with the Public Utility Commission, stating the address of the commission. The notice shall also include a statement that such protests must be written and filed no later than 60 days after the new rates are put into effect. A copy of the notice of the rate change shall be sent to this commission's office of consumer affairs at the same time it is mailed to the customers.

(b) *Utility notice to commission.* Notice of the proposed change in rates shall also be given to the commission by filing with the director of hearings a statement specifying the date of such change, the number of customers served by the utility, a revised tariff containing new rates to be charged, and a copy of the notice sent to customers pursuant to subsection (a) of this section. The statement of change shall be filed with the commission at least 30 days after providing notice of the rate change to customers, and upon such filing the utility may put the changed rates into effect. The notice to consumer affairs required by subsection (a) of this section does not constitute notice to the commission. Notice to the commission may be accomplished only by notifying the director of hearings as set forth in this section.

**§21.27. Contents of Notice for Regional Hearings.** Notice shall be given by the commission for regional hearings in the following manner:

(1) Publication by the commission in the *Register*. In rate making proceedings, the notice shall contain the information set forth in §21.22(a) of this title (relating to Contents of Notice for Rate Setting Proceedings). For rule-making proceedings, the notice shall contain the information as set out in §21.23(a) of this title (relating to Contents of Notice for Rulemaking Proceedings). For licensing proceedings, notice shall follow the form prescribed in §21.24(b) of this title (relating to Contents of Notice for Licensing Proceedings), and for other proceedings, notice shall be according to §21.25(b) of this title (relating to Contents of Notice for Proceedings Other Than Rate Setting, Licensing, or Rulemaking Proceedings).

(2) The commission may require the applicant to publish notice of the regional hearing in newspapers in the general area of the hearing, or may require the applicant to provide notice of regional hearings in any other manner calculated to reach the largest number of utility customers.

**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 August 29, 1983.

TRD-836887 Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Earliest possible date of adoption:  
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For further information, please call (512) 458-0100.

## Participants

### 16 TAC §§21.41-21.45

The Public Utility Commission of Texas proposes new §§21.41-21.45, concerning participants. This undesignated head will contain sections concerning participants defined, parties, alignment of participants, appearances, and representative appearances.

The proposed repeal of Chapter 21 and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and re enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel, the powers and duties of administrative law judges; the requiring of certain reports and forecasts by utilities and the commission, and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and greater readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757

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 and to make decisions with respect to administering the provisions of this Act.

**§21.41. Participants Defined.** The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

**Applicant (petitioner)**—Any party who has by written petition, including appeals, applied for or sought an available remedy from the commission.

**Intervenor**—A person who, upon showing a justifiable interest, is permitted to become a party to a proceeding. For licensing proceedings, an intervenor is a person who can demonstrate an interest in the outcome of the proceedings. Municipalities have standing in all cases

regarding utilities serving within their corporate limits. The Office of Public Utility Counsel may appear or intervene as a matter of right as a party or otherwise on behalf of residential consumers, as a class, in all proceedings before the commission, and may appear or intervene as a matter of right as a party or otherwise on behalf of small commercial consumers, as a class, in all proceedings where it is deemed by the counsel that small commercial consumers are in need of representation.

**Protestant**—A person opposing any matter contained in applications or petitions submitted to the commission.

**Respondent**—A person against whom any complaint has been filed or who is under formal investigation by the commission or the applicable municipality in any appeal to the commission from the decision of the governing body of such municipality.

**Staff**—The employees of the Public Utility Commission of Texas who represent the public interest in any proceeding.

**§21.42. Parties.** Parties to proceedings before the commission shall be classified as applicants or petitioners, respondents, and intervenors. Parties to proceedings shall have the right to present a direct case, cross-examine all witnesses, file requests for information, make legal arguments, and otherwise fully participate as a party in any proceeding. Protestants are not parties to the proceeding and may only register their protest or may, within the discretion of the commission or hearings examiner, present a direct case but have no right to cross-examine witnesses, file requests for information, or to otherwise participate in the proceeding. The commission staff shall not be a party as such; however, the general counsel's office may cross-examine all witnesses, file requests for information, make legal arguments, and otherwise fully participate in any proceedings.

**§21.43. Alignment of Participants.** Participants, except for the public utility counsel, shall be aligned according to the nature of the proceeding and their relationship to it. The presiding examiner may require hearing participants of a similar class to select one person to represent them in the proceedings.

**§21.44. Appearances.** Any person or agency may appear before the commission. In all regularly docketed cases other than major rate cases, a party may be permitted to appear in support of or in opposition to all or part of the remedy sought in any proceeding by filing its pleading at least 15 days in advance of the hearing day, providing that any such appearance made within 30 days of a scheduled hearing shall not work to delay such hearing. Any nonparty participant may appear at the proceeding without notifying all known parties by mail. However, in major rate proceedings all motions to intervene shall be filed within 10 days from the date the application, petition, or statement of intent to change rates is filed with the commission. All protests should be filed within 45 days from the date the application, petition, or statement of intent to change rates is filed with the commission. The times for filing set out in this section may be modified by the commission for good cause.

**§21.45. Representative Appearances.** Any person may appear before the commission *pro se* or by authorized representative.

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 August 29, 1983.

TRD-836888

Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

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

## Pleadings

### 16 TAC §§21.61-21.69

The Public Utility Commission of Texas proposes new §§21.61-21.69, concerning pleadings. This undesignated head will contain sections concerning classification of pleadings, form and content of pleadings, filing fees, service of pleadings, examination and correction of pleadings, written motions, amended pleadings, incorporation of commission records by reference, and applications, testimony, and exhibits.

The proposed repeal of Chapter 21 and adoption of new Chapter 21, concerning practice and procedure, is necessary because of revisions to the Public Utility Regulatory Act (PURA) as amended and re-enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges; the requiring of certain reports and forecasts by utilities and the commission; and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and better readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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 and to make decisions with respect to administering the provisions of the Act.

**§21.61. Classification of Pleadings.** In matters where the commission has appellate or original jurisdiction, pleadings filed with the commission shall be applications or petitions, answers, exceptions, replies, or motions. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed. Applications or petitions shall include both original applications to the commission and appeals to the commission from a regulatory authority.

**§21.62. Form and Content of Pleadings.**

(a) Typewritten or printed Pleadings and briefs shall be typewritten or printed in black type with an inside margin at least one inch wide, and annexed exhibits shall be folded to the same size. Unless printed, the impression shall be on one side of the paper only and shall be double-spaced, except that footnotes and quotations in excess of a few lines may be single-spaced. Reproductions may be by any process, provided all copies are clear and permanently legible.

(b) Forms of pleadings Official forms for use in certain pleadings are available from the commission. Copies will be furnished to any person upon request. All pleadings which are the subject of any official form shall contain the information, allegations, and other matter designated in that official form and shall conform substantially to that official form.

(c) Contents of petitions having no official form. All petitions for which no official form is prescribed shall contain:

(1) the name of the party supporting or opposing commission action with the original copy of every pleading signed in ink by the applicant or his authorized representative.

(2) the business phone number and the address, including the city, if any, and county, of the applicant and of his authorized representative, if any.

(3) the jurisdiction of the commission over the parties and subject matter.

(4) all the known parties and territories, if applicable, which would be affected if the petition is granted.

(5) the address of any party against whom any specific relief is sought

(6) a concise statement of the facts relied upon by the pleader.

(7) a prayer stating the type of relief, action, or order desired by the pleader.

(8) any other matter required by statute.

(9) a certificate of service, if required by §21.64 of this title (relating to Service of Pleadings).

(d) Contents of certificate of convenience and necessity petitions. In addition to the information called for in subsection (c) of this section, applications for certificates of convenience and necessity shall contain the following:

(1) three copies of the appropriate application form prescribed by the commission, completed as instructed, and properly executed.

(2) territorial maps filed in support of such applications for initial or amended certificates which shall fulfill the following requirements:

(A) For all utilities other than water and sewer, the information shall be on a full scale state highway or commission map or a portion thereof and shall be permanently legible.

(B) For water and sewer, the area to be served shall be shown on a state highway county map, scale one inch equals two miles. It shall show the location of the applicant and each neighboring water or sewer utility within five miles of applicant's present location. Facilities shall be shown on U.S.G.S. 7½-minute series map.

(C) Three copies of each map shall be filed.

(D) Separate maps shall be filed for each county in which the reporting utility operates.

(E) If applicable, the map shall separately indicate the generating facilities, transmission facilities, and distribution facilities as located within the territory claimed.

(i) A color code may be used to distinguish the types of facilities indicated.

(ii) The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location

(3) Three copies of any evidence as required by the commission to show that the applicant has plans to apply for, has applied for, or has received the required consent or permit of any other public authority, for example, municipalities, FCC, or FERC.

(e) Contents of rate setting petitions. In addition to the information required in subsection (c) of this section, rate setting petitions shall contain a statement of intent. The statement of intent shall include proposed revisions of rates 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 company, the classes and numbers of utility consumers affected, and other information which may be required by the commission.

(f) Contents of rule-making petitions. In addition to the information required in subsection (c) of this section, rule-making petitions shall contain the following:

(1) a brief explanation of the proposed rule.

(2) the text of the proposed rule, except any portion omitted as provided in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §6(c), prepared in a manner to indicate the words to be added or deleted from the current text, if any.

(3) a statement of the statutory or other authority under which the rule is proposed to be promulgated.

(4) any other statement required by law.

(g) Contents of petitions for review of municipal rate actions filed pursuant to §26(b) or (c) of the Act. In addition to the information called for in subsection (c) of this section, petitions for review of municipal rate action filed pursuant to §26(b) or (c) of the Act, concerning municipal rate orders for nonmunicipally-owned and



municipally-owned utilities, respectively, shall contain the original petition for review with the required signatures. Each signature page of a petition shall contain in legible form the following information for each signatory:

(1) a clear and concise statement that the petition is an appeal of a specific rate action of the municipality in question as well as a concise description and date of that rate action.

(2) a statement designating a specific individual, group of individuals, or organization as the signatories' "attorney in fact," and a statement that the designated "attorney in fact" 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.

(3) the name, telephone number, and street or rural route address (post office box numbers are not sufficient) of each signatory. In appeals relating to §26(c) of the Act, the petition shall list the address of the location where service is received if it differs from the residential address of the signatory.

(4) a statement indicating whether the signatory is appealing the municipal rate action as a qualified voter of that municipality under §26(b) of the Act, or as a customer of the municipality served outside the municipal limits under §26(c) of the Act.

(5) any page of the petition omitting any of the information required by this subsection, or containing illegible information not reasonably susceptible to verification, is deemed invalid; however, if the omitted or illegible material consists only of the name, telephone number, or address of a signatory, only such signatures are to be deemed invalid. The remaining signatures on that page shall be accepted. Any disputes over the informational sufficiency or legibility of a petition shall be resolved by the presiding hearings examiner by interim order, hereby deemed appealable to the commission under §21.106 of this title (relating to Interim Orders).

**§21.63. Filing Fees.** Each application, petition, or complaint which is intended to institute a proceeding before the commission shall be accompanied by the filing fee, if any, prescribed by law, and upon publication by the commission, a commission schedule of fees. This schedule of fees may be, from time to time, amended by the commission by publication of an amended schedule of fees.

**§21.64. Service of Pleadings.** A copy of any pleading filed by any part in any proceeding before the commission shall be mailed or delivered by the party filing it to every other party of record and to the general counsel of the Public Utility Commission. If any party is being represented by an attorney or other representative authorized under these rules to make appearances, service shall be made upon that attorney or representative. The willful failure of any party to make this service shall be grounds for the entry of an order striking the pleading from the record. Three copies of all pleadings shall be filed, unless directed otherwise by the commission, and shall include a certification that copies have been served on all parties of record and the general counsel to the commission, stating the names of the persons served, together with the date and manner of service.

**§21.65. Examination and Correction of Pleadings.**

(a) Sufficiency of pleadings. Any pleading filed with the commission shall be examined for sufficiency under this chapter. If it does not comply in all material respects with this chapter, it shall nevertheless be conditionally accepted for filing. Upon notification by this commission of a deficiency in pleadings, the pleading party shall correct or complete the pleading in accordance with the notice.

(b) Notice of deficiencies. If the commission or presiding examiner issues a written order, within 25 days after filing, concluding that material deficiencies exist in a commission-prescribed rate change application, the applicant shall have 10 days to amend its application and correct the deficiency. If the deficiency is not corrected within the 10-day period, the earliest possible effective date of the proposed change is at least 35 days after the filing of a sufficient application with substantially complete information as required by the commission, and the deadlines under §43 of the Act shall then be determined from the 35th day (or proposed effective date, if later) of the filing of the sufficient application and information.

(c) Verification of petitions of appeal to municipal rate actions. Unless otherwise provided by order of the commission or presiding hearings examiner, the following procedures shall be followed to verify petitions of appeals of municipal rate actions filed pursuant to §26(b) and (c) of the Act:

(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 status of the signatories to 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 setting forth the results of its review, together with a supporting written affidavit sworn to by a duly authorized municipal official.

(3) The period for review of the signatures on the petition may be extended by the commission for good cause, upon written motion served on all parties.

(4) Failure of the city to timely submit the statement of review required in paragraph (2) of this subsection shall result in all signatures being deemed valid.

(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 hearings examiner pursuant to §21.62 of this title (relating to Form and Content of Pleadings).

**§21.66. Written Motions.** Any motion relating to a pending proceeding shall, unless made during a prehearing or hearing, be written and shall set forth the relief sought and the specific reasons and grounds for relief. If based upon matters which do not appear of record, it shall be supported by affidavit. Any motion not made during a hearing shall be in writing and filed with the hearings examiner or the director of hearings, whichever is appropriate.

**§21.67. Amended Pleadings.** Any pleading may be amended at any time upon motion, provided that it does not act as a surprise to the opposite party. A protestant or intervenor may at any time adopt as his pleading by

amendment the licenses, rates, rules, or regulations proposed in the application or petition. Any amended pleading which operates as a surprise to the opposite party may be granted upon a showing that no harm will result.

**§21.68. Incorporation of Commission Records by Reference.** Any pleading may adopt and incorporate, by specific reference, any part of any document or entry in the official files and records of the commission. This rule shall not relieve any applicant of the necessity of alleging in detail, if required, facts necessary to sustain his burden of proof imposed by law.

**§21.69. Applications, Testimony, and Exhibits.**

(a) Filing for a change in rates. Any utility filing an application, petition, or statement of intent to change its rates in a major rate proceeding must file all of its evidence, including the prepared testimony of all of its witnesses and exhibits, on the same date that such application, petition, or statement of intent to change its rates is filed with the commission. In addition, such filing shall include annual company financial statements that have been examined and reported on by an independent certified public accountant, the date of such statements to be within the test year. Also, the filing shall include a report on a test year review made by the independent certified public accountant that covers the test year. The required procedures for the test year review shall be included in the commission-prescribed rate filing package. A utility filing for a change in rates shall be prepared to go forward at a hearing on the data which have been previously submitted and sustain the burden of proof of establishing that its proposed changes are just and reasonable, and the material submitted as the filing and supporting work papers shall be of such composition, scope, and format so as to serve as the utility's complete case. Fifteen sets of the company's application, petition, or statement of intent to change rates, working papers, supporting data, prepared testimony, and exhibits shall be submitted and filed with the commission, each securely bound in a cover. The book data included in the schedules and information required to be prepared and submitted as part of the filing shall be reported in a separate column or columns. All adjustments to book amounts shall also be shown in a separate column or columns so that book amounts, adjustments thereto, and adjusted amounts will be clearly disclosed, and any separation and allocation between interstate and intrastate operations shall be fully disclosed and clearly explained. In addition, the utility must complete and submit 15 copies of the commission-prescribed rate filing package and all the applicable schedules contained therein in order to complete an original filing, and failure to file such complete rate filing package shall be considered an incomplete filing, and any application or statement of intent to change rates shall be subject to being dismissed, and any time limits shall not begin to run thereon.

(b) Number of copies of testimony to be filed by intervenors or protestants. All intervenors or protestants shall file 11 copies of their prepared testimony and exhibits, if any, within the time period specified by the examiner.

(c) Prefiled staff testimony. The commission staff shall prefile, except for good cause, the prepared testimony and exhibits of its witnesses seven days prior to the final hearing but shall not otherwise be required to present its case prior to that time.

(d) Rate filing package. The items in the rate filing package may be modified by the commission for good cause.

(e) Other proceedings. In any other proceeding before the commission, the commission or its hearings examiner may require by order that motions in intervention, protests, requests for information, answers to requests for information, and prepared testimony and exhibits be filed prior to the date set for hearing.

(f) Times for filing. The times for filing set out in this chapter may be modified by the commission 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 August 29, 1983.

TRD-836889      Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Earliest possible date of adoption:  
October 10, 1983

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

## Prehearing Proceedings

### 16 TAC §§21.81-21.86

The Public Utility Commission of Texas proposes new §§21.81-21.86, concerning prehearing proceedings. This undesignated head will contain the following sections: discovery, dismissal without hearing, prehearing conference, interim rate relief, continuance, and consolidation.

The proposed repeal of Chapter 21, and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges; the requiring of certain reports and forecasts by utilities and the commission; and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing

the rules as proposed will be the assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983; and better readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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, and to make decisions with respect to administering the provisions of this Act.

**§21.81. Discovery.**

(a) Requests for information. The presiding examiner may set appropriate time limits for the filing of requests for information. All requests for information of a party must be filed with the commission, and copies of the request for information must be either hand delivered or sent by certified mail, return receipt requested, to all parties of record and the commission's general counsel within the time limits set by the examiner. Three copies of all answers to requests for information must be filed within 20 days from receipt of the request for information by the party. Upon the showing of good cause, the examiner may set a shorter or longer period for filing answers to requests for information. One copy shall be retained by the Hearings Division, and two copies shall be delivered to the commission's general counsel. The answers shall be served upon parties according to directions of the examiner.

(b) Subpoenas. The issuance of subpoenas in any proceeding shall be governed by the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §14. Following written request by a party, or on its own motion, the commission may issue subpoenas addressed to the sheriff or any constable to require the attendance of witnesses and the production of books, records, papers, or other objects as may be necessary and proper for the purposes of a proceeding. The subpoena may be issued by any commissioner, the director of public utilities, the secretary of the commission, or the presiding examiner. Motions for subpoenas to compel the production of books, records, papers, or other objects shall be addressed to the appropriate division or person, shall be verified, and shall specify as nearly as possible the books, records, papers, or other objects desired and the material and relevant facts to be proved by them. Subpoenas shall be issued by the commission only after a showing of good cause and the deposit of sums sufficient to insure payment of expenses incident to the subpoenas. Service of subpoenas and payment of witness fees shall be made in the manner prescribed in the Administrative Procedure and Texas Register Act.

(c) Depositions. The taking and use of depositions in any proceeding shall be governed by the Administrative Procedure and Texas Register Act, Texas Civil Statutes,

Article 6252-13a, §14 and §14a.

(d) Admission of facts and genuineness of documents. Requests for admission of facts and genuineness of documents shall be made in accordance with the Texas Rules of Civil Procedure, Rule 169.

**§21.82. Dismissal Without Hearing.**

(a) Motions for dismissal. The commission may entertain its own motions or other motions for dismissal without a hearing, for any of the following reasons:

- (1) lack of jurisdiction;
- (2) moot questions or obsolete petitions;
- (3) res adjudicata;
- (4) unnecessary duplication of proceedings;
- (5) failure to prosecute;
- (6) withdrawal;
- (7) not a necessary or proper party to the proceedings.

(b) Withdrawal of application. An applicant may withdraw its application without prejudice to refile of same, at any time prior to the signing of a final order thereon by the commission.

**§21.83. Prehearing Conference.**

(a) Prehearings. In any proceeding, upon written notice by the commission, the parties, their attorneys or representatives may be directed to appear before an examiner at a specified time and place for a prehearing conference for the purpose of designing procedures to organize the hearing on the merits, and to address motions to intervene or other motions concerning the proceeding.

(b) Major rate proceeding. In major rate proceedings, the commission or hearings examiner shall hold a prehearing conference on the 12th working day after the application, petition, or statement of intent to change rates is filed with the commission. The conference shall be held at commission offices, located at 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas.

(c) Prehearing orders. After a prehearing conference, the examiner may enter appropriate orders including, but not limited to, the following matters: discovery, stipulations of uncontested matters, presentation of evidence, and scope of the hearing.

(d) Record of prehearing. Action taken at the conference shall be recorded by the examiner, unless the parties enter into a written agreement as to such matters as permitted in §21.5 of this title (relating to Agreements To Be in Writing).

**§21.84. Interim Rate Relief.**

(a) Application. This section applies only to rate proceedings over which the commission has original jurisdiction. This section does not apply to tariffs filed pursuant to §23.24 of this title (relating to Form and Filing of Tariffs) or to appellate proceedings following an original jurisdiction case in which the commission has set rates on a systemwide basis.

(b) Burden of proof. Pursuant to the Act, §40(b), in any proceeding involving a petition for interim rate relief, the burden of proof is on the utility to establish that without additional revenues it is unlikely it will be able to pay its current, reasonable cash operating expenses and continue operating during the pendency of its rate proceeding. A request for interim relief will not be considered by the commission or the examiner earlier than

one week after it is filed.

(c) Interim rate relief by agreement of parties. This section does not preclude the commission or the hearings examiner from granting interim rate relief on the basis of agreement of all parties, including the general counsel, or upon a showing of good cause by the utility, in lieu of meeting the above standards. Interim rates may be conditional upon an obligation to refund all or a part thereof upon final order or such other conditions as the commission or the examiner may deem appropriate.

**§21.85. Continuance.** A motion for continuance must be in writing, and filed with the commission prior to the date set for hearing. The motion must set forth the specific grounds upon which continuance is sought. Once an application has proceeded to hearing, continuance may be granted by the examiner upon either oral or written motion.

**§21.86. Consolidation.** A motion for consolidation of applications, petitions, complaints, or other proceedings must be in writing, and may be made by the commission or by a party. When made by a party, the motion shall be signed by the movant, his attorney or representative, and filed with the commission prior to the date set for hearing. A motion for consolidation will not be granted without the affirmative consent of all parties to the proceedings unless the presiding examiner finds that the proceedings involve common questions of law or fact, and that separate hearings would result in unwarranted expense, delay, or substantial injustice. Special hearings on separate issues may also be allowed.

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 August 29, 1983

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

## Hearings

### 16 TAC §§21.101-21.109

The Public Utility Commission of Texas proposes new §§21.101-21.109, concerning hearings. This undesignated head will contain sections concerning place and nature of the hearings, presiding officer, order of procedure in evidentiary hearings, reporters and transcripts, formal exceptions, interim orders, briefs, the record, and types of hearings

The proposed repeal of Chapter 21 and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and re-enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges; the

requiring of certain reports and forecasts by utilities and the commission; and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

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Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757

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, and to make decisions with respect to administering the provisions of this Act.

**§21.101. Place and Nature of Hearings.** All hearings conducted in any proceeding shall be open to the public. All evidentiary hearings shall be held in Austin unless the commission determines that it is in the public interest to hold such hearings elsewhere. The commission may, when it is in the public interest, hold regional hearings to collect public comment for inclusion in the record.

#### **§21.102. Presiding Officer.**

(a) Examiner or presiding examiner. Hearings will be conducted by the commission, the director of hearings, an administrative law judge, or a hearings examiner, any and all of whom are at times referred to in these rules as the examiner or the presiding examiner. The presiding examiner shall have authority to administer oaths, to examine witnesses, to receive evidence and testimony, and to rule upon the admissibility of evidence and amendments to pleadings, to issue subpoenas to compel the attendance of witnesses and the production of papers and documents, to evidence and authorize the taking of depositions, to make proposed findings of fact and conclusions of law, to make proposed orders and judgments as shall be supported by the record and make within the limits set by law, to issue interim orders, to recess any hearing from day-to-day, and to do any and all other things necessary to provide a fair, just, and proper hearing. The presiding examiner shall also have the authority to set reasonable times within which a party may testify or present evidence.

(b) **Replacement.** If the presiding examiner is unable to continue presiding over a case at any time before the final decision, another presiding examiner will be appointed who shall perform any function remaining to be performed without the necessity of repeating any previous proceedings.

(c) *En banc* meetings. When the commission sits *en banc*, the chair shall be the presiding examiner, and in the chair's absence, one of the other commissioners, designated by the chair, shall preside.

**§21.103. Order of Procedure in Evidentiary Hearings.** The presiding examiner shall open the hearing and make a concise statement of its scope and purposes. Once the hearing has begun, parties or their representatives may be off the record only when the examiner permits. If a discussion off the record is pertinent, the examiner will summarize such discussion for the record. Appearances are to be entered on the record by all parties, their attorneys, or representatives. Thereafter, parties may make motions or opening statements. All persons who may testify will be placed under oath when it is their turn to testify. Following opening statements, if any, by all parties, the party with the burden shall be allowed to proceed with his direct case, after which opposing parties shall be allowed cross-examination. All other parties and the commission staff will then present their cases and be subject to cross-examination. Where the proceeding is initiated at the commission's own call, or where several proceedings are heard on a consolidated record, the presiding examiner shall designate who shall open and close and at what stage the other parties shall be permitted to offer evidence. After all parties have completed the presentation of their evidence, and have been afforded the opportunity to cross-examine the opposition witnesses, closing statements shall be allowed. The party with the burden of proof shall be entitled to open and close. The examiner may also call upon any party or the staff of the commission for further material or relevant evidence upon any issue before the issuance of a report and proposal for decision; however, no such evidence shall be allowed into the record without an opportunity for inspection and rebuttal by the other parties.

**§21.104. Reporters and Transcripts.**

(a) **Records of proceedings.** In all proceedings for which any party or the staff requests a reporter, an official reporter shall make and transcribe a stenographic record of the hearing and the reporter shall provide as many copies of the transcript as may be required for the purposes of the commission. In all other proceedings, a tape recording shall be made. No copies of the transcript will be furnished to the parties by the commission, but copies may be purchased from the official reporter upon payment of appropriate charges. The commission shall approve rates to be charged by its reporters on transcripts that are sold. The rates shall not exceed rates authorized by law to be paid the district court reporters. If no reporter was requested prior to a proceeding but a transcript is requested after the proceeding has closed, the commission may assess costs to any party requesting that a transcript be made from the tape of the proceeding.

(b) **Correction of transcript.** Errors claimed to be in a transcription of a hearing shall be noted in writing and suggested corrections may be offered within 10 days after the transcript is filed with the examiner, unless the examiner shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the examiner. If not objected to within 12 days after being offered, the examiner will direct that the suggested corrections be made and the manner of making them. In the event that parties disagree on suggested corrections, the examiner, with the aid of argument and testimony from the parties, shall then determine the manner in which the record shall be changed, if at all.

**§21.105. Formal Exceptions.** Formal exceptions to rulings of the presiding examiner during a hearing shall be unnecessary. It shall be sufficient that the party, at the time any ruling is made or sought, makes known to the presiding examiner the action which he desires.

**§21.106. Interim Orders.**

(a) **Relief through written interim orders.** Prior to any final order of the commission, a party or the staff may seek, through an examiner, relief through a written interim order, but that order shall not be considered of the same nature as a final decision. Furthermore, an interim order shall not be subject to exceptions or application for rehearing, but any party aggrieved by the interim order may file an appeal from the examiner's ruling to the commissioners by filing written notice within 10 days of the rendition of the order. Such appeal may seek a stay of the interim order. The commissioners shall rule on the interim order within 15 days of the filing of the appeal, and pending such ruling may grant a stay of the interim order. If the commissioners do not rule on the appeal within 15 days of its filing, or extend the time for ruling, the interim order is deemed approved and any granted stay is lifted.

(b) **Evidentiary rulings.** An evidentiary ruling by an examiner is not an interim order and is not appealable to the commissioners pending the issuance by the examiner of an examiner's report.

**§21.107. Briefs.** Briefs shall conform, where practicable, to the requirements for forms of pleadings set out in this chapter. The points involved shall be concisely stated, the evidence in support of each point shall be summarized, and the argument and authorities shall be organized and directed to each point in a concise and logical manner. Briefs may be requested by the examiner prior to and after the filing of the examiner's report and proposal for decision set out in §21.141 of this title (relating to Examiner's Report and Proposal).

**§21.108. The Record.**

(a) **Contents of record.** The record in a case shall include:

- (1) all pleadings, motions, and intermediate rulings.
- (2) evidence received or considered.
- (3) a statement of matters officially noticed.
- (4) questions and offers of proof, objections, and rulings on objections.
- (5) proposed findings and exceptions.

(6) any decision, opinion, or report by the officer presiding at the hearings

(7) all staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case.

(b) Findings of fact Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

**§21.109. Types of Hearings.**

(a) Rate setting hearings The commission shall hold a hearing on every application filed by a utility to change an existing rate unless no protests are filed, or the case is one in which administrative treatment is appropriate.

(b) Licensing hearings No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of commission proceedings, the commission gives notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee is given an opportunity to show compliance with all requirements of law for the retention of the license

(c) Rule-making hearings

(1) 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

(2) The commission shall consider fully all written and oral submissions concerning the 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 its reasons for overruling the considerations urged against its adoption

(3) If the commission finds that an imminent peril to the public health, safety, or welfare 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. An emergency rule adopted under the provisions of this paragraph, 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*.

(4) The commission may use informal conferences and consultations as a means of obtaining the viewpoints and advice of interested persons concerning contemplated rule-making, subject to §6(g) of the Act

(d) Hearings other than rate setting, licensing, or rule-making hearings. Hearings other than rate setting, licensing, or rule-making hearings shall be held after notice and service as set out in §21.25 of this title (relating to Contents of Notice for Proceedings Other Than Rate Setting, Licensing, or Rule-making Proceedings).

(e) Informal hearings for rate changes by water utilities with fewer than 150 customers.

(1) Customers may contest a rate change proposed under §43(h) of the Act by filing a written complaint

with the commission's Consumer Affairs Section within 60 days after the day the rates are put into effect, requesting that a hearing be held. A letter of protest of the rate change may be considered a request for a hearing

(2) Upon receiving timely written requests for a hearing from 10% of the customers of such a company, the director of hearings will assign a docket number, and an informal meeting will be convened at the commission offices at which the presiding examiner shall consider whether or not the rates are just and reasonable. The informal meeting need not be an evidentiary proceeding under the Administrative Procedure and Texas Register Act, but parties and staff shall be allowed comment.

(3) If the presiding examiner finds that the rates are just and reasonable, the examiner shall forward an examiner's report recommending his or her findings to the commission. All parties and the staff shall be afforded the opportunity to file exceptions to the examiner's report. If the rates are determined not to be just and reasonable, the examiner shall issue an order recommending that the case go to hearing, which order shall be forwarded to the director of hearings for approval. Such order is appealable to the commission pursuant to §21.106(a) of this title (relating to Interim Orders)

(4) Upon the issuance of an order recommending that the case go to hearing, the director of hearings shall forward to the company the applicable rate change application. The application must be completed by the company and filed with the Hearings Division in five copies within four weeks from receipt. If the rate change application is not timely filed by the company and if good cause for failure to timely file it is not shown, the case shall be subject to dismissal by the commission with the rates being reduced to the level charged prior to the change and with appropriate refunds

(5) In cases where the rates are determined not to be just and reasonable and an order has been issued that the case shall proceed to hearing, prehearing conferences and hearings shall be held as may be necessary. In all such proceedings the burden of proof shall be on the utility to show the justification for the changed rates. Such proceedings shall be conducted pursuant to the Administrative Procedure and Texas Register Act

(6) Upon written request of a party or the general counsel requesting that interim rates be set for the utility, the presiding examiner shall consider such and shall make a ruling on the request, either setting or denying interim rates

(7) Unless specifically in conflict with this section, the other procedural rules of the commission shall apply to all proceedings 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 August 29, 1983

TRD-836891

Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

**Earliest possible date of adoption  
October 10, 1983**

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

## **Evidence**

### **16 TAC §§21.121-21.128**

The Public Utility Commission of Texas proposes new §§21.121-21.128, concerning evidence. This undesignated head will contain sections concerning witnesses to be sworn, rules of evidence, official notice, documentary evidence, admissibility of prepared testimony and exhibits, introduction of exhibits, offer of proof, and witnesses limited.

The proposed repeal of existing Chapter 21 and adoption of new Chapter 21 concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and re enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel, the powers and duties of administrative law judges, the requiring of certain reports and forecasts by utilities and the commission, and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be the assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, and better readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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, and to make decisions with respect to administering the provisions of this Act.

**§21.121. Witnesses To Be Sworn.** Testimony shall be presented under oath administered by the examiner.

**§21.122. Rules of Evidence.** The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible under them 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. The rules of

privilege recognized by law shall be effective in commission proceedings. Any objections to evidentiary offers made shall be noted in the record. No evidence will be admissible in a proceeding if it is beyond the scope of the applicable pleadings.

**§21.123. Official Notice.** Official notice may be taken of judicially cognizable facts, and such notice may be taken of generally recognized facts within the area of the commission's specialized knowledge. Parties shall be notified of the material proposed to be noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. Any party requesting that official notice be taken of printed material shall supply copies of those materials to the examiner and make them available to all parties of record. The special skills and/or knowledge of the agency and its staff may be utilized in evaluating the evidence.

**§21.124. Documentary Evidence.** Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. On request, however, parties shall be given an opportunity to compare the copy with the original when possible. When a large number of similar documents is offered, the presiding examiner may limit those admitted to a number which are typical and representative, and may, as a matter of discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit, however, before making this requirement, the examiner shall see that all parties of record or their representatives are given an opportunity to examine the documents from which the abstracts are made.

**§21.125. Admissibility of Prepared Testimony and Exhibits.** When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness, upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness's being sworn and identifying the same as a true and accurate record of what the testimony would be if given orally. The witness shall be subject to clarifying questions and to cross examination and the prepared testimony shall be subject to objection.

#### **§21.126. Introduction of Exhibits.**

(a) **Form of exhibits.** Exhibits of documentary character shall be of a size which will not unduly encumber the files and records of the commission and whenever practicable, shall conform to the requirements of §21.62 of this title (relating to Form and Content of Pleadings) as to size. There shall be a brief statement on the first sheet of the exhibit as to what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(b) **Tender and service.** The original of each exhibit offered shall be tendered to the presiding examiner for identification. One copy shall be furnished to the examiner and one copy to each party of record or his representative. Written or printed documents and maps received in evidence may not be withdrawn except with the approval of the examiner.

(c) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, the presiding examiner shall determine whether or not the party offering the exhibit withdraws the offer, and if so, permit the return of the exhibit to him. If the excluded exhibit is not withdrawn, it shall be given an exhibit number for identification, shall be endorsed by the examiner with his ruling, and shall be included in the record for the purpose only of preserving the point for review. Exhibits excluded under subsection (a) of this section are not subject to inclusion in the record.

(d) Late exhibits. Unless specifically directed by the presiding examiner, no exhibit shall be filed in any proceeding after the conclusion of the hearing, and then only after a copy of the exhibit has been served on all parties.

**§21.127. Offer of Proof.** When testimony is excluded by ruling of the examiner, the party offering the evidence shall be permitted to make any offer of proof by dictating or submitting in writing the substance of the proposed testimony, prior to the conclusion of the hearing, and that offer of proof shall be sufficient to preserve the point for review by the commission. The presiding examiner may ask those questions of the witness deemed necessary to assure that the witness would testify as represented in the offer of proof. An alleged error in sustaining an objection to questions asked on cross-examination may be preserved without making an offer of proof.

**§21.128. Witnesses Limited.** The examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

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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\* For further information, please call (512) 458-0100.

## **Examiner's Report and Proposal for Decision**

### **16 TAC §§21.141-21.143**

The Public Utility Commission of Texas proposes new §§21.141-21.143, concerning examiner's report and proposal for decision. This undesignated head will contain the following sections: examiner's report and proposal, exceptions and replies, and oral argument before the commission.

The proposed repeal of Chapter 21, and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and reenacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges; the

requiring of certain reports and forecasts by utilities and the commission; and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Ryan also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and better readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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, and to make decisions with respect to administering the provisions of this Act.

### **§21.141. Examiner's Report and Proposal for Decision.**

(a) Requirements for final decision. In a proceeding in which a majority of the commissioners has not heard the case or read the record, a decision may not be made until an examiner's report and proposal for decision are served on the parties. The examiner's report shall be prepared by the person who conducted the hearing or by one who has read the record, and shall contain a statement of the nature of the case, a discussion of the issues, findings of fact, and conclusions of law.

(b) Countersignature. Every examiner's report and proposal for decision shall be countersigned by the director of hearings.

(c) Supplemental or amended reports. A supplemental or amended examiner's report and proposal for decision shall be clearly labeled as such.

### **§21.142. Exceptions and Replies.**

(a) Presentation. Any party may present briefs and file exceptions to the examiner's report and proposal for decision within a time period to be specified by the examiner. If any party files exceptions or presents briefs, an opportunity must be afforded to all other parties to file replies to the exceptions or briefs, with the time period to be set by the examiner.

(b) Exceptions. The exceptions shall be specifically and concisely stated. The evidence relied upon shall be stated with particularity, and any evidence or arguments relied upon shall be grouped under the exceptions to which they relate.



**§21.143. Oral Argument Before the Commission.** Any party may request oral argument before the commission, but oral argument shall be allowed only at the discretion of the commission. A request for oral argument shall be incorporated in the exceptions, reply to exceptions, motion for rehearing, or in a separate written pleading, filed with the commission and served upon all parties by 5 p.m. the fourth scheduled commission working day preceding the date upon which the commission is scheduled to consider the case. If all parties are present at the meeting at which the commission considers the case, the service requirements of this section may be waived, and the commission may hear oral argument at its discretion.

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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## Orders

### 16 TAC §§21.151-21.154

The Public Utility Commission of Texas proposes new §§21.151-21.154, concerning orders. This undesignated head will contain the following sections: form, content, and service of orders; administrative finality; effective date of order, and reciprocity of final orders between states.

The proposed repeal of Chapter 21, and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and re-enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges; the requiring of certain reports and forecasts by utilities and the commission, and providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Ryan, also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983; and better readability and comprehension of the rules of practice and procedure.

There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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, and to make decisions with respect to administering the provisions of this Act.

**§21.151. Form, Content, and Service of Orders.** After the expiration of the time for filing exceptions and replies thereto, the examiner's report and proposal for decision will be considered by the commission and either adopted, modified and adopted, or remanded to the examiner. All final decisions or orders of the commission shall be in writing and signed by a majority of the commissioners. A final decision shall include findings of fact and conclusions of law separately stated. 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. If, in accordance with commission rules, a party submits proposed findings of fact, the decision shall include a ruling on each proposed finding. Parties shall be notified either personally or by mail of any decision or order, and a copy of the decision or order shall be delivered or mailed to any party and to his authorized representative

**§21.152. Administrative Finality.** Administrative action becomes final upon:

- (1) adoption by the commission of a final order with no motion for rehearing made within 15 days of the adoption of the order;
- (2) adoption by the commission of a final order and the denial of a motion for rehearing, either expressly or by operation of law; or
- (3) adoption by the commission of a final order which includes a statement that no motion for rehearing will be necessary because an imminent peril to the public health, safety, and welfare requires that immediate effect be given to a final decision or order.

**§21.153. Effective Date of Order.** The effective date of a final decision or order, unless otherwise stated, is the date of commission action, and it shall be incorporated in the body of the instrument

**§21.154. 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 if the final order is an adoption, in whole or in part, of a final order rendered by a regulatory agency of some state other than the State of Texas after a hearing on the merits has been held by that other state's regulatory agency and if 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.

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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## Ancillary Proceedings and Proceedings Beyond the Order

### 16 TAC §§21.161-21.163

The Public Utility Commission of Texas proposes new §§21.161-21.163, concerning ancillary proceedings and proceedings beyond the order. This undesignated head will contain sections concerning rehearing, show cause orders and complaints, and form and filing of bonds.

The proposed repeal of existing Chapter 21 and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and re-enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel, the powers and duties of administrative law judges, the requiring of certain reports and forecasts by utilities and the commission, and, providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be the assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983, and, greater readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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, and to make decisions with respect to administering the provisions of this Act.

**§21.161. Rehearing.** Motions for rehearing must be made within 15 days after the rendition of a final decision or order. All motions for rehearing must with specificity appraise the commission of the claimed error. If a conclusory finding of fact is claimed to be in error, the motion for rehearing must appraise the commission of the underlying or basic findings of fact claimed to be in error, and cite to evidence relied upon which indicates such error. Replies to motions for rehearing must be filed with the commission within 25 days after the rendition of the final decision or order, and commission action on the motion shall be taken within 45 days after the rendition of the final decision or order. Copies of these motions and replies shall be served on all parties concurrently with the filing with the commission. If commission action is not taken within this 45-day period, the motion for rehearing shall be overruled by operation of law 45 days after the rendition of the final decision or order. The commission may by written order extend the period of time for filing these motions and replies and for taking commission action, except that this extension shall not extend the period for commission action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing shall be overruled by operation of law upon the date fixed by the order, or in the absence of a fixed date, 90 days from the date of the final decision or order.

**§21.162. Show Cause Orders and Complaints.** The commission, either upon its own motion or upon receipt of written complaint, may at its discretion, at any time after notice to all interested parties, cite any person or agency within its jurisdiction to appear before it in a public hearing and require him to show cause why he should not comply with any applicable statute, rule, regulation, or general order with which he is allegedly in non-compliance. All hearings in these show cause proceedings shall be conducted in accordance with the provisions of this chapter.

**§21.163. Form and Filing of Bonds.** During the pendency of its rate proceeding, a utility seeking to implement rates under bond pursuant to the Public Utility Regulatory Act, §43(c), shall file a bond and four copies of its tariff with the secretary of the commission at least one week prior to the bonding date, or one week prior to the date the bonded rates are to be effective, if that follows the bonding date. If different from the pending tariff proposal, the utility shall file a tariff of the bonded rates at least one week prior to billing on the bonded rates. The bond shall be in an amount equal to or greater than the difference between the utility's current rates and the bonded rates for a two-month period and must be approved by the director of hearings as to sufficiency. Any decision by the director of hearings either approving or disapproving the bond is specifically deemed to be ap-

pealable to the commission pursuant to §21.106 of this title (relating to Interim Orders).

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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## Organization of the Commission

### 16 TAC §21.171, §21.172

The Public Utility Commission of Texas proposes new §21.171 and §21.172, concerning organization of the commission. This undesignated head will contain sections concerning organization of the commission, and *en banc* proceedings or meetings.

The proposed repeal of existing Chapter 21 and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and re-enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel, the powers and duties of administrative law judges, the requiring of certain reports and forecasts by utilities and the commission, and, providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules

Ms. Ryan also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be the assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983; and, greater readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

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, and to make decisions with respect to administering the provisions of this Act.

### §21.171. Organization of the Commission.

(a) Divisions. The commission shall operate through such divisions as shall be established from time to time by the commission.

(b) Commission meeting days. The commission shall meet at times and places to be determined either by the chair of the commission or by agreement of the other two members of the commission.

(c) Secretary of commission. The director of hearings, in addition to other duties, shall:

- (1) serve as the secretary of the commission;
- (2) have possession and control of its seal;
- (3) have authority to accept service of all papers or other legal documents served on the commission or any of its members if served in their official capacity and not individually;

(4) serve as the clerk for the commission and the hearings section;

(5) keep a calendar or record of all findings with the commission;

- (6) acknowledge receipt of all filings;
- (7) keep a record of all settings for hearings before the commission and hearings examiners;
- (8) be responsible for notifying all parties of settings and hearings

§21.172 *En Banc Proceedings or Meetings.* The chair may call the commission to sit, both *en banc* or otherwise, in any proceeding or meeting, and the chair shall preside over any proceeding or meeting attended, unless some other person is designated to preside by the chair. The two commissioners, neither of whom is the chair, may also call the commission to sit, both *en banc* or otherwise, in any proceeding or 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 August 29, 1983

TRD-836896 Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Earliest possible date of adoption  
October 10, 1983

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

## Miscellaneous

### 16 TAC §21.181

The Public Utility Commission of Texas proposes new §21.181, concerning miscellaneous. This undesignated head will contain a section concerning commission forms.

The proposed repeal of existing Chapter 21 and adoption of new Chapter 21, concerning practice and procedure, is necessitated by revisions to the Public Utility Regulatory Act (PURA) as amended and re-enacted by the 68th Legislature, 1983, relating to the powers and duties of the Office of Public Utility Counsel; the powers and duties of administrative law judges; the requiring of certain reports and forecasts by utilities and the commission, and, providing for hearings and hearings procedures. Renumbering, regrouping, and reorganization, as well as revised wording, are also proposed to assure increased specificity and clarity through the logical organization of this chapter.

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Ms. Ryan also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be the assurance that commission rules are in accord with the PURA as adopted by the 68th Legislature, 1983; and better readability and comprehension of the rules of practice and procedure. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The new rule 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, and to make decisions with respect to administering the provisions of this Act.

**§21.181. Commission Forms.** Standard forms for certain reports to the commission will be furnished by the commission. These forms may be amended, deleted, or added to at the commission's discretion without having a rule-making proceeding. A complete set of all commission forms will be kept by the commission filing clerk. Notice of any new or amended form shall be printed in the commission bulletin.

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 August 29, 1983.

TRD-836897 Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Earliest possible date of adoption.  
October 10, 1983

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

## Chapter 23. Substantive Rules Rates

### 16 TAC §23.23

*(Editor's note: The Public Utility Commission of Texas proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)*

The Public Utility Commission of Texas proposes amendments to §23.23, concerning rate structure and rate design. The commission is also adopting this rule on an emergency basis in this issue. Beginning September 1, 1983, no automatic fuel adjustment clause shall be allowed, and any revision of a utility's billings to a customer to allow for the recovery of additional fuel costs may be made only upon a public hearing and order of the commission. No later than August 15, 1983, each utility covered by this rule shall file with the commission all information necessary to determine an interim fixed fuel factor, which shall be effective with its September 1983 billing period, and which shall remain in effect until the utility's next general rate case or commission ordered reconciliation, whichever occurs first. Thereafter all allowed fuel costs, including, if approved a reconciliation of over- or under-recovery of fuel costs, shall be recovered through the energy portion of the utility's base rates. No less than 12 months after implementing a change in its base rates, a utility shall request reconciliation of any over-recovery of fuel revenues and may request an opportunity to reconcile any under recovery of such fuel costs. Under recovery reconciliation shall be granted only to that portion of fuel costs increased by conditions or events beyond the control of the utility and upon demonstration of proof by the utility that such conditions or events could not have been predicted or foreseen at the time the rates were established. The rule also creates a closer scrutiny of fuel from affiliates, fuel mixture, and fuel contract prices. It also allows investor-owned electric distribution utilities, river authorities, and all cooperative-owned electric utilities which purchase electricity at wholesale pursuant to approved rate schedules to include within their tariff a purchased power cost recovery factor clause (PCRF).

Rhonda Colbert Ryan, secretary of the commission, has determined that for the first five-year period the rule will be in effect there will be fiscal implications for state or local government as a result of enforcing or administering the rule. There will be an estimated additional cost to state government of \$1,000,000 per year for the period 1983-1987. The costs to local government are undetermined at this time.

Ms. Ryan also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be the assurance to consumers that all fuel transactions will receive thorough scrutiny and prior approval by the commission, thereby abolishing any automatic provisions for purposes of fuel ad-

justment, stabilizing fuel costs affecting consumers' electric bills, and strengthening utilities' bargaining position with fuel suppliers. The possible economic cost to individuals who are required to comply with the rule as proposed will be as follows: delays in collecting fuel revenues may increase some utilities' working capital requirements, utilities' administrative and legal costs may also increase, and interest and penalties on over-recovery may be incurred. No estimate of these costs can be made now.

Comments on the proposal may be submitted to Rhonda Colbert Ryan, Secretary of the Commission, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757.

The amendments 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, and to make decisions with respect to administering the provisions of this Act.

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

Issued in Austin, Texas, on September 1, 1983.

TRD-836884 Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Earliest possible date of adoption:  
October 10, 1983

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

## TITLE 22. EXAMINING BOARDS

### Part XV. Texas State Board of Pharmacy

#### Chapter 291. Pharmacies

##### 22 TAC §291.15

The Texas State Board of Pharmacy proposes an amendment to §291.15, concerning notification of theft or loss of a controlled substance. This amendment as proposed will specify that the theft or significant loss of any controlled substance by a pharmacy shall be reported in writing to the board within 10 days, as stated in the Texas Pharmacy Act, Texas Civil Statutes, Article 4542a-1, §32.

Fred S. Brinkley, Jr., R.Ph., executive director/secretary, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Brinkley also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be the assurance that phar-

macists are in compliance with the law by requiring the notification of theft or loss of a controlled substance and the outlining of the procedures required for such notification. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Fred S. Brinkley, Jr. R.Ph., Executive Director/Secretary, 211 East Seventh Street, Suite 1121, Austin, Texas 78701.

The amendment is proposed under Texas Civil Statutes, Article 4542a-1, §32(a), which provide the Texas State Board of Pharmacy with the authority to require that a pharmacy report in writing to the board within 10 days the notification of theft or loss of a controlled substance.

**§291.15. Notification of Theft or Loss of a Controlled Substance.** For the purposes of Texas Civil Statutes, Article 4542a-1, §32(a), the theft or significant loss of any controlled substance by a pharmacy shall be reported in writing to the board within 10 days of [on] discovery of such theft or loss. A pharmacy shall be in compliance with this subsection by submitting to the board a copy of the Drug Enforcement Administration report of theft or loss of controlled substances, DEA Form 106, or by submitting a list of all controlled substances stolen or lost.

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 August 23, 1983.

TRD-836870 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy

Earliest possible date of adoption:  
October 10, 1983

For further information, please call (512) 478-9827.

## TITLE 31. NATURAL RESOURCES AND CONSERVATION

### Part III. Texas Air Control Board

#### Chapter 113. Toxic Materials

##### Subchapter A. Inorganic Fluoride Compounds and Beryllium

##### 31 TAC §§113.1-113.3, 113.8, 113.9, 113.11, 113.13

The Texas Air Control Board (TACB) proposes a new subchapter designation, Subchapter A, concerning inorganic fluoride compounds and beryllium, for §§113.1-113.3, 113.8, 113.9, 113.11, and 113.13, concerning toxic materials. In addition, the TACB proposes amendments to §113.1, concerning purpose; §113.2, concerning definitions; §113.3, concerning specific toxic materials; §113.8, concerning coordination of emissions from several properties; §113.9,

concerning measuring and monitoring; §113.11, concerning exclusion from application; and §113.13, concerning effective date and time for compliance.

The designation for the entire current 31 TAC §§113.1-113.13, concerning toxic materials, as Subchapter A, concerning inorganic fluoride compounds and beryllium, is proposed to allow for the addition of a new Subchapter B, concerning lead from stationary sources, which is simultaneously being proposed. The amendments to §§113.1-113.3, 113.8, 113.9, 113.11, and 113.13 are proposed to make all current references to the existing chapter refer instead to the proposed subchapter designation. These proposed amendments are administrative in nature with no substantive change intended. Thus, no comments suggesting substantive changes to current 31 TAC §§113.1-113.13, concerning toxic materials, can be considered in this proceeding.

Bernie Engelke, deputy director for administrative services, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Engelke also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be improved clarity of the regulations. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

A public hearing on this proposal is scheduled for October 11, 1983, at 7 p.m., in the city council chambers, second floor, 2 Civic Center Plaza, El Paso. Copies of the proposed rule changes are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearings. The TACB would appreciate receiving five copies of testimony prior to the hearings, where possible. Written testimony received by 4 p.m. on October 19, 1983, will be included in the hearing record. Written comments should be sent to the Hearing Examiner, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

These amendments are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

**§113.1. Purpose.** It is the purpose of this subchapter [chapter] to establish air standards for the State of Texas on inorganic fluoride compounds and beryllium. It is anticipated that additional provisions covering other toxic materials will be adopted as adequate and sufficient data relating to undesirable levels of other toxic materials is developed and evaluated.

**§113.2. Definitions.** The section on definitions in Chapter 101 of this title (relating to General Rules) applies to this subchapter [chapter]. **The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:** [The additional terms defined in this section have the meanings given them herein when used in this chapter.]

**Inorganic fluoride compounds**—All inorganic chemicals having an atom or atoms of fluorine in their chemical structure.

**Forage**—Growing, uncut, or unharvested vegetation, in the place where grown, which is, or after harvesting will be, used as food for cattle, horses, sheep, goats, and other livestock, whether it is or will be used on the property where grown or elsewhere.

**§113.3. Specific Toxic Materials.**

(a) Inorganic fluoride compounds.

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

(3) Emission limits for inorganic fluoride compounds.

(A) Inorganic fluoride compounds occur only infrequently in the atmosphere in nature and then usually in small quantities. The occurrence of these compounds is generally the result of the activities of man. While there are areas where cumulative effects from several properties can result in undesirable levels of inorganic fluoride compounds, the emissions usually arise from a single property. Accordingly, the emissions do not as a general rule need to be based on upwind levels of this contaminant. However, provision is made in this subchapter [chapter] for instances where a cumulative effect results when there are emissions of this contaminant from two or more properties located in close proximity to each other. If the cumulative effects of inorganic fluoride compound emissions cause the ambient air quality standards to be exceeded, the emission limits specified in this subchapter [chapter] will be modified by the board to prevent occurrence of undesirable levels of inorganic fluoride compounds.

(B) To assist in meeting the ambient air quality standards specified in subsection (a)(2) of this section, the board hereby establishes a limit on the emission of gaseous inorganic fluoride compounds, calculated as HF, which may be made from any property not to exceed six parts per billion by volume average during a period of three consecutive hours. The contribution of inorganic fluoride compounds by a single property shall be measured by the difference between the upwind level and the downwind level of inorganic fluoride compounds for the property, or by stack sampling calculated to a downwind concentration, in accordance with §113.9(a) of this title (relating to Measuring and Monitoring). It is a violation of this subchapter [chapter] for the contribution from a property, determined in accordance with the applicable rule, to exceed the emission limit specified in this paragraph. The owner, holder, or operator of a property is in compliance if the contribution from the property does not exceed the limit specified in this subparagraph.

(b) Beryllium

(1) (No change.)

(2) To assist in meeting the ambient air quality standards specified in paragraph (1) of this subsection,

the board hereby establishes a limit on the emission of beryllium which may be made from any property not to exceed 0.01 microgram average per cubic meter of air during any 24-hour period of time. The contribution of beryllium by a single property shall be measured by the difference between the upwind level and the downwind level of beryllium for the property, or by stack sampling, calculated to a downwind concentration in accordance with the procedures outlined in the applicable appendix of this **subchapter** [chapter]. It is a violation of this **subchapter** [chapter] to emit beryllium from a property in excess of the specified limit. The owner, holder, or operator of a property is in compliance if the contribution from the property does not exceed the specified limit.

**§113.8. Coordination of Emissions from Several Properties.**

(a) Air control zone. The provisions of air control zones, paragraph V.A. of the General Provisions, apply to this **subchapter** [chapter], as appropriate.

(b) Multiple air contaminant properties. The provisions on multiple air contaminant properties, paragraph V.B. of the General Provisions, apply to this **subchapter** [chapter], as appropriate.

**§113.9. Measuring and Monitoring.**

(a) Measuring.

(1) Where stack sampling is feasible, this is the method preferred by the board for measuring and controlling emissions. The owner, holder, or operator of the property shall, upon request of the board, provide in connection with the stack or flue from which the emissions are made such sampling and testing facilities and sampling ports, exclusive of instruments and sensing devices, as may be necessary for the board to determine the nature and quantity of the toxic materials which are or may be discharged as the result of the operations on the property. The facilities may be either permanent or temporary, at the discretion of the person responsible for their provision, and shall conform to all applicable laws and regulations concerning safe construction and safe practices. Evidence and data based on these stack samples and calculations may be used to substantiate compliance with or violations of this **subchapter** [chapter]. Agents of the board shall be permitted to sample the stacks at any reasonable time.

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

(b) (No change.)

**§113.11. Exclusion from Application.** Emissions of toxic materials pursuant to and in compliance with the terms of a variance granted by the board are excluded from the application of this **subchapter** [chapter].

**§113.13. Effective Date and Time for Compliance.**

(a) This **subchapter** [chapter] is effective July 30, 1969. The owner, holder, or operator of every property on which one or more sources or potential sources of the air contaminants covered in this **subchapter** [chapter] is located as of the effective date hereof who can comply with this **subchapter** [chapter] from and after its effective date without providing new or additional equipment or facilities or modifying existing equipment or facilities shall so comply.

(b) Where new, additional, or modified equipment

or facilities must be provided before the owner, holder, or operator of a property can comply with this **subchapter** [chapter], the owner, holder, or operator shall comply with the following procedure, as applicable:

(1) If the property will be in compliance with this **subchapter** [chapter] by January 1, 1970, no further action with respect to the board is required, and the property shall be in compliance by that date.

(2) If the property will not be in compliance with this **subchapter** [chapter] by January 1, 1970, and emissions of the toxic compounds named above will continue to be made from the property after that date, the person responsible for the property shall file a petition for variance not later than September 1, 1969.

(c) No person may cause, suffer, allow, or permit the emission of any of the named toxic materials covered by this **subchapter** [chapter], except as provided in this chapter.

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 September 1, 1983.

TRD-836860

Bill Stewart, P.E.  
Executive Director  
Texas Air Control Board

Proposed date of adoption.

December 16, 1983

For further information, please call (512) 451-5711, ext. 354.

## Subchapter B. Lead from Stationary Sources

The Texas Air Control Board (TACB) proposes new Subchapter B, concerning lead from stationary sources, in Chapter 113 of this title, relating to toxic materials.

This subchapter is proposed to control lead air pollution in El Paso County. It is being considered in conjunction with proposed revisions to the state implementation plan (SIP) for lead for El Paso County. This agency may consider at a later time whether certain rules concerning lead should apply statewide or in certain areas in addition to El Paso County.

Comments should be sent to the Executive Director, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723. However, the rule-making proceeding announced by this notice will consider only the adoption of rules concerning the control of lead from stationary sources in El Paso County.

During 1982, the TACB conducted a detailed review and evaluation of air quality in El Paso. This project included detailed statistical analysis of existing air quality and meteorological data and of chemical and microscopic analyses of total suspended particulate matter samples collected at ambient air quality monitoring sites and from specific emissions sources in El

Paso. In addition, the project included interviews with local air pollution control officials and other air quality specialists. Results of this project were reported to the TACB Regulation Development Committee in a meeting held April 26 and 27, 1983, in El Paso and are included in a report titled "A Study of Ambient Air Quality and Emission Source Contributions to Ambient Air Pollution for El Paso," which was prepared by Radian Corporation under contract to the TACB.

The results of this study show that lead concentrations in excess of those specified by national ambient air quality standards for lead have been measured in several portions of El Paso and that emissions from a large nonferrous smelter (ASARCO, Inc.) and motor vehicle exhaust emissions are the most important sources of lead air pollution in El Paso. On the basis of this finding a reduction in lead emissions in El Paso was determined to be necessary. The proposed revisions to the SIP for lead in El Paso County and the proposed new subchapter have been prepared to provide the additional emissions reductions that are necessary to abate air pollution from lead in El Paso and to demonstrate attainment of the national ambient air quality standards for lead.

Analysis of data from collected air quality and emission samples has been used, along with dispersion modeling, to identify sources contributing to lead concentrations greater than the national ambient air quality standards (NAAQS). The level of control that would be required by this new subchapter (relating to lead from stationary sources) includes both controls that ASARCO, Inc. has already agreed to implement and additional controls that have been determined to be necessary to meet the NAAQS for lead in El Paso. The control requirements were selected as technically practicable, economically reasonable, and necessary to meet the NAAQS in El Paso.

However, certain provisions in these proposed rules are somewhat more restrictive than the controls used in the associated control strategy for demonstration of attainment of the national ambient air quality standards for lead. These stricter regulatory provisions are proposed because they are enforceable and because emission reduction requirements that match those in the control strategy appear to be unenforceable in practice. For example, § 113.52 of this title (relating to smelting of lead), paragraph (5), requires that there be no visible emissions from the charging area of any of the lead blast furnaces, although the control strategy requires only a 75% reduction in emissions from these sources. This agency solicits suggestions for alternate, enforceable requirements that achieve at least the emission reductions listed in the control strategy.

Section 113.111 of this title, relating to alternate means of control, has wording slightly different from the similar provision § 115.401, relating to procedure, in Chapter 115 of this title, relating to volatile organic compounds. The proposed wording is chosen to make it clear that the alternate means of control is to be applied to the source to which the requirement applies.

Section 113.112 of this title, relating to alternate emission reductions, is proposed to assure that any "bubble" used to comply with a regulatory requirement of this subchapter, relating to lead from stationary sources, would result in at least equivalent, actual reductions in lead emissions and ambient air impacts so that the control strategy demonstration of attainment of the national ambient air quality standards for lead would remain valid.

Bennie Engelke, deputy director for administrative services has determined that for the first five year period that the rules will be in effect there will be no fiscal implications to either state or local government as a result of enforcing or administering the rules.

Eli Bell, deputy director for control and prevention, has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed will be reduced public exposure to lead in ambient air and less potential for excess lead levels in blood and for resulting adverse health effects. The anticipated effect of the proposed regulations on lead emissions from stationary sources in El Paso County is as follows:

	1981 Actual (tons/year)	1985 Allowable without additional controls (tons/year)	1985 Allowable with the controls proposed here (tons/year)
ASARCO, Inc.	348	330* ( 18)* +	174 ( 174) +

\* Based on reductions already scheduled  
+ Net change from 1981 emissions

The possible economic cost to individuals who are required to comply with the rule as proposed is estimated to be \$2.7 million in 1984, \$2.8 million in 1985, \$3.0 million in 1986, \$3.1 million in 1987; and \$3.2 million in 1988.

The following procedures were used in estimating costs. Capital cost estimates were based on 1984 purchase and installation, process equipment costs were annualized for 15 years at 15% interest; costs of instrumentation and equipment for control of open fugitive sources were annualized over 10 years at 15% interest, costs of paving and vacuuming equipment were annualized over five years at 15% interest, and variable costs were escalated after 1984 at a 10% inflation rate. Capital cost estimates should be considered to be accurate within a factor of 2 or 3.

A public hearing on this proposal is scheduled for October 11, 1983, at 7 p.m., in the City of El Paso, City Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso.

Copies of the proposed rule changes are available at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723, and at all TACB regional offices. Public comment, both oral and written, on the proposed changes is invited at the hearing. The Texas Air Control Board would appreciate receiving five copies of testimony prior to the hear-



ings. Written testimony received by 4 p.m., October 19, 1983, at the TACB central office will be included in the hearing record. Written comments should be sent to the Hearing Examiner, Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

### **Nonferrous Smelters in El Paso County**

**31 TAC §§ 113.41-113.43, 113.51-113.53, 113.71, 113.72**

These new rules are proposed under Texas Civil Statutes, Article 4477-5, §3.09(a), which provide the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

**§113.41. Maintenance and Operation of Control Equipment.** The owner or operator of any nonferrous smelter in El Paso County shall maintain and operate all equipment used for the purpose of preventing emissions of particulate matter to the atmosphere as necessary to achieve the control efficiency such equipment was designed to achieve or has achieved in operation, whichever is greater.

**§113.42. Areas Accessible to the General Public.** The owner or operator of any nonferrous smelter located in El Paso County shall prohibit access by the general public to the property on which the smelter is located, any contiguous property owned by or under the control of the owner or operator of the smelter, and any such property that would be contiguous but for intervening roads.

#### **§113.43. Control of Fugitive Dust**

(a) The owner or operator of any nonferrous smelter in El Paso County shall comply with the following requirements:

##### **(1) Roads**

(A) All plant roads shall be paved, and

(B) no visible emissions shall result from the use or cleaning of plant roads.

##### **(2) Outdoor bulk material storage areas**

(A) There shall be no visible emissions from outdoor bulk material storage areas except emissions resulting from the addition and removal of materials, and

(B) water sprays or other systems approved by the executive director shall be used to minimize visible emissions from outdoor bulk material storage areas during addition and removal of material.

(b) The owner or operator of a nonferrous smelter in El Paso County shall install and maintain complete vegetational cover on the property at which the smelter is located on all open unpaved areas except outdoor bulk material storage areas covered by the provisions of subsection (a), paragraph (2) of this section.

(c) The executive director may approve an exemption from one or more requirements of subsection (a) and/or subsection (b) of this section if he determines that the owner or operator has provided sufficient information to demonstrate that:

(1) compliance with the requirements is technically impracticable or economically unreasonable, and

(2) controls that are technically practicable and economically reasonable are implemented to minimize emissions, and

(3) the emissions allowed by the exemption(s) will not prevent attainment or maintenance of the national ambient air quality standards for lead or cause or contribute to a condition of air pollution.

**§113.51. Materials Handling and Transfer.** The owner or operator of any nonferrous smelter located in El Paso County shall comply with the following requirements:

(1) all lead sinter shall be transported in closed containers or shall be transported by enclosed conveying systems that are under negative pressure and are vented to the atmosphere only through particulate matter control equipment; and

(2) all particulate matter containing more than 1.0% lead by weight collected by air pollution control equipment shall be transported in closed containers or shall be transported by enclosed conveying systems that are under negative pressure and are vented to the atmosphere only through particulate matter control equipment; and

(3) there shall be no visible emissions from the transfer of collected particulate matter containing more than 1.0% lead by weight; and

(4) all collected particulate matter containing more than 1.0% lead by weight shall be pelletized or water granulated, and

(5) all pelletizing and water granulation of collected particulate matter required by paragraph (4) of this section shall occur in an enclosed structure that is under negative pressure and is vented to the atmosphere only through particulate matter control equipment; and

(6) granulated or pelletized particulate matter containing more than 1.0% lead by weight shall be handled in an enclosed structure that is under negative pressure and is vented to the atmosphere only through particulate matter control equipment, and

(7) the lead concentration in the gas streams exhausted to the atmosphere through control equipment required by paragraphs (1), (2), (5), and (6) of this section shall not exceed 0.001 grain per dry standard cubic foot.

**§113.52. Smelting of Lead.** The owner or operator of any lead smelter located in El Paso County shall comply with the following requirements:

(1) each blast furnace shall be equipped with an automatic system to control tuyere air flow; and

(2) there shall be no visible emissions from lead and slag tapping from any blast furnace; and

(3) there shall be no visible emissions from any lead dross reverberatory furnace, and

(4) there shall be no visible emissions from any receiving lead kettle or final dross lead kettle; and

(5) there shall be no visible emissions from the charging area of any lead blast furnace.

**§113.53. Smelting of Copper and Zinc.** The owner or operator of any copper or zinc smelter located in El Paso County shall comply with the following requirements:

(1) secondary hoods of design approved by the executive director shall be installed on each copper converter; and

(2) the emissions captured by the secondary hoods required by paragraph (1) of this section shall be exhausted through a duct system that is under negative pressure and through a system or device for the control of particulate matter; and

(3) the lead concentration in the gas leaving the system or device required by paragraph (2) of this section shall not exceed 0.001 grain per dry standard cubic foot, and the gas shall be vented to the atmosphere no less than 230 feet above grade; and

(4) each copper converter and zinc fuming operation shall be contained in a structure enclosed to the extent necessary to maintain an airflow of at least 200 feet per minute into the structure at all openings and doorways; and

(5) air vented to maintain air inflow into any structure required by paragraph (4) of this section shall be vented through a system or device for the control of particulate matter; and

(6) the lead concentration in the gas leaving the system or device required by paragraph (5) of this section shall not exceed 0.0001 grain per dry standard cubic foot; and

(7) a recording airflow monitoring system and an alarm approved by the executive director shall be installed and operated at all times to monitor airflow into any building required by paragraph (4) of this section, and

(A) the data on airflow shall be kept for at least three years; and

(B) upon request the data shall be made available to representatives of the Texas Air Control Board or local air pollution control agencies with jurisdiction; and

(8) there shall be no visible emissions from any building containing a copper converter or zinc fuming furnace.

**§113.71. Lead Emission Limits for Stacks.**

(a) No person may cause, suffer, or allow emissions in excess of any limit specified in Table 113.71(1) or Table 113.71(2) in this section.

**TABLE 113.71(1)  
Lead Emission Limits for Certain Vent Gas Streams at  
the ASARCO, Inc., El Paso Smelter**

Vent Gas From	Lead Emission Limits, lb/hr
Lead and Copper Ore Conveying Baghouse	0.4
Lead Ore Unloading Building Baghouse	4.1
Lead Ore Bedding Building Baghouse	2.5
Lead Sinter Plant Material Handling Baghouse	12.8
No. 2 Sulfuric Acid Plant	0.2
Lead Blast Furnace Baghouse Stacks (Total)	2.2
Copper Ore Unloading Building Baghouse	0.1
Copper Ore Bedding Building Baghouse	4.9

Copper Reverberatory Furnace Electrostatic Precipitator	1.5
Copper Converter Building Ventilation Baghouse	0.3
No. 1 Sulfuric Acid Plant	0.1
South Copper Anode Furnace	0.01
North Copper Anode Furnace	0.01
Zinc Fuming Furnace and Deleading Kilns Baghouse	4.3
Antimony Plant Baghouse	0.1
Cadmium Plant Baghouse	0.4
Copper Slag Settling Furnace	0.1

**TABLE 113.71(2)  
Opacity Limits for Certain Stacks at the ASARCO, Inc.,  
El Paso Smelter**

Stack	Opacity Limit
Lead Stack	5%
Each Lead Blast Furnace Baghouse Stack	5%

(b) The owner or operator of a stack affected by the requirements of paragraph (a)(2) of this section shall continuously monitor the opacity of the stack, shall maintain records of the monitoring data for at least three years, and shall upon request make the data available to representatives of the Texas Air Control Board or local air pollution control agency with jurisdiction.

**§113.72. Stack Height Requirements.** Stacks identified in Table 113.72 in this section shall be at least the specified height above grade.

**TABLE 113.72  
Minimum Stack Heights for Certain Stacks at the  
ASARCO, Inc., El Paso Smelter**

Stack	Stack Height (Feet)
Lead and Copper Ore Conveying Baghouse	132.5
Lead Ore Unloading Building Baghouse	132.5
Lead Ore Bedding Building Baghouse	150.0
Copper Ore Bedding Building Baghouse	150.0

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 September 1, 1983

TRD-836861 Bill Stewart, P. E.  
Executive Director  
Texas Air Control Board

Proposed date of adoption  
December 16, 1983

For further information, please call (512) 451-5711,  
ext. 354.

## Alternate Controls

### 31 TAC §113.111, §113.112

The new rules are proposed under Texas Civil Statutes, Article 4477 5, §3 09(a), which provide the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

**§113.111 Alternate Means of Control** Any person affected by any emission control requirement of this subchapter (relating to Lead from Stationary Sources) may request the executive director to approve an alternate means of control of the source affected by the specific control requirement. The executive director shall approve such alternate means of control if the applicant demonstrates that the alternate control will yield emission reductions for the same air contaminant that are at least equivalent to the emission reductions that would otherwise be required in terms of their quantity and their impact on air quality, including health and welfare effects, except that the executive director shall approve an alternate control plan in lieu of any requirement of paragraphs (2), (3), (4), or (5) of §113.52 of this title (relating to Smelting of Lead) if he determines that the applicant has provided sufficient information to demonstrate that the alternate control will assure that emissions of particulate matter from each affected facility will be reduced by the amount specified in paragraphs (1)-(4) of this section based on 1983 emissions extrapolated to maximum operating capacity:

- (1) for §113.52(2), 95%;
- (2) for §113.52(3), 90%;
- (3) for §113.52(4), 85%;
- (4) for §113.52(5), 75%.

**§113.112 Alternate Emission Reductions** The executive director shall not approve pursuant to §101.23 of this title (relating to Alternate Emission Reduction ("Bubble") Policy) controls in lieu of those required by the provisions of §§113.41-113.72 of this subchapter (relating to Nonferrous Smelters in El Paso County) if such proposed alternate controls were implemented prior to the effective date of §§113.41-113.72.

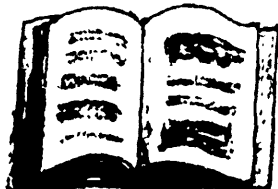
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 1, 1983

TRD-836862 Bill Stewart, P.E.  
Executive Director  
Texas Air Control Board

Proposed date of adoption  
December 16, 1983

For further information, please call (512) 451-5711,  
ext. 354



## Compliance and Control Plan Requirements

### 31 TAC §§113.121-113.124

The new rules are proposed under Texas Civil Statutes, Article 4477 5, §3 09(a), which provide the Texas Air Control Board with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the Texas Air Control Board makes.

**§113.121 Compliance with Other Rules** The rules in this subchapter (relating to Lead from Stationary Sources) apply independently to affected persons. They do not supersede any other regulatory requirements. If more than one requirement applies, the stricter requirement must be met.

**§113.122 Dates for Control Plan Submission and for Final Compliance.** Any person affected by the requirements of this subchapter (relating to Lead from Stationary Sources) shall submit a control plan to the executive director by March 31, 1984, and shall be in compliance as soon as practicable but no later than the dates specified in the following table. If no compliance date is specified for a section in this subchapter (relating to Lead from Stationary Sources), all affected persons shall be in compliance with the section no later than the effective date of the section and shall remain in continuous compliance with the section.

Rule Number	Date of Final Compliance
§113.43	September 30, 1984
§113.51	December 31, 1984
§113.52	August 31, 1984
§113.53	December 31, 1984
§113.72	December 31, 1984

**§113.123 Control Plan Procedure** A control plan for compliance with the requirements of this subchapter (relating to Lead from Stationary Sources) shall be submitted to the executive director detailing the compliance status of all emission controls required by this subchapter (relating to Lead from Stationary Sources) and describing in detail the method to be followed to achieve and maintain compliance. The plan shall specify the exact dates by which specific steps will be taken to achieve compliance. The plan shall include all the following:

- (1) the dates by which contracts for emission control systems or process modifications will be awarded, or dates by which orders will be issued for the purchase of component parts to accomplish emission control or process modification;
- (2) the date of initiation of on-site construction or installation of emission control equipment or of process change;
- (3) The date by which process modification or on-site construction or installation of emission control equipment is to be completed;
- (4) the date by which final compliance is to be achieved.

**§113.124 Reporting Procedure** After a control plan for compliance with the requirements of this subchapter (relating to Lead from Stationary Sources) has been submitted to the Executive Director, progress reports shall

be submitted every 90 days for all control plans specified in §113.123 of this title (relating to Control Plan Procedure). The Executive Director shall also be notified of the completion of each separate step in the control plan within five days after completion. All reports and notifications shall be submitted in writing by the person submitting the compliance control plan.

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 September 1, 1983

TRD-836863 Bill Stewart, P.E.  
Executive Director  
Texas Air Control Board

Earliest possible date of adoption  
December 16, 1983

For further information, please call (512) 451-5711,  
ext. 354

## **TITLE 40. SOCIAL SERVICES AND ASSISTANCE**

### **Part I. Texas Department of Human Resources**

#### **Chapter 10. Family Self-Support Temporary Emergency Relief Program**

40 TAC §§10.4301-10.4316

*(Editor's note: The Texas Department of Human Resources proposes for permanent adoption the new rules it adopts on an emergency basis in this issue. The text of the rules is published in the Emergency Rules section of this issue.)*

The Texas Department of Human Resources (DHR) proposes new §§10.4301-10.4316 concerning the Temporary Emergency Relief Program. The program is a cooperative effort between the DHR and county commissioners courts to provide needy persons with food, utilities, housing, and clothing. If a county does not participate, other contractors, selected by a competitive bidding process, may contract with the DHR. Procedures and criteria for selecting noncounty providers will be published at a later date.

Simultaneous emergency rules appear in this issue of the *Register*.

David Hawes, programs budget and statistics director, has determined that for the two-year period the rules will be in effect there will be fiscal implications as a result of enforcing or administering the rules. The cost to the state is \$1,454,445 for fiscal year 1984 and \$45,559 for fiscal year 1985. The funding level for fiscal year 1985 is dependent on the balance of unencumbered fiscal year 1984 funds. There is no anticipated cost to units of local government.

Mr. Hawes also has determined that for each year the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules will be provision of temporary emergency assistance to persons eligible to participate. There is no economic cost to persons required to comply with the proposed rules.

The DHR will conduct a public hearing to accept comments on the proposed rules on September 22, 1983, beginning at 9 a.m. in the DHR board room, 706 Banister Lane, Austin.

Written comments also are invited and may be sent to Susan L. Johnson, Administrator, Policy Development Support Division, 406, Texas Department of Human Resources, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

The new rules are proposed under the Human Resources Code, Title 2, Chapters 22 and 34 which authorize the DHR to administer public assistance programs and the Temporary Emergency Relief Program.

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 September 1, 1983

TRD 836902 Marlin W. Johnson  
Commissioner  
Texas Department of Human  
Resources

Earliest possible date of adoption  
October 10, 1983

For further information, please call (512) 441-3355,  
ext. 2037

## **Part V. Veterans' Land Board Chapter 175. General Rules**

40 TAC §§175.3, 175.9, 175.12,  
175.14-175.17

*(Editor's note: The Veterans' Land Board proposes for permanent adoption the amendments it adopts on an emergency basis in this issue. The text of the amendments is published in the Emergency Rules section of this issue.)*

The Veterans' Land Board proposes amendments to §§175.3, 175.9, 175.12, and 175.14-175.17, concerning fees charged for various services performed in conjunction with the Veterans' Land Program. The proposed amendments will increase the various fees charged by the agency required by the increased costs of performing the various services.

Mike Lopez, Veterans' Land Program assistant executive director, estimates that, based on current workload assumptions, the new fees will generate \$1.4 million per year for the next five years in income to the Veterans' Land Program, which represents roughly a \$1 million per year increase over projections.

based on the old fee schedule. There will be no fiscal impact on local governments.

Mr. Lopez also has determined that the amendments will benefit the public by increasing the level of service provided to the veteran and by having the user of the program bear the costs of administering the program. It will cost users of the program \$1 million per year for the next five years as a result of this amendment. Mr. Lopez has determined that economic costs to the public as a result of these amendments will affect only the users of the Veterans' Land Program.

Comments on this proposal may be submitted to Mike Lopez, Assistant Executive Director, Veterans' Land Program, 1700 North Congress Avenue, Austin, Texas 78701.

The amendments are proposed under Senate Bill 288, 68th Legislature, 1983, Chapter 81, page 355, §21, which authorizes the Veterans' Land Board to set and collect fees for various services provided by the board.

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 September 1, 1983.

TRD-836900

Garry Mauro  
Commissioner  
General Land Office

Earliest possible date of adoption.  
October 10, 1983

For further information, please call (512) 475-5661.

# Withdrawn Rules

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is generally effective immediately upon filing.

If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office. Notice of the withdrawal will appear in the next regularly scheduled issue of the *Register*. The effective date of the automatic withdrawal will appear immediately following the published notice.

No further action may be taken on a proposal which has been automatically withdrawn. However, this does not preclude a new proposal of an identical or similar rule following normal rulemaking procedures.

**TITLE 16. ECONOMIC  
REGULATION  
Part II. Public Utility Commission of  
Texas  
Chapter 23. Substantive Rules  
Rates  
16 TAC §23.23**

The Public Utility Commission of Texas has withdrawn from consideration for permanent adoption proposed

amendments to §23.23, concerning substantive rules. The text of the amended section as proposed appeared in the July 29, 1983, issue of the *Texas Register* (8 TexReg 2852).

Issued in Austin, Texas, on September 1, 1983.

TRD 836883

Rhonda Colbert Ryan  
Secretary of the Commission  
Public Utility Commission of  
Texas

Filed: September 1, 1983

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

An agency may take final action on a rule 30 days after a proposal has been published in the *Register*. The rule 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.

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which explain the legal justification for the rule; how the rule will function; contain comments received on the proposal; list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes; and contain the agency's interpretation of the statute under which the rule was adopted.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

## Adopted Rules

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

#### Chapter 5. Quarantines Pink Bollworm Quarantine

##### 4 TAC §5 178, §5 179

The Texas Department of Agriculture adopts amendments to §5 178, without changes, and §5 179, with changes to the proposed text published in the April 15, 1983, issue of the *Texas Register* (8 TexReg 1239). The text of §5 178 will not be republished.

The Texas Agriculture Code, Chapter 74, Subchapter B, concerning pink bollworm control, authorizes the department to establish regulations governing the planting and growing of host plants in a quarantined zone that are necessary to control, eradicate, or suppress the populations of the pink bollworms. Research and experience have shown that the most effective method of reducing pink bollworm populations is through the establishment of a host free period between growing seasons. This host free period is accomplished by destroying all forms of cotton that will harbor and support the reproduction of the pink bollworm.

After consultation with cotton producers and the Texas Agricultural Extension Service, the staff of the department felt that amendment of §5 178 and §5 179 was necessary. Section 5 178 did not include all of El Paso County, where cotton is produced, thereby allowing a portion of the county outside the quaran-

tine zone. Section 5.179 did not provide adequate cotton stalk destruction procedures necessary to produce a host-free period in El Paso and Hudspeth Counties.

The amendment of §5 178, concerning pink bollworm quarantine, resulted in the inclusion of all of El Paso County in the quarantine zone and is being adopted without changes. However, the majority of the cotton producers who attended a recent hearing in El Paso felt the amendments to §5 179, concerning authorized planting and stalk destruction dates, were not flexible enough in the time and method of destruction for Zone 8. Two procedures were displayed in §5 179(8) for control of the pink bollworm. The cotton producers pointed out that grazing was an adequate control procedure if completed within a controlled time-frame.

The staff of the department agrees with the suggestions and has amended §5 179 accordingly. Subsection (a) has been altered by adding the additional statement to the first sentence "except as provided in paragraph (8)(C)," which indicates the location of the alternate procedure. Subparagraph (C) has been added to paragraph (8) and contains the procedure available when permission is secured from the department's staff for an extension of time.

Comments received indicated that producers favor regulations under which they would be allowed to graze their fields as an alternative method of stalk destruction. Additional time would sometimes be required to complete the grazing. The department agrees with the comments expressed and has amended §5.179 to allow this procedure.

The amendments are adopted under the Texas Agriculture Code, Chapter 71 and Chapter 74 (1981), which provides the Texas Department of Agriculture with the authority to promulgate and adopt rules to prevent the infestation and control of the pink bollworm.

**§5.179. Authorized Planting and Stalk Destruction Dates.**

(a) All cotton plants in any of the quarantine zones must be destroyed by the plant destruction deadline indicated below for each zone, except as provided in paragraph (8)(C). In Zones (1)-(7), this may be accomplished by shredding or plowing out the plants in such a way as to absolutely prevent further growth and to the point where there are no live cotton stalks containing squares, blooms, or bolls present on plants during that time period. See paragraph (8) of this section for Zone 8.

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

(8) Zone 8

(A) complete shredding of stalks and turning under all debris by plowing to a depth of six inches by midnight, February 1, or

(B) shredding stalks and disced and cross-disced to a depth of four inches by February 1 and irrigating prior to March 1.

(C) The Texas Department of Agriculture may grant permission to extend the deadlines listed in subparagraphs (A) and (B) of this paragraph under the following conditions:

(i) the grower applies for such extension before February 1 of each year, and

(ii) the grower grazes the land, completing such grazing by March 1 of each year.

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

(b) (No change.)

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

Issued in Austin, Texas, on August 31, 1983.

TRD-836841 Jim Hightower  
Commissioner  
Texas Department of Agriculture

Effective date: September 20, 1983.

Proposal publication date: April 15, 1983.

For further information, please call (512) 475-6346.

## **Chapter 11. Herbicide Regulations**

### **4 TAC §11.1, §11.2**

The Texas Department of Agriculture adopts amendments to §11.1 and §11.2, without changes to the proposed text published in the May 20, 1983, issue of the *Texas Register* (8 TexReg 1650).

The department is adopting amendments to §11.1, concerning counties regulated, and §11.2, concerning county special provisions, as a result of a commissioners court order promulgated effective January 1, 1983, from each affected county. The Texas Agriculture

Code, §75.023, 1981, authorizes each commissioners court to hold hearings to determine whether an order should be issued exempting or not exempting portions of affected counties from the herbicide regulations.

The amendments are presently in effect since they were adopted on an emergency basis effective May 13, 1983, and renewed effective September 11, 1983.

By adoption of the amendments, the department's regulations displayed in §11.1-11.10 of this title, relating to herbicide regulations, will reflect changes necessitated by the commissioners court of each affected county and will display current law applicable in each county.

In amending §11.1, concerning counties regulated, Lynn County was removed from the list of counties and Dimmit County was added to the list of counties being subjected to all provisions of the Texas Agriculture Code, Chapter 75, 1981, unless specifically exempt by §11.2, concerning county special provisions.

Specific amendments were made to each enumerated subsection as indicated in §11.2. In subsection (j), King County was separated from Cottle County and the restriction prohibiting the application of hormone-type herbicides between June 10 and October 15 was removed from King County. King County was transferred to subsection (aa) with the prohibition of aerial application of hormone herbicides between June 10 and October 15 of each year being implemented. In subsection (o), concerning Burleson County, the restriction was removed prohibiting the application of regulated herbicides unless, prior to each use, application was made to the commissioner of agriculture to secure approval to use, instead, restrictions modifying the use of 2,4-D formulations shall be applicable, which shall be the use of amine formulations with a boom type sprayer within a designated area as defined in subparagraph (A), which is further delineated with boundary requirements enumerated in the appropriate subparagraph. Further, the use of cluster nozzles is prohibited in the designated area as indicated in subparagraph (B).

In subsection (r), concerning Runnels County, minor changes to terminology were made for clarification. The major changes affect the elimination of the prohibition to use high volatile and low volatile ester formulations of regulated herbicide between May 24 and October 1 of each year, instead the change prohibits the use of regulated herbicides between May 28 and October 1 of each year. In regulated areas, no permit is required from October 1 to May 28, instead of May 24, which was previously allowed. Also, amine and other nonvolatile formulation may be used between May 28 and October 1 of each year, provided a permit is secured. In subsection (u), concerning Frio County, the aerial application of 2,4,5-T is prohibited, except for the months of April, May, and June of each year, with all prior restrictions removed. In subsection (x), concerning Austin County, that portion of the county delineated is brought under control of the



Texas Agriculture Code, Chapter 75, 1981. In subsection (y), concerning Cochran County, restriction is placed on the aerial application of hormone herbicides between May 1 and October 15 of each year. In subsection (z), concerning Dimmit County, the delineated portion of the county is brought under control of the Texas Agriculture Code, Chapter 75, 1981, with the aerial application of hormone-type herbicides being prohibited in the designated area.

No comments were received regarding adoption of the amendments

The amendments are adopted under authority of the Texas Agriculture Code, §75.023(h), 1981, which requires the commissioners court to notify the Texas Department of Agriculture of a change in the status of the exemption of a county or a portion of a county which has developed through a public hearing process and is being implemented county-wise by a commissioners court order. The Texas Agriculture Code, §75.018 and §75.019, 1981, provides the department with the authority necessary to promulgate rules to enforce the provisions of the Texas Agriculture Code, Chapter 75, 1981.

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 August 31, 1983.

TRD-836842 Jim Hightower  
Commissioner  
Texas Department of Agriculture

Effective date: September 20, 1983  
Proposal publication date: May 20, 1983  
For further information, please call (512) 475-6346.

## TITLE 22. EXAMINING BOARDS

### Part XV. Texas State Board of Pharmacy

#### Chapter 283. Licensing Requirements for Pharmacists

##### 22 TAC §283.8

The Texas State Board of Pharmacy adopts an amendment to §283.8, without changes to the proposed text published in the July 19, 1983, issue of the *Texas Register* (8 TexReg 2683).

The amendment makes the rule consistent with Texas Civil Statutes, Article 4542a-1, §20. The proposed amendment states that any individual having completed an internship program may no longer be designated a pharmacist-intern except as provided in §283.10 of this title, concerning extended internship program.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4542a-1, §20, which provide the Texas State Board of Pharmacy with the authority to specify qualifications for registration in a board-approved internship.

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 August 23, 1983

TRD-836871 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy

Effective date: September 22, 1983  
Proposal publication date: July 19, 1983  
For further information, please call (512) 478-9827.

## Chapter 307. Board Expenses and Per Diem

### 22 TAC §307.1

The Texas State Board of Pharmacy adopts the repeal of §307.1, without changes to the proposal published in the July 19, 1983, issue of the *Texas Register* (8 TexReg 2683)

This rule is being repealed because, effective September 1, 1983, the per diem for board members will be set by the legislative appropriation prescribed in the General Appropriations Act, Article 5, §4.

No comments were received regarding adoption of the repeal.

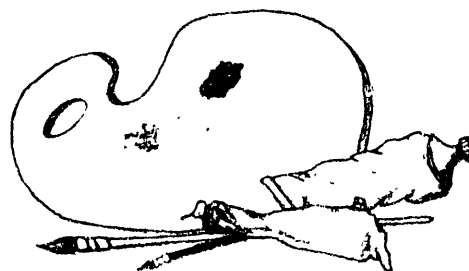
The repeal is adopted under Senate Bill 179, General Appropriations Act, Article 5, §4, which provides the Texas State Board of Pharmacy with the authority to entitle each member of the board the per diem as set by the legislative appropriation prescribed in the Act.

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 August 23, 1983

TRD-836872 Fred S. Brinkley, Jr., R.Ph.  
Executive Director/Secretary  
Texas State Board of Pharmacy

Effective date: September 22, 1983  
Proposal publication date: July 19, 1983  
For further information, please call (512) 478-9827.



## TITLE 40. SOCIAL SERVICES AND ASSISTANCE

### Part I. Texas Department of Human Resources Chapter 48. CCAD Minimum Standards

#### 40 TAC §48.8901

The Department of Human Resources adopts amendments to §48.8901 concerning standards for adult foster care in the Community Care for Aged and Disabled (CCAD) Program. The amendments are adopted with changes to the proposed text published in the June 28, 1983, issue of the *Texas Register* (8 TexReg 2254).

The standards are amended to allow adult foster care to be provided in small group homes. The small group homes must be licensed by the Texas Department of Health under the *Minimum Licensing Standards for Personal Care Homes*.

The amendments allow personal care homes serving from four to eight adults to be certified as adult foster care settings. Additional staff are required for these larger adult foster care homes.

Comments were received from the Adult Foster Home Association, San Antonio, and Sheltering Arms, Houston, at a public hearing on July 8, 1983. The Texas Association for Retarded Citizens submitted written comments. The Texas Association for Retarded Citizens commented for the proposal. The San Antonio Adult Foster Home Association commented against the proposal.

The Texas Association for Retarded Citizens commented in favor of §48.8901, saying the inclusion of small group homes as adult foster care settings is appropriate and timely. The Adult Foster Home Association of San Antonio commented against §48.8901(4)(C) and (D) requiring additional staff for licensed small group homes participating in adult foster care. The commenter said that additional staff is not necessary for the amount of service required by adult foster care clients. The commenter said additional staff might encourage a client's dependence. The department disagrees with this comment. The department estimates that an adult foster care client requires 2 1/2 hours of care per day. Homes in which four to eight clients must be assisted by one provider could not offer the necessary amount of care without additional staff. Another comment by this organization was that the effect of a rate increase would be offset by the cost of hiring additional staff. The department agrees with the last comment and is reducing the hours required in homes serving four and six clients. Section 48.8901(4) is changed to read:

(C) ensure the presence of an additional qualified member of the staff at least two hours a day for homes serving four clients, and four hours a day for homes serving five clients, including private pay.

(D) ensure the presence of an additional qualified member of the staff at least six hours a day for

homes serving six clients, and eight hours a day for homes serving seven or eight clients, including private pay

The Adult Foster Home Association of San Antonio commented against §48.8901(1)(J). This subsection requires the provider to get prior approval of substitute providers. A substitute is required when the provider is out of the home for more than 24 hours. The association disagreed with the rule saying that an adult foster care provider would not use an individual who is not trustworthy. No change is made to the rule based on this comment. The rule ensures that a qualified adult is available to care for the client in the provider's absence.

Sheltering Arms expressed disappointment at the size of the proposed rate increase for adult foster care. The commenter said providers in Houston spend more time assisting each client than the 2 1/2 hours per day used as a basis for calculating the rate. Sheltering Arms recommended a rate of \$12 a day instead of the rate of \$8.35. The proposed rate was not included in the rules and was not changed based on this comment. Beginning September 1, 1983, the department pays adult foster care providers \$8.35 a day per client. This is a 39% increase from the former rate of \$6 a day. The rate continues to be the same for all providers and is based on the estimate of the average amount of service required by adult foster care clients.

An additional change is being made to clarify §48.8901(4)(E). This change is shown as follows:

(E) ensure that additional qualified staff are on site for the specified number of hours, during the hours from 6 a.m. until 8 p.m. The provider must have records to document that qualified staff were serving clients for the required number of hours each day.

The following amendments are adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

**§48.8901. Standards for Adult Foster Care.** Providers of adult foster care services must meet these minimum standards.

(1) Provider responsibilities.

(A)-(I) (No change.)

(J) The provider must receive prior approval from the department if he plans to be absent for more than 24 hours. He must also receive prior approval of the proposed substitute provider or the alternate adult foster care setting.

(K)-(L) (No change.)

(2) (No change.)

(3) Facility requirements. Adult foster care homes must:

(A) be certified for no more than three DHR adult clients in the home; and

(B) serve no more than three clients, including private pay clients.

(4) Small group homes. Licensed small group homes providing adult foster care must:

(A) be licensed for no more than eight adult DHR clients in the home;

(B) serve no more than eight clients, including private pay clients;

(C) ensure the presence of an additional qualified member of the staff at least two hours a day for homes serving four clients, and four hours a day for homes serving five clients, including private pay clients;

(D) ensure the presence of an additional qualified member of the staff at least six hours a day for homes serving six clients, and eight hours a day for homes serving seven or eight clients, including private pay clients; and

(E) ensure that additional qualified staff are on site for the specified number of hours, during the hours from 6 a.m. until 8 p.m. The provider must have records to document that qualified staff were serving clients for the required number of hours each day.

(5) All homes. All homes providing adult foster care must:

(A) make an arrangement with the DHR client for reimbursement of his own room and board costs;

(B) have bedrooms with at least 100 square feet of floor space per client in a single occupancy room, and at least 72 square feet of floor space per client in a multiple occupancy room;

(C) have at least one telephone available in the home for clients to make local calls (providers must not charge clients for the use of the telephone);

(D) place emergency telephone numbers at or near the telephone;

(E) have either a conspicuously posted emergency/disaster evacuation plan that specifies what procedures residents follow in case of emergency, or documentation that evacuation drills are held regularly;

(F) provide each client with a bed, sufficient drawer and closet space for clothing, personal belongings, and toilet articles;

(G) provide at least one chair in each client's bedroom;

(H) have at least one dining table for residents;

(I) provide space and furniture for the resident's visitors;

(J) provide at least one grab bar in the bathtub/shower area;

(K) provide a slip-proof surface in the bathtub/shower area;

(L) ensure that first aid supplies are on the premises;

(M) have obtained inspections to ensure that the proprietor or lessee(s) of the home complies with the following:

(i)-(ii) (No change.)

(O) meet the requirements in paragraph (5), subsection (M), of this rule unless:

(i) certified by the program operators as complying with Housing Quality Standards for Housing and Urban Development (HUD), Section 8, Rental Subsidy; or

(ii) licensed by the Texas Department of Health as a small group home under the *Minimum Licensing Standards for Personal Care Homes*.

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 September 2, 1983.

TRD-836903

Marlin W. Johnston  
Commissioner  
Texas Department of Human  
Resources

Effective date: September 23, 1983

Proposal publication date: June 28, 1983

For further information, please call (512) 441-3355, ext. 2037.

# 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. Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register*. Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary. Published notices concerning county agencies include only the date, time, and location of the meeting. These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed.

Any of the governmental entities named above must have notice of an emergency meeting, or 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. However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

## Texas Antiquities Committee

**Monday, September 12, 1983, 10 a.m.** The Texas Antiquities Committee will meet in emergency session in Room 100B, Reagan Building, 101 West 15th Street, Austin. Items on the agenda include approval of minutes of committee Meetings 64 and 65, review and orientation on committee history and current activities, state archeological landmark nominations and designations of archeological and historic sites, local antiquities advisory committees, agency rules regarding permits for historic buildings; and a discussion and election of officers. The emergency status is necessary because the submission form did not meet the eight-day deadline.

**Contact:** Cindy Smetak, 105 West 16th Street, Austin, Texas, (512) 447-5211.

**Filed:** September 6, 1983, 9:38 a.m.  
TRD-836956

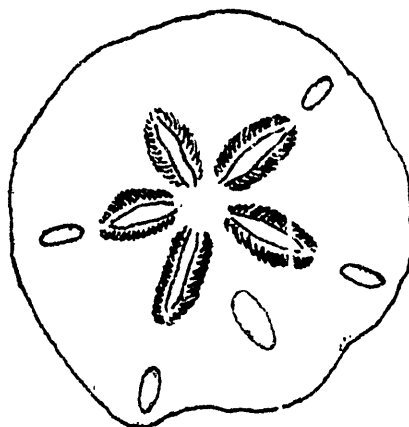
## Select Committee on Public Education

**Wednesday, September 14, 1983, 9 a.m.** The Select Committee on Public Education will meet in the Joe Kelly Butler Board

Room, Texas Education Agency North Building, 1200 East Anderson Lane, Austin. According to the agenda, the committee will hear testimony from teacher organizations and other professional organizations.

**Contact:** Larry Yawn, Sam Houston Building, Seventh Floor, 201 East 14th Street, Austin, Texas 78711, (512) 475-2427.

**Filed:** September 2, 1983, 3:38 p.m.  
TRD-836952



## Employees Retirement System of Texas

**Wednesday, September 21, 1983, 9 a.m.** The Group Insurance Advisory Committee of the Employees Retirement System of Texas (ERS) will meet in the ERS Building, 18th and Brazos Streets, Austin. According to the agenda, the committee will approve the May 5, 1983, minutes, elect officers for fiscal year 1984; review and discuss information required in developing recommendations to the trustee, and indoctrinate new members.

**Contact:** Clayton T. Garrison, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431.

**Filed:** September 2, 1983, 11:10 a.m.  
TRD-836914

## Texas Employment Commission

**Tuesday, September 13, 1983, 9 a.m.** The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 15th Street and Congress Avenue, Austin. According to the agenda, the commission will consider and act on higher level appeals in unemployment compensation cases listed on

Docket 37 and set the date of the next meeting.

**Contact:** Courtenay Browning, TEC Building, Room 608, 15th Street and Congress Avenue, Austin, Texas (512) 397-4415.

**Filed:** September 2, 1983, 3:42 p.m.  
TRD-836951

### State Board of Insurance

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. Days, times, and dockets follow.

**Tuesday, September 13, 1983, 9 a.m.** Docket 7305—whether the title insurance agent's license held by Statewide Title of Chambers County, Inc., Anahuac, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:13 a.m.  
TRD-836915

**Tuesday, September 13, 1983, 10:30 a.m.** Docket 7306—whether the title insurance agent's license held by Stewart Title of Johnson County, Inc., Cleburne, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:13 a.m.  
TRD-836916

**Tuesday, September 13, 1983, 1:30 p.m.** Docket 7325—application for approval of original charter of SWL RE Life Insurance Company, Dallas.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:13 a.m.  
TRD-836917

**Tuesday, September 13, 1983, 3:30 p.m.** Docket 7353—application for amendment to articles of incorporation of The Prairie States Insurance Company, Austin, increasing the authorized capital stock to \$1 million represented by 12,500 shares at \$80 per share.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:13 a.m.  
TRD-836918

**Wednesday, September 14, 1983, 9 a.m.** Docket 7307—whether the title insurance

agent's license held by Stewart—Duphorne Title Company, Aransas Pass, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:13 a.m.  
TRD-836919

**Wednesday, September 14, 1983, 10:30 a.m.** Docket 7308—whether the title insurance agent's license held by Texarkana Title and Abstract Company, Inc., Texarkana, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:13 a.m.  
TRD-836920

**Wednesday, September 14, 1983, 1:30 p.m.** Docket 7334—application of Ronald L. Jensen of Hurst to acquire control of United Group Insurance Company of Hurst.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:13 a.m.  
TRD-836921

**Thursday, September 15, 1983, 9 a.m.** Docket 7309—whether the title insurance agent's license held by Texas General Title, Inc., Plano, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:14 a.m.  
TRD-836922

**Thursday, September 15, 1983, 10:30 a.m.** Docket 7310—whether the title insurance agent's license held by Texas Republic Title Company, Houston, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:14 a.m.  
TRD-836923

**Thursday, September 15, 1983, 2 p.m.** The State Board of Insurance will meet in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board will conduct a public hearing to consider proposed rates for prepaid legal services contracts to be written by Bankers Multiple Line Insurance Company.

**Contact:** Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

**Filed:** September 6, 1983, 9:39 a.m.  
TRD-836957

The Commissioner's Hearing Section of the State Board of Insurance will conduct public hearings in Room 342, 1110 San Jacinto Street, Austin. Days, times, and dockets follow

**Friday, September 16, 1983, 9 a.m.** Docket 7311—whether the title insurance agent's license held by Golden Crescent Abstract & Title Company, doing business as Texas Titles, Victoria, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:14 a.m.  
TRD-836924

**Friday, September 16, 1983, 10:30 a.m.** Docket 7312—whether the title insurance agent's license held by Wilson Title Company, Inc., McKinney, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:14 a.m.  
TRD-836925

**Friday, September 16, 1983, 1:30 p.m.** Docket 7313—whether the title insurance agent's license held by Wise County Abstract Company, Decatur, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:14 a.m.  
TRD-836926

**Monday, September 19, 1983, 10:30 a.m.** Docket 7347—whether the local recording agent license and surplus lines license held by Joseph Michael Edge, doing business as Advent Insurance Agency, San Antonio, should be canceled or revoked.

**Contact:** John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

**Filed:** September 2, 1983, 11:14 a.m.  
TRD-836927

### Texas Board of Land Surveying

**Wednesday, September 21, 1983, 8 a.m.** The Executive Committee of the Texas Board of Land Surveying will meet in Suite 210W, 1106 Clayton Lane, Austin. According to the agenda, the committee will conduct informal hearings on complaints filed against registered public surveyors L. D. King of Aransas Pass, Donald Szurgot of

Burleson, and Joe Page Moore of Fort Stockton

**Contact:** Betty J. Pope, 1106 Clayton Lane, Suite 210 West, Austin, Texas, (512) 452-9427.

**Filed:** September 2, 1983, 2:14 p.m.  
TRD-836944

### State Board of Morticians

**Tuesday, September 6, 1983, 9 a.m.** The State Board of Morticians submitted an emergency revised agenda for a meeting held at 1513 IH 35 South, Austin. According to the agenda summary, the board considered an applicant for reinstatement of licenses and apprentice registrations. The emergency status was necessary because all credentials and information were not received until after the final deadline.

**Contact:** John W. Shocklee, 1513 IH 35 South, Austin, Texas 78741, (512) 442-6721.

**Filed:** September 1, 1983, 4:08 p.m.  
TRD-836881

### Texas Pork Producers Board

**Thursday, October 6, 1983, 1 p.m.** The Texas Pork Producers Board of the Texas Department of Agriculture will meet in the Executive I Meeting Room, Executive Inn, 3232 West Mockingbird Lane, Dallas. According to the agenda, the board will hear reports of the treasurer and the Finance and Check-Off, Research, Education, and Promotion Committees.

**Contact:** Ken Horton, P.O. Box 10168, Austin, Texas 78766, (512) 453-0615.

**Filed:** September 1, 1983, 1:53 p.m.  
TRD-836869

### Public Utility Commission of Texas

**Friday, September 2, 1983, 9 a.m.** The Public Utility Commission of Texas met in emergency session in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the commission considered the appeal of the examiner's order denying waiver of requirements for unadjusted data in 16 TAC §23.23 (052 02.03.033(b)(2)). The emergency status was necessary so that

deadlines under 16 TAC §23 23(b)(2) could be met

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

**Filed:** September 1, 1983, 2:49 p.m.  
TRD-836880

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

**Tuesday, September 13, 1983, 1:30 p.m.** A prehearing meeting in Docket 5351—application of San Miguel Electric Cooperative, Inc., for a rate increase.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

**Filed:** September 2, 1983, 2:17 p.m.  
TRD-836945

**Thursday, September 22, 1983, 10 a.m.** A prehearing conference in Docket 5244—application of Great Western Utilities Company for water and sewer certificates of convenience and necessity in Montgomery County

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** September 6, 1983, 9:32 a.m.  
TRD-836959

**Thursday, September 29, 1983, 10 a.m.** A hearing on the merits in Dockets 5271 and 5304—inquiry into the water rate increase of Skycorp, Inc., within Johnson County.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

**Filed:** September 2, 1983, 9:27 a.m.  
TRD-836907

**Friday, September 30, 1983, 10 a.m.** A hearing in Docket 5265—petition of Community Water and Sewer Corporation to cease operations in the Green Valley addition in Johnson County.

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** September 2, 1983, 2:13 p.m.  
TRD-836946

**Tuesday, October 25, 1983, 10 a.m.** A hearing on the merits in Docket 5296—application of Walter J. Sauder, doing business as San Miguel Springs Water Company, for

a certificate of convenience and necessity within Guadalupe County

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

**Filed:** September 2, 1983, 9:27 a.m.  
TRD-836908

**Tuesday, November 29, 1983, 10:30 a.m.** A hearing in Docket 5267—inquiry into services rendered by View-Caps Water Supply Corporation

**Contact:** Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

**Filed:** September 2, 1983, 9:27 a.m.  
TRD-836909

### Railroad Commission of Texas

**Monday, September 12, 1983, 9 a.m.** Divisions of the Railroad Commission of Texas will meet at 1124 IH 35 South, Austin. Divisions, meeting rooms, and agendas follow.

The Administrative Services Division will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, personnel matters, and consider an interagency contract with the State Purchasing and General Services Commission to provide security services for fiscal year 1984

**Contact:** Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1211.

**Filed:** September 2, 1983, 11:48 a.m.  
TRD-836928

The Automatic Data Processing Division will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

**Contact:** Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

**Filed:** September 2, 1983, 11:49 a.m.  
TRD-836929

The Flight Division will meet in Room 107 to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Ken Fossler, 1124 IH 35 South, Austin, Texas 78704, (512) 445-1103.

**Filed:** September 2, 1983, 11:51 a.m.  
TRD-836930

The Gas Utilities Division will meet in Room 107 to consider gas utilities Dockets 4063, 4065, 4066, 4094, 4155, 4160-4175, and the division director's report

**Contact:** Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 475-0461.

**Filed:** September 2, 1983, 11:47 a.m.  
TRD-836931

The Office of Information Services will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** Brian W. Scharble, P.O. Drawer 12967, Austin, Texas 78711

**Filed:** September 2, 1983, 11:48 a.m.  
TRD-836933

The LP-Gas Division will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, and personnel matters

**Contact:** Hugh E. Keepers, P.O. Drawer 12967, Austin, Texas 78711

**Filed:** September 2, 1983, 11:49 a.m.  
TRD-836934

The Oil and Gas Division will meet in the first floor auditorium to consider various matters falling within the Railroad Commission's oil and gas regulatory jurisdiction.

**Contact:** Liz Nauert, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1307.

**Filed:** September 2, 1983, 11:50 a.m.  
TRD-836935

#### Additions to the above agenda

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

**Contact:** Madalyn J. Girvin, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1273.

**Filed:** September 2, 1983, 11:49 a.m.  
TRD-836937

Consideration of whether or not to adopt statewide Rule 85, Oil Transportation Manifest Rule.

**Contact:** Patrick F. Thompson, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1286

**Filed:** September 2, 1983, 11:50 a.m.  
TRD-836936

Consideration of Docket 8-78,489—application of A. K. Guthrie Operating Com-

pany for an amendment of field rules, Sara-Mag (Canyon Reef) Field, Howard County. Order vacating final order of December 13, 1982, in compliance with a judgment of 201st District Court, Travis County, entered August 2, 1983, in Cause 344,493, styled Guthrie Operating Company v. Railroad Commission of Texas

**Contact:** Norman Bonner, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1292

**Filed:** September 2, 1983, 11:47 a.m.  
TRD-836938

The Personnel Division will meet in the first floor auditorium to consider and act on the division director's report on division administration, budget, procedures, and personnel matters

**Contact:** Herman E. Wilkins, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1120.

**Filed:** September 2, 1983, 11:51 a.m.  
TRD-836939

The Office of the Special Counsel will meet in the third floor conference room to consider and act on the division director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters; and Docket 5-76,659—recommendation of the commission that the Travis Peak Formation be designated as a tight sands formation in Texas, pending before the Federal Energy Regulatory Commission

**Contact:** Walter Earl Fife, 1124 IH 35 South, Austin, Texas 78701, (512) 445-1186.

**Filed:** September 2, 1983, 11:51 a.m.  
TRD-836940

The Surface Mining and Reclamation Division will meet in Room 107 to consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

**Contact:** J. Randel (Jerry) Hill, 105 West Riverside Drive, Austin, Texas, (512) 475-8751.

**Filed:** September 2, 1983, 11:48 a.m.  
TRD-836941

The Transportation Division will meet in the first floor auditorium, Room 107, to consider various matters falling within the commission's transportation regulatory jurisdiction.

**Contact:** Sandy Yates, 1124 IH 35 South, Austin, Texas 78704.

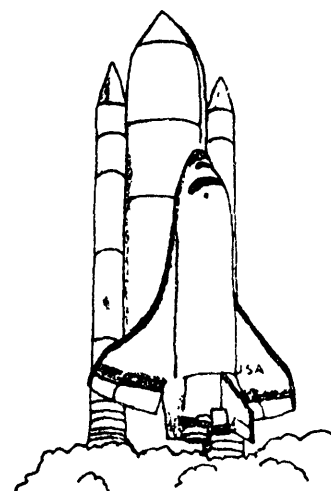
**Filed:** September 2, 1983, 11:47 a.m.  
TRD-836942

#### Addition to the above agenda

Consideration of Docket 05 481A1AR—proposed repeal of 16 TAC §5 481, concerning telephone reports of certain accidents incidents of railroads, and Docket 05 612A1NR—proposed new 16 TAC §§5 612-5 615, concerning railroad safety requirements

**Contact:** Sandy Yates, 1124 IH 35 South, Austin, Texas, (512) 445-1330

**Filed:** September 2, 1983, 4:03 p.m.  
TRD-836953



#### Texas State Technical Institute

**Friday, September 16, 1983.** The Board committees and the Board of Regents of the Texas State Technical Institute will meet at 9 a.m. and 10:30 a.m., respectively, at the Colonial Inn, Abilene. Items on the agenda summary include approval of minutes, reports of policy committees, and other business.

**Contact:** Theodore A. Talbot, Texas State Technical Institute, Waco, Texas 76705, (817) 799-3611, ext. 3909.

**Filed:** September 2, 1983, 12:58 p.m.  
TRD-836932

#### Texas Turnpike Authority

**Wednesday, September 14, 1983.** Committees of the Texas Turnpike Authority (TTA) will meet at the TTA Administration Building, 3015 Raleigh Street, Dallas. Times, committees, and agenda summaries follow.

## Texas Register

**2 p.m.** The Right-of-Way Acquisition Committee will meet in executive session to consider repurchase or value of real property and approval of Property Appraisal List I for the acquisition of right-of-way for the Dallas North Tollway Extension project.

**2:30 p.m.** The Permanent Contract Awards Committee will consider the following in connection with the Dallas North Tollway Extension project: award of Contract DNT-127, interagency cooperation contract with the State Department of Highways and Public Transportation; and proposed agreements with RepublicBank of Dallas, N.A., as trustee, and Wells Fargo Armored Service.

**Contact:** Harry Kabler, P.O. Box 190369, Dallas, Texas 75219, (214) 522-6200.

**Filed:** September 1, 1983, 10:14 a.m.  
TRD-836865, 836866

### Texas Water Commission

**Monday, September 12, 1983, 10 a.m.** The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider water district bond issues, use of surplus funds, change in plans, setting hearing for district creation, water quality proposed permits, amendments and renewals, water quality permit dismissal, amendment to certificate of adjudication, extension of time, motion for rehearing, and filing and setting of hearing dates.

**Contact:** Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514.

**Filed:** September 1, 1983, 11:21 a.m.  
TRD-836867

### Regional Agencies

#### Meeting Filed September 1

**The Lower Colorado River Authority,** Board of Directors, met at 3700 Lake Austin Boulevard, Austin, on September 8, 1983, at 1 p.m. Information may be obtained from Elof H. Soderberg, P.O. Box 220, Austin, Texas 78767, (512) 473-3200.  
TRD-836868

#### Meetings Filed September 2

**The Ellis County Tax Appraisal District** met at 406 Sycamore Street, Waxahachie, on

September 8, 1983, at 7 p.m. Information may be obtained from Gray Chamberlain, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

**The Garza County Appraisal District,** Board of Directors, met in the appraisal office, courthouse, Post, on September 6, 1983, at 7 p.m. Information may be obtained from Jean M. Westfall, P.O. Drawer 1, Post, Texas 79356, (806) 495-3939.

**The High Plains Underground Water Conservation District 1,** Board of Directors, will meet in the conference room, 2930 Avenue Q, Lubbock, on September 13, 1983, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, (806) 762-0181.

**The Jones County Appraisal District,** Board of Directors, will meet at 1137 East Court Plaza, Anson, on September 15, 1983, at 9 a.m. Information may be obtained from John Steele, P.O. Box 348, Anson, Texas 79501, (915) 823-2422.

**The Lampasas County Appraisal District** will meet at 403 East Second Street, Lampasas, on September 9, 1983, at 3 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76750, (512) 856-8058.

**The Northeast Texas Community Development Program,** Regional Review Committee, met at the Titus County Civic Center, Mt. Pleasant, on September 7, 1983, at 5:30 p.m. Information may be obtained from J. Goerke, P.O. Box 5307, Texarkana, Texas 75501, (501) 774-3481.

**The Swisher County Appraisal District,** Board of Directors, met at 130 North Armstrong, Tulia, on September 8, 1983, at 8 p.m. Information may be obtained from Nan Davis, 130 North Armstrong, Drawer 8, Tulia, Texas 79088, (806) 995-3015.

**The Texas Municipal Power Agency,** Board of Directors, met at Gibbons Creek Steam Electric Station, Carlos, on September 8, 1983, at 9 a.m. Information may be obtained from Frank H. Bass, Jr., 2225 East Randol Mill Road, Suite 600, Arlington, Texas 76011, (817) 461-4400.

**The Tyler County Tax Appraisal District,** Board of Directors, will meet at 1004 West Bluff, Woodville, on September 14, 1983, at 7 p.m. Information may be obtained from Leslie J. Silva, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.

**The Wise County Appraisal District,** Board of Directors, will meet at 206 South State, Decatur, on September 8, 1983, at 8:30 a.m. and 9 a.m. Information may be obtained from Angela Caraway, P.O. Box 509, Decatur, Texas 76234, (817) 627-3081.  
TRD-836913

#### Meetings Filed September 6

**The Archer County Appraisal District,** Board of Directors, will meet at the Archer County Courthouse, Archer City, on September 14, 1983, at 8 p.m. Information may be obtained from A. G. Reis, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

**The Bastrop County Appraisal District,** Board of Review, will meet in the county commissioners' courtroom, 804 Pecan Street, Bastrop, on September 12, 1983, at 7 p.m. Information may be obtained from Roy E. Humble, 708 Sprme Street, Bastrop, Texas, (512) 321-4316.

**The Bexar-Medina-Atascosa Counties Water Control and Improvement District 1,** Board of Directors, will meet at the district office, Highway 81, Natalia, on September 12, 1983, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 170, Natalia, Texas 78059, (512) 663-2132.

**The Brazos Higher Education Authority, Inc.,** Board of Directors, met in emergency session at City Club, Eighth and Washington, Waco, on September 6, 1983, at noon. Information may be obtained from Murray Watson, Jr., P.O. Box 1308, Waco, Texas 76701, (817) 753-0913.

**The Carson County Appraisal District,** Board of Directors, will meet at 220 Main Street, Panhandle, on September 14, 1983, at 7:30 p.m. Information may be obtained from Dianne Lavake, Box 970, Panhandle, Texas 79068, (806) 537-3569.

**The Central Counties Center for Mental Health and Mental Retardation Services,** Board of Trustees, will meet at 302 South 22nd Street, Temple, on September 15, 1983, at 7:45 p.m. Information may be obtained from Steven B. Schnee, Ph.D., P.O. Box 518, Temple, Texas 76503.

**The Copano Bay Soil and Water Conservation District 329** will meet at Shay Plaza, 106 South Alamo, Refugio, on September 14, 1983, at 8:30 p.m. Information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, (512) 526-2334.



**The DeWitt County Appraisal District,** Board of Directors, will meet at 103 Bailey Street, Cuero, on September 14, 1983, at 7:30 p.m. Information may be obtained from Wayne K. Woolsey, P.O. Box 4, Cuero, Texas 77984, (512) 275-5753.

**The Fannin County Single Appraisal District,** Board of Directors, met in emergency session at 401 North Main, Bonham, on September 6, 1983, at 5:30 p.m. Information may be obtained from Joe Hart, 401 North Main, Bonham, Texas 75418, (214) 583-9546.

**The Fisher County Appraisal District,** Board of Directors, will meet in the Hospitality Room, Fisher County Courthouse, Roby, on September 12, 1983, at 8 p.m. Information may be obtained from Kyle Moore, Route 1, Roby, Texas 79543.

**The Gregg County Appraisal District,** Board of Directors, will meet at 2010 Gilmer Road, Longview, on September 13, 1983, at noon. Information may be obtained from William L. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

**The Gulf Bend Mental Health and Mental Retardation Center,** Board of Trustees, met in emergency session at 2105 Port Lavaca Drive, Victoria, on September 7, 1983, at noon. Information may be obtained from T. G. Kellher, Jr., 2105 Port Lavaca Drive, Victoria, Texas 77902, (512) 578-5262.

**The Hansford County Appraisal District,** Board, will meet at 13 West Kenneth Avenue, Spearman, on September 14, 1983, at

3 p.m. Information may be obtained from Alice Peddy, Box 567, Spearman, Texas 79081, (806) 659-5575.

**The Henderson County Appraisal District,** Board of Directors, will meet at 101 East Corsicana, Athens, on September 15, 1983, at 7:30 p.m. Information may be obtained from Linda Hagar, 101 East Corsicana, Athens, Texas, (214) 675-9296.

**The Hood County Appraisal District,** Board of Directors, will meet at 1902 West Pearl, Granbury, on September 13, 1983, at 7:30 p.m. Information may be obtained from Ben H. Griffin, P.O. Box 819, Granbury, Texas, (817) 573-5595.

**The Lamar County Appraisal District,** Board of Directors, will meet at 1523 Lamar Avenue, Paris, on September 12, 1983, at 4 p.m. Information may be obtained from L. J. Ricketson, 1523 Lamar Avenue, Paris, Texas, (214) 785-7822.

**The Nortex Regional Planning Commission,** General Membership Committee, will meet at McBride Seafood & Steak, 5400 Seymour Highway, Wichita Falls, on September 15, 1983, at noon. The North Texas State Planning Region Consortium will meet at the same location on the same day at 1 p.m. Information may be obtained from Edwin B. Daniel, 2101 Kemp Boulevard, Wichita Falls, Texas 76309, (817) 322-5281.

**The Palo Pinto Appraisal District,** Board of Directors, met in emergency session in the county courtroom, Palo Pinto, on September 8, 1983, at 3 p.m. Information may be obtained from John R. Winters, 100

Southeast Fifth Street, Mineral Wells, Texas 76067, (817) 659-3651.

**The Parmer County Tax Appraisal District** will meet at 305 Third, Bovina, on September 12, 1983, at 8:30 p.m. Information may be obtained from Ronald E. Procter, Box 56, Bovina, Texas 79009, (806) 238-1405.

**The Permian Basin Regional Planning Commission,** Board of Directors, will meet at 2514 Pliska Drive, Midland, on September 14, 1983, at 1:30 p.m. Information may be obtained from Pam K. Hammit, P.O. Box 6391, Midland, Texas 79701, (915) 563-1061.

**The Rockwall County Central Appraisal District,** Board of Directors, will meet at 106 North San Jacinto, Rockwall, on September 12, 1983, at 7:30 p.m. Information may be obtained from Eugene "Bo" Daffin, 106 North San Jacinto, Rockwall, Texas 75087, (214) 722-2034.

**The Tarrant County Appraisal District,** Board of Directors, will meet in Suite 300, 1701 River Run, Fort Worth, on September 15, 1983, at 10 a.m. Information may be obtained from Cecil Mae Perrin, 1701 River Run, Suite 300, Fort Worth, Texas 76107, (817) 332-8522.

**The Upshur County Appraisal District,** Board of Directors, will meet at the district office, Trinity and Warren Streets, Gilmer, on September 12, 1983, at 7 p.m. Information may be obtained from Louise Stracener, P.O. Box 31, Gilmer, Texas 75644, (214) 843-3041.

TRD-836958

# In Addition

The *Register* is required by statute to publish applications to purchase control of state banks (filed by the banking commissioner); notices of rate ceilings (filed by the consumer credit commissioner); changes in interest rate and applications to install remote service units (filed by Texas Savings and Loan commissioner), and consultant proposal requests and awards (filed by state agencies, regional councils of government, and the Texas State Library and Archives Commission)

In order to aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows. This often includes applications for construction permits (filed by the Texas Air Control Board), applications for amendment, declaratory ruling, and notices of intent (filed by the Texas Health Facilities Commission), applications for waste disposal permits (filed by the Texas Water Commission), and notices of public hearing.

## Texas Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of August 15-26, 1983.

Information relative to the applications listed below, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the address stated above, and at the regional office for the Air Quality Control Region within which the proposed facility will be located.

Listed are the names of the applicants and the city in which each facility is located, type of facility, location of the facility (if available); permit number; and type of application—new source or modification.

Solano Gas Processing, Inc., Asherton; contracting gas treating; suburban plant-six miles east of Asherton; 3694A; modification.

Amarillo By-Products, Inc., Amarillo; meat, meal, and tallow; 8415 East First; 1494C; modification.

High Plains Pavers, Inc., Plainview; hot mix asphalt; five miles south and one mile west of Highway 87; 7953B; modification.

Oasis Pipe Line Company, Pyote; gas transportation; FM 1927; 9357; new source.

Joe McDaniel Construction Company, Austin; utility construction; Old Bee Cave Road; 1399A; modification.

Cen-Tex Ready Mix Concrete Company, Inc., Copperas Cove; ready-mix concrete; 139 Wolfe Road; 3551A, modification.

General Motors Assembly Division, Arlington; automobile assembly, 2525 East Abram; 9358; new source.

Laurel Industries, Inc., La Porte, antimony oxide; 1901 Avenue H at 16th Street, 4558F, 4558G, new sources.

QIR Products & Chemicals, Pasadena; industrial chemicals, 412 Davison Road; 9359; new source.

Monarch Castings Corporation, Memphis; foundry; 2100 Greenwood, 8340A, modification.

Issued in Austin, Texas, on August 30, 1983.

TRD-836858

Ramon Dasch  
Director of Hearings  
Texas Air Control Board

Filed: September 1, 1983

For further information, please call (512) 451-5711, ext. 354.

## Public Hearing

Notice is hereby given that pursuant to the requirements of the Texas Clean Air Act, §§3.09, 3.15 and 3.17, Texas Civil Statutes, Article 4477-5; 40 Code of Federal Regulations §51.4 of the Environmental Protection Agency regulations, concerning state implementation plans; the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §5; and 31 TAC §103.11(4) of the procedural rules of the Texas Air Control Board (TACB) the TACB will conduct a public hearing to receive testimony concerning 14 new rules, amend-

ments to seven of its rules, and proposed revisions to the state implementation plan

Specifically, the TACB is proposing to reorganize existing 31 TAC §§113.1-113.13 into new Subchapter A, titled "Inorganic Fluoride Compounds and Beryllium." In conformity with this reorganization, the TACB is proposing to amend 31 TAC §§113.1-113.3, 113.8, 113.9, 113.11, and 113.13 to remove their internal references to Chapter 113 in general and make them refer only to Subchapter A of Chapter 113.

The TACB is simultaneously proposing new 31 TAC §§113.41-113.43, 113.51-113.53, 113.71, 113.72, 113.111, 113.112, and 113.121-113.124. These rules will be organized under a new Subchapter B, titled "Lead from Stationary Sources." These proposed new rules are concerned with the following subjects:

#### Nonferrous Smelters in El Paso County

- §113.41 *Maintenance and Operation of Control Equipment*
- §113.42 *Areas Accessible to the General Public*
- §113.43 *Control of Fugitive Dust*
- §113.51 *Materials Handling and Transfer*
- §113.52 *Smelting of Lead*
- §113.53 *Smelting of Copper and Zinc*
- §113.71 *Lead Emission Limits for Stacks*
- §113.72 *Stack Height Requirements*

#### Alternate Controls

- §113.111 *Alternate Means of Control*
- §113.112 *Alternate Emission Reductions*

#### Compliance and Control Plan Requirements

- §113.121 *Compliance with Other Rules*
- §113.122 *Dates for Control Plan Submission and for Final Compliance*
- §113.123 *Control Plan Procedure*
- §113.124 *Reporting Procedure*

Finally, the TACB is proposing to revise its state implementation plan for lead in regard to El Paso. These revisions will replace and supersede Section II D of the previously proposed state implementation plan for lead, dated March 21, 1980.

The hearing will be held on October 11, 1983, at 7 p.m., at the City of El Paso city council chambers, second floor, 2 Civic Center Plaza, El Paso.

Public comments, both oral and written, on these proposed amendments, new rules, and state implementation plan revisions are invited at the public hearings. Written comments not submitted at the hearing may be submitted to the TACB central office in Austin up to and including October 19, 1983. The comments at the hearing, as well as the written comments received by 4 p.m. on October 19, 1983, at the TACB central office in Austin, will be considered by the board prior to any final decision on the proposed changes. Five copies of all written comments offered would be helpful to the board in making its review.

The proposed amendments and new rules are being published in the *Texas Register*. Copies of them, as well as the proposed lead SIP revisions, are available at the central office of the TACB, 6330 Highway 290 East, Austin,

Texas 78723, and at the regional office of the agency, 9615 Sims Drive, El Paso, Texas 79925. For further information, call Beverly Fowler at (512) 451-5711.

Issued in Austin, Texas, on August 30, 1983

TRD 836864 Bill Stewart, P.E.  
Executive Director  
Texas Air Control Board

Filed September 1, 1983

For further information, please call (512) 451-5711, ext. 354

## Texas Department of Health Licensing Actions for Radioactive Materials

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 radioactive 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.

### AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Diskeene, Hodges, and Graham	05-472	Dallas	32	08/15/83
Harlingen	Valles Baptist Medical Center	08-1909	Harlingen	17	08/16/83
Houston	Houston Northwest Medical Center	11-2253	Houston	16	08/18/83
Houston	Medical Center Del Oro Hospital	11-2073	Houston	8	08/15/83
Lubbock	St. Mary of the Plains Hospital & Rehabilitation Ctr	02-1547	Lubbock	24	08/19/83
San Antonio	Southwest Texas Methodist Hospital	09-594	San Antonio	61	08/18/83
Throughout Texas	Comanche Wireline Company	05-3012	Mineral Wells	3	08/17/83
Throughout Texas	Welex	11-387	Houston	55	08/17/83
Throughout Texas	Zone Perforators	12-2834	Midland	8	08/17/83
Throughout Texas	Schlumberger Well Services	11-1833	Houston	33	08/17/83
Throughout Texas	Panhandle Perforators, Inc.	01-3065	Pampa	1	08/17/83
Webster	Clear Lake Hospital	11-1680	Webster	16	08/18/83

### RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Friendswood	Iso Tex Diagnostics	11-2999	Friendswood	1	08/15/83
Gatesville	Corvell Memorial Hospital	06-2391	Gatesville	7	08/16/83
Houston	Bio Science Laboratories	11-2883	Houston	3	08/17/83
San Antonio	Dudley Harris, M.D., P.A.	09-2399	San Antonio	3	08/16/83
Sherman	Medical Plaza Hospital	05-2372	Sherman	5	08/17/83
Throughout Texas	All American Maintenance, Inc.	09-1336	San Antonio	9	08/19/83

**TERMINATIONS OF LICENSES ISSUED:**

Location	Name	License #	City	Amend- ment #	Date of Action
Irving	Nuclear Apothecary, Inc	05-2765	Irving	12	08/18/81

In issuing new licenses and amending and renewing existing licenses, the 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, Texas Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

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, 1212 East Anderson Lane, Austin, Texas, from 8:00 a.m. to 5:00 p.m. Monday through Friday (except holidays).

Issued in Austin, Texas, on September 2, 1983.

TRD-836910 Robert A. MacLean, M.D.  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: September 2, 1983  
For further information, please call (512) 835-7000.

## Public Hearings

The Texas Department of Health will conduct the following two hearings on applications for municipal solid waste sites:

(1) Application No. 1503 of North Texas Services, Inc., to operate a proposed Type I municipal solid waste landfill site to be located approximately 2.5 miles southeast of Celeste, one mile northeast of the community of Kingston, one mile northeast of the junction of FM Road 903 with U.S. Highway 69, and between two unnamed county roads in Hunt County.

The public hearing will be held on Tuesday, October 4, 1983, 9:30 a.m. at Wright Park Community Center, Highway 69 South, Greenville, Texas.

(2) Application No. 1510 of Hardin County to operate a proposed Type I municipal solid waste disposal site to be located adjacent to the east side of the existing Hardin County Landfill and fronting on the north side of FM Road 770, 0.6 mile west of the intersection of FM Road 770 and State Highway 326, and approximately 3.25 miles southwest of the County Courthouse in Kountze, in Hardin County. The public hearing will be held on Wednesday, October 5, 1983, 9:00 a.m. in the Commissioner's Courtroom, Hardin County Courthouse, Kountze, Texas.

Issued in Austin, Texas, on September 2, 1983.

TRD-836911 Robert A. MacLean, M.D.  
Deputy Commissioner  
Professional Services  
Texas Department of Health

Filed: September 2, 1983  
For further information, please call (512) 458-7271.

## Request for Public Comments

Under authority of the Omnibus Budget Reconciliation Act of 1981, the Texas Department of Health is making application to the U. S. Public Health Service for funds to continue the Maternal and Child Health Services and Preventive Health and Health Services Block Grant Programs during federal fiscal year 1984.

The department has completed the intended use of funds reports for each of the block grants as required by the previously mentioned Act. Public comment taken from the testimony received at the eight public hearings held throughout the State of Texas has been included in these reports. The intended use reports consist of intended expenditures and statements of compliances and assurances that the state will expend the funds in a fair and equitable manner and in accordance with program requirements.

The purpose of this notice is to permit review and comment from any person (including any federal, state, local, or other public agencies) on these reports. They may be viewed at the following Texas Department of Health regional offices:

<b>Public Health Region 1</b>	<b>Public Health Region 6</b>
Old Health Center	2408 South 37th Street
Building	Temple, Texas 76503
300 Victory Drive	(817) 778-6744
Canyon, Texas 79016	

Public Health Region 2/12 4709 66th Street Lubbock, Texas 79414 (806) 797-4331	Public Health Region 7/10 1517 Front Street Tyler, Texas 75702 (214) 595-3585
Public Health Region 3 2300 East Yandell El Paso, Texas 79903 (915) 533-4972	Public Health Region 8 1401 S. Rangerville Road Harlingen, Texas 78550 (512) 423-0130
Public Health Region 4 Commerce Plaza Office Building 1290 South Willis Suite 100 Abilene, Texas 79605 (915) 695-7170	Public Health Region 9 Old Memorial Hospital Garner Field Road Uvalde, Texas 78801 (512) 278-7173
Public Health Region 5 701 Directors Drive Arlington, Texas 76011 (817) 460-3032	Public Health Region 11 1110 Avenue G Rosenberg, Texas 77471 (713) 342-8685

In addition, the following local health departments will have the report:

Corpus Christi-Nueces County Health Department 1702 Horne Road Corpus Christi, Texas 78408 (512) 855-4051	San Antonio Metropolitan Health District 332 West Commerce Street San Antonio, Texas 78285 (512) 299-8780
Denison-Sherman- Grayson County Health Department 521 West Houston Sherman, Texas 75090 (214) 893-0131	Texarkana-Bowie County Family Health Center 902 West 12th Street Texarkana, Texas 75502 (214) 792-8211
Laredo-Webb County Health Department 2600 Cedar Street Laredo, Texas 78041 (512) 723-2051	Victoria County Health Department 107 West River Street Victoria, Texas 77901 (512) 578-6281
San Angelo-Tom Green County Health Department City Hall San Angelo, Texas 76902 (915) 655-9121	Wichita Falls- Wichita Falls County Health Department 1700 Third Street Wichita Falls, Texas 76301 (817) 322-9702

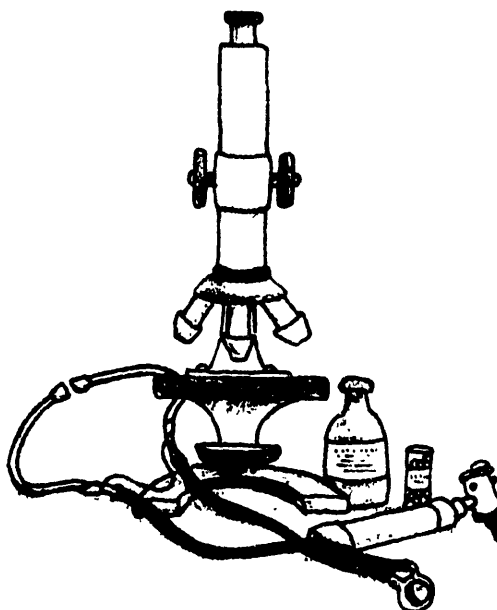
Comments regarding these block grants may be sent to Clift Price, M.D., Associate Commissioner, Personal Health Services, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

Issued in Austin, Texas, on September 2, 1983.

TRD-836912	Robert A. McLean, M.D. Deputy Commissioner Professional Services Texas Department of Health
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Filed: September 2, 1983

For further information, please call (512) 458-7321.



## Texas Health Facilities Commission Application Accepted for Amendment, Declaratory Ruling, and Notice of Intent

Notice is hereby given by the Texas Health Facilities Commission of an application accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research project; NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to the application, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice. If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P.O. Box 50049, Austin, Texas 78763, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to the application must meet the criteria set out in 25 TAC §515.9. Failure of a party to supply the necessary infor-

mation in the correct form may result in a defective request to become a party.

Fondren Imaging Center, Houston  
AS83-0812-106

NIE—Request for a declaratory ruling that a certificate of need is not required for Fondren Imaging Center to acquire by purchase a Technicare telescan 5KG Nuclear Magnetic Resonance Imaging System, a Technicare Delta Scan 2060 Computerized Tomography System, and a Technicare Digital Radiography Dr-960-S System.

Issued in Austin, Texas, on September 2, 1983.

TRD-836905

John R. Neel  
General Counsel  
Texas Health Facilities  
Commission

Filed: September 2, 1983

For further information, please call (512) 475-6940.

## **Texas Historical Commission Consultant Proposal Request**

This document is public notification that the consultant proposal request for editing National Register Department publications and nominations to the National Register of Historic Places, issued in the August 12, 1983, issue of the *Texas Register* (8 TexReg 3167) has been officially withdrawn.

Issued in Austin, Texas, on September 2, 1983.

TRD-836906

Curtis Tunnell  
Executive Director  
Texas Historical Commission

Filed: September 2, 1983

For further information, please call (512) 475-3092.

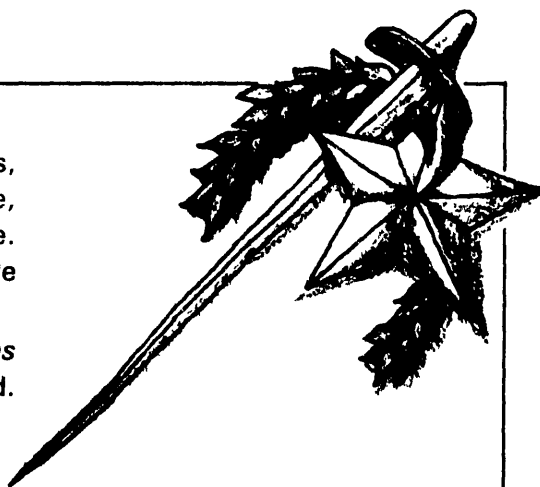
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