

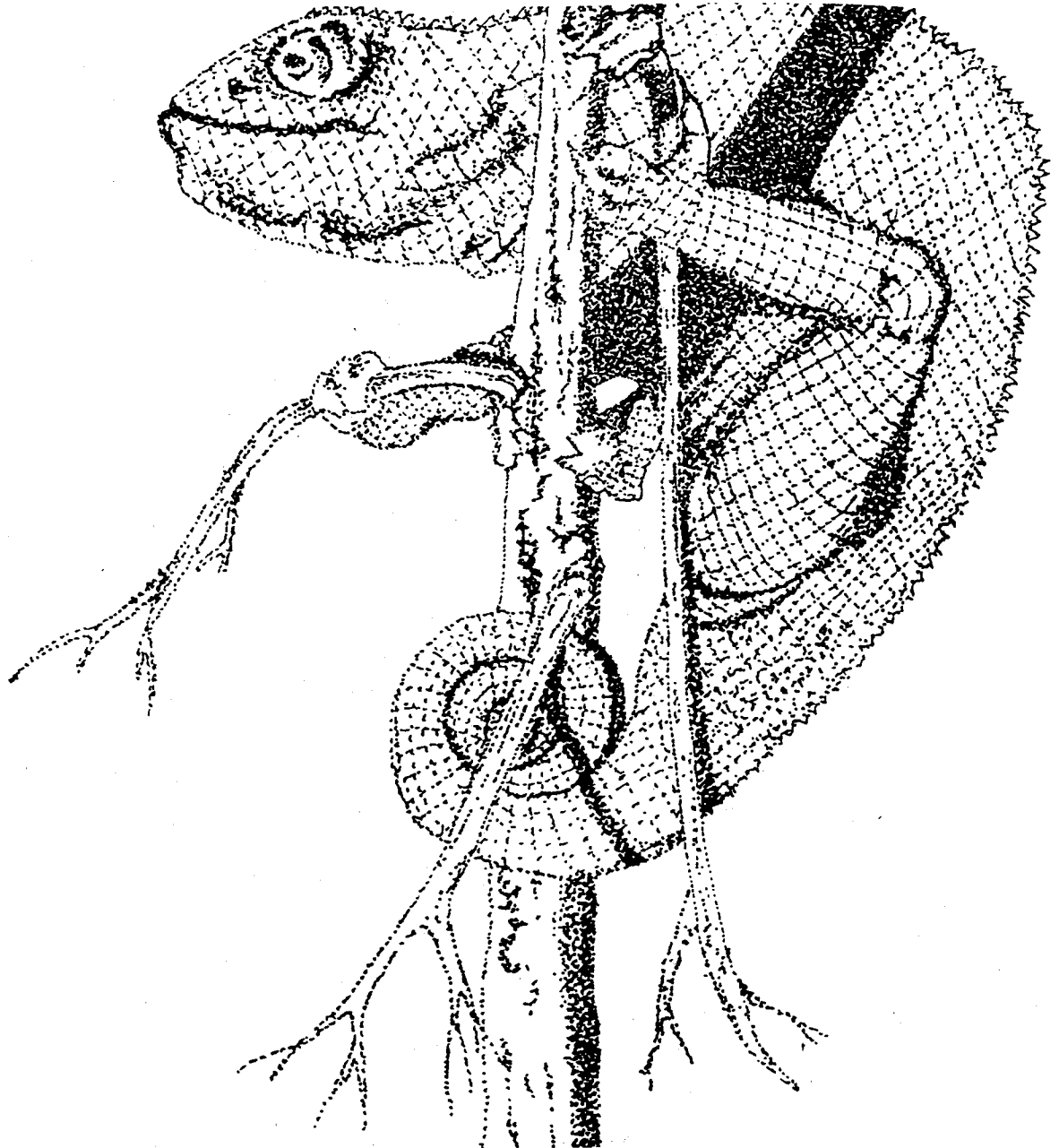
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# TEXAS REGISTER

Volume 22 Number 22 March 21, 1997

Page 2915-3019

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***This month's front cover artwork:***

***Artist: Brian Flanagan***

***11th Grade***

***Northbrook Sr. High, SBISD***

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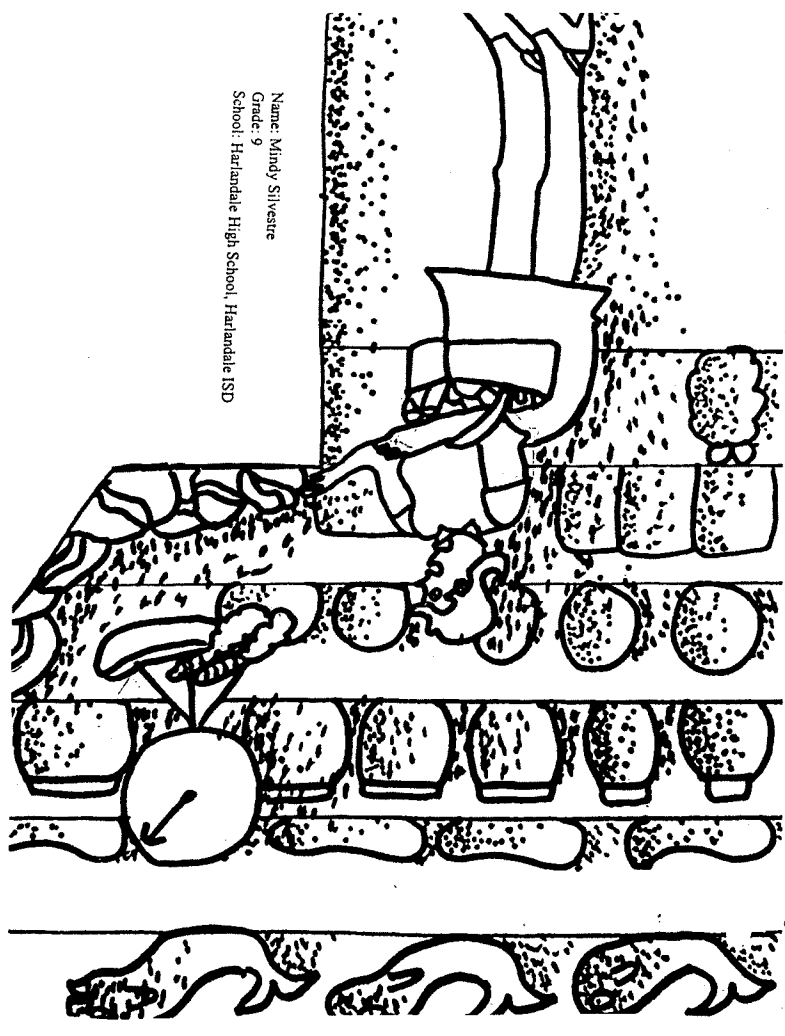
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# OFFICE OF THE ATTORNEY GENERAL

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

## Request for Opinions

**ID# 39397.** Request from the Honorable Fred Hill, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning authority of the City of Pasadena to provide certain plumbing services to private individuals.

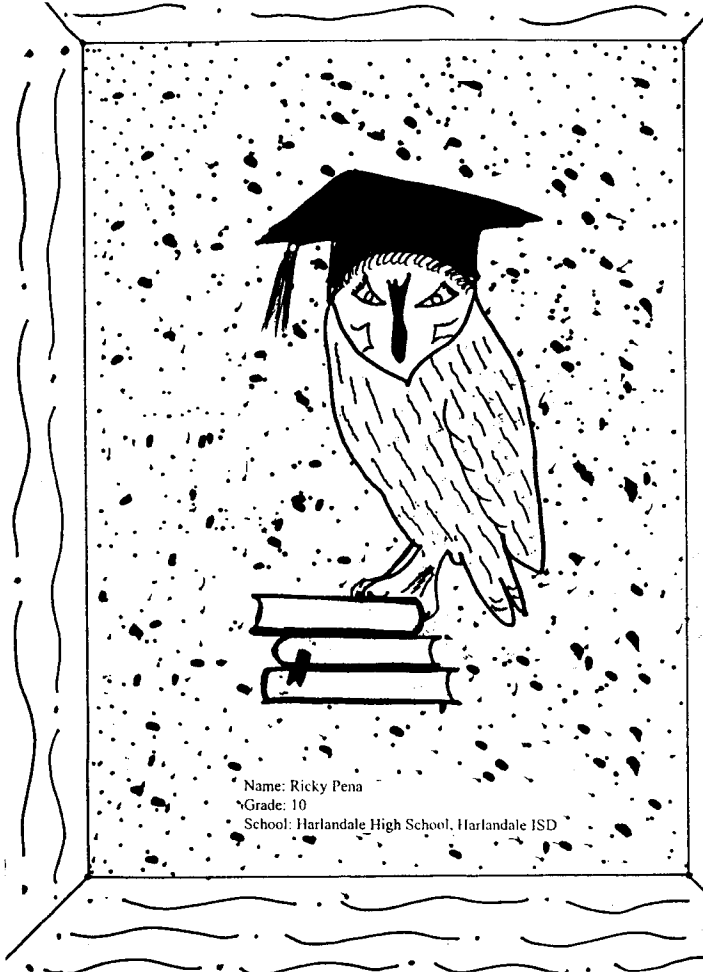
**ID# 39401.** Request from the Honorable Bill Ratliff, Texas Senate, P.O. Box 12068, Austin, Texas 78711, concerning application of §11.251, Tax Code, the "freeport" exemption.

**ID# 39403.** Request from the Honorable Fred Hill, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768, concerning

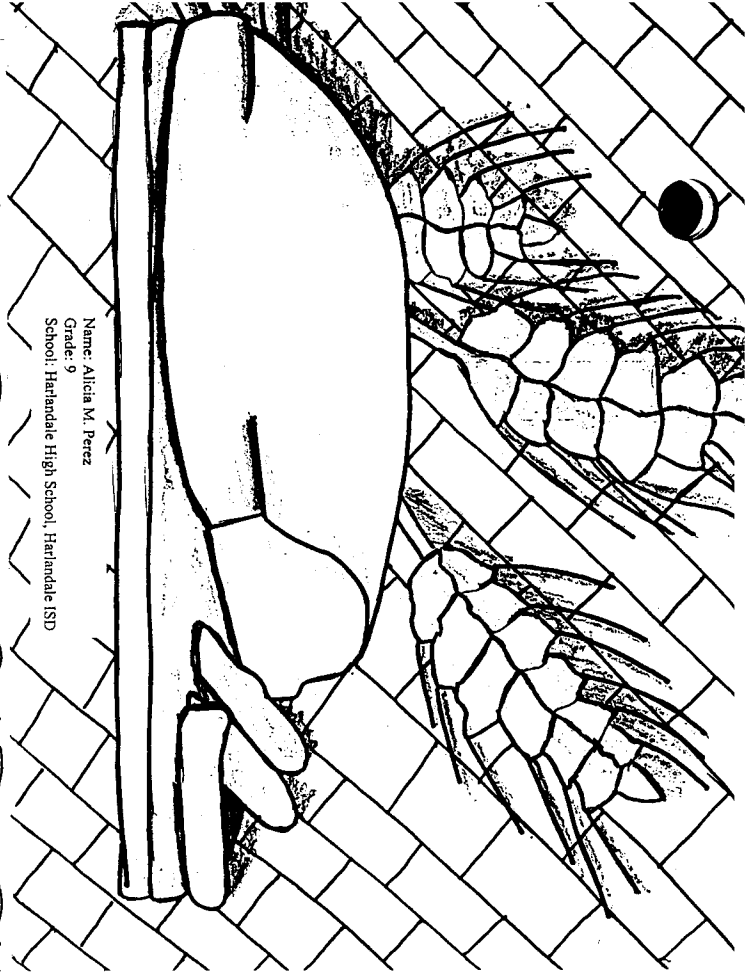
determination of eligibility for health benefits of survivors of deceased public safety officers under chapter 615, subchapter D, Government Code.

**ID# 39404.** Request from the Honorable Fred Hill, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768, concerning freeze on taxes due on historic sites under section 11.24, Tax Code.

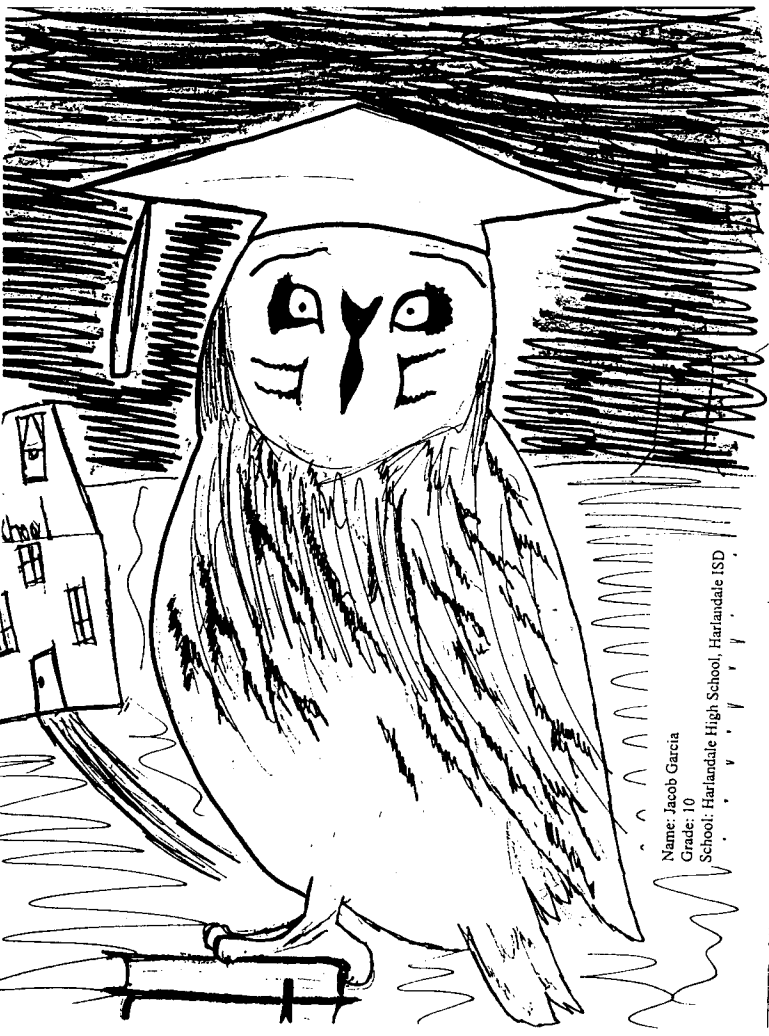
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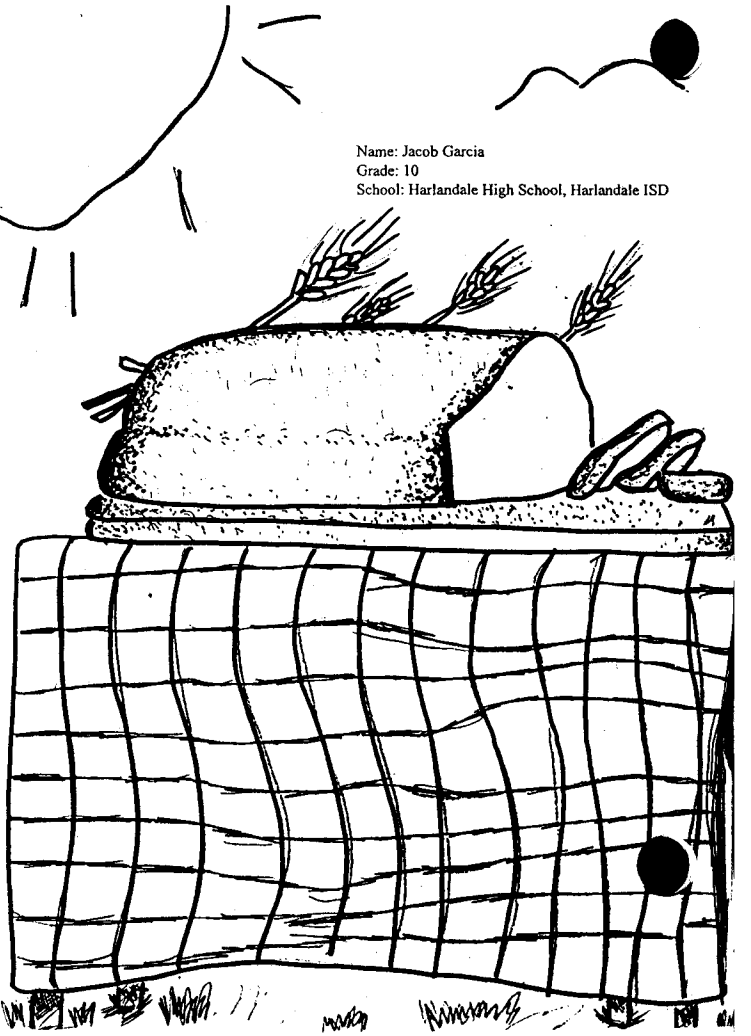
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# PROPOSED RULES

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

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

## TITLE 10. COMMUNITY DEVELOPMENT

### Part I. Texas Department of Housing and Community Affairs

#### Chapter 50. Low Income Tax Credit Rules-1995B

##### 10 TAC §§50.1-50.15

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

The Texas Department of Housing and Community Affairs (the Department) proposes the repeal of §§50.1-50.15, concerning the Low Income Tax Credit Rules. The sections are repealed in order to enact new sections conforming the requirements of new regulation enacted under the Internal Revenue Code of 1986, §42 as amended, which provides for credits against federal income taxes for owners of qualified low income rental housing.

Daisy Stiner, Director of Housing Programs, has determined that for the first five year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Ms. Stiner also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be permit the adoption of new rules for the allocation of low income housing tax credit authority within the State of Texas, thereby enhancing the State's ability to provide safe and sanitary housing for Texans through the tax credit program administered by the Department. There will be no effect on small businesses. There is no anticipated

economic cost to persons who are required to comply with the repeals as adopted.

Comments may be submitted to Cherno Njie, Manager, Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 400, Austin, Texas, 78701.

The repeals are proposed pursuant to the authority of the Texas Government Code, Chapter 2306; Acts of the 73rd Legislature, Senate Bill 45, Chapter 141, effective May 16, 1993; and Acts of the 73rd Legislature, Senate Bill 1356, Chapter 725, effective September 1, 1993; and the Internal Revenue Code of 1986, §42 as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-91-4 (June 17, 1991), which provide this Department with the authority to make housing credit allocation in the State of Texas.

The Texas Government Code, Chapter 2306, if affected by the proposed repeals.

§50.1. *Scope.*

§50.2. *Definitions.*

§50.3. *State Housing Credit Ceiling.*

§50.4. *Applications; Environmental Assessments; Market Study; Reservations; Notifications; Commitments; Extensions, Carryover Allocations; Agreements and Elections; Extended Commitments.*

§50.5. *Set Asides, Reservations and Preferences.*

§50.6. *Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects.*

§50.7. *Compliance Monitoring.*

§50.8. *Housing Credit Allocations.*

§50.9. *Department Records; Certain Required Filings.*

§50.10. *Department Responsibilities.*

§50.11. *Program Fees.*

- §50.12. *Manner and Place of Filing Applications.*
- §50.13. *Withdrawals, Amendments, Cancellations.*
- §50.14. *Waiver and Amendment of Rules.*
- §50.15. *Forward Reservations; Binding Commitments.*

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

Issued in Austin, Texas, on March 5, 1997.

TRD-9703037

Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 475-3726



### 10 TAC §§50.1-50.15

The Texas Department of Housing and Community Affairs proposes new §§50.1 - 50.15, concerning the Low Income Housing Tax Credit Qualified Allocation Plan and Rules - 1997. The new sections are necessary to provide procedures for the allocation by the Department of certain low income housing tax credits available under federal income tax laws to owners of qualified low income rental housing developments.

Daisy Stiner, Director of Housing Programs, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Ms. Stiner also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be the enhancement of the state's ability to provide safe and sanitary housing for Texans through the efficient and coordinated allocation of federal income tax credit authority available to the state for administration of state housing agencies. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments may be submitted to Cherno Njie, Manager, Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 400, Austin, Texas, 78701.

The new sections are proposed under the Texas Government Code, Chapter 2306; Acts of the 73rd Legislature, Regular Senate Bill 45, Chapter 141, effective May 16, 1993; and Acts of the 73rd Legislature, Senate Bill 1356, Chapter 725, effective September 1, 1993; and the Internal Revenue Code of 1986, §42 as amended, which provides the Department with the authority to adopt rules governing the administration of the Department and its programs and Executive Order AWR-91-4 (June 17, 1991), which provides this Department with the authority to make housing credit allocations in the State of Texas.

The Texas Government Code, Chapter 2306, is affected by these new sections.

§50.1. *Scope.*

The Rules in this chapter apply to the allocation by the Texas Department of Housing and Community Affairs (the Department) of certain low income housing tax credits authorized by applicable federal income tax laws. The Internal Revenue Code of 1986, §42, as amended, provides for credits against federal income taxes for owners of qualified low-income rental housing Projects. That section provides for the allocation of the available tax credit amount by state housing credit agencies. Pursuant to Executive Order AWR-91-4 (June 17, 1991), the Department was authorized to make housing credit allocations for the State of Texas. As required by the Internal Revenue Code, §42(m)(1), the Department developed a Qualified Allocation Plan (QAP) which is set forth in §§50.3-50.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations). Sections in this chapter establish procedures for applying for and obtaining an allocation of the low income housing tax credit, along with insuring that the proper Threshold Criteria, Selection Criteria, priorities and preferences are followed in making such allocations. It is a goal of this Department, through these provisions, to encourage diversity through broad geographic allocation of tax credits within the state and to promote maximum utilization of the available tax credit amount, consistent with ensuring that the tax credits are allocated to owners of Projects that will serve the Department's public policy objectives and federal requirements to provide housing to persons and families of very low and low income. It is the policy of the Department to encourage the use of Historically Underutilized Businesses (HUBs) in all of the Department's programs. In response to this policy, the Department has established a minimum goal of 30% participation of HUBs in the low income housing tax credit program. Project Owners are encouraged to achieve these minimum goals.

#### §50.2. *Definitions:*

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

**Ad Hoc Tax Credit Committee-** That Committee comprised of members of the Board of the Department charged with the direct oversight of the Low Income Housing Tax Credit Program, also referred to as the "Committee."

**Affiliate -** An individual, corporation, partnership, joint venture, limited liability company, trust, estate, association, cooperative or other organization or entity of any nature whatsoever that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with any other Person, and specifically shall include parents or subsidiaries.

**Agreement and Election Statement -** A document in which the Project Owner elects, irrevocably, to fix the applicable credit percentage with respect to a building or buildings, as that in effect for the month in which the Department and the Project Owner enter into a binding agreement as to the housing credit dollar amount to be allocated to such building or buildings, which Agreement and Election Statement shall be executed by the Project Owner no later than five days after the end of the month of execution of the agreement as to housing credit dollar amount.

**Applicable Fraction-** The fraction used to determine the Qualified Basis of the qualified low income building, which is the smaller of the Unit fraction or the floor space fraction, as defined more fully in the Code, §42(c)(1).

**Applicable Percentage -** The percentage used to determine the amount of the low income housing tax credit, as defined more fully in the Code, §42(b).

**Applicant-** Any Person and any Affiliate of such Person, corporation, a partnership, joint venture, association, or other that submits an Application to the Department requesting a tax credit allocation pursuant to the Rules and the QAP. The Applicant is also the Project Owner unless the Applicant transfers or assigns its interest in the Project (which assignment can only occur with the consent of the Department). Each Project Owner, and each of the Project Owner's successors in interest, shall be obligated to carry out the commitments made to the Department by the Applicant.

**Application -** An Application in the form prescribed by the Department, including any required exhibits or other supporting materials, filed with the Department by a Project Owner requesting a low income housing tax credit allocation.

**Application Acceptance Period -** That period of time as published in the *Texas Register* during which Applications for tax credits may be submitted to the Department.

**Application Round -** The period beginning with the start of the Application Acceptance Period and lasting until such time as all available credits (as stipulated by the Department) are allocated, provided that the Application Round not extend beyond the last day of the calendar year. Applications for Projects which receive at least 50% of their financing from the proceeds of tax exempt bonds may be submitted at any time during the year.

**Application Submission Procedures Manual -** That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of Applications for low income housing tax credits, which manual may be amended from time to time by the Department.

**Appraiser-** A real estate professional certified or licensed by the Texas Appraiser Licensing and Certification Board who has satisfied continuing education requirements. The appraiser must have, at a minimum, five years appraisal experience, preferably in the geographic area of the property to be appraised. It is desirable, but not required, that the appraiser have a professional designation or be an active member of a professional accredited appraisal institution.

**Beneficial Owner -** A "Beneficial Owner" means:

(A) Any Person who, directly or indirectly, through any contract, arrangement, understanding, relationship or otherwise has or shares;

(i) voting power which includes the power to vote, or to direct the voting as any other Person or the securities thereof, and/or

(ii) investment power which includes the power to dispose, or direct the disposition of, any Person or the securities thereof.

(B) Any Person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement or any other contract, arrangement or device with the purpose or effect of

divesting such Person of Beneficial Ownership (as defined herein) of a security or preventing the vesting of such Beneficial Ownership as part of a plan or scheme to evade inclusion within the definitional terms contained herein; and

(C) Any Person who has the right to acquire Beneficial Ownership during the Compliance Period, including but not limited to any right to acquire any such Beneficial Ownership;

(i) through the exercise of any option warrant or right,

(ii) through the conversion of a security,

(iii) pursuant to the power to revoke a trust, discretionary account or similar arrangement, or

(iv) pursuant to the automatic termination of a trust, discretionary account, or similar arrangement.

(D) Provided, however, that any Person who acquires a security or power specified in clauses (i), (ii) or (iii) of this subparagraph, with the purpose or effect of changing or influencing the control of any other Person, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition is deemed to be the Beneficial Owner of the securities which may be acquired through the exercise or conversion of such security or power. Any securities not outstanding which are subject to options, warrants, rights or conversion privileges as deemed to be outstanding for the purpose of computing the percentage of outstanding securities of the class owned by such Person but are not deemed to be outstanding for the purpose of computing the percentage of the class by any other Person.

**Board -** The governing Board of Directors of the Department and may also denote as used in this chapter, the Committee.

**Carryover Allocation -** An allocation of current year tax credit authority by the Department pursuant to the provisions of the Code, §42(h)(1)(E) and Treasury Regulations, §1.42-6.

**Carryover Allocation Document -** A document issued by the Department to a Project Owner pursuant to §50.4(k) of this title (relating to Applications; Environmental Assessments; Market Study; Reservations; Notification; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

**Carryover Allocation Procedures Manual -** That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of request for Carryover Allocations for low income housing tax credits, which said manual may be amended from time to time by the Department.

**Code-** The Internal Revenue Code of 1986, as amended from time to time, together with any applicable regulations, rules, rulings, revenue procedures, information statements or other official pronouncements issued thereunder by the United States Department of the Treasury or the Internal Revenue Service relating to the Low Income Housing Tax Credit Program authorized by the Code, §42, and as may be amended from time to time.

**Commitment Notice -** A notice issued by the Department to a Project Owner pursuant to §50.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) and also referred to as the "commitment".

**Compliance Period** - With respect to a building, the period of 15 taxable years, beginning with the first taxable year of the Credit Period pursuant to the Code, §42(i)(1).

**Contractor** - One who contracts for the construction, or rehabilitation of an entire building or Project, rather than a portion of the work. The Contractor hires subcontractors, such as plumbing contractors, electrical contractors, etc., coordinates all work, and is responsible for payment to the said subcontractors. This party may also be referred to as the "general contractor".

**Control** - (including the terms "controlling," "controlled by, and/or "under common control with") the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of any Person, whether through the ownership of voting securities, by contract or otherwise.

**Cost Certification Procedures Manual** - That certain manual produced by the Department which sets forth procedures, forms, and guidelines for the filing of requests for IRS Forms 8609 for Projects placed in service under the Low Income Housing Tax Credit Program, which said manual may be amended from time to time by the Department.

**Credit Period** - With respect to a building within a Project, the period of ten taxable years beginning with the taxable year the building is placed in service or, at the election of the Project Owner, the succeeding taxable year, as more fully defined in the Code, §42(f)(1).

**Declaration of Land Use Restrictive Covenants (LURA)** - An agreement between the Department, the Project Owner and all successors in interest in the Project Owner which encumbers the Project with respect to provisions stipulated in the Code, §42, §§50.1-50.15 of this title (relating to Low Income Housing Tax Credit Qualified Allocation Plan and Rules), and the Texas Government Code, Chapter 2306 as may be amended from time to time. The LURA includes an Extended Low Income Housing Commitment Agreement.

**Department** - The Texas Department of Housing and Community Affairs, a public and official governmental Department of the State of Texas created and organized under the Texas Department of Housing and Community Affairs Act, Texas Government Code, Chapter 2306 and Texas Civil Statutes, Article 4413(501) as amended by the 73rd Legislature, Chapter 725 and 141.

**Development Team** - All Persons or Affiliates thereof which play(s) a material role in the development, construction, rehabilitation, management and/or continuing operation of the subject Property, which may include any consultant(s) hired by the Applicant for the purpose of the filing of an Application for low income housing tax credits with the Department.

**Difficult Development Area** - Any area which is so designated by the Secretary of the United States Department of Housing and Urban Development (HUD) as an area which has high construction, land, and utility costs relative to area median gross income.

**Eligible Basis** - With respect to a building within a Project, the building's Eligible Basis as defined in the Code, §42(d).

**Equity Gap** - The difference between the total sources of financing for the Project and the total Project costs that is to be filled with the proceeds of the credit.

**Extended Low Income Housing Commitment Agreement** - An agreement between the Department, the project owner and all

successors in interest to the project owner concerning the extended low income housing use of buildings within the project throughout the extended use period as provided in the Code, §42(h)(6).

**Financial Statement** - Document(s) which provides information about the Applicant's economic resources, claims against those resources, and the interests of owners at specific dates as more fully described in subparagraphs (A)-(D) of this definition.

(A) **Statement of Financial Position/Balance Sheet** - a listing, as of a particular date, of all assets and claims against those assets (liabilities). The difference is equity.

(B) **Income Statement** - a listing that relates to a specific period of time, presenting an entity's results of operations.

(C) **Statement of Retained Earnings** - reports all changes in retained earnings during the accounting period, reconciles beginning and ending retained earnings balances and provides a connecting link between the income statement and the balance sheet.

(D) **Cash Flow Statement** - a report listing the changes in an entity's cash and cash equivalents, classified by principal sources and uses, for a given period.

**General Projects** - Any project which is not a Qualified Nonprofit Project or is not under consideration in the Rural/Prison set-aside as such terms are defined by the Department.

**General Pool** - The pool of credits that have been returned or recovered from prior years' allocations or current year's Commitment Notices after the Board has made its initial allocation of the current year's available credit ceiling. General pool credits will be used to fund Applications on the waiting list without regard to set-aside.

**Governmental Entity** - Includes federal or state agencies, departments, boards, bureaus, commissions, authorities, and political subdivisions, special districts and other similar entities.

**Historically Underutilized Businesses** - Pursuant to Texas Civil Statutes, Article 601b, §§1.02, 1.03, and 1.04, entitled State Purchasing and General Services Act which is codified at Chapter 2161, Texas Government Code, entitled Historically Underutilized Businesses, a business in the form of a corporation, partnership or joint venture which is at least 51% owned, or a sole proprietorship which is 100% owned by a person or persons who have been historically underutilized due to their identification as a member of a certain group. The following are the groups which will be considered pursuant to this definition:

(A) **African Americans** - persons having origins in any of the Black racial groups of Africa;

(B) **Hispanic Americans** - persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(C) **Asian-Pacific Americans** - persons whose origins are from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Philippines, Samoa, Guam, U.S. Trust Territories of the Pacific and the Northern Marianas;

(D) **Native Americans** - persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; or

(E) **Women** - includes all women of any ethnicity.



**Homeless Person** - An individual or family that lacks a fixed, regular, and adequate nighttime residence as more fully defined in 24 Code of Federal Regulations, §841.1, and as may be amended from time to time.

**Housing Credit Agency**- A governmental entity charged with the responsibility of allocating low income housing tax credits pursuant to the Code, §42. For the purposes of these Rules, the Department is the sole "Housing Credit Agency" of the State of Texas.

**Housing Credit Allocation** - An allocation by the Department to a Project Owner of low income housing tax credit in accordance with §50.8 of this title (relating to Housing Credit Allocations).

**Housing Credit Allocation Amount** - With respect to a Project or a building within a Project, that amount the Department determines to be necessary for the financial feasibility of the Project and its viability as a qualified low income housing Project throughout the Compliance Period and allocates to the Project.

**HUD** - The United States Department of Housing and Urban Development, or its successor.

**Intermediary Costs** - Costs associated with the sale or use of tax credits to raise equity capital. Such costs include but are not limited to syndication and partnership organization costs and fees, filing fees, broker commissions, related attorney and accounting fees, appraisal, engineering, environmental site assessment, etc.

**IRS** - The Internal Revenue Service, or its successor.

**Local Tax Exempt Organization** - An entity which is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, and which is registered or qualified to conduct business in the State of Texas and/or the governmental unit wherein the Project will be situated.

**Person** - Means, without limitation, any natural person, corporation, partnership, limited partnership, joint venture, limited liability company, trust, estate, association, cooperative, government, political subdivision, agency or instrumentality or other organization of any nature whatsoever and shall include any group of Persons acting in concert toward a common goal.

**Persons with Disabilities**- A person who:

(A) has a physical, mental or emotional impairment that;

(i) is expected to be of a long, continued and indefinite duration,

(ii) substantially impedes his or her ability to live independently, and

(iii) is of such a nature that the ability could be improved by more suitable housing conditions, or

(B) has a developmental disability, as defined in section 102(7) of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001-6007).

**Prison Community** - A city or town which is located outside of a major Metropolitan Statistical Area (MSA) or Primary Metropolitan Statistical Area (PMSA) and was recently awarded a state prison as set forth in the Reference Manual.

**Project** - A low income rental housing Property the owner of which represents that it is or will be a qualified low income housing Project within the meaning of the Code, §42(g). With regards to this

definition, the "Project" is that Property which is the basis for the Application for low income housing tax credits. May also be referred to as the subject "property".

**Project Owner** - Any Person or Affiliate thereof that owns or proposes to develop the Project or expects to acquire Control of the Project pursuant to a purchase contract satisfactory to the Department.

**Property** - The real estate and all improvements thereon which are the subject of the Application (including all items of personal property affixed or related thereto), whether currently existing or proposed to be built thereon in connection with the Application.

**Qualified Allocation Plan** - An allocation plan executed by the Governor of the State of Texas which sets forth the Threshold Criteria, Selection Criteria, priorities, preferences, and compliance and monitoring as provided in the Code, §42(m)(1) and as further provided in §§50.3-50.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations).

**Qualified Basis** - With respect to a building within a Project, the building's Eligible Basis multiplied by the Applicable Fraction, within the meaning of the Code, §42(c)(1).

**Qualified Census Tract** - Any census tract which is so designated by the Secretary of HUD and, for the most recent year for which census data are available on household income in such tract, in which 50% or more of the households have an income which is less than 60% of the area median gross income for such year.

**Qualified Market Analyst** - A real estate appraiser certified or licensed by the Texas Appraiser or Licensing and Certification Board or a real estate consultant or other professional currently active in the subject property's market area who demonstrates competency, expertise, and the ability to render a high quality written report. The individual's experience and educational background will provide the general basis for determining competency as a Market Analyst. Such determination will be at the sole discretion of the Department. The Qualified Market Analyst must not be related to or Affiliated with the Project consultant, or the independent CPA employed for certifying the 10% test and/or the final Project cost certification.

**Qualified Nonprofit Organization** - An organization that is described in the Code, §501(c)(3) or (4), as these cited provisions may be amended from time to time, that is exempt from federal income taxation under the Code, §501(a), that is not Affiliated with or Controlled by a for profit organization, and includes as one of its exempt purposes the fostering of low income housing within the meaning of the Code, §42(h)(5)(C).

**Qualified Nonprofit Project** - A Project in which a Qualified Nonprofit Organization has Control (directly or through a partnership or wholly-owned subsidiary) and materially participates (within the meaning of the Code, §469(h), as may be amended from time to time) in its development and operation throughout the Compliance Period.

**Real Estate Owned (REO) Projects** - Any existing residential development that is owned or that is being sold by an insured depository institution in default, or by a receiver or conservator of such an institution, or is a property owned by HUD, Federal National Mortgage

Association (Fannie Mae), Federal Home Loan Mortgage Corporation (Freddie Mac), federally chartered bank, savings bank, savings and loan association, Federal Home Loan Bank or a federally approved mortgage company or any other federal agency.

Reference Manual - That certain manual, and any amendments thereto, produced by the Department which sets forth reference material pertaining to the Low Income Housing Tax Credit Program.

Rehabilitation Expenditure - Amounts incurred in connection with the rehabilitation which the Project Owner represents to be "Rehabilitation Expenditures" within the meaning of the Code, §42(e)(2).

Residential Development - Any Project that is comprised of at least one "Unit" as such term is defined in this section.

Rules - The Department's low income housing tax credit Rules, §§50.1-50.15 of this title (relating to Low Income Housing Tax Credit Qualified Allocation Plan and Rules) excluding §§50.3-50.8 of this title (relating to State Housing Credit Ceiling, Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments, Set-Asides, Commitments and Preferences, Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects; Compliance Monitoring, Housing Credit Allocations).

Rural Project- A Project located within an area which:

(A) is situated outside the boundaries of a PMSA or MSA; or

(B) is situated within the boundaries of a PMSA or MSA if it has a population of not more than 20,000 and does not share boundaries with an urbanized area; or

(C) is located in an area that is eligible for funding by TxRD.

Scattered Site Project - A group of buildings, (excluding apartments and townhomes) which would (but for their lack of proximity) qualify as a Project for purposes of the Code and which are all rent restricted, owned by the same Project Owner and financed under a common plan. This shall include all single family detached housing, duplexes, triplexes and fourplexes, except fourplexes in clusters of four or more on contiguous property under common ownership, management and Control.

Selection Criteria - Criteria used to determine housing priorities of the State under the Low Income Housing Tax Credit Program.

Small Development - A Project consisting of not more than ten single-family detached Units or 35 multifamily Units, which is not a part of, or contiguous to, a large Project.

Special Housing Project - Any Project developed specifically for Special Housing Need Groups, including mental health/mental retardation Projects, group homes, housing for the homeless, transitional housing, elderly Projects, congregate care facilities, projects for persons with HIV/AIDS, or as otherwise defined in the State Consolidated Plan.

State Housing Credit Ceiling - The limitation imposed by the Code, §42(h), on the aggregate amount of housing credit allocations that may be made by the Department during any calendar year, as determined from time to time by the Department in accordance with the Code, §42(h)(3).

Sustaining Occupancy- The figure at which occupancy income is equal to all operating expenses and mandatory debt service requirements for a Project.

Threshold Criteria- Criteria used to determine the Project's qualifications which are the minimum level of acceptability for consideration under the Low Income Housing Tax Credit Program.

Total Housing Development Cost- The total of all costs incurred or to be incurred by the Project Owner in acquiring, constructing, rehabilitating and financing a Project, as determined by the Department based on the information contained in the Project Owner's Application. Such costs include Intermediary Costs, reserves and any expenses attributable to commercial areas. Projects which include commercial space must allocate the relative portion of all applicable expenses to the commercial space and exclude the same from Total Development Costs. In determining the Equity Gap calculation, the Department will not deduct from the Project's sources of funds the amount of financing associated with the commercial use, unless such financing specifically identifies in its terms that it is being provided for the commercial use.

TxRD - The Texas Department of Rural Development, or its successor.

Unit- Any residential rental unit in a Project consisting of an accommodation containing separate and complete physical facilities and fixtures for living, sleeping, eating, cooking and sanitation. The term "Unit" includes a single room occupancy housing unit used on a non-transient basis.

#### §50.3. State Housing Credit Ceiling

(a) The Department shall determine the State Housing Credit Ceiling for each calendar year as provided in the Code, §42(h)(3)(C).

(b) The Department shall publish each such determination in the *Texas Register* within 30 days after notification by the Internal Revenue Service.

(c) The aggregate amount of Housing Credit Allocations made by the Department during any calendar year shall not exceed the State Housing Credit Ceiling for such year as provided in the Code, §42.

#### §50.4. Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments.

(a) Any Project Owner requesting a Housing Credit Allocation for a Project must submit an Application to the Department which Application shall be originally executed by the Project Owner. This Application shall contain full and complete information as to each item specified in the Application Submission Procedures Manual, as amended. When any item is marked "not applicable," the Project Owner shall provide a written explanation why such item is "not applicable." Failure to provide a detailed written explanation will result in the Application being deemed incomplete and not accepted for filing. The Department is also authorized to request the Project Owner to provide any additional information it deems relevant as clarification to the Application. The Department will require, as a part of a completed Application, information to be submitted by the Project Owner which identifies the number of HUBs to be used in the development and/or continuous operation of the Project, in a form specified within the Application Submission Procedures Manual. Further, the Department will require the Project Owner to supply sufficient documentation which will represent the means by which these HUBs

were or are to be selected. The Project Owner is also advised that the Department will be requesting information pertaining to the use of HUBs in the actual development of the Project at the time of final allocation of tax credits, pursuant to §50.8(c) of this title (relating to Housing Credit Allocations).

(b) As part of the complete Application the Applicant must submit the most current Phase I Environmental Assessment of the subject Property, dated not more than 12 months from the date of Application to the Department. In the event that a Phase I Environmental Assessment on the Project is older than 12 months, the Project Owner may supply the Department with an update letter from the Person or organization which prepared the initial assessment; provided, however, that the Department will not accept any Phase I Environmental Assessment which is more than 24 months old. This environmental assessment should be conducted and reported in conformity with the standards of the American Society for Testing and Materials (ASTM) and such other recognized industry standards as a reasonable person would deem relevant in view of the Property's anticipated use for human habitation. The report must include, but is not limited to, a review of records, interviews with people knowledgeable about the Property, a certification that the environmental engineer has conducted an inspection of the Property, the building(s), and adjoining Properties, as well as any other industry standards concerning the preparation of this type of environmental assessment. If the report recommends further studies or establishes that environmental hazards currently exist on the Property, or are originating off-site but would nonetheless affect the Property, the Project Owner must act on such a recommendation or provide either a plan for the abatement or elimination of the hazard. The environmental assessment shall be conducted by an environmental or professional engineer and be prepared at the expense of the Project Owner. For Projects which have had a Phase II Environmental Assessment performed and hazards identified, the Project Owner is required to maintain a copy of said assessment on site available for review by all persons which either occupy the Property or are applying for tenancy. Properties financed through the TxRD or Properties with four Units or fewer will not be required to supply this information; however, the Project Owners of such Projects are hereby notified that it is their responsibility to ensure that the Property is maintained in compliance with all state and federal environmental hazard requirements. Those Projects which have or are to receive first lien financing from HUD may submit HUD's environmental assessment report, provided that it conforms with the requirements of this subsection. An environmental report that is not submitted with the Application will result in the Application being deemed incomplete and not accepted for filing.

(c) The Market Study required by the Department shall comply with the Uniform Standards of Professional Appraisal Practice and with paragraphs (1)-(2) of this subsection and other guidelines provided in the Reference Manual.

(1) A Market Study (prepared by a Qualified Market Analyst acceptable to the Department who is independent of the Development Team), which is not dated more than six months prior to the date of Application, is required as part of the complete Application. Projects which are comprised of 12 Units or fewer or whose funds have been obligated by TxRD are not required to provide the Department with a market study; provided that the Department may request information with respect to the operating expenses, proposed new construction or rehabilitation cost or other

information. In the event that a Market Study on a Project is older than six months, a Project Owner may supply the Department with an updated Market Study from the entity or organization which prepared the initial report; provided, however, that the Department will not accept as having satisfied the condition of this subsection (c) of this section any Market Study which is more than 12 months old. The Market Study shall be prepared for the Department at the expense of the Project Owner and shall include, at a minimum, the required information. If any of the required information in subparagraphs (A)-(K) of this paragraph is not obtainable, the Market Analyst shall provide a statement to such effect and offer an alternative analysis intended to address the applicable question.

(A) an evaluation of the existing occupancy rates in comparable multifamily rental Residential Developments in the same market and submarket area as the proposed Project with special emphasis given to available low income rental housing;

(B) Project absorption rates for the three years prior to the date of the study for Units in comparable multifamily rental Residential Developments in the same market area as the Project. Further, provide a projection of the time necessary for the Project to achieve Sustaining Occupancy;

(C) an evaluation of the current physical condition of existing rental housing Units in the market area, with special emphasis given to available low income rental housing;

(D) an evaluation of the need for affordable housing within the Project market area, which includes an analysis of any existing federal, state and/or locally subsidized rental housing Units in the market area;

(E) an evaluation of the appropriateness of the Unit-mix and size in terms of market demand and low income housing demographics;

(F) an evaluation of the appropriateness of the location and total development cost of the Project from a market feasibility standpoint;

(G) an evaluation of the appropriateness of the anticipated operating costs of the Project for the housing market in which the Project is located, generally, and specifically for low income housing;

(H) an evaluation of the appropriateness of the existing or proposed physical amenities and appliance packages at the Project for the low income target population;

(I) a summary of qualifications of the individuals who participated in the development of the Market Study;

(J) a statement from the Qualified Market Analyst certifying that he/she is not a part of the Development Team, nor Affiliated with any member of the Development Team engaged in the development of the Property; and

(K) such other matters as the Department, in its discretion, may determine from time to time to be relevant to the Department's evaluation of the need for the Project and the allocation of the requested Housing Credit Allocation Amount.

(2) a written opinion is required from the Qualified Market Analyst who prepared the Market Study required under paragraph (1) of this subsection, stating that:

(A) the projected Total Housing Development Costs of the proposed Project do or do not appear to be reasonable. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with regards to the reasonableness of the projected development costs;

(B) the projected Total Operating Costs of the proposed Project do or do not appear to be reasonable. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the reasonableness of the projected operating costs;

(C) the proposed Project, in light of the vacancy and absorption rates for the applicable market area and/or any applicable submarket area, is or is not likely to result in an unreasonably high vacancy rate for comparable Units within the market area and/or any applicable submarket area (i.e., standard, well maintained Units within such market area that are reserved for occupancy by low and very low income tenants). The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with regard to the effects of the Project's development on the vacancy rates for comparable Units within the market area and/or any applicable submarket area;

(D) the projected initial rents for the Project are or are not below the rental range for comparable Projects within the market area. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusion with respect to the data on comparable rents in the Project's market area; and

(E) Project reserves are or are not adequate to cover operating shortfalls until the Project achieves Sustaining Occupancy. The Qualified Market Analyst must provide the Department with sufficient documentation to support his/her conclusions with regards to the adequacy of the Project reserves.

(3) All Applicants shall acknowledge by virtue of filing an Application that the Department shall not be bound by any such opinion or the Market Study itself, and may substitute its own analysis and underwriting conclusions for those submitted by the Qualified Market Analyst.

(d) A Project Owner may file an Application at any time during the Application Acceptance Period(s), as published from time to time by the Department in the *Texas Register*.

(e) An Application that is incomplete or that is not filed in accordance with the Application Submission Procedures Manual, as amended, unless any such requirement has been waived by the Department, will be deemed not to have been timely filed, will be deemed terminated and will be returned to the Applicant. Failure to return the Application shall not affect its status and the Department shall not be deemed to have accepted any such incomplete Application.

(f) The Department will not recommend an Application for funding if it includes a member of the Development Team who has been, or is:

(1) barred, suspended, or terminated from procurement in a state or federal program or who is listed in the List of Parties Excluded from Federal Procurement or Nonprocurement Programs, whether in the hard copy or electronic form;

(2) convicted within the past five years, under indictment for or is on probation for a state or federal crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar criminal offenses;

(3) subject to enforcement action under state or federal securities law, or is the subject of an enforcement proceeding with a state or federal agency or another governmental entity unless any such action has been concluded and no adverse action or finding (or entry into a consent order) has been taken with respect to such member; or

(4) active in the ownership or management of any other low income housing tax credit Property (or any Property pursuant to an affordable housing program administered by a local, state or federal entity) that is or was materially out of compliance with the rules or regulations of the appropriate regulatory authority.

(g) After eligible Applications have been evaluated, ranked and underwritten in accordance with the QAP and the Rules the Department shall make its recommendations to the Committee and the Board at their next meeting for the issuance of Commitment Notices.

(h) The Board's decisions shall be based upon its evaluation of the Project's consistency with the criteria and requirements set forth in the QAP and the Rules. In making a determination to allocate tax credits, the Department and Board shall be authorized not to rely solely on the number of points scored by an Applicant. They shall in addition, be entitled to take into account, as appropriate, such factors as Project feasibility, underwriting, concentration of low income Projects within specific markets or submarkets, geographic dispersion of multifamily housing in any particular market or submarket, as well as dispersion of the credits on a state-wide basis, site conditions, the experience of the Development Team, the type of housing being proposed and/or the Project's impact on the Low Income Housing Tax Credit Program's goals and objectives as stated in the QAP and the Rules and as otherwise provided under this chapter.

(1) If the Board approves the Application, the Department will issue a Commitment Notice to the Project Owner which:

(A) shall confirm that the Board has approved the Application; and

(B) shall state the Department's commitment to make a Housing Credit Allocation to the Project Owner in a specified amount, subject to the feasibility determination described in §50.8(a) of this title (relating to Housing Credit Allocations), compliance by the Project Owner with the remaining requirements of this chapter, and any other conditions set forth therein by the Department. This Commitment Notice shall expire on the date specified therein, unless the commitment has been accepted and the conditions to receipt of an allocation set forth therein shall have been met.

(C) the Department shall notify, in writing, the mayor or other equivalent chief executive officer of the municipality in which the Property is located informing him/her of the Board's issuance of a Commitment Notice.

(2) If the Board disapproves or fails to act upon the Application, the Department shall issue to the Project Owner a written notice stating the reason(s) for the Board's disapproval or failure to act.

(i) A Project Owner may request that the Department extend the expiration date of a Commitment Notice which has not expired by submitting a written request for such action, accompanied by the

extension fee specified in §50.11 of this title (relating to Program Fees). The request shall specify the term of the extension requested and the reason(s) why the Project Owner has been unable to satisfy the requirements of this chapter prior to the original expiration date. The Department, in its sole discretion, may consider and grant such extension requests; provided, however, that in no event shall the expiration date of a Commitment Notice be extended beyond the last business day of the applicable calendar year.

(j) A Project Owner must indicate acceptance of the Department's offer of a commitment of tax credit authority by executing the Commitment Notice and paying the commitment fee specified in §50.11 of this title (relating to Program Fees) prior to the expiration date set forth in the notice. Together with or following the Project Owner's acceptance of the commitment, the owner may request the Department to execute an Agreement and Election Statement, in the form prescribed by the Department, for the purpose of fixing the applicable credit percentage for the Project as that for the month in which the commitment was accepted, as provided in the Code, §42(b)(2). Upon receipt of a duly dated and executed Agreement and Election Statement and the accepted Commitment Notice, if the Project Owner is in compliance with the Rules of this chapter, the Department shall execute the Agreement and Election Statement and return a copy to the Project Owner. The Agreement and Election Statement shall be executed by the Project Owner no later than five days after the end of the month in which the offer of commitment was accepted. Current Treasury Regulations, §1.42-8(a)(1)(v), suggest that in order to permit a Project Owner to make an effective election to fix the applicable credit percentage for a Project, the Commitment Notice must be executed by the Department and the Project Owner in the same month. The Department will cooperate with a Project Owner, as needed, to assure that the Commitment Notice can be so executed.

(k) Prior to the expiration of the Commitment Notice a Project Owner who has been issued a Commitment Notice may request the Department to execute a Carryover Allocation Document. The Carryover Allocation must be properly completed, signed, dated and notarized by the Project Owner and delivered to the Department along with any and all other documentation prescribed in the Carryover Allocation Procedures Manual, as amended. The commitment fee as specified in §50.11 of this title (relating to Program Fees) must be received by the Department prior to the processing of any Carryover Allocation Documentation.

(l) If the entire State Housing Credit Ceiling for the applicable calendar year has been, committed or allocated in accordance with this chapter, the Department shall place all remaining Applications which have satisfied all Threshold Criteria on a waiting list. All such waiting list Applications will be weighed one against the other and a priority list shall be developed by the Department and approved by the Committee. If at any time prior to the end of the Application Round, one or more Commitment Notices expire and a sufficient amount of the State Housing Credit Ceiling becomes available, the Department shall issue a Commitment Notice to Applications on the waiting list in order of priority. In the event that the Department makes a Commitment Notice or offers a commitment within the last month of the calendar year, it will require immediate action by the Applicant to assure that an allocation or Carryover Allocation can be issued before the end of that same calendar year.

(m) Within 15 business days of the date an Application is received, the Department shall notify in writing the mayor or other

equivalent chief executive officer of the municipality, if the Project or a part thereof is located in a municipality; otherwise the Department shall notify the chief executive officer of the county in which the Project or a part thereof is located, to advise such individual that the Project or a part thereof will be located in him/her jurisdiction and request any comments which such individual may have concerning such Project. Such comments shall be part of the documents required to be reviewed by the Board under this subsection if received by the Department within 30 days after receipt of such certified mail notification to said individual; otherwise, if comments are received by the Department after 30 days, same may be reviewed at the discretion of the Board under this subsection. If the local municipal authority expresses opposition to the Project, the Department will give consideration to the objections raised and will visit the proposed site or Project within 30 days of notification.

(n) Prior to the Department's issuance of the IRS Form 8609 declaring that the Project has been placed in service for purposes of the Code, §42, Project Owners must date, sign and acknowledge before a notary public a LURA and send the original to the Department for execution. The Project Owner shall then record said LURA, along with any and all exhibits attached thereto, in the real Property records of the county where the Project is located and return the original document, duly certified as to recordation by the appropriate county official, to the Department. If any liens (other than mechanics' or materialmen's liens) shall have been recorded against the Project and/or the Property prior to the recording of the LURA, the Project Owner shall obtain the subordination of the rights of any such lienholder, or other effective consent, to the survival of certain obligations contained in the LURA following the foreclosure of any such lien. Receipt of such certified recorded original LURA by the Department is required prior to issuance of IRS Form 8609. A representative of the Department shall physically inspect the Property for compliance with the Application and the representatives, warranties, covenants, agreements and undertakings contained therein before the IRS Form 8609 is issued.

#### §50.5. *Set-Asides, Commitments and Preferences.*

(a) At least 10% of the State Housing Credit Ceiling for each calendar year shall be allocated to Qualified Nonprofit Projects which meet the requirements of the Code, §42(h)(5). Such organizations may compete in one of the following set-asides:

Non Profit-10%;  
Rural Projects/Prison Communities-15%;  
General Projects-75%.

(b) The Department may redistribute the credits depending on the level of demand exhibited during the Allocation Round; provided that no more than 90% of the State's Housing Credit Ceiling for the calendar year may go to Projects which are not Qualified Nonprofit Projects. The Department will reserve 25% of the 15% Rural Projects/Prison Communities set-aside for projects financed through Rural Development (TxRD) (formerly Farmer's Home). Should there not be sufficient qualified applications submitted for the TxRD set-aside, then the allocations would revert back to the Rural Projects/Prison Communities set-aside pool. Information concerning the appropriate set-aside for each Application Round will be published in the *Texas Register*. Applicants may submit only one Application for each site.

(c) No Commitment Notice shall be issued with respect to any Project, the total development cost of which, as determined by the Department, or the acquisition, construction or rehabilitation cost

of which exceed the limitations established from time to time by the Department and the Board as more specifically provided for within the Reference Manual. The Department will reduce the Applicant's estimate of developer's and/or Contractor fees in instances where these fees are considered excessive, as more specifically provided for within the Application Submission Procedures Manual, as amended. In the instance where the Contractor is an Affiliate of the Project Owner and both parties are claiming fees, Contractor's overhead, profit, and general requirements, the Department will reduce the total fees estimated to a level that it deems appropriate. Further, the Department shall deny or reduce the amount of low income housing tax credits on any portion of costs which it deems excessive or unreasonable. The Department also may require bids in support of the costs proposed by any Applicant.

(d) The Department may, at any time and without additional administrative process, determine to award credits to projects previously evaluated and awarded credits if it determines that such previously awarded credits are or may be invalid and the owner was not responsible for such invalidity. To the maximum extent feasible, the Department will use credits carried forward from the prior year or recovered during the current year to make awards pursuant to subsections (a)-(d) of this section.

*§50.6. Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects.*

(a) Threshold Criteria. To have an Application considered for Selection Criteria, a Project Owner must first supply all required information and demonstrate that the Project meets all of the requirements of the Threshold Criteria set forth as follows and as more specifically provided for in the Application Submission Procedures Manual, as amended. Applications not meeting Threshold Criteria may be terminated as otherwise provided under this chapter. No Scattered Site Project will be considered for allocation of tax credits under this QAP and the Rules, and thus Scattered Site Projects do not satisfy Threshold Criteria. Project Owners whose Applications do not meet Threshold Criteria will be so informed in writing. The following are the Threshold Criteria that are mandatory requirements at the time of Application submission:

(1) EXHIBIT 101: Label as EXHIBIT 101, the following documents:

(A) a letter from the design architect specifying the type of amenities proposed for the development;

(B) original photographs of the signage, existing buildings, and interior photographs; and

(C) original photographs of the development site and the surrounding area. Property Owners must provide at least four of the following amenities:

- (i) limited access security fence;
- (ii) designated playground and equipment;
- (iii) community laundry room/laundry hook-up in Units;
- (iv) furnished community room;
- (v) recreation facilities;
- (vi) public telephone(s);

(vii) on-site day care, Senior Center, or Community meals room;

(viii) storage areas; or

(ix) covered parking.

(D) With respect only to Small Developments (35 Units or less) and Special Housing Projects, the Department will consider requests for waivers of the foregoing amenity requirement. Any such waiver requests shall be submitted in writing at the time of the Application submission, setting forth the reasons for the proposed waiver.

(E) All Projects must adhere to the Texas Property Code statute relating to Security Devices and other applicable requirements for Residential Tenancies.

(2) EXHIBIT 102: Label as EXHIBIT 102(A) or (B), according to the development type, provide construction costs break-down associated with the proposed new construction or rehabilitation. Additionally, all rehabilitation Projects must provide a detailed work write-up/physical assessment report with estimated cost which is prepared by a registered architect, professional engineer or bonded general Contractor detailing the scope of work to be performed throughout the rehabilitation process.

(3) EXHIBIT 103: There shall exist evidence of readiness to proceed in the form of at least one of the items under subparagraphs (A)-(E) of this paragraph:

(A) Label as EXHIBIT 103(A), evidence of site control through one of the following:

(i) A recorded warranty deed in the name of the ownership entity, or entities which comprise the Applicant;

(ii) A contract for sale or lease (the minimum term of the lease must be at least 45 years) in the name of the ownership entity, or entities which comprise the Applicant which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater; or

(iii) An exclusive option to purchase in the name of the ownership entity, or entities which comprise the Applicant which is valid for the entire period the development is under consideration for tax credits or at least 90 days, whichever is greater.

(B) Label as EXHIBIT 103(B), evidence of current and appropriate zoning in the form of a letter from the appropriate municipal authority. In lieu of such documentation the Applicant must submit evidence that a rezoning request has been filed with the appropriate municipal authority as of the date of submission of the Application. Any commitment of tax credits to the Applicant will be contingent upon proper rezoning prior to Carryover Allocation. If zoning is not required, the Applicant must submit a letter from the local municipal/county authority so stating. If the Property is currently a non-conforming use as presently zoned, provide the following:

(i) a detailed narrative of the nature of non-conformance;

(ii) the applicable destruction threshold;

(iii) owners rights to reconstruct in the event of damage; and

(iv) penalties of noncompliance.

(C) Label as EXHIBIT 103(C), evidence of the availability of all necessary utilities/services to the development site. Exhibits must be in the form of a letter from the appropriate municipal provider/local service provider, or in the form of the last monthly bill which must clearly identify the development by name and address. Necessary utilities are GAS/ELECTRIC; TRASH; WATER, and SEWER.

(D) Label as EXHIBIT 103(D), evidence of permanent financing in only one of the following forms:

(i) Bona Fide permanent financing in place as evidenced by a valid and binding loan agreement and a deed(s) of trust in an amount not less than the projected liens to be placed upon the Project upon completion of construction in the name of the ownership entity which identifies the mortgagor as the Applicant or entities which comprise the general partner;

(ii) Bona Fide commitment or term sheet issued by a lending institution or mortgage company that is actively and regularly engaged in the business of lending money which is addressed to the ownership entity, or entities which comprise the Applicant and which has been executed and accepted by both parties (the term of the loan must be for a minimum of 15 years with a 25 year amortization); or

(iii) if the development will be financed through owner contributions, provide a letter from an independent CPA verifying the capacity of the Applicant to provide the proposed financing and that funds are committed solely for such purpose with a letter from the Applicant's bank or banks confirming that such funds have been provided for or deposited in a separate account at said bank(s).

(E) Label as EXHIBIT 103(E), a copy of the current title policy which shows that the ownership of the land/Project is vested in the exact name of the Applicant, or entities which comprise the Applicant (purchaser) or the entity/Person (seller) with which the Applicant or entities which comprise the Applicant has executed an option to purchase, a purchase and sale agreement, a long-term lease or option to lease.

(4) EXHIBIT 104: Label as EXHIBIT 104, evidence of pre-Application notification by the Applicant to the local chief executive officer(s) (i.e., mayor and county judge) of the locality of the development. Such evidence must be in the form of a copy of the certified mail receipt, overnight mail receipt, or confirmation letter from said official.

(5) EXHIBIT 105: Provide Applicant's Financial Statements for the current year (as well as the most current) of all Applicants, corporation or general partner(s) and its principal(s) which are not more than 12 months old prepared and submitted in EXHIBIT 105, which is provided as part of this Application Submission Procedures Manual. Audited Financial Statements not more than 12 month old for the general partner(s), or unaudited Financial Statement not more than 90 days old prepared by an independent CPA, may be accepted in lieu of EXHIBIT 105.

(6) EXHIBIT 106: must be the original copy of the completed and executed Previous Participation and Background Certification Form (EXHIBIT 106) with respect to each member of

the Development Team which is provided as part of the Application Submission Procedures Manual.

(7) EXHIBIT 107: Label as EXHIBIT 107, a current rent roll for occupied Projects undergoing rehabilitation. The rent roll must disclose terms and rate of the lease, "street" rents, Unit mix, tenant names or vacancy, dates of first occupancy and expiration of lease. Vacant and proposed new construction Projects will, of course, be exempt from this requirement.

(8) EXHIBIT 108: Label as EXHIBIT 108, for rehabilitation developments, historical monthly operating statements of the subject development to date for the past three full calendar years and for the current year to date as of the end of the month occurring not more than 45 days prior to the date of initial Application, or since the date of acquisition of the development and for new construction, submit 15-year proforma estimates of operating expenses and all supporting documentation to support projections. Rehabilitation Projects must also submit a 15-year proforma of operating expenses with appropriate supporting documentation.

(9) EXHIBIT 109: Label as EXHIBIT 109 on the cover page only, a Market Study addressing all items listed in §50.4(c) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) and/or required by the Reference Manual.

(10) EXHIBIT 110: Label as EXHIBIT 110 on the cover page only, a Phase I Environmental Study prepared in accordance with §50.4(c) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments).

(11) EXHIBIT 111: Label as EXHIBIT 111, documentation, as applicable, that the Applicant is a Qualified Nonprofit Organization pursuant to the Code, §42(h)(5)(C), as evidenced by:

(A) an IRS determination letters,

(B) partnership agreement which shows that the nonprofit Controls the Project (directly or indirectly) and will materially participate (within the meaning of the Code §469(h) in the development and operation of the Project throughout the Compliance Period, and

(C) a current list of all directors and officers of the nonprofit organization, along with information pertaining to their primary occupations and disclosing any relationship; as an Affiliate or otherwise, with other members of the Applicant and/or any members or Affiliate of the Development Team, including any market analyst, CPA, appraiser, or other professional performing any services with respect to the Project and/or the subject Property.

(12) EXHIBIT 112: Label as EXHIBIT 112, if applying for acquisition credits or if the Applicant is affiliated with the seller an appraisal of the Property apportioning the value of the land and the improvements where applicable, a valuation report from the local tax appraisal district and a bona fide valid contract verifying the acquisition cost which clearly identifies the selling Persons or entities, and details any relationship with the Applicant or any Affiliation with the Development Team, any Qualified Market Analyst and any other professional or consultant performing services with respect to the Project.



(13) EXHIBIT 113: Label as EXHIBIT 113, a copy of the public notice published in a widely circulated newspaper in the area in which the proposed development will be located. Such notice must run at least twice within a two week period, except on holidays, prior to the submission of the Application to the Department. The notice must be prepared in accordance with the guidelines established in the Application Submission Procedures Manual.

(b) Evaluation Factors. The Department will consider Applications for a housing credit allocation using the evaluation and point system described herein and in the Application Submission Procedures Manual:

(1) Applications will be initially evaluated against the Threshold Criteria as they are accepted for filing in the Department during any Application Acceptance Period. Applications not meeting the Threshold Criteria may be terminated and may, at the Department's discretion, be returned to the Applicant without further review. The Department shall not be responsible for the Applicant's failure to meet the Threshold Criteria, and any oversight or failure of the Department's staff to notify the Applicant of such inability to satisfy the Threshold Criteria shall not confer upon the Applicant any rights to which it would not otherwise be entitled. All Applicants may withdraw and subsequently refile an Application, as well as file a new Application before the filing deadline.

(2) Applications will then be ranked according to the points scored under the Selection Criteria in accordance with the Rules and the Application Submission Procedures Manual. Applications not scored by the Department's staff shall be deemed to have the points allocated through self-scoring by the Applicants until actually scored. This shall apply only for ranking purposes.

(3) Applications which receive the highest number of points, in each set-aside category during the applicable round, and if a sufficient amount of state housing tax credits are available, will be eligible for an evaluation by an Underwriter. As detailed in §50.4(h) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) the Department, the Committee, and the Board shall evaluate an Application on the basis of additional factors beyond scoring criteria such as underwriting analysis, geographic dispersion of multi-family housing as well as tax credit allocation, site conditions, impact on the Low Income Housing Tax Credit Program's goals and objectives as stated in the QAP and the Rules, and as otherwise provided under this chapter. If such evaluation warrants, the Application will be forwarded to the Committee and to the Board for approval. The Department may have an outside third party perform the underwriting evaluation to the extent it determines appropriate. The expense of any third party underwriting evaluation shall be paid by the Applicant prior to the commencement of the aforementioned evaluation.

(4) Applications which have not received a Commitment Notice at the end of the Application Round may be placed on a waiting list to be established by the Department and approved by the Committee and the Board. At the end of each calendar year, all Applications which have not received a Commitment Notice shall be deemed terminated, unless the Department shall determine to retain or act upon such Applications as provided hereinafter at §50.15 of this title (relating to Forward Reservations; Binding Commitments). The Applicant may re-apply to the Department during the next Application Acceptance Period.

(c) Selection Criteria. Pursuant to subsection (b)(1)(4) of this section, Applications receiving the highest number of points in each set aside category; in each Application Acceptance Period, if a sufficient amount of the State Housing Credit Ceiling is available, will be eligible for an evaluation by an Underwriter. All Applications will be ranked according to the Selection Criteria listed in paragraphs (1)-(9) of this subsection. If no additional set-aside credits are available, the Application shall be scored and evaluated in the General Pool using the criteria to which such General Pool Applications are subject, without special set-aside scoring points being considered.

#### (1) DEVELOPMENT LOCATION

(A) EXHIBIT 201: Label as EXHIBIT 201, a copy of the census map (may be obtained from HUD or the local planning department) if the subject Property is located within a Qualified Census Tract (QCT) as defined by the Secretary of HUD and qualifies for the 30% increase in Eligible Basis, pursuant to the Code, §42(d)(5)(C). The census map must clearly identify the proposed development to be located within a QCT. Census tract numbers must be clearly marked on the map, and must be identical to the QCT number stated in the Department's Reference Manual. Applicants for Projects in a Difficult Development Area or a Targeted Texas County must indicate this designation in the space provided in the Application Submission Procedures Manual. (5 points) OR

(B) EXHIBIT 202: Label as EXHIBIT 202, evidence that the proposed development is located within a city-sponsored neighborhood preservation/redevelopment area or a designated state or federal empowerment/enterprise zone. Such evidence must be in the form of a letter and a map from a city/county official verifying the proposed development to be located within a preservation/redevelopment area or empowerment/enterprise zone. In order to qualify for these points, an Applicant whose Project is located within a city-sponsored redevelopment area must submit a certified copy of the appropriate resolution or documentation from the mayor, local city council, county judge, county commissioners court in support of the Project which documents that the designated area was:

- (i) created by the local city council/county commission;
- (ii) targets a specific geographic area; and
- (iii) offers tangible and significant area-specific incentives or benefit over and above those normally provided by the city or county. Public Improvement Districts (PIDs), Tax Increment Financing Zones (TIFs), or similar districts organized under the Texas Local Government Code are prime examples of such redevelopment efforts. (5 points)

#### (2) HOUSING NEEDS CHARACTERISTICS

(A) The proposed development is located in a county in which 10% or more of the households are below the poverty level as set forth in the Department's "County Data Elements Guide" incorporated into the Reference Manual. Utilize the percentages in clauses (i)-(iv) of this subparagraph to assess the appropriate score.

- (i) 10% to 20% of households are below the poverty level (3 points)
- (ii) 21% to 31% of households are below the poverty level (5 points)



(iii) 32% to 42% of households are below the poverty level (7 points)

(iv) 42% + of households are below the poverty level (9 points)

(B) The proposed development is located in a county in which 20% or more of the rental units have a cost burden as set forth in the County Data Elements guide. Utilize the following percentages to assess the appropriate score:

(i) 20% to 30% of rental units have a cost burden (4 points)

(ii) 31% to 41% of rental units have a cost burden (6 points)

(iii) 42% + of rental units have a cost burden (8 points)

### (3) PROJECT CHARACTERISTICS

(A) EXHIBIT 203: Label as Exhibit 203, evidence that the proposed development to be purchased qualifies as a federally assisted building within the meaning of the Code, §42(d)(6)(B), and is in danger of having the mortgage assigned to HUD, TxRD, or creating a claim on a federal mortgage insurance fund. Such evidence must be a letter from the institution to which the development is in danger of being assigned. (5 points)

(B) EXHIBIT 204: Label as EXHIBIT 204, evidence that the proposed development is a low-income building with mortgage prepayment eligibility as provided for in the Code, §42(d)(6)(C). Such evidence must be a copy of the HUD regulatory agreement which evidences the prepayment clause. (5 points)

(C) EXHIBIT 205: Label as EXHIBIT 205, evidence that the Applicant is purchasing(ed) a Property (no earlier than 1995) owned by HUD, an insured depository institution in default, or a receiver or conservator of such an institution, or is an REO Property. Such evidence must be in the form of a binding contract to purchase from such federal or other entity as described in subparagraph (A)-(C) of this paragraph, closing statements, or recorded warranty deed. (5 points)

(D) The proposed development's composition offers a Unit mix which is conducive to housing large families. To qualify for these points, these Units must have at least 1000 square feet of living space for three bedrooms or 1200 square feet for four bedrooms. Five points will be awarded for the first 15% of the Units in the development that are three bedrooms or larger. An additional point will be awarded in 5% increments for every 5%, up to 30% of Units which are three bedrooms or larger, up to a maximum of three points. In computing qualified Units for this selection item where the Unit Project is a mixed-income development, only tax credit Units should be included.

(i) 15% of the Units in the development are three or four bedrooms. (5 points)

(ii) An additional point will be awarded for every 5% of Units that are three or four bedrooms up to a maximum of three points. (3 points)

(E) EXHIBIT 206: Label as Exhibit 206A, for new Construction, a letter from the architect which certifies that at least four of the following energy saving devices will be utilized in the

construction of each tax credit Unit. The devices selected must be certified as included in each tax credit Unit of the Project upon placement in service.

(i) Ceiling Fans  
(ii) Insulation which exceeds code for walls and ceilings

(iii) Solar Screens  
(iv) Gas heating system with a minimum 80% flue efficiency

(v) Energy efficient air conditioning system with a 10 SEER or above

(vi) Dual pane insulating windows  
(F) To qualify for these points at least four of the six items listed in subparagraph (E) of this paragraph must be selected. (3 points)

(G) Label as Exhibit 206B for rehabilitation, an energy audit of 10% of the tax credit Units and common areas, conducted by a local utility servicer or a registered architect. Upon placement in service, another audit will be required of the same Units to certify that the design features and/or construction components installed in each tax credit Unit exceeds local/regional building code with respect to energy efficiency. In the event that an energy audit is unobtainable because the Units are currently vacant and uninhabitable, a certification from a registered architect will suffice. (3 points)

(H) The proposed development provides low density housing of less than 16 Units per acre or as follows:

(i) 16 Units or less per acre (6 points)

(ii) 17 to 20 Units per acre (4 points)

(I) The subject Project is an existing Residential Development without maximum rent limitations or set-asides for affordable housing seeking rehabilitation credits. (8 points)

(J) The subject Project is a mixed-income development comprised of both market rate Units and qualified tax credit Units.

(i) Project's Applicable Fraction is no greater than 75%. (6 points)

(ii) Project's Applicable Fraction is no greater than 60%. (10 points)

(K) EXHIBIT 207: Label as EXHIBIT 207, evidence that the proposed historic residential development has received an historic property designation by a federal, state or local governmental entity. Such evidence must be in the form of a letter from the designating entity identifying the development by name and address and stating that the project is:

(i) listed in the National Register of Historic Places under the U.S. Department of the Interior in accordance with the National Historic Preservation Act of 1966;

(ii) located in a registered historic district and certified by the U.S. Department of the Interior as being of historic significance to that district;

(iii) identified in a city, county, or state historic preservation list; or

(iv) designated as a state landmark. (6 points)

(L) Property Owner will set-aside Units for households with incomes at 50% or less of Area Median Gross Income (AMFI) for occupancy of the tax credit Units (TCU's) in the development. The rents for these Units must not be higher than the allowable tax credit rents at the 50% AMFI level. Utilize the percentages below to assess the appropriate score:

(i) Four points will be awarded for the first 10% of the Units in the development that are set-aside for tenants with incomes at 50% or less of AMFI. (4 points)

(ii) An additional point will be awarded for every 5% of additional Units set-aside for tenants with incomes at 50% or less of AMFI up to a maximum of four points. (4 points)

(M) Proposed development is comprised of fourplexes in clusters of four or more on contiguous property under common ownership, management and Control or townhome developments of at least 16 Units. To qualify for these points the development must have a density of no more than 16 Units per acre. (5 points)

(N) EXHIBIT 208: Label as EXHIBIT 208, for rehabilitation evidence that a majority of the development's residential Units, as of the end of the Application Acceptance Period, are vacant and uninhabitable. Such evidence must be in the form of a letter and report from the local municipal authority citing substantial code violations. To qualify for these points, the Applicant or its Affiliates must not have owned a significant interest in, or have had Control of the Project during the period in which such Units were rendered uninhabitable. (4 points)

(O) EXHIBIT 209: Label as EXHIBIT 209, evidence from the local municipal authority stating that the proposed development fulfills a need for additional affordable rental housing as evidenced in a local Consolidated Plan and is supported by the local municipal authority. (5 points)

(P) The Project is a Small Development. A Small Development is defined as a Project consisting of not more than 35 multifamily Units, which is not a part of, or contiguous to, a larger Project. A Project may not receive points for this characteristic if it would otherwise qualify as a Rural Project. (5 points)

#### (4) SPONSOR CHARACTERISTICS

(A) EXHIBIT 210: Label as EXHIBIT 210, evidence that the ownership entity, general partner, or its principals have a record in successfully developing and operating affordable rental housing under a program operated by HUD, TxRD, RTC, HOME, LIHTC or any other verifiable source which provides affordable housing. With respect to the Properties listed as developed and operated, such ownership entity, principals or general partner must be the Project Owner or have the Control of the Project Owner. The term "successful" is defined as developing, operating, and maintaining current Control of at least 100 Units under the tax credit program, or at least 100 Units under all other affordable housing programs except TxRD and Rural Projects. For such Projects, a minimum of 35 Units are required. For the tax credit program, evidence in the form of a copy of the IRS Form 8609 for the first building and a copy of the partnership agreement must be submitted. For HUD subsidized properties, the evidence must include the most recent

Housing Quality Standards inspection and the Annual Performance Review (HUD Form 9822). For other affordable housing programs, documentation (including development and partnership agreements) evidencing current ownership and operation of the Project is required. Applicants whose experience in affordable housing was through mortgage revenue bonds, must submit documentation which shows that the ownership entity/general partner and its principals have developed and had or currently maintain Control in the Project Owner. Such evidence should include a copy of the financing and/or regulatory agreements, warranty deed which shows the ownership entity as the grantee, the partnership and development agreements, the name, address and contact Person of the bond trustee, issuer, and compliance agent. Additional information to be provided shall include a schedule of Properties owned, years of ownership, addresses of properties, number of Units in the Properties, and the percentage of direct or indirect ownership of each Property. Property Owners in noncompliance with any of the aforementioned programs, but which are not barred from having an Application recommended by §50.4(f) of this title (relating to Applications), or which have had a continuing pattern of defaults and foreclosures are ineligible to claim the points for this item.

(i) Project Owner or general partner has developed and currently maintains Control of at least 100 affordable housing Units under the tax credit or other affordable housing programs. (8 points); or

(ii) Project Owner or general partner has developed and had Control of at least 100 affordable housing Units under the tax credit or other affordable housing program for a period of not less than five years. (6 points); or

(iii) Project Owner or general partner has developed and had or currently maintains Control of at least 100 market-rate Units for a period of not less than five years. (4 points)

(B) EXHIBIT 211: Label as EXHIBIT 211, evidence that the HUB has been certified by the General Services Commission and is the Project Owner or Controls the Project Owner. With respect to the filing of an Application and the development, operation and ownership of a Project, the historically underutilized person or persons whose ownership interests comprise a majority of a corporation, partnership, joint venture or other business entity, must maintain this majority and must demonstrate regular, continuous, and substantial participation in the operation and management activities of the entity. Likewise, with regard to a sole proprietorship, the individual who comprises the sole proprietorship must demonstrate regular, continuous, and substantial participation in the development, operation and ownership of the Project. The Department shall require evidence of regular, continuous and substantial participation and this evidence shall include, but not limited to, the agreement to personally guarantee the interim construction loan secured (and all other guarantees to the equity investor) relative to the development of a Project by the person or persons upon whose purported ownership interest(s) and participation form the basis for which the designation of a HUB is being claimed. Any such guarantee wherein an Affiliate, partner and or Beneficial Owner of the guarantor agrees to indemnify, in whole or in part, the guarantor from the liability arising from the guarantee, shall not constitute said evidence. The Department shall, during and after the Application Round, monitor those individuals upon whose purported ownership interest(s) and participation form the basis for which the designation of HUB is being claimed and may require the submission of any additional documentation as required

to verify said evidence. To qualify for these points, in addition to the certification from the General Services Commission, the historically underutilized person or persons whose ownership interest(s) form the basis of the HUB designation must provide the necessary loan and syndication guarantees to develop the Project. The Department's goal is to have substantive participation by those individuals upon whose purported ownership interest(s) and participation form the basis for which the designation as a HUB is claimed. A determination by the Department that there has been a material misrepresentation as to such participation or that insufficient evidence has been provided to substantiate such participation will be final and points awarded for HUB participation will be withdrawn accordingly. (5 points)

(5) **PARTICIPATION OF LOCAL TAX EXEMPT ORGANIZATIONS.** EXHIBIT 212: Label as EXHIBIT 212, evidence that the Property owner has an executed agreement with a Local Tax Exempt Organization for the provision of special supportive services that would not otherwise be available to the tenants. The supportive services will be evaluated based upon the following:

- (A) the duration of the service agreement,
- (B) the accessibility and appropriateness of the service to the tenants,
- (C) the experience of the service provider, and
- (D) the importance of the service in enhancing the tenants standard of living. The supportive service will be included in the LURA. (Up to 5 points)

(6) **TENANT POPULATIONS WITH SPECIAL HOUSING NEEDS.**

(A) This criterion applies to elderly Projects which must provide significant facilities and services specifically designed to meet the physical and social needs of the residents. Significant services may include congregate dining facilities, social and recreation programs, continuing education, welfare information and counseling, referral services, transportation and recreation. Other attributes of such Projects include providing hand rails along steps and interior hallways, grab bars in bathrooms, routes that allow for barrier-free lever type doorknobs and single lever faucets, as well as elevators for Projects of over two stories. Elderly Projects must not contain any Units with three or more bedrooms. Such a Project must conform to the Federal Fair Housing Act and must be a Project which:

- (i) is constructed for, and occupied by at least one Person who is 62 years of age or older; and
- (ii) adheres to policies and procedures which demonstrate a firm commitment by the owner and manager to provide housing for Persons 62 years of age or older. (10 points)

(B) EXHIBIT 213: Label as EXHIBIT 213, evidence verifying that the subject development provides Units specifically equipped for persons with physical or mental disabilities. Such evidence must be in the form of a certification from an accredited architect stating the number of Units which are/will be designed to meet American National Standards for buildings and facilities providing accessibility and usability for Persons with Disabilities (ANSI A117.1 - 1992 or successor) and will conform to the Fair Housing Act. "Equipped" means that features that make the Units fully usable to such persons are installed in the Units at the time of construction or provisions have been included in construction for easy modification to meet the ANSI A117.1 standards. For Units targeted

for tenants with mental disabilities, such evidence must include a referral agreement with an entity that provides on-site supportive services specifically designed for such tenants.

- (i) 6% to 10% of Units are set-aside for persons with physical disabilities or targeted for persons with mental disabilities. (4 points)
- (ii) 11% to 15% of Units are set-aside for persons with physical/mental disabilities. (6 points)
- (iii) 16% + of Units are set-aside for persons with physical/mental disabilities. (8 points)

(C) EXHIBIT 214: Label as EXHIBIT 214, evidence that the Project is designed solely for transitional housing for homeless persons on a non-transient basis, with supportive services designed to assist tenants in locating and retaining permanent housing. Such evidence must include a detailed narrative describing the type of proposed housing; a referral agreement with an established organization which provides services to the homeless; and a marketing plan designed to attract qualified tenants and housing providers, as well as a list of supportive services. (15 points)

(7) **PUBLIC HOUSING WAITING LISTS.** EXHIBIT 215: Label as EXHIBIT 215, evidence that the Property owner has committed in writing to the local public housing authority (PHA), the availability of Units which also states that the Property owner agrees to consider as potential tenants, those households on the PHA's waiting list. Property owner's letter to the PHA must be accompanied by a marketing plan outlining how these Units will be marketed to individuals on the waiting list. If no PHA is within the locality of the development PHA, the Property owner must utilize the nearest authority or office responsible for administering Section 8 programs. Such evidence must include a copy of the Property owner's letter to the local PHA; a copy of the marketing plan submitted with letter to the local PHA; verification of receipt by the PHA in the form of certified return receipt or overnight mail receipt; and a letter received from an appropriate municipal authority, or local PHA stating the need for additional affordable housing Units within its jurisdiction. (3 points)

(8) **SUBSTANTIAL READINESS TO PROCEED.** EXHIBIT 216: Label as EXHIBIT 216, evidence of substantial readiness to proceed. Such evidence must be in the form of an enforceable construction financing commitment from a regulated financial institution that is actively and regularly engaged in the business of lending money. Such a commitment must be a written approval of a loan or grant (i.e., preliminary approval by the lender's loan committee) and be subject only to conditions fully under the control of the Applicant to satisfy (excluding the allocation of tax credits). (4 Points)

(9) **BONUS POINTS**

(A) EXHIBIT 217: Label as EXHIBIT 217, evidence that the sponsor agrees to provide, and provides, to a qualified nonprofit organization (or a tenant organization) a right of first refusal to purchase the Project for the minimum price provided in, and in accordance with the requirements of, §42 (i) (7) of the Code. Sponsor may qualify for this bonus in either of the following ways:

- (i) by entering into an agreement with a specific qualified nonprofit organization (or tenant organization) providing for such right of first refusal, or

(ii) by entering into an agreement with the Department providing that upon the earlier of:

(I) the Sponsor's determination to sell the Project, or

(II) the Sponsor's request to the Department, pursuant to §42(h)(6)(I) of the Code, to find a buyer who will purchase the Project pursuant to a "qualified contract" within the meaning of §42(h)(6)(F) of the Code, the Department shall be authorized to identify a qualified nonprofit organization (or tenant organization) to which the Sponsor shall sell the Project at the minimum price provided in §42(i)(7)(B) of the Code. (5 points)

(B) Application is received within the first ten days of the Application Acceptance Period. (2 points)

(d) Final Ranking. The Department will evaluate Projects according to the strength of the Project in meeting the Threshold and Selection Criteria. In the event that two or more Applications receive the same number of points in any given set-aside category, the Department will utilize the following factors in the order presented in paragraphs (1)-(7) of this subsection in making a determination as to which Project will receive a preference in consideration for a tax credit commitment:

(1) which demonstrates the highest substantial readiness to proceed as evidenced by the Selection Criteria, more specifically provided for in subsection (c)(8) of this section;

(2) which provide for the most efficient usage of the low income housing tax credit on a per Unit basis;

(3) which have substantial community support as evidenced by the commitment of local public funds toward the construction, rehabilitation and acquisition and subsequent rehabilitation of the Project;

(4) Project which is a Special Housing Project as defined in §50.2 of this title (relating to Definitions);

(5) which serve the lowest income tenants;

(6) which serve low-income tenants for the longest period of time, in the form of a longer Compliance Period and/or extended low-income use period (as set forth in the Extended Low-Income Housing Commitment Agreement); and

(7) whose Unit composition provides the highest percentage of three bedrooms or greater sized Units.

(e) Past Performance. In reaching the final ranking of an Application, the Department will take into consideration the Project Owner's history in the tax credit program and other affordable housing programs. The Department may disqualify from this allocation round, any Applicant, Project Owner, developer and its partners, principals, and/or Affiliates who have received an allocation of credits in the 1996 round and who have not yet finalized the closing of the construction loan, respectively, as of the start of this Application Acceptance Period. The Department may deduct up to ten points from the final score of any Applicant (or an Affiliate of which), in the past, has not placed into service developments for which the Department has made an allocation, or if a Property Owner has failed to perform under the obligations of any previous Commitment Notice. The Department may, at its sole discretion disqualify or impose limitation or disabilities upon an Applicant, Project Owner, developer, and its partners, principals and/or Affiliates with respect to the competition for

allocations of tax credits as a consequence of material misstatement or omission, noncompliance with any Code requirements, or any of the terms, conditions or obligations of the program for any Project that has received a commitment or allocation, or for failure to place in service buildings for which credits were allocated. The Department will disqualify an Applicant who has been convicted of fraud, theft, misappropriation of funds; who has made misrepresentations to the Department; who is in noncompliance with the LURA or other similar agreement for any other Project monitored by the Department, or who is in noncompliance under this program or another program administered by this Department or other governmental entities. Additionally, Applicants are advised that the Department reserves the right to reject Applications which include principals who have been:

(1) Excluded from federal and non federal procurement programs (either debarment or suspension);

(2) Convicted of a felony offense;

(3) Indicted or subject to enforcement action under state or federal securities law; and

(4) Negligent in the physical upkeep of subject Property, or negligent in the operation of the subject Property, as deemed so by another federal or state authority. All such rejections of Applications shall be at the sole discretion of the Department.

(f) Credit Amount.

(1) The Department shall issue tax credits only in the amount needed for the financial feasibility and viability of a Project throughout the Compliance Period. The issuance of tax credits or the determination of any allocation amount in no way represents or purports to warrant the feasibility or viability of the Project by the Department. The Department will limit the allocation of tax credits to no more than \$1.2 million per Project or \$2.4 million per Applicant. For these purposes this limitation will apply to all Affiliates of any Applicant, developer, Project Owner, general partner, sponsor or their Affiliates or related entities unless otherwise provided for by the Department.

(2) The limitation does not apply:

(A) to an entity which raises or provides equity for one or more Projects, solely with respect to its actions in raising or providing equity for such Projects (including syndication related activities as agent on behalf of investors),

(B) to the provision by an entity of "qualified commercial financing" within the meaning of the Code, §50(a)(1)(D)(ii) (without regard to the 80% limitation thereof), and

(C) to a Qualified Nonprofit Organization or other not-for-profit entity, to the extent that the participation in a Project by such organization consists of the provision of loan funds or grants.

(3) In making determinations with respect to the limitation the Department may take into account such factors as the percentage of interest held by a particular individual or any Affiliate thereof in a Project, the amount of fees or other compensations paid to a particular individual or any Affiliate thereof with respect to a Project, any other financial benefits, either directly or indirectly through Beneficial Ownership received by a particular individual or any Affiliate thereof with respect to a Project. The Committee, in its sole discretion, may allocate credits to a Project Owner in addition to those awarded at the time of the initial Carryover Allocation in instances where there

is bona fide substantiation of cost overruns and the Department has made a determination that the allocation is needed to maintain the Project's financial viability as a qualified low income Project.

(g) Limitations on the Size of Projects. Rural Projects involving new construction must not exceed 75 Units. All other Projects involving new construction or requesting both rehabilitation and new construction tax credits will be limited to 250 Units.

(h) Tax Exempt Bond Financed Projects. Applications for Projects which receive at least 50% of their financing from the proceeds of tax-exempt bonds which are subject to the state volume cap as described in the Code, §42(h)(4)(B) are also subject to evaluation under the QAP and Rules. Such Projects must meet all the Threshold Requirements stipulated in the most recently approved QAP and Rules. Such Projects must also demonstrate consistency with the bond issuer's local Consolidated Plan. The issuer, (if other than the Department) may, at its discretion, enter into a contractual agreement to allow the Department to underwrite the Project. If the Department does not underwrite the Project for feasibility, it will require evidence that such a determination has been made by the issuer of the bonds. If the Department determines that all requirements have been met, the Executive Director, without further action, shall issue an appropriate notice to the Sponsor that the Project satisfies the requirements of the QAP and Rules in accordance with §42(m)(1)(D).

(i) Adherence to Obligations. All representations, undertakings and commitments made by an Applicant in the applications process for a Project, whether with respect to Threshold Criteria, Selection Criteria or otherwise, shall be deemed to be a condition to any Commitment Notice and/or Carryover Allocation for such Project, the violation of which shall be cause for cancellation of such Commitment Notice or Carryover Allocation by the Department, and if concerning the ongoing features or operation of the Project, shall be reflected in the LURA.

#### §50.7. Compliance Monitoring.

(a) The Code, §42 (m)(1)(B)(iii), requires each State Allocating Agency to include in its "Qualified Allocation Plan" a procedure that the agency (or an agent or other private Contractor of such agency) will follow in monitoring Projects for noncompliance with the provisions of the Code, §42 and in notifying the Internal Revenue Service (the "Service"), or its successor, of such noncompliance of which such agency becomes aware. This procedure does not address forms and other records that may be required by the Service on examination or audit.

(b) The Department will also monitor compliance with any additional covenants made by the Project Owner in the Extended Low Income Housing Commitment Agreement.

(c) The owner of a low income housing Project must keep records for each qualified low income building in the Project showing:

(1) the total number of residential rental Units in the building (including the number of bedrooms and the size in square feet of each residential rental Unit);

(2) the percentage of residential rental Units in the building that are low income Units;

(3) the rent charged on each residential rental Unit in the building including documentation to support the utility allowance;

(4) the number of occupants in each low income Unit;

(5) the low income Unit vacancies in the building and information that shows when, and to whom, the next available Units were rented;

(6) the annual income certification of each low income tenant per Unit, in the form designated by the Department in the Compliance Reference Guide, as may be amended;

(7) documentation to support each low income tenant's income certification, consistent with the verification procedures required by HUD under §8 of the United States Housing Act of 1937 (§8). In the case of a tenant receiving housing assistance payments under §8, the documentation requirement is satisfied if the public housing authority provides a statement to the Project Owner declaring that the tenant's income does not exceed the applicable income limit under the Code, §42(g) as described in the Compliance Reference Guide;

(8) the Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period;

(9) the character and use of the nonresidential portion of the building included in the building's Eligible Basis under the Code, §42(d), (e.g. tenant facilities that are available on a comparable basis to all tenants and for which no separate fee is charged for use of the facilities, or facilities reasonably required by the Project); and

(10) additional information as required by the Department.

(d) Record retention provision. The owner of a low-income housing Project is required to retain the records described in subsection (c) of this section for at least six years after the due date (with extensions) for filing the federal income tax return for that year; however, the records for the first year of the tax Credit Period must be retained for at least six years beyond the due date (with extensions) for filing the federal income tax return for the last year of the Compliance Period of the building.

#### (e) Certification and Review.

(1) On or before February 1st of each year, the Department will send each Project Owner of a completed Project an Owner's Certification of Program Compliance to be completed by the Owner and returned to the Department on or before the first day of March of each year in the Compliance Period. Any Project for which the certification is not received by the Department, is received past due, or is incomplete, improperly completed or not signed by the Project Owner, will be considered not in compliance with the provisions of the Code. The Owner Certification of Program Compliance shall cover the proceeding calendar year and shall include the following statements of the Owner:

(A) the Project met the minimum set-aside test which was applicable to the Project;

(B) there was no change in the Applicable Fraction of any building in the Project, or that there was a change, and a description of the change;

(C) the owner has received an annual income certification from each low income tenant and documentation to support that certification;

(D) each low income Unit in the Project was rent-restricted under the Code, §42(g)(2) and Internal Revenue Service Final Regulation §1.42 - 10 regarding utility allowances;

(E) all Units in the Project were for use by the general public and used on a non-transient basis (except for transitional housing for the homeless provided under the Code, §42(i)(3)(B)(iii));

(F) each building in the Project was suitable for occupancy, taking into account local health, safety, and building codes;

(G) either there was no change in the Eligible Basis (as defined in the Code, §42(d)) of any building in the Project, or that there has been a change, and the nature of the change;

(H) all tenant facilities included in the Eligible Basis under the Code, §42(d), of any building in the Project, such as swimming pools, other recreational facilities, and parking areas, were provided on a comparable basis without charge to all tenants in the building;

(I) if a low income Unit in the Project became vacant during the year, reasonable attempts were, or are being, made to rent that Unit or the next available Unit of comparable or smaller size to tenants having a qualifying income before any other Units in the Project were, or will be, rented to tenants not having a qualifying income;

(J) if the income of tenants of a low income Unit in the Project increased above the limit allowed in the Code, §42(g)(2)(D)(ii), the next available Unit of comparable or smaller size in the Project was, or will be, rented to tenants having a qualifying income;

(K) a LURA including an extended low income housing commitment agreement as described in the Code, §42(h)(6)(B), was in effect for buildings subject to the Revenue Reconciliation Act of 1989, §7106(c)(1) (generally any building receiving an allocation after 1989);

(L) no change in the ownership of a Project has occurred during the reporting period;

(M) the Project Owner has not been notified by the Internal Revenue Service that the Project is no longer "a qualified low income housing project" within the meaning of the Code, §42; and

(N) the Project met all terms and conditions which were recorded in the LURA, or if no LURA was required to be recorded, the Project met all representations of the Project Owner in the Application for credits.

(2) Review.

(A) The Department will review each Owner's Certification of Program Compliance for compliance with the requirements of the Code, §42.

(B) Each year, the Department will perform monitoring reviews of at least 20% of the low income housing Projects. A monitoring review will include an inspection of the income certification, the documentation the Project Owner has received to support that certification, the rent record for each low income tenant, and any additional information that the Department deems necessary, for at least 20% of the low income Units in those Projects. The Department shall give reasonable notice to the Project Owner that an inspection will occur; however, the Projects and records to be reviewed will be selected by the Department in its discretion. Monitoring reviews

will be performed at the location of the Project, unless the Project is required to have fewer than ten low income Units.

(C) The Department may, at the time and in the form designated by the Department, require the Project Owners to submit for compliance review, information on tenant income and rent for each low income Unit, and may require a Project Owner to submit for compliance review a copy of the income certification, the documentation the Project Owner has received to support that certification and the rent record for any low income tenant.

(3) Exception. The Department may, at its discretion, enter into a Memorandum of Understanding with the TxRD, whereby the TxRD agrees to provide to the Department information concerning the income and rent of the tenants in buildings financed by the TxRD under its §515 program. Owners of such buildings may be excepted from the review procedures of paragraph (2)(B) or (C) of this subsection or both; however, if the information provided by TxRD is not sufficient for the Department to make a determination that the income limitation and rent restrictions of the Code, §42(g)(1) and (2), are met, the Project Owner must provide the Department with additional information.

(f) Inspection provision. The Department retains the right to perform an on site inspection of any low income housing Project including all books and record pertaining thereto through either the end of the Compliance Period or the end of the period covered by any Extended Low Income Housing Commitment Agreement, whichever is later. An inspection under this subsection may be in addition to any review under subsection (e)(2) of this section.

(g) Notices to Owner. The Department will provide prompt written notice to the owner of a low income housing Project if the Department does not receive the certification described in subsection (e)(1) of this section or discovers through audit, inspection, review or any other manner, that the Project is not in compliance with the provisions of the Code, §42. The notice will specify a correction period which will not exceed 90 days, during which the owner may respond to the Department's findings, bring the Property into compliance, or supply any missing certifications. The Department may extend the correction period for up to six months if it determines there is good cause for granting an extension. If any communication to the Project Owner under this section is returned to the Department as unclaimed or undeliverable, the Project may be considered not in compliance without further notice to the Project Owner.

(h) Notice to the Internal Revenue Service.

(1) Regardless of whether the noncompliance is corrected, the Department is required to file IRS Form 8823, Low Income Housing Credit Agencies Report of Noncompliance, with the Internal Revenue Service. IRS Form 8823 will be filed not later than 45 days after the end of the correction period specified in the Notice to Owner, but will not be filed before the end of the correction period. The Department will explain on IRS Form 8823 the nature of the noncompliance and will indicate whether the Project Owner has corrected the noncompliance or has otherwise responded to the Department's findings.

(2) The Department will retain records of noncompliance or failure to certify for six years beyond the Department's filing of the respective IRS Form 8823. In all other cases, the Department will retain the certification and records described in this section for three

years from the end of the calendar year the Department receives the certifications and records.

(i) Notices to the Department.

(1) A Project Owner must notify the Department in writing prior to any sale, transfer, exchange, or renaming of the Project or any portion of the Project, and this notification requirement shall be included in a LURA with respect to each Project.

(2) A Project Owner must notify the Department in writing of any change of address to which subsequent notices or communications shall be sent.

(j) Liability. Compliance with the requirements of the Code, §42 is the sole responsibility of the owner of the building for which the credit is allowable. By monitoring for compliance, the Department in no way assumes any liability whatsoever for any action or failure to act by the owner including the owner's noncompliance with the Code, §42.

(k) These provisions apply to all buildings for which a low income housing credit is, or has been, allowable at any time. The Department is not required to monitor whether a building or Project was in compliance with the requirements of the Code, §42, prior to January 1, 1992. However, if the Department becomes aware of noncompliance that occurred prior to January 1, 1992, the Department is required to notify the Service in a manner consistent with subsection (g) of this section.

§50.8. *Housing Credit Allocations.*

(a) The Housing Credit Allocation Amount shall not exceed the dollar amount the Department determines is necessary for the financial feasibility and the long term viability of the Project throughout the Compliance Period. Such determination shall be made by the Department at the time of issuance of the Commitment Notice; at the time the Department makes a housing credit allocation; and/or the date the building is placed in service. Any housing credit allocation amount specified in a Commitment Notice, allocation and/or Carryover Allocation Document is subject to change by the Department dependent upon such determination. Such a determination shall be made by the Department based on its evaluation and procedures, considering the items specified in the Code, §42(m)(2)(B), AND THE DEPARTMENT IN NO WAY OR MANNER REPRESENTS OR WARRANTS TO ANY PROJECT OWNER, SPONSOR, INVESTOR, LENDER OR OTHER ENTITY THAT THE PROJECT IS, IN FACT, FEASIBLE OR VIABLE.

(b) When the Project Owner is in full compliance with the QAP and the Rules in this chapter, the Commitment Notice, the Carryover Allocation Procedures Manual and all fees as specified within §50.11 of this title (relating to Program Fees) have been received by the Department, the Department, if requested, shall execute a Carryover Allocation Document which has been properly completed, executed and notarized by the Project Owner. The Department shall return one executed copy to the Project Owner.

(c) All Carryover Allocations will be contingent upon the following:

(1) The Project Owner's closing of the construction loan shall occur within 150 days from the date of the execution of the Carryover Allocation Document with a one-time 30 day extension. All requests for extensions by Applicants shall be submitted to the Department for review. The Committee may grant extensions, in its

sole discretion, on a case-by-case basis. The Committee may, in its sole discretion, waive related fees. Copies of the closing documents must be submitted to the Department within two weeks after the closing. The Carryover Allocation will automatically be revoked if the Project Owner fails to meet the aforementioned closing deadline, and all credits previously allocated to that Project will be returned to the general pool for reallocation.

(2) The Project Owner must commence and continue substantial construction activities within a year of the execution of the Carryover Allocation document and evidence such activity in a format prescribed by the Department, (as more fully defined in the Carryover Allocation Procedures Manual), outlining progress towards placing the Project in service in an expeditious manner. All requests for extensions by Applicants shall be submitted to the Department for review, and the Committee may grant extensions, in its sole discretion, on a case-by-case basis.

(d) The Department shall not allocate additional credits to a developer/Project Owner who is unable to provide evidence, satisfactory to the Department, of progress towards placements in service for a Project(s) that is in carryover. An allocation will be made in the name of the Applicant identified in the related Commitment Notice. If an allocation is made in the name of the party expected to be the general partner in an eventual owner partnership, the Department may, upon request, approve a transfer of allocation to such owner partnership in which such party is the sole general partner. Any other transfer of an allocation will be subject to review and approval by the Department. The approval of any such transfer does not constitute a representation to the effect that such transfer is permissible under the Code or without adverse consequences thereunder, and the Department may condition its approval upon receipt and approval of complete documentation regarding the new owner including all the criteria for scoring, evaluation and underwriting, among others, which were applicable to the original Applicant.

(e) The Department shall make a housing credit allocation, either in the form of IRS Form 8609, with respect to current year allocations for buildings placed in service, or in the Carryover Allocation Document, for buildings not yet placed in service, to any Project Owner who holds a Commitment Notice which has not expired, and for which all fees as specified in §50.11 of this title (relating to Program Fees), have been received by the Department. In order for an IRS Form 8609 to be issued with respect to a building in a Project, satisfactory evidence must be received by the Department that such building is completed and has been placed in service in accordance with the provisions of the Department's Cost Certification Procedures Manual. The Department shall mail or deliver IRS Form 8609 (or any successor form adopted by the Internal Revenue Service) to the Project Owner, with Part I thereof completed in all respects and signed by an authorized official of the Department. The delivery of the IRS Form 8609 will only occur only after the Project Owner has complied with all procedures and requirements listed within the Cost Certification Procedures Manual. Regardless of the year of Application to the Department for low income housing tax credits, the current year's Cost Certification Procedures Manual must be utilized when filing all cost certification requests. A separate housing credit allocation shall be made with respect to each building within a Project which is eligible for a housing credit; provided, however, that where an allocation is made pursuant to a Carryover Allocation Document on a project basis in accordance with the Code,



§42(h)(1)(F), a housing credit dollar amount shall not be assigned to particular buildings in the Project until the issuance of IRS Forms 8609 with respect to such buildings.

(f) In making a housing credit allocation, the Department shall specify a maximum Applicable Percentage, not to exceed the Applicable Percentage for the building permitted by the Code, §42(b), and a maximum Qualified Basis amount. In specifying the maximum applicable percentage and the maximum Qualified Basis amount, the Department shall disregard the first-year conventions described in the Code, §42(f)(2)(A) and §42(f)(3)(B). The housing credit allocation made by the Department shall not exceed the amount necessary to support the extended low-income housing commitment as required by the Code, §42(h)(6)(C)(i).

(g) Project inspections shall be required to show that the Project is built or rehabilitated according to required plans, and specifications. Subject to the following requirement contained in this subsection, a copy of all Project inspections required and accepted by the lender financing the Project shall be acceptable to the Department as a certification that the Project is built to plans and specifications if such inspections are required by the lender during the construction of the Project. At a minimum, all Project inspections must include an inspection at the start-up phase and the interim phase, and a final inspection at the time the Project is placed in service. If no Project inspections are required by the lender financing the Project, the Department will require inspections to be made of the Project from time to time as determined at the sole discretion of the Department. All such Project inspections shall be performed by an independent, third party inspector acceptable to the Department. The Project Owner shall pay all fees and costs of said inspections.

(h) At the time each building in the Project is placed in service, the Project Owner shall be responsible for furnishing the Department with documentation which satisfies the requirements as set forth in the Cost Certification Procedures Manual. The Department may require copies of invoices and receipts and statements for materials and labor utilized for the new construction or rehabilitation and, if applicable, a closing statement for the acquisition of the Project as well as for the closing of all interim and permanent financing for the Project.

#### §50.9. Department Records; Certain Required Filings.

(a) At all times during each calendar year the Department shall maintain a record of the following:

(1) the cumulative amount of the State Housing Credit Ceiling that has been reserved pursuant to reservation notices during such calendar year;

(2) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Commitment Notices during such calendar year;

(3) the cumulative amount of the State Housing Credit Ceiling that has been committed pursuant to Carryover Allocation Documents during such calendar year;

(4) the cumulative amount of housing credit allocations made during such calendar year; and

(5) the remaining unused portion of the State Housing Credit Ceiling for such calendar year.

(b) Not less frequently than quarterly during each calendar year, the Department shall publish in the *Texas Register* each of the items of information referred to in subsection (a) of this section.

(c) The Department shall mail to the Internal Revenue Service, not later than the 28th day of the second calendar month after the close of each calendar year during which the Department makes housing credit allocations, the original of each completed (as to Part I) IRS Form 8609, a copy of which was mailed or delivered by the Department to a Project Owner during such calendar year, along with a single completed IRS Form 8610, Annual Low-Income Housing Credit Agencies Report. When a Carryover Allocation is made by the Department, a copy of IRS Form 8609 will be mailed or delivered to the Project Owner by the Department in the year in which the building(s) is placed in service, and thereafter the original will be mailed to the Internal Revenue Service in the time sequence above mentioned. The original of the Carryover Allocation Document will be filed by the Department with IRS Form 8610 for the year in which the allocation is made. The original of all executed Agreement and Election Statements shall be filed by the Department with the Department's IRS Form 8610 for the year a housing credit allocation is made as provided in this section.

#### §50.10. Department Responsibilities.

In making a housing credit allocation under this chapter, the Department shall rely upon information contained in the Project Owner's Application to determine whether a building is eligible for the credit under the Code, §42. The Project Owner shall bear full responsibility for claiming the credit and assuring that the Project complies with the requirements of the Code, §42. The Department shall have no responsibility for ensuring that a Project Owner who receives a housing credit allocation from the Department will qualify for the housing credit. The Department will reject, and consider barring the Project Owner from future participation in the Department's tax credit program as a consequence thereof, any Application in which fraudulent information, knowingly false documentation or other misrepresentation has been provided. The aforementioned policy will apply at any stage of the evaluation or approval process.

#### §50.11. Program Fees.

(a) Each Project Owner that submits an Application shall submit to the Department, along with such Application, a non refundable Application fee, as set forth in the Application Submission Procedures Manual.

(b) For each Project that is to be evaluated by an independent third party underwriter in accordance with §50.6(b)(3) of this title (relating to Threshold Criteria; Evaluation Factors; Selection Criteria; Final Ranking; Credit Amount; Tax Exempt Bond Financed Projects), the Project Owner will be so informed in writing prior to the commencement of any reviews by said underwriter. The cost for the third party underwriting will be set forth in the Application Submission Procedures Manual, and must be received by the Department prior to the engagement of the underwriter. The fees paid by the Project Owner to the Department for the third party underwriting will be credited against the commitment fee established in subsection (c) of this section, in the event that a Commitment Notice is issued by the Department to the Project Owner.

(c) Each Project Owner that receives a Commitment Notice shall submit to the Department, not later than the expiration date on the commitment billing notice, a non refundable commitment



fee, as set forth in the Application Submission Procedures Manual. The commitment fee shall be paid by cashier's check. Projects located within one of the targeted Texas counties, as indicated in the Reference Manual, will be exempt from the requirement to pay a commitment fee, in the event that Commitment Notice is issued.

(d) Each Project Owner that requests an extension of the expiration date of a Commitment Notice, shall submit to the Department, along with such request, a non refundable extension fee, as set forth in the Application Submission Procedures Manual and shall be paid by cashier's check. Such extension shall be granted at the discretion of the Department.

(e) Upon the Project being placed in service, the Project Owner will pay a compliance monitoring fee in the form of a cashier's check, as set forth in the Application Submission Procedures Manual. The compliance monitoring fee must be received by the Department prior to the release of the IRS Form 8609 on the Project.

(f) Public information requests are processed by the Department in accordance with the provisions of Texas Civil Statutes, Article 6252-17a, codified as Government Code, Chapter 552, and as amended by the Acts during the 73rd Legislature, and as may be amended from time to time. The General Services Commission and the Department determine the cost of copying, and other costs of production.

(g) The amounts of the Application fee, commitment fee, compliance monitoring fee, administrative fees, extension fee, and other applicable fees as specified in the Application Submission Procedures Manual will be revised by the Department from time to time as necessary to ensure that such fees compensate the Department for its administrative costs and expenses.

#### §50.12. Manner and Place of Filing Applications.

(a) All Applications, letters, documents, or other papers filed with the Department will be received only between the hours of 8:00 a.m. and 5:00 p.m. on any day which is not a Saturday, Sunday or a holiday established by law for state employees.

(b) All Applications and related documents submitted to the Department shall be mailed or delivered to Low Income Housing Tax Credit Program, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 400, Austin, Texas 78701.

#### §50.13. Withdrawals, Cancellations, Amendments.

(a) A Project Owner may withdraw an Application prior to receiving a commitment, Carryover Allocation Document or Housing Credit Allocation, or may cancel a Commitment Notice by submitting to the Department a notice, as applicable, of withdrawal or cancellation.

(b) The Department may consider an amendment to a Commitment Notice, Carryover Allocation or other requirement with respect to a Project if the revisions:

- (1) are consistent with the Code and the tax credit program;
- (2) do not occur while the Project is under consideration for tax credits;
- (3) do not involve a change in the number of points scored (unless the Project's ranking is adjusted because of such change);
- (4) do not involve a change in the Project's site; or

(5) do not involve a change in the set-aside election.

(c) The Department may cancel a Commitment Notice or Carryover Allocation prior to the issuance of IRS Form 8609 with respect to a Project if:

(1) the Project Owner or any member of the Development Team, or the Project, as applicable, fails to meet any of the conditions of such Commitment Notice or Carryover Allocation or any of the undertakings and commitments made by the Project Owner in the applications process for the Project;

(2) any statement or representation made by the Project Owner or made with respect to the Project Owner, the Development Team or the Project is untrue or misleading;

(3) an event occurs with respect to any member of the Development Team which would have made the Project's Application ineligible for funding pursuant to §50.4(f) of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments), if such event had occurred prior to issuance of the Commitment Notice or Carryover Allocation; or

(4) the Project Owner, any member of the Development Team, or the Project, as applicable, fails to comply with these Rules or the procedures or requirements of the Department.

#### §50.14. Waiver and Amendment of Rules.

(a) The Board, in its discretion, may waive any one or more of these Rules in cases of natural disasters such as fires, hurricanes, tornadoes, earthquakes, or other acts of nature as declared by Federal or State authorities.

(b) The Department may amend this chapter and the Rules contained herein at any time in accordance with the provisions of Texas Civil Statutes, Article 6252-13a, codified as Government Code, Chapter 2001, and as amended by the Acts of the 73rd Legislature, and as may be amended from time to time.

#### §50.15. Forward Reservations; Binding Commitments.

(a) Anything in §50.4 of this title (relating to Applications; Environmental Assessments; Market Study; Commitments; Extensions; Carryover Allocations; Agreements and Elections; Extended Commitments) or elsewhere in this chapter to the contrary notwithstanding, the Department with approval of the Board may determine to issue commitments of tax credit authority with respect to Projects from the State Housing Credit Ceiling for the calendar year following the year of issuance (each a "forward commitment"). The Department may make such forward commitments:

- (1) with respect to Projects placed on a waiting list in any previous Application Round during the year; or
- (2) pursuant to an additional Application Round.

(b) If the Department determines to make forward commitments pursuant to a new Application Round, it shall provide information concerning such round in the *Texas Register*. In inviting and evaluating Applications pursuant to an additional Allocation Round, the Department may waive or modify any of the set-asides set forth in §50.5(a) and (b) of this title (relating to Set-Asides, Commitments and Preferences) and make such modifications as it determines appropriate in the Threshold Criteria, evaluation factors and Selection Criteria set forth in §50.6 of this title (relating to Threshold Criteria, Evaluation Factors; Selection Criteria; Final Ranking; Credit

Amount; Tax Exempt Bond Financed Projects) and in the dates and times by which actions are required to be performed under this chapter. The Department may also, in an additional Application Round, include Projects previously evaluated within the calendar year and rank such Projects together with those for which Applications are newly received.

(c) Unless otherwise provided in the Commitment Notice with respect to a Project selected to receive a forward commitment or in the announcement of an Application Round for Projects seeking a forward commitment, actions which are required to be performed under this chapter by a particular date within a calendar year shall be performed by such date in the calendar year of the anticipated allocation rather than in the calendar year of the forward commitment.

(d) Any forward commitment made pursuant to this section shall be made subject to the availability of State Housing Credit Ceiling in the calendar year with respect to which the forward commitment is made. No more than 15% of the per capita component of State Housing Credit Ceiling anticipated to be available in the State of Texas in a particular year shall be allocated pursuant to forward commitments to Project Applications carried forward without being ranked in the new Application Round pursuant to subsection (f) of this section. If a forward commitment shall be made with respect to a Project placed in service in the year of such commitment, the forward commitment shall be a "binding commitment" to allocate the applicable credit dollar amount within the meaning of the Code, §42(h)(1)(C).

(e) If tax credit authority shall become available to the Department later in a calendar year in which forward commitments have been awarded, the Department may allocate such tax credit authority to any eligible Project which received a forward commitment, in which event the forward commitment shall be canceled with respect to such Project.

(f) In addition to or in lieu of making forward commitments pursuant to subsection (a) of this section, the Department may determine to carry forward Project Applications on a waiting list or otherwise received and ranked in any Application Round within a calendar year to the subsequent calendar year, requiring such additional information, Applications and/or fees, if any, as it determines appropriate. Project Applications carried forward may, within the discretion of the Department, either be awarded credits in a separate allocation round on the basis of rankings previously assigned or may be ranked together with Project Applications invited and received in a new Application Round. The Department may determine in a particular calendar year to carry forward some Project Applications under the authority provided in this subsection, while issuing forward commitments pursuant to subsection (a) of this section with respect to others.

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

Issued in Austin, Texas, on March 4, 1997.

TRD-9703428

Larry Paul Manley  
Executive Director

Texas Department of Housing and Community Affairs

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 475-3726

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

##### Conservation Rules and Regulations

###### 3 TAC §3.26, §3.27

The Railroad Commission of Texas withdraws formerly proposed amendments to §3.26, concerning separating devices and tanks, and §3.27, concerning gas to be measured (published in the September 27, 1996, issue of the *Texas Register* (21 TexReg 9215)), and re-proposes amendments to those sections with changes based on comments to the original proposal. The re-proposed amendments conform the sections to Texas Natural Resources Code §85.046(c), as amended, and clarify existing provisions regarding administrative approval of surface commingling of oil and gas. The re-proposed amendments authorize the commission, after notice and an opportunity for affected parties to request a hearing, to approve surface commingling of produced hydrocarbons.

The re-proposed amendments delineate the procedures for seeking approval of surface commingling when an application for surface commingling is protested, and for seeking administrative approval when an application is unprotested. Administrative approval is authorized when notice has been given to all working interest and royalty interest owners, no protest to the proposed commingling has been received by the commission, and the commission finds that surface commingling will prevent waste, promote conservation or protect correlative rights. Based on comments received following the original publication of §3.26, subsection (b)(4) has been added requiring notice to offset operators when a field governed by special field rules is involved or a well proposed for commingling produces from multiple commission designated fields.

The amendments set out the requirements for a reasonable allocation of commingled hydrocarbons among royalty and working interests. The re-proposed amendments also clarify existing commission procedures concerning circumstances in which the commission may authorize surface commingling, administratively.

The re-proposed language in §3.26(b), concerning procedures for approval of surface commingling of oil, was selected because it tracks the amendment to the underlying statute and concisely outlines the circumstances in which surface commingling applications may be administratively approved. The re-proposed amendments to this subsection simplify the existing text of the rule and clarify existing commission procedures regarding circumstances in which surface commingling may be administratively approved without notice or hearing. Section 3.27(e), concerning approval of surface commingling of gas, references and incorporates the procedures for approval of commingling set out in §3.26(b).

Amendments are re-proposed to the existing provisions in §3.27, relating to gas to be measured, to remove redundant and obsolete portions of the section. The re-proposed amendments

also eliminate unnecessary measuring requirements by providing an exemption for *de minimis* gas releases and, in some circumstances, for wells producing less than 20 mcf per day. Based on comments to the originally proposed amendments, §3.27(m) has been revised to clarify when an exemption from measurement for *de minimis* production may be revoked.

Rita E. Percival, planner for the Oil and Gas Division, has determined that there will be fiscal implications as a result of enforcing or administering the amended rules. The effect on state government for the first five-year period the re-proposed rule amendments will be in effect will be: an estimated \$18,000 for computer programming in fiscal year 1997, with no costs in fiscal years 1998 through 2001. There will be no fiscal implications for local government. There will be no cost for small business as a result of administering or enforcing these rule amendments.

Colin K. Lineberry, hearings examiner in the Office of General Counsel, has determined that for each year of the first five years the sections, as re-proposed, will be in effect, the public benefit anticipated as a result of enforcing the sections will be a reduction of the regulatory burden by the removal of the requirement that a hearing be held on certain unprotested surface commingling applications, as well as by clarification of existing procedures concerning when surface commingling of hydrocarbons may be approved administratively. The commission anticipates that there will be a beneficial effect on small businesses because formal hearings will no longer be required on unprotested applications, thus reducing the costs of obtaining exceptions to allow surface commingling. The commission anticipates that there will be a reduction in economic costs to persons who are required to comply with the re-proposed rules because of the reduction in the number of hearings and the clarification of existing procedures.

Comments may be submitted to Colin K. Lineberry, Hearings Examiner, Office of General Counsel - Oil & Gas Section, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. The commission particularly encourages comments concerning newly added §3.26(b)(4) requiring notice to offset operators under certain circumstances. The commission also particularly encourages comments concerning the newly proposed provision for certain gas wells found in §3.26(a)(2). Parties commenting on the provision are encouraged to address the legal authority of the commission to adopt the provision under the governing statutes, including §§88.011 and §88.052 of the Texas Natural Resources code.

The deadline for filing comments is 30 days after publication in the *Texas Register*. Comments should refer to the docket numbers of these rulemaking proceedings, 20-0209522 (§3.26) and 20-0209569 (§3.27). For more information call Colin K. Lineberry at (512) 463-7051.

The commission proposes the amendments pursuant to Texas Natural Resources Code, §§81.052, 85.046, 85.201, and 86.042, which authorize the commission to prevent waste of oil and gas and to protect correlative rights.

The Texas Natural Resources Code, §§81.052, 85.046, 85.201, and 86.042 are affected by this proposal.

### §3.26. *Separating Devices , [and] Tanks, and Surface Commingling of Oil .*

(a) Where oil and gas are found in the same stratum and it is impossible to separate one from the other, or when a well has been classified as a gas well and such gas well is not connected to a cycling plant and such well is being produced on a lease and the gas is utilized under Texas Natural Resources Code, §§86.181-86.185, the operator shall install a separating device of approved type and sufficient capacity to separate the oil and liquid hydrocarbons from the gas. [ which]

(1) The separating device shall be kept in place as long as a necessity for it [therefore] exists, and, after being installed, such device shall not be removed nor the use thereof discontinued without the consent of the commission.

(2) All oil and any other liquid hydrocarbons as and when produced shall be adequately measured according to the pipeline rules and regulations of the commission before the same leaves the lease from which they are produced, except for gas wells where the full well stream is moved to a plant or central separation facility in accordance with 3.55 of this title (Statewide Rule 55, relating to reports on gas wells commingling liquid hydrocarbons before metering) and the full well stream is measured, with each completion being separately measured, before the gas leaves the lease.

(3) Sufficient tankage and separator capacity shall be provided by the producer to adequately take daily gauges of all oil and any other liquid hydrocarbons unless LACT equipment, installed and operated in accordance with the latest revision of American Petroleum Institute (API) Manual of Petroleum Measurement Standards, Chapter 6.1 or another method approved by the commission or its delegate, is being used to effect custody transfer.

(b) In order to prevent waste, to promote conservation or to protect correlative rights, the commission may approve surface commingling of oil, gas, or oil and gas production from two or more tracts of land producing from the same commission-designated reservoir or from one or more tracts of land producing from different commission-designated reservoirs as follows:

(1) Administrative approval. Upon written application, the commission may grant approval for surface commingling administratively when any one of the following conditions is met:

(A) The tracts or commission-designated reservoirs have identical working interest and royalty interest ownership in identical percentages and therefore there is no commingling of separate interests;

(B) Production from each tract and each commission-designated reservoir is separately measured and therefore there is no commingling of separate interests; or

(C) When the tracts or commission-designated reservoirs do not have identical working interest and royalty interest ownership in identical percentages and the commission has not received a protest to an application within 21 days of notice of the application being mailed by the applicant to all working and royalty interest owners or, if publication is required, within 21 days of the date of last publication and the applicant provides:

(i) a method of allocating production to ensure the protection of correlative rights, in accordance with paragraph (3) of this subsection; and

(ii) an affidavit or other evidence that all working interest and royalty interest owners have been notified of the application by certified mail or have provided applicant with waivers of notice requirements, or

(iii) in the event the applicant is unable, after due diligence, to provide notice by certified mail to all working interest and royalty interest owners, a publisher's affidavit or other evidence that the commission's notice of application has been published once a week for four consecutive weeks in a newspaper of general circulation in the county or counties in which the tracts that are the subject of the application are located.

(2) Request for hearing. When the tracts or commission-designated reservoirs do not have identical working interest and royalty interest ownership in identical percentages and a person entitled to notice of the application has filed a protest to the application with the commission, the applicant may request a hearing on the application. The commission shall give notice of the hearing to all working interest and royalty interest owners. The commission may permit the commingling if the applicant demonstrates that the proposed commingling will protect the rights of all interest owners in accordance with paragraph (3) of this subsection and will prevent waste, promote conservation or protect correlative rights.

(3) Reasonable allocation required. The applicant must demonstrate to the Commission or its designee that the proposed commingling of hydrocarbons will not harm the correlative rights of the working or royalty interest owners of any of the wells to be commingled. The method of allocation of production to individual interests must accurately attribute to each interest its fair share of aggregated production.

(A) In the absence of contrary information, such as indications of material fluctuations in the monthly production volume of a well proposed for commingling, the Commission will presume that allocation based on the production rate for each well as determined and reported to the Commission by periodic well tests conducted in accordance with Statewide Rules 28, 52, 53, and 55 (§§3.28, 3.52, 3.53, and 3.55 of this title, relating to potential and deliverability of gas wells to be ascertained and reported, oil well allowable production, well status reports required, and reports of gas wells commingling liquid hydrocarbons before metering) at the intervals provided in this section will accurately attribute to each interest its fair share of production without harm to correlative rights. As used in this section, "daily production rate" for a well means the 24 hour production rate determined by the most recent well test conducted and reported to the commission in accordance with Statewide Rules 28, 52, 53, and 55 (§§3.28, 3.52, 3.53, and 3.55 of this title, relating to potential and deliverability of gas wells to be ascertained and reported, oil well allowable production, well status reports required, and reports of gas wells commingling liquid hydrocarbons before metering).

(i) For applications proposing to commingle production from wells which each have a daily production rate of 100 mcf of gas or less and four barrels or less of oil or condensate,

the production rate for each well shall be measured by well tests conducted annually;

(ii) For applications proposing to commingle production from wells which each have a daily production rate of 250 mcf of gas or less and less than 10 barrels of oil or condensate, the production rate for each well shall be measured by well tests conducted semi-annually; and,

(iii) For applications proposing to commingle production from one or more wells having a daily production rate of more than 250 mcf of gas or 10 or more barrels of oil or condensate, the production rate for each well shall be measured by well test conducted quarterly.

(B) An applicant may test less frequently than the applicable minimum frequencies set out in subparagraph (A)(ii) and (iii) of this paragraph with the written consent of all royalty and working interest owners. Allocation of commingled production shall not be based on well tests conducted less frequently than annually.

(C) Nothing in this section prohibits allocations based on more frequent well tests than the minimums set out in subparagraph (A) of this paragraph. Additional tests used for allocation do not have to be filed with the commission but must be available for inspection at the request of the commission, working interest owners or royalty interest owners.

(D) Allocations may be based on a method other than periodic well tests if the Commission or its designee determines that the alternative allocation method will insure a reasonable allocation of production as required by this paragraph.

(4) Additional notice required. In addition to giving notice to the persons entitled to notice under paragraph (1)(C) of this subsection, an applicant for a surface commingling exception must give notice of the application to the operator of each tract adjacent to one or more of the tracts proposed for commingling that has one or more wells producing from the same commission-designated reservoir as any well proposed for commingling if:

(A) any one of the wells proposed for commingling produces from a commission-designated reservoir for which special field rules have been adopted; or

(B) any one of the wells proposed for commingling produces from multiple commission-designated reservoirs, unless:

(i) an exception to §3.10 of this title (relating to restriction of production of oil and gas from different strata) has previously been obtained for production from the well; or,

(ii) the applicant continues to separately measure production from each different commission-designated reservoir produced from the same wellbore.

[(b) If two or more tracts of land (regardless of whether or not the tracts are covered by the same original lease) have their working interests owned by the same parties, have their royalty interests owned by the same parties, and are located in such proximity to each other as to permit under practical operating conditions, the running of the oil from all of said tracts into common tankage, the production from said leases may be run into a common tank battery or batteries provided that a permit granted pursuant to an exception allowing the use of a

common tank battery or batteries shall have first been obtained from the commission. Likewise, where two or more leases have been unitized by an agreement among the owners of the working interests therein and the owners of the royalty interests therein, a permit granted pursuant to an exception for the running of the production of these leases into common tankage may be secured where said leases are located in such proximity to each other as to permit, under practical operating conditions, the running of the oil from all said leases into common tankage, after the commission has been furnished a copy of such unitization agreement. The oil produced from the tracts described in this subsection shall be produced in the manner set out in subsection (a) of this section, but said measurements shall be taken in the aforementioned common tank battery or batteries, in which event the operator shall be required to mark such common battery or batteries so as to show the particular tracts from which oil is being run therein.]

(c)-(d) (No change.)

**§3.27. Gas to be Measured and Surface Commingling of Gas.**

(a) All natural gas, except casinghead gas, produced from wells [completed in gas reservoirs] shall be measured, with each completion being measured separately, [accounted for by measurement] before the gas [the same] leaves the lease, [each completion to be metered separately,] and the producer shall report the volume produced from each completion to the commission. Exceptions to this provision may be granted by the commission upon [receipt of] written application.

(b) All natural gas produced from wells completed in an oil reservoir but not listed on the oil proration schedule shall be accounted for by measurement before the same leaves the lease, and the producer shall report the volume produced to the commission.]

(b) [(c)] All casinghead gas [produced from oil wells and] sold, processed for its gasoline content, used in a field other than that in which it is produced, or used in cycling or repressuring operations, shall be measured [accounted for by measurement] before the gas [the same] leaves the lease, and the producer shall report the volume produced to the commission. Exceptions to this provision may be granted by the commission upon [receipt of] written application.

(c) [(d)] All casinghead gas produced [from oil wells] in this state which is not covered by the provisions of subsection (b) [(c)] of this section, shall be measured [accounted for by measurement or by an accurate estimate] before the gas [same] leaves the lease, is used as fuel, or is released into the air, based on its use or on [its] periodic tests [test], and reported to the commission by the producer. The volume of casinghead gas produced by wells exempt from gas/oil ratio surveys must be estimated, based on general knowledge of the characteristics of the wells. [without the use of periodic test data. It is further provided that it shall not be necessary for a producer to report any casinghead gas produced from a marginal well that is exempt from gas/oil ratio survey if such gas is not sold or utilized off the lease.] Exceptions to this provision may be granted by the commission upon [receipt of] written application.

(d) Releases and production of gas at a volume or daily flow rate, commonly referred to as "too small to measure" (TSTM), which, due to minute quantity, cannot be accurately determined or for which a determination of gas volume is not reasonably practical using routine oil and gas industry methods, practices, and techniques are exempt from compliance with this

rule and are not required to be reported to the commission or charged against lease allowable production.

(e) In order to prevent waste, to promote conservation or to protect correlative rights, the commission may approve surface commingling of gas or oil and gas described in subsections (a), (b) or (c) of this section and produced from two or more tracts of land producing from the same commission-designated reservoir or from one or more tracts of land producing from different commission-designated reservoirs in accordance with §3.26(b) of this title (relating to separating devices, tanks, and surface commingling of oil).

(f) [(e)] In reporting gas well production, the full-well stream gas shall [should] be reported and charged against each gas well for allowable purposes. All gas produced, including all gas used on the lease or released into the air, must be reported regardless of its disposition[, including gas used on the lease for heaters, any other type of lease use, or gas vented from low pressure separators].

(g) [(f)] If gas is produced from a lease or other property covered by the coastal or inland waters of the state, the gas produced may, at the option of the operator, be measured on a shore or at a point removed from the lease or other property from which it was produced.

(h) [(g)] All natural hydrocarbon gas produced and utilized from wells completed in geothermal resource reservoirs shall be measured [accounted for by measurement] and allocated to each individual lease based on semiannual test conducted on full well stream lease production.

(i) [(h)] For purposes of this rule, "measured" ["measurement"] shall mean a determination of gas volume [volumes] in accordance with this rule and other rules of the commission, including accurate estimates of unmetered gas volumes released into the air or used as fuel.

(j) [(i)] No meter or meter run used for measuring gas as required by this rule shall be equipped with a manifold which will allow gas flow to be diverted or bypassed around the metering element in any manner unless it is of the type listed in paragraphs (1) or (2) of this subsection:

(1) double chambered orifice meter fittings with proper meter manifolding to allow equalized pressure across the meter during servicing;

(2) double chambered or single chambered orifice meter fittings equipped with proper meter manifolding or other types of metering devices accompanied by one of the following types of meter inspection manifolds:

(A) a manifold with block valves on each end of the meter run and a single block valve in the manifold complete with provisions to seal and a continuously maintained seal record;

(B) an inspection manifold having block valves at each end of the meter run and two block valves in the manifold with a bleeder between the two and with one valve equipped with provisions to seal and continuously maintained seal records;

(C) a manifold equipped with block valves at each end of the meter run and one or more block valves in the manifold, when accompanied by a documented waiver from the owner or owners of at least 60% of the royalty interest and the owner or owners of at

least 60% of the working interest of the lease from which the gas is produced.

(k) [(j)] Whenever sealing procedures are used to provide security in the meter inspection manifold systems, the seal records shall be maintained for at least three years at an appropriate office and made available for Railroad Commission inspection during normal working hours. At any time a seal is broken or replaced, a notation will be made on the orifice meter chart along with graphic representation of estimated gas flow during the time the meter is out of service.

[(k) All gas meters used for measuring gas as required by this rule must be equipped so as to comply with one of the accepted methods set out in subsection (i) of this section by October 1, 1983. Exceptions may be granted by the Director of the Oil and Gas Division upon showing of good cause.]

(l) (No change.)

(m) The commission may grant an exception to measurement requirements under subsections (a), (b) and (c) of this section if the requirements of this subsection are met. An exception granted under this subsection will be revoked if the most recent well test or production reported to the commission reflects a production rate of more than 20 MCF of gas per day or if any of the other requirements for an exception under this subsection are no longer satisfied. An applicant seeking an exception under this subsection must file an application establishing:

(1) the most recent production test reported to the commission demonstrates that the gas well or oil lease for which an exception is sought produces at a rate of no more than 20 MCF of gas per day;

(2) an annual test of the production of the gas well or oil lease provides an accurate estimate of the daily rate of gas flow;

(3) the flow rate established in paragraph (2) of this subsection multiplied by the recorded duration determined by any device or means that accurately records the duration of production each month yields an accurate estimate of monthly production; and

(4) the operator of the pipeline connected to the gas well or oil lease concurs in writing with the application.

(n) [(m)] Failure to comply with the provisions of this rule will result in severance of the producing well, lease, facility, or gas pipeline or in other appropriate enforcement proceeding. [, depending upon the nature of the violation and the party at fault.]

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703418

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 463-7008

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## 16 TAC §3.101

The Railroad Commission of Texas proposes amendments to §3.101, concerning certification for severance tax exemption or reduction for certain high-cost natural gas. The purpose of the proposed amendments is to conform the existing section to House Bill 398, 74th Legislature, 1995, which provides that producers of natural gas may receive, upon certification by the Railroad Commission that the gas is high-cost, either a severance tax exemption or severance tax reduction. The amendments also clarify and augment the application procedure and the criteria for obtaining high-cost certification.

Rita E. Percival, planner for the Oil and Gas Division, has determined that there will not be fiscal implications as a result of enforcing or administering the amended rule. There will be no effect on local government. There will be no cost of compliance with the amended rule for small businesses.

Meredith Kawaguchi, legal examiner in the Office of General Counsel, has determined that for each year of the first five years the section as proposed will be in effect, the public benefit anticipated as a result of enforcing the section will be a more consistent assessment of what constitutes high-cost gas and a more efficient processing of state severance tax exemption or reduction applications. There is no significant anticipated economic cost to individuals who are required to comply with the section.

Comments may be submitted to Meredith Kawaguchi, Legal Examiner, Office of General Counsel - Oil & Gas Section, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 30 days after publication in the *Texas Register*. Comments should refer to the docket number of this rulemaking proceeding, 20-0209628. For more information contact Ms. Kawaguchi at (512) 463-7152.

The commission proposes the amendments pursuant to Texas Natural Resources Code, §81.052, which authorizes the commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission. The proposed amendments also are necessary to conform the existing section to House Bill 398, 74th Legislature, 1995.

The proposed amendments implement the Tax Code, §201.057.

§§3.101. *Certification for Severance Tax Exemption or Reduction for Gas Produced from High-Cost Gas Wells.*

(a) Purpose. To provide a procedure by which an operator can obtain a Railroad Commission of Texas certification that natural gas from a particular gas well qualifies as high-cost natural gas under the Texas Tax Code, Chapter 201, Subchapter B, §201.051(a)(2)(A) [§201.057] and that such gas is [therefore] exempt from or eligible for a reduction of the severance tax imposed by the Texas Tax Code, Chapter 201.

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

(1)-(4) (No change.)

(5) **Data-point well**—A well that has been tested and/or produced in the proposed tight gas formation; and, from the test results or other data, applicant provides a measured or calculated *in situ* permeability and/or a measured or calculated stabilized flow rate against atmospheric pressure to show that a requested area qualifies as a designated tight formation area pursuant to the requirements of this section.

(6) [(5)] **Director**—The director of the Oil and Gas Division or the director's delegate. Any authority given to the director in this section is also retained by the commission. Any action taken by the director pursuant to this section is subject to review by the commission.

(7) **First day of production**—The first day of the month following the earlier of the month of the deliverability test as reported on the commission designated form or the production month as indicated on the first production report filed showing a gas disposition code other than "lease or field fuel use" or "vented or flared."

(8) [(6)] **High-cost gas**—Natural gas which the commission finds to be:

- (A) produced from any gas well, if production is from a completion which is located at a depth of more than 15,000 feet;
- (B) produced from geopressured brine;
- (C) occluded natural gas produced from coal seams;
- (D) produced from Devonian shale; or
- (E) produced from designated tight formations or produced as a result of production enhancement work.

(9) [(7)] **Operator**—The person responsible for the actual physical operation of a gas well.

(10) [(8)] **Spud date**—The date of commencement of drilling operations, as shown on commission records.

(c) **Applicability.**

(1) A severance tax exemption is available for high-cost gas produced from a well that is spudded or completed between May 24, 1989, and September 1, 1996. Eligible high-cost gas will be exempt from the tax imposed by the Texas Tax Code, Chapter 201, during the period from September 1, 1991, through August 31, 2001.

[(1) This section applies to high-cost gas produced from a well that is spudded or completed between May 24, 1989 and September 1, 1996.]

(2) A severance tax reduction is available for high-cost gas produced from a well that is spudded or completed after August 31, 1996, and before September 1, 2002. Eligible high-cost gas will be entitled to a reduction of the tax imposed by the Texas Tax Code, Chapter 201, for the first 120 consecutive calendar months beginning on the first day of production or until the cumulative value of the tax reduction equals 50% of the drilling and completion costs incurred for the well, whichever occurs first. The amount of tax reduction is determined pursuant to §201.057(c) of the Texas Tax Code, Chapter 201, Subchapter B.

(3)[(2)] The plug back or deepening of an existing wellbore qualifies as a completion under this section. When the plug back or deepening is completed prior to September 1, 1996, the gas produced may qualify for a tax exemption. When the plug back or deepening is completed after August 31, 1996, the gas produced may qualify for a tax reduction. The plug back or deepening qualifies as a completion if:

(A) [if] it is the initial completion in a commission-designated or newly discovered [new] field that has not been previously produced from that wellbore; or

(B) the operator can demonstrate that the strata between the former completion and the new completion [locations] contain a minimum of 20 vertical feet of impermeable strata; or

(C) the operator submits the results of bottom hole pressure surveys, gas analyses or other methods or calculations comparing the new completion with previous completions in the wellbore that were in existence prior to May 24, 1989. The application shall include an explanation of the engineering principles, calculations, and reasoning to show that the gas to be produced from the applied-for completion could not have been produced from any completion in existence prior to May 24, 1989.

[(C) the operator submits the results of bottom hole pressure surveys, gas analyses or other methods or calculations comparing the completion locations which are the subject of the application and any completion locations in the wellbore which were completed for production prior to May 24, 1989, with an explanation of the engineering principles, calculations, and reasoning used in making the judgment that these comparisons demonstrate that the gas to be produced from the subject completion locations could not have been produced from any completion locations in existence prior to May 24, 1989.]

[(3) Eligible high-cost gas will be exempt from the tax imposed by the Texas Tax Code, Chapter 201, during the period beginning September 1, 1991, and ending August 31, 2001.]

(4) If the operator determines that a gas well previously certified as producing high-cost gas no longer produces high-cost gas or if the operator takes any action or discovers any information that affects the eligibility of gas for an exemption or tax reduction under Texas Tax Code, §201.057, the operator must notify the commission in writing within 30 days after such an event occurs.

(5) If the commission determines that a gas well previously certified as producing high-cost gas no longer produces high-cost gas or if the commission takes any action or discovers any information that affects the eligibility of gas for an exemption or tax reduction under Texas Tax Code, §201.057, the commission will notify within 48 hours, in writing, the comptroller [, all first purchasers (if known),] and the operator [in writing immediately].

(d) **Application procedure.**

(1) An application for a state severance tax exemption or tax reduction for a gas well may be made only by the operator of that well. Written application must be received by the commission no later than the 180th day after the first day of production. The operator shall file one copy of the required application form, one copy of the required attachments specified in subsection (e)(1) - (6) of this section and any additional information deemed necessary by the commission. Submission of legible



copies of required attachments will comply if the application includes a statement, signed by the operator, that the attachments are true and correct copies of the documents originally filed with the commission. However, the commission may require an operator to file certified copies of required attachments or other documents from commission files if necessary for a certification.

[(1) An application for a state severance tax exemption may be made only by the operator of a well. The operator shall file only one copy of any required document. Submission of a legible copy of a required document originally submitted to the commission will comply if the application includes a statement signed by the operator that copies of commission documents attached to the application are true and correct copies of the documents originally filed with the commission. The commission may require an operator to file certified copies of documents from commission files or of other documents necessary for a determination.]

(2) (No change.)

(e) Application [Individual well filing] requirements for individual well certifications. To qualify for the severance tax exemption or tax reduction, the operator must prove that the gas produced is high-cost gas by providing the following information:

(1) Applications for wells producing deep high-cost gas shall include:

(A) (No change.)

(B) copies of all Gas Well Back Pressure Test, Completion or Recompletion Reports and Logs [G-1s] ever filed on the subject well.

(2) Applications for wells producing geopressured brine shall include:

(A) (No change.)

(B) copies of all Gas Well Back Pressure Test, Completion or Recompletion Reports and Logs [G-1s] ever filed on the subject well;

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

(3) Applications for wells producing coal seam gas shall include:

(A) (No change.)

(B) copies of all Gas Well Back Pressure Test, Completion or Recompletion Reports and Logs [G-1s] ever filed on the subject well if the gas is produced through a wellbore, or a detailed description of the production process if the gas is not produced through a wellbore;

(C) (No change.)

(D) evidence to establish that the natural gas was produced from coal seams [seam].

(4) Applications for wells producing Devonian shale gas shall include:

(A) (No change.)

(B) copies of all Gas Well Back Pressure Test, Completion or Recompletion Reports and Logs [G-1s] ever filed on the subject well;

(C)-(F) (No change.)

(5) Applications for wells producing designated tight formation gas shall include:

(A) (No change.)

(B) copies of all Gas Well Back Pressure Test, Completion or Recompletion Reports and Logs [G-1s] ever filed on the subject well; and

(C) specific reference to the commission docket number assigned to the applicable designated tight formation [sands] area certification[designations] along with a copy of the map with the subject well location shown and which outlines [outlining] the designated tight formation area [as] approved by the commission [with the location of the subject well shown]; if the subject well's location lies within a drilling unit or proration unit that had been eliminated from the designated tight formation area pursuant to the provisions of subsection (g)(4) of this section, the applicant shall also include a copy of test results or other data, for the subject well, to show that a measured or calculated *in situ* permeability and a measured or calculated stabilized flow rate against atmospheric pressure do not exceed the limits specified in subsection (f)(3)(B)(i) and (ii) of this section.

(6) Applications for wells producing production enhancement gas shall include:

(A) (No change.)

(B) copies of all Gas Well Back Pressure Test, Completion or Recompletion Reports and Logs [G-1s] ever filed on the subject well;

(C)-(I) (No change.)

(f) Application [Tight sands area designation filing] requirements for tight formation area certifications.

(1) If justification for an individual well application is based on a tight formation certification and the well is not located within a geographical area that has been previously certified as a designated tight formation area or the well is not completed in a formation interval that has been previously certified as a designated tight formation by the Federal Energy Regulatory Commission under the Natural Gas Policy Act or by the Railroad Commission of Texas, the operator must first apply for a tight formation area designation.

[(1) If the application for a "tight sands" approval is on a well that is not within an area previously designated as a tight formation by the Federal Energy Regulatory Commission under the Natural Gas Policy Act or by the Railroad Commission of Texas, the operator must first apply for a new tight formation area designation.]

(2) An applicant requesting a tight formation area designation must submit a written request to the High-Cost Gas Severance Tax Section, at the address given in subsection (d)(2) of this section, [of the Oil and Gas Division] for a certification [determination] that a named formation or a specific portion thereof is a tight formation. The applicant must supply a list of the names and addresses of all affected persons. For purposes of this subsection, "affected persons" means all operators of [first purchasers, as indicated in current commission records, from] all wells listed on the current proration schedule for the applicable [(regardless of operator) within the specific portion of the named



formation and all operators in the same] field or fields located within the proposed designated area [involved]. The applicant shall mail or deliver a copy of the prescribed, completed notice of application form to all affected persons, and if required, shall publish the notice of application in accordance with §1.46 of this title (relating to notice by publication in oil and gas and surface mining and reclamation nonrulemaking proceedings), as found in the Commission's General Rules of Practice and Procedure. Notice of application forms may be obtained by contacting the Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967, Attention: High-Cost Severance Tax Section. Before the application may be approved, the applicant shall submit a letter certifying that all affected persons were sent a copy of the notice of application, and the date on which the notice of application was sent. [The staff shall mail notice of the tight sands application to all affected persons. If the technical staff finds that the data submitted with the application are complete and comply with the requirements set out in paragraph (3) of this subsection, and if no protest is filed within 21 days of the notice, the application will be presented to the commission for approval. If the technical staff finds the data submitted are incomplete, or if a protest is filed within the 21-day notice period, the applicant may request a hearing to consider the application. If the applicant does not request such a hearing, the application shall be dismissed. Any such hearing shall be held only after at least 10 days notice to all affected persons. If no protestant appears at the hearing, the application shall be presented to the commission for approval if the application and any evidence presented at the hearing establishes that the subject formation meets the requirements for a tight formation determination.]

(3) In addition to the written request and list of affected persons, the applicant must submit the following information in duplicate:

(A) a geographical and geological description of the formation, including:

(i) a map with an outline of the geographical limits of the formation in and around the requested area, with the proposed designated areal boundaries shown, with counties, surveys and abstracts identified and with the locations clearly identified for all wells inside the requested area that have either penetrated, tested or are currently completed in the proposed formation; all wells (i.e. those that either penetrated, tested or are currently completed in the proposed formation) shown on the map inside the requested area shall include either the commission's gas well identification number or the API number (if available); the proration unit areas or the drilling unit areas shall be clearly identified on the map for all data-point wells where available data has shown that both the measured or calculated *in situ* permeability and the measured or calculated pre-stimulation stabilized production rate against atmospheric pressure are equal to or greater than twice the values set out in subparagraph (B)(i) and (ii) of this paragraph; for those data-point wells where the applicable permeability and pre-stimulation stabilized production rate values are equal to or greater than twice the values set out in subparagraph (B)(i) and (ii) of this paragraph, and where special field rules are in effect at the time of the application, the minimum proration unit areas shall be identified on the map; for those data-point wells where there are no special field rules in effect at the time of the application or if the data-point wells' completions have been abandoned from

the proposed tight formation, or proposed portion thereof, the drilling unit areas shall be identified on the map;

[(i) a map outlining the geographic limits of the formation, counties involved, boundaries, abstract numbers, survey names, and field name(s);]

(ii) a list of the counties involved, abstract numbers, survey names, geologic formation markers, and any other descriptive information that will aid in identifying the subject formation including an estimate of the number of acres within the requested area; and

(iii) a structure map contoured on the top of the formation and [,] a [regional] cross-section to depict upper and lower limits of the proposed formation, or specific portion thereof. [, and depositional history;]

(B) engineering and geological exhibits [data], including a written explanation of each [exhibit], to establish [establishing] the following:

(i) that the *in situ* permeability throughout the proposed formation or specific portion thereof [pay zone] is 0.1 millidarcies [millidarcy] or less, as determined by geometric mean or median analysis of available data from all wells that either have been tested or are completed in the proposed formation within the requested area. If no *in situ* permeability estimates are provided for wells that are in the requested area and have been tested and/or are completed in the proposed formation, an explanation must be provided [methodology];

(ii) that the pre-stimulation [a] stabilized production rate against atmospheric pressure at the wellhead, as determined by a geometric mean or median analysis of available data from all wells within the requested area that either have been tested and/or are completed in the proposed formation or specific portion thereof, does not[, without stimulation, against atmospheric pressure, of wells completed for production in the formation is not expected to] exceed the production rate listed [determined] in [accordance with] the following table:[;and]  
Figure: 16 TAC 3.101(f)(3)(B)(ii)

(iii) that no well drilled into the formation is expected to produce, without stimulation, more than five barrels of crude oil per day; and, [,]

(iv) that the requested designated area does not extend beyond a two and one-half (2 1/2) mile radius drawn from the data point well for those designated areas sought where the *in situ* permeability and the stabilized flow rate against atmospheric pressure are provided for one well only.

[(C) a map or list of the wells that are currently producing in the formation.]

(g) Commission action on [well] applications for individual well certifications and for tight formation area designations.

(1) Each application, for an individual well certification, will be assigned a docket number identifying it as a severance tax application. A notice of receipt will be sent to the applicant, indicating the assigned docket number and receipt date. All further correspondence shall include this docket number.

(2) The director may administratively approve the individual well certification applications [application] if the forms and

information submitted by the operator establish that the gas qualifies as high-cost gas eligible for the severance tax exemption or tax reduction. If the director denies administrative approval, the applicant shall have the right to a hearing.

(3) If commission staff finds that the data submitted with the tight formation area designation applications are complete and comply with the requirements set out in subsection (f)(3) of this section and the condition set out in paragraph (4) of this subsection and if no protest to the application is filed within 21 days of the notice, the application will be presented to the commission for approval. If commission staff finds the data submitted are incomplete, or indicate the area does not qualify, or if a protest is filed within the 21-day notice period, the applicant must request a hearing to have the application considered. If the applicant does not request such a hearing or if the applicant fails to appear at a requested hearing, the application shall be dismissed. Any such hearing shall be held only after at least 10 days' notice by the commission to all affected persons. If no protestant appears at the hearing, and/or if the application and any evidence presented at the hearing establishes that the subject formation meets the requirements for a tight formation certification, the application shall be presented to the commission for approval.

[(3) A notice of hearing will be issued only for complete applications and will be furnished to the applicant, to any other person the commission deems necessary, and to the commission secretary. Persons claiming a justiciable or administratively cognizable interest may intervene to support or oppose the application.]

(4) Prior to final approval of the designated tight formation area application, the applicable proration unit areas and/or drilling unit areas will be eliminated from the requested area for all data-point wells where available data has shown that both the measured or calculated *in situ* permeability and the measured or calculated pre-stimulation stabilized production rate against atmospheric pressure are equal to or greater than twice the values set out in subsection (f)(3)(B)(i) and (ii) of this section.

[(4) The hearings in dockets in which an intervention in opposition is entered prior to or at the scheduled hearing will be recessed to a time designated by the examiner. If the applicant did not appear at the hearing initially, the examiner will give notice of the opposition and recess. Failure of the intervenor to appear at the subsequent hearing will be deemed a withdrawal.]

[(5) If the parties do not waive issuance of a proposal for decision and the examiner's recommendation is adverse to a party in the docket, the examiner will issue a proposal for decision. The parties shall file any exceptions to the proposal within 20 days after service of the proposal, and any replies to exceptions within 30 days after service of the proposal. The parties shall serve copies of exceptions and replies to exceptions on all other participants and must be received by the commission within these times in order to be considered.]

[(6) If a person alleging a justiciable or administrative cognizable interest was not given notice, the person may file a written motion in intervention any time prior to the date of commission consideration in open meeting. The motion shall set forth facts showing good cause for the commission to grant the intervention or take other appropriate action.]

(h) Reporting. To qualify for the exemption or tax reduction provided by Texas Tax Code, §201.057(a)(2)(A) [§201.057], all [the] persons [person] responsible for paying the tax must apply with [to] the comptroller after receiving a copy of the commission's certification letter. The application shall contain the commission's letter certifying [certification of the commission] that the well produces or will produce high-cost gas, a completed copy of the commission's application for certification form and a completed copy of the applicable Comptroller of Public Accounts' form [, and may be filed with the comptroller between January 1, 1990, and December 31, 1998, for exemption from the natural gas severance tax provided in the Texas Tax Code, Chapter 201]. An application for the tax exemption or tax reduction must be filed with the comptroller on or before the later of the 180th day after the first day of production or the 45th day after the certification by the commission.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703393

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 463-7008

## TITLE 22. EXAMINING BOARDS

### Part I. Texas Board of Architectural Examiners

#### Chapter 1. Architects

##### Subchapter A. Scope; Definitions

###### 22 TAC §1.5

The Texas Board of Architectural Examiners proposes an amendment to §1.5, concerning Terms Defined Herein. The proposed amendment is to add definitions for commonly used phrases. The effects are expected to be clarification of the rules.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be a better understanding of all the board's rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

**§1.5. Terms Defined Herein.**

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

**Direct Supervision** —That degree of supervision by a person overseeing the work of another whereby the supervisor and the individual being supervised work in close proximity to one another and the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

**Emeritus Status** —An honorary title that allows a retired architect who no longer wishes to actively practice architecture to retain his or her professional title but does not confer the right to practice as a registered professional.

**Responsible Charge** —That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional standard of care.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703367

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535.



**22 TAC §1.16**

The Texas Board of Architectural Examiners proposes an amendment to §1.16, concerning Official Records. The proposed amendment is to omit a reference to a chapter that has been repealed and to correct the title of a referenced subchapter. The effects are expected to correct inaccuracies in wording of the rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be clarification of the existing rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

**§1.16. Official Records.**

Among other official records required by law, or by rules of other agencies in support of law, there shall be kept in the board offices accurate and current records, including, but not limited to:

(1) minutes—a record containing in proper order, proceedings of each meeting of the board;

(2) record of registrants—a record containing the name and registration number of all persons to whom certificates of registration are issued, the last known address of all architects, and a record of all current renewals effected through annual registration;

(3) registrant files—an individual file for each architect, containing the original application, relevant verification and evaluation data, records of examinations and scores, date of original registration, and a record of annual registrations and fees received after original registration, and, when applicable, records of alleged violations, suspensions, and revocations;

(4) finances—a system of record keeping correctly and currently indicating funds budgeted, committed, spent, and remaining, as well as projections of appropriate requests for consideration in budget development;

(5) records of candidates—an individual file for each candidate for licensing, containing the original application, educational transcripts, employer certification, evaluation data, records of examinations and scores, and date of original registration. Upon registration, such files shall be transferred to the registrant's permanent file. (See also §1.50 of this title (relating to Reapplication));

(6) records of nonregistrants—records which shall be kept of those unregistered persons or firms, against whom allegations of violations have been filed, together with the resulting actions taken in accordance with the authority in Subchapter J of this chapter (relating to Complaint Procedure). [Violations by Unregistered Persons].

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703364

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535



**Subchapter B. Registration**

**22 TAC §1.25**

The Texas Board of Architectural Examiners proposes an amendment to §1.25, concerning Processing. The proposed amendment is to insert a sentence accidentally omitted from the earlier version. The effects are expected to be to make it possible to collect information required for board records.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be the collection of complete and accurate information for board records. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§1.25. *Processing.*

(a) (No change.)

(b) When received, applications will be entered into the Board records. When the required fee has been received, information submitted will be verified and evaluated. Subsequent submittals may be required of the applicant.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703366

Cathy L. Hendricks, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535

◆ ◆ ◆  
Subchapter E. Fees

22 TAC §1.88

The Texas Board of Architectural Examiners proposes an amendment to §1.88, concerning Emeritus Fee. The proposed amendment is to clarify the term "emeritus status." The effects are expected to be a more uniform application of the rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be a better understanding of the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§1.88. *Emeritus Fee.*

Architects 62 years of age or older who are currently registered to practice architecture in Texas and who are not delinquent in any fees [who have retired from active practice and/or other related professional activities,] may request emeritus status. The annual renewal fee for approved emeritus architects will be as prescribed by the board. A registrant who has been granted emeritus status may have his or her registration reinstated in the same manner as a registrant who has been revoked for any cause. [\$10.]

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703370

Cathy L. Hendricks, ASID/IIDA  
Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535

◆ ◆ ◆  
Subchapter I. Charges Against Architects: Action  
22 TAC §1.161

The Texas Board of Architectural Examiners proposes an amendment to §1.161, concerning Disciplinary Actions. The proposed amendment is to correct a Subchapter number referenced in the rule. The effects are expected to correct an inaccuracy in the rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be clarification of the existing rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249a which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

**§1.161. Disciplinary Actions.**

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

(h) Where a violation appears evident, the Board will consider instituting disciplinary action by means of scheduling a public hearing in conformance with Subchapter L [Subchapter K] of this chapter (relating to Hearings-Contested Cases); however:

(1)-(4) (No change.)

(i)-(n) (No change.)

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703365

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535



**Chapter 3. Landscape Architects**

**Subchapter A. Scope; Definitions**

**22 TAC §3.5**

The Texas Board of Architectural Examiners proposes an amendment to §3.5, concerning Terms Defined Herein. The proposed amendment is to add definitions for commonly used phrases. The effects are expected to be clarification of the rules.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be a better understanding of all the board's rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249c which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

**§3.5. Terms Defined Herein.**

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

**Direct Supervision** —That degree of supervision by a person overseeing the work of another whereby the supervisor and

the individual being supervised work in close proximity to one another and the supervisor has both control over and detailed professional knowledge of the work prepared under his or her supervision.

**Emeritus Status** —An honorary title that allows a retired architect who no longer wishes to actively practice architecture to retain his or her professional title but does not confer the right to practice as a registered professional. others.

**Responsible Charge** —That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional standard of care.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703368

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535



**Subchapter E. Fees**

**22 TAC §3.88**

The Texas Board of Architectural Examiners proposes an amendment to §3.88, concerning, Emeritus Fee. The proposed amendment is to clarify the term "emeritus status." The effects are expected to be a more uniform application of the rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be a better understanding of the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249c which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

**§3.88. Emeritus Fee.**

Landscape Architects 62 years of age or older who are currently registered to practice landscape architecture in Texas and who are not delinquent in any fees [who have retired from active practice and/or other related professional activities,] may request emeritus status. The annual renewal fee for approved emeritus

landscape architects will be as prescribed by the board. A registrant who has been granted emeritus status may have his or her registration reinstated in the same manner as a registrant who has been revoked for any cause. [\$10. Application for reinstatement may be made for which there will be no reinstatement fee.]

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703371

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535



## Chapter 5. Interior Designers

### Subchapter A. Scope; Definitions

#### 22 TAC §5.5

The Texas Board of Architectural Examiners proposes an amendment to §5.5, concerning Terms Defined Herein. The proposed amendment is to add definitions for commonly used phrases. The effects are expected to be clarification of the rules.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be a better understanding of all the board's rules. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

#### §5.5. Terms Defined Herein.

The following words and terms, when used in these rules, shall have the following meanings, unless the context clearly indicates otherwise.

**Direct Supervision** —That degree of supervision by a person overseeing the work of another whereby the supervisor and the individual being supervised work in close proximity to one another and the supervisor has both control over and detailed

professional knowledge of the work prepared under his or her supervision.

**Emeritus Status** —An honorary title that allows a retired architect who no longer wishes to actively practice architecture to retain his or her professional title but does not confer the right to practice as a registered professional.

**Responsible Charge** —That degree of control over and detailed knowledge of the content of technical submissions during their preparation as is ordinarily exercised by registered architects applying the required professional standard of care.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703369

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535



## Subchapter B. Registration

### 22 TAC §5.31

The Texas Board of Architectural Examiners proposes an amendment to §5.31, concerning Eligibility. The proposed amendment is to specify a closing date for applications for interior designer registration without examination. The effects are expected to be the establishment of a deadline for fulfilling the requirements for interior designer registration without examination.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be improved record keeping and processing of applications. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e which provide the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

#### §5.31. Eligibility.

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

(d) An applicant for registration without examination under the provisions of subsection (a)(2) of this section who fails

to complete the required six or more years of experience on or before September 1, 2003, will be ineligible for registration without examination.

(e) Pursuant to the provisions of the Texas Family Code, §231.302 each applicant shall submit his or her social security number on forms prescribed by the board. Such information shall be considered confidential as stated in the Texas Family Code, §231.302(e).

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703363

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535

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Subchapter E. Fees.

22 TAC §5.99

The Texas Board of Architectural Examiners proposes an amendment to §5.99, concerning Emeritus Fee. The new proposed amendment is to clarify the term "emeritus status." The effects are expected to be a more uniform application of the rule.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five years the section as proposed is in effect, there will be no fiscal implications as a result of enforcing or administering the section.

Ms. Hendricks also has determined that for each year of the first five years the section as proposed is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be a better understanding of the rule. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments may be submitted to Cathy L. Hendricks, ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed under Vernon's Texas Civil Statutes, Article 249e which provides the Texas Board of Architectural Examiners with authority to promulgate rules.

This proposed amendment does not affect any other statutes.

§5.99. *Emeritus Fee.*

Interior designers 62 years of age or older who are currently registered to practice interior design in Texas and who are not delinquent in any fees [who have retired from active practice and/or other related professional activities.] may request emeritus status. The annual renewal fee for approved emeritus interior designers will be as prescribed by the board. A registrant who has been granted emeritus status may have his or her registration reinstated in the

same manner as a registrant who has been revoked for any cause. [\$10.]

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703372

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 305-8535

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**TITLE 31. NATURAL RESOURCES AND CONSERVATION**

**Part IV. School Land Board**

**Chapter 155. Land Resources**

**Coastal Public Lands**

**31 TAC §155.5**

The School Land Board (SLB) proposes amendments to §155.5 of this title, relating to registration of structures and piers on coastal public lands. Because the Texas Natural Resources Code provides for two types of registrations, §155.5 is proposed for amendment to clarify which provisions of the rule are applicable to each of the registered improvements. Section 33.115 of the Texas Natural Resources Code allows a littoral owner to construct a pier which does not exceed 25 feet in width and 100 feet in length on coastal public land without an easement or lease from the SLB. Section 33.132 of the Texas Natural Resources Code is a "grandfather" clause which allowed littoral owners to register, on or before December 31, 1973, any structures which existed on coastal public land as of August 27, 1973. These grandfathered structures, if registered by December 31, 1973 may, subject to §155.5(g), remain on coastal public land without an easement or lease from the SLB.

Because the definition of "structure" in §155.1 of this title includes floating and fixed piers, the proposed amendments expressly exclude piers eligible for registration from such definition. This amendment will eliminate any confusion which may have resulted from the terminology used in §155.5. Further, the proposed amendments set forth the limitations on an owner's right to modify and rebuild a registered structure or pier and clarify when a structure or pier registration is terminated. The proposed amendments require that, upon termination of the agreement authorizing the pier or structure to remain on coastal public land, the owner shall remove any and all private property from coastal public land and leave the land in a safe, clean condition. This proposed amendment is consistent with other administrative rules and the Texas Natural Resources Code. Other minor editorial changes are proposed to update and clarify the language of the rule.

Christopher K. Price, Deputy Commissioner for Asset Management, Texas General Land Office, has determined that for the

first five- year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amended rule.

Mr. Price also has determined that for each year of the first five years the rule is in effect the public benefits anticipated as a result of this amendment will be clarity in the rules, more efficient government enforcement and better protection of state coastal natural resources. Mr. Price also has determined that there will be no increased economic cost to persons required to comply with the rule, and that there will be no adverse effect on small business resulting from adoption of the proposed amendment.

Comments on the proposed amendment may be submitted to Lenora DuBose, Texas General Land Office, Legal Services Division, 1700 North Congress Avenue, Room 626, Austin, Texas, 78701-1495 (Fax: (512) 463-6311). In order to be considered, comments must be received by 5:00 p.m. on April 21, 1997.

The amendment is proposed under the Texas Natural Resources Code, Chapter 33, §33.064, which authorizes the SLB to adopt procedural and substantive rules necessary for the management of coastal public land.

The Texas Natural Resources Code, §33.115 and §33.132, is affected by the proposed amendment.

*§155.5. Registration of Structures.*

(a) For purposes of this §155.5, the term "structure" does not include any fixed or floating pier which is eligible for registration under Texas Natural Resource Code, §33.115.

(b)[(a)] Pursuant to Texas Natural Resource Code, §33.115, a [A] littoral owner may construct on or over coastal public lands a pier which does not exceed 100 feet in length or 25 feet in width, requires no filling or dredging, and is not used for commercial purposes, without obtaining an easement from the board; however, the littoral owner shall register the location and dimensions of the pier with the board.

(c)[(b)] Pursuant to Texas Natural Resource Code, §33.132, a [A] littoral owner claiming any right in any structure, which as of August 27, 1973, is situated in whole or in part upon coastal public lands, shall register the location and dimensions of any such structure. Registration after January 1, 1974, may require an easement or lease.

(d)[(c)] Any person desiring to register a structure or pier on coastal public lands with the board must submit the plat information and registration form approved by the General Land Office.

(1) The commissioner may request any additional information deemed necessary.

(2) A nonrefundable registration fee made payable to the General Land Office must accompany the registration form for each structure or pier.

(e)[(d)] Upon receipt of a registration form the commissioner will, upon review and evaluation of the information, authorize the registration of the structure or pier.

(f)[(e)] Any person registering any structure or pier on coastal public lands or water surface areas agrees and consents to

comply with and be bound by the following terms and conditions unless waived by the commissioner:

(1) to keep the commissioner informed at all times of his or her address, and if a corporation, of the address of its principal place of business and the name and address of the officer or agent authorized to receive service of notice;

(2) that the structure or pier registered will be maintained in proper order and will not be allowed to deteriorate to such a degree as to become a hazard or public nuisance;

(3) to pay to the General Land Office the necessary registration fees as determined by the board;

(4) that the allowance of the registration shall be subject to the express condition that the board may grant other rights in any part of the area on which the structure or pier is located;

(5) that registration of such structure or pier by the commissioner shall not be construed as evidence of the acquiescence of the state in such claim by the owner.

(g)[(f)] In the event a structure or pier has been registered with the commissioner and the littoral owner subsequently desires to make modifications or additions or rebuild such structure, the littoral owner is required to obtain an easement or lease in lieu of the prior registration of such structure or pier if [such structure] :

(1) in the case of a pier registered pursuant to Texas Natural Resource, §33.115, following modification or rebuilding, such pier will be [is] for commercial purposes, will require [requires] dredging or filling, or will exceed [exceeds] 100 feet in length or 25 feet in width ; or

(2) in the case of a structure registered pursuant to Texas Natural Resource Code, §33.132, following modification or rebuilding, such structure will exceed the original dimensions of the registered structure by more than two feet in width or ten feet in length. The [If no easement or lease is required, the] littoral owner shall notify the General Land Office of the proposed modifications, additions, or rebuilding prior to undertaking the work. In the event any pier or structure which is registered with the commissioner is modified or rebuilt so that, in the case of a registered pier, the dimensions exceed 100 feet in length or 25 feet in width, it is used for commercial purposes or requires dredging or filling, or in the case of a registered structure, the dimensions exceed the original structure dimensions by more than two feet in width or ten feet in length, then the registration automatically terminates. Continued use or possession of a structure or pier without the required lease or easement shall subject the owner to the provisions of §51.302, et seq, Texas Natural Resource Code

(h)[(g)] Assignment may be made of any pier [structure] registered with the commissioner subject to the written approval of the commissioner and provided that, at the time of assignment, such pier [structure] is not used for commercial purposes, requires no filling or dredging, or does not exceed 100 feet in length or 25 feet in width, in which event an easement may be required. Any such assignment must be approved by the commissioner in writing and executed on the then current assignment form provided by the commissioner [filed in triplicate accompanied by a written request for approval in which the assignee agrees to comply with all rules and regulations contained in this section]. No assignment



shall be effective to transfer any pier [structure] until approved by the commissioner, the assignor, and assignee.

(i) Assignment may be made of any structure registered with the commissioner subject to the written approval of the commissioner and provided that, at the time of assignment, the dimensions of such structure do not exceed the original dimensions of such structure by more than two feet in width or ten feet in length. Any such assignment must be approved by the commissioner in writing and executed on the then current assignment form provided by the commissioner. No assignment shall be effective to transfer any structure until approved by the commissioner, the assignor, and assignee.

(j)(h) Upon termination of any agreement which is not renewed [reinstated] by the board, the littoral owner shall, at the option of the board, within 120 days from said termination, remove all of his or her personal property and all structures and manmade improvements from coastal public land [authorized]. The littoral owner shall take whatever measures as are necessary to restore the area involved as nearly as practicable to the same condition that existed prior to placement of any structure or improvements thereon, except as otherwise approved in writing by the commissioner. Failure to comply with these rules and regulations subjects the structure registration to termination].

(k)(i) The failure of any littoral owner to register a structure or pier, as authorized by Texas Natural Resource Code, Chapter

33, shall prevent such owner from making any further claim of right against the state in such structure or pier and shall render the structure or pier [such] a nuisance per se subject to abatement by the state at the expense of the littoral owner, as provided in Chapter 33 and/or §51.302, et seq, Texas Natural Resource Code.

(l)(j) The criteria for construction of a structure [dock] or pier will include a review and determination by the commissioner [as] in accordance with the project activity guidelines in §155.3 of this title (relating to Easements).

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

Issued in Austin, Texas, on March 12, 1997.

TRD-9703414

Gary Mauro

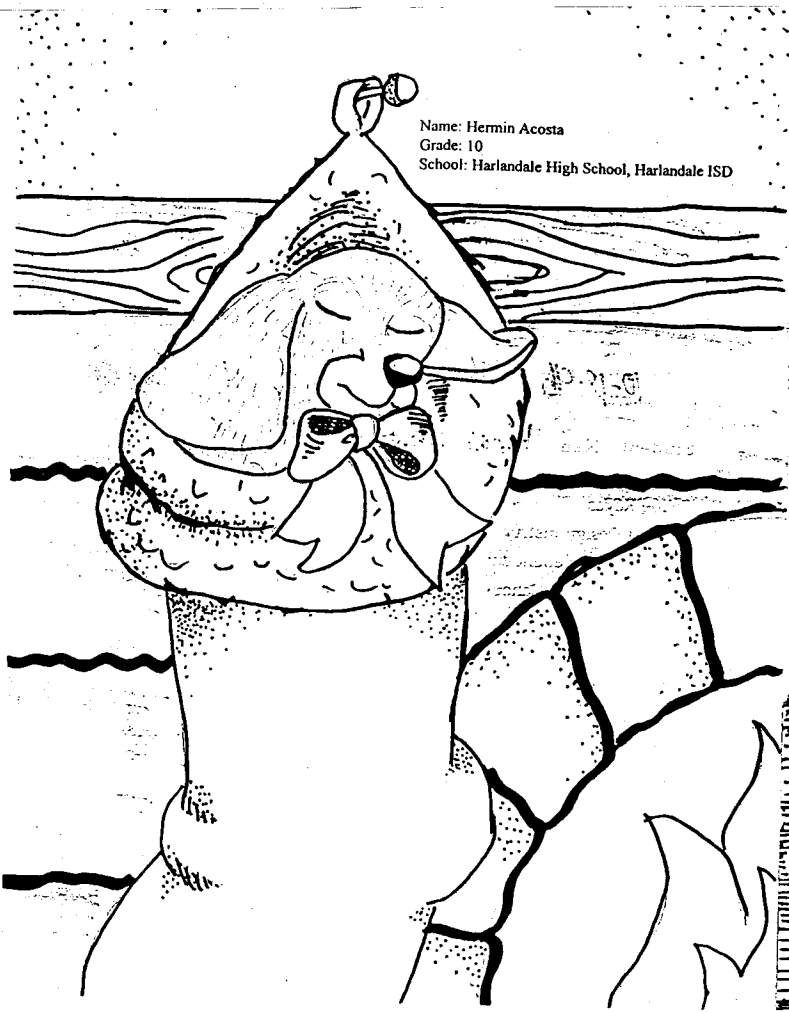
Chairman

School Land Board

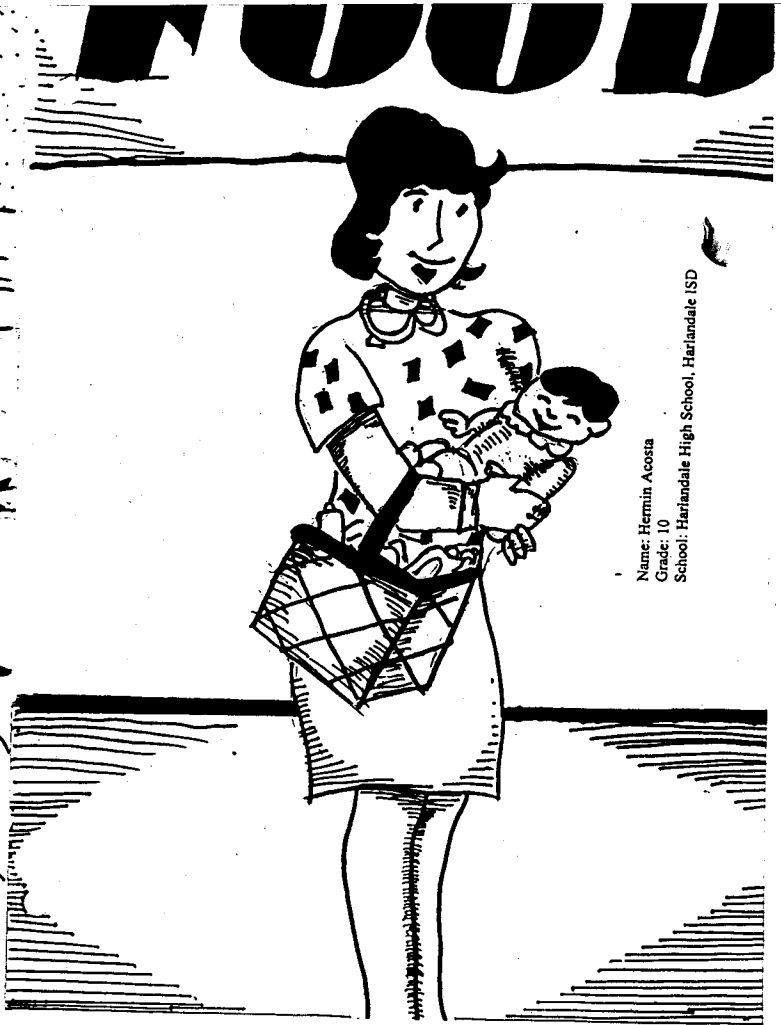
Earliest possible date of adoption: April 21, 1997

For further information, please call: (512) 463-6467

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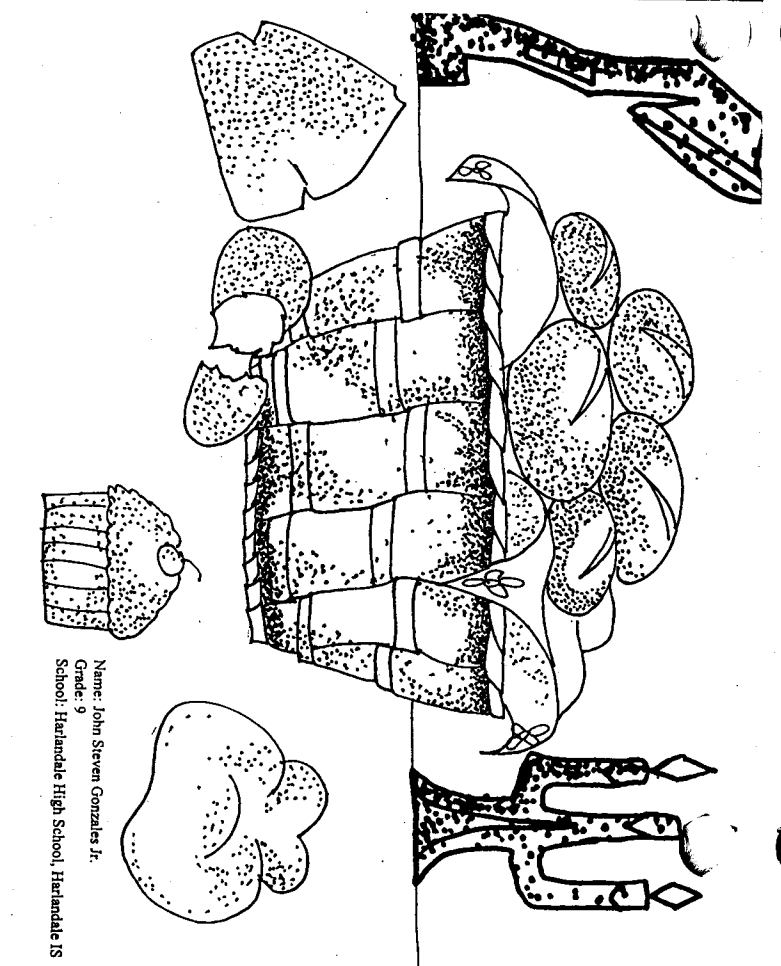
Name: Hermin Acosta  
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Name: Hermin Acosta  
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Name: Cinthya Tamaro  
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 School: Harlandale High School, Harlandale ISD



Name: John Steven Gonzales Jr.  
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 School: Harlandale High School, Harlandale IS

# WITHDRAWN RULES

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

## TITLE 16. ECONOMIC REGULATION

### Part I. Railroad Commission of Texas

#### Chapter 3. Oil and Gas Division

##### Conservation Rules and Regulations

###### 16 TAC §3.26, §3.27

The Railroad Commission of Texas has withdrawn from consideration for permanent adoption the proposed amendments §3.26 and §3.27, which appeared in the September 27, 1996, issue of the *Texas Register* (21 TexReg 9215).

Issued in Austin, Texas, on March 11, 1997.

TRD-9703394

Mary Ross McDonald

Deputy General Counsel, Office of General Counsel  
Railroad Commission of Texas

Effective date: March 28, 1997

For further information, please call: (512) 463-7008



### Part I. Texas Board of Architectural Examiners

#### Chapter 5. Interior Designers

##### Subchapter B. Registration

###### 22 TAC §5.31

The Texas Board of Architectural Examiners has withdrawn from consideration for permanent adoption the proposed amendment to §5.31, which appeared in the March 11, 1997, issue of the *Texas Register* (22 TexReg 2565).

Issued in Austin, Texas, on March 11, 1997.

TRD-9703362

Cathy L. Hendricks, ASID/IIDA

Executive Director

Texas Board of Architectural Examiners

Effective date: March 11, 1997

For further information, please call: (512) 305-8535



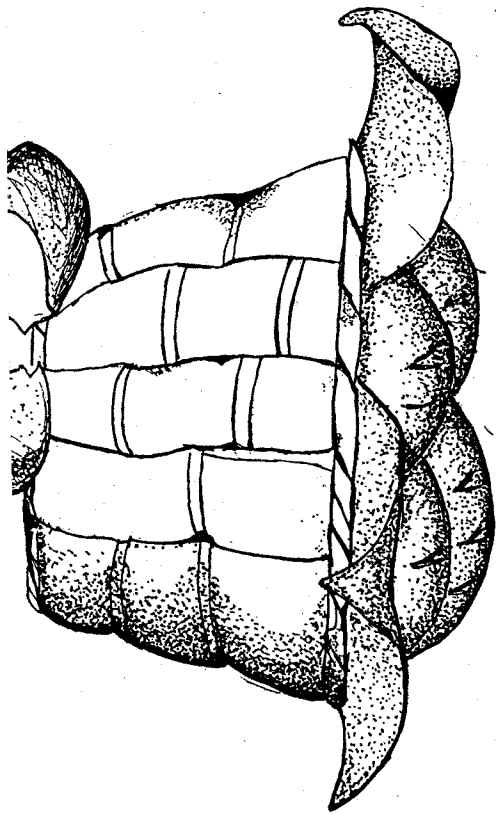
## TITLE 22. EXAMINING BOARDS



Name: Marth Macias  
Grade: 11  
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Name: Yvette Nolin  
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Name: Jacob Garcia  
Grade: 10  
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# ADOPTED RULES

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

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

## TITLE 16. ECONOMIC REGULATION

### Part VIII. Texas Racing Commission

#### Chapter 303. General Provisions

#### Subchapter D. Texas Bred Incentive Programs

#### Programs for Horses

#### 16 TAC §303.92

The Texas Racing Commission adopts an amendment to §303.92, concerning the rules for the Texas Bred Incentive Program for thoroughbred horses with changes to the proposed text published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1034). The amendment is adopted to ensure a clearly defined mechanism and set of standards to govern the exercise of duties conferred on the petitioner is established.

The amendment was presented to the Commission as a petition for rulemaking under 16 Texas Administrative Code, §307.303. According to the petition, the amendment will give detailed guidance for the functioning of the Texas Bred Incentive Program for thoroughbred horses and for the standards and procedures for determining eligibility and conferring awards. The amendment will change existing practice primarily by adding the features of subsection (b) relating to record keeping, governance of the program, and procedures for payment of awards.

On adoption, the Commission deleted subsection (c)(2)(G) in the proposed text. The Commission believes that text which relates to the Commission's procedures for collecting Texas-bred incentive program funds from the racetracks is unnecessary. Because of the deletion of a subparagraph, the letter designations of the subparagraphs that followed were changed accordingly. In addition, the Commission modified subsection (c)(2)(F) to give the breed registry the option to retroactively distribute excess incentive program money for owners after the end of a race meeting.

No comments were received regarding adoption of the proposal.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.08, which authorizes the commission

to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program.

#### §303.92. Thoroughbred rules.

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

(1) Horse Owner - A person who is owner of record of an accredited Texas-bred horse at the time of a race.

(2) Breeder - The owner of the dam at the time of foaling as stated on the foal's Jockey Club certificate of registration.

(3) Stallion Owner - A person who is the owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(4) Accredited Texas-bred Thoroughbred - A horse registered with the Jockey Club, accredited with the breed registry and conceived and foaled in Texas, sired by a stallion accredited with the breed registry at the time of conception of said foal and out of a mare accredited with the breed registry that is permanently domiciled in Texas. Also, any horse foaled in Texas will be eligible to be accredited if the mare remains in Texas to be next bred to any stallion accredited with the breed registry and the mare becomes an accredited mare permanently domiciled in Texas.

(5) Accredited Texas-bred Thoroughbred Mare - A mare registered with the Jockey Club, accredited with the breed registry, and permanently domiciled in Texas except for racing and breeding privileges. Annual reproductive activity of the mare may be required to be reported to the breed registry in writing via photocopy of the Live Foal Report/No Foal Report submitted annually to the Jockey club.

(6) Accredited Texas Thoroughbred Stallion - A stallion registered with the Jockey Club, accredited with the breed registry, and standing the entire breeding season in Texas. He shall be permanently domiciled in Texas from January 1 to July 31 except for medical or racing privileges, but shall not service a mare in North America outside the State of Texas within that breeding season. The breed registry must be notified in writing within ten calendar days each time the stallion leaves or enters the State of Texas. A photocopy of the annual Report of Mares Bred may be required to be submitted to the breed registry office on or before the date required by the Jockey Club (August 1). Stallion owners are eligible to receive stallion awards only from offspring sired in Texas after the stallion has become accredited with the breed registry and paid the applicable administrative fees.

(7) Breed Registry - The Texas Thoroughbred Association, the official breed registry for thoroughbred horses as designated in the Act.

(8) Act - The Texas Racing Act.

(9) Commission - The Texas Racing Commission.

(b) Organizational Structure. The breed registry shall comply with the provisions of the Act and commission rules and shall further maintain substantially the following:

(1) Records of the breed registry shall be kept so as to identify separately the activities of the accredited Texas-bred program.

(2) Management of the accredited Texas-bred program shall be under the control of the board of directors of the breed registry and may be exercised through a committee or other governing body appointed by and accountable to the board of directors. The committee shall keep records or minutes of its proceedings and shall establish its operational procedures. The committee's records must be available for inspection at any time by the commission at the office of the breed registry. The committee is authorized to reasonably interpret the definitions and standards of this section, subject to approval by the board of directors, whose decision in such matters shall be final.

(3) The committee shall prepare and implement a budget on an annual basis, subject to prior approval of the board of directors. The budget may contain provisions for reserves for contingencies deemed appropriate. The breed registry may develop and implement a fair system for sharing and allocation of expenses and operational costs between breed registry activities and accredited Texas-bred program activities, taking into consideration the promotion and improvement of thoroughbred horses in Texas. In no event may funds that are dedicated by law to fund the incentive awards program be used for any other purpose. Any funds or services advanced or provided by the breed registry to the accredited Texas-bred program may be offset or otherwise recouped upon proper accounting. The committee is authorized to set and collect application and administration fees.

(4) Eligibility for awards under the accredited Texas-bred program may not be conditioned upon membership in an organization.

(c) Procedure for Payment of Awards.

(1) Conditions precedent for payment of awards are:

(A) If a horse is leased, there must be on file with the breed registry a lease agreement specifying which party shall receive award money.

(B) Breeder's Awards will be paid only on an accredited Texas-bred Thoroughbred whose dam was accredited with the breed registry prior to foaling the subject horse.

(C) Accreditation fees are non-refundable after a work order has been assigned to an eligible entry. If a horse is ineligible, the fee will be refunded to the applicant.

(D) Any Texas-bred horse that becomes breeding stock must be accredited with the breed registry as an accredited mare or stallion.

(E) All applicable fees set by the breed registry must have been paid.

(2) Any accredited Texas-bred Thoroughbred that finishes first, second, or third in any race in Texas (with the exception of a stakes race restricted to accredited Texas-breds) shall receive an owner's award. Commencing with all Thoroughbred race meets run on and after January 8, 1997, all owner's awards shall be noted as a purse supplement in each association's condition book and race program, and owner's awards shall be considered as a portion of the purse money earned by the accredited Texas-bred Thoroughbred. For the purpose of calculations of the amount of owner's award purse supplement available the following procedure shall be utilized:

(A) Owner's Award purse supplements shall be calculated on a track-by-track basis, with analysis and opportunity for adjustment with each condition book.

(B) Based on historical data such as

(i) the relationship of the owner's award money available in relation to the purse money earned by accredited Texas-bred Thoroughbreds finishing first, second, or third, and

(ii) income projections for owner's award revenue calculated by the breed registry with the advice and consent of the Executive Secretary of the commission, the amount of the owner's award (as a percentage of the purse) shall be determined in advance for publication in each track's condition book and stakes book. For open company races, the owner's awards shall be advertised in each condition book, stakes book, and program so as to identify the availability of the accredited Texas-bred program awards.

(C) Accredited Texas-bred owner's award supplements shall only be paid to owners of accredited Texas-breds finishing first, second, or third in any race (except a stakes race restricted to accredited Texas-breds). No owner's award purse supplements shall be paid on fourth and fifth place finishes.

(D) It is the intent of the breed registry that (as close of an actual sum as possible to) (40%) of the total money generated for all categories of awards through the accredited Texas-bred Thoroughbred program will be distributed as owner's award purse supplements. The balance of the award money will be distributed by the breed registry with two-thirds of the balance (after payment of owner's awards) distributed to breeder's awards and one-third of the balance (after payment of owner's awards) distributed to stallion owner's awards.

(E) If the percentage set by the breed registry causes an amount greater or less than 40% of the cumulative owner's, breeder's, and stallion owner's awards from all sources of award revenue to be paid out in owner's awards during a condition book period, the breed registry (with the advice and consent of the Executive Secretary of the commission) shall have the ability to adjust the owner's award purse supplement (as a percentage of the purse) in future condition books during each particular race meeting. A periodic reconciliation shall be effected.

(F) After payment of owner's awards for the final condition book of a race meeting, any remaining award money allocated for owner's awards during that race meet (if any) may be carried over to the next live race meet at that track or redistributed retroactively, at the discretion of the breed registry. Funds allocated to the breeder's and stallion awards shall be distributed by the breed registry, with two-thirds of the balance to breeder's awards and one-third of the balance to stallion owner's awards.

(G) On the first business day after a week of live racing is concluded at a Texas track (i.e., Monday for a race week ending on a Friday, Saturday, or Sunday), the racetrack shall supply by electronic means (fax, e-mail, etc.) to the breed registry a complete listing of accredited Texas-bred Thoroughbreds that finished first, second, or third in any race at the track during the previous live racing week. The listing shall include the name of the horse, name of horse's owner, date of race, race number, finish position of horse (1st, 2nd, or 3rd), amount of purse money from the horsemen's purse account earned by the horse, and amount of accredited Texas-bred owner's award earned by the horse. The breed registry shall then on the same business day as it receives this report, transfer via electronic means to the horsemen's bookkeeper at the track a sum of money necessary to cover all accredited Texas-bred owner's awards during the previous live racing week.

(H) The breed registry shall retain the ability to set a maximum dollar amount for an owner's award. This procedure may be utilized in certain stakes races and/or high purse value allowance races. The intent of this maximum owner's award policy is to not provide an inordinate amount of the total money available for owner's awards to an individual horse during a condition book period. In the event the maximum owner's award policy is utilized for a race, the dollar amount of the maximum owner's award shall be indicated in the track's condition book, stakes book, and stakes nomination forms whenever possible.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703323

Paula C. Flowerday

General Counsel

Texas Racing Commission

Effective date: April 1, 1997

Proposal publication date: January 31, 1997

For further information, please call:

## Chapter 311. Conduct and Duties of Individuals

### Subchapter C. Alcohol and Drug Testing

#### 16 TAC §311.208

The Texas Racing Commission adopts an amendment to §311.208, concerning the penalties that may be imposed against an occupational licensee who tests positive for drugs while performing his or her duties on the grounds of a licensed racetrack without changes to the proposed text published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1037). The amendment is adopted to ensure pari-mutuel racing will be safer and the participants in racing will be encouraged to complete appropriate and necessary rehabilitation programs.

The amendment permits the stewards or judges to condition the reinstatement of a license after a suspension for a drug positive on the completion of any rehabilitation program ordered by the medical review officer.

No comments were received regarding adoption of the new section.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §14.03, which authorizes the commission to adopt rules relating to drug testing for occupational licensees.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703324

Paula C. Flowerday

General Counsel

Texas Racing Commission

Effective date: April 1, 1997

Proposal publication date: January 31, 1997

For further information, please call:

## Chapter 319. Veterinary Practices and Drug Testing

### Subchapter A. General Provisions

#### 16 TAC §319.7

The Texas Racing Commission adopts an amendment to §319.7, concerning medication labeling requirements without changes to the proposed text published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1037). The amendment is adopted to ensure the commission's enforcement programs relating to drugging of race animals will be effective.

The amendment clarifies the requirements relating to labeling of medications possessed on the grounds of pari-mutuel racetracks.

No comments were received regarding adoption of the new section.

The amendment is adopted under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §14.03, which authorizes the commission to adopt rules relating to illegal influencing of the outcome of a race.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703327

Paula C. Flowerday

General Counsel

Texas Racing Commission

Effective date: April 1, 1997

Proposal publication date: January 31, 1997

For further information, please call:

## TITLE 28. INSURANCE

### Part I. Texas Department of Insurance

#### Chapter 5. Property and Casualty Insurance

##### Subchapter E. Texas Catastrophe Property Insurance Association

###### Plan of Operation

###### 28 TAC §5.4001

The Commissioner of Insurance adopts amendments to §5.4001, the plan of operation of the Texas Catastrophe Property Insurance Association (TCPIA). The Commissioner considered the amendments in a public hearing held on March 5, 1997, under Docket Number 2282, at 10:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin Texas, and adopts the amendments with no changes to the proposed text as published in the February 7, 1997, issue of the *Texas Register* (22 TexReg 1384).

The Legislature created the TCPIA in 1971, by enacting the Catastrophe Property Insurance Pool Act (Article 21.49 of the Insurance Code). The TCPIA is composed of all property insurers authorized to transact property insurance in Texas. Its purpose is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Since its inception, the TCPIA has provided this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy. Pursuant to Commissioner's Order Number 95-1200 (November 14, 1995), effective March 1, 1996, the TCPIA provides coverage to residents in two additional coastal areas—the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Seabrook (Harris County) and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Harris County). Pursuant to Commissioner's Order Number 96-0380 (April 5, 1996), effective June 1, 1996, the TCPIA also provides coverage in the City of Morgan's Point (Harris County).

On December 18, 1996, the Commissioner designated two additional catastrophe areas, through entry of Commissioner's Order Number 96-1468. The areas are: (1) the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County); and (2) the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Pasadena (Harris County) (collectively, "Shoreacres/Pasadena Catastrophe Areas"). Commissioner's Order Number 96-1468 became effective on March 1, 1997, at which time TCPIA coverage became available in the Shoreacres/Pasadena Catastrophe Areas.

The amendments are necessary to revise subsection (e) (relating to Building Codes) of 28 TAC §5.4001 (the TCPIA Plan

of Operation) to include the Shoreacres/Pasadena Catastrophe Areas as designated areas that are subject to TCPIA building code specifications and standards and to the Department's Windstorm Inspection Program.

Subsection (e)(3) is amended to add a new subparagraph (D) providing that the Shoreacres/Pasadena Catastrophe Areas are subject to the building code requirements set forth in subsection (e) of the plan of operation. Subsection (e)(4) is amended to add a new subparagraph (F), relating to structures in Shoreacres/Pasadena Catastrophe Areas constructed, repaired, or to which additions were made on and after January 1, 1988 and before March 1, 1997. Subsection (F) provides that such structures shall be considered approved by the Commissioner of Insurance as being in compliance with the TCPIA's inland building code requirements contained in paragraph 2 of subsection (e) (Standard Building Code, 1973 Edition) or an equivalent recognized Code and, therefore, shall be considered insurable property by the TCPIA, if the owner of the structure presents to the TCPIA at the time of application a written statement verifying such compliance by a city building official. The text of the required compliance statement is included within subparagraph (F). A new subparagraph (G) is added to subsection (e)(4) to provide that a structure constructed, repaired, or to which additions were made on and after March 1, 1997, that is located in the Shoreacres/Pasadena Catastrophe Areas shall be considered an insurable property for windstorm and hail insurance from the TCPIA only if the structure is inspected or approved by the Commissioner of Insurance for compliance with building specifications as provided in the plan of operation, including any specifications for roofing materials, as provided in Article 21.49, §6A(a) of the Insurance Code.

The amendments will become effective on April 1, 1997.

The Department received no comments regarding the amendments to 28 TAC §5.4001, as proposed in the February 7, 1997, issue of the *Texas Register*.

The amendment to 28 TAC §5.4001 are adopted pursuant to the Insurance Code, Articles 21.49 and 1.03A. Article 21.49, §3(h) authorizes the Commissioner to designate a city or a part of a city, or a county or a part of a county, as a catastrophe area to be served by the TCPIA upon determination, after notice of not less than ten days and hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within that city or a part of that city or county or a part of that county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Pursuant to §3(h), the Commissioner designated the Shoreacres/Pasadena Catastrophe Areas as catastrophe areas through Commissioner's Order Number 96-1468 (December 18, 1996). Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the TCPIA. Article 21.49, §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the TCPIA plan of operation with the advice of the TCPIA board of directors. Section 5(f) of Article 21.49 provides that any interested person may petition the Commissioner to modify the plan of operation in accordance with the Administrative Procedure Act (Government Code title 10, subtitle A, ch. 2001). Article 21.49, §5, subsections (c) and (f), by their terms, delegate the foregoing authority to the



State Board of Insurance. However, under Article 1.02 of the Insurance Code, a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703383

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 1, 1997

Proposal publication date: February 7, 1997

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

## Manual

### 28 TAC §5.4501

The Commissioner of Insurance adopts an amendment to §5.4501, concerning the adoption by reference of a revised manual of rules governing the writing of windstorm and hail insurance by the Texas Catastrophe Property Insurance Association (TCPIA). The Commissioner considered the amendment in a public hearing held on March 5, 1997, under Docket Number 2283, at 10:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin Texas, and adopts the amendment with no changes to the proposed text as published in February 7, 1997 issue of the *Texas Register* (22 TexReg 1387).

The Legislature created the TCPIA in 1971, by enacting the Catastrophe Property Insurance Pool Act (Article 21.49 of the Insurance Code). The TCPIA is composed of all property insurers authorized to transact property insurance in Texas. Its purpose is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Since its inception, the TCPIA has provided this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy. Pursuant to Commissioner's Order Number 95-1200 (November 14, 1995), effective March 1, 1996, the TCPIA provides coverage to residents in two additional coastal areas—the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Seabrook (Harris County) and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Harris County). Pursuant to Commissioner's Order Number 96-0380 (April 5, 1996), effective June 1, 1996, the TCPIA also provides coverage in the City of Morgan's Point (Harris County).

On December 18, 1996, the Commissioner designated two additional catastrophe areas, through entry of Commissioner's Order Number 96-1468. The areas are: (1) the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County); and (2) the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Pasadena (Harris County) (collectively, "Shoreacres/Pasadena Catastrophe Areas"). Commissioner's Order Number 96-1468 became effective on March 1, 1997, at which time TCPIA coverage became available in the Shoreacres/Pasadena Catastrophe Areas.

The revised manual is necessary to incorporate rule amendments to provide for the applicability of the TCPIA's building code and inspection requirements to the Shoreacres/Pasadena Catastrophe Areas.

The adopted amendment to 28 TAC 5.4501 incorporates and adopts by reference a revised TCPIA Manual, effective April 1, 1997. The amendments to the Manual include the following:

Rule C, relating to Determination of Territory (Catastrophe Areas), in Section I-General Rules, has been amended to add new subdivisions, 2.c and 2.d. The new subdivisions will list, respectively, the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Shoreacres (Harris County) and the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Pasadena (Harris County) as designated catastrophe areas.

A new subdivision 4.c has been added to Rule D, relating to Insurable Property, in Section I-General Rules, to provide that structures constructed, repaired or to which additions were made on and after January 1, 1988 and before March 1, 1997 and that are located in the Shoreacres/Pasadena Catastrophe Areas are approved as complying with the TCPIA inland building code (1973 Edition, Standard Building Code) if the City of Shoreacres or the City of Pasadena has issued to the owner of the property a statement signed by a city building official that the structure was constructed or repaired, or an addition was made to the structure, in accordance with the building specifications and standards which comply with the Standard Building Code (1973 Edition) or an equivalent recognized code; and the City of Shoreacres or the City of Pasadena inspected the structure and enforced compliance to said code. Under subdivision 4.c, this signed statement must be provided to the TCPIA upon application to the TCPIA for windstorm and hail insurance and shall be considered evidence of the insurability of the structure by the TCPIA.

A new subdivision 5.c has been added to Rule D, relating to Insurable Property, in Section I-General Rules, to provide that a structure constructed, repaired, or to which additions were made on and after March 1, 1997, that is located in either of the Shoreacres/Pasadena Catastrophe Areas and that has been certified by the Texas Department of Insurance as being in compliance with the building specifications of the plan of operation shall be considered insurable property by the TCPIA. A certificate of compliance (Form WPI-8) issued by the Texas Department of Insurance shall be considered evidence of insurability of the structure by the TCPIA.

The Department received no comments regarding the adopted amendment to 28 TAC §5.4501.

The amendment to 28 TAC §5.4501 is adopted pursuant to the Insurance Code, Articles 21.49 and 1.03A. Article 21.49, §3(h) authorizes the Commissioner to designate a city or a part of a city or a county or a part of a county as a catastrophe area to be served by the TCPIA upon determination, after notice of not less than ten days and hearing, that windstorm and hail insurance is not reasonably available to a substantial number of owners of insurable property within that city or a part of that city or county or a part of that county that is subject to unusually frequent and severe damage resulting from windstorms and/or hailstorms. Pursuant to §3(h), the Commissioner designated the Shoreacres/Pasadena Catastrophe Areas as catastrophe areas through Commissioner's Order Number 96-1468 (December 18, 1996). Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the TCPIA. Article 21.49, §5A authorizes the Commissioner, after notice and hearing, to issue any orders which the Commissioner considers necessary to carry out the purposes of Article 21.49, including, but not limited to, maximum rates, competitive rates and policy forms. Article 21.49, §8 authorizes the Commissioner to approve every manual of classifications, rules, rates, rating plans, and every modification of any of the foregoing for use by the TCPIA. Articles 21.49, §§5A, 6A, and 8 by their terms delegate the foregoing authority to the State Board of Insurance; however, under Article 1.02 of the Insurance Code, a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by a statute.

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

Issued in Austin, Texas, on March 11, 1997.

TRD-9703382

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: April 1, 1997

Proposal publication date: February 7, 1997

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

## TITLE 37. PUBLIC SAFETY AND CORRECTIONS

### Part I. Texas Department of Public Safety

#### Chapter 15. Drivers License Rules<sup>1</sup>

##### Reciprocity in Driver Licensing

###### 37 TAC §15.91

The Texas Department of Public Safety adopts an amendment to §15.91, concerning Reciprocity in Driver Licensing, without changes to the proposed text as published in the January 24, 1997, issue of the *Texas Register* (22 TexReg 939)

The justification for this section will be to allow family members of Consuls to obtain a Texas driver's license.

The amendment adds language to subsection (e) stating that family members of Consuls may obtain a Texas driver's license.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Civil Statutes, Article 6687b, §1A, which provide the Texas Department of Public Safety with the authority to adopt rules that it determines are necessary to effectively administer this Act.

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

Issued in Austin, Texas, on February 26, 1997.

TRD-9703336

Dudley M. Thomas

Director

Texas Department of Public Safety

Effective date: March 31, 1997

Proposal publication date: January 24, 1997

For further information, please call: (512) 424-2890

# TEXAS DEPARTMENT OF INSURANCE EXEMPT FILINGS

As required by the Insurance Code, Article 5.96 and 5.97, The *Texas Register* publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.

These actions become effective 15 days after the date of publication or on a later specified date. The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.

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## ADOPTED

The Commissioner of Insurance has adopted amendments to the Texas Personal Lines Manual (Manual) to establish optional premium credits for homeowners and farm and ranch owners policies for the permanent identification of personal property as a protective measure against residential burglary. The commissioner has further adopted a form entitled "Inspector's Report For Compliance With The Property Identification Theft Reduction Program" that is to be used to demonstrate that a policyholder qualifies for the reduction in premiums. The Manual rules and form were proposed by department staff in a petition filed on January 21, 1997. Notice of the proposal (Reference No. P-0197-03-I) was published in the January 31, 1997, issue of the *Texas Register* (22 TexReg 1175). The Manual rules and form were considered at a public hearing on March 5, 1997, at 10:00 a.m., under docket number 2281 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas.

The commissioner has adopted, without changes to the proposal as noticed in the *Texas Register*, the amendments to the Homeowners and Farm and Ranch Owners Sections of the Manual to establish an optional premium credit for homeowners and farm and ranch owners insurance policies for compliance with the Property Identification Theft Reduction Program. The commissioner has adopted, with two changes to the proposal as noticed in the *Texas Register*, the Inspector's Report for Compliance With The Property Identification Theft Reduction Program form.

The adopted new rules to each section of the Manual are as follows: 1) In the Homeowners Section, Manual Rule VI-C is amended to add new item 6 "Personal Property Identification". 2) In the Farm and Ranch Owners Section, Manual Rule VI-C is amended to add new item 6 "Personal Property Identification".

These rules specify the standards that policyholders must meet to qualify for the credit and provide an optional credit of up to 5% for homeowners and farm and ranch owners policies for those policyholders who comply with the Property Identification Theft Reduction Program.

The "Inspector's Report For Compliance With The Property Identification Theft Reduction Program" (Inspector's Report) form was adopted with two changes to the proposal as noticed in the *Texas Register*. Based on information provided by staff, it was recognized that it was confusing to both policyholders and inspectors to specify in the Inspector's Report that a certain number of items must be marked or photographed. The intent of the adopted rules is that any property listed in the rules which is present in the home being inspected must be marked or photographed. The language specifying a particular number of items to be marked or photographed would be especially confusing in a situation where a homeowner has fewer items than the six or four items specified on the Inspector's Report. Even if a homeowner has only one item present in his home that is listed in the rule but it is marked and the home is inspected, the homeowner would still be eligible for the optional credit. In order to avoid confusion regarding this matter, the following sentences have been deleted from the Inspector's Report: 1) Inspectors must check at least six items that have been marked. 2) Inspectors must check at least four items that have been photographed. The Inspector's Report is to be used by inspectors certified by the Texas Commission on Law Enforcement Officer Standards and Education to certify that the personal property at the residence has been permanently marked or photographed in accordance with the criteria specified in the rule and that there are signs or stickers visible from the outside of the residence that indicate the personal property contained inside the residence has been permanently marked.

Commissioner's Order Number 94-1029 created the Residential Property Insurance Loss Mitigation Advisory Committee (Advisory Committee). The purpose of the Advisory Committee is to advise and make recommendations to the Commissioner of Insurance for reducing residential property insurance losses. The Advisory Committee recognized that the amount of losses paid is an important factor in determining insurance rates because a significant reduction in the amount of losses paid will ultimately reduce residential property insurance rates in Texas. Furthermore, the Advisory Committee recognized that many of the losses that occur might be eliminated or reduced through preventative measures employed by the insured to mitigate or prevent property losses.

To reduce residential burglary losses, the Advisory Committee recommended the Property Identification Theft Reduction Program which involves permanently marking commonly stolen personal property in residences and posting signs or stickers that are visible from the outside of the residence that indicate the personal property contained in the residence has been permanently marked. A majority of the property most commonly stolen from residences has no identifiable markings that can be used in a recovery process. Property that is unmarked makes the residence a prime target for burglary because unmarked property recovered by law enforcement officers cannot be traced or returned to the owner and it cannot be used in court as evidence to prosecute the burglar. Without identifiable markings, stolen property can be disposed of by criminals who profit from the crime with virtually no risk of apprehension.

Permanently marked personal property is a simple and cost effective method of reducing burglary and theft losses. A residence displaying stickers or signs indicating the personal property contained in the residence has been permanently marked is a deterrent to a burglar or thief. Permanently marked property is difficult for a burglar or thief to dispose of and it is acceptable evidence to the courts for conviction of criminals. Permanently marking personal property gives law enforcement officials the opportunity to identify property quickly and return it to its rightful owner, thus reducing the loss to insurance companies. The cost to individuals who choose to identify their property can be less than \$10.00. In communities where this type of program has been implemented, a decrease in burglaries and thefts has occurred.

The Advisory Committee recommended that compliance with the Property Identification Theft Reduction Program be recognized as a viable protective measure against residential burglary and further recommended amending the Homeowners Section and Farm and Ranch Owners Section of the Texas Personal Lines Manual to provide an optional credit of up to 5%. The commissioner determined that the credit for compliance with the Property Identification Theft Reduction Program would create an incentive for property owners to take protective measures against residential burglary losses. Based on the recommendation of the Advisory Committee, information provided by staff, and the testimony provided at the public hearing the commissioner has adopted the two amendments to the Texas Personal Lines Manual establishing an optional credit of up to 5% and the Inspector's Report form.

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

The Manual rules and form as adopted by the Commissioner of Insurance are on file in the Chief Clerk's Office of the Texas Department of Insurance under Reference Number P-0197-03-1 and are incorporated by reference in the Manual by Commissioner's Order Number 97-0244

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts action taken under Article 5.96 from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

Consistent with the Insurance Code, Article 5.96 (h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers affected by this action.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that Texas Personal Lines Manual Rules, Rule VI-C in the Homeowners Section and Rule VI-C in the Farm and Ranch Owners Section, as specified herein and which are attached to this Order and incorporated into this Order by reference, are adopted to be effective May 16, 1997.

IT IS FURTHER ORDERED that the Inspector's Report For Compliance With The Property Identification Theft Reduction Program form which is attached to this Order and incorporated by reference, is adopted to be effective May 16, 1997.

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

Issued in Austin, Texas, on March 17, 1997.

TRD-9703641

Robert R. Carter

Assistant General Counsel

Texas Department of Insurance

Effective date: May 16, 1997

Proposal publication date: January 31, 1997

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

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# TABLES & GRAPHICS

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Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

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**Figure: 16 TAC 3.101(f) (3) (B) (ii)**

If the average depth to the top of the formation (in feet)		The maximum allowable production rate (in thousand cubic feet per day) may not exceed-
exceeds-	but does not exceed-	
0	1,000	44
1,000	1,500	51
1,500	2,000	59
2,000	2,500	68
2,500	3,000	79
3,000	3,500	91
3,500	4,000	105
4,000	4,500	122
4,500	5,000	141
5,000	5,500	163
5,500	6,000	188
6,000	6,500	217
6,500	7,000	251
7,000	7,500	290
7,500	8,000	336
8,000	8,500	388
8,500	9,000	449
9,000	9,500	519
9,500	10,000	600
10,000	10,500	693
10,500	11,000	802
11,000	11,500	927
11,500	12,000	1,071
12,000	12,500	1,238
12,500	13,000	1,432
13,000	13,500	1,655
13,500	14,000	1,913
14,000	14,500	2,212
14,500		2,557

# OPEN MEETINGS

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

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

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

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

## State Office of Administrative Hearings

Monday, March 24, 1997, 10:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

### AGENDA:

A Prehearing conference is scheduled for the above date and time in SOAH DOCKET NUMBER 473-96-0581; PUC DOCKET NUMBER 15322; Application of DEEP EAST TEXAS ELECTRIC COOPERATIVE, INC. to amend Certificate of Convenience and Necessity for a Proposed Transmission Line within Nacogdoches County.

Contact: William G. Newchurch, 300 West 15th Street, suite 502, Austin, Texas, 78701-1649, (512) 936-0728.

Filed: March 14, 1997, 11:22 a.m.

TRD-9703570

Thursday, April 3, 1997, 10:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

### AGENDA:

A Prehearing conference is scheduled for the above date and time in SOAH DOCKET NUMBER 473-97-0330; PUC DOCKET NUMBER 16028; COMPLAINT OF LES COOK SERVICE ELECTRIC COMPANY Against the CITY OF GARLAND.

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas, 78701-1649, (512) 936-0728.

Filed: March 14, 1997, 1:19 p.m.

TRD-9703583

Tuesday, March 25, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

### AGENDA:

A Prehearing conference is scheduled for the above date and time in SOAH DOCKET NUMBER 473-96-2422; GULF STATES UTILITIES COMPANY'S filing in Compliance with Docket Number 12852 Final Order Regarding Refund (PUC DOCKET NUMBER 13922).

Contact: William G. Newchurch, 300 West 15th Street, Suite 502, Austin, Texas, 78701-1649, (512) 936-0728.

Filed: March 14, 1997, 1:49 p.m.

TRD-9703589

Thursday, April 10, 1997, 1:30 p.m.

300 West 15th Street Suite 502

Austin

State Office of Administrative Hearings

### AGENDA:

Administrative hearing before State Office of Administrative Hearings regarding SOAH Docket Number 551-97-0480, regarding Texas Department of Agriculture vs. Phillip Tarver, d/b/a Tarver's Nursery, concerning alleged violation of Texas Agriculture Code, Annotated §71.043(a) and Texas Administrative Code, Title 4, §22.2(a)(1996), as amended.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: March 13, 1997, 1:06 p.m.

TRD-9703507

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**Texas Commission on Alcohol and Drug Abuse  
(TCADA)**

Thursday, April 10, 1997, 9:00 a.m.

201 North Magnolia, Woodville Inn, Dogwood Parlor Room, Highway 69 Downtown

Woodville

Regional Advisory Consortium, (RAC), Region Five

AGENDA: Rescheduled from: Friday, April 11, 1997, 9:00 a.m., (22 TexReg 2654)

Call to order; welcome and introduction of guests; approval of minutes; TCADA update and comments; old business; new business; public comment; and adjourn.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349-6669.

Filed: March 17, 1997, 8:20 a.m.

TRD-9703609

◆ ◆ ◆  
Friday, April 11, 1997, 9:00 a.m.

911B Pegues Place, Woodbine Treatment Center

Longview

Regional Advisory Consortium, (RAC), Region Four

AGENDA: Rescheduled from: Friday, April 10, 1997, 9:00 a.m., (22 TexReg 2654)

Call to order; welcome and introduction of guests; approval of minutes; TCADA update and comments; old business; new business; public comment; and adjourn.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349-6669.

Filed: March 17, 1997, 8:20 a.m.

TRD-9703608

◆ ◆ ◆  
Wednesday, April 23, 1997, 11:00 a.m.

2616 South Clack, Suite 180, Abilene Regional MHMR Center

Abilene

Regional Advisory Consortium, (RAC), Region Two

AGENDA:

Call to order; welcome and introduction of guests; approval of minutes; TCADA update and comments; old business; new business; public comment; and adjourn.

Contact: Heather Harris, 9001 North IH35, Suite 105, Austin, Texas 78753, (512) 349-6669.

Filed: March 13, 1997, 10:24 a.m.

TRD-9703497

**Texas Alcoholic Beverage Commission**

Monday, March 24, 1997, 1:30 p.m.

5806 Mesa Drive, Suite 185

Austin

AGENDA:

1:30 p.m. — Call to order.

Convene in open meeting.

Announcement of executive session.

1. Executive session:

a. Briefing regarding operations of the general counsel's office.

Continue open meeting.

2. Take action, including a vote, if appropriate on topics listed for discussion under executive session.

3. Recognition of agency employees with 20 or more years of service.

4. Approval of minutes of February 4, 1997, meeting; discussion, comment, possible vote.

5. Administrator's report.

6. Amend 16 TAC §45.105 as published in 22 TexReg 1783 on February 18, 1997; discussion, comment, possible vote. (Outdoor Advertising)

7. Amend 16 TAC §45.109 as published in 22 TexReg 1783-1784 on February 18, 1989; discussion, comment, possible vote. (Restocking and Rotation of Alcoholic Beverages)

8. Audit report related to agency's legal department and 1997 Audit Plan; discussion, comment, possible vote.

9. Public comment.

10. Adjourn.

Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, (512) 206-3217.

Filed: March 14, 1997, 8:10 a.m.

TRD-9703535

◆ ◆ ◆  
**Texas Appraiser Licensing and Certification Board**

Thursday, April 3, 1997, 3:30 p.m.

TALCB Conference Room, 1101 Camino La Costa

Austin

Enforcement Committee

AGENDA:

Call to order; Discussion and possible action or adoption of recommendations to the Texas Appraiser Licensing and Certification Board concerning complaint file numbered 96-022; Adjourn.

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

Filed: March 13, 1997, 12:54 p.m.



TRD-9703505

◆ ◆ ◆  
**Texas Commission on the Arts**

Tuesday, April 1, 1997, 8:00 p.m.

920 Colorado, Fourth Floor, E.O. Thompson Building  
Austin

Media/Multimedia Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas  
78701, (512) 463-5535, extension 42328.  
Filed: March 12, 1997, 10:54 a.m.

TRD-9703434

◆ ◆ ◆  
Wednesday, April 2, 1997, 3:00 p.m.

920 Colorado, Fourth Floor, E.O. Thompson Building  
Austin

Performing Arts Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas  
78701, (512) 463-5535, extension 42328.  
Filed: March 12, 1997, 10:54 a.m.

TRD-9703435

◆ ◆ ◆  
Thursday, April 3, 1997, 8:00 a.m.

920 Colorado, Fourth Floor, E.O. Thompson Building  
Austin

Performing Arts Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas  
78701, (512) 463-5535, extension 42328.  
Filed: March 12, 1997, 10:54 a.m.

TRD-9703436

◆ ◆ ◆  
Tuesday, April 8, 1997, 8:00 a.m.

920 Colorado, Fourth Floor, E.O. Thompson Building  
Austin

Community Arts Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas  
78701, (512) 463-5535, extension 42328.  
Filed: March 12, 1997, 10:55 a.m.

TRD-9703437

◆ ◆ ◆  
Wednesday, April 9, 1997, 8:00 a.m.

920 Colorado, Fourth Floor, E.O. Thompson Building  
Austin

Community Arts Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas  
78701, (512) 463-5535, extension 42328.  
Filed: March 12, 1997, 10:56 a.m.

TRD-9703438

◆ ◆ ◆  
Thursday, April 10, 1997, 8:00 a.m.

920 Colorado, Fourth Floor, E.O. Thompson Building  
Austin

Education Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas  
78701, (512) 463-5535, extension 42328.  
Filed: March 12, 1997, 10:56 a.m.

TRD-9703439

◆ ◆ ◆  
Friday, April 11, 1997, 8:00 a.m.

920 Colorado, Fourth Floor, E.O. Thompson Building  
Austin

Education Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, extension 42328.  
 Filed: March 12, 1997, 10:57 a.m.

TRD-9703440



Thursday, April 17, 1997, 3:00 p.m.  
 920 Colorado, Fourth Floor, E.O. Thompson Building  
 Austin  
 Visual Arts/Architecture Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, extension 42328.  
 Filed: March 12, 1997, 10:57 a.m.

TRD-9703441



Friday, April 18, 1997, 8:00 a.m.  
 920 Colorado, Fourth Floor, E.O. Thompson Building  
 Austin  
 Visual Arts/Architecture Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, extension 42328.  
 Filed: March 12, 1997, 10:58 a.m.

TRD-9703442



Tuesday, April 22, 1997, 3:00 p.m.  
 920 Colorado, Fourth Floor, E.O. Thompson Building  
 Austin  
 Presenting Organizations/Touring Artists Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, extension 42328.  
 Filed: March 12, 1997, 10:58 a.m.

TRD-9703443



Wednesday, April 23, 1997, 8:00 a.m.  
 920 Colorado, Fourth Floor, E.O. Thompson Building  
 Austin

Presenting Organizations/Touring Artists Advisory Panel

AGENDA:

1. Introductions
2. Grants Deliberations and Voting
3. Policy Review

Contact: Brenda Tharp, 920 Colorado, Fifth Floor, Austin, Texas 78701, (512) 463-5535, extension 42328.  
 Filed: March 12, 1997, 10:59 a.m.

TRD-9703444



**State Board of Barber Examiners**

Thursday, March 20, 1997, 9:00 a.m.

William P. Hobby State Building, 333 Guadalupe, Suite 2-110,  
 Tower 2, Room 400A

Austin

Board of Directors

AGENDA:

Opening of Meeting: Roll call: Read and possibly approve minutes of March 10, 1997 Board Meeting. Executive Session under §551.071(2), Texas Government Code, to meet with Assistant Attorney General to seek legal advice regarding employment law and personnel matters. Open Session for discussion and possible action involving the legal advice. Executive Session under §551.074, Texas Government Code, for the discussion of personnel matters; the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of the Executive Director. Open Session for further discussion and possible action involving the appointment, employment, evaluation, reassignment, duties, discipline or dismissal of the Executive Director. Executive Session under §551.074, Texas Government Code, for the discussion of personnel matters; the appointment, employment, evaluation, reassignment and duties of an acting Executive Director. Open Session for further discussion and possible action involving the appointment, employment, evaluation, reassignment, and duties of an acting Executive Director. Open Session for discussion and possible action regarding the process for the employment and evaluation of an Executive Director. Adjourn.

Contact: B. Michael Rice, 333 Guadalupe, Suite 2-110, Austin, Texas 78701, (512) 305-8475.

Filed: March 12, 1997, 4:04 p.m.

TRD-9703475



Friday, March 21, 1997, 9:00 a.m.

William P. Hobby State Building, 333 Guadalupe, Suite 2-110,  
Tower 2, Room 400A

Austin

Board of Directors

AGENDA:

1. Executive Session, \$551.071 (2)
2. Open Session
3. Executive Session, \$551.074
4. Open Session

Adjourn

Contact: B. Michael Rice, 333 Guadalupe, Suite 2-110, Austin, Texas  
78701, (512) 305-8475.

Filed: March 13, 1997, 4:35 p.m.

TRD-9703532

◆ ◆ ◆  
**Texas School for the Blind and Visually Impaired**

Friday, March 21, 1997, 8:00 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees, Subcommittee on Finance and Audit

AGENDA:

Approval of Minutes from January 24, 1997 Meeting

Legislative Appropriations Update.

Legacy Revenue Report

Investments Report

Legacy Budget Report

Operating Revenue Report

Operating Budget Report

Contingency Fund Report

Report from Internal Auditor

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas  
78756, (512) 206-9133.

Filed: March 13, 1997, 2:11 p.m.

TRD-9703519

◆ ◆ ◆  
Friday, March 21, 1997, 9:00 a.m.

1100 West 45th Street, Room 110

Austin

Board of Trustees, Subcommittee on Policies

AGENDA:

Review and Discussion of Policies on March 21, 1997 Agenda:

BBD, BBD-E, BF, BP, DBBA, DCDA, DFBB, DFBC, DIID, EHAA  
and GKC

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas  
78756, (512) 206-9133.

Filed: March 13, 1997, 2:02 p.m.

TRD-9703512

◆ ◆ ◆  
Friday, March 21, 1997, 9:00 a.m.

1100 West 45th Street, Room 151

Austin

Board of Trustees, Subcommittee on Personnel

AGENDA:

Consideration of Board Self-Evaluation

Consideration of Superintendent's Performance Appraisal

Consideration of Personnel Policies: DBBA, DCDA, DFBB, and  
DFBC

Consideration of Administrative Structure

Consideration of Approval of Proposed Renewals and Nonrenewals  
of Staff Contracts

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas  
78756, (512) 206-9133.

Filed: March 13, 1997, 2:03 p.m.

TRD-9703516

◆ ◆ ◆  
Friday, March 21, 1997, 10:00 a.m.

1100 West 45th Street, Room 116

Austin

Board of Trustees

AGENDA:

Approval of Minutes of January 24, 1997 Board Meeting; Approval  
of Board Policies; Consideration of Board Self-Evaluation; Consider-  
ation of Administrative Structure; Consideration of Consultant's con-  
tract over \$5,000; Progress Report on Requested Legislative Amend-  
ments; Progress Report on Summer 1997 Programs.

Contact: Marjorie L. Heaton, 1100 West 45th Street, Austin, Texas  
78756, (512) 206-9133.

Filed: March 13, 1997, 2:03 p.m.

TRD-9703513

◆ ◆ ◆  
**Texas Bond Review Board**

Thursday, March 20, 1997, 10:00 a.m.

Clements Building, Committee Room Five, Fifth Floor, 300 West  
15th Street

Austin

AGENDA:

I. Call to Order

**II. Approval of Minutes**

**III. Consideration of Proposed Issues**

A. Texas State University System, Lamar University-Combined Fee and Revenue System Refunding Bonds, Series 1997

B. Texas Department of Housing and Community Affairs- Multi-family Housing Revenue Bonds (Canyon Crest Apartments Project) Series 1997

**IV. Other Business**

A. Report by Texas Agricultural Finance Authority regarding loan programs

B. Discussion of legislative action/schedules

**V. Adjourn**

Contact: Albert L. Bacarisse, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.

Filed: March 12, 1997, 1:20 p.m.

TRD-9703449

**Texas Cancer Council**

Friday, March 21, 1997, 10:00 a.m.

American Cancer Society, 8900 West John Carpenter Freeway  
Dallas

Board of Directors-Planning and Program Development Committee

**REVISED AGENDA:**

The Committee will discuss and possibly act on: minutes of the November 6, 1996 meeting; staff proposal and adoption of committee process and recommendations to the Council regarding the initiative review process; priorities for FY 1998 initiatives; review of concept papers for FY 1998 initiatives; update on FY 1997 Action Plan and the *Texas Cancer Plan*; priorities, process and desired outcomes of the council planning retreat; recommendations to the council regarding FY 1997 funding request; next meeting date; other business; and adjourn.

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Sue Marshall at (512) 463-3190 five working days prior to the meeting so that appropriate arrangements can be made.

Contact: Emily F. Untermeyer, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Filed: March 13, 1997, 10:24 a.m.

TRD-9703498

**Texas Department of Criminal Justice**

Thursday, March 20, 1997, 9:30 a.m.

Doubletree Hotel, 6505 IH35 North, Austin Room

Austin

Special Committee on Prison Industries

**REVISED AGENDA:**

**I. Call to Order**

**II. Discussion on Job Placements in Free-World Garment Manufacturing Facilities (Texas)**

**III. Discussion Relating to Moving the Vocational/Academic School from the Fort Stockton Facility**

**IV. Update on TCI Providing Certification of Training**

**V. Update on Levi-Strauss-Donation**

**VI. Update on New Industries**

**A. Portable Buildings**

**B. Compaq**

**VII. Briefing on Marketing Approaches**

**VIII. Public Testimony**

**IX. Adjourn**

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: March 12, 1997, 2:08 p.m.

TRD-9703461

Thursday, March 20, 1997, 4:30 p.m.

Doubletree Hotel, 6505 IH35 North, Capitol Room

Austin

Texas Board of Criminal Justice

**REVISED AGENDA:**

**I. Executive Session**

**A. Discussion with attorneys concerning Falgoust vs. TDCJ; Guajardo vs. TDCJ; Johnson vs. Rodriguez; Lucia vs. Manhattan Construction vs. TDJC; MKK/Northstar vs. TDCJ; Moore vs. TDCJ; Prejean vs. TDCJ; Ruiz vs. Scott; Simpson vs. TDCJ; Strain vs. TDCJ; and TDCJ vs. VitaPro cases (Closed in accordance with §551.071, Government Code).**

**B. Discussion of matters made confidential under State Bar Disciplinary Rules of Professional Conduct. (Closed in accordance with §551.071, Government Code.)**

**C. Discussion of personnel Matters. (Closed in accordance with §551.071, Government Code.)**

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: March 12, 1997, 2:08 p.m.  
TRD-9703460

Friday, March 21, 1997, 9:00 p.m.

Doubletree Hotel, 6505 IH35 North, Phoenix Ballroom North  
Austin

Texas Board of Criminal Justice

AGENDA:

II. Regular Session

- A. Recognitions
- B. Consent Items
- C. Approval of the 61st Board of Criminal Justice Meeting Minutes
- D. Election of Board of Criminal Justice Officers
- E. Board Liaison and Committee Reports/Division Summaries
- F. Executive Director's Report
- G. Approval of Purchases Over One Million Dollars
- H. Request for Financing
- I. Approval of Investments in Money Market Account for Lease Purchase Revenue Bond Accounts
- J. Facilities Issues
- K. Presentation by the Judicial Advisory Council

L. Report and Action on Legal Consolidation

M. Proposed Amendment to Board Policy 10.05-Delegation of Authority for Facility Construction and Maintenance Projects

N. Proposed Amendment to Board Policy 2.84-Acceptance of Gifts and Grants Related to Buildings for Religious and Programmatic Purposes.

O. Adoption of Proposed Amendments to Board Rules Concerning Substantial Non-Compliance (37 TAC §163.42) and Funding and Financial Management (37 TAC §163.43).

P. Adoption of Proposed Repeal and New board Rule Concerning Residential Services (37 TAC §163.39)

Q. Adoption of Proposed Board Rules Concerning Private Real Property Rights Affected by Government Action (37 TAC §153.20)

R. Adoption of Proposed Board Rules for Investigations of Abuse, Neglect or Exploitation of Elderly or Disabled Persons (37 TAC §§153.1-153.7)

S. Adoption of Proposed Board Rule Concerning Emergency Response to Non-Agent Private Prisons/Jails (37 TAC §152.61)

T. Land Transactions

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711,  
(512) 475-3250.

Filed: March 13, 1997, 11:48 a.m.

TRD-9703503

**State Employee Charitable Campaign**

Wednesday, March 19, 1997, 11:30 a.m.

701 West 15th Street, Sixth Floor West, Commissioner's Conference Room

Austin

Local Employee Committee

AGENDA:

- Welcome and Introductions
- Local Campaign Manager Selection
- 1997 Campaign Plan and Budget
- Team Assignments
- Adjourn

Contact: Anne Murphy, 2000 East MLK Jr. Boulevard, Austin, Texas 78702, (512) 472-6267.

Filed: March 12, 1997, 3:47 p.m.

TRD-9703474

Monday, March 24, 1997, 4:00 p.m.

625 Dallas Drive, #525

Denton

Local Employee Committee, Denton, Texas

AGENDA:

- I. Welcome
- II. Appoint Local Campaign Manager
- III. Approve Local Calendar
- IV. Approve Campaign Budget

Contact: Pat Gobble, 625 Dallas, Suite 525, Denton, Texas 76201, (817) 566-5851, fax: (817) 898-8976.

Filed: March 14, 1997, 4:52 p.m.

TRD-9703598

Tuesday, April 14, 1997, 4:00 p.m.

625 Dallas Drive, #525

Denton

Local Employee Committee, Denton, Texas

AGENDA:

- I. Welcome
- II. Applications for Local Federations

### III. Appointment of Campaign Cabinet

Contact: Pat Gobble, 625 Dallas, Suite 525, Denton, Texas 76201, (817) 566-5851, fax: (817) 898-8976.

Filed: March 14, 1997, 4:52 p.m.

TRD-9703599

### General Services Commission

Tuesday, March 25, 1997, 9:30 a.m.

Central Services Building, 1711 San Jacinto, Room 402

Austin

#### AGENDA:

1) Consideration of proposed new rule 1 TAC, 111.5 concerning Consumer, Service Recipient and Contractor's Complaints; 2) Consideration of name for a building on the campus of the Texas School for the Deaf; 3) Consideration of Resolution Authorizing a Request for Financing for Construction of Phase II of the Master Plan Building Program at the Texas School for the Deaf located at Austin, Texas; 4) Consideration of proposed change orders- various projects; 5) Program Issues; 6) Consideration of approval of Contract for purchase of real property in El Paso, Texas, and resolution to request financing from Texas Public Finance Authority; Executive Session to consider personnel matters pursuant to the provisions of Texas Government Code §551.074; Executive Session to consider the status of the purchase of real property pursuant to the provisions of Texas Government Code, §551.072; Executive Session to consult with Legal Counsel concerning pending litigation pursuant to the provisions of Texas Government Code §551.071.

Contact: Judy Ponder, 1711 San Jacinto, Austin, Texas 78701, (512) 463-3960.

Filed: March 14, 1997, 10:43 a.m.

TRD-9703562

### Texas Department of Health

Thursday, March 20, 1997, 8:30 a.m.

Moreton Building, Room M-739, Texas Department of Health

1100 West 49th Street

Austin

Texas Board of Health Strategic Management Committee

#### AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the February 15, 1997, meeting; final adoption of the rules for Texas Department of Health activities with the Texas Health Care Information Council; Board of Health strategic priorities; legislative update; congressional update; Office of Border Health update; and monthly financial report (historically underutilized businesses; contract leverage team implementation; new laboratory; monthly financial update; and Human Immunodeficiency Virus/Sexually Transmitted Diseases (HIV/STD) audit update).

To request an accommodation under the ADA, please contact Suzzanna Currier, ADA Coordinator in the Office of Civil Rights

at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 12, 1997, 2:00 p.m.

TRD-9703456

Thursday, March 20, 1997, 10:00 a.m.

Moreton Building, Room M-739, Texas Department of Health

1100 West 49th Street

Austin

Texas Board of Health Human Resources Committee

#### AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the February 15, 1997, meeting; appointments to the Scientific Advisory Committee on Birth Defects; final adoption of rules concerning abolition of the Children's Speech-Language and Hearing Advisory Committee; and program and budget briefings to include (Medicaid; Early Periodic Screening, Diagnosis, and Treatment (EPSDT)/Texas Health Steps; Medically Dependent Children Program; and the Texas Health Care Information Council).

To request an accommodation under the ADA, please contact Suzzanna Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 12, 1997, 2:00 p.m.

TRD-9703457

Thursday, March 20, 1997, 1:00 p.m.

Moreton Building, Room M-739, Texas Department of Health

1100 West 49th Street

Austin

Texas Board of Health —Health and Clinical Services Committee

#### REVISED AGENDA:

The committee will discuss and possibly act on: approval of the minutes of the February 15, 1997, meeting; approval of the revised continuing Medical Education (CME) Program mission statement; adoption under federal mandate of fiscal year 1997 Women, Infants and Children (WIC) State Plan of Operations and amendments to the WIC Policy and Procedure Manual; and final adoption of rules concerning immunization requirements in Texas elementary and secondary schools and institutions of higher education.

To request an accommodation under the ADA, please contact Suzzanna Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: March 12, 1997, 2:00 p.m.

TRD-9703458

◆ ◆ ◆  
Thursday, March 20, 1997, 2:00 p.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street

Austin

Texas Board of Health Regulatory Committee

**REVISED AGENDA:**

The committee will discuss and possibly act on: approval of the minutes of the February 15, 1997, meeting; final adoption of rules concerning radiation safety requirements for well logging services operations and tracer studies; final adoption of rules concerning meat and poultry inspection; and final adoption of rules concerning fair hearing procedures.

To request an accommodation under the ADA, please contact Suzzanna Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756,  
(512) 458-7484.

Filed: March 12, 1997, 2:00 p.m.

TRD-9703459

◆ ◆ ◆  
Friday, March 21, 1997, 8:30 a.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street

Austin

Texas Board of Health Board Briefing

**AGENDA:**

The board will receive a briefing by the commissioner on the current activities of the Texas Department of Health; and a discussion will be held concerning procedural and/or administrative issues of the Board of Health.

To request an accommodation under the ADA, please contact Suzzanna Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756,  
(512) 458-7484.

Filed: March 13, 1997, 2:03 p.m.

TRD-9703514

◆ ◆ ◆  
Friday, March 21, 1997, 10:00 a.m.

Moreton Building, Room M-739, Texas Department of Health  
1100 West 49th Street

Austin

Texas Board of Health

**REVISED AGENDA:**

The board will meet and introduce guests and discuss and possibly act on: approval of minutes of the February 16, 1997 meeting; commissioner's report; presentation of Moment of Truth Awards; Communications Task Force Report; Strategic Management Committee Report (final adoption of the rules for Texas Department of Health activities with the Texas Health Care Information Council); Health Financing Committee Report (approval of proposed amendments to Medicaid Managed Care rules concerning default procedures; and recommendation to the State Medicaid Director concerning proposed rules regarding in-home total parenteral hyperalimentation services); Health and Clinical Services Committee Report (approval of the revised Continuing Medical Education (CME) Program mission statement; adoption under federal mandate of fiscal year 1997 Women, Infants and Children (WIC) State Plan of Operations and amendments to WIC Policy and Procedure Manual; and final adoption of rules concerning immunization requirements in Texas elementary and secondary schools and institutions of higher education); Human Resources Committee report (appointments to the Scientific Advisory Committee on Birth Defects; and final adoption of rules concerning abolition of the Children's Speech-Language and Hearing Advisory Committee); Regulatory Committee Report final adoption concerning radiation safety requirements for well logging services operations and tracer studies; final adoption of rules concerning meat and poultry inspection; and final adoption of rules concerning fair hearing procedures; public comments; announcements and comments; and setting of next meeting date in April, 1997.

To request an accommodation under the ADA, please contact Suzzanna Currier, ADA Coordinator in the Office of Civil Rights at (512) 458-7627 or TDD at (512) 458-7708 at least two days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756,  
(512) 458-7484.

Filed: March 13, 1997, 2:03 p.m.

TRD-9703515

◆ ◆ ◆  
**Texas Department of Human Services (TDHS)**

Friday, March 21, 1997, 11:00 a.m.

701 West 51st Street, East Tower, Public Hearing Room

Austin

Texas Board of Human Services

**AGENDA:**

1. Approval of the Minutes of February 21, 1997.
2. Chair's Comments and Announcements.
3. Reimbursements for Nonpriority Primary Home Care Services and Family Care Services.
4. Improved Targeting of Day Care Home Reimbursements in the Child and Adult Care Food Program (CACFP).
5. Prohibition of Family Day Care Home Sponsors in the Child and Adult Care Food Program (CACFP) Compensating Staff Based on the Number of Homes Recruited.
6. Field Trips as Extensions of the Facility in the Child and Adult Care food Program (CACFP).
7. Requirement in the Aid to Families with Dependent Children (AFDC) Program to Pursue and Accept Income and Resources from Federal Sources.
- 8.

Mandatory Disqualification for Noncompliance with Job Opportunity and Basic Skills (JOBS) and Employment and Training Requirements in the Aid to Families with Dependent Children (AFDC) and Food Stamp Programs. 9. Increased Penalties for Intentional Program Violations in the Aid to Families with Dependent Children (AFDC) Program. 10. Amendment to the Medicaid Nursing Facility Preadmission Screening and Annual Resident Review (PASARR) Rules to Delete the Annual Resident Review. 11. Amendments to the Nursing Facility Licensure Rules. 12. Amendments to Policies and Procedures. 13. Commissioner's Report: a. Announcements and Comments. b. Tracking of Board Action Items.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-3048.

Filed: March 13, 1997, 3:51 p.m.

TRD-9703528

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**Texas Department of Insurance**

Monday, March 31, 1997, 9:00 a.m.

300 West 15th Street, Suite 502, State Office of Administrative Hearings

Austin

AGENDA:

In the Matter of Carlos Gonzales

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

Filed: March 17, 1997, 9:58 a.m.

TRD-9703633

◆ ◆ ◆  
Wednesday, April 2, 1997, 9:00 a.m.

300 West 15th Street, Suite 502, State Office of Administrative Hearings

Austin

AGENDA:

To consider whether disciplinary action should be taken against ELOY GARCIA, McAllen, Texas, who holds a Group I, Legal Reserve Life Insurance Agent's License and a Local Recording Agent's License issued by the Texas Department of Insurance.

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

Filed: March 17, 1997, 9:58 a.m.

TRD-9703632

◆ ◆ ◆  
Wednesday, April 2, 1997, 9:00 a.m.

300 West 15th Street, Suite 502, State Office of Administrative Hearings

Austin

AGENDA:

To consider whether the Certificate of Authority of GUARDIAN SECURITY LIFE INSURANCE COMPANY, Grand Prairie, Texas,

should be revoked as issued by the Texas Department of Insurance (Continued from December 17, 1996).

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

Filed: March 17, 1997, 9:58 a.m.

TRD-9703631

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**Texas Department of Licensing and Regulation**

Monday, March 24, 1997, 9:00 a.m.

920 Colorado, E.O. Thompson Building, Fourth Floor, Room 420

Austin

Enforcement Division

AGENDA:

According to the complete agenda, the Department will hold an Administrative Hearing to consider the possible assessment of administrative penalties against the Respondent, Bob N. Jones, for allegedly falsifying inspection reports submitted to the commissioner (159 counts), in violation of the Texas Health and Safety Code, Annotated, (the Code §754.023(C)(2), pursuant to the Code and Texas Revised Civil Statutes Annotated article 9100; Texas Government Code, chapter 2001, (APA); 16 Texas Administrative Code Chapters 60 and 74.

Contact: Paula Hamje, 920 Colorado, Austin, Texas 78701, (512) 463-3192.

Filed: March 14, 1997, 8:35 a.m.

TRD-9703542

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**Texas Natural Resource Conservation Commission**

Monday, March 24, 1997 at 1:30 p.m.

12100 Park 35 Circle, Room 201S, Building E

Austin

AGENDA:

This meeting is a work session for discussion between Commissioners and staff. No public testimony or comment will be accepted except by invitation of the Commission.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: March 14, 1997, 3:56 p.m.

TRD-9703595

◆ ◆ ◆  
**Texas Council on Offenders with Mental Impairments**

Friday, April 4, 1997, 1:30 p.m.

Embassy Suites Hotel, 5901 IH35 North

Austin



Full Council Meeting

AGENDA:

- I. Call to Order
- II. Roll Call
- III. Public Comments/Introductions of Guests
- IV. Approval of Minutes
- V. TDCJ Classification
- VI. Uniform Assessment Prospect
- VII. Frontal Lobe Dysfunction
- VIII. Committee Reports
  - \* Executive Committee
  - \* Program/Research Committee
  - \* Planning/Legislative Committee
  - \* Finance Committee
- IX. Ad Hoc Committee
  - \* Operating Policies
  - \* Elliott Award
- X. Director's Report
  - \* Legislative Update
  - \* Program Status Report
  - \* Interdisciplinary Conference
  - \* Offender's with Special Needs Information

Adjourn.

Contact: Diane Menchaca, 8610 Shoal Creek Boulevard, Austin, Texas 78752, (512) 406-5406.

Filed: March 12, 1997, 2:28 p.m.

TRD-9703464

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**Texas Board of Physical Therapy Examiners**

Tuesday, March 25, 1997, 10:00 a.m.

333 Guadalupe, Suite 2-510

Austin

REVISED AGENDA:

- I. Public Comment
- II. Approval of Minutes of December 17, 1996 board meeting
- III. Election of board officers/committee appointments
- IV. Appointment of representatives to the Executive Council of Physical Therapy and Occupational therapy Examiners
- V. Committee Reports
  - A. Investigative Committee

1. Review and possible action on Agreed Orders number: 96116, 96146, 96159, 96162, 96165, 97033, 97041, 97051, 97053, 97055, 97079, 97091

2. Discussion and general investigation activities

3. Discussion of February 22, 1997 Committee Meeting

B. Rules/Education Committees

1. Discussion of March 1, 1997 Committee Meeting

2. Review and possible adoption of published revision of §321.1, supervision of aides

3. Review and possible adoption of published revision of §346.1, regarding the education setting

4. Review and possible adoption of published revision of §347.5, physical therapy facilities

5. Review and possible adoption of published revision of §329.3, regarding temporary licenses

6. Review and possible adoption of published revision of §321.1, regarding definitions

7. Review and possible adoption of published revision of §329.1, regarding applications

8. Review and possible adoption of published revision of §329.5, foreign-trained applicants

VI. PT Coordinator's Report

VII. Executive Director's Report

VIII. Presiding Officer's Report

IX. Executive Session Pursuant to §551.074 of the Government Code, to deliberation about the evaluation of the executive director.

X. Act on executive session item as required in open session

XI. Adjourn

Contact: Gerard Swain, 333 Guadalupe, Suite 2-510, Austin, Texas 78704, (512) 305-6900.

Filed: March 12, 1997, 4:37 p.m.

TRD-9703479

◆ ◆ ◆  
**Public Utility Commission of Texas**

Monday, March 31, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be held by the State office of Administrative Hearings in Docket Number 17187-Application of Plexnet Communication Services, Inc. for a Service Provider Certificate of Operating Authority (SPCOA). Applicant intends to provide on either a resale basis monthly recurring, flat-rate local exchange service including extended area service, toll restriction, call control options, tone dialing, custom calling services, Caller ID and any other services which are available on a resale basis from the underlying incumbent local exchange carrier or other certificated carrier within the service area of Plexnet Communications Services,

Inc. Applicant's requested SPCOA geographic area follows the Public Utility Commission's certificated boundaries of the existing service areas of the local exchange carriers, including, but not limited to Southwestern Bell Telephone Company, General Telephone of the Southwest (GTE), Centel (Sprint), United Telephone (Sprint), Lufkin-Conroe Telephone; Alltel/Sugarland Telephone, Texas Alltel. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by March 26, 1997.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7152.

Filed: March 13, 1997, 2:49 p.m.

TRD-9703524

Monday, March 31, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

**AGENDA:**

A Hearing on the Merits will be held by the State office of Administrative Hearings in Docket Number 17186--Application of Resource Innovations Group, Inc. d/b/a DFW-Direct for a Service Provider Certificate of Operating Authority (SPCOA). Applicant intends to provide on either a resale basis or via resold local loops monthly recurring, flat rate local exchange service including extended area service, toll restriction, call control options, tone dialing, custom calling services, Caller ID and any other services which are available on a resale basis from the underlying incumbent local exchange carrier or other carrier within the service area of DFW-Direct. Applicant's requested SPCOA geographic area follows the Public Utility Commission's certificated boundaries of the existing service areas of the local exchange carriers, including, but not limited to Southwestern Bell Telephone Company, General Telephone of the Southwest (GTE), Centel (Sprint), United Telephone (Sprint), Alltel/Sugarland Telephone; Texas Alltel, and Lufkin-Conroe Telephone. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by March 26, 1997.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7152.

Filed: March 13, 1997, 2:49 p.m.

TRD-9703525

Monday, March 31, 1997, 9:00 a.m.

1701 North Congress Avenue

Austin

**AGENDA:**

A Hearing on the Merits will be held by the State office of Administrative Hearings in Docket Number 17188--Application of TEK Communications, Inc. for a Service Provider Certificate of Operating Authority (SPCOA). Applicant intends to provide resale local exchange service(s) in Texas to business and residential customers. Applicant's requested SPCOA geographic area follows the Public Utility Commission's certificated boundaries of the existing

and the hereinafter Public Utility Commission approved, service areas of Southwestern Bell Telephone Company, within the State of Texas. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission by March 26, 1997.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7152.

Filed: March 13, 1997, 2:49 p.m.

TRD-9703526

**Texas Rehabilitation Commission**

Thursday, March 27, 1997, 9:30 a.m.

4900 North Lamar Boulevard, Brown-Heatly Building Public Hearing Room, First Floor

Austin

Regular Board Meeting

**AGENDA:**

Roll Call/Introduction of Guests/Invocation

Approval of Minutes; December 5, 1996 Board Meeting

Commissioner's Comments

Legislative Update

Appropriations Update

Rehabilitation Services Job Retention Study

Texas Rehabilitation Advisory Council 1996 Annual Report

Management Audit Update

Disability Determination Services Update

Sunset Review Orientation

Annual Report — Article IX, §32

For ADA assistance, call Oleta Grizzle at (512) 424-4057.

Executive Session: Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, Disability Determination Services and Management Audit. These subjects will be discussed in Executive Session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code, Annotated §551.)

Adjourn

If all agenda items have been completed, the Board will adjourn. If all agenda items have not been completed, the Board will recess until 9:30 a.m. Friday, March 28, 1997 to reconvene in the Public Hearing Room, First Floor, Brown-Heatly Building, 4900 North Lamar, Austin, Texas.

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7110, Austin, Texas, 78751, (512) 424-4003 or TDD (512) 424-4045.

Filed: March 12, 1997, 1:39 p.m.

TRD-9703453

Friday, March 28, 1997, 9:30 a.m.

4900 North Lamar Boulevard, Public Hearing Room, First Floor,  
Brown-Heatly Building

Austin

Regular Board Meeting

AGENDA:

Roll Call/Introduction of Guests

Continuation of Board Agenda from March 27, 1997

Executive Session:

Review of potential litigation, personnel practices, and staff presentations involving the Texas Rehabilitation Commission, Disability Determination Services and Management Audit. These subjects will be discussed in Executive Session pursuant to §§551.071, 551.074, and 551.075 of the Open Meetings Act (Texas Government Code, Annotated §551).

For ADA assistance, call Oleta Grizzle at (512) 424-4057.

Adjourn

Contact: Charles Schiesser, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751, (512) 424-4003 or TDD (512) 424-4045.  
Filed: March 12, 1997, 1:39 p.m.

TRD-9703452

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**Texas State Technical College System**

Friday, March 21, 1997, 9:00 a.m.

TSTC Waco Campus, IDEAS Center

Waco

Board of Regents Search Committee

AGENDA:

Discussion and Review of the following TSTC Board of Regents Search Committee Agenda.

Recommendations, if any, to the full Board of Regents regarding Search Committee Meeting.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-3964.

Filed: March 14, 1997, 9:05 a.m.

TRD-9703543

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Friday, March 21, 1997, 9:05 a.m.

TSTC Waco Campus, IDEAS Center

Waco

Board of Regents Search Committee Closed Meeting

AGENDA:

Closed meeting for the specific purpose provided in §§551.074 and 551.075; §551.074, Discuss Chancellor search process and review applications for the position.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-3964.

Filed: March 14, 1997, 9:06 a.m.

TRD-9703545

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Friday, March 21, 1997, 12:30 p.m.

TSTC Waco Campus, IDEAS Center

Waco

Board of Regents

AGENDA:

Discussion and Review of the following TSTC Policy Committee Minute Orders and Reports:

Committee of the Whole

Policy Committee for Instruction and Student Services

Policy Committee for Human Resources and Development

Policy Committee for Facilities

Policy Committee for Fiscal Affairs

Reconvene Committee of the Whole

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-3964.

Filed: March 13, 1997, 9:44 a.m.

TRD-9703491

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Saturday, March 22, 1997, 8:00 a.m.

TSTC Waco Campus, IDEAS Center

Waco

Board of Regents

AGENDA:

Classes Meeting with Less than Ten Students, Institutional Plan for Instructional Telecommunications at Waco/Marshall/ AAS Degree Program in Environmental Bioanalysis Technology at Harlingen, Requests for Budget Change, Minute Order to be Rescinded, Renewal of Lease Agreement with Filterspun at Amarillo, Lease Agreement with Jack Rabbit Filters at Amarillo. Sale of Excess Property at Waco, Ratification of Executive Committee's Action of February 17, 1997, Approval of Management Agreement for Residential Units at Marshall, Agreement with Confederate Air Force Ranger Wing for Air Show at Waco, Appointment of Environmental Resource Consultant Firm for Amarillo Facility Abatement and Demolition, Award contract for Construction of Science and Technology Building at Harlingen, Award a Contract for Construction of Parking Lot at Harlingen, Contract with First Service Air Conditioning for HVAC System Replacement for the Clean Room at Sweetwater, Board of Regents Meeting Schedule and Format.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-3964.

Filed: March 13, 1997, 10:00 a.m.

TRD-9703495

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Saturday, March 22, 1997, 8:00 a.m.

TSTC Waco Campus, IDEAS Center

Waco

Board of Regents

**REVISED AGENDA:**

Addition of Accept Bid from Epic Construction Company to Construct a Parking Lot for the Health and Recreation Center at Texas State Technical College, Sweetwater.

Contact: Sandra K. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-3964.

Filed: March 17, 1997, 9:26 a.m.

TRD-9703627

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Saturday, March 22, 1997, 8:00 a.m.

TSTC Waco Campus, IDEAS Center

Waco

Board of Regents

**REVISED AGENDA:**

Addition of Discussion of Advisory Committee on Advanced and Emerging Technologies.

Contact: Sandra K. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-3964.

Filed: March 17, 1997, 9:55 a.m.

TRD-9703630

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Saturday, March 22, 1997, 8:05 a.m.

TSTC Waco Campus, IDEAS Center

Waco

Board of Regents Closed Meeting

**AGENDA:**

Closed meeting for the specific purpose provided in §§551.071, 551.074, and 551.075 of Chapter 551 of the Texas Government Code to include the following:

Maria Christina Lucio vs. Texas State Technical College and J. Gilbert Leal

David Snyder and Eldon Davidson Plaintiffs vs. TSTC

Asbestos Litigation

Discuss findings of the Search Committee

Discuss Conflict of Interest Statutes and Possibility of Seeking an Attorney General's Opinion.

Contact: Sandra K. Krumnow, 3801 Campus Drive, Waco, Texas 76705, (817) 867-3964.

Filed: March 13, 1997, 9:52 a.m.

TRD-9703493

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## Texas Workers' Compensation Insurance Facility

Monday, March 24, 1997, 10:15 a.m.

DoubleTree Guest Suites Hotel, 305 West 15th Street

Austin

Governing Committee

**AGENDA:**

Executive Session(s) regarding personnel matters and pending legal matters. Following the closed Executive Session(s), the Governing Committee will reconvene in Open and Public Session and take any action as may be desirable or necessary as a result of the closed deliberations. Approval of minutes from the February 17, 1997 Governing Committee meeting. Final report on the 1996 budget. Consideration and possible action on 1996 Actuary Report. Consideration and possible action on servicing company request for reimbursement of legal fees and expenses. Facility transition activities update. Executive Director's Report.

Contact: Peter E. Potemkin, 8303 MoPac Expressway North, Suite 310, Austin, Texas 78759, (512) 345-1222.

Filed: March 14, 1997, 10:40 a.m.

TRD-9703561

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## Regional Meetings

Meetings filed March 12, 1997

Cash Water Supply Corporation, Board of Directors, met at Corporation Office, FM 1564 and Highway 34, Greenville, March 17, 1997 at 7:00 p.m. Information may be obtained from Eddy W. Daniel, P.O. Box 8129, Greenville, Texas 75404-8129, (903) 883-2695. trd-9703430.

Coastal Bend Council of Governments, Membership/Board, will meet at 2910 Leopard Street, Corpus Christi, March 21, 1997 at 2:00 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743. TRD-9703445

Education Service Center, Region XIII, Board of Directors, met at 5701 Springdale Road, Board Room 205, Austin, March 17, 1997 at 12:30 p.m. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 919-5300. TRD-9703454.

Golden Crescent Private Industry Council, Oversight Committee, met at 2401 Houston Highway, Victoria, March 17, 1997 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9703469.

Golden Crescent Private Industry Council, Executive Committee, met at 2401 Houston Highway, Victoria, March 19, 1997 at 6:30 p.m. Information may be obtained from Sandy Heiermann, 2401 Houston Highway, Victoria, Texas 77901, (512) 576-5872. TRD-9703470.

Gonzales County Appraisal District, Board of Directors, met at 928 St. Paul Street, Gonzales, March 20, 1997 at 6:00 p.m. Information may be obtained from Brenda Downey, 928 St. Paul, Gonzales, Texas 78629, (210) 672-2879 or fax: (210) 672-8345. TRD-9703478.

Guadalupe-Blanco River Authority, Policy Meeting, met at 933 East Court Street, Seguin, March 18, 1997 at 1:00 p.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (210) 379-5822. TRD-9703450.

Guadalupe-Blanco River Authority, Board of Directors, met at Seguin ISD board Room, 1221 East Kingbury, Seguin, March 19, 1997 at 10:00 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, (210) 379-5822. TRD-9703451.

Harris County Appraisal District, Board of Directors, met with revised agenda, at 2800 North Loop West Eighth Floor, Houston, March 19, 1997 at 9:30 a.m. Information may be obtained from Margie Hilliard, P.O. Box 920975, Houston, Texas 77292, (713) 957-5291. TRD-9703448.

Hood County Appraisal District, Board of Directors, met at 1902 West Pearl Street District Office, Granbury, March 18, 1997 at 7:30 p.m. Information may be obtained from Harold Chesnut, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471. TRD-9703463.

Lower Neches Valley Authority, Board of Directors, met at 7850 Eastex Freeway, Beaumont, March 18, 1997 at 10:30 a.m. Information may be obtained from A.T. Hebert, Jr. P.O. Drawer 3464, Beaumont, Texas 77704, (409) 892-4011. TRD-9703476.

Sabine Valley Center, Finance Committee, met at Administration Building, 107 Woodbine Place, Longview, March 20, 1997 at 6:00 p.m. Information may be obtained from Inman White, or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9703466.

Sabine Valley Center, Care and Treatment Committee, met at Administration Building, 107 Woodbine Place, Longview, March 20, 1997 at 6:00 p.m. Information may be obtained from Inman White, or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9703468.

Sabine Valley Center, Personnel Committee, met at Administration Building, 107 Woodbine Place, Longview, March 20, 1997 at 6:00 p.m. Information may be obtained from Inman White, or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9703467.

Sabine Valley Center, Board of Trustees, met at Administration Building, 107 Woodbine Place, Longview, March 20, 1997 at 7:00 p.m. Information may be obtained from Inman White, or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9703465.

Tri-County Special Utility District, (SUD), Board of Directors Called Meeting, met at Highway 7 East, Marlin, March 17, 1997 at 6:00 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, (817) 803-3553. TRD-9703447.

West Central Texas Workforce Development Board, met at 1025 EN 10th Street, Abilene, March 19, 1997 at 10:30 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9703433.

Wood County Appraisal District, Board of Directors, met at 210 Clark Street, Quitman, March 20, 1997, at 1:30 p.m. Information may be obtained from W. Carson Wages or Lou Brooke, P.O. Box 518, Quitman, Texas 75783-0518, (903) 763-4891. TRD-9703429.

Meetings filed March 13, 1997

Burke Center, Board of Trustees, will meet at 4101 South Medford, Lufkin, March 25, 1997 at 1:00 p.m. Information may be obtained from Debra Fox, 4101 South Medford Drive, Lufkin, Texas 75901, (409) 639-1141. TRD-9703500.

Central Texas MHMR Center, Board of Trustees, met at 408 Mulberry, Brownwood, March 17, 1997 at 5:00 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (914) 646-9574, extension 103. TRD-9703511.

Heart of Texas Council of Governments, One Stop Advisory Council, met at 300 Franklin Avenue, Waco, March 20, 1997, at 4:00 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9703508.

Heart of Texas Council of Governments, Private Industry Council, met at 300 Franklin Avenue, Waco, March 20, 1997, at 5:30 p.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9703509.

Heart of Texas Council of Governments, Executive Committee, will meet at 300 Franklin Avenue, Waco, April 4, 1997, at 10:00 a.m. Information may be obtained from Donna Teat, 300 Franklin Avenue, Waco, Texas 76701, (817) 756-7822. TRD-9703510.

Henderson County Appraisal District, Appraisal Review Board, met at 1751 Enterprise Street, Athens, March 20, 1997 at 9:00 a.m. Information may be obtained from Lori Fetterman, 1751 Enterprise, Athens, Texas 75751, (903) 675-9296. TRD-9703518.

Hunt County Appraisal District, Appraisal Review Board, will meet at 4801 King Street, Greenville, March 27, 1997, at 9:00 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9703492.

North Central Texas Council of Governments, Executive Board, met at Centerpoint Two, 616 Six Flags Drive, Second Floor, Arlington, March 20, 1997 at 12:45 p.m. Information may be obtained from Edwina J. Shires, P.O. Box 5888, Arlington, Texas 76005-5888, (817) 640-3300. TRD-9703517.

North Texas Municipal Water District, Board of Directors, will meet at Administration Office, 505 East Brown Street, Wylie, March 27, 1997, at 4:00 p.m. Information may be obtained from Carl W. Riehn, P.O. Box 2408, Wylie, Texas 75098, (972) 442-5405. TRD-9703521.

Riceland Regional Mental Health Authority, Executive Committee Board of Trustees, met at 3007 North Richmond Road, Wharton, March 20, 1997 at 1:00 p.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, (409) 532-3098. TRD-9703502.

Tarrant Appraisal District, Board of Directors, will meet at 2301 Gravel Road, Fort Worth, March 21, 1997 at 9:00 a.m. Information may be obtained from Mary McCoy, 2315 Gravel Road, Fort Worth, Texas 76118, (817) 284-0024. TRD-9703496.

Texas Municipal Power Agency ("TMPA"), Board of Directors, met at the Holiday Inn Select, LBJ Northeast, Rose Room, 11350 LBJ Freeway at South Jupiter, Dallas, March 17, 1997 at 10:00 a.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-1131. TRD-9703523.

Texas Municipal Power Agency ("TMPA"), Mission and Goals Committee, met at the Holiday Inn Select, LBJ Northeast, Rose Room, 11350 LBJ Freeway at South Jupiter, Dallas, March 17, 1997

at 1:00 p.m. Information may be obtained from Carl Shahady, P.O. Box 7000, Bryan, Texas 77805, (409) 873-1131. TRD-9703522.

Texas Political Subdivisions Joint Self-Insurance Funds, Board of Trustees, too part in teleconference originated from: 14135 Midway Road, Suite 300, Dallas, March 17, 1997 at 12:30 p.m. Information may be obtained from James R. Gresham, P.O. Box 803356, Dallas, Texas 75380, (972) 392-9430. TRD-9703504.

Trinity River Authority of Texas, Utility Services Committee, met at 5300 South Collins Street, March 19, 1997 at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, (817) 467-4343. TRD-9703499.

Upshur County Appraisal District, Board of Directors, met at Warren and Trinity Streets, Gilmer, March 20, 1997 at 1:00 p.m. Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, TRD-9703501.

#### Meetings filed March 14, 1997

Alamo Area Council of Governments, met at 118 Broadway, Suite 400, San Antonio, March 19, 1997 at 10:00 a.m. Information may be obtained from Al J. Notzon, 118 Broadway, Suite 400, San Antonio, Texas 78205, (210) 225-5201. TRD-9703555.

Austin Travis County MHMR Center, Human Resource Committee, met at 1700 South Lamar, Building One, Suite 102A, Small Training Room, Austin, March 19, 1997 at 4:30 p.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 440-4031. TRD-9703551.

Capital Area Rural Transportation System (CARTS), Board of Directors, met at the CARTS Conference room, 2010 East Sixth Street, Austin, March 20, 1997 at 9:00 a.m. Information may be obtained from Edna M. Burroughs, P.O. Box 6050, Austin, Texas 78702, (512) 389-1011. TRD-9703557.

Central Texas Council of Governments, Regional Review Committee, Local Entities, and Consultants, met at 201 East Second Avenue, Belton, March 19, 1997 at 2:30 p.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-7075. TRD-9703547.

Central Texas Council of Governments, K-TUTS Transportation Planning Policy Board, met at 302 East Central Avenue, Belton, March 20, 1997 at 9:15 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-0885. TRD-9703541.

Community Action Committee of Victoria, Texas, Executive Committee, met at 1501 North DeLeon, Suite C, Victoria, March 20, 1997 at 5:00 p.m. Information may be obtained from Vicki Smith, 1501 North DeLeon, Suite A, Victoria, Texas, 77902-2142. TRD-9703571.

Coryell City Water Supply District, Board, met at 9440 FM 929, Coryell City, March 20, 1997 at 7:00 p.m. Information may be obtained from Helen Swift, 9440 FM 929, Gatesville, Texas 76528, (817) 865-6089. TRD-9703596.

Dallas Area Rapid Transit, Planning Ad Hoc Committee, met at 1401 Pacific Avenue, Conference Room C, First Floor, Dallas, March 18, 1997 at 10:00 a.m. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9703591.

Dallas Area Rapid Transit, Bylaws Ad Hoc Committee, met at 1401 Pacific Avenue, Conference Room B, First Floor, Dallas, March 18, 1997 at 12:00 noon. Information may be obtained from Paula J. Bailey, DART, P.O. Box 660163, Dallas, Texas 75266-0163, (214) 749-3256. TRD-9703593.

East Texas Council of Governments, Workforce Development Board Request for Proposals Task Force, met at 801 North Henderson Boulevard, Kilgore, March 20, 1997 at 9:00 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903)984-8641. TRD-9703564.

East Texas Council of Governments, Workforce Development Board, met at 801 North Henderson Boulevard, Kilgore, March 20, 1997 at 11:30 a.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (903) 984-8641. TRD-9703572.

Education Service Center, Region XI, Board of Directors, will meet at 3001 North Freeway, Fort Worth, March 25, 1997 at 10:00 a.m. Information may be obtained from Dr. Ray L. Chancellor, 3001 North Freeway, Fort Worth, Texas 76106, (817) 625-5311. TRD-9703550.

Ellis County Appraisal District, Board of Directors, met at 400 Ferris Avenue, Waxahachie, March 20, 1997 at 7:00 p.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 878, Waxahachie, Texas 75168, (972) 937-3552. TRD-9703537.

Johnson County Rural Water Supply Corporation, Water Source Committee, met at Corporation Office, 2849 Highway 171 South, Cleburne, March 18, 1997 at 5:45 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9703540.

Johnson County Rural Water Supply Corporation, Monthly Board Meeting, met at Corporation Office, 2849 Highway 171 south, Cleburne, March 18, 1997 at 6:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9703539.

Kendall Appraisal District, Board of Directors, met at 121 South Main Street, Boerne, March 20, 1997 at 5:30 p.m. Information may be obtained from Leta Schlinke or Helen Tamayo, P.O. Box 788, Boerne, Texas 78006, (210) 249-8012, fax: (210) 249-3975. TRD-9703558.

Lavaca County Central Appraisal District, Appraisal Review Board, will meet at 113 North Main Street, Hallettsville, April 2, 1997 at 9:00 a.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9703538.

Lower Rio Grande Valley Tech Prep, Associate Degree Consortium, Board of Directors, met at Best Western Palm Aire Motel, 415 South International Boulevard, Weslaco, March 19, 1997 at noon. Information may be obtained from Pat Bubb, TSTC Conference Center, Harlingen, Texas 78550-3697; (210) 425-0729. TRD-9703573.

Montague County Tax Appraisal District, Board of Directors, met at 312 Rusk Street, March 19, 1997, at 7:00 p.m. Information may be obtained from Wanda Russell, 312 Rusk Street, Montague, Texas, 76251, (817) 894-2081. TRD-9703590.

Sabine Valley Center, Board of Trustees, revised agenda, met at the Administration Building, 107 Woodbine Place, Longview, March 20, 1997 at 7:00 p.m. Information may be obtained from Inman White,

or LaVerne Moore, P.O. Box 6800, Longview, Texas 75608, (903) 237-2362. TRD-9703560.

Stephens County Rural Water Supply Corporation, Annual meeting, will meet at Stephens County Agriculture Building, Highway 180 East, Breckenridge, March 27, 1997 at 7:00 p.m. Information may be obtained from Mary Barton, P.O. Box 1621, Breckenridge, Texas 76424, (817) 559-6180. TRD-9703544.

Swisher County Appraisal District, Board of Directors, met at 130 North Armstrong, Tulia, March 20, 1997 at 7:00 p.m. Information

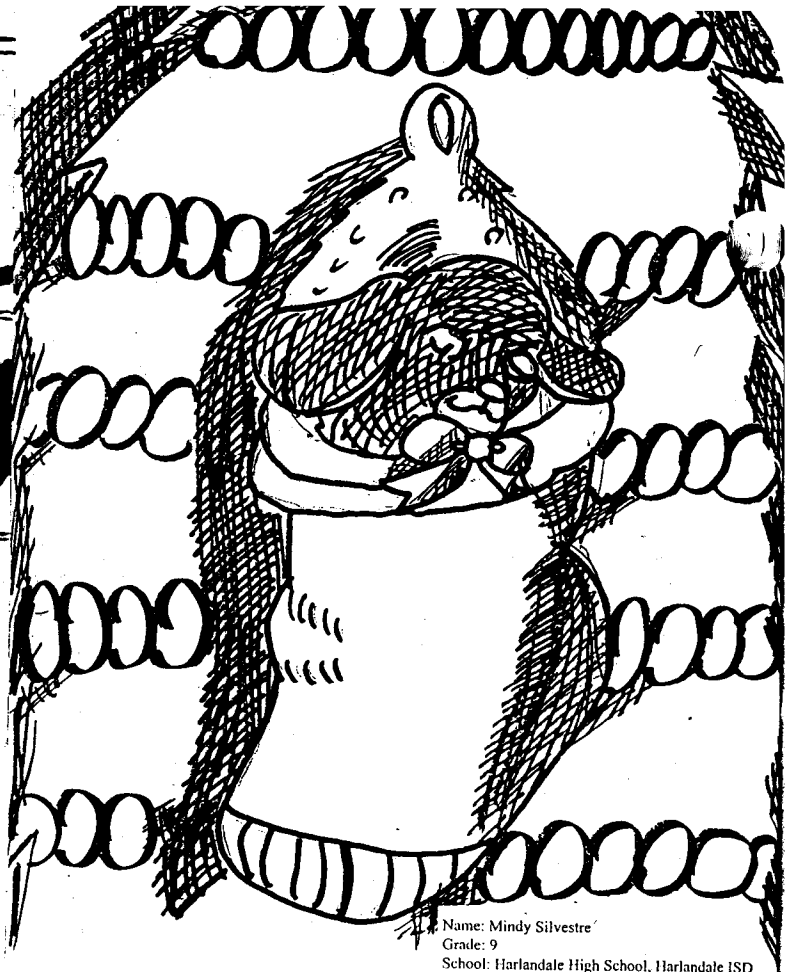
may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (906) 995-4118. TRD-9703569.

**Meetings filed March 17, 1997**

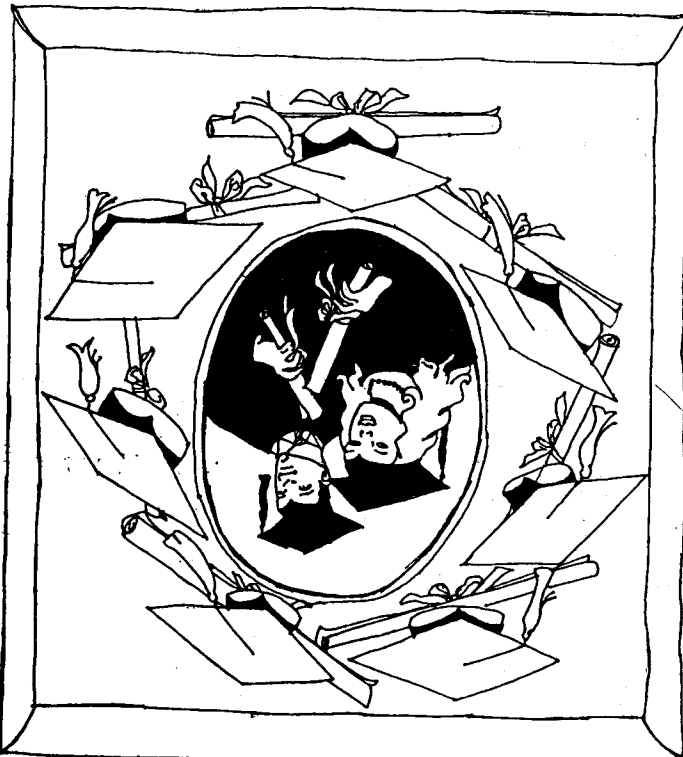
Harris County Appraisal District, Appraisal Review Board, will meet at 2800 North Loop West, Eighth Floor, Houston, March 21, 1997, at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, (713) 957-5222. TRD-9703621.



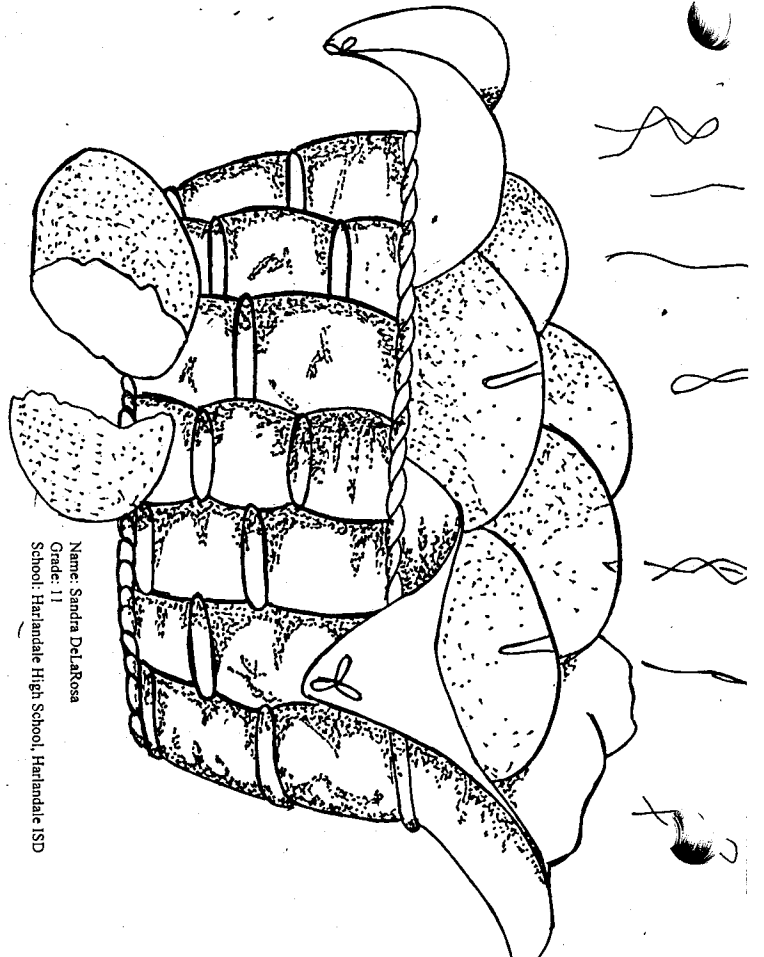
Name: Hermin Acosta  
 Grade: 10  
 School: Harlandale High School, Harlandale ISD



Name: Mindy Silvestre  
 Grade: 9  
 School: Harlandale High School, Harlandale ISD



Name: David Ibarra  
 Grade: 10  
 School: Harlandale High School, Harlandale ISD



Name: Sandra Delakosa  
 Grade: 11  
 School: Harlandale High School, Harlandale ISD



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# IN ADDITION

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The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

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## Coastal Coordination Council

### Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence under the Texas Coastal Management Program

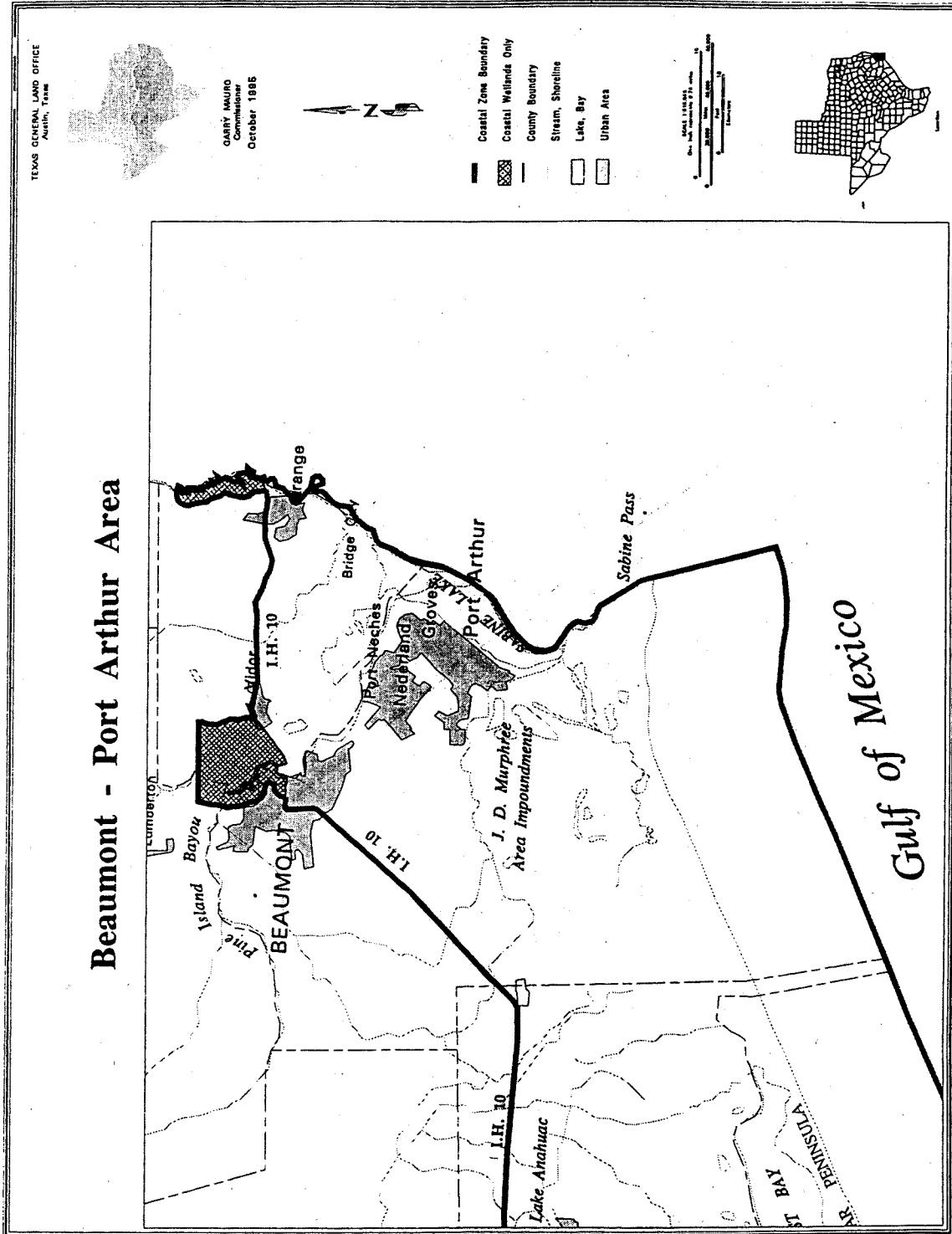
On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC 501. Requests for federal consistency review were received for the following projects(s) during the period of March 11, 1997, through March 13, 1997:

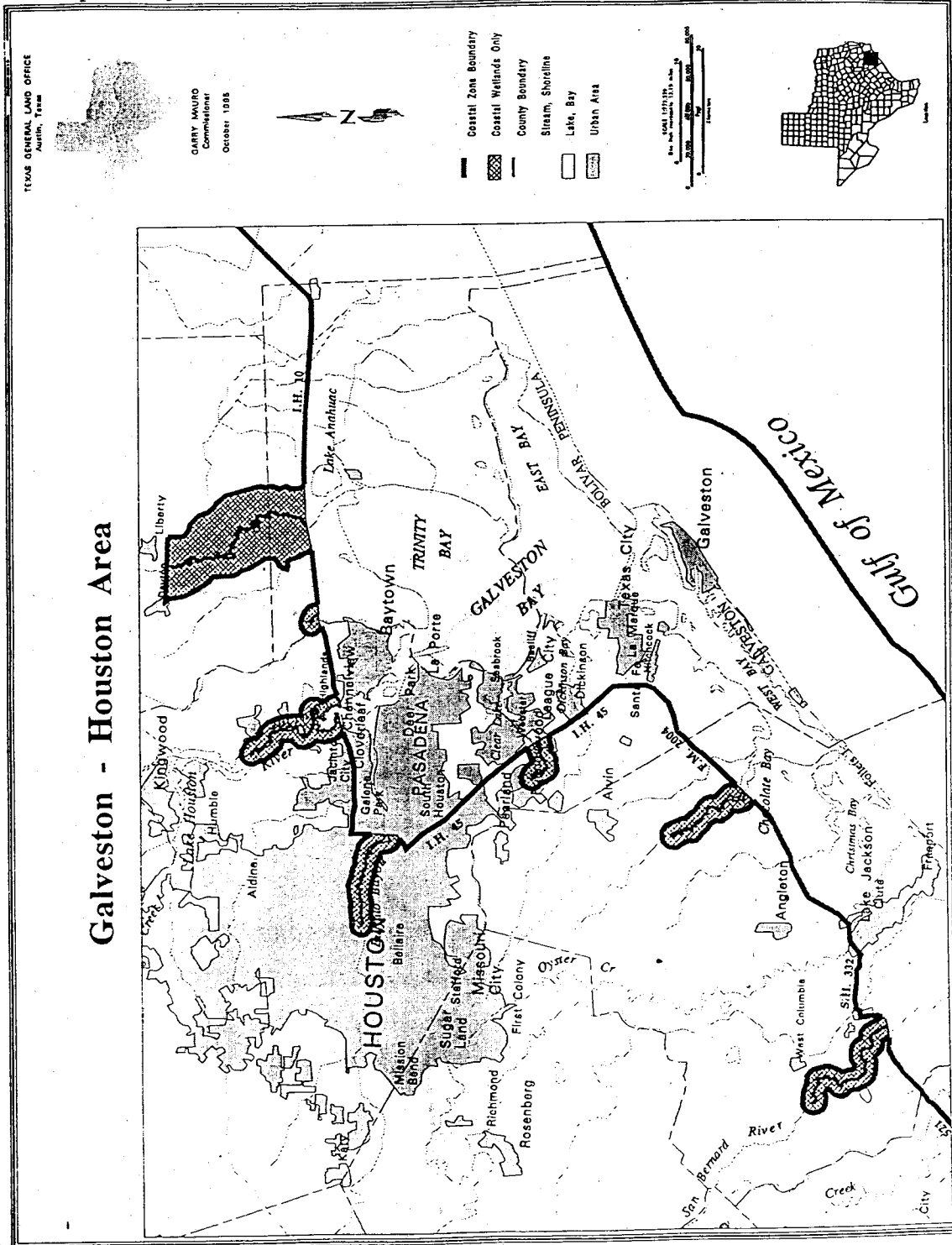
#### FEDERAL AGENCY ACTIONS:

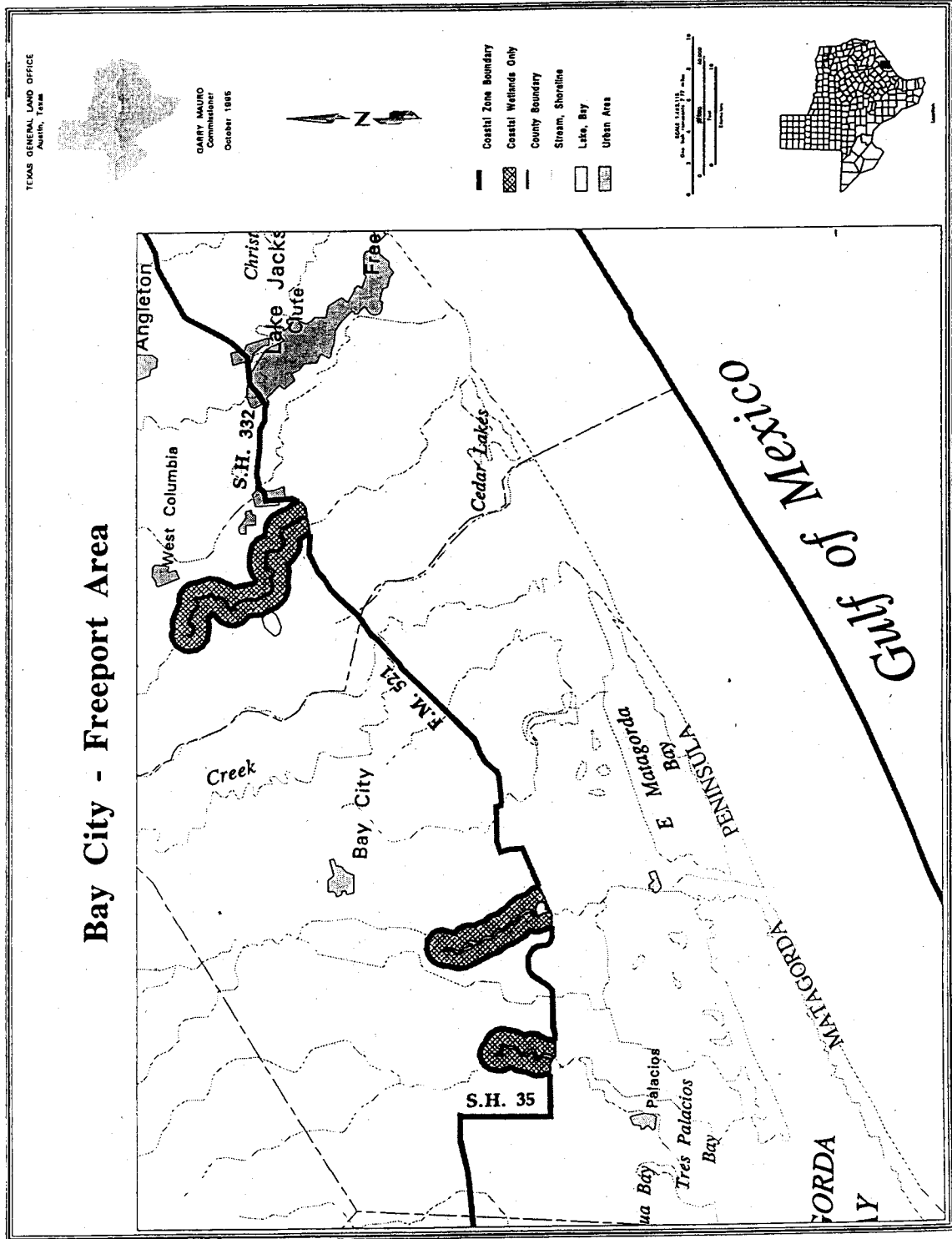
Applicant: R.O. Perry; Location: The abandoned Aransas Pass Airport, east end of the old runway, Redfish Bay, Aransas Pass, Nueces County, Texas; Project Number: 97-0050-F1; Description of Proposed Action: The applicant proposes to construct a 294-foot by 6-foot wooden pier with a 10-foot by 40-foot T-head.

The applicant also proposes to place concrete fill in approximately 0.41 acre of wetlands for the construction of a 269-foot by 6-foot concrete walkway.; Type of Application: U.S.C.O.E. permit application #20915 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

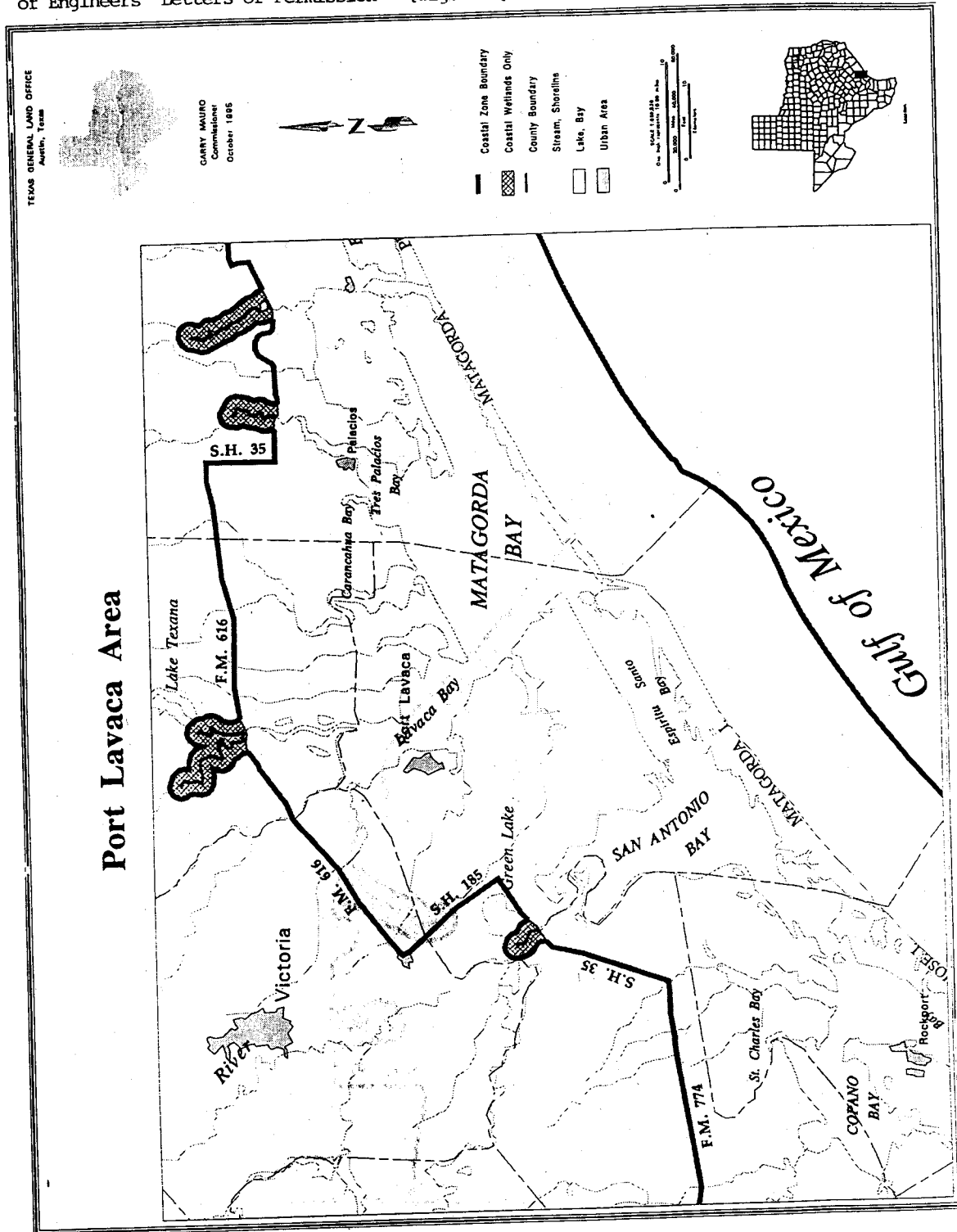
Applicant: I.P. Petroleum Company; Location: Brazos, Block 378, Lease OCS-G 13769, OCS Federal Offshore Waters, Gulf of Mexico; Project No.: 97-0051-F1; Type of Application: Initial Plan of Exploration, Title 30 CFR 250.33 (f) and (h). Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action should be referred to the Coastal Coordination Council for review and whether the action is or is not consistent with the Texas Coastal Management Program goals and policies. All comments must be received within 30 days of publication of this notice and addressed to Ms. Janet Fatheree, Council Secretary, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495.

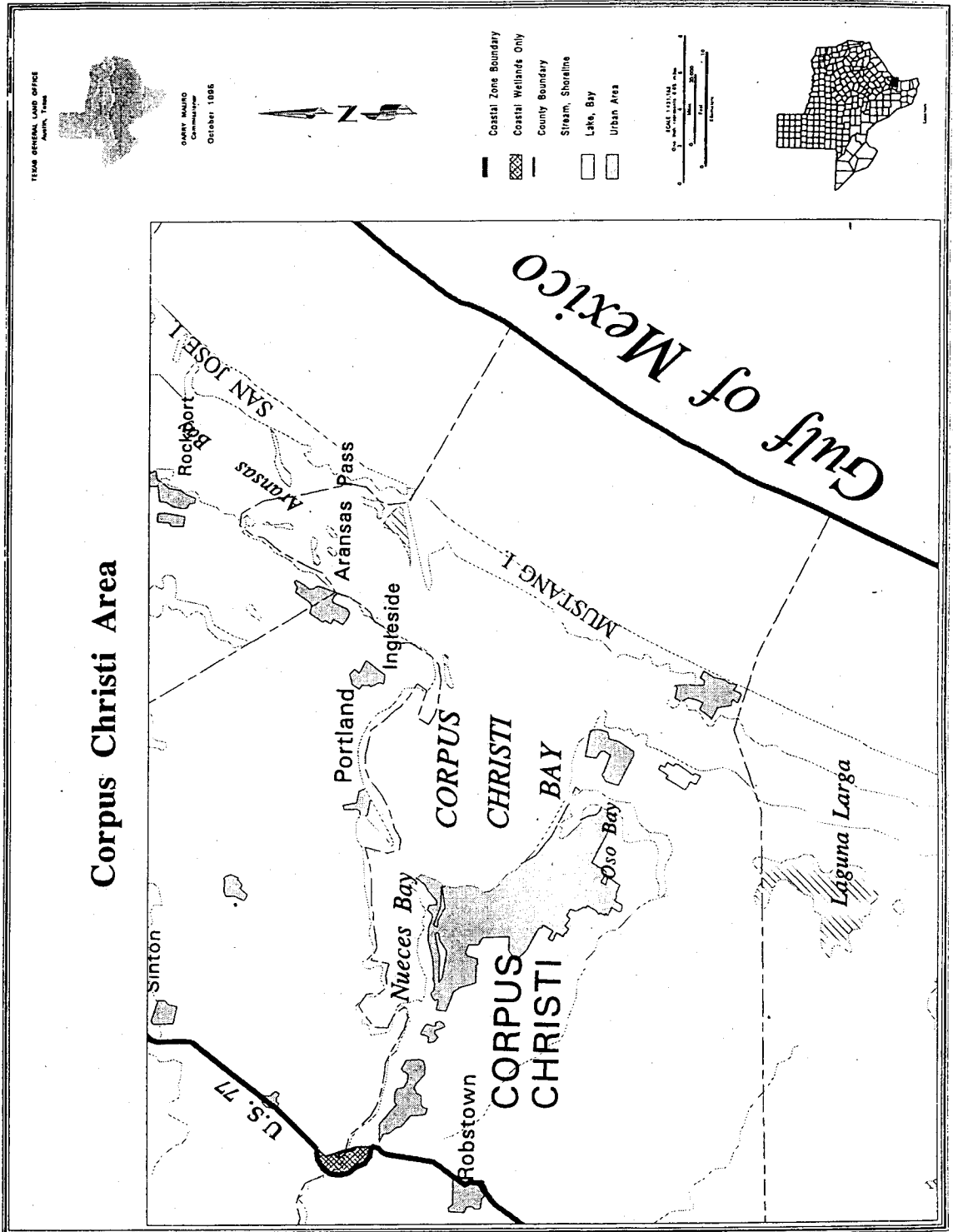


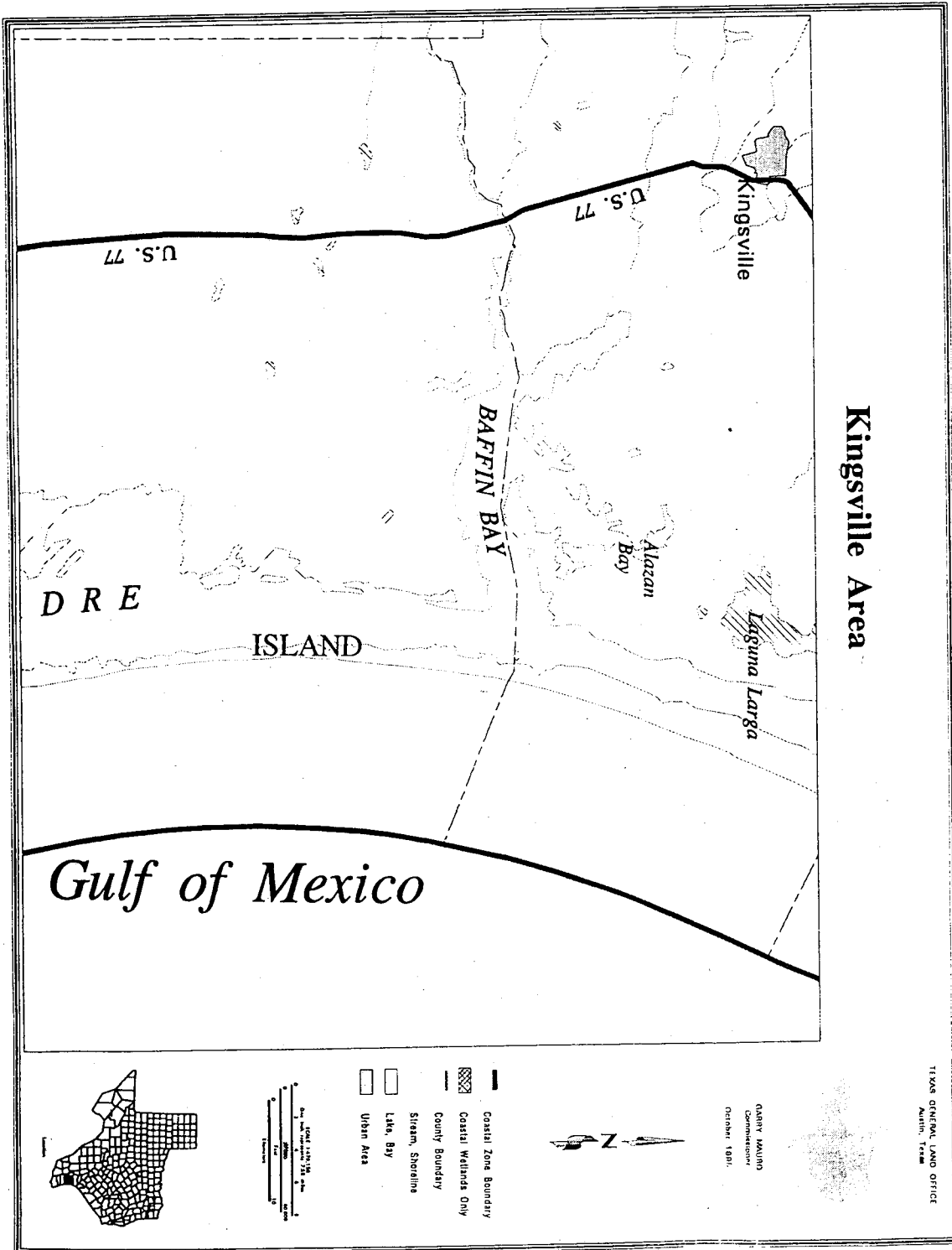


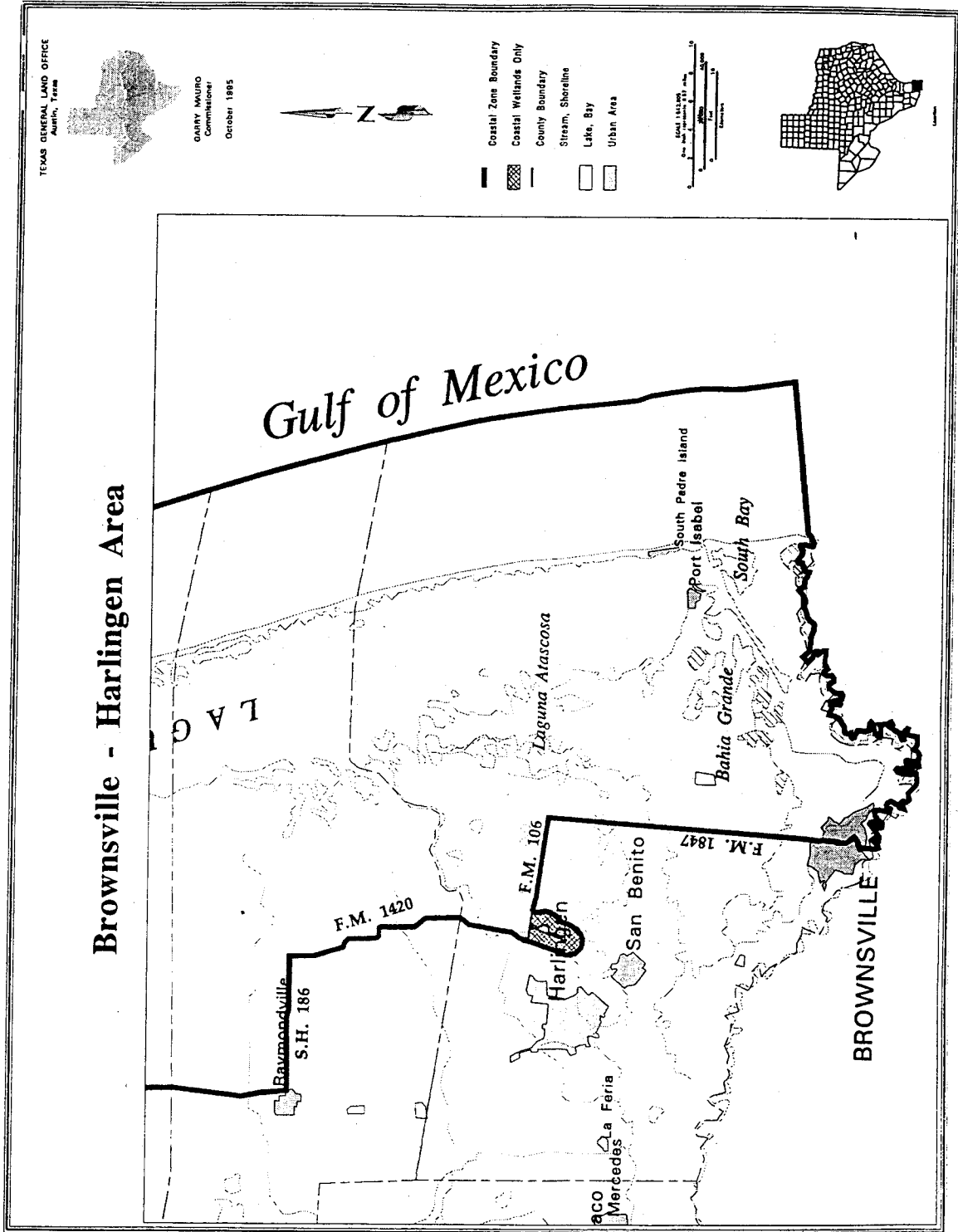


134-Notice and Opportunity to Comment on General Consistency Concurrence for Corps of Engineers "Letters of Permission"- [figure 4]











eligibility for listing in the NRHP. Sites determined to be eligible for listing in the NRHP shall be mitigated in consultation with the Corps. Cultural resources include prehistoric and historic archeological sites, and areas or structures of cultural interest which occur in the permit area.

7. Appropriate erosion and siltation controls shall be used and maintained in effective operating condition during construction, and all exposed soil shall be permanently stabilized at the earliest practicable date.

8. All temporary fills shall be removed in their entirety.

9. All construction activities in federally maintained channels and/or waterways shall be coordinated for required setback distances with the appropriate Corps area or district office prior to application for an LOP.

10. Heavy equipment working in wetlands shall be placed on mats, or other measures shall be taken to minimize disturbances to soil.

11. No authorization will be granted for an activity that is likely to jeopardize the continued existence of a threatened or endangered species or a species proposed for such designation, as identified under the Endangered Species Act, or for an activity that is likely to destroy or adversely modify the critical habitat of such species. Permittee shall notify the Corps if any listed species or critical habitat might be affected by, or is in the vicinity of, the project and shall not begin work until notified by the Corps that the requirements of the Endangered Species Act have been satisfied and that the activity is authorized.

12. The project shall not significantly disrupt the movement of

those species of aquatic life indigenous to the water body or those species that normally migrate through the project area.

Issued in Austin, Texas, on March 10, 1997.

TRD-9703607  
Garry Mauro  
Chairman

◆ ◆ ◆  
**Notice and Opportunity to Comment on General Consistency  
Concurrence for Corps of Engineers "Letters of Permission."**

The Coastal Coordination Council (Council) proposes a general concurrence (GC) pursuant to 31 TAC §506.35. Under the Federal Coastal Zone Management Act, 16 United States Code Annotated §§1451-1464, a federal agency cannot issue a permit for an activity affecting the State of Texas' coastal zone unless the Council finds that the activity is consistent with the goals and policies of the Texas Coastal Management Program (CMP). The Council is proposing the GC to make such a finding with respect to those routine, low-impact activities the United States Army Corps of Engineers (Corps) authorizes by "Letter of Permission" (LOP). This will eliminate the need for an individual consistency concurrence for each separate activity within the category.

Absent the GC, each LOP must be processed for review under 31 TAC, Chapter 506, which requires 30 days public comment. However, the Corps issues LOPs after only 15 days comment by state and federal agencies. Because of the longer CMP comment period, the Corps may be ready to finalize an LOP before the state has determined its consistency. The GC eliminates this potential for delay by providing a process for expedited state review. This process is modeled on both the Corps' current LOP process and the §401 certification that Texas Natural Resource Conservation Commission issued for it. It has three key features.

First, all activities authorized by LOP must meet certain standard conditions. (For example, no contaminated soil may be allowed to enter a watercourse).

Second, the Corps must send the Council secretary notice of any activity that is proposed for authorization under an LOP.

Third, if within 15 days, three Council members object to the activity being authorized under the LOP, the Council secretary will notify the Corps. The activity can then receive authorization only by an individual Corps permit with a full consistency review. If the Corps does not receive notice within 15 days, however, the activity may be authorized by LOP.

The Council proposed the GC on March 7, 1997, and is now requesting public comment for 30 days. At the end of the comment period, the Council chair will send a written recommendation, including any recommended revisions to the GC, and a summary of public comments to other Council members. If three Council members object to the chair's recommendation, they may place the matter on the agenda of a Council meeting for consideration. If the matter is not placed on the Council agenda, the Council chair will issue the GC.

Interested parties should submit comments by 5:00 p.m. on April 20, 1997, to Ms. Janet Fatheree, Council Secretary, General Land Office, 1700 North Congress, Suite 617, Austin, Texas, 78701-1495. **GENERAL CONCURRENCE COASTAL COORDINATION COUNCIL**

Pursuant to 31 Texas Administrative Code §506.35 and 15 CFR §930.53(c), the Coastal Coordination Council (CCC) proposes the following General Concurrence (GC) for certain activities authorized

by Letters of Permission (LOP) issued by the U.S. Army Corps of Engineers, Galveston District (Corps).

**SECTION 1: PURPOSE AND INTENT**

The purpose of this GC is to minimize the scope and duration of the review for consistency with the Texas Coastal Management Program that is required for those activities permitted by the Corps that, while individually inconsequential, may have cumulative adverse effects of coastal natural resource areas within the coastal zone. Therefore, this GC is intended to incorporate the Corps's existing process for coordinating with other agencies and authorizing minor and routine activities by LOP.

**SECTION 2: ACTIVITIES COVERED**

The GC covers two categories of activities within the coastal zone depicted in Appendices A through G of this document. Both categories are subject to existing LOP processes previously established by the Corps.

a. Work and the placement of structures in navigable waters of the United States, which are subject to the permitting requirements of §10 of the Rivers and Harbors Act of 1899.

b. Discharges of dredged or fill material associated with excavation activities in waters of the United States, which are subject to the permitting requirements of §404 of the Clean Water Act. This includes such activities as removal of accumulated sediment at road crossings, construction and maintenance dredging of boat slips, channels, and intake and outfall structures, mining of sand and gravel, and work associated with these activities, such as temporary coffer dams. This also includes the disposal of excavated material into waters of the United States provided the purpose of the disposal is not land reclamation. Activities covered by this GC are subject to the general conditions contained in Appendix H of this document.

Work that, pursuant to the procedures in Section 4 of this document, is determined to have the potential for individually significant adverse effects on coastal natural resource areas is not covered by this GC and will be subject to review for consistency with the Texas Coastal Management Program under the rules of the Council.

**SECTION 3: NOTIFICATION PROCEDURES**

Persons proposing that an activity be authorized by LOP shall submit to the Corps a written description of the project, proposed work schedule, and the address and telephone number of a point of contact. A description of the project must include at least the following information, as applicable:

a. A vicinity map showing the location of the entire project, including all disposal sites(s).

b. Plan and typical cross-section views of the proposed work.

c. A description of the type, amount, and location of all permanent and temporary fills and excavations that would be located in waters of the United States, including adjacent wetlands. A description of each disposal site shall also be included.

d. A statement disclosing whether any species listed as threatened or endangered under the Endangered Species Act might be affected by, or found in the vicinity of, the proposed project should be included.

e. Any other available relevant information, such as information regarding cultural resources, the proximity of the project to ecologically

sensitive areas, results of previous sediment sampling, and project impacts on local/regional hydrology.

The information may be submitted on an Application for Department of the Army Permit form (ENG Form 4345) or in any other form convenient to the applicant.

#### SECTION 4: INTERAGENCY COORDINATION PROCEDURES

These procedures are intended to allow members of the Council to determine whether activities proposed for authorization by an LOP may individually have significant adverse effects on coastal natural resource areas.

a. If the Corps proposes to authorize an activity by LOP, the Corps shall send to the Council secretary a written notice containing the information set out in §3 of this document. The Council secretary is responsible for coordinating with other Council members regarding any such notice.

b. If, within 15 days of the Corps sending notice to the Council secretary, any three members of the Council find that the activity may individually have significant adverse effects on coastal natural resource areas, the activity will be reviewed for consistency with the Texas Coastal Management Program under the rules of the council. The Council secretary is responsible for sending the Corps written notice of the members' finding. If the Corps does not receive written notice of the finding within 15 days, the Council is deemed to have concurred that the activity is consistent with the Texas Coastal Management Program under the GC.

Issued in Austin, Texas, on March 10, 1997.

TRD-9703610

Gary Mauro

Chairman

Coastal Coordination Council

Filed: March 10, 1997

### Comptroller of Public Accounts

#### Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announce this notice of consultant contract award.

The consultant proposal request was published in the January 21, 1997, issue of the *Texas Register* (22 TexReg 925).

The consultant will assist the Comptroller in conducting a management and performance review of the Spring Independent School District, and will produce periodic progress reports and assist in producing a final report. These reports shall include analyses and recommendations to contain costs, improve management strategies, and to promote better education through school administration efficiency. The successful proposer will be expected to begin performance of the contract on or about March 17, 1997.

The contract is awarded to WCL Enterprises, P.O. Box 273046, Houston, Texas 77277-3046. The total dollar value of the contract is not to exceed \$125,000.00 in the aggregate. The contract was executed March 13, 1997, and extends through December 31, 1997. WCL Enterprises is to assist the Comptroller in preparing a final report which will be made public on or about August 26, 1997.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703536

Arthur F. Lorton

Senior Legal Counsel

Comptroller of Public Accounts

Filed: March 14, 1997

### Office of the Consumer Credit Commissioner

#### Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	03/17/97-03/23/97	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

Filed: March 10, 1997

Issued in Austin, Texas, on March 13, 1997.

TRD-9703480  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner

◆ ◆ ◆  
The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Title 79, Texas Civil Statutes, Article 1.04, as amended (Texas Civil Statutes, Article 5069-1.04).

<u>Types of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer (1)/Agricultural/ Commercial (2) thru \$250,000</u>	<u>Commercial(2) over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	03/10/97-03/16/97	18.00%	18.00%

(1)Credit for personal, family or household use. (2)Credit for business, commercial, investment or other similar purpose.

[graphic]

Issued in Austin, Texas, on March 7, 1997.

TRD-9703483  
Leslie L. Pettijohn  
Commissioner  
Office of Consumer Credit Commissioner  
Filed: March 10, 1997

### Texas Education Agency

#### Correction of Error

The Texas Education Agency (TEA) submitted a Request for Application concerning the Christa McAuliffe Fellowship Program, 1997-1998. The request appeared in the January 21, 1997, issue of the Texas Register (22 TexReg 926).

On page 926, due to an error on the part of the Texas Register in the description section of the request, a period was inserted in place of a semicolon at the end of the first sentence.

The TEA submitted open meeting notices, which appeared in the February 4, 1997, issue of the Texas Register (22 TexReg 1341).

On pages 1341 and 1342, due to an error on the part of the Texas Register in the contact information section of the open meeting notice for the State Board of Education (SBOE) Committee on Planning. The room number "4-159" should not have been published.

On page 1342, one error appeared in the agenda section of the open meeting notice for State Board of Education (SBOE) Committee on School Finance/Permanent School Fund. The language "Proposed repeal of 19 TAC..." should read "Proposed amendments of 19 TAC..."

The TEA adopted new 19 TAC §89.1115 concerning a memorandum of understanding related to students with disabilities living in residential care facilities. The rule appeared in the February 11, 1997, issue of the Texas Register (22 TexReg 1629).

On page 1636, due to error on the part of the agency, in the second line from the top of the page. The language "ediation is a forum in which..." should read "mediation is a forum in which..."

The TEA submitted open meeting notices for the Texas Environmental Education Advisory Committee (TEEAC). The notices appeared in the February 18, 1997, issue of the Texas Register (22 TexReg 1839).

On page 1829, an error appeared in the third open meeting notice listed under the TEA. The starting time "8:30 p.m." should read "8:30 a.m."

The TEA submitted a notice of Request for Applications Concerning Academics 2000: First Things First, the Texas Goal 2000 Initiative, Reading Improvement Grants. The request appeared in the February 18, 1997, issue of the Texas Register (22 TexReg 1856).

On page 1856, due to an error on the part of the Texas Register, at the end of the request under the issuing information section, the issuing date "January 12, 1997" should read "February 12, 1997."

Due to error the agency, three errors appeared in the request. The starting date "August 11, 1997" should read "October 1, 1997." The ending date "August 14, 1997" should read "September 30, 1997." The language "remaining federal funds for 1996-1997 (\$10,060,000)" should read "remaining federal funds for 1996-1997 (\$10,060,000)". The deadline for receipt of applications "April 17, 1997" should read "April 24, 1997." These errors have been corrected in a Notice of Correction of Starting and Ending Date, Correction of Funding, and Extension of Deadline under the In Addition section of the February 28, 1997, issue of the Texas Register.

The TEA submitted open meeting notices, which appeared in the February 25, 1997, issue of the Texas Register (22 TexReg 1984).

On page 1984, due to error on the part of the Texas Register, in the contact section of the open meeting notice for the Policy Committee on Public Education Information. The name "Nancy Vaughn" should read "Nancy Vaughan."

## Texas Department of Health

### Correction of Error

The Department of Health submitted a Notice of Public Hearing for the Home and Community Support Services Agencies Rules, the

notice appeared in the March 11, 1997, issue of the Texas Register (22 TexReg 2661).

The public hearing was rescheduled for 9:00 a.m., Tuesday, April 1, 1997, in the Lecture Hall, Room K-100, Main Building, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

### Request for Proposal/Worksite-Based Weight Control Initiatives

**Description:** The Texas Department of Health, Bureau of Nutrition Services, Public Health Nutrition Program (TDH/BNS/PHNP) requests proposals from public health/community organizations to work in collaboration with a worksite to develop and implement intervention and environmental change initiatives which target employees. The initiatives must address the issue of weight control through proper nutrition and/or physical activity.

**Eligible Applicants:** Non-profit, community-based organizations such as community health centers, local health departments, educational service centers, schools, and hospitals.

**Selection Procedure:** Priority for funding will be given to a community-based organizations with an established, demonstrated working relationship with a worksite which employs between 50 and 500 full-time employees. Proposals from applicants to implement a project at their own worksite will be considered for funding.

**Dates and Amount of Contract:** The contract period will be from September 1, 1997 through August 31, 1998. TDH/BNS/PHNP will provide approximately four (4), \$10,000 grants. Potential for second year of funding will be based on first year performance and the availability of funds.

**Contract and deadlines:** A request for proposal packet, with proposal submission instructions, may be obtained by contacting, Claire Heiser, Chronic Disease Nutritionist, Bureau of Nutrition Services, 1100 West 49th Street, Austin, Texas, 78756. Telephone (512) 458-7785. Proposals must be received by 5:00 p.m. on Friday, May 23, 1997. Faxed copies will not be accepted.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703597

Susan K. Steeg

General Counsel

Texas Department of Health

Filed: March 14, 1997

## North Central Texas Council of Governments

### Notice of Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the December 13, 1996, issue of the Texas Register (21 TexReg 12006). The consultant will conduct a telephone survey to measure the public's attitude toward vehicle maintenance.

The consultant selected for this project is EGS Research & Consulting, 6106 Ledge Mountain, Austin, Texas 78731. The maximum

amount of this contract is \$35,000. The contract began February 25, 1997, and will terminate on April 24, 1997.

Issued in Arlington, Texas, on March 14, 1997.

TRD-9703594

Mike Eastland

Executive Director

Texas Council of Governments Agency

Filed: March 14, 1997

**Texas Health and Human Services Commission**

**Excluded Medicaid Providers**

In compliance with the Medicare and Medicaid Patient Protection Act of 1987, the following list provided by the Texas Health and Human Services Commission (HHSC) which identifies providers or employees of providers who are excluded from state and federal health care programs since publication of the February 1997 Medicaid Bulletin.

Providers excluded from the Medicaid and Title XX programs must not order or prescribe services to clients after the date of exclusion. Services rendered under the medical direction or under the prescribing orders of an excluded provider will also be denied. Providers who submit cost reports cannot include the salaries/wages/benefits of employees who have been excluded from Medicaid. Additionally, excluded employees are not permitted to provide Medicaid services to any patient/client.

Name  
License/Provider  
Number  
City  
Effective Date Exclusion  
Period of Exclusion

**DENTISTS:**

Bartley, Emily J., DDS

17265

Houston

12/30/96

Indefinitely

Garcia, Leticia S., DDS

13618

Nederland

01/06/97

Indefinitely

Mannino, Troy M., DDS

15737

Katy

01/29/97

Indefinitely

**DOCTORS:**

Baker, Jr., Grisby, DC

4126

Houston

12/30/96

Indefinitely

Chamberlain, Charles D., MD

C6886

Brenham

11/16/96

Indefinitely

Coomansingh, Belden J.L., MD

F8446

Fort Worth

10/04/96

Indefinitely

Dodd, Daniel J., DC

2926

Texas City

12/30/96

Indefinitely

Goebel, Michael L., DC

Cleveland

12/30/96

Indefinitely

Herligyf, Daniel, DO

H8125

Irving

11/16/96

Indefinitely

Morrill, Thomas R., DO

BH2620

Rockwall

01/06/97

Indefinitely

Nicosia, Michael L., DC

Portland

01/29/97

Indefinitely

Skidmore, Clyde E., DC



4056  
Stafford  
01/06/97  
Indefinitely  
Tallant, Arthur N., MD  
C5259  
San Marcos  
01/01/97  
Indefinitely  
Wicoff, James S., MD  
E1178  
San Antonio  
12/30/96  
3 years  
NURSES:  
Mason, Mickie A., LVN  
054676  
Vidor  
11/15/96  
Indefinitely  
Mifflin, Betty H., RN  
563566  
Meridian  
11/21/96  
Indefinitely  
Orosco, Cindy L., LVN  
138820  
Victoria  
11/15/96  
Indefinitely  
Shropulos, Katherine, RN  
240701  
Dallas  
08/02/96  
Indefinitely  
Spalding, Karen L., LVN  
119729  
Antlers  
11/15/96  
Indefinitely  
Whitting, Lisa R., CNA

NA000219236  
Crockett  
02/13/97  
5 years  
Wright, Shirley T., LVN  
037986  
Denver City  
11/15/96  
Indefinitely  
FACILITIES:  
Dr. Nevins' Eyeworld  
El Paso  
01/29/97  
5 years  
Health Care Innovations, Inc.  
Ovilla  
01/29/97  
10 years  
Randy Shelly DME Supply Co.  
Ovilla  
01/29/97  
10 years  
Texas United Health Care, Inc.  
Ovilla  
01/29/97  
10 years  
Trans Texas Vision Associates  
Texarkana  
01/29/97  
15 years  
OPTICAL:  
Henderson, Leroy R.,  
Optician  
Texarkana  
01/29/97  
15 years  
Mobile Optics  
Texarkana  
01/29/97  
15 years  
INDIVIDUALS:

Keatts, Janet G., Ophthalmic Asst.

Houston

12/30/96

6 years

Shelly, Randy L., Owner

Ovilla

01/29/97

10 years

Updyke, John G., DPM

Houston

01/06/97

Indefinitely

Issued in Austin, Texas, on March 13, 1997.

TRD-9703527

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: March 13, 1997

## Texas Department of Insurance

### Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for admission in Texas for Bridgefield Casualty Insurance Company, a foreign fire and casualty company. The home office is in Lakeland, Florida.

Application for admission in Texas for Farmers Insurance Company of Idaho, a foreign fire and casualty company. The home office is in Pocatello, Idaho.

Application for a name change in Texas for Thurston Fire and Casualty Insurance Company, a foreign fire and casualty company. The proposed new name is GHS Fire Insurance Company. The home office is in Tulsa, Oklahoma.

Application for a name change in Texas for Consumer Benefit Life Insurance Company, a foreign life, accident and health company. The proposed new name is Gerling Global Life Reinsurance Company. The home office is in Nashville, Tennessee.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

Issued in Austin, Texas, on March 17, 1997.

TRD-9703634

Robert R. Carter

Assistant General Counsel

Texas Department of Insurance

Filed: March 17, 1997

### Notice

The Commissioner of Insurance, or his designee, will consider approval of a request submitted by American Fidelity Insurance Companies proposing to use a rating manual relative to classifications and territories different than that promulgated by the Commissioner of Insurance pursuant to Texas Insurance Code Annotated Article 5.101, §3(l). They are proposing the adoption of new subclassification breakouts splitting some of their regular classes for the companies' Hotel/Motel program, public automobiles not otherwise classified and their AFIRMS school program.

Copies of the filing may be obtained by contacting Gifford Ensey, at the Texas Department of Insurance, Legal and Compliance, P.O. Box 149104, Austin, Texas 78714-9104, extension (512) 475-1761.

This filing is subject to Department approval without a hearing unless a properly filed objection, pursuant to Art. 5.101, §3(h), is made with Edna Ramon Butts, Senior Associate Commissioner, Regulation and Safety, at the Texas Department of Insurance, MC 107-2A, P.O. Box 149104, Austin, Texas 78701 within 30 days after publication of this notice.

Issued in Austin, Texas, on March 12, 1996.

TRD-9703477

Bernice Ross

Deputy Chief Clerk

Texas Department of Insurance

Filed: March 12, 1996

### Notice of Application by SUPERIOR HEALTHPLAN, INC., Austin, Texas, for Issuance of a Certificate of Authority to Establish and Operate an HMO in the State of Texas

Notice is given to the public of the application of, SUPERIOR HEALTHPLAN, INC., Austin, Texas, for the issuance of a certificate of authority to establish and operate a health maintenance organization (HMO) offering basic health care services in the State of Texas in compliance with the Texas HMO Act and rules and regulations for HMOs. The application is subject to public inspection at the offices of the Texas Department of Insurance, Insurer Services Division, 333 Guadalupe, Hobby Tower III, 5th Floor, Austin, Texas.

Upon consideration of the application, if the Commissioner is satisfied that all requirements of law have been met, the Commissioner or his designee may take action to issue a certificate of authority to SUPERIOR HEALTHPLAN, INC., Austin, Texas, without a public hearing.

Issued in Austin, Texas, on March 17, 1997.

TRD-9703635

Robert R. Carter

Assistant General Counsel

Texas Department of Insurance

Filed: March 17, 1997

### Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2286, on April 2, 1997, at 9:00 a.m. in Room 102 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider two proposed re-appointments to the Board of Directors of the Texas Catastrophe Property Insurance Association (TCPIA). One of the proposed re-appointments is a general public member and the other is a local recording agent member. Both nominees are being considered for appointment to terms that begin upon the date of re-appointment and expire on the third Tuesday of March 2000.

The Commissioner is considering, upon the recommendation of the Office of Public Insurance Counsel, the re-appointment of Mr. Harley Londrie, Laguna Vista, Texas (Cameron County), as a general public member on the TCPIA Board of Directors, and upon the recommendation of Department staff, the re-appointment of Mr. Lloyd L. Grove, Jr., of the Grove Agency Insurance in Corpus Christi, Texas, and currently chair of the TCPIA board, as one of two local recording agent members on the board.

Article 21.49, §5(g) of the Insurance Code provides that the TCPIA Board of Directors shall be composed of nine members. Section 5(g)(2) of Article 21.49 provides that two of these members shall be representatives of the general public, nominated by the Office of Public Insurance Counsel, who, as of the date of the appointment, reside in a catastrophe area and are TCPIA policyholders. Section 5(g)(3) of Article 21.49 provides that two of the TCPIA board members shall be local recording agents licensed under the Insurance Code with demonstrated experience in the TCPIA and who, as of the date of the appointment, have principal offices located in the catastrophe area. Section 5(h) of Article 21.49 provides that members of the TCPIA Board of Directors serve three-year staggered terms with the terms of three members expiring on the third Tuesday of March of each year.

Mr. Grove was initially appointed by the former State Board of Insurance to begin serving on the TCPIA board on March 1, 1992. The nine-member TCPIA Board of Directors as presently constituted was statutorily created in 1991 pursuant to the Insurance Code, Article 21.49, §5(g). As a result, all nine initial appointees drew lots to determine each member's initial term of service on the TCPIA board. Mr. Grove was one of the appointees who drew a two-year term to expire on the third Tuesday of March 1994. Mr. Grove was re-appointed to the TCPIA board in March 1994 for a three-year term which expired on the third Tuesday of March 1997. Mr. Londrie was initially appointed to the TCPIA board on April 1, 1996, to serve the remainder of the term of a general public member, Ms. Reene Vetitoe Braggs, which expired on the third Tuesday of March 1997. Pursuant to the TCPIA plan of operation (28 TAC §5.4001, subsection (b)(2)(D)), both members continue to serve until the appointment of a successor or re-appointment.

The hearing is held pursuant to the Insurance Code, Article 21.49, §5A which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed re-appointments.

Issued in Austin, Texas, on March 14, 1996.

TRD-9703549  
Bernice Ross

Deputy Chief Clerk  
Texas Department of Insurance  
Filed: March 14, 1996

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**Third Party Administrator Applications**

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Texas & Oklahoma Preferred Provider System, (doing business under the assumed name of Texas & Oklahoma Preferred Provider System (TOPPS)), a domestic third party administrator. The home office is Paris, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

Issued in Austin, Texas, on March 13, 1996.

TRD-9703529  
Bernice Ross  
Deputy Chief Clerk  
Texas Department of Insurance  
Filed: March 13, 1996

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**Texas Natural Resource Conservation Commission**

**Enforcement Orders**

An agreed enforcement order was entered regarding MARQUETTE PAYTON, Docket Number 96-0860-LII-E (No License) on March 7, 1997 assessing \$600. in administrative penalties with \$180. deferred.

Information concerning any aspect of this order may be obtained by contacting Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed enforcement order was entered regarding CHRIS BERKEBILE, Docket Number 96-0705-LII-E (No License) on March 7, 1997 assessing \$1,000 in administrative penalties with \$300. deferred.

Information concerning any aspect of this order may be obtained by contacting Lee Parham, Enforcement Coordinator at (512) 239-0539, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703553  
Eugenia K. Brumm, Ph.D  
Chief Clerk  
Texas Natural Resource Conservation Commission  
Filed: March 14, 1997

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**Notice of Applications for Waste Disposal Permits**

Attached are Notices of Applications for waste disposal permits issued during the period of March 10, 1997 thru March 13, 1997.

The Executive Director will issue these permits unless one or more persons file written protests and/or a request for a hearing within 30 days after newspaper publication of this notice.

To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; (5) the location of your property relative to the applicant's operations; and (6) your proposed adjustments to the application/permit which would satisfy your concerns and cause you to withdraw your request for hearing. If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court. If no protests or requests for hearing are filed, the Executive Director will sign the permit 30 days after newspaper publication of this notice or thereafter. If you wish to appeal a permit issued by the Executive Director, you may do so by filing a written Motion for Reconsideration with the Chief Clerk of the Commission no later than 20 days after the date the Executive Director signs the permit.

Information concerning any aspect of these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, Chief Clerks Office-MC105, P.O. Box 13087, Austin, Texas 78711. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

Listed are the name of the applicant and the city in which the facility is located, type of facility, location of the facility, permit number and type of application-new permit, amendment, or renewal.

**CITY OF BERTRAM**, P.O. Drawer F, Bertram, Texas 78605, The wastewater treatment facilities and disposal site are located west of the City of Bertram on the south side of State Highway 29, approximately 1.7 miles west of the intersection of State Highway 29 and Farm-to-Market Road 1174 North in Burnet County, Texas, renewal, 11669-01.

**BROWNSVILLE NAVIGATION DISTRICT**, 1000 Foust Road, Brownsville, Texas 78523, marine cargo handling facility, The disposal site is located on the north side of State Highway 48 at points approximately 1.4 miles (Pit Number 2) and 2.2 miles (Pit Number 1) east of the intersection of State Highway 48 with FM 511 north-east of the City of Brownsville, Cameron County, Texas, renewal, 02597.

**COOPER CAMERON CORPORATION**, 11800 Charles Street, Houston, Texas 77041, Cameron-Charles Street Wastewater Treatment Facilities, The facilities are located at 11800 Charles Street; approximately 1.0 mile west-northwest of the intersection of U.S. Highway 290 and Farm-to-Market Road 529 in Harris County, Texas, renewal, 13578-01.

**CITY OF EAST TAWAKONI**, 700 Briggs Boulevard, East Tawakoni, Texas 75453, The wastewater treatment facilities are approximately one mile due east of the intersection of State Highway

276 and Farm-to-Market Road 513 on the northeast side of Lake Tawakoni in Rains County, Texas, renewal, 11428-01.

**KLEIN INDEPENDENT SCHOOL DISTRICT**, 7200 Spring Cypress Road, Klein, Texas 77379, The Klein I.S.D. Wastewater Treatment Plant site is located 2,000 feet east and 2,000 feet north of the intersection of Stuebner Airline Road and Spring Cypress Road in Harris County, Texas, renewal, 12224-01.

**CITY OF LONE OAK**, P.O. Box 127, Lone Oak, Texas 75453, The wastewater treatment facilities are east of Bull Creek, approximately 0.5 mile south of the intersection of U.S. Highway 69 and Farm-to-Market Road 1571 in Hunt County, Texas, renewal, 10760-01.

**OPAL DURANT**, Ridge Utilities, 456 Fairway Drive, Granbury, Texas 76049, The wastewater treatment plant site is located approximately 1,700 feet northeast of the intersection of Hood County Road 311-A and Farm-to-Market Road 3210 southeast of the City of Granbury in Hood County, Texas, renewal, 13025-01.

**TARKINGTON INDEPENDENT SCHOOL DISTRICT**, Route 6, Box 130, Cleveland, Texas 77327, The wastewater treatment facilities are approximately 1.5 miles east of the intersection of Farm-to-Market Road 163 and State Highway 321 and 8 miles southeast of the City of Cleveland in Liberty County, Texas, renewal, 11377-01.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703554

Eugenia K. Brumm, Ph.D

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 14, 1997

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**Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions**

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Health and Safety Code, the Texas Clean Air Act (the Act), Chapter 382, §382.096. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 19, 1997. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the enforcement coordinator designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 19, 1997. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-1893. The

TNRCC enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1)COMPANY: Coburn Auto Sales; DOCKET NUMBER: 96-1827-AIR-E; ACCOUNT NUMBER: WA-0076-E; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.1(c)(1), (2), and (3) and the Act, §382.085(b), by offering for sale a vehicle with missing and inoperable required emission control systems and/or devices and by failing to display proper notification of vehicle emission control requirements; PENALTY: \$0; ENFORCEMENT COORDINATOR: Mary Jennings, (512) 239-1864; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423, (713) 767-3500.

(2)COMPANY: Franklin Citgo & Tire; DOCKET NUMBER: 96-1828-AIR-E; ACCOUNT NUMBER: WA-0074-I; LOCATION: Huntsville, Walker County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.1(c)(1), (2), and (3) and the Act, §382.085(b), by offering for sale a vehicle with missing and inoperable required emission control systems and/or devices and by failing to display proper notification of vehicle emission control requirements; PENALTY: \$0; ENFORCEMENT COORDINATOR: Mary Jennings, (512) 239-1864; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423, (713) 767-3500.

(3)COMPANY: Mumme's, Incorporated; DOCKET NUMBER: 96-1236-AIR-E; ACCOUNT NUMBER: FJ-0025-G; LOCATION: Pearsall, Frio County, Texas; TYPE OF FACILITY: anhydrous ammonia tank and dry fertilizer blending plant; RULE VIOLATED: 30 TAC §116.110(a) and the Act, §382.0518(a) and §382.085(b), by failing to qualify for a standard exemption or obtain a permit prior to installation of an anhydrous ammonia tank; PENALTY: \$0; ENFORCEMENT COORDINATOR: Carl Schnitz, (512) 239-1892; REGIONAL OFFICE: 140 Heimer Road, Suite 360, San Antonio, Texas 78232-5042, (210) 490-3096.

(4)COMPANY: Ride-A-Way Motor Company; DOCKET NUMBER: 97-0044-AIR-E; ACCOUNT NUMBER: CP-0240-I; LOCATION: McKinney, Collin County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.1(c)(2) and the Act, §382.085(b), by offering for sale a vehicle with inoperable required emission control systems and/or devices; PENALTY: \$350; ENFORCEMENT COORDINATOR: Mary Jennings, (512) 239-1864; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010, (817) 467-6750.

(5)COMPANY: Thorp's Car Sales; DOCKET NUMBER: 96-1696-AIR-E; ACCOUNT NUMBER: HG-9570-W; LOCATION: Pasadena, Harris County, Texas; TYPE OF FACILITY: used car lot; RULE VIOLATED: 30 TAC §114.1(c)(1) and (2) and the Act, §382.085(b), by offering a vehicle for sale with missing and inoperable required emission control systems and/or devices; PENALTY: \$350; ENFORCEMENT COORDINATOR: Mary Jennings, (512) 239-1864; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423, (713) 767-3500.

(6)COMPANY: Village Creek Motors Auto Sales; DOCKET NUMBER: 96-1806-AIR-E; ACCOUNT NUMBER: HF-0180-V; LOCATION: Lumberton, Hardin County, Texas; TYPE OF FACILITY: used car sales lot; RULE VIOLATED: 30 TAC §114.1(c)(1) and (2) and the Act, §382.085(b), by offering for sale a vehicle with missing and inoperable required emission control systems or devices;

PENALTY: \$350; ENFORCEMENT COORDINATOR: Mary Jennings, (512) 239-1864; REGIONAL OFFICE: 3870 Eastex Freeway, Suite 110, Beaumont, Texas 77703-1830, (409) 898-3838. Issued in Austin, Texas, on March 14, 1997.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703548

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: March 14, 1997

The Texas Natural Resource Conservation Commission (TNRCC) Staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) pursuant to the Health and Safety Code, the Texas Clean Air Act (the Act), Chapter 382, §382.096. The Act, §382.096 requires that the TNRCC may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 382.096 requires that notice of the proposed orders and of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is April 19, 1997. Section 382.096 also requires that the TNRCC promptly consider any written comments received and that the TNRCC may withhold approval of an AO if a comment indicates the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Act. Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each of the proposed AOs is available for public inspection at both the TNRCC's Central Office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable Regional Office listed as follows. Written comments about these AOs should be sent to the staff attorney designated for each AO at the TNRCC's Central Office at P.O. Box 13087 Austin, Texas 78711-3087 and must be received by 5:00 p.m. on April 19, 1997. Written comments may also be sent by facsimile machine to the staff attorney at (512) 239-3434. The TNRCC staff attorneys are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §382.096 provides that comments on the AOs should be submitted to the TNRCC in writing.

(1) COMPANY: Basis Petroleum Incorporated; DOCKET NUMBER: 96-1547-AIR-E; ACCOUNT NUMBER: GB-0073-P; LOCATION: Texas City, Galveston County, Texas; TYPE OF FACILITY: refinery; RULE VIOLATED: 30 TAC §101.4 and the Act, §382.085(a) and (b) by emitting one or more air contaminants, specifically slurry oil from the Fluid Catalytic Cracker Unit, in such concentration and of such duration as were or tended to be injurious or to adversely affect human health or welfare, animal life, vegetation, or property, or as to interfere with the normal use and enjoyment of animal life, vegetation, or property; PENALTY: \$8,000; STAFF ATTORNEY: Cecily Small, MC-175, (512) 239-2940; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486.

(2) COMPANY: Minhaz Hooda; DOCKET NUMBER: 96-1561-PST-E; ENFORCEMENT ID NUMBER: E11721; LOCATION: Denton, Denton County, Texas; TYPE OF FACILITY: petroleum storage tanks at retail gasoline operation; RULE VIOLATED: 30 TAC §115.241 and §115.249 and the Act, §382.085(b) by failing to install by November 15, 1994, an approved Stage II vapor

recovery system which is certified to reduce the emissions of volatile organic compounds (VOCs) to the atmosphere by at least 95%; PENALTY: \$14,000; STAFF ATTORNEY: Walter Ehresman, MC-175, (512) 239-0573; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010.

(3) COMPANY: ICO, Inc.; DOCKET NUMBER: 96-0837-AIR-E; ACCOUNT NUMBER: HG-0539-K; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: pipe cleaning and coating plant; RULES VIOLATED: 30 TAC §116.110 and the Act, §382.085(b) and §382.0518(a) by operating the External Varnish/Coating Operation without a valid permit or satisfying all the conditions for a standard exemption; and 30 TAC §116.115 and the Act, §382.085(b) by violating provisions of their permit as follows: exceeding primer usage limits for the Powder Coating Line; failure to maintain the thermal oxidizer combustion operating chamber at a temperature of at least 1,400 degrees Fahrenheit; failure to produce records to demonstrate compliance with this Special Provision not available for review as required at the time of the inspection; failure to submit, by the required deadline, documentation specified in the permit to show compliance with all Special Provisions in it; failure to have operating instructions for thermal oxidizer posted as required discovered during investigation conducted on July 19, 1994; and the permit required stack sampling be done no later than May 1, 1994, and that the final test report be submitted to TNRCC staff no later than 60 days after that. Testing was not conducted until May 18, 1995 (with the final report received by TNRCC staff on August 4, 1995); PENALTY: \$17,000; STAFF ATTORNEY: Walter Ehresman, MC-175, (512) 239-0573; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1423.

(4) COMPANY: Ashraf Ibrahim; DOCKET NUMBER: 96-1631-PST-E; ENFORCEMENT ID NUMBER: E11337; LOCATION: Fort Worth, Tarrant County, Texas; TYPE OF FACILITY: petroleum storage tanks at gasoline retail operation; RULE VIOLATED: 30 TAC §115.241 and §115.249 and the Act, §382.085(b) by failing to install, test, maintain, and operate by November 15, 1994, an approved Stage II vapor recovery system which is certified to reduce the emissions of VOCs to the atmosphere by at least 95%; PENALTY: \$16,000; STAFF ATTORNEY: Walter Ehresman, MC-175, (512) 239-0573; REGIONAL OFFICE: 1101 East Arkansas Lane, Arlington, Texas 76010.

(5) COMPANY: International Grating, Inc.; DOCKET NUMBER: 96-1038-AIR-E; ACCOUNT NUMBER: HG-3508-V; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: safety grate production plant; RULE VIOLATED: 30 TAC §116.110 and the Act, §382.0518 and §382.085(b) by failing to obtain a permit or meet the requirements of a standard exemption for the operation of a safety grate manufacturing plant; PENALTY: \$3,950; STAFF ATTORNEY: Linda Sorrells, MC-175, (512) 239-3408; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas, 77023-1486. Issued in Austin, Texas, on March 14, 1997.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703556

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: March 14, 1997

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## Provisionally-Issued Temporary Permits to Appropriate State Water

Listed below are permits issued during the period of March 14, 1997.

Application Number TA-7782 by D.L. Lennon, Incorporated Contractor for diversion of 1 acre-foot in a 1-year period for industrial (highway construction, FM 2456) purposes. Water may be diverted from the FM 2456 crossing of an unnamed tributary of the West Fork Jernigan Creek, approximately 20 miles southeast of Bonham, Fannin County, Texas, Sulphur River Basin.

Application Number TA-7783 by D.L. Lennon, Incorporated Contractor for diversion of 1 acre-foot in a 1-year for industrial (Highway construction, FM 1566) purposes. Water may be diverted from the FM 1566 crossing of Horse Creek, approximately 7 miles northeast of Greenville, Hunt County, Texas, Sabin River Basin.

The Executive Director of the TNRCC has reviewed each application for the permits listed and determined that sufficient water is available at the proposed point of diversion to satisfy the requirements of the application as well as all existing water rights. Any person or persons who own water rights or who are lawful users of water on a stream affected by the temporary permits listed above and who believe that the diversion of water under the temporary permit will impair their rights may file a complaint with the TNRCC. The complaint can be filed at any point after the application has been filed with the TNRCC and the time the permit expires. The Executive Director shall make an immediate investigation to determine whether there is a reasonable basis for such a complaint. If a preliminary investigation determines that diversion under the temporary permit will cause injury to the complainant the commission shall notify the holder that the permit shall be cancelled without notice and hearing. No further diversions may be made pending a full hearing as provided in Section 295.174. Complaints should be addressed to Water Rights Permitting Section, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, Telephone (512) 239-4433. Information concerning these applications may be obtained by contacting the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 787311, Telephone (512) 239-3300.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703552

Eugenia K. Brumm, Ph.D

Chief Clerk

Texas Natural Resource Conservation Commission

Filed: March 14, 1997

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## Texas Board of Nursing Facility Administrators

### Correction of Error

The Texas Board of Nursing Facility Administrators Board adopted new 22 TAC §241.19 and §241.20. The rules appeared in the February 28, 1997, issue of the Texas Register (22 TexReg 2360).

The effective date of the rules should be March 6, 1997 instead of March 7, 1997 as published.

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## Public Utility Commission of Texas

**Notices of Application for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to Public Utility Commission Substantive Rule 23.103**

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 10, 1997, for an extension of the due date to file an intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103. A summary of the application follows.

**Docket Title and Number:** Application of Southwest Texas Telephone Company for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE 23.103(d)(2)(B), Docket Number 17043 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 17043, Southwest Texas Telephone Company requests an extension of the due date to file an intraLATA equal access implementation plan to July 8, 1997, and an extension to provide intraLATA equal access to January 1, 1998, or until the date certain for implementation of the state Universal Service Fund.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Affairs at (512) 936-7120 on or before March 31, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

**Issued in Austin, Texas, on March 14, 1997.**

TRD-9703575

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 14, 1997

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 10, 1997, for an extension of the due date to file an intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103. A summary of the application follows.

**Docket Title and Number:** Application of Poka Lambro Telephone Cooperative, Inc. for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE 23.103(d)(2)(B), Docket Number 17047 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 17047, Poka Lambro Telephone Cooperative, Inc. requests an extension of the due date to file an intraLATA equal access implementation plan to July 8, 1997, and an extension to provide intraLATA equal access to January 1, 1998, or until the date certain for implementation of the state Universal Service Fund.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Affairs at (512) 936-7120 on or before March 31, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

**Issued in Austin, Texas, on March 14, 1997.**

TRD-9703576

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 14, 1997

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 10, 1997, for an extension of the due date to file an intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103. A summary of the application follows.

**Docket Title and Number:** Application of Valley Telephone Cooperative, Inc. for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE 23.103(d)(2)(B), Docket Number 17048 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 17048, Valley Telephone Cooperative, Inc. requests an extension of the due date to file an intraLATA equal access implementation plan to July 8, 1997, and an extension to provide intraLATA equal access to January 1, 1998, or until the date certain for implementation of the state Universal Service Fund.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Affairs at (512) 936-7120 on or before March 31, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

**Issued in Austin, Texas, on March 14, 1997.**

TRD-9703577

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 14, 1997

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 10, 1997, for an extension of the due date to file an intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103. A summary of the application follows.

**Docket Title and Number:** Application of Fort Bend Telephone Company for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE 23.103(d)(2)(B), Docket Number 17049 before the Public Utility Commission of Texas.

**The Application:** In Docket Number 17049, Fort Bend Telephone Company requests an extension of the due date to file an intraLATA equal access implementation plan to July 8, 1997, and an extension to provide intraLATA equal access to January 1, 1998, or until the date certain for implementation of the state Universal Service Fund.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer

Affairs at (512) 936-7120 on or before March 31, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703578

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: March 14, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 10, 1997, for an extension of the due date to file an intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103. A summary of the application follows.

Docket Title and Number: Application of Central Texas Telephone Cooperative, Inc. for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE 23.103(d)(2)(B), Docket Number 17050 before the Public Utility Commission of Texas.

The Application: In Docket Number 17050, Central Texas Telephone Cooperative, Inc. requests an extension of the due date to file an intraLATA equal access implementation plan to July 8, 1997, and an extension to provide intraLATA equal access to January 1, 1998, or until the date certain for implementation of the state Universal Service Fund.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Affairs at (512) 936-7120 on or before March 31, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703579

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: March 14, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 10, 1997, for an extension of the due date to file an intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103. A summary of the application follows.

Docket Title and Number: Application of Brazoria Telephone Company for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE 23.103(d)(2)(B), Docket Number 17051 before the Public Utility Commission of Texas.

The Application: In Docket Number 17051, Brazoria Telephone Company requests an extension of the due date to file an intraLATA equal access implementation plan to July 8, 1997, and an extension to provide intraLATA equal access to January 1, 1998, or until the date certain for implementation of the state Universal Service Fund.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Affairs at (512) 936-7120 on or before March 31, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703580

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: March 14, 1997

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Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on February 10, 1997, for an extension of the due date to file an intraLATA equal access implementation plan pursuant to P.U.C. SUBSTANTIVE RULE 23.103. A summary of the application follows.

Docket Title and Number: Application of Cameron Telephone Company for Extension of Due Date for IntraLATA Equal Access Implementation Plan Pursuant to P.U.C. SUBSTANTIVE RULE 23.103(d)(2)(B), Docket Number 17052 before the Public Utility Commission of Texas.

The Application: In Docket Number 17052, Cameron Telephone Company requests an extension of the due date to file an intraLATA equal access implementation plan to July 8, 1997, and an extension to provide intraLATA equal access to January 1, 1998, or until the date certain for implementation of the state Universal Service Fund.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas 78711-3326, or call the Commission's Office of Consumer Affairs at (512) 936-7120 on or before March 31, 1997. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703581

Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: March 14, 1997

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**Public Notice of Interconnection Agreement**

On February 28, 1997, Southwestern Bell Telephone Company (SWB) and American Teleco., Inc. (ATI) collectively referred to as Applicants filed a joint application for approval of a modified interconnection agreement under the Federal Telecommunications Act of 1996 (FTA) (Pub. L. No. 104-104, 110 Stat. 56 (1996), (to be codified at 47 U.S.C. §§151 et. seq.) and the Public Utility Regulatory Act of 1995 (PURA95) (Texas Revised Civil Statutes Annotated article 1446c-0 Vernon Supplement 1997). The joint application has been designated Docket Number 17149. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.



The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 18 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the Applicants. The comments should specifically refer to Docket Number 17149. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by April 17, 1997, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
  - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
  - b) is not consistent with the public interest, convenience, and necessity; or
  - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, an Administrative Law Judge (ALJ) of the commission will determine whether to conduct further proceedings concerning the joint application. The ALJ shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The ALJ may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the Applicants, if necessary, and briefing and oral argument. The ALJ may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Office of Consumer Affairs at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 17149.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703574

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: March 14, 1997

### Public Notice of Project Investigating Texas Ratepayer Payments Into the Federal Nuclear Waste Fund

The Public Utility Commission of Texas (PUCT) requests interested parties to comment on the issue of nuclear utility payments into the Federal Nuclear Waste Fund (NWF) and possible action by the PUCT in response to the Department of Energy's (DOE) anticipated failure to meet its contractual obligations to accept nuclear utility spent nuclear fuel (SNF). In answering the questions, interested parties may find it helpful to review the memorandum to the PUCT commissioners dated December 6, 1996 on the same subject that was discussed as Item Number 24 during the Open Meeting on December 12, 1996. Answers to the questions may be filed by submitting 16 copies to the commission's Secretary, Ms. Paula Mueller, at 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days of the date of publication. All submissions should refer to Project Number 16534.

1) Given the delays in the federal spent fuel storage program and the Department of Energy's responsibility to accept SNF on January 31, 1998, as reaffirmed by the D.C. Circuit Court, what legal remedies are available to the commission to protect the interests of Texas ratepayers?

2) Numerous states and commissions have filed a petition with the D.C. Circuit Court of Appeals to protect the collection of fees from ratepayers through an order of escrow to ensure that NWF payments remain available for SNF disposal.

a) If this petition fails, what other actions should the PUCT consider to protect ratepayers?

b) Should the PUCT take action now, wait until the outcome of the current petition before the courts, or wait until the DOE breaches its obligation to begin accepting SNF on Jan 31, 1998?

3) Does the PUCT possess the requisite regulatory legal authority to order nuclear utilities to suspend or escrow payments into the NWF?

4) Would the PUCT's ordering the escrow of funds be deemed an abrogation of the contract between the DOE and the affected Texas utilities?

5) If payments into the NWF were suspended without a favorable judgment in the current petition, are there risks to PUCT regulated utilities (i.e., potential Nuclear Regulatory Commission actions, loss of SNF order of shipment, etc.)? If so, what are they? How severe or damaging could these consequences be to PUCT regulated utilities and/or their ratepayers? Are there any benefits? If so, what are they?

6) If the escrow or suspension options were pursued independent of the current petition, what milestones should be met to justify releasing the funds from escrow to the NWF?

7) How should Texas ratepayers be protected from the additional costs of SNF interim storage at PUCT regulated nuclear plants?

8) Have PUCT regulated nuclear plants made expenditures for additional storage of SNF based upon DOE's failure to prepare a permanent repository by 1998? If so, should the PUCT pursue reimbursement by the DOE? Why or why not?

Issued in Austin, Texas, on March 14, 1997.

TRD-9703582  
Paula Mueller  
Secretary of the Commission  
Public Utility Commission of Texas  
Filed: March 14, 1997

## Texas Rehabilitation Commission

### Request for Proposals

**RFP TITLE: ADVOCACY SUPPORT NETWORK** This announces the availability of funds to be awarded on behalf of the Texas Planning Council for Developmental Disabilities by the Texas Rehabilitation Commission. This is one of two Requests for Proposals offered under the Inclusive Communities Initiative.

**BACKGROUND-Inclusive communities Initiative:** To reduce service fragmentation and to encourage communities to fully include all members in the life of their communities, the Council has embarked on an Inclusive Communities Initiative. The Inclusive Communities Initiative will build on the work of Council grants and initiatives using the findings and expertise developed by current and past grantees and, as appropriate, the new projects initiated by the Council. Both this RFP and the RFP entitled Inclusive Communities are a part of the Inclusive Communities Initiative. Applicants under this announcement are encouraged to consider applying for and conjointly implementing both of the RFPs as complementary and supplementary projects.

**EXPECTED OUTCOME:** The purpose and expected outcome of the Inclusive Communities Initiative is to achieve full participation in the community for all members of the community, including those persons with a disability. As a means to accomplish this, the expected outcome of the Advocacy Support Network project is a viable advocacy network in four communities which results in enhanced advocacy capabilities among local advocates, stronger cross-disability advocacy at the local level, and support for local or regional cross-disability advocacy support networks. Collaborative applications among cooperating agencies and organizations are encouraged.

**ELIGIBILITY:** Eligible applicants can be organizations which are public agencies, private nonprofit agencies or private for-profit agencies. Nontraditional applicants from diverse geographical and cultural Texas communities are encouraged. **TERMS:** Under this announcement, up to four projects will be funded for up to three years. Funding for years 2 and 3 will be contingent upon an annual review of performance, availability of federal funding, and TPCDD funding priorities. The initial funding period is September 1, 1997 to May 31, 1998. Estimated funding per project to be determined by staff, but not to exceed \$25,000 per project per year. Non-federal match of 25% is required for the first year. A project located in counties designated as federal poverty areas requires a minimum of 10% matching resources for the first year. Increasing non-federal match will be required in years two through three. In-kind match may be accepted for all or part of the non-federal match in year one.

Grant funds for this RFP were awarded to the Texas Rehabilitation Commission on behalf of the Texas Planning Council for Developmental Disabilities by the Administration on Developmental Disabilities in the amount of \$100,000 (75%) in FY 1997. A nonfederal match in the amount of \$33,333 (25%) is expected.

For the application packet containing the full request for proposals, application forms and instructions, please submit a written or fax request to: Lester Sanders, Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Blvd., Austin, Texas 78751-2399, (512) 424-4084 (voice) or (512) 424-4097 (fax). Deadline: Proposals will be accepted at the Texas Planning Council Office, 4900 North Lamar Blvd., Office #5410, 5th Floor, Austin, Texas until 4:00 p.m. on May 16, 1997. No fax copies of proposals will be accepted. Copies of application kit will be sent by regular mail and will not be faxed to applicants.

Issued in Austin, Texas, on March 14, 1997.

TRD-9703586  
Simon Y. Rodriguez  
General Counsel for the Office of the General Counsel  
Texas Rehabilitation Commission  
Filed: March 14, 1997

**RFP TITLE: INCLUSIVE COMMUNITIES** This announces the availability of funds to be awarded on behalf of the Texas Planning Council for Developmental Disabilities by the Texas Rehabilitation Commission. This is one of two Requests for Proposals offered under the Inclusive Communities Initiative.

**BACKGROUND-Inclusive Communities Initiative:** To reduce service fragmentation and to encourage communities to fully include all members in the life of their communities the Council has embarked on an Inclusive Communities Initiative. The Inclusive Communities Initiative will build on the work of Council grants and initiatives using the findings and expertise developed by current and past grantees and, as appropriate, the new projects initiated by the Council. Both this RFP and the RFP entitled Advocacy Support Network focus on achieving that goal. Applicants under this announcement are encouraged to consider applying for and conjointly implementing both of the RFPs described as complementary and supplementary projects.

**EXPECTED OUTCOMES:** The purpose and expected outcome of the Inclusive Communities Initiative is to achieve full participation in the community for all members of the community, including those persons with a disability. As a means to accomplish this, the expected outcome of the Inclusive Communities project is five communities which have developed mechanisms and are implementing plans for solving community inclusion issues. **Initial Phase:** Each project will develop an infrastructure for community problem solving and identify barriers and areas of community concern regarding the full inclusion of people of all ages and cultures in the community, including people with disabilities. An action plan identifying areas of activity and expected outcomes/results over a five year period will be developed during this phase.

**SECOND PHASE:** The duration of the second phase is up to four years. The second phase will focus on the implementation of the action plan developed during the first phase. Applicants must demonstrate collaboration and planning in the application with agencies, organizations and individuals with whom they will cooperate to achieve project objectives. Collaborative applications among cooperating agencies and organizations are encouraged.

**PRODUCT:** The project will develop a four-year action plan for achieving a fully inclusive community.

**ELIGIBILITY:** Eligible applicants can be public agencies, private nonprofit agencies or private for-profit organizations, municipalities, civic organizations, or other entities involved in community betterment. Nontraditional applicants from diverse geographical and cultural communities are encouraged.

**TERMS:** Under this announcement, up to five projects will be funded for one year. Contingent on approval of an action plan, up to five projects will receive implementation funding for up to four additional years. The initial funding period is September 1, 1997 to May 31, 1998. Estimated funding to be determined by TPCDD staff but not to exceed \$50,000 for the first year and up to \$75,000 annually for years two through five. Non-federal match of 25% is required for the first year. A project located in counties designated as federal poverty areas requires a minimum of 10% matching resources for the first year. Increasing non-federal match will be required in years two through five. Grant funds for this RFP were awarded to the Texas Rehabilitation Commission on behalf of the Texas Planning Council for Developmental Disabilities by the Administration on Developmental Disabilities in the amount of \$250,000 (75%) in FY 1997. A nonfederal match in the amount of \$83,333 (25%) is expected.

For the application packet containing the full request for proposals, application forms and instructions, please submit a written or fax request to: Lester Sanders, Grants Management Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751-2399, (512) 424-4084 (voice) or (512) 424-4097 (fax). Deadline: Proposals will be accepted at the Texas Planning Council Office, 4900 North Lamar Boulevard, Office #5410, 5th Floor, Austin, Texas until 4:00 p.m. on May 16, 1997. No fax copies of proposals will be accepted. Copies of application kit will be sent by regular mail and will not be faxed to applicants. Issued in Austin, Texas on March 14, 1997

Issued in Austin, Texas, on March 14, 1997.

TRD-9703588

Simon Y. Rodriguez

General Counsel for the Office of the General Counsel

Texas Rehabilitation Commission

Filed: March 14, 1997

## Texas Department of Transportation

### Requests for Proposals

**Notice of Invitation:** The Amarillo District Office of the Texas Department of Transportation (TxDOT) intends to enter four contracts with professional engineers, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. TxDOT will negotiate and enter a separate contract with each of the four prime providers selected. To qualify for contract award a selected engineer must perform a minimum of 30% of the actual contract work.

**RFP Number 04-7RFP5002:** The engineer will provide Advanced Preliminary Engineering to upgrade US 54 from 2 lanes to 4 lanes with striped median and US 287 from 2 lane to 4 lane divided highway in Dallam, Hartley and Sherman counties.

**Deadline:** A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (806) 356-3263,

or by hand delivery to TxDOT, Amarillo District Office, Attention: John White, 5715 Canyon Drive, Amarillo, Texas 79110, or by mail addressed to P.O. Box 2708, Amarillo, Texas 79105-2708. Letters of interest will be received until 5:00 p.m. on Thursday, April 17, 1997. The letter of interest must include the engineer's firm name, address, telephone number, fax number, name of engineer's contact person and refer to RFP Number 04-7RFP5002. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet. TxDOT will not issue Request for Proposal packet without receipt of letter of interest.)

**Preproposal Meeting:** A preproposal meeting will be held on Thursday, April 24, 1997, at the TxDOT, Amarillo District Office, 5715 Canyon Drive, Amarillo, Texas 79110 beginning at 2:00 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory preproposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact John White at (806) 356-3248 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline:** Proposals for RFP Number 04-7RFP5002 will be accepted until 5:00 p.m. on Thursday, June 12, 1997 at the previously mentioned TxDOT, Amarillo District Office address.

**Agency Contact:** Requests for additional information regarding this notice of invitation should be addressed to John White at (806) 356-3248 or fax (806) 356-3263.

Issued in Austin, Texas, on March 13, 1996.

TRD-9703533

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Filed: March 13, 1996

**Notice of Invitation:** The Texas Department of Transportation (TxDOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

**Contract Number 04-745P5003:** The engineer will provide Advanced Preliminary Engineering to add a direct connector at the IH 40/IH 27 interchange from the IH 40 eastbound exit ramp to IH 27 southbound in Amarillo, Texas.

**Deadline:** A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (806) 356-3263, or by hand delivery to TxDOT, Amarillo District Office, Attention: John White, 5715 Canyon Drive, Amarillo, Texas 79110, or by mail addressed to P.O. Box 2708, Amarillo, Texas 79105-2708. Letters of interest will be received until 5:00 p.m. on Tuesday, April 15, 1997. The letter of interest must include the engineer's firm name, address, telephone number, fax number, name of engineer's contact person and refer to Contract Number 04-745P5003. Upon receipt of the letter of interest a Request for Proposal packet will be issued.

(Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet. TxDOT will not issue Request for Proposal packet without receipt of letter of interest.)

**Preproposal Meeting:** A preproposal meeting will be held on Thursday, April 24, 1997, at the TxDOT, Amarillo District Office, 5715 Canyon Drive, Amarillo, Texas 79110 beginning at 10:00 a.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory preproposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact John White at (806) 356-3248 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline:** Proposals for Contract Number 04-745P5003 will be accepted until 5:00 p.m. on Friday, May 23, 1997 at the previously mentioned TxDOT, Amarillo District Office address.

**Agency Contact:** Requests for additional information regarding this notice of invitation should be addressed to John White at (806) 356-3248 or fax (806) 356-3263.

**Contract Number 04-745P5007:** The engineer will provide Plans, Specifications & Estimate (PS&E) to reconstruct old truss bridge for use as a pedestrian/bicycle path in Canadian, Texas.

**Deadline:** A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (806) 356-3263, or by hand delivery to TxDOT, Amarillo District Office, Attention: John White, 5715 Canyon Drive, Amarillo, Texas 79110, or by mail addressed to P.O. Box 2708, Amarillo, Texas 79105-2708. Letters of interest will be received until 5:00 p.m. on Friday, April 11, 1997. The letter of interest must include the engineer's firm name, address, telephone number, fax number, name of engineer's contact person and refer to Contract Number 04-745P5007. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivery or fax, will be required to receive Request for Proposal packet. TxDOT will not issue Request for Proposal packet without receipt of letter of interest.)

**Preproposal Meeting:** A preproposal meeting will be held on Thursday, April 17, 1997, at the TxDOT, Amarillo District Office, 5715 Canyon Drive, Amarillo, Texas 79110 beginning at 2:00 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory preproposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact John White at (806) 356-3248 at least two work days prior to the meeting so that appropriate arrangements can be made.

**Proposal Submittal Deadline:** Proposals for Contract Number 04-745P5007 will be accepted until 5:00 p.m. on Thursday, May 15, 1997 at the previously mentioned TxDOT, Amarillo District Office address.

**Agency Contact:** Requests for additional information regarding this notice of invitation should be addressed to John White at (806) 356-3248 or fax (806) 356-3263.

Issued in Austin, Texas, on March 13, 1996.

TRD-9703534

Robert E. Shaddock  
General Counsel

Texas Department of Transportation  
Filed: March 13, 1996

## Texas Workforce Commission

### Notice of Contract Award

The Texas Workforce Commission files this notice of the award of a consulting services contract, approved on March 7, 1997, to the Hobbs Company under the provisions of the Government Code, Chapter 2254.

The award was made pursuant to a finding of fact from the governor's Office of Budget and Planning dated January 2, 1997, and under the provisions of Government Code, Section 2254.025.

The Hobbs Company will design a Texas-specific model of a Full Employment Program, incorporating the capabilities and features of programs now operating in Mississippi and Oregon, for operational testing in a major metropolitan area of the state to be selected by the Texas Workforce Commission. The test will be designed to operate in coordination with other elements of Texas' welfare reform program, but in a manner that will allow comparative analysis of the impact of the overall program with and without full employment. The design will also delineate the process for the optional statewide implementation of a Full Employment Program.

The private consultant is The Hobbs Company, whose business address is 4027 North Upland Street, McLean, Virginia 22101-3355.

The award is for the total value of \$30,000 with a beginning contract date of February 17, 1997 and a contract ending date of August 15, 1997.

The Hobbs Company shall:

Prepare and submit to the Texas Workforce Commission for review and approval, within 60 days of contract award, an initial concept report describing the broad outlines of a Texas-specific Full Employment Program, including program goals, recommendations for decisions on major policy issues, a proposed test location, and a general description of operating and organizational requirements and expected impacts.

Prepare, within 90 days of approval of the initial concept report, a detailed operating plan for the Full Employment test, incorporating essential specifications for implementation, including state plan amendments, special operating procedures, organization and contracting arrangements, Management Information Systems and training implications, schedule, and evaluation options.

Determine the need for and, in a timely manner during the course of the project, prepare any legislative proposals necessary to carry out the Full Employment test.

The Hobbs Company shall also produce the following deliverables within the timeframe of the contract:

Plan for operational testing of a pilot site in a major metropolitan area

Plan for statewide implementation

Strategies for employer involvement through management plan for outreach

Cost-benefit analysis, including projections of start-up costs including but not limited to contracts, media, processing of payments, job readiness classes

Evaluation criteria using current Texas data collection systems

A performance-based contracting system

A feasible approach to using Federal Unemployment Tax Act funds for contracting out workforce-related services.

Issued in Austin, Texas, on March 13, 1997.

TRD-9703494

Esther Hajdar

Director of Legal Services

Texas Workforce Commission

Filed: March 13, 1997



## March - December 1997 Publication Schedule

The following is the March-December 1997 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. No issues will be published on May 30, November 14, December 2, and December 30. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
21 Tuesday, March 18	Monday, March 10	Wednesday, March 12	Wednesday, March 12
22 Friday, March 21	Wednesday, March 12	Monday, March 17	Monday, March 17
23 Tuesday, March 25	Monday, March 17	Wednesday, March 19	Wednesday, March 19
24 Friday, March 28	Wednesday, March 19	Monday, March 24	Monday, March 24
25 Tuesday, April 1	Monday, March 24	Wednesday, March 26	Wednesday, March 26
26 Friday, April 4	Wednesday, March 26	Monday, March 31	Monday, March 31
Tuesday, April 8	<i>First Quarterly Index</i>		
27 Friday, April 11	Wednesday, April 2	Monday, April 7	Monday, April 7
28 Tuesday, April 15	Monday, April 7	Wednesday, April 9	Wednesday, April 9
29 Friday, April 18	Wednesday, April 9	Monday, April 14	Monday, April 14
30 Tuesday, April 22	Monday, April 14	Wednesday, April 16	Wednesday, April 16
31 Friday, April 25	Wednesday, April 16	Monday, April 21	Monday, April 21
32 Tuesday, April 29	Monday, April 21	Wednesday, April 23	Wednesday, April 23
33 Friday, May 2	Wednesday, April 23	Monday, April 28	Monday, April 28
34 Tuesday, May 6	Monday, April 28	Wednesday, April 30	Wednesday, April 30
35 Friday, May 9	Wednesday, April 30	Monday, May 5	Monday, May 5

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
36 Tuesday, May 13	Monday, May 5	Wednesday, May 7	Wednesday, May 7
37 Friday, May 16	Wednesday, May 7	Monday, May 12	Monday, May 12
38 Tuesday, May 20	Monday, May 12	Wednesday, May 14	Wednesday, May 14
39 Friday, May 23	Wednesday, May 14	Monday, May 19	Monday, May 19
40 Tuesday, May 27	Monday, May 19	Wednesday, May 21	Wednesday, May 21
Friday, May 30	<i>No Issue Published</i>		
41 Tuesday, June 3	*Friday, May 23	Wednesday, May 28	Wednesday, May 28
42 Friday, June 6	Wednesday, May 28	Monday, June 2	Monday, June 2
43 Tuesday, June 10	Monday, June 2	Wednesday, June 4	Wednesday, June 4
44 Friday, June 13	Wednesday, June 4	Monday, June 9	Monday, June 9
45 Tuesday, June 17	Monday, June 9	Wednesday, June 11	Wednesday, June 11
46 Friday, June 20	Wednesday, June 11	Monday, June 16	Monday, June 16
47 Tuesday, June 24	Monday, June 16	Wednesday, June 18	Wednesday, June 18
48 Friday, June 27	Wednesday, June 18	Monday, June 23	Monday, June 23
49 Tuesday, July 1	Monday, June 23	Wednesday, June 25	Wednesday, June 25
50 Friday, July 4	Wednesday, June 25	Monday, June 30	Monday, June 30
51 Tuesday, July 8	Monday, June 30	Wednesday, July 2	Wednesday, July 2
Friday, July 11	<i>Second Quarterly Index</i>		
52 Tuesday, July 15	Monday, July 7	Wednesday, July 9	Wednesday, July 9
53 Friday, July 18	Wednesday, July 9	Monday, July 14	Monday, July 14
54 Tuesday, July 22	Monday, July 14	Wednesday, July 16	Wednesday, July 16
55 Friday, July 25	Wednesday, July 16	Monday, July 21	Monday, July 21
56 Tuesday, July 29	Monday, July 21	Wednesday, July 23	Wednesday, July 23
57 Friday, August 1	Wednesday, July 23	Monday, July 28	Monday, July 28

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
58 Tuesday, August 5	Monday, July 28	Wednesday, July 30	Wednesday, July 30
59 Friday, August 8	Wednesday, July 30	Monday, August 4	Monday, August 4
60 Tuesday, August 12	Monday, August 4	Wednesday, August 6	Wednesday, August 6
61 Friday, August 15	Wednesday, August 6	Monday, August 11	Monday, August 11
62 Tuesday, August 19	Monday, August 11	Wednesday, August 13	Wednesday, August 13
63 Friday, August 22	Wednesday, August 13	Monday, August 18	Monday, August 18
64 Tuesday, August 26	Monday, August 18	Wednesday, August 20	Wednesday, August 20
65 Friday, August 29	Wednesday, August 20	Monday, August 25	Monday, August 25
66 Tuesday, September 2	Monday, August 25	Wednesday, August 27	Wednesday, August 27
67 Friday, September 5	Wednesday, August 27	*Friday, August 29	*Friday, August 29
68 Tuesday, September 9	*Friday, August 29	Wednesday, September 3	Wednesday, September 3
69 Friday, September 12	Wednesday, September 3	Monday, September 8	Monday, September 8
70 Tuesday, September 16	Monday, September 8	Wednesday, September 10	Wednesday, September 10
71 Friday, September 19	Wednesday, September 10	Monday, September 15	Monday, September 15
72 Tuesday, September 23	Monday, September 15	Wednesday, September 17	Wednesday, September 17
73 Friday, September 26	Wednesday, September 17	Monday, September 22	Monday, September 22
74 Tuesday, September 30	Monday, September 22	Wednesday, September 24	Wednesday, September 24
75 Friday, October 3	Wednesday, September 24	Monday, September 29	Monday, September 29
Tuesday, October 7	<i>Third Quarterly Index</i>		
76 Friday, October 10	Wednesday, October 1	Monday, October 6	Monday, October 6
77 Tuesday, October 14	Monday, October 6	Wednesday, October 8	Wednesday, October 8
78 Friday, October 17	Wednesday, October 8	Monday, October 13	Monday, October 13
79 Tuesday, October 21	Monday, October 13	Wednesday, October 15	Wednesday, October 15
80 Friday, October 24	Wednesday, October 15	Monday, October 20	Monday, October 20



<b>FOR ISSUE PUBLISHED ON:</b>	<b>DEADLINES FOR RULES BY 10 A.M.</b>	<b>DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.</b>	<b>DEADLINES FOR OPEN MEETINGS BY 10 A.M.</b>
81 Tuesday, October 28	Monday, October 20	Wednesday, October 22	Wednesday, October 22
82 Friday, October 31	Wednesday, October 22	Monday, October 27	Monday, October 27
83 Tuesday, November 4	Monday, October 27	Wednesday, October 29	Wednesday, October 29
84 Friday, November 7	Wednesday, October 29	Monday, November 3	Monday, November 3
85 Tuesday, November 11	Monday, November 3	Wednesday, November 5	Wednesday, November 5
Friday, November 14	<i>No Issue Published</i>		
86 Tuesday, November 18	Monday, November 10	Wednesday, November 12	Wednesday, November 12
87 Friday, November 21	Wednesday, November 12	Monday, November 17	Monday, November 17
88 Tuesday, November 25	Monday, November 17	Wednesday, November 19	Wednesday, November 19
89 Friday, November 28	Wednesday, November 19	Monday, November 24	Monday, November 24
Tuesday, December 2	<i>No Issue Published</i>		
90 Friday, December 5	Wednesday, November 26	Monday, December 1	Monday, December 1
91 Tuesday, December 9	Monday, December 1	Wednesday, December 3	Wednesday, December 3
92 Friday, December 12	Wednesday, December 3	Monday, December 8	Monday, December 8
93 Tuesday, December 16	Monday, December 8	Wednesday, December 10	Wednesday, December 10
94 Friday, December 19	Wednesday, December 10	Monday, December 15	Monday, December 15
95 Tuesday, December 23	Monday, December 15	Wednesday, December 17	Wednesday, December 17
96 Friday, December 26	Wednesday, December 17	Monday, December 22	Monday, December 22
Tuesday, December 30	<i>No Issue Published</i>		



## How to Use the Texas Register

**Information Available:** The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

**Governor** - Appointments, executive orders, and proclamations.

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

**Secretary of State** - opinions based on the election laws.

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

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

**Proposed Rules** - sections proposed for adoption.

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

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

**Texas Department of Insurance Exempt Filings** - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

**Texas Department of Banking** - opinions and exempt rules filed by the Texas Department of Banking.

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

**Open Meetings** - notices of open meetings.

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

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

**How to Cite:** Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 22 (1997) is cited as follows: 22 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "22 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 22 TexReg 3."

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

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in a plain text version as well as a .pdf (portable document format) version through the Internet. In addition to the Internet version, the *Texas Register* is available online through a dialup bulletin board and as ASCII files on diskette. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

### Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official

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

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

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

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

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

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

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

**How to update:** To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 28, April 8, July 11, and October 7, 1997). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

#### TITLE 40. SOCIAL SERVICES AND ASSISTANCE

##### Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

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

**Update by FAX:** An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the *TAC* number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561 or (800) 226-7199.

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