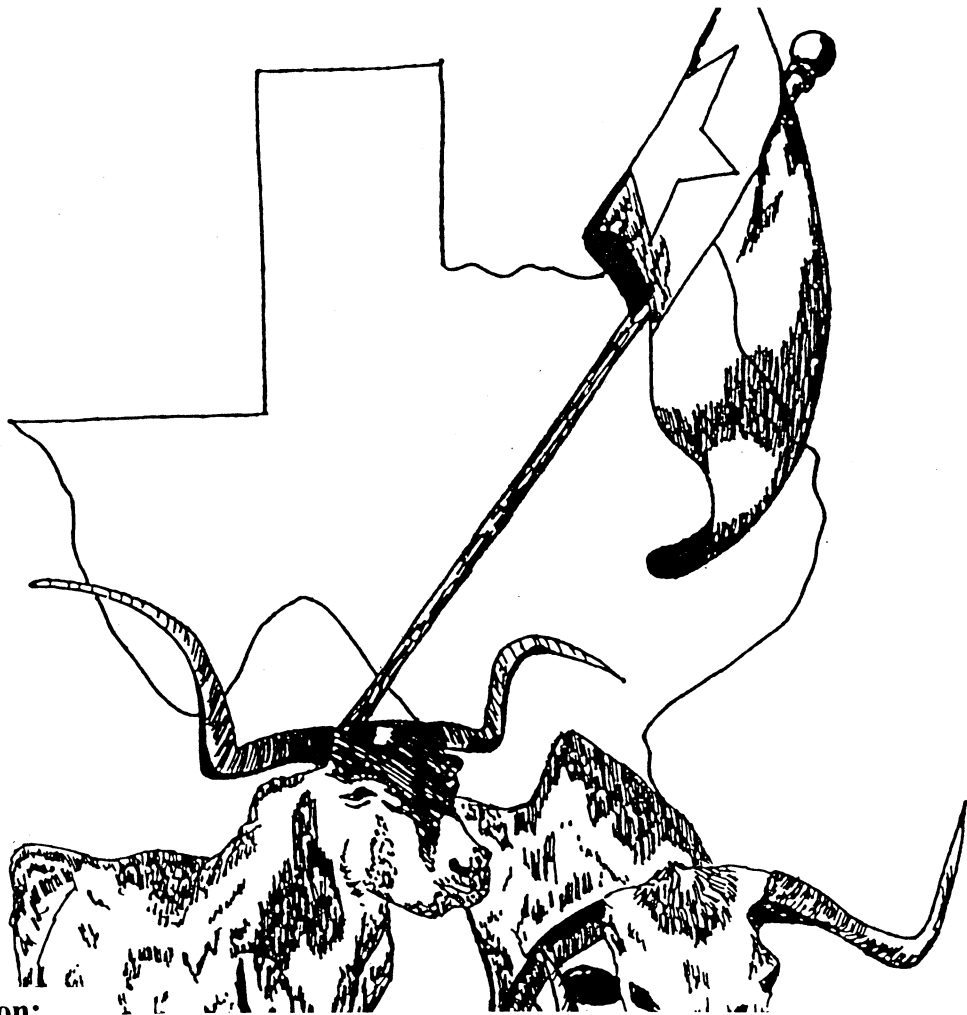

TEXAS REGISTER

Volume .21 Number .17 March 5, 1996

Page 1718-1837



Correction:

In converting to new publishing software with the February 27, 1996, *Texas Register*, we inadvertently omitted the names of state agencies from the Table of Contents. A replacement Table of Contents for the February 27 issue is printed in the back of this issue.



This month's front cover artwork:

Artist: Lakeisha R. Hines

11th grade

Sulphur Springs High School, Sulphur Springs ISD

School children's artwork has decorated the blank filler pages of the *Texas Register* since 1987. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

Starting with the February 27, 1996 issue, we will display artwork on the cover of each *Texas Register*. The artwork featured on the front cover is chosen at random.

The artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*. The artwork does not add additional pages to each issue and does not increase the cost of the *Texas Register*.

For more information about the student art project, please call (800) 226-7199.

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IN THIS ISSUE

GOVERNOR

Office of the Governor

Appointments Made February 7, 1996.....	1724
Appointments Made February 12, 1996.....	1724
Appointments Made February 13, 1996.....	1724
Appointments Made February 14, 1996.....	1724
Appointments Made February 21, 1996.....	1725

Opinions

PROPOSED RULES

Public Utility Commission of Texas

Substantive Rules

16 TAC §23.61.....	1730
16 TAC §23.98.....	1731

Texas Higher Education Coordinating Board

Proprietary Schools

19 TAC §§12.21-12.24.....	1732
---------------------------	------

Texas Department of Mental Health and Mental Retardation

ICF/MR Programs

25 TAC §406.311.....	1734
----------------------	------

Texas Natural Resource Conservation Commission

Consolidated Permits

30 TAC §305.45.....	1735
30 TAC §305.62.....	1736
30 TAC §305.127.....	1736
30 TAC §305.141.....	1737

Comptroller of Public Accounts

Property Tax Administration

34 TAC §9.4011.....	1737
---------------------	------

Texas Youth Commission

Administrative Provisions

37 TAC §81.25.....	1753
--------------------	------

WITHDRAWN RULES

Texas State Library and Archives Commission

State Records

13 TAC §§6.21-6.35.....	1754
-------------------------	------

Local Records

13 TAC §§7.21-7.35.....	1754
-------------------------	------

ADOPTED RULES

Texas Lottery Commission

Administration of the State Lottery Act

16 TAC §§401.152, 401.153, 401.156, 401.157, 401.159.....	1756
16 TAC §§401.301-401.304.....	1756
16 TAC §§401.352, 401.355, 401.356, 401.361-401.364, 401.366 1757	

Texas Higher Education Coordinating Board

Agency Administration

19 TAC §1.9.....	1757
------------------	------

Program Development

19 TAC §§5.151-5.155, 5.157, 5.158.....	1757
19 TAC §§5.151-5.159.....	1758
19 TAC §§5.191-5.195.....	1762
19 TAC §§5.311-5.318.....	1762

Campus Planning

19 TAC §§17.24, 17.31, 17.33.....	1762
19 TAC §§17.44-17.46.....	1763

Student Services

19 TAC §21.31.....	1764
19 TAC §21.508.....	1764
19 TAC §§21.970-21.981.....	1764
19 TAC §§21.970-21.983.....	1765

Texas Department of Mental Health and Mental Retardation

ICF/MR Programs

25 TAC §406.157.....	1765
----------------------	------

Texas Department of Insurance

Continuing Care Retirement Facilities

19 TAC §§33.1-33.10.....	1765
19 TAC §§33.101-33.108.....	1767
19 TAC §§33.201-33.206.....	1767
19 TAC §§33.301-33.308.....	1768
19 TAC §33.304.....	1768
19 TAC §33.401.....	1769
19 TAC §§33.402-33.406.....	1770
19 TAC §§33.402-33.407.....	1770
19 TAC §§ 33.501-33.511.....	1771

Employees Retirement System

Benefits

34 TAC §73.31.....	1774
--------------------	------

Texas Commission for the Deaf and Hard of Hearing
 Board for Evaluation of Interpreters and Interpreter Certification

40 TAC §183.5011774
 40 TAC §183.5051775

EXEMPT FILINGS

Proposed

Adopted

OPEN MEETINGS

State Aircraft Pooling Board

Monday, March 11, 1996, 9:30 a.m.1778

Texas Board of Chiropractic Examiners

Thursday, March 7, 1996, 8:30 a.m.1778
 Thursday, March 7, 1996, 8:30 a.m.1778
 Thursday, March 7, 1996, 9:30 a.m.1778
 Thursday, March 7, 1996, 10:00 a.m.1778
 Thursday, March 7, 1996, 1:00 p.m.1778
 Thursday, March 7, 1996, 1:30 p.m.1778

Community Nutritional Task Force

Wednesday, March 6, 1996, 10:00 a.m.1779

Texas Department of Criminal Justice

Thursday, March 7, 1996, 1:30 p.m.1779
 Friday, March 8, 1996, 9:00 a.m.1779

Texas Education Agency

Monday, March 18, 1996, 10:00 a.m.1779

State Employee Charitable Campaign

Thursday, March 7, 1996, 10:00 a.m.1780
 Monday, March 11, 1996, 10:30 a.m.1780

Fire Fighters' Pension Commission

Thursday-Friday, March 28-29, 1996, 9:00 a.m. and 1:00 p.m. (Thursday), and 8:30 a.m. (Friday)1780

Texas Department of Health

Monday, March 11, 1996, 1:00 p.m.1780
 Monday, March 11, 1996, 1:00 p.m.1780
 Thursday, March 14, 1996, 11:00 a.m.1781

Texas Department of Housing and Community Affairs

Monday, March 4, 1996, 9:00 a.m.1781

Texas Department of Human Services

Thursday, March 7, 1996, 10:00 a.m.1781

Texas Department of Insurance

Monday, March 11, 1996, 9:00 a.m.1781
 Friday, March 15, 1996, 1:00 p.m.1781

Texas Natural Resource Conservation Commission

Wednesday, March 6, 1996, 9:30 a.m.1781
 Wednesday, March 6, 1996, 9:30 a.m.1782
 Friday, March 15, 1996, 9:00 a.m.1782
 Monday, March 25, 1996, 10:00 a.m.1782
 Wednesday, April 10, 1996, 10:00 a.m.1782

Texas State Board of Pharmacy

Thursday, March 7, 1996, 9:00 a.m. (Conclusion)1782

Texas Property and Casualty Insurance Guaranty Association

Tuesday, March 5, 1996, 1:00 p.m.1783

Public Utility Commission of Texas

Wednesday, March 6, 1996, 9:00 a.m.1783
 Wednesday, March 20, 1996, 8:30 a.m.1783

Council on Sex Offender Treatment

Friday, March 8, 1996, 8:30 a.m.1783

Texas State Board of Social Worker Examiners

Friday, March 8, 1996, 9:00 a.m.1783
 Friday, March 8, 1996, 10:00 a.m.1784
 Friday, March 8, 1996, 1:30 p.m.1784
 Saturday, March 9, 1996, 8:00 a.m.1784

Texas Guaranteed Student Loan Corporation

Wednesday-Thursday, March 6-7, 1996, 2:30 p.m. and 8:30 a.m., respectively.1784

Texas Department of Transportation

Thursday, February 29, 1996, 9:00 a.m.1785

Texas State Treasury

Wednesday, March 6, 1996, 11:00 a.m.1785

The University of Texas System

Friday, March 1, 1996, 11:00 a.m.1785

Texas Workforce Commission

Tuesday, March 5, 1996, 9:00 a.m.1785

Regional Meetings

Meetings Filed February 26, 19961786
 Meetings Filed February 27, 19961786
 Meetings Filed February 28, 19961786

IN ADDITION

Office of the Consumer Credit Commissioner

Revised Interpretations	1788
Notice of Rate Ceilings	1788

Texas Education Agency

Notice of Registration of Providers of School Board Member Continuing Education	1789
---	------

Texas Department of Agriculture

Request for Proposal-Financial Advisor	1789
--	------

Texas Department of Health

Notice of Revocation of a Certificate of Registration	1791
---	------

Texas Department of Housing and Community Affairs

Notice of Funding Availability	1791
--------------------------------------	------

◆ ◆ ◆
Texas Department of Human Services

Public Notice	1791
---------------------	------

◆ ◆ ◆
Texas Department of Insurance

Notice	1791
Third Party Administrator Applications	1792
Notices of Public Hearing	1792
Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers	1792

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Notice of Amendment of Consulting Services Contract	1794
Public Hearing Notice	1794
Public Notice	1794

Texas Parks and Wildlife Department

Notice of Public Hearing-Gulf States Marine Fisheries Commission	1795
--	------

Texas Department of Protective and Regulatory Services

Announcement of Intention to Procure Personal Assistance Services	1795
---	------

Public Utility Commission of Texas

Correction of Public Hearing Date	1796
Notice of Work Session	1796

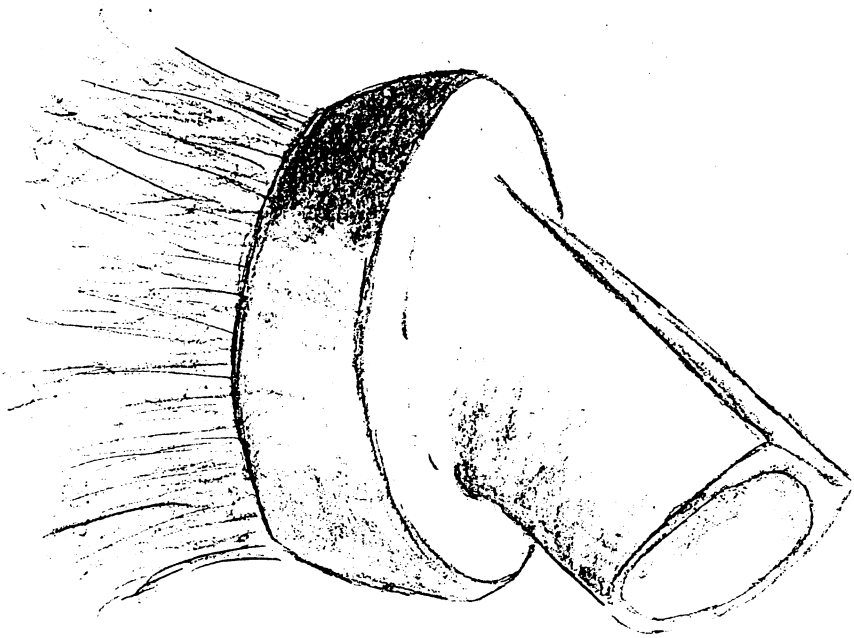
Texas Council on Purchasing from People with Disabilities

Mission Statement — Objectives	1796
--------------------------------------	------

Texas Workforce Commission

Notice of Hearing	1796
-------------------------	------

GOVERNOR



Name: Lance Bishop

Grade: 8

School: Buffalo Jr. High School, Buffalo ISD

*Lance
Bishop*

THE GOVERNOR

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

Office of the Governor

Appointments Made February 7, 1996

To be chairman of the **Texas State Board of Examiners of Professional Counselors** for a term at the pleasure of the Governor. Anthony Paul Picchioni, Ph.D. of Irving will be replacing Dr. James O. Mathis of Huntsville as chairman. Dr. Mathis will continue to serve on the board.

To be a member of the **Community Nutrition Task Force** for a term to expire September 1, 1997: Jerry W. Meers, 2314 56th Street, Lubbock, Texas 79412. Mr. Meers is being appointed pursuant to House Bill Number 2198, 74th Legislature, Regular Session.

Appointments Made February 12, 1996

To be a member of the **Texas Defense Economic Adjustment Advisory Council** for a term at the pleasure of the Governor pursuant to Executive Order Number GWB 95-9: Major General James S. Childress, Commander, San Antonio Air Logistics Center, Kelly Air Force Base, San Antonio, Texas 78241, (210) 925-6914.

Appointments Made February 13, 1996

To be a member of the **Texas Aerospace Commission** for a term to expire February 1, 2001: Anne H. McNamara, 9307 Guernsey Lane, Dallas, Texas 75220. Mrs. McNamara will be replacing Ronald G. Bliss of Houston whose term expired.

To be a member of the **Texas State Board of Pharmacy** for a term to expire August 31, 2001: Oren M. Peacock, Jr., 5409 Heritage Circle, Sachse, Texas 75048. Mr. Peacock will be replacing David Lee Franklin of Dallas whose term expired.

To be a member of the **Texas State Board of Pharmacy** for a term to expire August 31, 2001: Roberta Williams High, Route 1, Box 362, Haskell, Texas 79521. Mrs. High will be replacing Thomas A. Aday of Plainview whose term expired.

To be a member of the **Texas State Board of Pharmacy** for a term to expire August 31, 2001: Bill C. Pittman, 4805 Fern Hollow, Austin, Texas 78731. Mr. Pittman will be replacing Ann Peden of Hondo whose term expired.

To be a member of the **Texas State Board of Pharmacy** for a term to expire August 31, 2001: Ira Wayne McConnell, 11006 Bellbrook, Houston, Texas 77096. Mr. McConnell will be replacing Susan Rees Williams of McAllen whose term expired.

To be a member of the **Texas State Board of Acupuncture Examiners** for a term to expire January 31, 1997: Pamela Kay Estes, 1601 South Shepherd, Number 272, Houston, Texas 77019. Ms. Estes will be filling the unexpired term of Fred Wulf of Center who resigned.

To be a member of the **Texas State Board of Acupuncture Examiners** for a term to expire January 31, 2001: Annette M. Zaharoff, M.D., 17103 Fawncloud, San Antonio, Texas 78248. Dr. Zaharoff will be replacing Dr. William F. Craig of Arlington whose term expired.

To be a member of the **Texas State Board of Acupuncture Examiners** for a term to expire January 31, 2001: Dr. Lawrence Woon-Chung Chan, 7213 Alpine Lane, Amarillo, Texas 79109. Dr. Chan will be replacing Dr. Houchi Dung of San Antonio who resigned.

To be a member of the **Texas State Board of Acupuncture Examiners** for a term to expire January 31, 2001: Dr. Cheng Ming Chang, 1103 Bitters Road, San Antonio, Texas 78216. Dr. Chang is being reappointed.

Appointments Made February 14, 1996

To be a member of the **Texas State Board of Pharmacy** for a term to expire August 31, 2001: Oren M. Peacock, Jr., Sachse, Texas. Please correct your records to show the expiration days of Mr. Peacock's term to be August 31, 1999.

To be chair of the **Texas Commission on Alcohol and Drug Abuse** for a term at the pleasure of the Governor: James C. Oberwetter of Dallas.

To be members of the **Texas Commission on Alcohol and Drug Abuse** pursuant to Senate Bill 1428, 74th Legislature for terms to expire February 1, 1997: Hector Delgado, 3028 Zion, El Paso, Texas 79904; Murphy George, Route 1, Box 3230, Lufkin, Texas

75901; Dorothy Grasty, 4614 Willow Bend, Arlington, Texas 76017; Stephanie Haynes, P.O. Box 1022, Alpine, Texas 79831; Norwood W. Knight-Richardson, M.D., 928 Plantation Drive, League City, Texas 77573; and James C. Oberwetter, 7029 Meadow Lake Avenue, Dallas, Texas 75214.

Appointments Made February 21, 1996

To be a member of the **State Preservation Board** for a term to expire February 1, 1997: Dealey Herndon, 2903 Tarry Trail, Austin, Texas 78703. Mrs. Herndon will be replacing Joseph F. Pinnelli of Austin whose term expired.

To be a member of the **Board of Vocational Nurse Examiners** for a term to expire September 6, 1999: Carla Sue McCroan, Route One, Box 125Z, Royse City, Texas 75189. Mrs. McCroan will be filling the unexpired term of Steven H. Levin of Dallas who resigned.

To be chair of the **Texas Cosmetology Commission** for a term at the pleasure of the Governor. Comer J. Cottrell, Jr. of Dallas will be replacing Lucille Garcia of San Antonio as chair. Ms. Garcia will continue to serve on the commission.

To be a member of the **Texas Cosmetology Commission** for a term to expire December 31, 2001: Comer J. Cottrell, Jr., 5444 Northbrook, Dallas, Texas 75220. Mr. Cottrell will be replacing Dr. Nedom C. Muns, III of Huntsville whose term expired.

To be a member of the **Texas Cosmetology Commission** for a term to expire December 31, 2001: Brian P. King, 14515 Wunderlich Drive, Town House 1101, Houston, Texas 77069-2833. Mr. King will be replacing Sergio Shearer of Edingburg whose term expired.

To be a member of the **Agriculture Resources Protection Authority** for a term to expire February 1, 1997: Alfonso Posadas, P.O. Box 218, Muleshoe, Texas 79347. Mr. Posadas is being appointed pursuant to Senate Bill Number 372, 74th Legislature.

To be chair of the **Texas Commission on Human Rights** for a term at the pleasure of the Governor. Laura Ayoub Keith will be replacing Frank Thompson of Houston as chair. Mr. Thompson no longer serves on the commission.

To be a member of the **Texas Commission on Human Rights** for a term to expire September 24, 2001: Laura Ayoub Keith, 22 Silver Crest, El Paso, Texas 79902. Mrs. Keith will be replacing Frank Thompson, Jr. of Houston whose term expired.

To be a member of the **Texas Commission on Human Rights** for a term to expire September 24, 2001: Charles W. Taylor, Jr., 1102 Baffin Lane, Houston, Texas 77090. Mr. Taylor will be replacing Jose E. de Santiago of Houston whose term expired.

To be a member of the **Texas State Board of Plumbing Examiners** for a term to expire September 5, 1999: J. DeWitt Morrow, Jr., 815 Alhambra, Sugar Land, Texas 77478. Mr. Morrow will be filling the unexpired term of Marcus Torres of Corpus Christi who was not confirmed by the Senate.

To be a member of the **Texas State Board of Plumbing Examiners** for a term to expire September 5, 2001: Joe Rocha, Jr., HCR 4, Box 384, Blanco, Texas 78606. Mr. Rocha will be replacing Alonzo L. Starkey, III of Kerrville whose term expired.

To be a member of the **Texas State Board of Plumbing Examiners** for a term to expire September 5, 2001: Jose L. Cardenas, 807 Dickey

Drive, Euless, Texas 76040. Mr. Cardenas will be replacing Jerry D. Moore of Lufkin whose term expired.

To be a member of the **Texas State Board of Plumbing Examiners** for a term to expire September 5, 1999: Fernando Rico, Jr., 2453 Alan Duncan, El Paso, Texas 79936. Mr. Rico will be replacing Gerald L. Harris of Sugar Land whose term expired.

To be a member of the **Texas State Board of Plumbing Examiners** for a term to expire September 5, 1999: Greg David Contreras, 1114 Statler Drive, Duncanville, Texas 75116. Mr. Contreras will be filling the unexpired term of Robert L. West of Houston who was not confirmed by the Senate.

To be a member of the **Texas State Board of Plumbing Examiners** for a term to expire September 5, 2001: Nelda Martinez, 513 Cole Street, Corpus Christi, Texas 78404. Ms. Martinez will be replacing Nolene Sykora of Waco who was not confirmed by the Senate.

To be a member of the **State Employee Charitable Campaign Policy Committee** for a term to expire January 1, 1998: Judy Burks, 2409 Ellingham, Wichita Falls, Texas 76308. Ms. Burks is being appointed to an open position on the committee.

To be a member of the **State Employee Charitable Campaign Policy Committee** for a term to expire January 1, 1998: John A. Anderson, 4108 Beall Circle, Tyler, Texas 75701. Mr. Anderson will be replacing Rebecca Lightsey of Austin whose term expired.

To be a member of the **State Employee Charitable Campaign Policy Committee** for a term to expire January 1, 1998: Martha W. Wood, Ph.D., 5806 Rue Bourbon, San Antonio, Texas 78240. Dr. Wood will be replacing Jeffrey J. Guidry of College Station whose term expired.

To be a member of the **State Employee Charitable Campaign Policy Committee** for a term to expire January 1, 1998: Maria (Mary) L. Banda, 2605 Falcon Avenue, McAllen, Texas 78504. Ms. Banda will be replacing Hector Villa, III of El Paso whose term expired.

To be a member of the **State Employee Charitable Campaign Advisory Committee** for a term to expire January 1, 1998: Gary R. Wilson, 26940 Cynthia Drive, San Antonio, Texas 78266. Mr. Wilson will be replacing Winiford N. Dunn of Houston whose term expired.

To be a member of the **State Employee Charitable Campaign Advisory Committee** for a term to expire January 1, 1998: Joseph L. Way, 3910 Silkwood Trail, Arlington, Texas 76016. Mr. Way will be replacing Glenn A. Cochran of Lubbock whose term expired.

To be a member of the **State Employee Charitable Campaign Advisory Committee** for a term to expire January 1, 1998: Anne C. Murphy, 1401 Saint Edwards Drive #266, Austin, Texas 78704. Ms. Murphy will be replacing John Warren of Austin whose term expired.

To be a member of the **State Employee Charitable Campaign Advisory Committee** for a term to expire January 1, 1998: Thomas H. Fowler, 107 Tamarisk Trail, Lake Jackson, Texas 77566. Mr. Fowler will be replacing Thelma M. Garza of Corpus Christi whose term expired.

To be a member of the **State Employee Charitable Campaign Advisory Committee** for a term to expire January 1, 1998: Thomas

W. Tobin, 1400 Rio Grande, Austin, Texas 78701. Mr. Tobin is being reappointed.

To be a member of the State Employee Charitable Campaign Advisory Committee for a term to expire January 1, 1998: Diane Fanning, 1129 Canyon Drive, New Braunfels, Texas 78130. Mrs. Fanning will be replacing Cleo Glenn-Johnson of Houston whose term expired.

To be a member of the State Employee Charitable Campaign Advisory Committee for a term to expire January 1, 1998: Harold J. LeBourgeois, Jr., 606 Parkview Drive, Round Rock, Texas 78681. Mr. LeBourgeois will be replacing David L. Geisbush of San Antonio whose term expired.

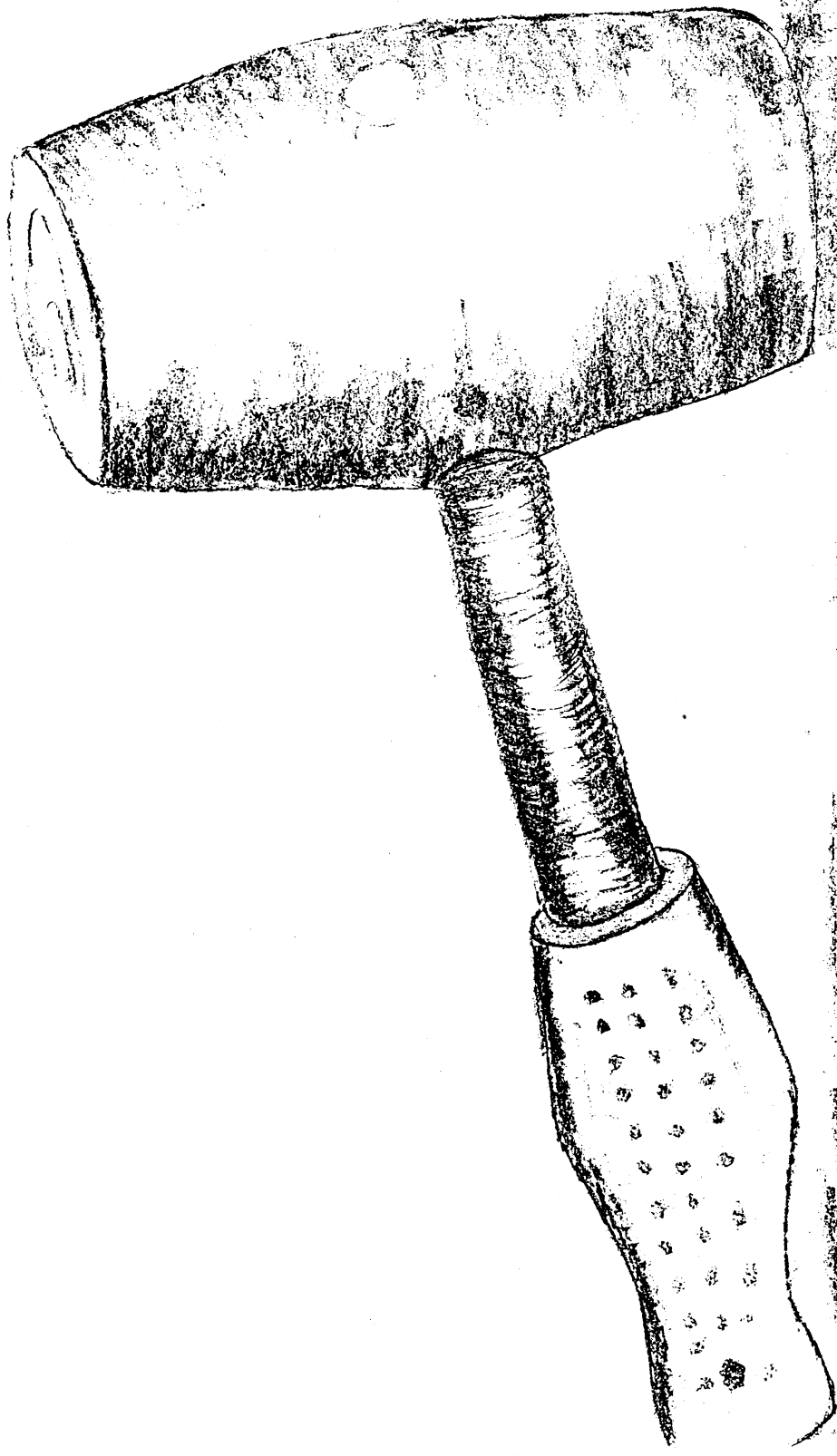
State Employee Charitable Campaign Advisory Committee for a term to expire January 1, 1998: Michael R. Rush, 1506 Ashwood, Austin, Texas 78722. Mr. Rush will be replacing Cathy Brunicardi of Austin whose term expired.

Issued in Austin, Texas, on February 22, 1996.

TRC-9602519

George W. Bush
Governor of Texas





Name: Lance Bishop
Grade: 8
School: Buffalo Jr. High School, Buffalo ISD

Handwritten signature
K. ...

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 record decisions are summarized for publication in the *Texas Register*. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

(DM-373) (RQ-805). Request from the Honorable Harvey Hilderbran, Chair, Committee on Human Services, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether a city is restricted from reannexing an area previously annexed and then disannexed under Local Government Code, §43.033.

Summary of Opinion. The fact that an area adjacent to a city has already been annexed and then, pursuant to landowner or voter petition, disannexed under the provisions of Local Government Code, §43.033, does not in itself limit the city's authority to annex the area again under that section. The city may reannex the area so long as the conditions for annexation set out in the section are met.

TRD-9602709

(DM-374) (RQ-805). Request from Ray Farabee, Office of General Counsel, The University of Texas System, 201 West Seventh Street, Austin, Texas 78701-2981, concerning whether the El Paso County Water Improvement District Number 1 may, pursuant to Chapter 55, Subchapter N of the Water Code, assess a tax on the benefit basis against land belonging to the Permanent University Fund.

Summary of Opinion. Whether the "tax . . . on the benefit basis" authorized by Chapter 55, Subchapter N of the Water Code is a tax or a special assessment, the El Paso County Water Improvement District Number 1 may not levy such a tax against land owned by the Permanent University Fund.

TRD-9602710

(DM-375) (RQ-705). Request from Tom Treadway, Executive Director, General Services Commission, P.O. Box 13047, Austin, Texas 78711-3047, concerning whether a vendor that offers to sell local exchange, interexchange, cellular telephone, mobile radio, or pager services may offer such services for sale through the catalogue purchase method set forth in Government Code, Chapter 2157, Subchapter B.

Summary of Opinion. A vendor that offers to sell local exchange, interexchange, cellular telephone, mobile radio, or pager services may not offer such services for purchase or lease through the catalogue

purchase method set forth in Chapter 2157, Subchapter B of the Government Code. The Government Code, Chapter 2170 governs the sale of local exchange and interexchange service for certain state agencies. The General Services Commission may acquire cellular telephone, mobile radio, or pager services pursuant to Chapter 2157, Subchapter C, which establishes a competitive sealed proposal method for the acquisition of "a telecommunications device, system, or service," but only if the commission "determines by rule that competitive sealed bidding and informal competitive bidding are not practical or are disadvantageous to the state." The acquisition of telecommunications services that is not governed by Chapter 2170 also may occur in accordance with Chapter 2157, Subchapter C. Chapter 2157 of the Government Code does not apply to services provided by a public utility.

TRD-9602711

(DM-376) (RQ-746). Request from Steve Robinson, Executive Director, Texas Youth Commission, P.O. Box 4260, Austin, Texas 78765, concerning whether a Texas Youth Commission employee in a hazardous duty position but not receiving hazardous duty pay accrues service credits for purposes of longevity pay.

Summary of Opinion. A Texas Youth Commission employee holding a hazardous duty position is not eligible to receive hazardous duty pay during his first year in a hazardous duty position. Such employee continues to accrue "lifetime service credit" for longevity pay purposes during the first year in a hazardous duty position. Subject to the other conditions of Government Code, §659.062 and §659.063, part-time and hourly, as well as full-time, Texas Youth Commission employees in hazardous duty positions are eligible to receive hazardous duty pay.

TRD-9602712

(DM-377) (RQ-820). The Honorable Robert Newsom, Hopkins County Attorney, 110 Main Street, Sulphur Springs, Texas 75482, concerning whether a county court at law judge, with an unexpired term greater than one year, who declared at a county commissioners court meeting that he was a candidate for the district judgeship has announced his candidacy or "in fact become a candidate" for

purposes of Article XVI, §65 of the Texas Constitution and related questions.

Summary of Opinion. Under the facts presented, the county court at law judge of Hopkins County has announced his candidacy or has "in fact become a candidate" as a matter of law for purposes of Article XVI, §65 of the Texas Constitution. Thus, pursuant to Article XVI, §65, the county judge has automatically resigned his office. However, he continues to hold over in his office under XVI, §17 of the Texas Constitution, until his successor is appointed and qualifies for office. Attorney General Opinions WW-1253 (1962), C-43 (1963), and H-161 (1973) are affirmed on this issue.

Attorney General Opinion WW-788 (1960), which concluded that an officer who automatically resigns his office pursuant to Article XVI, §65 of the Texas Constitution is ineligible for appointment to fill the vacancy created in his office, is affirmed.

The Government Code, §25.0009(a) requires the county commissioners court to appoint an individual to fill a vacancy in the office of judge of a statutory county court. Nothing in §25.0009, nor in any other statute of which we are aware, specifies a particular time period within which the commissioners court must appoint a new judge; nor does any statute specifically prescribe the procedure a commissioners court must use to appoint an individual to the office of county court at law judge. The commissioners court must, of course, comply with the Open Meetings Act, Government Code, Chapter 551, in appointing the new county court at law judge.

TRD-9602713



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 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Quality of Service

16 TAC §23.61

The Public Utility Commission of Texas proposes an amendment to §23.61, concerning Telephone Utilities. The proposed amendment conforms the existing rule to the mandates of the Public Utility Regulatory Act of 1995, §3.151(a), which requires that the commission fix depreciation rates that promote deployment of new technology and infrastructure.

The proposed amendment eliminates the constraint of using only the straight line methodology when fixing depreciation rates for telecommunication utilities and enables the commission to fix depreciation rates based upon reasonable methods of depreciation. The amendment further enables the commission to consider the depreciation practices of nonregulated telecommunications providers when fixing depreciation rates.

Ann M. Coffin, assistant general counsel, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Coffin also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the setting of depreciation rates that promote deployment of new, telecommunications technology and infrastructure. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Ms. Coffin has determined further that for each year of the first five years the proposed section is in effect there will be no

impact on employment in the geographical areas affected by implementing the requirements of the section.

Comments on the proposed rule (16 copies) may be submitted to Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. All comments should refer to Project Number 14423. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the amendment. The commission will consider the costs and benefits in deciding whether to adopt the amendment. The commission staff will conduct a public hearing on this rulemaking under Government Code, §2001.029 at the Commission offices on April 18, 1996, at 10:00 a.m.

The amendment is proposed under the Public Utility Regulatory Act of 1995 (PURA), §1.101, 74th Legislature, Regular Session 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction including rules of practice and procedure and PURA §3.151, which requires the commission to establish methods of depreciation for telecommunication utilities.

Cross Index to Statutes: §1.101 and §3.151(a) - Public Utility Regulatory Act of 1995, 74th Legislature, Regular Session 1995.

§23.61. *Telephone Utilities.*

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

(h) Depreciation rates. DCTUs shall use [utilize] depreciation rates approved by the commission to determine [for determination of] depreciation expense and provide [provision] for accumulated depreciation (also referred to as depreciation reserve). For the purpose of this rule depreciation rates used prior to September 1, 1976, and those in effect on September 1, 1976, shall be deemed appropriate for use unless subsequently modified by the commission.

(1) Depreciation rate changes for telecommunications utilities subject to regulation of interstate depreciation rates by the

Federal Communications Commission. Telecommunications utilities subject to interstate regulation by the Federal Communications Commission are also required to file for commission approval of intrastate depreciation rates. Filings should be made in the same format and on the same schedule as those required by the federal regulatory body, with the addition of proposed intrastate accrual changes calculated through use of jurisdictional separations procedures. **The utility** [Said utilities] shall have the burden of proof to establish that requested intrastate depreciation rate changes are reasonable and in the public interest in proceedings before the commission.

(2) Depreciation rate changes for other dominant carriers. Any DCTU, except as covered in paragraph (1) of this subsection, requesting a change in depreciation rates must request commission approval and include the following in its request:

(A) for each property account or subaccount for which [wherein] a depreciation rate change is proposed:

(i)-(iii) (No change.)

(B)-(C) (No change.)

(3) Methods for figuring depreciation rates. **On application by a utility, the commission shall fix depreciation rates that promote deployment of new technology and infrastructure. In setting depreciation rates, the commission shall consider depreciation practices of nonregulated telecommunications providers.** Depreciation rates must be based on reasonable methods of depreciation [life and salvage estimates, and must use a straight line method, such as average service life, vintage group, or equal life group. Such methods may incorporate the remaining life technique]. The commission specifically reserves for consideration in each case selection of appropriate methods of depreciation [for life and salvage estimates].

(4) Burden of proof. A DCTU shall have the burden of proof to show that depreciation or amortization expense is reasonable, necessary and in the public interest. The DCTU shall also be required to show that depreciation rate changes were timely requested in accordance with prudent management practices. The burden of proof shall not be satisfied solely by demonstrating that the depreciation rates or amortization periods used [utilized] were approved. If the DCTU fails to meet this burden the commission may deny as a cost of service that depreciation or amortization expense.

(5) Interim booking. Unless ordered otherwise by the commission or any presiding officer, a DCTU may[, at its option,] book depreciation and amortization expense on an interim basis based on proposed depreciation rates from the month of filing until interim or final action by a presiding officer. Such interim booking must be revised using the finally approved depreciation rates and records must be maintained showing the interim booking and the adjustments, if any, after a final order is entered.

(6) (No change.)

(7) New depreciation rates. When a DCTU determines a need to establish a new depreciation rate for a new class of property it may adopt a depreciation rate approved by the commission for another similar DCTU for the same property class if **similar depreciation parameters and methods are used to determine the rates** [the estimated lives and salvage are expected to be similar]. The DCTU must notify the commission of said action **within 45 days** but no

commission approval is necessary. The commission may review said rate and make changes upon appropriate motion or in subsequent rate or depreciation proceedings.

(i)-(j) (No change.)

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

Issued in Austin, Texas, on February 26, 1996.

TRD-9602662

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Earliest possible date of adoption: April 5, 1996

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

◆ ◆ ◆
Telephone

16 TAC §23.98

The Public Utility Commission of Texas proposes new §23.98, concerning Abbreviated Dialing Codes. The proposed rule is responsive to a commission order issued in Docket No. 11441, *Petitions of Infodial, Inc. and Others for Assignment of Abbreviated N11 Dialing Codes*, which directed commission staff to initiate a rulemaking project to review existing LEC and public interest uses of N11 dialing codes. The proposed rule also addresses issues raised by the City of Dallas in Project No. 14563 regarding the need for a new rule to provide abbreviated dialing for non-emergency municipal services.

The proposed section will define the assigned uses of N11 dialing codes within the State of Texas, restrict Directory Assistance Call Completion (DACC) service to the caller's local calling scope, eliminate LEC use of N11 dialing codes for repair service and business office contact, and place restrictions upon LEC use of unassigned N11 dialing codes for internal business and testing purposes.

Ms. Ann M. Coffin, assistant general counsel, has determined that for each year of the first five-year period the proposed section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Coffin also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be uniform access to emergency services afforded by 911 and end user access to directory assistance through the 411 code. There will be no effect on small businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

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

Comments on the proposed rule (16 copies) may be submitted to Paula Mueller, Secretary of the Commission, Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Austin, Texas 78757, within 30 days after publication. Reply comments

(16 copies) may be submitted to the same address within 60 days after publication. All comments should refer to Project Number 12853. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the new rule. The commission will consider the costs and benefits in deciding whether to adopt the rule. The commission invites specific comments on limiting DACC service to call completion within the caller's local calling scope and discontinuing LEC use of the N11 dialing codes for repair and business office contact. In particular, the commission seeks the views of interested parties on how this commission should balance customer convenience with the competitive issues that arise from current LEC use of 611 (repair service) and 811 (business office access). The commission also invites comments on whether there may be interim use of N11 dialing codes, pending FCC action, for governmental and non-emergency municipal services. Specifically, the commission invites parties to comment on the technical feasibility of such uses. Further, the commission seeks comment on whether the Telecommunications Act of 1996 affects the Commission's authority to act regarding N11 dialing codes.

The commission staff will conduct a public hearing on this rule-making under Government Code § 2001.029 at the commission offices on April 25, 1996, at 10:00 a.m.

The new section is proposed under the Public Utility Regulatory Act of 1995, 74th Leg., R.S. 1995, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Index to Statutes: § 1.101 <-> Public Utility Regulatory Act of 1995, 74th Legislature Regular Session 1995.

§§23.98. *Abbreviated Dialing Codes.*

(a) The following abbreviated dialing codes may be used in Texas:

(1) 411

(A) Directory Assistance

(B) Directory Assistance Call Completion for calls within the caller's local calling scope.

(2) 911 - Emergency service

(b) The following N11 dialing codes are not assigned for use in Texas:

(1) 211

(2) 311

(3) 511

(4) 611

(5) 711

(6) 811

(c) Telecommunications providers within the State of Texas may assign or use N11 dialing codes only as directed by the commission.

(d) An unassigned N11 dialing code may be used by a LEC for internal business and testing purposes such as inspector ringback,

line opener, dial tone multifrequency testing (DTMF Test), and automatic number announcement.

(e) The following limitations apply to LEC use of N11 dialing codes for internal business and testing purposes:

(1) use may not interfere with the assignment of such numbers by the FCC and the NANP; and

(2) use of an N11 dialing code must be discontinued on short notice if the number is reassigned on a statewide or nationwide basis.

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

Issued in Austin, Texas on February 26, 1996.

TRD-9602664

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Earliest possible date of adoption: April 5, 1996

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

TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 12. Proprietary Schools

Subchapter A. Purpose and Authority

19 TAC §§12.21-12.24

The Texas Higher Education Coordinating Board proposes amendments to §§12.21-12.24, concerning Purpose and Authority. The purpose of the proposed amendments is to further ensure the quality and integrity of applied associate degree programs at proprietary institutions, facilitate the establishment and implementation of the institutional effectiveness review program for proprietary institutions, achieve consistency with revisions in the Texas Education Code, and to achieve greater uniformity in the administration and delivery of applied associate degrees programs at Texas proprietary institutions. The proposed amendments will enhance the quality of proprietary degree programs and will help protect students enrolled in those programs if the institution closes.

Bob Lahti, Assistant Commissioner for Community and Technical Colleges has determined that for the first five-year period the rules are in effect there will be no fiscal implications.

Sharon Cobb, Assistant Commissioner for Student Services has determined that for the first five years the rules are in effect the public benefit will be by providing a greater level of standardization among proprietary degree programs, help assure that degree programs at proprietary institutions meet the same quality standards as programs offered at public technical community colleges, provide for regular Coordinating Board evaluation of proprietary degree programs, and will help protect students in the event that a degree-granting proprietary institution closes. There will be no effect on small businesses.

There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

The amendments are proposed under Texas Education Code, §132.063, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Purpose and Authority.

There were no other sections affected by these rules.

§§12.21. Purpose.

It is the intent of the Legislature to encourage proprietary postsecondary institutions and to ensure the integrity of applied associate degrees.

(1) Proprietary schools, as defined in Section 132.001 [Section 32.11] of the Texas Education Code, offering programs in which applied associate degrees are awarded, shall meet minimum educational program standards.

(2) (No Change.)

§§12.22. Authority.

[(a)] Texas Education Code, Section 132.063 [Chapter 32 and 61] provides the authority to the Texas Higher Education Coordinating Board to enforce minimum standards for the approval of programs of study leading to the award of the applied associate degree.

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

[(b)] Texas Education Code, Chapter 32, and rules promulgated by the State Board of Education provide the authority to the Texas Education Agency to enforce minimum standards for approval of proprietary schools.]

§§12.23. Degree Titles Authorized.

[(a)] The Associate of Applied Science (A.A.S.), Associate of Applied Arts (A.A.A.), and Associate of Occupational Studies (A.O.S.) degrees[.]

[(1) A.A.S., A.A.A., and A.O.S. degrees] will be the only degrees authorized by the Texas Higher Education Coordinating Board.

[(2) Institutions may enroll students in A.A.S., A.A.A., and A.O.S. degrees under Texas Education Agency minimum standards until June 16, 1993, unless the approval is revoked by the Texas Education Agency. All students enrolled in such degree programs under Texas Education Agency minimum standards must complete all degree program requirements prior to December 15, 1995.

[(3) Institutions which were approved to award the A.A.S., A.A.A., and/or the A.O.S. degrees by Texas Education Agency prior to September 1, 1989, may continue to enroll students in these degree programs only if such programs have met the minimum requirements of the Coordinating Board by June 16, 1993.

[(4) Effective September 1, 1989, new A.A.S., A.A.A., and A.O.S. degree programs must meet the requirements of the Coordinating Board.]

§§12.24. Definitions.

The following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

Change of ownership—any change in control of a school or an agreement to transfer control of a school. The control of a school is considered to have changed:

(A) in the case of ownership by an individual, when more than 50% of the school has been sold or transferred;

(B) in the case of ownership by a partnership or a corporation, when more than 50% of the school or of the owning partnership or corporation has been sold or transferred; or

(C) when the board of directors, officers, shareholders, or similar governing body has been changed to such an extent as to significantly alter the management and control of the school.

Developmental courses—courses designated as remedial or compensatory education courses. Credit earned in a developmental course is not applicable toward the applied associate degree. Also see Remediation.

Institution—see Proprietary School.

Library/Learning resources[Resources]—instructional materials (e.g. books, audio-visual equipment, and computers) that support the educational/vocational development of the student.

Multiple site program offering [Site Program Offering]—any extension location where course(s) which are alleged to entitle a student to an applied associate degree are offered.

Newly-enrolled student—a person who has been admitted to a program of study for the first time.

Owner—the proprietor of a proprietary school including an individual; a partnership including all full, silent, and limited partners; a corporation or corporations including directors, officers, and each shareholder owning shares of issued and outstanding stock aggregating at least 10% of the total of the issued and outstanding shares.

Person—any individual, firm, partnership, association, corporation, or other private entity, or combination thereof.

Program approval [Approval]—the process whereby an institution requests authorization to implement a technical or vocational program leading to the applied associate degree.

Program of study[Study]—any course or grouping of courses which entitle a student to an applied associate degree or to credits which are applicable to an applied associate degree.

Proprietary school [School]—any business enterprise operated for a profit, or on a nonprofit basis, that [which] maintains a place of business within this state [in the State of Texas] or solicits business within this state [the State of Texas], and that is not specifically exempted by this Chapter and; [which]

(A) that offers or maintains a course or courses of instruction or study; or

(B) at which place of business such a course or courses of instruction or [of] study is available through classroom instruction or by correspondence or both to a person [or persons] for the purpose of training or preparing the person for a field of endeavor in a business, trade, technical, or industrial occupation, or for avocational or personal improvement [except as excluded by Section 32.12 of the Texas Education Code].

Prospective student-a person who expresses interest in a program of study and who is provided with written information about the institution or any of the institution's programs.

Remediation-an activity designed to teach basic competency in such areas as reading, writing, oral communications, [and] arithmetic, or other rudimentary subjects.

Returning student-a person who is returning to a program of study following withdrawal or other absence of more than one academic semester or one academic quarter.

Target market area-the local, regional, statewide, and/or national area from which the institution's students are drawn and in which employment opportunities have been identified for graduates of that institution's applied associate degree programs.

Teach-out agreement-a formal arrangement between a closed proprietary institution and another institution authorized by the Coordinating Board to grant the applied associate degree, which provides for student transfer, completion of degree requirements, and awarding degrees to students transferred from the closed proprietary school.

Teach-out institution-an institution that is authorized by the Coordinating Board to grant the applied associate degree and that has formally accepted the transfer of students from a proprietary school that has closed.

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

Issued in Austin, Texas on February 23, 1996.

TRD-9602655

James McWhorter

Assistant Commissioner

Texas Higher Education Coordinating Board

Proposed date of adoption: April 19, 1996

For further information, please call: (512) 483-6160

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 406. ICF/MR Programs

Subchapter G. Additional Facility Responsibilities

25 TAC §406.311

The Texas Department of Mental Health and Mental Retardation (TDMHMR) proposes new §406.311, concerning additional facility responsibilities.

The proposed new section would assure the safety of individuals participating in facility sponsored water activities.

Don Green, chief financial officer, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ernest McKenney, director, Medicaid Administration, also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to secure the safety of individuals participating in water activities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Deborah Hankey, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, (512) 323-3261.

Written comments on the proposal may be sent to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668, within 30 days of publication.

The amendment is proposed under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The section affects Texas Human Resources Code, §§32.001-322.040, and Texas Civil Statutes, Article 4413(502), §16.

§§406.311. *Requirements for Water Activities in ICF/MR Facility Sponsored Events.*

In the area of water activities, the facility shall assure the safety of all individuals who participate in facility sponsored events. For the purpose of this regulation, water activities are defined as activities which occur in or on water deep enough to require swimming for life saving retrieval. To assure the safety of all individuals who participate, the following applies:

(1) The facility will develop and implement written procedures regarding the water sites utilized by the facility; such as, lakes, amusement parks, pools, etc.

(2) A minimum of one individual with demonstrated proficiency in cardio pulmonary resuscitation (CPR) must be at the site and on duty for the duration of the water activity when individuals are involved in water activities.

(3) A minimum of one staff person with demonstrated proficiency in water life saving skills must be on duty and at the site when activities are in or on water which is deep enough to require swimming for life saving retrieval. This person must maintain supervision of the activity for its duration.

(4) A sufficient number of staff or combination of staff and volunteers must be available to meet the safety requirements of the group and/or specific individuals.

(5) The individual program plan (IPP) for a resident who participates in facility sponsored water activities must address the individual's needs for level and type of supervision to insure safety when participating in water activities including, but not limited to, medical conditions, physical disabilities and/or behavioral needs which could pose as a threat to safety of the individual or others, the ability to follow directions and instructions pertaining to water safety, the ability to swim independently, and when called for, special precautions.

(6) If the Interdisciplinary Team (IDT) recommends the use of a flotation device as a precaution for any individual to engage in water activities, the device must be one approved by the U.S. Coast Guard or a specialized therapy flotation device utilized in the individual's therapy program.

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 February 26, 1996.

TRD-9602605

Ann Utley

Chairman, Texas Mental Health and Mental Retardation Board

Texas Department of Mental Health and Mental Retardation

Earliest possible date of adoption: April 5, 1996

For further information, please call: (512) 206-4516

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 305. Consolidated Permits

The Texas Natural Resource Conservation Commission (the commission or TNRCC) proposes amendments to §§305.45, 305.62, 305.127 and 305.141, concerning consolidated permits.

The amendments cover contents of applications for a permit, amendments of permits, conditions to be determined for individual permits, and applicability of conditions.

The proposed rule changes are to clarify four existing sections as to their applicability or nonapplicability to municipal solid waste by adding a reference to municipal solid waste where appropriate.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there are no significant fiscal implications for state or local governments or small businesses as a result of enforcement or administration of the sections. The effect on state government will be a minor cost savings in processing of permit applications. Minor cost savings will also be realized by applicants for solid waste permits in the preparation and review phases of the permitting process.

Mr. Minick also has determined that for the first five-year period the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be a clarification in the process of review and approval of permit applications, more cost-effective use of state resources dedicated to the solid waste permit program and reduction in the time required for project approval. There are no economic costs anticipated for small businesses or for any person required to comply with the rules as proposed.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to clarify four existing sections in the agency's permitting procedural rules as to their

applicability or nonapplicability to municipal solid waste. The rules will substantially advance this specific purpose by adding specific language at appropriate places to remove any doubt as to applicability. Promulgation and enforcement of these rules will not affect private real property because the rules apply only to the procedures involved in the administration of the permitting program, including amendments, modifications, transfers, and revocations.

Written comments may be mailed to Bettie Mabry Bell, TNRCC Office of Policy and Regulatory Development, MC205, P.O. Box 13087, Austin, Texas 78711-3017; faxed to (512) 239-4804; or e-mailed to bmabry@smptgate.tnrcc.state.tx.us. All comments should reference rule Log Number 95032305-WS. Comments must be received by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*. For further information, please contact Hector H. Mendieta, Waste Policy and Regulations Division, at (512) 239-6694.

Subchapter C. Application for Permit

30 TAC §305.45

The amendment is proposed under the Texas Water Code, §5.103, which provides the TNRCC with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, §361.024, which gives the TNRCC the authority to regulate solid and hazardous wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The amendment affect the Health and Safety Code, Chapter 361.

§305.45. Contents of Application for Permit.

(a) Forms for permit applications will be made available by the executive director. Each application for permit shall include the following:

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

(8) Supplementary technical report. A supplementary technical report shall be submitted in connection with an application. The report shall be prepared either by a Texas registered professional engineer, or by a qualified person who is competent and experienced in the field to which the application relates and thoroughly familiar with the operation or project for which the application is made. The report shall include the following:

(A)-(B) (No change.)

(C) Such other information as reasonably may be required by the executive director for an adequate understanding of the project or operation, and which is necessary to provide the commission an adequate opportunity to make the considerations required by §331.121 of this title (relating to Class I Wells), §331.122 of this title (relating to Class III Wells), §305.50 of this title (relating to Additional Requirements for an Application for a Hazardous or Industrial Solid Waste Permit), [and] §305.48 of this title (relating to Additional Contents of Applications for Waste Discharge Permits), and Chapter 330, Subchapter E, of this title (relating to Municipal Solid Waste Permit Procedures).

(b) (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 February 26, 1996.

TRD-9602576

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: April 5, 1996

For further information, please call: (512) 239-6087

Subchapter D. Amendments, Renewals, Transfers, corrections, Revocation, and Suspension of Permits

30 TAC §305.62

The amendment is proposed under the Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission (TNRCC) with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, §361.024, which gives the TNRCC the authority to regulate solid and hazardous wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The amendment affects the Health and Safety Code, Chapter 361.

§305.62. Amendment.

(a) Causes for amendment. Except as provided in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and in §305.66 of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment to a permit. If the permittee requests an amendment, the application shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a hazardous or industrial solid waste permit, the application shall be processed in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). **If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title (relating to Municipal Solid Waste Class I Modifications).** If an affected person requests an amendment, such request shall be submitted to the executive director for review. If the executive director determines such a request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that such a request is justified, the amendment will be processed in accordance with subsections (d) and (f) of this section.

(b)-(h) (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 February 26, 1996.

TRD-9602577

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: April 5, 1996

For further information, please call: (512) 239-6087

Subchapter F. Permit Characteristics and Conditions

30 TAC §305.127

The amendment is proposed under the Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission (TNRCC) with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, §361.024, which gives the TNRCC the authority to regulate solid and hazardous wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The amendment affects the Health and Safety Code, Chapter 361.

§305.127. Conditions to be Determined for Individual Permits.

The following conditions are to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable shall be incorporated into the permit expressly or by reference.

(1)-(3) (No change.)

(4) Requirements for individual programs.

(A) Requirements to provide for and assure compliance with standards set by the rules of the commission and the laws of Texas shall be determined and included in permits on a case-by-case basis to reflect the best method for attaining such compliance. Each permit shall contain terms and conditions as the commission determines necessary to protect human health and safety, and the environment. Reference is made to **Chapter 330 of this title (relating to Municipal Solid Waste) for municipal solid waste facility standards**, to Chapter 331 of this title (relating to Underground Injection Control) for injection well standards, to Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste) for solid waste facility standards, and to Chapter 309 of this title (relating to Effluent Standards) for waste discharge standards and to Chapter 329 of this title (relating to Drilled or Mined Shafts) for drilled or mined shaft standards.

(B)-(C) (No change.)

(5)-(6) (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 February 26, 1996.

TRD-9602578

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: April 5, 1996

For further information, please call: (512) 239-6087

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Subchapter G. Additional Conditions for Hazardous and Industrial Solid Waste Storage, Processing, or Disposal Permits

30 TAC §305.141

The amendment is proposed under the Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission (TNRCC) with the authority to adopt any rules necessary to carry out its powers and duties under the code and other laws of the State of Texas, and to establish and approve all general policy of the commission; and under the Texas Solid Waste Disposal Act (the Act), Texas Health and Safety Code, §361.024, which gives the TNRCC the authority to regulate solid and hazardous wastes and to adopt and promulgate rules consistent with the general intent and purposes of the Act.

The amendment affects the Health and Safety Code, Chapter 361.

§§305.141. Applicability.

(a) Unless otherwise stated, the conditions contained in this subchapter apply to all hazardous and industrial solid waste storage, processing, or disposal permits. These conditions are in addition to those set forth in §305.66 of this title (relating to Revocation and Suspension).

(b) (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 February 26, 1996.

TRD-9602579

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: April 5, 1996

For further information, please call: (512) 239-6087

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 9. Property Tax Administration

Subchapter I. Validation Procedures

34 TAC §9.4011

The Comptroller of Public Accounts proposes an amendment to §9.4011, concerning adoption of the *Manual for the Appraisal of Timberlands*, to be effective for the 1996 tax year. These amendments are necessary to establish for chief appraisers and property owners the methods and procedures for qualifying and appraising timberland.

The amendment discusses the methods and procedures for qualifying timberland. In addition, the manual addresses the application process, discusses the methods for determining a change of use has occurred on timberland, details the calculation of the additional tax due after a change of use determination, and establishes the procedures and methods for the productivity appraisal of timberland.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there would be no fiscal impact on the state. There could be a fiscal impact in the approximately 57 counties that have timberland. The impact on these local governments would depend upon appraisal methods used by the county appraisal districts and could result in a positive or negative fiscal impact depending upon the appraisal method currently being used.

Mr. Reissig also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be in providing new information regarding the methods to be used by appraisal districts when appraising timberland. The fiscal implications for small businesses located in the 57 counties containing timberland would depend upon the appraisal methods being used by the county appraisal districts in the affected counties. There is no anticipated significant economic cost to the public.

Comments on the amendment may be submitted to Larrilyn Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The amendment is proposed under the Tax Code, §23.73, which requires the comptroller to develop procedures for verifying that land qualifies for 1-d-1 timber appraisal and setting forth the method of appraising qualified land, and §5.03, which gives the comptroller authority to adopt rules setting forth minimum standards for administration and operation of an appraisal district.

The amendment implements the Tax Code, Chapter 23, Subchapter E.

§9.4011. Appraisal of Timberlands.

(a) Adoption of the *Manual for the Appraisal of Timberland*. The Comptroller of Public Accounts [State Property Tax Board] adopts *Manual for the Appraisal of Timberland* [by reference "Guidelines for the Valuation of Timberlands" to be effective May 10, 1983]. This document is published in booklet format by and is available from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528 [State Property Tax Board, 9501 IH 35 North, P.O. Box 15900, Austin, Texas 78761].

(b) Introductory comments concerning the timber manual.

(1) In 1978, voters approved a constitutional amendment, Article VIII, §1-d-1, permitting appraisal based on the pro-

ductive capacity or Productivity value of timberland. The new constitutional amendment took effect in 1979. In enacting the Property Tax Code that year, the 66th Legislature, 1979, adopted Property Tax Code, §§23.71-23.79, implementing §1-d-1 for land qualified for timber productivity appraisal.

(2) The Property Tax Code assigns most qualified timber appraisal responsibilities to the chief appraiser. However, the Property Tax Code, §23.73 and §23.75, direct the comptroller to develop a manual for appraising qualified timber and an application form and distribute them to appraisal districts. Property Tax Code, §23.73, also directs the comptroller to develop procedures for verifying that land qualifies for timber use appraisal.

(3) This manual sets out both the eligibility requirements for timberland to qualify for productivity appraisal and the methodology for appraising qualified timberland. Appraisal districts are required by law to follow the procedures and methodology set out in this manual.

(c) The qualification of timberland for productivity appraisal.

(1) In this manual, the word timber refers to standing trees that are grown to produce commercial wood products, such as sawtimber, pulpwood, poles, and chips. Timberland refers to forest land that is capable of producing commercial wood crops.

(2) Timberland in Texas varies in many ways. A pine plantation may have trees just over a year old, while another pine plantation may have much older and taller trees. Hardwoods may be the only timber on one tract, while other tracts may have pine trees or a mixture of hardwoods and pine. In addition, soil productivity—a key determinant of timber growth—often varies dramatically from one timber tract to another, even within the same county.

(3) The degree of intensity with which timber producers manage the land also differs. Some owners practice custodial care, which means the owner does nothing to manage the land, while other owners manage their land intensively. Timber plantations are usually managed intensively. However, some plantation land may require little management for a few years, then need sophisticated, intensive management for several years. For example, a timber plantation that is between thinning activities and prescribed burning may need little management, but final harvest and preparation for replanting require intensive management.

(4) These variations among timber tracts and timber growing operations make determining eligibility for timber productivity appraisal a challenge for a chief appraiser. The chief appraiser must be familiar with timber activities in the immediate area and the forest region of which the appraisal district is a part.

(5) A valuable source of information about timber activity and timberland use in the area is the Agricultural appraisal advisory board. The Property Tax Code, §6.12, requires the chief appraiser to appoint, with the advice and consent of the appraisal district's board of directors, an agricultural appraisal advisory board consisting of three or more members as determined by the board of directors. The law requires that one of the members must be a representative of the

county agricultural stabilization and conservation service. The other members must own land in the district that qualifies for productivity appraisal and must have been residents of the district for at least five years. The function of this board is to advise the chief appraiser on the valuation and use of land qualified for productivity appraisal, including agricultural land and timberland.

(6) If chief appraisers plan to seek the advisory board's advice on timber characteristics and timber management activities within their respective appraisal districts, they should appoint individuals who are knowledgeable about the area's timber.

(7) The Texas Constitution permits timber productivity appraisal only if the property and its owner meet specific requirements defining timber use. Land will not qualify simply because it has timber standing on it. In addition, timberland that is used principally for aesthetic or recreational purposes will not qualify.

(8) The Property Tax Code, §23.72, sets the standards for determining whether land qualifies: "Land qualifies for timber appraisal . . . if it is currently and actively devoted principally to production of timber or forest products to the degree of intensity generally accepted in the area with intent to produce income and has been devoted principally to production of timber or forest products or to agricultural use that would qualify the land for [agricultural] appraisal . . . for five of the preceding seven years."

(9) To qualify land for timber productivity appraisal, a property owner must show the chief appraiser that the land meets the Property Tax Code, §23.72, standard. To do so, the property owner must apply for the appraisal and give the chief appraiser the information necessary to determine if the land qualifies. The owner also must notify the chief appraiser of any changes in the land's status.

(10) To qualify for timber productivity appraisal, landowners must meet each of the following six eligibility requirements.

(A) The land must be currently and actively devoted to timber production.

(B) The land must be used principally for timber production.

(C) The land must be devoted to timber production to the degree of intensity generally accepted for the area.

(D) The owner must have an intent to produce income.

(E) The land must have been dedicated principally to agriculture or timber production for any five of the preceding seven years.

(F) The property owner must file a timely and valid application form.

(11) Timber appraisal applies only to land and its potential for growing timber. It does not apply to improvements on land or to minerals.

(A) **Improvements.** Buildings and structures such as barns, sheds, or other outbuildings must be appraised separately at market value. Fences, however, are appurtenances and are not appraised separately. Land beneath out-buildings and other improvements related to timber use qualifies for the special appraisal because the owner uses it in the timber producing operation.

(B) **Minerals.** Oil, gas, or any hard mineral must be appraised separately at market value.

(C) **Harvested timber.** Harvested timber in the owner's hands on January 1 is personal property and taxed separately from the land.

(12) Some man-made alterations of, or additions to, timberland are appraised as part of the land. These appurtenances to the land canals, water wells, roads, stock tanks, and other similar reshaping of the Soil are included in the value of the land and are not separately appraised.

(13) Under the Property Tax Code, §23.72, land must be "currently and actively devoted to timber use to qualify for timber productivity appraisal. Unlike other types of property, the land may not have visible physical characteristics of qualification on January 1, but may still qualify. If timber use is not evident on January 1, the chief appraiser should investigate further to see if the owner can show that the land will be devoted to active timber production for the calendar year for which he or she is applying, by reason of other indications or evidence of current and active devotion.

(14) Determining if the owner is currently and actively devoting land to timber production is often a difficult and complicated task. Consider the following situations.

(A) The chief appraiser may not be able to see signs of activity when a timber operation is young, even though the owner may have spent a great deal of time, money, and effort to start the operation and is currently and actively devoting the land to timber use.

(B) A chief appraiser may not be able to see any management activity at the time of inspection if the owner has not harvested for some time.

(C) The chief appraiser may not be able to find evidence of active devotion if the size of the tract means that management activities take place away from the roads that give the chief appraiser access to the land.

(15) However, the absence of visible physical timber activities on the land does not mean that the land is not currently and actively devoted to timber production. The chief appraiser should look for other indications of current and active devotion. The following are some indications of current, active devotion.

(A) **Timber activity records.** Is the owner able to produce records showing timber management activity? Some records that show timber management activity are documents showing the timber has been harvested, canceled checks for services, contracts of sale, and land leases.

(B) **Forest management plan.** The owner operates under a current, written forest management plan. A forest management plan must be developed for the present time. An

outdated plan is of no use as a management document. The plan also should be in writing and signed by the individual who prepared it.

(C) **Use of forest management plan.** However, the existence of a current management plan does not always mean the owner is following the plan. The owner should be able to show that he or she is using or intends to use the plan for timber production.

(D) **Preparation of forest management plan.** Knowledgeable timberland owners may prepare their own plans. If the owner of a marginal tract cannot afford a privately developed forest management plan, is on a waiting list to have a plan developed by a public agency, or lacks the expertise to develop his or her own plan, the chief appraiser should look for other evidence of current and active devotion.

(E) **Timber cost-sharing programs.** The owner receives Texas Reforestation Foundation (TRF), Forestry Incentive Program (FIP), Agricultural Conservation Program (ACP) or Stewardship Incentive Program (SIP) cost sharing funds for reforestation and timber stand improvement. The Texas Forest Service coordinates the federal FIP, ACP and SIP programs. TRF is a privately funded cost-sharing program.

(F) **Efforts to sell timber.** The owner has letters or other documents showing efforts to sell the timber.

(G) **Salvage activity.** The owner has documentation showing that he or she has attempted to salvage damaged or dead timber that continues to have value.

(H) **Registered tree farm.** A registered tree farm is privately owned, protected, and managed timberland. Timberland must meet several qualifications for certification as a registered tree farm: private ownership, management for growth and repeated timber crop harvests, adequate protection from fire, insects, disease, and destructive grazing. In addition, the owner's harvesting practices must assure prompt reforestation with desirable trees. A registered tree farm is inspected by professional foresters before it may qualify for the program. Each registered tree farm is reinspected periodically. Most registered tree farms are easily recognized by the green diamond-shaped TREE FARM marker placed in front of the property.

(I) **Memberships in associations.** The owner is a member of the Texas Forestry Association or a county or local timber growers association.

(J) **Assistance programs.** Does the owner participate in a forest industry landowner assistance program? Many firms in the forest products and the pulp and paper industry have entered into agreements with private timberland owners to manage their timber in exchange for first chance to buy the timber when it is ready to harvest.

(K) **Forestry extension activities.** The Texas Agricultural Extension Service offers periodic programs for timberland owners. These programs cover timber management practices. The Service also offers a correspondence course to show timber owners how to prepare a timber management plan.

(L) **Consulting foresters.** Has the owner contracted with or hired a private consulting forester to help manage his or her timber? What were the results of this collabora-

tion? Is the owner operating on the written advice of a consulting forester?

(16) Land that is currently and actively devoted to timber production will not qualify for productivity appraisal unless timber production is the land's primary use. If the owner uses the land for more than one purpose, the principal use must be growing timber. Although the distinction between currently and active devotion and primary use may be subtle, there is a difference between the two criteria.

(17) While timber production must be the primary use of the land, other compatible uses do not prevent land from qualifying if timber production remains the primary use. For example, an owner may use land principally to grow timber and lease it for hunting. However, if hunting activities are the primary use of the land, and the timber is used to create an environment for wildlife production, then the land would not qualify.

(18) The chief appraiser must determine all the uses to which the owner puts the land and decide which use is the primary one. If any use is incompatible with timber production, or if it replaces timber production as the primary use of land, the land is not principally devoted to timberland use and cannot qualify for productivity appraisal.

(19) There are situations where timber production may not be the land's primary use. The primary use test is particularly important for timberland because the kind of intensive management required to grow agricultural crops is not necessary to grow timber. This less visible management activity can make determining the land's primary use a difficult job.

(20) The following situations are intended to illustrate situations in which timber production may not be the land's primary use, although the land appears to be currently and actively devoted to timber production. In these or comparable situations, the chief appraiser should use the situation as a trigger for further, careful investigation of the application.

(A) Presence of deer-proof fences on the property. Although this is not always the case, the existence of deer-proof fences around the property may indicate that the property is being used for wildlife production. The chief appraiser must then determine if the owner's principal use is timber production, hunting or wildlife production.

(B) Presence of stock or wildlife ponds on the property. Ponds are not normally necessary for the conduct of timber management activities or timber harvesting. The existence of ponds may trigger further investigation of the land's primary use.

(C) Land being readied or held for development. Some timber harvests may indicate that the land is being prepared for housing development rather than used principally to grow timber. (These are commonly referred to as real estate cuts.) Another possible indication that land is being used principally for development is a sign offering the land for development or one indicating it is zoned for industrial or residential use.

(D) Presence of homes, vacation facilities, retreats, and recreational facilities on the property. The existence of

dwellings and recreational facilities, such as retreats, camps, lodges, and similar facilities, may indicate that the timberland is being used to provide an aesthetic environment for these facilities. If this is indeed the case, timber production is not the land's primary use and the land would not qualify for productivity appraisal.

(21) A chief appraiser may establish a policy to follow reasonable and carefully developed guidelines for determining primary use. Establishing guidelines requires the chief appraiser to become familiar with timber activity in the area. The chief appraiser may also rely on the expertise of the agricultural appraisal advisory board in establishing primary use guidelines.

(22) Guidelines, however, should serve only as a trigger for more investigation they should not be arbitrarily or automatically applied. For example, a chief appraiser whose guidelines require a management plan should not automatically deny timber appraisal to an owner who does not have a plan. A property owner with no forest management plan may actually be managing the land more actively and intensely than other owners who have management plans. This land should qualify for productivity appraisal if its use meets all other eligibility qualification requirements. Instead, the chief appraiser should use the lack of a plan as a trigger to investigate the application more closely.

(23) Guidelines that are applied arbitrarily or by rote can produce incorrect results. An application for timber productivity appraisal should not be denied outright because the chief appraiser discovers deer-proof fences, wildlife ponds, dwellings or recreational facilities on the property. The presence of these structure is an indication, not proof, that timber production may not be the land's primary use. In these situations, the chief appraiser should carefully investigate the land's primary use.

(24) To qualify for productivity appraisal, timberland must be used to the degree of intensity generally accepted for prudent timber growers in the area. The degree of intensity test is intended to exclude from productivity appraisal land on which token timber activity occurs simply to get tax relief.

(25) The law doesn't set degree of intensity standards. The chief appraiser must develop standards after carefully investigating the area's typical timber operations performed by prudent landowners. After thoroughly studying the area, the chief appraiser should set minimum degree of intensity standards. The chief appraiser may also rely on the expertise of the agricultural appraisal advisory board in determining the typical degree of intensity for the prudent timber grower.

(26) To set degree of intensity standards, the chief appraiser should analyze the major types of timber operations in the area. This analysis should break down the typical steps in producing timber and attempt to specify how much time, labor, equipment, etc., is typical for each type of timber operation. The sources listed in subsection (f) of this section may help the chief appraiser determine how much of these items are typically used.

(27) Degree of intensity standards will vary from one timber growing area and operation to another. In general, there are three different levels of management intensity: custodial, minimal, and intensive.

(28) Custodial management is hands-off management. The only activities the owner conducts are payment of property taxes and occasional visits to the site. However, it is highly unlikely that a timber property that shows no indication of management activity for two or more decades is being actively devoted to timber production.

(29) Minimal management may fall anywhere between custodial management and intensive management. The owner may undertake some activities, such as periodic thinning, regular site visits, or maintenance of an access road.

(30) Intensive management can involve many activities, including careful soil preparation for replanting, regular thinning and/or prescribed burning to reduce competing vegetation, removal of undesirable trees, following a program to check for and control insects and disease, prompt actions to control insects and disease, and building and maintaining all-weather roads to the site.

(31) Large timber plantations owned by corporations may receive intensive management; small operations owned by individuals may receive custodial management. The chief appraiser's degree of intensity standards should recognize these different levels of management activity and differences among timber operations.

(32) In most cases, property owners must prove that they are following the common production steps for their type of operation and using typical amounts of labor, management, and investment. However, a timber growing operation is not disqualified simply because it differs from the typical operation in some respects. Appraisers should not, for example, disqualify a custodial timber operation because many comparably sized operations are more management intensive. Nor should an owner who is clearly meeting the degree of intensity test be disqualified because the operation has some element of the degree of intensity test missing. The total effort finally determines whether a given timber growing operation qualifies, not the level of each separate "input."

(33) The degree of intensity test applies to the year of the appraisal only it does not apply to the historical use (time period) requirement. Land used principally for timber for five of the preceding seven years may qualify although it was not used to the typical degree of intensity during those years.

(34) The chief appraiser should not apply minimum degree of intensity standards arbitrarily they are a trigger for a more careful review of the application. For example, if the minimum standards require regular thinning of competing vegetation, the application should not be denied simply because the land is not thinned regularly. The chief appraiser should instead carefully review the application and inspect the property to determine if the land qualifies.

(35) The owner must use the land with an intent to produce income. Like the degree of intensity test, this test excludes those owners who aren't producing timber and who are trying to use productivity appraisal to avoid paying property taxes on the land's market value. In Texas Attorney General Letter Opinion LO-88-89, the attorney general stated that land used solely for cutting wood to build fences for ranch operations does not qualify for timber appraisal. Whether the owner has an

intent to produce income is a fact question for the chief appraiser to decide.

(36) To qualify, the owner is not required to prove that the land has produced income in the current year. Timberland does not produce income regularly because the time between harvests is long. At the time of qualification, however, the owner must show evidence of an intent to produce income.

(37) Land that does not produce income (in this context, income means net income) during the time in which a prudent manager would have produced income may not qualify. Further, an owner probably has no real intent to produce income if he or she has had no expenses directly related to the timber operation within the last two decades.

(38) The chief appraiser may use expense receipts, canceled checks, or current accounts of expenses, labor, and revenues to determine if the owner has expenses directly related to timber production. An owner seeking to produce income usually will keep these types of records.

(39) Some examples of evidence of intent to produce income are:

- (A) receipt of revenues through sale of timber;
- (B) letters or other documents showing that the owner has attempted to sell the timber;
- (C) a contract of sale;
- (D) receipts, canceled checks, and other evidence that the owner has had expenses or income related to the timberland's use;
- (E) investments in improvements to enhance the value of the existing timber;
- (F) purchase of easements to allow loggers access to land-locked tracts;
- (G) investments in substantial amounts of reforestation or smaller amounts if other parts of the tract are already in commercial timber;
- (H) attempts to salvage timber that has value but that is damaged or dead;
- (I) using a consulting forester to help manage the land;
- (J) hiring someone to conduct a timber sale; and
- (K) seeking recommendations of a public forester before making a timber sale.

(40) Land used primarily for either timber or agricultural production during any five of the previous seven years may qualify for timber productivity appraisal. A landowner may point to a history of agricultural use that would qualify the land for productivity appraisal in meeting this requirement.

(41) As long as either timber or agriculture was the principal use in the preceding years, the land qualifies although that use may not have met the degree of intensity requirement in all or some of those years. This historical use requirement attaches to the land. It is not a requirement for the landowner to show a history of timber production activities.

(42) The Property Tax Code, §23.75(b), requires the comptroller to prescribe the application form for timber productivity appraisal. The comptroller's application form has been adopted by §9.402 of this title (relating to Special Use Application Forms) available from the comptroller's Property Tax Division.

(43) The appraisal district may copy the comptroller's form and offer it to local property owners. An appraisal district may use a form that substantially complies with the comptroller's form that is it has the same language in the same order as the comptroller form if the district has written approval from the comptroller.

(44) The comptroller will not approve an appraisal district form unless the form has the same elements and asks for the same information as the comptroller form. The comptroller will not approve a form that asks for any information not required by the agency's form.

(45) These rules do not permit appraisal districts to add additional questions to the initial application. If, however, the initial application is valid but does not contain all the information the district needs to rule on an application, the chief appraiser may require the applicant to give additional information. This procedure is described later in this section.

(46) Where the district offers its own form, the applicant may choose between the comptroller application form and the district's form. An applicant may not be denied the appraisal because he or she chooses to use the comptroller form. The applicant must completely provide all information requested by the comptroller form an incomplete application is not valid.

(47) Property owners must file applications with the chief appraiser in the appraisal district where the land is located. Taxpayers whose land is appraised by more than one appraisal district must file an application in each district.

(48) The law requires chief appraisers to share appraisal information on properties within overlapping areas. Chief appraisers are also required to coordinate appraisal records and appraisal activities relating to properties in overlapping areas by written agreement. Appraisal districts must send a comptroller prescribed advisory notice to affected property owners informing them that required reports and other documents must be filed with or sent to each appraisal district. This advisory notice must also inform affected property owners that they should consider sending any other document relating to the property to each appraisal district.

(49) A property owner may file a single application form covering all tracts within an appraisal district. Owners need not file a separate form for each tract as long as they provide sufficient information to show that all tracts qualify under the law.

(50) The chief appraiser should encourage owners to file a single form if they are managing several tracts as a unit. The chief appraiser must view the entire timber growing operation as a unit not with respect to the activities on each individual parcel. The single application form notifies the appraisal district of the operation's unity.

(51) An application must be postmarked or filed no later than midnight, April 30. For good cause and only on the property owner's request, the chief appraiser may extend the filing deadline in individual cases for not more than 60 days. The property owner must request an extension before the filing deadline.

(52) The Property Tax Code does not define good cause. However, it is commonly something the applicant cannot control. Illness or injury or an inability to transact normal business for a period that effectively prevents filing on time is usually good cause. Travel out of town on business or vacation or simply forgetting about the filing deadline is not good cause.

(53) A property owner who misses the deadline may file a late application until the appraisal review board approves records for that year (usually about July 20). However, there is a penalty for late application. An application filed after April 30 is subject to a penalty equal to 10% of the difference between the tax if imposed at market value and the tax imposed at the timber productivity value. If the chief appraiser extended the deadline for that property owner, this penalty does not apply.

(54) Chief appraisers must note imposition of the penalty in the appraisal records. They also must send the property owner written notice of the penalty and explain the reasons. The tax assessor adds the penalty amount to the tax bill and collects the penalty along with the annual tax payment.

(55) A lien attaches to the property until the penalty is paid. If the penalty remains unpaid on February 1 of the following year (or a later delinquency date if tax bills are mailed late), penalty and interest on the penalty amount accrue as if it were a delinquent tax.

(56) If a person does not file a valid application before the appraisal review board approves the appraisal roll, the land is ineligible for productivity appraisal in that tax year.

(57) Once the application is filed and approved, the land continues to receive productivity appraisal every year without a new application unless the ownership changes, the land's eligibility changes, or the chief appraiser requires a new application. The chief appraiser may require a new application if he or she has good cause to believe that the land's eligibility for productivity has ended. If the chief appraiser requires a new application, the property owner must meet the deadlines that apply to a new applicant. To better inform the taxpayer, the chief appraiser may wish to state in writing the reason for a new application.

(58) If the land's eligibility ends or its ownership changes, the property owner must notify the appraisal office in writing before the next May 1. New owners are not eligible for timberland productivity appraisal unless they apply. If the owner fails to do so, one or more penalties will apply.

(59) If the land remains under the same ownership and the owner fails to inform the appraisal district that the land is no longer eligible for productivity appraisal, either because the land is no longer in timber use or because the degree of intensity has fallen below that typical for the area, the property owner must pay a penalty equal to 10% of the difference between the taxes imposed under the timber use and the taxes that would have been imposed under the new use. This penalty applies for

each year the property received the incorrect appraisal, but for no more than five years.

(60) If the property erroneously receives productivity appraisal because a new owner failed to file an application or because an owner's use of the land no longer qualifies, the chief appraiser must calculate the difference between the land's market value and its productivity value. The owner must pay taxes and penalties on the difference between these values for the time that the land erroneously received productivity appraisal, plus a 10% penalty on these taxes. This additional tax and penalty may not cover a time period exceeding five years. In the year the chief appraiser discovers the change, the chief appraiser should add this value to the appraisal roll as property omitted in a prior year.

(61) For example, if a timber producer reduces the scale of the operation and timber is no longer the land's principal use, the land will not be eligible for productivity appraisal. If the landowner fails to notify the appraisal district and, therefore, receives productivity appraisal, the land is back assessed. For each year in question (not to exceed five years), the owner must pay the difference between the taxes based on productivity appraisal and the taxes based on market value, plus a 10% penalty on that difference. Because the land has not been taken completely out of timber use, it is not subject to rollback taxes. (Rollback procedures are discussed in detail in subsection (d) of this section.)

(62) When a penalty is imposed, the chief appraiser must notify the property owner. This notice must explain the procedures for protesting the penalty. The chief appraiser notes the imposition of the penalty in the appraisal records, and the tax assessor adds the amount of the penalty to the property's annual tax bill.

(63) The chief appraiser must review each application and decide whether to:

- (A) approve it and grant productivity appraisal;
 - (B) disapprove it and ask for more information;
- or
- (C) deny the application.

(64) The chief appraiser must determine the validity of all timely filed applications before turning all appraisal records over to the district's appraisal review board. The deadline is May 15 or as soon afterward as is practicable.

(65) The chief appraiser usually gives the appraisal records to the appraisal review board (ARB) by May 15. Property owners who were denied productivity appraisal may file a protest with the ARB. In addition, taxing unit officials who believe productivity appraisal was erroneously granted to any property owner may seek to remove that grant by filing a challenge with the ARB.

(66) The chief appraiser must rule on all late-filed applications before the appraisal review board approves the records for the year. The chief appraiser must notify the applicant in writing within five days of an application's denial. This notice must explain the procedures for protest.

(67) The chief appraiser may request additional information. If the initial application form is valid but the chief appraiser does not have all the information needed to determine if the land qualifies, the chief appraiser may request additional information. The chief appraiser may request only additional information that is necessary to determine if the land qualifies for productivity appraisal.

(68) In determining whether an application is valid, the chief appraiser should take care to consider the application as a whole. If the chief appraiser determines that the omission of a piece of information on the original application was a mistake, the chief appraiser may, at his or her discretion, either:

- (A) extend the filing deadline for 60 days; or
- (B) send a form requesting additional information.

(69) Information contained in income statements and income tax returns, land lease rates, and lease agreements is not necessary to determine whether the land qualifies other than invasive evidence of qualification exists. If the chief appraiser asks an owner for this type of information, the request should clearly state that the owner is not required to give the information to qualify for productivity appraisal.

(70) The applicant must provide additional information within 30 days after the date of the request or the application will be denied.

(71) If there is good cause, the chief appraiser may extend the deadline to allow additional information. An extension cannot exceed 15 days.

(72) If a chief appraiser denies an application, a notice of the denial must be delivered to the applicant within five days. The notice must explain the procedures for protesting to the appraisal review board. To better inform the taxpayer, the chief appraiser may wish to explain the reasons for denying the application.

(73) Even if land meets all the preceding conditions, some situations may block approval of an application. Land within the boundaries of a city often will not qualify. Land located within an incorporated city or town must meet all the criteria for productivity appraisal and, in addition, must meet one of the following:

- (A) the city must not provide the land with general services comparable to those provided in other parts of the municipality having similar features and population; or
- (B) the land must have been devoted principally to production of timber or forest products continuously for the preceding five years.

(74) Property Tax Code, §23.77(2) and (3), provide that some kinds of foreign ownership make the land ineligible for productivity appraisal. Under the law, if the property owner is a non-resident alien (a non-United States citizen who does not reside in the United States), the land can't qualify. Similarly, the law states that a corporation can't qualify its land if a non-resident alien, foreign government, or both control the corporation.

(75) The Texas Supreme Court has held, however, that Property Tax Code, §23.56(3), barring foreign corporate and

governmental ownership from qualifying land for agricultural appraisal, unconstitutionally violates the Texas Constitution's guarantee of equal protection. Although the Court's opinion did not address the ineligibility of non-resident aliens (Property Tax Code, §23.56(2)), its reasons for holding subsection (3) of that statute unconstitutional also applies to the non-resident's eligibility for timber productivity appraisal. The HL Farms case did not address timber appraisal, but the law making productivity appraisal unavailable to foreign owners is identical to the agricultural appraisal law. Property Tax Code, §23.77(2) and (3), is identical to Property Tax Code, §23.56(2) and (3). Because of the similarity between the agricultural appraisal and the timber appraisal sections, a court is likely to hold that HL Farms applies to timberland. Therefore, a chief appraiser should seek the advice of an attorney if the appraiser is confronted with an application for timber appraisal submitted by a foreign owner.

(76) When the Texas Legislature adopted timber productivity appraisal, the law was written to create a minimum taxable value on timberland. Property Tax Code, §23.78, provides that the minimum taxable value of qualified timberland is the market value assigned to the land by the taxing unit in 1978. The purpose of this section was to ensure that a taxing unit with a large amount of timberland would not suffer a serious decrease in its tax base after implementation of productivity appraisal. This means that timberland qualified for productivity appraisal will not be taxed on its productivity value if that value is less than the 1978 value.

(77) The Tax Code requires a unit's tax assessor to compare the total productivity value for the parcel with the unit's 1978 value for the parcel. If the total productivity value is less than the total 1978 value, the unit's assessor must substitute the 1978 value for the entire parcel.

(78) If the nature of the parcel has changed, the assessor must use historical value to reconstruct what the entire parcel's value would have been in 1978. For example, if a parcel includes more land in the current year than it did in 1978, the assessor may not substitute a 1978 per acre average for the new acreage. Instead, a unit's assessor must use historical data to determine what the 1978 value for the entire tract would have been for the unit.

(79) A unit that did not exist in 1978, or that did not levy an ad valorem tax in 1978, may not substitute a 1978 value for the land's productivity value. The law permits only substitution of the 1978 value for the unit. A unit that did not exist or that had no property tax in 1978 has no market value to substitute for the productivity value.

(80) The tax assessor must determine or reconstruct a 1978 value for each unit for which the assessor collects taxes. Each unit's 1978 value must be applied separately from that of other units. The law does not provide for an average 1978 value that is applied for all units that had a 1978 value. Nor does it provide for a historical reconstruction that combines the taxing units having a value in 1978.

(81) An owner may waive his right to productivity appraisal. By barring the land from receiving productivity appraisal, the waiver insures that a taxing unit may depend on a certain level of tax revenue. This certainty may be critical to the survival of small taxing units or those that are in debt.

(82) A waiver is effective for 25 years. Land may not qualify for productivity appraisal for the duration of the waiver. A change in ownership does not revoke the waiver. An owner may file a waiver on land that does not qualify for productivity appraisal. A waiver may be filed with some or all the units that tax the property.

(83) A waiver filed before May 1 becomes effective when it is filed. For good cause, the chief appraiser may extend the May 1 deadline for 60 days. These waivers become effective the year following the filing year.

(84) To revoke a waiver, the owner must file an application for revocation with the governing body of each taxing unit where the waiver is effective. The unit's governing body must vote to approve the revocation and make a finding the unit's debt obligations will not be affected.

(d) Rollback procedures that relate to timberland.

(1) State law imposes an additional tax on qualified timberland each time it is taken out of timber use and is no longer eligible for productivity appraisal. For the purposes of this manual, this additional tax plus accrued interest is referred to as a Roll back

(2) The rollback recaptures the taxes the owner would have paid if his or her property had been taxed at market value each year of the preceding five-year period plus accrued interest. The rollback has two parts:

(A) back taxes; and

(B) accrued interest on those back taxes. The tax portion of the rollback equals the difference between the total taxes the owner actually paid in the five years preceding the change in use and the total taxes the owner would have paid on the property's market value. The interest portion of the rollback is calculated from the dates on which the differences would have been due. A rollback is applicable only if the land was receiving productivity appraisal before its change of use.

(3) A property owner may take land out of timber use either by ending timber operations or by diverting the property to a non-timber use. This Change of use is the only event that triggers a rollback on timberland. If the property owner diverts only part of a timber property to a non-timber use, the rollback applies only to the changed portion.

(4) Technically, the tax is an additional tax imposed by law on the date the cessation of timber production or change of use occurs. The rollback tax bill has its own delinquency date different from the delinquency dates of other tax bills.

(5) A change of use is a physical change. The owner must stop using the land to produce timber. For example, a timber grower who has been receiving timber use appraisal may decide to stop timber operations entirely. The grower has the timber cut, does not plant new trees and shows no intention of replanting. Because the owner has stopped all timber activity, productivity appraisal will be lost and the land will incur a rollback tax.

(6) Reduced intensity of use at the owner's option will cause a loss of productivity appraisal. For example, if the owner decided to use the land primarily for recreational purposes and

timber is no longer the land's principal use, the land would no longer be eligible for productivity appraisal. However, as long as the land is used for some kind of timber production, a rollback will not be triggered.

(7) Reduced intensity resulting from acts of nature and financial hardships also will not prompt a loss of timber productivity appraisal. For example, severe fires, droughts or freezes may extend the normal time land can remain out of timber production. In such cases, the land remains eligible for productivity appraisal until the owner clearly shows an intent to give up timber operations permanently.

(8) This principle also applies when damage is done to part of a tract. If a fire destroys 500 acres of a 3,000 acre forest—forcing the owner to temporarily cease timber operations on the 500 acres—the owner should continue to receive productivity appraisal on the destroyed part of the tract. In years of severe drought, many timber growing operations fail. Because the owner invested money in the failed operation, planting may be delayed because money to start a new operation may not be available. Here as well, the land should continue to qualify until the owner clearly shows that timber production will no longer take place on the land.

(9) Filing documents to plat land does not trigger imposition of a rollback. Only evidence that the actual use of the land has changed triggers the rollback. Plat documents provide some evidence of an intent to change use, but a physical change must occur, such as ceasing timber operations or installing utilities. Even in that case, the change of use may affect only part of the platted land. If the owner ceases timber operations on part of the platted land, only that part of the land is subject to rollback taxes.

(10) An owner who is required to reapply for productivity appraisal but who fails to do so may lose his or her eligibility, but will not suffer a rollback. Rollback requires an affirmative change of use. Failure to reapply alone does not signal an affirmative use change.

(11) Some changes to a different type of use do not trigger imposition of a rollback. Changing from timber use to an agricultural use that qualifies land for 1-d or 1-d-1 appraisal does not trigger a rollback. Property condemned or sold for right of way is not subject to a rollback even if its use changes. Filing a waiver of timber use appraisal with the appraisal district will not trigger a rollback if the use does not change.

(12) Chief appraisers must use great care in determining when a change of use triggers a rollback. The imposition of a rollback is a serious economic penalty that should not be imposed when circumstances beyond a property owner's control cause an abnormally long but temporary suspension of timber production. Chief appraisers must keep in mind that change of use issues are often unclear and require a delicate balance between fair applications of the law and good decisions based on the facts of each situation.

(13) The chief appraiser determines if and when the change of use occurs and must send the owner written notice of the determination. The notice must explain the owner's right to protest the determination.

(14) The owner may protest the change of use decision by filing a protest with the appraisal review board within 30 days after the notice is mailed. The appraisal review board must hear a timely protest even if appraisal records have been approved for the year.

(15) There are a number of ways for a chief appraiser to determine if a change of use has occurred. He or she may learn of a change of use from the owner's written notification, other filed transactions (such as a sale, issuance of a building permit), field observations, or word of mouth.

(16) The rollback covers the five calendar years preceding the year in which the change in use occurred. For example, if the use changed in 1995, the rollback covers 1994, 1993, 1992, 1991, and 1990. The preceding years are based on the use from January through December and not on the tax collection periods.

(17) The tax portion of the rollback is the difference between the taxes paid under productivity appraisal and the taxes that would have been paid on the market value of the land each year. For example:

Figure 1: 34 TAC 9.4011(d)(17).

(18) The assessor for each taxing unit must add 7.0% annual interest on these amounts from the date these taxes would have become due each year. The due date for each year is the date tax bills were mailed that year, which is normally October 1. Discounts for early payment do not apply to rollback taxes discounts apply only to ordinary property taxes. The assessor must compute interest from the date the difference would have become due (normally October 1) to the date the change of use occurs.

(19) Assuming that the use changed November 1, 1995, and that the assessor mailed tax bills on October 1 each year, the interest is calculated as follows:

Figure 2: 34 TAC 9.4011(d)(19).

(20) The five-year rollback period may cover one or more years when the property did not qualify for timber use appraisal. If the property used in the example in paragraph (19) of this subsection had been taxed on market value in 1993, the rollback tax would have been computed for 1994, 1992, 1991, and 1990.

(21) The rollback is due when the rollback tax bill is mailed. It becomes delinquent if not paid before the February 1 that is at least 20 days after the tax bill is mailed. For example, if the rollback tax bill is mailed on January 9, 1996, it becomes delinquent on the February 1, 1996, because there are 20 days between February 1 and January 9. However, if the bill is mailed January 30, 1996, it becomes delinquent February 1, 1997. On the delinquency date, the entire amount begins to draw penalty and interest at the same rate as other delinquent taxes.

(22) A tax lien attaches to the land on the date the use changes. The lien is imposed on behalf of all taxing units that levy taxes on the timberland. The lien covers payment of the additional tax, interest, and any penalties.

(23) The sale of timber property does not trigger a rollback tax. If land is sold and also changes use at the same

time, the buyer and seller may dispute liability. Under the law, the person who has title to the property on the date the use changes is personally liable for the rollback, but the lien may be foreclosed against the land regardless of who is liable for taxes. Tax certificates on land that receives productivity appraisal must note the appraisal and state that the land may be subject to additional taxes.

(24) Organizations that are exempt from ordinary property taxes are not exempt from the rollback. If qualified timberland is sold to an exempt organization and the organization continues timber use on the land, it continues to be exempt from property taxes. However, if the organization takes the property out of timber use, the rollback is triggered. In most cases, the tax lien can be enforced against the property.

(25) Where the state or a political subdivision buys the land and changes the use, the rollback will be triggered but the lien cannot be foreclosed. The rollback cannot be collected unless the governmental entity chooses to pay it. However, the lien against the land continues and could be enforced against a later buyer.

(26) If land changes from a qualifying use to a non-qualifying use after the appraisal review board has approved the appraisal records, the land is assessed for the difference between the property's market value and its timber use value for the current year's taxes. This assessment is in addition to the rollback taxes and interest due.

(27) The tax-assessor sends a supplemental bill for current taxes on the added value. This amount becomes delinquent on the same date as the original tax bill for the property. If those original taxes have been paid, the supplemental bill becomes delinquent on February 1 of the year following the date the bill is mailed or the first day of the next following month that allows the property owner 21 days to pay the tax, whichever is later.

(28) A property owner who willingly ceases timber production on land that is receiving timber use appraisal or diverts his timberland to non-timber use must notify the appraisal district in writing of this change in use before May 1 after the change. If the property owner fails to notify the appraisal district of this change in use, the chief appraiser must impose a penalty on the property equal to 10% of the difference between the taxes levied on the property in each year it was erroneously allowed appraisal and the taxes that should have been levied. This penalty is in addition to the rollback and is similar to the penalty for property left off the roll (omitted property). The chief appraiser must notify the landowner in writing of the imposition of a penalty and explain the procedures for protesting the penalty.

(29) The period for back assessing taxes for erroneously granted productivity appraisals is limited to five years. Landowners may incur other liabilities in addition to the penalty for failure to notify. For example, if qualified timberland was taken out of timber use in January, 1990, but the chief appraiser did not learn of this until 1995, the landowner would owe the following:

(A) the rollback taxes and interest, computed on the five years covering the 1985-89 period;

(B) regular delinquent penalty and interest under the Property Tax Code, §33.01, for the rollback tax bill that became delinquent February 1, 1991;

(C) additional Omitted taxes equal to the difference between the taxes actually paid (or assessed) and the taxes due for the tax years 1990-1994 as omitted property value, required by Property Tax Code, §23.75(j) and §25.21;

(D) interest at 1.0% per month for each year of the 1990-1994 period on the additional Omitted taxes as required by Property Tax Code, §26.09(d); and

(E) a No notice penalty equal to 10% of the additional Omitted taxes due for the 1990-1994 period as required by Property Tax Code, §23.75(h).

(30) Therefore, taxpayers should take great care to notify their chief appraisers as soon as they permanently cease timber operations. Otherwise, they may face heavy liabilities for failure to notify.

(e) The appraisal process for timberland.

(1) The productivity value of an acre of timberland equals the average annual net income a prudent manager could earn from growing timber over the five-year period preceding the appraisal's effective year, divided by a statutory capitalization rate. Net income has two parts: gross income and production cost.

(2) Gross income is calculated by computing potential average annual timber growth per acre and multiplying this amount by timber's average annual market price for that year. This computation is performed for each year of the five-year period.

(3) The average annual cost of producing timber in each of the five years is subtracted from gross income to find net income for the year.

(4) Average annual net income is computed by averaging net income for each year of the five-year period. This five-year average annual net income is then divided by the statutory capitalization rate to produce the productivity value of timberland. Timberland's productivity value is determined in ten basic steps:

- (A) classify timberland into three forest types;
- (B) classify timberland into four soil types;
- (C) estimate average annual timber growth;
- (D) convert timber growth into units for estimating gross income;
- (E) estimate average annual timber prices;
- (F) estimate average annual potential gross income of timber growth;
- (G) estimate average annual costs of producing timber;
- (H) estimate net income of timber growth;
- (I) capitalize net income by statutory rate to develop per acre timber values; and

(J) apply timber values to timber acreage within the district.

(5) The law requires chief appraisers to estimate timber productivity values for three forest types and four soil types, and apply these values to the different classes of timber within their respective districts. (At most, an appraisal district may have 12 classes of timber—four soil types for each of three forest types. Some districts may not have 12 classes of timber. For example, a district that contained only pine forest might have four classes of timber: pine soil class 1, pine soil class 2, pine soil class 3 and pine soil class 4.)

(6) Figure 6: 34 TAC 9.4011(g) through Figure 36: 34 TAC 9.4011(g) illustrate this methodology, and the text frequently refers to these Figures.

(7) The Property Tax Code, §23.71, requires chief appraisers to use The lands potential average annual growth in computing timber's gross income. In this context, the word Potential does not mean actual—it means possible. Consequently, the gross income of an acre of timberland is equal to the value of an average year's worth of possible growth. Chief appraisers must apply the value of a year's worth of possible growth to all timber in each forest and soil type category, irrespective of the size of trees on any one tract.

(8) The result of defining gross income as the value of potential growth often confuses many timber growers, because trees of dramatically different ages and sizes may have the same values. Assume, for example, two tracts of timber, both planted in loblolly pine and both having the same soil type and other characteristics. One tract has pine seedlings six inches high from a recent replanting; the other has pine trees 80 feet high and ready for harvest. If the chief appraiser is following the law's requirements on timber appraisal, both tracts should have the same appraised values per acre.

(9) The law uses the land's potential income because the tax is a property tax. If individual tracts were appraised on their individual incomes, the tax would be an unconstitutional income tax.

(10) The Property Tax Code, §23.71, requires chief appraisers to use information from five different sources to determine forest types, soil types, average growth and timber prices. These are:

(A) United States Department of Agriculture (USDA) Forest Service;

(B) United States Department of Interior Geological Survey;

(C) United States Department of Agriculture (USDA) Natural Resources Conservation Service (formerly the Soil Conservation Service);

(D) Texas Forest Service; and

(E) Texas colleges and universities.

(11) These sources are mandatory and are described in subsection (f) of this section. The one exception to this requirement is discussed below in the last paragraph of Step One.

(12) As noted earlier in subsection (c) of this section, the Property Tax Code, §6.12, requires chief appraisers to appoint an Agricultural appraisal advisory board. The function of this advisory board is to advise the chief appraiser on the use and valuation of timberland and agricultural land within the district. However, the board's advice on the appraisal of timberland does not take precedence over the law's requirements on data sources or the appraisal methodology set out in this chapter.

(13) Before using data from any of these mandatory sources, chief appraisers should check with the relevant agency for updates. For example, the USDA Forest Service may periodically revise its published Texas timber survey numbers. The agency makes these revisions available to the Texas Forest Service. Chief appraisers should check with the Texas Forest Service for revisions to the Texas timber survey numbers before they use the survey data. In addition, chief appraisers should not use data from any of these sources in any manner different from that shown in this manual without first checking with the relevant agency to be sure they are using the data properly.

(14) Texas has two timber regions: northeast and southeast. Figure 6: 34 TAC 9.4011(g) contains a map of east Texas counties showing the boundaries of the northeast and southeast timber regions. Chief appraisers must use regional data that correspond to their county's location when using USDA Forest Service survey data and Texas Forest Service price data. Although the USDA Forest Service reports its Texas survey data at the county level, this agency cautions that the county data are not reliable because of large sampling errors. The Texas Forest Service reports forest product price data at the region level but not at the county level.

(15) The Property Tax Code, §23.71, requires chief appraisers to estimate timber productivity values for three forest types and four soil types. Chief appraisers should begin the appraisal process by classifying the timberland within their districts according to forest type. There are three basic forest types in Texas: pine, hardwood and mixed. These are as follows.

(A) Pine (and other softwood) timberland includes all forested areas in which the trees are predominately green throughout the year and do not lose their leaves. These trees are called evergreens. Forested areas where pine and other softwoods make up more than two-thirds of the trees free to grow are in this category.

(B) Hardwood timberland includes all forested areas with a predominance of deciduous trees. These trees lose their leaves at the end of the frost-free season. Stands where hardwoods are more than two-thirds of the trees free to grow are in this category.

(C) Mixed timberland includes all forested areas where both evergreen and deciduous trees are growing and neither predominates. An area is classified as mixed when evergreen and deciduous trees each make up more than one-third of the trees.

(16) The Texas Agricultural Experiment Station at Texas A & M University in College Station has developed maps of forest types for Texas timber counties. These maps are available upon request for a nominal fee to cover reproduction costs.

(17) In addition, chief appraisers may use aerial photographs, forest type maps and soil class maps from any governmental source that is recognized as competent to determine soil type, soil capability, general topography, weather, location and any other pertinent factors necessary to classify commercial timberland by forest type and soil type. If the chief appraiser elects to use maps from a data source not listed in subsection (f) of this section, the chief appraiser should exercise great care to be certain that the maps are the most current and reliable maps available and that the data source of the maps is a competent governmental source.

(18) The law requires chief appraisers to classify all timber-producing areas in their districts into four soil types. The chief appraiser should use data from the USDA Natural Resources Conservation Service (NRCS) soil surveys to develop soil type maps for his or her district. The NRCS does not publish soil type maps that the chief appraiser may use in appraising timber. However, the Texas Agricultural Extension Service at Texas A & M University has used the soil surveys to develop soil type maps for timberland within each timber-producing county in Texas. These maps are available upon request for a nominal fee to cover reproduction costs.

(19) The NRCS's soil classification system is based on the concept of site index. Site index is a measure of the productive capacity of a forest site based on the average height of the tallest trees on the site at an arbitrarily chosen age. For example, if the average height of the five tallest loblolly pine trees in a fully stocked stand at the age of 50 years is 75 feet, the site index for loblolly pine trees on that forest site is 75. The NRCS publishes site index information in its soil surveys of Texas counties.

(20) The NRCS soil surveys provide site index information for all land capable of growing commercial trees within each county. The NRCS site index data must be grouped into types that are generally comparable to the USDA Forest Service site classes, and this information should then be used to generate soil type maps. This is necessary because the USDA Forest Service reports timber growth data by site class, which is also a measure of soil productivity. However, the USDA Forest Service growth data by site class cannot be mapped since they were derived from a sample of selected sites in Texas.

(21) The USDA Forest Service classifies all commercial timberland into five site classes based on the land's potential capacity to grow commercial wood crops. Site class is a measure of timber growth in cubic feet per year. The USDA Forest Service determines site class by measuring the height of the three tallest trees at a particular site, and then selecting the tree providing the highest estimate of site class. The USDA Forest Service has defined these five site classes as follows:

(A) land capable of producing more than 165 cubic feet per acre per year;

(B) land capable of producing 120-165 cubic feet per acre per year;

(C) land capable of producing 85-120 cubic feet per acre per year,

(D) land capable of producing 50-85 cubic feet per acre per year; and

(E) land capable of producing less than 50 cubic feet per acre year.

(22) To comply with the law's requirement to use four soil types, chief appraisers using the USDA Forest Service's system must reduce these five site classes to four. The over 165 cubic feet site class should be combined with the 120-165 cubic feet site class to produce the mandatory four soil types, because this produces a classification scheme that works well with NRCS site index data discussed below. The site index data compiled by the Natural Resources Conservation Service show virtually no trees with a site index of 110 and above, which is the equivalent of site class 165 and above. Consequently, if the top two USDA Forest Service site classes were kept separate and the two lower site classes were combined, there would be no NRCS data for the "over 165 site class" in most of Texas. As explained below, the NRCS data are necessary to develop soil type maps. In this manual, this combined site class is called the over 120 cubic feet site class.

(23) As noted earlier, the NRCS site index data must be grouped into ranges that are roughly comparable with USDA Forest Service's soil types. This grouping produces the following ranges:

Figure 3: 34 TAC 9.4011(e)(23).

(24) Chief appraisers must use growth data from private timberland that is the most current and reliable data available from one of the sources required by law. (See subsection (f) of this section for a discussion of these sources.) At the time this manual was written, the most current and reliable growth data available was the 1992 survey of Texas timber conducted by the USDA Forest Service. Figure 7: 34 TAC 9.4011(g) contains summary growth data for private timberland from the 1992 Texas survey. These data, which were prepared by the Texas Forest Service, show the average annual growth of Texas timber during the 1986-1992 period. The Texas Forest Service, located in College Station, maintains Texas Forest survey data collected by the USDA Forest Service. This growth is expressed in terms of four forest products for each of three forest types and four site classes for each Texas timber region. Chief appraisers should use the data in Figure 7: 34 TAC 9.4011(g) to calculate the average annual growth per acre for each forest type expressed in terms of forest products.

(25) The forest products are pine sawtimber, pine pulpwood, hardwood sawtimber and hardwood pulpwood, and the forest types are pine, mixed and hardwood. To avoid confusion, it is important to remember that pine forests—defined in paragraph (15)(A) of this subsection to be at least two-thirds evergreen trees—may produce both pine and hardwood forest products. Likewise, hardwood forests—defined to be at least two-thirds deciduous trees—may produce both pine and hardwood products.

(26) Figure 8: 34 TAC 9.4011(g) shows these calculations for northeast Texas region; Figure 13: 34 TAC 9.4011(g) shows comparable calculations for southeast Texas. All calculations are based on the data in Figure 7: 34 TAC 9.4011(g). Figure 8: 34 TAC 9.4011(g) shows the steps necessary to compute growth for an average acre of pine in northeast Texas. For pine sawtimber, for example (the forest product shown in the upper left-hand box), the chief appraiser should multiply the number of

plots in each site class by the per acre growth for that site class. Multiplying 95 (number of plots) by 478.13 (average growth per acre in board feet) in site class 120+ produces 45,422.35, which is the estimated total growth for this site class. The result of each calculation for the four different site classes is added and this sum is divided by the total number of plots for all four site classes. The resulting number, 357.31 board feet, is the average annual amount of pine sawtimber grown on the average acre of pine in northeast Texas.

(27) The computations necessary to calculate the average annual growth of the other forest products—pine pulpwood, hardwood sawtimber and hardwood pulpwood—are identical to those for pine sawtimber. Figure 8: 34 TAC 9.4011(g) shows that the average acre of pine forest in northeast Texas grows annually 357.31 board feet of pine sawtimber, 20.37 board feet of hardwood sawtimber, 28.54 cubic feet of pine pulpwood and 4.86 cubic feet of hardwood pulpwood.

(28) The chief appraiser should use these same procedures to compute the average annual growth of an average acre of both mixed and hardwood forests in the rest of northeast Texas. Identical calculations should be used for all forest types in southeast Texas. Complete calculations for all forest types are shown in Figures 8-13: 34 TAC 9.4011(g) for northeast and southeast Texas, respectively. The results of the detailed calculations illustrated in Figures 8-13: 34 TAC 9.4011(g) are summarized in Figure 14: 34 TAC 9.4011(g).

(29) As shown in Figures 8-14: 34 TAC 9.4011(g), the USDA Forest Service measures sawtimber growth estimates in the International 1/4 inch log rule and measures pulpwood growth estimates in cubic feet. (A Log rule is a scale for measuring the amount of sawtimber that can be produced from a tree. There are dozens of recognized log rules in use in the United States, and each is based on various assumptions about tree taper, lumber shrinkage, cutting methods, and waste. The two log rules that are of interest to the chief appraiser are the International one-fourth inch—used by the USDA Forest Service—and the Doyle log rule, used by the Texas Forest Service.) The Texas Forest Service collects timber sales data bi-monthly from timber buyers and sellers; however, buyers and sellers report sawtimber transactions in the Doyle log rule and pulpwood transactions in cords. Consequently, the next step in the appraisal process is conversion of the growth estimates to the same scales in which forest product selling prices are reported.

(30) The chief appraiser must use a log rule conversion table to develop factors to convert sawtimber growth from one log rule to another. Figures 15 and 16: 34 TAC 9.4011(g) contain factors for converting board feet from the International 1/4 inch log rule to the Doyle log rule for northeast Texas and southeast Texas, respectively. The individual conversion factors shown in the fifth column of these tables are for Texas timber. Chief appraisers should use these log rule conversion factors until subsequent log rule conversion factors are developed based on reliable and scientific data from sources listed in subsection (f) of this section.

(31) The first two columns in Figure 15: 34 TAC 9.4011(g) are from the 1992 USDA Forest Service survey and show timber volumes by tree diameter class in northeast Texas. The fourth column, titled percent of total volume, shows volume

for each diameter class as a percent of total volume. At the top of Figure 15: 34 TAC 9.4011(g), for example, the reported volume for pine in diameter class 9-10.9 inches is 1,708.5 million board feet. The 1,708.5 million board feet is divided by total volume, 11,947.8 million board feet, to produce the percentage figure of 0.1430. The fifth column, titled conversion factor, is for Texas timber. The percentage and conversion factor for each diameter class are multiplied to produce the weighted contribution shown in the sixth column. Finally, these weighted contributions are added to produce the weighted conversion factor for pine in northeast Texas, which is 0.58817. The computations for the other conversion factors are identical. The timber volume data shown in both tables are for privately-owned timberland.

(32) After calculating the weighted conversion factors for sawtimber as illustrated in Figures 15 and 16: 34 TAC 9.4011(g), chief appraisers should apply these conversion factors to the sawtimber growth estimates summarized in Figures 14: 34 TAC 9.4011(g). The results of these computations are shown in Figures 17 and 18: 34 TAC 9.4011(g). In northeast Texas, for example (Figure 17: 34 TAC 9.4011(g)), the chief appraiser should multiply 357.31 board feet of pine sawtimber in the International 1/4 inch log rule (from Figure 13: 34 TAC 9.4011(g)) by the weighted conversion factor of 0.58817 to get 210.16 board feet of pine sawtimber in the Doyle log rule. To convert the 210.16 board feet to thousand board feet, the chief appraiser should divide 210.16 by 1,000 to get 0.210. The computations for hardwood sawtimber are identical.

(33) In addition, the pulpwood growth volumes shown in Figure 13: 34 TAC 9.4011(g) must be converted from cubic feet into cords because pulpwood prices are reported in cords. The chief appraiser should use the pulpwood conversion factors provided by the Texas Forest Service in its bi-monthly publication, Texas Timber Price Trends. In the September-October, 1994 edition of Texas Timber Price Trends, the suggested conversion factors for pine pulpwood and hardwood pulpwood are 81 and 80, respectively. The results of these calculations also are presented in Figures 17 and 18: 34 TAC 9.4011(g).

(34) Figure 19: 34 TAC 9.4011(g) summarizes the annual average growth of an acre of timberland by forest type and forest product in both northeast and southeast Texas. Sawtimber growth is shown as thousand board feet (MBF) in the Doyle log rule, while pulpwood growth is shown as cords. As shown in this table, for example, the average annual growth of an acre of pine forest in northeast Texas is:

- (A) 0.210 MBF (thousand board feet) of pine sawtimber;
- (B) 0.013 MBF of hardwood sawtimber;
- (C) 0.35 cords of pine pulpwood; and
- (D) 0.06 cords of hardwood pulpwood.

(35) To determine the average annual gross income from an acre of timber, the chief appraiser should multiply timber growth by its average annual price, or stumpage price. Stumpage price is the terminology used to indicate the price of uncut, marketable timber. Before doing this, however, the chief appraiser must calculate the average annual stumpage price of each of the four forest products for each year of the five-year period preceding the year of appraisal.

(36) A readily available source of stumpage price data is the Texas Forest Service, located in College Station, Texas. The Texas Forest Service is also an official source of data for timber appraisal. This agency collects timber prices in its bi-monthly surveys of forest industries, consulting foresters, government agencies and large landowners and publishes selected summaries of price data in its publication Texas Timber Price Trends. The Texas Forest Service also provides summaries of average annual stumpage prices of various forest products by region for various years. It does not provide data at the county level. This publication reports selected price data for pine and hardwood sawtimber sales, pine and hardwood pulpwood sales and other miscellaneous sales. Unpublished annual summaries of price data at the regional level are available upon request.

(37) The Texas Forest Service reports both un-weighted average annual prices and weighted average annual prices for various forest products for both northeast and southeast Texas. These price reports are available upon request from the Texas Forest Service. Chief appraisers should compute a simple average of these two reported prices and use this simple average in their timber appraisals.

(38) Figures 20 and 21: 34 TAC 9.4011(g) show how to calculate average annual stumpage prices for four forest products for each year of the 1990-1994 period. In northeast Texas, for example (Figure 20: 34 TAC 9.4011(g)), the average price for pine sawtimber in 1990 was \$169.53 per thousand board feet (MBF); in 1991, \$182.17 per MBF; in 1992, \$241.52 per MBF, etc.

(39) This section explains how chief appraisers should calculate the average annual potential gross income of timber growth. The steps in this calculation are:

- (A) compute average annual gross income;
- (B) calculate soil productivity multipliers; and
- (C) use soil productivity multipliers to adjust average annual gross income to potential gross income.

(40) First, the chief appraiser should multiply the growth of each of the four timber products (from Figure 19: 34 TAC 9.4011(g)) by its respective price (from Figures 20 and 21: 34 TAC 9.4011(g)) for each year of the five-year period. Figures 22 and 23: 34 TAC 9.4011(g), show these calculations for northeast and southeast Texas, respectively. As shown in Figure 22: 34 TAC 9.4011(g), for example, the average annual gross income for an acre of pine forest in northeast Texas was \$44.11 in 1990 and \$91.93 in 1994. These numbers were computed by multiplying each forest product growth estimate by its respective price and then summing the products.

(41) Next, the chief appraiser must adjust these gross income estimates to reflect different soil productivities. To do this, the chief appraiser should develop productivity multipliers to adjust the average gross income. Productivity multipliers must be computed from statutory data sources that are current and reliable. (As noted earlier, subsection (f) of this section contains a listing of official data sources.) At the time this manual was written, USDA Forest Service data were the only current and reliable data available for developing soil productivity multipliers.

(42) The USDA Forest Service data needed to compute productivity multipliers are:

- (A) the most recent forest survey data for Texas; and
- (B) data contained in the Boyce study, conducted by the USDA Forest Service.

(43) The Boyce study, named after one of its authors, determined in 1975 the average annual maximum potential amount of timber that could be produced on an acre of loblolly pine east of the Mississippi River in each of four soil productivity classes. The soil productivity classes used in the Boyce study correspond to the soil classification scheme developed in paragraph (41) of this subsection. Combining that soil classification scheme with the Boyce study productivity classes produces the following:

Figure 4: 34 TAC §9.4011(e)(43).

(44) The concepts of site quality class and site index range were discussed earlier. "Potential timber growth per acre per year are the Boyce study estimates of the maximum potential growth of an acre of loblolly pine in each soil productivity class under ideal conditions.

(45) Figures 24 and 25: 34 TAC 9.4011(g), show how to compute the average annual potential growth of an average acre. The top part of Figure 24: 34 TAC 9.4011(g) lists acres by site class for each county in northeast Texas. These data are from the 1992 USDA Forest Service survey of Texas. The bottom part of Figure 24: 34 TAC 9.4011(g) shows the results of multiplying the acreage in each site class in each county by the growth potentials developed in the Boyce study.

(46) For example, the 15,300 acres in site class 165+ in Anderson County (Figure 24: 34 TAC 9.4011(g)) are multiplied by 163 (the growth potential for that site type). The result, shown in the lower half of the table, is 2,493,900 cubic feet. This calculation is carried out for all site classes in each county. The resulting products are added to produce 606,729,100 cubic feet, which is the estimated total potential growth of timberland in northeast Texas. This total estimated potential growth is divided by the total number of acres, 4,897,100, to generate an estimate of the average annual potential timber growth of an acre of timberland in northeast Texas of 123.9 cubic feet per acre per year. As noted earlier, Average annual potential growth is not the same as average annual actual growths

(47) Computations for southeast Texas are identical and are shown in Figure 25: 34 TAC 9.4011(g).

(48) Figure 26: 34 TAC 9.4011(g), shows how to calculate soil productivity multipliers for the four productivity classes for northeast and southeast Texas. Chief appraisers should compute these productivity multipliers by dividing the growth potentials from the Boyce study by the growth potential for each region. To compute the productivity multiplier for productivity class II timberland in northeast Texas, for example, the chief appraiser should divide 123 by 123.9 to generate a productivity multiplier of 0.99. The chief appraiser should compute the productivity multiplier for class II timberland in southeast Texas by dividing 123 by 122.3, which yields a multiplier of 1.01.

(49) Figures 27 and 28: 34 TAC 9.4011(g), show chief appraisers how to apply productivity multipliers to the average annual gross income estimates, which were developed in Figures 22 and 23: 34 TAC 9.4011(g). In northeast Texas in 1990, for example, the annual gross income of pine, \$44.11, is multiplied by the productivity multiplier for each productivity class. This produces estimates of the average annual potential gross income of each productivity class in 1990.

(50) It is important to remember that this Potential gross income measure is not an estimate of the actual income an individual timber grower could receive from the sale of timber in a particular year. It is a measure of the value of a year's worth of possible growth in each timber category (forest type and soil productivity class) in the region.

(51) Texas law defines timber production costs as reasonable management costs and other reasonable expenses directly attributable to producing timber. The costs of producing timber are expenses related to establishing, owning, protecting, maintaining, and improving timber. These costs may vary by forest type, soil productivity, management intensity and other factors.

(52) Timber production costs include professional services, site preparation, tree planting and seeding, timber improvement, protection against fire, insects and diseases, prescribed burning, maintenance of property boundaries, road construction and maintenance, measurements of standing timber, selling costs, property taxes, equipment use, mileage traveled to/from property for timber management, personnel supervision and administration. Since many foresters may include several activities under one general classification, chief appraisers should understand the components of a particular timber management activity to avoid duplicating or omitting costs.

(53) The cost model in Figure 37: 34 TAC 9.4011(g) lists timber management activities and a typical frequency for each activity. The chief appraiser should use this general cost model as a basis for developing a district-specific cost model that reflects typical activities for a prudent manager in the district. Chief appraisers may add or delete activities to this model so that it reflects management activities that are typical for their respective counties districts.

(54) After determining typical management activities and the frequency of each activity in the district, the chief appraiser should estimate the average annual cost of each activity. Sources of cost data are the Texas Forest Service, landowners within the district, private contractors, consulting foresters, and departments of forestry in Texas colleges and universities. The chief appraiser must develop costs that reflect typical management activities and typical frequencies for a prudent manager in the district.

(55) Chief appraisers may develop an average, per acre cost for all timberland or an average, per acre cost for each type of timberland. In either case, chief appraisers must adjust these costs to reflect different management costs for each category of timber. This is done because timber on more productive land is often managed more intensively, resulting in higher costs per acre. Adjusting average annual costs per acre for soil productivity classes is analogous to adjusting average annual

gross income per acre to soil productivity classes, as discussed in Step Six above.

(56) Chief appraisers who develop one average cost for all timberland must adjust this cost to reflect both forest type and soil productivities. To accomplish this, chief appraisers may use the following cost proration factors developed by the Texas Agricultural Experiment Station:

Figure 5: 34 TAC 9.4011(e)(56).

(57) Figure 29: 34 TAC 9.4011(g) shows hypothetical costs for a hypothetical county in northeast Texas and in southeast Texas. The numbers in this table were created to illustrate the timber appraisal process, and chief appraisers should not use these numbers in their appraisals.

(58) Figures 30 and 31: 34 TAC 9.4011(g) show the results of applying these cost proration factors to the hypothetical costs shown in Figure 29: 34 TAC 9.4011(g). The chief appraiser should note that these cost proration factors are applied to an average cost for all timberland. The proration factors adjust costs for both forest type and soil productivity class.

(59) If chief appraisers develop an average cost for each forest type, they must adjust each of these costs to reflect the impact of different soil productivity classes. To accomplish that, chief appraisers may apply the relationships within soil classes above to make the adjustments. For example, assume that the chief appraiser determines that the average annual management cost of hardwood is \$8.00 and that most of the hardwood in the district is in soil class II. This \$8.00 figure becomes the management cost for hardwood soil class II. The management cost for hardwood soil class I would be $\$8.00 \times 1.25$, or \$10.00. The 1.25 factor is derived by taking the relationship from the factors for hardwood in Figure 5 of paragraph (56) of this subsection, which is $0.75/0.60 = 1.25$.

(60) The management cost for hardwood soil class III would be $\$8.00 \times 0.75$, or \$6.00. The 0.75 is the quotient of 0.45 divided by 0.60. The proration factor for hardwood soil class IV would be $0.30/0.60 = 0.50$ and the management cost would be $\$8.00 \times 0.50 = \4.00 .

(61) To calculate the average annual net income per acre for each timber type and soil productivity class, the chief appraiser must subtract the average annual cost per acre from the average annual potential gross income per acre. This calculation must be performed for each forest type and soil productivity class. The results are the average annual net income per acre by forest type and soil productivity class. Figures 32 and 33: 34 TAC 9.4011(g) show these computations for hypothetical counties in northeast and southeast Texas, respectively.

(62) To complete the timber appraisal process, chief appraisers must develop an average net income for each forest type and soil productivity class for the prior five years of average annual net incomes, capitalize this average net income and apply these productivity values to the timber acreage in their appraisal districts. Figure 34: 34 TAC 9.4011(g) shows how to perform these calculations for hypothetical appraisal districts in both northeast and southeast Texas.

(63) The productivity value of an acre of timberland is determined by dividing the average net income per acre for

each forest type and productivity class by the capitalization rate mandated by the Property Tax Code, §23.74. The law sets the capitalization rate at the interest rate specified by the Farm Credit Bank of Texas or its successor on December 31 of the preceding year, plus 2-1/2 percentage points. Chief appraisers also may contact the comptroller's property tax division to find out the current year's capitalization rate.

(64) Figure 34: 34 TAC 9.4011(g) shows the results of dividing the net income per acre by a capitalization rate of 10.75%. For example, in northeast Texas, pine forest, soil productivity class I, the chief appraiser would divide \$66.30, the net income per acre, by 0.1075, the capitalization rate, to get \$616.74, the productivity value of the average acre of pine forest in soil productivity class I in northeast Texas. In southeast Texas, the chief appraiser would divide \$53.38 per acre by 0.1075 to get \$496.56, the productivity value of the average acre of pine in soil productivity class I. The chief appraiser should perform these calculations for each forest type and each soil productivity class in the appraisal district.

(65) The chief appraiser should apply the per acre values developed in paragraph (64) of this subsection to the respective acreages of each parcel of qualified timberland in each forest type and soil productivity class in each taxing jurisdiction. Figures 35 and 36: 34 TAC 9.4011(g) show how to do this calculation for hypothetical counties in both Northeast and Southeast Texas, respectively.

(66) In determining the forest type and soil productivity class of qualified timberland in the district, the chief appraiser should use maps from one or more of the five official sources listed in subsection (f) of this section. As noted earlier in Step One, chief appraisers may use aerial photographs, forest type maps and soil class maps from any governmental source that is recognized as competent to determine soil type, soil capability, general topography, weather, location and any other pertinent factors necessary to classify commercial timberland by forest type and soil type. If the chief appraiser elects to use maps for classifying timberland within his or her district from a data source not listed in subsection (f) of this section, the chief appraiser should exercise great care to be certain that the maps are the most current and reliable maps available and that the source of the maps is a competent governmental source.

(f) Data sources for the chief appraiser.

(1) Chief appraisers are solely responsible for determining timber productivity values within their respective appraisal districts. To do so, they must obtain information on forest types, soil types, timber growth and forest product prices from sources listed in the Property Tax Code. While the following sources provide information on which to base determinations, the chief appraiser bears ultimate responsibility for determining timberland productivity value.

(2) United States Department of Agriculture (USDA) Natural Resources Conservation Service (NRCS). The NRCS is the federal agency charged with inventorying and classifying the nation's soils. This agency has detailed soil surveys of Texas timber-producing counties which show the potential productivity and site index of common trees in each soil series that is suitable for growing commercial trees. This information may be used to generate soil productivity maps.

(3) United States Department of Agriculture Forest Service. The USDA Forest Service is a branch of the United States Department of Agriculture. This agency collects voluminous information about average timber growth and forest characteristics in east Texas timber counties as part of its surveys of east Texas timber. The USDA Forest Service publishes the results of these surveys and makes much of the collected data available to the Texas Forest Service.

(4) United States Department of Interior Geological Survey. The United States Geological Survey periodically publishes land use/land cover maps, which classify forest types in a format useful for timberland appraisal. The agency has negatives of panchromatic (showing all colors in the visible color spectrum) aerial photographs and positive transparencies of color-infrared aerial photographs.

(5) Texas Forest Service (TFS). The Texas Forest Service (TFS) is a state agency and has branch offices throughout the state's timber region. TFS foresters help timber growers prepare management plans, giving priority to those with long-term timber production goals who are interested in using approved management practices, including cost-sharing. TFS headquarters are located in College Station, where the agency publishes a bi-monthly report of timber stumpage prices, called Texas Timber Price Trends. In addition, TFS publishes an annual report of timber harvests called Harvest Trends. This publication shows harvest information for each product and for each timber-producing county in Texas. Finally, the TFS has data about timber growth that the agency develops in cooperation with the United States Department of Agriculture Forest Service.

(6) Universities and colleges. The College of Forestry at Stephen F. Austin State University in Nacogdoches, the Department of Forest Science at Texas A & M University in College Station and other Texas colleges of forestry and universities with forest science departments often have research-based information unavailable from other sources. For example, personnel at the Texas Agricultural Experiment Station at Texas A & M University have developed forest type maps and soil productivity maps using United States Geological Survey maps and USDA Natural Resources Conservation Service data, respectively. These maps are available upon request for a nominal fee to cover reproduction costs.

(g) Appendix C contains Figures 6-22 which are referred to in this section. (A map and Tables 1-16B).

Figure 6: 34 TAC 9.4011(g).
Figure 7: 34 TAC 9.4011(g).
Figure 8: 34 TAC 9.4011(g).
Figure 9: 34 TAC 9.4011(g).
Figure 10: 34 TAC 9.4011(g).
Figure 11: 34 TAC 9.4011(g).
Figure 12: 34 TAC 9.4011(g).
Figure 13: 34 TAC 9.4011(g).
Figure 14: 34 TAC 9.4011(g).
Figure 15: 34 TAC 9.4011(g).
Figure 16: 34 TAC 9.4011(g).
Figure 17: 34 TAC 9.4011(g).
Figure 18: 34 TAC 9.4011(g).
Figure 19: 34 TAC 9.4011(g).
Figure 20: 34 TAC 9.4011(g).
Figure 21: 34 TAC 9.4011(g).

Figure 22: 34 TAC 9.4011(g).
Figure 23: 34 TAC 9.4011(g).
Figure 24: 34 TAC 9.4011(g).
Figure 25: 34 TAC 9.4011(g).
Figure 26: 34 TAC 9.4011(g).
Figure 27: 34 TAC 9.4011(g).
Figure 28: 34 TAC 9.4011(g).
Figure 29: 34 TAC 9.4011(g).
Figure 30: 34 TAC 9.4011(g).
Figure 31: 34 TAC 9.4011(g).
Figure 32: 34 TAC 9.4011(g).
Figure 33: 34 TAC 9.4011(g).
Figure 34: 34 TAC 9.4011(g).
Figure 35: 34 TAC 9.4011(g).
Figure 36: 34 TAC 9.4011(g).

(h) Appendix D contains Figure 37 (Timber Cost Model).
Figure 37: 34 TAC 9.4011 (g).

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

Issued in Austin, Texas on February 26, 1996.

TRD-9602646

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: April 5, 1996

For further information, please call: (512) 463-4028

◆ ◆ ◆
TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 81. Administrative Provisions

Subchapter

37 TAC §81.25

The Texas Youth Commission (TYC) proposes new §81.25, concerning concealed handguns. The new section provides rules which prohibit the possession of handguns on the premises of TYC buildings, offices, facilities, or programs unless specifically authorized by the executive director.

John Franks, Director of Finance, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Franks also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased safety for TYC staff and youth and the public. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Gail Graham, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar Boulevard, P.O. Box 4260, Austin, Texas 78765.

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

The proposed rule implements the Human Resource Code, §61.034.

§81.25. Concealed Handguns.

(a) The Texas Youth Commission (TYC) performs juvenile correctional activities and provides safety and security for its staff, youth, and the public.

(b) Handguns may not be possessed by anyone on the premises of TYC buildings, offices, facilities, or programs, including possession of a handgun under the authority of Texas Civil Statutes, Art. 4413(29ee), unless specifically authorized by the executive director.

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 February 23, 1996.

TRD-9602599

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: April 5, 1996

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

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 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 6. State Records

Microfilming Standards for State Agencies

13 TAC §§6.21-6.35

The Texas State Library and Archives Commission has withdrawn from consideration for permanent adoption the proposed new §§6.21-6.35, which appeared in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6564).

Issued in Austin, Texas, on February 23, 1996.

TRD-9602612

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: February 23, 1996

For further information, please call: (512) 463-5436



Chapter 7. Local Records

Microfilming Standards for Local Governments

13 TAC §§7.21-7.35

The Texas State Library and Archives Commission has withdrawn from consideration for permanent adoption the proposed repeal §§7.21-7.35, which appeared in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6564).

Issued in Austin, Texas, on February 23, 1996.

TRD-9602802

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: February 23, 1996

For further information, please call: (512) 463-5436



The Texas State Library and Archives Commission has withdrawn from consideration for permanent adoption the proposed new §§7.21-7.35, which appeared in the August 25, 1995, issue of the *Texas Register* (20 TexReg 6564).

Issued in Austin, Texas, on February 23, 1996.

TRD-9602613

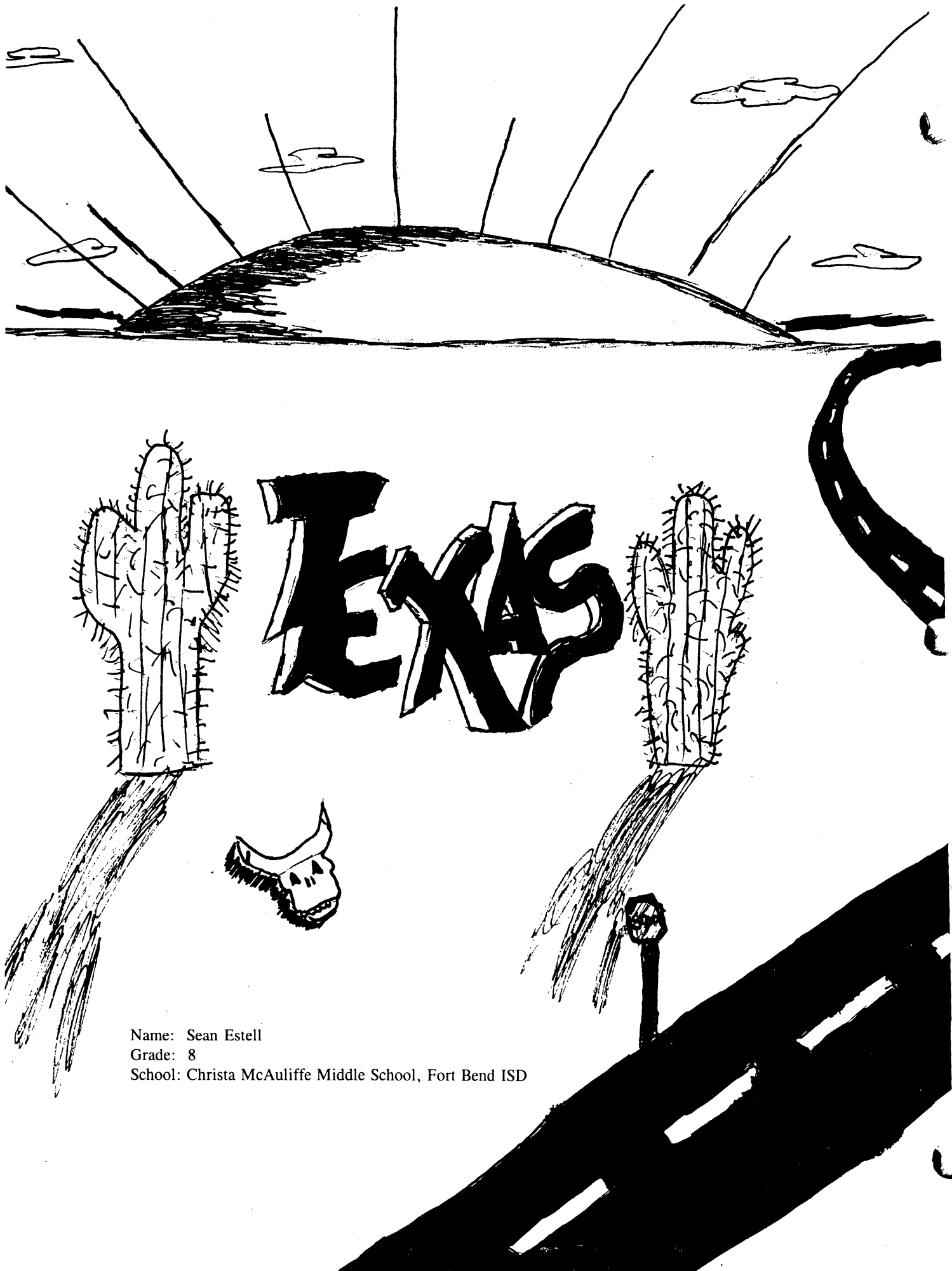
Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Effective date: February 23, 1996

For further information, please call: (512) 463-5436



Name: Sean Estell
Grade: 8
School: Christa McAuliffe Middle School, Fort Bend ISD

ADOPTED RULES

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

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

TITLE 16. ECONOMIC REGULATION

Part IX. Texas Lottery Commission

Chapter 401. Administration of the State Lottery Act

The Texas Lottery Commission adopts amendments to 16 TAC §§401.152 (relating to Application for Licenses), 401.153 (relating to Qualification for License), 401.156 (relating to Renewal for License), 401.157 (relating to Temporary Licensee), 401.159 (relating to Summary Suspension of License), 401.301 (relating to General Definitions), 401.302 (relating to Instant Game Rules), 401.303 (relating to Grand Prize Drawing Rule), 401.304 (relating to On-Line Game Rules (General)), 401.352 (relating to Settlement Procedures), 401.355 (relating to Restricted Sales), 401.356 (relating to Sales Price of Tickets), 401.361 (relating to Required Purchases of Lottery Tickets), 401.362 (relating to Security Procedures), 401.363 (relating to Retailer Record), 401.364 (relating to Training), and 401.366 (relating to Compliance with All Applicable Laws), without changes to the proposed test published in the December 8, 1995, issue of the *Texas Register* (20 TexReg 10335).

Many of the amendments are made to clarify language that became inconsistent when the Texas Lottery Commission, the agency, was created by House Bill 54, 72nd Legislature, First Called Session as amended by House Bill 1587, 73rd Legislature, Regular Session. Additionally, there are several instances in which the language is amended to reflect correct statutory references. Phrases within several of the rules are amended to correspond with the practices of the Texas Lottery Commission.

The language in §401.153 is amended to incorporate legislation promulgated by House Bill 3031, 74th Legislature, Regular Session, regarding the locations lottery tickets may be sold.

The changes to the existing rules make it clear (1) who, within the agency, is making determinations regarding particular

matters and (2) what current agency practice is in light of legislative changes.

No comments were received regarding adoption of the amendments.

Subchapter B. Licensing of Sales Agents

16 TAC §§401.152, 401.153, 401.156, 401.157, 401.159

The amendments are adopted under the Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt all rules governing the establishment and operation of the lottery.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602542

Kimberly L. Kiplin

General Counsel

Texas Lottery Commission

Effective date: March 14, 1996

Proposed publication date: December 8, 1995

For further information, please call: (512) 323-3791

Subchapter D. Lottery Game Rules

16 TAC §§401.301-401.304

The amendments are adopted under the Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt all rules governing the establishment and operation of the lottery.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602541
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: March 14, 1996
Proposed publication date: December 8, 1995
For further information, please call: (512) 323-3791

◆ ◆ ◆
Subchapter E. Retailer Rules

16 TAC §§401.352, 401.355, 401.356, 401.361-401.364, 401.366

The amendments are adopted under the Texas Government Code, §466.015, which provides the Texas Lottery Commission with the authority to adopt all rules governing the establishment and operation of the lottery.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602540
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Effective date: March 14, 1996
Proposed publication date: December 8, 1995
For further information, please call: (512) 323-3791

◆ ◆ ◆
TITLE 19. EDUCATION

Part I. Texas Higher Education Coordinating Board

Chapter 1. Agency Administration

Subchapter A. General Provisions

19 TAC §1.9

The Texas Higher Education Coordinating Board adopts an amendment to §1.9, concerning General Provisions (Training for Members of Governing Boards and Board Trustees), without changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10461).

The 74th Legislature modified this training program. House Bill 1250 permits the Coordinating Board to provide for alternative methods by which regents can obtain the required training. It also eliminates the requirement for a two-day training session and allows more latitude by the Coordinating Board in the selection of topics. House Bill 1689 makes the regents training optional for elected members community college boards of trustees. The proposed modifications to the board rules includes changing the statute reference from §61.083 to §61.084. This was changed in House Bill 1250 to correct a duplication of a previously used section number. The second change is to add a section allowing for an alternative method for delivering

the training program. Governing board members are required to attend a one-day seminar addressing topics such as budgeting, policy development, and governance. Previously, board members were required to attend a two-day seminar. Board members are still required to attend one seminar during their first two years of service on the Board.

There were no comments received regarding adoption of the amendment.

The amendment is adopted under Texas Education Code, §61.084, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning General Provisions (Training for Members of Governing Boards and Board of Trustees).

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

Issued in Austin, Texas, on February 20, 1996.

TRD-9602526
James McWhorter
Assistant Commissioner for Administration
Texas Higher Education Coordinating Board
Effective date: March 14, 1996
Proposal publication date: December 12, 1995
For further information, please call: (512) 483-6160

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Chapter 5. Program Development

Subchapter H. Approval of Off-Campus and Out-of-district Instruction for Public Colleges and Universities

19 TAC §§5.151-5.155, 5.157, 5.158

The Texas Higher Education Coordinating Board adopts the repeal of Subchapter H, §§5.151-5.155, 5.157, and 5.158, concerning Approval of Off-Campus and Out-of-district Instruction for Public Colleges and Universities, without changes to the proposed text as published in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9791).

The repeals will: ease constraints on universities and health science centers offering courses on other campuses; enhance the freedom of each community college to use any mode of instruction within the boundaries of its taxing authority; eliminate the "one-third rule" for the delivery of distance instruction (a rule which required one-third of any degree to be taken by a student on campus); omit the limit of three years on approval of off-campus master's programs; and do away with current requirements for initial Institutional Plans for live off-campus instruction and annual financial reports for Instructional Telecommunications.

There were no comments received regarding adoption of the repeals.

The repeals are adopted under Texas Education Code, §61.051 and §130.086, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning

Approval of Distance Learning for Public Colleges and Universities.

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

Issued in Austin, Texas, on February 20, 1996.

TRD-9602529

James McWhorter

Assistant Commissioner for Administration

Texas Higher Education Coordinating Board

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For further information, please call: (512) 483-6160

19 TAC §§5.151-5.159

The Texas Higher Education Coordinating Board adopts new Subchapter H, §§5.151-5.159, concerning Approval of Distance Learning for Public Colleges and Universities, with changes to the proposed text as published in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9791).

The new sections will: ease constraints on universities and health science centers offering courses on other campuses; enhance the freedom of each community college to use any mode of instruction within the boundaries of its taxing authority; eliminate the "one-third rule" for the delivery of distance instruction (a rule which required one-third of any degree to be taken by a student on campus); omit the limit of three years on approval of off-campus master's programs; and do away with current requirements for initial Institutional Plans for live off-campus instruction and annual financial reports for Instructional Telecommunications.

There were no comments received regarding adoption of the new sections.

The new sections are under Texas Education Code, §61.051 and §130.086, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Approval of Distance Learning for Public Colleges and Universities.

§§5.151. Terminology.

(a) "Distance Learning" refers to instruction delivered by any means to any single or multiple location(s):

(1) other than the "main campus" of a senior institution (or "on campus"), where the primary office of the chief executive officer of the campus is located;

(2) outside the boundaries of the taxing authority of a community/junior college district; or

(3) via instructional telecommunications to any other distance location. For the purposes of this subchapter, health science centers and health-related institutions shall be regarded as senior institutions.

(b) The term "Instructional Telecommunications" (IT) refers to distance learning instruction delivered primarily by telecommunications technology. Delivery systems may include but are not limited to one or more of the following: interactive video, open-channel tele-

vision, cable television, closed-circuit television, low-power television, communication and/or direct broadcast satellite, satellite master antenna system, microwave, video tape, video disc, computer software, computer networks, and telephone lines.

(c) A "Reception Site" is any location that receives instruction via instructional telecommunications. This may include campuses, health agencies, business and industrial sites, public schools, homes, or any other locations where students may receive instruction.

(d) The term "Program" refers to any certificate or degree program. A program is understood to be "offered via distance learning" if a student may complete the program without taking any courses on the main campus of the senior institution or without physically attending classes within the boundaries of the taxing authority of the community/junior college district.

(e) An "Auxiliary Location" is a site or facility owned by an institution or recognized by the Coordinating Board as qualifying for special treatment under the provisions of this subchapter (see §5.155(b) and (c) of this title (relating to Annual Plan for Distance Learning)).

(f) A "Regional Council" is a cooperative arrangement among representatives of all public and independent higher education institutions within a State Uniform Service Region (See §5.156 of this title (relating to Procedures for Review)).

(g) An "Annual Plan" is a listing by location of distance learning courses and programs planned to be taught during an academic year by an institution. (See §5.155)

§5.152. General Provisions.

(a) The provisions of this subchapter are in accordance with Texas Education Code, §61.051 and §130.086, and apply to all distance learning instruction provided live or via telecommunication technology for academic credit by a public community/junior college outside of the boundaries of its taxing authority, or by a technical college, university, or health-related institution at a site other than the main campus. The subchapter also applies to instruction offered at out-of-state or foreign locations.

(b) A class offered both on-campus and through distance learning instruction is subject to the reporting provisions of this subchapter if any student receives more than one-half of the instruction via distance learning delivery systems.

(c) Each course offered under the provisions of this subchapter must be reported annually in accordance with the Board's uniform reporting system. State-funded distance learning instruction which is not reported by location will be disallowed for funding.

(d) No degree or certificate program may be offered via distance learning instruction without prior approval of the Board. In addition, institutions may not offer through distance learning instruction at any site an array of courses that would constitute a degree or certificate program without prior approval by the Board to offer a full program at that site. Courses offered in violation of this provision will be disallowed for formula funding.

(e) No master's degree program may be offered via distance learning instruction without express prior notification to the Southern Association of Colleges and Schools. No distance learning doctoral degree programs will be authorized except through the approval of joint or cooperative degree programs.

(f) As directed by statute, the Board retains final authority for the offering of classes, courses, programs, and degrees, and may take whatever action it deems appropriate to comply with the Texas Education Code.

§5.153. Standards and Criteria for Distance Learning.

(a) Distance learning instruction offered by any live or telecommunications delivery system must be comparable to on-campus instruction. It must meet all of the quality standards which an institution requires of similar instruction offered on-campus to regularly enrolled students.

(b) A distance learning course which offers either regular college credit or Continuing Education Units must do so in accordance with the standards of the Commission on Colleges of the Southern Association of Colleges and Schools.

(c) Students enrolled in distance learning must satisfy the same requirements for admission to the institution, to the program of which the course is a part, and to the class/section itself, as are required of on-campus students.

(d) Faculty providing distance learning instruction must be selected and evaluated by the same standards, review, and approval procedures used by the institution to select and evaluate faculty responsible for on-campus instruction. Institutions must provide training and support to enhance the added skills required of faculty teaching classes via instructional telecommunications.

(e) The instructor of record must participate in the delivery of instruction and evaluation of student progress.

(f) Providers of graduate-level distance learning instruction must be approved by the graduate faculty of the institution.

(g) All distance learning instruction must be administered under the authority of the same office or person administering the corresponding on-campus instruction. The supervision, monitoring, and evaluation processes for instructors must be comparable to those for on-campus instruction.

(h) Students must be provided academic support services - including academic advising, counseling, library and other learning resources, tutoring services, and financial aid - that are comparable to those available for on-campus students.

(i) Facilities for distance learning instruction (other than homes as instructional telecommunications reception sites) must be adequate for the purpose of delivering instruction which is comparable in quality to on-campus instruction.

§5.154. Institutional Plan for Instructional Telecommunications.

(a) Each institution seeking first-time authority to offer distance learning instruction via telecommunications technology must submit an "Institutional Plan for Instructional Telecommunications" for review by the Coordinating Board's Advisory Committee on Instructional Telecommunications and approval by the Board before offering such instruction, except as noted in §5.154(c) of this section. The plan must include the following:

(1) Institutional policies reflecting a commitment to maintain quality in accordance with the provisions of this subchapter.

(2) A description of institutional arrangements for the operation of instructional telecommunications, including identification of courses to be offered and the location(s) of proposed distance learning instruction.

(b) After an initial Institutional Plan for Instructional Telecommunications has been approved by the Board, an institution must receive additional Board approval to expand beyond the approved plan.

(c) The Commissioner may authorize under experimental authority a one-time offering of a limited number of classes via instructional telecommunications prior to Board approval of an Institutional Plan for Instructional Telecommunications.

§5.155. Annual Plan for Distance Learning.

(a) Unless specifically exempted by the Board, all state-funded distance learning instruction must be submitted for annual review by appropriate Regional Councils or peer institutions as provided in this subchapter. The procedure will utilize an Annual Plan for Distance Learning ("Annual Plan") for each requesting institution (See §5.156 of this title (relating to Procedures for Review)).

(b) The Board may exempt from annual review courses offered by one public institution on the campus of another public institution, courses taught on military bases or in correctional institutions, student teaching, internships, clinical instruction, practica, cooperative education work stations, field courses (when limited to campus-based students), and other specialized types of distance instruction. Exemption may also be given for distance learning instruction at a designated Auxiliary Location. Instruction offered under all such exemptions, however, must still be reported in accordance with the Board's uniform reporting system and will be subject to monitoring for quality.

(c) If distance learning instruction is provided regularly in an approved cooperative degree program, in a correctional institution, on a military base, or at other sites where an institution needs to utilize resources not normally available on its main campus, the site where the instruction is received may be recognized as an Auxiliary Location by the Board. Auxiliary locations are recognized as having a specific, defined academic mission; expansion beyond the authorized mission requires prior approval of the Board.

(d) In approving Annual Plans, the Commissioner may give preference for the delivery of distance learning courses or degree programs which rely principally upon faculty travel off-campus or out-of-district to the nearest institution willing and able to deliver the instruction.

(e) The Commissioner may approve, as amendments to an institution's Annual Plan, courses submitted not later than two weeks after the beginning of any semester or summer session. The Commissioner shall not approve additional courses in excess of 20% of the number of courses previously approved as part of the Annual Plan for the requesting institution, or ten courses, whichever is greater. Such courses must first be submitted for consideration by public and independent institutions in the appropriate Regional Council(s).

§5.156. Procedures for Review and Approval of Lower-Division Distance Learning.

(a) Each institution must submit for review by all affected Regional Councils an Annual Plan which lists by location all proposed lower-division distance learning instruction. Requests for new locations and/or substantially different classes or programs at previously approved locations must be submitted on application forms provided by the Commissioner for that purpose.

(b) Proposed lower-division distance learning instruction must be reviewed by the Regional Council of the Uniform Service Region containing each proposed site for the receiving of instruction in accordance with the provisions of this subchapter.

(c) The Coordinating Board recognizes Regional Councils in each of the ten state Uniform Service Regions. The presidents - or designated representatives - of each public and independent institution of higher education with its main campus in the Region comprise the Council membership. A Council Chair shall be elected by the members, with term of service to be determined by the respective Council.

(d) Each Regional Council has the following responsibilities:

(1) Develop and file with the Universities and Community and Technical College Divisions of the Coordinating Board its procedures and guidelines for reviewing Annual Plans for proposed lower-division distance learning classes, programs, and locations in the Region.

(2) Facilitate inter-institutional cooperation in the conduct of distance learning instruction, assure that each institution in the Region has notification in advance of all lower-division classes, programs, and locations proposed to be offered in the Region by any other institution, and provide each institution in the Region full opportunity to review and comment on the plans of other institutions.

(3) Make recommendations to the Commissioner regarding Annual Plans for Distance Learning proposed to be offered within its Uniform Service Region in accordance with the consensus views of Council members.

(4) Advise the Commissioner on appropriate policies and procedures for effective state-level administration of lower-division distance learning.

(5) Encourage excellence in the conduct of lower-division distance learning instruction.

(6) Study cooperatively the various methods of providing lower-division distance learning instruction, and promote the use of those methods which support quality and promise the most effective and efficient use of state resources.

(e) Procedures for submitting applications to the Board for authorization to offer lower-division distance learning classes are as follows:

(1) Each Regional Council must meet at least annually in the spring semester to receive and review each institution's Annual Plan for lower-division distance learning instruction proposed within the Region for the following academic year. Distance learning instruction proposed at any other time of the year may be reviewed by Council members by other means.

(2) Distance learning instruction proposed by an institution must be reviewed by the Regional Council and forwarded to the Coordinating Board by a deadline set by the Commissioner, together with the Council's recommendations for approval or disapproval.

(3) If proposed classes could affect an institution which is a member of another Regional Council, the Annual Plan must also be sent to that institution and to the Council to which it belongs. The full membership of that Council must review the proposal and return a recommendation to the originating Council.

This recommendation and that of the originating Council must both be sent to the Commissioner.

(4) Distance learning instruction proposed to be offered on a statewide basis must be separately identified.

(5) Recommendations of the Regional Councils must be submitted in a time frame determined by the Commissioner to permit annual consideration by the Board at its April meeting.

(6) The Commissioner will consider the recommendations of Regional Councils as well as any dissenting report filed by an institution. Subject to the following section, the Commissioner has the authority to approve or disapprove courses and Annual Plans, and to resolve disputes between or among institutions which cannot be resolved by the Councils. The Commissioner will report to all affected institutions on approvals and disapprovals of classes proposed under each Annual Plan at least two weeks before the scheduled April Board meeting, at which time the Board may hear appeals to approvals and disapprovals made by the Commissioner.

(f) During the passage of the year it may be necessary for an institution to request approval of lower-division distance learning activities not submitted as part of its Annual Plan. Such proposed amendments to an Annual Plan must be submitted to affected Regional Councils prior to the teaching of any additional classes. Each Council Chair will forward recommendations to the Commissioner regarding the appropriateness of such instruction. Amendments shall be considered by the Commissioner in accordance with §5.155(e) of this title (relating to Annual Plan for Distance Learning).

§5.157. Procedures for Review and Approval of Upper-Level and Graduate Distance Learning.

(a) Each January the Commissioner will initiate an exchange of information among all public and independent senior institutions, whether they propose to offer distance learning instruction for the following academic year or not. The exchange will be used to develop long-range plans for meeting state and regional needs, achieving institutional cooperation, and eliminating unnecessary duplication of offerings. Institutions must notify all other potentially affected institutions of their Annual Plans for the next academic year within the time frame prescribed by the Commissioner, and must seek to eliminate any conflicts or duplication.

(b) Institutions must submit their official requests for approval by the Commissioner of distance instruction classes on forms provided by the Commissioner.

(c) The Commissioner has the authority to resolve disputes between or among institutions, and has the authority to approve or disapprove courses and Annual Plans subject to the following section.

(d) The Commissioner will report to all affected institutions on approvals and disapprovals of distance learning activities proposed under each Annual Plan at least two weeks before the scheduled July Board meeting, at which time the Board may hear appeals to approvals and disapprovals made by the Commissioner.

(e) During the passage of the year it may be necessary for an institution to request approval of courses not submitted as part of its annual plan. The Commissioner shall consider such requests in accordance with §5.155(e) of this title (relating to Annual Plan for Distance Learning) if they are accompanied by documentation

of discussions with other public and independent institutions in the affected Uniform Service Region concerning the proposed classes.

§5.158. Approval of State-Funded Out-of-State and Foreign Courses.

(a) State-funded out-of-state and foreign courses offered by Texas public institutions of higher education or by an approved consortium composed of Texas public institutions must have prior approval by the Commissioner in order for the semester credit hours or contact hours to be used for formula reimbursement. The following procedures shall apply:

(1) An institution or consortium must submit to the Commissioner an application for state funding which demonstrates that the course meets the criteria set forth in subsection (b) of this section.

(2) The Commissioner or designee will review applications in accordance with the standards and criteria outlined in this subchapter, and will notify the requesting institution of approval or denial of course applications, including a written explanation for any denials.

(3) A course that has been previously approved to be offered at an out-of-state or foreign location may be re-approved on the basis of institutional certification that the course is the same as that previously approved.

(b) State-funded out-of-state and foreign courses are subject to the following standards and criteria:

(1) All students enrolled must meet all institutional standards for admission and must be actually admitted to the institution or one of the participating institutions in an approved consortium. All students enrolled must pay the appropriate tuition and fees for their residency category for the total number of credit hours earned. Financial aid must be available to students registering in foreign classes on the same basis as it would be for such students seeking financial aid for on-campus instruction. Additional financial aid may be furnished by the institution as appropriate.

(2) Instruction must be provided by faculty of the institution or one of the consortium institutions and be supervised and evaluated according to appropriate institutional policies. Exceptions may be made by the Commissioner to take advantage of uniquely qualified instructors at an out-of-state or foreign location if the institution provides for individual justification and approval by the appropriate faculty or institutional officials.

(3) Individual courses must meet the following standards and criteria:

(A) Each course must be on the approved course inventory of the main campus of the institution or a consortium institution, must be a part of an approved degree or certificate program, and must be justified in terms of academic, cultural, or other resources available at the specific location(s).

(B) Instruction must conform to all relevant academic policies of the institution. All classes must conform to the institution's workload and enrollment requirements, contact hour/credit ratio, and similar matters.

(C) Courses may not offer credit for activities undertaken primarily for travel, recreation, or pleasure.

(D) Minimum class enrollments must conform to the same standards applicable were the class to be offered on-campus.

(4) Multi-course offerings must meet the following standards and criteria:

(A) A group of courses taught by an individual faculty member and offered in the same time period and in the same out-of-state or foreign location may be considered as an aggregate for approval purposes.

(B) Some courses may be approved within an aggregate request without satisfying paragraph (3)(A) of this subsection; however, the Commissioner may approve a multi-course aggregate only if at least one-half of the classes (making up at least one-half of the combined credit hours) comply with paragraph (3)(A) of this subsection. All other criteria in this subsection must be fully met by all courses that make up a multi-course aggregate.

(5) Advertising or marketing for out-of-state and foreign classes should emphasize the instructional nature of the classes, and may not emphasize or create the impression that the classes are primarily credit-for-travel experiences.

(6) Faculty and staff may not realize unusual perquisites or unusual financial gain for teaching out-of-state or foreign classes.

(7) Except for funds specifically appropriated for international activities (e.g. state incentive programs, scholarships, etc.), state funds may not be used for faculty or student travel, meals and lodging, or other incidental expenses associated with out-of-state or foreign instruction.

(8) Any free tickets for travel, accommodations, or other expenses provided by travel agents, carriers, or hotels must be used in direct support of the instructional program and may not be made as gifts to faculty or staff members or their families.

(9) No state funding will be provided for courses or credits delivered by Instructional Telecommunications (see §5.15 (b) of this title relating to Terminology) to reception sites outside state boundaries.

§5.159. Non-State-Funded Out-of-State and Foreign Classes.

(a) Out-of-state and foreign courses offered by public universities and health related institutions, for which no state funds are expended, may be taught without prior approval of the Board. However, prior Board approval is required for full degree programs offered under these circumstances. Institutions are expected to ensure that all such instruction meets the quality standards expected of Texas higher education institutions.

(b) Community and technical colleges proposing to offer out-of-state or foreign courses for which no state funds are expended are subject to the provisions of Chapter 9, Subchapter L of these rules and regulations.

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

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Subchapter J. Instructional Telecommunications
19 TAC §§5.191-5.195

The Texas Higher Education Coordinating Board adopts the repeal of Subchapter J, §§5.191-5.195, concerning Instructional Telecommunications, without changes to the proposed text as published in the November 24, 1995, issue of the *Texas Register* (20 TexReg 9794).

The repeals will: ease constraints on universities and health science centers offering courses on other campuses; enhance the freedom of each community college to use any mode of instruction within the boundaries of its taxing authority; eliminate the "one-third rule" for the delivery of distance instruction (a rule which required one-third of any degree to be taken by a student on campus); omit the limit of three years on approval of off-campus master's programs; and do away with current requirements for initial Institutional Plans for live off-campus instruction and annual financial reports for Instructional Telecommunications.

There were no comments received regarding adoption of the repeals.

The repeals are adopted under Texas Education Code, §61.051 and §130.086, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Instructional Telecommunications.

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

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Subchapter P. Testing and Remediation
19 TAC §§5.311-5.318

The Texas Higher Education Coordinating Board adopts the repeal of Subchapter P §§5.311-5.318, concerning Testing and Remediation, without changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10462).

The rules are being repealed due to new legislation and updates were needed.

There were no comments received regarding adoption of the repeals.

The repeals are adopted under Texas Education Code, §§51.306, 51.3061, and 130.090, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Remediation.

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

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The Texas Higher Education Coordinating Board adopts new Subchapter P §§5.311-5.318, concerning Testing and Remediation, without changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10462).

The rules are being changed due to new legislation and updates were needed. The new sections will clarify the current rules and will institute new regulations due to legislation.

There were no comments received regarding adoption of the new sections.

The new sections are adopted under Texas Education Code, §§51.306, 51.3061, and 130.090, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Testing and Remediation.

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

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Chapter 17. Campus Planning

Subchapter A. Criteria for Approval of New Construction and Major Repair and Rehabilitation

19 TAC §§17.24, 17.31, 17.33

The Texas Higher Education Coordinating Board adopts amendments to Subchapter A §§17.24, 17.31, and 17.33, concerning Criteria for Approval of New Construction and Major Repair and Rehabilitation, without changes to the proposed

text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10465).

The rules are being changed to bring the rules in line with changes in state law (Senate Bill 726 passed by the 74th Legislature provided for energy conservation performance projects at higher education institutions). Other proposed changes are to correct obsolete language and improve internal consistency of the rules. The proposed changes provide for the Board and/or Committee approval of energy conservation performance projects; allow institutions eighteen months instead of one year to award a contract on projects approved or evaluated by the Coordinating Board; remove obsolete deadlines; and, correct agency names that have changed.

Comments were received regarding the proposed amendments stating that they concurred with the rule changes. One comment said they had no suggested changes. No further changes were made to the rules.

Comments were received from: State Energy Conservation Office; General Services Commission; Honeywell, Inc.; Texas A & M University at Galveston; University of Texas Health Science Center-San Antonio; and University of Texas-Pan American.

The amendments are adopted under Texas Education Code, §61.0572 and §61.058, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Criteria for Approval of New Construction and Major Repair and Rehabilitation.

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

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Subchapter B. Application for Approval of New Construction and Major Repair and Rehabilitation

19 TAC §§17.44-17.46

The Texas Higher Education Coordinating Board adopts amendments to Subchapter B §§17.44-17.46, concerning Application for Approval of New Construction and Major Repair and Rehabilitation, with changes to the proposed text published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10466).

The rules are being changed to bring the rules in line with changes in state law (Senate Bill 726 passed by the 74th Legislature provided for energy conservation performance projects at higher education institutions). Other proposed changes are to correct obsolete language and improve internal consistency of the rules. The proposed changes provide for the Board and/or Committee approval of energy conservation performance

projects; allow institutions eighteen months instead of one year to award a contract on projects approved or evaluated by the Coordinating Board; remove obsolete deadlines; and, correct agency names that have changed.

Comments were received regarding the proposed amendments stating that they concurred with the rule changes. One comment said they had no suggested changes. Two comments suggested changes in the language of §17.45 to make it concur with legislative language regarding energy conservation projects. Additional changes were made to §17.45 as a result of these comments.

Comments were received from: State Energy Conservation Office; General Services Commission; Honeywell, Inc.; Texas A & M University at Galveston; University of Texas Health Science Center-San Antonio; and University of Texas-Pan American.

The amendments are adopted under Texas Education Code, §61.0572 and §61.058, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Application of New Construction and Major Repair and Rehabilitation.

§17.44. Application Form.

Application forms and guidelines for requesting Coordinating Board approval will be provided by the Coordinating Board and shall call for the following information:

(1) (No change.)

(2) Letter of assurance that the project has been designed to improve utilization of energy using the Energy Management Center standards;

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

§17.45. Energy Conservation Projects.

For the purpose of encouraging repair and rehabilitation projects that improve energy conservation in higher education facilities, the following procedure may be used to review, for Board approval, energy conservation projects reviewed by the State Energy Conservation Office's Energy Management Center for funding through a performance contract; or energy conservation contracts approved for funding by SECO/EMC through the Texas LoanSTAR Program.

(1) The Energy Management Center periodically will submit to the Coordinating Board lists of the projects it has reviewed for funding through performance contracting or approved for funding through the Texas LoanSTAR Program at public institutions of higher education, except community or junior colleges.

(2) The Coordinating Board staff reviews the projects to verify that none would result in a net addition of educational and general space or would be in conflict with Board standards for repair and rehabilitation projects. However, in the case of performance funding projects, additional space may be added.

(3) (No change.)

(4) If the committee approves the list of projects the staff will notify the Energy Management Center and the institutions whose projects have been approved.

(5) The committee may refer to the full Board any projects it does not wish to approve that cost more than \$600,000. If a

Loanstar project would have the effect of increasing space, it must be referred to the full Board.

(6) The Coordinating Board or Campus Planning Committee must approve energy conservation performance contracts. However, the Board or Campus Planning Committee will consider the review and comment report from the Energy Management Center prior to approval.

§17.46. Special Approval Procedure.

(a) Under this procedure the Coordinating Board delegates to the Campus Planning Committee the review and approval of the following types of projects:

(1) (No change.)

(2) Major repair and rehabilitation of existing education and general buildings that will not add educational and general space and whose total project cost is no more than \$3 million. However, in the case of energy conservation performance projects, additional space may be added.

(3) (No change.)

(b) (No change.)

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

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Chapter 21. Student Services

Subchapter B. Determining Residence Status

19 TAC §21.31

The Texas Higher Education Coordinating Board adopts an amendment to Subchapter B §21.31, concerning Competitive Scholarship Recipients, without changes to the proposed text as published in the December 19, 1995, issue of the *Texas Register* (20 TexReg 10875).

The rules are being changed to implement changes required by passage of House Bill 1792. The rule provides guidance on implementing the expansion of the competitive scholarship program to include nonacademic scholarships.

There were no comments received regarding the proposed amendment.

The amendment is adopted under Texas Education Code, §54.064, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Competitive Scholarship Recipients.

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

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Subchapter P. Professional Nurses' Student Loan Repayment Program

19 TAC §21.508

The Texas Higher Education Coordinating Board adopts an amendment to Subchapter P §21.508, concerning Professional Nurses' Student Loan Repayment Program (Qualifications for Student Loan Repayment), without changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10467).

The rules are being changed to clarify which fields of nursing qualify for repayment of loans. The change clarifies which fields of nursing will qualify for possible repayment of loans.

There were no comments received regarding the proposed amendment.

The amendment is adopted under Texas Education Code, §61.656, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Professional Nurses' Student Loan Repayment Program (Qualifications for Student Loan Repayment).

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

Issued in Austin, Texas, on February 20, 1996.

TRD-9602534

James McWhorter

Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: March 14, 1996

Proposal publication date: December 12, 1995

For further information, please call: (512) 483-6160

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Subchapter DD. Minority Doctoral Incentive Program

19 TAC §§21.970-21.981

The Texas Higher Education Coordinating Board adopts new Subchapter DD §§21.970-21.981, concerning Minority Doctoral Incentive Program, without changes to the proposed text published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10468).

The rules for the administration of this program are being changed to improve their clarity. Funds were appropriated for this program in the 74th Legislative Session. The rules will be used to guide decisions regarding selection of candidates for the program and the guarantee the state will make for repayment of loans.

There were no comments received regarding the proposed new sections.

The new sections are adopted under Texas Education Code, §56.162, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Minority Doctoral Incentive Program.

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

Issued in Austin, Texas, on February 20, 1996.

TRD-9602535

James McWhorter

Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: March 14, 1996

Proposal publication date: December 12, 1995

For further information, please call: (512) 483-6160

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19 TAC §§21.970-21.983

The Texas Higher Education Coordinating Board adopts the repeal of Subchapter DD §§21.970-21.983, concerning Minority Doctoral Incentive Program, without changes to the proposed text published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10467).

The repeal to the subchapter will give more clarity to the rules. Funds were appropriated for this program in the 74th Legislative Session. The rules will be used to guide decisions regarding selection of candidates for the program and the guarantee the state will make for repayment of loans.

There were no comments received regarding the proposed repeals.

The repeals are adopted under Texas Education Code, §56.162, which provides the Texas Higher Education Coordinating Board with the authority to adopt rules concerning Minority Doctoral Incentive Program.

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

Issued in Austin, Texas, on February 20, 1996.

TRD-9602536

James McWhorter

Assistant Commissioner for Administration
Texas Higher Education Coordinating Board

Effective date: March 14, 1996

Proposal publication date: December 12, 1995

For further information, please call: (512) 483-6160

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

Chapter 406. ICF/MR Programs

Subchapter D. Reimbursement Methodology

25 TAC §406.157

The Texas Department of Mental Health and Mental Retardation (TDMHMR) and adopts an amendment to §406.157, concerning ICF/MR program reimbursement methodology, without changes to the proposed text as published in the December 12, 1995, issue of the *Texas Register* (20 TexReg 10500).

The proposed amendment deletes language inadvertently added in the last action on this rule; deletes four facilities from the list of children's facilities considered eligible for alternative reimbursement rates; and allows for the provisions of a settlement agreement between the Private Provider Association of Texas, the Texas Health and Human Services Commission, the Texas Department of Mental Health and Mental Retardation, and the Texas Department of Human Services which would allow the state to facilitate creation of a new reimbursement methodology for the Intermediate Care Facilities/Mental Retardation (ICF/MR) program.

There was no written public comment received during the public comment period.

The amendment is adopted under the Texas Health and Safety Code, §532.015, which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, and under the provisions of Texas Civil Statutes, Article 4413(502), §16, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

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

Issued in Austin, Texas, on February 21, 1996.

TRD-9602606

Ann Utley

Chairman, Texas Mental Health and Mental Retardation Board
Texas Department of Mental Health and Mental Retardation

Effective date: March 12, 1996

Proposal publication date: December 12, 1996

For further information, please call: (512) 206-4516

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TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 33. Continuing Care Retirement Facilities

Subchapter A. General Provisions

19 TAC §§33.1-33.10

The Commissioner of Insurance adopts amendments to §§33.1-33.10, concerning the general provisions for Chapter 33 of this title (relating to Continuing Care Retirement Communities), without changes to the proposed text of §§33.1-33.7, and §§33.9-33.10 as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6791). Amended §33.8 is adopted with changes to the proposed text of Form Number 6 which was incorporated by reference in this section, as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6791).

The amendments are necessary to provide technical corrections, to clarify the sections, and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993.

Section 33.1 states the purpose of this chapter. Section 33.2 revises several of the definitions contained in this section. Section 33.3 clarifies the persons to which this chapter apply. Section 33.4 provides that if a court of competent jurisdiction determines portions of this chapter are invalid, then the remaining portions will remain in effect. Section 33.5 provides that violators of this chapter or any orders entered under this chapter may be subject to penalties under the Insurance Code, Article 1.10, §7. Section 33.6 provides the filing fee for a certificate of authority. Section 33.7 defines fiscal year. Section 33.8 adopts and incorporates by reference forms to be used by continuing care retirement facilities. Copies of these forms have been filed with the Secretary of State's Office, Texas Register Division. Persons desiring copies of these forms can obtain them from the Texas Department of Insurance, MC 305-2C, P.O. Box 149104, Austin, Texas 78714-9104. Section 33.9 changes the address for all filings made under this chapter. Section 33.10 clarifies that unregistered facilities are required to respond to commissioner inquiries and that the commissioner may take action against unregistered facilities.

A comment suggested adding to Form Number 6 - Form for Disclosure Statement, the words "consumer protection and refund provisions" so that the form section regarding required contract language reads "Consumer Protection and Refund Provisions - Required Standard Contract Language". **The department agrees and makes such a change to Form Number 6, incorporated by reference in §33.8.**

A comment suggested adding the Texas Department of Insurance's toll free number to Form Number 6 - Form for Disclosure Statement, so that interested parties could contact the department for a copy of the brochure on continuing care retirement communities. The department agrees and makes such a change to Form Number 6, incorporated by reference in §33.8.

For with changes: Office of Public Insurance Counsel, individual commenters.

The amendments are adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003 of that chapter; the Insurance Code, Articles 1.03A and 1.10; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.04, et seq. Health and Safety Code, Chapter 246 sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules as necessary to administer and enforce that chapter. Insurance Code,

Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Insurance Code, Article 1.10 authorizes sanctions for violations by licensees of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and Commissioner of Insurance. The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

§§33.8. *Forms.*

The forms listed in this section are published by the department and filed with the Office of the Secretary of State, Texas Register Division. Copies of the forms may be obtained from the Texas Department of Insurance, CCRC Section, Insurer Services, Mail Code 305-2C, P.O. Box 149104, Austin, Texas, 78714-9104. The department adopts and incorporates by reference the forms listed in paragraphs (1) - (16), and their use is required, where applicable, for compliance with the provisions of this chapter.

- (1) CCRC Form Number 1 - Application for Certificate of Authority to do Business in the State of Texas under the Act, §246.022;
- (2) CCRC Form Number 2 - Application for Approval by the Commissioner for Release of Loan Reserve Fund Escrow Account Amounts in Excess of that Allowed Under the Act, §246.078(a);
- (3) CCRC Form Number 3 - Officers and Directors Page;
- (4) CCRC Form Number 4 - Biographical Data Form;
- (5) CCRC Form Number 4a - Biographical Data Form for Not-for-Profit CCRC Board Members;
- (6) CCRC Form Number 5 - Acknowledgment of Delivery of Disclosure Statement;
- (7) CCRC Form Number 6 - Form for Disclosure Statement;
- (8) CCRC Form Number 6a - Instructions for Preparation of CCRC Disclosure Statement for Filing with the Texas Department of Insurance;
- (9) CCRC Form Number 7 - Application for Change of Control of CCRC;
- (10) CCRC Form Number 8 - Certification of Changes to Disclosure Statement;
- (11) CCRC Form Number 9 - Notice of Request to Release Entrance Fee Escrow Account Funds;
- (12) CCRC Form Number 10 - Notice of Request to Release Funds from the Reserve Fund Escrow Account;
- (13) CCRC Form Number 11 - Notice by Provider of Repayment of Previously Released Funds to the Reserve Fund Escrow Account;
- (14) CCRC Form Number 12 - Affidavit of Repayment of Previously Released Funds to the Reserve Fund Escrow Account;
- (15) CCRC Form Number 13 - Notice of Lien; and

(16) CCRC Form Number 14 - Calculations Concerning Conditions for Release of Entrance Fees to Provider.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602556

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 14, 1996

Proposal publication date: September 1, 1995

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

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Subchapter B. Facilities Qualifying for a Certificate of Authority Under the Texas Continuing Care Facility and Disclosure and Rehabilitation
19 TAC §§33.101-33.108

The Texas Commissioner of Insurance adopts the repeal of §§33.101-33.108, without changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6793).

The adopted repeals are necessary because the rules contained in Subchapter B relate to Health and Safety Code, §246.023, a grandfather provision that allowed certain providers to obtain mandatory certificates of authority if a facility was occupied by one or more residents on September 1, 1987; was under construction on September 1, 1987; or incurred substantial financial obligations before September 1, 1987 related to the development of the facility. All providers who would have been issued a mandatory certificate of authority under Health and Safety Code, §246.023 have already been issued a certificate of authority.

These rules are no longer necessary or relevant because the provisions in Health and Safety Code, §246.023 regarding the mandatory issuance of a certificate of authority have already been executed.

No comments were received regarding adoption of the repeals.

The repeals are adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003; the Insurance Code, Article 1.03A; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. Health and Safety Code, Chapter 246 sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth

the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

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

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TRD-9602558

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

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Proposal publication date: September 1, 1995

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

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Subchapter C. Application by Continuing Care Provider for Certificate of Authority
19 TAC §§33.201-33.206

The Commissioner of Insurance adopts amendments to §§33.201-33.206, without changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6794).

Amended sections 33.201-33.206 concern the application by a continuing care provider for a certificate of authority. The amendments are necessary to provide technical corrections, to clarify the sections and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993.

Section 33.201 establishes the scope of this subchapter. Section 33.202 provides that only incorporated entities shall be issued a certificate of authority. Section 33.203 clarifies the requirements for filing an application for certificate of authority. Section 33.204 clarifies the items which should be included with an application for certificate of authority. Section 33.205 clarifies the actions which may be taken for a deficient application for certificate of authority. Section 33.206 addresses the hearing to be held on an application for certificate of authority.

No comments were received regarding the adoption of amendments to these sections.

The amendments are adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003 of that chapter; the Insurance Code, Article 1.03A; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. Health and Safety Code, Chapter 246 sets out the statutory requirements for continuing care retirement facilities and §246.003 of that chapter authorizes the board to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A, provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The

Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602564

Alicia M. Fecthel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 14, 1996

Proposal publication date: September 1, 1995

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

Subchapter D. Disclosure Statement

19 TAC §§33.301-33.308

The Commissioner of Insurance adopts amendments to §§33.301-33.308, concerning the contents, preparation, delivery and filing requirements for disclosure statements, financial statements, studies and forecasts, without changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7792).

The amendments are necessary to provide technical corrections, to clarify the sections, and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993.

Section 33.301 clarifies the requirements for filing and preparation of the disclosure statement. Section 33.302 clarifies the requirements for filing the annual disclosure statement revision, and provides for the applicable fees. Section 33.303 clarifies the provisions for other revisions of the disclosure statement. Section 33.304 provides that disclosure statements shall follow the format and instructions contained in CCRC Form Number 6 and Form Number 6a. Section 33.305 clarifies the requirements for the date on the cover page of a disclosure statement. Section 33.306 provides that financial statements shall specifically address escrow accounts, trusts, and reserve funds, and provides reporting requirements if the provider operates more than one facility or has other business interests. Section 33.307 clarifies the requirements for the delivery of the disclosure statement. Section 33.308 provides for actions the commissioner may take when a provider fails to submit a disclosure statement.

No comments were received regarding adoption of these amended sections.

The amendments are adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003; the Insurance Code, Article 1.03A; and House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. Health and Safety Code, Chapter 246 sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board

to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Insurance Code, Article 1.10 authorizes sanctions for violations by licensees of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602563

Alicia M. Fecthel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 14, 1996

Proposal publication date: September 26, 1995

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

19 TAC §33.304

The Texas Commissioner of Insurance adopts the repeal of §33.304, concerning requirements for disclosure statement preparation and filing, without changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6796).

The repeal of §33.304 is necessary to enable the commissioner to simultaneously amend §33.301(c) of this title. This repeal and amendment of §33.301(c) is necessary for the more effective regulation of continuing care retirement communities.

The repeal of §33.304 allows the commissioner to address disclosure statement preparation and filing in amended §33.301(c) of this title.

No comments were received regarding adoption of the repeal.

The repeals are adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003; the Insurance Code, Article 1.03A; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. Health and Safety Code, Chapter 246 sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth

the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602562

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 14, 1996

Proposal publication date: September 1, 1995

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

Subchapter E. Escrow Accounts

19 TAC §33.401

The Commissioner of Insurance adopts an amendment to §33.401, concerning the requirements for the maintenance and use of escrow accounts by continuing care retirement facility providers, with changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6796).

The amendment is necessary to provide technical corrections, to clarify the section, and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993.

The amendment to §33.401 describes the requirements for entrance fee escrow accounts, provides for the ownership of the interest accrued in the accounts, provides the requirements for depositing funds into the accounts and issuing status statements, and provides that certain non refundable portions of deposits are not required to be held in the entrance fee escrow account.

A comment suggested a provision should be added to §33.401(b) which states "the written receipt given to the resident or prospective resident for the funds shall include the information that the provider must deposit the funds in the escrow account within 72 hours of receipt, in addition to the name and address of the escrow agent." The department agrees and the adoption makes such a change to the paragraph.

A comment suggested a provision should be added to §33.401(c) which states: the written receipt given to the resident shall also include the following statement: "at your request, the escrow agent must provide a statement indicating the status of your balance in the entrance fee escrow account." The department agrees and the adoption makes such a change to the paragraph.

For with changes: Office of Public Insurance Counsel, individual commenters.

The amendment is adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003; the Insurance Code, Articles 1.03A and 1.10; House Bill 1461, §1.23, 73rd Legislature, 1993; and the

Government Code, §2001.004, et seq. The Health and Safety Code, Chapter 246 sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the department to regulate those facilities, to adopt rules, and to take other action as necessary to administer and enforce that chapter. The Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Article 1.10 provides that the commissioner, after notice and opportunity for a hearing, may take action against the holder of a continuing care retirement facility license. House Bill 1461, §1.23 authorizes the transition of duties between the State Board and Commissioner of Insurance. The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules or practice setting forth the nature and requirements of available procedures, and prescribes the manner for adoption of rules by a state administrative agency.

§§33.401. Entrance Fee Escrow Account.

(a) The provider of a facility which was unoccupied on September 1, 1987, and for which continuing care contracts have been or will be entered into on or after September 1, 1987, shall establish an entrance fee escrow account with a bank or trust company located in this state, as escrow agent. The provider subject to this section shall establish the entrance fee escrow account before entering into a reservation agreement or a continuing care contract, and accepting an entrance fee or a reservation agreement deposit. The entrance fee escrow account shall be maintained in an account separate from the provider's business account and must be fully covered by federal deposit insurance or secured by the United States Government.

(b) When the provider receives a refundable reservation agreement deposit, an entrance fee, or a portion of an entrance fee from a resident or prospective resident, the funds shall be deposited in the entrance fee escrow account. The provider shall give the resident or prospective resident a written receipt for the funds. The provider shall then deliver a copy of the receipt together with the funds to the escrow agent for deposit within 72 hours of the provider's receipt. The written receipt given to the resident or prospective resident for the funds shall include the information that the provider must deposit the funds in the escrow account within 72 hours of receipt, in addition to the name and address of the escrow agent.

(c) At any time upon the request of the resident or prospective resident, the provider, or the commissioner, the escrow agent shall issue a statement indicating the status of a resident or prospective resident's balance in the entrance fee escrow account. The written receipt given to the resident shall also include the following statement: "At your request, the escrow agent must provide a statement indicating the status of your balance in the entrance fee escrow account."

(d) Accrued interest on the entrance fee escrow account shall be the property of the provider unless otherwise provided in the continuing care contract.

(e) This section does not apply to any non refundable portion of an entrance fee or reservation agreement deposit that does not exceed two percent of the amount required as the entrance fee and that is clearly designated as non refundable in the relevant continuing care contract or reservation agreement.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602557

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 14, 1996

Proposal publication date: September 1, 1995

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

◆ ◆ ◆
19 TAC §§33.402-33.406

The Commissioner of Insurance adopts new §§33.402 - 33.406, concerning the requirements for the maintenance and use of escrow accounts by continuing care retirement facility providers, without changes to the proposed text as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6798).

These sections will replace the existing sections which are adopted for repeal in another section of this issue of the Texas Register. The new rules are designed to clarify the sections and to make changes mandated by amendments to Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993.

New §33.402 details provisions for refund of entrance fees and return of reservation agreement deposits, and details certain provisions the reservation agreement must contain. New §33.403 provides the escrow agent shall notify the department of a request for release of funds, contains the conditions for release of the entrance fee escrow account funds to the provider, and gives a limit on the amount of funds that may be released. New §33.404 details requirements for the loan reserve fund escrow account. New §33.405 contains the conditions and procedures for release of the loan reserve fund escrow account. New §33.406 provides for the repayment of funds released from the reserve fund escrow account.

No comments were received regarding the adoption of the new sections.

The new sections are adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003, the Insurance Code, Articles 1.03A and 1.10; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. The Health and Safety Code, Chapter 246 sets out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the department to regulate those facilities, to adopt rules, and to take other action as necessary to administer and enforce that chapter. The Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. Article 1.10 provides that the commissioner after notice and opportunity for a hearing, may take action against the holder of a continuing care retirement facility license. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and Commissioner of Insurance.

The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules or practice setting forth the nature and requirements of available procedures, and prescribes the manner for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602559

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 14, 1996

Proposal publication date: September 1, 1995

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

◆ ◆ ◆
19 TAC §§33.402-33.407

The Commissioner of Insurance adopts the repeal of §§33.402-33.407, concerning the requirements for the maintenance and use of escrow accounts by continuing care retirement facility providers, without changes as published in the September 1, 1995, issue of the *Texas Register* (20 TexReg 6797).

The repeals are necessary to eliminate unnecessary provisions, to make changes mandated by amendments to the Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993 and to enable the Texas Department of Insurance to adopt new §§33.402 - 33.406. Simultaneously to the adoption of this appeal, adoption of new §§ 33.402-33.406 is published elsewhere in this issue of the Texas Register.

New §33.402 states the conditions under which entrance fees in escrow must be returned to the persons who paid them to providers. New §33.403 sets forth a procedure for determining when entrance fees in escrow may be released to providers. The calculations in repealed §33.403(b) are now contained in the new CCRC Form #14 - Calculations Concerning Conditions for Release of Entrance Fees to Provider under Health and Safety Code, §246.073. New §33.404 provides for the calculation of the total amount of entrance fees in escrow for a particular facility that may be released to the provider before the facility is complete. New §33.405 provides for the establishment of reserve fund escrow accounts with respect to continuing care retirement facilities. New §33.406 places a limit on the amount of funds which may be released to a provider from the reserve fund escrow. New §33.407 requires that escrow agreements for entrance fee and reserve fund escrow accounts contain provisions obligating the escrow agent to notify the board when a provider requests a release of funds.

No comments were received regarding the adoption of the repeal.

The repeals are adopted pursuant to Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003; the Insurance Code, Article 1.03A; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. Health and Safety Code, Chapter 246 sets

out the statutory requirements for continuing care retirement facilities and §246.003 authorizes the board to regulate those facilities and to adopt rules and take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A provides the commissioner with the authorization to adopt rules and regulations for the conduct and execution of the duties and functions of the department. House Bill 1461, §1.23 authorizes the transition of duties between the State Board of Insurance and the Commissioner of Insurance. The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602560

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

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Proposal publication date: September 1, 1995

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

Subchapter F. Ongoing Regulatory Requirements

19 TAC §§ 33.501-33.511

The Commissioner of Insurance adopts amendments to §§33.501-33.504, and §§33.506-33.511, concerning the ongoing regulatory requirements for continuing care retirement facilities without changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register* (20 TexReg 7794). Amended §33.505 is adopted with changes to the proposed text as published in the September 26, 1995, issue of the *Texas Register*. A public hearing on the sections as published was requested on October 24, 1995, by the Texas Association of Homes and Services for the Aging, but was subsequently withdrawn.

The amendments are necessary to provide technical corrections, to clarify the sections, and to make changes mandated by amendments to the Health and Safety Code, Chapter 246, enacted by the passage of House Bill 2389, 73rd Legislature, 1993. Section 33.505 was expanded to include additional criteria when evaluating whether a facility is financially unsound.

Section 33.501 states how books and records of providers shall be kept. Section 33.502 provides that the commissioner may make inquiries to determine compliance with the Act. Section 33.503 provides that the commissioner may conduct investigations and examinations to determine compliance with the Act. Section 33.504 provides the requirements for advertising. Section 33.505 provides a purpose statement for the rule, gives a list of factors the department may consider to determine whether a provider is financially unsound, and includes additional financial information the department may consider to determine a facility is financially unsound. Section 33.506 provides the ac-

tuarial review requirements. Section 33.507 provides the commissioner's authority under the Act relating to supervision, rehabilitation, or liquidation. Section 33.508 provides the procedures for the transfer of a certificate of authority. Section 33.509 requires the provider to file with the department any management contract with a third party 30 days before the contract is entered into. Section 33.510 provides for advance notice to the department for a change in fiscal year. Section 33.511 provides for notification to the department of any changes of persons responsible for the management or direction of a facility.

Comments suggested that the language in §33.305(b)(1)(A) which as originally published stated, one of the factors to be considered in evaluating the financial condition of a facility is an adequate fund balance, "as evidenced by a positive fund balance of the actuarial balance sheet" should be changed to delete the reference to "positive". In response to this suggestion, the department changed the language so that the criteria to consider whether an adequate fund balance is maintained is "evidenced by a fund balance on the actuarial balance sheet which is acceptable to the commissioner or by an actuarial funded status ratio acceptable to the commissioner."

A comment suggested the language in §33.305(b)(1)(B)(i) as originally published which states: facilities which are not required to obtain actuarial balance sheets may show an adequate fund balance by "maintaining a positive fund balance on its audited financial statements prepared under generally accepted accounting principles" should be changed and the reference to "positive" deleted. The department agrees and has deleted the reference to positive and changed the language so that facilities which are not required to obtain an actuarial balance sheet may show an adequate fund balance by "maintaining a fund balance on audited financial statements prepared under generally accepted accounting principles which is acceptable to the commissioner."

One comment suggested that the reference to positive fund balance in §33.505(b)(1)(B)(ii) should be deleted. The department agrees and has changed the language of §33.505(b)(1)(B)(ii) so that a facility which is not required to obtain actuarial balance sheets under §33.506 may show an adequate fund balance by "voluntarily obtaining an actuarial report to show a satisfactory actuarial balance as described in §33.506(c)."

Comments suggested that the reference to positive fund balance in §33.505(e)(1)(B) as originally proposed should be changed to "if the facility does not maintain a satisfactory actuarial balance." The department agrees and has changed the language to "[i]f the facility does not maintain a satisfactory actuarial balance as described in Section 33.506(c), the commissioner may require the facility to disclose these items in notes accompanying the financial statements, even if an accounting entry is not required to be made."

Comments suggested that §33.505(d) as originally proposed should be changed so that if any unaudited generally accepted accounting principles balance sheet filed with the disclosure statement shows a net fund deficit and reflects an unfunded future service obligation, the commissioner may require the facility to submit an actuarial report demonstrating the facility is in actuarial balance. In response to this suggestion, the department changed this paragraph, but added the provision

that the actuarial report must demonstrate the facility is in satisfactory actuarial balance in order to make the language consistent with §33.506(c).

Comments were received on §33.505(e)(C) as originally proposed that recommended changing the language from "non-refundable entrance fees shall be treated as deferred revenue to be amortized over each group of residents' estimated lives" to "non-refundable entrance fees shall be reported in accordance with the American Institute of Certified Public Accountants Statement of Position 90-8." The department disagrees because the language as originally proposed is more specific and follows the standard for reporting contained in the American Institute of Certified Public Accountants Statement of Position 90-8.

Comments were received on §33.505(e)(D) which stated there was a mistake in the language as originally proposed that was contrary to the standards for reporting contained in the American Institute of Certified Public Accountants Statement of Position 90-8, requiring the refundable portion of entrance fee to be amortized. The department agrees and deleted the provision regarding amortization.

A comment was received on §33.506(c)(1) which suggested the language as originally proposed on whether a satisfactory actuarial balance is maintained should be changed from "if resources that are available for the facility's current residents are greater than or equal to the actuarial present value of the expected costs of performing all remaining obligations to such residents under their contracts" to "a satisfactory actuarial balance is maintained if resources that are available for the facility's current residents are at levels acceptable to the commissioner and within industry guidelines." The department disagrees. The language in §33.506(c)(1) regarding whether a satisfactory actuarial balance is maintained is taken verbatim from Actuarial Standard of Practice Number 3, Practices Relating to Continuing Care Retirement Communities.

For the changes: The Texas Association of Homes and Services for the Aging, individual commenters and Davis & Wilkerson.

The amendments are adopted pursuant to the Health and Safety Code, Chapter 246, including the rule making authority conferred by §246.003; the Insurance Code, Article 1.03A; House Bill 1461, §1.23, 73rd Legislature, 1993; and the Government Code, §2001.004, et seq. Health and Safety Code, Chapter 246 provides the statutory requirements for continuing care retirement facilities and §246.003 authorizes the department to regulate those facilities, to adopt rules, and to take other action as necessary to administer and enforce that chapter. Insurance Code, Article 1.03A sets forth the requirements for rules of general application to be adopted by the Commissioner of Insurance. Section 1.23 of House Bill 1461 authorizes the transition of duties between the State Board of Insurance and Commissioner of Insurance. The Government Code, §2001.004, et seq. authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and prescribes the manner for adoption of rules by a state administrative agency.

§§33.505. *Financial Condition*

(a) The purpose of this rule is to enumerate conditions which the commissioner may consider to determine whether a provider or facility is financially unsound and which may be a basis for the commissioner to initiate an action against a facility or provider under the Health and Safety Code, §246.091. In evaluating any of these factors, all circumstances concerning the provider's or facility's operations must be evaluated in making an ultimate conclusion that a facility or provider is financially unsound.

(b) In order to determine whether a facility or provider is financially unsound, the commissioner may consider the following factors:

(1) Adequate fund balance.

(A) An adequate fund balance is maintained if resources that are available for the facility's current residents (including the actuarial present value of periodic fees expected to be paid in the future by current residents) are reasonably equivalent to or greater than the actuarial present value of the expected costs of performing all remaining obligations to such residents under their contracts, as evidenced by a fund balance on the actuarial balance sheet which is acceptable to the commissioner or by an actuarial funded status ratio acceptable to the commissioner.

(B) Facilities which are not required to obtain actuarial balance sheets under §33.506 may show an adequate fund balance by:

(i) maintaining a fund balance on audited financial statements prepared under generally accepted accounting principles which is acceptable to the commissioner; or

(ii) voluntarily obtaining an actuarial report to show a satisfactory actuarial balance as described in §33.506(c); or (iii) providing evidence of adequate funding by showing guarantees of liabilities and obligations to residents by a parent or other supporting organization, and providing audited financial statements of such parent or supporting organization showing its capacity to provide such guarantees.

(2) Ability to meet current financial obligations. The facility's or provider's ability to meet its current financial obligations, as shown on its most recently audited financial statements can be measured by comparing current assets, including current portions of restricted funds, to current liabilities.

(3) Ability to meet projections. The facility's or provider's ability to meet its projected occupancy goals or cash projections can be measured by comparing the projections filed with the department as part of the annual disclosure statement, CCRC Form Number 6 to actual results. The comparison of projections to actual results, including occupancy figures, shall be included with the disclosure statement and the financial statements, together with an explanation of variances greater than plus or minus 10% in a line item, and an explanation of variances which are greater in dollar amount than the net cash flow, positive or negative.

(4) Cash Flow. The facility's or provider's ability to maintain a level of cash flow acceptable to the commissioner can be measured by analyzing the cash flow statement included in the audited financial statements.

(5) Operating ratio. The facility's or provider's ability to maintain an operating ratio acceptable to the commissioner and within industry guidelines can be measured by taking cash operating

revenues and dividing it by cash operating expenses. In determining if an operating ratio is acceptable, the commissioner may consider guarantees of operating support by a parent or other supporting organization, and audited financial statements of such parent or organization showing its capacity to provide such guarantees.

(6) Debt service ratio. The facility's or provider's ability to maintain a debt service ratio acceptable to the commissioner and within industry guidelines can be measured by using the following calculation: Total Excess (Deficit) of Revenues and Gains in excess of Expenses and Losses plus Interest Expense plus Depreciation Expense plus Amortization Expense minus Amortization of Deferred Revenues from Entry Fees plus Net Proceeds from Entry Fees, divided by Annual Debt Service (annual principal and interest payment or maximum annual debt service).

(7) Occupancy ratio. The facility's or provider's ability to maintain an occupancy ratio acceptable to the commissioner and within industry guidelines can be measured by taking the total number of occupied units in a facility and dividing it by the total number of units in that facility. Occupancy may be tracked by each level of care, including independent living units, nursing beds, or other levels of care available.

(c) Additional financial information.

(1) The commissioner may require information or reports in addition to those contained in the disclosure statement to monitor the financial condition of the facility and administer and enforce the Act. The reports may include, but are not limited to, quarterly financial statements, statements prepared for reporting to bond issuers or underwriters, and audited financial statements of the facility's parent or other supporting organization.

(2) The commissioner may consider the trends in a facility's operation and on its financial statements, and may consider the effect that any unusual, extraordinary, or non-recurring occurrence may have on the outcomes of any calculations made to determine trends or to financial condition of the facility as contemplated in subsection (b).

(3) If a facility is a start-up facility, the commissioner may consider that such a facility may meet standards which differ from those required of an established facility for at least the first thirty-six months of operation, beginning with occupancy by the first resident.

(4) Before making a final determination that a facility is financially unsound, the commissioner will provide the facility with the opportunity to submit additional financial information to demonstrate its ability to meet its financial obligations and obligations to its residents.

(d) Balance sheet with net fund deficit. If any audited generally accepted accounting principles (GAAP) balance sheet filed with the disclosure statement shows a net fund deficit and reflects an unfunded future service obligation, the commissioner may require the provider or management of the facility to submit an actuarial balance sheet demonstrating that the facility is in satisfactory actuarial balance, or to submit a plan delineating action to be taken to remove such deficit. The plan shall include, but not be limited to, the items listed in paragraphs (1) through (3) of this subsection:

(1) The reasons or causes of the deficit balance;

(2) Conditions or circumstances that exist which may require unusual accounting treatment, but are not regularly recurring conditions that will cause increasing deficits in subsequent periods;

(3) Projections of the following:

(A) cash flow from operations of the facility for the next 18 months or for whatever other period of time the department deems appropriate;

(B) overall financial conditions, as projected in pro forma calendar quarterly balance sheets and income statements, for the next 18 months or for whatever period of time the department deems appropriate;

(C) debt service for the next 18 months; and

(D) specific actions to be taken by management during the next 18 months to minimize any operating factors that are contributing to the deficit balance, or to reduce the deficit balance.

(e) Requirements for basic financial statements. A provider or facility shall file the basic financial statements with the disclosure statement which satisfy the requirements in paragraphs (1) - (3) of this subsection.

(1) The balance sheet on a comparative basis shall reflect at least the liabilities listed in subparagraphs (A) - (D) of this paragraph.

(A) A continuing care provider which is financed through a financing authority by the issuance of bonds or other long-term obligations shall establish those obligations which are issued for its benefit as liabilities. The provider is responsible for repayment of the obligations. The notes accompanying the financial statements shall disclose the debt service ratio, and shall disclose any guarantees of bond obligations made by parent or other supporting organizations.

(B) Liability to provide future services is the excess of the present value of the facility's obligations to provide future services to current residents over and above the present value of related future revenue. No accounting entry is required if the present value of future related revenues exceeds the present value of the obligations for future services. If the present value of related future revenue is less than the present value of the obligation, no accounting entry is required unless the liability is greater than the unamortized entrance fees, in which case a liability is recognized and an expense recorded. If the facility does not maintain a satisfactory actuarial balance as described in Section 33.506(c), the commissioner may require the facility to disclose these items in notes accompanying the financial statements, even if an accounting entry is not required to be made.

(C) The non-refundable entrance fees paid by a resident upon entering into a continuing care contract shall be treated as deferred revenue to be amortized over each group of residents' estimated remaining lives using a method that properly matches revenues with expenses.

(D) The refundable portion of the entrance fee shall be recorded as a liability.

(2) The basic audited financial statements filed with the disclosure statement shall include at least the items listed in subparagraphs (A) - (D) of this subsection:

(A) a statement of activity (a statement of support, revenue, expense);

(B) a statement of changes in fund balances;

(C) a statement of changes in financial position prepared on a cash flow basis; and

(D) notes to accompany the financial statements considered necessary to full disclosure or adequate understanding of the financial statements, financial condition, and operation.

(3) Accompanying the basic financial statements described in paragraphs (1) and (2) of this subsection shall be a reconciliation of the cash flow statement to the statement of revenue and expenses, and a comparison of pro-forma projections for the period to actual results, including an explanation of variances greater than plus or minus 10% in a line item, and an explanation of variances which are greater in dollar amount than total net income or loss. The comparison shall also include actual beginning and ending occupancy rates for living units, and actual number of occupied bed-days for nursing care units. The reconciliation and comparisons required by this paragraph are not required to be included within the audit of the financial statements, and may be prepared by the management of the facility or by the preparers of the audited financial statements.

(f) Continuing Care Contract Liens. To secure the obligations of the provider under any continuing care contract, a lien attaches on the date a resident first occupies a facility. The lien covers the real and personal property of the provider located at the facility. The provider shall submit to the department a written notice sworn to by an officer of the provider for each county where the provider has a facility on CCRC Form Number 13 (Notice of Lien). The provider shall file the notice of the lien with the department before the date of the execution of the first continuing care contract related to the facility.

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

Issued in Austin, Texas, on February 22, 1996.

TRD-9602561

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: March 14, 1996

Proposal publication date: September 26, 1995

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

TITLE 34. PUBLIC FINANCE

Part IV. Employees Retirement System

Chapter 73. Benefits

34 TAC §73.31

The Employees Retirement System of Texas adopts an amendment to §73.31, concerning adjustment to annuities without changes to the proposed text as published in the September 15, 1995, issue of the *Texas Register* (20 TexReg 7263).

The amendment provides adjustments to annuities as a result of Senate Bill 1231, 74th Legislature, which made some plan design changes which may now be considered for potential adjustments to current annuities.

The amendment will permit certified peace officers (CPOs) and custodial officers (COs) who retired before August 31, 1995 to receive credit for partial years of service and to have their annuity calculated using the new formula rather than the CPO table that was repealed under Senate Bill 1231. This amendment will provide equity for all CPOs/COs regardless of their actual retirement date. The various adjustments to the annuities would be applied to the March annuities and would be payable March 31, 1996.

The amendment is adopted under the Government Code, §814.602 which provides the Employees Retirement System of Texas with the authority to adopt rules that adjust or modify annuities to the extent necessary to be consistent with changes in plan design.

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

Issued in Austin, Texas, on February 23, 1996.

TRD-9602629

Charles D. Travis

Executive Director

Employees Retirement System

Effective date: March 15, 1996

Proposed publication date: September 15, 1995

For further information, please call: (512) 867-3336

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part VI. Texas Commission for the Deaf and Hard of Hearing

Chapter 183. Board for Evaluation of Interpreters and Interpreter Certification

Subchapter D. Denial, Suspension, or Revocation of a Certificate

40 TAC §183.501

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §183.501, concerning Grounds for Denial, Suspension, or Revocation of an Interpreter Certificate or Interpreter Certification Application, with changes to the proposed text as published in the December 22, 1995, issue of the *Texas Register* (20 Tex Reg 10988). This amendment will update current grievance procedures to comply with those of the Office of Administrative Hearings.

A comment was received regarding terminology/grammatical changes which has been incorporated.

The amendment is adopted under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing the authority to adopt rules for administration and programs.

The adopted amendment affects Texas Administrative Code.

§§183.501. *Grounds for Denial, Suspension, or Revocation of an Interpreter Certificate or Interpreter Certification Application.*

The Texas Commission for the Deaf and Hard of Hearing may deny application; suspend or revoke certification; or otherwise discipline, reprimand, or place on probation an interpreter for any of the following causes:

(1) conviction of a felony or any offense involving moral turpitude. In determining if the criminal conviction has a direct bearing on whether the interpreter or applicant should be entrusted to serve the public, the commission considers the particular facts and circumstances of each case to include evidence of those matters required by Texas Government Code §2001.001 et seq. The crimes having such a direct bearing include criminal conduct of homicide, rape, sexual abuse, indecency with a child, injury to a child, aggravated assault, robbery, burglary, theft, forgery, bribery, perjury, and those relating to controlled substances;

(2) use of drugs or intoxicating liquors to an extent that affects his or her professional competence. This includes: the use of drugs or intoxicating liquors, whether or not controlled, to an extent that is dangerous to the interpreter or applicant, or any other members of the public; the use of drugs or intoxicating liquors to the extent that such use impairs the interpreter's or applicant's ability to perform the work of interpreting in a safe and responsible manner;

(3) impersonating another person who holds an interpreter certification from TCDHH/BEI;

(4) allowing another person to use his or her interpreter certification;

(5) representing that the interpreter has a level of certification different from the actual level of certification awarded by the commission;

(6) using fraud, deception or misrepresentation in an application for certification;

(7) willfully violating or aiding in the violation of any of the standards of ethical behavior;

(8) being grossly incompetent or grossly negligent in his or her duties as an interpreter; or having demonstrated repeated and/or continuous negligence or irresponsibility in the performance of his or her duties;

(9) being adjudicated mentally incompetent by a court of competent jurisdiction;

(10) intentionally harassing, abusing, or intimidating a board member, candidate, or any supportive staff either physically or verbally;

(11) intentionally divulging any aspect of confidential information relating to the certification evaluation including content,

topic, vocabulary, identity of individuals involved in the tests, skills, written tests, and any other testing materials;

(12) failure to meet requirements for certification maintenance; or

(13) engaging in the practice of interpreting while certification is suspended.

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

Issued in Austin, Texas, on February 21, 1996.

TRD-9602478

David W. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: March 13, 1996

Proposal publication date: December 22, 1995

For further information, please call: (512) 451-8494

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40 TAC §183.505

The Texas Commission for the Deaf and Hard of Hearing adopts an amendment to §183.505, concerning Certificate Holders' Rights to Information Regarding Revocation and Suspension, without changes to the proposed text as published in the December 22, 1995, issue of the *Texas Register* (20 TexReg 10989). This amendment will update current grievance procedures to comply with those of the Office of Administrative Hearings.

No comments were received regarding adoption of this amendment.

The amendment is adopted under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing the authority to adopt rules for administration and programs.

The adopted amendment affects Texas Administrative Code.

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

Issued in Austin, Texas, on February 21, 1996.

TRD-9602479

David W. Myers

Executive Director

Texas Commission for the Deaf and Hard of Hearing

Effective date: March 13, 1996

Proposal publication date: December 22, 1995

For further information, please call: (512) 451-8494
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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Board of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the board adopts the proposal. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the Board of Insurance adopts the proposal. The Administrative Procedure Act, the Government Code, Chapters 2001 and 2002, does not apply to board action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104.)

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Proposed

The Commissioner of Insurance, at a public hearing under Docket Number 2211 scheduled for April 18, 1996 at 9:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition proposes amendment to the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1992 through 1996 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0296-03-I) was filed on February 6, 1996.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the various model years of the listed vehicles. The exhibit attached to staff's petition omits symbols used by Insurance Services Office (ISO) for multi-purpose and utility type vehicles for 1994 and prior year models, which will continue to be rated according to the traditional method set forth in the Manual, page 2 of the Symbol and Identification Section. For 1995 and later year models, excluding customized vehicles, the symbol for each multi-purpose and utility type vehicle must be used in the same manner as the symbol for a private passenger auto, as required by Commissioner's Order Number 95-0607, effective September 1, 1995. The operative provisions of that order have been printed in the Manual.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 322-6326; refer to (Reference Number A-0296-03-I).

Written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P. O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

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

Issued in Austin, Texas, on February 28, 1996.

TRD-9602789

Alicia M. Fechtel

Texas Department of Insurance

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

The Commissioner of Insurance at a hearing scheduled under Docket Number 2209 on April 18, 1996, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider approval of a filing made by the staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Section I A of the Texas Experience Rating Plan of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan of Workers' Compensation and Employers' Liability Insurance. The purpose of this amendment is to require insurance companies to furnish, free of charge, one copy of the workers' compensation experience modifier calculation to the producer of record within ten working days of the modifier being calculated or received by the insurance company. The producer of record may also obtain a copy of the modifier calculation directly from the insured.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Article 5.60 (b) and 5.96.

A copy of the petition containing the full text of the proposed changes to Section I A of the Texas Experience Rating Plan of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327. (Refer to Reference Number W-0296-05-I).

This notification is made pursuant to the Texas Insurance code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2110 (Administrative Procedure Act). The agency hereby certifies that the rule as proposed has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602790

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

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

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Adopted

The Commissioner of Insurance, at a public hearing under Docket Number 2197 held at 9:00 a.m., February 22, 1996 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, adopted amendments proposed by United Services Automobile Association (USAA) to the Texas Automobile Rules and Rating Manual (the Manual), Rule 74, to allow an optional discount for a vehicle equipped with a daytime-running-lights system. USAA's petition (Reference Number A-0595-9) was published in the January 19, 1996, issue of the *Texas Register* (21 TexReg 500).

In Manual Rule 74.H, the caption is expanded and a new subsection 3.d. is added to provide for this optional daytime-running-lights system discount. The amount of any discount for such a system is within an insurer's discretion, but any such discount must be applicable for original equipment systems and aftermarket installed systems.

The amendments as adopted by the Commissioner of Insurance are shown in an exhibit on file with the Chief Clerk under Reference Number A-0595-9, which is incorporated by reference into Commissioner's Order Number 96-0217.

The Commissioner of Insurance has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.10, 5.96, 5.98, and 5.101.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Consistent with the Insurance Code, Article 5.96(h), the Department will notify all insurers writing automobile insurance of this adoption by letter summarizing the commissioner's action.

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

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the Manual is amended as described herein, and the amendments are adopted effective April 1, 1996.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602788

Alicia M. Fechtel

General Counsel and Chief Clerk,

Texas Department of Insurance

Effective date: April 1, 1996

Open Meetings

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

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

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

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

State Aircraft Pooling Board

Monday, March 11, 1996, 9:30 a.m.

4900 Old Manor Road

Austin

AGENDA:

1. Call to order
2. Introductions
3. Approval of minutes of board meeting, October 26, 1995
4. Strategic plan, 1997-2001
5. Airport relocation status
6. Executive director's report
7. Setting of time and place for next meeting
8. Final adjournment

Contact: Gladys Alexander, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

Filed: February 28, 1996, 8:59 a.m.

TRD-9602274

Texas Board of Chiropractic Examiners

Thursday, March 7, 1996, 8:30 a.m.

333 Guadalupe, Tower I, Room 102

Austin

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of cases # 94-29, 95-200, 95-239, 95-261, 95-296, 95-215, 95-276, 95-319, 95-199, 95-305, 94-29, 95-297, 95-324, 95-66, 95-195, 95-215, 95-179, 95-186 and 96-03 through 96-104.

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

Filed: February 27, 1996, 11:26 a.m.

TRD-9602722

Thursday, March 7, 1996, 8:30 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Revised Agenda

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of: A. Continuing education waivers based on age; B. Preceptorship programs; C. Continuing education by video tape; D. Request for extension before licensure; E. Waiver of board-presented two-hour course for out-of-state licensees; F. Changes in California law for reconsideration as a state whose law is substantially equivalent to Texas law; G. Approval of provisional licensure; H. Consideration of reinstatement of license; I. Designation of board member to attend each license renewal seminar and determination of set seminar fee; J. Consideration of Turkish credentials and U. T. evaluation.

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

Filed: February 27, 1996, 11:27 a.m.

TRD-9602724

Thursday, March 7, 1996, 9:30 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Technical Standards Committee

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of: A. Injectables; B. Guidelines for Radiologic Technologist Continuing Education.

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

Filed: February 27, 1996, 11:27 a.m.

TRD-9602726

Thursday, March 7, 1996, 10:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Rules Committee

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of: A. Proposed Rule §73.6, Default on Texas Guaranteed Student Loan; B. Proposed Rule §73.7, Non-payment of Court Ordered Child Support; C. Proposed Rule §75.2, Medical Records; D. Proposed Rule §73.8, Travel to Treat.

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

Filed: February 27, 1996, 11:27 a.m.

TRD-9602725

Thursday, March 7, 1996, 1:00 p.m.

333 Guadalupe, Tower III, Suite 825

Austin

Executive Committee

AGENDA:

Consideration, discussion, any appropriate action, and/or approval of: A. Board meeting agenda; B. Use of board stationary by board members; C. Peer review guidelines.

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

Filed: February 27, 1996, 11:27 a.m.

TRD-9602723

Thursday, March 7, 1996, 1:30 p.m.

333 Guadalupe, Tower I, Room 102

Austin

AGENDA:

The Texas Board of Chiropractic Examiners will meet on Thursday, March 7, 1996 at 2:00 p.m. to consider, discuss, take any appropriate action, and/or approve: I. Minutes of the January 12, 1996 board meeting; II. Report of the president on board activities and the chiropractic profession; III. Report of the executive director on administration, budget, internal policy and procedure, personnel,

and general information on licensees; IV. Committee reports: A. Enforcement Committee-1. Enforcement actions-Fiscal year 1996; B. Licensure and Educational Standards Committee-1. Continuing Education credit waiver based on age, 2. Preceptorship programs, 3. Continuing Education by video tape, 4. Request for extension before licensure, 5. Waiver of board-presented two-hour course for out-of-state active licensees, 6. Changes in California law for reconsideration as a state whose law is substantially equivalent to Texas law, 7. Approval of provisional licensure, 8. Consideration of re-instatement of license, 9. Designation of board member to attend each license renewal seminar and determination of set seminar fee, 10. Consideration of Turkish credentials and U. T. evaluation; C. Technical Standards Committee-1. Injectables, 2. Guidelines for Radiologic Technologist Continuing Education; D. Rules Committee-1. Proposed §73.6, Default on Texas Guaranteed Student Loan, 2. Proposed §73.7, Non-payment of Court Ordered Child Support, 3. Proposed §75.2, Medical Records, 4. Proposed §73.8, Travel to Treat; E. Executive Committee-1. Use of board stationary; V. Rules, Chapters 71-80, Texas Administrative Code, as published in the December 8, 1995, Texas Register; VI. Licenses cancelled due to non-renewal for a period of two years or more; VII. Alternative license renewal processes/systems; VIII. Changes to Policies and Procedures Manual; IX. Items to be considered for future agenda.

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

Filed: February 27, 1996, 11:26 a.m.

TRD-9602721

Community Nutritional Task Force

Wednesday, March 6, 1996, 10:00 a.m.

1700 North Congress Avenue, Stephen F. Austin Building, Room 831

Austin

AGENDA:

- I. Call to order
- II. Discuss and formulate a work plan with a time frame
- III. Agency reports
- IV. Discuss general developments and objectives for projects
- V. Public comment
- VI. Adjourn

Contact: Leda Roselle, 1700 North Congress Avenue, Room 837, Austin, Texas 78701, (512) 463-6279.

Filed: February 26, 1996, 11:55 a.m.

TRD-9602681

Texas Department of Criminal Justice

Thursday, March 7, 1996, 1:30 p.m.

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

Austin

Judicial Advisory Council Meeting

AGENDA:

Committee meetings:

Special Services, Special Projects, Training Committee, Grant and Audit Committee, Special Recognition Committee, and Administrative Services Committee.

Contact: Elizabeth Colvin, 209 West 14th Street, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: February 27, 1996, 4:03 p.m.

TRD-9602746

Friday, March 8, 1996, 9:00 a.m.

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

Judicial Advisory Committee Meeting

AGENDA:

Greeting, introduction of guests/staff, approval of minutes, recognition/moment of silence for Edmond Peterson, recognition of TDCJ Volunteer Award recipient, TBCJ-CJAD liaison (Nancy Patton), TDCJ executive director's report (Wayne Scott invited), TDCJ Program and Services Division report, State Jail Division report, State Jail Division report, Texas Community Service Association (TCSA) presentation, Residential Committee presentation, Probation Advisory Committee report, committee reports and section updates, division director's update, next meeting, and adjournment.

Contact: Elizabeth Colvin, 209 West 14th, Suite 400, Austin, Texas 78701, (512) 305-8584.

Filed: February 27, 1996, 4:03 p.m.

TRD-9602747

◆ ◆ ◆
Texas Education Agency

Monday, March 18, 1996, 10:00 a.m.

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

Austin

Public Committee on Public Education Information (PCPEI)

AGENDA:

The meeting will be called to order, and the PCPEI will consider the following: status reports on the Bulletin 742 sunset process, the plan for information management and communication, and the electronic data transmission project; updates concerning the policy group's suggestions and recommendations from December, the public education information management system (PEIMS) 1997-1998 data standards, and information systems (including planning group activities and PEIMS quality assurance); a policy group report or PEIMS definitions; and the Information Task Force 1996 schedule of activities.

Contact: Nancy Vaughn, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8110.

Filed: February 27, 1996, 9:38 a.m.

TRD-9602714

◆ ◆ ◆
State Employee Charitable Campaign

Thursday, March 7, 1996, 10:00 a.m.

2000 East Martin Luther King Jr. Boulevard
Austin

State Policy Committee

AGENDA:

1. Orientation for new State Policy Committee members
2. Review and approve final 1995 local budgets
3. Review and approve proposed 1996 state campaign manager budget
4. Review and approve 1996 local campaign manager budget form
5. Review and approve statewide federation applications
6. Selection of 1996 Local Employee Committee chairs
7. Review and approve proposed recertification form for 1997

Contact: Mary Ellen Burns, 505 East Huntland Drive, Suite 455, Austin, Texas 78752, (512) 450-0840, fax: (512) 450-0108.

Filed: February 27, 1996, 3:38 p.m.

TRD-9602741

Monday, March 11, 1996, 10:30 a.m.

2000 East Martin Luther King, Jr. Boulevard

Austin

Local Employee Committee, Executive Leadership Team

AGENDA:

- I. Introductions
 - II. Creation of a campaign cabinet
 - III. Identification of target agencies and universities
 - IV. Message development
 - V. Executive liaison
 - VI. Recruitment from other campaign areas
- Adjourn

Contact: Anne Murphy, 2000 East Martin Luther King, Jr. Boulevard, Austin, Texas, 78702, (512) 472-6267, fax: (512) 482-8309.

Filed: February 27, 1996, 5:06 p.m.

TRD-9602770

◆ ◆ ◆
Fire Fighters' Pension Commission

Thursday-Friday, March 28-29, 1996, 9:00 a.m. and 1:00 p.m. (Thursday), and 8:30 a.m. (Friday).

The Holiday Inn, IH-35 South at Woodward

Austin

Administrative Division

AGENDA:

The Statewide Volunteer Fire Fighters' Retirement Fund Board of Trustees Legislative Law Change Committee will meet for the purpose of discussing possible law changes for the 1997 legislative

session. The Board of Trustees quarterly meeting will be held for the purpose of hearing reports from the plan consultant, actuary, CPA, state auditors, and Assistant Attorney General. Also staff reports from commissioner and the plan administrator.

Contact: Helen Campbell, 3910 South IH-35, #235, Austin, Texas 78704, (512) 462-0222.

Filed: February 26, 1996, 2:44 p.m.

TRD-9602690

◆ ◆ ◆
Texas Department of Health

Monday, March 11, 1996, 1:00 p.m.

Room T-607, Texas Department of Health, 1100 West 49th Street
Austin

Midwifery Board

AGENDA:

The board will discuss and possibly act on: approval of the minutes of the December 11, 1995, meeting; comments by the chair; Grievance Committee report (update on complaints 95-03, 95-08, and 95-14); Education Committee report (finalizing amended education rules and documentation rules); Legislative Committee report (report on previous meeting for possible changes in law for 1997 legislation); and Conflict Resolution Committee report (report on initial meeting of a committee that has been formed by midwives for better communication between the Texas Department of Health and midwives); old business (report on status of board member applicant; and approval of certificate); and open forum (Janet Dirmeyer (addressing letter sent to board members).

Contact: Cecilia Noble, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. To request an accommodation under the ADA, please contact Renee Rusch, 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.

Filed: February 27, 1996, 1:54 p.m.

TRD-9602735

Monday, March 11, 1996, 1:00 p.m.

Room T-607, Texas Department of Health, 1100 West 49th Street
Austin

Midwifery Board, Grievance Committee

AGENDA:

The committee will meet to discuss and possibly act on opening remarks by chair; and begin working on grievance rules.

Contact: Cecilia Noble, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. To request an accommodation under the ADA, please contact Renee Rusch, 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.

Filed: February 27, 1996, 1:54 p.m.

TRD-9602734

Thursday, March 14, 1996, 11:00 a.m.

Room M-739, Texas Department of Health, 1100 West 49th Street
Austin

Family Planning Advisory Committee

AGENDA:

The council will discuss and possibly act on: approval of minutes from the December 14, 1995 meeting; report from representative of Regional Coordinating Committee chairpersons; domestic violence and the impact on clients served by family planning programs; Family Planning Futures Project Committee-preliminary report and recommendations; and public comments not requiring committee action.

NOTE: The Regional Coordinating Committee chairpersons will meet at 8:30 a.m., on Thursday, March 14, 1996 at the Texas Department of Health, 1100 West 49th Street, Room M-739, Austin.

Contact: Carol Pavica, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7700. To request an accommodation under the ADA, please contact Renee Rusch, 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.

Filed: February 27, 1996, 1:53 p.m.

TRD-9602730

◆ ◆ ◆
Texas Department of Housing and Community Affairs

Monday, March 4, 1996, 9:00 a.m.

1100 Congress Avenue, Capitol Extension, Room E1.028
Austin

Low Income Housing Tax Credit Committee Meeting

AGENDA:

The Low Income Housing Tax Credit Committee will meet to consider and possibly act on following: Draft of the Qualified Allocation Plan for the Low Income Housing Tax Credit Program for publication in the Texas Register; executive session-Consultation with executive session-Adjourn.

Contact: L. P. Manley, 811 Barton Springs, Austin, Texas 78704, (512) 475-3934.

Filed: February 26, 1996, 3:35 p.m.

TRD-9602693

◆ ◆ ◆
Texas Department of Human Services

Thursday, March 7, 1996, 10:00 a.m.

701 West 51st Street, Third Floor, Conference Room 305-E
Austin

Client Self-support Services Advisory Council

AGENDA:

I. Call to order. II. Approval of minutes of January 4, 1995, meeting (page 2). III. Chairman's comments. IV. Deputy commissioner comments. V. New business. A. Action items: Implementation of Finger Print Imaging in the AFDC and FS programs (page 5). Rules change: TEFAP (page 7). Consideration of proposed improvements in the CAVFP (page 9). B. Information items: Deadline for submitting a claim for reimbursement (page 11). Transition of

employment and child care programs (page 12). VI. Next meeting/ adjournment.

Contact: Toni Lemm, P.O. Box 149030, Austin, Texas 78714-9030, (512) 438-4147.

Filed: February 26, 1996, 3:34 p.m.

TRD-9602692

◆ ◆ ◆
Texas Department of Insurance

Monday, March 11, 1996, 9:00 a.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0283.c

To consider whether disciplinary action should be taken against James Robert Truitt, Dallas, Texas, who holds a Local Recording Agent's License issued by the Texas Department of Insurance.

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

Filed: February 26, 1996, 4:30 p.m.

TRD-9602698

Friday, March 15, 1996, 1:00 p.m.

State Office of Administrative Hearings, 300 West 15th Street, Suite 502

Austin

AGENDA:

454-96-0347.c

To consider whether disciplinary action should be taken against Lance Ray Harper, Fort Worth, Texas, who holds a Group I, Legal Reserve Insurance 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: February 26, 1996, 4:30 p.m.

TRD-9602697

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Wednesday, March 6, 1996, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

AGENDA:

The commission will consider approving the following matters: Water utility matter; air quality enforcement; reports; rules; motion for rehearing; administrative law judge's memorandum; administrative law judge's proposal for decision; executive session; the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to rescheduling an item in its entirety or for particular

action at a future date or time. (Registration for 9:30 agenda starts 8:45 until 9:25.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: February 27, 1996, 12:48 p.m.

TRD-9602729

Wednesday, March 6, 1996, 9:30 a.m.

12118 North Interstate 35, Building E, Room 201S

Austin

Revised Agenda

AGENDA:

The commissioners will consider an addendum to agenda. The addendum is nominations and appointments to the Municipal Solid Waste Management and Resource Recovery Advisory Council

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, (512) 239-3317.

Filed: February 27, 1996, 3:46 p.m.

TRD-9602745

Friday, March 15, 1996, 9:00 a.m.

12105 Park 35 Circle, Building E, Room 201S

Austin

Municipal Solid Waste Management and Resource Recovery Advisory Council

AGENDA:

The Municipal Solid Waste Management and Resource Recovery Advisory Council will meet on Friday, March 15, 1996, at the Texas Natural Resource Conservation Commission complex, located at 12105 Park 35 Circle, Building E, Room 201S. The meeting will begin at 9:00 a.m. with a call to order, introductions, and minutes of the December 14, 1995 meeting. Reports will be made regarding the "Options for Texas" conference, burning tire shreds discussion, presentation by the permits staff regarding special waste regulations, standard air permit regulations, TNRCC permit procedures, Chapter 305.70 modifications and public comments. At 1:30 p.m. the following reports will be made: Municipal Solid Waste Division director's report, Pollution Prevention and Recycling Division director's report, and the Waste Planning and Assessment Division director's report. At 3:15 p.m. a presentation will be made regarding burning brush at landfills and outdoor burning rules. Other business will include committee appointments and future meeting schedules. Public comments are welcome.

Contact: Gary W. Trim, 12015 Park 35 Circle, Building E, Room 201S, Austin, Texas 78753, (512) 239-6708.

Filed: February 28, 1996, 9:55 a.m.

TRD-9602791

Monday, March 25, 1996, 10:00 a.m.

Youth Center, 101 Reynolds

Pittsburg

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by Pilgrim's Pride Corporation for Proposed Permit Number 03842 to authorize a discharge of process wastewater, utility wastewater and domestic wastewater at a volume not to exceed an average flow of 2,500,000 gallons per day. The applicant proposes to operate a facility that process broilers for various poultry products. The plant site is on the west side of Highway 271 and adjacent to Big Cypress Creek, approximately 4.9 miles north of the City of Pittsburg, Camp County, Texas. The treated effluent is discharged directly to Big Cypress Creek in Segment Number 040 of the Cypress Creek Basin. SOAH Docket Number 582-96-0246.

Contact: Susan Prior, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.
Filed: February 27, 1996, 9:25 a.m.

TRD-9602705

Wednesday, April 10, 1996, 10:00 a.m.

Administration Building, Commissioner's Courtroom, 301 North Thompson

Conroe

AGENDA:

For a hearing before an administrative law judge of the State Office of Administrative Hearings on an application filed with the Texas Natural Resource Conservation Commission by Henry Steitz for Proposed Permit Number 03727 to authorize the storage, processing and disposal of wastewater treatment sludge, water treatment sludge and domestic septage. The site is approximately 24 acres with 18.25 acres and for land applying sludge and/or septage. The proposed permit also authorizes a variance to the buffer zone requirements. No discharge of pollutants into the waters of the state is authorized by this permit. The facilities and disposal site are adjacent to the west side of the Missouri Pacific Railroad and 3,300 feet east of the intersection of State Highway 75 and Camp Sliver Springs Road, five miles north of Conroe, Montgomery County, Texas. The site is in the drainage area of Stewarts Creek in Segment Number 1004 (West Fork San Jacinto River) of the San Jacinto River Basin. SOAH Docket Number 582-95-1655.

Contact: Susan Prior, P.O. Box 13025, Austin, Texas 78711-3025, (512) 475-3445.
Filed: February 27, 1996, 9:25 a.m.

TRD-9602706

Texas State Board of Pharmacy

Thursday, March 7, 1996, 9:00 a.m. (Conclusion)

One Capitol Square, 300 West 15th Street, Fifth Floor, Room 502

Austin

AGENDA:

The State Office of Administrative Hearings will conduct a disciplinary hearing in the matter of Russell W. Hale, R.Ph. (TSBP #27203) and Austin Pharmacy (TSBP #15213) Case Number G-96-015, SOAH Docket Number 515-95-0165

Contact: Carol Fisher, R.Ph., 333 Guadalupe Street, Box 21, Austin, Texas 78701-3942, (512) 305-8000.

Filed: February 27, 1996, 3:38 p.m.

TRD-962742

Texas Property and Casualty Insurance Guaranty Association

Tuesday, March 5, 1996, 1:00 p.m.

9420 Research Boulevard, Echelon III, Suite 400

Austin

Board of Directors

Revised Agenda

AGENDA:

Discussion and possible action on TDI's proposed repeal of §§29.1-29.7 and proposed adoption of new §29.1 of the Texas Administrative Code.

Contact: Marvin Kelly, 9420 Research Boulevard, Suite 400, Echelon III, Austin, Texas 78759, (512) 345-9335.

Filed: February 27, 1996, 11:07 a.m.

TRD-9602717

Public Utility Commission of Texas

Wednesday, March 6, 1996, 9:00 a.m.

7800 Shoal Creek Boulevard

Austin

AGENDA:

There will be an open meeting for discussion, consideration, and possible action on: Secretary's report; Docket Numbers 15210, 15280, Project Number 15345; tracking procedures for Federal and State Implementation of the Telecommunications Act of 1996; Docket Number 14174; (SOAH Number 473-95-1191); Docket Number 14893, Docket Number 15195, Docket Number 15233, Docket Number 15395, Project Numbers 14045, 15000, 15001 and 15002; Project Assignments; Staff Reports and Agency Administrative Procedures; Travis Building project; Budget, Fiscal Matters and Strategic Planning; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed.

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0241.

Filed: February 27, 1996, 2:16 p.m.

TRD-9602737

Wednesday, March 20, 1996, 8:30 a.m.

Capitol Extension Auditorium, Texas State Capitol Building

Austin

AGENDA:

The Commission will have a Workshop at the above date, time, and location for discussion and possible action in Project Number 15344 concerning the effect of recent Federal legislation on the

Commission's authority and responsibilities under the Texas Public Utility Regulatory Act of 1995, Texas Civil Statutes, Annotated, Article 1446c (Vernon's Supplement 1996) (thereafter PURA-95).

Contact: Paula Mueller, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 459-0241.

Filed: February 27, 1996, 2:16 p.m.

TRD-9602738

◆ ◆ ◆
Council on Sex Offender Treatment

Friday, March 8, 1996, 8:30 a.m.

MHMR Central Office, 909 West 45th Street, Suite 240

Austin

Joint Meeting of the Council on Sex Offender Treatment and the Interagency Advisory Community

AGENDA:

- I. Convene, Collier M. Cole, Ph.D, chairperson
- II. Adoption of the minutes
- III. Executive director's report
- IV. Review of CSOT strategic plan elements.
- V. Review of CSOT performance target measures.
- VI. Review of legislative appropriations request.
- VII. Discussion and possible action on changes to strategic plan and budget structures and performance measures.
- VIII. Election of officers
- IAC
- CSOT
- IX. Discussion and possible action on resolution for the application of the STOP grant funds.
- X. Other business
- XI. Public comment.
- XII. Adjourn.

Contact: Evelyn Nichols, P.O. Box 12546, Austin, Texas 78711-2546, (512) 463-2323.

Filed: February 27, 1996, 12:48 p.m.

TRD-9602728

◆ ◆ ◆
Texas State Board of Social Worker Examiners

Friday, March 8, 1996, 9:00 a.m.

Weatherford Room, Aristocrat Hotel, 1933 Main Street

Dallas

Newsletter Committee

AGENDA:

The committee will meet to discuss and possibly act on: minutes from the December 2, 1995 meeting; status of second class postage re-entry and frequency of newsletter; consider next newsletter content; and set next meeting.

Contact: Michael Doughty, 1101 West 49th Street, Austin, Texas 78756 (512) 719-3521. To request an accommodation under the ADA, please contact Renee Rusch, 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.

Filed: February 27, 1996, 1:53 p.m.

TRD-9602731

Friday, March 8, 1996, 10:00 a.m.

Weatherford Room, Aristocrat Hotel, 1933 Main Street

Dallas

Continuing Education Committee

AGENDA:

The committee will meet to discuss and possibly act on: minutes from the April 28, 1995 meeting; consider continued competency project; audit of continuing education sponsors; and set next meeting.

Contact: Michael Doughty, 1101 West 49th Street, Austin, Texas 78756 (512) 719-3521. To request an accommodation under the ADA, please contact Renee Rusch, 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.

Filed: February 27, 1995, 1:54 p.m.

TRD-9602733

Friday, March 8, 1996, 1:30 p.m.

Weatherford Room, Aristocrat Hotel, 1933 Main Street

Dallas

AGENDA:

The board will discuss and possibly act on: approval of the minutes from the December 1, 1995 meeting; executive director's report; committee reports; consider proposed amendments to Chapter 781; consider frequency of newsletter; ratify probated licenses (Candace Guillen, Adrian Rodriguez, Domingo Santana; and Dorothy White); ratify other probated licenses; consider release of probated license on Gerardo Perez; consider release of probated license on Rita Tamez; and discuss long term goals for board.

Contact: Michael Doughty, 1101 West 49th Street, Austin, Texas 78756 (512) 719-3521. To request an accommodation under the ADA, please contact Renee Rusch, 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.

Filed: February 27, 1996, 1:53 p.m.

TRD-9602749

Saturday, March 9, 1996, 8:00 a.m.

Weatherford Room, Aristocrat Hotel, 1933 Main Street

Dallas

Complaints/Compliance Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes from the December 1, 1995 meeting; consider sanctions list per 50,022(b); Andrew Malveaux to address committee; Katherine Axline to address committee regarding SW-95-035; consider participation or release in Disciplinary Action Reporting System (42 states

participation); noncompliance of TT agreed order; discussion on interoffice memorandum from Office of General Counsel dated January 11, 1996; discussion and action on complaints (SW-85-061; SW-96-006; SW-96-022; SW-96-030; SW-96-037; SW-95-062; SW-96-007; SW-96-023; SW-96-031; SW-96-038; SW-95-063; SW-96-007A; SW-96-024; SW-96-032; SW-96-039; SW-95-071; SW-96-009; SW-96-025; SW-96-032A; SW-96-040; SW-95-073; SW-96-010; SW-96-026; SW-96-033; SW-96-041; SW-95-074; SW-96-011; SW-96-027; SW-96-034; SW-96-042; SW-95-076; SW-96-014; SW-96-028; SW-96-035; SW-96-043; SW-95-077; SW-96-020; SW-96-029; SW-96-036; and SW-96-044); consider policy on complaint schedule; and discussion on Houston Chronicle article.

Contact: Michael Doughty, 1101 West 49th Street, Austin, Texas 78756 (512) 719-3521. To request an accommodation under the ADA, please contact Renee Rusch, 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.

Filed: February 27, 1996, 1:53 p.m.

TRD-9602732

Texas Guaranteed Student Loan Corporation

Wednesday-Thursday, March 6-7, 1996, 2:30 p.m. and 8:30 a.m., respectively.

San Antonio Room, Stouffer Hotel, 9721 Arboretum Boulevard
Austin

Board of Directors

AGENDA:

March 6, 1996 (2:30 p.m.-6:15 p.m.)

2:30 Call to order

Approval of January 26, 1996 board meeting minutes

2:35 Opening remarks (Alan/Brent/Milt)

3:00 Discussion of format (Neal)

Situation analysis

3:15 Staff presentations/discussion

3:15 Compliance/Regulatory-Nina Hold/Phil Flora

3:45 Reauthorization scenarios/Legislative-George Torres

4:15 System 97-Lloyd Dodge

4:45 Finance-Robin Fenner

5:15 Marketing-Mike Sheffield

5:45 New products (Project Leapfrog)-Kim Alexander/Andrew Bergstrom

March 7, 1996 (8:30 a.m.-3:30 p.m.)

8:30 Continental breakfast

9:00 Framework/An approach for the future (Neal)

Interactive board discussion

10:30 Break

10:45 Discussion continued

Noon Working lunch

12:30 Corporate objectives/priorities/programs-prioritization

2:30 Break

2:45 Summary and conclusions

3:15 Adjourn to executive session

Lease of real estate in TOTH

3:25 Resume open session

3:26 Action on items arising from executive session

Adjourn

Contact: Pat Boulton, 13809 North Highway 183, Austin, Texas 78750, (512) 219-4550.

Filed: February 27, 1996, 3:18 p.m.

TRD-9602740

Texas Department of Transportation

Thursday, February 29, 1996, 9:00 a.m.

125 East 11th Street, First Floor, Dewitt C. Greer Building
Austin

Emergency Revised Agenda

Texas Transportation Commission

AGENDA:

Supplement to the agenda has been added to the following items:

12. Contracts.

(d) Contract Claim

(1) Harris County-SH 146-Project C 389-12-52-Williams Brothers Company, Inc. relating to Houston Ship Channel Bridge

Reason for emergency: Immediate action is required due to the unforeseen final agreement of parties in settlement of contract dispute and avoidance of burdensome and costly litigation.

Contact: Diane Northam, 125 East 11th Street, Austin, Texas 78701, (512) 463-8630.

Filed: February 27, 1996, 11:23 a.m.

TRD-9602718

Texas State Treasury

Wednesday, March 6, 1996, 11:00 a.m.

200 East Tenth Street, Room 227

Austin

TexPool Advisory Board

AGENDA:

I. Call to order

II. Approval of minutes

III. Treasurer's remarks

IV. State Auditor's report

- V. Attorney General's opinion
- VI. Treasury's response
- VII. TexPool fee
- VIII. TexPool investment report
- IX. TexPool operations and financial status report
- X. Discussion of agenda for next meeting
- XI. Adjournment

Contact: Jim Howell, 200 East Tenth Street, Suite 309, Austin, Texas 78701, (512) 463-5971.

Filed: February 27, 1996, 9:25 a.m.

TRD-9602704

◆ ◆ ◆
The University of Texas System

Friday, March 1, 1996, 11:00 a.m.

Ninth Floor, Ashbel Smith Hall, 201 West Seventh Street
 Austin

Board of Regents

AGENDA:

The Board of Regents of the University of Texas System will meet via telephone conference call to:

A. Consider in open session

1. Proposed appointment of Dr. Robert E. Witt as president of the University of Texas at Arlington effective immediately
2. Actions related to the University of Texas Investment Management Company (UTIMCO) as follows:
 - a. Appointment of members of the Board of Directors of UTIMCO
 - b. Approval of the membership of the Audit and Ethics Committee of UTIMCO.

B. Consider in executive session

The report of counsel and recommendations of the Hearing Tribunal regarding the possible termination of Sewa Legha, M.D., a tenured faculty member at the University of Texas M. D. Anderson Cancer Center.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: February 27, 1996, 9:10 a.m.

TRD-9602702

◆ ◆ ◆
Texas Workforce Commission

Tuesday, March 5, 1996, 9:00 a.m.

Room 644, TEC Building, 101 East 15th Street

Austin

AGENDA:

Prior meeting notes; staff reports; consideration and possible final adoption of rule regarding waivers for independent staffing and separate service provider requirements for local workforce development

boards, and for a person that provides one-stop services to also provide development services such as basic education and skills training; consideration and possible final adoption of rule regarding planning guidelines for us by local workforce development boards; consideration for adoption of the Texas Workforce Commission personnel manual; discussion, consideration, and possible action with regard to transfer of programs pursuant to House Bill 1863; discussion, consideration and possible action with regard to submitted applications for certification of various local workforce development boards including Cameron County; internal procedures of commission appeals; consideration and action on tax liability cases and higher level appeals in unemployment compensation cases listed on Texas Employment Commission Docket 10; and set date of next meeting.

Contact: C. Ed Davis, 101 East 15th Street, Austin, Texas 78778, (512) 463-2291.

Filed: February 26, 1996, 4:02 p.m.

TRD-9602694

◆ ◆ ◆
Regional Meetings

Meetings Filed February 26, 1996

The Austin Travis County MHMR Center, Executive Committee met at 1430 Collier Street, Executive Conference Room, Austin, February 29, 1996, at 4:30 p.m. Information may be obtained from Sharon Taylor, P.O. Box 3548, Austin, Texas 78764-3548, (512) 447-4141. TRD-9602696.

The Callahan Country Appraisal District, Board of Directors, met at 130-A West Fourth Street, Baird, March 4, 1996, at 7:00 p.m. Information may be obtained from Jane Ringhoffer, P.O. Box 806, Baird, Texas 79504, (915) 854-1165, Fax (915) 854-1413. TRD-9602667.

The Education Service Center, Region XIII, Board of Directors met at 5701 Springdale Road, Room H, Austin, March 4, 1996, at Noon. Information may be obtained from Dr. Roy C. Benavides, 5701 Springdale Road, Austin, Texas 78723, (512) 919-5300. TRD-9602682.

The Education Service Center, Region XVII, Board of Directors will meet at 1111 West Loop 289, Lubbock, April 2, 1996, at 9:00 a.m. Information may be obtained from Virgil (Ed) Flathouse, 1111 West Loop 289, Lubbock, Texas 79416, (806) 793-4852. TRD-9602666.

The Middle Rio Grande Development Council, Board of Directors met at Gardner Field Road, Bluebonnet Conference Room, SWTJC, Uvalde, February 28, 1996, at 1:00 p.m. Information may be obtained from Leodoro Martinez, Jr., P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533. TRD-9602700.

The Millersview-Doole Water Supply Corporation, Board of Directors will meet one block west of FM Highway 765 and FM Highway 2134, at Corporation's Office, Millersview, March 5, 1996, at 7:00 p.m. Information may be obtained from Glenda M. Hampton, P.O. Box 130, Millersview, Texas 76862-0130, (915) 483-5438. TRD-9602686.

The Northeast Texas Rural Rail Transportation District, Board met at 2821 Washington Street, Administrative Conference Room, Greenville, February 29, 1996, at 3:00 p.m. Information may be obtained from Sue Ann Harting, P.O. Box 306, Commerce, Texas 75428-0306. TRD-9602684.

The Red River Boundary Commission will meet at the Midwestern State University, Clark Student Center Theater, Southwest Corner of Tee Pee Drive and Comanche Trail, Wichita, March 6-7, 1996, at 1:00 p.m. and 10:00 a.m. (respectively). Information may be obtained from M'Lou Bell, 1700 North Congress Avenue, Room 630, Austin, 78701, (512) 305-9127. TRD-9602701.

The Texas Rural Communities, Inc., Board of Directors will meet at 1016 La Posada Drive, Suite 280, Austin, March 7, 1996, at 9:00 a.m. Information may be obtained from Leslie Janca, 1016 LaPosada Drive, Suite 200, Austin, Texas 78752, (512) 458-1016. TRD-9602689.

The Sabine River Authority, Board of Directors met at the Fredonia Hotel, 200 Fredonia Street, Nacogdoches, March 1, 1996, at 10:00 a.m. Information may be obtained from Sam F. Collins, P.O. Box 579, Orange, Texas 77630, (409) 746-3200. TRD-9602687.

The Central Appraisal District of Taylor County, Appraisal Review Board will meet at 1534 South Treadaway, Abilene, March 7, 1996, at 1:30 p.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381, Ext. 24. TRD-9602680.

Meetings Filed February 27, 1996

The Concho Valley Council of Governments, Executive Committee will meet at 5014 Knickerbocker Road, San Angelo, March 6, 1996,

at 6:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666. TRD-9602736.

The Lower Rio Grande Valley Development Council, Hidalgo County Metropolitan Planning Organization met at the Edinburg Municipal Auditorium, 415 West McIntyre, Edinburg, February 29, 1996, at 6:30 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas, (210) 682-3481. TRD-9602703.

The Tyler County Appraisal District, Board of Directors will meet at 806 West Bluff, Woodville, March 12, 1996, at 10:00 a.m. Information may be obtained from Tyler CAD, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736. TRD-9602727.

Meetings Filed February 28, 1996

The Johnson County Rural Water Supply Corporation, Annual Membership will meet at the Cleburne Civic Center, 1501 West Henderson, Cleburne, March 5, 1996, at 7:00 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9602773.

The Johnson County Rural Water Supply Corporation, Special Board will meet at the Civic Center, 1501 West Henderson, Cleburne, March 5, 1996, at 8:30 p.m. Information may be obtained from Peggy Johnson, P.O. Box 509, Cleburne, Texas 76033, (817) 645-6646. TRD-9602775.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Consumer Credit Commissioner

Revised Interpretations

The Office of Consumer Credit Commissioner issued interpretation Request Number 95-3 which appeared in the November 14, 1995, issue of the *Texas Register* (20 TexReg 9488). The wording of the documentary fee disclosure which was published was incorrect.

The correct wording to be used as of January 1, 1996, is as follows:

"A DOCUMENTARY FEE IS NOT AN OFFICIAL FEE. A DOCUMENTARY FEE IS NOT REQUIRED BY LAW, BUT MAY BE CHARGED TO BUYERS FOR HANDLING DOCUMENTS AND PERFORMING SERVICES RELATING TO THE CLOSING OF A SALE. A DOCUMENTARY FEE MAY NOT EXCEED \$50. THIS NOTICE IS REQUIRED BY LAW."

Issued in Austin, Texas on February 26, 1996.

TRD-9602688

Leslie L. Pettijohn

Commissioner

Office of 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)	03/04/96-03/10/96	18.00%	18.00%
Monthly Rate - Art. 1.04 (c) ⁽³⁾	03/01/96-03/31/96	18.00%	18.00%

⁽¹⁾Credit for personal, family or household use. ⁽²⁾Credit for business, commercial, investment or other similar purpose. ⁽³⁾For variable rate commercial transactions only.

Issued in Austin, Texas, on February 27, 1996.

TRD-9602780

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: February 28, 1996

Texas Education Agency

Notice of Registration of Providers of School Board Member Continuing Education

The Texas Education Agency (TEA) is registering providers of school board membership continuing education, pursuant to the Texas Education Code, §11.159, and 19 TAC §61.1. Individuals or organizations desiring to provide training for school board members of Texas public school districts must register with TEA. Registration is valid for three years. Each registered provider will receive a registration number. A provider must supply the provider's registration number to participants and to the school district as part of the verification of completion of training. The form for registering as a provider of school board member training is available through the Department of School/Community Support, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

Additional information may be obtained from Madeleine Draeger Manigold, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9077.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602777

Criss Cloudt

Associate Commissioner for Policy Planning and Research

Texas Education Agency

Filed: February 28, 1996

Texas Department of Agriculture

Request for Proposal-Financial Advisor

I. Purpose and Scope.

A. The Texas Agricultural Finance Authority (the "Authority") is seeking to employ a Financial Advisor to assist the Authority in the design and expansion of financial assistance programs and issuance of the expanded general obligation authority under Texas Agriculture Code, Chapter 58, and the Texas Constitution, Article 3, §49(f) and §49(i).

Texas Agriculture Code, §58.031, provides for the issuance by the Authority of General Obligation Bonds as authorized by the Texas Constitution for the establishment of the Texas Agricultural Fund (the "Fund") and the rural microenterprise fund. The Texas Constitution, Article 3, §49(f)(g) allows the proceeds of \$200 million of the bonds authorized by that section to be used for the purposes provided by Article 3, §49(i) and for other rural economic development programs. Section 49(f)(g), also provides that the proceeds of the bonds issued for those purposes shall be deposited in the Fund, to be administered in the same manner, as those issued under Article 3, Section 49-i.

This is an expansion of the \$25 million bonding authority to \$225 million. The constitutional amendment authorizing this expansion was approved by the voters of Texas on November 7, 1995 to become effective January 1, 1996 (the "Constitutional Amendment"). The expanded authority allows for programs that provide financial assistance to eligible agricultural businesses. The Texas Agriculture Code, §58.021(e) provides that the Authority may design and implement programs to further rural economic development in Texas.

Because the expansion impacts the current agribusiness program and the potential development of new rural economic development programs, the Financial Advisor will be requested to evaluate the impact of all programs on the Fund.

B. The Authority was created during the 70th and 71st regular sessions of the Texas Legislature for the purpose of financing innovative, diversified, or value-added production, processing, marketing, or exporting businesses of Texas. The Authority can provide financing through instruments including direct loans, loan guaranties, insurance or co-insurance.

The 73rd regular session of the Texas Legislature transferred the Farm and Ranch Finance Program from the Veterans Land Board to the Authority with a mandate of creating a program that would provide farmers and ranchers an alternative avenue for financing the acquisition of farm or ranch real estate. Through this transfer the Authority was provided access to general obligation authority approved by the voters of Texas in 1985 to the Veterans Land Board in the amount of \$500 million. The Authority has implemented such a farm and ranch program with the development and closing of a \$100 million commercial paper program in May 1995. The Texas Bond Review Board approved this program in May 1995. The Veterans Land Board was removed from the authorization with the passage of the Constitutional Amendment in November 1995. The Authority has total control of all programs under its jurisdiction.

The Authority intends to implement the expansion of the current agribusiness program as quickly as feasible. For planning purposes, the Authority proposes to issue financing obligations with the enhancement of the general obligation of the State of Texas by June 1996 and will consider those firms that can commit to a significant effort to meet this time schedule. Although the Authority did receive authority to issue up to \$200 million in general obligations of the State of Texas, the Authority would expect the financial team of the Financial Advisor, Bond Counsel and staff of the Authority to present the best alternative for issuance size to the Authority.

II. Proposal Contents.

Responses should include the following:

A. A thorough description of your firm's ability to represent the Authority as Financial Advisor including, but not limited to, the following:

1. A description of how the firm is organized and how its resources will be put to work for the Authority.
2. A description of your firm's past experience as Financial Advisor for small business finance. Please include the identity of the issues, the amount and type of bonds or notes, and the purpose for the issuance in your description for each of the past two years.
3. A description of your firm's past experience as Financial Advisor for other state agencies and political subdivisions. Please include the identity of the issues, the amount and the type of bonds or notes, and the purpose for the issuance in your description.
4. A description of any significant innovations you have developed and implemented in the public sector, briefly outlining the problem, your solution, and the results.
5. A description of your firm's Proforma Cash Flow analysis software, attach a brief example of a completed analysis of no more than three pages.

6. A specific designation of each of the individuals who would be assigned to the Authority. Please include brief resumes and the specific issues they have worked on in the past two years.

7. A statement addressing the effort made by your firm to encourage and develop the participation of women and minorities in the procurement of contracts for financial advisory services and the equal opportunity goals and policies of your firm. This description can include the degree of ownership in or control of your firm by minorities and women; the number and percentage of women and minority officers in your firm; and any offers tendered for apportioning responsibilities by sub-contract or joint venture.

B. A discussion of your firm's ability to perform all the normal duties associated with advising the Authority on types of financing available for the agribusiness program and loan policy, as well as any other rural economic development program, including, but not limited to:

1. Assisting the Authority and the Authority's Bond Counsel in preparation of issuing documents.

2. Assisting the Authority in presentations to the major ratings agencies to obtain the best ratings possible for the bonds.

3. Advising the Authority of current and projected loan market conditions and the impact of those conditions on short and long term Authority investment and loan policies.

4. Advising the Authority of any real or anticipated changes in state and federal law which would impact future bond issues investment policy and loan policy.

5. Advising the Authority on loan program design and structure to ascertain that the criteria desired by the Authority meet and abide by state and federal laws and regulations.

6. Assisting the Authority in the development of credit criteria and the design and management of a loan application review process.

7. Assisting the Authority by producing the necessary proforma fund analysis as required for presentation to the Texas Bond Review Board, and assist the Authority in all presentations to such board.

8. Assisting in the preparation of all offering documents of the Authority relating to the Fund.

9. Assisting the Authority in the design and management of revolving loan funds including arbitrage management, refunding, rebating, debt service analysis and any other program analysis that might be necessary for continued program operation, including recommendations and training for appropriate computer software.

10. Assisting the Authority and Bond Counsel in preparation of such documents necessary to obtain approval from the Attorney General and the Bond Review Board.

11. Assisting the Authority in the preparation of any other documents as are customary and necessary in issuance of the financing operations of the loan program.

C. A discussion of the amount of all fees, expenses, or other charges for performing the services described above, computed as follows, with the understanding that such fees, expenses, or other charges for performed services will only be paid when such financing structure is closed and issued:

1. A per hour rate charge, which shall also include the specific hourly rate for each individual assigned to perform services on behalf of the

Authority, and the estimated amount of time for completion of each task.

2. A flat fee computed to include all fees, charges and expenses. This flat fee shall include an express agreement that it shall in no event exceed that amount.

3. A fee schedule which includes a combination of the two aforesaid methods, i.e., an hourly rate combined with a maximum cap.

III. Proposal Requirements.

The submitted proposal must be executed by a duly authorized representative of the firm. An unsigned proposal will not be accepted. The Authority has the sole discretion and reserves the right to reject any and all proposals received in response to this request, and to cancel the request if it is deemed in the best interest of the Authority to do so. Issuance of the proposal request in no way constitutes a commitment by the Authority to award a contract, to issue the bonds, or to pay for any services incurred either in the preparation of a response to this proposal request or for the production of any contract services. The Authority also reserves the right to make amendments to this request for proposal by giving written notice to all firms who receive the request.

The Chairman of the Authority has requested that all communications by submitting firms with the Authority concerning this proposal request and the selection of a Financial Advisor be directed to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, acting as program manager on behalf of the Authority. Any contact by a submitting firm, its employees or representatives, with any Board member of the Authority for the purposes of soliciting or encouraging a favorable review may be considered grounds for disqualification.

IV. Proposal Submission.

All proposals must be received no later than 5:00 p.m. Monday, March 11, 1996. Proposal responses, modifications or addenda to an original response received by the Authority after the specified time and date for closing will not be considered. Each firm is responsible for ensuring that the response reaches the Authority before the proposed due date. Firms should submit one original and fifteen copies of its proposals to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Agricultural Finance Authority, c/o Texas Department of Agriculture, P.O. Box 12847, 1700 North Congress, Room 1028, Stephen F. Austin Boulevard, Austin, Texas, 78701.

Please mark the envelopes containing proposals with the following note in the lower left hand corner: "IN RESPONSE TO PROPOSAL REQUEST; FINANCIAL ADVISOR". All proposals become property of the Authority. Proposals must set forth full, accurate, and complete information as required by this request. Oral instructions or offers will not be considered.

V. Proposal Modifications.

Any proposal may be modified or withdrawn even after received by the Authority at any time prior to the proposal due date. No material changes will be allowed after the expiration of the proposal due date; however, non-substantive corrections or deletions may be made with the approval of the Authority.

VI. Proposal Evaluation.

The acceptance of a proposal will not be made solely on the basis of lowest cost, although cost will be considered in the evaluation process. Staff of the Texas Department of Agriculture, acting on behalf of the Authority will select a minimum of three but not more than five proposals that demonstrate the highest degree of competence and exhibit the necessary qualifications to provide professional services at a fair and reasonable price. The selected firms will be asked to present oral presentations at the next meeting of the Authority Board on March 22, 1996. Those firms not selected will be notified prior to that meeting.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602778

Dolores Alavardo Hibbs
Chief Administrative Law Judge
Texas Agricultural Finance Authority
Filed: February 28, 1996

Texas Department of Health

Notice of Revocation of a Certificate of Registration

The Texas Department of Health, having duly filed complaints pursuant to Texas Regulations for Control of Radiation, Part 13 (25 Texas Administrative Code §289.112), has revoked the following certificate of registration: Hernandez Chiropractic Clinic, Alamo, R18788, July 31, 1995.

A copy of all relevant material is available for public inspection at the Bureau of Radiation Control, Exchange Building, 8407 Wall Street, Austin, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

Issued in Austin, Texas, on February 27, 1996.

TRD-9602708

Susan K. Steeg
General Counsel
Texas Department of Health
Filed: February 27, 1996

Texas Department of Housing and Community Affairs

Notice of Funding Availability

Housing Trust Fund

The Texas Department of Housing and Community Affairs (TDHCA) through its Housing Trust Fund is pleased to announce that it will make available approximately \$1,500,000 in loan funds to finance, acquire, rehabilitate, and develop safe, decent, and affordable housing for low and very low income persons and families, and individuals with special needs. The maximum award amount is \$250,000. Funds will be made available, in the form of senior or subordinate loans, for multi-family housing. Mixed income projects are encouraged providing that a portion of the units are targeted towards families at or below 80% of area median income. Eligible applicants include local units of government, nonprofit organizations, public housing authorities, TDHCA, and community housing development organizations.

The Housing Trust Fund will seek to select a diverse group of projects that will serve various populations throughout the state. An applicant's high score is used to evaluate the project, and does not in and of itself guarantee that an award will follow. Applicants will compete with each other for funding based on their proposed

activity. Proposals evidencing the leveraging of funds will be favored. Applications will then be selected based on program scoring criteria, the applicant's past history with the Department, impact in the community, and geographic diversity.

The Department's Board reserves the right to change the award amount, and to award less than the requested amount.

Applications are due in our offices by 5 p.m. April 22, 1996. Faxed application submissions will not be accepted. All interested parties are encouraged to participate in this program. Applications will be available on March 5, 1996. For additional information or to request an application package please call the Housing Trust Fund Office at (512) 475-1458. Please direct your Final Applications to: Texas Department of Housing and Community Affairs Housing Trust Fund, Attention: Judith Rhedin, Post Office Box 13941, Austin, Texas 78711-3941.

PHYSICAL ADDRESS:

507 Sabine, Suite 400, Austin, Texas 78701, Attention: Judith Rhedin, Housing Trust Fund.

Issued in Austin, Texas on February 27, 1996.

TRD-9602716

Larry Paul Manley
Executive Director
Texas Department of Housing and Community Affairs
Filed: February 27, 1996

Texas Department of Human Services

Public Notice

The Texas Department of Human Services has published a report describing the actual expenditures of Title XX Social Services Block Grant funds for Fiscal Year 1995. Free copies of the report are available to the public. Contact Person: To obtain a copy of this report, write Burton Raiford, Commissioner, Texas Department of Human Services, W-619, P.O. Box 149030, Austin, Texas 78714-9030

Issued in Austin, Texas on February 27, 1996

TRD-9602750

Glen Scott
General Counsel
Texas Department of Human Services
Filed: February 27, 1996

Texas Department of Insurance

Notice

On February 16, 1996, in Order Number 96-0168, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan of Association, Plan of Operation. Notice of the possible adoption was published in the January 26, 1996, issue of the *Texas Register* (21 TexReg 703).

For copies of Commissioner's order number 96-0168 and the Texas Automobile Insurance Association Plan of Operation, contact Sylvia Gutierrez at (512) 463-6327 (refer to file number A-1095-36).

Issued in Austin, Texas, on February 28, 1996.

TRD-9602781

Alicia M. Fachtel
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 28, 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 United Physicians Affiliates, L.P., (doing business under the assumed name of UMC Management), a domestic third party administrator. The home office is Houston, Texas.

Application for admission to Texas of Preferred Chiropractic Care, Inc., a foreign third party administrator. The home office is Wichita, Kansas.

Application for admission to Texas of Group Executive Insurance Marketing, Inc. a foreign third party administrator. The home office is Phoenix, Arizona.

Application for incorporation in Texas of Austin Diagnostic Clinic Association, a domestic third party administrator. The home office is Austin, 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 February 28, 1996.

TRD-9602782

Alicia M. Fachtel
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 28, 1996

Notices of Public Hearing

The Commissioner of Insurance at a hearing scheduled under Docket Number 2209 on April 18, 1996, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, will consider approval of a filing made by the staff of the Workers' Compensation Group of the Texas Department of Insurance pertaining to an amendment to Section I A of the Texas Experience Rating Plan of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan of Workers' Compensation and Employers' Liability Insurance. The purpose of this amendment is to require insurance companies to furnish, free of charge, one copy of the workers' compensation experience modifier calculation to the producer of record within ten working days of the modifier being calculated or received by the insurance company. The producer of record may also obtain a copy of the modifier calculation directly from the insured.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code, Article 5.60 (b) and 5.96.

A copy of the petition containing the full text of the proposed changes to Section I A of the Texas Experience Rating Plan of the Texas Basic Manual of Rules, Classifications and Experience Rating Plan

for Workers' Compensation and Employers' Liability Insurance is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street Austin, Texas 78714-9104. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327 (Refer to Reference Number W-0296-05-I).

This notification is made pursuant to the Texas Insurance code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2110 (Administrative Procedure Act).

Issued in Austin, Texas, on February 28, 1996.

TRD-9602783

Alicia M. Fachtel
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 28, 1996

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Notice of Applications by Small Employer Carriers to be Risk-Assuming Carriers

Notice is given to the public of the application of the listed small employer carrier to be a risk-assuming carrier under Texas Insurance Code Article 26.52. A small employer carrier is defined by Chapter 26 of the Texas Insurance Code as a health insurance carrier that offers, delivers or issues for delivery, or renews small employer health benefit plans subject to the chapter. A risk-assuming carrier is defined by Chapter 26 of the Texas Insurance Code as a small employer carrier that elects not to participate in the Texas Health Reinsurance System. The following small employer carrier has applied to be a risk-assuming carrier:

Foundation Health National Life Insurance Company

The application is subject to public inspection at the offices of the Texas Department of Insurance, Financial Monitoring Unit, 333 Guadalupe Street, Hobby Tower 3, 3rd Floor, Austin, Texas.

If you wish to comment on this application to be a risk-assuming carrier, you must submit your written comments within 60 days after publication of this notice in the Texas Register to Alicia M. Fachtel, Chief Clerk, Mail Code 113-1C, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-91204. An additional copy of the comments must be submitted to Mike Boerner, Managing Actuary, Actuarial Division of the Financial Program, Mail Code 304-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. 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 approve the application to be a risk-assuming carrier.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602786

Alicia M. Fachtel
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 28, 1996

◆ ◆ ◆
The Commissioner of Insurance, at a public hearing under Docket Number 2211 scheduled for April 18, 1996 at 9:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street

in Austin, Texas, will consider a proposal made in a staff petition. Staff's petition proposes amendment to the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or adjusted 1992 through 1996 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Reference Number A-0296-03-I) was filed on February 6, 1996.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the various model years of the listed vehicles. The exhibit attached to staff's petition omits symbols used by Insurance Services Office (ISO) for multi-purpose and utility type vehicles for 1994 and prior year models, which will continue to be rated according to the traditional method set forth in the Manual, page 2 of the Symbol and Identification Section. For 1995 and later year models, excluding customized vehicles, the symbol for each multi-purpose and utility type vehicle must be used in the same manner as the symbol for a private passenger auto, as required by Commissioner's Order Number 95-0607, effective September 1, 1995. The operative provisions of that order have been printed in the Manual.

A copy of the petition containing the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 322-6326; refer to (Reference Number A-0296-03-I).

Written comments should be directed to Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be submitted to David Durden, Deputy Commissioner, Property and Casualty Insurance Lines, Texas Department of Insurance, P.O. Box 149104, MC 104-5A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

Issued in Austin, Texas, on February 28, 1996.

TRD-9602784
Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 28, 1996

The Commissioner of Insurance will hold a public hearing on April 18, 1996, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, under Docket Number 2200 to consider the adoption of proposed amendments to 28 TAC §§7.201-7.205, and §7.209 concerning administrative regulation under the Insurance Holding Company System Regulatory Act.

The proposed amendments and the statutory authority for the proposed amendments to 28 TAC §§7.201-7.205 and §7.209 were published in the November 3, 1995 issue of the *Texas Register* 20 TexReg 9133).

Issued in Austin, Texas, on February 28, 1996.

TRD-9602785
Alicia M. Fechtel
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: February 28, 1996

The Commissioner of Insurance will hold a public hearing under Docket Number 2210 on March 14, 1996, at 10:00 a.m., in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas, to consider a petition to designate the City of Morgan's Point as a catastrophe area eligible for windstorm and hail insurance coverage through the Texas Catastrophe Property Insurance Association (TCPIA). On November 8, 1995, the City Council of the City of Morgan's Point passed, by majority vote, Resolution 96-03 petitioning the Commissioner of Insurance to include the City of Morgan's Point in the catastrophe area served by the TCPIA. Pursuant to the resolution, the City Council "finds, determines and declares that residents of the City of Morgan's Point who all live east of State Highway 146 have had difficulty obtaining or found it impossible to obtain windstorm coverage through their regular insurance agents, and have had to obtain such coverage in the secondary market at a much higher rate." The petition to the Commissioner was filed by the City Council of the City of Morgan's Point on December 11, 1995. With a population of just over 350, the entire city is located east of State Highway 146. According to the petition, because the City of La Porte, which shares a common city limits line with Morgan's Point, has been designated as a catastrophe area, there are serious concerns that unless Morgan's Point is also so designated, the residents of Morgan's Point will be unable to purchase windstorm coverage. Pursuant to Commissioner's Order Number 95-1200 (November 14, 1995), effective March 1, 1996, 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) is designated as a catastrophe area eligible for windstorm and hail insurance coverage through the TCPIA. The petition states that the Morgan's Point City Council fears that the city's small size and adjacency to La Porte will force the voluntary market to cease coverage in Morgan's Point.

The Commissioner is authorized pursuant to the Insurance Code, Article 21.49, §3(h) 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.

The TCPIA was created by the Texas legislature in 1971 and is composed of all property insurers authorized to transact property insurance in Texas. The purpose of the TCPIA 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 will provide coverage to residents in two additional coastal areas—the area located east of the 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).

All interested parties are invited to attend the hearing and testify for or against the petition. Anyone wishing to present testimony on this matter is requested to complete a witness card which will be available at the hearing site prior to the hearing.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602787

Alicia M. Fechtel

General Counsel and Chief Clerk

Texas Department of Insurance

Filed: February 28, 1996

◆ ◆ ◆
Texas Natural Resource Conservation Commission

Notice of Amendment of Consulting Services Contract

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of an amendment of a consulting services contract which was awarded for information describing historical and recent estuarine circulation patterns, and alterations in those patterns due to human activity and natural environmental phenomena in the Corpus Christi Bay National Estuary Program (CCBNEP) study area.

The notice for request for proposals was published in the June 17, 1994, issue of the Texas Register.

Description of Services.

The contractor will compile and synthesize information describing historical and recent estuarine circulation patterns, and alterations in those patterns due to human activity and natural environmental phenomena. The following major products will be produced: Quarterly Reports; Final Report, December 31, 1996.

Effective Date and Value of Contract.

This amendment is a no cost extension of the contract from the original termination date of February 28, 1996. The contract will be effective from December 15, 1994, until December 31, 1996. The total cost of the contract is \$50,466.

Name of the Contractor.

The contract has been awarded to the Center for Research in Water Resources, The University of Texas at Austin, PRC 119, Austin, Texas 78712.

Persons who have questions concerning this award may contact Richard Volk, Corpus Christi Bay National Estuary Program, TAMU-CC, Campus Box 290, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 985-6767.

Issued in Austin, Texas, on February 28, 1996.

9602772

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: February 28, 1996

◆ ◆ ◆
Public Hearing Notice

Notice is hereby given that pursuant to the requirements of the Texas Government Code, Subchapter B, Chapter 2001, the Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony concerning proposed requirements Chapters 295, 297, and 331 (Water Rights, Procedural; Water Rights, Substantive; and Underground Injection Control).

The commission proposes new §§295.21 and §295.22; amendments to §§297.1, 297.13, and 297.19, and new §297.30; and amendments to §331.2 and §331.11, and new §§331.181-331.186. The proposed rules will implement recent legislation in House Bill 1989 (Regular Session, 74th Legislature, 1995) which directs the TNRCC to investigate the feasibility of storing appropriated surface water in various aquifers around the state by encouraging the issuance of permits for aquifer storage and retrieval projects, which would store appropriated surface water in specific aquifers for subsequent retrieval and beneficial use.

Also, the proposed rules will implement recent legislation in House Bill 475 (1995) and Senate Bill (1995) that provide water right permitting exemption for irrigation of certain historic cemeteries and for surface coal mining sedimentation control structures, respectively.

A public hearing on the proposal will be held March 22, 1996, at 10:00 a.m. in Room 2210 of TNRCC Building F located at 12100 Park 35 Circle, Austin. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. Open discussion within the audience will not occur during the hearing; however, a TNRCC staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P.O. Box 13087, Austin, Texas 78711-3087; fax to (512) 239-5687; or e-mailed to LOSHOKO@smtpgate.tnrcc.state.tx.us. All should reference Rule Log Number 95160-295-WT. Comments must be received by 5:00 p.m., April 1, 1996. For further information, please contact James Kowis at (512) 239-4900.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-1459. Requests should be made as far in advance as possible.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602771

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: February 28, 1996

◆ ◆ ◆
Public Notice

The Executive Director of the Texas Natural Resource Conservation Commission has issued a public notice of the selection of a proposed remedial action for a State Superfund Site which may constitute an imminent and substantial endangerment due to a release or threatened release of hazardous substances into the environment. A copy of the notice appeared in Nueces County Record-Star on Thursday, March 7, 1996.

In accordance with 30 Texas Administrative Code (TAC) §335.349 (a), concerning requirements for the remedial action and the Texas Health and Safety Code, Chapter 361.187 concerning the proposed remedial action, a public meeting regarding the proposed remedy for the South Texas Solvents Site must be held at least 45 days after publishing a notice in the *Texas Register* and a local newspaper. The public meeting is scheduled at the Banquete Senior Center, Highway 44 at 4th Street, Banquete, Texas on Tuesday, May 7, 1996, at 7:00 p.m.

The site for which a proposed remedy has been selected is the South Texas Solvents site that was originally placed on the State Superfund list on January 16, 1987 (13 TexReg 427). South Texas Solvents is an abandoned site (since 1984) located four miles south of Banquete, Nueces County, Texas at FM 666 and County Road 22. The company was a solvent recovery operation in the early 1980's and reclaimed various solvents (chlorinated and non-chlorinated) by means of filtration and/or distillation. Previously, the site was a gasoline blending plant, which operated from 1939 through 1968.

The public meeting will be legislative in nature and not a contested case hearing under the Texas Government Code, §2001.002. Persons desiring to make oral comments on the proposed remedial action may do so prior to or at the public meeting. All written comments concerning the proposed remedial action must be submitted at least ten days prior to the public meeting to Mr. Michael Bame, C.P.G., Project Manager, Superfund Investigation Section, MC-143, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

The Executive Director of the TNRCC has prepared a brief summary of the Commission's public records regarding this site. This summary as well as a portion of the public records for the site are available for inspection and copying during business hours at the Nueces County Library, 710 East Main, Robstown, Texas, 78380. (512) 767-5228.

Copies of the complete public record file may be obtained during business hours of the TNRCC by contacting Ms. Beth Behrend, Central Records Center, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-2920. Copying of the file information is subject to payment of a fee. For further information, please call (800) 633-9363.

Issued in Austin, Texas, on February 28, 1996.

TRD-9602792

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: February 28, 1996

Texas Parks and Wildlife Department

Notice of Public Hearing-Gulf States Marine Fisheries Commission

The Gulf States Marine Fisheries Commission will hold its 46th Annual Spring Meeting March 18-22, 1996. Texas is the host state and arrangements have been made to convene at the Holiday Inn Fort Brown, 1900 East Elizabeth Street, Brownsville, Texas. (210) 546-0756. All persons interested in the Gulf States Marine Fisheries Commission are invited to attend. For additional information please call Virginia K. Herring (601) 875-5912.

Issued in Austin, Texas, on February 26, 1996.

TRD-9602683

Bill Harvey

Regulatory Coordinator

Texas Parks and Wildlife Department

Filed: February 26, 1996

Texas Department of Protective and Regulatory Services

Announcement of Intention to Procure Personal Assistance Services

The Texas Department of Protective and Regulatory Services (PRS), Adult Protective Services (APS), Region 06 (Harris County and surrounding area), announces its intention of selecting vendors to provide Personal Assistance to APS clients through the APS Emergency Client Services (ECS) program.

Service Description: Licensed home and community support service agencies will employ attendants to provide nonskilled, nontechnical services in a client's home. Tasks performed for the client include: personal care, housekeeping, meal preparation, escort, and supervision. An elderly or disabled adult must be receiving adult protective services from PRS in accordance with §48.002(5) and 48.021(a) of the Human Resources Code, and have a service plan developed by the department under these sections which indicates that emergency client services are needed to remedy abuse, neglect, or exploitation.

Background: APS investigates reports of abuse, neglect and exploitation of the elderly and adults with disabilities who are 18 to 64 years of age. In some cases, ECS funds are utilized to purchase Personal Assistance Services for clients to remedy abuse or neglect. The APS unit rate paid will be \$7.34 per hour. If the client is identified as high risk, the unit rate is \$9.55 per hour. PRS, Region 06 expenditures for procuring Personal Assistance Services will be approximately \$220,000. Funding will be dependent upon available appropriations. The effective dates of any contract awarded will be May 1, 1996 through August 31, 1997. Personal Assistance Services will be provided in the following counties: Harris, Walker, Montgomery, Liberty, Chambers, Galveston, Brazoria, Matagorda, Wharton, Fort Bend, Colorado, Austin, and Waller. A contractor may serve one or more of these counties. Eligible Applicants: Home and Community Support Service Agencies licensed by the Texas Department of Health. Historically underutilized businesses, public or private profit, or nonprofit agencies with demonstrated knowledge, competence, and qualifications in performing these services are encouraged to apply.

Process: Vendors will be selected through a competitive multiple awards process. The names of the agencies that receive a contract with PRS will be placed in a directory of contract agencies. The number of referrals will depend upon how often Personal Assistance Services are authorized for clients living in the counties served, client selection of agency and availability of funding. Vendors must demonstrate compliance with minimum enrollment requirements. Vendors must ensure that staff providing direct services must have appropriate training and experience with frail elderly and adults with disabilities who are 18 to 64 years of age. References must be provided as specified in the enrollment packet.

Contact Person: Enrollment packets may be obtained by contacting Ms. Dolores Dawkins, APS Operations Support Director, Mail Code 174-1, Texas Department of Protective and Regulatory Services, P.O.Box 16017, Houston, Texas 77222-6017, 713/767-2703 by March 15, 1996

Issued in Austin, Texas on February 27, 1996.

TRD-9602715

Deborah L. Churchill

Supervising Attorney

Texas Department of Protective and Regulatory Services

Filed: February 27, 1996

Public Utility Commission of Texas

Correction of Public Hearing Date

The Public Utility Commission of Texas proposed an amendment to §23.57, relating to Telecommunications Privacy as noticed in the February 27, 1996 issue of the *Texas Register* (21 TexReg 1435). The amendment is necessary to comply with the provisions of the Public Utility Regulatory Act of 1995, §3.501, relating to Customer Proprietary Network Information. The public hearing on this rulemaking which was originally scheduled for February 21, 1996 at 10:00 a.m. has been rescheduled for March 5, 1996 at 10:00 a.m. The public hearing, conducted by the commission staff under Texas Government Code, §2001.029, will be held at the commission offices.

Issued in Austin, Texas, on February 27, 1996.

TRD-9602739

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: February 27, 1996

Notice of Work Session

The Public Utility Commission of Texas will hold a work session on proposed substantive rule §23.97 regarding interconnection in Project Number 14440 on Thursday, March 14, 1996, at 10:00 a.m. in the Commissioner's Hearing Room. The Commissioners will be present at the work session.

A draft of Staff's recommendation for adoption on §23.97 will be filed on March 7, 1996. The draft will be the basis of discussion of issues at the work session. Parties who plan to comment on the draft recommendation should be prepared to: identify and briefly summarize the specific provision of the draft rule that they wish to address; substantiate their comments about the rule with reasons; recommend alternative rule language if they disagree with specific provisions of the rule; and discuss the impact of the federal legislation (Telecommunications Act of 1996) on the draft rule and recommend alternative rule language where necessary.

Parties interested in participating in the work session should register with Meena Thomas at (512) 458-0211 by March 12, 1996.

Issued in Austin, Texas, on February 27, 1996.

TRD-9602720

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: February 27, 1996

Texas Council on Purchasing from People with Disabilities

Mission Statement — Objectives

THE PERFORMANCE SUBCOMMITTEE OF THE TEXAS COUNCIL FOR PURCHASING FROM PEOPLE WITH DISABILITIES (THE "COUNCIL") PUBLISHES THE PRELIMINARY DRAFT OF A MISSION STATEMENT AND OBJECTIVES FOR THE COUNCIL AS FOLLOWS:

MISSION STATEMENT

The Council's mission is to provide leadership and direction for programs and to set policies which will enable persons with disabilities to achieve maximum personal independence through employment

OBJECTIVES

The Council's objectives are to optimize employment, self esteem and the quality of life for people with disabilities;

Contract with central nonprofit agency(s) which will identify, recruit and assist community rehabilitation programs to develop and market products and services which provide employment for people with disabilities;

Review and approve state use program products and services, from eligible community rehabilitation programs, for sale to state agencies, departments, institutions and political subdivisions;

Assist state agencies, departments, institutions and political subdivisions in conforming with the requirements of nondiscrimination and affirmative action in employment matters related to people with disabilities.

Written comments regarding the Mission Statement and Objectives may be submitted to Rose-Michel Munguia, Legal Counsel, General Services Commission. Oral comments will be received at the March 8, 1996, Texas Council on Purchasing from People with Disabilities open meeting.

Issued in Austin, Texas on February 26, 1996.

TRD-9602685

Rose-Michel Munguia

Legal Counsel

Texas Council on Purchasing from People with Disabilities

Filed: February 26, 1996

Texas Workforce Commission

Notice of Hearing

The Texas Workforce Commission will hold a public hearing on March 12, 1996, at 1:00 p.m. at hearing room 109 in the John H. Reagan Building, 15th and Congress Avenue, Austin, Texas. The public hearing is to receive comments from interested parties concerning new Commission rule §803.1 proposed under the Labor Code, Texas Civil Statutes, §303.001ff, as amended by Chapter 655, Acts of the 74th Legislature, 1995, which establishes the skills development fund; §302.002 which authorizes the Executive Director to obligate funds from the skills development fund in a

manner consistent with rules adopted by the Commission for that program; and §301.061 which directs the Commission to adopt rules as necessary for the administration of Title 4 of the Labor Code. Any interested person may appear and offer comments or statements, either orally or in writing. While any person with pertinent comments or statements will be granted an opportunity to present them during the course of the hearing, the Commission reserves the right to restrict statements in terms of time or repetitive content. If you are unable to attend the hearing but wish to comment on the proposed rules, written comments will be accepted if mailed to Leslie Geballe, Intergovernmental Relations, Texas Workforce Commission Building, 101 East 15th Street, Room 662, Austin, Texas 78778. A copy of the proposed rules may be requested by calling Leslie Geballe at (512) 463-2213. Organizations, associations,

or groups are encouraged to present their commonly held views or similar comments through a representative member where possible. Persons with disabilities who have special needs and who plan to attend the meeting should contact Ms. Geballe at (512) 463-2213.

Issued in Austin, Texas, on February 26, 1996.

9602695

J. Ferris Duhon

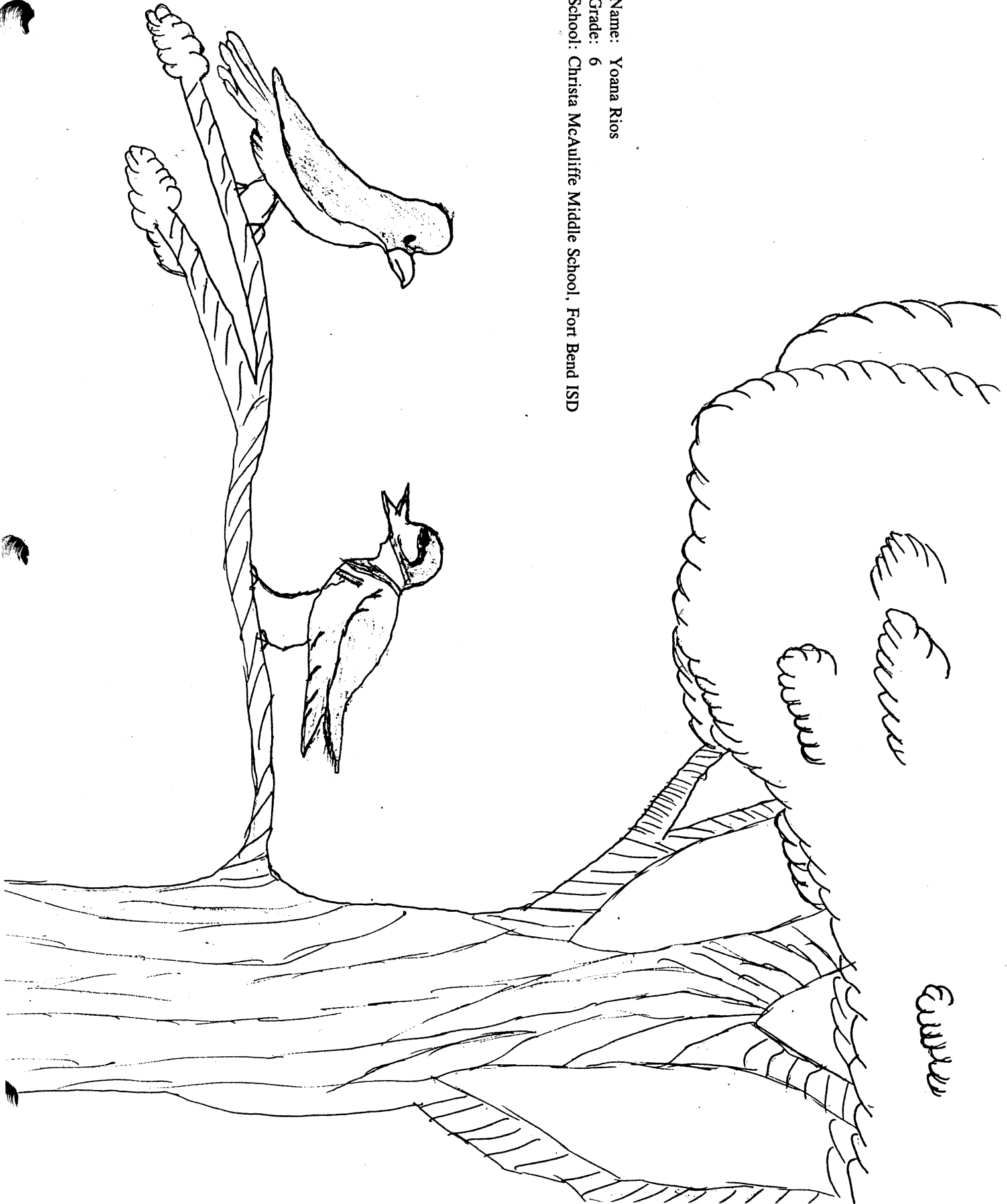
Legal Counsel

Texas Workforce Commission

Filed: February 26, 1996



Name: Yoana Rios
Grade: 6
School: Christa McAuliffe Middle School, Fort Bend ISD



TABLES & GRAPHICS

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.

Figure 1: 34 TAC9.4011(d)(17)

Year	Actual Tax Paid, Qualified Timberland	Tax That Would Have Been Paid on Market Value of Land	Difference Between Actual Taxes and "Market Value" Taxes
1994	\$150	\$1,000	\$850
1993	\$125	\$900	\$775
1992	\$100	\$600	\$500
1991	\$90	\$550	\$460
1990	\$80	\$500	\$420
Total Rollback Tax =	\$3,005		

Figure 2: 34 TAC9.4011(d)(19)

The 1994 interest runs from October 1, 1994 to November 1, 1995, or 1 year and 32 days. The formula for calculating the interest is:

\$850.00	= Tax
\$ 59.50	= $\$850 \times .07 =$ one year's interest (Oct. 1, 1994-Sept. 30, 1995)
\$ <u>5.22</u>	= $\$850 \times .07 \times (32 \div 365) =$ 32 days interest (Oct 1, 1995-Nov 1, 1995)
\$914.72	= Total 1994 tax and interest

The 1993 interest runs from October 1, 1993 to November 1, 1995, or 2 years and 32 days. The formula for calculating the interest is:

\$775.00	= Tax
\$108.50	= $\$775 \times .07 \times 2 =$ two year's interest (Oct 1, 1993-Sept 30, 1995)
\$ <u>4.76</u>	= $\$775 \times .07 \times (32 \div 365) =$ 32 days interest (Oct 1, 1995-Nov 1, 1995)
\$888.26	= Total 1993 tax and interest

The 1992 interest runs from October 1, 1992 to November 1, 1995, or three years and 32 days. The formula for calculating the interest is:

\$500.00	= Tax
\$105.00	= $\$500 \times .07 \times 3 =$ three year's interest (Oct 1, 1992-Sept 30, 1995)
\$ <u>3.07</u>	= $\$500 \times .07 \times (32 \div 365) =$ 32 days interest (Oct 1, 1995-Nov 1, 1995)
\$608.07	= Total 1992 tax and interest

The 1991 interest runs from October 1, 1991 to November 1, 1995, or four years and 32 days. The formula for calculating the interest is:

\$460.00	= Tax
\$128.80	= $\$460 \times .07 \times 4 =$ four year's interest (Oct 1, 1991-Sept 30, 1995)
\$ <u>2.82</u>	= $\$460 \times .07 \times (32 \div 365) =$ 32 days interest (Oct 1, 1995-Nov 1, 1995)
\$591.62	= Total 1991 tax and interest

The 1990 interest runs from October 1, 1990 to November 1, 1995, or five years and 32 days. The formula for calculating the interest is:

\$420.00	= Tax
\$147.00	= $\$420 \times .07 \times 5$ = five year's interest (Oct 1, 1990-Sept 30, 1995)
\$ 2.58	= $\$420 \times .07 \times (32 \div 365)$ = 32 days interest (Oct 1, 1995-Nov 1, 1995)
\$569.58	= Total 1990 tax and interest

The rollback due amounts to \$3,572.25. (This is the sum of amounts calculated above: $\$914.72 + \$888.26 + \$608.07 + \$591.62 + \$569.58 = \$3,572.25$.)

The interest calculation for each year can also be performed using number of days only. For example, the 1990 interest would be calculated on the basis of 1,857 days (5 years = $[365 \times 5] + 32$ days from October 1 to November 1). The interest can be computed by multiplying:

$$\$420 \times .07 \times (1,857 \div 365) = \$149.58.$$

Interest for the other years--1991, 1992, 1993 and 1994--also could be computed by using days only. The resulting amounts would need to be added to the additional taxes due in each year to arrive at the total amount due.

Figure 3: 34 TAC 9.4011(e) (23).

USDA Forest Service Site Classes

Over 120 cu. ft

85-120 cu. ft.

50-84 cu. ft

Under 50 cu. ft.

USDA NRCS Site Index Range

Over 95 ft.

80-95 ft.

60-79 ft.

Under 60 ft.

Figure 4: 34 TAC 9.4011 (e) (43).

Soil Productivity Class	Site Quality Class (cubic feet)	Site Index Range (feet)	Potential Timber Growth Per Acre Per Year (cubic feet)
Class I	Over 120	Over 95	163
Class II	85-120	80-95	123
Class III	50-84	60-79	85
Class IV	Under 50	Under 60	60

Figure 5: 34 TAC 9.4011(e) (56).

Forest Type	Soil Productivity Classes			
	I	II	III	IV
Hardwood	0.75	0.60	0.45	0.30
Pine	1.20	1.10	1.00	0.90
Mixed	1.00	0.90	0.80	0.70

Figure 1. Forest Regions in Texas

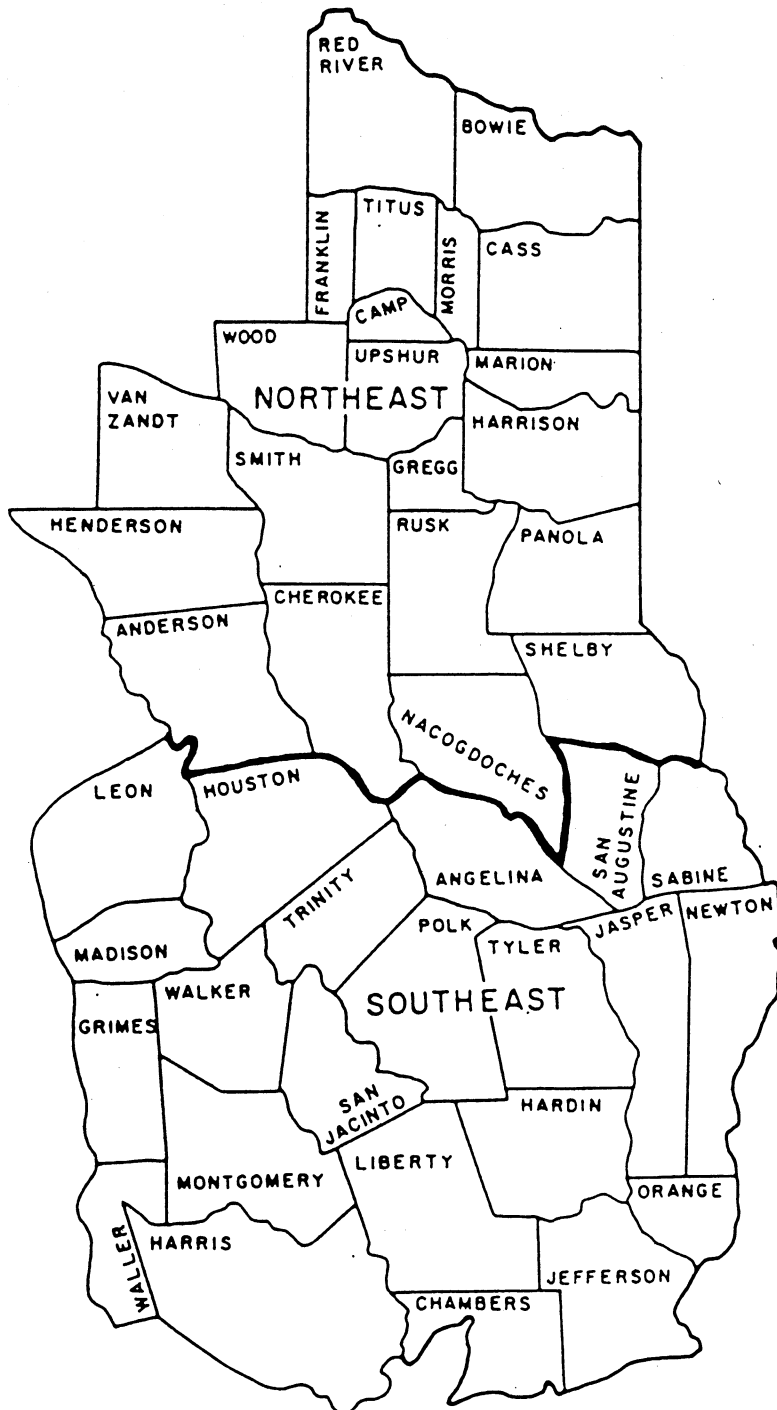


TABLE 1. NET AVERAGE ANNUAL GROWTH PER ACRE BY REGION, FOREST TYPE, AND SITE CLASS FOR PRIVATE TIMBERLAND IN EAST TEXAS

Region	Forest Type	Site Class	Number Of Plots	Average Pine		Average Hardwood		Average Pine		Average Hardwood	
				Sawtimber Growth/Acre (Board Feet) *	Sawtimber Growth/Acre (Board Feet) *	Sawtimber Growth/Acre (Board Feet) *	Sawtimber Growth/Acre (Board Feet) *	Pulpwood Growth/Acre (Cubic Feet)	Pulpwood Growth/Acre (Cubic Feet)	Pulpwood Growth/Acre (Cubic Feet)	Pulpwood Growth/Acre (Cubic Feet)
Northeast	Pine	120 +	95	478.13	23.50	12.58	4.04	280.00	16.57	42.52	5.36
		85 - 120	90	244.83	0.00	0.00	5.90	287.34	71.59	7.50	12.72
		50 - 85	37	189.20	27.26	11.27	6.75	121.60	36.77	10.22	4.28
		< 50	1	31.16	23.78	5.20	36.87	93.46	132.97	2.36	12.85
Mixed	Mixed	120 +	66	54.99	95.08	1.53	13.58	54.99	95.08	1.53	13.58
		85 - 120	66	32.82	80.94	1.67	12.17	32.82	80.94	1.67	12.17
		50 - 85	34	5.87	57.07	2.06	18.14	5.87	57.07	2.06	18.14
		< 50	2								
Hardwood	Hardwood	120 +	106	391.31	15.26	24.51	2.84	294.45	12.45	37.41	2.65
		85 - 120	143	163.48	2.12	29.89	1.89	163.48	2.12	29.89	1.89
		50 - 85	134	60.11	-2.32	14.03	-0.71	60.11	-2.32	14.03	-0.71
		< 50	37								
Southeast	Pine	120 +	125	230.12	67.65	13.24	6.75	187.28	42.67	8.50	6.34
		85 - 120	210	158.77	25.68	14.59	1.86	158.77	25.68	14.59	1.86
		50 - 85	88	238.00*	-20.04	20.48	5.04	238.00*	-20.04	20.48	5.04
		< 50	7								
Mixed	Mixed	120 +	65	123.29	126.75	1.92	8.09	123.29	126.75	1.92	8.09
		85 - 120	130	88.79	65.21	3.55	10.65	88.79	65.21	3.55	10.65
		50 - 85	37	24.19	60.43	3.88	9.20	24.19	60.43	3.88	9.20
		< 50	2	5.96	57.95	0.49	8.65	5.96	57.95	0.49	8.65
Hardwood	Hardwood	120 +	110								
		85 - 120	127								
		50 - 85	113								
		< 50	49								

* Board feet are expressed in terms of International 1/4 inch log rule.
 Source: Texas Forest Service, from the U.S. Department of Agriculture Forest Service 1992 survey of Texas timber, updated Mar 1995.

TABLE 2A. CALCULATION OF AVERAGE ANNUAL GROWTH, PER ACRE, BY FOREST TYPE AND FOREST PRODUCT IN NORTHEAST TEXAS

FOREST TYPE: PINE			
Forest Product: Pine Sawtimber			
Site Class	Number of Plots	Average Growth/Acre (board feet) *	Total Growth per Site Class
120 +	95	478.13	45,422.35
85-120	90	280.00	25,200.00
50-84	37	244.83	9,058.71
<50	1	0.00	0.00
Totals	223		79,681.06
			79,681.06 / 223 = 357.31 bd. ft.

Forest Product: Pine Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	95	12.58	1,195.10
85-120	90	42.52	3,826.80
50-84	37	36.31	1,343.47
<50	1	0.00	0.00
Totals	223		6,365.37
			6,365.37 / 223 = 28.54 cu.ft.

Forest Product: Hardwood Sawtimber			
Site Class	Number of Plots	Average Growth/Acre (board feet) *	Total Growth per Site Class
120 +	95	23.50	2,232.50
85-120	90	16.57	1,491.30
50-84	37	22.11	818.07
<50	1	0.00	0.00
Totals	223		4,541.87
			4,541.87 / 223 = 20.37 bd. ft.

Forest Product: Hardwood Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	95	4.04	383.80
85-120	90	5.36	482.40
50-84	37	5.90	218.30
<50	1	0.00	0.00
Totals	223		1,084.50
			1,084.50 / 223 = 4.86 cu.ft.

* Board feet are expressed in terms of International 1/4 inch log rule.

TABLE 2A. CALCULATION OF AVERAGE ANNUAL GROWTH, PER ACRE, BY FOREST TYPE AND FOREST PRODUCT IN NORTHEAST TEXAS (continued)

FOREST TYPE: MIXED

Forest Product: Pine Sawtimber				Forest Product: Pine Pulpwood				
Site Class	Number of Plots	Average Growth/Acre (board feet)	Total Growth per Site Class	Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class	
120 +	66	287.34	18,964.44	120 +	66	7.50	495.00	
85-120	66	189.20	12,487.20	85-120	66	11.27	743.82	
50-84	34	121.60	4,134.40	50-84	34	10.22	347.48	
<50	2	31.16	62.32	<50	2	5.20	10.40	
Totals	168		35,648.36	Totals	168		1,596.70	
			35,648.36 / 168 =				1,596.70 / 168 =	9.50 cu.ft.

Forest Product: Hardwood Sawtimber				Forest Product: Hardwood Pulpwood				
Site Class	Number of Plots	Average Growth/Acre (board feet)	Total Growth per Site Class	Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class	
120 +	66	71.59	4,724.94	120 +	66	12.72	839.52	
85-120	66	27.26	1,799.16	85-120	66	6.75	445.50	
50-84	34	36.77	1,250.18	50-84	34	4.28	145.52	
<50	2	23.78	47.56	<50	2	36.87	73.74	
Totals	168		7,821.84	Totals	168		1,504.28	
			7,821.84 / 168 =				1,504.28 / 168 =	8.95 cu.ft.

* Board feet are expressed in terms of International 1/4 inch log rule.

TABLE 2A. CALCULATION OF AVERAGE ANNUAL GROWTH, PER ACRE, BY FOREST TYPE AND FOREST PRODUCT IN NORTHEAST TEXAS (continued)

FOREST TYPE: HARDWOOD			
Forest Product: Pine Sawtimber			
Site Class	Number of Plots	Average Growth/Acre (board feet)	Total Growth per Site Class
120 +	106	93.46	9,906.76
85-120	143	54.99	7,863.57
50-84	134	32.82	4,397.88
<50	37	5.87	217.19
Totals	420		22,385.40
			22,385.40 / 420 = 53.30 bd. ft.
Forest Product: Pine Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	106	2.36	250.16
85-120	143	1.53	218.79
50-84	134	1.67	223.78
<50	37	2.06	76.22
Totals	420		768.95
			0,768.95 / 420 = 1.83 cu.ft.
Forest Product: Hardwood Sawtimber			
Site Class	Number of Plots	Average Growth/Acre (board feet)	Total Growth per Site Class
120 +	106	132.97	14,094.82
85-120	143	95.08	13,596.44
50-84	134	80.94	10,845.96
<50	37	57.07	2,111.59
Totals	420		40,648.81
			40,648.81 / 420 = 96.78 bd. ft.
Forest Product: Hardwood Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	106	12.85	1,362.10
85-120	143	13.58	1,941.94
50-84	134	12.17	1,630.78
<50	37	18.14	671.18
Totals	420		5,606.00
			5,606.00 / 420 = 13.35 cu.ft.

* Board feet are expressed in terms of International 1/4 inch log rule.

TABLE 2B. CALCULATION OF AVERAGE ANNUAL GROWTH, PER ACRE, BY FOREST TYPE AND FOREST PRODUCT IN SOUTHEAST TEXAS

FOREST TYPE: PINE

Forest Product: Pine Sawtimber			
Site Class	Number of Plots	Average Growth/Acre (board feet) * per Site Class	Total Growth per Site Class
120 +	125	391.31	48,913.75
85-120	210	294.45	61,834.50
50-84	88	163.48	14,386.24
<50	7	60.11	420.77
Totals	430		125,555.26
			125,555.26 / 430 = 291.99 bd. ft.

Forest Product: Pine Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (cubic feet) per Site Class	Total Growth per Site Class
120 +	125	24.51	3,063.75
85-120	210	37.41	7,856.10
50-84	88	29.89	2,630.32
<50	7	14.03	98.21
Totals	430		13,648.38
			13,648.38 / 430 = 31.74 cu.ft.

Forest Product: Hardwood Sawtimber			
Site Class	Number of Plots	Average Growth/Acre (board feet) * per Site Class	Total Growth per Site Class
120 +	125	15.26	1,907.50
85-120	210	12.45	2,614.50
50-84	88	2.12	186.56
<50	7	-2.32	-16.24
Totals	430		4,692.32
			4,692.32 / 430 = 10.91 bd. ft.

Forest Product: Hardwood Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (cubic feet) per Site Class	Total Growth per Site Class
120 +	125	2.84	355.00
85-120	210	2.65	556.50
50-84	88	1.89	166.32
<50	7	-0.71	-4.97
Totals	430		1,072.85
			1,072.85 / 430 = 2.50 cu.ft.

* Board feet are expressed in terms of International 1/4 inch log rule.

TABLE 2B. CALCULATION OF AVERAGE ANNUAL GROWTH, PER ACRE, BY FOREST TYPE AND FOREST PRODUCT IN SOUTHEAST TEXAS (continued)

FOREST TYPE: MIXED

Forest Product: Pine Sawtimber				Forest Product: Pine Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (board feet) *	Total Growth per Site Class	Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	65	230.12	14,957.80	120 +	65	13.24	860.60
85-120	130	187.28	24,346.40	85-120	130	8.50	1,105.00
50-84	37	158.77	5,874.49	50-84	37	14.59	539.83
<50	2	238.00	476.00	<50	2	20.48	40.96
Totals	234		45,654.69	Totals	234		2,546.39
			45,654.69 / 234 =				2,546.39 / 234 =
			195.11 bd. ft.				10.88 cu. ft.

Forest Product: Hardwood Sawtimber				Forest Product: Hardwood Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (board feet) *	Total Growth per Site Class	Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	65	67.65	4,397.25	120 +	65	6.75	438.75
85-120	130	42.67	5,547.10	85-120	130	6.34	824.20
50-84	37	25.68	950.16	50-84	37	1.86	68.82
<50	2	-20.04	-40.08	<50	2	5.04	10.08
Totals	234		10,854.43	Totals	234		1,341.85
			10,854.43 / 234 =				1,341.85 / 234 =
			46.39 bd. ft.				5.73 cu. ft.

* Board feet are expressed in terms of International 1/4 inch log rule.

TABLE 2B. CALCULATION OF AVERAGE ANNUAL GROWTH, PER ACRE, BY FOREST TYPE AND FOREST PRODUCT IN SOUTHEAST TEXAS (continued)

FOREST TYPE: HARDWOOD

Forest Product: Pine Sawtimber				Forest Product: Pine Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (board feet)	Total Growth per Site Class	Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	110	123.29	13,561.90	120 +	110	1.92	211.20
85-120	127	88.79	11,276.33	85-120	127	3.55	450.85
50-84	113	24.19	2,733.47	50-84	113	3.88	438.44
<50	49	5.96	292.04	<50	49	0.49	24.01
Totals	399		27,863.74	Totals	399		1,124.50
			27,863.74 / 399 = 69.83 bd. ft.				1,124.50 / 399 = 2.82 cu.ft.

Forest Product: Hardwood Sawtimber				Forest Product: Hardwood Pulpwood			
Site Class	Number of Plots	Average Growth/Acre (board feet)	Total Growth per Site Class	Site Class	Number of Plots	Average Growth/Acre (cubic feet)	Total Growth per Site Class
120 +	110	126.75	13,942.50	120 +	110	8.09	889.90
85-120	127	65.21	8,281.67	85-120	127	10.65	1,352.55
50-84	113	60.43	6,828.59	50-84	113	9.20	1,039.60
<50	49	57.95	2,839.55	<50	49	8.65	423.85
Totals	399		31,892.31	Totals	399		3,705.90
			31,892.31 / 399 = 79.93 bd. ft.				3,705.90 / 399 = 9.29 cu.ft.

* Board feet are expressed in terms of International 1/4 inch log rule.

TABLE 3. AVERAGE ANNUAL TIMBER GROWTH, MEASURED IN TERMS OF FOREST PRODUCTS, ON AN AVERAGE ACRE OF TIMBER, BY FOREST TYPE

NORTHEAST TEXAS				
Forest Type	Pine Sawtimber	Hardwood Sawtimber	Pine Pulpwood	Hardwood Pulpwood
	Board Feet* per Acre per Year	Board Feet* per Acre per Year	Cubic Feet per Acre per Year	Cubic Feet per Acre per Year
Pine	357.31	20.37	28.54	4.86
Mixed	212.19	46.56	9.50	8.95
Hardwood	53.30	96.78	1.83	13.35

SOUTHEAST TEXAS				
Forest Type	Pine Sawtimber	Hardwood Sawtimber	Pine Pulpwood	Hardwood Pulpwood
	Board Feet* per Acre per Year	Board Feet* per Acre per Year	Cubic Feet per Acre per Year	Cubic Feet per Acre per Year
Pine	291.99	10.91	31.74	2.50
Mixed	195.11	46.39	10.88	5.73
Hardwood	69.83	79.93	2.82	9.29

* Board feet are expressed in terms of International 1/4 inch log rule.

TABLE 4A. CALCULATION OF THE WEIGHTED CONVERSION FACTORS USED TO CHANGE THE VOLUME OF SAWTIMBER MEASURED IN INTERNATIONAL 1/4 INCH LOG RULE TO DOYLE LOG RULE, NORTHEAST TEXAS

PINE

<u>Diameter Class</u>	<u>Volume in Million bd.ft. International 1/4" Log Rule</u>	<u>Total Volume</u>	<u>Percent of Total Volume</u>		<u>Conversion Factor</u>		<u>Weighted Contribution</u>
9 - 10.9	1,708.5	/ 11,947.80	0.1430	x	0.39	=	0.05577
11 - 12.9	2,437.1	/ 11,947.80	0.2040	x	0.48	=	0.09792
13 - 14.9	2,495.4	/ 11,947.80	0.2089	x	0.57	=	0.11907
15 - 16.9	2,028.2	/ 11,947.80	0.1698	x	0.63	=	0.10697
17 - 18.9	1,304.3	/ 11,947.80	0.1092	x	0.69	=	0.07535
19 - 20.9	824.9	/ 11,947.80	0.0690	x	0.73	=	0.05037
21 - 28.9	986.4	/ 11,947.80	0.0826	x	0.85	=	0.07021
29 +	163.0	/ 11,947.80	0.0136	x	0.92	=	0.01251
	<u>11,947.8</u>		<u>1.0001</u>				<u>0.58817</u>

Weighted Conversion Factor for Pine = 0.58817

HARDWOOD

<u>Diameter Class</u>	<u>Volume in Million bd.ft. International 1/4" Log Rule</u>	<u>Total Volume</u>	<u>Percent of Total Volume</u>		<u>Conversion Factor</u>		<u>Weighted Contribution</u>
9 - 10.9	0.0	/ 7,028.10	0.0000	x	0.39	=	0.00000
11 - 12.9	1,322.4	/ 7,028.10	0.1882	x	0.48	=	0.09034
13 - 14.9	1,450.6	/ 7,028.10	0.2064	x	0.57	=	0.11765
15 - 16.9	1,223.1	/ 7,028.10	0.1740	x	0.63	=	0.10962
17 - 18.9	1,013.4	/ 7,028.10	0.1442	x	0.69	=	0.09950
19 - 20.9	715.9	/ 7,028.10	0.1019	x	0.73	=	0.07439
21 - 28.9	1,110.9	/ 7,028.10	0.1581	x	0.85	=	0.13439
29 +	191.8	/ 7,028.10	0.0273	x	0.92	=	0.02512
	<u>7,028.1</u>		<u>1.0001</u>				<u>0.65101</u>

Weighted Conversion Factor for Hardwood = 0.65101

Figure 16: 34 TAC 9.4011(g)

TABLE 4B. CALCULATION OF THE WEIGHTED CONVERSION FACTORS USED TO CHANGE THE VOLUME OF SAWTIMBER MEASURED IN INTERNATIONAL 1/4 INCH LOG RULE TO DOYLE LOG RULE, SOUTHEAST TEXAS

PINE							
<u>Diameter Class</u>	Volume in Million bd.ft. International <u>1/4" Log Rule</u>	<u>Total Volume</u>	Percent of <u>Total Volume</u>		<u>Conversion Factor</u>		<u>Weighted Contribution</u>
9 - 10.9	2,323.9	/ 16,087.70	0.1445	x	0.39	=	0.05636
11 - 12.9	2,758.0	/ 16,087.70	0.1714	x	0.48	=	0.08227
13 - 14.9	2,869.7	/ 16,087.70	0.1784	x	0.57	=	0.10169
15 - 16.9	2,826.8	/ 16,087.70	0.1757	x	0.63	=	0.11069
17 - 18.9	2,164.0	/ 16,087.70	0.1345	x	0.69	=	0.09281
19 - 20.9	1,311.8	/ 16,087.70	0.0815	x	0.73	=	0.05950
21 - 28.9	1,642.9	/ 16,087.70	0.1021	x	0.85	=	0.08679
29 +	190.6	/ 16,087.70	0.0118	x	0.92	=	0.01086
	<u>16,087.7</u>		<u>0.9999</u>				<u>0.60097</u>

Weighted Conversion Factor for Pine = 0.60097

HARDWOOD							
<u>Diameter Class</u>	Volume in Million bd.ft. International <u>1/4" Log Rule</u>	<u>Total Volume</u>	Percent of <u>Total Volume</u>		<u>Conversion Factor</u>		<u>Weighted Contribution</u>
9 - 10.9	0.0	/ 7,406.40	0.0000	x	0.39	=	0.00000
11 - 12.9	1,106.0	/ 7,406.40	0.1493	x	0.48	=	0.07166
13 - 14.9	1,417.5	/ 7,406.40	0.1914	x	0.57	=	0.10910
15 - 16.9	1,231.4	/ 7,406.40	0.1663	x	0.63	=	0.10477
17 - 18.9	1,066.9	/ 7,406.40	0.1441	x	0.69	=	0.09943
19 - 20.9	809.7	/ 7,406.40	0.1093	x	0.73	=	0.07979
21 - 28.9	1,460.4	/ 7,406.40	0.1972	x	0.85	=	0.16762
29 +	314.5	/ 7,406.40	0.0425	x	0.92	=	0.03910
	<u>7,406.4</u>		<u>1.0001</u>				<u>0.67147</u>

Weighted Conversion Factor for Hardwood = 0.67147

TABLE 6. AVERAGE ANNUAL TIMBER GROWTH, MEASURED IN TERMS OF FOREST PRODUCTS, ON AN AVERAGE ACRE OF TIMBER, BY FOREST TYPE

		NORTHEAST TEXAS				SOUTHEAST TEXAS	
		Pine Sawtimber MBF* per Acre per Year	Hardwood Sawtimber MBF* per Acre per Year	Pine Pulpwood Cords per Acre per Year	Hardwood Pulpwood Cords per Acre per Year	Pine Sawtimber MBF* per Acre per Year	Hardwood Sawtimber MBF* per Acre per Year
Pine		0.210	0.013	0.35	0.06	0.175	0.007
Mixed		0.125	0.030	0.12	0.11	0.117	0.031
Hardwood		0.031	0.063	0.02	0.17	0.042	0.054

* MBF (thousands of board feet) are expressed in terms of Doyle log rule.

TABLE 7A. AVERAGE STUMPAGE PRICES FOR NORTHEAST TEXAS FOREST PRODUCTS, 1990-1994

SAWTIMBER					
Year	Pine: \$/MBF*			Hardwood: \$/MBF*	
	Unweighted Average Prices (1)	Weighted Average Prices (2)	Average of Unweighted & Weighted	Unweighted Average Prices (1)	Weighted Average Prices (2) & Weighted
1990	\$170.81	\$168.24	\$169.53	\$62.15	\$55.63
1991	\$178.70	\$185.63	\$182.17	\$61.59	\$63.11
1992	\$236.02	\$247.01	\$241.52	\$63.29	\$67.53
1993	\$290.22	\$296.79	\$293.51	\$61.94	\$70.56
1994	\$393.31	\$411.97	\$402.64	\$62.99	\$75.26

PULPWOOD					
Year	Pine: \$/Cord			Hardwood: \$/Cord	
	Unweighted Average Prices (1)	Weighted Average Prices (2)	Average of Unweighted & Weighted	Unweighted Average Prices (1)	Weighted Average Prices (2) & Weighted
1990	\$21.12	\$21.07	\$21.10	\$5.65	\$6.30
1991	\$20.99	\$22.32	\$21.66	\$8.25	\$8.76
1992	\$22.80	\$23.87	\$23.34	\$8.72	\$9.89
1993	\$25.97	\$25.66	\$25.82	\$9.24	\$11.00
1994	\$16.17	\$16.51	\$16.34	\$9.50	\$15.73

*Doyle log rule.

(1) Unweighted averages are arithmetic means of reported transactions.

(2) Weighted averages are equal to the total value of reported transactions divided by the total volume of reported transactions.

Source: Texas Forest Service

graphic

TABLE 7B. AVERAGE STUMPAGE PRICES FOR SOUTHEAST TEXAS FOREST PRODUCTS, 1990-1994

SAWTIMBER

Year	Pine: \$/MBF*			Hardwood: \$/MBF*		
	Unweighted Average Prices (1)	Weighted Average Prices (2)	Average of Unweighted & Weighted	Unweighted Average Prices (1)	Weighted Average Prices (2)	Average of Unweighted & Weighted
1990	\$161.57	\$160.38	\$160.98	\$70.23	\$67.86	\$69.05
1991	\$172.90	\$191.12	\$182.01	\$45.07	\$49.36	\$47.22
1992	\$234.87	\$254.14	\$244.51	\$57.94	\$67.04	\$62.49
1993	\$266.74	\$277.27	\$272.01	\$65.57	\$85.11	\$75.34
1994	\$343.20	\$370.20	\$356.70	\$91.90	\$101.56	\$96.73

PULPWOOD

Year	Pine: \$/Cord			Hardwood: \$/Cord		
	Unweighted Average Prices (1)	Weighted Average Prices (2)	Average of Unweighted & Weighted	Unweighted Average Prices (1)	Weighted Average Prices (2)	Average of Unweighted & Weighted
1990	\$22.01	\$24.02	\$23.02	\$4.54	\$5.34	\$4.94
1991	\$21.31	\$22.79	\$22.05	\$6.81	\$9.17	\$7.99
1992	\$25.47	\$29.17	\$27.32	\$8.99	\$10.26	\$9.63
1993	\$27.17	\$27.69	\$27.43	\$11.51	\$13.24	\$12.38
1994	\$23.41	\$24.95	\$24.18	\$13.64	\$15.47	\$14.56

*Doyle log rule.

(1) Unweighted averages are arithmetic means of reported transactions.

(2) Weighted averages are equal to the total value of reported transactions divided by the total volume of reported transactions.

Source: Texas Forest Service

TABLE 8A. CALCULATION OF THE ANNUAL AVERAGE GROSS INCOME OF AN ACRE OF TIMBER GROWTH, BY FOREST TYPE, IN NORTHEAST TEXAS

<i>PINE</i>																		
Year	Sawtimber Growth (MBF) *						Pulp Growth (Cords) *						Average Annual Gross Income					
	Pine	x	Price **	+	Hardwood	x	Price **	+	Pine	x	Price **	+		Hardwood	x	Price **		
1990	(	0.210	x	\$169.53	)+(	0.013	x	\$58.89	)+(	0.35	x	\$21.10	)+(	0.06	x	\$5.98	) =	\$44.11
1991	(	0.210	x	\$182.17	)+(	0.013	x	\$62.35	)+(	0.35	x	\$21.66	)+(	0.06	x	\$8.51	) =	\$47.15
1992	(	0.210	x	\$241.52	)+(	0.013	x	\$65.41	)+(	0.35	x	\$23.34	)+(	0.06	x	\$9.31	) =	\$60.30
1993	(	0.210	x	\$293.51	)+(	0.013	x	\$66.25	)+(	0.35	x	\$25.82	)+(	0.06	x	\$10.12	) =	\$72.15
1994	(	0.210	x	\$402.64	)+(	0.013	x	\$69.13	)+(	0.35	x	\$16.34	)+(	0.06	x	\$12.62	) =	\$91.93

<i>MIXED</i>																		
Year	Sawtimber Growth (MBF) *						Pulp Growth (Cords) *						Average Annual Gross Income					
	Pine	x	Price **	+	Hardwood	x	Price **	+	Pine	x	Price **	+		Hardwood	x	Price **		
1990	(	0.125	x	\$169.53	)+(	0.030	x	\$58.89	)+(	0.12	x	\$21.10	)+(	0.11	x	\$5.98	) =	\$26.15
1991	(	0.125	x	\$182.17	)+(	0.030	x	\$62.35	)+(	0.12	x	\$21.66	)+(	0.11	x	\$8.51	) =	\$28.18
1992	(	0.125	x	\$241.52	)+(	0.030	x	\$65.41	)+(	0.12	x	\$23.34	)+(	0.11	x	\$9.31	) =	\$35.97
1993	(	0.125	x	\$293.51	)+(	0.030	x	\$66.25	)+(	0.12	x	\$25.82	)+(	0.11	x	\$10.12	) =	\$42.89
1994	(	0.125	x	\$402.64	)+(	0.030	x	\$69.13	)+(	0.12	x	\$16.34	)+(	0.11	x	\$12.62	) =	\$55.75

<i>HARDWOOD</i>																		
Year	Sawtimber Growth (MBF) *						Pulp Growth (Cords) *						Average Annual Gross Income					
	Pine	x	Price **	+	Hardwood	x	Price **	+	Pine	x	Price **	+		Hardwood	x	Price **		
1990	(	0.031	x	\$169.53	)+(	0.063	x	\$58.89	)+(	0.02	x	\$21.10	)+(	0.17	x	\$5.98	) =	\$10.41
1991	(	0.031	x	\$182.17	)+(	0.063	x	\$62.35	)+(	0.02	x	\$21.66	)+(	0.17	x	\$8.51	) =	\$11.46
1992	(	0.031	x	\$241.52	)+(	0.063	x	\$65.41	)+(	0.02	x	\$23.34	)+(	0.17	x	\$9.31	) =	\$13.66
1993	(	0.031	x	\$293.51	)+(	0.063	x	\$66.25	)+(	0.02	x	\$25.82	)+(	0.17	x	\$10.12	) =	\$15.51
1994	(	0.031	x	\$402.64	)+(	0.063	x	\$69.13	)+(	0.02	x	\$16.34	)+(	0.17	x	\$12.62	) =	\$19.30

* From Table 5A ** From Table 7A

TABLE 8B. CALCULATION OF THE ANNUAL AVERAGE GROSS INCOME OF AN ACRE OF TIMBER GROWTH, BY FOREST TYPE, IN SOUTHEAST TEXAS

PINE												
Year	Sawtimber Growth (MBF) *				Pulp Growth (Cords) *				Average Annual Gross Income			
	Pine	Price **	+ Hardwood	x Price **	+ Pine	x Price **	+ Hardwood	x Price **	=			
1990	(0.175	x \$160.98	)+( 0.007	x \$69.05	)+( 0.39	x \$23.02	)+( 0.03	x \$4.94	) =	\$37.78		
1991	(0.175	x \$182.01	)+( 0.007	x \$47.22	)+( 0.39	x \$22.05	)+( 0.03	x \$7.99	) =	\$41.02		
1992	(0.175	x \$244.51	)+( 0.007	x \$62.49	)+( 0.39	x \$27.32	)+( 0.03	x \$9.63	) =	\$54.17		
1993	(0.175	x \$272.01	)+( 0.007	x \$75.34	)+( 0.39	x \$27.43	)+( 0.03	x \$12.38	) =	\$59.20		
1994	(0.175	x \$356.70	)+( 0.007	x \$96.73	)+( 0.39	x \$24.18	)+( 0.03	x \$14.56	) =	\$72.97		

MIXED												
Year	Sawtimber Growth (MBF) *				Pulp Growth (Cords) *				Average Annual Gross Income			
	Pine	Price **	+ Hardwood	x Price **	+ Pine	x Price **	+ Hardwood	x Price **	=			
1990	(0.117	x \$160.98	)+( 0.031	x \$69.05	)+( 0.13	x \$23.02	)+( 0.07	x \$4.94	) =	\$24.31		
1991	(0.117	x \$182.01	)+( 0.031	x \$47.22	)+( 0.13	x \$22.05	)+( 0.07	x \$7.99	) =	\$26.19		
1992	(0.117	x \$244.51	)+( 0.031	x \$62.49	)+( 0.13	x \$27.32	)+( 0.07	x \$9.63	) =	\$34.77		
1993	(0.117	x \$272.01	)+( 0.031	x \$75.34	)+( 0.13	x \$27.43	)+( 0.07	x \$12.38	) =	\$38.60		
1994	(0.117	x \$356.70	)+( 0.031	x \$96.73	)+( 0.13	x \$24.18	)+( 0.07	x \$14.56	) =	\$48.89		

HARDWOOD												
Year	Sawtimber Growth (MBF) *				Pulp Growth (Cords) *				Average Annual Gross Income			
	Pine	Price **	+ Hardwood	x Price **	+ Pine	x Price **	+ Hardwood	x Price **	=			
1990	(0.042	x \$160.98	)+( 0.054	x \$69.05	)+( 0.03	x \$23.02	)+( 0.12	x \$4.94	) =	\$11.77		
1991	(0.042	x \$182.01	)+( 0.054	x \$47.22	)+( 0.03	x \$22.05	)+( 0.12	x \$7.99	) =	\$11.81		
1992	(0.042	x \$244.51	)+( 0.054	x \$62.49	)+( 0.03	x \$27.32	)+( 0.12	x \$9.63	) =	\$15.62		
1993	(0.042	x \$272.01	)+( 0.054	x \$75.34	)+( 0.03	x \$27.43	)+( 0.12	x \$12.38	) =	\$17.80		
1994	(0.042	x \$356.70	)+( 0.054	x \$96.73	)+( 0.03	x \$24.18	)+( 0.12	x \$14.56	) =	\$22.68		

* From Table 5B ** From Table 7B

Figure 24: 34 TAC 9.4011(g)

TABLE 9A. CALCULATION OF THE POTENTIAL GROWTH OF AN AVERAGE ACRE OF TIMBER, NORTHEAST TEXAS

County	Number of Privately-Owned Acres (000's) by Site Class					All Classes
	165+	120-165	85-120	50-85	<50	
Anderson	15.3	101.8	76.4	122.2	25.5	341.2
Bowie	10.5	36.6	94.1	52.3	15.7	209.2
Camp	0.0	16.0	8.0	24.0	0.0	48.0
Cass	11.7	123.1	158.3	123.1	0.0	416.2
Charokee	41.1	164.5	129.2	52.9	5.9	393.6
Franklin	0.0	7.8	31.1	15.6	0.0	54.5
Gregg	7.2	14.5	28.9	28.9	0.0	79.5
Harrison	27.9	117.2	161.9	67.0	0.0	374.0
Henderson	0.0	11.1	22.2	88.8	77.7	199.8
Marion	0.0	103.6	90.6	12.9	0.0	207.1
Morris	0.0	25.7	19.2	32.1	0.0	77.0
Nacogdoches	35.3	129.4	141.1	58.8	0.0	364.6
Panola	30.6	91.9	159.4	42.9	12.3	337.1
Red River	0.0	40.5	86.7	138.7	28.9	294.8
Rusk	26.6	168.3	62.0	70.9	8.9	336.7
Shelby	27.2	95.3	129.3	47.6	0.0	299.4
Smith	0.0	18.7	106.1	99.8	25.0	249.6
Titus	0.0	36.5	26.0	26.0	0.0	88.5
Upshur	11.8	58.9	123.7	29.5	0.0	223.9
Van Zandt	0.0	6.9	27.6	27.6	34.5	96.6
Wood	0.0	28.6	114.3	62.9	0.0	205.8
All Counties	245.2	1,396.9	1,796.1	1,224.5	234.4	4,897.1

County / Soil Type	Potential Cu. Ft. Growth x Number of Acres (000's)					Total
	163	163	123	85	60	
Anderson	2,493.9	16,593.4	9,397.2	10,387.0	1,530.0	40,401.5
Bowie	1,711.5	5,965.8	11,574.3	4,445.5	942.0	24,639.1
Camp	0.0	2,608.0	984.0	2,040.0	0.0	5,632.0
Cass	1,907.1	20,065.3	19,470.9	10,463.5	0.0	51,906.8
Charokee	6,699.3	26,813.5	15,891.6	4,496.5	354.0	54,254.9
Franklin	0.0	1,271.4	3,825.3	1,326.0	0.0	6,422.7
Gregg	1,173.6	2,363.5	3,554.7	2,456.5	0.0	9,548.3
Harrison	4,547.7	19,103.6	19,913.7	5,695.0	0.0	49,260.0
Henderson	0.0	1,809.3	2,730.6	7,548.0	4,662.0	16,749.9
Marion	0.0	16,886.8	11,143.8	1,096.5	0.0	29,127.1
Morris	0.0	4,189.1	2,361.6	2,728.5	0.0	9,279.2
Nacogdoches	5,753.9	21,092.2	17,355.3	4,998.0	0.0	49,199.4
Panola	4,987.8	14,979.7	19,606.2	3,646.5	738.0	43,958.2
Red River	0.0	6,601.5	10,664.1	11,789.5	1,734.0	30,789.1
Rusk	4,335.8	27,432.9	7,626.0	6,026.5	534.0	45,955.2
Shelby	4,433.6	15,533.9	15,903.9	4,046.0	0.0	39,917.4
Smith	0.0	3,048.1	13,050.3	8,483.0	1,500.0	26,081.4
Titus	0.0	5,949.5	3,198.0	2,210.0	0.0	11,357.5
Upshur	1,923.4	9,600.7	15,215.1	2,507.5	0.0	29,246.7
Van Zandt	0.0	1,124.7	3,394.8	2,346.0	2,070.0	8,935.5
Wood	0.0	4,661.8	14,058.9	5,346.5	0.0	24,067.2
All Counties	40,621.0	227,694.7	220,920.3	104,082.5	14,064.0	606,729.1

606,729.1	=	123.9 cubic feet per acre per year
4,897.1		

**TABLE 9B. CALCULATION OF THE POTENTIAL GROWTH OF AN AVERAGE
ACRE OF TIMBER: SOUTHEAST TEXAS**

County	Number of Privately-Owned Acres (000's) by Site Class					All Classes
	165+	120-165	85-120	50-85	<50	
Angelina	13.1	130.8	130.8	52.3	0.0	327.0
Chambers	0.0	0.0	8.6	0.0	0.0	8.6
Grimes	0.0	30.8	24.6	86.3	12.3	154.0
Hardin	17.3	103.7	224.8	86.5	17.3	449.6
Harris	11.6	29.0	69.7	121.9	5.8	238.0
Houston	10.8	64.8	145.8	64.8	5.4	291.6
Jasper	37.3	118.0	186.4	130.5	12.4	484.6
Jefferson	5.6	5.6	50.1	11.1	0.0	72.4
Leon	0.0	11.0	33.1	60.6	170.9	275.6
Liberty	42.8	85.6	96.3	133.8	21.4	379.9
Madison	0.0	6.7	26.7	40.1	13.4	86.9
Montgomery	26.3	94.8	205.4	57.9	21.1	405.5
Newton	36.9	142.3	226.6	105.4	15.8	527.0
Orange	5.5	38.6	71.7	11.0	0.0	126.8
Polk	11.6	144.5	265.8	104.0	11.6	537.5
Sabine	9.6	76.7	81.5	14.4	0.0	182.2
San Augustine	18.4	73.7	116.8	12.3	0.0	221.2
San Jacinto	0.0	56.1	112.1	49.8	0.0	218.0
Trinity	33.2	19.9	126.2	106.2	0.0	285.5
Tyler	17.3	121.3	283.0	69.3	5.8	496.7
Walker	0.0	56.3	146.4	39.4	11.3	253.4
Waller	0.0	5.9	41.6	23.8	0.0	71.3
All Counties	297.3	1,416.1	2,674.0	1,381.4	324.5	6,093.3

Growth Potentials County / Soil Type	Potential Cu. Ft. Growth x Number of Acres (000's)					Total
	163	163	123	85	60	
Angelina	2,135.3	21,320.4	16,088.4	4,445.5	0.0	43,989.6
Chambers	0.0	0.0	1,057.8	0.0	0.0	1,057.8
Grimes	0.0	5,020.4	3,025.8	7,335.5	738.0	16,119.7
Hardin	2,819.9	16,903.1	27,650.4	7,352.5	1,038.0	55,763.9
Harris	1,890.8	4,727.0	8,573.1	10,361.5	348.0	25,900.4
Houston	1,760.4	10,562.4	17,933.4	5,508.0	324.0	36,088.2
Jasper	6,079.9	19,234.0	22,927.2	11,092.5	744.0	60,077.6
Jefferson	912.8	912.8	6,162.3	943.5	0.0	8,931.4
Leon	0.0	1,793.0	4,071.3	5,151.0	10,254.0	21,269.3
Liberty	6,976.4	13,952.8	11,844.9	11,373.0	1,284.0	45,431.1
Madison	0.0	1,092.1	3,284.1	3,408.5	804.0	8,588.7
Montgomery	4,286.9	15,452.4	25,264.2	4,921.5	1,266.0	51,191.0
Newton	6,014.7	23,194.9	27,871.8	8,959.0	948.0	66,988.4
Orange	896.5	6,291.8	8,819.1	935.0	0.0	16,942.4
Polk	1,890.8	23,553.5	32,693.4	8,840.0	696.0	67,673.7
Sabine	1,564.8	12,502.1	10,024.5	1,224.0	0.0	25,315.4
San Augustine	2,999.2	12,013.1	14,366.4	1,045.5	0.0	30,424.2
San Jacinto	0.0	9,144.3	13,788.3	4,233.0	0.0	27,165.6
Trinity	5,411.6	3,243.7	15,522.6	9,027.0	0.0	33,204.9
Tyler	2,819.9	19,771.9	34,809.0	5,890.5	348.0	63,639.3
Walker	0.0	9,176.9	18,007.2	3,349.0	678.0	31,211.1
Waller	0.0	961.7	5,116.8	2,023.0	0.0	8,101.5
All Counties	48,459.9	230,824.3	328,902.0	117,419.0	19,470.0	745,075.2

745,075.2	=	122.3 cubic feet per acre per year
6,093.3		

TABLE 10. CALCULATION OF SOIL PRODUCTIVITY MULTIPLIERS

NORTHEAST TEXAS					
Soil Productivity Class	Average Maximum Potential Productivity in Southern United States (cu. ft. / acre / yr.)	/	Average Maximum Potential Productivity (cu. ft. / acre / yr.)	=	Productivity Multiplier
I	163	/	123.9	=	1.32
II	123	/	123.9	=	.99
III	85	/	123.9	=	.69
IV	60	/	123.9	=	.48

SOUTHEAST TEXAS					
Soil Productivity Class	Average Maximum Potential Productivity in Southern United States (cu. ft. / acre / yr.)	/	Average Maximum Potential Productivity (cu. ft. / acre / yr.)	=	Productivity Multiplier
I	163	/	122.3	=	1.33
II	123	/	122.3	=	1.01
III	85	/	122.3	=	.70
IV	60	/	122.3	=	.49

TABLE 11A. CALCULATION OF AVERAGE ANNUAL POTENTIAL GROSS INCOME, NORTHEAST TEXAS
PINE

Year	Soil Productivity Classes											
	I			II			III			IV		
	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income
1990	\$44.11	x 1.32 =	\$58.23	\$44.11	x 0.99 =	\$43.67	\$44.11	x 0.69 =	\$30.44	\$44.11	x 0.48 =	\$21.17
1991	\$47.15	x 1.32 =	\$62.24	\$47.15	x 0.99 =	\$46.68	\$47.15	x 0.69 =	\$32.53	\$47.15	x 0.48 =	\$22.63
1992	\$60.30	x 1.32 =	\$79.60	\$60.30	x 0.99 =	\$59.70	\$60.30	x 0.69 =	\$41.61	\$60.30	x 0.48 =	\$28.94
1993	\$72.15	x 1.32 =	\$95.24	\$72.15	x 0.99 =	\$71.43	\$72.15	x 0.69 =	\$49.78	\$72.15	x 0.48 =	\$34.63
1994	\$91.93	x 1.32 =	\$121.35	\$91.93	x 0.99 =	\$91.01	\$91.93	x 0.69 =	\$63.43	\$91.93	x 0.48 =	\$44.13

Year	MIXED											
	I			II			III			IV		
	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income
1990	\$26.15	x 1.32 =	\$34.52	\$26.15	x 0.99 =	\$25.89	\$26.15	x 0.69 =	\$18.04	\$26.15	x 0.48 =	\$12.55
1991	\$28.18	x 1.32 =	\$37.20	\$28.18	x 0.99 =	\$27.90	\$28.18	x 0.69 =	\$19.44	\$28.18	x 0.48 =	\$13.53
1992	\$35.97	x 1.32 =	\$47.48	\$35.97	x 0.99 =	\$35.61	\$35.97	x 0.69 =	\$24.82	\$35.97	x 0.48 =	\$17.27
1993	\$42.89	x 1.32 =	\$56.61	\$42.89	x 0.99 =	\$42.46	\$42.89	x 0.69 =	\$29.59	\$42.89	x 0.48 =	\$20.59
1994	\$55.75	x 1.32 =	\$73.59	\$55.75	x 0.99 =	\$55.19	\$55.75	x 0.69 =	\$38.47	\$55.75	x 0.48 =	\$26.76

Year	HARDWOOD											
	I			II			III			IV		
	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income
1990	\$10.41	x 1.32 =	\$13.74	\$10.41	x 0.99 =	\$10.31	\$10.41	x 0.69 =	\$7.18	\$10.41	x 0.48 =	\$5.00
1991	\$11.46	x 1.32 =	\$15.13	\$11.46	x 0.99 =	\$11.35	\$11.46	x 0.69 =	\$7.91	\$11.46	x 0.48 =	\$5.50
1992	\$13.66	x 1.32 =	\$18.03	\$13.66	x 0.99 =	\$13.52	\$13.66	x 0.69 =	\$9.43	\$13.66	x 0.48 =	\$6.56
1993	\$15.51	x 1.32 =	\$20.47	\$15.51	x 0.99 =	\$15.35	\$15.51	x 0.69 =	\$10.70	\$15.51	x 0.48 =	\$7.44
1994	\$19.30	x 1.32 =	\$25.48	\$19.30	x 0.99 =	\$19.11	\$19.30	x 0.69 =	\$13.32	\$19.30	x 0.48 =	\$9.26

TABLE 11B. CALCULATION OF AVERAGE ANNUAL POTENTIAL GROSS INCOME, SOUTHEAST TEXAS
PINE

Year	Soil Productivity Classes											
	I			II			III			IV		
	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income
1990	\$37.78	x 1.33 =	\$50.25	\$37.78	x 1.01 =	\$38.16	\$37.78	x 0.70 =	\$26.45	\$37.78	x 0.49 =	\$18.51
1991	\$41.02	x 1.33 =	\$54.56	\$41.02	x 1.01 =	\$41.43	\$41.02	x 0.70 =	\$28.71	\$41.02	x 0.49 =	\$20.10
1992	\$54.17	x 1.33 =	\$72.05	\$54.17	x 1.01 =	\$54.71	\$54.17	x 0.70 =	\$37.92	\$54.17	x 0.49 =	\$26.54
1993	\$59.20	x 1.33 =	\$78.74	\$59.20	x 1.01 =	\$59.79	\$59.20	x 0.70 =	\$41.44	\$59.20	x 0.49 =	\$29.01
1994	\$72.97	x 1.33 =	\$97.05	\$72.97	x 1.01 =	\$73.70	\$72.97	x 0.70 =	\$51.08	\$72.97	x 0.49 =	\$35.76

MIXED

Year	Soil Productivity Classes											
	I			II			III			IV		
	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income
1990	\$24.31	x 1.33 =	\$32.33	\$24.31	x 1.01 =	\$24.55	\$24.31	x 0.70 =	\$17.02	\$24.31	x 0.49 =	\$11.91
1991	\$26.19	x 1.33 =	\$34.83	\$26.19	x 1.01 =	\$26.45	\$26.19	x 0.70 =	\$18.33	\$26.19	x 0.49 =	\$12.83
1992	\$34.77	x 1.33 =	\$46.24	\$34.77	x 1.01 =	\$35.12	\$34.77	x 0.70 =	\$24.34	\$34.77	x 0.49 =	\$17.04
1993	\$38.60	x 1.33 =	\$51.34	\$38.60	x 1.01 =	\$38.99	\$38.60	x 0.70 =	\$27.02	\$38.60	x 0.49 =	\$18.91
1994	\$48.89	x 1.33 =	\$65.02	\$48.89	x 1.01 =	\$49.38	\$48.89	x 0.70 =	\$34.22	\$48.89	x 0.49 =	\$23.96

HARDWOOD

Year	Soil Productivity Classes											
	I			II			III			IV		
	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income	Gross Income	Prod. Mult.	Potential Gross Income
1990	\$11.77	x 1.33 =	\$15.65	\$11.77	x 1.01 =	\$11.89	\$11.77	x 0.70 =	\$8.24	\$11.77	x 0.49 =	\$5.77
1991	\$11.81	x 1.33 =	\$15.71	\$11.81	x 1.01 =	\$11.93	\$11.81	x 0.70 =	\$8.27	\$11.81	x 0.49 =	\$5.79
1992	\$15.62	x 1.33 =	\$20.77	\$15.62	x 1.01 =	\$15.78	\$15.62	x 0.70 =	\$10.93	\$15.62	x 0.49 =	\$7.65
1993	\$17.80	x 1.33 =	\$23.67	\$17.80	x 1.01 =	\$17.98	\$17.80	x 0.70 =	\$12.46	\$17.80	x 0.49 =	\$8.72
1994	\$22.68	x 1.33 =	\$30.16	\$22.68	x 1.01 =	\$22.91	\$22.68	x 0.70 =	\$15.88	\$22.68	x 0.49 =	\$11.11

**TABLE 12. AVERAGE ANNUAL TIMBER PRODUCTION COSTS
PER ACRE FOR A HYPOTHETICAL COUNTY**

<u>Year</u>	<u>Northeast</u>	<u>Southeast</u>
1990	\$14.10	\$14.68
1991	\$14.20	\$13.29
1992	\$14.00	\$14.02
1993	\$14.25	\$14.50
1994	\$14.40	\$14.97

TABLE 13A. RESULTS OF MULTIPLYING AVERAGE ANNUAL COSTS BY PRORATION FACTORS, NORTHEAST TEXAS PINE

Year	Soil Productivity Classes			
	I	II	III	IV
	Cost	Factor	Prorated Cost	Prorated Cost
1990	\$14.10	x 1.20 =	\$16.92	\$14.10 x 1.00 = \$14.10
1991	\$14.20	x 1.20 =	\$17.04	\$14.20 x 1.00 = \$14.20
1992	\$14.00	x 1.20 =	\$16.80	\$14.00 x 1.00 = \$14.00
1993	\$14.25	x 1.20 =	\$17.10	\$14.25 x 1.00 = \$14.25
1994	\$14.40	x 1.20 =	\$17.28	\$14.40 x 1.00 = \$14.40
				Cost x Factor = Prorated Cost
				\$14.10 x 0.90 = \$12.69
				\$14.20 x 0.90 = \$12.78
				\$14.00 x 0.90 = \$12.60
				\$14.25 x 0.90 = \$12.83
				\$14.40 x 0.90 = \$12.96

MIXED

Year	Soil Productivity Classes			
	I	II	III	IV
	Cost	Factor	Prorated Cost	Prorated Cost
1990	\$14.10	x 1.00 =	\$14.10	\$14.10 x 0.80 = \$11.28
1991	\$14.20	x 1.00 =	\$14.20	\$14.20 x 0.80 = \$11.36
1992	\$14.00	x 1.00 =	\$14.00	\$14.00 x 0.80 = \$11.20
1993	\$14.25	x 1.00 =	\$14.25	\$14.25 x 0.80 = \$11.40
1994	\$14.40	x 1.00 =	\$14.40	\$14.40 x 0.80 = \$11.52
				Cost x Factor = Prorated Cost
				\$14.10 x 0.70 = \$9.87
				\$14.20 x 0.70 = \$9.94
				\$14.00 x 0.70 = \$9.80
				\$14.25 x 0.70 = \$9.98
				\$14.40 x 0.70 = \$10.08

HARDWOOD

Year	Soil Productivity Classes			
	I	II	III	IV
	Cost	Factor	Prorated Cost	Prorated Cost
1990	\$14.10	x 0.75 =	\$10.58	\$14.10 x 0.45 = \$6.35
1991	\$14.20	x 0.75 =	\$10.65	\$14.20 x 0.45 = \$6.39
1992	\$14.00	x 0.75 =	\$10.50	\$14.00 x 0.45 = \$6.30
1993	\$14.25	x 0.75 =	\$10.69	\$14.25 x 0.45 = \$6.41
1994	\$14.40	x 0.75 =	\$10.80	\$14.40 x 0.45 = \$6.48
				Cost x Factor = Prorated Cost
				\$14.10 x 0.30 = \$4.23
				\$14.20 x 0.30 = \$4.26
				\$14.00 x 0.30 = \$4.20
				\$14.25 x 0.30 = \$4.28
				\$14.40 x 0.30 = \$4.32

TABLE 13B. RESULTS OF MULTIPLYING AVERAGE ANNUAL COSTS BY PRORATION FACTORS, SOUTHEAST TEXAS

PINE

Year	I		II		III		IV		
	Cost	Factor	Prorated Cost	Cost	Factor	Prorated Cost	Cost	Factor	
1990	\$14.68	x 1.20 =	\$17.62	\$14.68	x 1.10 =	\$16.15	\$14.68	x 1.00 =	\$14.68
1991	\$13.29	x 1.20 =	\$15.95	\$13.29	x 1.10 =	\$14.62	\$13.29	x 1.00 =	\$13.29
1992	\$14.02	x 1.20 =	\$16.82	\$14.02	x 1.10 =	\$15.42	\$14.02	x 1.00 =	\$14.02
1993	\$14.50	x 1.20 =	\$17.40	\$14.50	x 1.10 =	\$15.95	\$14.50	x 1.00 =	\$14.50
1994	\$14.97	x 1.20 =	\$17.96	\$14.97	x 1.10 =	\$16.47	\$14.97	x 1.00 =	\$14.97

MIXED

Year	I		II		III		IV		
	Cost	Factor	Prorated Cost	Cost	Factor	Prorated Cost	Cost	Factor	
1990	\$14.68	x 1.00 =	\$14.68	\$14.68	x 0.90 =	\$13.21	\$14.68	x 0.80 =	\$11.74
1991	\$13.29	x 1.00 =	\$13.29	\$13.29	x 0.90 =	\$11.96	\$13.29	x 0.80 =	\$10.63
1992	\$14.02	x 1.00 =	\$14.02	\$14.02	x 0.90 =	\$12.62	\$14.02	x 0.80 =	\$11.22
1993	\$14.50	x 1.00 =	\$14.50	\$14.50	x 0.90 =	\$13.05	\$14.50	x 0.80 =	\$11.60
1994	\$14.97	x 1.00 =	\$14.97	\$14.97	x 0.90 =	\$13.47	\$14.97	x 0.80 =	\$11.98

HARDWOOD

Year	I		II		III		IV		
	Cost	Factor	Prorated Cost	Cost	Factor	Prorated Cost	Cost	Factor	
1990	\$14.68	x 0.75 =	\$11.01	\$14.68	x 0.60 =	\$8.81	\$14.68	x 0.45 =	\$6.61
1991	\$13.29	x 0.75 =	\$9.97	\$13.29	x 0.60 =	\$7.97	\$13.29	x 0.45 =	\$5.98
1992	\$14.02	x 0.75 =	\$10.52	\$14.02	x 0.60 =	\$8.41	\$14.02	x 0.45 =	\$6.31
1993	\$14.50	x 0.75 =	\$10.88	\$14.50	x 0.60 =	\$8.70	\$14.50	x 0.45 =	\$6.53
1994	\$14.97	x 0.75 =	\$11.23	\$14.97	x 0.60 =	\$8.98	\$14.97	x 0.45 =	\$6.74

TABLE 14A. CALCULATION OF AVERAGE ANNUAL NET INCOME, NORTHEAST TEXAS

Year	Soil Productivity Classes											
	I			II			III			IV		
	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income
1990	\$58.23	- 16.92 =	\$41.31	\$43.67	- 15.51 =	\$28.16	\$30.44	- 14.10 =	\$16.34	\$21.17	- 12.69 =	\$8.48
1991	\$62.24	- 17.04 =	\$45.20	\$46.68	- 15.62 =	\$31.06	\$32.53	- 14.20 =	\$18.33	\$22.63	- 12.78 =	\$9.85
1992	\$79.60	- 16.80 =	\$62.80	\$59.70	- 15.40 =	\$44.30	\$41.61	- 14.00 =	\$27.61	\$28.94	- 12.60 =	\$16.34
1993	\$95.24	- 17.10 =	\$78.14	\$71.43	- 15.68 =	\$55.75	\$49.78	- 14.25 =	\$35.53	\$34.63	- 12.83 =	\$21.80
1994	\$121.35	- 17.28 =	\$104.07	\$91.01	- 15.84 =	\$75.17	\$63.43	- 14.40 =	\$49.03	\$44.13	- 12.96 =	\$31.17
5 Year Average			\$66.30			\$46.89			\$29.37			\$17.53

Year	Soil Productivity Classes											
	I			II			III			IV		
	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income
1990	\$34.52	- 14.10 =	\$20.42	\$25.89	- 12.69 =	\$13.20	\$18.04	- 11.28 =	\$6.76	\$12.55	- 9.87 =	\$2.68
1991	\$37.20	- 14.20 =	\$23.00	\$27.90	- 12.78 =	\$15.12	\$19.44	- 11.36 =	\$8.08	\$13.53	- 9.94 =	\$3.59
1992	\$47.48	- 14.00 =	\$33.48	\$35.61	- 12.60 =	\$23.01	\$24.82	- 11.20 =	\$13.62	\$17.27	- 9.80 =	\$7.47
1993	\$56.61	- 14.25 =	\$42.36	\$42.46	- 12.83 =	\$29.63	\$29.59	- 11.40 =	\$18.19	\$20.59	- 9.98 =	\$10.61
1994	\$73.59	- 14.40 =	\$59.19	\$55.19	- 12.96 =	\$42.23	\$38.47	- 11.52 =	\$26.95	\$26.76	- 10.08 =	\$16.68
5 Year Average			\$35.69			\$24.64			\$14.72			\$8.21

Year	Soil Productivity Classes											
	I			II			III			IV		
	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income
1990	\$13.74	- 10.58 =	\$3.16	\$10.31	- 8.46 =	\$1.85	\$7.18	- 6.35 =	\$0.83	\$5.00	- 4.23 =	\$0.77
1991	\$15.13	- 10.65 =	\$4.48	\$11.35	- 8.52 =	\$2.83	\$7.91	- 6.39 =	\$1.52	\$5.50	- 4.26 =	\$1.24
1992	\$18.03	- 10.50 =	\$7.53	\$13.52	- 8.40 =	\$5.12	\$9.43	- 6.30 =	\$3.13	\$6.56	- 4.20 =	\$2.36
1993	\$20.47	- 10.69 =	\$9.78	\$15.35	- 8.55 =	\$6.80	\$10.70	- 6.41 =	\$4.29	\$7.44	- 4.28 =	\$3.16
1994	\$25.48	- 10.80 =	\$14.68	\$19.11	- 8.64 =	\$10.47	\$13.32	- 6.48 =	\$6.84	\$9.26	- 4.32 =	\$4.94
5 Year Average			\$7.93			\$5.41			\$3.32			\$2.49

TABLE 14B. CALCULATION OF AVERAGE ANNUAL NET INCOME, SOUTHEAST TEXAS PINE

Year	I			II			III			IV		
	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income
1990	\$50.25	- 17.62	= \$32.63	\$38.16	- 16.15	= \$22.01	\$26.45	- 14.68	= \$11.77	\$18.51	- 13.21	= \$5.30
1991	\$54.56	- 15.95	= \$38.61	\$41.43	- 14.62	= \$26.81	\$28.71	- 13.29	= \$15.42	\$20.10	- 11.96	= \$8.14
1992	\$72.05	- 16.82	= \$55.23	\$54.71	- 15.42	= \$39.29	\$37.92	- 14.02	= \$23.90	\$26.54	- 12.62	= \$13.92
1993	\$78.74	- 17.40	= \$61.34	\$59.79	- 15.95	= \$43.84	\$41.44	- 14.50	= \$26.94	\$29.01	- 13.05	= \$15.96
1994	\$97.05	- 17.96	= \$79.09	\$73.70	- 16.47	= \$57.23	\$51.08	- 14.97	= \$36.11	\$35.76	- 13.47	= \$22.29
5 Year Average			\$53.38			\$37.84			\$22.83			\$13.12

MIXED

Year	I			II			III			IV		
	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income
1990	\$32.33	- 14.68	= \$17.65	\$24.55	- 13.21	= \$11.34	\$17.02	- 11.74	= \$5.28	\$11.91	- 10.28	= \$1.63
1991	\$34.83	- 13.29	= \$21.54	\$26.45	- 11.96	= \$14.49	\$18.33	- 10.63	= \$7.70	\$12.83	- 9.30	= \$3.53
1992	\$46.24	- 14.02	= \$32.22	\$35.12	- 12.62	= \$22.50	\$24.34	- 11.22	= \$13.12	\$17.04	- 9.81	= \$7.23
1993	\$51.34	- 14.50	= \$36.84	\$38.99	- 13.05	= \$25.94	\$27.02	- 11.60	= \$15.42	\$18.91	- 10.15	= \$8.76
1994	\$65.02	- 14.97	= \$50.05	\$49.38	- 13.47	= \$35.91	\$34.22	- 11.98	= \$22.24	\$23.96	- 10.48	= \$13.48
5 Year Average			\$31.66			\$22.04			\$12.75			\$6.93

HARDWOOD

Year	I			II			III			IV		
	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income	Potential Gross Income	Annual Costs	Net Income
1990	\$15.65	- 11.01	= \$4.64	\$11.89	- 8.81	= \$3.08	\$8.24	- 6.61	= \$1.63	\$5.77	- 4.40	= \$1.37
1991	\$15.71	- 9.97	= \$5.74	\$11.93	- 7.97	= \$3.96	\$8.27	- 5.98	= \$2.29	\$5.79	- 3.99	= \$1.80
1992	\$20.77	- 10.52	= \$10.25	\$15.78	- 8.41	= \$7.37	\$10.93	- 6.31	= \$4.62	\$7.65	- 4.21	= \$3.44
1993	\$23.67	- 10.88	= \$12.79	\$17.98	- 8.70	= \$9.28	\$12.46	- 6.53	= \$5.93	\$8.72	- 4.35	= \$4.37
1994	\$30.16	- 11.23	= \$18.93	\$22.91	- 8.98	= \$13.93	\$15.88	- 6.74	= \$9.14	\$11.11	- 4.49	= \$6.62
5 Year Average			\$10.47			\$7.52			\$4.72			\$3.52

TABLE 15. CALCULATION OF TIMBER PRODUCTIVITY VALUES

		NORTHEAST TEXAS											
		Soil Productivity Classes				Soil Productivity Classes							
		I		II		III		IV					
		Net Income	Capitalization Rate	Productivity Value	Net Income	Capitalization Rate	Productivity Value	Net Income	Capitalization Rate	Productivity Value			
Pine		\$66.30	10.75%	= \$616.74	\$46.89	10.75%	= \$436.19	\$29.37	10.75%	= \$273.21	\$17.53	10.75%	= \$163.07
Mixed		\$35.69	10.75%	= \$332.00	\$24.64	10.75%	= \$229.21	\$14.72	10.75%	= \$136.93	\$8.21	10.75%	= \$76.37
Hardwood		\$7.93	10.75%	= \$73.77	\$5.41	10.75%	= \$50.33	\$3.32	10.75%	= \$30.88	\$2.49	10.75%	= \$23.16
SOUTHEAST TEXAS													
		Soil Productivity Classes				Soil Productivity Classes							
		I		II		III		IV					
		Net Income	Capitalization Rate	Productivity Value	Net Income	Capitalization Rate	Productivity Value	Net Income	Capitalization Rate	Productivity Value			
Pine		\$53.38	10.75%	= \$496.56	\$37.84	10.75%	= \$352.00	\$22.83	10.75%	= \$212.37	\$13.12	10.75%	= \$122.05
Mixed		\$31.66	10.75%	= \$294.51	\$22.04	10.75%	= \$205.02	\$12.75	10.75%	= \$118.60	\$6.93	10.75%	= \$64.47
Hardwood		\$10.47	10.75%	= \$97.40	\$7.52	10.75%	= \$69.95	\$4.72	10.75%	= \$43.91	\$3.52	10.75%	= \$32.74

Figure 34: 34 TAC 9.4011(8)

**TABLE 16A. CALCULATION OF TOTAL
TIMBER PRODUCTIVITY VALUES
FOR A HYPOTHETICAL COUNTY
IN NORTHEAST TEXAS**

PINE

Productivity Class	Acres	Value per Acre	Total Value
I	1,000	\$616.74	\$2,466,960
II	2,000	\$436.19	\$8,723,800
III	2,400	\$273.21	\$3,278,520
IV	0	\$163.07	\$0
Totals	36,000		\$14,469,280

MIXED

Productivity Class	Acres	Value per Acre	Total Value
I	6,400	\$332.00	\$2,124,800
II	23,000	\$229.21	\$5,271,830
III	8,000	\$136.93	\$1,095,440
IV	3,000	\$76.37	\$229,110
Totals	40,400		\$8,721,180

HARDWOOD

Productivity Class	Acres	Value per Acre	Total Value
I	4,000	\$73.77	\$295,080
II	20,000	\$50.33	\$1,006,600
III	12,000	\$30.88	\$370,560
IV	0	\$23.16	\$0
Totals	36,000		\$1,672,240

TABLE 16B. CALCULATION OF TOTAL
TIMBER PRODUCTIVITY VALUES
FOR A HYPOTHETICAL COUNTY
IN SOUTHEAST TEXAS

PINE

Productivity Class	Acres	Productivity Value	Total Value
I	3,500	\$496.56	\$1,737,960
II	15,000	\$352.00	\$5,280,000
III	16,000	\$212.37	\$3,397,920
IV	0	\$122.05	\$0
Totals	34,500		\$10,415,880

MIXED

Productivity Class	Acres	Productivity Value	Total Value
I	500	\$294.51	\$147,255
II	12,400	\$205.02	\$2,542,248
III	10,000	\$118.60	\$1,186,000
IV	500	\$64.47	\$32,235
Totals	23,400		\$3,907,738

HARDWOOD

Productivity Class	Acres	Productivity Value	Total Value
I	0	\$97.40	\$0
II	0	\$69.95	\$0
III	0	\$43.91	\$0
IV	0	\$32.74	\$0
Totals	0		\$0

**APPENDIX D. TYPICAL TIMBER MANAGEMENT COSTS FOR
TEXAS TIMBERLAND**

<u>COST ITEM</u>	<u>FREQUENCY</u>
Property taxes	Annually
Consultant fees during	At time of harvest (average of three times a 35-year rotation)*
Consultant fees for management/administration	Annually
Accountant's fees	Annually
Reforestation expenses (site preparation, years seedlings, planting, etc.)	Once every 20 to 35
Boundary line maintenance years	Once every 5 to 10 (average is 7 years)*
Fire break/lane establishment years	Once every 20 to 35
Fire break/lane maintenance years	Once every 1 to 3 (average is 3 years)*
Road maintenance years	Once ever 3 to 5 (average is four years)*
Timber stand improvement herbicide application years	Once every 3 to 5 (average is 3 years)*

prescribed burning years	Once every 3 to 5 (average is 3 years)*
pre-commercial thinning years	Once every 20 to 35 (once during rotation possible)
fertilization	Every 10 to 35 years
pruning	Every 12 to 35 years
Surveying maintained	Once during ownership if boundaries are
Legal fees	Once every 5 to 10 years
Pest control	Once every 3 to 10 years (average is 7 years)*
Pest Inspection	Annually
Insurance	Annually
Travel to forest (typical or reasonable travel) annually	Once or more

*Recognizing the wide range of ownership objectives and intensity of management, for any specific management activity, a range of years is provided. But the average time period presented is the recommended reasonable length of time for the prudent manager.

Note: If a contractor is not used to maintain or harvest timber, depreciation on capitalized equipment may not be claimed as a typical timber-management cost.

Table of Contents

February 27, 1996, Texas Register

The Table of Contents for the February 27 issue contained formatting errors and omitted the names of state agencies for *Open Meetings* and *In Addition* documents. Please remove this corrected version of the Table of Contents and insert it into the February 27 issue of the *Texas Register*.

PROPOSED RULES

Texas Department of Agriculture

General Procedures

4 TAC §1.85 1429

Texas Animal Health Commission

Tuberculosis

4 TAC §43.1 1429

4 TAC §43.21 1430

Railroad Commission of Texas

Oil and Gas Division

16 TAC §3.21 1431

16 TAC §3.21 1431

Liquefied Petroleum Gas Division

16 TAC §9.3 1432

16 TAC §9.160, §9.161 1434

Public Utility Commission of Texas

Substantive Rules

16 TAC §23.57 1436

Texas Higher Education Coordinating Board

Program Development

19 TAC §§5.263-5.267 1438

19 TAC §5.268 1440

Public Junior Colleges

19 TAC §9.63 1440

19 TAC §9.103 1441

19 TAC §9.192 1442

Proprietary Schools

19 TAC §§12.41-12.57 1443

19 TAC §§12.41-12.52, 12.55-12.57 1443

19 TAC §§12.72-12.76 1445

19 TAC §§12.77-12.79 1446

Student Services

19 TAC §21.1039 1447

19 TAC §§21.1033, 21.1035, 21.1036, 21.1042 1448

19 TAC §21.1039 1449

19 TAC §21.1039 1450

Texas Education Agency

Adaptations for Special Populations

19 TAC §89.1001 1450

19 TAC §§89.1011, 89.1015, 89.1020, 89.1025, 89.1030, 89.1035, 89.1040, 89.1045, 89.1050, 89.1055, 89.1060, 89.1065, 89.1070,

89.1075, 89.1080, 89.1085, 89.1090, 89.1095, 89.1100, 89.1105, 89.1110 1451

19 TAC §89.1121, §89.1125 1462

19 TAC §89.1131 1463

19 TAC §89.1141 1464

19 TAC §§89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, 89.1190 1464

19 TAC §§89.1201, 89.1205, 89.1210, 89.1215, 89.1220, 89.1225, 89.1230, 89.1235, 89.1240, 89.1245, 89.1250, 89.1255, 89.1260, 89.1265 1467

Board of Vocational Nurse Examiners

Licensing

22 TAC §235.49 1475

Texas Board of Physical Therapy Examiners

Applications Review Committee

22 TAC §323.4 1475

Organization of the Board

22 TAC §325.7 1475

Licensing Procedure

22 TAC §329.1 1476

Display of License

22 TAC §337.2 1476

License Renewal

22 TAC §341.1 1477

Texas State Board of Examiners of Psychologists

General Rulings

22 TAC §461.11 1477

Applications

22 TAC §463.5 1479

22 TAC §463.8 1481

22 TAC §463.10 1482

22 TAC §463.30 1482

22 TAC §463.31 1483

Specialty Certification

22 TAC §469.2 1484

Fees

22 TAC §473.1 1485

Structural Pest Control Board

General Provisions

22 TAC §591.21 1485

Texas Department of Health

Purchased Health Services

Table of Contents
February 27, 1996, Texas Register

25 TAC §29.1129.....	1486	40 TAC §727.301, §727.302.....	1514
Comptroller of Public Accounts		40 TAC §§727.301, 727.303, 727.305.....	1514
Prepaid Higher Education Tuition Program		40 TAC §727.401, §727.402.....	1515
34 TAC §7.82.....	1486	40 TAC §§727.401, 727.403, 727.405, 727.407, 727.409, 727.411.....	1516
Texas Department of Public Safety		40 TAC &§727.501-727.514.....	1517
General Rules of Practice and Procedure		§727.601, §727.602.....	1518
22 TAC §§29.101-29.157.....	1487	40 TAC §§727.701-727.707.....	1518
Texas Commission on Fire Protection		40 TAC §§727.801-727.806.....	1518
Fire Suppression		40 TAC §§727.901-727.903.....	1518
37 TAC §§423.305, 423.307, 423.309.....	1497	40 TAC §§727.1001-727.1006.....	1519
Fire Protection Instructors		Texas Workforce Commission	
37 TAC §425.1.....	1498	Skills Development Fund	
Fees		40 TAC §803.1.....	1519
37 TAC §437.13, §437.15.....	1498	WITHDRAWN RULES	
Examinations for Certification		Railroad Commission of Texas	
37 TAC §439.13.....	1499	Oil and Gas Division	
37 TAC §439.5, §439.13.....	1499	16 TAC §3.21.....	1524
Fire Cause and Origin Investigator		Texas State Board of Examiners of Psychologists	
37 TAC §451.1, §451.3.....	1501	Applications	
Standards for Volunteer Certification		22 TAC §463.31.....	1524
37 TAC §471.5.....	1502	Fees	
Volunteer Fire Investigator		22 TAC §473.1.....	1524
37 TAC §476.1.....	1503	Structural Pest Control Board	
Texas Department of Occupational Therapy Examiners		Licenses	
Inactive/Retiree Status		22 TAC §593.23.....	1524
40 TAC §371.1.....	1503	Texas Natural Resource Conservation Commission	
40 TAC §371.2.....	1504	Control of Air Pollution From Volatile Organic Compounds	
40 TAC §375.1.....	1505	30 TAC §115.950.....	1525
Texas Department of Protective and Regulatory		Control of Air Pollution by Permits for New Construction or Modification	
General Licensing Procedures		30 TAC §116.119.....	1525
40 TAC §§725.3044, 725.3045, 725.3047, 725.3049, 725.3050, 725.3056, 725.3065, 725.3068, 725.3069, 725.3071, 725.3075-725.3078.....	1505	ADOPTED RULES	
40 TAC §725.4013.....	1507	Office of the Secretary of State	
Licensing of Maternity Facilities		Elections	
40 TAC §§727.101-727.111.....	1508	7 TAC §81.52.....	1527
40 TAC §§727.101, 727.103, 727.105, 727.107, 727.109, 727.111.....	1509	Texas Department of Agriculture	
40 TAC §727.201.....	1510	Marketing and Development Division	
40 TAC §§727.201, 727.203, 727.205, 727.207.....	1510	4 TAC §17.30, §17.31.....	1527
40 TAC §§727.201, 727.203, 727.205, 727.207.....	1512	Texas Department of Banking	
		Loans and Investments	

Table of Contents

February 27, 1996, Texas Register

7 TAC §12.91.....	1528	22 TAC §465.10.....	1540
Texas Department of Housing and Community Affairs		22 TAC §465.19.....	1540
Texas Community Development Program		22 TAC §465.20.....	1541
10 TAC §9.9.....	1531	22 TAC §465.33.....	1541
Texas Department of Commerce		Structural Pest Control Board	
Job Training Partnership Act Rules		Compliance and Enforcement	
10 TAC §§ 187.280, 187.282, 187.283, 187.286-187.288, 187.290, 187.296-187.298.....	1532	22 TAC §595.2.....	1541
Railroad Commission of Texas		22 TAC §595.11.....	1541
Liquefied Petroleum Gas Division		Unlawful Acts and Grounds for Revocation	
16 TAC §9.184, §9.190.....	1532	22 TAC §597.1.....	1543
16 TAC §9.239.....	1533	Treatment Standards	
Texas Alcoholic Beverage Commission		22 TAC §599.4.....	1544
Auditing		22 TAC §599.11.....	1544
16 TAC §41.54.....	1533	Texas Department of Health	
Marketing Practices		Athletic Trainers	
16 TAC §45.4.....	1535	25 TAC §313.3, §313.9.....	1545
Texas Board of Architectural Examiners		Texas Natural Resource Conservation Commission	
Architecture		General Rules	
22 TAC §1.10.....	1535	30 TAC §101.1.....	1545
22 TAC §1.51.....	1535	Control of Air Pollution From Volatile Organic Compounds	
Architecture		30 TAC §115.10.....	1558
22 TAC §1.81.....	1536	30 TAC §§115.112, 115.114, 115.116, 115.117.....	1560
22 TAC §1.82.....	1536	30 TAC §§115.121-115.123, 115.126, 115.127, 115.129.....	1561
22 TAC §1.104.....	1536	30 TAC §115.212, §115.219.....	1563
Landscape Architecture		30 TAC §§115.412, 115.413, 115.416, 115.417, 115.419.....	1564
22 TAC §3.10.....	1537	30 TAC §§115.421-115.423, 115.425-115.427, 115.429.....	1564
22 TAC §3.21.....	1537	30 TAC §§115.433, 115.435-115.437, 115.439.....	1567
22 TAC §3.28.....	1537	30 TAC §§115.442, 115.443, 115.445, 115.446.....	1567
22 TAC §3.51.....	1538	30 TAC §§115.512, 115.513, 115.517.....	1567
22 TAC §3.82.....	1538	30 TAC §§115.541-115.543, 115.546, 115.547, 115.549.....	1567
22 TAC §3.106.....	1538	30 TAC §§115.600, 115.614, 115.617.....	1568
Interior Design		Control of Air Pollution by Permits for New Construction or Modification	
22 TAC §5.10.....	1538	30 TAC §116.10.....	1580
22 TAC §5.91.....	1539	30 TAC §§116.112, 116.116-116.118.....	1581
22 TAC §5.93.....	1539	30 TAC §116.117.....	1583
22 TAC §5.114.....	1539	Texas Low-Level Radioactive Waste Disposal Authority	
Texas State Board of Examiners of Psychologists		General Provisions	
Applications		31 TAC §449.71.....	1583
22 TAC §463.6.....	1540	31 TAC §§449.81-449.87.....	1584
Rules of Practice		Planning and Implementation Fees	

Table of Contents

February 27, 1996, Texas Register

31 TAC §§450.1-450.4.....	1584
Comptroller of Public Accounts	
Tax Administration	
34 TAC §3.295.....	1584
34 TAC §3.296.....	1585
Property Tax Administration	
34 TAC §9.405.....	1588
34 TAC §9.801.....	1588
Texas Department of Public Safety	
Commercial Driver's License	
37 TAC §§16.103-16.105.....	1588
Equipment and Vehicle Standards	
37 TAC §21.7.....	1589
Crime Records	
37 TAC §§27.51-27.64.....	1589
37 TAC §§27.71-27.76.....	1590
Texas Commission for the Blind	
Vocational Rehabilitation Program	
40 TAC §§163.25, 163.28, 163.32	1590
OPEN MEETINGS	
State Office of Administrative Hearings	
Wednesday, June 19, 1996, 10:00 a.m.....	1592
Monday, March 25, 1996, 10:00 a.m.....	1592
Texas Department of Agriculture	
Monday, February 26, 1996, 1:30 p.m. (Rescheduled from February 12, 1996.)	1592
Tuesday, March 5, 1996, 1:15 p.m.....	1592
Wednesday, March 6, 1996, 9:00 a.m.....	1593
Thursday, March 28, 1996, 9:00 a.m.....	1593
Monday, March 18, 1996, 1:00 p.m.....	1593
Texas Commission on Alcohol and Drug Abuse	
Tuesday, February 27, 1996, 10:30 a.m.....	1593
Wednesday, February 28, 1996, 9:00 a.m.....	1593
Tuesday, March 5, 1996, 1:00 p.m.....	1593
Texas Alcoholic Beverage Commission	
Monday, February 26, 1996, 1:30 p.m.....	1593
Texas Commission on the Arts	
Friday, March 8, 1996, 10:00 a.m.....	1594
The State Bar of Texas	
Friday, February 23, 1996, 1:30 p.m.....	1594

Texas Bond Review Board	
Thursday, February 22, 1996, 10:00 a.m.....	1594
Coastal Coordination Council	
February 17, 1996, 8:30 a.m.....	1595
Conservatorship Board	
Monday, February 26, 1996, 1:30 p.m.....	1595
Texas Department of Criminal Justice	
Tuesday, March 5, 1996, 10:00 a.m.....	1595
State Board of Dental Examiners	
Friday-Saturday, March 8-9, 1996, 8:00 a.m.....	1595
Texas Council on Purchasing from People with Disabilities	
Tuesday, February 27, 1996, 10:00 a.m.....	1596
Texas Education Agency	
Monday, February 26, 1996, 8:30 a.m.....	1596
Texas State Board of Registration for Professional Engineers	
Friday, March 1, 1996, 10:00 a.m.....	1596
General Services Commission	
Tuesday, February 27, 1996, 9:30 a.m.....	1596
Texas Department of Health	
Saturday-Sunday, March 9-10, 1996, 1:00 p.m. and 8:30 a.m., respectively. (The meeting will be continued on Sunday only if necessary.).....	1596
Sunday, March 10, 1996, 10:00 a.m.....	1597
Texas Department of Health	
Thursday, February 12, 1996, 9:00 a.m.....	1597
Thursday, February 22, 1996, 10:00 a.m.....	1597
Thursday, February 22, 1996, 11:30 a.m.....	1597
Thursday, February 22, 1996, 1:30 p.m.....	1597
Thursday, February 22, 1996, 4:00 p.m.....	1598
Friday, February 23, 1996, 8:00 a.m.....	1598
Friday, February 23, 1996, 9:30 a.m.....	1598
Friday, February 23, 1996, 10:00 a.m.....	1598
Friday, February 23, 1996, 1:00 p.m.....	1598
Statewide Health Coordinating Council	
Thursday, February 29, 1996, 2:30 p.m.....	1599
Texas Department of Housing and Community Affairs	
Monday-Tuesday, February 26-27, 1996, 9:30 a.m.....	1599
Texas State Affordable Housing Corporation	
Monday, February 26, 1996, 2:00 p.m.....	1599

Table of Contents

February 27, 1996, Texas Register

Texas Department of Human Services

Tuesday, February 27, 1996, 1:00 p.m.....	1599
Tuesday, February 27, 1996, 1:00 p.m.....	1599

Texas Incentive and Productivity Commission

Friday, March 1, 1996, 8:30 a.m.....	1600
--------------------------------------	------

Texas Department of Insurance

Thursday, March 7, 1996, 9:00 a.m.....	1600
Thursday, March 7, 1996, 1:00 p.m.....	1600
Friday, March 8, 1996, 2:00 p.m.....	1600

Board of Law Examiners

Saturday-Sunday, February 24-25, 1996, 8:30 a.m.....	1600
--	------

Texas State Board of Medical Examiners

Thursday, February 22, 1996, 9:00 a.m.....	1601
Thursday, February 22, 1996, 10:00 a.m.....	1601
Thursday, February 22, 1996, 1:30 p.m.....	1601

Texas Board of Licensure for Professional Medical Physicians

Wednesday, February 28, 1996, 8:00 a.m.....	1601
Wednesday, February 28, 1996, 10:30 a.m.....	1601

Texas National Research Laboratory Commission

Wednesday, February 28, 1996, 11:00 a.m.....	1602
--	------

Texas Natural Resource Conservation Commission

Thursday, February 22, 1996, 1:30 p.m.....	1602
Wednesday, February 28, 1996, 9:30 a.m.....	1602
Wednesday, February 28, 1996, 10:00 a.m.....	1602
Friday, March 8, 1996, 10:00 a.m.....	1602
Monday, March 18, 1996, 10:00 a.m.....	1603
Monday, May 6, 1996, 1:30 p.m.....	1603

Texas State Board of Physical Therapy Examiners

Friday, March 1, 1996, 10:00 a.m.....	1603
Friday-Saturday, March 1-2, 1996, 6:00 p.m.....	1603
Saturday, March 2, 1996, 9:00 a.m.....	1603

Texas State Board of Plumbing Examiners

Wednesday, February 28, 1996, 9:00 a.m.....	1604
Wednesday, February 28, 1996, 1:00 p.m.....	1604

Public Utility Commission of Texas

Thursday, February 22, 1996, 9:00 a.m.....	1604
Thursday, February 22, 1996, 9:00 a.m.....	1604

Railroad Commission of Texas

Friday, February 23, 1996, 2:00 p.m.....	1604
--	------

Tuesday, February 27, 1996, 9:30 a.m.....	1605
---	------

Texas Residential Property Insurance Market Assistance Program

Monday, February 26, 1996, 9:15 a.m. (This meeting will only be held if the Executive Committee does not complete its business on February 23, 1996.)	1605
---	------

State Securities Board

Tuesday, February 27, 1996, 9:30 a.m.....	1605
---	------

Sunset Advisory Commission

Wednesday, February 28, 1996, 9:00 a.m.....	1605
---	------

Teacher Retirement System of Texas

Thursday, February 22, 1996, 2:30 p.m.....	1605
Friday, February 23, 1996, 8:00 a.m.....	1605
Friday, February 23, 1996, 9:30 a.m.....	1606

The Texas State University System

Wednesday-Friday, February 21-23, 1996, 5:00 p.m., 8:00 a.m., and 8:30 a.m., respectively.....	1606
Friday, February 23, 1996, 11:00 a.m.....	1606
Friday, February 23, 1996, 11:30 a.m.....	1606
Friday, February 23, 1996, 1:00 p.m.....	1607

Texas Tech University and Texas Tech University Health Sciences Center

Friday, February 23, 1996, 3:00 p.m.....	1607
Friday, February 23, 3:00 p.m.....	1607

Texas State Treasury

Tuesday, February 27, 1996, 9:00 a.m.....	1607
---	------

University Interscholastic League

Friday, February 16, 1996, 3:00 p.m.....	1607
Wednesday, February 21, 1996, 9:00 a.m.....	1607

University of North Texas/University of North Texas Health Science Center

Thursday, February 22, 1996, 11:15 a.m.....	1608
---	------

University of Texas Health Science Center at San Antonio

Wednesday, February 28, 1996, 3:00 p.m.....	1608
---	------

University of Texas M. D. Anderson Cancer Center

Tuesday, February 20, 1996, 9:00 a.m.....	1608
---	------

Texas Workers' Compensation Insurance Fund

Tuesday, February 27, 1996, 8:00 p.m.....	1508
Wednesday, February 28, 1996, 1:00 p.m.....	1608

Texas Workers' Compensation Insurance Facility

February 29, 1996, 9:45 a.m.....	1608
----------------------------------	------

Texas Workforce Commission

Table of Contents
February 27, 1996, Texas Register

Tuesday, February 27, 1996, 9:00 a.m.....	1609	Texas Department of Health	
Regional Meetings		Public Hearing.....	1623
Meetings Filed February 14, 1996.....	1609	Texas Department of Insurance	
Meetings Filed February 15, 1996.....	1609	Insurer Services.....	1623
Meetings Filed February 16, 1996.....	1610	Notice of Public Hearing.....	1623
Meetings Filed February 19, 1996.....	1611	Insurer Services.....	1623
Meetings Filed February 20, 1996.....	1612	Insurer Services.....	1624
Meetings Filed February 21, 1996.....	1612	Third Party Administrator Applications.....	1624
IN ADDITION		Extension of Consultant Proposal Request.....	1624
Texas Department of Commerce		Texas Natural Resource Conservation Commission	
Request for Proposals.....	1615	Provisionally-Issued Temporary Permits to Appropriate State Wa- ter.....	1624
State Council on Competitive Government		Notice of Commission Action.....	1625
Notice of Vendor Forums.....	1617	Notice of Opportunity to Comment on Permitting Actions.....	1625
Comptroller of Public Accounts		Applications for Sludge Registrations.....	1626
Local Sales Tax Changes Effective April 1, 1996.....	1617	Enforcement Orders.....	1626
Office of Consumer Credit Commissioner		Notice of Applications for Waste Disposal Permits.....	1626
Interpretations.....	1618	Notice of Application for Municipal Solid Waste Management Facility Permits for the Week Ending February 16, 1996.....	1627
State Employee charitable Campaign Policy Committee		Public Notice.....	1628
Notice of Application.....	1619	Texas Department of Public Safety	
Texas Department of Health		Regulations Governing Transportation of Hazardous Materials and Transportation Safety-§3.59, §3.62, Public Hearing Notice.....	1628
Licensing Actions for Radioactive Materials.....	1619	Notice of Application to Amend Certificate of Convenience and Necessity.....	1629
Notice Of Rescission of Order.....	1621	Railroad Commission of Texas	
Request for Proposals.....	1621	Notice of Intent to Reclaim Abandoned Mine Lands at the Butler Weddington Area 2B Abandoned Uranium Mine in Karnes County, Texas.....	1629
Notice of Emergency Cease and Desist Order.....	1622		
Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation.....	1622		
Notice Of Rescission of Order.....	1622		
Notice Of Revocation of Certificates of Registration.....	1622		
Notice of Revocation of Radioactive Material Licenses.....	1623		

February - December 1996 Publication Schedule

The following is the February-December 1996 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. Generally, deadlines for a Tuesday edition of the *Texas Register* are Monday and Wednesday of the previous week, and deadlines for a Friday edition are Wednesday of the previous week and Monday of the week of publication. No issues will be published on February 23, March 15, November 8, December 3, and December 31. An asterisk beside a publication date indicates that the deadlines have been moved because of 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.
9 Friday, February 2	Wednesday, January 24	Monday, January 29	Monday, January 29
10 Tuesday, February 6	Monday, January 29	Wednesday, January 31	Wednesday, January 31
11 Friday, February 9	Wednesday, January 31	Monday, February 5	Monday, February 5
12 Tuesday, February 13	Monday, February 5	Wednesday, February 7	Wednesday, February 7
13 Friday, February 16	Wednesday, February 7	Monday, February 12	Monday, February 12
14 Tuesday, February 20	Monday, February 12	Wednesday, February 14	Wednesday, February 14
Friday, February 23	<i>No Issue Published</i>		
15 Tuesday, February 27	*Tuesday, February 20	Wednesday, February 21	Wednesday, February 21
16 Friday, March 1	Wednesday, February 21	Monday, February 26	Monday, February 26
17 Tuesday, March 5	Monday, February 26	Wednesday, February 28	Wednesday, February 28
18 Friday, March 8	Wednesday, February 28	Monday, March 4	Monday, March 4
19 Tuesday, March 12	Monday, March 4	Wednesday, March 6	Wednesday, March 6
Friday, March 15	<i>No Issue Published</i>		
20 Tuesday, March 19	Monday, March 11	Wednesday, March 13	Wednesday, March 13
21 Friday, March 22	Wednesday, March 13	Monday, March 18	Monday, March 18

22 Tuesday, March 26	Monday, March 18	Wednesday, March 20	Wednesday, March 20
23 Friday, March 29	Wednesday, March 20	Monday, March 25	Monday, March 25
24 Tuesday, April 2	Monday, March 25	Wednesday, March 27	Wednesday, March 27
25 Friday, April 5	Wednesday, March 27	Monday, April 1	Monday, April 1
Tuesday, April 9	<i>First Quarterly Index</i>		
26 Friday, April 12	Wednesday, April 3	Monday, April 8	Monday, April 8
27 Tuesday, April 16	Monday, April 8	Wednesday, April 10	Wednesday, April 10
28 Friday, April 19	Wednesday, April 10	Monday, April 15	Monday, April 15
29 Tuesday, April 23	Monday, April 15	Wednesday, April 17	Wednesday, April 17
30 Friday, April 26	Wednesday, April 17	Monday, April 22	Monday, April 22
31 Tuesday, April 30	Monday, April 22	Wednesday, April 24	Wednesday, April 24
32 Friday, May 3	Wednesday, April 24	Monday, April 29	Monday, April 29
33 Tuesday, May 7	Monday, April 29	Wednesday, May 1	Wednesday, May 1
34 Friday, May 10	Wednesday, May 1	Monday, May 6	Monday, May 6
35 Tuesday, May 14	Monday, May 6	Wednesday, May 8	Wednesday, May 8
36 Friday, May 17	Wednesday, May 8	Monday, May 13	Monday, May 13
37 Tuesday, May 21	Monday, May 13	Wednesday, May 15	Wednesday, May 15
38 Friday, May 24	Wednesday, May 15	Monday, May 20	Monday, May 20
39 Tuesday, May 28	Monday, May 20	Wednesday, May 22	Wednesday, May 22
40 Friday, May 31	Wednesday, May 22	*Friday, May 24	*Friday, May 24
41 Tuesday, June 4	*Tuesday, May 28	Wednesday, May 29	Wednesday, May 29
42 Friday, June 7	Wednesday, May 29	Monday, June 3	Monday, June 3
43 Tuesday, June 11	Monday, June 3	Wednesday, June 5	Wednesday, June 5
44 Friday, June 14	Wednesday, June 5	Monday, June 10	Monday, June 10
45 Tuesday, June 18	Monday, June 10	Wednesday, June 12	Wednesday, June 12
46 Friday, June 21	Wednesday, June 12	Monday, June 17	Monday, June 17

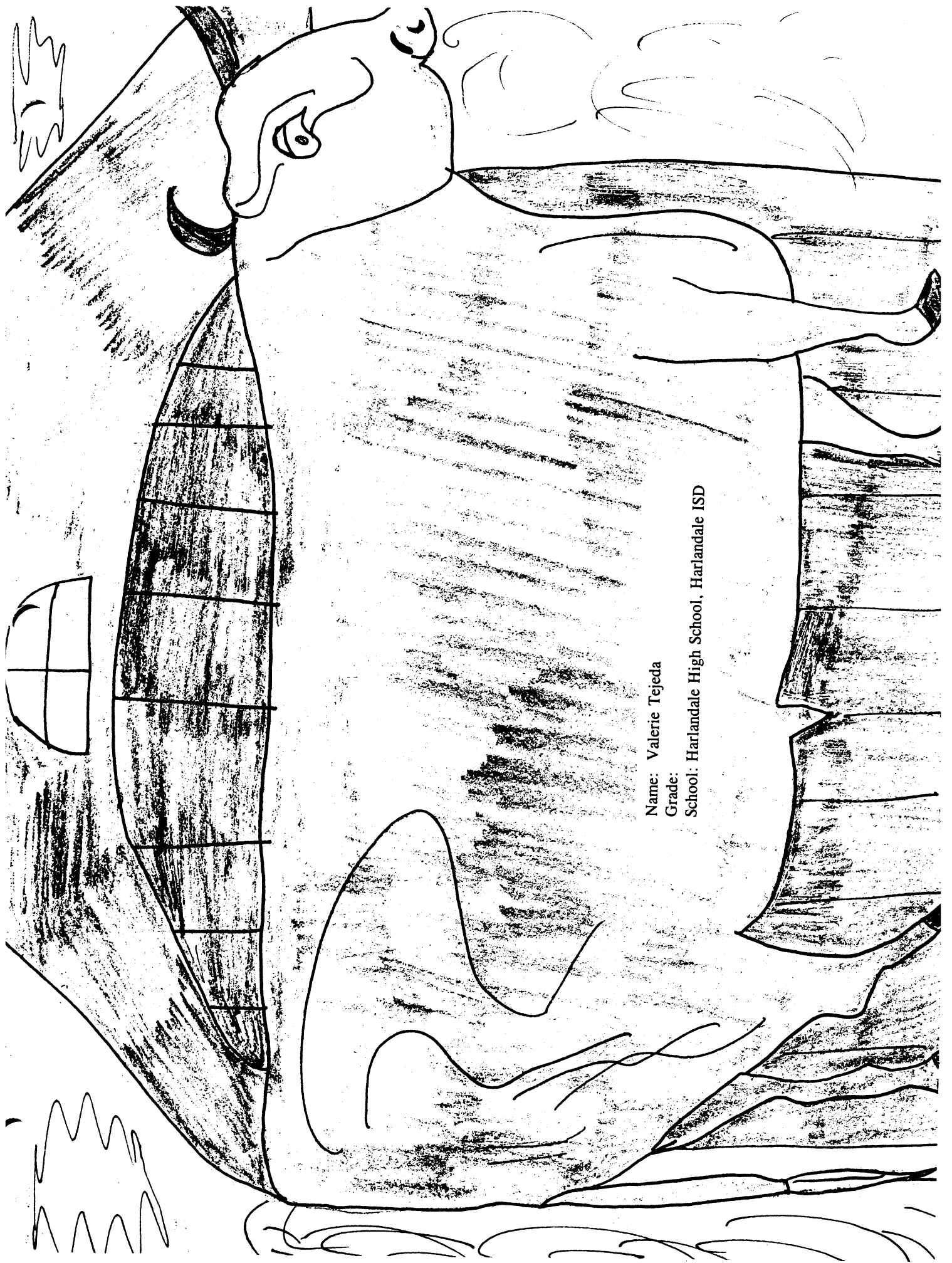
47 Tuesday, June 25	Monday, June 17	Wednesday, June 19	Wednesday, June 19
48 Friday, June 28	Wednesday, June 19	Monday, June 24	Wednesday, June 24
49 Tuesday, July 2	Monday, June 24	Wednesday, June 26	Wednesday, June 26
50 Friday, July 5	Wednesday, June 26	Monday, July 1	Monday, July 1
51 Tuesday, July 9	Monday, July 1	Wednesday, July 3	Wednesday, July 3
Friday, July 12	<i>2nd Quarterly Index</i>		
52 Tuesday, July 16	Monday, July 8	Wednesday, July 10	Wednesday, July 10
53 Friday, July 19	Wednesday, July 10	Monday, July 15	Monday, July 15
54 Tuesday, July 23	Monday, July 15	Wednesday, July 17	Wednesday, July 17
55 Friday, July 26	Wednesday, July 17	Monday, July 22	Monday, July 22
56 Tuesday, July 30	Monday, July 22	Wednesday, July 24	Wednesday, July 24
57 Friday, August 2	Wednesday, July 24	Monday, July 29	Monday, July 29
58 Tuesday, August 6	Monday, July 29	Wednesday, July 31	Wednesday, July 31
59 Friday, August 9	Wednesday, July 31	Monday, August 5	Monday, August 5
60 Tuesday, August 13	Monday, August 5	Wednesday, August 7	Wednesday, August 7
61 Friday, August 16	Wednesday, August 7	Monday, August 12	Monday, August 12
62 Tuesday, August 20	Monday, August 12	Wednesday, August 14	Wednesday, August 14
63 Friday, August 23	Wednesday, August 14	Monday, August 19	Monday, August 19
64 Tuesday, August 27	Monday, August 19	Wednesday, August 21	Wednesday, August 21
65 Friday, August 30	Wednesday, August 21	Monday, August 26	Monday, August 26
66 Tuesday, September 3	Monday, August 26	Wednesday, August 28	Wednesday, August 28
67 Friday, September 6	Wednesday, August 28	*Friday, August 30	*Friday, August 30
68 Tuesday, September 10	*Tuesday, September 3	Wednesday, September 4	Wednesday, September 4
69 Friday, September 13	Wednesday, September 4	Monday, September 9	Monday, September 9
70 Tuesday, September 17	Monday, September 9	Wednesday, September 11	Wednesday, September 11
71 Friday, September 20	Wednesday, September 11	Monday, September 16	Monday, September 16

72 Tuesday, September 24	Monday, September 16	Wednesday, September 18	Wednesday, September 18
73 Friday, September 27	Wednesday, September 18	Monday, September 23	Monday, September 23
74 Tuesday, October 1	Monday, September 23	Wednesday, September 25	Wednesday, September 25
75 Friday, October 4	Wednesday, September 25	Monday, September 30	Monday, September 30
Tuesday, October 8	<i>Third Quarterly Index</i>		
76 Friday, October 11	Wednesday, October 2	Monday, October 7	Monday, October 7
77 Tuesday, October 15	Monday, October 7	Wednesday, October 9	Wednesday, October 9
78 Friday, October 18	Wednesday, October 9	Monday, October 14	Monday, October 14
79 Tuesday, October 22	Monday, October 14	Wednesday, October 16	Wednesday, October 16
80 Friday, October 25	Wednesday, October 16	Monday, October 21	Monday, October 21
81 Tuesday, October 29	Monday, October 21	Wednesday, October 23	Wednesday, October 23
82 Friday, November 1	Wednesday, October 23	Monday, October 28	Monday, October 28
83 Tuesday, November 5	Monday, October 28	Wednesday, October 30	Wednesday, October 30
Friday, November 8	<i>No Issue Published</i>		
84 Tuesday, November 12	Monday, November 4	Wednesday, November 6	Wednesday, November 6
85 Friday, November 15	Wednesday, November 6	*Friday, November 8	*Friday, November 8
86 Tuesday, November 19	*Tuesday, November 12	Wednesday, November 13	Wednesday, November 13
87 Friday, November 22	Wednesday, November 13	Monday, November 18	Monday, November 18
88 Tuesday, November 26	Monday, November 18	Wednesday, November 20	Wednesday, November 20
89 Friday, November 29	Wednesday, November 20	Monday, November 25	Monday, November 25
Tuesday, December 3	<i>No Issue Published</i>		
90 Friday, December 6	Wednesday, November 27	Monday, December 2	Monday, December 2
91 Tuesday, December 10	Monday, December 2	Wednesday, December 4	Wednesday, December 4
92 Friday, December 13	Wednesday, December 4	Monday, December 9	Monday, December 9
93 Tuesday, December 17	Monday, December 9	Wednesday, December 11	Wednesday, December 11
94 Friday, December 20	Wednesday, December 11	Monday, December 16	Monday, December 16

95 Tuesday, December 24	Monday, December 16	Wednesday, December 18	Wednesday, December 18
96 Friday, December 27	Wednesday, December 18	Monday, December 23	Monday, December 23
Tuesday, December 31	<i>No Issue Published</i>		

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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 21 (1996) is cited as follows: 21 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 "21 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 21 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 26, April 9, July 12, and October 8, 1996). 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 §3.704950, 1820

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

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