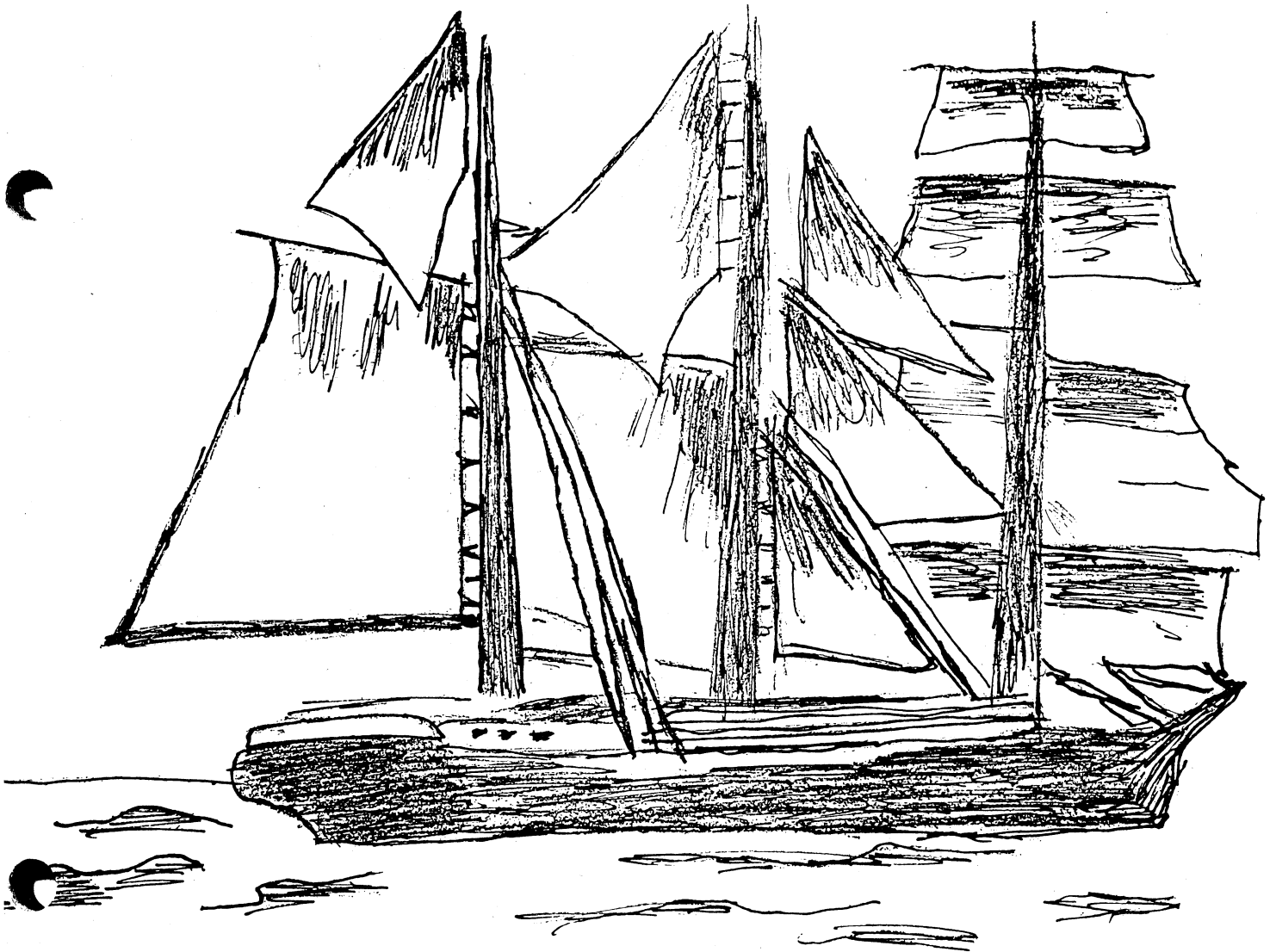

TEXAS REGISTER

Volume 21 Number 84 November 12, 1996

Page 11023-11130



This month's front cover artwork:

Artist: Nick Davis

5th grade

Copeland Intermediate, Huffman 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.

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.

Texas Register, ISSN 0362-4781, is published twice weekly 100 times a year except February 23, March 15, August 2, December 3, and December 31, 1996. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: printed, one year \$95, six month \$75. Costs for diskette and online versions vary by number of users (see back cover for rates). Single copies of most issues for the current year are available at \$7 per copy in printed or electronic format.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* Director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodical Postage is paid at Austin, Texas.

POSTMASTER: Please send form 3579 changes to the *Texas Register*, P.O. Box 13824, Austin, TX 78711-3824.

**TEXAS
REGISTER**

a section of the
Office of the Secretary of State
P.O. Box 13824
Austin, TX 78711-3824
(800) 226-7199
(512) 463-5561
FAX (512) 463-5569

Secretary of State - Antonio O. Garza, Jr.
Director - Dan Procter
Assistant Director - Dee Wright
Receptionist - Cam Sorrell

Circulation/Marketing
Jill S. Ledbetter
Liz Stern

Texas Administrative Code
Dana Blanton
Daneane Jarzombek

Texas Register
Carla Carter
Ann Franklin
Roberta Knight
Jamie McCornack
Kelly Ramsey
Mimi Sanchez
Patty Webster
Becca Williams

Technical Support
Eric Bodenschatz

IN THIS ISSUE

PROPOSED RULES

Texas Department of Banking

Corporate Activities

7 TAC §15.4.....	11029
7 TAC §15.8.....	11030

Texas Savings and Loan Department

Loans and Investments

7 TAC §65.17.....	11031
-------------------	-------

Applications

7 TAC §75.81.....	11033
7 TAC §75.89.....	11034

Loans, Investments, Savings and Deposits

7 TAC §77.31.....	11036
-------------------	-------

Miscellaneous

7 TAC §79.99.....	11037
7 TAC §79.104.....	11038

Railroad Commission of Texas

Oil and Gas Division

16 TAC §§3.49, 3.52, 3.53.....	11039
--------------------------------	-------

Texas State Board of Registration for Professional Engineers

Practice and Procedure

22 TAC §131.101.....	11041
22 TAC §131.155.....	11042

Texas Appraiser Licensing and Certification Board

Practice and Procedure

22 TAC §§151.1-151.30.....	11042
----------------------------	-------

Rules Relating to Practice and Procedure

22 TAC §§151.1-151.8.....	11043
22 TAC §§151.9-151.14.....	11045
22 TAC §§151.15-151.19, 151.30.....	11046

Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §153.5, §§153.9-153.11, §153.13, §153.15, §§153.17-153.20, §153.25, §153.27, §153.31.....	11047
22 TAC §153.23, §153.29, §153.35.....	11055

Rules Relating to Appraisals

22 TAC §155.1.....	11055
--------------------	-------

Rules Relating to Professional Conduct and Ethics

22 TAC §§157.1-157.5.....	11056
---------------------------	-------

Texas Department of Health

Medicaid Program Appeals Procedures

25 TAC §36.1, §36.2.....	11057
25 TAC §36.11, §36.12.....	11057
34 TAC §§36.21-36.23.....	11058

Radiation Control

25 TAC §289.120.....	11060
25 TAC §289.253.....	11060

Texas Department of Insurance

Property and Casualty Insurance

28 TAC §5.1201.....	11067
---------------------	-------

Texas Water Development Board

Financial Assistance Programs

31 TAC §363.505.....	11070
----------------------	-------

Edwards Aquifer Authority

Filing and Processing of Permit Applications

31 TAC §§701.35-701.35.....	11078
31 TAC 31 TAC §§701.51-70.59.....	11078
31 TAC §§701.71-701.77.....	11080
31 TAC §§701.91-701.102.....	11081
31 TAC §§701.121-701.131.....	11083
31 TAC §701.141-701.147.....	11086

Comptroller of Public Accounts

Funds Management (Fiscal Affairs)

34 TAC §5.140.....	11087
34 TAC §§5.141-5.143.....	11088

Property Tax Administration

34 TAC §§ 9.1-9.14.....	11088
34 TAC §9.109.....	11089

Texas Department of Transportation

Employment Practices

43 TAC §§4.51, 4.55, 4.56.....	11093
--------------------------------	-------

Motor Carriers

43 TAC §18.2.....	11095
-------------------	-------

ADOPTED RULES

State Finance Commission

Banking Section

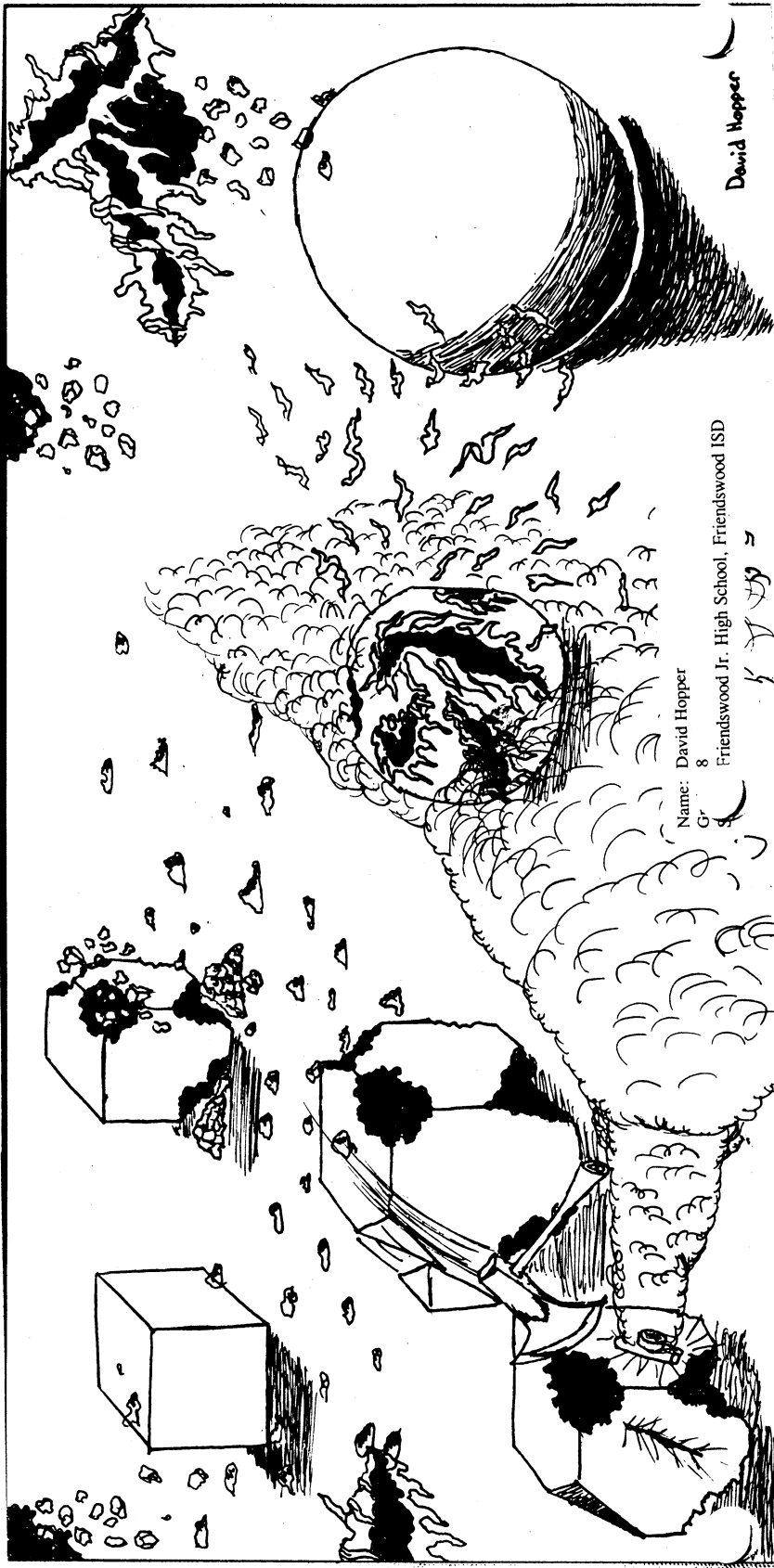
7 TAC §3.7.....	11097
7 TAC §3.22.....	11097
7 TAC §3.61.....	11098

7 TAC §3.91.....	11098	Thursday, November 14, 1996, 1:30 p.m.....	11112
7 TAC §3.92.....	11099	Thursday, November 14, 1996, 4:00 p.m.....	11112
Currency Exchange		Thursday, November 14, 1996, 4:30 p.m.....	11113
7 TAC §4.10.....	11100	Friday, November 15, 1996, 8:30 a.m.....	11113
Texas Savings and Loan Department		The Daughters of the Republic of Texas, Inc.	
Savings and Deposit Accounts		Friday, November 22, Saturday, November 23, 1996, 8:30 a.m.	11113
7 TAC §67.17.....	11102	State Board of Dental Examiners	
Loans, Investments, Savings and Deposits		Friday, November 15, 1996, 9:30 a.m.....	11114
7 TAC §77.91.....	11102	Texas Planning Council for Developmental Disabilities	
7 TAC §77.115.....	11103	Thursday, November 7, 1996, 9:00 a.m.....	11114
Texas Department of Housing and Community Affairs		Advisory Commission on State Emergency Communica-	
Administration		tions	
10 TAC §1.2.....	11103	Tuesday, November 12, 1996, 8:30 a.m.....	11114
10 TAC §1.13.....	11103	Tuesday, November 12, 1996, 9:30 a.m.....	11114
TABLES AND GRAPHICS		Tuesday, November 12, 1996, 1:00 p.m.....	11115
Tables and Graphics		Tuesday, November 12, 1996, 2:00 p.m.....	11115
Tables and Graphics.....	11105	Tuesday, November 12, 1996, 3:30 p.m.....	11115
OPEN MEETINGS		Wednesday, November 13, 1996, 8:30 a.m.....	11115
State Office of Administrative Hearings		State Employee Charitable Campaign	
Friday, November 15, 1996, 10:00 a.m.....	11109	Wednesday, November 13, 1996, 3:00 p.m.....	11116
Texas Department on Aging (TDoA)		Texas Funeral Service Commission	
Wednesday, November 13, 1996, 8:00 a.m.....	11109	Tuesday, November 12, 1996, 2:00 p.m.....	11116
Wednesday, November 13, 1996, 9:30 a.m.....	11109	Thursday, November 14, 1996, 8:30 a.m.....	11116
Wednesday, November 13, 1996, 3:00 p.m., Thursday, November	11109	Commission on Jail Standards	
14, 1996, 9:30 a.m., and 1:30 p.m.....	11109	Friday, November 15, 1996, 9:00 a.m.....	11116
Thursday, November 14, 1996, 8:00 a.m.....	11110	Legislative Budget Board	
Texas Commission on Alcohol and Drug Abuse		Wednesday, November 20, 1996, 9:30 a.m.....	11117
Wednesday, November 13, 1996, 1:00 p.m.....	11110	Texas Mental Health and Mental Retardation Board	
Wednesday, November 13, 1996, 1:30 p.m.....	11110	Wednesday, November 13, 1996, 9:45 a.m.....	11117
Texas Bond Review Board		Midwestern State University	
Tuesday, November 12, 1996, 10:00 a.m.....	11110	Friday, November 8, 1996, 9:00 a.m.....	11117
Texas Department of Commerce		Texas Natural Resource Conservation Commission	
Wednesday, November 13, 1996, 1:00 p.m.....	11111	Tuesday, December 17, 1996, 9:00 a.m.....	11117
Credit Union Department		Board of Nurse Examiners	
Friday, November 15, 1996, 12:30 p.m.....	11111	Thursday and Friday, November 21 and 22, 1996, 8:30 a.m.....	11117
Friday, November 15, 1996, 10:00 a.m.....	11111	Texas Parks and Wildlife Department	
Texas Department of Criminal Justice		Tuesday, November 19, 1996, 1:00 p.m.....	11118
Thursday, November 14, 1996, 9:00 a.m.....	11111	Public Utility Commission of Texas	
Thursday, November 14, 1996, 10:00 a.m.....	11112	Tuesday, November 12, 1996, 10:30 a.m.....	11118
Thursday, November 14, 1996, 11:00 a.m.....	11112	Thursday, November 21, 1996, 9:00 a.m.....	11118

Friday, November 22, 1996, 9:00 a.m.....	11118	Notice of Public Hearing.....	11123
Railroad Commission of Texas		Texas Department of Housing and Community Affairs	
Tuesday, November 12, 1996, 9:30 a.m.....	11118	Notice of Amendment to the 1996 State of Texas Consolidated Plan.....	11124
Texas Tech University Health Sciences Center and Texas Tech University		Texas State Library and Archives Commission	
November 8, 1996, 8:30 a.m.....	11118	Nominations for Vacancy on Local Government Records Committee.....	11124
November 8, 1996, 10:00 a.m.....	11119	Texas Department of Mental Health and Mental Retardation	
November 8, 1996, 10:00 a.m.....	11119	Notice of Public Hearing.....	11124
November 8, 1996, 10:00 a.m.....	11119	Texas Natural Resource Conservation Commission	
November 8, 1996, 2:00 p.m.....	11120	Notice of Award.....	11125
Board for Lease of University Lands		Public Notices.....	11125
Tuesday, November 12, 1996, 10:00 a.m.....	11120	Public Utility Commission of Texas	
The University of Texas System		Notice of Application to Amend Certificate of Convenience and Necessity.....	11127
Wednesday, November 13, 1996, 3:00 p.m., Thursday, November 14, 1996, 9:30 a.m.....	11121	Notice Of Filing of Request for Arbitration to Establish Interconnection Agreement.....	11127
Texas Workforce Commission		Telecommunications Infrastructure Fund Board	
Tuesday, November 12, 1996, 10:00 a.m.....	11121	Master Plan.....	11127
Sunday, November 17, 1996, 2:00 p.m.....	11121	Texas Department of Transportation	
Monday, November 18, 1996, 9:00 a.m.....	11121	Request for Proposals.....	11127
Regional Meetings		Texas Water Development Board	
IN ADDITION		Applications Received.....	11128
Texas Commission on Alcohol and Drug Abuse		Texas Workers' Compensation Commission	
Consultant Services Contract Award.....	11123	Public Hearing on Proposed Amendment and New Rules.....	11130
Comptroller of Public Accounts			
Prepaid Higher Education Tuition Board Notice of Enrollment Period.....	11123		
Texas Health and Human Services Commission			



Name: Taylor Springle
Grade: 8
School: Friendswood Jr. High School, Friendswood ISD



Name: David Hopper
Grade: 8
School: Friendswood Jr. High School, Friendswood ISD

David Hopper

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 7. BANKING AND SECURITIES

Part II. Texas Department of Banking

Chapter 15. Corporate Activities

Subchapter A. Fees and Other Provisions of General Applicability

7 TAC §15.4

The Finance Commission of Texas (the commission) proposes an amendment to §15.4, concerning required information and abandoned filings. Only subsection (d) of this section is proposed to be amended. The proposed amendment corrects a typographical error that resulted in an erroneous cross reference.

Subsection (d) provides that the banking commissioner (the commissioner) may determine a filing to be abandoned if certain information is not filed within time frames specified in "subsection (b)." In fact, subsection (c) sets out applicable time limits for providing this information; subsection (b) pertains solely to notice given to an applicant regarding the completeness or deficiencies of a filing.

Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, has determined that, for each year of the first five years the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Gillespie 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 its adoption will be an accurate and reliable statement of the law pertaining to abandoned filings under The Texas Banking Act, Texas Civil Statutes, articles 342-1.001 et seq. (the Act). No economic cost will be incurred by a person required to comply with this section, and there will be no effect on small businesses.

Comments on the proposed section may be submitted in writing to Sharon Gillespie, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The amendment is proposed pursuant to the Texas Banking Act, §1.012(a), which provides that the commission may adopt rules "to accomplish the purposes of this Act," including rules that "implement and clarify" the Act.

As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state. Texas Banking Act, §§3.002-3.006, 3.101-3.104, 3.201-3.205, 3.301, 3.302, 3.401, 3.402, 3.405, 3.501, 3.502, 4.002(a), 4.005, 4.107, 4.201, 4.205, 4.207, 5.001(b), 5.102, 5.106(b), 5.201(a), 5.103, 7.101(a)(3), 7.102, 7.105, 8.004, 8.206, 8.301, 8.304, 9.004, and 9.006 are affected by this amendment.

§15.4. Required Information and Abandoned Filings.

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

(d) Abandoned Filing. The banking commissioner may determine any submitted or accepted filing to be abandoned, without prejudice to the right to refile, if the information required by the Act, this chapter, or any rule or regulation adopted pursuant to the Act, or additional requested information, is not furnished within the time period specified by subsection (c) [(b)] of this section or as requested by the banking commissioner in writing to the person or entity making the submission. The banking commissioner may determine a submitted or accepted filing for which fees required by the Act or by this chapter are not paid within 30 days of receipt of the initial submission to be abandoned.

(e) (No change.)

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615905

Everette D. Jobe
General Counsel

Texas Department of Banking

Proposed date of adoption: January 24, 1997

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

◆ ◆ ◆
7 TAC §15.8

The Finance Commission (the commission) proposes new §15.8, concerning the filing of certain corporate forms under the Texas Banking Act (Texas Civil Statutes, Article 342-1.001 et seq), the Texas Business Corporation Act, and the Texas Miscellaneous Corporation Laws Act (Texas Civil Statutes, Article 1302-1.01 et seq). The commission may issue subsequent rules regarding corporate filings.

Texas Banking Act, §3.007, provides that the Texas Business Corporation Act and the Texas Miscellaneous Corporations Laws Act applies to a state bank to the extent not inconsistent with the Texas Banking Act or the proper business of a state bank, except that a reference in those Acts to the secretary of state means the banking commissioner unless the context requires otherwise; and the right of shareholders or participants to cumulative voting in the election of directors or managers exists only if granted by the state bank's articles of association.

The proposed new section specifies which corporate forms must be filed with the banking commissioner and with the secretary of state. The proposed new section also provides that state banks may utilize modified versions of forms promulgated by the secretary of state if the banking commissioner has not promulgated forms. Finally, the proposed new section also specifies which corporate forms are inapplicable to state banks and do not need to be filed with either the banking commissioner or the secretary of state.

Allen Barr, Assistant Division Director, Corporate Activities Division, Texas Department of Banking, has determined that, for each year of the first five years the section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Barr 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 its adoption will be the clarification of highly complex statutory standards to aid the industry in compliance. No economic cost will be incurred by a person required to comply with this section, and there will be no effect on small businesses. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by this section.

Comments on the proposed section may be submitted in writing to Jerry Sanchez, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed pursuant to the Texas Banking Act, §3.007, which authorizes the commission to adopt rules to limit or refine the applicability of subsection (a) to a state bank or to alter or supplement the procedures and requirements of the Texas Business Corporation Act applicable to an action taken under the Texas Banking Act. This section is also proposed under the Texas Banking Act, §1.012(a), which authorizes the commission to adopt rules to implement and clarify Act.

As required by the Texas Banking Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

The Texas Banking Act, §§3.002, 3.006-3.007, 3.101-3.104, and 3.301- 3.302, are affected by this new section.

§15.8. Corporate Filings.

(a) In accordance with the applicable provisions of Texas Civil Statutes, Article 342-1.001 et seq (the Act, §§1.001 et seq), the following corporate forms regarding a state bank, along with the applicable filing fees, must be filed with the banking commissioner:

- (1) articles of correction as authorized by Texas Civil Statutes, Article 1302-7.02;
- (2) articles of amendment under the Act, §3.101;
- (3) restated articles of association under the Act, §3.101;
- (4) restated articles of association with amendments under the Act, §3.101;
- (5) articles of merger under the Act, §3.301 et seq, as supplemented by the Texas Business Corporation Act (TBCA), Article 5.04;
- (6) articles of share exchange under TBCA, Article 5.02;
- (7) statements regarding delayed effective condition under TBCA, Article 10.03;
- (8) establishment of a series of shares by the board of directors under the Act, §3.102;
- (9) statement regarding a restriction on the transfer of shares under TBCA, Article 2.22(E);
- (10) statement of cancellation of redeemable shares under TBCA, Article 4.10(B);
- (11) statement of cancellation of treasury shares under TBCA, Article 4.11;
- (12) statement regarding the reduction of capital and surplus under TBCA, Article 4.12; and
- (13) abandonment of a merger or share exchange prior to its effective date under TBCA, Art. 5.03(I).

(b) For purposes of corporate filings with the banking commissioner under subsection (a) of this section, state banks may utilize a modified version of forms promulgated by the secretary of state if the banking commissioner or the finance commission has not promulgated an appropriate corporate form; however, the banking com-

missioner may require the submission of additional information. The modified corporate forms must:

- (1) specifically reference the applicable provisions of the Act;
- (2) change references from "corporation" to "association;" and
- (3) change the references to "stated capital" and similar terms defined in the TBCA to an appropriate reference to terms defined in the Act.

(c) In accordance with the applicable provisions of the TBCA, a state bank must file the following corporate forms with the secretary of state as instructed in the TBCA:

- (1) name registrations under TBCA, Article 2.07; and
- (2) assumed name certificates under TBCA, Article 2.05.

(d) The following corporate forms are inapplicable to state banks and are not required to be filed by a state bank with either the secretary of state or the banking commissioner:

- (1) changes of registered office or agent under TBCA, Article 2.10 or Article 2.10-1;
- (2) name reservations under TBCA, Article 2.06;
- (3) applications for reinstatement under TBCA, Article 10.01;
- (4) articles of dissolution under TBCA, Article 6.06; and
- (5) revocation of dissolution under TBCA, Article 6.05.

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 November 1, 1996.

TRD-9615906

Everette D. Jobe

General Counsel

Texas Department of Banking

Proposed date of adoption: January 24, 1997

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



Part IV. Texas Savings and Loan Department

Chapter 65. Loans and Investments

7 TAC §65.17

The Finance Commission of Texas proposes an amendment to §65.17, regarding loan documentation for savings and loan associations.

Section 65.17(a)(1)-(14) currently lists specific loan documentation requirements that, at a minimum, must be maintained by a savings and loan association to comply with the rule. While the documents listed are generally appropriate and should be used as a guideline for prudent lending, a rigid requirement that all documents listed be present for each loan is too restric-

tive and does not necessarily address all safety and soundness concerns. Currently, if an institution is missing any of the documents required by this section, it is technically in violation of the rule, even if the safety and soundness intent of the rule has been satisfied. Conversely, safety and soundness concerns may, in some cases, necessitate different or additional documentation beyond the documents listed in this section. For example, §65.17(a)(3) requires a financial statement from the borrower for all loans, ostensibly to justify the borrower's willingness and ability to repay the loan. However, the borrower's ability and willingness to repay a consumer or home loan may be better demonstrated with a verification of employment (not currently required) and a satisfactory credit report, rather than a financial statement.

With the expanded movement toward electronic banking and other technological advances, there is an increased industry need for flexibility to use alternative documentation criteria as long as safety and soundness standards are met.

The proposed amendment would require that the board of directors of each savings and loan association establish written policies for prudent underwriting and documentation standards consistent with safety and soundness. Section 65.17(a) sets forth criteria to be considered in such policies paralleling federal interagency standards for safety and soundness in all federally insured depository institutions. The policies and procedures established by the savings and loan association will be reviewed during each regular examination for their adequacy and appropriateness.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the amended section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section. Mr. Pledger estimates that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the section.

As required by the Act, §1.012(b), in proposing the amendment, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings associations with federal savings associations and other depository institutions in this state consistent with the safety and soundness of state savings associations and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which require the commission to adopt rules regarding enforcement and implementation of that statute.

The following are the articles and sections affected by the proposed amended section: Article 852a, Vernon's Texas Civil Statutes.

§65.17. *Loan Policies and Documentation.*

(a) Each association shall establish written policies approved by its board of directors establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; take adequate account of concentration of credit risk; and are appropriate to the size of the association and the scope of its lending activities. Loan documentation standards should be established and maintained to enable the association to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the association may substitute and still address the safety and soundness concern. [Prior to funding any type of secured loan (other than a loan fully secured by an account at the association and loans made pursuant to §65.13 of this title (relating to Manufactured Home Loans), and §65.14 of this title (relating to Home Improvement Loans) made or purchased under this chapter, an association shall insure that the following documents and records are in the possession of the association or an escrow agent designated by the association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the association:]

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

(3) current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors;

(4)-(14) (No change).

(b) [Notwithstanding the foregoing requirements,] Smaller loans in an amount less than \$50,000 would generally be expected to meet more limited documentation guidelines of [shall meet only the documentation requirements of] subsection (a)(1)-(8) of this section and of §65.14(c) (8), (9), and (11) of this title (relating to Home Improvement Loans). Further, §65.13(e) and §65.14(c) of this title (relating to Manufactured Home Loans and Home Improvement

Loans) provide additional documentation guidelines for making home improvement or manufactured housing loans.

(c) [Prior to funding any unsecured loan under this chapter,] Documentation guidelines for unsecured loans under this chapter would generally include the documents [an association shall insure, that the documents and records required] in subsection (a)(1) and (3)-(7) of this section. [are in the possession of the association or an escrow agent designated by the association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding.]

(d) Loan documentation which meets the documentation requirements of the applicable agency meets [may be substituted for] the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof, or which is guaranteed in any amount by the Veteran's Administration, Federal Housing Administration, or Farmer's Home Administration.

(e) (No change).

(f) **Permanent Loan File Requirements.**

(1) Loan documentation shall be in the possession of the association or an escrow agent designated by the association before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the association.

(2) The permanent loan file required by this section shall be located at an office of the association. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the association's discretion. Files for loans which are fully secured by accounts at the association may be maintained at the office where the loan was originated.

(3)[(g)] The permanent loan file shall contain evidence that the association obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the association's interest therein. This requirement shall not apply to loan participations purchased by the association.

(4)[(h)] Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw shall be part of the permanent file.

(5) When an association purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The association shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this Section.

(g)[(i)] The records of the association shall reflect that the board of directors has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the association and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the association. Loans originating in branch offices,

loan offices, or agencies shall be approved in the same manner as loans originating in the principal office. The board of directors shall approve or ratify all loans, except loans secured by savings accounts of the association and loans of less than \$10,000.

[(j)] When an association purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The association shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this Section.]

(h) [(k)] An association shall maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

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 November 1, 1996.

TRD-9615921

James L. Pledger
Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 475-1350



Chapter 75. Applications

Reorganization, Merger, Consolidation, Conversion, Purchase and Assumption and Acquisition

7 TAC §75.81

The Finance Commission of Texas proposes an amendment to §75.81, regarding reorganization, merger, consolidation, conversion and purchase and assumption transactions.

This section currently requires an application and the approval of the commissioner for the reorganizations, mergers or conversions of a state savings bank regardless of the type of charter which will be held by the resulting institution. In recent discussions regarding the ability of national banks to convert to a state savings bank charter, the application and approval process for savings bank conversions to another type of financial institution charter as well as mergers and reorganizations have come into issue. The Office of the Comptroller of the Currency (OCC) rules relating to authority of national banks to convert to another type of charter require reciprocity in state law for reorganizations, mergers and conversions involving a national bank charter. Specifically, 12 U.S.C. §214(c) provides that:

"No conversion of a national banking association into a State bank . . . shall take place . . . unless under the laws of the State in which such national banking association is located State banks may without approval by any State authority

convert into and merge or consolidate with national banking associations under limitations or conditions no more restrictive than those contained in 12 U.S.C. §214a with respect to the conversion of a national bank into, or merger or consolidation of a national bank with, a State bank under a State charter."

Although this section of the Department's regulations applies to all types of reorganizations and mergers, it is the Department's policy that there should not be regulatory or institutional barriers to allowing institutions to conduct their business through whatever type of charter they choose. This policy position is consistent with the cross industry mergers and acquisitions legislation adopted by the 74th Legislature. Likewise, the Department does not wish its regulations to hinder other types of financial institutions from converting to a state savings bank charter.

There are examples in which state banking laws relating to mergers and reorganizations do not conflict with §214(c). These provisions require notice and opportunity for objection on the part of state banking authorities. Therefore, in order to ensure that national banks will be able to convert to a state savings bank charter, the Department concluded that it was necessary amend its merger and reorganization regulations to eliminate the conflict with §214. Mergers in which the resulting institution will be a state savings bank will continue to require full application and approval from the Department prior to consummation. Incidental to this proposed amendment, similar amendments related to charter conversion to another type of financial institution and the application fees related to such transactions are being proposed since those issues are likewise addressed by §214(c).

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the amended section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section. Mr. Pledger estimates that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the section.

As required by the Act, §1.012(b), in proposing the amendment, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings associations with federal savings associations and other depository institutions in this state consistent with the safety and soundness of state savings associations and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which requires the commission to adopt rules regarding enforcement and implementation of that statute.

The following are the articles and sections affected by the proposed amended section: Article 489e, Vernon's Texas Civil Statutes.

§75.81. Reorganization, Merger, Consolidation or Purchase and Assumption Transaction[Filing of Plan].

(a) Reorganization, merger or conversion of a state savings bank into another type of financial institution charter shall be exclusively subject to the provisions of §75.89 of this title (relating to Conversion to Another Financial Institution Charter). Such a transaction shall not be subject to the procedures and requirements set forth in this section.

(b) Any savings bank seeking to reorganize, merge, and/or consolidate or to engage in a purchase and assumption transaction in which the resulting institution will be a state savings bank shall do so pursuant to a plan adopted by the board of directors and filed with the commissioner as a part of an application for approval. Purchase and assumption transactions include purchases or sales of assets, deposit accounts or other liabilities in bulk not made in the ordinary course of business.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615923

James L. Pledger
Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 475-1350

◆ ◆ ◆
7 TAC §75.89

The Finance Commission of Texas proposes an amendment to §75.89, regarding conversion from a state savings bank to another financial institution charter.

This section currently requires an application and the approval of the commissioner for the conversion of a state savings bank into another type of financial institution charter. In recent discussions regarding the ability of national banks to convert to a state savings bank charter, the application and approval process for savings bank conversions to another type of financial institution charter came into issue. The Office of the Comptroller of the Currency (OCC) rules relating to authority of national banks to convert to another type of charter require reciprocity in state law for conversions to a national bank charter. Specifically, 12 U.S.C. §214(c) provides that:

"No conversion of a national banking association into a State bank . . . shall take place . . . unless under the laws of the State in which such national banking association is located State banks may without approval by any State authority convert into and merge or consolidate with national banking associations under limitations or conditions no more restrictive than those contained in U.S.C. §214a with respect to the conversion of a national bank into, or merger or consolidation of a national bank with, a State bank under a State charter."

Although this section of the Department's regulations applies to conversions to types of charters other than national banks, it is the Department's policy that there should not be regulatory or institutional barriers to allowing institutions to conduct their business through whatever type of charter they choose. This policy position is consistent with the cross industry mergers and acquisitions legislation adopted by the 74th Legislature. Likewise, the Department does not wish its regulations to hinder other types of financial institutions from converting to a state savings bank charter.

There are examples in which state banking laws do not conflict with §214(c). While these provisions require notice to the state banking authority, they do not require approval. Therefore, in order to enable national banks to convert to a state savings bank charter, the Department concluded that it was necessary to amend its regulations to eliminate the conflict with §214. Incidental to this proposed amendment, similar amendments related to mergers and consolidations and the application fees related to such transactions are being proposed since those issues are likewise addressed by §214(c).

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the amended section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section. Mr. Pledger estimates that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the section.

As required by the Act, §1.012(b), in proposing the amendment, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which require the commission to adopt rules regarding enforcement and implementation of that statute.

The following are the articles and sections affected by the proposed amended section: Article 489e, Vernon's Texas Civil Statutes.

§75.89. Reorganization, Merger or Conversion to Another Financial Institution Charter.

(a) A [The commissioner may authorize any] savings bank is authorized to reorganize, merge, or [subject to this title to] convert into another type of financial institution charter subject to applicable

law and regulation relating to the type of charter which shall be held by the resulting institution [into which the savings bank seeks to convert].

(b) The commissioner shall be given written notice of the intention of the savings bank to reorganize, merge or convert no less than 30 days prior to the proposed transaction. [A conversion by a savings bank may be initiated by a two-third vote of the savings bank's board of directors approving the conversion plan and authorizing the filing of an application. Upon approval of the conversion plan, the plan shall be approved by the adoption of a resolution by a majority vote of the members or stockholders of a savings bank entitled to vote at an annual meeting or special meeting called to consider the conversion. The resolution must declare that the savings bank shall be converted. A copy of the minutes of the proceedings of the meeting of the stockholders or members, verified by affidavit of the secretary or an assistant secretary, must be filed in the office of the commissioner within 10 days after the date of the meeting. In addition, the following supporting information shall be submitted:]

[(1) a copy of the proposed articles of incorporation and bylaws for the new financial institution;

[(2) estimates of the cost of conversion, exclusive of any application or filing fees;

[(3) a statement of the reasons or need for conversion; and

[(4) a statement of the savings bank's proposed plans for operation following conversion, including a description of any material changes in the savings bank's organizational structure and management and in the services to be provided by the savings bank to the public following conversion.

[(c) Within 10 days after the date of receipt of an application to convert and a copy of the minutes, the commissioner shall either consent to the conversion by written order or set a hearing to consider whether the proposed conversion complies with the statutory and regulatory conditions. The commissioner may approve a conversion if he finds that:

[(1) the conversion will not substantially lessen competition or be in restraint of trade and will not result in a monopoly or be in furtherance of a combination or conspiracy to monopolize or attempt to monopolize the savings and loan or savings bank industry in any part of the state, unless the anti-competitive effects of the proposed conversion are clearly outweighed in the public interest by the probable effect of the conversion in meeting the convenience and needs of the community to be served;

[(2) the proposed conversion will not cause undue harm to the public interest or to any other existing financial institution; and

[(3) the proposed conversion is not contrary to the best interests of the savers, depositors, creditors, and stockholders of the converting savings bank and of the public in general.

[(d) If a hearing is held, it must be held within 25 days after the date of the filing of the conversion application unless a later date is agreed to by the savings bank and the commissioner. The commissioner or a hearing officer designated by the commissioner shall conduct the hearing as a contested case in compliance with the administrative procedure act, except that a proposal for decision may not be made and a final decision or order must be rendered by

the commissioner within 15 days after the date of the close of the hearing. If the commissioner denies an application to convert, the Administrative Procedure and Texas Register Act governs a motion for rehearing and available judicial review.

[(e) If the commissioner consents to the conversion, the savings bank, within three months after the date of the commissioner's written order, shall consummate the conversion in the manner prescribed and authorized by the applicable laws of this state or the United States. A copy of the charter issued to the new financial institution by the appropriate banking agency or the certificate showing the organization of the new financial institution, certified by the secretary or assistant secretary of the appropriate banking agency, must be filed with the commissioner. Failure to file the charter or certificate with the commissioner does not affect the validity of the conversion.

[(f) On the grant of a charter by the appropriate banking agency, the savings bank receiving the new charter ceases existence as a savings bank incorporated and is not subject to the supervision and control of the commissioner.]

(c) The savings bank shall file with the commissioner:

(1) a copy of the application filed with the appropriate banking agency having jurisdiction over the surviving financial institution;

(2) a certified copy of all minutes of meetings of the board of directors, shareholders or members;

(3) a publisher's certificate certifying the publication of the notice required to be published by the appropriate banking agency; and,

(4) evidence to ensure that no undue harm shall be caused to the public interest or to any other existing financial institution.

(d) Upon the receipt of all of the preceding information and any required filing fee, the commissioner shall be deemed to have consented to the reorganization, merger or conversion into another type of financial institution charter. Upon compliance with the provisions of this section and the granting of a successor charter by the appropriate banking agency, a copy of which shall be filed with the commissioner, the savings bank receiving the new charter ceases to exist as a savings bank and will no longer be subject to the jurisdiction of the commissioner.

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 November 1, 1996.

TRD-9615924

James L. Pledger

Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 475-1350

◆ ◆ ◆
Chapter 77. Loans, Investments, Savings and Deposits

Authorized Loans and Investments

7 TAC §77.31

The Finance Commission of Texas proposes an amendment §77.31, regarding loan documentation for savings banks.

Section 77.31(a)(1)-(14) currently lists specific loan documentation requirements that, at a minimum, must be maintained by a savings bank to comply with the rule. While the documents listed are generally appropriate and should be used as a guideline for prudent lending, a rigid requirement that all documents listed be present for each loan is too restrictive and does not necessarily address all safety and soundness concerns. Currently, if an institution is missing any of the documents required by this section, it is technically in violation of the rule, even if the safety and soundness intent of the rule has been satisfied. Conversely, safety and soundness concerns may, in some cases, necessitate different or additional documentation beyond the documents listed in this section. For example, §77.31(a)(3) requires a financial statement from the borrower for all loans, ostensibly to justify the borrower's willingness and ability to repay the loan. However, the borrower's ability and willingness to repay a consumer or home loan may be better demonstrated with a verification of employment (not currently required) and a satisfactory credit report, rather than a financial statement.

With the expanded movement toward electronic banking and other technological advances, there is an increased industry need for flexibility to use alternative documentation criteria as long as safety and soundness standards are met.

The proposed amendment would require that the board of directors of each savings bank establish written policies for prudent underwriting and documentation standards consistent with safety and soundness. Section 77.31(a) sets forth criteria to be considered in such policies paralleling federal interagency standards for safety and soundness in all federally insured depository institutions. The policies and procedures established by the savings bank will be reviewed during each regular examination for their adequacy and appropriateness.

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the amended section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section. Mr. Pledger estimates that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the section.

As required by the Act, §1.012(b), in proposing the amendment, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which require the commission to adopt rules regarding enforcement and implementation of that statute.

The following are the articles and sections affected by the proposed amended section: Article 489e, Vernon's Texas Civil Statutes.

§77.31. *Loan Policies and Documentation.*

(a) Each savings bank shall establish written policies approved by its board of directors establishing prudent credit underwriting and loan documentation standards. Such standards must be designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the association's capital. Credit underwriting standards should consider the nature of the markets in which loans will be made; provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial stability of any guarantor, the nature and value of underlying collateral, and the borrower's character and willingness to repay as agreed; establish a system of independent, ongoing credit review and appropriate communication to senior management and the board of directors; take adequate account of concentration of credit risk; and are appropriate to the size of the savings bank and the scope of its lending activities. Loan documentation standards should be established and maintained to enable the savings bank to make informed lending decisions and assess risk, as necessary, on an ongoing basis; identify the purpose of the loan and source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; ensure that any claim against a borrower is legally enforceable; demonstrate appropriate administration and monitoring of a loan; and consider the size and complexity of a loan. The following documents are generally appropriate and can be used as a guideline for prudent lending; however, unless such documents are specifically required by other state and federal statutes or regulations, there may be alternative documents equally suitable in satisfying the safety and soundness intent of this section which the savings bank may substitute and still address the safety and soundness concern. [Prior to funding any type of secured loan (other than a loan fully secured by an account on deposit at the savings bank), made or purchased under this chapter, a savings bank shall insure that the following documents and records are in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the savings bank:]

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

(3) Current financial statements signed by the borrower and all guarantors and/or current documented credit reports disclosing the financial ability of the borrower and guarantors (a current financial statement is as of a date within 180 days before the application

is filed) together with written certification by the borrower and guarantors that no material adverse changes in financial condition have occurred since the financial statement was prepared;

(4)-(14) (No change).

(b) **Smaller** [Notwithstanding the foregoing requirements,] loans in an amount less than \$50,000 **would generally be expected to meet more limited documentation guidelines of** [shall meet only the documentation requirements of] subsection (a)(1)-(8) of this section. **Further, §77.4(c) and §77.5(d) of this title (relating to Home Improvement Loans and Manufactured Home Loans) provide additional documentation guidelines for making home improvement or manufactured housing loans.**

(c) [Prior to funding any unsecured loan under this chapter,] **Documentation guidelines for unsecured loans under this chapter would generally include the documents** [a savings bank shall insure that the documents and records required] in subsection (a)(1) and (3)-(7) of this section. [are in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding.]

(d) Loan documentation which meets the documentation requirements of the applicable agency **meets** [may be substituted for] the requirements of this section for any loan of which at least 80% of the principal is guaranteed by the United States or any agency or instrumentality thereof, or which is guaranteed in any amount by the Veteran's Administration, Federal Housing Administration, or Farmer's Home Administration.

(e) (No change).

(f) **Permanent Loan File Requirements.**

(1) **Loan documentation shall be in the possession of the savings bank or an escrow agent designated by the savings bank before funding, together with a signed certification by an officer or employee that the loan documentation was complete before funding and such documents and records shall be placed in one permanent loan file immediately upon receipt by the savings bank.**

(2) The permanent loan file required by this section shall be located at an office of the savings bank. Duplicate loan files or other files containing loan documentation not required by this rule may be maintained at the savings bank's discretion. Files for loans which are fully secured by accounts at the savings bank may be maintained at the office where the loan was originated.

(3)[(g)] The permanent loan file shall contain evidence that the savings bank obtained the prompt recording in the proper records of every mortgage, deed of trust, or other instrument creating, constituting or transferring any lien securing in whole or part any loan made under this chapter, or the savings bank's interest therein. This requirement shall not apply to loan participations purchased by the savings bank.

(4)[(h)] Where the proceeds of a loan are disbursed over the term of the loan in the form of draws by the borrower, the documentation supporting each draw shall be part of the permanent file.

(5) **When a savings bank purchases whole loans or participations in loans, it shall cause the assignment or transfer**

of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The savings bank shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this Section.

(g)[(i)] The records of the savings bank shall reflect that the board of directors has by appropriate resolution established procedures for the approval of all loans, loan commitments or letters of credit made by the savings bank and specifically fixing the authority and responsibility for preliminary loan approval by officers and employees of the savings bank. Loans originating in branch offices, loan offices, or agencies shall be approved in the same manner as loans originating in the principal office.

(j) When an association purchases whole loans or participations in loans, it shall cause the assignment or transfer of its interest in the liens securing such loans to be in recordable form and maintained in the permanent file. If such loans are serviced by others, the servicing agreement shall be a part of the permanent file. The association shall obtain a certification from the seller of the loan or participation that the seller is in possession of all documents required by this Section.]

(h) [(k)] An savings bank shall maintain a register of all outstanding loan commitments, including commitments to purchase loans or participations, containing the name and address of the customer to whom the commitment is made, dollar amount of the commitment, and a summary of all material terms of the commitment, with a description of any written documents evidencing the loan commitment.

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 November 1, 1996.

TRD-9615922

James L. Pledger

Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 475-1350

◆ ◆ ◆

Chapter 79. Miscellaneous

Fees and Charges

7 TAC §79.99

The Finance Commission of Texas proposes an amendment to §79.99, regarding fees for reorganization, merger, and consolidation of a state savings bank.

This section currently establishes the application fee for reorganizations, mergers and consolidations involving state savings banks. In recent discussions regarding the ability of national banks to convert to a state savings bank charter, the application and approval process for savings bank for reorganizations, mergers, conversions and consolidations came into issue. The Office of the Comptroller of the Currency (OCC) rules relating to authority of national banks to convert to another type of charter

require reciprocity in state law for conversions, reorganizations, mergers and consolidations. Specifically, 12 U.S.C. §214(c) provides that:

"No conversion of a national banking association into a State bank . . . shall take place . . . unless under the laws of the State in which such national banking association is located State banks may without approval by any State authority convert into and merge or consolidate with national banking associations under limitations or conditions no more restrictive than those contained in 12 U.S.C. §214a with respect to the conversion of a national bank into, or merger or consolidation of a national bank with, a State bank under a State charter."

Although this section of the Department's regulations applies all types of mergers and reorganizations, it is the Department's policy that there should not be regulatory or institutional barriers to allowing institutions to conduct their business through whatever type of charter they choose. This policy position is consistent with the cross industry mergers and acquisitions legislation adopted by the 74th Legislature. Likewise, the Department does not wish its regulations to hinder other types of financial institutions from converting to a state savings bank charter.

Therefore, in order to enable national banks to convert to a state savings bank charter, the Department concluded that it was necessary amend its regulations relating to merger and reorganization fees to eliminate any conflict with §214. Incidental to this proposed amendment, similar amendments related to reorganizations, conversions, mergers and consolidations and the application fees related to such transactions are being proposed since those issues are likewise addressed by §214(c).

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the amended section as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this section. Mr. Pledger estimates that, for the first five years the proposed section is in effect, no economic costs will affect regulated entities as a result of complying with the proposed section. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the section.

As required by the Act, §1.012(b), in proposing the amendment, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Comments on the proposed section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The amendment is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which require the commission to adopt rules regarding enforcement and implementation of that statute.

The following are the articles and sections affected by the proposed amended section: Article 489e, Vernon's Texas Civil Statutes.

§79.99. *Fee for Reorganization, Merger, and Consolidation.*

(a) Any association seeking to reorganize, merge, and/or consolidate, pursuant to the Texas Savings Bank Act, §3.03 and §§75.81-75.88 of this title (relating to Reorganization, Merger, Consolidation, Purchase and Assumption transactions and Acquisition) shall pay to the commissioner, at time of filing its plan, a fee of \$2,500 for each financial institution involved in a plan of reorganization, merger and/or consolidation. For each financial institution involved in a plan filed for a purchase and assumption acquisition, a fee of \$2,000 shall be paid to the commissioner. No fee is required for a reorganization, merger, or consolidation pursuant to §75.89 of this title (relating to Conversion to Another Financial Institution Charter) where the resulting institution is not a state savings bank. No additional fee is required for an interim charter to facilitate a transaction under §§75.81-75.88 of this title.

(b) (No change.)

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615925

James L. Pledger

Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 475-1350

7 TAC §79.104

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

The Finance Commission of Texas proposes the repeal of §79.104, regarding the fee for conversion from a state savings bank to another financial institution charter.

This section currently establishes the application fee for conversions by state savings banks to another type of financial institution charter. In recent discussions regarding the ability of national banks to convert to a state savings bank charter, the application and approval process for savings bank for reorganizations, mergers, conversions and consolidations came into issue. The Office of the Comptroller of the Currency (OCC) rules relating to authority of national banks to convert to another type of charter require reciprocity in state law for conversions, reorganizations, mergers and consolidations. Specifically, 12 U.S.C. §214(c) provides that:

"No conversion of a national banking association into a State bank . . . shall take place . . . unless under the laws of the State in which such national banking association is located State banks may without approval by any State authority convert into and merge or consolidate with national banking

associations under limitations or conditions no more restrictive than those contained in 12 U.S.C §214a with respect to the conversion of a national bank into, or merger or consolidation of a national bank with, a State bank under a State charter."

It is the Department's policy that there should not be regulatory or institutional barriers to allowing institutions to conduct their business through whatever type of charter they choose. This policy position is consistent with the cross industry mergers and acquisitions legislation adopted by the 74th Legislature. Likewise, the Department does not wish its regulations to hinder other types of financial institutions from converting to a state savings bank charter.

Therefore, in order to enable national banks to convert to a state savings bank charter, the Department concluded that it was necessary amend its regulations relating to fees for conversion to another type of financial institution charter to eliminate any conflict with §214. Incidental to this proposed amendment, similar amendments related to reorganizations, conversions, mergers and consolidations and the application fees related to such transactions are being proposed since those issues are likewise addressed by §214(c).

James L. Pledger, Savings and Loan Commissioner, has determined that for the first five year period the repeal as proposed will be in effect, there will be no fiscal implications for state and local government as a result of enforcing or administering this repeal. Mr. Pledger estimates that, for the first five years the proposed repeal is in effect, no economic costs will affect regulated entities as a result of complying with the proposed repeal. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the repeal.

As required by the Act, §1.012(b), in proposing the repeal the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

Comments on the repeal of this section may be submitted in writing to James L. Pledger, Commissioner, Savings and Loan Department, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705-4294.

The repeal is proposed under Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, which requires the commission to adopt rules regarding enforcement and implementation of that statute.

The following are the articles and sections affected by the proposed repeal: Article 489e, Vernon's Texas Civil Statutes.

§79.104. *Fee for Conversion to Another Financial Institution Charter.*

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 November 1, 1996.

TRD-9615926

James L. Pledger
Commissioner

Texas Savings and Loan Department

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 475-1350

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

16 TAC §§3.49, 3.52, 3.53

The Railroad Commission of Texas proposes amendments to §§3.49, 3.52, and 3.53 relating to gas-oil ratio, oil well allowable production, and well status reports required. The proposed amendments allow the commission to exempt certain low volume oil wells from annual well testing requirements.

The proposed amendments to §3.49 permit an allocation based on production in lieu of an annual well test for reporting gas-oil ratios for oil wells capable of producing no more than two barrels of oil per 24-hour period, excluding surface-commingled wells, swabbed wells, the East Texas Field, and various designated Panhandle fields. The proposed amendments to §3.49(f) delete the reference to Special Order Number 20-58,691 allowing well testing at calendar day allowable rates. Adoption of §3.49 as amended herein will overrule Special Order Number 20-58,691.

The proposed deletion of §3.49(g)(1) eliminates the provision allowing for well testing at calendar day allowable rates. The proposed deletion of §3.49(g)(3) eliminates the exception to any certification requirement for wells tested at less than the schedule allowable rate. The proposed deletion of §3.49(i) eliminates the provision requiring retests of wells because of variation in the percentage allowable factor.

The proposed amendment to §3.52(f)(4)(A) deletes the requirement that all wells be tested annually in order to produce the total allowable on a lease or unit production basis, and adds a provision permitting a production allocation pursuant to proposed §3.53(a)(2) of this title (relating to well status reports required), commonly referred to as Statewide Rule 53, for reporting production on the Form W-10. The proposed amendments also delete the definition of "lease allowable" in §3.52(f)(4)(C).

The proposed amendments to §3.53(a)(1) add a requirement for annual oil well testing that was previously required and enforced only through the Form W-10. Proposed §3.53(a)(2) creates an exempt status for oil wells producing two barrels of oil per day or less, excluding surface commingled wells, swabbed wells, the East Texas Field, and various designated Panhandle Fields.

The proposed amendments to §3.53(a)(3), currently in §3.53(a)(1), exclude injection and disposal wells from the Form W-10 filing requirement. Proposed §3.53(a)(4), currently in

§3.53(a)(2), deletes the reference to gas-oil ratio tests and the effective date for new allowables.

The proposed amendment to §3.53(b) deletes the reference to Special Order Number 20-63,197 which amended Statewide Rule 53(a) and authorized the initial use of the Form W-10. Adoption of §3.53 as amended herein will overrule Special Order Number 20-63,197.

Rita E. Percival, planner for the Oil and Gas Division, has determined that for the first five-year period the proposed sections will be in effect, there will be fiscal implications as a result of enforcing or administering the sections. The effect on state government for the first year, fiscal year 1997, that the sections will be in effect is estimated to be \$10,000 for computer program development, testing, and analysis. There are no fiscal implications for fiscal years 1998 through 2001. There will be no fiscal implications for local government. There will be no anticipated economic cost for small businesses or individuals as a result of enforcing or administering the proposed sections.

Mickey R. Olmstead, hearings examiner in the Office of General Counsel, has determined that for each year of the first five years the rules as proposed will be in effect, the public benefit anticipated as a result of enforcing the rules will be a reduction of the regulatory burden by removing the requirement that all oil wells capable of producing no more than two barrels of oil per 24-hour period be tested annually. There should be a beneficial effect on small businesses because annual well testing will no longer be required on certain exempt oil wells, resulting in a reduction in the costs and overhead necessary to produce marginal properties.

Comments may be submitted to Mickey R. Olmstead, Hearings Examiner, Office of General Counsel - Oil and Gas Section, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967. The deadline for filing comments is 30 days after publication in the *Texas Register*. Comments should refer to the docket number of this rulemaking proceeding, 20-0213768. For more information call Mr. Olmstead at (512) 463-6923.

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

The following code sections are affected by this rule: Texas Natural Resources Code, §§81.052, 85.201, and 86.042.

§3.49. Gas-Oil Ratio.

(a) Any oil well producing with a gas-oil ratio in excess of 2,000 cubic feet of gas per barrel of oil produced shall be allowed to produce daily only that volume of gas obtained by multiplying its maximum daily oil allowable, as determined by the allocation formula applicable to the well, by 2,000. The gas volume thus obtained shall be known as the daily gas limit of the well. The daily oil allowable of the well shall then be determined by dividing its daily gas limit, obtained as provided in this section, by its producing gas-oil ratio in cubic feet per barrel of oil produced.

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

(f) All gas-oil ratios determined by test or allocation [ratio tests] shall be reported on Form W-10 (Oil Well Status Report [the appropriate form] in accordance with instructions thereon and

the provisions of §3.53(a) of this chapter (relating to annual well tests and well status reports required [as required by order of the commission (reference Order Number 20-58,691, effective July 2, 1968)]).

(g) Allowables [Well tests].

(1) Each well in the state may be tested at the calendar day allowable rate during gas-oil ratio tests and other production tests that demonstrate the ability of such well to produce oil, provided, that it shall not be required that a well either be tested at the schedule allowable rate, or that a certification be made that a well can produce at the schedule allowable rate for such well to be entitled to produce its allowable as it is fixed by the applicable field rules and the general statewide market demand order. The calendar day allowable rate is the figure that is determined by multiplying the schedule daily allowable by the percentage factor determined by the commission to supply demand for oil during the month in which the test is made.]

(1)[(2)] No well shall have its allowable curtailed below the allowable fixed by the applicable field rules and the general statewide market demand order, unless such well is incapable of producing this allowable on a calendar day basis.

(3) This section shall not be construed as granting an exemption to gas-oil ratio penalties assessed by other regulations, but it shall be considered as granting an exception to provisions of a statewide rule, regulation, order, memorandum order, or other instruction that either requires a certification for wells tested at a lesser rate that such wells can produce at the schedule allowable rate.]

(2)[(4)] Any well that has a gas-oil ratio in excess of the prescribed ratio for the field in which it is located will have its schedule daily allowable penalized due to such ratio.

(h) Each rule, regulation order, memorandum order, or other instruction that set testing requirements contrary to the provision of subsection (g) of this section, is amended or changed to the extent it is in conflict with such subsection, and it will be revised at the earliest date to comply with this section.

(i) Operators are advised that variation in the percentage allowable factor could cause the retest of wells where the test rate for a well is less than the allowable rate that is available, so operators are encouraged to conduct tests at as near the schedule allowable rate as is practical consistent with equipment and condition of the well in order to avoid the necessity for additional tests where increase in market demand factor provides increased calendar day rates.]

§3.52. Oil Well Allowable Production.

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

(f) The operator of any lease or unitized area in the State of Texas may be permitted to produce the total allowable for any such lease or unitized area subject to the following provisions:

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

(4) Annual well test or allocation :

(A) An annual well test, or an allocation pursuant to §3.53(a)(2) of this chapter (relating to Annual Well Tests and Well Status Reports Required), shall be made and reported on Form W-10 [such form as the commission may designate] on each lease or unit property to which a lease production basis has been granted showing an individual well test or allocation on each oil well on the property made [taken] during the prescribed test [a quarterly] period

determined by the commission. Offset operators must be notified of any test dates 24 hours in advance of test and such tests may be witnessed by offset operators. The commission will use the test or allocation data [date] in the preparation of the oil proration schedule [Exhibit "A"]. The total schedule daily lease allowable shall be the sum of the individual well allowables as determined under applicable rules and the lease production basis shall be designated on the oil proration schedule [Exhibit "A"] by an appropriate symbol. [Each well shall be tested at a rate of production at least equal to its allowable and the test report shall show oil, gas, and water produced on a daily basis.] All wells on the lease for which an allowable is requested shall have their production volumes [be tested and] reported pursuant to §3.53(a) of this chapter (relating to Annual Well Tests and Well Status Reports Required).

(B) (No change.)

[(C) The sum of the individual well allowables as determined from these tests and the applicable rules will constitute the lease allowable.]

(5)-(7) (No change.)

§3.53. *Annual Well Tests and Well Status Reports Required.*

(a) Oil wells.

(1) Unless otherwise provided for in this section, each operator of producing oil wells shall annually test each producing oil well for a 24-hour period during the test period specified on the well status report form and shall record all oil, gas and water volumes resulting from the test on the form.

(2) For any oil well capable of producing no more than two barrels of oil per 24-hour period, the operator of such well may report the required oil, gas and water volumes based on an allocation of that well's production on a prorated daily basis, rather than an actual well test. This option of using production allocation instead of actual well tests does not apply to surface-commingled wells, swabbed wells, the East Texas Field or the following Panhandle fields: Panhandle Carson County Field (Field Number 68845-001); Panhandle Collingsworth County Field (Field Number 68859-001); Panhandle Gray County Field (Field Number 68873-001); Panhandle Hutchinson County Field (Field Number 68887-001); Panhandle Moore County Field (Field Number 68901-001); Panhandle Potter County Field (Field Number 68915-001); and Panhandle Wheeler County Field (Field Number 68929-001). Both the two-barrel limit and the list of excluded wells and fields are subject to modification by the commission.

(3)[(1)] Each operator of a well or wells [normally] listed in the oil proration schedule shall file with the commission an oil well status report form in accordance with instructions on the form. All wells on a lease, [(excluding statutory gas wells)] and injection and disposal wells, must be reported[, including injection wells, water disposal wells, shut in wells with no allowable, etc.]

(4) [(2)] Changes in oil well status filed [Reports of gas-oil ratio tests on oil wells] between regularly scheduled oil well status [gas-oil ratio test] surveys shall be submitted on oil well status report forms in accordance with instructions on the form. [If such tests result in allowable changes, the new allowables will become effective on the test dates or 15 days prior to the date tests are received by the District Office, whichever is later.]

(b) Gas wells. Each operator of a gas well producing liquid hydrocarbons shall file with the commission gas well status reports in accordance with instructions thereon [(reference Special Order Number 20-63,197, effective August 2, 1973)].

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 October 31, 1996.

TRD-9615842

Mary Ross McDonald

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

Earliest possible date of adoption: December 13, 1996

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

TITLE 22. EXAMINING BOARDS

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Examinations

22 TAC §131.101

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.101, concerning engineering examinations required for registration as a professional engineer. The amendment is being proposed to redefine when a student is considered a senior in college for the purpose of scheduling the fundamentals of engineering examination.

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

Mr. Speed also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification that an undergraduate student who is within two regular semesters (not including summer sessions) of graduating is considered a senior and may take the fundamentals of engineering examination. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P. O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §14 is affected by this proposed amendment.

§131.101. Engineering Examinations Required for Registration as a Professional Engineer.

(a) The written examinations required under the Texas Engineering Practice Act (the Act), §12(a)(1) and (2), will consist of an eight-hour fundamentals of engineering examination and an eight-hour principles and practice of engineering examination. Normally, these examinations will be offered twice each year, once in the first six months (April) and once in the second six months (October) of each calendar year. Written examinations will be held in Austin or places designated by the board.

(1) An undergraduate [A] student who is [classified as a senior in college] within two regular semesters (not including summer sessions) [one calendar year] of graduating and who is enrolled in an EAC/ABET-accredited engineering program, TAC/ABET-accredited four-year baccalaureate technical program, [course, or an engineering] or an engineering-related science program of four years or more that has been approved by the board, may take the fundamentals of engineering examination at their [his or her] school provided the school will administer the examination as prescribed by the board.

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

(b)-(g) (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 October 30, 1996.

TRD-9615797

John R. Speed P.E.

Executive Director

Texas State Board of Registration for Professional Engineers

Proposed date of adoption: January 8, 1997

For further information, please call: (512) 440-7723

◆ ◆ ◆
Professional Conduct and Ethics

22 TAC §131.155

The Texas State Board of Registration for Professional Engineers proposes an amendment to §131.155, concerning professional practice and reputation. Subsection (a) is being amended to remove the legal action of political contributions from the list of illegal actions otherwise described in the section. Subsection (d) is amended to correct the legal reference to the Texas Professional Services Procurement Act from the civil statute to the government code.

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

Mr. Speed 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 elimination of the legal action to make political contributions from the list of illegal actions and the correct legal reference to the Texas Professional Services Procurement Act. There will be no effect on small businesses. There is no anticipated economic cost

to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to John R. Speed, P.E., Executive Director, Texas State Board of Registration for Professional Engineers, P. O. Drawer 18329, Austin, Texas 78760.

The amendment is proposed under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

Texas Civil Statutes, Article 3271a, §22 is affected by this proposed amendment.

§131.155. Professional Practice and Reputation.

(a) The engineer shall not offer or promise to pay or deliver, directly or indirectly, any commission, [political contribution,] gift, favor, gratuity, benefit, or reward as an inducement to secure any specific engineering work or assignment; providing and excepting, however, that an engineer may pay a duly licensed employment agency its fee or commission for securing engineering employment in a salaried position.

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

(d) A registrant shall not submit or request, orally or in writing, a competitive bid to perform engineering services, whether as prime contractor, subcontractor, or consultant, under a contract subject to the provisions of the Texas Professional Services Procurement Act, Government Code, Chapter 2254 [Texas Civil Statutes, Article 664-4.] (which includes but is not limited to any state agency, political subdivision, county, municipality, district, authority, or publicly-owned utility of the State of Texas), or its federal counterpart, the Brooks Act, 40 United States Code, §§541-544.

(1)-(2) (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 October 30, 1996.

TRD-9615798

John R. Speed P.E.

Executive Director

Texas State Board of Registration for Professional Engineers

Proposed date of adoption: January 8, 1997

For further information, please call: (512) 440-7723

◆ ◆ ◆
Part VIII. Texas Appraiser Licensing and Certification Board

Chapter 151. Practice and Procedure

22 TAC §§151.1-151.30

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Offices of the Texas Appraiser Licensing and Certification Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Appraiser Licensing and Certification Board proposes the repeal of 22 TAC Chapter 151, Rules Relating to Professional Conduct and Ethics, including §151.1, Definitions; §151.2, Object of Rules; §151.3, Scope of Rules; §151.4, Filing of Documents; §151.5, Computation of Time; §151.6, Motions for Postponement, Continuance, Withdrawal or Dismissal; §151.7, Conduct and Decorum; §151.8, Petition for Declaratory Rulings; §151.9, Request for Advisory Opinions; §151.10, Notice of Intent to Adopt Rules; §151.11, Request for Comments; Hearing; Explanation of Board Action; §151.12, Emergency Rules; §151.13, Petition for Adoption of Rules; §151.14, Informal Consultations; §151.15, Denial of License; §151.16, Suspension or Revocation of a License; §151.17, Notice of Hearing; §151.18, Hearings Before the Board; §151.19, Limitations on Number of Witnesses; §151.20, Right to Counsel; Right to Participate; §151.21, Ex Parte Consultations, §151.22; Subpoenas; Depositions; Discovery; §151.23, Testimony; §151.24, Rules of Evidence; §151.25, The Record; §151.26, Informal Disposition; §151.27, Final Decisions and Orders; §151.28, Finality of Decisions; §151.29, Prerequisite to Judicial Review; and §151.30, Judicial Review.

These sections are being repealed and new replacement sections proposed to eliminate redundancy with rules and procedures of the Administrative Procedures Act and of the State Office of Administrative Hearings.

Renil C. Liner, commissioner, has determined that for the first five-year period the repeals as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Liner also has determined that each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the replacement by new rules which will make the rules less cumbersome and eliminate unnecessary redundancy. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the Board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 5, 11, 12, 12A, and 19 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed repeals.

- §151.1. Definitions.
- §151.2. Object of Rules.
- §151.3. Scope of Rules.
- §151.4. Filing of Documents.
- §151.5. Computation of Time.

- §151.6. Motions for Postponement. Continuance. Withdrawal or Dismissal.
- §151.7. Conduct and Decorum.
- §151.8. Petition for Declaratory Rulings.
- §151.9. Request for Advisory Opinions.
- §151.10. Notice of Intent to Adopt Rules.
- §151.11. Request for Comments; Hearing; Explanation of Board Action.
- §151.12. Emergency Rules.
- §151.13. Petition for Adoption of Rules.
- §151.14. Informal Consultations.
- §151.15. Denial of License.
- §151.16. Suspension or Revocation of a License.
- §151.17. Notice of Hearing.
- §151.18. Hearings Before the Board.
- §151.19. Limitations on Number of Witnesses.
- §151.20. Right to Counsel; Right to Participate.
- §151.21. Ex Parte Consultations.
- §151.22. Subpoenas; Depositions; Discovery.
- §151.23. Testimony.
- §151.24. Rules of Evidence.
- §151.25. The Record.
- §151.26. Informal Disposition.
- §151.27. Final Decisions and Orders.
- §151.28. Finality of Decisions.
- §151.29. Prerequisite to Judicial Review.
- §151.30. Judicial Review.

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 October 30, 1996.

TRD-9615825

Renil C. Liner

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 465-3950

Chapter 151. Rules Relating to Practice and Procedure

Subchapter A. General Provisions

22 TAC §§151.1-151.8

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new 22 TAC Chapter 151, Rules Relating to Professional Conduct and Ethics, Subchapter A, General Provisions,

including §151.1, Definitions; §151.2, Object of Rules; §151.3, Scope of Rules; §151.4, Computation of Time; §151.5, Conduct and Decorum; §151.6, Request for Advisory Opinions; §151.7, Denial of a License; §151.8, Suspension and Revocation of a License.

These new sections will establish rules regarding the TALCB interaction with the general public and licensees. The board is eliminating much of the redundancy of the existing rules in regards to the Administrative Procedures Act and of the State Office of Administrative Hearings. The proposed rules address general provision including definitions of terms used in the chapter, the object and scope of these rules, and how time is computed when referenced in these rules. The proposed rules also provide for proper comportment of those appearing before the board or in administrative hearings. They also provide for requesting advisory opinions from the board, and address the issues of denial, suspension or revocation of a license.

Renil C. Liner, commissioner, has determined that for the first five-year period these rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Liner also has determined that each year of the first five years the sections are in effect the public benefit anticipated will be to make the rules clearer, less cumbersome and eliminate unnecessary redundancy. There will be no effect on small business. There is no anticipated additional economic cost to persons who are required to comply with the rules as proposed. No private real property rights are effected by adoption of these rules.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 5, 11, 12, 12A, and 19 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed sections.

§151.1. Definitions.

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

Act-The Texas Appraiser Licensing and Certification Act.

Applicant-A person seeking a certification, license or approval as an appraiser trainee from the board.

Board-The Texas Appraiser Licensing and Certification Board.

Complaining witness-Any person who has made a written complaint to the board against any person subject to the jurisdiction of the board,

Contested case-A proceeding in which the legal rights, duties or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Day-a calendar day unless clearly indicated otherwise.

License-The whole or a part of any board permit, certificate, approval, registration or similar form of permission required by law.

Licensing-Includes the board processes respecting the granting, disapproval, denial, renewal, certification, revocation, suspension, annulment, withdrawal or amendment of a license.

Party-The board and each person named or admitted as a party.

Person-Any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than the board.

Petitioner-The person seeking an advisory ruling, the person petitioning for the adoption of a rule, or the party seeking affirmative relief in a proceeding before the board.

Record-All notices, pleadings, motions and intermediate orders; questions and offers of proof; objections and rulings on them; any decision, opinion or report by the board; and all staff memoranda submitted to or considered by the board.

Respondent-Any person subject to the jurisdiction of the board against whom any complaint has been made.

§151.2. Object of Rules.

The purpose of these rules is to provide for a simple and efficient system of procedure before the board, to insure uniform standards of practice and procedure, public participation and notice of board actions, and a fair and expeditious determination of causes. These rules shall be liberally construed, with a view towards the purpose for which they were adopted.

§151.3. Scope of Rules.

These rules shall govern the procedure for the institution, conduct and determination of all causes and proceedings before the board. They shall not be construed so as to enlarge, diminish, modify or alter the jurisdiction, powers or authority of the board or the substantive rights of any person.

§151.4. Computation of Time.

In computing any period of time described or allowed by these sections, by order of the board, or by any applicable statute, the period shall begin on the day after the act, event or default in controversy and conclude on the last day of such computed period, unless it be a Saturday, Sunday or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday nor a legal holiday.

§151.5. Conduct and Decorum.

Every party, witness, attorney or other representative shall comport himself in all proceedings with proper dignity, courtesy and respect for the board and all other parties. Disorderly conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys-at-law by the State Bar of Texas.

§151.6. Request for Advisory Opinions.

Upon written or oral request, the board may issue written or oral advisory opinions. Such opinions are not binding on the board or

on the person making the request, and may not be relied upon as an official board ruling. The board shall maintain a record of each advisory opinion, identifying the person to whom it was issued.

§151.7. Denial of a License.

If the board denies a certification or license to an applicant under the Act, the board immediately shall give written notice of the denial to the applicant. Notice and hearings relating to denial of a license issued by the board shall be governed by the Act and By Texas Government Code Annotated §§2001.001, et seq. In the case of an application for approval as an appraiser trainee the board shall also notify a sponsoring certified appraiser of the denial, but a sponsoring appraiser is not required to request a hearing or to be named or admitted as a party in the proceeding before the board. A hearing pursuant to this section shall be held at a place designated by the board. Failure to request a hearing timely waives judicial appeal, and the board determination becomes final and unappealable.

§151.8. Suspension and Revocation of a License.

A license issued by the board may not be suspended or revoked except after notice and opportunity for hearing pursuant to statutory obligation and these sections. If an appraiser trainee is a respondent, the board will also notify the trainee's sponsoring appraiser of the hearing. The hearing shall be held at a time and place designated by the board.

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

Issued in Austin, Texas, on October 30, 1996.

TRD-9615826

Renil C. Liner

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 465-3950

Subchapter B. Contested Case Hearings

22 TAC §§151.9-151.14

The Texas Appraiser Licensing and Certification Board (TALCB) proposes new 22 TAC Chapter 151, Rules Relating to Practice and Procedure, Subchapter B, Contested Case Hearings, including §151.9, Notice of Hearing; §151.10, Right to Counsel; Right to Participate; §151.11, Contested Cases: Entry of Appearance; Continuance; §151.12, Failure to Attend Hearing; Default Judgment; §151.13, Ex Parte Consultations; and §151.14, Informal Disposition.

These new sections will establish rules regarding the TALCB interaction with licensees and specify rights and responsibilities. The board is also eliminating much of the redundancy of the existing rules in regards to the Administrative Procedures Act and of the State Office of Administrative Hearings. The proposed rules address obligations of the board in providing notice of a hearing and specifies language concerning a respondent's failure to appear which results in a default judgment. The rules also specify that a respondent has a right to legal counsel and to participate. Information concerning the entry of appearance and filing for continuance is also addressed, as well as a default judgment being entered if a respondent fails to appear at a contested case hearing. The rules address ex parte commu-

nications between members of the board and the public, and provides for informal disposition of complaints.

Renil C. Liner, commissioner, has determined that for the first five-year period these rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Liner also has determined that each year of the first five years the sections are in effect the public benefit anticipated will be to make the rules clearer, less cumbersome and eliminate unnecessary redundancy. There will be no effect on small business. There is no anticipated additional economic cost to persons who are required to comply with the rules as proposed. No private real property rights are affected by adoption of these rules.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P. O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 5, 12, and 12A of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed rules.

§151.9. Notice of Hearing.

(a) The notice of hearing shall be served by personal service or certified mail return receipt requested not later than the 30th day before the hearing date.

(b) The notice shall comply with the requirements as set out in Section 12A of the Act.

(c) The notice prepared by the board shall be reviewed and approved by the attorney general.

(d) The notice shall include the following language in capital letters in boldface type: **FAILURE TO APPEAR AT THE HEARING WILL RESULT IN THE ALLEGATIONS AGAINST YOU SET OUT IN THE COMPLAINT BEING ADMITTED AS TRUE AND A DEFAULT JUDGMENT BEING TAKEN AGAINST YOU.**

§151.10. Right to Counsel; Right to Participate.

All parties, at their own expense, may be represented by counsel, which right may be expressly waived. Parties are entitled to respond and present evidence and argument on all issues involved, and to conduct cross examinations for full and true disclosure of the facts.

§151.11. Contested Cases; Entry of Appearance; Continuance.

(a) When a contested case has been instituted, the respondent or the representative of the respondent shall enter an appearance not later than 20 days after the date of receipt of notice as provided in §12A of the Act.

(b) For the purposes of this section, a contested case shall mean any action that is referred by the board to the State Office of Administrative Hearings.

(c) For purposes of this section, an entry of appearance shall mean the filing of a written answer or other responsive pleading with the State Office of Administrative Hearings.

(d) The filing of an untimely appearance by a party, or entering an appearance at the contested case hearing entitles the board to a continuance of the hearing in the contested case at the board's discretion for such a reasonable period of time as determined by the administrative law judge, but not for a period of less than 20 days. For purposes of this section, an untimely appearance is an appearance not entered within 20 days of the date the respondent has received notice.

§151.12. Failure to Attend Hearing; Default Judgment.

(a) If a respondent fails to appear in person or through his legal representative on the day and at the time set for hearing in a contested case, regardless of whether an appearance has been entered, the administrative law judge, upon motion by the board, shall enter a default judgment in the matter adverse to the respondent who has failed to attend the hearing, upon proper proof of notice to the defaulting party.

(b) For purposes of this section, a default judgment shall mean the issuance of a proposal for decision against the respondent in which the factual allegations against the respondent contained in the complaint shall be admitted as prima facie evidence and deemed admitted as true, without any requirement for additional proof to be submitted by the board.

§151.13. Ex Parte Consultations.

A member of the board may not communicate, directly or indirectly, in connection with any issue of fact or law with any person, party, or their representative except on notice and opportunity for all parties to participate. A member of the board may communicate ex parte with employees of the board who have not participated in any hearing in the case for the purpose of utilizing the special skills or knowledge of the board and its staff in evaluating the evidence.

§151.14. Informal Disposition.

Informal disposition may be made of any contested case by stipulation, agreed settlement, consent order or default. No stipulation or agreed settlement between the parties or their attorneys or representatives, with regard to any matter involved in any proceeding before the board, shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives and made a part of the record, or unless it shall have been dictated into the record by them during the course of a hearing or incorporated in an order bearing their written approval.

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 October 30, 1996.

TRD-9615827

Renil C. Liner

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 465-3950

Subchapter C. Post Hearing

22 TAC §§151.15-151.19, 151.30

The Texas Appraiser Licensing and Certification Board proposes new 22 TAC Chapter 151, Rules Relating to Professional Conduct and Ethics, Subchapter C, Post Hearing, including §151.15 Proposals for Decision; §151.16, Exceptions and Replies; §151.17, Final Decisions and Orders; §151.18, Motions for Rehearing; Finality of Decisions; §151.19, Prerequisite for Judicial Review; and §151.30, Judicial review.

These new sections will establish rules regarding the obligations and rights of licensees after a hearing before the State Office of Administrative Hearings. The board is also eliminating some of the redundancy of the existing rules in regards to the Administrative Procedures Act and of the State Office of Administrative Hearings (SOAH). The proposed rules address obligations of SOAH with regard to the content of the proposal for decisions and service of that proposal. They also specify the time period in which exceptions and replies must be made by the respondent. The proposed rules specify a time period in which the board may act in considering a final order, and provide for a motion for rehearing within a specified time period. Finally, they address the prerequisite for judicial review and for the judicial review itself.

Renil C. Liner, commissioner, has determined that for the first five-year period these rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Liner also has determined that each year of the first five years the sections are in effect the public benefit anticipated will be to make the rules clearer, less cumbersome and eliminate unnecessary redundancy, and to specify the rights and responsibilities of those who have had a disciplinary hearing. There will be no effect on small business. There is no anticipated additional economic cost to persons who are required to comply with the rules as proposed. No private real property rights are effected by adoption of these rules.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 5, 11, 12, 12A, and 19, of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed sections.

§151.15. Proposals for Decision.

(a) The administrative law judge shall serve on the parties a proposal for decision which shall contain:

(1) a statement of the administrative law judge's reasons for the proposed decision;

(2) findings of fact and conclusions of law, separately stated, that are necessary to the proposed decision.

(b) Service. When a proposal for decision is prepared, a copy of the proposal shall be served by the administrative law judge on each party, his attorney of record or representative, and the board. Service of the proposal shall be in accordance with §151.17 of this title (relating to notice).

§151.16. Exceptions and Replies.

(a) Entitlement. Any party of record who is aggrieved by the administrative law judge's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 20 days from the date of service of the proposal for decision. Replies to the exceptions may be filed by the other party within 20 days of the filing of the exception.

(b) Exceptions and replies shall be filed with the administrative law judge.

§151.17. Final Decisions and Orders.

(a) Board action. The proposal for decision may be acted upon by the board after the expiration of 60 days after the date of service of the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his attorney of record.

(b) Imminent peril. If the board finds that an imminent peril to the public health, safety, or welfare requires immediate effect on a final decision or order in a contested case, it shall recite the finding in the decision or order as well as the fact that the decision or order is final and effective on the date rendered, in which event the decision or order is final and appealable on the date rendered, and no motion for rehearing is required as a prerequisite for appeal.

§151.18. Motions for Rehearing; Finality of Decisions.

(a) Filing times. A motion for rehearing must be filed within 20 days after a party has been notified, either in person or by certified mail, return receipt requested, of the final decision or order by the board.

(b) Board action. Board action on a motion must be taken within 45 days after the date of rendition of the final decision or order. If board action is not taken within the 45-day period, the motion for rehearing is overruled by operation of law.

(c) A decision is final, in the absence of a timely motion for rehearing, on the expiration of the period for filing a motion for rehearing. A decision is final and appealable on the date of rendition of the order overruling a motion for rehearing, or on the date the motion for rehearing is overruled by operation of law.

(d) A decision is final and appealable on the date rendered if the board finds that an imminent peril to the public health, safety or welfare requires immediate effect, in which event the decision or order shall recite the finding and the fact that the decision is final and effective on the date rendered.

§151.19. Prerequisite to Judicial Review.

Except in the case of an emergency decision or order, a motion for rehearing is a prerequisite to judicial review

§151.30. Judicial Review.

(a) A person who has exhausted all administrative remedies, and who is aggrieved by a final decision in a contested case is entitled to judicial review.

(b) The petition shall be filed in a district court of Travis County, Texas, within 30 days after the decision or order of the board is final and appealable.

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 October 30, 1996.

TRD-9615828

Renil C. Liner

Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 465-3950

Chapter 153. Provisions of the Texas Appraiser Licensing and Certification Act

22 TAC §153.5, §§153.9-153.11, §153.13, §153.15, §§153.17-153.20, §153.25, §153.27, §153.31

The Texas Appraiser Licensing and Certification Board proposes amendments to §153.5, Fees; §153.9, Applications; §153.11, Examinations; §153.13, Educational Requirements; §153.15, Experience Required for Certification or Licensing; §153.17, Renewal of Certification License or Trainee Approval; Continuing Education; §153.19, Licensing and Certification of Persons with Criminal Backgrounds; §153.20, Guidelines for Revocation and Suspension; Investigations; §153.25, Temporary Certification and Licensure; §153.27, Certification and Licensure by Reciprocity; and §153.31, Office Location. The board also proposes new §153.10, Date of Licensure, and §153.18, Appraiser Continuing Education.

New §153.10, Date of Licensure will indicate that a licensee is licensed on the date a license number is issued rather than the date he or she receives the certificate in the mail. New §153.18, Appraiser Continuing Education, is split from the current §153.17, Renewal of Certification, License or Trainee Approval; Continuing Education, which will be renamed, to clarify the appraiser continuing education requirements for renewal of licensure. Additionally, it notes the increased continuing education requirements as of January 1, 1998, as per the Appraiser Qualifications Board criteria. Amendments to §153.5, Fees, will remove the \$10 fee for notifying the board of a new business address, and indicates that all fees must be paid in U.S. currency or funds. Section 153.9., Applications, clarifies some language and proposes a new form for temporary non-resident appraiser registration with a revised "Irrevocable Consent to Service" statement. Amendments to §153.11, Examinations, provide for examinations by endorsement from other states. Section 153.13, Educational Requirements, reorganizes the section by listing the requirements by type of license or certification, and adds the educational requirements effective January 1, 1998, as per the Appraiser Qualifications Board criteria. It also allows examination time to be considered in the required classroom hours, and notes that after January 1, 1998, teaching of appraisal courses will not be acceptable for meeting

experience requirements. It further specifies requirements for acceptable courses in the Uniform Standards of Professional Appraisal Practice (USPAP). Amendments to §153.15, Experience Required for Certification or Licensing, provide for the new experience requirements effective January 1, 1998, as per the Appraiser Qualifications Board criteria. They also provide that experience credit can only be given to those whose experience complies with USPAP, is verifiable and was performed when the person had legal authority to appraise real property. Section 153.17, Renewal of Certification, License or Trainee; Continuing Education, will be amended to remove "Continuing Education" from the title, and to make reference to §153.18, new "Appraiser Continuing Education." Amendments to §153.19, Licensing and Certification of Persons with Criminal Backgrounds, adds appraiser trainees and non-resident temporary practice to those whose licence or authorization may be revoked for cause by the board. Section 153.20, Guidelines for Revocation and Suspension; Investigation, will be retitled, Guidelines for Revocation, Suspension, or Denial; Investigation, and language will be added to the text to indicate that denial of licensure is included. It also will provide that holding oneself out as certified or licensed when he or she is not, or being engaged in other unacceptable appraisal business practices is also grounds for disciplinary action. It also provides that a license or certification may be revoked under Chapter 232 of the Texas Family Code for failure to pay child support. §153.25, Temporary Certification and Licensure will provide that a person must submit an application to be registered. Section 153.27, Certification and Licensure by Reciprocity, will provide that a Texas resident is not eligible for licensure by reciprocity from another state. Section 153.31, Office Location, will eliminate language requiring payment of a fee for notifying the board of a change of office address.

Renil C. Liner, commissioner, has determined that for the first five-year period the proposed amendments and new rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Liner also has determined that each year of the first five years the amendments and new rules are in effect the public benefit anticipated as a result of enforcing and administering the section is to clarify the rules in light of changes to federal regulations. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended and new sections as proposed.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 5, 6, 8, 9, 10, 11, 12, 12A, 14, 15, 16, 17, and 20 of the Texas Appraiser Licensing and Certification Act

(Article 6573a.2, V.T.C.S.) may be affected by the proposed amendment.

§153.5. Fees.

(a) The board shall charge and the commissioner shall collect the following fees:

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

(5) no fee is required [a fee] for notifying the board of a change of office location [of \$10];

(6)-(12) (No change.)

(b) Fees must be submitted in U.S. currency or funds payable to the order of the Texas Appraiser Licensing and Certification Board. Fees are not refundable once an application has been accepted for filing. Persons who have submitted a check which has been returned, and who have not made good on that check within thirty days, for whatever reason, shall submit all future fees in the form of a cashier's check or money order.

(c) (No change.)

§153.9. Applications.

(a) A person desiring to be certified or licensed as an appraiser or approved as an appraiser trainee or registered as a temporary non-resident appraiser shall file an application using forms prescribed by the board[; provided, however, forms implementing the prior law may be accepted so long as the applicant satisfies current requirements for certification or licensing]. The commissioner shall review the application and make a recommendation for final action to the board. The board may decline to accept for filing an application which is materially incomplete or which is not accompanied by the appropriate fee. Except as provided by the Act, the board may not grant a certification, license or approval of trainee status to an applicant unless the applicant:

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

(b) The Texas Appraiser Licensing and Certification Board adopts by reference the following forms approved by the board and published and available from the board, P.O. Box 12188, Austin, Texas 78711-2188:

(1)-(5) (No change.)

(6) TALCB Form 6.3 [6.2], Temporary Non-Resident Appraiser Registration;

(7) TALCB Form 8.3 [8.2] Change of Office Address;

(8)-(9) (No change.)

(c)-(e) (No change.)

(f) [Applications transferred to the board pursuant to the Act, §24(d), shall be deemed filed with the board on the effective date of the Act. An application for general certification shall be considered an application to the board for general real estate appraiser certification. An application for residential certification shall be considered an application to the board for residential real estate appraiser certification. The board shall confirm satisfaction of requirements for certification or licensing imposed by the Act but may not require reapplication or payment of additional application fees.]

[g] An application shall be considered void and subject to no further evaluation or processing if the applicant fails to

provide acceptable documentation that all requirements for licensure, certification, or approval as an appraiser trainee have been met within one year of the date the application was received by the board, or within one year of the date of the applicant's last examination, whichever occurs later.

§153.10. Date of Licensure.

(a) Applicants are not certified or licensed and may not hold themselves out as certified or licensed appraisers, or as appraiser trainees or as registered temporary non-resident appraisers, until the certificate, license, authorization or registration has been issued by the board.

(b) A certification, license, authorization or registration is issued when all requirements have been met and it is entered into the board's database and a certificate or license number has been assigned.

§153.11. Examinations.

(a)-(j) (No change.)

(k) **Examination by endorsement:** An applicant for a state license or certification who has successfully passed an AQB approved competency examination, and is currently licensed or certified in another jurisdiction and in good standing, will not be required to retake the examination for the same level of licensure or certification to become certified or licensed in Texas. The applicant shall provide appropriate documentation as required.

§153.13. Educational Requirements.

(a) **General Real Estate Appraiser Certification.**

(1) Applicants for General Real Estate Appraiser Certification must have successfully completed 165 (180, effective January 1, 1998) classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these 165 (180, effective January 1, 1998) classroom hours, at least 30 classroom hours must be in fundamental real estate appraisal courses and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice.

(b) **Residential Real Estate Appraiser Certification.**

(1) Applicants for Residential Real Estate Appraiser Certification must have successfully completed 120 classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(n) of this section.

(2) Of these 120 classroom hours, at least 30 classroom hours must be in fundamental real estate appraisal courses and at least 15 classroom hours must be in a class devoted to the Uniform Standards of Professional Appraisal Practice.

(c) **Real Estate Appraiser License or Provisional License.**

(1) Applicants for a Real Estate Appraiser License or Provisional License must have successfully completed 75 (90, effective January 1, 1998) classroom hours in courses approved by the board which meet the requirements as set out in subsections (d)-(p) of this section.

(2) Of these 75 (90, effective January 1, 1998) classroom hours, at least 30 classroom hours must be in fundamental real estate appraisal courses and at least 15 classroom hours must

be in a class devoted to the Uniform Standards of Professional Appraisal Practice.

(d) [(a)] The board may accept a course of study to satisfy educational requirements for certification or licensing established by the Act or by this section if the board has approved the course and determined it to be a course related to real estate appraisal.

(e) [(b)] The board may approve courses submitted or to be submitted by applicants for appraiser certification upon a determination of the board that:

(1) the subject matter of the course was appraisal-related; provided that core real estate courses set forth in Texas Civil Statutes, Article 6573a, §7(a)(1)-(4), (6), (8), and (9), shall be deemed appraisal-related;

(2) the course was offered by an accredited college or university, a school accredited by a real estate or appraiser certification or licensing agency of another state, a professional trade association, or a service-related school such as the United States Armed Forces Institute; or the course was offered or approved by a federal agency or commission or by an agency of this state;

(3) the applicant either obtained credit by challenge examination as permitted by the Act, §24(d), or received in a classroom presentation the hours of instruction for which credit was given and successfully completed a final examination for course credit.

(4) the course was at least 15 classroom hours in duration, which includes time devoted to examinations which are considered to be part of the course [not including the time required for an examination].

(f) [(c)] For the purposes of this section, a professional trade association is a nonprofit, cooperative, and voluntarily joined association of business or professional competitors that is designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting the common interest of its members.

(g) [(d)] The board may require an applicant to furnish materials such as course outlines, syllabi, course descriptions or official transcripts to verify course content or credit.

[(e)] Applicants for general real estate appraiser certification must have successfully completed 165 classroom hours in courses approved by the board including at least 30 classroom hours in fundamental real estate appraisal courses. Applicants for residential real estate appraiser certification must have successfully completed 120 classroom hours in courses approved by the board (including at least 30 classroom hours in fundamental real estate appraisal courses). For either category of certification, the coursework submitted must have included a minimum of 15 classroom hours of coverage of the Uniform Standards of Professional Appraisal Practice.]

[(f)] Applicants for a real estate appraiser license or a provisional license must have successfully completed 75 classroom hours in courses approved by the board, including at least 30 classroom hours of fundamental real estate appraisal course and 15 classroom hours of coverage of the Uniform Standards of Professional Appraisal Practice.]

(h) [(g)] Course providers may obtain prior approval of a course by filing form TALCB 5.0 and submitting the following items to the board:

(1) a copy of any textbook, course outline, syllabus, or other written material used in the course;

(2) a copy of the question and answers to the written final examination; and

(3) such prior approval of courses will remain in effect for a period of two years after the date of approval.

(i) [(h)] The board shall accept classroom hour units of instruction as shown on the transcript or other document evidencing course credit if the transcript reflects the actual hours of instruction the student received. Fifteen classroom hours of credit may be awarded for one semester hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for one quarter hour of credit from an acceptable provider. Ten classroom hours of credit may be awarded for each continuing education credit from an acceptable provider. The board may not accept courses repeated within three years of the original offering unless the subject matter has changed significantly.

(j) [(i)] Teachers of appraisal courses may receive credit for either classroom hours or experience, but not for both. **After January 1, 1998, teaching of appraisal courses will not be acceptable for meeting the experience requirement.** Applicants must provide documentation as requested by the board to establish credit for teaching appraisal courses. Education credit for teaching a particular course may be claimed only once in each three year period.

(k) [(j)] Correspondence courses may be acceptable in the following conditions:

(1) the course must have been presented by an accredited college or university which offers correspondence programs in other disciplines;

(2) an individual has successfully completed a written examination administered to positively identified examinees at a location and by an official approved by the college or university;

(3) the content and length of the course must meet the requirements for real estate appraisal related courses established by the chapter and by the Appraiser Qualifications Board of the Appraisal Foundation; and

(4) a correspondence course also may be acceptable provided the course has received the American Council on Education's Program on Non-collegiate Sponsored Instructions (PONS) approval for college credit.

(l) [(k)] "In-house" education and training is not acceptable for meeting the educational requirements for certification or licensure.

(m) **To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP) educational requirement, a course must:**

(1) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of 15 classroom hours of instruction;

(2) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(3) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(4) At a minimum be based on the topics covered by the Appraisal Standards Board (ASB) Instructor's Manual. This section does not limit additional USPAP topics to be covered in the course.

(n) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation.

§153.15. Experience Required for Certification or Licensing.

(a) An applicant for general real estate appraiser certification must provide evidence satisfactory to the board that the applicant possesses the equivalent of 2,000 (3,000, effective January 1, 1998) hours of appraisal experience over a minimum of two calendar years (30 months, effective January 1, 1998). At least 1,000 (1,500, effective January 1, 1998) hours of experience must be in non-residential work. Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(b) An applicant for residential real estate appraiser certification must provide evidence satisfactory to the board that the applicant possesses the equivalent of 2,000 (2,500, effective January 1, 1998) hours of appraisal experience over a minimum of two calendar years (24 months, effective January 1, 1998). Hours may be treated as cumulative in order to achieve the necessary hours of appraisal experience.

(c) (No change.)

(d) Experience credit shall be awarded by the board in accordance with current criteria established by the Appraiser Qualifications Board and in accordance with the provisions of the Act specifically relating to experience requirements. Experience as a real estate lending officer of a financial institution or as a real estate broker is acceptable experience if the experience includes the actual performance or professional review of real estate appraisals. An hour of experience means 60 minutes expended in one or more of the acceptable appraisal experience areas. Calculation of the hours of experience must be based solely on actual hours of experience. Any one or any combination of the following categories may be acceptable for the completion of 1,000 hours of credit each year.

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

(8) Experience credit may be awarded for teaching appraisal courses provided that an applicant may not receive more than 500 hours for teaching appraisal courses each year. Actual classroom time may be claimed, e.g. a three semester credit course equates to 45 hours of appraisal teaching experience; a 15 classroom hour course equates to 15 hours of teaching experience. Teaching an appraisal course may be used either for experience credit or for education credit. Both experience credit and education credit may be granted for teaching multiple sections of the same course; that is, credit for teaching a particular section of a course may be applied toward education credit and teaching another section of the same course may be applied toward experience credit. Documentation shall be required. (Teaching appraisal courses will not be accepted for meeting the experience requirement effective January 1, 1998.)

(e) (No change.)

(f) An applicant may be granted experience credit only for appraisals which:

- (1) comply with the Uniform Standards of Professional Appraisal Practice (USPAP) in effect at the time of the appraisal;
- (2) are verifiable and supported by written reports or file memoranda; and
- (3) were performed by the applicant at a time when the applicant had legal authority to perform real property appraisals.

§153.17. *Renewal of Certification, License or Trainee Approval; Continuing Education*].

(a) A license or certification issued by the board is valid for two years after the date of issuance. A certified or licensed appraiser or appraiser trainee may renew the certification, license, or trainee approval by timely filing the prescribed application for renewal, paying the appropriate fee to the board and satisfying continuing education requirements as provided by §153.18 of this title (relating to Appraiser Continuing Education)[this section].

(b) (No change.)

(c) The board may not accept a renewal application filed after the expiration of the certification, license or appraiser trainee approval. An appraiser or trainee who does not timely file a renewal application must reapply for certification, license or approval as an appraiser trainee in accordance with the provisions of §153.9 of this title (relating to Applications). If the application is filed within one year of the expiration of a previous certification or license the applicant shall also provide satisfactory evidence of completion of any continuing education, as provided by §153.18 of this title, that would have been required for a timely renewal of the previous certification or license. If the application for certification or license is filed more than one year after the expiration of the previous certification or license, the applicant must successfully complete the examination required by §153.11 of this title (relating to Examinations).

(d) (No change.)

(e) As a condition for renewing a certification or license after December 31, 1994, or two years after the federal implementation of Title XI, Financial Institutions Reform, Recovery and Enforcement Act (FIRREA), whichever is later, an appraiser must successfully complete the equivalent of at least 20 classroom hours of appraiser continuing education (ACE) courses approved by the board, during the two year period preceding the expiration of the certification or license. The board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualification criteria of the Appraiser Qualifications Board (AQB).]

[(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.]

[(2) The following types of educational offerings may be accepted for meeting the ACE requirements:]

[(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:]

[(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications

criteria of the Appraiser Qualifications Board (AQB) for continuing education; and]

[(ii) the course was not repeated within a three year period;]

[(B) The board shall accept as continuing education any continuing education a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education;]

[(C) A course specifically approved by the board for meeting ACE offered by a provider as specified in §153.13(b)(2) of these rules (relating to Educational Requirements), provided the course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education and the course is at least two hours in duration;]

[(D) A course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education;]

[(E) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.]

[(F) Correspondence courses may be acceptable for meeting ACE requirements in the following conditions:]

[(i) the course must have been presented by an accredited college or university which offers correspondence programs in other disciplines;]

[(ii) an individual has successfully completed a written examination administered to positively identified examinees at a location and by an official approved by the college or university;]

[(iii) the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and]

[(iv) a correspondence course also may be acceptable provided the course has received the American Council on Education's Program on Non-collegiate Sponsored Instructions (PONS) approval for college credit.]

[(G) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.]

[(3) As part of the twenty classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction covering the Uniform Standards of Professional Appraisal Practice (USPAP) before the appraiser's second renewal after December 31, 1992 of certification or licensure, and before every even numbered renewal thereafter (fourth, sixth, eighth, etc.).]

[(4) Copies of transcripts or course completion certificates from the course provider must accompany the Application for Renewal form.]

[(5) Appraiser continuing education credit may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.]

[(f) As a condition for renewing an appraiser trainee approval, a trainee must successfully complete the following educational courses which meet requirements for application for licensing and certification:]

[(1) For the first annual renewal, 15 classroom hours devoted to the Uniform Standards of Professional Appraisal Practice (USPAP);]

[(2) for the third annual renewal, 30 classroom hours of actual real estate appraisal courses;]

[(3) for the fifth annual renewal, 30 classroom hours of actual real estate appraisal or appraisal related courses;]

[(4) for the sixth annual renewal, 15 classroom hours devoted to the USPAP; and]

[(5) for each second annual renewal thereafter, 30 classroom hours of actual real estate appraisal or appraisal related courses.]

(e) [(g)] Renewal of Licenses or Certification for Servicemen on Active Duty Outside the State.

(1) A person previously licensed or certified by the board under this Act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas may renew an expired license or certification without being subject to any increase in fee imposed in his or her absence, or any additional education or experience requirements if the person:

(A) provides a copy of official orders or other documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period;

(B) applies for the renewal within 90 days after the person's active duty ends; and

(C) pays the renewal application fee in effect when the previous license or certification expired.

(2) Appraiser continuing education requirements as set out in §153.18 of this title, that would have been imposed for a timely renewal shall be deferred under this section to the next renewal of a license or certification.

(f) [(h)] Denial of Licensing and certification of persons who are in default on (TGSLC) loans. Renewals of licenses and certifications issued by the board are subject to the policies established by the Texas Education Code, §57.491. Before the board declines to renew a license or certification due to default on a loan guaranteed by the TGSLC, a default on a repayment agreement with TGSLC, or a failure to enter a repayment agreement with TGSLC, the board shall give notice and provide an opportunity for a hearing in accordance with the provisions of the Texas Government Code, §2001.051 et

seq. The board shall advise those licensed or certified in renewal notices and shall advise those who apply for licensure or certification in application forms that default on a loan guaranteed by TGSLC may prevent subsequent renewal of a license or certification or prevent the approval of an initial application for license or certification.

§153.18. *Appraiser Continuing Education.*

(a) Renewing a Certification or License. An appraiser must successfully complete the equivalent of at least 20 (28, effective January 1, 1998) classroom hours of appraiser continuing education (ACE) courses approved by the board during the two year period preceding the expiration of the certification or license. The courses must comply with the requirements set out in subsection (d) of this section.

(b) Renewing an Appraiser Trainee Approval. As a condition for renewing an appraiser trainee approval, a trainee must successfully complete the following educational courses which meet requirements for application for licensing and certification during the two year period preceding the expiration of the appraiser trainee approval being renewed. The courses must comply with the requirements set out in subsection (d) of this section.

(1) For the first annual renewal, 15 classroom hours devoted to the Uniform Standards of Professional Appraisal Practice (USPAP);

(2) for the third annual renewal, 30 classroom hours of actual real estate appraisal courses;

(3) for the fifth annual renewal, 30 classroom hours of actual real estate appraisal or appraisal related courses;

(4) for the sixth annual renewal, 15 classroom hours devoted to the USPAP; and

(5) for each second annual renewal thereafter, 30 classroom hours of actual real estate appraisal or appraisal related courses.

(c) The appraiser continuing education requirement as set forth in §153.17 of this title (relating to renewal of certification) for a person previously licensed or certified by the board under this act who is on active duty in the United States armed forces and serves in this capacity outside the State of Texas are deferred until the next renewal of a license or certification provided the person furnishes a copy of official orders or other official documentation acceptable to the board showing that the person was on active duty outside the state during the person's last renewal period.

(d) In approving appraiser continuing education (ACE) courses, the board shall base its review and approval of appraiser continuing education courses upon the then current appraiser qualification criteria of the Appraiser Qualifications Board (aqb).

(1) The purpose of ACE is to ensure that certified and licensed appraisers participate in programs that maintain and increase their skill, knowledge, and competency in real estate appraising.

(2) The following types of educational offerings may be accepted for meeting the ACE requirements:

(A) A course that meets the requirements for certification or licensing also may be accepted for meeting ACE provided:

(i) The course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications

criteria of the Appraiser Qualifications Board (AQB) for continuing education;

(ii) the course was not repeated within a three year period; and

(iii) the educational offering is at least two hours in length.

(B) The board shall accept as continuing education any continuing education a licensed or certified appraiser was awarded by a national appraiser organization approved by the board as a provider of qualifying education;

(C) A course specifically approved by the board for meeting ACE offered by a provider as specified in §153.13(e)(2) of this title (relating to Educational Requirements), provided the course is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education and the course is at least two hours in duration;

(D) A course that meets the Texas Real Estate Commission mandatory continuing education (MCE) requirements, provided it is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education;

(E) A seminar or other educational offering that deals with appraisal issues, offered by an appraiser trade association, a related association, or by a federal or state governmental agency, provided the offering was at least two hours in duration, and is devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education.

(F) Correspondence courses may be acceptable for meeting ACE requirements in the following conditions:

(i) the course must have been presented by an accredited college or university which offers correspondence programs in other disciplines;

(ii) an individual has successfully completed a written examination administered to positively identified examinees at a location and by an official approved by the college or university;

(iii) the content and length of the course must meet the requirements for appraiser continuing education established by this chapter and must be devoted to one or more of the appraisal related topics of the then current appraiser qualifications criteria of the AQB for continuing education; and

(iv) a correspondence course also may be acceptable provided the course has received the American Council on Education's Program on Non-collegiate Sponsored Instructions PONSI approval for college credit.

(G) "In-house" education and training are not acceptable for meeting the appraiser continuing education (ACE) requirements.

(H) To be acceptable for meeting the Uniform Standards of Professional Appraisal Practice (USPAP), appraiser continuing education (ACE) requirement, a course must:

(i) Be devoted to the Uniform Standards of Professional Appraisal Practice (USPAP) with a minimum of seven classroom hours of instruction;

(ii) Use the current edition of the Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation;

(iii) Provide each student with his or her own permanent copy of the current Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board of the Appraisal Foundation; and

(iv) At a minimum be based on topics covered by the Appraisal Standards Board (ASB) Instructor's Manual. This section does not limit additional USPAP related topics to be covered in the course.

(I) Courses specifically approved by the Appraiser Qualifications Board (AQB) of the Appraisal Foundation are acceptable for meeting ACE requirements.

(J) As part of the twenty (twenty-eight, effective January 1, 1998) classroom hour ACE requirement, an appraiser must successfully complete a minimum of seven classroom hours of instruction covering the Uniform Standards of Professional Appraisal Practice (USPAP) before the appraiser's second renewal of certification or licensure, and for every even numbered renewal thereafter (fourth, sixth, eighth, etc.).

(K) Copies of transcripts or course completion certificates from the course provider must accompany the Application for Renewal form.

(L) Appraiser continuing education credit may also be granted for participation, other than as a student, in real estate appraisal educational processes and programs. Examples of activities for which credit may be granted are teaching, educational program development, authorship of real estate appraisal textbooks, or similar activities that are determined by the board to be equivalent to obtaining appraiser continuing education. Appraisal experience may not be substituted for ACE.

§153.19. Licensing and Certification for Persons with Criminal Backgrounds.

(a) (No change.)

(b) As provided in Texas Civil Statutes, Article 6252-13c, the board may suspend or revoke an existing valid license or certification, disqualify an individual from receiving a license or certification, or deny to a person the opportunity to be examined for a license or certification because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of the licensed or certified occupation. The board shall revoke the license or certification, or authorization as an appraiser trainee, or non-resident temporary practice registration of an individual upon his felony conviction, felony probation revocation, revocation of parole, or revocation of mandatory supervision.

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

§153.20. Guidelines for Revocation, [and] Suspension or Denial; Investigations

(a) The board may suspend or revoke a license, [or] certification, authorization or registration issued under provisions of the Act at any time when it has been determined that the person holding the license, [or] certification, authorization or registration

(1)-(15) (No change.)

(16) has acted or held himself or any other person out as a licensed or certified real estate appraiser under this or another state's Act when not so licensed or certified;

(17) has engaged in any other act relating to the business of appraising that the board, in its discretion, believes warrants a suspension or revocation.

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

[(d) To determine if probable cause exists for a hearing on a complaint, the board may designate an investigator on signed complaint in writing or upon the board's own motion, to investigate the actions and appropriate records of a state licensed real estate appraiser, a state certified real estate appraiser, or an appraiser trainee. If the board determines that the complaint does not present facts that constitute a basis for disciplinary action, the board may not take further action.]

[(e) The chair of the board with the advice and consent of the executive committee may appoint a peer investigative committee consisting of three real estate appraisers certified or licensed under the Act. The chair of the investigative committee must be an appraiser member of the board. Each remaining member of the committee shall certify to the board that the member is familiar with the appraisal process in the appraisal to be reviewed. The investigative committee shall review and determine the facts of the complaint and submit a written report to the board in a timely manner. The board may ask for inspection of an appraiser's books and records relative to a specific complaint or investigation. The appraiser must produce the specified documents within 60 days of the request.]

(d) [(f) The board may not investigate under this section a complaint submitted more than two years after the date of discovery of the incident involving the state licensed real estate appraiser, provisional licensed appraiser, state certified real estate appraiser, or appraiser trainee who is the subject of the complaint.]

(e) [(g) Notwithstanding any other provision of the Act, there shall be no undercover or covert investigations conducted by authority of the Act. [No investigations of licensees or certificate holders or any other actions against licensees or certificate holders shall be initiated on the basis of anonymous complaints whether in writing or otherwise, but shall be initiated only upon the board's own motion or a signed written complaint. Upon the adoption of such a motion by the board or upon receipt of such complaint, the licensee or certificate holder shall be notified promptly and in writing unless the board itself, after due consideration determines otherwise.]

(f) [(h) All board members, officers, directors, and employees of this agency shall be held harmless with respect to any disclosures made to the board in connection with any complaints filed with the board.]

(g) **A license, certification, authorization or registration may be revoked or suspended for failure to pay child support under provisions of Chapter 232 of the Texas Family Code.**

[(i) On completion of an investigation, a written report containing statements of fact, the recommendations of the investigator, and the position or defense of the investigated appraiser shall be submitted by the investigator for the board to determine what further action is necessary. Based on the report, the board may:]

[(1) order that the matter be further investigated;]

[(2) permit the appraiser who is the subject of the complaint to appear before the board for an informal discussion regarding the alleged violation, pursuant to subsection (j) below;]

[(3) determine that probable cause does not exist to believe that a violation occurred and dismiss the case; or]

[(4) determine that probable cause that a violation occurred exists and proceed with a contested case hearing as the complainant.]

[(j) The board may permit an appraiser under investigation an opportunity to appear before the board for a voluntary informal discussion of facts and circumstances of an alleged violation on the board's motion or on request of the appraiser. The informal discussion constitutes part of the board's investigation of the pending disciplinary case and the facts discussed at the informal discussion may be considered by the board if the case proceeds to a contested case hearing. The board may seek a consent order as provided by subsection (k) of this section at the time of the informal discussion.]

[(k) The board may negotiate a settlement and enter into a consent order with an appraiser who is under investigation. An appraiser member of the board designated by the chair and the attorney general may agree to negotiate a settlement under this subsection. A proposed consent order shall be presented to the board for approval and shall be binding if approved by the board and signed by the board chair and the appraiser. A board member who participates in negotiation of a consent order is not disqualified for participating in adjudication of the contested case that results from the negotiation. Consent to negotiation by the appraiser constitutes waiver of the right to notice and the opportunity to be heard under Tex. Gov't. Code Ann. §2001.001 et seq. during the settlement negotiations. A prosecuting attorney may discuss informal settlement with the board chair or a representative of the board. If the parties agree to a consent order, a statement of charges shall be filed with the consent order.]

[(l) The board, in its discretion and in lieu of prosecuting a first-time violator of the rules of professional conduct adopted by the board, may enter into a consent agreement as provided by this subsection. An appraiser member of the board, designated by the chair, and the attorney general may agree to negotiate a consent agreement. The proposed consent agreement shall be presented to the board for approval and shall be binding if approved by the board and signed by the board chair and the appraiser. Failure by the appraiser to comply with the terms of the agreement constitutes grounds for prosecution.]

(h) [(m) A certified or licensed appraiser who files a complaint against another certified or licensed appraiser that the board determines to be frivolous is liable for a civil penalty. At the request of the board, the attorney general or a district or county attorney may institute a civil action in district court to collect a penalty under this subsection. A civil penalty under this subsection may not be less than \$500 or more than \$10,000. A civil penalty recovered in a suit instituted under this subsection shall be deposited in the state treasury to the credit of the general revenue fund.]

[(n) If the board determines to take further action, notice of a hearing shall be given in accordance with Section 151.17 of these rules; and any further proceedings shall be considered to be a contested case and to be governed by the Tex. Gov't Code Ann. §§2001.051-202. The hearing shall be conducted by the State

Office of Administrative Hearings pursuant to Tex. Gov't Code Ann. §2003.001 et seq. and Chapter 155, Texas Administrative Code.]

§153.25. *Temporary Certification and Licensure*

(a) (No change.)

(b) A person wishing to be registered under this subsection must submit an completed application form prescribed by the board.

(c) [(b)] A person registered under this subsection must submit an irrevocable consent to service of process in this state pursuant to §153.29 of this title (relating to Irrevocable Consent of Service of Process).

§153.27. *Certification and Licensure by Reciprocity*

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

(h) A person whose legal residency is in the State of Texas may not be licensed or certified though reciprocity.

§153.31. *Office Location*

An appraiser licensed or certified under the Act who is a resident of this state shall maintain a fixed office in this state. If the appraiser moves from a previously designated address, the appraiser shall notify the board of the new office location on a form approved by the board [and pay a fee set by the board,] not later than the 10th day after the date of the move.

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 October 30, 1996.

TRD-9615831

Renil C. Liner
Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 465-3950

22 TAC §153.23, §153.29, §153.35

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Offices of the Texas Appraiser Licensing and Certification Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Appraiser Licensing and Certification Board proposes repeal of §153.23, Appraisers Meeting Certification Requirements Under Prior Law; Transitional Licenses; §153.29, Irrevocable Consent to Service of Process; and §153.35, Record Keeping.

Section 153.23, Appraisers Meeting Certification Requirements Under Prior Law; Transitional Licenses is being repealed. It is no longer needed as those affected by it have already been dealt with. Section 153.29 is being repealed because it is redundant to Section 15(e) of the Texas Appraiser Licensing and Certification Act (Art. 6573a.2, VTCS). Section 153.35 is being repealed because it is redundant to Section 20 of the Act.

Renil C. Liner, commissioner, has determined that for the first five-year period the repeals as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Liner also has determined that each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the clarification of the rules by eliminating redundant or unnecessary language. There will be no effect on small business. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 15, 20 and 24 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed repeal.

§153.23. *Appraisers Meeting Certification Requirements Under Prior Law; Transitional Licenses.*

§153.29. *Irrevocable Consent to Service of Process.*

§153.35. *Record Keeping.*

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 October 30, 1996.

TRD-9615829

Renil C. Liner
Commissioner

Texas Appraiser Licensing and Certification Board

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 465-3950

Chapter 155. Rules Relating to Appraisals

22 TAC §155.1

The Texas Appraiser Licensing and Certification Board proposes an amendment to §155.1, Standards of Practice.

The Board proposes amendments to §155.1 to eliminate dated language which no longer applies.

Renil C. Liner, commissioner, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Liner also has determined that each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing and administering this section is to clarify the rules in light of changes to federal regulation. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amended section as proposed.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rule has been scheduled in conjunction with the board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 3, 5, 12, 12A of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed amendment.

§155.1. Standards of Practice.

[(a)] An appraisal performed by a person subject to the Texas Appraiser Licensing and Certification Act must conform with the "Uniform Standards of Professional Appraisal Practice (USPAP) of the Appraisal Foundation in effect at the time of the appraisal.

[(b)] Appraisal reports prepared by state certified or licensed appraisers in connection with a federally related transaction under the jurisdiction of a federal financial institutions regulatory agency or the Resolution Trust Corporation shall be written reports.]

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 October 30, 1996.

TRD-9615832

Renil C. Liner
Commissioner

Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: December 13, 1996
For further information, please call: (512) 465-3950

Chapter 157. Rules Relating to Professional Conduct and Ethics

22 TAC §§157.1-157.5

(Editor's Note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the Offices of the Texas Appraiser Licensing and Certification Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas Appraiser Licensing and Certification Board proposes the repeal of 22 TAC Chapter 157, Rules Relating to Professional Conduct and Ethics, including §157.1, General; §157.2, Professional Independence; §157.3, Hypothetical Conditions; §157.4, Undisclosed Fees; and §157.5, Confidentiality.

The Board proposes repeal of Chapter 157 to eliminate redundancy since the proposed repealed sections and language are already found virtually verbatim in the Preamble of the Uniform Standards of Professional Appraisal Practice (USPAP) which is referenced in §155.1, Standards of Practice.

Renil C. Liner, commissioner, has determined that for the first five-year period the repeals as proposed are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Liner also has determined that each year of the first five years the repeals are in effect the public benefit anticipated as a result of these repealed sections is to make the Rules less cumbersome and eliminate unnecessary redundancy. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Renil C. Liner, Commissioner, Texas Appraiser Licensing and Certification Board, P.O. Box 12188, Austin, Texas 78711-2188.

A public hearing on the proposed rules has been scheduled in conjunction with the Board's regular meeting at 9:30 a.m., Thursday, December 12, 1996, in conference room 235, 1101 Camino La Costa, Austin, Texas 78752.

Section 5 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) provides the Texas Appraiser Licensing and Certification Board with authority to adopt rules for the licensing and certification of real estate appraisers and for standards of practice.

Sections 12, 12A, and 19 of the Texas Appraiser Licensing and Certification Act (Article 6573a.2, V.T.C.S.) may be affected by the proposed repeal.

§157.1. General.

§157.2. Professional Independence.

§157.3. Hypothetical Conditions.

§157.4. Undisclosed Fees.

§157.5. Confidentiality.

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 October 30, 1996.

TRD-9615833

Renil C. Liner
Commissioner

Texas Appraiser Licensing and Certification Board
Earliest possible date of adoption: December 13, 1996
For further information, please call: (512) 465-3950

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 36. Medicaid Program Appeals Procedures

On behalf of the State Medicaid Director, the Texas Department of Health (department) submits proposed new §§36.1, 36.2, 36.11, 36.12, and 36.21-36.23, concerning Medicaid program appeals procedures. The proposed new sections provide for standardized procedures for informing recipients of their rights to notice of intended actions and actions affecting Medicaid-covered services, and recipients' right to reconsideration and

fair hearing before the department. Specifically, §36.1 provides definitions of terms to be used throughout the chapter. Section 36.2 is a statement of the department's policy to assist individuals with special needs or disabilities. Section 36.11 establishes the department's procedures for providing recipient notification of intent to take an action that affects Medicaid-covered services. Section 36.12 provides a procedure for reconsideration of an intended action. Sections 36.21-36.23 establish the department's procedure for providing notice to a recipient when the department takes an action and/or intended action; sets out required content of the notice; and provides a recipient the right to a fair hearing under this title. These rules implement the state plan requirements found at 42 Code of Federal Regulations, §§431.200-431.245.

Joe Moritz, health care financing budget director, has determined that for the first five-year period these sections are in effect there will be fiscal implication as a result of enforcing or administering the sections as proposed. The effect on state government will be an estimated increase in cost of \$49,760 for fiscal year (FY) 1997, \$52,745 for FY 1998, \$55,910 for FY 1999, \$59,265 for FY 2000, and \$62,820 for FY 2001. There are no anticipated fiscal implications for local government.

Mr. Moritz also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be standardized application of the department's recipient notification of action, notification of right to fair hearing, and procedure to request a reconsideration and/or fair hearing. There is no anticipated economic cost to small or large businesses or individuals who are required to comply with the proposed section. There is no anticipated effect on local employment.

Comments on the proposal may be sent to Brenda Salisbery, Health Care Financing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 338-6521. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

Subchapter A. General

25 TAC §36.1, §36.2

These new sections are proposed under the Human Resources Code, §32.021 and the Government Code §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature.

The new sections affect the Human Resources Code, Chapter 32.

§36.1. Definitions.

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

Action - A denial, termination, suspension, or reduction of Medicaid-covered services; a denial of prior authorization for covered services affecting a recipient; or a lock-in. This term does not include a

provider action for which the recipient may be held financially liable by the provider.

Day - A calendar day.

Department - The Texas Department of Health.

Designee - The department's contractor who administers the Medicaid program.

Final decision - A decision that is reached by a decision maker after conducting a fair hearing under this chapter.

Lock-in - An action taken by the department to restrict the recipient's choice of providers.

Managed care organization (MCO) - A managed care organization under contract with the department to provide services to Medicaid recipients.

Prior authorized services - Services that are reimbursable only when authorization or approval is obtained before services are actually rendered. Prior authorized services are limited in duration, scope, and amount. Services provided beyond those authorized are not reimbursable.

Provider action - A denial or reduction of a provider claim for payment for services rendered to a Medicaid recipient.

Reconsideration - The administrative review process the department and its designee follows under this chapter preceding a fair hearing.

§36.2. Recipients with Special Needs or Disabilities.

The department will make reasonable accommodations to assist recipients in reading and understanding notices and procedures under this chapter. The department will also provide assistance to recipients who require language translations or hearing or speech communication devices.

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 October 31, 1996.

TRD-9615864

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 458-7236



Subchapter B. Recipient Notice of Intent to Take Action and Reconsideration

25 TAC §36.11, §36.12

These new sections are proposed under the Human Resources Code, §32.021 and the Government Code §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature.

The new sections affect the Human Resources Code, Chapter 32.

§36.11. Notice of Intent to Take Action.

(a) When required. A Medicaid-eligible recipient is entitled to a notice of intent to take action under this subchapter any time the department, its designee, or an managed care organization (MCO) intends to take an action. An MCO is responsible for sending the notice to recipients enrolled in the MCO. The notice sent by the MCO shall inform recipients of their right to access the department's appeal process under this chapter.

(b) Time of notice. A notice of intent to take action must be mailed to the recipient by the MCO not less than 20 days before the day the department, its designee, or the MCO intends to take an action.

(c) Content of notice. The notice required in subsection (b) of this section must contain the following information.

(1) a statement of the action the department, its designee, or MCO intends to take;

(2) an explanation of the reasons the department or MCO intends to take an action;

(3) an explanation that the recipient may request a reconsideration before the action is taken;

(4) the procedure by which the recipient may request a reconsideration from the department or its designee, including the address where written requests must be submitted and any toll-free or local phone number the recipient may call to request assistance or a reconsideration;

(5) a statement of whether and under what circumstances benefits may be continued if a reconsideration is requested; and

(6) a statement of the recipient's right to request a fair hearing.

(d) No request for reconsideration. If a request for reconsideration is not received within ten days of the date of the notification letter, the recipient waives the opportunity to request a reconsideration.

§36.12. Reconsideration Procedure.

(a) If the recipient requests a reconsideration, the department and/or its designee will respond to the request within 60 days of receipt of the request from the recipient. The department or its designee will:

(1) obtain any additional medical information or documentation required or available regarding the request;

(2) review the request along with all documentation;

(3) attempt to resolve issues based on additional information and review of the documentation; and

(4) send the notice required by subsection (b) or (c) of this section.

(b) The department or its designee will notify the recipient and the provider if the services are approved after reconsideration.

(c) The department will notify recipients of their right to a fair hearing as described in §36.21 of this title (relating to Recipient

Notice), if the services are not approved after reconsideration, and an action will be taken.

(d) If the recipient is enrolled in a managed care organization (MCO), the department or its designee shall also notify the MCO of the department's decision. The MCO is bound by a decision of the department, or its designee, to approve services after a reconsideration under this section.

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 October 31, 1996.

TRD-9615865

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 458-7236

◆ ◆ ◆
**Subchapter C. Recipient Notice and Fair Hearing
25 TAC §§36.21-36.23**

These new sections are proposed under the Human Resources Code, §32.021 and the Government Code §531.021, which provides the Health and Human Services Commission with the authority to adopt rules to administer the state's medical assistance program and are submitted by the Texas Department of Health under its agreement with the Health and Human Services Commission to operate the purchased health services program and as authorized under Chapter 15, §1.07, Acts of the 72nd Legislature.

The new sections affect the Human Resources Code, Chapter 32.

§36.21. Recipient Notice.

(a) Notice required. The department will notify recipients of their right to a fair hearing services are not approved after a reconsideration review.

(b) Content of notice. The notice required by subsection (a) of this section must contain the following information:

(1) a statement of the action the department will take;

(2) an explanation of the reasons the department will take an action;

(3) a reference to the state or federal regulations which support the action the department will take;

(4) an explanation of the recipient's right to request a fair hearing;

(5) the procedure by which the recipient may request a fair hearing from the department, including the address where written requests must be submitted and any toll-free or local phone number the recipient may call to request assistance or a hearing;

(6) an explanation that recipients may represent themselves or have legal counsel, a relative, a friend, or another spokesperson represent them;

(7) an explanation of whether and under what circumstances services may be continued if a fair hearing is requested;

(8) a statement that the recipient must make a request for a fair hearing within 20 days of the date on the notice and that if the recipient does not request a fair hearing, the recipient's right to a fair hearing will be waived; and

(9) an explanation that the recipient may request the fair hearing be conducted based on written information without the necessity of taking oral testimony. The written information may consist of any information used in the reconsideration process and any additional written information they may wish to submit.

§36.22. Maintaining Benefits or Services.

(a) Except as otherwise specified in subsection (e) of this section, if the recipient is currently receiving a service upon which an action is taken and requests a fair hearing within the time allowed, the service will be continued until a final decision is rendered following a fair hearing.

(b) The department may terminate or reduce services before rendering a decision only if:

(1) the department informs the recipient in writing of its intent to reduce or terminate services at least five days before the termination or reduction would be effective; and

(2) it is determined at the hearing that the sole issue is one of state or federal law or policy.

(c) The department may deny, terminate, suspend, or reduce services after an adverse decision is rendered following a fair hearing.

(d) The department may recover or recoup the cost of any services provided as a result of this section, if the fair hearing decision supports the department's action.

(e) The department has no obligation to begin, or continue services at the same level, for services requiring prior authorization, pending a final decision.

§36.23. Fair Hearing.

(a) A fair hearing will be conducted under the department's informal hearing procedures at §§1.51-1.55 of this title (relating to Informal Hearing Procedures).

(b) A final decision must be made by the department within 90 days from the date the recipient makes a request for a fair hearing, unless waived in writing by the recipient.

(c) If the recipient is enrolled in a managed care organization (MCO), the department shall also notify the MCO of its decision. The decision of the department is binding on the MCO.

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 October 31, 1996.

TRD-9615866

Susan K. Steeg

General Counsel

Texas Department of Health

Earliest possible date of adoption: December 13, 1996

For further information, please call: (512) 458-7236

◆ ◆ ◆
Chapter 289. Radiation Control

The Texas Department of Health (department) proposes the repeal of existing §289.120; and proposes new §289.253; concerning the control of radiation. The section proposed for repeal adopts by reference Part 36, titled "Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies" of the Texas Regulations for Control of Radiation (TRCR). The proposed new section incorporates language from Part 36 that has been rewritten in Texas Register format and includes revision of several subsections of the section. The repeal and new section are part of the renumbering phase in the process of rewriting the department's radiation rules in the Texas Register format. The new section reflects the renumbering.

The revised requirements delete the requirement for 16 additional hours of training for individuals performing tracer studies. The deletion is made as a result of a petition for rulemaking submitted by Mr. Keith Moon. The word "downhole" is deleted in some subsections of the rule and replaced with the words "well logging" because some calibration sources that are not used for logging the well are used downhole inside a logging tool. A requirement for notifying the department whenever there is reason to believe a sealed source or device containing radioactive material has been ruptured is added. This requirement is an item of compatibility with the United States Nuclear Regulatory Commission and as an Agreement State, Texas must adopt it. References to other sections of this chapter are clarified to reflect the Texas Register format. Other subsections of the proposed section are changed to clarify and more adequately specify the requirements for well logging and/or tracer studies.

Mrs. Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for the first five-year period the sections will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mrs. McBurney also has determined that for each year of the first five years the proposed sections will be in effect, the public benefit anticipated as a result of enforcing the sections will be to maintain the established radiation safety requirements for well logging service operations and tracer studies as a means of protecting the public, workers, and the environment from unnecessary exposure to radiation. Small businesses, or individuals who are required to comply with these sections will have an estimated savings due to the deletion of the requirement for an additional 16 hours of training for those entities that use tracer materials. The savings to a licensee that had previously been required to provide training will range from \$60.00 to \$160.00 per individual, based upon ten students in a commercially obtained training course. There is no anticipated effect on local employment as a result of implementing these sections.

Comments on the proposal may be presented to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688. Public comments will be accepted for 60 days

following publication of these proposed changes in the *Texas Register*. In addition, a public hearing will be held at 9:00 a.m., Wednesday, January 8, 1997, in conference room N218, Texas Department of Health, Bureau of Radiation Control, located at the Exchange Building, 8407 Wall Street, Austin, Texas.

Texas Regulations for Control of Radiation

25 TAC §289.120

The repeal is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeal affects Health and Safety Code, Chapter 401.

§289.120. Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies.

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 October 31, 1996.

TRD-9615868

Susan K. Steeg

General Counsel

Texas Department of Health

Proposed date of adoption: January 17, 1997

For further information, please call: (512) 458-7236

License Regulations

25 TAC §289.253

The new section is proposed under the Health and Safety Code, Chapter 401, which provides the Texas Board of Health with authority to adopt rules and guidelines relating to the control of radiation; and §12.001, which authorizes the board rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new section affects Health and Safety Code, Chapter 401.

§289.253. Radiation Safety Requirements for Well Logging Service Operations and Tracer Studies.

(a) Purpose and scope. This section establishes radiation safety requirements for persons using sources of radiation for well logging service operations, including radioactive markers, mineral exploration and tracer studies. The requirements of this section are in addition to, and not in substitution for, the requirements of §289.112 of this title (relating to Hearing and Enforcement Procedures), §289.114 of this title (relating to Notices, Instructions, and Reports to Workers; Inspections), §289.119 of this title (relating to Radiation Safety Requirements for Particle Accelerators), §289.122 of this title (relating to Registration of Radiation Machine Use and Services), §289.126 of this title (relating to Fees for Certificates of Registration, Radioactive Material(s) Licenses, Emergency Planning and Implementation, and other Regulatory Services), §289.201 of this title (relating to General Provisions), §289.202 of this title (relating to Standards for Protection Against Radiation), and §289.252 of this title (relating to Licensing of Radioactive Material). This section applies

to all licensees or registrants who use sources of radiation for well logging service operations, radioactive markers, mineral exploration and tracer studies.

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

(1) Field station - A facility where sources of radiation may be stored or used and from which equipment is dispatched to temporary job sites.

(2) Injection tool - A device used for controlled injection of radioactive tracer material.

(3) Licensing state - Any state with rules equivalent to the *Suggested State Regulations for Control of Radiation* relating to, and an effective program for, the regulatory control of naturally occurring or accelerator-produced radioactive material (NARM) and has been designated as such by the Conference of Radiation Control Program Directors, Inc.

(4) Logging assistant (equipment operator) - Any individual who, under the personal supervision of a logging supervisor, handles sealed sources or tracers that are not in logging tools or shipping containers or who performs surveys required by subsection (x) of this section.

(5) Logging supervisor (field engineer) - The individual who provides personal supervision of the utilization of sources of radiation at temporary job sites.

(6) Logging tool - A device used subsurface to perform well logging.

(7) Mineral logging - Any logging performed for the purpose of mineral exploration other than oil or gas.

(8) Personal supervision - Guidance and instruction by the supervisor, who is physically present at the job site and in such proximity that visual contact can be maintained and immediate assistance given as required.

(9) Radiation safety officer - An individual named by the licensee or registrant who has a knowledge of, responsibility for, and authority to enforce appropriate radiation protection rules, standards, and practices on behalf of the licensee and/or registrant; and who meets the requirements of subsection (q) of this section.

(10) Radioactive marker - Radioactive material placed subsurface or upon a structure intended for subsurface use for the purpose of depth determination or direction orientation.

(11) Residential location - Any area where structures in which people lodge or live are located, and the grounds on which these structures are located including, but not limited to, houses, apartments, condominiums, and garages.

(12) Service company - Any contracted or subcontracted company that is present at the temporary job site, specifically, that company to which the licensees' equipment is connected and that is exposed to radioactive material.

(13) Source holder - A housing or assembly into which a radioactive source is placed for the purpose of facilitating the handling and use of the source.

(14) Storage container - A container designed to provide radiation safety and security when sources of radiation are being stored.

(15) Temporary job site - A location where well logging or tracer studies are performed other than the specific location(s) listed on a license or certificate of registration.

(16) Tracer study - The release of a substance tagged with radioactive material for the purpose of tracing the movement or position of the tagged substance in the wellbore, at the wellhead, or adjacent formation.

(17) Transport container - A container that meets the regulations of the United States Department of Transportation (DOT) and is designed to provide radiation safety and security when sources of radiation are being transported.

(18) Uranium sinker bar - A weight containing depleted uranium used to aid in the descent of a logging tool down toward the bottom of a wellbore.

(19) Wellbore - A drilled hole in which wireline service operations are performed.

(20) Well logging - All operations involving the lowering and raising of measuring devices or logging tools (that may or may not contain sources of radiation) into wellbores or cavities for the purpose of obtaining information about the well and/or adjacent formations.

(21) Wireline - An armored steel cable containing one or more electrical conductors used to lower and raise logging tools in the wellbore.

(22) Wireline service operation - Any mechanical service that is performed in the wellbore using devices that are lowered into the well on a wireline for purposes of evaluation.

(c) Prohibition.

(1) No licensee shall perform well logging service operations with a sealed source(s) in any well or wellbore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling contractor, or land owner that specifies who will be responsible for ensuring the following requirements are met:

(A) a reasonable effort at recovery will be made in the event a sealed source is lost or lodged downhole;

(B) a person shall not attempt to recover a sealed source in a manner that, in the licensee's opinion, could result in a source rupture;

(C) in the event the environment, any equipment, or personnel are contaminated with radioactive material, decontamination to levels specified in §289.202(ddd) and (eee) of this title must be performed; and

(D) the requirements of subsection (aa)(4) of this section shall be met in the event a decision is made to abandon the sealed source downhole.

(2) No licensee shall perform tracer study operations with a substance tagged with radioactive material in any well or wellbore unless, prior to commencement of the operation, the licensee has a written agreement with the well operator, well owner, drilling

contractor or land owner, and the service company to which the licensee's equipment is connected, as applicable, that specifies who will be responsible for ensuring the following requirements are met:

(A) in the event the service company's personnel or equipment are contaminated with radioactive material, they must be decontaminated in accordance with §289.202(eee) of this title before release from the job site or release for unrestricted use;

(B) in the event the well head or job site are contaminated with radioactive material, they must be decontaminated in accordance with §289.202(ddd) of this title to the concentration limits specified Table II, Column 2 in §289.202(ggg)(2) of this title, with the units changed from microcuries per milliliter to microcuries per gram before release for unrestricted use; and

(C) in the event radioactive material is to be reversed from the well of the well screens out, the licensee must have established procedures and equipment or facilities to do the following:

(i) reverse material into a preconstructed pit that is specifically established in the event of a screen out; or

(ii) reverse material into suitable transport container(s) in the event of a screen out.

(3) A copy of the written agreement in accordance with paragraphs (1) or (2) of this subsection shall be maintained for inspection by the agency for a period of five years following completion of the well logging service operation or tracer study.

(d) Limits on levels of radiation. Sources of radiation shall be used, stored, and transported in such a manner that the requirements of §289.202(a), (f), (l), (n) of this title, and §289.252(t) of this title as applicable, are met.

(e) Storage precautions.

(1) Each source of radiation, except accelerators, shall be provided with a storage and/or transport container. The container shall have a lock (or tamper seal for calibration sources) to prevent unauthorized removal of, or exposure to, the source of radiation.

(2) Each area or room in which sources of radiation are stored shall be posted in accordance with §289.202(aa)(5) of this title.

(3) Sources of radiation shall be stored downhole or in a bunker in order to minimize the danger from explosion and/or fire.

(4) Sources of radiation may not be stored in residential locations. This section does not apply to storage of radioactive material in a vehicle in transit for use at temporary job sites, if the licensee complies with subsection (x)(2) of this section.

(5) Sources of radiation in storage shall be secured to prevent tampering, or removal by unauthorized individuals.

(f) Transport precautions. Transport containers shall be locked and physically secured to the transporting vehicle to prevent shifting during transport, accidental loss, tampering, or unauthorized removal.

(g) Radiation survey instruments.

(1) The licensee or registrant shall maintain a sufficient number of calibrated and operable radiation survey instruments at each location where radioactive material is stored or used to make physical radiation surveys as required by this section and by §289.202(p) of this title. Instrumentation shall be capable of mea-

suring 0.1 milliroentgen per hour through at least 50 milliroentgens per hour. (Instrumentation capable of measuring 0.1 mR/hr through 50 mR/hr may not be sufficient to determine compliance with the regulations of the DOT.)

(2) A licensee using tracer material shall have available at each field station and temporary job site additional calibrated and operable radiation survey instruments sensitive enough to detect the radioactive surface contamination limits specified in §289.202(eee) of this title.

(3) Each radiation survey instrument shall be calibrated:

(A) by a person specifically licensed or registered by the agency, another agreement state or licensing state or the United States Nuclear Regulatory Commission (NRC) to perform such service;

(B) at intervals not to exceed six months and after each survey instrument repair;

(C) for the types of radiation used and at energies appropriate for use; and

(D) at an accuracy within $\pm 20\%$ of the true radiation level at each calibration point.

(4) Calibration records shall be maintained for a period of five years from the date of calibration for inspection by the agency.

(h) Leak testing of sealed sources. Sources of radioactive material shall be tested for leakage and contamination in accordance with §289.201(g) of this title. Records of leak tests shall be maintained for agency inspection for five years from the date of the leak test.

(i) Quarterly inventory. Each licensee or registrant shall conduct a quarterly physical inventory to account for all sources of radiation received or possessed at intervals not to exceed three months. Records of inventories shall be maintained for five years from the date of the inventory for inspection by the agency and shall include:

- (1) the quantities and kinds of sources of radiation;
- (2) the location where sources of radiation are assigned;
- (3) a unique identification of each source of radiation;
- (4) the date of the inventory; and
- (5) the name of the individual conducting the inventory.

(j) Utilization records. Each licensee or registrant shall maintain current records, that shall be kept available for inspection by the agency for five years from the date of the recorded event, showing the following information for each source of radiation:

(1) identification of each source of radiation to include:

(A) the make and model number and/or serial number (or if absent, a description) of each sealed source used; or

(B) the radionuclide and activity of tracer materials and radioactive markers used at a particular well site and the disposition of any unused tracer materials.

(2) the identity of the logging supervisor or individual who is responsible for receiving sources of radiation, to whom assigned; and

(3) the locations where used and dates of use.

(k) Design and performance criteria for sealed sources used in well logging operations.

(1) Each sealed source manufactured after August 1, 1992, (except those containing radioactive material in gaseous form) used in well logging operations shall be certified at the time of manufacture to meet the following minimum criteria.

(A) The sealed source is of doubly encapsulated construction.

(B) The sealed source contains radioactive material with a chemical/physical form as insoluble and nondispersible as practicable.

(C) The sealed source's prototype has been tested and found to maintain its integrity after each of the following tests.

(i) Temperature. The test source must be held at -40°C for 20 minutes, 600°C for one hour, and then be subjected to a thermal shock test with a temperature drop from 600°C to 20°C within 15 seconds.

(ii) Impact. A 5 kilogram steel hammer, 2.5 centimeters in diameter, must be dropped from a height of 1 meter onto the test source.

(iii) Vibration. The test source must be subjected to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(iv) Puncture. A 1 gram hammer and pin, 0.3 centimeter pin diameter, must be dropped from a height of 1 meter onto the test source.

(v) Pressure. The test source must be subjected to an external pressure of 24,600 pounds per square inch absolute (1.695×10^7 pascals) without leakage.

(2) In the absence of prototype testing required by paragraph (1)(C) of this subsection, sealed sources (except those containing radioactive material in gaseous form) used after January 1, 1993, shall be certified to meet the requirements of Paragraph (1) (C) of this subsection.

(3) Certification of source criteria as required by paragraph (1) and (2) of this subsection shall be performed only by persons specifically authorized to do so by the agency, another agreement or licensing state, or the NRC.

(4) Certification documents shall be maintained by the licensee for inspection by the agency for a period of five years after source disposal.

(1) Labeling.

(1) Each source, source holder, or logging tool containing radioactive material other than exempt quantity, shall bear a durable, legible, and clearly visible marking or label that has, as a minimum, the standard radiation caution symbol with no color requirement, and the wording DANGER (or CAUTION), RADIOACTIVE-DO NOT HANDLE, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY).

(2) The labeling specified in paragraph (1) of this subsection shall be on the smallest component (i.e., source, source holder, or logging tool) that is transported as a separate piece of equipment.

(3) Each transport container shall have permanently attached to it a durable, legible, and clearly visible label that has, as a minimum, the standard radiation caution symbol and the wording DANGER (or CAUTION), RADIOACTIVE, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY).

(4) After August 1, 1993, each transport container shall have attached to it a durable, legible, and clearly visible label(s) that has, as a minimum, the licensee's name, address, and telephone number, the radionuclide, its activity, and the assay date.

(m) Inspection and maintenance.

(1) Each licensee or registrant shall conduct, at intervals not to exceed six months, a program of visual inspection and maintenance of source holders (or sealed source, if there is no source holder), logging tools, source handling tools, storage containers, transport containers, and injection tools to assure proper labeling and physical condition. The inspection program may be performed concurrently with routine leak testing of sealed sources. Records of inspection and maintenance shall be maintained for a period of five years for inspection by the agency.

(2) If any inspection conducted in accordance with paragraph (1) of this subsection reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

(3) Any operation, such as drilling, cutting, or chiseling on a source holder containing a sealed source, shall be performed on the source holder only by persons specifically licensed to do so by the agency, another agreement or licensing state, or the NRC.

(4) The repair, opening, or modification of any sealed source shall be performed only by persons specifically licensed to do so by the agency, another agreement or licensing state, or the NRC.

(n) Training requirements.

(1) No licensee or registrant shall permit any individual to act as a logging supervisor until such individual has:

(A) successfully completed in a course recognized by the agency, another agreement or licensing state, or the NRC, at least 24 hours of formal training in the subjects outlined in subsection (bb)(1) of this section;

(B) received copies of and instruction in:

(i) the rules contained in this section and the applicable subsections of §§289.114, 289.201 and 289.202 of this title or their equivalent;

(ii) the conditions of the appropriate license or certificate of registration; and

(iii) the licensee's or registrant's operating and emergency procedures;

(C) demonstrated understanding of the requirements in subparagraph (A) and (B) of this paragraph by successfully completing a written examination administered by the licensee or registrant;

(D) completed two months of on-the-job training under the supervision of a logging supervisor; and

(E) demonstrated through a field evaluation, competence in the use of sources of radiation, related handling tools, and the type of radiation survey instruments that will be used in the job assignment.

(2) No licensee or registrant shall permit any individual to act as a logging assistant until such individual has:

(A) received copies of and instruction in the applicable subsections of §§289.114, 289.201, and 289.202 of this title or their equivalent and the licensee's or registrant's operating and emergency procedures;

(B) demonstrated understanding of the requirements in subparagraph (A) of this paragraph by successfully completing a written examination administered by the licensee or registrant; and

(C) demonstrated competence to use, under the personal supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments that will be used in the job assignment.

(3) The licensee or registrant shall provide an annual radiation safety review for logging supervisors and logging assistants.

(4) Each licensee or registrant shall maintain records that document that the requirements of paragraphs (1), (2), and (3) of this subsection are met. Such records shall be maintained for inspection by the agency until the agency authorizes their disposal.

(o) Operating and emergency procedures. The licensee or registrant shall maintain written operating and emergency procedures that include descriptions of and directions in at least the items listed in subsection (bb)(4) of this section.

(p) Personnel monitoring.

(1) In addition to the requirements of §289.202(q) of this title, no licensee or registrant shall permit any individual to act as a logging supervisor or logging assistant unless that individual wears either a film badge or a thermoluminescent dosimeter (TLD) at all times during well logging service operations and/or tracer studies utilizing sources of radiation. Each film badge or TLD shall be assigned to and worn by only one individual. Film badges must be replaced at least monthly and TLDs replaced at least quarterly. After replacement, each film badge or TLD must be returned to the supplier for processing within 14 calendar days or as soon as practicable. In circumstances that make it impossible to return each film badge or TLD within 14 calendar days, such circumstances must be documented and available for review by the agency.

(2) When necessary in order to aid in determining the extent of an individual's exposure to concentrations of radioactive material, the agency may require a licensee to make available to the individual appropriate bioassay services and to furnish a copy of the reports of such services to the agency.

(3) Personnel monitoring records shall be maintained for inspection by the agency until the agency authorizes their disposal.

(q) Radiation safety officer.

(1) A radiation safety officer (RSO) shall be designated for every license and certificate of registration issued by the agency.

(2) The RSO's documented qualifications shall include:

(A) possession of a high school diploma or a certificate of high school equivalency based on the GED test;

(B) completion of the training and testing requirements of subsection (n)(1) of this section; and

(C) two years of experience as a logging supervisor to include knowledge of well logging service operations and tracer studies.

(3) The specific duties of the RSO include, but are not limited to, the following:

(A) to establish and oversee operating, emergency, and as low as reasonably achievable (ALARA) procedures, and to review them regularly to ensure that the procedures are current and conform with this chapter;

(B) to oversee and approve all phases of the training program for well logging service operations and/or tracer studies personnel so that appropriate and effective radiation protection practices are taught;

(C) to ensure that required radiation surveys and leak tests are performed and documented in accordance with this chapter, including any corrective measures when levels of radiation exceed established limits;

(D) to ensure that personnel monitoring is used properly by occupationally-exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by §289.114 of this title;

(E) to investigate and report to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by this chapter and each theft or loss of source(s) of radiation, to determine the cause, and to take steps to prevent its recurrence;

(F) to have a thorough knowledge of management policies and administrative procedures of the licensee or registrant;

(G) to assume control and have the authority to institute corrective actions including shutdown of operations when necessary in emergency situations or unsafe conditions;

(H) to maintain records as required by this chapter;

(I) to ensure the proper storing, labeling, transport, and use of sources of radiation, storage, and/or transport containers;

(J) to ensure that quarterly inventories are performed in accordance with subsection (i) of this section; and

(K) to ensure that personnel are complying with this chapter, the conditions of the license or the registration, and the operating and emergency procedures of the licensee or registrant.

(r) Security. During each well logging or tracer application, the logging supervisor or other designated employee is responsible for protecting against unauthorized and/or unnecessary entry into a restricted area, as defined in §289.201 of this title.

(s) Handling tools. The licensee shall provide and require the use of tools that will assure remote handling of sealed sources other than low activity calibration sources.

(t) Tracer studies.

(1) Protective gloves and other appropriate protective clothing and equipment shall be used by all personnel handling radioactive tracer material. Precautions shall be taken to avoid ingestion or inhalation of radioactive material, and to avoid contamination of field stations, temporary job sites, vehicles, associated equipment, and clothing.

(2) No licensee shall permit the injection of radioactive material into usable quality groundwater (3,000 parts per million (ppm) total dissolved solids or less) without prior written authorization from this agency.

(u) Particle accelerators. No licensee or registrant shall permit above-ground testing of particle accelerators that results in the production of radiation except in areas or facilities controlled or shielded to meet the requirements of §289.202(f) or (n) of this title, as applicable.

(v) Radioactive markers. The licensee may use radioactive markers in wells only if the individual markers contain quantities of radioactive material not exceeding the quantities specified in §289.251(q) of this title. The use of markers is subject only to the provisions of this subsection and subsection (i) of this section.

(w) Uranium sinker bars. The licensee may use a depleted uranium sinker bar in well logging service operations only if it is legibly impressed with the wording DANGER (or CAUTION), RADIOACTIVE-DEPLETED URANIUM, NOTIFY CIVIL AUTHORITIES (OR NAME OF COMPANY).

(x) Radiation surveys.

(1) Radiation surveys (and calculations, for neutron sources) shall be made and recorded for each area where radioactive materials are stored.

(2) Radiation surveys (and calculations, for neutron sources) of the radiation levels in occupied positions and on the exterior of each vehicle used to transport radioactive materials shall be made and recorded. Such surveys (and calculations, for neutron sources) shall include each source of radiation and combination of sources of radiation transported in the vehicle.

(3) If the sealed source assembly is removed from the logging tool before departing the job site, a survey meter shall be used to verify that the logging tool is free of contamination.

(4) If the licensee has reason to believe that the encapsulation of the sealed source could be damaged by an operation, the licensee shall immediately conduct a radiation survey, including a contamination survey, during and after the operation.

(5) Radiation surveys shall be made and recorded at the job site and/or well head for each tracer operation except for those utilizing hydrogen-3, carbon-14, sulfur-35, or krypton-85. These surveys shall include measurements of radiation levels before and after the operation.

(6) Records required in accordance with paragraphs (1) through (5) of this subsection shall also include the dates, the identification of individual(s) making the survey, the unique identification of survey instrument(s) used, radiation measurements in milliroentgen per hour (mR/hr), calculations in millirem per hour, and an exact description of the location of the survey. Records of these surveys shall be maintained for inspection by the agency for two years after completion of the survey.

(y) Records and documents required at field stations.

(1) Each licensee or registrant maintaining field stations from which well logging service operations are conducted shall have copies of the following records and documents available at each station for inspection by the agency:

(A) a copy of the appropriate license or certificate of registration;

(B) operating and emergency procedures;

(C) applicable rules as listed in the license or certificate of registration;

(D) survey records required in accordance with subsection (x) of this section;

(E) quarterly inventories required in accordance with subsection (i) of this section;

(F) utilization records required in accordance with subsection (j) of this section;

(G) records of inspection and maintenance required in accordance with subsection (m) of this section;

(H) records of the survey instrument calibration and leak test for the specific devices and sources at the field station;

(I) records of personnel monitoring required in accordance with subsection (p) of this section for personnel employed at the field station;

(J) training records required in accordance with subsection (n) of this section;

(K) shipping papers for the transportation of radioactive material; and

(L) records of receipt, transfer and disposal of radioactive material at the field station.

(2) Records required in accordance with paragraph (1)(A) through (L) of this subsection shall be maintained in accordance with subsection (bb)(5) of this section.

(z) Records and documents required at temporary job sites. Each licensee or registrant conducting well logging service operations at a temporary job site shall have the following records and documents available at that site for inspection by the agency:

(1) a copy of the appropriate license or certificate of registration;

(2) operating and emergency procedures;

(3) survey records required in accordance with subsection (x) of this section for the period of operation at that site;

(4) evidence of current calibration for the radiation survey instruments in use at the site;

(5) a copy of the current leak test record for the source(s) in use; and

(6) shipping papers for the transportation of radioactive material.

(aa) Notification of incidents and lost sources; abandonment procedures for irretrievable sources.

(1) Notification of incidents and sources lost in other than downhole well logging operations shall be made in accordance with appropriate provisions of §289.202 of this title.

(2) Whenever there is reason to believe that a sealed source or a device containing radioactive material has been ruptured, the licensee shall notify the agency immediately by telephone and submit written notification within 30 days. The written notification shall designate the following:

(A) the well or other location;

(B) a description of the magnitude and extent of the escape of radioactive material;

(C) an assessment of the consequences of the rupture; and

(D) an explanation of the efforts planned or being taken to mitigate these consequences.

(3) Whenever a sealed source or device containing radioactive material is lost downhole, the licensee shall:

(A) monitor with a radiation survey instrument (or logging tool adjusted to detect gamma emissions from source(s) lost downhole), at the surface for the presence of radioactive contamination during logging tool recovery (fishing) operations; and

(B) notify the agency immediately by telephone and submit written notification within 30 days if radioactive contamination is detected at the surface or if the source appears to be damaged.

(4) When it becomes apparent that efforts to recover the radioactive source will not be successful, the licensee shall:

(A) advise the well operator of the Texas Railroad Commission rules regarding abandonment and an appropriate method of abandonment, that shall include:

(i) the immobilization and sealing in place of the radioactive source with a cement plug,

(ii) the setting of a whipstock or other deflection device, and

(iii) the mounting of a permanent identification plaque, containing information required by paragraph (5) of this subsection, at the surface of the well;

(B) notify the agency by telephone giving the circumstances of the loss; and

(C) file a written report with the agency within 30 days of the abandonment, setting forth the following information:

(i) date of occurrence;

(ii) a description of the radioactive source involved, including radionuclide, activity, chemical and physical form, and serial number;

(iii) surface location and identification of well;

(iv) results of efforts to immobilize and seal the source in place;

(v) depth of the radioactive source;

(vi) depth of the top of the cement plug;

(vii) depth of the well; and

(viii) information contained on the permanent identification plaque.

(5) Whenever a sealed source containing radioactive material is abandoned downhole, the licensee shall provide a permanent plaque (an example of a suggested plaque is shown in subsection (bb)(3) of this section) for posting the well or wellbore. This plaque shall:

(A) be constructed of long-lasting material such as stainless steel, brass, bronze, or monel. The size of the plaque should be convenient for use on active or inactive wells; e.g., a seven-inch square. Letter size of the word "CAUTION" should be approximately twice the letter size of the rest of the information; e.g., 1/2 inch and 1/4 inch letter size, respectively; and

(B) contain the following engraved information on its face:

- (i) the word "CAUTION;"
- (ii) the radiation symbol (color not required);
- (iii) the date of abandonment;
- (iv) the name of the well operator or well owner;
- (v) the well name and well identification number(s) or other designation;

(vi) radionuclide(s) and activity(ies) of the source(s);

(vii) the source depth and the plug back depth (depth to the top of the plug); and

(viii) an appropriate warning, depending on the specific circumstances of each abandonment, such as the following:

- (I) "Do not drill below plug back depth;"
- (II) "Do not enlarge casing;" or

(III) "Do not re-enter hole before contacting Bureau of Radiation Control, Texas Department of Health."

(6) The licensee shall immediately notify the agency by telephone and confirming letter if the licensee knows or has reason to believe that radioactive material has been lost in or to an underground potable water source. Such notice shall designate well location and describe the magnitude and extent of loss of radioactive material, consequences of such loss and efforts taken or planned to mitigate these consequences.

(7) In the event of an uncontrolled release of radioactive tracer material to the environment, the licensee shall notify the agency by telephone within 24 hours and submit written notification within 30 days.

(bb) Appendices.

(1) Subjects to be included in training courses for well logging service operations and/or tracer studies are as follows:

(A) fundamentals of radiation safety that include:

- (i) characteristics of radiation;
- (ii) units of radiation dose (rem) and activity;
- (iii) significance of radiation dose specifying radiation protection standards and biological effects of radiation;

(iv) levels of radiation from sources of radiation;

(v) methods of controlling radiation dose specifying time, distance, and shielding;

(vi) radiation safety practices, specifying prevention of contamination and methods of decontamination; and

(vii) discussion of ingestion, inhalation pathways.

(B) radiation detection instrumentation to be used that includes:

(i) use of radiation survey instruments specifying operation, calibration, and limitations;

(ii) survey techniques; and

(iii) use of personnel monitoring equipment specifying film badges, thermoluminescent dosimeters (TLDs), and pocket dosimeters;

(C) equipment to be used that specifies;

(i) handling equipment and remote handling tools;

(ii) sources of radiation;

(iii) storage control, disposal, and transport of equipment and sources of radiation;

(iv) operation and control of equipment; and

(v) maintenance of equipment.

(D) the requirements of pertinent federal and state regulations;

(E) the licensee's or registrant's written operating and emergency procedures;

(F) the licensee's or registrant's record keeping procedures; and

(G) case histories and potential consequences of accidents in well logging service operations and tracer studies.

(2) In addition to the subjects for training courses required in paragraph (1) of this subsection, individuals performing tracer studies must also complete training in the following subjects:

(A) sources of contamination;

(B) contamination detection and control;

(C) decontamination techniques and limits;

(D) survey techniques for tracer materials; and

(E) packaging requirements for transportation of radioactive materials, especially residual materials from tracer studies.

(3) The following is an example of a plaque for identifying wells containing sealed sources of radioactive material abandoned downhole:

Figure 1: 25 TAC §289.253(bb)(3)

(4) The licensee's or registrant's operating and emergency procedures shall include descriptions of and instructions in at least the following:

(A) the handling and use of sources of radiation in wells without surface casing for protecting fresh water aquifers, if appropriate;

(B) the handling and use of sources of radiation to be employed so that no individual is likely to be exposed to radiation doses in excess of the limits established in §289.202 of this title. Every reasonable effort shall be made to keep radiation exposures and releases of radioactive material in soils and effluents to unrestricted areas as low as is reasonably achievable;

(C) methods and occasions for conducting radiation surveys;

(D) methods and occasions for locking and securing sources of radiation;

(E) personnel monitoring and the use of personnel monitoring equipment, including bioassays;

(F) removal of radioactive material from storage, transportation of radioactive material to field locations and temporary job sites, including packaging of sources of radiation in the vehicles, placarding of vehicles, securing sources of radiation during transportation, and return to storage;

(G) minimizing exposure of individuals during routine use and in the event of an accident;

(H) procedures for notifying proper personnel in the event of an accident or well excursion;

(I) maintenance of records;

(J) use, inspection, and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools;

(K) procedures to be followed in the event a sealed source is lost or lodged downhole;

(L) procedures to be used for picking up, receiving, handling, and opening packages containing radioactive material;

(M) procedures to be used for surveys of temporary job sites and equipment, and decontamination of vehicles, associated equipment, and clothing following tracer studies;

(N) storage and disposal of radioactive waste;

(O) procedures for laundering contaminated clothing, if applicable;

(P) licensee's or registrant's management structure;

(Q) posting of radiation areas and labeling radioactive material containers;

(R) procedures to be followed in the event of an uncontrolled release of radioactive tracer material to the environment; and

(S) actions to be taken if a sealed source is ruptured, including actions to prevent the spread of contamination and minimize inhalation and ingestion of radioactive material, and actions to obtain suitable radiation survey instruments as required by subsection (g) of this section.

(5) The following are time retention requirements for record keeping.

Figure 2: 25 TAC §289.253(bb)(5):

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 October 31, 1996.

TRD-9615867

Susan K. Steeg

General Counsel

Texas Department of Health

Proposed date of adoption: January 17, 1997

For further information, please call: (512) 458-7236

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter B. Insurance Code, Chapter 5, Subchapter B

Regulation of Excess Liability Insurance Including Automobile Liability Insurance

28 TAC §5.1201

The Texas Department of Insurance proposes the repeal of §5.1201, concerning the regulation of excess liability insurance including automobile liability insurance. The repeal of this section is necessary to enable the department to simultaneously adopt a new section which replaces the repealed section with provisions concerning the regulation of umbrella liability insurance. This repeal and adoption of a new section is necessary for insurers to offer consumers a wider range of policy provisions and self insured retentions for umbrella liability insurance. Notification appears elsewhere in this issue of the *Texas Register* of the proposed new section which would replace the section proposed for repeal.

David Durden, deputy commissioner for property and casualty lines has determined that for the first five-year period the repeal will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Durden has also determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of administering the repeal will be that consumers may be offered a wider range of policy provisions and will no longer be limited to an indemnity payment provision and no defense coverage or supplementary payments. There will be no effect on local employment or the local economy. There is no anticipated economic cost to persons who are required to comply with the repeal as proposed.

Comments on the proposal to be considered by the Department must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, Mail Code 113-2A, Austin Texas 78714-9104. An additional copy of the comment should be submitted to David

Durden, Deputy Commissioner for Property and Casualty Lines, Texas Department of Insurance, P. O. Box 149104, Mail Code 104-5A, Austin, Texas 78714-9104.

The repeal is proposed under the Insurance Code, Articles 5.98 and 1.03A; and the Government Code, §§2001.004 et seq. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Government Code, §§2001.004 et seq. (Administrative Procedures Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this repeal: Insurance Code, Articles 5.13, 5.13-2 and 5.15

§5.1201. Regulation of Excess Liability Insurance Including Automobile Liability Insurance.

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 October 31, 1996.

TRD-9615839

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 13, 1996

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



The Texas Department of Insurance proposes new §5.1201, concerning the regulation of umbrella liability insurance. The new §5.1201 is simultaneous with the proposed repeal of existing §5.1201. Notice of the proposed repeal appears elsewhere in this issue of the *Texas Register*. The new section is necessary to provide procedures and requirements for insurers writing personal and commercial umbrella liability insurance in Texas. Proposed subsection (a) outlines the purpose and scope of the new section. Subsection (b) defines terms used in the new section. Subsection (c) addresses the general requirements for the underlying primary liability insurance for writing umbrella liability insurance. Subsection (d) is proposed to specify policy provisions which are required or may be included in umbrella liability policy forms filed for approval. This subsection will allow insurers writing umbrella liability insurance to convert from an indemnity payment provision to a pay on behalf of payment provision. This new subsection will also allow insurers to offer defense coverage and it specifies the supplementary payments required for insurers electing to provide defense coverage. Subsection (e) specifies the insured or retained automobile liability minimums that are required for writing umbrella liability insurance. Subsection (f) addresses the self insured retentions and minimum required retentions on primary liability insurance that are required for writing umbrella liability insurance. Subsection (g) specifies the filing procedures for rating plans, policy and endorsement forms and statistical data for insurers writing personal umbrella liability coverage and specifies that (a)

rate applications for personal umbrella policies will no longer be accepted after November 1, 1995. Subsection (h) addresses the filing procedures for rating plans, policy and endorsement forms and statistical data for insurers writing commercial umbrella liability insurance and specifies that (a) rate applications for commercial umbrella policies will no longer be accepted after November 1, 1995.

David Durden, deputy commissioner for property and casualty lines has determined that for the first five-year period the section will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Durden has also determined that for each year of the first five years the proposed section is in effect, the public benefit anticipated as a result of administering the section will be to offer consumers a wider range of policy provisions including a pay on behalf of payment provision and defense coverage with supplementary payments and a wider range of self insured retentions. There will be no effect on local employment or the local economy. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal to be considered by the Department must be submitted within 30 days after publication of the proposed section in the *Texas Register* to Caroline Scott, General Counsel and Chief Clerk, Texas Department of Insurance, P.O. Box 149104, Mail Code 113-2A, Austin Texas 78714-9104. An additional copy of the comment should be submitted to David Durden, Deputy Commissioner for Property and Casualty Lines, Texas Department of Insurance, P. O. Box 149104, Mail Code 104-5A, Austin, Texas 78714-9104.

This section is proposed under the Insurance Code, Articles 5.13, 5.13-2, 5.15, 5.98 and 1.03A and the Government Code, §§2001.004 et seq. Articles 5.13 and 5.15 authorize the commissioner to approve policy and endorsement forms and rates for personal liability insurance. Article 5.13-2 authorizes the commissioner to approve policy forms, endorsements and other related forms for commercial liability insurance. Article 5.98 authorizes the commissioner to adopt reasonable rules and rates that are appropriate to accomplish the purposes of Chapter 5. Article 1.03A authorizes the commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute. The Government Code, §§2001.004 et seq. (Administrative Procedures Act) authorizes and requires each state agency to adopt rules of practice setting forth the nature and requirements of available procedures and to prescribe the procedure for adoption of rules by a state administrative agency.

The following articles of the Insurance Code are affected by this proposed section: Insurance Code, Articles 5.13, 5.13-2 and 5.15.

§5.1201. Regulation of Umbrella Liability Insurance.

(a) Purpose and Scope. The purpose and scope of this section is to specify procedures and requirements for those insurers writing personal and commercial umbrella liability insurance in Texas. These procedures and requirements address:

(1) general requirements for underlying primary liability insurance for umbrella liability insurance;

(2) certain policy provisions which are required and policy provisions which are optional in umbrella liability policy forms;

(3) the minimum insured automobile liability or retained automobile liability that is required for writing an umbrella liability policy;

(4) the minimum required retentions on primary liability insurance, other than automobile insurance, and self insured retentions; and

(5) the procedures for filing rating plans, forms and statistical data by insurers who write commercial and personal umbrella liability insurance.

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

(1) Excess liability insurance—liability insurance which provides coverage for a liability loss that is above the policy limit of the primary liability insurance coverage.

(2) Primary liability insurance—liability coverage that provides benefits up to the limits of the liability policy regardless of other insurance policies in effect. The primary liability insurance is specified as underlying coverage in the umbrella liability insurance policy.

(3) Self insured retention—the portion of a liability loss that will be paid by the umbrella policyholder where the umbrella policyholder does not have primary liability insurance to cover the loss.

(4) Umbrella liability insurance—excess liability coverage above the limits of automobile liability and business or personal liability policies. The umbrella policy also provides liability coverage for exposures not covered under the primary liability insurance policies and not excluded by the umbrella liability insurance policy.

(c) General Requirements for Umbrella Liability Insurance. The requirements for the primary liability insurance for writing umbrella liability insurance are as follows:

(1) an umbrella liability insurance policy cannot be written with automobile liability insurance as the only primary liability insurance coverage; and

(2) an umbrella liability insurance policy shall have automobile liability insurance as a primary liability insurance coverage and is required to have at least one other type of liability insurance as a primary liability insurance coverage in addition to the automobile liability insurance.

(d) Policy Provisions. The following are policy provisions which are required or may be included in umbrella liability policy forms filed for approval.

(1) The payment provision in umbrella liability insurance policies shall be written to indemnify the insured, pay to the insured or pay on behalf of the insured, losses in excess of the specific required retention(s) or underlying insurances.

(2) Umbrella liability insurance policies may or may not provide for defense as a coverage. If defense is provided, the

following supplementary payments shall be included in the policy and paid by the insurer with respect to any claim or suit that the insurer defends. These supplementary payments shall not reduce the limits of the umbrella liability insurance policy.

(A) All expenses the insurer incurs.

(B) Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the bodily injury liability coverage applies. The insurer does not have to furnish these bonds.

(C) The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. The insurer does not have to furnish these bonds.

(D) All reasonable expenses incurred by the insured at the insurer's request to assist the insurer in the investigation or defense of the claim or suit, including actual loss of earnings up to \$100 a day because of time off from work.

(E) All costs taxed against the insured in the suit.

(F) Prejudgment interest awarded against the insured on that part of the judgment the insurer pays. If the insurer makes an offer to pay the applicable limit of insurance, the insurer shall not pay any prejudgment interest based on that period of time after the offer.

(G) All interest on the full amount of any judgment that accrues after entry of the judgment and before the insurer has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

(e) Required Insured or Retained Automobile Liability Minimums. The required insured or retained automobile liability minimums shall be no less than one of the following:

(1) for commercial automobile liability coverage, policy limits of not less than \$100,000 each person, \$300,000 each accident or occurrence with respect to bodily injury liability and \$50,000 each accident or occurrence with respect to property damage liability or combined single limits for bodily injury and property damage liability of not less than \$350,000;

(2) for personal automobile liability coverage, policy limits of not less than \$100,000 each person, \$300,000 each accident or occurrence with respect to bodily injury liability and \$25,000 each accident or occurrence with respect to property damage liability or combined single limits for bodily injury and property damage liability of not less than \$325,000;

(3) for persons who are self insured, pursuant to the Transportation Code, §601.124, with respect to automobiles eligible for personal automobile coverage, a retention of automobile bodily injury liability and property damage liability of not less than \$100,000 for bodily injury to or death of one person in one accident, \$300,000 for bodily injury to or death of two or more persons in one accident and \$25,000 for damage or destruction of property or a combined retention of bodily injury and property damage liability of \$325,000; or

(4) for persons who are self-insured, pursuant to the Transportation Code, §601.124, with respect to automobiles eligible for commercial automobile coverage, a retention of automobile bodily injury liability and property damage liability of not less than \$100,000 for bodily injury to or death of one person in one accident, \$300,000

for bodily injury to or death of two or more persons in one accident and \$50,000 for damage or destruction of property or a combined retention of bodily injury and property damage liability of \$350,000.

(f) Self Insured Retentions And Minimum Required Retentions On Primary Liability Insurance.

(1) On all umbrella liability insurance policies, the exposures not covered by primary liability insurance shall be subject to optional self insured retentions.

(2) On all umbrella liability insurance policies, the minimum required retentions for exposures covered by primary liability insurance (other than automobile liability insurance) shall be at least the basic limits of liability for each primary liability insurance coverage.

(g) Rate, Form And Data Filing Procedures for Personal Umbrella Liability Insurers.

(1) Each insurer writing personal umbrella liability insurance shall file with the commissioner a rating plan and rules on a prior approval basis. Policy and endorsement forms proposed to be used with such rating plan and rules shall be filed with the commissioner on a prior approval basis. Statistical data on personal umbrella liability insurance shall be filed and maintained in accordance with the prescribed statistical plan. These filings shall be processed in accordance with the commissioner's requirements and the requirements of the Insurance Code, Article 5.15.

(2) No individual (a) rate, being filed as a departure from the insurer's approved rating plan for personal umbrella liability insurance, shall be utilized after November 1, 1995.

(h) Rate, Form And Data Filing Procedures for Commercial Umbrella Liability Insurance.

(1) Each insurer writing commercial umbrella liability insurance shall file with the commissioner a rating plan and rules on a file and use basis. Policy and endorsement forms proposed to be used with such rating plan and rules shall be filed with the commissioner on a prior approval basis. Statistical data on commercial umbrella liability insurance shall be filed and maintained in accordance with the prescribed statistical plan. These filings shall be processed in accordance with the commissioner's requirements and the requirements of the Insurance Code, Article 5.13-2.

(2) No individual (a) rate application, being filed as a departure from the insurer's approved rating plan for commercial umbrella liability insurance, shall be utilized after November 1, 1995.

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 October 31, 1996.

TRD-9616114

Caroline Scott

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: December 13, 1996

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



TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

Subchapter E. Economically Distressed Areas Program

31 TAC §363.505

The Texas Water Development Board (the board) proposes an amendment to §363.505, concerning Calculation of Financial Assistance. The amendment provides a revised methodology for determining the amount and form of financial assistance on applications requesting an increase in the amount of financial assistance previously provided by the Board for projects under the Economically Distressed Areas Program. The proposed method for determining the amount of the loan for project increases would be to determine a grant to loan ratio based on the current Board methodology for determining the amount and form of financial assistance, to also determine the amount of the loan for the increase based on the grant to loan ratio originally given for the project, and for the Board to accept the larger of the two amounts as the amount of financial assistance to be added to the original loan for the project. The remainder of the requested increase would be in the form of a grant.

Pamela Ansbury, the Director of Finance, has determined that for the first five year period the section is in effect there will not be fiscal implications for state government as a result of enforcing or administering the section. The impact on local government will likely be an increase in the amount of loan dollars and a reduction in the amount of grant dollars to political subdivisions, however the dollar amount cannot be qualified at this time.

Ms. Ansbury also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing the section will be the establishment of a clear policy for the calculation of increased financial assistance for projects that have already received a commitment from the Board for construction costs under the EDAP program. There will not be an effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Ignacio Madera, Jr., Financial Applications Manager, (512) 463-7509, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendment is proposed under Texas Water Code, §6.101 and Texas Water Code, §16.342 which require the board to adopt rules that are necessary to carry out the program provided by Water Code, Subchapter K, Chapter 17.

Texas Water Code §§15.407, 17.927, and 17.933 are the statutory provisions affected by the proposed amendment.

§363.505. *Calculation of Financial Assistance.*

(a) The board's financial assistance will be determined by the provisions of this section, including calculating:

(1) (No change.)

(2) revenue available for payment of debt service. The board will determine the revenue available for payment of debt service by using the appropriate method specified in either subparagraph (A) or (B) of this paragraph.

(A) (No change.)

(B) If there is insufficient satisfactory evidence that there are other families of similar income who are similarly situated paying the same rates, then the revenue available for debt service will be either:

(i) (No change.)

(ii) for existing systems with a capital component of greater than zero and which are extending service to an area to which the provider utility has not previously provided service the revenue available for payment of debt service will be the payment rate of the provider utility multiplied by the capital component of the provider utility multiplied by the estimated number of LUEs in the project area at the end of construction of the project less other debt incurred by the provider utility attributable to the overall project proposed in the application to the Board; and

(3) for applications requesting an increase in the amount of financial assistance previously provided by the board for the project under this program, the amount of the increase for which repayment will be required will be the greater of:

(A) an amount equal to the amount of the loan of the financial assistance provided by the board in its first commitment for the project divided by the total amount of the financial assistance provided by the board in its first commitment for the project multiplied by the amount of the additional financial assistance request under consideration by the board; or

(B) an amount equal to the amount of the loan that would have resulted by implementing the provisions of subsection (a)(2) of this section to the total financial assistance for the project, including the increase, divided by the total project cost of the project, including the increase, multiplied by the amount of the additional financial assistance request under consideration by the board.

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

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615875

Suzanne Schwartz

General Counsel

Texas Water Development Board

Proposed date of adoption: December 19, 1996

For further information, please call: (512) 463-7981

Part XX. Edwards Aquifer Authority

Chapter 701. Filing and Processing of Permit Applications

The Edwards Aquifer Authority (Authority) proposes new sub-chapters C, D, E, F, G and H of Chapter 701, §§701.31-701.35, 701.51-701.59, 701.71-701.77, 701.91-701.102, 701-121-701.131, 701.141-701.147, which consist of rules governing the filing, review and final decision on permit applications for an initial regular permit. The purpose of these proposed rules is to describe the procedures for filing declarations of historical use with the Authority, the administrative review, technical review, and initial determination on such applications, the standards for determining initial regular permit amounts and terms, provide an opportunity for a hearing, set forth post-hearing procedures, and an appeal following a final Authority determination on the applications for initial regular permits.

The Legislature created the Authority pursuant to the Conservation Amendment, which makes the protection and conservation of underground water and all other natural resources of the State of Texas both public rights and public duties. Section 1.08(a) of the Act grants the Authority all the powers, rights and privileges necessary to manage, conserve, preserve, and protect the Edwards Aquifer and to increase the recharge of, and prevent the waste and pollution of water in, the aquifer. The section also confers upon the Authority all the rights, powers, privileges, authority, functions and duties provided by the Conservation Amendment and the general law of the State, including chapter 36 of the Texas Water Code.

The Act creates a permitting system for withdrawals of underground water from the Edwards Aquifer. This permitting system requires the Authority to accept timely filed historical claims to underground water called "declarations of historical use" and, to the extent water is available for permitting, to issue "initial regular" permits to those persons who establish by convincing evidence that an amount of underground water was withdrawn from the aquifer and beneficially used without waste during the 21-year historical period of June 1, 1972 to May 31, 1993. The "declaration of historical use" constitutes an application for an initial regular permit. The Act requires the Authority to make a final determination on all historical claims for initial regular permits before considering any other claim for water that is not based on proven beneficial use during the historical period. The Act does provide for permits to be issued on an emergency basis to prevent the loss of life or to prevent severe, imminent threats to public health or safety.

According to the express terms of the Act, declarations of historical use were to be filed with the Authority by March 1, 1994. The Act was intended by the 73rd Legislature to become effective on September 1, 1993, with the required filing date following the effective date by six months. However, the effectiveness of the Act was unexpectedly delayed by objections under the federal Voting Rights Act - objections that were resolved by the 1995 amendment to the Act that provided for the election, rather than the appointment of the board of directors. The Act was then challenged in state court on constitutional grounds, resulting in an injunction barring implementation of the Act. The injunction was dissolved by the Texas Supreme Court, and the Act thereby became effective, on June 28, 1996. *Barshop v. Medina County Underground Water Conservation*

District, Number 95-0881. In its opinion upholding the Act, the Supreme Court recognized that the Legislature intended to require the filing of declarations of historical use six months following the effective date of the Act and rejected the argument that the stale March 1, 1994 filing date was an immovable, fatal flaw in the legislation.

In general, under §1.15(b) of the Act, persons within the jurisdictional boundaries of the Authority may not withdraw underground water from the Edwards Aquifer or begin construction of a well or other works designed for the withdrawal of water from the aquifer unless they obtain a permit from the Authority. This prohibition does not apply to a well that produces 25,000 gallons of underground water from the Edwards Aquifer per day or less exclusively for domestic or livestock use (Act, §1.16(c)). Such wells must be registered with the Authority (or with a local groundwater conservation district), but need not be metered and may continue to use underground water from the Edwards Aquifer exclusively for domestic and livestock uses (Act, §1.33). Domestic and livestock uses are defined by the Act to include use of water for drinking, washing, and culinary purposes, irrigation of a family garden or orchard the produce of which is for household consumption only, and watering of animals (Act, §1.03(9)). However, the exemption for small domestic and livestock wells does not extend to a well serving a subdivision requiring platting (Act, §1.33(c)). Proposed §701.51 extends this exemption to any well that is not capable of producing more than 25,000 gallons per day.

Under the Act, initial regular permits are subject to proportional reduction to reflect the total amount of water available for withdrawals through non-exempt wells. The total amount of water available is 450,000 acre feet per calendar year, unless the board of the Authority determines in consultation with appropriate state and federal agencies, that additional water supplies are available through the implementation of various water management strategies and studies (§1.14(d)). However, the Act provides two safe harbors against proportional reduction to reflect the total amount of water available for permitting. An existing user that qualifies for the "irrigation withdrawal floor" is assured two acre-feet of underground water for every acre of land the user actually irrigated during any one calendar year of the historical period. The "historical average withdrawal floor" is available to a historical user that withdrew and beneficially used water from the aquifer for at least three years of the historical period. Such a user is assured its annual average beneficial water use during the years of the historical period in which it withdrew water from the aquifer.

Although the Act prohibits withdrawals from nonexempt wells without a permit, it provides "interim authorization" to persons who produced water from a well on the effective date of Act to continue withdrawing water until the filing date for declarations of historical use. For an existing user with interim authorization that timely files a declaration of historical use, the Act extends the authorization until a final and appealable decision is rendered on the user's application for permit.

On September 3, 1996, the Authority published in the *Texas Register*, volume 21, page 8401, a first set of proposed filing rules contained in subchapter A and B of chapter 701. Among other provisions, these rules, which were adopted by the Authority on October 29, 1996, and filed with the *Texas Register*

on October 31, 1996, established December 30, 1996 as the filing deadline for declarations of historical use. Under §701.18 of this first set of rules, applications for initial regular permits must be filed with the Authority no later than December 30, 1996. An application is considered timely filed with the Authority if the application and the \$25 application fee are 1) actually received in the Authority offices by 5:00 p.m. on December 30, 1996 or 2) deposited in the United States mail enclosed in a postpaid envelope properly addressed to the Authority which bears an official postmark date of no later than December 30, 1996. Applications must be made on printed forms prescribed by and available from the Authority.

This second set of proposed permit filing and processing rules should be read in conjunction with the adopted first set of rules. These rules establish the procedure by which the Authority will review the applications for initial regular permits, the standards for making an initial determination on those applications, a description of the type of information that an applicant should provide in support of an application and how and where to file it, a procedure for filing a protest, obtaining a hearing, and appealing the determination on each application. A complete copy of the filing and processing rules is available from the Authority, at the address stated below.

The Authority proposes to add new §§701.31, 701.32, 701.33, 701.34, and 701.35 to subchapter C of chapter 701, pertaining to filings and notices related to applications for initial regular permits. The Authority proposes five definitions which relate to the review and final decision on applications in proposed §701.31, as follows: "Application" is a permit application along with any information, documents, and attachments timely submitted in support of the application. The definition makes clear that the term "application" includes a timely filed declaration of historical use. "Beneficial use without waste" means use of water to the extent the water is economically necessary for a lawful purpose when reasonable intelligence and reasonable diligence are used to apply the water to that purpose, and does not constitute waste. This definition tracks the definition of "beneficial use" in the Act, §1.03(4), and incorporates the term "waste" as defined in the Act, §1.03(21). The phrase "contested case hearing" is defined as an evidentiary hearing governed by the rules and the Administrative Procedures Act ("APA"), chapter 2001, Texas Government Code. "Historical period" refers to the 21-year period from June 1, 1972 through May 31, 1993. A "permit withdrawal floor" is the amount of underground water an initial regular permit holder is assured against any required proportional reduction to meet the amount available for permitted withdrawals. The two types of permit withdrawal floor are the "irrigation withdrawal floor" and the "historical average withdrawal floor." These permit withdrawal floors are described in greater detail in proposed §§701.98-701.101 of these proposed rules.

Proposed §701.32 directs the general manager to appoint a docket clerk to accept for filing applications for permits and other papers relating to such applications. Proposed §701.33 directs the general manager to establish a sequential numbering system for applications and permits. Proposed §701.34 provides a general mailbox rule for mailing of papers related to permits, states the address of the Authority to which an application and papers relating to an application should be

sent, and requires applicants and permit holders to inform the Authority of a change of address within 30 days. Proposed §701.35 requires an applicant to file an original and one copy of an application and other papers with the docket clerk.

The Authority proposes to add new §§701.51, 701.52, 701.53, 701.54, 701.55, 701.56, 701.57, 701.58, and 701.59 to subchapter D of chapter 701, pertaining to administrative review of declarations of historical use.

Proposed §701.51 states an exception to the general rule - a de minimis user who is not capable of producing more than 25,000 gallons per day from a well or well unit need not apply for an initial regular permit. Proposed §701.52 states that failure to file an application in substantial compliance with chapter 701 extinguishes and bars any claim to an initial regular permit, but also makes clear that such failure does not affect exempt wells or applications for other types of permits. Proposed §701.53 tracks §1.17 of the Act, which provides interim authorization for persons who owned a producing nonexempt well on June 28, 1996 to continue withdrawals from the well during the period of time that applications for initial regular permits are being determined by the Authority. The maximum amount of withdrawals allowed by interim authorization is the applicant's historical annual maximum beneficial use without waste during the historical period as evidenced by the applicant's declaration. The maximum interim authorization amount is subject to proportional reduction to meet the amount of water available for permitting in accordance with §1.16(e) of the Act.

Proposed §701.54 states that a separate declaration of historical use must be filed for every separate farm, industrial operation, municipality, or other user unit. However, an application may pertain to more than one well or more than one use, if the wells or uses are located or occur within the same user unit. Thus, any water-using operation that functions as a single unit must file one declaration of historical use reflecting all uses. Proposed §701.55 provides that an application for initial regular permit and any papers submitted by an applicant in support of the application will be date stamped "RECEIVED" by the docket clerk at the time the application or paper is received by the Authority. Assuming the required application fee is paid, and subject to adopted §701.18 of Chapter 701 (relating to Time for Filing), applications and papers will be considered filed on the day they are deposited in the mail or physically delivered to the Authority.

Proposed §701.56 describes the procedure for dealing with failure to submit the required application fee. If the fee is not attached to the application or is returned unpaid, the general manager will notify the applicant that the fee has not been paid. The notice will advise the applicant that if the fee is not paid within 15 days of the date of the notice the application will be deemed not filed and will be returned to the applicant. If payment is received within 15 days, the application will be deemed filed on the date originally received by the Authority. However, if the payment is not received within 15 days, the application will be deemed not filed and will be returned to the applicant. An application for initial regular permit that is deemed not filed for failure to pay the application fee cannot be treated as a timely application.

Under proposed §701.57, upon timely receipt of an application and payment of the required fee, the general manager will review the application to determine whether it is administratively complete. Proposed §701.58 states that an application will be considered complete if it appears to contain the information required by adopted §701.19 of chapter 701 (relating to Information Required in Application), including any required attachments and supporting documentation. If the application is complete, the general manager will send a notice to the applicant that the application is administratively complete and will be submitted to the staff for technical review.

If the application is incomplete, proposed §701.59 requires the general manager to so notify the applicant and state in the notice what information or action is necessary to make the application complete, that the applicant must file the information or take the action within 30 days of the date of the notice, and that the application will be submitted to technical review on the 31st day after the date of the notice, based on whatever information has been timely supplied by the applicant. Incomplete applications for initial regular permit will not be deemed untimely or returned to the applicant, but rather will be reviewed on the basis of the information submitted by the applicant.

The Authority proposes to add new subchapter E of chapter 701, pertaining to technical review and initial determination of declarations of historical use, which will include new proposed §§701.71, 701.72, 701.73, 701.74, 701.75, 701.76 and 701.77. Proposed §701.71 states that subchapter E governs the technical review and initial determination of declarations of historical use. Proposed §701.72 states that the applicant may submit further information in support of the application not later than the 30th day following the date of the notice of administrative completeness, but not thereafter unless requested or permitted by the general manager under proposed §701.72(b) or proposed §701.73 (relating to Supplementation of Application and Request for Additional Information), or as may be allowed at a contested case hearing under proposed §701.124 of this title (relating to Evidence at Contested Case Hearing). Under subsection (b) of proposed §701.72, the general manager may allow any applicant to late file additional information in support of the application, upon good cause shown, no later than April 1, 1997. The general manager may also, under proposed §701.73, request additional information from an applicant at any time prior to the completion of technical review on all timely filed applications. Such information must be provided within 30 days of the request. A request for additional information under this section extends the deadline for completion of technical review by 30 days. The technical review will proceed and be completed whether or not the Applicant provides the requested information following the passage of this 30 day period.

Proposed §701.74 describes the process of technical review. The purpose of technical review is to determine if and to what extent the application establishes withdrawals and beneficial use without waste of underground water from the Edwards Aquifer during the historical period. The section states that technical review will be completed within 90 days of the date the application is declared administratively complete (or within 90 days after the 31st day after notice of incomplete application is sent). Promptly following the completion of technical review,

the general manager will give the applicant notice that technical review has been completed. This notice will contain an application summary that states the general manager's preliminary findings, that the general manager may modify the preliminary findings and seek additional information from the applicant in the course of conducting technical review of other applications, that the permit amount may be proportionately reduced to meet the amount of water available for permitting (subject to any applicable permit withdrawal floor), and that the general manager will issue an initial determination on all timely filed applications when technical review is complete on all such applications. The notice will also inform the applicant that a notice of initial determination will be sent to the applicant and published in the *Texas Register*, and that the applicant may file a protest and request a contested case hearing on or before the 30th day following the publication of notice in the *Texas Register*.

Proposed §701.75 describes the process by which the general manager makes an initial determination on all timely filed applications. Within 15 days after technical review on all applications has been completed, the general manager will determine all recommended permit withdrawal amounts in accordance with proposed §701.101, and prepare an initial determination. The initial determination will consist of 1) a matrix of all claims presented with proposed permit withdrawal amounts; 2) final application summaries containing the general manager's findings; and 3) proposed permits setting forth proposed permit withdrawal amounts, terms and conditions. Under proposed §701.76, the general manager must publish notice of the initial determination in the *Texas Register* and newspapers, and mail a copy of the application summary and recommended permit to each applicant. The notice will state that the initial determination has been made and is available for inspection, will summarize the determination, and, if applicable, will state that the applicant has interim authorization under §1.17 of the Act, subject to proportional reductions to meet the amount of water available for permitting as determined by the general manager. The notice will also state that the initial determination will become final with respect to any application unless the determination as to that application is protested by an applicant or other affected person within the geographic boundary of the Authority within 45 days following publication of the notice in the *Texas Register*.

Proposed §701.77 states that after the protest period is closed the general manager will submit to the board a list of all uncontested applications and initial determinations on those applications. The general manager shall then issue permits on those applications. Uncontested permits are subject to adjustment after a final decision has been rendered in all contested case hearings.

The Authority proposes to create subchapter F of chapter 701, pertaining to initial regular permit amounts and terms, which will contain new proposed §§701.91, 701.92, 701.93, 701.94, 701.95, 701.96, 701.97, 701.98, 701.99, 701.100, 701.101 and 701.102. Proposed §701.91 states that subchapter E governs the determination of amounts of withdrawals authorized by initial regular permits and the terms of those permits. Proposed §701.92 tracks the language of the Act that allows the board to increase the amount of water available for permitting based on a determination that additional supplies of water

are available based on studies and implementation of water management strategies. The section states that the board will consider whether to increase the statutory cap on permitted withdrawals of 450,000 acre feet not later than the date the staff completes technical review on all timely-filed declarations. If the amount of water available for permitting is increased by the board by this date, the general manager can take the higher number into account in calculating permit amounts in the initial determination.

Proposed §701.93 states that the Authority will issue an initial regular permit to an existing user who timely files a declaration and pays the application fee, and who establishes by convincing evidence beneficial use of underground water during the historical period. To the extent water is available for permitting, either the 450,000 acre foot cap or a higher amount determined by the board, the Authority must issue an initial regular permit for an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period.

A set of criteria for technical review are set out in proposed §701.94 to give guidance to applicants and technical review staff. The staff will employ these criteria in performing technical review of applications. Withdrawal of water that appears to be substantially in excess of the volume or rate reasonably required for a particular use will be presumed to constitute waste. Irrigation use of two acre feet per irrigated acre will be presumed not to constitute waste. Use of water for irrigation of multiple or successive crops is a beneficial use to the extent it does not constitute waste. It will be presumed that a well was beneficially used without waste to the maximum capacity of the well and the equipment connected to the well. All of the presumptions stated in this section may be rebutted by convincing evidence. "Waste" is defined in §1.03 (21) of the Act.

Proposed §701.95 defines the phrase "convincing evidence" as used in the Act and applied in these rules. The section states that the phrase means credible and reliable evidence, including but not limited to testimonial or documentary evidence, that is reasonably sufficient to satisfy the requirements of the Act, is legally relevant and material, is not merely conclusory, is not internally inconsistent or contradictory, and is not contradicted or called into question by other evidence. An affidavit filed by the applicant may provide sufficient support for an application if the affidavit meets the standard of "convincing evidence" and is corroborated by some documentary proof that also meets the standard. However, if no such documentary proof is available, verified statements from two credible persons with personal knowledge of the matter may be accepted in lieu of such proof, if the applicant reasonably explains why no such proof can be produced.

Proposed §701.96 states that in the case of an existing user who is otherwise entitled to an initial regular permit, but does not have use for a full year during the historical period, the Authority will calculate the permit withdrawal amount based on the amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year, subject to adjustment in accordance with the chapter to the same extent as other permit withdrawal amounts. This section implements §1.16(e) (second sentence) of the Act. Section

1.16(f) of the Act is implemented in proposed §701.97 of the proposed rules, which states that the board must consider the equitable treatment of a user whose historic use was affected by a requirement of or participation in a federal program, including a user that participated in a federal program that required a reduction in the number of acres irrigated by the user. A credit for irrigation use for acreage in a federal program is to be based on irrigation use on comparable acreage in the same farm unit which is not in the program, and shall not be less than the applicable permit withdrawal floor. However, the federal program credit mandated by the Act is not limited to agricultural programs.

Proposed §701.98 describes the two types of permit withdrawal floors provided by the Act. The function of the permit withdrawal floors is to provide a minimum permit withdrawal amount that is not subject to proportional reduction to meet the amount of water available for permitting, as required by §1.16(e) (third sentence) of the Act. Accordingly, the permit withdrawal amount for these users will not be set lower than the applicable permit withdrawal floor. If the user shows by convincing evidence that it withdrew water from the Edwards Aquifer and irrigated a specified number of acres during the historical period, the user may qualify for the "irrigation withdrawal floor". The irrigation withdrawal floor is calculated by multiplying two acre feet by the maximum number of acres that the user irrigated during any one calendar year of the historical period. In order to qualify for the "historical average withdrawal floor," a user must establish by convincing evidence that it withdrew and beneficially used without waste water from the Edwards Aquifer for at least three years during the historical period. The historical average floor is calculated by averaging the user's annual water use during every calendar year of the historical period in which the user actually withdrew water from the aquifer.

Proposed §701.99 provides further guidance as to how an irrigation withdrawal floor claim will be evaluated. An applicant may qualify for an irrigation withdrawal floor by presenting convincing evidence that the user or the user's predecessor in interest 1) owned, leased, or otherwise had a legal right to irrigate a specified number of acres of irrigable land during the historical period; 2) owned a well capable of irrigating and equipped to irrigate the acreage; and 3) actually irrigated the land from the well during the historical period. If the applicant establishes the first two of these requirements, the third requirement may be satisfied, depending on the circumstances, by the applicant's sworn statement. If two or more applicants seek to qualify for an irrigation floor on the same acreage, the Authority will equitably prorate the floor between the applicants in order to avoid granting more than two acre feet in permit withdrawal floor for the same acreage.

Proposed §701.100 provides further guidance as to how a claim for a historical average withdrawal floor will be evaluated once the applicant meets the qualifying requirement of at least three years of withdrawals during the historical period. Because the historical average withdrawal floor is based on the average annual water use during the historical period, a person seeking this floor must provide convincing evidence of the amount of water withdrawn and beneficially used without waste during every year of the historical period in which the applicant withdrew water from the aquifer. However, because

some applicants may not have a complete or reliable record of water use for every year of the 21-year historical period, the Authority may in appropriate circumstances estimate the amount of withdrawals for a year or years, but only if the applicant provides a credible explanation for the inability to produce reliable data for that year or years. For purposes of calculating the average, the Authority will presume that the applicant withdrew water from the well during any year that the well was "in use" as defined in the Texas Water Well Driller's Act, chapter 32, Texas Water Code. Thus, the applicant will need to affirmatively show that the well was not "in use" during any year the applicant wishes excluded from the calculation of the historical average.

The process by which the general manager makes the initial determination of permit withdrawal amounts is described in proposed §701.101. The general manager will determine proposed permit withdrawal amounts by proportionately reducing each applicant's maximum historical use to reflect the amounts of water available for permitting. The amount available for permitting is 450,000 acre-feet per year, unless the board determines that a greater amount is available under proposed §701.92. An applicant's proposed permit withdrawal amount will not be set below the applicant's permit withdrawal floor. The formula for proportional reduction is set out in proposed subsection (d). This formula involves multiplying an applicant's maximum annual historical use by the ratio of the water available for permitting and the aggregate amount of approved historical use claims. Thus, if the general manager has determined that the user has established maximum annual historical use of 100 acre feet per year, the amount of water available for permitting is 450,000 acre feet per year, and the aggregate number of approved claims is 600,000, the general manager will multiply 100 by $450,000/600,000$ (.75), which would equal 750. Thus, the permit withdrawal amount would be 750 acre feet per year, unless the applicant has qualified for a higher permit withdrawal floor. The general manager will continue to apply this reduction approach until the total amount of permitted withdrawals equals the amount available for permitting. Following the termination of a contested case hearing and after all appeals have been exhausted, the general manager will make a final determination of each applicant's permitted withdrawal amount by applying the same formula for proportionate reductions set out in subsection (d) of this section. The final determination is not a contested case and cannot be challenged by any person in a contested case hearing. Instead, any person dissatisfied by such final determination may seek recourse by bringing a declaratory judgment action on the rule under §2001.038, Administrative Procedures Act.

Proposed §701.102 sets out a number of general terms and conditions that are deemed to be included in every initial regular permit, and states that the board may include special terms and conditions consistent with the Act. For example, the permit holder is required to comply with the terms and conditions of the permit, maintain the well in lawful condition, file an annual report of water use by March 1 of every year, and pay all lawful fees assessed by the Authority. Permit holders must install and maintain meters to determine volume and rate of water withdrawn from the Aquifer, unless the Authority has waived the requirement upon written request by the applicant and allowed the permit holder to use an alternate method of

determining the amount of water withdrawn for irrigation wells in existence on September 1, 1993, the Authority is responsible for installing and maintaining meters. Permits will also provide that the permit withdrawal amount may be adjusted based on final determinations made in contested case hearings. Permits will state that they remain in effect until abandoned, canceled, or retired, and that they are assignable and transferable, subject to the Act's 50% limitation on leasing of irrigation water rights and to the rules of the Authority. Proposed §701.102 also provides that the board may impose fines on a permit holder for violations of the terms and conditions of the permit. The board may promulgate rules providing for suspension of a permit for nonpayment of fees or violation of permit terms or rules of the Authority. The board may impose fines or take any enforcement action authorized by the Act upon a finding that the application contains a material and intentional misrepresentation.

The Authority proposes to add new subchapter G of chapter 701, pertaining to hearings process, which will contain new proposed §§701.121, 701.122, 701.123, 701.124, 701.125, 701.126, 701.127, 701.128, 701.129, 701.130, and 701.131. Proposed §701.121 states that any applicant or affected person within the geographical boundaries of the Authority who disputes the initial determination with respect to that person's or another person's application may file a protest with the Authority not later than the 45th day following the date notice of initial determination is published in the *Texas Register*. The protest must be in writing and verified, and must state with reasonable specificity the grounds of the protest. A protest is limited to the fact or facts which are the foundation for or are necessarily implied by the initial determination. The protest must at a minimum show that the person is affected by the initial determination on an application and that the person is reasonably entitled to an evidentiary hearing on a fact or facts identified in the protest. Under proposed §701.122, the board will review all timely filed protests for sufficiency. Protests that meet the minimum requirements will be referred to contested case hearings before an administrative law judge, and insufficient protests will be denied by the board by written order. If the board finds that a protest is groundless or filed in bad faith under the standards stated in rule 13 of the Texas Rules of Civil Procedure, the board shall so state in the order denying the protest and shall assess the costs of reviewing the protest against the person who filed it.

Proposed §701.123 provides that the Authority will contract with the State Office of Administrative Hearings (SOAH) to conduct contested case hearings on protests. SOAH will assign an administrative law judge (ALJ) or judges to preside over the hearings. The ALJ will have the full panoply of powers over the hearing, including the power to impose sanctions for a groundless or bad faith protest. Proposed §701.124 identifies the types of evidence that an applicant will be allowed to offer in support of the applicant's application at the hearing. In addition to a certified copy of the application, the applicant may offer rebuttal and impeachment evidence, evidence bearing on procedural and jurisdiction issues, newly discovered evidence, and any other evidence that may be required to be admitted as a matter of constitutional right. Unless proffered evidence falls into one of these categories, an applicant may not offer it in support of the application in the contested case hearing.

The general manager is required to give notice of the protests that the board has referred to hearings by proposed §701.125. Notice will be published in the *Texas Register* and in newspapers of general circulation throughout the Authority and the area represented by the South Central Texas Water Advisory Committee, and will be sent to protestants.

Under proposed §701.126, the ALJ will hold a preliminary hearing to determine party status, determine the factual issues in dispute, and set a hearing schedule. All persons seeking party status in the hearing must prove that they are affected by and have a justiciable interest in the initial determination on an application. An organization seeking party status must satisfy organizational standing requirements. Under proposed §701.127, following the preliminary hearing, evidentiary hearings are conducted on protests. Each protest will be the subject of an individualized hearing, except to the extent the ALJ consolidates protests for hearing. Under proposed §701.128, the ALJ may enforce reasonable standards of conduct and decorum in the hearings, and may after warning impose sanctions for inappropriate conduct. Ex parte communications will be governed by the rules established for such in the APA under proposed §701.129.

The burden of proof to be utilized in the contested case hearings is specified by proposed §701.130. First, the protestant must introduce some evidence that raises a genuine issue of disputed fact with respect to a factual finding stated or necessarily implied in the initial determination. If the protestant meets this burden, the burden of proof shifts to the proponent of the finding to support the finding by a preponderance of the evidence. If the protestant fails to raise a genuine issue of fact with respect to a factual finding, that finding is binding on the parties. The evidentiary portion of the hearing will be limited to genuine issues of disputed fact.

Proposed §701.131 requires the general manager to contract with a certified court reporter to be the official court reporter and to make a verbatim record and transcript of the hearings. Transcript costs are to be equitably allocated among the parties, and other costs are to be borne by the party incurring such costs.

The Authority proposes to add new subchapter H of chapter 701, pertaining to post hearing process, which will contain new proposed §§701.141, 701.142, 701.143, 701.144, 701.145, 701.146, and 701.147. Proposed §701.141 describes the time for issuing a proposal for decision (PFD) and the content of a PFD. The PFD will be issued within 30 working days of the closing of the hearing, and a copy will be mailed to the applicant and the other parties to the hearing. Unless it is agreed to by the parties, the PFD will contain findings of fact and conclusions of law and a statement of reasons for the proposal. Any party may file exceptions, briefs, or proposed findings of fact within 20 days after the issuance of the PFD, as stated in proposed §701.142. Replies can be filed within 30 days after the issuance of the PFD. Under proposed §701.143, the PFD along with any exceptions, replies, or proposed findings, is submitted to the board and scheduled for a board meeting. At the meeting, the parties may present oral argument to the board, and the ALJ will be present to answer the board's questions. The board may accept the PFD, remand an issue or issues for additional hearing, or, for reasons of public policy, reject the PFD in whole

or in part. If the board rejects the PFD, it must explain the decision in writing. The board's decision must be supported by a separate statement of findings of fact and conclusions of law.

Proposed §701.144 allows a person to file a motion for rehearing of a board decision within 20 days after notice of the decision. The timely filing of such a motion is a prerequisite to an appeal of the decision. A reply to the motion may be filed within 30 days of notice of the decision. A timely filed motion for rehearing may be set for hearing before the board, pursuant to proposed §701.145. The board may grant the motion in whole or in part, and may reopen the hearing. If the board does not rule on the motion within 45 days after notice of the decision, the motion is overruled by operation of law. However, the board by written order can extend the time to consider a motion for rehearing to up to 90 days after the decision. The motion is overruled by operation of law at the end of the extended period, unless ruled on by the board. If a timely motion for rehearing is not filed, proposed §701.146 states that the board decision will become final when the period for filing a motion for rehearing expires. If a motion for rehearing is timely filed, the decision of the board becomes final and appealable on the date the motion is overruled, either by the board or by operation of law.

Proposed §701.147 states that a person affected by a final decision or order of the board may file a petition for judicial review within 30 days after the decision or order becomes final and appealable. Petitions for judicial review will be reviewed under the substantial evidence rule. This section also lists the various documents and evidence that are to be included in the agency record for appeal. The procedure for pursuing judicial review of a board decision is governed by subchapter G of the APA. Under the APA, petitions for judicial review must be filed in Travis County district court.

The Authority, while it believes that the Private Real Property Preservation Act, Texas Government Code, chapter 2007, is not applicable, it has in any event performed a Takings Impact Analysis of these rules. The Authority has determined that these rules do not impact real property interests in a manner or to an extent that constitutes a constitutional or statutory taking. These rules are a valid and reasonable exercise of the Authority's statutory mandate to implement a permit system for withdrawals of underground water from the Edwards Aquifer. These rules are integral to the Authority's ability to carry out its missions under the Act to create a comprehensive permitting system for withdrawals from the aquifer, maximize conservation and beneficial use of water available for withdrawal from the aquifer, protect the water quality of the aquifer and surface streams dependent on the aquifer, protect aquatic and wildlife habitats and threatened and endangered species, and provide springflows for instream uses, bays and estuaries. The rules will also allow the identification, perfection, and protection of historical rights in beneficial use of water from the aquifer, as required by the Act. These rules will not deny any real property owner of all economically viable use of land or eviscerate any vested property rights, and there is a nexus and rough proportionality between the actions of the Authority, the impact of the actions on landowners, and the public interests furthered by those actions.

Rick Illgner, general manager of the Edwards Aquifer Authority, has prepared this fiscal note concerning the fiscal impact on

state and local governments for each of the first five years that these rules will be in effect. Mr. Illgner has determined that there will be no direct fiscal impact on the state government by these rules. These rules will have a fiscal impact on local governments who are also water suppliers. These local governments will incur costs related to filing and reviewing an application for an initial regular permit, including any protest and appeal of a determination on such application. In addition, these entities may incur fiscal impacts directly or indirectly from the implementation of these rules due to the need to expend funds for the investigation and development of additional water supplies if projections indicate such supplies will be necessary in light of their authorized permitted withdrawal. To that end, the Authority, and its predecessor agency, the Edwards Underground Water District, has been a participant since 1993 in the Trans-Texas Program that was created to determine present and projected demand and supply alternatives through the year 2050 for those water users in the Edwards Aquifer region using accepted environmental criteria. It is the goal of the Authority to reduce the fiscal impact on all users of the Edwards Aquifer through its participation in this program. It is difficult to estimate the exact cost to each local government. The exact cost will vary from local government to local government based on such factors as the quantity of water applied for, how difficult it will be for that person to substantiate its water claim, whether its determination is protested, and the extent of that protest.

Rick Illgner, general manager of the Edwards Aquifer Authority, has prepared this note concerning public benefits and costs. The interests of all persons will be benefited by the regulatory scheme presented in these rules. Population growth in the region and otherwise uncontrolled pumping from the Edwards Aquifer jeopardizes every pumper's ability to pump adequate water for his needs. These rules establish a scheme that will provide certainty about the amount of water from the Edwards Aquifer that each permit holder can withdraw. Once that number is established, it can serve as a planning tool for developing water supplies in the future. Further, the permitting process implemented in these rules is crucial to allow the Authority to develop a long range comprehensive management plan as well as effective critical period management plans that will reduce the effect of drought throughout the region.

Rick Illgner, general manager of the Edwards Aquifer Authority, also has prepared this note concerning the effect of these rules on small businesses in the region. To the extent that these businesses are also water suppliers or owners or operators of a well or wells used for an industrial purpose, the fiscal impact on these entities will be the same as the fiscal impact on local governments as described above. These entities will benefit from these rules as they will have a known quantity of water available to them. This information can be used by them to make decisions about growth or expansion of their businesses. In addition, uncertainty about the sufficiency of a water supply will be eliminated and to the extent alternative water supplies come on-line, they will have a basis by which to evaluate the economic feasibility to bring those alternative supplies on-line.

The Authority requests comments on the proposed rules from any interested person. Questions about the proposed rules should be directed to Steve Walthour, Hydrologist III, Division of Field Operations, Edwards Aquifer Authority, at (210)222-2204.

Written comments on the proposed rules may be submitted to Rick Illgner, General Manager, Edwards Aquifer Authority, P.O. Box 15830, 1615 North St. Mary's Street, San Antonio, Texas 78212-9030, by 5:00 p.m. 30 days from the date of publication of this proposal in the *Texas Register*.

Subchapter C. Filing and Notices

31 TAC §§701.35-701.35

The Authority proposes these rules under the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993), as amended (the "Act"), the Authority's powers and duties under the Act to promulgate rules and to implement and enforce the Act's permitting requirements (Act §§1.08, 1.11, 1.14-1.20), and the Conservation Amendment of the Texas Constitution, Article 16, §59.

The proposed sections implement the Edwards Aquifer Authority Act, Chapter 626, 73rd Legislature, Regular Session (1993), §§1.08, 1.11, 1.14, -1.20.

§701.31. Definitions.

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

APA-The Administrative Procedures Act, Texas Government Code, chapter 2001.

Application-A permit application along with any information, documents, and attachments timely submitted in support of the application by the applicant. The term "application" includes a timely filed declaration of historical use.

Beneficial use without waste-Use of the amount of water economically necessary for a lawful purpose, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose, and the use does not constitute waste.

Contested case hearing-An evidentiary hearing governed by these rules and the APA.

Historical period-The 21-year period from June 1, 1972 through May 31, 1993.

Permit withdrawal floor-The amount of underground water an initial regular permit holder is assured against any required proportional reduction to meet the amount available for permitted withdrawals, because such holder either irrigated during any year of the historical period and is entitled to the "irrigation withdrawal floor" or operated a well for three or more years during the historical period and is entitled to the "historical average withdrawal floor," in accordance with §1.16(e) of the Act.

§701.32. Docket Clerk.

The general manager will designate an employee or contractor of the Authority as the docket clerk. The docket clerk will be responsible for accepting for filing applications for permits and related papers. The docket clerk will date stamp all papers submitted for filing, assign a docket number to each application, maintain an official file for said application and perform such other functions related to the filing and processing of the application and records relating to permits as is assigned by the general manager.

§701.33. Docket System.

The general manager shall establish a sequential numbering system for applications and permits.

§701.34. Notices and Other Communications.

(a) All notices, applications, requests, responses, filings or other communications referred to in this title shall be sent by first class mail or by express or personal delivery, prepaid. If an applicant, permit holder or other sender desires to obtain proof of mailing and receipt by the Authority or other person to whom a communication is sent, the sender should send the communication by certified mail, return receipt requested. If a rule specifically requires certified mail, return receipt requested, for certain filings, the sender shall send such filings by such certified mail.

(b) Notices and communications shall be addressed as follows:

(1) if to the applicant or permit holder, at the address stated in the application or permit, unless the applicant or permit holder has advised the Authority in writing of a different address;

(2) if to the Authority, at its central office: Edwards Aquifer Authority, 1615 North St. Mary's Street, P.O. Box 15830, San Antonio, Texas 78212, Attention: Docket Clerk; or

(3) if to any other person, at the address provided in writing to the Authority.

(c) Any notice shall be deemed given or other communication shall be deemed sent on the date deposited in the United States mail or with an express carrier, or on the date of any personal delivery. The authority shall maintain dated records of all communications sent and received pursuant to these rules.

(d) Applicants or permit holders shall inform the Authority in writing of any change in address within 30 days of the change.

§701.35. Number of Copies.

The applicant shall file with the docket clerk an original and one copy of the application and any other papers filed with the Authority in connection with the application.

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 November 1, 1996.

TRD-9615885

Rick Illgner

General Manager

Edwards Aquifer Authority

Proposed date of adoption: December 13, 1996

For further information, please call: (210) 222-2204

Subchapter D. Administrative Review of Declarations of Historical Use

31 TAC §§701.51-701.59

The Authority proposes these rules under the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993), as amended (the "Act"), the Authority's powers and duties under the Act to promulgate rules and to implement and enforce the Act's permitting requirements (Act §§1.08, 1.11,

1.14-1.20), and the Conservation Amendment of the Texas Constitution, Article 16, §59.

The proposed sections implement the Edwards Aquifer Authority Act, Chapter 626, 73rd Legislature, Regular Session (1993), §§1.08, 1.11, 1.14,-1.20.

§701.51. De Minimus Users.

A user who is not capable of producing more than 25,000 gallons of underground water a day from a well or well unit shall not be required to apply for an initial regular permit.

§701.52. Effect of Failing to Timely File Declaration.

Failure to timely file an application in substantial compliance with this chapter extinguishes and bars any claim to an initial regular permit under §1.16 of the Act, but does not in any event affect the right to withdraw water from a well that is exempt under §1.16(c) of the Act or the right to apply for a permit other than an initial regular permit.

§701.53. Interim Authorization.

(a) A person who owned a producing nonexempt well that withdraws water from the aquifer on June 28, 1996 may, pursuant to §1.17 of the Act, continue to withdraw and beneficially use water from the well until final action on permits by the Authority, if:

- (1) the well is in compliance with all statutes and rules relating to well construction, approval, location, spacing and operation; and
- (2) the person timely files an application in compliance with this chapter.

(b) Use under interim authorization.

(1) may not exceed on an annual basis the historical maximum beneficial use of water without waste during any one calendar year of the historical period as evidenced by the declaration submitted as part of the application;

(2) is subject to the comprehensive management plan and other plans or rules adopted by the Authority; and

(3) ends on entry of a final and appealable order by the authority acting on the application, or on December 30, 1996, if the person has not filed a declaration of historical use.

§701.54. Separate Declarations.

An applicant must file a separate declaration for every separate farm, industrial operation, municipality, or other user unit. An application may pertain to more than one well or more than one use, if the wells or uses are located or occur within the same user unit.

§701.55. Receipt and Filing of Application.

(a) Applications and any other papers submitted by an applicant in connection with an application will be date stamped "RECEIVED" by the docket clerk at the time that they are received by the Authority.

(b) Subject to the timely payment of a required fee, if any, and subject to §701.18 of this title (relating to filing of declarations of historical use), an application papers submitted in support of an application, including but not limited to any request, motion, response to request for additional information, or protest, will be considered filed on the day deposited in the mail or, in the case of personal delivery, the date actually received by the Authority.

§701.56. Notice of Non-Payment of Fee.

(a) If the application fee is not attached to the application or the payment is returned to the Authority unpaid for any reason, the Authority will notify the applicant that the fee was not received and that payment must be made within 15 days of the date of the notice or the application will be deemed not filed and will be returned to the applicant.

(b) If proper payment of the application fee is not received by the Authority within 15 days of the date of the notice of non-payment of fee, the application will be deemed not filed and will be returned to the applicant.

(c) If proper payment of the application fee is received by the Authority within 15 days of the date of the notice, the application will be deemed filed on the date originally received by the Authority.

§701.57. Administrative Review.

Upon receipt of an application and payment of the required fee, the general manager will review the application to determine whether it is administratively complete.

§701.58. Application Complete.

Upon receipt of an application that appears to contain the information required by §701.19 of this title (relating to Information Required in Application), including any required attachments and supporting documentation, the general manager will declare the application administratively complete, and notify the applicant that the application is administratively complete and will be submitted for technical review.

§701.59. Application Incomplete.

(a) Upon receipt of an application that appears not to contain the required information or is otherwise incomplete, the general manager will mail to the applicant a notice that the application is incomplete.

(b) A notice that an application is incomplete will state what information or other action is required to make the application complete, state that the applicant must file the information or take the action within 30 days of the date of the notice, and state that the application will be submitted to technical review on the 31st day after the date of the notice based on information timely submitted in support of the application by that day.

(c) On the 31st day after the notice of incomplete application, the incomplete application along with any other timely filed supporting papers will be submitted to technical review.

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 November 1, 1996.

TRD-9615886

Rick Illgner

General Manager

Edwards Aquifer Authority

Proposed date of adoption: December 13, 1996

For further information, please call: (210) 222-2204

◆ ◆ ◆
Subchapter E. Technical Review and Initial Determination of Declarations of Historical Use

31 TAC §§701.71-701.77

The Authority proposes these rules under the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993), as amended (the "Act"), the Authority's powers and duties under the Act to promulgate rules and to implement and enforce the Act's permitting requirements (Act §§1.08, 1.11, 1.14-1.20), and the Conservation Amendment of the Texas Constitution, Article 16, §59.

The proposed sections implement the Edwards Aquifer Authority Act, Chapter 626, 73rd Legislature, Regular Session (1993), §§1.08, 1.11, 1.14, -1.20.

§701.71. *Applicability.*

This subchapter governs the technical review and initial determination of all declarations of historical use.

§701.72. *Supplementation of Application.*

(a) The applicant may submit further information in support of the application not later than 30 days following the date of the notice of administrative completeness, but may not submit such information after that time except as allowed or requested by the general manager pursuant to subsection (b) of this section or §701.33 of this title (relating to Request of Additional Information,) or as provided in §701.64 of this chapter (relating to Evidence at Contested Case Hearing).

(b) The general manager may upon good cause allow the applicant to submit additional information upon good cause shown no later than April 1, 1997.

§701.73. *Request for Additional Information.*

(a) If at any time prior to the completion of technical review on all timely filed applications in accordance with §701.34 of the title (relating to Technical Review) the general manager believes that additional information is necessary or helpful to complete review of an application, the general manager will request the applicant to provide such information within 30 days of the date of the request.

(b) A request for additional information under this section extends the deadline for completion of technical review by 30 days.

(c) If the applicant fails to timely provide requested additional information, the technical review of the application will be concluded based on information previously provided by the applicant.

§701.74. *Technical Review.*

(a) When an application has been declared administratively complete (or the 31st day after the date of notice of incomplete application), it will be submitted to the staff for technical review.

(b) The purpose of technical review is to determine if and to what extent the application establishes withdrawals and beneficial use without waste of underground water from the Edwards Aquifer during the historical period entitling the applicant to an initial regular permit in accordance with the Act and this chapter.

(c) Technical review of the application will be completed within 90 days of the date the application is declared administratively complete (or within 90 days after the 31st day after the date of notice of incomplete application), unless that time is extended by a request for additional information by the general manager in accordance with §701.33 of this title (relating to Request for Additional Information).

(d) Promptly following the completion of technical review, the general manager will notify the applicant that technical review of the application has been completed. The notice will contain:

(1) An application summary that states the following preliminary findings, if applicable:

(A) the total maximum amount of annual historical usage claimed by the applicant;

(B) the type or types of water use upon which the claim is based;

(C) the total maximum volume and rate of water withdrawn and beneficially used without waste during any one calendar year of the historical period determined to be established by convincing evidence;

(D) the type and amount of permit withdrawal floor or floors for which the applicant seeks to qualify;

(E) the type and amount of permit withdrawal floor determined to be established by convincing evidence;

(F) any equitable adjustment made because the applicant's historic water use was affected by a requirement of or participation in a federal program; and

(G) any other determinative factors bearing on the preliminary findings.

(2) A statement that:

(A) The general manager may modify the preliminary findings and seek additional information from the applicant in the course of conducting technical review of other applications.

(B) The general manager may proportionately reduce the total amount of annual historical usage established by convincing evidence in the application, subject to any application permit withdrawal floor, to reflect the amount of water available for permitting in accordance with §701.42 of this title (relating to Determination of Amount of Water Available for Permitting), and that this proportional reduction cannot be made until technical review of all timely filed applications has been completed.

(C) The general manager may further adjust the permit withdrawal amount after a final decision is rendered on all timely filed applications, to the extent the permit withdrawal amount exceeds any applicable permit withdrawal floor

(D) The general manager will issue an initial determination on all timely-filed applications when technical review is complete on all such applications, in accordance with §701.35 of this title (relating to Initial Determination).

(E) The general manager will notify the applicant of the initial determination and publish notice of same in the *Texas Register* in accordance with §701.36 of this title (relating to Notice of Initial Determination); and

(F) The applicant may file a protest and request for contested case hearing on or before the 30th day following the publication of notice in the *Texas Register* in accordance with §701.61 of this title (relating to Filing Protests), and that protests filed prior to such publication of notice will not be acted upon until after such publication.

§701.75. *Initial Determination.*

(a) Within 15 days after technical review on all applications has been completed, the general manager will determine recommended permit withdrawal amounts in accordance with §701.51 of this title (relating to Initial Determination of Permit Withdrawal Amounts), and prepare an initial determination of all timely filed applications.

(b) The initial determination will consist of the following:

(1) a matrix of all claims presented in such applications that shows at least the following information: application identification number, principal type of use (agricultural, municipal, industrial, or other), amount of maximum historical beneficial use without waste and rate of withdrawal claimed, the proposed permit withdrawal amounts, the type and amount of permit withdrawal floor claimed and recommended, and, if denial of the application is recommended, the reason for the denial;

(2) the final application summaries prepared by the general manager after the conclusion of the technical review period with respect to each application represented in the matrix;

(3) a proposed permit, if applicable, setting forth proposed permit withdrawal amounts, terms, and conditions; and

(4) interim authorization to withdraw the amount of water equal to that applicant's historical maximum withdrawal and beneficial use of water without waste.

§701.76 Notice of Initial Determination.

(a) Promptly after the issuance of the initial determination, the general manager will send a copy of the application summary and recommended permit to the applicant, and will publish notice of the initial determination in the *Texas Register* and in newspapers of general circulation throughout the Authority.

(b) The notice shall summarize the initial determination and state that:

(1) the initial determination on all timely filed applications has been issued by the Authority, and that copies of the initial determination are available for inspection by the public;

(2) the initial determination will become final with respect to any application, subject to any pro rata adjustments if applicable, unless the determination as to that application is timely contested in accordance with this section;

(3) any applicant or other affected person within the geographic boundaries of the Authority who wishes to contest the initial determination with respect to an application, must file with the Authority, on or before the 45th day following the publication of notice of initial determination in the *Texas Register*, a written and verified protest of the initial determination in accordance with §701.61 of this title (relating to Filing Protests); and

(4) until the Authority enters a final and appealable order on the application, the applicant has interim authorization to withdraw the amount of water equal to that applicant's historical maximum withdrawal and beneficial use of water without waste, subject to any proportional reduction pursuant to §701.51 of this title (relating to Initial Determination of Permit Withdrawal Amounts).

§701.77. Uncontested Applications Submitted to Board.

(a) Promptly after the last day for filing protests to the initial determination, the general manager shall submit to the board for review and approval all uncontested applications and initial

determinations on those applications. Such a permit is subject to adjustment after a final decision has been rendered in all contested case hearings.

(b) The board may refer an uncontested application to a contested case hearing by written order stating the specific issues the board wishes to submit to the hearing.

(c) With respect to an uncontested application approved by the board, the board shall issue a written order conditionally approving such application and the general manager shall promptly issue the permit in accordance with the order. Such a permit is subject to adjustment after a final decision has been rendered in all contested case hearings.

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 November 1, 1996.

TRD-9615887

Rick Illgner

General Manager

Edwards Aquifer Authority

Proposed date of adoption: December 13, 1996

For further information, please call: (210) 222-2204

◆ ◆ ◆
Subchapter F. Initial Regular Permit Amounts and Terms

31 TAC §§701.91-701.102

The Authority proposes these rules under the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993), as amended (the "Act"), the Authority's powers and duties under the Act to promulgate rules and to implement and enforce the Act's permitting requirements (Act §§1.08, 1.11, 1.14-1.20), and the Conservation Amendment of the Texas Constitution, Article 16, §59.

The proposed sections implement the Edwards Aquifer Authority Act, Chapter 626, 73rd Legislature, Regular Session (1993), §§1.08, 1.11, 1.14, -1.20.

§701.91. Applicability.

This subchapter governs the determination of amounts of withdrawals authorized by initial regular permits and the terms of those permits.

§701.92. Determination of Amount of Water Available for Permitting.

(a) If the board determines from time to time that there are additional supplies available from the aquifer through studies and implementation of water management strategies, including conservation, springflow augmentation, diversions downstream of the springs, reuse, supplemental discharge, conjunctive management of surface and subsurface water, and critical period management plans, the board may increase the maximum amount of permitted withdrawals and set a different maximum amount of withdrawals in accordance with §1.14 of the Act.

(b) Not later than the date the staff completes technical review of all timely filed declarations, the board will consider whether it should increase the maximum amount of permitted withdrawals and

set a higher maximum amount of withdrawals in accordance with §1.14(d) of the Act.

§701.93. Maximum Historical Use.

(a) The Authority shall issue an initial regular permit to an existing user who timely files a declaration and pays the application fee, and who establishes by convincing evidence beneficial use of underground water during the historical period.

(b) To the extent water is available for permitting, the Authority shall issue an initial regular permit for an amount of water equal to the user's maximum beneficial use of water without waste during any one calendar year of the historical period.

§701.94. Criteria for Technical Review.

(a) Withdrawal of water which is substantially in excess of the volume or rate reasonably required for a particular use will be presumed to constitute waste.

(b) Irrigation use of 2 acre feet of water per irrigated acre will be presumed not to constitute waste.

(c) Use of water for irrigation of multiple or successive crops is a beneficial use to the extent it does not constitute waste.

(d) It will be presumed that a well was beneficially used without waste to the maximum capacity of the well and the equipment connected to the well.

(e) Any presumption stated in this section may be rebutted by convincing evidence.

§701.95. Convincing Evidence.

(a) For purposes of this Subchapter, "convincing evidence" is credible and reliable evidence, including but not limited to testimonial or documentary evidence, that is reasonably sufficient to satisfy the requirements of the Act, is legally relevant and material to those requirements, is not merely conclusory, is not internally inconsistent or contradictory, and is not contradicted or called into question by other evidence.

(b) An affidavit filed by the applicant may be deemed convincing evidence if it satisfies subsection (a) of this section and is corroborated by documentary evidence that satisfies subsection (a) of this section.

(c) If no documentary evidence in support of an application is available, verified statements from two credible persons with personal knowledge of the matter may be accepted by the Authority in lieu thereof if the applicant reasonably explains why no documentary evidence in support of the application can be produced.

§701.96. Use for Part of a Year.

If an existing user who is otherwise entitled to an initial regular permit does not have historical use for a full year during the historical period, the calculation of the initial regular permit withdrawal amount issued to that user will be based on the amount of water that would normally be beneficially used without waste for the intended purpose for a calendar year, subject to adjustment in accordance with this chapter.

§701.97. Credit for Participation in Federal Program.

The board shall consider the equitable treatment of a user whose historic use was affected by a requirement of or participation in a federal program, including but not limited to a user that participated in a federal agricultural program that required a reduction in the

number of acres irrigated by the user. A credit for irrigation use for acreage in a federal program shall be based upon irrigation use on comparable acres in the same farm unit which are not in the federal program, and shall not be less than the applicable permit withdrawal floor.

§701.98. Permit Withdrawal Floor.

The permit withdrawal amount will not be set lower than the following permit withdrawal floors, if applicable:

(1) With respect to historical irrigation use by a historical user, such user will receive an initial regular permit for not less than 2 acre feet a year for each acre of land the user actually irrigated in any one calendar year during the historical period (the "irrigation withdrawal floor").

(2) With respect to an existing user who operated a well for three or more years during the historical period, such user shall receive a permit for at least the average amount of water withdrawn annually by the user during the historical period (the "historical average withdrawal floor"). For purposes of this subsection, "operated" means that the user actually withdrew underground water from the aquifer.

§701.99. Establishing Irrigation Floor.

(a) An applicant that seeks an irrigation floor will be granted the floor if the applicant's declaration shows by convincing evidence that the applicant or the applicant's predecessor in interest:

(1) owned, leased, or otherwise had a legal right to irrigate a specified number of acres of irrigable land during the historical period;

(2) owned a well capable of irrigating and equipped to irrigate the acreage; and

(3) actually irrigated the land from the well during the historical period.

(b) If the applicant establishes subsections (a)(1) and (a)(2) of this section by convincing evidence, the Authority may, if appropriate under the circumstances, deem subsection (a)(3) of this section satisfied provided that the applicant files a sworn statement that the land was actually irrigated from the well during the historical period.

(c) In the case of valid multiple claims for irrigation floors based on the same acreage, the Authority will equitably prorate the floors between the claimants so as to avoid granting the floor more than once for the same acreage.

§701.100. Establishing Historical Average Floor.

(a) An applicant seeking to establish average withdrawals of water during the historical period for purposes of the historical average withdrawal floor must establish the amount of water withdrawn and beneficially used without waste during every year of the historical period in which the applicant withdrew water from the aquifer.

(b) If the applicant cannot provide convincing evidence of the amount of water withdrawn and beneficially used without waste during one or more years of the historical period during which the applicant withdrew water from the aquifer, the Authority may estimate the amount of withdrawals during that year or years, but only if the applicant provides a credible explanation for the failure or inability to produce such evidence and the other information submitted by the applicant provides a reasonable basis for the estimate.

(c) For purposes of this section, withdrawals from a well will be presumed for any year in which the well was "in use" as defined in Texas Water Code, §32.017(d), unless the applicant establishes by convincing evidence that the well was not "in use" during that year.

§701.101. Initial Determination of Permit Withdrawal Amounts.

(a) The general manager will determine proposed permit withdrawal amounts by proportionately reducing each applicant's maximum historical use to reflect the amount of water available for permitting.

(b) The amount of water available for permitting is 450,000 acre feet per calendar year unless the board establishes a higher amount in accordance with §701.42 of this title (relating to Determination of Amount of Water Available for Permitting).

(c) An applicant's proposed permit withdrawal amount will not be set below that applicant's permit withdrawal floor.

(d) In proportionately reducing maximum historical use to calculate individual permit withdrawal amounts (p), the general manager will multiply the applicant's maximum historical use (h) by the quotient of the total amount of water available for permitting (P) divided by the aggregate amount of approved historical use claims (C): $h \times P/C = p$. Each applicant's permit withdrawal amount will then be reduced to p, or the applicable permit withdrawal floor, whichever is higher. The general manager will then calculate the resulting aggregate amount of permit withdrawal amounts (W). If, because of permit withdrawal floors, W still exceeds P, the general manager will continue to apply this reduction approach to individual permit withdrawal amounts until W equals P.

(e) A final determination of each applicant's permitted withdrawal following the calculation to proportionately reduce each applicant's maximum historical use performed after a final decision in a proceeding on application is not a contested case and cannot be challenged by any person in a contested case hearing.

§701.102. General and Special Permit Terms.

(a) All permits issued by the Authority are subject to and deemed to contain the following general terms and conditions, which will be stated in the permit:

(1) The permit holder shall not withdraw water from the aquifer except in accordance with the permit, the Act, and the rules of the Authority.

(2) The permit holder shall not waste water produced from any well servicing the permit.

(3) The permit holder shall not withdraw or use water from the Aquifer in a manner that pollutes or contributes to the pollution of the aquifer.

(4) The permit holder shall maintain the well or wells servicing the permit in compliance with all statutes relating to well construction, approval, location, spacing, and operation.

(5) The permit is subject to limitation as provided by the act, including all lawful rules and regulation of the Authority, including but not limited to any rules promulgated in connection with a comprehensive management plan, critical period management plan, or other plans of the Authority.

(6) The permit holder shall file a written report concerning water use during the preceding year by March 1 of every year on a form prescribed by the Authority.

(7) The permit holder shall timely pay all management fees and other fees lawfully imposed by the Authority.

(8) Unless the Authority has waived the requirement upon written request by the permit holder to use an alternate method of determining the amount of water withdrawn, the permit holder shall install and maintain a measuring device approved by the Authority designed to indicate the flow rate and cumulative amount of water withdrawn by the well and the permit holder shall allow Authority personnel reasonable access to the meter and well for purposes of inspection. The permit holder is responsible for the costs of purchasing, installing, and maintaining the measuring device, if required, except in the case of an irrigation well in existence on September 1, 1993, and then the Authority shall be responsible for such costs.

(9) The permit withdrawal amount may be subject to adjustment by the Authority following the conclusion of all contested case hearings to take into account the results of those hearings.

(10) The permit will remain in effect until it is abandoned, canceled, or retired.

(11) If the permit authorizes irrigation use, no more than 50% of the irrigation water right may be leased for use other than irrigation of the acreage covered by the permit.

(12) The permit is assignable and transferable, subject to the Act's limitation on leasing of irrigation permit rights and the rules of the Authority.

(b) The board may include in a permit any special terms or conditions consistent with the Act or the rules of the Authority.

(c) The board may impose fines or take any other enforcement action authorized by the Act for violation of any term or condition of the permit, and may promulgate rules providing for the suspension of permits for non-payment of fees or violation of permit terms or rules of the Authority.

(d) The board may impose fines or take any other enforcement action authorized by the Act based upon a finding that the application for the permit or an annual report submitted in connection with the permit contains a material and intentional misrepresentation.

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 November 1, 1996.

TRD-9615888

Rick Illgner

General Manager

Edwards Aquifer Authority

Proposed date of adoption: December 13, 1996

For further information, please call: (210) 222-2204

◆ ◆ ◆
Subchapter G. Hearings Process

31 TAC §§701.121-701.131

§701.121. Filing Protests.

(a) Any applicant or affected person within the geographic boundaries of the Authority who disputes the initial determination on that person's or another person's application may, following the

publication of notice of initial determination in the Texas Register, but no later than the 30th day following such publication of notice, file a written protest with the Authority, stating with reasonable specificity the grounds of the protest and a request for a contested case hearing.

(b) A protestant may object only to the fact or facts which serve as the foundation for, or are necessarily implied by, the initial determination.

(c) The statement filed to protest an initial determination must be verified by an affidavit of the protestant or his agent.

(d) The protest must set forth facts showing on a prima facie basis that the person is affected by the initial determination on an application and that the person is reasonably entitled to a hearing on a fact or facts described in subsection (b) of this section.

(d) If the protest is directed against the initial determination of the water right of an applicant other than the protestant, a copy shall be served on each such applicant or applicant's attorney by certified mail, and proof of service shall be filed with the docket clerk of the Authority.

(e) No protest will be acted upon by the Authority prior to the date notice of initial determination is published in the Texas Register.

§701.122. Board Review of Protests.

(a) The board shall review a timely filed protest to determine whether it complies with §701.61 of this title (relating to Filing of Protests).

(b) After review of all timely filed protests, the board shall refer to a contested case hearing before an administrative law judge of the State Office of Hearings Examiners those protests which comply with §701.61 of this title (relating to Filing of Protests) and deny those protests which the board finds do not so comply.

(c) The board's order to deny a protest shall be in writing and shall state the basis for the denial and is a final appealable order pursuant to the APA. If the board finds that a protest of an application is groundless or filed in bad faith, it shall so state in its order and shall assess the costs of reviewing the protest against the person who filed it.

(d) The board's decision to refer a protest does not constitute approval of or support for the merits of the protest. The board's decision to refer a protest merely indicates that the protestant has properly stated with reasonable specificity grounds for a contested case hearing and has satisfied the other requirements of §701.61 of this title (relating to Filing of Protests).

(e) The board's order referring a protest shall include an order remanding to the State Office of Administrative Hearings a contested case hearing on the matters raised in each protest.

§701.123. Hearing Before the State Office of Administrative Hearings.

(a) The general manager shall contract with the State Office of Administrative Hearings for one or more administrative law judges from that office to conduct contested case hearings for the Authority.

(b) The general manager or his designee shall participate as a party in the contested case hearing.

(c) The board delegates to the State Office of Administrative Hearings the authority to conduct hearings under this chapter.

(d) The Chief Administrative Law Judge of the State Office of Administrative Hearings will assign one or more judges to the hearing. When more than one administrative law judge is assigned to the hearing, one of the judges will be designated as the presiding judge and shall resolve all procedural questions. Evidentiary questions will ordinarily be resolved by the judge sitting in that phase of the case, but may be referred by that judge to the presiding judge.

(e) An administrative law judge shall be authorized to:

(1) set hearing dates;

(2) convene the hearing at the time and place specified in the notice for the hearing;

(3) establish the jurisdiction of the Authority;

(4) rule on motions;

(5) designate and align parties and establish the order for presentation of evidence;

(6) authorize the taking of depositions and compel other forms of discovery;

(7) issue subpoenas to compel the attendance of witnesses or the production of papers and documents;

(8) set prehearing conferences and issue prehearing orders;

(9) ensure that information and testimony are introduced as conveniently and expeditiously as possible, including limiting the time of argument and presentation of evidence and examination of witnesses without unfairly prejudicing any rights of parties to the proceeding;

(10) limit testimony to matters under the Authority's jurisdiction;

(11) continue any hearing from time to time and from place to place;

(12) reopen the record of a hearing, before a proposal for decision is issued, for additional evidence where necessary to make the record more complete;

(13) impose appropriate sanctions, including attorney's fees and costs as a sanction for filing a groundless or bad faith protest as found by the administrative law judge in accordance with the standards set forth in rule 13 of the Texas Rules of Civil Procedure; and

(14) exercise any other appropriate powers necessary or convenient to carry out the administrative law judge's responsibilities.

(f) When a contested case hearing has been initiated in accordance with this section, any party who files a paper relating to the hearing must file a copy of the paper with the administrative law judge, in addition to the copies that must be filed with the docket clerk of the Authority.

§701.124. Evidence At Contested Case Hearing.

(a) A copy of the application certified by the docket clerk will be admitted in a contested case hearing.

(b) The applicant may offer the following evidence at the contested case hearing in support of the initial determination:

(1) A certified copy of the application and all papers timely filed with the Authority in support of the application;

(2) rebuttal and impeachment evidence;

(3) evidence bearing on procedural and jurisdictional issues;

(4) evidence which is newly discovered; and

(5) any other relevant and material evidence that must be admitted under the Texas or United States Constitution.

(c) Evidence is newly discovered and may be admitted as such under subsection (b) of this section if the evidence was discovered after technical review of the application was completed, the evidence is relevant, material, and would probably affect the outcome of the hearing, and the applicant did not know or have reason to know about the evidence until it was discovered.

§701.125. Notice of Hearing.

The Authority shall prepare a notice that lists the protests to the initial determination that the board has referred to a contested case hearing, and states the time and place of the contested case hearings on the protests. Notice of the time and place of the hearings shall be published in the *Texas Register* and in newspapers of general circulation throughout the Authority and the area represented by the South Central Texas Water Advisory Committee at least thirty (30) days before each hearing is scheduled to commence. Notice shall also be given to each person whose protest was referred to a contested case hearing or whose application is the subject of a referred protest not less than thirty (30) days before the contested case hearing is scheduled to commence.

§701.126. Preliminary Hearing.

(a) The administrative law judge(s) shall hold a preliminary hearing to determine party status, determine the factual issues in dispute, and develop a schedule for the proceeding.

(b) All persons seeking party status in a contested case hearing shall appear at the preliminary hearing and seek to be admitted as a party. A person seeking party status shall be prepared to demonstrate that the person is affected by the initial determination and has a justiciable interest, as defined under applicable law.

(c) An organization seeking to be admitted as a party must submit evidence in support of its interest. The administrative law judge will determine its party status based on the law of organizational standing.

(d) The applicant and the Authority are automatically included as parties in a contested case hearing involving the applicant's initial determination.

§701.127. Procedure at Protest Hearing.

(a) The administrative law judge shall consider evidence concerning jurisdiction.

(b) Unless consolidated by the administrative law judge, individual cases will be presented for each protest. The hearing on each protest will proceed as follows:

(1) the protestant and all other parties may make opening statements;

(2) the protestant will present evidence in support of the protest;

(3) the applicant, if different from the protestant, will present evidence;

(4) the general manager may present evidence;

(5) any other party may present evidence relevant to the particular protestant's case.

(c) Oral arguments and briefs may be permitted by the administrative law judge upon request, but the administrative law judge may prescribe reasonable limits.

§701.128. Conduct and Decorum.

(a) Those who attend or participate in hearings should conduct themselves in a manner respectful of the conduct of public business, and conducive to orderly and polite discourse. All those in attendance shall comply with the administrative law judge's directions concerning the offer of public comment and conduct and decorum.

(b) In a hearing before an administrative law judge, the administrative law judge shall first warn a person violating this section to refrain from the specific conduct in violation. Upon further violation of this section by the same person, the administrative law judge may take further action, including recessing the hearing, to correct the situation.

§701.129. Ex Parte Communications.

(a) After the initiation of a contested case hearing, unless required for the disposition of an ex parte matter authorized by law, a director may not directly or indirectly communicate in connection with an issue of fact or law related to an application for a permit with a state agency, Authority, person, party, or representative of those entities, except on notice and opportunity for each party to participate, subject to the exception provided in subsection (b).

(b) A director may communicate ex parte with an employee of the Authority who has not and will not participate in a hearing in the case, or participated in the review of any application for a permit for the purpose of using the special skills or knowledge of the Authority and its staff in evaluating evidence.

§701.130. Burden of Proof.

(a) The protestant challenging the initial determination must introduce some evidence that raises a genuine issue of disputed fact with respect to a factual finding stated or necessarily implied in the initial determination, in which case the proponent of the finding has the burden to support the finding by a preponderance of the evidence. If the protestant fails to introduce some evidence that raises a genuine issue of disputed fact with respect to a factual finding stated or necessarily implied in the initial determination, the finding shall be binding upon the parties.

(b) The administrative law judge will limit the evidentiary portion of the hearing to the factual findings upon which the protestant has raised a genuine issue of disputed fact.

§701.131. Transcriptions of Hearing.

(a) The general manager shall contract with a certified court reporter service to make a verbatim record and transcript of the contested case hearing. The court reporter provided by this contract shall be the official reporter for the proceeding.

(b) The administrative law judge at the close of the evidentiary hearing shall equitably allocate the costs for the court reporter services among the parties. Other costs shall be borne by the parties incurring such costs.

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 November 1, 1996.

TRD-9615889

Rick Illgner

General Manager

Edwards Aquifer Authority

Proposed date of adoption: December 13, 1996

For further information, please call: (210) 222-2204

Subchapter H. Post Hearing Process

31 TAC §701.141-701.147

The Authority proposes these rules under the Edwards Aquifer Authority Act, chapter 626, 73rd Legislature, Regular Session (1993), as amended (the "Act"), the Authority's powers and duties under the Act to promulgate rules and to implement and enforce the Act's permitting requirements (Act §§1.08, 1.11, 1.14-1.20), and the Conservation Amendment of the Texas Constitution, Article 16, §59.

The proposed sections implement the Edwards Aquifer Authority Act, Chapter 626, 73rd Legislature, Regular Session (1993), §§1.08, 1.11, 1.14,-1.20.

§701.141. Proposal for Decision.

(a) After closing the hearing, the administrative law judge will file a written proposal for decision with the Authority's docket clerk within thirty (30) working days and will send a copy by certified mail to each party.

(b) The proposal for decision shall contain finding of facts and conclusions of law which support the proposal. It shall also contain a statement of the reasons for the proposal.

(c) If the parties have informally resolved the dispute, the administrative law judge may informally dispose of the matter by proposing an order which need not contain findings of fact, conclusions of law, or reasons for the proposal.

§701.142. Exceptions.

(a) Any party affected by the proposal for decision may file exceptions, briefs or proposed findings of fact within 20 days after date of issuance of the proposal for decision.

(b) Any replies to exceptions, briefs, or proposed findings of fact shall be filed within 30 days after the date of issuance of the proposal for decision.

§701.143. Board Meeting and Decision Schedule.

(a) The general manager shall schedule the proposal for decision and any exceptions, replies or proposed findings of fact for board consideration at an open meeting.

(b) The parties to the proceeding may present oral argument and answer questions from the board. The administrative law judge shall also be present to summarize his proposal or answer questions from the board.

(c) The board may accept the proposal for decision, remand the matter for an additional hearing on new issues or to take additional evidence, or reject the proposal in whole or in part for reasons of

public policy. If the board rejects the proposal for decision it must explain in writing the reasons for its decision.

(d) A decision by the board must contain findings of fact and conclusions of law separately stated.

§701.144. Filing of Motion for Rehearing.

(a) A motion for rehearing is a prerequisite to appeal, except as provided by the APA. The motion shall be filed with the docket clerk within 20 days after the date the party or his attorney of record is notified of the decision or order.

(b) A reply to a motion for rehearing must be filed with the docket clerk within thirty (30) days after the date the party or his attorney of record is notified of the decision or order.

(c) A party or attorney of record is presumed to have been notified of the decision or order on the date that the decision or order is mailed by first-class mail.

§701.145. Decision on Motion for Rehearing.

(a) The motion for rehearing will be scheduled for consideration during a board meeting.

(b) A motion for rehearing may be granted in whole or in part. When a motion for rehearing is granted, the decision or order is nullified. The board may reopen the hearing to the extent it is deemed necessary.

(c) Unless the board by written order extends the time to rule on the motion for rehearing within 45 days after the date the party or his attorney of record is notified of the decision, the motion is overruled by operation of law.

(d) With the agreement of the parties or by action of the board, time to consider a motion for rehearing can be extended up to 90 days after the board's decision. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed in the order, or in the absence of a fixed date, 90 days after the date of the decision or order.

§701.146. Decision Final and Appealable.

In the absence of a timely motion for rehearing, a decision or order of the board is final on the expiration of the period for filing a motion for rehearing. If a party files a motion for rehearing, a decision or order of the board is final and appealable on the date of the order overruling the motion for rehearing or on the date the motion is overruled by operation of law.

§701.147. Appeal of Final Decision.

(a) A person affected by a final decision or order of the board may file a petition for judicial review within 30 days after the decision or order is final and appealable. General procedures for appealing an order of the board in contested cases are governed by the APA. The standard of review in an appeal of a board order is the substantial evidence rule.

(b) The record in a contested case shall include the following:

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

(5) summaries of the results of any conferences held before or during the hearing;

(6) proposed findings, exceptions, and briefs;

(7) any decision, opinion, or report by the officer presiding at the hearing;

(8) prefiled testimony;

(9) all staff memoranda or data submitted to or considered by the administrative law judge or directors who are involved in the decision; and

(10) the final order and all interlocutory orders.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615890

Rick Illgner

General Manager

Edwards Aquifer Authority

Proposed date of adoption: December 13, 1996

For further information, please call: (210) 222-2204

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing — Duplicate Warrants

34 TAC §5.140

The Comptroller of Public Accounts proposes new §5.140, concerning replacement warrants, to replace §§5.141-5.143 which are being repealed.

The new section is necessary because of substantial amendments made to Government Code, §403.054 by the 73rd Legislature, 1993, which render obsolete certain portions of existing §§5.141-5.143.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on state or local government as a result of enforcing or administering the rule.

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 tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be addressed to Franny Martinez, Accounts Examiner, Claims Division, P.O. Box 13528, Austin, Texas 78711.

The new section is proposed under the Government Code, §403.054, which provides that the comptroller may issue a

replacement warrant in place of an original warrant, if the state agency on whose behalf the comptroller issued the original warrant notifies the comptroller of certain specific events. This statute also specifies under what conditions the comptroller may not issue a replacement warrant. This statute also authorizes the comptroller to adopt rules regarding the issuance of replacement warrants.

The new section implements Government Code, §403.054.

§5.140. Replacement Warrants.

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

(1) Payee - A person or entity to whom a warrant is made payable.

(2) Payment Cancellation Voucher - A form prescribed by the Comptroller used to cancel a warrant.

(3) Replacement warrant - A warrant issued to replace an original warrant.

(b) Request for issuance. A person or entity may request issuance of a replacement warrant if the person or entity is the payee of the original warrant. The request must be directed to the state agency on whose behalf the original warrant was issued and must be accompanied by any statements or documentation required by the agency. Upon receipt of the request, the agency must determine whether:

(1) the original warrant was lost, destroyed, or stolen;

(2) the original warrant was not received by the person or entity; or

(3) the person's or entity's endorsement on the original warrant was forged.

(c) Issuance by comptroller. The comptroller may issue a replacement warrant only if:

(1) the state agency on whose behalf the original warrant was issued properly notifies the comptroller that at least one of the conditions listed in subsection (b) of this section exists concerning the original warrant; and

(2) subsection (f) of this section does not prohibit issuance of the replacement warrant.

(d) Issuance by other agency. A state agency other than the comptroller may issue a replacement warrant if:

(1) the comptroller has delegated to the agency the authority to issue original and replacement warrants;

(2) the replacement warrant would replace an original warrant previously issued by the agency;

(3) at least one of the conditions listed in subsection (b) of this section exists concerning the original warrant; and

(4) subsection (f) of this section does not prohibit issuance of the replacement warrant.

(e) Notice. Notification to the comptroller under subsection (c)(1) of this section is proper only if the agency properly completes and submits a payment cancellation voucher. Once the warrant is canceled, the agency may submit a request for the issuance of a re-

placement warrant through procedures outlined by the Comptroller's Office.

(f) Prohibition on issuance. A replacement warrant may not be issued if:

(1) the original warrant has been paid, unless a refund of the payment has been obtained by the state;

(2) the period during which the state treasurer or the comptroller may pay the original warrant has expired under the Government Code, §404.046, or other applicable law;

(3) the payee of the replacement warrant is not the same as the payee of the original warrant; or

(4) state or federal law prohibits the issuance of a warrant to the payee of the replacement warrant.

(g) Limitations. A replacement warrant must reflect the same fiscal year as the original warrant and may not be paid unless presented to the comptroller or a financial institution before the expiration of two years after the close of the fiscal year in which the original warrant was issued. Replacement warrants issued by the Texas Workforce Commission shall be issued in accordance with this section. The deadline for issuance of replacement warrants by the Texas Workforce Commission shall be governed by the Labor Code, Chapter 210, Subchapter B.

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 October 31, 1996.

TRD-9615823

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 13, 1996

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

34 TAC §§5.141-5.143

The Comptroller of Public Accounts proposes the repeal of §§5.141-5.143, concerning definitions; return of stolen or forged warrants to comptroller; application of duplicate warrant. These sections are being repealed to implement statutory changes to Government Code, §403.054 governing the issuance of replacement warrants. Based on these statutory changes a substantially revised section (34 TAC §5.140 concerning replacement warrants) will be adopted.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no revenue impact on the state or local government as a result of enforcing or administering the repeals.

Mr. Reissig also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the rules will be in clarification of comptroller rules related to the franchise tax. There will be no effect on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be addressed to Franny Martinez, Accounts Examiner, Claims Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are proposed under the Government Code, §403.054, which provides that the comptroller may issue a replacement warrant in place of an original warrant, if the state agency on whose behalf the comptroller issued the original warrant notifies the comptroller of certain specific events. This statute also specifies under what conditions the comptroller may not issue a replacement warrant. This statute also authorizes the comptroller to adopt rules regarding the issuance of replacement warrants.

The repeals implement the Government Code, §403.054.

§5.141. *Definitions.*

§5.142. *Return of Stolen or Forged Warrants to Comptroller.*

§5.143. *Application of Duplicate Warrant.*

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 October 31, 1996.

TRD-9615822

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 13, 1996

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

Chapter 9. Property Tax Administration

Subchapter A. Practice and Procedure

34 TAC §§ 9.1-9.14

The Comptroller of Public Accounts proposes the repeal of §9.1-9.14, concerning intent and scope of property value study protest rules, construction of property value study protest rules, definitions, general provisions, who may protest, filing of a protest, additional general provisions, scheduling a protest hearing, hearing examiner's powers, conduct of hearing, proposed decision, exceptions to proposed decision, final decision, certification of changes to preliminary findings. The rules are being repealed in order to combine the information in these rules into new rule 34 TAC §9.109. The new rule will make it easier for the persons effected by these rules to read and interpret them.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no fiscal impact on state or units of local government as a result of enforcing or administering the repeals.

Mr. Reissig also has determined that for each year of the first five years the repeals are in effect the public benefit would be by providing a more efficient means of obtaining information concerning tax responsibilities. There will be no effect on small businesses. There are no anticipated significant economic costs to persons who are required to comply with the repeals as proposed.

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

The repeals are proposed under the Government Code, §403.303(e), which provides the comptroller with the authority to adopt rules governing protests of preliminary findings of taxable value.

The repeals implement Government Code, §403.302 and §403.303, and the Tax Code, §5.10.

§9.1. *Intent and Scope of Property Value Study Protest Rules.*

§9.2. *Construction of Property Value Study Protest Rules.*

§9.3. *Definitions.*

§9.4. *General Provisions.*

§9.5. *Who May Protest.*

§9.6. *Filing of a Protest.*

§9.7. *Additional General Provisions.*

§9.8. *Scheduling a Protest Hearing.*

§9.9. *Hearing Examiner's Powers.*

§9.10. *Conduct of Hearing.*

§9.11. *Proposed Decision.*

§9.12. *Exceptions to Proposed Decision.*

§9.13. *Final Decision.*

§9.14. *Certification of Changes to Preliminary Findings.*

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 November 4, 1996.

TRD-9615974

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 13, 1996

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

34 TAC §9.109

The Comptroller of Public Accounts proposes new §9.109, concerning procedures for protesting preliminary findings of taxable value. This new rule replaces 34 TAC §9.1 through §9.14, concerning the same subject matters, which are being repealed in order that they can be adopted under Title 34, Part I, Chapter 9, Subchapter A. The new rule is being proposed to make the rules easier to use and to conform to current agency practice.

The new rule sets forth how the Comptroller of Public Accounts shall provide procedures for protesting preliminary findings of taxable value as provided by the Government Code, §403.302(f) or (g) and §403.303, and the Tax Code, §5.10, in the manner required by law.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no

fiscal impact on state or units of local government as a result of enforcing or administering the rule.

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 them with a more efficient means of obtaining information concerning tax responsibilities. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

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

The new section is proposed under the Government Code, §403.303(e), which provides the comptroller the authority to adopt rules governing protests of preliminary findings of taxable value.

The new section implements the Government Code, §403.302 and §403.303, and the Tax Code, §5.10.

§9.109. *Procedures for Protesting Preliminary Findings of Taxable Value.*

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

(1) Agent - The individual that the petitioner is required to designate in the petition to perform the following activities on behalf of the petitioner:

(A) receive and act on all notices, orders, decisions, exceptions, replies to exceptions, and any other communications regarding the petitioner's protest;

(B) resolve any matter raised in petitioner's petition;

(C) argue and present evidence timely submitted with the petition at petitioner's protest hearing, unless agent designates in writing another individual to argue and present timely submitted evidence; and

(D) any other action required of petitioner.

(2) Appraisal district measures - The comptroller's measures of the degree of uniformity and median level of appraisal of an appraisal district made under the Tax Code, §5.10.

(3) Decision.

(A) Proposed decision - An official finding made by the hearing examiner concerning a protest of preliminary findings of taxable value, subject to filing of exceptions by any party.

(B) Final decision - An official finding made by the hearing examiner and signed by the Deputy Comptroller if a written exception is filed by the petitioner. A proposed decision may also become final without the Deputy Comptroller's signature, if no exceptions to that proposed decision are timely filed.

(4) District - A school district. District does not include an appraisal district.

(5) Person - Any individual, partnership, corporation, association, governmental subdivision, or public or private organization.

(6) Petition - The document and supporting evidence filed by petitioner indicating disagreement with the comptroller's preliminary findings or appraisal district measures.

(7) Petitioner - A school superintendent, chief appraiser or eligible property owner who submits a petition seeking redetermination of the comptroller's preliminary findings or appraisal district measures.

(8) Preliminary findings - The comptroller's findings of district property value delivered to a district and certified to the commissioner of education under the Government Code, §403.302(f) or (g).

(9) Protest - A disagreement by a district, property owner, or appraisal district with the comptroller's preliminary findings or appraisal district measures initiated by timely filing the petition required by subsection (f) of this section.

(10) Ratio study - A study designed to evaluate appraisal performance through a comparison of appraised values made for tax purposes with independent estimates of market value based either on sales prices or independent appraisals.

(b) Intent and scope of protest rule. The protest rule is intended to provide a petitioner with a clear process for resolving a disagreement with the Comptroller of Public Account's preliminary findings of property value certified to the commissioner of education pursuant to the Government Code, §403.302(f) or (g), and the measures of degree of uniformity and the median level of appraisal made pursuant to the Tax Code, §5.10. This rule governs all aspects of a preliminary findings or appraisal district measures protest.

(c) Construction of protest rule. Rules concerning protests of the preliminary findings of property value certified to the commissioner of education pursuant to the Government Code, §403.302(f) or (g) and the measures of degree of uniformity and the median level of appraisals made pursuant to the Tax Code, §5.10, will be reasonably construed in the rule's total context and in a manner providing a fair decision for every protest. Unless the context clearly indicates otherwise, in this rule, the term "petitioner" includes petitioner's agent.

(d) General provisions.

(1) All petitions and other documents related to a protest of the comptroller's preliminary findings or appraisal district measures shall be filed with the Comptroller of Public Accounts of the State of Texas, Property Tax Division manager. No document or petition is filed until actually received. However, any petition including supporting evidence is timely filed if it is sent to the Property Tax Division manager by:

(A) first-class United States mail in a properly addressed and stamped envelope or wrapper, and the envelope or wrapper exhibits a legible postmark affixed by the United States Postal Service showing that the petition including supporting evidence was mailed on or before the last day for filing; or

(B) an express mail corporation in a properly addressed envelope or wrapper, and the envelope or wrapper exhibits a legible date showing that the petition including supporting evidence was delivered to the express mail corporation for delivery on or before the last day for filing; or

(C) fax received on or before the last day for filing if the petition including supporting evidence, is under ten pages in

content, the original is mailed within three days of the fax and all procedures for submitting a protest have been followed.

(2) An extension of time shall be requested in writing five days in advance of the original deadline for which the extension is requested. No more than one extension during an appeals period may be granted for each petitioner. An extension may not extend the deadline for more than ten days. An extension shall be granted only by the hearing examiner for good cause shown, and if the reason for the extension is not the petitioner's neglect, indifference, or lack of diligence. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline.

(3) In computing a period of time, the period begins on the day after the act or event in question and ends on the last day of the time period. If the last day of the time period is a Saturday, Sunday, or state or federal legal holiday the period of time runs until the end of the first day which is neither a Saturday, Sunday, or state or federal legal holiday.

(4) The protest hearing will be conducted by a hearing examiner.

(5) Before a scheduled protest hearing the comptroller or a petitioner may request a preliminary conference to clarify the issues or resolve the protest. If the request is accepted, the conference shall be scheduled during business hours at the offices of the comptroller or at a time mutually agreeable to the comptroller and the petitioner. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing. A hearing examiner may not attend a preliminary conference.

(6) An error in the comptroller's preliminary findings caused by an error in a district's annual report of property value or by a change in a district's certified tax roll may be corrected by timely filing a petition and otherwise complying with the requirements of this section.

(7) A district shall send notice of its protest to each appraisal district that appraises property for the district. An appraisal district shall send notice of its protest to each district that participates in the appraisal district. The district's or appraisal district's petition shall contain a certification that a copy of its petition was delivered as required by this subsection.

(8) A property owner may contact the Property Tax Division manager for information concerning the districts or appraisal districts that have filed a petition as required by this section. A district or appraisal district may contact the Property Tax Division manager for information concerning property owners that have filed a petition as required by this section.

(9) During the conduct of a protest hearing, a petitioner or a comptroller employee may present evidence not submitted prior to the deadline for filing the protest petition if the evidence is requested and obtained by a comptroller employee pursuant to subsection (i)(5) of this section, after the deadline to file a petition has passed and before the date set for the petitioner's protest hearing.

(10) A comptroller employee may present evidence, gathered during the conduct of the property value study or during the comptroller's review of the petitioner's protest, during a hearing on the petitioner's protest.

(11) At any time before the date final changes in the preliminary findings are certified to the commissioner of education,

the comptroller may certify to the commissioner of education amended preliminary findings. If the comptroller certifies amended preliminary findings that are adverse to the district, the appraisal district's, property owner's, and district's time to protest begins to run on the date the amended preliminary findings are certified. An amended preliminary finding is made when the comptroller's finding of property value for a district is delivered to a district and certified to the commissioner of education between the date preliminary findings for the district are originally certified and final certification of changes in preliminary findings.

(12) A petition shall show the petitioner's name and address, designate the petitioner's agent, and list for each category of property the grounds for objection to the preliminary findings for that category. The grounds for objection shall list by category specific changes that the petitioner alleges would improve the accuracy of the taxable value finding or appraisal district measures, and shall provide the reason that each change will make the findings more accurate. A petition that does not clearly specify by category of property the specific changes that petitioner alleges would improve the accuracy of the taxable finding or appraisal district measures does not adequately specify the grounds for objection as required by Government Code, §403.303(a). The petition shall include the following information:

(A) all documentary evidence, placed in order by category, necessary to support the factual and legal contentions made in the petition; and

(B) the value petitioner claims is correct.

(13) A petition must be signed by:

(A) the superintendent of the district if it is a petition filed by a school district; or

(B) the property owner or the property owner's agent if it is a petition filed by a property owner; or

(C) the chief appraiser of the appraisal district, if it is a petition filed by an appraisal district.

(14) The petition must contain a statement by the person signing the petition that, to the best of the person's knowledge, the evidence contained in the petition is true and correct.

(15) In a protest of the comptroller's preliminary findings, the comptroller has the burden of proving by a preponderance of the evidence that the comptroller used appraisal, statistical compilation, and analysis techniques, generally accepted as an appropriate method for the conduct of a ratio study by organizations setting recognized standards for the conduct of a ratio study, to reach a correct value for a district included in the property value study.

(16) The comptroller may, on the comptroller's own motion, grant an extension of time for the limited purpose of correcting technical errors or omissions in a timely filed protest petition. Petitioner's failure to submit grounds for objection or all documentary evidence necessary to support the factual and legal contentions made in the petition is not a technical error or omission.

(e) Who may protest.

(1) A district may protest the preliminary findings of its taxable value.

(2) A district may protest the preliminary findings of taxable value of an audit within the district.

(3) An owner of property included in a sample used by the comptroller to determine the taxable value of a category of property in a district may protest the comptroller's preliminary findings of value if the total ad valorem tax liability on the owner's properties included in the category sample for the district is \$100,000 or more.

(4) An appraisal district may protest the comptroller's measures, made under the Tax Code, §5.10, of the level and uniformity of property appraisals within the district.

(5) A protest filed by a property owner or an appraisal district will not be considered for any purposes to be a protest filed by a district.

(f) Filing of a protest. A petition for a protest of the preliminary findings of taxable value or measures of degree of uniformity or median level of appraisal must be filed within 40 days after the date the comptroller certifies preliminary findings of district taxable value to the commissioner of education. A petition for a protest of the preliminary findings of taxable value of an audit must be filed within 40 days of the date the district received the preliminary findings of taxable value. Except as provided by subsection (d)(10) or (i)(5) of this section, no additional evidence may be submitted after the deadline for filing the petition.

(g) Scheduling a protest hearing. The comptroller shall deliver notice of the date, time, and place fixed for a hearing to each petitioner. The notice must be delivered not later than ten days before the date of the hearing.

(h) Hearing examiner's powers.

(1) The hearing examiner shall conduct a protest hearing in a manner insuring fairness, the reliability of evidence, and the timely completion of the hearing. The hearing examiner shall have the authority necessary to receive and consider all evidence, propose decisions, consider exceptions and replies to exceptions, and amend a proposed decision. The hearing examiner's authority includes, but is not limited to, the following:

(A) establish the comptroller's jurisdiction concerning the protest, including whether a timely protest has been filed or whether an extension of time should be granted;

(B) set hearing dates;

(C) rule on motions and the admissibility of evidence;

(D) designate parties and establish the order of presentation of evidence;

(E) consolidate related protests;

(F) conduct a single hearing that provides for:

(i) participation by the affected district(s), appraisal district, and any property owner that has filed a valid and timely petition, if the hearing concerns preliminary findings of taxable value or the degree of uniformity and median level of appraisal; or

(ii) participation by the affected district(s) and the commissioner of education, if the hearing concerns the preliminary findings of an audit of a district's taxable property value;

(G) conduct hearings in an orderly manner;

(H) provide for hearings by written submission;

(I) administer oaths to all persons presenting testimony;

(J) examine witnesses and comment on the evidence;

(K) insure that evidence, argument, and testimony are introduced and presented expeditiously;

(L) refuse to hear arguments that are repetitious, not confined to matters raised in the petition, not related to the evidence or that constitute mere personal criticism;

(M) accept and note any petitioner's waiver of any right granted by this rule;

(N) limit each hearing to one hour for presentation of evidence and argument or extend the one-hour time limit in the interest of a full and fair hearing; and

(O) exercise any other powers necessary or convenient to carry out the hearing examiner's responsibilities and to insure timely certification of changes in preliminary findings to the commissioner of education.

(2) The hearing examiner may take official notice of any matter that trial judges may judicially notice and of facts within the hearing examiner's personal knowledge or specialized experience. Petitioners in a protest in which official notice is taken shall have an opportunity to contest the matter.

(3) The hearing examiner may entertain motions for dismissal at any time for any of the following reasons:

(A) failure to prosecute;

(B) unnecessary duplication of proceedings or res judicata;

(C) withdrawal of protest;

(D) moot questions or obsolete petition;

(E) failure to certify that notice of protest was filed as required by subsection (d)(1) of this section or failure to actually file notice as required by subsection (d)(1) of this section; or

(F) the result of an appraisal district protest is adverse to a district.

(4) The hearing examiner may grant a request to postpone a protest hearing if good cause is shown and doing so would not prevent timely certification of changes in the preliminary findings to the commissioner of education. A request to postpone must be in writing, show good cause for the postponement, and be delivered five days before the date the protest hearing is scheduled to begin. Good cause does not include a claim that the time periods established in this rule are too short to meet the deadline.

(5) The hearing examiner shall determine the admissibility of the evidence. Any party may object to the admission of evidence and the objection will be ruled on and noted on the record. The hearing examiner may exclude irrelevant, immaterial, or unduly repetitious evidence. The hearing examiner may receive any part of the evidence in writing.

(6) The hearing examiner in a protest may not communicate outside a protest hearing, directly or indirectly, with any agency, person, petitioner or petitioner's agent regarding any issue of fact or law relating to the protest unless all petitioners in the protest have no-

vice and opportunity to participate, except that the hearing examiner may communicate ex parte with comptroller employees to use the comptroller's special skills to evaluate the evidence if the employee will not participate in the protest hearing, has not been involved in preparing for the hearing, and has not been involved in conducting the particular property value study under protest.

(i) Conduct of hearing.

(1) The hearing examiner shall convene a hearing for a protest.

(2) All protests heard by the hearing examiner shall be recorded on audio tape. A petitioner will be provided a copy of the recording after a written request and payment of a cost-based fee. A petitioner may at any time make arrangements for and bear the cost of having a hearing recorded and transcribed by a court reporter, provided the comptroller's staff timely receives a copy of the transcript.

(3) All proceedings are open to the public and are held in Austin, unless the hearing examiner designates another place for the hearing. The hearing examiner may close a hearing, on the hearing examiner's own motion or on the motion of any party, if confidential information may be disclosed during the hearing.

(4) A petitioner may designate in writing one or more individuals to present argument and evidence timely submitted with the petition.

(5) If a comptroller employee has requested in writing information, materials, sales, or documentary evidence of any type from the appraisal district, property owner, or district and any of these materials are not provided to the comptroller's employee within ten working days of the request, the materials that were not provided shall be inadmissible during the conduct of a protest hearing for a petitioner who failed to provide the materials. The comptroller may require that information requests be supplemented.

(6) Each petitioner may present argument on any matter raised by the petition. Each petitioner may offer oral argument at the hearing. Argument shall be confined to the evidence and to arguments of other parties. Admissions, proposals, or offers made in the compromise of disputed issues in a preliminary conference may not be admitted in a hearing.

(7) No more than one representative for each petitioner or aligned group of petitioners shall be heard in the protest hearing on any petition except on leave of the hearing examiner. An agent may designate, and the hearing examiner may approve, a reasonable number of individuals to present argument and timely submitted evidence. Nothing in this subsection limits the presentation of evidence through witness testimony.

(8) The hearing examiner shall establish the order of proceeding, and is responsible for closing the record.

(j) Proposed decision.

(1) The hearing examiner, hearing examiner's designee, or a comptroller employee who has read the record shall prepare a proposed decision, which shall include a statement of the reasons for the proposed decision.

(2) The hearing examiner shall serve the proposed decision on the petitioner by certified mail.

(k) Exceptions to proposed decision.

(1) Unless the petitioner has waived the right of review of the proposed decision, any party adversely affected by the proposal may, within ten days after the date the proposed decision is mailed, file exceptions by delivering the original documents to the hearing examiner. Replies to exceptions shall be filed in the same manner within 20 days after the proposal for decision is mailed. Copies of all exceptions and replies shall be served promptly on the examiner and on all other parties in the protest with certification of service furnished to the hearing examiner. Failure to provide copies to all other parties in the protest and to the hearing examiner with certification of service is grounds for withholding consideration of the written exceptions.

(2) After consideration of the exceptions and replies, the hearing examiner may issue an amended decision without again serving the decision on the petitioner.

(l) Final decision.

(1) A proposed decision is final ten days after it is delivered to the parties to the protest, unless exceptions to the proposed decision are filed, in which case the decision becomes final, in either its original or amended form, on the date signed by the Deputy Comptroller.

(2) A final decision ordering changes to preliminary findings made as a result of a school district's protest will change the preliminary findings for the appraisal district in which the school district is located.

(3) A final decision ordering changes to preliminary findings made as a result of an appraisal district's protest will change the preliminary findings for the school districts participating in the appraisal district.

(4) A final decision ordering changes to preliminary values made as a result of a property owner's or district's protest will change the measures for an appraisal district.

(5) A final decision ordering changes to preliminary findings made as a result of a property owner's protest will change the preliminary findings for the school district where the property which is the subject of the protest is located. A property owner's preliminary value may be changed by a protest brought by a school district or appraisal district.

(6) A decision concerning a protest of preliminary findings of taxable value of an audit must be decided by written order within 120 days of the date the school district received the preliminary findings.

(7) The hearing examiner shall deliver written notice of the final decision to each protesting petitioner.

(m) Certification of changes to preliminary findings. Unless the comptroller determines that circumstances require otherwise, the comptroller shall certify to the commissioner of education all changes to the preliminary findings on or before July 1 of the year following the year of the study.

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 November 4, 1996.

TRD-9615975

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

Earliest possible date of adoption: December 13, 1996

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

◆ ◆ ◆
TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 4. Employment Practices

Subchapter E. Sick Leave Pool Program

43 TAC §§4.51, 4.55, 4.56

The Texas Department of Transportation proposes amendments to §§4.51, 4.55, and 4.56, concerning the department's sick leave pool program.

Government Code, Chapter 661, authorizes the department to establish a sick leave pool program and to adopt rules and prescribe procedures to provide additional sick leave for an employee when the employee or the employee's immediate family member has a catastrophic illness or injury which causes the employee to exhaust all leave time earned and lose compensation from the state.

The amendments identify the specific criteria used to determine if an illness or injury is a severe condition, place stricter requirements on psychological conditions as a qualifying reason for using pool hours, and establish greater control over the use of hours granted from the pool.

Section 4.51 is amended to add new definitions of licensed psychiatrist and sick leave. The definition of severe condition is amended to add separate psychological and physical conditions and establish separate criterion for each and also eliminates the reference to permanent disability as used in the term. The amendments also remove the definition of permanent disability.

The amendments to §4.55 clarify which form the pool administrator will review for contribution returns.

The amendments to §4.56 require that a licensed psychiatrist certify a psychological medical condition; the employee's job description be attached to the medical certification form the health care provider completes; and exhaustion of accrued leave before using hours granted from the pool. The amendments also remove the paragraph that defines the appropriate use of hours granted for a permanent disability, allow time granted from the pool to begin after the time covered by the last worker's compensation check distributed for on the job injuries, consolidate the maximum hours per request and maximum hours per condition, and change 90 calendar days to 90 work days regarding the maximum number of hours that can be granted per condition.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five years the sections are in effect, there will be fiscal implications for the state as a result of enforcing or administering the proposed sections. The

anticipated estimated reduction in cost to the state will be \$104,190.82 per year for the first five years the amendments are in effect. There are no anticipated fiscal implications to local governments as a result of administering or enforcing the sections. There is an anticipated economic cost to persons who are required to comply with these sections as proposed if the stricter requirements on psychological conditions disqualify the employee from sick leave pool hours. This anticipated cost cannot be determined due to the individual circumstances of each employee.

Cathy J. Williams, Director, Human Resources Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed sections.

Ms. Williams also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a more effective implementation of the department's sick leave pool program. There will be no effect on small businesses.

Written comments on the proposal may be submitted to Cathy J. Williams, Director, Human Resources Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on Monday, December 16, 1996.

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and Government Code, Chapter 661, which requires the department to adopt rules administering a sick leave pool program.

No statutes, articles, or codes are affected by these proposed amendments.

§4.51. Definitions.

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

Licensed psychiatrist -A psychiatrist licensed by a state medical licensing board.

[Permanent disability-A physical or mental impairment that substantially limits one or more major life activities.]

Severe condition-A psychological illness that results in the patient being suicidal or capable of harming themselves or others, and requires one week or more inpatient hospitalization. A physical [Any] illness or injury that poses an imminent threat to the life of the patient[, results in a permanent disability,] or causes the employee to be off work for three continuous months or more for the current episode.

Sick leave -Leave taken when sickness, injury, or pregnancy and confinement prevent the employee's performance of duty or when the employee is needed to care and assist a member of his immediate family who is actually ill.

§4.55. Contribution Returns.

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

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

(3) The pool administrator shall review the withdrawal of contribution form and approve or deny the transfer of hours from the sick leave pool to the employee's personal sick leave account.

§4.56. Withdrawals.

(a) Restrictions.

(1) (No change.)

(2) A written certification from a health care provider must be submitted with all requests for withdrawals. Requests related to psychological conditions must be certified by a licensed psychiatrist. The certification should include the diagnosis and prognosis of the condition or combination of conditions and the date the employee or employee's immediate family member will be able to return to normal activities. If the certification is for the employee's immediate family member, it should also include the amount of time the employee will be needed to provide primary care. The health care provider certification shall be in a form prescribed by the pool administrator. This information is confidential, unless otherwise required by law, and may only be released to the human resources officer if he or she can demonstrate a legitimate business necessity for this information.

(3) (No change.)

[(4) Hours transferred from the pool for an illness or injury resulting in a permanent disability may be used solely for the treatment of the illness or injury and not for rehabilitation or training needed as a result of the disability.] (4) [(5)] An employee's use of a transfer from the sick leave pool for family members not residing in that employee's household is strictly limited to the time necessary to provide assistance to a spouse, child, or parent of the employee who needs such care and assistance as a direct result of a documented medical condition. (5) [(6) The maximum hours that may be granted per request is 720 hours (90 calendar days) or one third of the balance of the pool, whichever is less at the time the request is received.] The maximum number of hours that may be granted per catastrophic condition is 720 hours (90 work [calendar] days) or one third of the pool balance, whichever is less at the time a request is received. (6) [(7)] When the pool balance is below 7,200 hours, an employee may not be transferred more than 340 hours (approximately two months) per request, unless unpaid leave is incurred before the request is approved. If unpaid leave is incurred, the employee may not be transferred more than the sum of the unpaid leave and 340 hours. [The time transferred will begin on the date and time the employee exhausted all accrued leave.] Additionally, the pool administrator will approve or deny all requests in the order in which they are received.

(7) The time transferred will begin on the date and time the employee exhausted all accrued leave or, in cases which are eligible for workers' compensation payments, after the period covered by the last workers' compensation check distributed.

(8) (No change.)

(9) An employee must exhaust all accrued leave time before using [being eligible to use] hours approved [for a particular catastrophic illness or injury] from the sick leave pool.

(10) (No change.)

(b) Procedures.

(1) (No change.)

(2) The employee shall submit the application and the health care provider's certification form and a copy of the employee's functional job description to his or her health care provider no earlier than 15 workdays before the need for the withdrawal. The health care provider will complete the certification and mail it, with the completed application, directly to the pool administrator.

(3)-(8) (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 November 4, 1996.

TRD-9615957

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: December 13, 1996

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



Chapter 18. Motor Carriers

Subchapter A. General Provisions

43 TAC §18.2

The Texas Department of Transportation proposes an amendment to §18.2, concerning definitions. The amended section is necessary to ensure the department's proper administration of the laws concerning the registration of commercial motor carriers.

Texas Civil Statutes, Article 6675c, states that motor carrier registration provisions do not apply to "... a motor vehicle the department by rule exempts because the vehicle is subject to comparable registration and a comparable safety program administered by another agency." The Texas Alcoholic Beverage Commission adopted 16 TAC §35.5, which became effective August 26, 1996. With the adoption of §35.5, vehicles transporting liquor under a private carrier permit issued in accordance with the Texas Alcoholic Beverage Code, Chapter 42, are subject to registration and safety programs comparable to those required by the department. In addition to a comparable registration program, the Texas Alcoholic Beverage Commission's safety program includes comparable liability insurance levels, proof of insurance, insurance filing, safety affidavit, and suspension/cancellation requirements. As such, the department has determined that such carriers should be exempt from motor carrier registration under this department's rules.

The proposed amendment to §18.2 revises the definition of "commercial motor carrier" to exclude vehicles transporting liquor under a private carrier permit issued in accordance with the Texas Alcoholic Beverage Code, Chapter 42. The proposed change will release affected permittees from the obligation of complying with overlapping regulations by the Texas Alcoholic Beverage Commission and the Texas Department of Transportation. Such dual regulation unnecessarily raises the costs of governmental agencies and regulated businesses.

Frank J. Smith, Director, Budget and Finance Division, has determined that there will be fiscal implications as a result of enforcing or administering the section. The effect on state government for the first five-year period the section will be in effect will be an estimated loss in revenue of \$81,400 each year for fiscal years 1997-2001 as a result of enforcing or administering the section. In addition, the state can expect to save \$1,379 annually in registration processing costs. There will be no fiscal implication for local governments as a result of enforcing or administering the amendment.

The anticipated economic effect to persons required to comply with the proposed amendment will be a savings of \$10 annually for each vehicle required to be registered with the department. In addition, such persons will no longer be required to register with two separate state agencies.

Lawrence R. Smith, Director, Motor Carrier Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendment. There will be no effect on small businesses.

Mr. Lawrence Smith, also has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be the elimination of unnecessary registration requirements and cost savings to those previously required to register as a motor carrier.

Written comments on the proposal may be submitted to Lawrence R. Smith, Director, Motor Carrier Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments will be 5:00 p.m. on Monday, December 16, 1996.

The amended section is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the Texas Department of Transportation, and more specifically, Texas Civil Statutes, Article 6675c, which authorizes the department to carry out the provisions of those laws governing motor carrier registration.

No statutes, articles, or codes are affected by the proposed amendment.

§18.2. Definitions.

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

Commercial motor vehicle-

(A) (No change.)

(B) Does not include:

(i) (No change.)

(ii) cotton vehicles registered in accordance with Transportation Code, §502.277; [and]

(iii) a vehicle registered with the Railroad Commission pursuant to Texas Natural Resources Code, §113.131 and §116.072; and

(iv) a vehicle transporting liquor under a private carrier permit issued in accordance with Alcoholic Beverage Code, Chapter 42.

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 November 4, 1996.

TRD-9615958

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: December 13, 1996

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

◆ ◆ ◆

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 7. BANKING AND SECURITIES

Part I. State Finance Commission

Chapter 3. Banking Section

Subchapter A. Securities Activities and Subsidiaries

7 TAC §3.7

The Finance Commission of Texas (the commission) adopts the repeal of §3.7, concerning applications for creation of bank subsidiaries by a state bank, without changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8353).

The repeal is necessary because of changes in law made regarding subsidiaries of state banks as a result of the recent enactment of Texas Civil Statutes, Articles 342-1.001 et seq (Texas Banking Act, §§1.001 et seq) (the Act), particularly by the Act, §5.103. The repealed section is inconsistent with the Act, §5.103, and the statute is sufficiently specific to allow for repeal of §3.7. A new section regarding subsidiaries will be developed and proposed for adoption in a future issue of the *Texas Register*.

No comments were received regarding the proposed repeal.

The repeal of this section is adopted pursuant to rulemaking authority under the Act, §1.012(a)(1), which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Act. As required by the Act, §1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state.

This agency hereby certifies that the repeal 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 November 1, 1996.

TRD-9615913

Everette D. Jobe

General Counsel, Texas Department of Banking

State Finance Commission

Effective date: November 22, 1996

Proposal publication date: September 3, 1996

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

Subchapter B. General

7 TAC §3.22

The Finance Commission of Texas (the commission) adopts new §3.22, concerning sale or lease agreements between a state bank and an officer, director, manager, managing participant, principal shareholder, or principal participant of the bank, or an affiliate of the bank (insider), without changes to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8353).

New §3.22(a) requires a sale or lease agreement between a state bank and an insider to be in writing. New §3.22(b) specifies that such agreements must have terms and rates that are substantially equivalent to or more favorable to the bank than those prevailing at the time for comparable transactions with or involving nonaffiliated parties.

New §3.22(c) clarifies the phrase "approval of a disinterested majority of the board," and requires board consideration of all insider sale or lease agreements. New §3.22(d) specifies the form and content of the written request which must be submitted to the banking commissioner if a state bank must seek the prior written approval of the banking commissioner to enter into a sale or lease agreement with an insider.

Finally, new §3.22(e) sets out applicable record keeping requirements, and new §3.22(f) specifies that subsection (c) is not applicable to a legally binding, written lease, entered into by a state bank prior to June 16, 1991, until such lease is renewed or extended beyond its original term.

The agency received one comment from the Texas Banker's Association (TBA) which requested that the 60-day requirement of subsection (c) for obtaining banking commissioner approval be reduced to 30 days. The agency respectfully declines to make this suggested revision. Agency staffing constraints and the likelihood that many of the lease and sale agreements between a state bank and insiders will be lengthy and complex and not permit a reduction in the amount of time required for the banking commissioner to consider a sale or lease transaction.

New §3.22 will be applicable to trust companies under Texas Civil Statutes, Article 342-1102, §1.

Adoption of this section is made under Texas Civil Statutes, Article 342-1.012(a), which authorizes the commission to adopt rules to implement and clarify the Act, and to preserve or protect the safety and soundness of state banks. As required by Texas Civil Statutes, Article 342-1.012(b)(1),(2), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, and allow for economic development within this state.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615914

Everette D. Jobe

General Counsel, Texas Department of Banking
State Finance Commission

Effective date: November 22, 1996

Proposal publication date: September 3, 1996

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

◆ ◆ ◆
Subchapter D. Trust Companies

7 TAC §3.61

The Finance Commission of Texas (the commission) adopts the repeal of §3.61, concerning applications for acquisition or changes of control of a Texas chartered trust company, without change to the repeal as proposed in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8355).

The repeal is necessary because of changes in law made regarding change of control of state banks as a result of the recent enactment of Texas Civil Statutes, Articles 342-1.001 et seq (Texas Banking Act, §§1.001 et seq) (the Act), particularly by the Act, §§4.001-4.007. The repealed section is inconsistent with the Act, §§4.001-4.007, and the rule adopted under the Act regarding change of control, §15.81 of Title 7. Further, the provisions of the statute and §15.81 are sufficiently specific to allow for repeal of §3.61. Section 15.81 and the Act, §§4.001-4.007, are applicable to a trust company by virtue of Texas Civil Statutes, Article 342-1102, §1.

No comments were received regarding the proposed repeal.

The repeal of this section is adopted under Texas Civil Statutes, Article 342-1106(b), which authorizes the commission to adopt general rules and regulations as may be necessary to accomplish the purposes of trust company regulation.

This agency hereby certifies that the repeal 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 November 1, 1996.

TRD-9615910

Everette D. Jobe

General Counsel, Texas Department of Banking

Texas Department of Banking

Effective date: November 22, 1996

Proposal publication date: September 3, 1996

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

◆ ◆ ◆
Subchapter E. Banking House and Other Facilities

7 TAC §3.91

The Finance Commission of Texas (the commission) adopts new §3.91, concerning loan production offices, with a non-substantive change to the proposed text as published in the September 3, 1996, issue of the *Texas Register* (21 TexReg 8355).

New §3.91 specifies the form and content of the written notification required to inform the banking commissioner of the establishment, relocation, or closure of a loan production office involving the purchase or lease of personal or real property from an officer, director, manager, managing participant, or principal shareholder or participant of the bank or an affiliate of the bank, under Texas Civil Statutes, Article 342-4.107. Also, new §3.91 provides that temporary loan production offices need not comply with its written notification provisions. Additionally, new §3.91 requires that state banks proposing to conduct an activity at a loan production office in Texas which is prohibited by Texas Civil Statutes, Article 342-3.205, but which is allowable for a national bank domiciled in this state, must comply with the provisions of Texas Civil Statutes, Article 342-3.010(b). Also, new §3.91 provides that a bank not domiciled or primarily located in this state which seeks to establish a loan production office in this state must comply with the provisions of Texas Civil Statutes, Article 342-8.003. Finally, new §3.91 provides that out-of-state banks must comply with the provisions of Texas Civil Statutes, Article 342-8.002, and foreign bank corporations must comply with the provisions of Texas Civil Statutes, Article 342-9.007.

The agency received one written comment requesting that §3.91 be clarified to provide that the provisions of §3.91 do not apply to foreign banks. The agency concurs and has added subsection (g), which provides that foreign banks must comply with the provisions of Texas Civil Statutes, Article 342-9.007.

Adoption of this section is made under Texas Civil Statutes, Article 342-1.012(a) (1) and (2), which authorize the commission to adopt rules necessary or reasonable to implement and clarify the Act, and to preserve or protect the safety and soundness of state banks. Adoption of this section is also made under Texas Civil Statutes, Article 9.002(b), which authorizes the commission to adopt rules specifically applicable to foreign bank corporations. As required by Texas Civil Statutes, Article 342-1.012(b), the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state banks with national banks and other depository institutions in this state consistent with the safety and soundness of state banks and the state bank system, and allow for economic development within this state. §3.91. Loan Production Offices.

§3.91. *Loan Production Offices.*

(a) Required Information. Pursuant to Texas Civil Statutes, Article 342-3.205(b), a state bank is required to notify the banking commissioner of its intent to establish a loan production office in this state. The banking commissioner must be notified in writing before the 31st day preceding the date of establishment of the loan production office, except that the banking commissioner may waive or shorten the period if the banking commissioner does not have a significant supervisory or regulatory concern regarding the bank or its planned loan production office. The written notification must include the physical address of the planned loan production office, a list of the specific activities to be performed at the planned loan production office, the anticipated date for the establishment of the loan production office, and other information which the banking commissioner may reasonably request.

(b) Relocation or closure of a loan production office. A state bank which seeks to relocate or close an established loan production office in this state, shall notify the banking commissioner in writing before the 5th day preceding the date of the planned relocation or closure of the loan production office. The written notification must include the physical address of the relocated or closed loan production office, the anticipated date for the closure or relocation of the loan production office, and other information which the banking commissioner may reasonably request.

(c) Exemption: temporary loan production offices. Subsections (a) and (b) of this section do not apply to a loan production office which operates for less than a total of 21 days in any one 12-month period. Instead, state banks shall register the location of a temporary loan production office with the banking commissioner no later than the 10th day after such office is opened. As a part of such notice, the bank may indicate the anticipated repeated use of such office through the year. For example, a temporary office in a convention or exposition hall used in connection with trade shows may be registered once each year with an estimate of usage throughout the year.

(d) Transactions with management and affiliates. A state bank establishing a loan production office involving the purchase or lease of personal or real property from an officer, director, manager, managing participant, or principal shareholder or participant of the bank or an affiliate of the bank, must comply with the provisions of Texas Civil Statutes, Article 342-4.107 and §3.22 of this Title (Relating to Sale and Lease Agreements With an Officer, Director, Principal Shareholder, or Affiliate).

(e) Parity with national banks. A state bank that intends to exercise an activity at a loan production office in this state that is prohibited by Texas Civil Statutes, Article 342-3.205(a), but is allowable for a national bank domiciled in this state, shall notify the banking commissioner in accordance with the provisions of Texas Civil Statutes, Article 342-3.010(b).

(f) Out-of-state banks. A bank not domiciled or primarily located in this state which seeks to establish a loan production office in this state must comply with the provisions of Texas Civil Statutes, Article 342-8.003.

(g) Foreign bank corporations. A banking corporation or association incorporated or organized under the laws of jurisdiction other than the United States or a state, territory, commonwealth, or other political subdivision of the United States, must comply with the provisions of Texas Civil Statutes, Article 342-9.007.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615911

Everette D. Jobe

General Counsel, Texas Department of Banking
State Finance Commission

Effective date: November 22, 1996

Proposal publication date: September 3, 1996

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

◆ ◆ ◆
7 TAC §3.92

The Finance Commission of Texas (the commission) adopts an amendment to §3.92, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines or ATMs, without changes to the proposed text as published the September 3, 1996, issue of the *Texas Register* (21 TexReg 8357).

Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines (referred to as the ATM User Safety Act). Another statute bears a duplicate number, Article 342-903d, but concerns fees charged in connection with use of ATMs, and is not affected by §3.92.

Provisions in the ATM User Safety Act purport to cross-reference to other provisions of the Texas Banking Code, Texas Civil Statutes, Article 342-101 et seq, for definitional purposes, but the Texas Banking Code was in large part repealed by Act of May 18, 1995, 74th Legislature, chapter 914, §26, 1995 Texas Session Law Service 4451, 4551, in connection with the adoption of the Texas Banking Act. Section 3.92(a) therefore contains definitions designed to facilitate understanding of these cross-references to repealed statutes.

However, the former definition of ATM in §3.92(a)(2), drawn from Texas Civil Statutes, Article 342-903, §2 (repealed), was ambiguous with respect to whether a night depository could be construed to be "a machine ... capable of being operated solely by a customer, by which a customer may communicate to the financial institution ... an instruction to deposit funds into the customer's account with the financial institution." The commission does not believe the legislature contemplated the application of the ATM User Safety Act to night depositories. As amended, §3.92(a)(2) will exclude night depositories, although a financial institution may voluntarily apply the standards of §3.92 to lighting and landscaping around its night depositories if it chooses to do so. A cross-reference within §3.92(a)(2) to the definition of "customer convenience terminal" is also deleted as unnecessary, in order to eliminate awkward phrasing and assist understanding.

No comments were received regarding the proposed amendment.

Amendment of this section is adopted under the authority of Texas Civil Statutes, Article 342-903d, §7(a), as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647,

1995 Texas Session Law Service 3528, 3530, which requires the commission to adopt rules regarding enforcement and implementation of that statute.

Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, 3530, are affected by the proposed amendment.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615912

Everette D. Jobe

General Counsel

State Finance Commission

Effective date: November 22, 1996

Proposal publication date: September 3, 1996

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

◆ ◆ ◆
Chapter 4. Currency Exchange

7 TAC §4.10

The Finance Commission of Texas (the commission) adopts new §4.10, concerning the conduct of currency exchange or transmission business from a motorized vehicle or other mobile unit at specific locations under Texas Civil Statutes, Article 350 (the Act), with one nonsubstantive change to the proposed text as published in the September 3, 1996, issue of the Texas Register (21 TexReg 8357).

Pursuant to the Act, §2, a person may not, with limited exceptions, engage in the business of currency exchange or transmission in this state without a license. Members of the regulated industry have requested that the commission expressly authorize a licensee to offer currency exchange or transmission services from a mobile unit. The adopted new section outlines the requirements and procedures for licensing a mobile currency business and establishes limitations and requirements specific to mobile currency exchange operations.

The Act, §4(d), requires a separate license for each location at which currency is exchanged or accepted for transmission and each stop of a mobile unit must therefore be separately licensed. However, the adopted section will authorize the Banking Commissioner of Texas (the commissioner) to issue a consolidated license that lists each separately licensed location at which currency is exchanged or accepted for transmission by a single mobile unit. Further, the adopted section will waive the application fee for each additional stop in excess of the first stop for a single mobile unit. A licensee must operate at least one fixed office location as its initial licensed location before a license to serve an additional location by means of a mobile unit may be issued, and all records required to be maintained by a licensee must be maintained at the fixed office address to facilitate examination by the commissioner as required by the Act, §11.

The department received one set of written comments which expressed no opposition to adoption of the section as a whole.

This commenter expressed concern that, under subsection (e) of the new section, a licensee will not be able to provide mobile currency exchange services at stops that are not licensed and, as a consequence, the licensee will lose some business during the 10-day period required to amend the license locations. The Act, §4(d), expressly provides that each location at which currency is exchanged or accepted for transmission must be licensed. This mandate cannot be changed by rule. However, the license can include as many address locations as the licensee desires, and additional locations can be added to the license as needed. Since the department must review and process a request for additional locations, prepare an amended license, and obtain the approval of the banking commissioner, the 10-day period for issuance of a corrected license is not excessive.

This commenter also inquired as to whether a licensee can apply for a single location that includes several businesses or if the specific location of each business must be included in the license application. The department will require that an applicant list the actual names and addresses of the businesses whose employees will be served by the currency exchange business and submit a map identifying the location of each. An applicant may identify businesses that are adjacent to or near one another on one map. The Department does not believe any clarification of the section is warranted.

In addition, the commenter asked whether, in the event of a vehicular breakdown, a licensee could substitute one mobile unit for another if the substituted unit is not licensed for the same locations. The commenter also inquired as to whether a separate license is required for "each location at which currency is exchanged or accepted for transmission." Pursuant to the Act, §4(d), a separate license is required for each mobile unit except that a consolidated license may be issued under the Act, §4(e). Furthermore, a mobile unit may be used only to conduct currency exchange transactions at the addresses listed on the license issued for that mobile unit. To avoid the possibility that a mobile unit will not be authorized for currency exchange transactions at a particular location or locations, the department recommends that an applicant list every location where it will conduct the entirety of its mobile currency business on the license application for each unit. The licensee may then use any licensed mobile unit at any location where the licensee engages in the mobile currency exchange business. The Department does not believe any clarification of the section is warranted.

In addition, the commenter asked if subsection (c)(5) of the new section will require a licensee to obtain a separate bond for a mobile unit license. A separate bond is required if a licensee's current bonding company is unwilling to cover currency exchange activity conducted from a mobile unit. Otherwise, a bond rider (issued by the bonding company that has issued the surety bond for a particular currency exchange license) authorizing mobile currency exchange activity will satisfy the bonding requirement of the new section. The new section also permits a letter of credit or deposit that complies with the Act, §10, to substitute for a bond. The Department does not believe any clarification of the section is warranted.

Finally, this commenter asked for clarification of the insurance provision in subsection (c)(6) of the new section. The required insurance policy must insure the mobile unit against loss by

theft, burglary, robbery, forgery, or embezzlement and must insure not only the vehicle itself, but also the contents of the mobile unit. Clarification is added to subsection (c)(6). The commenter also noted that insurance for contents of an armored vehicle may be impossible to find and the cost of such insurance is "astronomical." A theft, burglary, forgery, or embezzlement of the contents of a mobile unit could wholly undermine the viability of a licensee that is not insured. As a consequence, the insurance requirement of this new section is sound. However, the Department will inquire whether the required insurance is cost prohibitive.

This new section is adopted pursuant to rulemaking authority under the Act, §7, which authorizes the commission to prescribe rules necessary to implement the Act.

§ 4.10. Mobile Currency Business.

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

(1) Mobile currency business—The business of currency exchange as defined in Texas Civil Statutes, Article 350 (the Act), §1(4), and/or currency transmission as defined in Texas Civil Statutes, Art. 350 (the Act), §1(6), conducted from a mobile unit a tone or more locations.

(2) Mobile unit—A motorized vehicle from which mobile currency business is conducted or will be conducted.

(b) Use of a mobile unit. A licensee under the Act may not conduct a mobile currency business without first obtaining an additional license to serve each location at which the mobile unit will stop to conduct mobile currency business, and must have at least one previously existing office address at which it actively conducts licensed currency exchange and/or currency transmission before applying for a license under this section. The filing fee for an additional location set forth in §4.11 of this title (relating to Fees) applies to a license application under this section; except that the application fee for each additional location in excess of the first location for mobile currency business is waived.

(c) Application. The application for license authorizing services from a mobile unit must be on a form prescribed by the commissioner, made under oath, and accompanied by the application fee, and must, except to the extent expressly waived in writing by the commissioner, contain the following:

- (1) the name, address, and pre-existing license numbers of the applicant;
- (2) the identification number and description of the vehicle from which mobile currency business will be conducted, the vehicle license plate number, and a photograph of the vehicle;
- (3) the name and address of the person or persons who will be responsible for the mobile currency business;
- (4) the exact locations at which the mobile unit will stop to conduct mobile currency business, identified by specific street address and by a map marking the locations;
- (5) proof of a bond, letter of credit, or deposit in lieu of bond, as required by the Act, §10;
- (6) a copy of a policy or policies of insurance issued by an insurance company or indemnity company authorized to do business

in this state, which must insure the mobile unit and its contents against loss by theft, burglary, robbery, forgery, or embezzlement in the principal sum of \$500,000. If the average amount of cash and liquid funds to be maintained in a mobile unit during a license year will exceed \$500,000, the policy or policies on license renewal must be for an additional principal sum of \$500 for each \$1,000 or fraction thereof in excess of \$500,000;

(7) such other information that the commissioner may reasonably require.

(d) Separate licenses. Provided the application meets the requirements of this section, the commissioner will issue a single consolidated license incorporating separate licenses for each location at which the mobile unit will conduct mobile currency business. Approval for the conduct of mobile currency business from one mobile unit does not authorize the conduct of such business from another mobile unit. A license issued under this section must be renewed annually as required by the Act, §4.

(e) Limitations on operations. A licensee under this section may transact mobile currency business from its mobile unit only at the particular locations specified in its consolidated license. The licensee must advise the commissioner in writing of any proposed change in the locations identified in its consolidated license and must obtain a corrected consolidated license prior to conducting mobile currency business at a new location. Provided the requirements of subsection (c) of this section continue to be met by the licensee, the commissioner will issue a corrected license within ten days after receipt of the required information.

(f) Compliance with the Act and rules. The licensee must maintain all records relating to currency exchange transactions conducted from the mobile unit, including but not limited to logs, records, and receipt information, in accordance with the requirements of §4.3 of this title (relating to Reporting and Recordkeeping). Other than records in immediate use in a mobile unit, all records related to the mobile currency business must be maintained at a fixed, licensed location of the licensee and readily available to the commissioner for examination purposes. A licensee engaged in a mobile currency business must comply with all provisions of the Act and all rules promulgated under the Act, except that §4.4 of this title (relating to Change of Location) is inapplicable to a location licensed for mobile currency business.

(g) Compliance with other laws and requirements. Applicants and licensees shall comply with all vehicle and traffic laws and the ordinances and traffic regulations issued by municipal and other authorities.

(h) Agents of the commissioner. All applications and notices required to be submitted to the commissioner under this section must be addressed to the Texas Department of Banking, Special Audits Division, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615909

Everette D. Jobe

General Counsel, Texas Department of Banking

State Finance Commission

Effective date: November 22, 1996
Proposal publication date: September 3, 1996
For further information, please call: (512) 475-1300

◆ ◆ ◆
Part IV. Texas Savings and Loan Department

Chapter 67. Savings and Deposit Accounts
7 TAC §67.17

The Finance Commission of Texas adopts an amendment §67.17, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines or ATMs, to specifically exclude its application to night depositories, without changes to the proposed text as published in the September 6, 1996, issue of the *Texas Register* (21 TexReg 8558).

Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines (referred to as the ATM User Safety Act). Another statute bears a duplicate number, Article 342-903d, but concerns fees charged in connection with use of ATMs, and is not affected by §67.17 or the adopted amendment.

Section 67.17 contains definitions designed to facilitate understanding of cross-references to repealed statutes.

However, the definition of ATM in §67.17, drawn from Texas Civil Statutes, Article 342-903, §2 (repealed), is ambiguous with respect to whether a night depository could be construed to be "a machine...capable of being operated solely by a customer, by which a customer may communicate to the financial institution...an instruction to deposit funds into the customer's account with the financial institution." The Finance Commission does not believe the legislature contemplated the application of the ATM User Safety Act to night depositories. As amended, §67.17 will exclude night depositories, although a financial institution may voluntarily apply the standards of §67.17 to lighting and landscaping around its night depositories if it chooses to do so. A cross-reference within §67.17 to the definition of "customer convenience terminal" is deleted as unnecessary, in order to eliminate awkward phrasing and assist understanding.

No comments were received regarding the amended section.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 342-1.013, which provide the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615920
James L. Pledger

Commissioner
Texas Savings and Loan Department
Effective date: November 22, 1996
Proposal publication date: September 6, 1996
For further information, please call: (512) 475-1350

◆ ◆ ◆
Chapter 77. Loans, Investments, Savings and Deposits

Authorized Loans and Investments
7 TAC §77.91

The Finance Commission of Texas adopts an amendment §77.91, concerning investment in and divestiture of subsidiary corporations, without changes to the proposed text as published in the September 6, 1996, issue of the *Texas Register* (21 TexReg 8559).

Under the current §77.91, concerning investment in and divestiture of subsidiary corporations, a savings bank must obtain the prior written approval of the commissioner in order to invest in or divest itself of a subsidiary corporation. The amendments would require that additionally a savings bank would be required to obtain the prior written approval of the commissioner to merge an existing subsidiary corporation with any other corporation. The standard for approval would involve a finding that the terms and conditions of the merger are in the best interest of the savings bank.

In adopting the section, the commission considered the need to promote a stable banking environment, provide the public with convenient, safe, and competitive banking services, preserve and promote the competitive parity of state savings banks with federal savings associations, national banks and other depository institutions in this state consistent with the safety and soundness of state savings banks and the state thrift system, and allow for economic development within this state.

No comments were received regarding the amended section.

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 342-1.013, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615918
James L. Pledger
Commissioner
Texas Savings and Loan Department
Effective date: November 22, 1996
Proposal publication date: September 6, 1996
For further information, please call: (512) 475-1350

◆ ◆ ◆
Savings and Deposits

7 TAC §77.115

The Finance Commission of Texas adopts an amendment to §77.115, concerning user safety at unmanned teller machines, sometimes referred to as automated teller machines or ATMs, to specifically exclude its application to night depositories, without changes to the proposed text as published in the September 6, 1996, issue of the *Texas Register* (21 TexReg 8560).

Texas Civil Statutes, Article 342-903d, as enacted by Act of May 27, 1995, 74th Legislature, Chapter 647, 1995 Texas Session Law Service 3528, governs user safety at unmanned teller machines (referred to as the ATM User Safety Act). Another statute bears a duplicate number, Article 342-903d, but concerns fees charged in connection with use of ATMs, and is not affected by §77.115 or the adopted amendment.

Section 77.115 contains definitions designed to facilitate understanding of cross-references to repealed statutes.

However, the definition of ATM in §77.115, drawn from Texas Civil Statutes, Article 342-903, §2 (repealed), is ambiguous with respect to whether a night depository could be construed to be "a machine...capable of being operated solely by a customer, by which a customer may communicate to the financial institution...an instruction to deposit funds into the customer's account with the financial institution." The Finance Commission does not believe the legislature contemplated the application of the ATM User Safety Act to night depositories. As amended, §77.115 will exclude night depositories, although a financial institution may voluntarily apply the standards of §77.115 to lighting and landscaping around its night depositories if it chooses to do so. A cross-reference within §77.115 to the definition of "customer convenience terminal" is also deleted as unnecessary, in order to eliminate awkward phrasing and assist understanding.

No comments were received regarding the amended section.

The amendment is adopted under Texas Revised Civil Statutes, Annotated, Article 342-1.013, which provides the Finance Commission of Texas with the authority to promulgate general rules and regulations not inconsistent with the constitution and statutes of the state and, from time to time, to amend same.

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

Issued in Austin, Texas, on November 1, 1996.

TRD-9615919

James L. Pledger
Commissioner

Texas Savings and Loan Department

Effective date: November 22, 1996

Proposal publication date: September 6, 1996

For further information, please call: (512) 475-1350



TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Housing and Community Affairs

Chapter 1. Administration

Subchapter A. General Policies and Procedures

10 TAC §1.2

The Texas Department of Housing and Community Affairs (Department) adopts an amendment to § 1.2 concerning the Department's complaint system, without changes to the proposed text as published in the October 1, 1996, *Texas Register* (21 TexReg 9329).

The amendment changes the person to whom complaints are submitted and clarifies that manufactured housing consumer complaints are not subject to this complaint system.

The Department did not receive any public comments regarding adoption of the amendment during the 30-day public comment period.

The amendment is adopted under Texas Government Code, §2306.066, which provides Texas Department of Housing and Community Affairs with the authority to develop procedures by which complaints are filed with the department.

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

Issued in Austin, Texas, on November 4, 1996.

TRD-9615965

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 25, 1996

Proposal publication date: October 1, 1996

For further information, please call: (512) 475-3916



Subchapter B. Block Grants

10 TAC §1.13

The Texas Department of Housing and Community Affairs (Department) adopts an amendment to § 1.13, concerning the formal complaint system established to investigate complaints received about programs funded by federal block grants administered by the Department, without changes to the proposed text published in the October 1, 1996 issue of the *Texas Register* (21 TexReg 9330).

The amendment changes the person to whom complaints are submitted.

The Department did not receive any public comments regarding adoption of the amendment during the 30-day public comment period.

The amendment is adopted under Texas Government Code, §2105, which provides the Department with the authority to maintain a procedure for investigating complaints about programs funded by federal block grants administered by the Department.

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

Issued in Austin, Texas, on November 4, 1996.

TRD-9615966

Larry Paul Manley
Executive Director

Texas Department of Housing and Community Affairs

Effective date: November 25, 1996

Proposal publication date: October 1, 1996

For further information, please call: (512) 475-3916



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: 25 TAC §289.253(bb)(3)

**B.I.G. OIL COMPANY
UNIVERSITY NO. 1234**



CAUTION

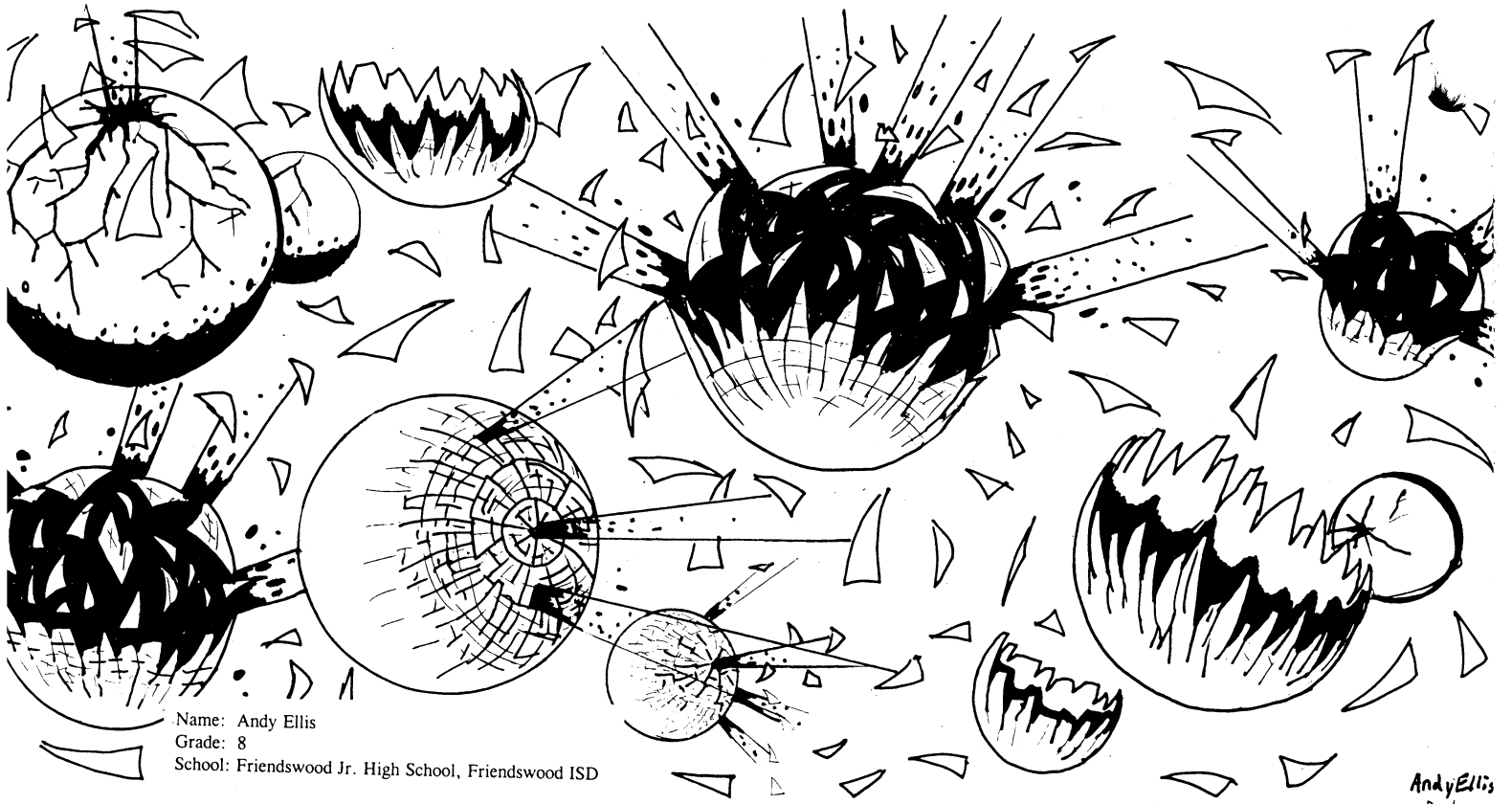


**ONE 2 CURIE CS 137 RADIOACTIVE SOURCE ABANDONED
3-3-75 AT 8400 FT. PLUG BACK DEPTH 8200 FT.
DO NOT RE-ENTER THIS WELL BEFORE CONTACTING**

**BUREAU OF RADIATION CONTROL
TEXAS DEPARTMENT OF HEALTH**

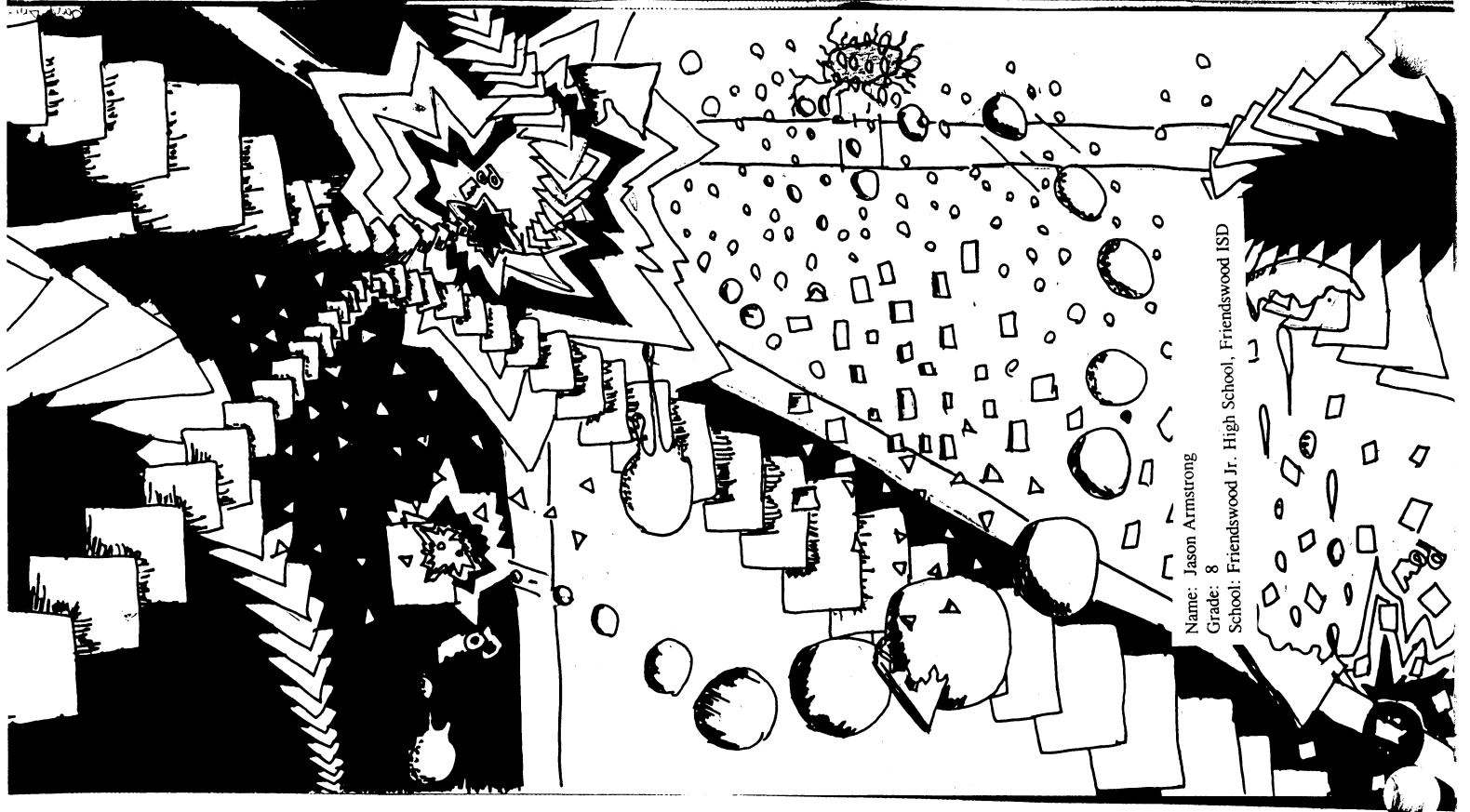
Figure 2: 25 TAC §289.253(bb)(5)

Specific Subsection	Name of Record	Time Interval Required for Record Keeping
§289.253(c)	Agreement with well operator, owner, drilling contractor, or land owner	5 years following completion of the well logging service operation or tracer study
§289.253(g)	Survey instrument calibration	5 years
§289.253(h)	Leak test	5 years
§289.253(i)	Quarterly inventory	5 years
§289.253(j)	Utilization record	5 years
§289.253(k)	Certification document	5 years after source disposal
§289.253(l)	Inspection and maintenance	5 years
§289.253(n)	Training and testing record	Until disposal is authorized by the agency
§289.253(p)	Personnel monitoring record	See §289.202(ggg)(6) of this title
§289.253(x)	Radiation surveys	2 years after completion of the survey
§289.253(y)	Records for receipts, transfer and disposal at field stations	2 years or until disposal is authorized by the agency
§289.253(z)	Records at temporary job sites	During temporary job site operations



Name: Andy Ellis
Grade: 8
School: Friendswood Jr. High School, Friendswood ISD

Andy Ellis
p-1



Name: Jason Armstrong
Grade: 8
School: Friendswood Jr. High School, Friendswood ISD

OPEN MEETINGS

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

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

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

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

State Office of Administrative Hearings

Friday, November 15, 1996, 10:00 a.m.

1701 North Congress Avenue

Austin

Utility Division

AGENDA:

A Prehearing conference will be held at the above date and time in SOAH Docket Number 473-96-2069; PUC Docket Number 16439-Office of Public Utility Counsel's PURA95 §2.211 Complaint against Southwestern Public Service Company.

Contact: J. Kay Trostle, 300 West 15th Street, Suite 502, Austin, Texas 78701-1649, (512) 936-0728.

Filed: November 5, 1996, 4:36 p.m.

TRD-9616086

Texas Department on Aging (TDoA)

Wednesday, November 13, 1996, 8:00 a.m.

4900 North Lamar Boulevard, Room 5501

Austin

Area Agency on Aging (AAA) Operations Committee

AGENDA:

Call to order. Minutes of August 7, 1997 meeting. Consider adoption of administrative rules as published in the Texas Register and recommend to Board on Aging. Adjourn.

Contact: Mary Sapp, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78751, (512) 444-2727.

Filed: November 5, 1996, 11:39 a.m.

TRD-9616046

Wednesday, November 13, 1996, 9:30 a.m.

4900 North Lamar Boulevard, Brown-Heatly Building, Room 4501

Austin

Citizens Advisory Council

AGENDA:

Consider and possibly act on: Call to order, Minutes of August 1, 1996 meeting, Receive public testimony. Orientation for new members. Discussion of Strategies for local educational interface with elected officials.

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

Filed: November 5, 1996, 11:39 a.m.

TRD-9616047

Wednesday, November 13, 1996, 3:00 p.m., Thursday, November 14, 1996, 9:30 a.m., and 1:30 p.m.

4900 North Lamar Boulevard, Brown-Heatly Building, 11-13-96, 3:00 — Room 4501, 11-14-96, 9:30 a.m.- Room 1430, 11-14-96, 1:30 p.m.-Room 4501

Austin

Board on Aging

AGENDA:

Call to order, Minutes of August 8, 1996 meeting. Public testimony. Chairman's report. Executive Director's report. Area Agency on Aging (AAA) Operations Committee — Adopt administrative rules as published; Audit and Finance committee — Recommendation of Administrative Law Judge regarding Permian Basin Regional Planning Council; Budget report; Internal Audit; Phillip Morris Helping the Helper grant awards; Funding methodology for Ombudsman Activity funds; Audit updates. Appointment of Legislative Committee and Chairman. Citizen's Advisory Council (CAC)—Report; Select representative. Reports — Options for Independent Living Advisory

Committee; Cultural Diversity Committee; Governor's Conference on Aging—Disposition of funds related to past TDoA conferences; Contract related to upcoming conference; Texas Association of Regional Councils' presentation. Board member travel. General announcements. Adjourn.

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

Filed: November 5, 1996, 11:40 a.m.

TRD-9616049



Thursday, November 14, 1996, 8:00 a.m.

4900 North Lamar Boulevard, Texas Department on Aging-Room 4501

Austin

Audit and Finance Committee

AGENDA:

Call to order, Minutes of August 7, 1996 meeting. Recommendation of the Administrative Law Judge regarding disposition of the issuance of disallowance to the Permian Basin Regional Planning Council. Budget report. Internal Audit of the TDoA Contract Management System and Federal Compliance Issues. Funding methodology for FY 1997 Ombudsman Activity funds. Audit updates-internal and State Auditor. Adjourn.

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

Filed: November 5, 1996, 11:40 a.m.

TRD-9616048



Texas Commission on Alcohol and Drug Abuse

Wednesday, November 13, 1996, 1:00 p.m.

9001 North IH35, Suite 105, Whitney Jordan Plaza at North IH35 and Rundberg

Austin

Board of Commissioners

AGENDA:

Call to order; approval of October 15, 1996 minutes; chairman's report' executive director's report; public comment; information items: legislative priorities for the 75th session, services improvement initiative, contracts workgroup, status of resolution of task force issues, prevention workgroup; action items: change in criteria for 1997 special projects (Travis county Juvenile Offender Substance Abuse Treatment Network), change in criteria for 1997 HIV early intervention (HEI), change in criteria for 1997 Human Immunodeficiency Virus (HIV) outreach, criteria for selection of services improvement projects, change in criteria for 1997 Harris County pharmacotherapy request for proposal (RFP), change in criteria for 1997 prevention awards, change in criteria for 1997 adult treatment awards, change in criteria for 1997 youth treatment awards, criteria for distribution of increased dollars in 1997 block grant; information/action items: action to propose rules on provider performance review and application cycles, report on Funding Group B-recommendations

(and timeline), report on statewide formula and Regional Advisory Consortium (RACs) and distribution within regions and Regional Advisory Consortium (RACs); action item: agency staffing budget; action item: agreed final order in the matter of Brazos County Alcohol/Drug Education Agency; and adjournment.

Contact: Terry F. Bleier, Executive Director, Texas Commission on Alcohol and Drug Abuse, 9001 North IH35, Suite 105, Austin, Texas 78753-5233, (512) 349-6602.

Filed: November 4, 1996, 4:21 p.m.

TRD-9616009



Wednesday, November 13, 1996, 1:30 p.m.

6451 Boeing, Conference Room, Texas Department of Human Services

El Paso

Regional Advisory Consortium (RAC) Region 10

AGENDA:

Call to order; public comment; comments: convener and regional representative; award presentation; approval of October 24, 1996 minutes; nomination/selection of co-convener; ad-hoc committee membership recommendation: committee membership (by-laws Article III, Section 2) and membership recommendations; goal 3/4 ad-hoc committee recommendations-final draft; scheduling of next meeting; and adjournment.

Contact: Joe Salas, Texas Commission on Alcohol and Drug Abuse, 1200 Golden Key Circle, 4th Floor, El Paso, Texas 79925, (915) 783-8660.

Filed: November 4, 1996, 12:03 p.m.

TRD-9615985



Texas Bond Review Board

Tuesday, November 12, 1996, 10:00 a.m.

Clements Building, 300 West 15th Street, Committee Room 5, Fifth Floor

Austin

Planning Session

AGENDA:

I. Call to Order

II. Approval of Minutes

III. Discussion of Proposed Issues

A. University of North Texas-lease purchase of computer equipment

B. Comptroller of Public Accounts-lease purchase of computer equipment.

C. Veterans Land Board-Texas Veterans' Land Bonds, Taxable Series 1996A

D. Texas Tech University-Revenue Financing System Refunding and Improvement Bonds, Third Series (1996)

E. Texas Tech University-Revenue Financing System Bonds, Fourth Series (Taxable 1996)

F. Texas Water Development Board-State Revolving Fund Senior Lien Revenue Bonds, Series 1996B

G. Texas Water Development Board-General Obligation Bonds: Agricultural Water Conservation Bonds, Taxable Series 1997; Water Development Bonds, Series 1997A, B and C.

IV. Other Business

A. Public Utility Commission of Texas-request for amendment of payment terms for financint electronic information system

B. Veterans Land Board-discussion of extension of approval for issuance of Taxable Land Refunding Bonds

C. Texas Department of Housing and Community Affairs-commercial paper note program and unexpended proceeds refunding program.

D. Discussion of proposed amendments to rules for the private activity bond allocation program

V. Adjourn

Contact: Albert L. Bacarisse, Executive Director, 300 West 15th Street, Suite 409, Austin, Texas 78701, (512) 463-1741.
Filed: November 4, 1996, 4:26 p.m.

TRD-9616022

Texas Department of Commerce

Wednesday, November 13, 1996, 1:00 p.m.

1700 North Congress Avenue, Room 118

Austin

Policy Board

AGENDA:

1:00 p.m. Call to order; Recess into Executive Session; Call back to order; Adoption of the minutes from the meeting of August 14, 1996; Report from the Executive Director; Legislative Update; Update on International Activities; Presentation of the Smart Jobs Fund Grants Awarded through August 31, 1996; Report of TSBIDC Investment Transactions; Approve Staff's Proposed Plan of Action Extending a Letter of Credit for Commerce's Taxable Commercial Paper Notes Series A (Texas Leverage Fund); Consider Approving Publishing for Comment Texas Department of Commerce Investment Policy Rules; Update on Tourism Activities; Public Comments; Board Comments; Adjourn.

Contact: Shirley Zimmerman, 1700 N. Congress, Austin, Texas 78701, (512) 936-0158.

Filed: November 5, 1996, 10:04 a.m.

TRD-9616037

Credit Union Department

Friday, November 15, 1996, 12:30 p.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

Legislative Advisory Committee for the Credit Union Commission

AGENDA SUMMARY:

To Invite: Public input for future consideration.

To Consider: Discussion of and possible vote on Legislative recommendations concerning Credit Union Act provisions; and discussion regarding recommendation of Sunset Advisory Commission; Establish date for next committee meeting.

Contact: James W. Ratzman, Director of Finance/Operations, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: November 5, 1996, 4:23 p.m.

TRD-9616084

Friday, November 15, 1996, 10:00 a.m.

Credit Union Department Building, 914 East Anderson Lane

Austin

Credit Union Commission Special Meeting

AGENDA SUMMARY:

To Invite: Public input for future consideration.

To Conduct: Executive session to review credit unions and problem cases; to consult with legal counsel regarding contemplated legal action, and existing litigation, including the suit filed by the Independent Bankers Association of Texas et al; and to discuss personnel matters including interviewing candidate for Deputy Commissioner.

To Consider: Possible vote on matters discussed in executive session; discussion with legal counsel regarding the lawsuit by the Independent Bankers Association of Texas, et al; discussion of the U.S. District Court's Injunctive Order banning NCUA's multiple group field of membership policy; and set date for next Commission meeting.

Contact: James W. Ratzman, Director of Finance/Operations, 914 East Anderson Lane, Austin, Texas 78752-1699, (512) 837-9236.

Filed: November 5, 1996, 4:23 p.m.

TRD-9616085

Texas Department of Criminal Justice

Thursday, November 14, 1996, 9:00 a.m.

Paramount Theatre, 352 Cypress Street

Abilene

Special Committee on Prison Industries

AGENDA:

I. Call to Order

II. Approval of the Minutes from the August 26, 1996 Meeting

III. Status Update on Industry Policies

IV. Briefing on the Survey of Other States Regarding Vocational Training Programs

V. Recommendations on New Industries/Products

VI. TDCJ Facilities Utilization Update

VII. Public Testimony

VIII. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 6, 1996, 9:54 a.m.

TRD-9616105



Thursday, November 14, 1996, 10:00 a.m.

Paramount Theatre, 352 Cypress Street

Abilene

Management Information System Committee

AGENDA:

I. Call to Order

II. Review/Approval of the Minutes from the July 11, 1996 Meeting

III. Offender Information Management Re-engineering Program —A. Update from TDCJ Project Manager, B. Report from Re-engineering Consultant

IV. Public Testimony

V. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 6, 1996, 9:54 a.m.

TRD-9616106



Thursday, November 14, 1996, 11:00 a.m.

Paramount Theatre, 352 Cypress Street

Abilene

Facilities Committee

AGENDA SUMMARY:

I. Call to Order

II. Approval of the Minutes from the July 11, 1996 Facilities Committee Meeting

III. Recommendation for Construction/Remodeling for Board or Committee Approval

IV. Items furnished to Committee for Information

V. Other Discussion Items

VI. Public Testimony

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 6, 1996, 9:54 a.m.

TRD-9616107



Thursday, November 14, 1996, 1:30 p.m.

Paramount Theatre, 352 Cypress Street

Abilene

Programs Committee

AGENDA:

I. Call to Order

II. Update on Pre-Release Programs

III. Report and Committee Vote on Request for Proposal for Non-Compensated Services for Values Based Pre-Release Program

IV. Substance Abuse Treatment Program Update

V. Report on Parole Division Community Service Activities

VI. Windham School District Administrative Update

VII. Update on Community Service Projects

VIII. Overview of Batterer's Intervention and Prevention Program

IX. Public Testimony

X. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 6, 1996, 9:55 a.m.

TRD-9616108



Thursday, November 14, 1996, 4:00 p.m.

Paramount Theatre, 352 Cypress Street

Abilene

Windham School Board of Trustees

AGENDA:

I. Regular Session

A. Consent Items: 1. Minutes of the September 12, 1996 Meeting; 2. Multiple Employment Requests; 3. Bimonthly Investment Report; 4. Appraisers 1996-1997

B. Public Comment

C. Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 6, 1996, 9:55 a.m.

TRD-9616109

◆ ◆ ◆
Thursday, November 14, 1996, 4:30 p.m.

Paramount Theatre, 352 Cypress Street

Abilene

Texas Board of Criminal Justice

AGENDA:

I. Executive Session

A. Discussion with attorneys concerning: Beverly Dennis v. TDCJ; Johnson v. Rodriguez; Ruiz v. Scott; Strain v. TDCJ; Terrell v. TDCJ; and TDCJ v. VitaPro cases (Closed in accordance with Section 551.071, Government Code).

B. Discussion of matters made confidential under State Bar Disciplinary Rules of Professional Conduct. (Closed in accordance with Section 551.071, Government Code).

C. Discussion of personnel matters. (Closed in accordance with Section 551.074, Government Code).

Adjourn

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 6, 1996, 9:55 a.m.

TRD-9616110

◆ ◆ ◆
Friday, November 15, 1996, 8:30 a.m.

Paramount Theatre, 352 Cypress Street

Abilene

Texas Board of Criminal Justice

AGENDA SUMMARY:

I. Regular Session

A. Recognition

B. Consent Items

C. Approval of the 58th and 59th Board of Criminal Justice Meeting Minutes

D. Board Liaison and Committee Reports/Division Summaries

E. Presentation by the Judicial Advisory Council

F. Approval of purchases Over One Million Dollars

G. Approval of Halfway House/Substance Abuse Residential Contract

H. Action on Facilities Issues

I. Approval of New Prison Industry Facilities/Products

J. Resolution Requesting Legislation on Supervision Officers Carrying Handguns

K. Revisions to the Use of Force Plan

L. Proposed Board Rule on the TDCJ Emergency Response to Non-Agent Private Prisons/Jails (37 TAC §152.61)

M. Land Transactions

N. Naming of the Intermediate Sanction Facility in Pampa

O. Presentation of the New Correctional Officer Uniform

Persons with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangements can be made.

Contact: Meredith Johnson, P.O. Box 13084, Austin, Texas 78711, (512) 475-3250.

Filed: November 6, 1996, 9:55 a.m.

TRD-9616111

◆ ◆ ◆
The Daughters of the Republic of Texas, Inc.

Friday, November 22, Saturday, November 23, 1996, 8:30 a.m.

Stagecoach Inn

Salado

Board of Management

AGENDA:

The Daughters of the Republic of Texas, Inc., exercising an overabundance of caution hereby notice of portion of the Board of Management meeting as an open meeting under Texas Open Meeting Act with regard to all matters pertaining to State owned properties which are under the management or control of D.R.T., Inc.

Friday, November 22, 1996 starts at 8:30 a.m.- closed session- 1:00 p.m. Open Session, Determination of Quorum, reports or discussion preview to reports of committees operating State owned properties which are under the management or control of D.R.T. Inc., —Alamo Committee. Saturday, November 23, Closed/Executive Session-Determination of Quorum.

Contact: Mary Kathryn Briggs, President General, Daughters of the Republic of Texas, Inc. 3711 Stillmeadow Drive, Bryan, Texas 77802, (409) 846-0871.

Filed: November 5, 1996, 11:38 a.m.

TRD-9616045

◆ ◆ ◆
State Board of Dental Examiners

Friday, November 15, 1996, 9:30 a.m.

333 Guadalupe, Tower 3, Suite 800, William Hobby Building
Austin

Dental Hygiene Advisory Committee

AGENDA SUMMARY:

I. Call to order

II. Roll call

III. Discuss, consider and define the functions of the Dental Hygiene Advisory Committee pursuant to the Dental Practice Act, Article 4451e, §4A, and Senate bill 18, Statutory note 27.

IV. Discuss and consider proposed new rule 103.3-A. Effect of rule 103.3; B. Requirements for dental hygiene candidates from non-accredited programs seeking to take the WREB examination; C. DHAC comments on Rule 103.3.

V. Discuss, and consider proposing a rule to place medicaments, sub-gingivally, including but not limited to tetracycline fibers.

VI. Discuss the issue of administering local anesthesia by dental hygienists

VII. Announcements

VIII. Adjourn

Contact: Mei Ling Clendennen, Executive Assistant, SBDE, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701. (512) 463-6400.

Filed: November 4, 1996, 12:00 p.m.

TRD-9615982

◆ ◆ ◆
Texas Planning Council for Developmental Disabilities

Thursday, November 7, 1996, 9:00 a.m.

Sheraton Hotel, 500 North IH35, Mezzanine Boardroom

Austin

Executive Committee

EMERGENCY REVISED AGENDA:

Thursday, November 7, 1996-9:00 a.m. — Call to Order

I. Introductions

II. Public Comments

III. Approval of Minutes of September 12, 1996

IV. Consideration of Stipends Applications

V. Chair's Report: A) TPCDD Priorities Survey Results; B) New Member Mentor Program; C) Other Report Items

VI. Executive Director's Report; A) Information and Update Items

VII. TPCDD Budget Status Report

VIII. Consideration of TPCDD Policies

IX. TPCDD Planning Process

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact Rosalinda Lopez at (512) 424-4094.

REASON FOR EMERGENCY: Original revised agenda was not posted correctly by the Texas Register.

Contact: Roger Webb, Executive Director, Texas Planning Council for Developmental Disabilities, 4900 North Lamar Boulevard, Austin, Texas 78751, (512) 424-4080.

Filed: November 5, 1996, 3:13 p.m.

TRD-9616058

◆ ◆ ◆
Advisory Commission on State Emergency Communications

Tuesday, November 12, 1996, 8:30 a.m.

333 Guadalupe, Room 100

Austin

Executive Committee

AGENDA:

The Committee will call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: Changes in the Telecommunications Environment and Potential Impact on 911; Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: November 4, 1996, 4:25 p.m.

TRD-9616019

◆ ◆ ◆
Tuesday, November 12, 1996, 9:30 a.m.

333 Guadalupe, Room 100

Austin

Poison Control Committee

AGENDA:

The Committee will call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: Poison Control Financial Report; FY 1997 Poison Center Grant- West Texas Regional Poison Center Budget; Approval of July 9, 1996 Committee Meeting Minutes; Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: November 4, 1996, 4:25 p.m.

TRD-9616020

Tuesday, November 12, 1996, 1:00 p.m.

333 Guadalupe, Room 100

Austin

Operations and Performance Committee

AGENDA:

The Committee will call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: ACSEC Financial Report; Recommended Guidelines for Regional Council's Independent Audits; Authorization to Release Batches in Uniform State Accounting System (USAS) for Payment; House Appropriations Subcommittee Recommendations on Funding Through Councils of Governments; and, its' Potential Impact on ACSEC Operations; Public Education Programs Report; Approval of July 9 and September 9, 1996 Committee Meeting Minutes. The Committee may meet in Executive Session on any of the above items as authorized by the Texas Open Meetings Act, and Pursuant to Government Code 551, Subchapter D. Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: November 4, 1996, 4:25 p.m.

TRD-9616021

Tuesday, November 12, 1996, 2:00 p.m.

333 Guadalupe, Room 100

Austin

Legislative and Regulatory Committee

AGENDA:

The Committee will call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: Issues to include but are not limited to, FCC and PUC Proceedings: Potential Changes to Private Switch Legislation, HB 1544; Proposed Amendments to Health and Safety Code, Chapter 771, to Authorize Commercial License to Promote 911 for Kids Project, and Other Actions; Legislative Interim Committee Interests: Auditing and Contracting Issues, One-Call Legislation; Implementation of House Bill 212B Provisions; Funding through Councils of Governments or Other Similar Organizations; 911 Interconnection Implementation and Potential Legislative Issues; Potential Wireless Legislative Issues; Notice of FCC Rule Making

for Wireless and E911 Systems (94-102); Other PUC and FCC Proceedings; Potential Public Utility Commission (PUC) Proceedings Regarding 911; Approval of September 9, 1996 Committee Meeting Minutes. The Committee may meet in Executive Session on any of the above items as authorized by the Texas Open Meetings Act, and Pursuant to Government Code 551, Subchapter D. Adjourn

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: November 4, 1996, 4:25 p.m.

TRD-9616018

Tuesday, November 12, 1996, 3:30 p.m.

333 Guadalupe, Room 100

Austin

Planning and Implementation Committee

AGENDA SUMMARY:

The Committee will call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: Review ACSEC Rules for Potential Amendments and/or Proposed Rule Making; Potential Public Utility Commission (PUC) Proceedings Regarding 911; FY 1996 Surcharge Fund Distribution and Year End Balance; Middle Rio Grande Development Council Plan Amendment; Capital Area Planning Council Regional Plan Update and Proposed Service Fee Reduction; Final Addressing Status Report; Approval of September 9, 1996 Committee Meeting Minutes. The Committee may meet in Executive Session on any of the above items as authorized by the Texas Open Meeting Act, and pursuant to Government Code 551, Subchapter D. Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: November 4, 1996, 4:24 p.m.

TRD-9616017

Wednesday, November 13, 1996, 8:30 a.m.

333 Guadalupe, Room 100

Austin

Commission Meeting

AGENDA SUMMARY:

The Committee will call the Meeting to Order and Recognize Guests; Hear Public Comment; Hear Reports, Discuss and take Committee Action, as Necessary: Executive Committee Report; Poison Committee Report, Operations and Performance Committee

Report; Legislative and Regulatory Committee Report; Minutes/ Other. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code 551, Subchapter D., 551.071, consultation with Assistant Attorneys General on Pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at (512) 305-6933 at least two working days prior to the meeting.

Contact: Velia Williams, Advisory Commission on State Emergency Communications, 333 Guadalupe Street, Austin, Texas 78701, (512) 305-6933.

Filed: November 4, 1996, 4:24 p.m.

TRD-9616014

◆ ◆ ◆

State Employee Charitable Campaign

Wednesday, November 13, 1996, 3:00 p.m.

4000 Southpark Drive, Suite 1200

Austin

Local Employee Committee, Tyler

AGENDA:

- I. Call to Order
- II. Discuss 1996 Local Campaign Progress and Wrap-Up
- III. Discuss Any Problems and Future Strategies
- IV. Discuss Agenda and Schedule Next Meeting

Contact: Ron Greathouse, United Way of Tyler/Smith County, 4000 Southpart Drive, Suite 1200, Tyler, Texas 75713, (903) 581-6376

Filed: November 4, 1996, 12:02 p.m.

TRD-9615986

◆ ◆ ◆

Texas Funeral Service Commission

Tuesday, November 12, 1996, 2:00 p.m.

510 South Congress, Suite 206

Austin

Rules Committee

AGENDA:

1. Call to order and roll call.
2. Discussion and possible action on rule revisions, rules 22 TAC §203.4, 203.17, 203.30; New rule 203.32.
3. Discussion and possible action on suggested statutory changes regarding Tex. Rev. Civ. Stat., Article 4582b, §1(S)(9) and 1(T).
4. Set date for next committee meeting.
5. Public comment.
6. Adjourn.

Contact: Marc Allen Connelly, General Counsel, 510 South Congress, Suite 206, Austin, Texas 78704, (512) 479-7222.

Filed: November 4, 1996, 4:24 p.m.

TRD-9616016

◆ ◆ ◆

Thursday, November 14, 1996, 8:30 a.m.

510 South Congress, Suite 206

Austin

Finance Committee

AGENDA:

1. Call to order and roll call.
2. Discussion and possible action on FY97 budget.
3. Discussion or reports and other fiscal matters.
4. Set date for next committee meeting.
5. Public comment.
6. Adjourn.

Contact: Marc Allen Connelly, General Counsel, 510 South Congress, Suite 206, Austin, Texas 78704, (512) 479-7222.

Filed: November 4, 1996, 4:24 p.m.

TRD-9616015

◆ ◆ ◆

Commission on Jail Standards

Friday, November 15, 1996, 9:00 a.m.

William P. Clements Building, Committee Room 5, 300 West 15th Street

Austin

AGENDA SUMMARY:

Call to order. Roll call of Commission members. Reading and approval of July 26, 1996 minutes and September 27, 1996. Review of Commission Action Taken on September 27, 1996. Variances, Change to Standards- Adopt, Change to Standards-Proposed, Assignment of New Assistant Attorney General to TCJS.

Old Business: City of Taylor, Report on AG Opinion DM-404, Rockwall County, Runnels County, Change to Standards- Adopt, Hopkins county. New Business: Harris County, Williamson County, Changes to Standards-Proposed. Review of Variances; Cooke, Hopkins, Lubbock, Rockwall and Runnels Counties. Staff Report: Annual financial Report, Selection of Juvenile Justice Contractor, Completed Jail Projects, Active Remedial Orders/Cancel/Changes, Sunset Advisory Commission Review, Status and Composition of Jail Population, Financial Report/Budget/Grants, Training, Commission Meeting Schedule for 1997. Other Business. Executive Session. Adjourn.

Contact: Jack E. Crump, Executive Director, P.O. Box 12985, Austin, Texas 78711, (512) 463-5505.

Filed: November 5, 1996, 8:53 a.m.

TRD-9616033

◆ ◆ ◆

Legislative Budget Board

Wednesday, November 20, 1996, 9:30 a.m.

Senate Chambers, State Capitol

Austin

Board

AGENDA:

I. Conduct public hearing and adopt items of information necessary to set the Article VIII constitutional limit on certain appropriations for the 1998-1999 biennium.

Contact: Legislative Budget Board, P.O. Box 12666, Austin, Texas 78711-2666, (512) 463-1200.

Filed: November 5, 1996, 4:52 p.m.

TRD-9616088

Texas Mental Health and Mental Retardation Board

Wednesday, November 13, 1996, 9:45 a.m.

909 West 45th Street (Auditorium)

Austin

AGENDA:

1. Call to Order-Roll Call
2. Citizens Comments
3. Consideration of Items Regarding the Conveyance of Approximately 200 Acres at Travis State School to Vision Village, Inc.

For ADA assistance or deaf interpreters are required, notify TXMHMR, (voice or Relay Texas), Ellen Hurst, 72 hours prior to the meeting.

Contact: Ellen Hurst, P.O. Box 12668, Austin, Texas 78711, (512) 206-4506.

Filed: November 5, 1996, 5:09 p.m.

TRD-9616089

Midwestern State University

Friday, November 8, 1996, 9:00 a.m.

3410 Taft Boulevard, Hardin Board Room

Wichita Falls

Board of Regents

REVISED AGENDA:

An item will be added to the previously posted agenda to discuss the disposal of university land on the Southwest Parkway of Wichita Falls, Texas. This matter will be discussed in Executive Session as allowed by the Texas Government Code, Chapter 551.

Contact: Deborah L. Barrow, Midwestern State University, 3410 Taft Boulevard, Wichita Falls, Texas 76308, (817) 689-4212.

Filed: November 4, 1996, 4:59 p.m.

TRD-9616027

Texas Natural Resource Conservation Commission

Tuesday, December 17, 1996, 9:00 a.m.

Sierra Blanca School Gymnasium, 1111 Ranch Road North

Sierra Blanca

State Office of Administrative Hearings

AGENDA:

Notice of public hearing before an administrative law judge of the State Office of Administrative Hearings on an application by TEXAS LOW LEVEL RADIOACTIVE WASTE DISPOSAL AUTHORITY for a proposed Water Quality Permit Number 03899. This permit would authorize an intermittent flow variable discharge of stormwater via Outfall 001. The applicant proposes to operate a facility to dispose of low level radioactive waste. The proposed plant is located at Mile Marker 112.5, Interstate Highway 10, east of the city of Sierra Blanca in Hudspeth County, Texas.

Contact: Pablo Carrasquillo, State Office of Administrative Hearings, P.O. Box 13025, Austin, Texas 78711, (512) 475-4993.

Filed: November 4, 1996, 4:58 p.m.

TRD-9616028

Board of Nurse Examiners

Thursday and Friday, November 21 and 22, 1996, 8:30 a.m.

333 Guadalupe, Tower 2, Room 225

Austin

AGENDA:

The Board of Nurse Examiners will receive the minutes from the September meeting, and August and September financial statements; consider practice, education matters, including a public hearing to consider a proposal from The University of Texas at Pan American, APN program, CNS in Adult Health scheduled for 9:30 am on November 21. The Board will take action on Declaratory Orders pertaining to Julie Kay Holton, Tara Camille Peterka, and Stephen Wayne Sparks, petitioners. The board will consider an ALJ proposal for decision for Sherry Jean Gibson, Petitioner, and Agreed Orders for Ollie Pearl Campbell, #570625, Alicia HG Cantu, #220846, Judy Ingram, #233020, Nella W. McCormack, #534066, Roxanne L. Putney, #54388, Renee J. Sellers, #257101, Anita Sue Steelman, #250825, and Kimberley L. Wallace, #256026. The Board will conduct a site visit to Sylvan Learning Center on November 22 1996 from 8:30-10:30 a.m., return to regular session at 11:00 a.m. and conclude a board worksession.

Contact: Erlene Fisher, Box 140466, Austin, Texas 78714, (512) 305-6811.

Filed: November 4, 1996, 1:35 p.m.

TRD-9615989

Texas Parks and Wildlife Department

Tuesday, November 19, 1996, 1:00 p.m.
Commission Hearing Room, 4200 Smith School Road
Austin
Operation Game Thief Committee

AGENDA:

Approval of Committee Minutes for August 24, 1996 Public Hearing; Financial Report; Consideration of Payment of Rewards; B. Stan Cook Memorial Reward; Date of Next Meeting; Discussion Items-a. Awareness and Funding- b. Lifetime Member Award- c. Awareness Events Report- d. Contract Employee Status Report- e. Newsletter -f. Decoy Program- g. Computer Database System Upgrade

Contact: Andrew Sansom, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744.
Filed: November 5, 1996, 4:49 p.m.

TRD-9616054

◆ ◆ ◆
Public Utility Commission of Texas

Tuesday, November 12, 1996, 10:30 a.m.
1701 North Congress Avenue
Austin

AGENDA:

There will be a commissioner's Worksession for discussion, consideration, and possible action on: Docket Number 15840, Regional Transmission Proceeding to Establish Postage Stamp Rate Statewide Load Flow pursuant to P.U.C. SUBST.R.§23.67; Docket Number 15643 (SOAH Docket Number 473-96-1580) Central Power and Light Company and West Texas Utilities Company Filing in Compliance with PUC SUBST.R. 23.67; Project Number 14929, Investigation of Universal Service Issues; Project assignments, correspondence, staff reports, agency administrative procedures, budget, fiscal matters and personnel policy; Adjournment for closed session to consider litigation and personnel matters; Reconvene for discussion and decisions on matters considered in closed session.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7145.
Filed: November 4, 1996, 3:04 p.m.

TRD-9616008

◆ ◆ ◆
Thursday, November 21, 1996, 9:00 a.m.

1701 North Congress Avenue
Austin
Legal Administration

AGENDA:

An Arbitration Hearing has been scheduled in Docket Number 16402-Petition of Western Wireless Corporation dba Cellular One for Arbitration of Unresolved Interconnection Issues with GTE Southwest, Inc., Pursuant to The Federal Telecommunications Act of 1996.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78711, (512) 936-7145.
Filed: November 4, 1996, 12:01 p.m.
TRD-9615984

◆ ◆ ◆
Friday, November 22, 1996, 9:00 a.m.
1701 North Congress Avenue

Austin

AGENDA:

A Hearing on the Merits will be held by the State Office of Administrative Hearings in Docket Number 16599-Application of FXi, Inc. for a Service Provider Certificate of Operating Authority. Applicant plans to resell local exchange service, including dial tone, vertical services, and other services which are available on a resale basis from the incumbent local exchange provider. The service will include 911 access as provided by the incumbent local exchange provider. Applicant may expand plans to offer analog private branch exchange trunks, digital PBX and DID trunks and Centrex system lines. Applicant plans to provide local exchange service in a geographic area currently serviced by the incumbent LEC's of Southwestern Bell Telephone, GTE Southwest, Inc., and Sugarland Telephone Company. Persons who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Commission by November 15, 1996.

Contact: Paula Mueller, 1701 North Congress Avenue, Austin, Texas 78701, (512) 936-7145.
Filed: November 4, 1996, 2:01 p.m.

TRD-9616005

◆ ◆ ◆
Railroad Commission of Texas

Tuesday, November 12, 1996, 9:30 a.m.
1710 North Congress, 1st Floor Conference Room 1-111
Austin

AGENDA:

Discussion of telephonic participation in hearings

Contact: Lindil C. Fowler, Jr. Director of Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78701, (512) 463-7033.

Filed: November 4, 1996, 4:23 p.m.

TRD-9616014

◆ ◆ ◆
**Texas Tech University Health Sciences Center
and Texas Tech University**

November 8, 1996, 8:30 a.m.

Broadway and Ackron, Administration Building, Board Suite, Campus

Lubbock

Executive Session

AGENDA SUMMARY:

Consider: V.T.C.A. Government 551.071-consultation with attorney regarding pending and contemplated litigation, V.T.C.A. Government 551.072-consideration of the value and sale of The Pyramid Plaza Office Building; V.T.C.A. Government Code 551.073-consideration of prospective gifts to the University; V.T.C.A. Government Code 551.075- to receive information from University employees. Reports.

Contact: Jim Brunjes, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: November 4, 1996, 1:38 p.m.

TRD-9615993

◆ ◆ ◆
November 8, 1996, 10:00 a.m.

Broadway and Ackron, Administration Building, 104 Admin., Campus

Lubbock

Academic, Student and Clinical Affairs

AGENDA:

Texas Tech University Health Sciences Center: Granting of emeritus status; Granting of academic tenure with appointment; Approval of the establishment of the UMC endowment for excellence in medicine to initiate and support at least ten endowed chairs to benefit the Texas Tech University Health Sciences Center School of medicine's Lubbock campus and the Lubbock County Hospital District, and to be funded by a trust agreement provided by Lubbock County Hospital District doing business as University medical Center; ratification of administrative actions related to academic and student affairs: conferral of degrees for December 14, 1996, commencement, commissioning of peace officers. Reports.

Texas Tech University: Election of assistant secretary to the board of regents; granting of academic tenure with appointment; nominee for honorary degree; approval of the board of regents to enter into an agreement with a nationally recognized lobbying and consulting firm; ratification of administrative actions related to academic and student affairs: leave of absence, conferral of degrees for December 14, 1996, commencement, commissioning of peace officers. Reports.

Contact: Jim Brunjes, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: November 4, 1996, 1:39 p.m.

TRD-9615994

◆ ◆ ◆
November 8, 1996, 10:00 a.m.

Broadway and Ackron, Administration Building, Board Suite, Campus

Lubbock

Finance and Administration

AGENDA:

Approve August 20, 1996 committee meeting minutes. Consider:

Texas Tech University Health Sciences Center: Approval of the estab. of a quasi-endowment for the Bernhard T. Mitemeyer chair in community medicine; approval resolution amending the master

resolution estab. revenue financing system; estab. of quasi-endowment to be used as a potential matching fund for the estab. of at least two chairs in orthopaedic medicine with proceeds from (1) trust fund endowed chair for orthopaedic surgery, (2) orthopaedics MPIP Funds, (3) the Mabel Haney Estate Endowment; modification of the O. W. English and E. L. Hunt surgical lectureship into the English-Hunt; endowed medical scholarships; budget adjustments for the period July 1, 1996 to September 30, 1996; ratification of administrative actions relating to finance; delegation of officers and administrator to approve travel, delegation of officers and/or employees to authorize and approve expenditures from appropriated funds, specification of officers and/or employees to sign checks, specification of officers and/or employees to sign cashier's checks only, specification of officers and/or employees to authorize wire transfers, delegation of officers and/or employees to approve and sign documents for the sale, purchase and transfer of securities owned or controlled by the H.S.C. reports.

Texas Tech University: Award of a contract to provide electronic game machines and services to the University Center; approval of the resolutions amending the master resolution estab. revenue financing system, approving the third and fourth supplemental resolutions to the master resolution authorizing the issuance, sale, and delivery of board of regents revenue financing system bonds, and selecting underwriting firms and bond counsel for proposed bond issuance; authorization for chancellor to review offers from potential buyers of the Pyramid Plaza Office Building and if approved execute all necessary documents to consummate the sale; approval of amendment to existing energy contract with Lubbock Power and Light to extend term of land lease to Lubbock Power and Light by five years and to extend term of the electric and steam provisions of the agreement by ten years; approval of contract for sale of prepaid advertising in the United Spirit Arena; appointment of member to the board of directors of the Texas Tech Foundation, Inc.; estab. two quasi-endowments to be used as potential matching funds for (i) scholarships for students at T.T.U. (ii) graduate school fellowships for students at the T.T.U. graduate school with proceeds from sale of Proctor Ranch; approval sale of T.T.U.'s interest in Ruth Ann Franklin Estate farm; Board of regents' expression of gratitude for pledges in support of the construction of the United Spirit Arena; acceptance of gift-in-kind with value in excess of \$25,000; budget adjustments for June 1, 1996-August 31, 1996 and September 1, 1996-November 7, 1996; ratification of admin. actions relating to finance: delegation of officers and administrators to approve travel, delegation of officers and/or employees to approve official travel reimbursements from appropriated funds, delegation of officers and/or employees to authorize and approve expenditures from appropriated funds, specification of officers and/or employees to sign checks, specification of officers and/or employees to sign cashier's checks only specification of officers and/or employees to authorize wire transfers, delegation of officers and/or employees to approve and sign documents for the sale, purchase and transfer of securities owned or controlled by the University. Reports.

Contact: Jim Brunjes, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: November 4, 1996, 1:40 p.m.

TRD-9615995

◆ ◆ ◆
November 8, 1996, 10:00 a.m.

Broadway and Ackron, Administration Building, Board Suite, Campus

Lubbock

Facilities

AGENDA SUMMARY:

Approve August 20, 1996, committee meeting minutes. Consider:

Texas Tech University Health Sciences Center: Authorization for the Chancellor to review and approve the renewal to the agreement between Texas Tech University Health Sciences Center and University Medical Center (Lubbock, Texas) to lease clinical Space in the Medical Office Plaza; authorization for the Chancellor to proceed with the project, to establish a project budget, approval of the schematic design and authorization to proceed with documents for submittal to the Texas Higher Education Coordinating Board for review and approval, and upon approval, to proceed with contract documents and the receipt of bids for relocation of the department of communications disorders, a division of Texas Tech University Health Sciences Center School of Allied Health; appointment for a committee to study the establishment of a multi-specialty group practice site located in then northeast sector of the City of El Paso and the expansion/renovation of the Department of Family Medicine in El Paso, and, upon completion of the study, the authorization for the Chancellor to enter into all agreements recommended by the committee; ratification of administrative actions relating to facilities: ratification of the facilities construction and deferred maintenance master plan (also know as the five-year campus master plan update). Reports.

Texas Tech University: Renaming the existing president's residence as the chancellor's residence; authorization for the chancellor to proceed with the project and with documents for submittal to the Texas Higher Education Coordinating Board for review and approval, and upon approval, to establish a project budget and to enter into a contract with the State Energy Conservation Office for the building recommissioning program for the campus; authorization for the chancellor to enter into a loan agreement with the State Energy Conservation Office for renovation of the mechanical and electrical systems in the library; authorization to proceed with documents for submittal to the Texas Higher Education Coordinating Board for review and approval, and upon approval, to proceed with contract documents and the receipt of bids for the expansion of the chiller and cooling tower at central heating and cooling plant I; authorization for the chancellor to proceed with the project, to establish a project budget, approval of the schematic design and authorization to proceed with documents for submittal to the Texas Higher Education Coordinating Board for review and approval, and upon approval, to proceed with contract documents and the receipt of bids, and to award a construction contract for a voice and data network for the residence halls; authorization for the chancellor to proceed with the project, to establish a project budget, approval of the schematic design and authorization to proceed with documents for submittal to the Texas Higher Education Coordinating Board for review and approval, and upon approval to proceed with contract documents and the receipt of bids, and to award a construction contract for the renovation of the Naval Reserve Building; increase of the proposed budget for an arena for Texas Tech University; ratification of administrative actions relating to facilities; acceptance date for the Horn/Knapp-air conditioning, acceptance date for the International Cultural Center, acceptance date for the Southwest Collection, acceptance date for the athletic service building, ratification of the facilities construction and

deferred maintenance master plan (also know as the five-year campus master plan update). Reports.

Contact: Jim Brunjes, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: November 4, 1996, 1:40 p.m.

TRD-9615996

◆ ◆ ◆
November 8, 1996, 2:00 p.m.

Broadway and Ackron, Administration Building, Board Suite, Campus

Lubbock

Board of Regents

AGENDA:

Action and/or reports on:

Minutes; academic, student and clinical affairs committee; finance and administration committee; facilities committee; and chancellor's report; committee of the whole.

Contact: Jim Brunjes, Box 42011, Lubbock, Texas 79409, (806) 742-2161.

Filed: November 4, 1996, 1:37 p.m.

TRD-9615992

◆ ◆ ◆ Board for Lease of University Lands

Tuesday, November 12, 1996, 10:00 a.m.

University of Texas System, Board of Regents Meeting Room, 201 West 7th Street, 9th Floor

Austin

AGENDA:

1. Approval of the Minutes of the May 14, 1996, Board for Lease Meeting
2. Approval of tracts offered for Regular Oil and Gas Lease Sale Number 90 and Special Oil and Gas Lease Sale.
3. Approval of tracts offered for Frontier Oil and Gas Lease Number 90-A.
4. Lease awards to highest bidders for Regular Oil and Gas Lease Sale Number 90 and Special Oil and Gas Lease Sale.
5. Lease awards to highest bidders for Frontier Oil and Gas Lease Sale Number 90-A.
6. Action regarding lease procedures and terms for Regular Oil and Gas Lease Sale Number 91.
7. Discussion regarding existing lease form and Board for Lease policy, and action on lease form changes.
8. Discussion and action regarding legislative initiatives and Board for Lease Rules.
9. Action regarding forfeiture of University Least Nos. 73648, 73639, and 82861.
10. Report on Shafter Lake Clearfork Unit, Andrews County, Texas.

11. Action regarding M.A.K. (Spraberry) Unit.
12. Report and action regarding take in-kind oil royalty program and contracts to be awarded December 1, 1996.
13. Report and action regarding take in-kind gas royalty program.
14. Report on internal audit of the University Lands Accounting Office.
15. Royalty income report for year ending August 31, 1996.
16. Report regarding deposit of funds received at the lease sales.
17. Report on annual reporting and payment proposal.

(Persons with disabilities who plan to attend the meeting and who may need auxiliary aids or services may contact Loretta Loyd at (512) 499-4462 at least two work days prior to the meeting date so that appropriate arrangements can be made.)

Contact: Mary Burke, Assistant Secretary, Board for Lease of University Lands, 201 West 7th Street, Austin, Texas 78701, (512) 499-4462.

Filed: November 4, 1996, 4:22 p.m.

TRD-9616013

The University of Texas System

Wednesday, November 13, 1996, 3:00 p.m., Thursday,
November 14, 1996, 9:30 a.m.

11/13 — Cambridge room, Le Meridien Hotel, 650 North Pearl Street,
11/14 — Room NA8.102, Hamon Biomedical Research Building
and Rooms NB2.402 and NB2.403, Simmons Biomedical Research
Building, University of Texas Southwestern Medical Center, 6000
Harry Hines Boulevard

Dallas

AGENDA:

To consider Chancellor's Docket (submitted by System Administration); Amendments to Regents' Rules and Regulations; Matters Related to the University of Texas Investment Management Company (UTIMCO); U.T. System- Guidelines for Periodic Evaluation of Tenured Faculty; Systemwide Internal Audit Plan; Taxable Interim Financing Program; U.T. Austin- Repeal of Bowl Game Policy and Law School Admissions Standards and Enrollment; degree programs; U.T. El Paso — private fund-raising campaign to increase endowment funds and provide capital needs; UT. Southwestern Medical Center — Dallas- Mission Statement; U.T. M.D. Anderson Cancer Center- Patent and Technology License Agreement with BioCyte Therapeutics; buildings and grounds matters including approval of preliminary plans, appropriations; approval of new projects and approval of building plaques; potential litigation; real estate matters; and personnel matters as detailed on the attached complete agenda.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, Texas 78701-2981, (512) 499-4402.

Filed: November 4, 1996, 11:04 a.m.

TRD-9615981

Texas Workforce Commission

Tuesday, November 12, 1996, 10:00 a.m.

101 East 15th Street, Room 644, Texas Workforce Building
Austin

AGENDA SUMMARY:

Prior meeting notes; Public Comment; Staff reports, update on activities relating to Skills Development Fund, Update on block grant funding work group and other activities as determined by the Executive Director; Consideration and action on tax liability cases listed on Texas Workforce Commission Docket 46; Discussion, consideration and possible action regarding potential and pending applications for certification and recommendations to the Governor of local workforce development boards for certification; Discussion of the rate of interest on the late refunds required by Texas Education Code §132.061(e) used to deter proprietary schools from retaining student funds; Discussion, consideration and possible action regarding adoption of TWC performance appraisal system; Discussion and possible final adoption of rules §§817.4-817.6 regarding child labor; Executive session pursuant to Texas Government. Code §551.074 to discuss duties and responsibilities of the executive director and internal auditor; Actions, if any, resulting from executive session; Consideration and action on whether to assume continuing jurisdiction on Unemployment Compensation cases and reconsideration of Unemployment Compensation cases, if any; Consideration and action on higher level appeals in Unemployment Compensation cases listed on Texas Workforce Commission Docket 46; and Set date for next meeting.

Contact: Esther Hajdar, Director of Legal Services, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778, (512) 463-7833.

Filed: November 4, 1996, 4:22 p.m.

TRD-9616012

Sunday, November 17, 1996, 2:00 p.m.

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

Texas Commission on Volunteerism and Community Service

AGENDA SUMMARY:

Reading and approval of minutes of previous meeting; State of the Commission; Progress reports of committee chairs (financial management, grant review, intergovernmental affairs, state plan, ad hoc higher education); Election of officers; Selection of 1997 meeting dates.

Contact: Dee Bednar, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778, (512) 463-9484.

Filed: November 5, 1996, 3:12 p.m.

TRD-9616056

Monday, November 18, 1996, 9:00 a.m.

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

Texas Commission on Volunteerism and Community Service

AGENDA:

Meet and conclude business.

Contact: Dee Bodnar, Texas Workforce Commission, 101 East 15th Street, Austin, Texas 78778, (512) 463-9484.

Filed: November 5, 1996, 3:12 p.m.

TRD-9616057

Regional Meetings

Meetings filed November 4, 1996

Central Texas MHMR Center, Board of Trustees, met at 408 Mulberry Drive, Brownwood, November 7, 1996, at 6:00 p.m. Information may be obtained from Saul Pullman, P.O. Box 250, Brownwood, Texas 76804, (915) 646-9574, Ext. 102. TRD-9615985.

Lavaca County Central Appraisal District, Board of Directors will meet at 113 North Main Street, Hallettsville, November 13, 1996, at 4:00 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396. TRD-9616025.

Rio Grande Council of Governments, Board of Directors' Meeting, will meet at 1100 North Stanton, Fourth Floor, Main Conference Room, El Paso, November 15, 1996, at 1:00 p.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0998. TRD-9616083.

Rio Grande Council of Governments, Board of Directors' Meeting will meet at 1100 North Stanton, Fourth Floor, Main Conference Room, El Paso, November 15, 1996, at 1:00 p.m. Information may be obtained from Lidia Flynn, 1100 North Stanton, Suite 610, El Paso, Texas 79902, (915) 533-0998. TRD-9616029.

Tarrant Appraisal District, Tarrant Appraisal Review Board, will meet at 2329 Gravel Road, Fort Worth, November 21, 1996, at 9:00 a.m. Information may be obtained from Linda G. Smith, 2329 Gravel Road, Fort Worth, Texas 76118-6984, (817) 284-8884. TRD-9616007.

West Center Texas Council of Governments, Regional Citizens Advisory Council, will meet at 1025 East North Sixth Street, Abilene, November 21, 1996, at 10:00 a.m. Information may be obtained from Brad Helbert, 1025 EN 10th Street, Abilene, Texas 79601, (915) 672-8544. TRD-9616026.

Meetings filed November 5, 1996

Texas Automobile Insurance Plan Association, Governing Committee, will meet at 6121 I-35 North, Red Lion Hotel, Austin, November 13, 1996, at 8:30 a.m. Information may be obtained from Dianna Brooks, P.O. Box 18447, Austin, Texas 78760-8447, (512) 444-4441, ext. 104. TRD-9616055.

Tax Appraisal District of Bell County, Board of Directors, will meet at 411 East Central Avenue, Belton, November 12 and 13, 1996, at 7:00 p.m. Information may be obtained from Carl Moore, P.O. Box 390, Belton, Texas 76513, (817) 939-5841. TRD-9616051.

Bexar-Medina-Atascosa WCID, Board of Directors will meet at 226 Highway 132, Natalia, November 12, 1996, at 8:30 a.m. Information may be obtained from Jeanette F. Williams, P.O. Box 170, Natalia, Texas 78059, (210) 665-2132. TRD-9616090.

Colorado County Appraisal District, Board of Directors will meet at 400 Spring, Columbus, November 12, 1996, at 1:30 p.m. Information may be obtained from Billy Youens, P.O. Box 10 Columbus, Texas 78934, (409) 732-8222. TRD-9616042.

Cypress Springs Water Supply Corporation, Board of Directors, will meet at the office of Cypress Springs Water, Supply Corporation, 4430 Highway 115, South of Mount Vernon, November 12, 1996, at 7:00 p.m. Information may be obtained from Richard Zachary, P.O. Box 591, Mount Vernon, Texas 75457, (903) 588-2777. TRD-9616043.

Grand Parkway Association, Board of Directors will meet at 5757 Woodway, 140 East Wing, Houston, November 14, 1996, at 8:15 a.m. Information may be obtained from L. Diane Schenke, 5757 Woodway, 140 East Wing, Houston, Texas 77057, (713) 782-9330. TRD-9616044.

Red Bluff Water Power Control District, Board of Directors met at 111 West Second Street, Pecos, November 11, 1996, at 1:00 p.m. Information may be obtained from Jim Ed Miller, 111 West Second Street, Pecos, Texas 79772, (915) 445-2037. TRD-9616052.

Scurry County Appraisal District, Board of Directors, will meet at 2612 College Avenue, Snyder, November 12, 1996, at 8:00 a.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549. TRD-9616053.

Tri County Special Utility Dist (SUD), Board of Directors, met at Highway 7 East, Marlin, November 11, 1996, at 7:00 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 76661, (817) 803-3553. TRD-9616032.

Upper Rio Grande Private Industry Council, Upper Rio Grande Private Industry Council Board, will meet at 5919 Brook Hollow, El Paso, November 13, 1996, at 7:30 a.m. Information may be obtained from Norman R. Haley, 5919 Brook Hollow, El Paso, Texas 79925, (915) 772-5627, Ext. 406. TRD-9616063.

Wise County Appraisal District, Board of Directors, will meet at 206 South State Street, Decatur, November 12, 1996, at 7:00 a.m. Information may be obtained from Freddie Triplett, 206 South State Street, Decatur, Texas 76234, (817) 627-3081. TRD-9616050.

Meetings filed November 6, 1996

Bastrop Central Appraisal District, Appraisal Review Board, met at 1200 Cedar Street, Bastrop, November 11, 1996, at 8:30 a.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, (512) 303-3536. TRD-9616091.

Dallas Housing Authority, Dallas Housing Authority Board of Commissioners, will meet at the Melrose Hotel, 3015 Oaklawn Avenue, Dallas, November 14, 1996, at 8:00 a.m. Information may be obtained from Betsy Horn, 3939 North Hampton Road, Dallas, Texas 75212, (214) 951-8302. TRD-9616096.

Hunt County Appraisal District, Appraisal Review Board, will meet at 4801 King Street, Greenville, December 4, 1996, at 8:30 a.m. Information may be obtained from Shirley Gregory, P.O. Box 1339, Greenville, Texas 75403, (903) 454-3510. TRD-9616092.

Permian Basin Regional Planning Commission, Metropolitan Planning Organization, will meet at 2910 La Force Boulevard, Midland, November 18, 1996, at 2:00 p.m. Information may be obtained from Terri Moore, P.O. Box 60660, Midland, Texas 79711, (915) 563-1061. TRD-9616104.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Commission on Alcohol and Drug Abuse

Consultant Services Contract Award

The following consultant contract (#517-6-1163) award is filed under the provisions of Government Code, Title 10, Subchapter B, §2254.021.

The consultant request was published in the July 26, 1996, issue of the *Texas Register* (21 TexReg 7183).

The contractor will provide a comprehensive study, analysis, and recommendation on the rate setting methodology of state funded substance abuse treatment services in Texas.

The contractor is: David M. Griffith & Associates, Ltd., 13601 Preston Road #400W, Dallas Texas 75240.

The total value of the contract is \$56,800. The contract started October 31, 1996 and will end April 30, 1997.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615991

Mark S. Smock

Deputy for Finance and Administration

Texas Commission on Alcohol and Drug Abuse

Filed: November 4, 1996

Comptroller of Public Accounts

Prepaid Higher Education Tuition Board Notice of Enrollment Period

In accordance with §54.618, Texas Education Code, and 34 TAC §7.42, Texas Prepaid Higher Education Tuition Board, by and through the Comptroller of Public Accounts, announces that the next enrollment period for purchasing contracts under the Texas Prepaid Higher Education Program will be from November 18, 1996, to February 18, 1997.

Issued in Austin, Texas, on November 6, 1996.

TRD-9616098

Arthur F. Lorton

Senior Legal Counsel

Comptroller of Public Accounts

Filed: November 6, 1996

Texas Health and Human Services Commission

Notice of Public Hearing

In fulfillment of the requirements of House Bill 2698, 74th Legislature, to develop a long-term care plan for Texas, on November 22, 1996, the Texas Health and Human Services Commission will hold a public hearing at 4900 North Lamar, Brown-Healy Building, Room 1420, from 8:00 a.m. to 5:00 p.m. The Commission will be assisted by Barrett Markland and Roy Ray, Chairs of the Long Term Care Task Force. Other participating agencies include the Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Department on Aging, Texas Department of Health, Texas Department of Protective and Regulatory Services, Texas Commission for the Blind, Texas Commission for the Deaf and Hard of Hearing, Texas Commission on Alcohol and Drug Abuse, Texas Rehabilitation Commission, Texas Education Agency, and Texas Department of Housing and Community Affairs.

The purpose of the hearing is to receive public comment to update the Long-Term Care Report from August, 1994, which will serve as a basis for developing a long-term care plan for Texas. In an effort to organize and analyze comments, the Commission requests that the following categories be used, when applicable, in presenting material during the hearing:

DEFINITION AND SCOPE OF LONG-TERM CARE SERVICES

CONSUMER CHOICE, RISK AND REGULATION OF LONG-TERM CARE SERVICES

ACCESS TO AND ELIGIBILITY FOR LONG-TERM CARE SERVICES

ORGANIZATIONAL DELIVERY STRUCTURE FOR LONG-TERM CARE SERVICES

RESOURCES AND FUNDING OF LONG-TERM CARE SERVICES

Anyone who may require special assistance under the Americans with Disabilities Act may call Cecilia Berrios at (512) 424-6512 at least 48 hours before the hearing. If you would like a copy of the Long-Term Care Report, please contact Becky Medina at (512) 424-6509. If you have questions, please contact Kathy Kramer at (512) 424-6541. Written testimony is encouraged. If unable to attend, please send written comments to: Dr. Kathy Kramer, P.O. Box 13247, Austin, Texas 78711-3247.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615987

Marina Henderson

Executive Deputy Commissioner

Texas Health and Human Services Commission

Filed: November 4, 1996

◆ ◆ ◆
Texas Department of Housing and Community Affairs

Notice of Amendment to the 1996 State of Texas Consolidated Plan

The Texas Department of Housing and Community Affairs announces an amendment to the 1996 State of Texas Consolidated Plan; specifically, the 1996 Final Statement which governs the Texas Community Development Program. The 1996 Consolidated Plan is being amended as follows:

Under Part III, titled "Project Length", the language shall be changed to include the Housing Demonstration Fund and should read as follows: All funded projects, except Texas Capital Fund (TCF) and Housing Demonstration Fund (HDF) projects, must be completed within two years from the execution date of the contract agreement. Waivers of these requirements for any TCDP contract will only be granted when a waiver request is submitted in writing to TDHCA or TDOC (for Texas Capital Fund contracts) and TDHCA and TDOC finds that compelling circumstances exist outside the control of the local government that justify the approval of such a waiver.

Written comments concerning this amendment will be accepted for ten days from the date of publication and should be submitted to Anne Paddock, Deputy General Counsel, Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941.

Issued in Austin, Texas, on November 6, 1996.

TRD-9616094

Larry Paul Manley

Executive Director

Executive Director

Filed: November 6, 1996

◆ ◆ ◆
Texas State Library and Archives Commission

Nominations for Vacancy on Local Government Records Committee

Notice is hereby given, pursuant to the Texas Government Code, §441.163, as amended by §25 of SB 366, 74th Legislature, 1995, for the purpose of accepting nominations for appointment to the Local Government Records Committee.

Nominations will be accepted for 30 days from the date of the publication of this announcement to fill the ten positions on the committee: two of whom represent counties, one of whom must be a county clerk or a district clerk; two of whom represent municipalities; two of whom represent school districts; two of whom represent appraisal districts; and two of whom represent water districts. At least one committee member must be a records management officer who is not also an elected county officer. At least four members must represent either a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more.

A nomination for appointment may be made by an organization representing officers or employees of the type to be appointed that has as members at least 50 of those officers or employees. As specified by statute, a nomination made by such an organization shall include a nominee who represents a county with a population of 10,000 or more and a nominee who represents a county with a population of fewer than 10,000 or a municipality or district that does not extend into a county with a population of 10,000 or more. The director and librarian shall appoint a nominee or shall appoint an officer chosen by the director and librarian, if there are no nominees. The director and librarian shall appoint members to give representation to all geographical regions of the state.

All appointments to the committee will be for terms ending February 1, 1999. To remain eligible to serve on the committee, a person must continue to hold the office or position the person was appointed to represent.

Nominations should be sent to Robert S. Martin, Director and Librarian, Texas State Library, P.O. Box 12927, Austin, Texas 78711-2927.

Issued in Austin, Texas, on November 4, 1996.

TRD-9616004

Raymond Hitt

Assistant State Librarian

Texas State Library and Archives Commission

Filed: November 4, 1996

◆ ◆ ◆
Texas Department of Mental Health and Mental Retardation

Notice of Public Hearing

The Texas Department of Mental Health and Mental Retardation (TDMHMR) will conduct a public hearing to receive comments on the department's proposed reimbursements for the following Medicaid program: campus-based state-operated ICFs/MR. The proposed reimbursements will cover the time period May 1, 1996-December 31, 1996. The public hearing is held in compliance with Title 25, Texas Administrative Code, Chapter 409, Subchapter A, §409.002(j).

which requires a public hearing on proposed reimbursement rates for medical assistance programs.

The hearing will be held at 8:30 a.m., Wednesday, November 27, 1996, in the Auditorium of the TDMHMR Central Office (main building) at 909 West 45th Street in Austin, Texas.

Persons who wish to offer testimony but who are unable to attend the hearing may submit written comments which must be received by noon the day of the hearing. The written comments should be sent to the Data Analysis Section, Medicaid Administration, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668 or faxed to (512) 206-5725.

Interested parties may obtain a copy of the reimbursement briefing package by calling the Data Analysis Section at (512) 206-5680. If interpreters for the hearing impaired are required, please contact the Data Analysis Section at the number given above at least 72 hours in advance of the hearing.

Issued in Austin, Texas, on November 6, 1996.

TRD-9616095

Ann K. Utley

Chairman

Texas Department of Mental Health and Mental Retardation

Filed: November 6, 1996

Texas Natural Resource Conservation Commission

Notice of Award

The Texas Natural Resource Conservation Commission (TNRCC) furnishes this notice of a consulting services contract award for the gathering and evaluation of information how to effect maximum local stakeholder involvement and input for the development of the Comprehensive Conservation and Management Plan ("CCMP").

The notice for request for proposals was published in the July 5, 1996, issue of the *Texas Register*.

Description of Services. The consultant will provide information and advice to the Corpus Christi Bay National Estuary Program regarding how to effect maximum local stakeholder involvement and input for the development of the CCMP. The following major products will be produced: Monthly Written Reports; Final Report, June 30, 1997.

Effective Date and Value of Contract. The contract will be effective from October 25, 1996, until August 31, 1997. The total cost of the contract is \$30,000.

Name of the Contractor. The contract has been awarded to the Coastal Bend Bays Foundation, P.O. Box 23025, Corpus Christi, Texas 78403.

Persons who have questions concerning this award may contact Richard Volk, Corpus Christi Bay National Estuary Program, Natural Resources Center, Suite 3300, 6300 Ocean Drive, Corpus Christi, Texas 78412, (512) 980-3420.

Issued in Austin, Texas, on November 3, 1996.

TRD-9616112

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: November 6, 1996

Public Notices

Texas Natural Resource Conservation Commission (TNRCC) is required under the Texas Solid Waste Disposal Act, Health and Safety Code Chapter 361, as amended (the "Act"), to identify and assess facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. Pursuant to §361.184(a), the Commission must publish in the *Texas Register* those facilities which are identified as eligible for listing on the state registry. The most recent registry listing was published in the April 12, 1996, issue of the *Texas Register* (21TexReg 3273-3274).

The following is a facility or area that the Executive Director of the TNRCC has determined eligible for listing and which the Executive Director proposes to list on the state registry. Also specified is the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the Executive Director.

The facility known as the Barlow's Wills Point Plating Company (the "site") is located on the south side of U.S. Highway 80, 3.4 miles east of the intersection of US Highway 80 and State Highway 64 in Wills Point, Van Zandt County, Texas. The site is a 2.0 acre plot consisting of one metal building located on a cement slab. The facility was used in the electroplating operations from early 1987 until early 1990. The electroplating operations involved nickel-chromium electroplating, zinc-aluminum anodizing, and other miscellaneous plating lines utilizing copper, silver, or cyanide. The material generated from these processes included hazardous waste and rinse water, as well as non-hazardous wastes. All wastes were handled on site with no apparent off-site shipments. Elevated levels of chromium, nickel, zinc, and copper have been found in the site soils. In March of 1990, the site was abandoned with waste on site, including approximately 133 drums and containers.

In May of 1994, TNRCC performed a Site Screening Investigation and determined that conditions at the site required an immediate removal action due to the potential exposure of the public and the environment to hazardous substances found at the site. During December 1995, the secured fence was installed around the site and "Contaminated Area" warning signs were posted. The metal building was cleaned of debris and made secure for use as a staging area for the old drums and containers that had been left at the site. A total of 53 old drums were overpacked into new drums in order to containerize liquids and solids. Ten new, corrosive resistant, drums were used to containerize liquids with extremely low pH. The containerized wastes were categorized, staged on pallets and samples were collected to characterize the waste. The results of these analyses show significant levels of cyanide, elevated levels of chromium and lead, and also the presence of corrosive liquids.

A public meeting has been scheduled regarding the proposed listing of the site. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Government Code, Chapter 2001). Persons desiring to comment on the proposed listing of this site may do so at the public meeting either orally or in writing. Written comments may also be submitted to

the attention of Ms. Luda Voskov, Superfund Investigation Section, Pollution Cleanup Division, Texas Natural Resource Conservation Commission, MC-143, P. O. Box 13087, Austin, Texas 78711-3087; telephone 1-800-633-9363. All comments must be received by the Commission on or before December 16, 1996.

The public meeting has been scheduled for the following time and place: 6:30 p.m.; Monday, December 16, 1996, at Wills Point City Hall, Wills Point, Texas.

The Executive Director of the Texas Natural Resource Conservation Commission 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 the business hours of the Van Zandt County Library, 317 First Monday Lane, Canton, Texas 75103; telephone (903) 567-4276. Copies of the complete public record file may be obtained during regular business hours at the Texas Natural Resource Conservation Commission, Central Records Center, Building D, First Floor, North Entrance, 12100 North IH-35, Austin, Texas; telephone (512) 239-2920. Copying of file information is subject to payment of a fee.

Issued in Austin, Texas, on November 6, 1996.

TRD-9616100

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: November 6, 1996

◆ ◆ ◆
The Executive Director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of intent to delete (delist) a facility from the list of sites proposed for the state registry (*State Superfund Registry*). The *State Superfund Registry* contains the list of sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment.

The site proposed for delisting is Hagerson Road Drums State Superfund Site, Dewalt, Texas. This site was published in the July 26, 1996, issue of the *Texas Register* (16 TexReg 4102) as a site proposed for listing on the *State Superfund Registry*.

Hagerson Road Drums State Superfund Site is located in the community of Dewalt, Fort Bend County, Texas. This site consists of two areas: Area A and Area B. Area A, which is approximately 250 feet south of Hagerson Road, is adjacent to 1215 Hagerson Road, Dewalt. Area B is located approximately 1.25 miles south of Area A. Areas A and B are undeveloped land where drummed paint waste was illegally dumped during the 1970's. Records indicate that approximately 50 drums were disposed within a 2,500 square foot area in Area A and another 100 drums in a 4,800 square foot area of Area B. Site records indicate that the condition of the drums had deteriorated, and the contents of some of the drums leaked and/or were emptied onto the ground over a period of time.

The period from 1980 to 1990, the site was investigated on six occasions by EPA and the predecessor agencies to the TNRCC. In April 1992, the TNRCC removed all the drums from Area A and Area B. At the same time (April 1992), Area A was excavated to a depth of approximately 18 inches and Area B to a depth of

approximately 48 inches in one section and 18 inches in another section. When the excavation at Area B failed to remove all visually apparent contamination, the 48 inch (four-foot) excavation was backfilled with the excavated soil while the TNRCC initiated a remedial investigation. OHM Remediation Services Corp. (OHM) was contracted by the TNRCC in October 1993 to conduct a Remedial Investigation/Feasibility Study (RI/FS), including a Baseline Risk Assessment at the Hagerson Road State Superfund Site in Dewalt, Texas.

The purpose of the remedial investigation was to determine the nature and extent of contamination present at the site. The Baseline Risk Assessment evaluates potential risk to human health and the environment attributable to the contaminants discerned from the remedial investigation. Following the remedial investigation, only paint waste impacted soil, lead, and Total Petroleum Hydrocarbon (TPH) warranted further consideration in the risk assessment. All other analytes either showed levels of contamination below the instrument detection limit (typically a smaller value than the action level) or the prescribed federal and TNRCC action levels. The quantitative and qualitative evaluation of risk associated with the levels of lead and TPH present at the site demonstrate that both constituents do not pose unacceptable risk to human health and the environment even under the most conservative, residential future land use scenario. No health based risk is attributable to the paint waste impacted soil.

Because both the Remedial Investigation and Risk Assessment conducted at this site support the conclusion that the site does not currently pose an unacceptable risk to human health and safety or the environment, no further action is required. Available data supports the conclusion that this site is usable for residential development without any further remediation.

The executive director has determined that this site does not present an imminent and substantial endangerment to public health and safety or the environment, and is therefore eligible for deletion from the list of sites proposed for the *State Superfund Registry* in accordance with 30 TAC §335.344(c).

In accordance with 30 TAC §335.344(b), "the commission shall hold a public contested case hearing..... provided that a written request for hearing is filed with the Chief hearings examiner of the commission by any Potential Responsible Party (PRP)..... or any interested party, within 30 days after receipt of a determination by the executive director At least 30 days prior to the date set for hearing, notice shall be provided by first class mail to all other PRPs and other interested persons, and by publication in a newspaper of general circulation in the county where the facility is located. The person submitting the request shall bear the cost of publication of this notice". The cost of publication may vary depending on the newspaper.

Hagerson Road Drums State Superfund Site will be delisted from the *State Superfund Registry* if a contested public hearing, challenging this determination by the executive director, is not requested by any interested party(ies) before the designated date.

All inquiries regarding the Hagerson Road Drums State Superfund Site should be directed to Bruce McAnally, TNRCC, Community Relations Unit at 1-800-633-6393. Documents and testing results pertinent to this determination by the executive director are available at the following repositories for inspection and copying during regular business hours: George Memorial Library, 1001 Gulfview, Richmond, Texas 77469-5199, telephone (713) 341-2640, and TNRCC

Central Records, Building D, First Floor, 12100 Park 35, Austin, Texas 78753, telephone (512) 239-2920.

Issued in Austin, Texas, on November 6, 1996.

TRD-9616099

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Filed: November 6, 1996



Public Utility Commission of Texas

Notice of Application to Amend Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 22, 1996, to amend a Certificate of Convenience and Necessity pursuant to §§1.101(a), 2.201, 2.101(e), 2.252, and 2.255, of the Public Utility Regulatory Act of 1995. A summary of the application follows.

Docket Title and Number: Application of West Texas Utilities Company to Amend Certificated Service Area Boundaries within Sterling County, Docket Number 16565 before the Public Utility Commission of Texas.

The Application: In Docket Number 16565, West Texas Utilities Company requests approval of the application for a service area exception to serve an oil well for Fasken Oil Company and a Cathodic Rectifier for Seminole Pipeline within Sterling County.

Persons who wish to intervene in the proceeding or comment upon action sought, should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission's Office of Consumer Affairs at (512) 936-7120. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the Commission at (512) 936-7136 within 15 days of this notice.

Issued in Austin, Texas, on November 6, 1996.

TRD-9616103

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: November 6, 1996



Notice Of Filing of Request for Arbitration to Establish Interconnection Agreement

Notice is given to the public of filing with the Public Utility Commission of Texas an application requesting compulsory arbitration to establish an interconnection agreement pursuant to the Federal Telecommunications Act of 1996, §242(b).

Docket Title and Number: Petition of Western Wireless Corporation dba Cellular One for Arbitration of Unresolved Interconnection Issues with GTE Southwest, Inc., Pursuant to The Federal Telecommunications Act of 1996, Docket Number 16402.

The Application: An Arbitration Hearing will be held on Thursday, November 21, 1996 at 9:00 a.m. at the Commission's offices, 1701 North Congress Avenue, Austin, Texas. Interested persons may

provide a statement of position and/or provide a list of questions to be addressed in these arbitration proceedings. These statements may address the recent Federal Communication Commission's (FCC's) First Report and Order. In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket Number 96-98, FCC 96-325 (rel. Aug. 8, 1996) (First Report and Order).

Statements and/or lists of questions on the Arbitration Hearing may be submitted to the Public Utility Commission of Texas, P. O. Box 13326, Austin, Texas, 78711-3326, on or before November 18, 1996. Statements (22 copies) should refer to Docket Number 16402.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615983

Paula Mueller

Secretary of the Commission

Public Utility Commission of Texas

Filed: November 4, 1996



Telecommunications Infrastructure Fund Board

Master Plan

A Draft of the Telecommunications Infrastructure Fund Board Master Plan Is Available for Public Comment

The Telecommunications Infrastructure Fund Board (TIFB) is making the latest draft of its Master Plan available for public comment. The comment period will end November 22, 1996. Please submit any comments to the TIFB in writing in any of the following manners: by sending a regular or certified letter, telefax or e-mail. Our physical address is 221 East 11th Street, Suite 103, Austin, Texas 78701; our mailing address is P.O. Box 12428, Austin, Texas 78701; our e-mail address is tifb@governor.texas.gov; our fax number is 512-936-2681.

To receive a copy of the TIFB Master Plan, please contact the TIFB at (512) 936-8432. You may also e-mail the TIFB for a copy at the above e-mail address. A copy of the Master Plan will also be available on our Internet homepage: <http://www.state.tx.us/TIF>. **Note: The TIFB Master Plan is a draft—it is not in final form. It is a living and breathing document. It is a draft.**

Issued in Austin, Texas, on November 6, 1996.

TRD-9616097

Arnold Viramontes

Executive Director

Telecommunications Infrastructure Fund Board

Filed: November 6, 1996



Texas Department of Transportation

Request for Proposals

Notice of Invitation: The Texas Department of Transportation (Tx-DOT) intends to engage an engineer, pursuant to Texas Government Code, Chapter 2254, Subchapter A, and 43 TAC §§9.30-9.40, to provide the following services. The engineer selected must perform a minimum of 30% of the actual contract work to qualify for contract award.

Contract Number 04-745P5002: To develop the plans, specifications and estimate (PS&E) package to add two additional lanes in the IH 40/IH 27 interchange between Washington Street and Arthur Street located in Amarillo, Texas.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (806) 356-3263, or hand-delivered to TxDOT, Amarillo District Office, Attention: John White, 5715 Canyon Drive, Amarillo, Texas 79110, or mailed to P.O. Box 2708, Amarillo, Texas 79105-2708. Letters of interest will be received until 5:00 p.m. on Tuesday, November 26, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and refer to Contract Number 04-745P5002. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: Written requests, either by mail/hand delivered or fax, will be required to receive Request for Proposal packet. TxDOT will not issue Request for Proposal packet without receipt of letter of interest.)

Preproposal Meeting: A preproposal meeting will be held on Thursday, December 5, 1996, at the TxDOT Amarillo District Office, 5715 Canyon Drive, Amarillo, Texas 79110, beginning at 2:00 p.m. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory preproposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact John White, at (806) 356-3248 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline: Proposals for Contract Number 04-745P5002 will be accepted until 5:00 p.m. on Thursday, January 9, 1997, at the TxDOT Amarillo District Office mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to John White, at (806) 356-3248 or fax (806) 356-3263.

Contract Number 21-745P5014: To prepare schematics, plans, specifications and estimates for FM 3362 and FM 3420, Jackson Road McAllen/Pharr Area, from FM 495 to SH 107 in Hidalgo County.

Deadline: A letter of interest notifying TxDOT of the provider's intent to submit a proposal will be accepted by fax at (210) 702-6266, or hand delivered to TxDOT, Pharr Area Office, 611 North Cage (US-281), Attention: Mr. Mario Jorge, P.E., or mailed to P.O. Drawer EE, Pharr, Texas 78577. Letters of interest will be received until 5:00 p.m. on Friday, November 22, 1996. The letter of interest must include the engineer's firm name, address, telephone number, name of engineer's contact person and refer to Contract Number 21-745P5014. Upon receipt of the letter of interest a Request for Proposal packet will be issued. (Note: written requests, either by mail/hand delivered or fax, will be required to receive a Request for Proposal packet. TxDOT will not issue Request for Proposal packets without receipt of a letter of interest.)

Preproposal Meeting: A preproposal meeting will be held on Tuesday, November 26, 1996, 10:00 a.m., Pharr District Office, located at 600 West Expressway in Pharr, Texas. (TxDOT will not accept a proposal from an engineer who has failed for any reason to attend the mandatory preproposal meeting.)

Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Mr. Mario Jorge, P.E. at (210) 702-6250 or Mr. Leo Morales, P.E. at (210) 702-6260 or fax (210) 702-6266 at least two work days prior to the meeting so that appropriate arrangements can be made.

Proposal Submittal Deadline: Proposals for Contract Number 21-745P5014 will be accepted until 5:00 p.m. on Thursday, December 12, 1996, at the TxDOT Pharr Area Office mentioned address.

Agency Contact: Requests for additional information regarding this notice of invitation should be addressed to Mario Jorge, P.E. at (210) 702-6250 or Leo Morales, P.E. at (210) 702-6260 or fax (210) 702-6266.

Issued in Austin, Texas, on November 5, 1996.

TRD-9616081

Robert E. Shaddock

General Counsel

Texas Department of Transportation

Filed: November 5, 1996

Texas Water Development Board

Applications Received

Pursuant to the Texas Water Code, §6.195, the Texas Water Development Board provides notice of the following applications received by the Board:

Moore Water Supply Corporation, P.O. Box 78, Moore, Texas 78057, received June 4, 1996, application for financial assistance in an amount not to exceed \$48,960 from the Research and Planning Fund.

Benton City Water Supply Corporation, P.O. Box 1210, Lytle, Texas 78052, received August 5, 1996, application for financial assistance in the amount of \$1,500,000 from the Water Supply Account of the Texas Water Development Fund.

Brazos River Authority, 4400 Cobbs Drive, Waco, Texas 76710, received October 1, 1996, application for financial assistance in the amount of \$1,615,000 from the State Water Pollution Control Revolving Fund.

City of Deer Park, 710 East San Augustine, Deer Park, Texas 77536, received October 4, 1996, application for financial assistance in the amount of \$3,000,000 from the State Water Pollution Control Revolving Fund.

City of Lampasas, P.O. Box 666, Lampasas, Texas 76550, received August 30, 1996, application for financial assistance in the amount of \$6,625,000 from the State Water Pollution Control Revolving Fund.

City of San Marcos, 630 East Hopkins, San Marcos, Texas 78666, received October 2, 1996, application for financial assistance in the amount of \$7,500,000 from the State Water Pollution Control Revolving Fund.

City of Huntsville, 1212 Avenue M, Huntsville, Texas 77340, received October 1, 1996, application for financial assistance in the amount of \$14,395,000 from the State Water Pollution Control Revolving Fund.

Rockett Special Utility District, P.O. Box 40, Red Oak, Texas 75154, received October 1, 1996, application for financial assistance in the amount of \$6,625,000 from the Water Supply Account of the Texas Water Development Fund.

City of Port Lavaca, 202 North Virginia, Port Lavaca, Texas 77979, received October 4, 1996, application for financial assistance in the amount of \$5,485,000 from the State Water Pollution Control Revolving Fund.

Victoria County Water Control and Improvement District Number 1, 207 Illinois Street, Bloomington, Texas 77951, received October 2, 1996, application for financial assistance in the amount of \$1,280,000 from the State Water Pollution Control Revolving Fund.

Macedonia-Eylau Municipal Utility District Number 1, Route 1, Box 228C, Texarkana, Texas 75501, received October 1, 1996, application for financial assistance in the amount of \$225,000 from the State Water Pollution Control Revolving Fund.

City of Houston, P.O. Box 1562, Houston, Texas 77251-1562, received September 23, 1996, application for financial assistance in the amount of \$160,000,000 from the State Water Pollution Control Revolving Fund.

Siesta Shores Water Control and Improvement District, P.O. Box 321, Zapata, Texas 78076, received August 30, 1996, application for grant assistance in the amount of \$863,377 from the Economically Distressed Areas program of the Texas Water Development Fund.

Lower Valley Water District, 10005 Alameda, Suite P, El Paso, Texas 79927, received October 7, 1996, application for additional grant/loan assistance in the amount of \$2,556,957 from the State Water Pollution Control Revolving Fund and the Economically Distressed Areas Account of the Texas Water Development Fund.

Evergreen Underground Water Conservation District, P.O. Box 155, Jourdanton, Texas 78026, received October 11, 1996, application for financial assistance in the amount of \$500,000 from the Agricultural Water Conservation Loan Program.

Panhandle Ground Water Conservation District Number 3, P.O. Box 637, White Deer, Texas 79097, received October 11, 1996, application for financial assistance in the amount of \$300,000 from the Agricultural Water Conservation Loan Program.

High Plains Underground Water Conservation District #1, 2930 Avenue Q, Lubbock, Texas 79405, received September 28, 1996, application for financial assistance in the amount of \$2,000,000 from the Agricultural Water Conservation Loan Program.

Sandy Land Underground Water Conservation District, P.O. Box 130, Plains, Texas 79355-0130, received September 28, 1996, application for financial assistance in the amount of \$500,000 from the Agricultural Water Conservation Loan Program.

South Plains Underground Water Conservation District, P.O. Box 986, Brownfield, Texas 79316, received October 3, 1996, application for financial assistance in the amount of \$750,000 from the Agricultural Water Conservation Loan Program.

Ward County Water Improvement District #1, P.O. Box 1328, Pecos, Texas 79772-1328, received September 3, 1996, application for financial assistance in the amount of \$250,000 from the Agricultural Water Conservation Loan Program.

Robertson County Soil and Water Conservation District, Route 2, Box 17C, Franklin, Texas 77856, received August 26, 1996, application for grant assistance in the amount of \$9,300 from the Agricultural Conservation Grants to Districts Program.

Moore County Soil and Water Conservation District, 210 East Seventh Street, Dumas, Texas 79029, received July 25, 1996, application for grant assistance in the amount of \$5,010 from the Agricultural Conservation Grants to Districts Program.

Palo Duro Soil and Water Conservation District, 304 Fifteenth Street, Canyon, Texas 79015, received August 12, 1996, application for grant assistance in the amount of \$4,512 from the Agricultural Conservation Grants to Districts Program.

Gray County Soil and Water Conservation District, HCRC, Box 32, Pampa, Texas 79065, received August 15, 1996, application for grant assistance in the amount of \$4,564 from the Agricultural Conservation Grants to Districts Program.

Caprock Soil and Water Conservation District, P.O. Box 660, Silverton, Texas 79257, received September 23, 1996, application for grant assistance in the amount of \$4,958 from the Agricultural Conservation Grants to Districts Program.

Frio Soil and Water Conservation District, P.O. Box 180, Pearsall, Texas 78061, received September 23, 1996, application for grant assistance in the amount of \$4,665 from the Agricultural Conservation Grants to Districts Program.

Cochran Soil and Water Conservation District, Box 905, Morton, Texas 78061, received September 24, 1996, application for grant assistance in the amount of \$2,176 from the Agricultural Conservation Grants to Districts Program.

Mustang Soil and Water Conservation District, P.O. Box 1070, Stanton, Texas 79782, received August 19, 1996, application for grant assistance in the amount of \$2,322 from the Agricultural Conservation Grants to Districts Program.

Maverick County Water Control and Improvement District Number 1, 2252 East Garrison Street, Eagle Pass, Texas 78852, received July 17, 1996, application for grant assistance in the amount of \$37,275 from the Agricultural Conservation Grants to Districts Program.

Fayette Soil and Water Conservation District, 254 North Jefferson Street, La Grange, Texas 78945-2214, received August 16, 1996, application for grant assistance in the amount of \$7,606 from the Agricultural Conservation Grants to Districts Program.

High Plains Underground Water Conservation District, 2930 Avenue Q, Lubbock, Texas 79405, received April 30, 1996, application for grant assistance in the amount of \$60,000 from the Agricultural Conservation Grants to Districts Program.

Upper Clear Fork Soil and Water Conservation District, 111 A North Garfield, Rotan, Texas 79546, received September 26, 1996, application for grant assistance in the amount of \$1,936 from the Agricultural Conservation Grants to Districts Program.

Upper Pease Soil and Water Conservation District, Box 550, Matador, Texas 79244, received September 26, 1996, application for grant assistance in the amount of \$9,820 from the Agricultural Conservation Grants to Districts Program.

Blackwater Valley Soil and Water Conservation District, 105 East Avenue D, Muleshoe, Texas 79347, received September 24, 1996,

application for grant assistance in the amount of \$1,939 from the Agricultural Conservation Grants to Districts Program.

Hidalgo County Irrigation District Number 1, P.O. Box 870, Edinburg, Texas 78540, received October 23, 1996, application for grant assistance in the amount of \$30,000 from the Agricultural Conservation Grants to Districts Program.

Tarrant County Water Control and Improvement District Number 1, 800 East North Side Drive, Fort Worth, Texas 76102-1097, received November 4, 1996, application for additional assistance in an amount not to exceed \$18,000 from the Research and Planning Fund.

Issued in Austin, Texas, on November 6, 1996.

TRD-9616113

Craig D. Pedersen

Executive Administrator

Texas Water Development Board

Filed: November 6, 1996



Texas Workers' Compensation Commission

Public Hearing on Proposed Amendment and New Rules

The Texas Workers' Compensation Commission will hold a public hearing on November 14, 1996 at 1:30 p.m. on the following proposed rules:

Rule 110.108. Employer Notice Regarding Work-Related Exposure to Communicable Disease/HIV: Posting Requirements; Payment for Tests (proposed new rule).

Rule 122.3. Exposure to Communicable Diseases: Reporting and Testing Requirements for Emergency Responders (proposed new rule).

Rule 122.4. State Employees Exposed to Human Immunodeficiency Virus (HIV): Reporting and Testing Requirements (proposed new rule).

Rule 133.206. Spinal Surgery Second Opinion Process (proposed amendment to existing rule).

The hearing will be held at the Commission's Central Office in Austin at 4000 South IH35 in Room 910, the Tippy Foster Meeting Room. The Texas Workers' Compensation Commission offers reasonable accommodations for persons attending meetings, hearings or education events, as required by the Americans with Disabilities Act. Those persons requiring special accommodations should contact Idalia Cantu at (512) 440-5690 at least two days before the event.

Issued in Austin, Texas, on November 4, 1996.

TRD-9615988

Elaine Crease

Program Assistant, General Counsel's Office

Texas Workers' Compensation Commission

Filed: November 4, 1996



November - December 1996 Publication Schedule

The following is the November-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. No issues will be published on 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.
81 Friday, November 1	Wednesday, October 23	Monday, October 28	Monday, October 28
82 Tuesday, November 5	Monday, October 28	Wednesday, October 30	Wednesday, October 30
83 Friday, November 8	Wednesday, October 30	Monday, November 4	Monday, November 4
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>		

January - December 1997 Publication Schedule

The following is the January-December 1997 Publication Schedule for the *Texas Register*. Listed below are the deadline dates for these issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. No issues will be published on May 30, November 14, December 2, and December 30. An asterisk beside a publication date indicates that the deadlines are early due to state holidays.

FOR ISSUE PUBLISHED ON:	DEADLINES FOR RULES BY 10 A.M.	DEADLINES FOR MISCELLANEOUS DOCUMENTS BY 10 A.M.	DEADLINES FOR OPEN MEETINGS BY 10 A.M.
1 Friday, January 3	*Monday, December 23	Monday, December 30	Monday, December 30
2 Tuesday, January 7	Monday, December 30	*Tuesday, December 31	*Tuesday, December 31
3 Friday, January 10	*Tuesday, December 31	Monday, January 6	Monday, January 6
4 Tuesday, January 14	Monday, January 6	Wednesday, January 8	Wednesday, January 8
5 Friday, January 17	Wednesday, January 8	Monday, January 13	Monday, January 13
6 Tuesday, January 21	Monday, January 13	Wednesday, January 15	Wednesday, January 15
7 Friday, January 24	Wednesday, January 15	*Friday, January 17	*Friday, January 17
Tuesday, January 28	<i>1996 Annual Index</i>		
8 Friday, January 31	Wednesday, January 22	Monday, January 27	Monday, January 27
9 Tuesday, February 4	Monday, January 27	Wednesday, January 29	Wednesday, January 29
10 Friday, February 7	Wednesday, January 29	Monday, February 3	Monday, February 3
11 Tuesday, February 11	Monday, February 3	Wednesday, February 5	Wednesday, February 5
12 Friday, February 14	Wednesday, February 5	Monday, February 10	Monday, February 10
13 Tuesday, February 18	Monday, February 10	Wednesday, February 12	Wednesday, February 12
14 Friday, February 21	Wednesday, February 12	*Friday, February 14	*Friday, February 14
15 Tuesday, February 25	*Friday, February 14	Wednesday, February 19	Wednesday, February 19

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.
16 Friday, February 28	Wednesday, February 19	Monday, February 24	Monday, February 24
17 Tuesday, March 4	Monday, February 24	Wednesday, February 26	Wednesday, February 26
18 Friday, March 7	Wednesday, February 26	Monday, March 3	Monday, March 3
19 Tuesday, March 11	Monday, March 3	Wednesday, March 5	Wednesday, March 5
20 Friday, March 14	Wednesday, March 5	Monday, March 10	Monday, March 10
21 Tuesday, March 18	Monday, March 10	Wednesday, March 12	Wednesday, March 12
22 Friday, March 21	Wednesday, March 12	Monday, March 17	Monday, March 17
23 Tuesday, March 25	Monday, March 17	Wednesday, March 19	Wednesday, March 19
24 Friday, March 28	Wednesday, March 19	Monday, March 24	Monday, March 24
25 Tuesday, April 1	Monday, March 24	Wednesday, March 26	Wednesday, March 26
26 Friday, April 4	Wednesday, March 26	Monday, March 31	Monday, March 31
Tuesday, April 8	<i>First Quarterly Index</i>		
27 Friday, April 11	Wednesday, April 2	Monday, April 7	Monday, April 7
28 Tuesday, April 15	Monday, April 7	Wednesday, April 9	Wednesday, April 9
29 Friday, April 18	Wednesday, April 9	Monday, April 14	Monday, April 14
30 Tuesday, April 22	Monday, April 14	Wednesday, April 16	Wednesday, April 16
31 Friday, April 25	Wednesday, April 16	Monday, April 21	Monday, April 21
32 Tuesday, April 29	Monday, April 21	Wednesday, April 23	Wednesday, April 23
33 Friday, May 2	Wednesday, April 23	Monday, April 28	Monday, April 28
34 Tuesday, May 6	Monday, April 28	Wednesday, April 30	Wednesday, April 30
35 Friday, May 9	Wednesday, April 30	Monday, May 5	Monday, May 5
36 Tuesday, May 13	Monday, May 5	Wednesday, May 7	Wednesday, May 7
37 Friday, May 16	Wednesday, May 7	Monday, May 12	Monday, May 12
38 Tuesday, May 20	Monday, May 12	Wednesday, May 14	Wednesday, May 14

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.
39 Friday, May 23	Wednesday, May 14	Monday, May 19	Monday, May 19
40 Tuesday, May 27	Monday, May 19	Wednesday, May 21	Wednesday, May 21
Friday, May 30	<i>No Issue Published</i>		
41 Tuesday, June 3	*Friday, May 23	Wednesday, May 28	Wednesday, May 28
42 Friday, June 6	Wednesday, May 28	Monday, June 2	Monday, June 2
43 Tuesday, June 10	Monday, June 2	Wednesday, June 4	Wednesday, June 4
44 Friday, June 13	Wednesday, June 4	Monday, June 9	Monday, June 9
45 Tuesday, June 17	Monday, June 9	Wednesday, June 11	Wednesday, June 11
46 Friday, June 20	Wednesday, June 11	Monday, June 16	Monday, June 16
47 Tuesday, June 24	Monday, June 16	Wednesday, June 18	Wednesday, June 18
48 Friday, June 27	Wednesday, June 18	Monday, June 23	Monday, June 23
49 Tuesday, July 1	Monday, June 23	Wednesday, June 25	Wednesday, June 25
50 Friday, July 4	Wednesday, June 25	Monday, June 30	Monday, June 30
51 Tuesday, July 8	Monday, June 30	Wednesday, July 2	Wednesday, July 2
Friday, July 11	<i>Second Quarterly Index</i>		
52 Tuesday, July 15	Monday, July 7	Wednesday, July 9	Wednesday, July 9
53 Friday, July 18	Wednesday, July 9	Monday, July 14	Monday, July 14
54 Tuesday, July 22	Monday, July 14	Wednesday, July 16	Wednesday, July 16
55 Friday, July 25	Wednesday, July 16	Monday, July 21	Monday, July 21
56 Tuesday, July 29	Monday, July 21	Wednesday, July 23	Wednesday, July 23
57 Friday, August 1	Wednesday, July 23	Monday, July 28	Monday, July 28
58 Tuesday, August 5	Monday, July 28	Wednesday, July 30	Wednesday, July 30
59 Friday, August 8	Wednesday, July 30	Monday, August 4	Monday, August 4
60 Tuesday, August 12	Monday, August 4	Wednesday, August 6	Wednesday, August 6

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.
61 Friday, August 15	Wednesday, August 6	Monday, August 11	Monday, August 11
62 Tuesday, August 19	Monday, August 11	Wednesday, August 13	Wednesday, August 13
63 Friday, August 22	Wednesday, August 13	Monday, August 18	Monday, August 18
64 Tuesday, August 26	Monday, August 18	Wednesday, August 20	Wednesday, August 20
65 Friday, August 29	Wednesday, August 20	Monday, August 25	Monday, August 25
66 Tuesday, September 2	Monday, August 25	Wednesday, August 27	Wednesday, August 27
67 Friday, September 5	Wednesday, August 27	*Friday, August 29	*Friday, August 29
68 Tuesday, September 9	*Friday, August 29	Wednesday, September 3	Wednesday, September 3
69 Friday, September 12	Wednesday, September 3	Monday, September 8	Monday, September 8
70 Tuesday, September 16	Monday, September 8	Wednesday, September 10	Wednesday, September 10
71 Friday, September 19	Wednesday, September 10	Monday, September 15	Monday, September 15
72 Tuesday, September 23	Monday, September 15	Wednesday, September 17	Wednesday, September 17
73 Friday, September 26	Wednesday, September 17	Monday, September 22	Monday, September 22
74 Tuesday, September 30	Monday, September 22	Wednesday, September 24	Wednesday, September 24
75 Friday, October 3	Wednesday, September 24	Monday, September 29	Monday, September 29
Tuesday, October 7	<i>Third Quarterly Index</i>		
76 Friday, October 10	Wednesday, October 1	Monday, October 6	Monday, October 6
77 Tuesday, October 14	Monday, October 6	Wednesday, October 8	Wednesday, October 8
78 Friday, October 17	Wednesday, October 8	Monday, October 13	Monday, October 13
79 Tuesday, October 21	Monday, October 13	Wednesday, October 15	Wednesday, October 15
80 Friday, October 24	Wednesday, October 15	Monday, October 20	Monday, October 20
81 Tuesday, October 28	Monday, October 20	Wednesday, October 22	Wednesday, October 22
82 Friday, October 31	Wednesday, October 22	Monday, October 27	Monday, October 27
83 Tuesday, November 4	Monday, October 27	Wednesday, October 29	Wednesday, October 29

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.
84 Friday, November 7	Wednesday, October 29	Monday, November 3	Monday, November 3
85 Tuesday, November 11	Monday, November 3	Wednesday, November 5	Wednesday, November 5
Friday, November 14	<i>No Issue Published</i>		
86 Tuesday, November 18	Monday, November 10	Wednesday, November 12	Wednesday, November 12
87 Friday, November 21	Wednesday, November 12	Monday, November 17	Monday, November 17
88 Tuesday, November 25	Monday, November 17	Wednesday, November 19	Wednesday, November 19
89 Friday, November 28	Wednesday, November 19	Monday, November 24	Monday, November 24
Tuesday, December 2	<i>No Issue Published</i>		
90 Friday, December 5	Wednesday, November 26	Monday, December 1	Monday, December 1
91 Tuesday, December 9	Monday, December 1	Wednesday, December 3	Wednesday, December 3
92 Friday, December 12	Wednesday, December 3	Monday, December 8	Monday, December 8
93 Tuesday, December 16	Monday, December 8	Wednesday, December 10	Wednesday, December 10
94 Friday, December 19	Wednesday, December 10	Monday, December 15	Monday, December 15
95 Tuesday, December 23	Monday, December 15	Wednesday, December 17	Wednesday, December 17
96 Friday, December 26	Wednesday, December 17	Monday, December 22	Monday, December 22
Tuesday, December 30	<i>No Issue Published</i>		

How to Use the Texas Register

Information Available: The 13 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

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

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 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:

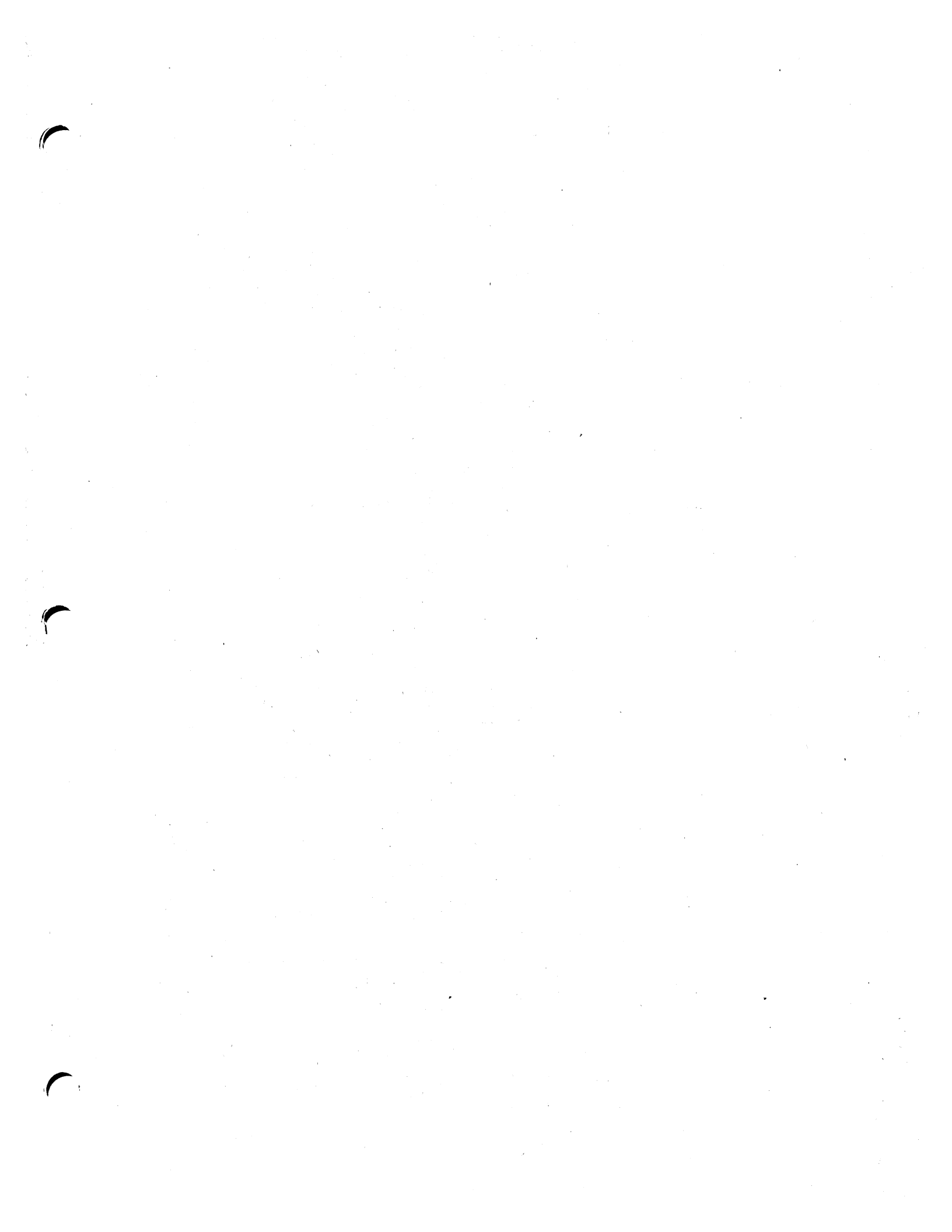
1 indicates the title under which the agency appears in the *Texas Administrative Code*; TAC stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

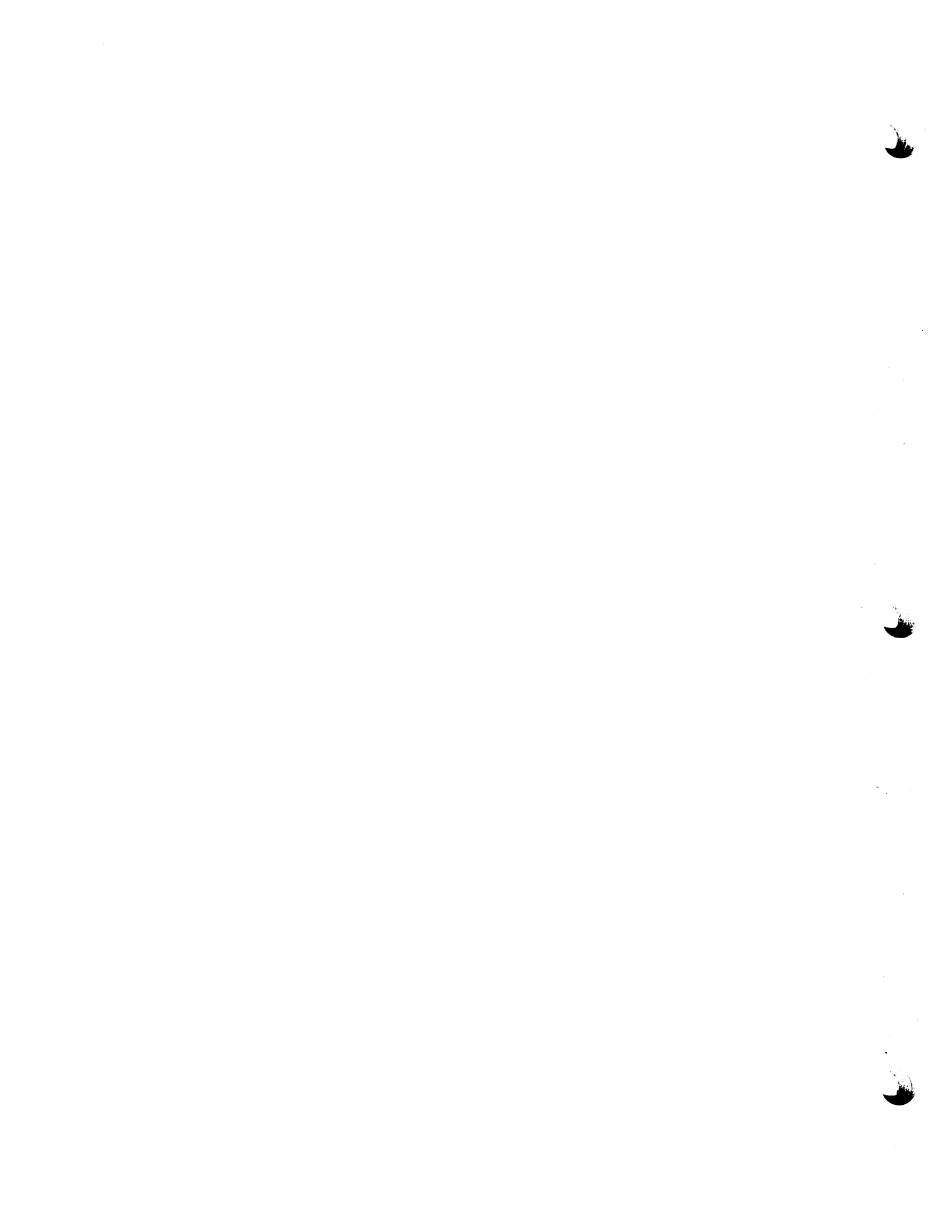
How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 26, April 9, 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.

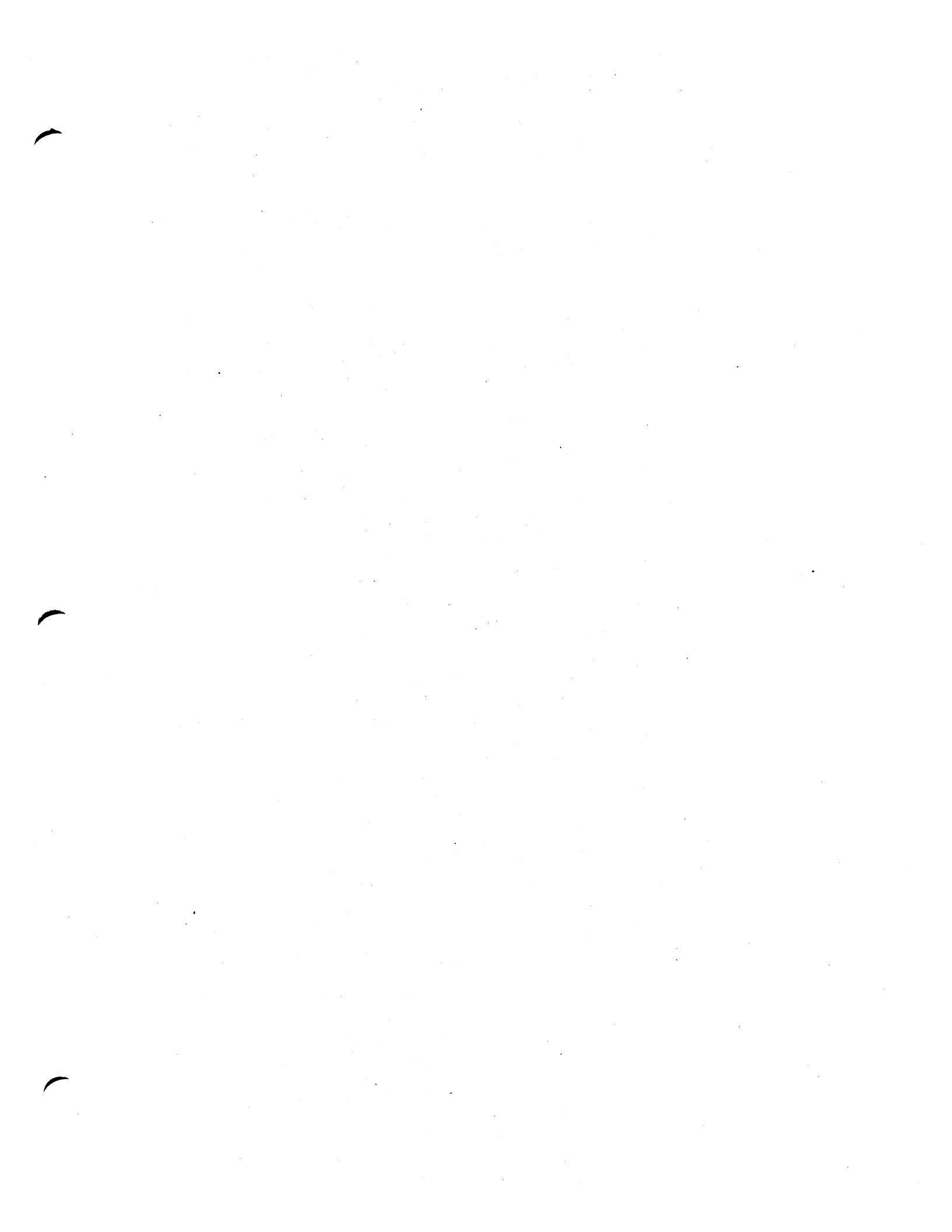
TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

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

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the TAC number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561 or (800) 226-7199.







Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

Change of Address

Back Issue

_____ Quantity

Volume _____,

Issue # _____

*(Prepayment required
for back issues)*

New Subscription (Yearly)

Printed \$95

Diskette 1 to 10 users \$200

11 to 50 users \$500

51 to 100 users \$750

100 to 150 users \$1000

151 to 200 users \$1250

More than 200 users--please call

Online BBS 1 user \$35

2 to 10 users \$50

11 to 50 users \$90

51 to 150 users \$150

151 to 300 \$200

More than 300 users--please call

NAME _____

ORGANIZATION _____

ADDRESS _____

CITY, STATE, ZIP _____

Customer ID Number/Subscription Number _____

(Number for change of address only)

Bill Me

Payment Enclosed

Mastercard/VISA Number _____

Expiration Date _____ Signature _____

Please make checks payable to the Secretary of State. Subscription fees are not refundable.
Do not use this form to renew subscriptions.

Periodical Postage

PAID

Austin, Texas
and additional entry offices