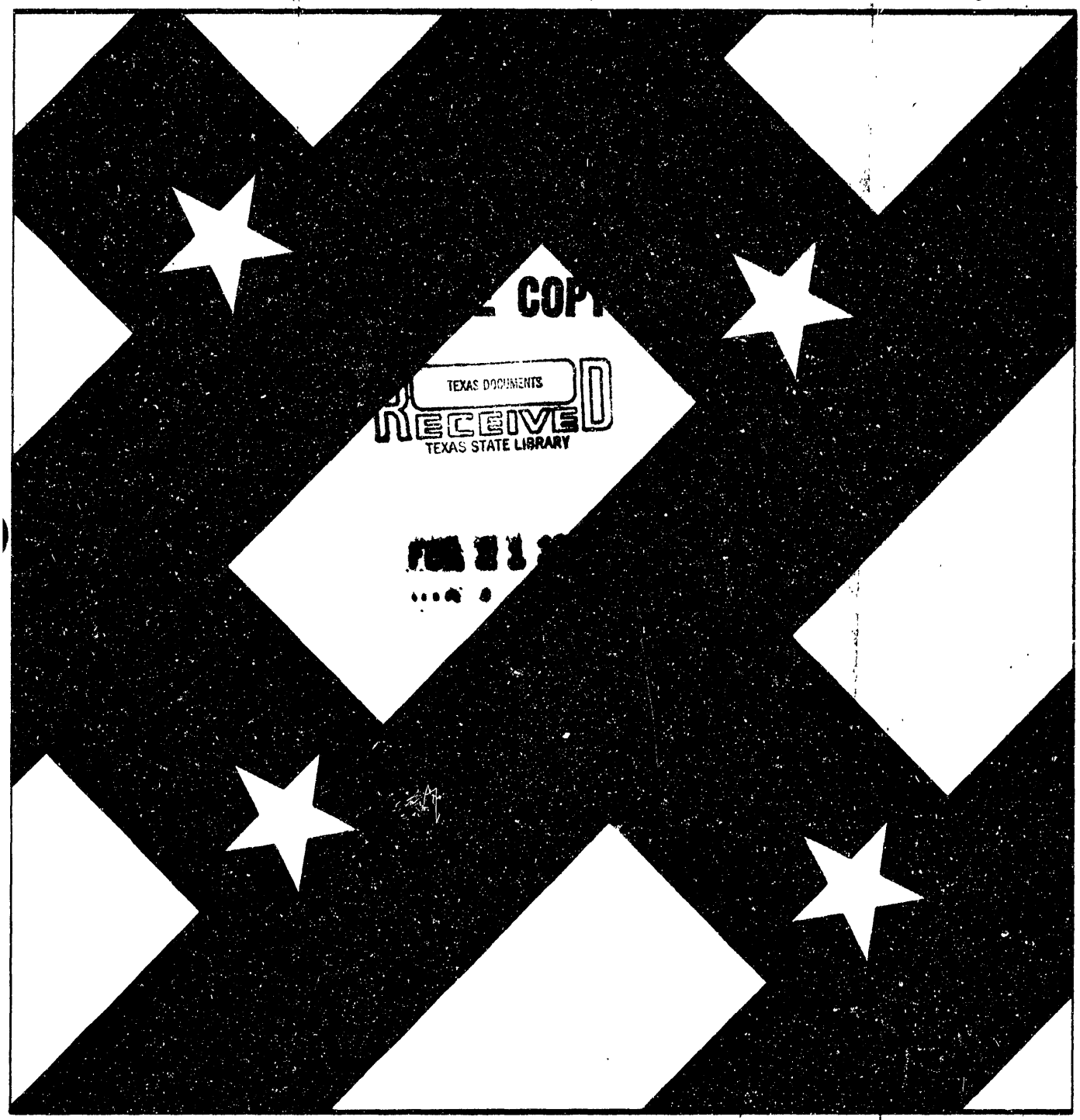
Texas Register

Volume 11, Number 10, February 7, 1986 *Pages 677-778*



Highlights

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1986 with the exception of June 24, September 2, December 2, and December 30 by the Office of the Secretary of State.

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

Information Available: The 11 sections of the *Register* represent various facets of state government. Documents contained within them include:

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Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date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

Specific explanations on the contents of each section can be found on the beginning page of the section. The division also publishes monthly, quarterly, and annual indexes to aid in researching material published.

How To Cite: Material published in the *Texas Register* is referenced by citing the volume in which a document appears, the words "TexReg," and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 6 (1981) is cited as follows: 6 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written: "11 TexReg 2 Issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "Issue date 11 TexReg 3."

How To Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, 503E Sam Houston Building, Austin. Material can be found by using *Register* indexes, the *Texas Administrative Code*, rule number, or TRD number.

Texas Administrative Code

The *Texas Administrative Code* (TAC) is the approved, collected volumes of Texas administrative rules.

How To Cite: Under the TAC scheme, each agency rule is designated by a TAC number. For example, in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*;

TAC stands for the *Texas Administrative Code;*

27.15 is the section number of the rule (27 indicates that the rule is under Chapter 27 of Title 1; 15 represents the individual rule within the chapter).

Texas Register Publications

a division of the
Office of the Secretary of State
P.O. Box 13824
Austin, Texas 78711-3824
512-463-5561

Myra A. McDaniel
Secretary of State

Director
Dan Procter

Documents Section Coordinator
Jane Orcutt

Document Editors
Cynthia Cooke
Molly Gardner
Sabra Noyes

Document Filing
Lainie Crease
Denise Roberts

Production Editors
Jody Allen
Lisa Bauer

Typographers
Dawn VanCleave
Glynn Fluitt

Circulation Section Coordinator
Dee Wright

Circulation Assistant
Kristine Hopkins Mohajer

TAC Editors
William Craig Howell
Hollis Glaser

Subscriptions—one year (96 regular issues and four index issues), $80; six months (48 regular issues and two index issues), $60. Single copies of most issues of the *Texas Register* are available at $3.00 per copy.

Table of Contents

In Addition

TAC Titles Affected

TAC Titles Affected—January

The following is a list of the administrative rules that have been published this month.

Attorney General

Description of attorney general submissions. Under provisions set out in the Texas Constitution, Texas Civil Statutes (Article 4399), and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the *Register*.

Requests for Opinions

RQ-728. Request from Mark W. Brooks, Rowe & Young, attorneys at law, Houston, concerning whether information maintained by an independent contractor hired by a utility district is subject to disclosure under the Open Records Act.

RQ-729. Request from Dan M. Boulware, district attorney, Cleburne, concerning the private practice of law by district and county attorneys.

RQ-730. Request from Gary E. Miller, MD., commissioner, Texas Department of Mental Health and Mental Retardation, Austin, concerning whether the Department of Mental Health and Mental Retardation may license as a private mental hospital a medical facility established to treat and rehabilitate persons suffering from the effects of closed head injury.

RQ-731. Request from Jim Bob Darnell, criminal district attorney, Lubbock; Robert Bernstein, MD., commissioner, Texas Department of Health, Austin; and Robert Schulman, attorney of law, San Antonio, concerning the construction of the Open Records Act, Texas Civil Statutes, Article 6252-17a, §3(a)(17) and §3(A), and related questions.

RQ-732. Request from Roger D. Shipman, executive secretary, Texas Board of Veterinary Medical Examiners, Austin, concerning clarification of JM-382 with regard to reimbursement of expenses incurred in the performance of official duties by the Texas Board of Veterinary Medical Examiners.

RQ-733. Request from Mike Driscoll, Harris County attorney, Houston, concerning whether Harris County may require performance and payment bonds on all public works projects, and related questions.

RQ-734. Request from John B. Holmes, Jr., Harris district attorney, Houston, concerning whether a particular hospital is a religious institution for purposes of exemption from the Texas Nonprofit Corporation Act, Article 1396-1.01, *et seq.*

RQ-735. Request from Allen Parker, Sr., commissioner, Texas Department of Labor and Standards, Austin, concerning whether the Department of Labor and Standards may adopt fees for motor vehicle storage facilities, and related questions.

TRD-8601001

Emergency Rules

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

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter E. Miscellaneous Taxes Based on Gross Receipts

★34 TAC §3.58

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.58 for a 60-day period effective January 29, 1986. The text of the amended §3.58 was originally published in the October 1, 1985, issue of the *Texas Register* (10 TexReg 3788).

Issued in Austin, Texas, on January 29, 1986.

TRD-8601010 Bob Bullock
Comptroller of Public Accounts

Effective date: January 29, 1986
Expiration date: March 30, 1986
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.59

The Comptroller of Public Accounts is renewing the effectiveness of the emergency adoption of amended §3.59 for a 60-day period effective January 29, 1986. The text of the amended §3.59 was originally published in the October 4, 1985, issue of the *Texas Register* (10 TexReg 3830).

Issued in Austin, Texas, on January 29, 1986.

TRD-8601011 Bob Bullock
Comptroller of Public Accounts

Effective date: January 29, 1986
Expiration date: March 30, 1986
For further information, please call (512) 463-4606.

★ ★ ★

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Parameter Vehicle Emission Inspection and Maintenance Program

★37 TAC §23.91

The Texas Department of Public Safety adopts on an emergency basis an amendment to §23.91, concerning vehicle emission inspection. The amendment provides for the inspection of passenger cars and light-duty trucks, registered in Dallas, El Paso, Harris, or Tarrant Counties, which have been converted to dual-fuel systems allowing the vehicle to run on either gasoline (or gasohol) or liquefied petroleum gas (LPG) or natural gas (NG). The amendment adopts a list of conversion systems deemed to be in compliance with federal and state law.

An emergency exists due to the limited time remaining until expiration of the current month's vehicle inspection certificates. Unless emergency action is taken, persons with dual-fuel vehicles registered in the affected counties will be unable to have their vehicles inspected prior to expiration of their vehicle inspection certificates.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §141(c)(1) and §142(c)-(h), which provide the Public Safety Commission with the authority to establish a Parameter Vehicle Emission Inspection and Maintenance Program for vehicles registered in any county in this state which does not meet national ambient air quality standards and for which the Texas Air Control Board has adopted a resolution requesting the Department of Public Safety to institute such a program. See also Attorney General Opinion JM-138, dated March 16, 1984.

§23.91. Vehicle Emission Inspection.

(a)-(r) (No change.)

(s) In the case of a dual-fuel conversion, which allows a passenger car or light-duty truck to run on either gasoline (or gasohol) or liquefied petroleum gas (LPG) or natural gas (NG), removal of emission control system items required to be inspected under subsection (m) of this section will not be permitted, provided that the thermostatic air intake system, the original air cleaner, when replaced by an air cleaner compatible with the LPG/NG carburetor and any other item accepted by the United States Environmental Protection Agency, may be removed. The only dual-fuel conversion systems which will be deemed to comply with the requirements of the parameter vehicle emission inspection and maintenance program are those systems which have been accepted by the United States Environmental Protection Agency as meeting the requirements of the Federal Clean Air Act. A list, including those dual-fuel conversion systems meeting the requirements of federal law, in its current form and as the list may hereafter be modified as administratively necessary, is hereby adopted and is available for inspection at the headquarters of the Texas Department of Public Safety, 5805 North Lamar, Austin, Texas 78752-4422.

Issued in Austin, Texas, on January 30, 1986.

TRD-8601099 James B. Adams
Director
Texas Department of Public Safety

Effective date: January 31, 1986
Expiration date: May 31, 1986
For further information, please call (512) 465-2000.

★ ★ ★

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Department of Human Services

Chapter 39. Medical Transportation

Transportation Services for Indigent Cancer Patients

★40 TAC §39.1001, 39.1002

The Texas Department of Human Services adopts on an emergency basis new sections concerning the Transportation for In-

digent Cancer Patients Program in its Medical Transportation chapter. Section 39.1001 concerns eligibility criteria for cancer patients (in Webb, Zapata, Starr, Jim Hogg, Hidalgo, Cameron, and Wallacy Counties) who will have access to limited additional transportation services that are outside their communities and are provided by the department. Section 39.1002 concerns the right of the client to receive assistance from a transportation attendant.

Failure to implement the section by February 1, 1986, would have increased potentially life-threatening constraints to treating indigent cancer patients. Delayed implementation would have resulted in imminent peril to the health, safety, and welfare of individuals whose lives may be further endangered from the lack of transportation to cancer treatment facilities.

In response to the Texas Cancer Council, the department's Office of Services to Aged and Disabled developed the Transportation for Indigent Cancer Patients Program to provide transportation services to indigent cancer patients who do not qualify for Medicaid benefits. Medical transportation services are not covered by private insurance or Medicare, except in an emergency. Medical transportation is already a covered Medicaid benefit for eligible clients, but there is no provision for individuals who cannot pay and do not qualify for Medicaid. The limited services the department will provide will be administered to eligible cancer patients according to this rule. A demonstration transportation network, in the seven counties along the Rio Grande, was approved for reimbursement under §6 of the Texas Cancer Council Rules of 1985. This network will provide intercounty/regional medical transportation services for indigent cancer patients from their residences and to and from regional or distant cancer referral institutions (including cancer facilities in the program area). Implementation of the Transportation for Indigent Cancer Patients Program was scheduled for February 1, 1986. The department simultaneously proposes these new sections for permanent adoption in this issue of the *Texas Register.*

The new sections are adopted on an emergency basis under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

§39.1001. Client Eligibility Criteria. To be determined eligible by the department for participation in the Transportation for Indigent Cancer Patients Program, the applicant:

(1) must provide initial confirmation of cancer diagnosis by a medical authority near his residence;

(2) must be medically indigent (at or below 100% of federal poverty guidelines);

(3) must not be eligible for Medicaid;

(4) must be accepted for evaluation or treatment by an intercounty or interregional referral institution capable of providing quality cancer services; and

(5) must reside in Webb, Zapata, Starr, Jim Hogg, Hidalgo, Cameron, or Willacy County.

§39.1002. Attendants. Clients participating in the Transportation for Indigent Cancer Patients Program may request an attendant when being transported to or from a cancer treatment facility. Clients must follow the policy in §39.103 of this chapter (relating to Attendants) to receive attendant services.

Issued in Austin, Texas, on January 31, 1986.

TRD-8601133 Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: February 1, 1986
Expiration date: June 1, 1986
For further information, please call (512) 450-3766.

★ ★ ★

Proposed Rules

Before an agency may permanently adopt a new or amended rule, or repeal an existing rule, a proposal detailing the action must be published in the *Register* at least 30 days before any action may be taken. The 30-day time period gives interested persons an opportunity to review and make oral or written comments on the rule. Also, in the case of substantive rules, 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 rule is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a rule.

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Merger, and Liquidations

★7 TAC §91.506

The Credit Union Department proposes an amendment to §91.506, concerning bond requirements for Texas Share Guaranty Credit Union. Language deemed to be redundant is deleted and the requirement for faithful performance of duty is removed because such coverage is not available.

John R. Hale, credit union commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the amendment.

Mr. Hale also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to enable adjustments of the fee by commission approval, as opposed to future amendments of the section. The anticipated economic cost to individuals who are required to comply with the proposed amendment will be minimal.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752.

These amendments are proposed under Texas Civil Statutes, Article 2461, §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of this Act.

§91.506 Director Meeting Fees and Bond Requirements.

(a) (No change.)

(b) Bond requirements. Each credit union shall provide a blanket fidelity bond issued by a corporate surety company authorized to do business in this state, and approved by the commissioner, covering the officials, employees, members of official committees, attorneys-at-law, and other agents of the credit union to protect the credit union against loss caused by dishonesty, burglary, robbery, larceny, theft, hold-up, forgery or alteration of instruments, misplacement or mysterious disappearance, and for lack of faithful performance of duty. Each bond shall provide a rider requiring the surety to give 30 days notice to the commissioner prior to cancellation of any or all coverages set out in the bond.

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

(6) The Texas Share Guaranty Credit Union [due to its specialized operation] may obtain coverage under the share insurance corporation bond [and faithful performance of duty coverage shall not be required].

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 January 29, 1986.

TRD-8601066 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption:
March 10, 1986
For further information, please call
(512) 837-9236.

★ ★ ★

Chapter 95. Texas Share Guaranty Credit Union

★7 TAC §95.4, §95.5

The Credit Union Department proposes amendments to §95.4 and §95.5, concerning extensive changes to bring existing sections into conformity with the Texas Credit Union Act (amended 1983) and to simplify, clarify, and strengthen various subsections to better enable the Texas Share Guaranty Credit Union in fulfilling its responsibilities.

John R. Hale, credit union commissioner, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the amendments.

Mr. Hale also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that the savings of credit union members will continue to be properly protected by the insuror of such accounts, Texas Share Guaranty Credit Union, through its enhanced ability in carrying out its responsibilities. The anticipated economic cost to individuals who are required to comply with the proposed amendments will be minimal.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752.

These amendments are proposed under Texas Civil Statutes, Article 2461, §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of this Act.

§95.4. Authority for the TSGCU. The commissioner shall issue a charter for the Texas Share Guaranty Credit Union which shall provide that said Texas Share Guaranty Credit Union, hereinafter referred to as the TSGCU, shall operate as a central credit union **including share and deposit guaranty insurance protection for members** subject to supervision, regulation, and examination by the department as hereinafter provided.

§95.5. Contracts of Insurance. The TSGCU may contract with a national share guaranty reinsurance corporation or with any commercial insurer authorized to do business in the State of Texas, for the purpose of aiding the TSGCU in performing its duties and responsibilities. [The amount of such contracts shall be not less than $1 million dollars.] The TSGCU shall not act to terminate or cancel such contracts without the prior approval of the commissioner. In the event of the termination or cancellation of such a contract by a party to the contract, the TSGCU shall **reasonably endeavor** [exercise due diligence] to procure replacement coverage at the earliest possible date and shall immediately inform the commissioner whenever a contract has been terminated or canceled or coverage procured under such a contract, **provided, however, the commissioner may waive for good cause such requirements and for such period of time and under such conditions as in his discretion circumstances shall require.**

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601068 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption:
March 10, 1986
For further information, please call
(512) 837-9236.

★ ★ ★

Powers

★7 TAC §§95.101-95.103

The Credit Union Department proposes amendments to §§95.101-95.103, concerning extensive changes to bring existing sections into conformity with the Texas Credit Union Act (amended 1983), and to simplify, clarify, and strengthen various subsections to better enable the Texas Share Guaranty Credit Union in fulfilling its responsibilities.

John R. Hale, credit union commissioner, has determined that there will not be any fiscal implications as a result of enforcing or adminsitering the rule.

Mr. Hale also has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that the savings of credit union members will continue to be properly protected by the insuror of such accounts, Texas Share Guaranty Credit Union, through its enhanced ability in carrying out its responsibilities. There is minimial anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 87752.

These amendments are proposed under Texas Civil Statutes, Article 2461 §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of this Act.

§95.101. Powers. The TSGU, **pursuant to §11.101(e) may, in addition to the powers contained in the Texas Credit Union Act, §4.01 and §4.02:**

[(1) enter into contracts of any nature;

[(2) sue and be sued;

[(3) adopt, use, and display a corporate seal;]

(1)[(4)] purchase, hold, lease, receive, use, encumber, sell, exchange, transfer, lend, advance, convey, assign, give, grant, transmit, hypothecate, or dispose of property or funds of any description, nature, or kind or of any interest, rights, title, or privileges therein from or to any member credit union or any corporation, association, or person, provided that any gift, grant, or transfer or a similar nature shall be made only with the approval of the commissioner;

(2)[(5)] declare and pay dividends on the membership investment fund;

[(6) change its principal place of business on giving written notice to the commissioner;]

(3)[(7)] make any type of investment authorized by law;

(4)[8] act under the order or appointment of any court of record, without giving bond, as guardian, receiver, trustee, executor, administrator, custodian, or as depository for any money paid into court for member credit unions; accept funds or money for deposit by fiduciaries, trustees, or receivers, if managing or holding funds in behalf of a member credit union; accept funds or money for deposit by building and loan associations, savings banks and trust companies or insurance companies, if the membership of the primary ownership of the institutions, associations, or companies is confined or restricted to or for the benefit of member credit unions or organizations of member credit unions, or if the institutions, associations, or companies are designed to serve or otherwise assist operations of member credit unions; act as custodian of individual retirement accounts or of pension funds of member credit unions, or as trustee under pension and profit sharing plans of member credit unions;

(5)[(9)] make deposits, purchase shares, and invest in legally chartered banks, trust companies, central credit unions, central-type credit union organizations, and savings and loan associations;

(6)[(10)] impress a lien on the deposits, dividends, and interest of any member credit union to the extent of any loans made to the member credit union directly or indirectly, on which the member credit union is a surety, and for any other obligations due by the member credit union;

[(11) borrow funds from any source;]

(7)[(12)] make or issue, with the approval of the commissioner, a guarantee or other form of written assurance to the appropriate person, association, corporation, or other entity which is reasonably necessary to facilitate the sale, conveyance, assignment, transfer, or other disposition of all or any part of the property or assets of a member credit union, and otherwise assist in the merger, consolidation, conservation, suspension, or liquidation of a member credit union upon the request and under the instruction of the commissioner;

(8)[(13)] advance funds, with or without interest, in accordance with agreed terms and conditions, to aid member credit unions to continue to operate and to maintain solvency or to maintain account balances with any financial institution in connection with the assumption of receivables from a member credit union, or to meet liquidity requirements;

(9)[(14)] purchase from a member credit union any equitable or other interest in its assets at book value or at some other value mutually agreed upon by such member and the board of directors of the TSGCU, notwithstanding that either of such values may exceed the market value of the assets so purchased, and upon such terms and conditions as the board of directors of the TSGSU may determine, provided however that all such terms, conditions, agreements and values are approved in writing by the commissioner;

(10)[15] exercise the powers granted corporations organized under the laws of this state and such other additional incidental powers not inconsistent with these amendments [regulations], as may be necessary to requisite to enable the TSGCU to promote and carry on effectively its purposes.

§95.102. Special Authorization. Notwithstanding the authority and powers conferred by §95.101 of this title (relating to Powers), for the purpose of stabilizing the financial condition and securing the liquidity or solvency of any of its member credit unions, or to guarantee the redemption of share accounts and the return of deposits to the members and depositors of member credit unions, the TSGCU may:

(1) advise and consult with a member credit union;

(2) assit in the merger, consolidation, or liquidation of a member credit union;

(3) pay to the member credit union, in accordance with an agreement entered into between the member credit union and the TSGCU and approved by the commissioner, an amount not in excess of the difference between the book value of some or all of the assets of the member credit union, and the fair value as determined by said agreement, in consideration for which such member credit union agrees to write down said assets to the fair value and to pay over to the TSGCU so much of any net proceeds realized from the sale or other disposition of said assets as are in excess of the fair value, the payment to be made in such amounts, and at such times and upon such terms and conditions as the board of directors of the TSGCU may determine and as approved by the commissioner. Any amount paid by the TSGCU to such member credit union and the agreement of the member credit union to repay the excess shall constitute liabilities of the member credit union only to the extent of any such excess for time to time actually realized;

(4) deposit a sum of money into the reserve accounts of the member credit union in accordance with an agreement entered into between the member credit union and the TSGCU and approved by the commissioner, such member credit union being authorized and empowered hereby, to repay the amount

to the TSGCU at such time or times and in such manner as the agreement may prescribe, and as approved by the commissioner, provided that, any such payment made by the TSGCU to the member credit union, and any agreement of the member credit union to repay the same shall constitute liabilities of the member credit union only to the extent provided by the agreement and approved by the commissioner.

(5) compromise or settle any unpaid balance for cash payment of other consideration as the board of directors of the TSGCU and the member credit union, with the approval of the commissioner, may agree upon, at any time from the date financial assistance has been granted to the member credit union under any provisions of this section or under any provisions of §85.101 of this title (relating to Powers).

(6) [(1)] act as conservator of a member credit union if so appointed by the commissioner, pursuant to his authority to approve a plan to continue operations in accordance with the Texas Credit Union Act, §10.01. As conservator, the TSGCU shall act in accordance with specific duties and obligations and under the instructions specified by the commissioner in writing and contained in the plan to continue operations. In the performance of its duties as conservator, pursuant to an approved plan to continue operations. In the performance of its duties as conservator, pursuant to an approved plant to continue operations, the TSGCU in addition to the other authorizations contained in paragraphs 1, 2, 3, 4, and 5 of this section may:

(A) (No change.)

[(B) advise and consult with a member credit union;

[(C) assist in the merger, consolidation or liquidation of a member credit union;

[(D) pay to the member credit union, in accordance with an agreement entered into between the member credit union and the TSGCU and approved by the commissioner, an amount not inexcess of the difference between the book value of some or all of the assets of the member credit union, and the fair value as determined by said agreement, in consideration for which such member credit union shall agree to write down said assets to the fair vlaue and to pay over to the TSGCU so much of any net proceeds realized from the sale or other disposition of said assets as are in excess of the fair value, the payment to be made in such amounts, and at such times and upon such terms and conditions as the board of directors of the TSGCU may determine and as approved by the commissioner. Any amount paid by the TSGCU to such member credit union and the agreement of the member credit union to repay the excess shall constitute liabilities of the member credit union only to the extent of any such excess from time to time actually realized;

[(E) deposit a sum of money into the reserve accounts of the member credit union in accordance with an agreement entered into between the member credit union and the TSGCU and approved by the commissioner, such member credit union being authorized and empowered hereby, to repay the amount to the TSGCU at such time or times and in such manner as the agreement may prescribe, and as approved by the commissioner, provided that, any such payment made by the TSGCU to the member credit union, and any agreement of the member credit union to repay the same shall constitute liabilities of the member credit union only to the extent provided by the agreement and approved by the commissioner;

[(F) compromise or settle any unpaid balance for cash payment or other consideration as the board of directors of the TSGCU and the member credit union, with the approval of the commissioner, may agree upon, at any time from the date financial assistance has been granted to the member credit union under any provisions of this section or under any provisions of §95.101 of this title (relating to Powers);

(B)[(G)] return to the member credit union the control, possession, management, supervision, and operation of the member credit union at any time after the prior written approval of the commissioner. The member credit union may resume control and operation of its business free from control by the TSGCU, subject to such conditions as the commissioner may require or approve;

(7)[(2)] act as a liquidating agent of any state chartered credit union when appointed as such by the commissioner; and

(8)[(3)] act as consultant, advisor, or supervisor of any member credit union and charge an appropriate and reasonable fee for such services.

§95.103. Special Guarantee Authorization. Whether appointed as conservator or not [Notwithstanding any other provision of these regulations, the commissioner, if he finds that a member credit union is insolvent or in imminent danger of insolvency, or that the capital of a member credit union is seriously impaired, may appoint the TSGCU to act as conservator of said member credit union pursuant to his authority to approve a plan to continue operations in accordance with the Texas Credit Union Act, §10.01, and, in such event he may authorize the the] TSGCU MAY [to] issue one or more special guarantees to guarantee said member credit union against any losses, devaluations, or diminutions in value of any assets or property of said member credit union under terms and conditions agreed to by said member credit union and the board of directors of the TSGCU and approved by the commissioner. It shall not be necessary under the terms of any of said guarantees that the TSGCU infuse or in any way transfer cash deposits to the funds of said member credit unions. Each such member credit union that receives such a special guarantee shall establish on its books and records and shall reflect on its financial statements an Accounts Receivable—TSGCU account which shall reflect the amount of said guarantees to said member credit union. The TSGCU shall establish a special reserve account on its books and records and reflect in its financial statements, with appropriate explanatory footnotes, such special guarantees issued pursuant to these provisions. Each member credit union which receives any such special guarantee from the TSGCU shall establish a schedule for transfers of earnings to apply against the Accounts Receivable—TSGCU account as agreed to by the TSGCU and the member credit union and approved by the commissioner. Such schedules may be revised by the agreement of the TSGCU and the member credit union, with the concurrent written approval of the commissioner. Any amount established in such schedules or provided in such special guarantees, and any agreements of the member credit unions to repay the same shall constitute liabilities of the member credit unions only to the extent provided by the agreements and approved by the commissioner. the TSGCU may, at its option, after notifying the commissioner, replace part or all of the Accounts Receivable—TSGCU account by direct payment and infusion of cash to the member credit union. The TSGCU may take liens, assignments, or any security interests on any property of the member credit union for each such special guarantee, cash infusion, or other consideration made to any such member credit union and shall return any excess proceeds gained from the sale or disposition of such liens, assignments, or security interests to said member credit union.

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 January 29, 1986.

TRD-8601069 John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption:
March 2, 1986
For further information, please call
(512) 837-9236.

★ ★ ★

Chapter 97. Commission Policies and Administrative Rules

Supervision Fees

★7 TAC §97.112

The Credit Union Department proposes an amendment to §97.112, concerning the annual supervision fee applicable to Texas Share Guaranty Credit Union.

John R. Hale, credit union commissioner, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the amendment.

Mr. Hale also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to enable adjustments of the fee by commission approval, as opposed to future amendments of the section. The anticipated economic cost to individuals who are required to comply with the proposed amendment will be minimal.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752.

The amendment is proposed under the provisions of Texas Civil Statutes, Article 2461, §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of this Act.

§97.112. Supervision Fees.

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

(d) [Because of the special nature of the] Texas Share Guaranty Credit **Union's** [Union its] annual supervision fee shall be **established by the commissioner with the approval of the commission each year** [$500 each year, beginning with the year-ending report of 1976. Subsections (b) and (c) of this section shall apply].

(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 January 29, 1986.

TRD-8601072 John R. Hale
Commissioner
Credit Union
Department

Earliest possible date of adoption:
March 10, 1986
For further information, please call
(512) 837-9236.

★ ★ ★

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs

Chapter 13. Housing Services

Subchapter B. Texas Rental Rehabilitation Program

★10 TAC §13.40

The Texas Department of Community Affairs (TDCA) proposes an amendment to §13.40, concerning variations from the uniform grant and contract management standards (UGCMS) adopted by the Office of the Governor in 1 TAC §§5.147-5.167. The variations pertain to units of general local government that apply for or receive funding under the Texas Rental Rehabilitation Program (TRRP). The amendments supersede Office of Management and Budget Circular A-87, as adopted in the UGCMS, §5.150, with Office of Management and Budget Circular A-122 which corrects an error and provides clarification. The variations are required by federal Rental Rehabilitation Grant Program regulations in 24 Code of Federal Regulations, §511.11(c).

Douglas C. Brown, general counsel, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal impilcations for state or local government or small businesses as a result of enforcing or administering the amendment.

Bill Pluta, director of the community development and housing division also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be compliance with the federal regulations governing the TRRP. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Douglas C. Brown, General Counsel, Texas Department of Community Affairs, P.O. Box 13166, Austin, Texas 78711. Comments will be accepted for 30 days after the date of publication of this proposal in the *Texas Register.*

The amendment is proposed under Texas Civil Statutes, Article 4413(32g) which provide the TDCA with the authority to establish variations from the UGCMS through rule making if such variations are required or specifically authorized by federal statute or regulation or state statute.

§13.40. Uniform Administrative Requirements.

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

(c) Variations. The rental rehabilitation and development grants under the United States Housing Act of 1937 (42 United States Code 1437o), §17, federal Rental Rehabilitation Grant Program regulations in 24 Code of Federal Regulations Part 511, and other pertinent federal laws and regulations contain financial management conditions and assurances with which program recipients are required to comply and which are at a variance with the standard financial management conditions and uniform assurances applicable to local governments under the UGCMS. The variations required by these federal statutes and regulations shall be applicable to contracts awarded to local governments under the Texas Rental Rehabilitation Program and shall modify or supersede the UGCMS in the manner hereinafter specified.

(1) The Office of Management and Budget Circular A-87, as adopted [by reference] in the UGCMS, §5.150 is **superseded by Office of Management and Budget Circular A-122 and Federal Rental Rehabilitation Grant Program Regulations in 24 Code of Federal Regulations,** §511.10(g) [modified to the extent that the cost of administration shall not be an allowable cost under the Texas Rental Rehabilitation Program, and eligible rehabilitation costs shall include only those costs specified in 24 Code of Federal Regulations Part 511.10(g).]

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

(4) Office of Management and Budget Circular A-102, Attachment P, as adopted [by reference] in the UGCMS, §5.167, is superseded by the Single Audit Act of 1984, Public Law 98-502, and Office of Management and Budget Circular **A-128,** [A-126] Audit Requirements for State and Local Governments[.] **For audits of fiscal years beginning after December 31, 1984.**

(5)-(6) (No change.)

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

Issued in Austin, Texas, on January 30, 1986.

TRD-8601065 Douglas C. Brown
General Counsel
Texas Department of
Community Affairs

Earliest possible date of adoption:
March 10, 1986
For further information, please call
(512) 834-6060.

★ ★ ★

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services

Crippled Children's Services Program

★25 TAC §§37.82-37.86, 37.93, 37.97

The Texas Department of Health proposes amendments to §§37.82-37.86, 37.93, and 37.97, concerning the Crippled Children's Services Program. The amendments expand financial eligibility determination to include cost of treatment, expand the conditional authorization period from 30 to 45 days, guarantee a full 30-day period for submission of claims, expand the medical eligibility criteria to include strabismus and ptosis, and permit the program to participate in pilot projects to

determine the projected cost of expansion of services or medical conditions.

Stephen Seale, chief accountant III, has determined that there will be fiscal implications as a result of enforcing or administering the rule. The effect on state government for the first five-year period the sections will be in effect will be an estimated additional cost of $220,000 in 1986, $335,000 in 1987, $358,000 in 1988, $383,000 in 1989, and $411,000 in 1990. The effect on local government for the first five year period the sections will be in effect will be a possible reduction of costs for local governments who provide for the medical care of their constituents, but the amount will be insignificant. There will be no adverse economic effect on small businesses.

Mr. Seale also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the rule as proposed will be that the program will be able to provide more services to more children. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Janet S. Barkley-Booher, Chief, Crippled Children's Services Bureau, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Public comments will be received for 30 days after these proposed rules have been published in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4419c, §8, which provide the Texas Board of Health with the authority to adopt rules concerning the criteria and procedures used to select physicians and dentists to participate in the Crippled Children's Program.

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

Eligibility date—The effective date of eligibility for the program, which is:

(A) (No change.)

(B) the date of sevice if all written information to establish eligibility was received in the central office within **45** [30] days.

§37.83. Eligibility for Patient Services. In order for a person to be eligible for crippled children's services, the person has to meet the medical, financial, and related criteria in this section.

(1) Medical criteria.

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

(C) List of coverable conditions.

(i)-(xi) (No change.)

(xii) Neurofibromatosis; [and]

(xiii) severe burns; **and**

(xiv) **disorders of the eye—only strabismus and ptosis (see subparagraph (E)(viii) of this paragraph).**

(D) (No change.)

(E) List of conditions not covered. **Examples** of conditions not covered include:

(i)-(vii) (No change.)

(viii) ophthalmologic conditions, **except the conditions mentioned in subparagraph (C)(xiv) of this paragraph [including strabismus];**

(ix)-(xiv) (No change.)

(2) Financial criteria.

(A) Financial need. Financial need is established on the basis of family income and assets which are legally available to the family.

(i) Family income.

(I) The family income used to determine eligibility is the gross income **(or the adjusted gross income if self employed)** of those persons who have a legal obligation to provide for the applicant. **If the family income is above the allowed amount, the program will use the projected cost of treatment, based on the program's last fiscal year annual average cost by medical condition, as an additional factor for eligibility purposes. If the difference between the family's annual income and the allowable income is less than the cost of treatment for a year, the program will consider the person eligible.**

(II) Income includes earned wages, pensions or allotments, child support payments, alimony, or any monies received on a regular basis for family support purposes. Verification of income will be required as set out in §37.85(e) of this title (relating to Application Process). If the applicant is over the age of 18 and is determined to be in school, the applicant is considered to be a responsibility of the parent, guardian, or conservator; if an applicant is over the age of 18, is not in school and/or has been gainfully employed or is living independently, eligibility will be determined by the applicant's individual situation.

(III) In families whose gross income is inconsistent or irradic, the calculation may be based on a six-month average. If income is static, the most recent IRS 1040, with supporting documents, may be used. If there has been a radical change of income, that of 20% or more, the program will use the income for the most recent period, that is, one or two months since the change in circumstance, and project forward on that basis.

(ii)-(iii) (No change.)

(B) (No change.)

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

(7) Determination of eligibility.

(A) The final detemination of eligibility is made by the program using the information provided by Parts A and B of the application. The program may request verification of any information given to establish eligibility, but at a minimum will require that documentation of income and residency be submitted with Part A of the application. **If the family income is above the allowed amount, the program will use the projected cost of treatment, based on the program's last fiscal year annual average cost by medical condition as an additional factor for eligibility purposes. If the difference between the family's annual income and the allowable income is less than the cost of treatment for a year, the person will be considered eligible.**

(B)-(D) (No change.)

(E) At the time eligibility is established, an eligibility date will be determined and entered into the program record. The eligibility date assigned will be:

(i) (No change.)

(ii) the date of service if the program was notified of the need for an application to be made, and if all written information to establish eligibility was received within **45** [30] days of the date of service.

(8) (No change.)

§37.84. Services Provided to **Patients** *[Patient].* The program provides no direct services but utilizes a reimbursement process through authorization of services rendered by approved and other participating providers. The patient should receive services as close to the home community as possible except in those situations where program contracts or policies require treatment at specific facilities or specialty centers.

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

(3) Program coverage. To be eligible for program coverage a person must meet all eligibility requirements of the program and be at or below the percentage of the federal poverty guidelines in effect for the program according to income priority levels. **If family income is overscale, the program will consider the annual cost of treatment as an eligibility factor based on the program's past fiscal year's average cost by medical condition.** Coverage may be limited or restricted if necessary to remain within available funding. The program will notify patients and providers of the extent of coverage when eligibility is determined and when authorization is requested.

(4) (No change.)

(5) Pilot projects. The program may initiate and participate in pilot projects to determine the fiscal impact of the expansion of medical conditions or the types of services provided. Such projects would be possible only if funds are available in the current fiscal year and would be limited to no more than 10% of the fiscal year appropriation. The basis for projects would be to provide the board and the legislature with cost data on the projected expense of program expansion.

§37.85. Application Process.

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

(d) Emergency situtations. Emergency situations are treated as any other request and notification must be received within five working days of emergency care. The program will require the following specific information: the nature of the emergency; diagnosis; services being requested; name

and address of facility; name and address of physician; name, current address, and date of birth of patient/applicant; name, address, and telephone of parents if patient/applicant is a minor. Eligibility must be established before any payment for services can be made; the program must receive a complete application (Part A & Part B) no later than **45** [30] days after the date of service was initiated. Failure to comply with this **45-day** [30-day] deadline will forfeit the provider's and patient's/applicant's right to any claim for payment.

(e)-(h) (No change.)

§37.86. Authorization of Services.

(a) Types of authorization.

(1) (No change.)

(2) Conditional authorization.

(A) (No change.)

(B) Notification of conditional authorization will be provided in writing to providers and parents with the understanding that the authorization will be honored by the program only if all information needed to establish or confirm eligibility or information to justify the need for a service is received in by the program within **45** [30] days of the date the service was initiated, and if **all** conditions of eligibility are met. The notification letter will include those items needed by the program to remove the conditional status. If the information is received within the time allowed, a voucher will be issued to the provider. Conditional authorizations will be cancelled after the **45-day** [30-day] deadline if the information is not received. If the information is not received within the **45-day** [30-day] limit and the child is later determined eligible for the program, the provider(s) must request authorization of services within five days of the date of service.

(3) (No change.)

(b)-(g) (No change.)

§37.93. Payment of Services. No payment will be made for services not authorized by the program except as indicated in paragraph (8) of this section. Payment for any service authorized by the program may be made only after the delivery of the service. If a service has been authorized by the program for payment, the family must not be billed for the service or be required to make a pre-admission or pre-treatment payment or deposit. Providers and facilities must agree to accept established fees as payment in full although such fees may be below usual and customary charges.

(1) Claims payment, denial, rejection. All payments made in behalf of a recipient will be for claims received by the program within 90 days of the date of service, or the latter date shown on the preprinted program voucher (90-day filing deadline), and/or within the submission deadlines listed in subparagraphs (B)-(C) of this paragraph, **or as stated in paragraph (6) of this section.** Claims will either be paid, denied, or rejected, generally within 60 days of receipt by the program.

(A)-(D) (No change.)

(2)-(5) (No change.)

(6) Ninety-day claims submission deadline. No claim may be considered for program payment if it reaches the central office later than 90 calendar days after the date of service, **or 30 days from the date the voucher was issued, whichever is later.** [except for] Claims involving third-party reimbursement, as provided in paragraph (1) of this section, **are an exception.**

(7)-(8) (No change.)

§37.97. Medical Eligibility Criteria. The department **adopts by reference** [will apply] the medical eligibility criteria **published by the department.** [as follows:] **A copy of the medical eligibility criteria is indexed and filed in the Bureau of Crippled Children's Services, Texas Department of Health, 1101 East Anderson Lane, Austin, Texas, and is available for public inspection during regular working hours.**

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601176 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption:
March 15, 1986
For further information, please call (512) 465-2680.

★ ★ ★

Chapter 133. Hospital Licensing Standards

★25 TAC §133.21

The Texas Department of Health proposes an amendment to §133.21, concerning hospital licensing standards, which is adopted by reference. The amendments to the standards will establish minimum operational requirements for existing hospital facilities. Specifically, the amendment covers fire prevention; hospital administration; medical staff; nursing personnel; laboratories; pharmacy; radiology; emergency service; dietary; waste and waste disposal; infection control; sterilization and sterile supplies; hazardous locations; handling and storage of gases, anesthetics, and flammable liquids; and linen and laundry service.

Stephen Seale, chief accountant III, has determined that there will be no fiscal implications for state or local government as a result of enforcing or administering the rule. There will be no adverse economic effect on small businesses.

Mr. Seale also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed will be updated operational requirements for those existing hospital facilities licensed under the Texas Hospital Licensing Law that are nonaccredited, non-Medicare certified. There will be no anticipated economic cost to individuals who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Gerald W. Guthrie, Director, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comments on this proposal will be accepted for 30 days after publication in the *Texas Register.*

The amendment is proposed under the Texas Civil Statutes, Article 4437f, §5, which provide the Texas Board of Health with the authority to adopt minimum standards for staffing by physicians and nurses, hospital services relating to patient care, and safety, fire prevention, and sanitary provisions of hospitals in Texas.

§133.21. Adoption By Reference.

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

(c) The Texas Department of Health adopts by reference Chapter 1 - "Existing Facilities, Operational Requirements," of the Department's publication entitled "Hospital Licensing Standards." Copies are available as stated in subsection (b) of this section.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601178 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Proposed date of adoption:
March 15, 1986
For further information, please call (512) 458-7531.

★ ★ ★

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 7. Corporate and Financial

Subchapter E. Admission Procedures for Foreign Insurance Companies

★28 TAC §7.504

The State Board of Insurance proposes amendments to §7.504, concerning a pro-

cedure for the disposition of foreign insurance company applications to do business in Texas. The board has determined that a commissioner's hearing prior to a decision on an application will be beneficial; a formal record containing the company's application with the recommendation of a hearings officer is the most appropriate way to determine these applications. Appeals to the board from commissioner's decisions will be in the usual manner as provided in the Insurance Code and the board's rules of practice and procedure.

R. B. Ashworth, corporate and financial deputy insurance commissioner, has determined that for the first five-year period the amendment will be in effect there will be fiscal implications to state government as a result of administering or enforcing the amendment. The State Board of Insurance is expected to incur some additional expense per application due to the hearing; this will be primarily in hearings officer and staff attorney time. It is expected that there will be additional staff time required in the amount of $150-$200 per application based on estimated average time spent by attorneys, hearings officers, and other personnel. There will be little or no additional expense expected for admissions examiner time. The usual expense of an application will be less than the amount stated. However, the expense will increase significantly in the case of an appealed decision. The cost specified is an average. The yearly cost for the agency will depend on the number of applications. There are no other expected cost implications for state or local government.

There is an expected cost to foreign insurers which are applying to do business in Texas and which fit the definition of a small business. The cost will result from the expense of attending a hearing and any costs incidental thereto. The cost will vary for each company depending on the distance an applicant will travel and the nature of its particular application. A survey has indicated there will be no additional time incident to the disposition of the application. There is no expected difference in cost between large and small companies on a cost per hour of labor basis.

Mr. Ashworth also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be a more formal procedure where an application will be reviewed in a public forum open to all interested persons. The anticipated economic cost to individuals who are required to comply with the rule as proposed will be to foreign insurers wishing to be admitted to do business in Texas. The cost will result from the expense of attending a hearing and any costs incidental thereto. The cost will vary for each company depending on the distance traveled and the nature of the application. A survey indicates there will be no additional time incident to the disposition of an application.

Comments on the proposal may be submitted to R. B. Ashworth, Deputy Insurance Commissioner, Corporate and Financial, State Board of Insurance, 1110 San Jacinto, Austin, Texas 78701-1998.

The amendment is proposed under authority of the Insurance Code, Article 1.04, and Texas Civil Statutes, Article 6252-13a, §4, pursuant to which the board may enact procedural rules necessary for it to carry out its statutory function.

§7.504. Disposition of Applications.

(a) The commissioner shall appoint an admissions examiner to review applications for admission. After **all documents necessary to complete the application have been filed and reviewed** [review], the admissions examiner shall **cause a hearing to be set on the commissioner's hearings docket for determination of the application** [forward his recommendation in writing to the commissioner].

(b) **Subsequent to the hearing** [Upon receiving the admissions examiner's recommendation], the commissioner shall enter an order approving or disapproving the application.

(c) The commissioner's order may be appealed to the board as provided in **the rules of practice and procedure and** the Insurance Code, Article 1.04(d). [The board will review the application as a pure trial de novo proceeding as if there had been no intervening action by the commissioner. Evidence of the commissioner's action may be admitted for the sole purpose of establishing jurisdiction in the board.]

(d) (No change.)

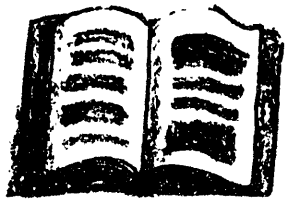
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on January 30, 1986.

TRD-8601138 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 463-6327.

★ ★ ★



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter G. Cigarette Tax

★34 TAC §3.102

The Comptroller of Public Accounts proposes an amendment to §3.102, concerning cigarette permits for trucks and cars. The amendment implements Senate Bill 472, 69th Legislature, 1985, which repealed provisions concerning solicitors' permits.

Dale Craymer, director of revenue estimating, has determined that for the first five-year period the proposed amendment will be in effect the fiscal implications for state or local government as a result of enforcing or administering the amendment are those shown in the fiscal note for the bill. This amendment is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the deletion of an obsolete provision, so that the comptroller's rules will reflect only current law. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Joe Greco, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the cigarette tax.

§3.102. Cigarette Permits for Trucks and Cars.

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

(c) Each cigarette manufacturer's sales representatives shall be required to purchase [a solicitor's permit and] a wholesale dealer's permit for each manufacturer's vehicle operated.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601164 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.104

The Comptroller of Public Accounts proposes an amendment to §3.104, concerning transfer and correction of permits. The amendments implement Senate Bill 472, 69th Legislature, 1985, which repealed provisions concerning solicitors' permits, retail dealers' permits and vending machine decal permits.

Dale Craymer, director of revenue estimating, has determined that for the first five-year period the proposed amendment will be in effect the fiscal implications for state or local government as a result of enforcing or administering the amendment are those shown in the fiscal note for the bill. This amendment is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the deletion of an obsolete rule, so that the comptroller's rules will reflect only current law. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Joe Greco, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the cigarette tax.

§3.104. Transfer and Correction of Permits.

(a) (No change.)

(1) Proprietorship.

(A) If an individual sells his business to another individual, partnership, or corporation.

(B) If an individual brings a person(s) into his business to form a partnership.

(C) If an individual acts with other persons to incorporate their business.

(2) Partnership.

(A) If the partnership sells the business to an individual, another partnership, or a corporation.

(B) If the partnership dissolves leaving only one of the original partners to operate the business under a proprietorship.

(C) If the partners act together or with others to incorporate their business.

(3) Corporation.

(A) If the corporation legally dissolves.

(B) If a corporation dissolves by merger.

[(b) Vending machine decal permits (retail dealer).

[(1) Each machine shall be a separate place of business.

[(2) Vending machines may be moved from one location to another so long as the decal permit remains on the machine it was issued for.

[(3) Decal permits can not be transferred from one machine to another when a machine is destroyed by fire or mechanical failure.

[(4) New decal permits must be purchased if the ownership status of the vending machine changes.]

(b)[(c)] Vehicle permits (wholesale dealer[, retail dealer]).

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

[(d) Solicitor permits.

[(1) Solicitor permits are issued only to manufacturer representatives engaged in soliciting and promoting the sales of cigarettes for a particular manufacturer.

[(2) Solicitor permits are issued in the entity name of manufacturer represented but shall also show the name of the individual solicitor as the business trade name.

[(3) The solicitor permit must be carried on the person of the individual sector at any time the individual is representing a manufacturer.

[(4) Solicitor permits may not be transferred from one individual to another or from one manufacturer to another, except where the manufacturer changes an entity name without changing ownership status.

[(5) A new solicitor permit must be purchased if the ownership status of the manufacturer changes.

[(6) Separate solicitor permits shall be required if an individual acts as a solicitor for more than one manufacturer.]

(c)[(e)] Fixed location permits (distributing agent, distributor, wholesale dealer[, retail dealer]).

(1)-(5) (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 February 3, 1986.

TRD-8601163 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.105

(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 Comptroller of Public Accounts, P.O. Box 13528, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.105 concerning cigarette vending machines. The Tax Code provisions concerning cigarette vending machine decal permits were repealed by Senate Bill 472, 69th Legislature, 1985 and this section is no longer necessary.

Dale Craymer, director of revenue estimating, has determined that for the first five-year period the proposed repeal will be in effect the fiscal implications for state or local government as a result of enforcing or administering the repeal are those shown in the fiscal note for the bill. This repeal is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the deletion of an obsolete rule, so that the comptroller's rules will reflect only current law. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Joe Creco, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the cigarette tax.

§3.105. Cigarette Vending Machines.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601161 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 463-4606.

★ ★ ★

Subchapter H. Cigar and Tobacco Tax

★34 TAC §3.122

The Comptroller of Public Accounts proposes an amendment to §3.122, concerning permits required for vehicles. This amendment implements Senate Bill 472, 69th Legislature, 1985, which amends provisions concerning solicitors' permits.

Dale Craymer, director of revenue estimating, has determined that for the first five-year period the proposed amendment will be in effect the fiscal implications for state or local government as a result of

enforcing or administering the amendment are those shown in the fiscal note for the bill. This amendment is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the deletion of an obsolete rule, so that the comptroller's rules will reflect only current law. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Joe Greco, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the cigar and tobacco tax.

§3.122. Permits Required for Vehicles.

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

(c) Each cigar or tobacco manufacturer's sales representative shall be required to purchase [a solicitor's permit and] a wholesale dealer's permit for each manufacturer's vehicle operated.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601167 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.124

The Comptroller of Public Accounts proposes an amendment to §3.124, concerning transfer and correction of permits. The amendment implements Senate Bill 472, 69th Legislature, 1985, which repealed provisions concerning solicitors' permits, retail dealers' permits, and vending machine decal permits

Dale Craymer, director of revenue estimating, has determined that for the first five-year period the proposed amendment will be in effect the fiscal implications for state or local government as a result of enforcing or administering the amendment are those shown in the fiscal note for the bill. This amendment is promulgated under the Tax Code, Title 2. and no statement of the fiscal implications for small businesses is required.

Mr. Craymer also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the deletion of obsolete provisions, so that the comptroller's rules will reflect only current law. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to Joe Greco, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the cigar and tobacco tax.

§3.124. Transfer and Correction of Permits.

(a) (No change.)

(1) Proprietorship.

(A) If an individual sells his business to another individual, partnership, or corporation.

(B) If an individual brings a person(s) into his business to form a partnership.

(C) If an individual acts with other persons to incorporate their business.

(2) Partnership.

(A) If the partnership sells the business to an individual, another partnership, or a corporation.

(B) If the partnership dissolves leaving only one of the original partners to operate the business under a proprietorship.

(C) If the partners act together or with others to incorporate their business.

(3) Corporation.

(A) If the corporation legally dissolves.

(B) If a corporation dissolves by merger.

[(b) Vending machine decal permits (retail dealer).

[(1) Each vending machine shall be a separate place of business.

[(2) Vending machines may be moved from one location to another as long as the decal permit remains on the machine it was issued for.

[(3) Decal permits can not be transferred from one machine to another when a machine is destroyed by fire or mechanical failure.

[(4) New decal permits must be purchased if the ownership status of the vending machine changes.]

(b)[(c)] Vehicle permits (wholesale dealer[, retail dealer]).

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

[(d) Solicitor permits.

[(1) Solicitor permits are issued only to manufacturer representatives engaged in soliciting and promoting the sales of cigar and tobacco products for a particular manufacturer.

[(2) Solicitor permits are issued in the entity name of manufacturer represented but shall also show the name of the individual solicitor as business trade name.

[(3) The solicitor permit must be carried on the person of the individual solicitor at any time the individual is representing a manufacturer.

[(4) Solicitor permits may not be transferred from one individual to another or from one manufacturer to another, except where the manufacturer changes an entity name without changing ownership status.

[(5) A new solicitor permit must be purchased if the ownership status of the manufacturer changes.

[(6) Separate solicitor permits shall be required if an individual acts as a solicitor for more than one manufacturer.]

(c)[(e)] Fixed location permits (distributing agent, distributor, wholesale dealer[, retail dealer]).

(1)-(5) (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 February 3, 1986.

TRD-8601166 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §3.125

(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 Comptroller of Public Accounts, P.O. Box 13528, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Comptroller of Public Accounts proposes the repeal of §3.125, concerning cigar and tobacco vending machines. The Tax Code provisions concerning cigar and tobacco products vending machine decal permits were repealed by Senate Bill 472, 69th Legislature, 1985, and this section is no longer necessary.

Dale Craymer, director of revenue estimating, has determined that for the first five-year period the proposed repeal will be in effect the fiscal implications for state or local government as a result of enforcing or administering the repeal are those shown in the fiscal note for the bill. The repeal is promulgated under the Tax Code, Title 2, and no statement of the fiscal implications for small businesses is required.

Mr. Craymer also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the deletion of an obsolete rule, so that the comptroller's rules will reflect only current law. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to Joe Greco, Director, Tax Administration, P.O. Box 13528, Austin, Texas 78711.

This repeal is proposed under Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the cigar and tobacco tax.

§3.125. Cigar and Tobacco Vending Machines.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601162 Bob Bullock
Comptroller of Public Accounts

Earliest possible date of adoption: March 10, 1986
For further information, please call (512) 463-4606.

★ ★ ★

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

Chapter 23. Vehicle Inspection

Parameter Vehicle Emission Inspection and Maintenance Program

★37 TAC §23.91

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

The Texas Department of Public Safety proposes amendments to §23.91, concerning vehicle emission inspection. The amendment provides for the inspection of passenger cars and light-duty trucks, registered in Dallas, El Paso, Harris, or Tarrant Counties, which have been converted to dual-fuel systems allowing the vehicle to run on either gasoline (or gasohol) or liquefied petroleum gas (LPG) or natural gas (NG). The amendment adopts a list of conversion systems deemed to be in compliance with federal and state law.

Melvin C. Peeples, Chief Accountant III, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state government. Significant repair or replacement costs may result to local governments in the affected counties whose dual-fuel vehicles do not meet the requirements of the Parameter Vehicle Emission Inspection and Maintenance Program. The cost of compliance for small businesses will be that no fiscal implications will occur for vehicle inspection stations, regardless of size. Significant repair or replacement costs may result to businesses, regardless of size, whose dual-fuel vehicles do not meet the requirements of the parameter vehicle emission inspection and, maintenance program.

Joe White, inspector, has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the ability of persons operating dual-fuel vehicles to have those vehicles inspected as required by law. An additional public benefit is the reduction of emissions of hydrocarbons and other pollutants from mobile sources that will result because of the increased number of emissions control systems operating properly, and the reduction in long-term repair costs caused by misfueling. The anticipated economic cost to individuals who are required to comply with the rule as proposed is intermediate. Significant repair or replacement costs may result to individuals whose vehicles do not meet the requirements of the Parameter Vehicle Emission Inspection and Maintenance Program.

Comments on the proposal may be submitted to John C. West, Jr., Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773, (512) 465-2000.

The amendment is proposed under Texas Civil Statutes, Article 6701d, §141(c)(1) and §142(c)-(h), which provide the Public Safety Commission with the authority to establish a Parameter Vehicle Emission Inspection and Maintenance Program for vehicles registered in any county in this state which does not meet the National Ambient Air Quality Standards and for which the Texas Air Control Board has adopted a resolution requesting the Department of Public Safety to institute such a program. See also Attorney General Opinion, JM-138, dated March 16, 1984.

Issued in Austin, Texas, on January 30, 1986.

TRD-8601100 James B. Adams
Director
Texas Department of Public Safety

Earliest possible date of adoption: March 10, 1986
For further information, please call (512) 465-2000.

Part X. Texas Adult Probation Commission

Chapter 321. Fiscal

★37 TAC §321.8

The Texas Adult Probation Commission proposes an amendment to §321.8 concerning suspension of state aid. The amendment proposes procedures for the suspension of state aid to probation departments.

Edmond J. Peterson, director of fiscal services, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Peterson 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 that TAPC will have several options to insure that probation departments review spending patterns and insure efficient use of state funds. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to David Spencer, General Counsel, Texas Adult Probation Commission, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753.

The amendment is proposed under the Texas Code of Criminal Procedure, Article 42.121, §3.01, which provides the Texas Adult Probation Commission with the authority to promulgate reasonable rules.

§321.8. Fiscal.

(a)-(i) (No change.)

(j) Suspension of State Aid.

(1) The following are definitions for terms used in §321.8 of this title.

(A) Complaint means a written statement from a source outside the TAPC alleging that a department is not in compliance with one or more of these standards.

(B) Verified complaint means a complaint that has not been resolved after receiving TAPC staff evaluation, investigation, and action, and which contains allegations sufficient to raise an issue of suspension of state aid to the department.

(C) Noncompliance report means a report from the TAPC staff to the commission charging that a department is not in compliance with one or more of these standards, that the violation has not been resolved after staff investigation and action, and that the violation is sufficient to raise an issue of suspension of state aid to the department.

(2) The TAPC staff shall not present a complaint to the commission until the staff has verified the complaint by evaluating and investigating the allegations and taking action to resolve any violations of standards.

The TAPC staff shall not present a verified complaint or noncompliance report to the commission unless the staff has taken every reasonable action to resolve the matters raised by the allegations and there remain unresolved violations that raise the issue suspension of state aid.

(3) Each verified complaint and violation report presented to the commission will be considered in an open meeting. The commission may decide that no action should be taken or may refer the matter to the TAPC staff for further action. If the commission decides that the noncompliance report or verified complaint contains allegations which, if true, would support a determination to suspend state aid to the department, then it will set the matter for a suspension hearing before the full commission. The suspension hearing may be at a regular meeting or at a special meeting called for that purpose in accordance with the Texas Code of Criminal Procedure, Article 42.121, §2.06(b). The meeting shall be open to the public.

(4) The department which is the subject of the verified complaint or noncompliance report shall be a party to the hearing. The department, the chief probation officer, and the district judge or district judges trying criminal cases in the judicial district shall be given at least 30 days notice of the suspension hearing. In all other respects the hearing shall be conducted in accordance with the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(5) If the evidence at the hearing fails to prove the allegations, the verified complaint or noncompliance report shall be dismissed. If the commission finds that the evidence proves the allegations it may:

(A) take no action;

(B) suspend state aid to the department permanently;

(C) suspend state aid to the department for a specific period of time;

(D) suspend state aid to the department until such time as the department has successfully completed such remedial action as the commission may direct it to take; or

(E) delay its decision to suspend state aid, conditioned on the department's successful completion of such remedial action as the commission shall direct it to take.

(6) If the commission suspends state aid to the department permanently, the department may not receive state aid again until it has submitted a new application and has satisfied the commission that it will comply with TAPC standards.

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 January 27, 1986.

TRD-8600970 David Spencer
General Counsel
Texas Adult Probation Commission

Earliest possible date of adoption:
February 28, 1986
For further information, please call (512) 834-8188.

★ ★ ★

Chapter 323. Program Funding

★37 TAC §323.2

The Texas Adult Probation Commission proposes an amendment to §323.2, concerning applications for program funding. The amendment changes the deadline for filing applications for program funding.

Edmond J. Peterson, director of fiscal services, has determined that for the first five-year period the proposed amendment will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the amendment.

Mr. Peterson also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment is that Texas Adult Probation Commission will have more time to review grants and determine that cost-effective measures are being used. There is no anticipated economic cost to individuals who are required to comply with the proposed amendment.

Comments on the proposal may be submitted to David Spencer, General Counsel, Texas Adult Probation Commission, 8100 Cameron Road, Suite 600, Building B, Austin, Texas 78753.

The amendment is proposed under the Texas Code of Criminal Procedure, Article 42.121, §3.01, which provides the Texas Adult Probation Commission with the authority to promulgate reasonable rules.

§323.2. Program Funding.

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

(d) Application deadlines. Application deadlines for program funding requests will be **60 days** [one month] before the appropriate commission meeting. Contact the Program Services Division of the Texas Adult Probation Commission.

(e)-(g) (No change.)

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

Issued in Austin, Texas, on January 27, 1986.

TRD-8600971 David Spencer
General Counsel
Texas Adult Probation Commission

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 834-8188.

★ ★ ★

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 39. Medical Transportation

Transportation Services for Indigent Cancer Patients

★40 TAC §39.1001, §39.1002

The Texas Department of Human Services proposes new §39.1001 and §39.1002 concerning the Transportation for Indigent Cancer Patients Program in its Medical Transportation chapter. Section 39.1001 concerns eligibility criteria for cancer patients (in Webb, Zapata, Starr, Jim Hogg, Hidalgo, Cameron, and Willacy Counties) who will have access to limited additional transportation services that are outside their communities and are provided by the department. Section 39.1002 concerns the right of the client to receive assistance from a transportation attendant.

In response to the Texas Cancer Council, the department's Office of Services to Aged and Disabled developed the Transportation for Indigent Cancer Patients Program to provide transportation services to indigent cancer patients who do not qualify for Medicaid benefits. Medical transportation services are not covered by private insurance or Medicare, except in an emergency. Medical transportation is already a covered Medicaid benefit for eligible clients, but there is no provision for individuals who cannot pay and do not qualify for Medicaid. The limited services the department will provide will be administered to eligible cancer patients according to this rule.

A demonstration transportation network, in the seven counties along the Rio Grande, was approved for reimbursement under the Texas Cancer Council Rules of 1985, §6. This network will provide intercounty/regional medical transportation services for indigent cancer patients from their residences and to and from regional or distant cancer referral institutions (including cancer facilities in the program area).

Implementation of the Transportation for Indigent Cancer Patients Program was sched-

uled for February 1, 1986. The department simultaneously adopts these new sections on an emergency basis in this issue of the *Texas Register.*

Clifton Martin, associate commissioner for programs, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local governments or small businesses as a result of enforcing or administering the rules.

Mr. Martin also has determined that for each year of the first five years the rules as proposed are in effect the public benefit will be increased benefits and services for indigent cancer patients. There is no economic cost to individuals required to comply with the rules as proposed.

Comments on the proposal may be sent to Cathy Rossberg, Administrator, Policy Development Support Division-037, Department of Human Services 153-E, P.O. Box 2960, Austin, Texas 78769, within 30 days of publication in the *Texas Register.*

The new sections are proposed under the Human Resources Code, Title 2, Chapters 22 and 32, which authorizes the department to administer public and medical assistance programs.

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 January 31, 1986.

TRD-8601134 Marlin W. Johnston
Commissioner
Texas Department of Human Services

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 450-3766.

★ ★ ★

Part IX. Texas Department on Aging

Chapter 281. Public Hearing Procedures for TDOA and AAA's

Statutes and Regulations

★40 TAC §§281.1-281.15

The Texas Department on Aging proposes new §§281.1-281.15, concerning public hearing procedures for Title III program. These sections establish a standard for all public hearings on programs to be administered by area agencies on aging and the Texas Department on Aging of programs for the elderly of Texas, authorized by the Older Americans Act, as amended.

Russell Gregorczyk, director for fiscal management, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Tim Shank, deputy executive director, Texas Department on Aging, also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be greater awareness of programs available for senior Texans and greater participation in the planning and development of these programs by the participation in the planning and development of these programs by the participants and providers of services under Title III of the Older Americans Act, as amended. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Edwin R. Floyd, Chief of Administrative Services, Texas Department on Aging, P.O. Box 12786, Austin, Texas 78711.

The new sections are proposed under the Human Resources Code, Chapter 101, which provides the Texas Department on Aging with the authority to adopt rules governing the function of the department.

§281.1. Title III, Older Americans Act, Public Hearing Procedures. This chapter outlines the procedures and standards on public hearings and will serve as a guide for use by the Texas Department on Aging, area agencies on aging, and local Title III service providers.

§281.2. Texas Department on Aging Responsibilities. The Texas Department on Aging will:

(1) conduct public hearings on the state plan at strategic geographic locations to ensure public input from the largest number of older persons, service providers, elected officials, and the general public;

(2) give adequate notice of the times, dates, and locations of the public hearings to older persons, service providers, elected officials, and the general public to give interested parties reasonable opportunity to have input;

(3) make public notices and news releases available in English and Spanish to increase the opportunity for input from older Texans of limited English-speaking ability;

(4) maintain a record, by registration of participants at the door of the public hearing, to document the number of persons attending the hearing in the following categories:

(A) the number of 60+ persons attending;

(B) number of persons speaking on behalf of agencies/organizations (service providers);

(C) number of elected officials; and

(D) the general public.

(5) insure that disabled persons have an opportunity to be heard by assuring access to the meeting place and microphones;

(6) assure than an interpreter is available to communicate through sign language the proceedings of the public hearing to the hearing impaired persons in attendance.

§281.3. Making Public Comment. The following procedures will be observed by individuals wishing to make public comment:

(1) persons who wish to make public comment must register to speak at the door of the public hearing;

(2) persons who wish to make a public comment should come to the microphone provided, if able, to insure their comments are heard;

(3) persons registered to speak will be recognized in the order in which they appear on the speaker's registration sheet, except as noted in paragraph 7 of this section;

(4) persons making comments will identify himself or herself and the agency/organization he or she represents;

(5) persons making comments should furnish the hearing officer with a copy of their testimony for the record;

(6) if a large number of persons wish to speak, a time period of five minutes per speaker may be established at the beginning of the hearing by the hearing officer;

(7) persons who are unable to stay the entire length of the hearingshould make arrangements with the hearing officer to be called upon to comment at the beginning of the hearing.

§281.4. Coordination Requirements. State plan public hearings will be coordinated between the Texas Department on Aging liaison staff and their assigned area agencies and include date(s), time(s), and place(s).

§281.5. Hearing Officers. Hearing officers for state plan hearings will be members of either or both the Texas Board on Aging or the State Citizens Advisory Council. If representatives from the board or the council are unable to participate, a staff member of the Texas Department on Aging will serve as the hearing officer.

§281.6. Use of Information. Information and input from the hearings will be used in the preparation of the state plan and the development of programs and policies for the biennium covered by the plan, as feasible, taking into consideration the available funding from the program period.

§281.7. Amendments to the State Plan. Hearings on amendments to the state plan will be conducted only when there is:

(1) a change in scope or services;

(2) new or revised federal or state statutes or regulations; or

(3) a material change in any law, organization, policy, or state agency operation.

§281.8. Area Agencies on Aging Responsibilities. Area agencies on aging will:

(1) conduct public hearings on the area plan at strategic geographic locations to ensure public input from the largest number of older persons, service providers, elected officials and the general public;

(2) give adequate notice of the time(s), date(s), and location(s) of the public hearings to older persons, service providers, elected officials, and the general public to give interested parties reasonable opportunity to participate;

(3) make public notices and news releases available in English and Spanish to increase the opportunity for input from older Texans of limited English-speaking ability;

(4) keep a record, by registration at the door of the public hearing, to document the number of persons attending the following categories;

(A) the number of 60+ persons attending;

(B) number of persons speaking on behalf of agencies/organizations (service providers);

(C) number of elected officials; and

(D) the general public.

(5) assure that facilities in which hearings are held are equipped in such a way that the mobility impaired have access to the hearing and an opportunity to speak;

(6) assure that an interpreter is available to communicate through sign language the proceedings of the public hearing to the hearing impaired.

§281.9. Public Comment Procedures. The procedure for making public comment or testimony is as follows:

(1) persons who wish to make public comment or testimony will register at the door of the public hearing and indicate as they register that they wish to speak;

(2) persons who wish to make public comment or testimony must come to the microphone provided, if able, to insure their comments are heard;

(3) persons making statements will make them in the order in which they signed the registration document, except as noted in paragraph 7 of this section;

(4) persons making statements will identify themselves and the agency/organization they represent;

(5) persons making a statement should furnish the hearing officer with a copy of their testimony for the record;

(6) if a large number of persons wish to speak, a time period of five minutes per speaker may be established at the beginning of the hearing by the hearing officer;

(7) persons who are unable to stay the entire length of the hearing should make arrangements with the hearing officer to be called upon to comment at the beginning of the hearing.

§281.10. Scheduling Public Hearings. Scheduling of the area plan public hearings should be coordinated ahead of time by area agency on aging staff members with subcontractors and local elected officials.

§281.11. Hearing Officer. The hearing officer for the area plan hearings will be the area agency on aging advisory council member(s) who represent the geographical area where the hearing is located. If the advisory council representative is unable to participate, the area agency on aging director or his or her designee will serve as the hearing officer.

§281.12. Use of Hearing Information. Information and input from the hearings will be used in the preparation of the area plan and the development of program priorities and policies for the biennium covered by that plan, as feasible, taking into consideration the available funding for that planning period.

§281.13. Hearings on Amendments. Hearings on amendments to the area plan will be conducted when there is:

(1) a change in scope of services;

(2) new or revised federal or state statutes or regulations; or

(3) a material change in any law, organization, policy or state agency operation.

§281.14. Hearings Required for Direct Services. Hearings will be conducted by area agencies prior to their request to provide direct services in their respective areas. The hearing procedures will be the same as listed in §281.13 of this title.

§281.15. Hearings Required for Waivers. Hearings will be conducted by area agencies prior to their request for a waiver for the provision of services in access, in-home, or legal services. The hearing procedure will be the same as listed in §281.13 of this title.

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 January 30, 1986.

TRD-8601101 O.P. (Bob) Bobbitt
Executive Director
Texas Department on Aging

Earliest possible date of adoption:
March 10, 1986
For further information, please call (512) 444-2727.

Withdrawn Rules

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

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 97. Communicable Diseases

Control of Communicable Diseases

★25 TAC §97.11

The Texas Department of Health has withdrawn from consideration for permanent adoption the proposed new §97.11, concerning acquired immune deficiency syndrome as a quarantinable disease. The text of the new section as proposed appeared in the December 20, 1985, issue of the *Texas Register* (10 TexReg 4887).

Issued in Austin, Texas, on February 3, 1986.

TRD-8601177 Robert A. MacLean
Deputy Commissioner
Texas Department of Health

Filed: February 3, 1986
For further information, please call (512) 458-7378.

★ ★ ★

Adopted Rules

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

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the rule 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 B. General

★7 TAC §3.21

The State Finance Commission adopts new §3.21, without changes to the proposed text published in the September 6, 1985, issue of the *Texas Register* (10 TexReg 3350).

Adoption of this new section is necessary because the public's response to viewing a vehicle bearing the banking department inscription, parked at or near a state-chartered bank, occasionally results in deposits being withdrawn. The elimination of the identification inscription would allow the department to continue to fulfill its mandate to regulate and examine state-chartered banks, without causing undue alarm to depositors.

The banking department will not be required to place an identifying inscription on all department-owned vehicles.

No comments were received regarding adoption of the new section.

This section is adopted under Texas Civil Statutes, Article 342-113, which provide the State Finance Commission with the authority to adopt rules not inconsistent with the constitution and statutes of the state, and under Article 6701m-1, which requires the adoption for purposes of exempting vehicles from identification.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601047 Jorge A. Gutierrez
General Counsel
State Finance Commission

Effective date: February 20, 1986
Proposal publication date: September 6, 1985
For further information, please call (512) 475-4451.

★ ★ ★

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, and Liquidations

Organization Procedures

★7 TAC §91.211

The Credit Union Department adopts an amendment to §91.211, without changes to the proposed text published in the November 29, 1985, issue of the *Texas Register* (10 TexReg 4509).

The section is necessary to assure the continuation of a requirement that shares and deposits of Texas members being served by branch offices of out-of-state credit unions be insured in amounts comparable to amounts required for credit unions chartered pursuant to the Texas Credit Union Act.

The section will allow out-of-state credit unions to operate branch offices in Texas, provided the related savings of members in such branch offices are insured in a manner comparable to insurance provided to members of Texas credit unions.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Texas Civil Statutes, Article 2461, §11.07, which provides the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601105 John R. Hale
Commissioner
Credit Union Department

Effective date: February 21, 1986
Proposal publication date: November 29, 1985
For further information, please call (512) 837-9236.

Investments

★7 TAC §91.802

The Credit Union Department adopts new §91.802, without changes to the proposed text published in the November 12, 1985, issue of the *Texas Register* (10 TexReg 4343).

The rule will satisfy the need to specify authorized investments available for surplus funds and provide credit union board of directors with guidance in developing written policies for the investments of surplus funds.

No comments were receiving regarding the adoption of this section.

This new section is adopted under Texas Civil Statutes, Article 2461, §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of this Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601067 John R. Hale
Commissioner
Credit Union Department

Effective date: February 20, 1986
Proposal publication date: December 13, 1985
For further information, please call (512) 837-9236.

★ ★ ★

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

★16 TAC §3.1

The Railroad Commission of Texas adopts an amendment to §3.1, with changes to the proposed text published in the October 1, 1985, issue of the *Texas Register* (10 TexReg 3792).

The amendment implements recent legislation which provides the Railroad Commission with the authority to require entities under its jurisdiction to file information with the commission concerning their organization. The amendment also provides a tracking mechanism to ensure accurate addresses, to identify persons who may already have an organization plan filed in a different name, and to inform out-of-state entities through their resident agents.

The amendment requires the three primary officers, directors, and trustees of an entity to file driver's license numbers or, in lieu of a driver's license number, a Texas Department of Public Safety identification card or, in lieu of a Texas Department of Public Safety identification card, a full legal name. The name, street, and mailing address of the resident agent may be filed in lieu of the street addresses of the three primary officers, directors, and trustees. The amendment also requires a foreign or nonresident entity under the jurisdiction of the commission to file the name and address of its resident agent. Failure by the foreign or nonresident entity to maintain and designate a resident agent will render the organization report invalid. Further, failure by the entity to answer any subpoena, commission-to-take-deposition, or directive-to-appear-at-a-hearing served on such entity by or on behalf of the commission will render the organization report invalid. The amendment requires the entities to keep supporting documents as well as those documents required to be filed with the commission for two years, or longer if required by another commission rule.

Written comments on the amendment were received from at least three companies and/or individuals. In addition, a public hearing was called and attended by at least 17 individuals, most of whom represented companies listed following.

Several companies sought clarification as to what type of business is required to file an organization report with the commission. The language of the provision is revised to clarify who is required to file such a form.

Some associations do not want the commission to require officers, directors, and trustees of an entity to disclose their residential addresses. In response to the comments, the specific provision is revised to require that the three primary trustees, directors, and officers file a street address which is different than that of the entity or in lieu of filing a street address, the name and street address of the resident agent of the entity. This change allows these people the discretion to file the street address of their choice.

Some associations were concerned that the list of operations subject to the jurisdiction of the commission was not a complete list. The commission added a provision to the rule to inform persons that the commission intends to notify those persons who may be performing operations subject to the commission's jurisdiction which were not included on the list that such operations trigger the filing of an organization report.

One association did not want the rule to require that the organization report be on file until all obligations are fulfilled. The commission did not revise this provision because to delete this provision would circumbent the purpose of amending Statewide Rule 1, namely locating and identifying those persons who perform operations within the jurisdiction of the commission.

Several persons did not want the rule to require entities to file amended organization reports immediately upon a change in any information. The commission revised this language and set a 15-day period in which to file the amanded information.

Sun Pipeline commented against the amendment. Texas Independent Producers Royalty Owners Association; Cities Service; Texaco; O'Neill, Haase, and White; Amoco; Texas Mid-Continent Oil and Gas Association; Exxon; and Mobil commented, not expressing specific support or opposition.

The amendment is adopted under the Texas Natural Resources Code, §91.142, which provides the Railroad Commission with the authority to require entities under its jurisdiction to file information with the commission concerning their organization.

§3.1 Organization Name to be Filed and Records to be Kept.

(a) Filing Requirements.

(1) Any entity, including any person, firm, partnership, joint stock association, corporation, or other organization, domestic or foreign, operating wholly or partially within this state, acting as principal or agent for another, for the purpose of performing operations within the jurisdiction of the commission, including:

(A) drilling, operating, or producing any oil, gas, geothermal resource, brine mining injection, fluid injection, or oil and gas waste disposal well;

(B) transporting, reclaiming, treating, processing, or refining crude oil, gas and products, or geothermal resources and associated minerals;

(C) discharging, storing, handling, transporting, reclaiming, or disposing of oil and gas waste;

(D) operating gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance or repressurizing plants, or recycling plants;

(E) hauling salt water;

(F) recovering skim oil from a salt water disposal site;

(G) nominating crude oil;

(H) operating a directional survey company;

(I) cleaning a reserve pit;

(J) operating a pipeline;

(K) operating as a cementer approved for plugging wells; or

(L) operating an underground hydrocarbon or natural gas storage facility shall file an organization report with the commission prior to performing such operations. The commission will notify entities who perform operations not included in subparagraphs (A)-(L) of this paragraph of any additional activities subject to the jurisdiction of the commission which require the filing of the organization report. Such notification will make the provisions of this section applicable to such activities. Each entity must maintain a current organization report with the commission until all duties, obligations, and liabilities incurred pursuant to commission rules and to Subtitles A, B, and C, and Chapter 111 of Subtitle D of Title 3 and Chapter 191 of Title 5 of the Texas Natural Resources Code and the Texas Water Code Chapters 27 and 29, are fulfilled. The organization report must contain the name, street address, and mailing address of the entity and if applicable, the plan under which it was organized, the names, driver's license numbers, street addresses different than that of the entity and, if different than the mailing address of the entity, the mailing address of the three primary trustees, officers, and directors, of such entity, and the name and street and mailing address of the resident agent. The name and street address of a resident agent of the entity may be filed in lieu of the street addresses of the three primary trustees, officers and directors. If the officer, director, or trustee does not have a driver's license number, then such person shall file with the commission a Texas identification card number issued by the Texas Department of Public Safety. If the officer, director, or trustee does not have a Texas identification card, then such person shall file with the commission his or her full legal name.

(2) Any foreign or nonresident entity identified in paragraph (1) of this subsection shall designate and maintain a resident agent upon whom may be served any process, notice, or demand reuqired or permitted by law to be served upon such entity by or on behalf of the commission. Failure

of such entity to designate and maintain a resident agent will render the organization report invalid. (Reference order number 20-60, 617 effective January 1, 1971.)

(3) Failure by any entity identified in paragraph (1) of this subsection to answer any subpoena, commission-to-take-deposition, or directive-to-appear-at-a-hearing served upon such entity by or on behalf of the commission will render the organization report invalid.

(4) Each entity who is required to file an organization report is also required to file annually a current organization report according to the schedule assigned by the commission. Prior to the filing date, the commission will mail notification and information to each entity for update of the organization report file. Further, an organization report must be amended and filed upon any change in any information reported on the organization report during the annual period within 15 days of such change.

(b) Record requirements. All entities who perform operations which are within the jurisdiction of the commission shall keep books showing accurate records of the drilling, redrilling, or deepening of wells, the volumes of crude oil on hand at the end of each month, the volumes of oil, gas, and geothermal resources produced and disposed of, together with records of such information on leases or property sold or transferred, and other information as required by commission rules and regulations in connection with the performance of such operations, which books shall be kept open for the inspection of the commission or its representatives, and shall report such information as required by the commission to do so.

(c) Time frame. All such entities shall keep copies of records, forms, and documents which are required to be filed with the commission and shall keep supporting documents for a period of two years from the date of filing unless a longer period is required by another commission rule, and any such copies may be disposed of at the discretion of such entities after the original records, forms, and documents have been on file with the commission for two years, or longer if required by another commission rule. All records, forms, and documents required to be filed with the commission shall be filed in the same name exactly as it appears on the organization report.

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

Issued in Austin, Texas, on January 27, 1986.

TRD-8600962 Buddy Temple
Chairman
Jim Nugent
Commissioner
Mark Wallace
Commissioner
Railroad Commission of Texas

Effective date: February 22, 1986
Proposal publication date: October 1, 1985
For further information, please call (512) 463-7149.

★ ★ ★

★16 TAC §3.75

The Railroad Commission of Texas adopts new §3.75, with changes to the proposed text published in the July 30, 1985, issue of the *Texas Register* (10 TexReg 2455).

New §3.75 prevents the pollution of surface and subsurface water in the State of Texas from discharges of wastes and other substances and materials associated with the exploration, development, and production of oil, gas, or geothermal resources. The new section also contains provisions necessary for the commission to obtain approval to conduct the portion of the National Pollutant Discharge Elimination System (NPDES) Program applicable to such discharges.

New §3.75 becomes effective upon approval of the commission's NPDES Program by EPA. It requires permits for point source discharges of pollutants into surface waters of the state, and sets the standards and procedures for permit issuance, denial, modification, revocation and reissuance, and termination. The new section applies to operations and activities associated with the exploration, development, and production of oil, gas, or geothermal resources, including operations and activities associated with the drilling and operation of oil, gas, or geothermal resource wells; the operation of gasoline plants, natural gas or natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants; the construction and operation of underground natural gas storage facilities or underground hydrocarbon storage facilities; the storage, transportation, and reclamation of oil before it enters a refinery; and the storage and transportation of gas before it is used in a manufacturing process or as a fuel. Included in §3.75 are provisions for the issuance of general permits. A general permit would authorize a category of discharges within a designated geographic area. The commission anticipates that it will issue general permits for the bulk of the discharges to which §3.75 applies.

In addition to some nonsubstantive editorial changes, the commission made some changes in §3.75 based upon comments received in writing or at the hearing held on August 29, 1985.

The commission received a number of comments questioning whether §3.75 allows the commission enough time to accomplish the anticipated general permitting before individual permit applications are due. Commenters suggested that individual permit applications not be required for discharges covered by a draft general permit, and that such discharges be authorized during the period during which the draft general permit is being reviewed.

As adopted, §3.75 requires existing dischargers other than storm water dischargers to submit individual permit applications within 18 months of the effective date of the section. (The application requirements for storm water dischargers are discussed in the following. The commission expects that it will have time to issue general permits for most categories of discharges under its jurisdiction within that 18-month period. The EPA has indicated that it will not be able to approve the commissions NPDES program if §3.75 sets the application deadline any later. Furthermore, the Clean Water Act and the federal NPDES regulations prohibit the point source discharge of pollutants without an NPDES permit. Therefore, §3.75 may not authorize discharges covered by a draft general permit.

Several comments were received asking for some relief from the application and permitting requirements of §3.75 for discharges that begin after the effective date of §3.75 but before an applicable general permit is issued, especially discharges that are currently authorized by 16 TAC §3.8(e). Section 3.75 requires that applications be submitted and permits be obtained before those discharges begin. The commenters asked for temporary authorization or expedited permitting for those discharges.

Section 3.75 may not authorize any discharge without a permit issued with all the conditions and under all the procedures required by federal NPDES regulations. However, §3.75 does allow the director to accept permit applications for new discharges sometimes less than 180 days before the discharge begins, when appropriate. This provision will expedite the permitting process to some extent. As for discharges previously authorized by §3.8 (e), the offshore general permit will probably be the first general permit issued by the commission.

Some commenters argued that any discharger with an EPA-issued NPDES permit should not have to submit an application under §3.75 until the EPA permit expires.

The commission rejects this argument for several reasons. First, the commission has no authority to enforce a permit issued by EPA. Second, EPA has indicated that the commission may not wait until an EPA permit expires to require a §3.75 permit application. Third, a provision recognizing EPA permits would be of little benefit because EPA has not issued permits for many discharges under the commission's jurisdiction.

Comments were made that the commission should allow the filing of copies of applications pending with EPA in satis-

faction of the §3.75 application requirement.

Section 3.75 does not provide for the filing of copies of applications pending with EPA, because the commission believes that the information on those applications would be outdated. Many of the applications currently pending with EPA were submitted several years past. Even those that were submitted to EPA recently will be outdated by the time applications are required to be submitted to the commission 18 months after the effective date of §3.75. To ensure that applications contain current and complete information, §3.75 requires the filing of new applications.

Several persons commented that the 180-day lead time required on applications for new discharges is too long for oil and gas operations.

The 180-day application period for new discharges is set by the federal regulations. However, in accordance with the federal regulations, §3.75 gives the director the discretion to accept applications less than 180 days before a discharge is proposed to commence, when appropriate.

The commission received several comments about the need for emergency or minor permit provisions or some other mechanism to address discharges that occur during upset conditions at facilities that are not ordinarily point sources.

These discharges are not exempt from the NPDES permit requirement, although they would not ordinarily be permitted because they are not anticipated. The Clean Water Act and the federal NPDES regulations make no provision for emergency or minor permits or any other exceptional procedure for these discharges. EPA has handled these situations by exercising discretion when deciding whether to take enforcement action. The commission will also have to exercise enforcement discretion in these situations.

Numerous comments were received concerning the provisions in §3.75 requiring permits for storm water discharges. The commenters noted that Congress is considering amendments to the Clean Water Act that would exempt storage water discharges by oil and gas operations from the NPDES permit requirement. Also, the EPA has proposed to amend the application requirements for storm water discharges. Some commenters suggested that the commission should postpone any storm water regulation under §3.75 until the proposed federal statutory and regulatory amendments are finalized. Other commenters argued that the §3.75 storm water requirements should at least be no more stringent than the current federal regulations. In particular, it was stated that §3.75 should recognize that there are two categories of storm water discharges in the federal regulations, one with relaxed application requirements. It was asserted that many oil and gas storm water discharges would fall in the category with relaxed application requirements. Comments were also made that §3.75 should exclude certain categories of storm water discharges, e.g. storm water discharges by natural gas compressor stations, from the permit requirement. It was also commented that the commission should commit in §3.75 to issue general permits for storm water discharges. Finally, comments were made that §3.75 should include a provision that would incorporate any future federal storm water exclusion or any future relaxed federal storm water requirements automatically.

To obtain approval of its NPDES program from the EPA, the commission must have storm water rules that are at least as stringent as the current EPA NPDES regulations. Therefore, the commission cannot postpone regulation of storm water discharges or exempt certain categories of storm water discharges that are currently covered by the federal regulations. However, given the current state of flux in the NPDES storm water program, the commission agrees that the storm water discharge application requirements in §3.75 should be no more stringent than the current federal application requirements. Therefore, changes are made in §3.75 to ensure that the application requirements for storm water discharges are no more stringent than the federal application requirements. As adopted, §3.75 categories storm water point sources into Group I and Group II. The commission now recognizes that some oil and gas storm water point sources may qualify as Group II storm water point sources. The commission has relaxed the application requirements for Group II storm water point sources consistent with the federal regulations. In addition, the commission has extended the application deadlines for existing storm water point sources consistent with the federal regulations. Finally, the commission has excluded storm water discharges from the requirement to give notice to downstream surface owners on the theory that such notice is not required in the federal regulations.

Regarding the comment that the commission should commit in §3.75 to issue general permits for storm water discharges, it would be inappropriate for the commission to make such a commitment in this procedural rule. This rule sets out the circumstances under which the commission may issue a general permit. The commission will consider the applicability of the general permitting procedure to particular categories of discharges on a case-by-case basis. However, the commission does intend to issue general permits whenever appropriate. Furthermore, the commission agrees that general permits are the only feasible means of permitting most oil and gas storm water point sources.

At this time, the commission cannot adopt any future federal storm water exclusion or any future relaxation of federal storm water requirements. Instead, the commission will have to follow the rulemaking procedures of the Administrative Procedure and Texas Register Act at the appropriate time.

Some commenters objected to the prohibition on discharges of pollutants other than sewage into publicly owned treatment works (POTWs). The commenters could cite no examples of such discharges in the State of Texas, but urged the commission to take a less restrictive approach in regulating discharges to POTWs. They stated that the commission should not involve itself in regulating discharges to facilities regulated by other agencies. A similar statement was made with regard to discharges to privately owned treatment works regulated by the Texas Water Commission.

The commission has not deleted the prohibition. The alternative would be to participate with the Texas Water Commission and the POTWs in the development of a pre-treatment program for such discharges, or to decline to regulate such discharges altogether. In the absence of any evidence that there are any such discharges in the State of Texas, the commission believes that the development of a pretreatment program would be a waste of state resources. However, the commission cannot abdicate its statutory responsibility to regulate such discharges. Therefore, the prohibition stands. Should it become apparent that such discharges do exist, the commission remains amenable to considering this issue further.

With regard to the comment about discharges to privately owned treatment works regulated by the Texas Water Commission, again the commission cannot abdicate its responsibility to regulate such discharges. However, §3.75 does not require a permit for such discharges provided that the treatment works and the Texas Water Commission do not object to the discharge.

Some commenters noted that there is some question whether the EPA will delegate the NPDES program to the State of Texas in the portion of the Gulf of Mexico between three miles and three leagues from the coast. They expressed their opposition to dual federal state permitting in that zone.

Section 3.75 requires permits for discharges to waters of the Gulf of Mexico out to the three-league boundary of the State of Texas. The commission intends to apply to the EPA to administer the NPDES program out to the state boundary. In the event that the commissions NPDES program is approved only to the three-mile line, the commission will consider ways to ameliorate the burden of dual permitting in the three-mile to three-league zone.

Several persons commented generally that the application requirements in §3.75 should be no more stringent than the requirements in the federal NPDES regulations. Specifically, objections were made to the requirement of §3.75(f)(5)(F)*(ii)* that applicants submit quantitative data on the pollutants listed in 40 Code of Federal Regulations Part 122, Appendix D, Table III (metals, cyanide, and total phenols) regardless of whether they know or have reason to believe that the pollutants are discharged.

Proposed §3.75 contained application requirements generally consistent with the federal application requirements. Where proposed §3.75 required more information from storm water dischargers than the current federal regulations, the section is changed to relax the application requirements to the extent allowed by the federal regulations. However, for other types of discharges, the commission has decided to retain the testing requirement for Table III pollutants in its proposed form. The commission has begun to require testing for these pollutants in applications for produced water discharge permits under 16 TAC §3.8, and sees no reason to discontinue the practice. The commission needs the information to adequately assess §3.75 permit applications.

A couple of commenters pointed out that the application requirement that appears in §3.75(f)(5)(H) has been deleted from the federal regulations because the information requested is so difficult to predict and is not essential. The commission has deleted this provision from §3.75 for the same reasons.

One commenter objected to the mention of subsurface water in the general standard for permit issuance in §3.75(d)(1). The commission has the statutory obligation to protect both surface and subsurface water from pollution. The commission must therefore consider the effects of discharges to surface waters on subsurface waters.

One commenter argued that the transfer of a general permit should be essentially automatic. The concept of a permit transfer is not readily applicable to a general permit. The transfer provision of §3.75 was intended to address individual permits only. The language of the transfer provision is changed to reflect that intention. The actions that must be taken by a discharger to be covered by a general permit will be addressed in the general permit itself.

The commission received a couple of comments on the inspection provision of §3.75(h)(9). One commenter noted that the provision requires a permittee to allow any member or employee of the commission to conduct an inspection. The commenter requested that the term "employee" be limited to exclude independent contractors. Another commenter contended that inspections should be conducted only at reasonable times.

The commission disagrees that the inspection provision of §3.75(h)(9) should be modified. The commission's statutory authority to inspect is set out in the Texas Natural Resources Code, §91.1012 and §141.013. The inspection provision of §3.75 is consistent with these statutory provisions both in terms of who may conduct the inspections and in terms of when inspections may be conducted. The commission needs to be able to inspect at all times in order to carry out its statutory duties.

The commission received a couple of comments on the bypass provision of §3.75(h)(14). One commenter stated that the definition of severe property damage in the bypass provision should cover the loss of productive capacity caused by the shutting in of an oil or gas well.

Another commenter objected to the requirement that anticipated bypasses be reported to both the district office and the Austin office.

The commission agrees that under some circumstances the loss of productive capacity caused by the shutting in of a well would justify the bypass of treatment facilities. For this reason, the statement in §3.75(h)(14) that such loss is not severe property damage is deleted. However, it should be noted that bypass is prohibited unless there is no feasible alternative. The commission believes that in most cases there would be feasible alternatives to a bypass. For example, the commission believes that disposal of produced water in a nearby disposal well is a feasible alternative to bypass at a tidal disposal facility.

Any report of an anticipated bypass will require a quick response from the commission. Therefore, the commission feels that it is necessary to require the report to be made to both the district office and the Austin office.

One commenter cautioned that that commission must follow proper notice and review procedures before incorporating any special conditions in a permit. The commenter also said that the commission should modify, revoke, and reissue or terminate a permit only after notice and good cause shown.

In response, the commission has added a provision inadvertently omitted in the proposal which provides an applicant the right to a hearing on a draft permit. The commission has also added a provision to specify that a permittee may request a hearing on a draft permit prepared when the director tentatively decides to modify, revoke, and reissue or terminate a permit.

In regard to the permit denial provision in subsection (k)(2), a comment was made that some limitation should be placed on the amount of time the director has to review and deny a permit application.

The commission disagrees that a time limit on the director's action should be included. No other commission pollution control rule contains such a time limit. The commission has and will continue to make every effort to act quickly on complete applications. The commission has no evidence that such a time limit is warranted.

One commenter stated that §3.75 should include procedures for treating certain information submitted to the commission as confidential. The commission has no procedures for treating information submitted to the commission confidentially. Commission policy is to treat any such information as a matter of public record.

Several commenters suggested that the effective date of §3.75 be stated in the body of the section. The commission does not consider such a statement to be necessary. The effective date is stated in the order adopting the rule.

A comment was made that §3.75 should establish some procedure whereby the commission would publish notice of changes in the federal NPDES regulations in the *Texas Register* and solicit comments about whether the commission should make corresponding changes in §3.75.

The commission disagrees that such a procedure is necessary. The *Federal Register* publication of amendments to the federal regulations will provide adequate public notice of the amendments. Any interested person may petition the commission to amend §3.75 in light of amendments to the federal regulations.

Several commenters argued that the duty to mitigate in §3.75(h)(4) should be limited to situations where there is a reasonable likelihood of harm to human health or the environment. The federal duty to mitigate provision contains that limitation.

The commission has left §3.75(h)(4) in its proposed form, which requires a permittee to take all reasonable steps to prevent or minimize any discharge in violation of the permit. The commission considers this approach to permit compliance to be good policy. Indeed, the legislature has endorsed this approach by requiring the commission to consider good faith in the assessment of administrative penalties. See, e.g., Texas Natural Resources Code, §81.0531(c).

Various comments were received from industry about provisions of §3.75 that are identical to provisions in the federal NPDES regulations that are required to be incorporated into state NPDES Programs. These comments will not be specifically discussed here because they are so numerous and because the commission cannot make the suggested changes without jeopardizing the approval of its NPDES program.

The EPA commented that the definition of publicly owned treatment works (POTW) in §3.75(a) is inconsistent with the federal definition of the term, in that the §3.75 definition requires that there is or may be a discharge of pollutants from the facility. The federal Pretreatment program covers industrial users of a POTW, regardless of whether there is a discharge of pollutants from the POTW.

In response to this comment, the commission has modified the definition of publicly owned treatment works. To be consistent in its terminology, the commission has also modified the definition of discharge to exclude the introduction of pollutants into a POTW. However, as discussed previously, the commission has retained the prohibition on the introduction of pollutants other than sewage into a POTW.

The EPA questioned whether some of the pits excluded from the definition of waters of the state in §3.75(a) are not included in the definition of waters of the U.S. in the federal NPDES regulations. If there is any doubt as to the status of the pits, the EPA commented that the exclusion should be appropriately qualified.

The commission has amended the definition of waters of the state to qualify the pit exclusion by referencing the corresponding waste treatment system exclusion in the federal regulations.

The EPA objected to the provision of proposed §3.75 that would temporarily exclude persons who are discharging under an existing state permit or authorization and persons who are discharging storm water from the permit requirement of §3.75(c)(1). The Clean Water Act prohibits discharges without an NPDES permit. State permits and authorizations cannot satisfy the NPDES permit requirement, even temporarily. The commission has deleted these exclusions from §3.75.

The EPA also objected to the language of §3.75(f)(2)(A) that requires permit applications no sooner than one year after the effective date of the section. The commission has deleted that language. Section 3.75(f)(2)(A) now requires persons who are discharging as of the effective date of the rule to submit permit applications within 18 months of the effective date of the rule.

The EPA requested clarification that the requirement in §3.75(i)(4) regarding 40 Code of Federal Regulations §122.45 covers the requirements of 40 Code of Federal Regulations §122.45(g) and (h).

The commission has reworded §3.75(i)(4) to clarify that these provisions are indeed addressed.

The EPA noted that references to Clean Water Act §302 (water quality related effluent limitations) should be included in §3.75(i)(4)(B) and (C). Those references have been included.

The EPA noted that the word "or" should be inserted after the text of §3.75(i)(7)(B), because best management practices are required if any one of the three conditions listed in §3.75 (i)(7) are met. The word is inserted.

The EPA noted that §3.75(k)(5)(c) should cite the notice requirements of 40 Code of Federal Regulations §124.57(a). The appropriate citation is added.

Names of those making comments on the rule. *Texas Mid-Continent Oil & Gas Association; *Gas Processor's Association; Texaco, Inc.; *Cities Service Oil and Gas Corporation; *Mobil Producing Texas & New Mexico, Inc.; *Amoco Production Company; *Texas Oil & Gas Corporation; *El Paso Natural Gas Company; *Exxon Corporation; *ARCO Resources Technology; *ARCO Transportation Company; *Conoco Inc.; North American Production Company.

*clearly expressed general support for the commission's effort to obtain approval to conduct an NPDES program. Although the EPA did not express specific support or opposition in its comments on this rule, the EPA has indicated its support of the commission's efforts to develop an NPDES program in other correspondence. Texas Independent Producers and Royalty Owners Association, Tennessee Gas Pipeline, and Phillips Petroleum commented, but did not express specific support or opposition.

This new section is adopted under the Texas Natural Resources Code, §91.101 and §141.012, which provides the commission with the authority to adopt rules to prevent the pollution of surface and subsurface water which might result from activities associated with the exploration, development, and production of oil, gas, or geothermal resources.

§3.75. Discharges to Waters of the State.

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

(1) Affected person—A person who, as a result of the discharge sought to be permitted, has suffered or may suffer actual injury or economic damage other than as a member of the general public.

(2) Best management practices (BMPs)—Schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the state, BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage, or leaks, sludge or waste disposal, or drainage from raw material storage.

(3) Commission—The Railroad Commission of Texas.

(4) CWA—The Clean Water Act (33 United States Code §1251 *et seq*).

(5) Director—The director of the oil and gas division or a staff delegate designated in writing by the director of the oil and gas division or the commission.

(6) Discharge or discharge of pollutants—Any addition of any pollutant or combination of pollutants from any point source to waters of the state. This definition includes indirect additions of pollutants to waters of the state through pipes, sewers, or other conveyances leading into privately owned treatment works. This definition does not include the introduction of Pollutants into a publicly owned treatment works.

(7) Effluent limitations—Restrictions imposed by the commission on discharge parameters, including quantities, discharge rates, and concentrations of pollutants.

(8) Effluent limitations guideline—A regulation adopted by the Environmental Protection Agency (EPA) under Clean Water Act, §304(b), to establish or revise effluent limitations for a class or category of point sources, and adopted by reference in subsection (m) of this section.

(9) EPA—The United States Environmental Protection Agency.

(10) General permit—A permit issued by the commission under subsection (e) of this section authorizing a category of discharges within a designated area.

(11) Group I storm water point source—Any storm water point source that is:

(A) subject to effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards; or

(B) located at an industrial plant or in plant associated areas. "Plant associated areas" means industrial plant yards, immediate access roads, drainage ponds, refuse piles, storage piles or areas, or material or products loading and unloading areas. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots.

(12) Group II storm water point source—Any storm water point source that is not a Group I storm water point source.

(13) Hazardous substance—Any substance designated by EPA as a hazardous substance in 40 Code of Federal Regulations §116.4.

(14) Major source—Any source classified as such by the commission, in conjunction with the regional administrator, based upon the size, nature, and location of the discharge and other relevant factors.

(15) New discharger—Any source, other than a new source, from which the discharge of pollutants did not begin at a particular site before August 13, 1979, and for which a permit authorizing discharges at that site has never been issued by EPA under the CWA, §402, or by the commission under this section. The term "new discharger" includes an existing mobile source, such as an existing mobile offshore oil and gas developmental drilling rig, that meets the criteria of this definition; however, it does not include an existing mobile offshore or coastal

oil and gas exploratory drilling rig or an existing mobile coastal oil and gas developmental drilling rig that meets those criteria, unless pollutants from such rig are being discharged in an area determined by the commission to be an area of biological concern. In determining whether an area is an area of biological concern, the commission shall consider the factors specified in 40 Code of Federal Regulations §125.122(a).

(16) New source—Any source the construction of which commences after EPA adopts new source performance standards that are applicable to such source, or after EPA proposes new source performance standards that are applicable to such source, but only if EPA adopts the standards within 120 days of their proposal. In determining whether a source is a new source, the commission shall consider the criteria specified in 40 Code of Federal Regulations §122.29(b).

(17) New source performance standards—Standards adopted by EPA under the CWA, §306, and adopted by reference in subsection (m) of this section.

(18) Permit—A written authorization issued by the commission under this section for the discharge of pollutants. "Permit" includes a general permit.

(19) Person—A natural person, corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(20) Point source—Any discernible, confined, and discrete conveyance, including any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft from which pollutants are or may be discharged. Point source includes a storm water point source.

(21) Pollutant—Any waste or other substance or material, including salt water, other mineralized water, sludge, drilling fluids, cuttings, completion fluids, and oil, that is associated with any operation or activity subject to regulation by the commission under the Texas Natural Resources Code, §91.101 or §141.012.

(22) Pollution—The alteration of the physical, thermal, chemical, or biological quality of, or the contamination of, any waters of the state or subsurface water that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property, or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(23) Privately owned treatment works—Any device or system, other than a publicly owned treatment works, which is used to treat wastes from any source whose operator is not the operator of the treatment works, and from which there is or may be a discharge of pollutants.

(24) Publicly owned treatment works—Any device or system which is owned by a state or municipality and used to treat municipal sewage or industrial wastes.

(25) Recommencing discharger—A source that recommences discharge after terminating operations.

(26) Regional administrator—The regional administrator of EPA Region VI, or his or her authorized representative.

(27) Schedule of compliance—A schedule of remedial measures, including a sequence of interim requirements, leading to compliance with this section.

(28) Sewage—Waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation, that is associated with an operation or activity subject to regulation by the commission under the Texas Natural Resources Code, §91.101 or §141.012.

(29) Source—Any building, structure, facility, or installation, including associated land, from which there is or may be a discharge of pollutants.

(30) Storm water point source—A conveyance or system of conveyances, including pipes, conduits, ditches, and channels, primarily used for collecting and conveying storm water runoff from sources subject to regulation by the commission under the Texas Natural Resources Code, §91.101 or §141.012.

(31) Subsurface water—Groundwater, percolating or otherwise.

(32) Water quality standards—Standards adopted by the Texas Water Commission pursuant to Texas Water Code, §26.023.

(33) Toxic pollutant—Any pollutant listed as toxic in 40 Code of Federal Regulations §401.15.

(34) Variance—A modification or waiver of generally applicable effluent limitation requirements or time deadlines of the CWA.

(35) Waters of the state—The Gulf of Mexico inside the territorial boundaries of the state, and all other bodies of surface water inside the territorial boundaries of the state that are "waters of the United States" as that term is defined in 40 Code of Federal Regulations §122.2, including bays, estuaries, lakes, rivers, streams (including intermittent streams), playa lakes, and wetlands. "Waters of the state" does not include pits authorized or permitted under §3.8 of this title (relating to Water Protection) to the extent such pits are covered by the waste treatment system exclusion in the definition of waters of the United States in 40 Code of Federal Regulations §122.2.

(36) Wetlands—Swamps, marshes, bogs, and other areas that are inundated or saturated by water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions.

(b) Prohibitions.

(1) Discharging without a permit. No person may discharge any pollutant from a point source into waters of the state without obtaining a permit from the commission under this section. This prohibition does not apply to any discharge that is:

(A) authorized by a general permit issued by the commission under subsection (e) of this section; or

(B) excluded under subsection (c) of this section.

(2) Falsifying documents and tampering with gauges. No person may knowingly make any false statement, representation, or certification in any application, report, record, or other document submitted or required to be maintained under this section or any permit issued pursuant to this section, or falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this section or any permit issued pursuant to this section.

(3) Indirect discharges. No person may introduce any pollutant other than sewage into a publicly owned treatment works.

(c) Exclusions. The following discharges do not require a permit under this section:

(1) any discharge of sewage from vessels, including laundry, shower, and galley sink wastes, or effluent from properly functioning marine engines, or any other discharge incidental to the normal operation of a vessel. This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard, nor to other discharges when the vessel is operating other than as a means of transportation, such as when used as or secured to a storage facility, or when secured to the bed of waters of the state for the purpose of oil or gas exploration or development;

(2) discharges through pipes, sewers, or other conveyances leading into a privately owned treatment works subject to regulation by the commission under this section, except as the commission may otherwise require under subsection (i)(9) of this section;

(3) discharges through pipes, sewers, or other conveyances leading into a privately owned treatment works subject to regulation by the Texas Water Commission, provided the owner or operator of the treatment works and the Texas Water Commission do not object to the discharge;

(4) discharges of dredged or fill material that are regulated by the United States Army Corps of Engineers under the CWA, §404;

(5) discharges in compliance with the instructions of an on-scene coordinator pursuant to 40 Code of Federal Regulations Part 300 (The National Oil and Hazardous Substances Pollution Plan) or 33 Code of Federal Regulations §153.10(e), (Pollution by Oil and Hazardous Substances).

(d) Standards for permit issuance.

(1) General standard. A permit may be issued only if the commission determines that the discharge will not result in the pollution of waters of the state or subsurface water.

(2) Permit conditions. All permits issued under this section will contain the conditions required by subsections (h) and (i) of this section, and all other conditions reasonably necessary to prevent the pollution of waters of the state and subsurface water.

(3) Prohibited permits. No permit may be issued when:

(A) the discharge will cause a violation of water quality standards. A new source or new discharger proposing to discharge into a water segment which has been classified as water quality limited in the State of Texas water quality inventory prepared pursuant to the CWA, §305(b), and for which the Texas Water Commission has performed a pollutants load allocation for the pollutant to be discharged, must demonstrate that:

(i) there are sufficient remaining pollutant load allocations to allow for the discharge; and

(ii) the existing dischargers into that segment are subject to compliance schedules designed to bring the segment into compliance with applicable water quality standards;

(B) the discharge would be inconsistent with a water quality management plan approved under the CWA, §208(b);

(C) the regional administrator has objected to issuance of the permit under 40 Code of Federal Regulations §123.44;

(D) the conditions of the permit do not provide for compliance with the applicable water quality requirements of all states whose waters would be affected by the discharge;

(E) the discharge would contain any radiological, chemical, or biological warfare agent or high-level radioactive waste;

(F) insufficient information exists to make a reasonable judgment whether the discharge complies with the ocean discharge criteria contained in 40 Code of Federal Regulations Part 125, Subpart M, if applicable;

(G) the United States Army Corps of Engineers has advised the commission in writing that the discharge would substantially impair anchorage or navigation in or on any of the waters of the United States. Review or appeal of a permit denial under this subparagraph shall be made through the applicable procedures of the corps of engineers.

(4) Conditions requested by other agencies.

(A) If the United States Army Corps of Engineers advises the commission in writing that the imposition of specified conditions upon the permit is necessary to avoid any substantial impairment of anchorage or navigation in or on any of the waters of the United States, the commission will include the specified conditions in the permit. Review or appeal of conditions specified by the corps of engineers shall be made through the applicable procedures of the corps of engineers.

(B) If a state or federal agency with jurisdiction over fish, wildlife, or public health advises the commission in writing that specific conditions need to be imposed upon the permit to avoid substantial impairment of fish, shellfish, or wildlife resources, the commission may include the specified conditions in the permit to the extent they are determined necessary to carry out the provisions of the CWA.

(e) General permits.

(1) Coverage. A general permit may be written to regulate, within an area corresponding to existing geographic or political boundaries, a category of point sources, including a category of storm water point sources, if the point sources all:

(A) involve the same or substantially similar types of operations;

(B) discharge the same types of wastes;

(C) require the same effluent limitations or operating conditions;

(D) require the same or similar monitoring; and

(E) in the commission's opinion, are more appropriately controlled under a general permit than under individual permits.

(2) Relation to individual permits.

(A) A general permit will not apply to any discharge authorized by an individual permit issued under this section.

(B) Any person excluded from the coverage of a general permit solely because the person already has an individual permit may request that the individual permit be revoked. Upon revocation of the individual permit, the general permit will apply.

(C) Any person covered by a general permit may request to be excluded from the coverage of the general permit by applying for an individual permit. A permit application, with reasons supporting the request for exclusion from the general permit, must be submitted to the commission within 90 days after publication of the final general permit in the *Texas Register*. If an individual permit is issued, the applicability of the general permit to the individual permittee will terminate automatically upon the effective date of the individual permit.

(3) Requiring an individual permit.

(A) The commission may require any person covered by a general permit to apply for and obtain an individual permit. Any interested person may petition the commission to take action under this subparagraph. Cases where an individual permit may be required include the following:

(i) the commission determines that the discharge is a significant contributor of pollution to waters of the state or subsurface water, considering the location, size, and nature of the discharge, and other relevant factors;

(ii) the discharger is not in compliance with the conditions of the general permit;

(iii) a change has occurred in the availability to the discharger of demonstrated technology or practices for the control or abatement of pollutants;

(iv) effluent limitations guidelines for point sources covered by the general permit are adopted by EPA and adopted by reference in subsection (m) of this section;

(v) a water quality management plan containing requirements applicable to the point source is approved under the CWA, §208(b); or

(vi) the requirements of paragraph (1) of this subsection are not met.

(B) If the commission decides to require a person covered by a general permit to obtain an individual permit, the commission will notify the person in writing that a permit application is required. The notice will include a brief statement of the reasons for the decision, an application form, and a statement setting a time for filing the application. The commission may extend the time for filing the application on request of the applicant. Upon the effective date of the individual permit, the applicability of the general permit to the individual permittee will terminate automatically.

(f) Permit application.

(1) Duty to apply. Except for persons whose discharges are excluded under subsection (c) of this section, or authorized by a general permit issued under subsection (e) of this section, any person who discharges or proposes to discharge pollutants from a point source into waters of the state, and who does not have a permit issued by the commission under this section, shall file a permit application with the commission in Austin within the time provided in paragraph (2) of this subsection. The applicant shall mail or deliver a copy of the application to the appropriate district office on the same day the application is mailed or delivered to the commission in Austin. A permit application shall be considered filed with the commission on the date it is received by the commission in Austin.

(2) Time to apply.

(A) Except for any person who is discharging storm water from a storm water point source, any person who is discharging as of the effective date of this section shall file a permit application within 18 months of the effective date of this section.

(B) Any person who is discharging storm water from a Group I storm water point source as of the effective date of this section shall file a Permit application by December 31, 1987. Any person who is discharging storm water from a Group II storm water point source as of the effective date of this section shall file a permit application by June 30, 1989.

(C) Any person proposing a new discharge shall file a permit application at least 180 days before the date on which the discharge is to commence, unless a later date has been authorized by the director.

(D) Any person who has obtained a permit under this section and who wishes to continue to discharge after the permit expires shall file an application for a new permit at least 180 days before the existing permit expires, except that:

(i) the director may extend the deadline for filing an application, but not later than the permit expiration date; and

(ii) the director may grant permission to submit the information required by paragraph (5)(F) and (G) of this subsection after the permit expiration date.

(3) Who applies. When a source is owned by one person but is operated by another person, it is the operator's duty to file an application for a permit.

(4) Application requirements for all applicants. All applicants shall submit the following information, using application forms supplied by the commission:

(A) the activities conducted by the applicant that require it to obtain a permit;

(B) name, mailing address, and location of the source for which the application is submitted;

(C) a brief description of the nature of the business;

(D) up to four standard industrial classification (SIC) codes that best reflect the principal products or services provided by the source;

(E) the operator's name, mailing address, telephone number, and status as federal, state, private, public, or other entity, and a statement indicating whether the operator is the owner of the source;

(F) a listing of all permits or construction approvals for the source received or applied for under any of the following programs:

(i) Hazardous Waste Management Program under the Resource Conservation and Recovery Act;

(ii) Underground Injection Control Program under the Safe Drinking Water Act;

(iii) National Pollutant Discharge Elimination System Program under the CWA;

(iv) Prevention of Significant Deterioration Program under the Clean Air Act;

(v) Nonattainment Program under the Clean Air Act;

(vi) National Emission Standards for Hazardous Pollutants Program under the Clean Air Act;

(vii) Ocean Dumping Program under the Marine Protection Research and Sanctuaries Act;

(viii) Dredge or Fill Program under the CWA, §404; or

(ix) other federal or state environmental programs;

(G) a topographic map, or other map if a topographic map is unavailable, extending one mile beyond the property boundaries of the source, depicting the source; each of its intake and discharge structures; each of its hazardous waste treatment, storage, or disposal facilities; each well where fluids from the source are injected underground; and those wells, springs, other surface water bodies, and drinking water wells listed in public records or otherwise known to the applicant in the map area. If the application is for a discharge of storm water from a Group II storm water point source, the applicant may submit, in lieu of the topographic map, a brief narrative description of the drainage area, the receiving water, and any treatment applied to the discharge. The description must include an estimate of the size of the drainage area;

(H) if the application is for a discharge into a watercourse, other than a discharge of storm water from a storm water point source, a map showing the surface ownership of the tracts of land between the discharge point and ½ mile downstream of the discharge point. On the map, or on a separate sheet attached to the map, the applicant shall list the names and addresses of the surface owners, as determined from the current county tax rolls or other reliable sources, and shall identify the source of the list. If the director determines that, after diligent efforts, the applicant has been unable to ascertain the name and address of one or more surface owners, the director may waive the requirements of this subparagraph with respect to those surface owners.

(5) Application requirements for existing dischargers. Except for an applicant for a permit to discharge storm water from a Group II storm water point source, any applicant who is discharging at the time of application for a permit shall submit the following additional information on application forms supplied by the commission:

(A) the latitude and longitude of each outfall location to the nearest 15 seconds and the name of the receiving water;

(B) a line drawing of the water flow through the source with a water balance, showing operations contributing wastewater to the effluent and treatment units. The water balance must show approximate average flows at intake and discharge points and between units. If a water balance cannot be determined, the applicant may provide instead a pictorial description of the nature and amount of any water sources and any collection and treatment measures;

(C) a narrative identification of each type of process, operation, or production area that contributes wastewater to the effluent for each outfall, including process wastewater, cooling water, and storm water runoff; the average flow that each process contributes; a description of the treatment that the wastewater receives, including the ultimate disposal of any solid or fluid wastes other than by discharge; and, if any of the discharges are intermittent or seasonal, a description of the frequency, duration, and flow rate of each discharge occurrence, except for storm water runoff, spillage, or leaks. Storm water dischargers may estimate the average flow of their discharge and must indicate the rainfall event and the method of estimation that the estimate is based on;

(D) if an effluent limitations guideline applies to the applicant and is expressed in terms of production or other measure of operation, a reasonable measure of the applicant's actual production reported in the units used in the applicable effluent limitations guideline and calculated in accordance with 40 Code of Federal Regulations §122.45(b)(2);

(E) a description of any present requirements or compliance schedules for construction, upgrading, or operation of waste treatment equipment, including a listing of the required and projected final compliance dates;

(F) information specified in this subparagraph on the discharge from each outfall. When quantitative data are required, the applicant must collect a sample of effluent and analyze it in accordance with methods approved under 40 Code of Federal Regulations Part 136. When no analytical method is approved, the applicant may use any suitable method but must provide a description of the method. When an applicant has two or more outfalls with substantially identical effluents, the director may allow the applicant to test only one outfall and report that the quantitative data also apply to the substantially identical outfalls. Grab samples must be used for pH, temperature, cyanide, total phenols, residual chlorine, oil and grease, and fecal coliform. For all other pollutants, 24-hour composite samples must be used. However, a minimum of one grab sample may be taken for effluents from holding ponds or other impoundments with a retention period greater than 24 hours. In addition, the director may waive composite sampling for any outfall for which the applicant demonstrates that the use of an automatic sampler is infeasible and that a representative sample of the effluent may be obtained by taking one grab sample in the first hour or less of discharge and one additional grab sample in each succeeding hour of discharge up to a minimum of four grab samples for discharges lasting four or more hours:

(i) each applicant must report quantitative data for the following pollutants and parameters: biochemical oxygen demand (BOD^5), chemical oxygen demand, total organic carbon, total suspended solids, ammonia (as N), temperature (summer and winter), pH, inorganic chlorides, and oil and grease. The director may waive the reporting requirements for individual point sources or for a class or category of point sources for one or more of these pollutants or parameters if the director determines that a waiver is appropriate because sufficient information to support issuance of a permit can be obtained with less stringent requirements;

(ii) except for an applicant for a permit to discharge storm water from a Group I storm water point source, each applicant must report quantitative data for each pollutant listed in 40 Code of Federal Regulations Part 122, Appendix D, Table III;

(iii) each applicant for a permit to discharge storm water from a Group I storm water point source must indicate whether it knows or has reason to believe that any of the pollutants listed in 40 Code of Federal Regulations Part 122, Appendix D, Table III is discharged. For every pollutant expected to be discharged in concentrations of 10 parts per billion (ppb) or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, the applicant must either report quantitative data or briefly describe the reasons that the pollutant is expected to be discharged;

(iv) each applicant must report quantitative data for each pollutant listed in 40 Code of Federal Regulations Part 122, Appendix D, Table IV, other than oil and grease, if the applicant knows or has reason to believe that the pollutant is discharged;

(v) each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in 40 Code of Federal Regulations Part 122, Appendix D, Table II is discharged. For every pollutant expected to be discharged in concentrations of 10 parts per billion (ppb) or greater, the applicant must report quantitative data. For every pollutant expected to be discharged in concentrations less than 10 ppb, the applicant must either report quantitative data or briefly describe the reasons that the pollutant is expected to be discharged;

(vi) each applicant must indicate whether it knows or has reason to believe that any of the pollutants listed in 40 Code of Federal Regulations Part 122, Appendix D, Table V are discharged. For every pollutant expected to be discharged, the applicant must briefly describe the reasons that the pollutant is expected to be discharged, and report any existing quantitative data for the pollutant;

(G) a listing of any pollutant that is listed as toxic in 40 Code of Federal Regulations §401.15, and that the applicant currently uses or manufactures as an intermediate or final product or by-product. The director may waive or modify this requirement for any applicant if the applicant demonstrates that it would be unduly burdensome to identify each toxic pollutant and the commission has adequate information to issue the permit;

(H) the identity of any biological toxicity tests that the applicant knows or has reason to believe have been made within the last three years on any of the discharges or on a receiving water in proximity to a discharge;

(I) if a contract laboratory or consulting firm performed any of the analyses required by subparagraph (F) of this paragraph, the identity of each laboratory or firm and the analyses performed.

(6) Additional information. The applicant shall submit any other information required on the application form supplied by the commission. In addition to the information reported on the application form, the applicant shall submit, at the director's request, any other information the commission may reasonably require to assess the discharges of the source and to determine whether to issue a permit. The director may request the information specified in paragraph (5) of this subsection from any applicant for a permit to discharge storm water from a Group II storm water point source who is discharging at the time of application.

(7) Best management practices program. The applicant must submit a BMP program as part of the application if necessary under 40 Code of Federal Regulations §125.102.

(g) Signatories to applications and reports.

(1) Applications generally. Except for an application for a permit to discharge storm water from a Group II storm water point source, all applications shall be signed as follows:

(A) for a corporation, by a responsible corporate officer. A responsible corporate officer means:

(i) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy-making or decision-making functions for the corporation; or

(ii) the manager of one or more manufacturing, production, or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25 million (in second-quarter 1980 dollars), if authority to sign such documents has been assigned or delegated to the manager in accordance with corporate procedures;

(B) for a partnership or sole proprietorship, by a general partner or the proprietor, respectively;

(C) for a municipality, state, federal, or other public agency, by either a principal executive officer or ranking elected official. A principal executive officer of a federal agency includes the chief executive officer of the agency or a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency.

(2) Reports and Group II storm water applications. All reports required by permits and other information requested by the commission and each application for a permit to discharge storm water from a Group II storm water point source shall be signed by a person described in paragraph (1) of this subsection or by a duly authorized representative of that person. A person is a duly authorized representative only if:

(A) an authorization is made in writing by a person described in paragraph (1) of this subsection;

(B) the authorization specifies an individual or position having responsibility for the overall operation of the regulated activity or an individual or position having overall responsibility for environmental matters for the company; and

(C) the authorization is submitted to the commission before or together with any report or information signed by the authorized representative.

(3) Certification. Any person signing a document under paragraph (1) or (2) of this subsection shall make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or who are directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information."

(h) Conditions applicable to all permits. The conditions specified in this subsection apply to all permits.

(1) Duty to comply. The permittee shall comply with all conditions of the permit. Any permit noncompliance is grounds for enforcement action, for permit termination, revocation and reissuance, or modification, or for denial of a permit renewal application. The permittee shall comply with effluent standards or prohibitions for toxic pollutants established by EPA under the CWA, §307(a), and adopted by reference in subsection (m) of this section within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate them.

(2) Duty to reapply. If the permittee wishes to continue a permitted activity after the expiration date of the permit, the permittee must apply for and obtain a new permit.

(3) Need to halt or reduce activity not a defense. It is not a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

(4) Duty to mitigate. The permittee shall take all reasonable steps to prevent or minimize any discharge in violation of the permit.

(5) Proper operation and maintenance. The permittee shall at all times prop-

erly operate and maintain all facilities and systems of treatment and control, and related appurtenances, that are installed or used by the permittee to achieve compliance with the conditions of the permit. Proper operation and maintenance includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the conditions of the permit.

(6) Permit actions. The permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

(7) Property rights. The permit does not convey any property rights of any sort, or any exclusive privilege.

(8) Duty to provide information. The permittee shall furnish to the commission, within a reasonable time, any information that the commission may request to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit, or to determine compliance with the permit. The permittee shall also furnish to the commission, upon request, copies of records required to be kept under the conditions of the permit.

(9) Inspection and entry. The permittee shall allow any member or employee of the commission, on proper identification, to:

(A) enter upon the permittee's premises where a regulated activity is conducted, or where records must be kept under the conditions of the permit;

(B) have access to and copy, during reasonable working hours, any records required to be kept under the conditions of the permit;

(C) inspect any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under the permit; and

(D) sample or monitor any substance or parameter for the purpose of assuring compliance with the permit or as otherwise authorized by the Texas Natural Resources Code, §91.1012 or §141.013.

(10) Monitoring and records.

(A) Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

(B) Monitoring must be conducted according to test procedures approved under 40 Code of Federal Regulations Part 136, unless other test procedures have been specified in the permit.

(C) The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, copies of all reports required by the permit, and records of all data used to complete the Permit application, for at least three years from the date of the sample, measurement, report, or application. This period may be extended by request of the commission at any time.

(D) Records of monitoring information must include the date, exact place, and time of the sampling or measurements; the individual(s) who performed the sampling or measurements; the date(s) analyses were performed; the individual(s) who performed the analyses; the analytical techniques or methods used; and the results of the analyses.

(11) Signatory requirement. All reports and other information submitted to the commission must be signed and certified in accordance with subsection (g) of this section.

(12) Reporting requirements.

(A) The permittee shall notify the commission as soon as possible of any planned physical alteration or addition to the source if the alteration or addition:

(i) may create a new source under the criteria specified in 40 Code of Federal Regulations §122.29(b); or

(ii) could significantly change the nature or increase the quantity of pollutants discharged, unless the pollutants are subject to effluent limitations in the permit or notification requirements under subparagraph (G) of this paragraph.

(B) The permittee shall give advance notice to the commission of any planned changes to the source that may result in noncompliance with permit requirements.

(C) Monitoring results shall be reported at the intervals specified in the permit on a discharge monitoring report (DMR) form prescribed by the commission. If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 40 Code of Federal Regulations Part 136 or specified in the permit, the results shall be included in the calculation and reporting of data in the DMR. Calculations for all limitations that require averaging of measurements must use an arithmetic mean unless the permit specifies otherwise.

(D) Reports of compliance or noncompliance with the requirements contained in any compliance schedule of the permit shall be submitted no later than 14 days after each scheduled date.

(E) The permittee shall report to the commission any noncompliance that may endanger health or the environment as follows.

(i) An oral report shall be made to the appropriate district office within 24 hours from the time the permittee becomes aware of the noncompliance. A written report shall also be filed with the appropriate district office and with the Austin office within five days of the time the permittee becomes aware of the noncompliance. The written report must contain the following information:

(I) a description of the noncompliance and its cause;

(II) the period of noncompliance, including exact dates and times, and, if the noncompliance has not been corrected, the anticipated time it is expected to continue; and

(III) steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(ii) Information that must be reported under this subparagraph includes the following:

(I) any unanticipated bypass that causes any effluent limitation in the permit to be exceeded;

(II) any upset; and

(III) any violation of a maximum daily discharge limitation specifically required by the permit to be reported within 24 hours.

(F) The permittee shall report any noncompliance not reported under subparagraphs (C)-(E) of this paragraph at the time monitoring reports are submitted. The report must contain the information listed in subparagraph (E)*(i)* of this paragraph.

(G) The permittee shall notify the commission as soon as the permittee knows or has reason to believe:

(i) that any activity has occurred or will occur that would result in the discharge, on a routine or frequent basis, of a toxic pollutant not limited in the permit if the discharge will exceed the highest of the following notification levels:

(I) one hundred micrograms per liter (ug/1);

(II) one milligram per liter (mg/1) for antimony;

(III) five times the maximum concentration value reported for that pollutant in the permit application; or

(IV) the level established by the commission in accordance with subsection *(i)*(5) of this section; or

(ii) that any activity has occurred or will occur that would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant not limited in the permit if the discharge will exceed the highest of the following notification levels:

(I) five hundred micrograms per liter (ug/1);

(II) one milligram per liter (mg/11) for antimony;

(III) 10 times the maximum concentration value reported for that pollutant in the permit application; or

(IV) the level established by the commission in accordance with subsection *(i)*(5) of this section.

(H) If the permittee becomes aware that it failed to submit any relevant facts or submitted incorrect information in a permit application or a report to the commission, the permittee shall promptly submit the relevant facts or correct information.

(13) Transfers. An individual permit is not transferable to any person except by modification, or revocation and reissuance, to change the name of the permittee and incorporate other necessary requirements.

(14) Bypass. Bypass means the intentional diversion of waste streams from any portion of a treatment facility. Severe property damage means substantial physical damage to property, damage to treatment facilities that causes them to become inoperable, or substantial and permanent loss of natural resources that can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

(A) The permittee may allow a bypass that does not cause effluent limitations to be exceeded, but only for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of subparagraphs (B) and (C) of this paragraph.

(B) Bypass is prohibited unless:

(i) bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(ii) the permittee gave notice of the bypass as required by subparagraph (C) of this paragraph; and

(iii) there was no feasible alternative to the bypass, such as use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance.

(C) If the permittee knows in advance of the need for a bypass, the permittee shall notify the appropriate district office and the Austin office at least 10 days before the anticipated bypass if possible. The commission may approve an anticipated bypass, after considering its adverse effects, if the commission determines that the bypass will meet the conditions listed in subparagraph (B) of this paragraph. The permittee shall report an unanticipated bypass that causes effluent limitations to be exceeded in accordance with paragraph (12)(E) of this subsection.

(15) Upset. Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. Upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(A) An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based permit effluent limitations if the requirements of subparagraph (B) of this paragraph are met. The permittee seeking to establish the occurrence of an upset has the burden of proof. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

(B) A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

(i) an upset occurred and the permittee can identify the cause(s) of the upset;

(ii) the treatment facility was at the time being properly operated;

(iii) the permittee submitted notice of the upset in accordance with paragraph (12)(E) of this subsection; and

(iv) the permittee complied with any remedial measures required under paragraph (4) of this subsection.

(i) Other permit conditions. In addition to the conditions required in all permits, the commission will establish conditions, as required on a case-by-case basis, to provide for and assure compliance with the requirements specified in this subsection.

(1) Duration. Permits will be effective for a fixed term not to exceed five years.

(2) Schedules of compliance.

(A) The permit may, when appropriate, specify a schedule of remedial measures leading to compliance with this section. The schedule of compliance will require compliance as soon as possible, but not later than an applicable statutory deadline under the CWA. If the schedule of compliance exceeds one year from the date of permit issuance, the schedule will specify interim requirements and the dates for their achievement. The time between interim dates will not exceed one year. The permit will require the permittee to submit a written compliance report within 14 days after each interim date and the final compliance date.

(B) The first permit issued to a new source or a new discharger may contain a schedule of compliance only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised by EPA after commencement of construction, but less than three years before commencement of discharge. For recommencing dischargers, a schedule of compliance may be included in the permit only when necessary to allow a reasonable opportunity to attain compliance with requirements issued or revised by EPA less than three years before recommencement of discharge.

(3) Monitoring. All permits will specify the following requirements:

(A) requirements concerning the proper use, maintenance, and installation, when appropriate, of monitoring equipment or methods, including biological monitoring methods when appropriate;

(B) requirements concerning the type, intervals, and frequency of monitoring sufficient to yield data representative of the monitored activity, including continuous monitoring when appropriate;

(C) requirements to monitor:

(i) the mass, or other measurement specified in the permit, of each pollutant limited in the permit;

(ii) the volume of effluent discharged from each outfall;

(iii) other measurements as appropriate to assure compliance with permit limitations, including measurements of pollutants in internal waste streams subject to limitation under 40 Code of Federal Regulations §122.45(i), the frequency and rate of noncontinuous discharges subject to limitation under 40 Code of Federal Regulations §122.45(e), and pollutants subject to notification requirements under subsection (h)(12)(G) of this section;

(D) requirements to monitor according to test procedures approved under 40 Code of Federal Regulations Part 136 for the analyses of pollutants having approved test procedures under that part, and according to test procedures specified in the permit for pollutants with no approved test procedures;

(E) requirements to report monitoring results with a frequency dependent on the nature and effect of the discharge, but in no case less than once a year.

(4) Effluent limitations and standards. Permits will include conditions meeting the requirements of this paragraph. To determine what conditions must be included in permits under this paragraph, the commission will use the guidelines, standards, and criteria contained in the federal regulations located at 40 Code of Federal Regulations Part 125, Subparts A and M; Part 129; Part 401; and Part 435. These permit conditions will be determined as outlined in 40 Code of Federal Regulations §122.45 and §122.50, when applicable. The following conditions must be included in permits, when applicable:

(A) technology-based effluent limitations and standards based on effluent limitations guidelines or new source performance standards, on case-by-case determinations, or on a combination of the two, in accordance with 40 Code of Federal Regulations §125.3. For new sources or new dischargers, these technology-based limitations and standards are subject to the protection period provided in 40 Code of Federal Regulations §122.29(d)(1)-(3);

(B) other effluent limitations and standards under the CWA, §§301, 302, 303, and 307;

(C) any requirements in addition to, or more stringent than, promulgated effluent limitations guidelines or standards under the CWA, §§301, 304, 306, or 307 necessary to:

(i) achieve water quality standards;

(ii) ensure consistency with the requirements of a water quality management plan approved under the CWA, §208(b);

(iii) incorporate the CWA, §403(c) criteria for ocean discharges under 40 Code of Federal Regulations Part 125, Subpart M;

(iv) incorporate alternate effluent limitations or standards where warranted by fundamentally different factors under 40 Code of Federal Regulations Part 125, Subpart D; or

(v) attain or maintain a specified water quality through water quality related effluent limitations established under the CWA, §302;

(D) limitations established under subparagraphs (A), (B), or (C) of this paragraph to control pollutants described in subparagraph (D)*(i)* of this paragraph. Limitations will be established in accordance with subparagraph (D)*(ii)* of this paragraph;

(i) limitations must control all toxic pollutants that the commission determines, based on information reported in a permit application under subsection (f)(5)(F) of this section or in a notification under subsection (h)(12)(G) of this section, or on other information, are or may be discharged at a level greater than the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 Code of Federal Regulations §125.3(c);

(ii) the requirement that the limitations control the pollutants described in subparagraph (D)*(i)* of this paragraph will be satisfied by:

(I) limitations on those pollutants; or

(II) limitations on other pollutants if, in the commission's judgment, the limitations on other pollutants will provide treatment of the pollutants described in subparagraph (D)*(i)* of this paragraph to the levels required by 40 Code of Federal Regulations §125.3(c).

(5) Notification level. Permits may contain a notification level that exceeds the notification level of subsection (h)(12)(G) of this section, upon petition from the permittee or on the commission's initiative. This new notification level may not exceed the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 Code of Federal Regulations §125.3(c).

(6) Twenty-four hour reporting. Pollutants for which the permittee must report violations of maximum daily discharge limitations within 24 hours will be listed in the permit. This list will include any toxic pollutant or hazardous substance, or any pollutant specifically identified as the method to control a toxic pollutant or hazardous substance.

(7) Best management practices. Permits will specify BMPs to control or abate the discharge of pollutants when:

(A) the practices are authorized under the CWA, §304(e), to control ancillary industrial activities that may contribute significant amounts of toxic pollutants or hazardous substances to waters of the state. These BMPs will be incorporated into permits in accordance with the criteria and standards set forth in 40 Code of Federal Regulations Part 125, Subpart K;

(B) numeric effluent limitations are infeasible; or

(C) the practices are reasonably necessary to achieve effluent limitations and standards or to carry out the purposes and intent of the CWA.

(8) Reissued permits.

(A) Except as provided in subparagraph (B) of this paragraph, a renewed or reissued permit will include limitations, standards, and conditions that are at least as stringent as the limitations, standards, and conditions in the previous permit, unless the circumstances on which the previous permit was based have materially and substantially changed since the time the previous Permit was issued, and the changed circumstances would constitute cause for permit modification, or revocation and reissuance, under subsection (j) of this section.

(B) When effluent limitations were imposed on a case-by-case basis in accordance with 40 Code of Federal Regulations §125.3(c) in a previously issued permit, and these limitations are more stringent than required by a subsequently promulgated effluent limitations guideline, this paragraph will apply unless:

(i) the discharger has installed the treatment facilities required to meet the effluent limitations in the previous permit and has properly operated and maintained the facilities, but has nevertheless been unable to achieve those effluent limitations, in which case the limitations in the renewed or reissued permit may reflect the level of pollutant control actually achieved, but may not be less stringent than required by the subsequently promulgated effluent limitations guideline;

(ii) the subsequently promulgated effluent limitations guideline is based on best conventional pollutant control technology; or

(iii) there is increased production at the facility that results in a significant reduction in treatment efficiency, in which case the permit limitations will be adjusted to reflect any decreased efficiency resulting from increased production and raw waste loads, but in no event may permit limitations be less stringent than those required by the subsequently promulgated effluent limitations guideline.

(9) Privately owned treatment works. A permit for a privately owned treatment works will contain any conditions expressly applicable to any user, as a limited co-permittee, that are necessary to ensure compliance with this section. Alternatively, the commission may issue separate permits to the treatment works and to its users, or may require a separate permit application from any user.

(10) Coast Guard regulations. When a permit is issued for a source that may operate at certain times as a means of transportation over water, the permit will contain a condition that the permittee shall comply with any applicable regulations promulgated by the Coast Guard that establish specifications for safe transportation, handling, carriage, and storage of pollutants.

(j) Modification, revocation and reissuance, and termination of permits. A permit may be modified, revoked and reissued, or terminated by the commission either upon the written request of any interested person, including the permittee, or upon the commission's initiative, but only for the reasons and under the conditions specified in this subsection. Except for minor modifications made under paragraph (4) of this subsection, the commission will follow the applicable procedures in subsection (k) of this section. In the case of a modification, the commission may request additional information or an updated application. In the case of a revocation and reissuance, the commission will require a new application. If a permit is modified, only the conditions subject to modification are reopened. The term of a permit may not be extended by modification. If a permit is revoked and reissued, the entire Permit is reopened and subject to revision, and the permit is reissued for a new term.

(1) Modification. The following are causes for modification, but not revocation and reissuance, unless the permittee requests or agrees.

(A) Material and substantial alterations or additions to the source occurred after permit issuance and justify permit conditions that are different or absent in the existing permit.

(B) The commission receives information, other than revised regulations, guidance, or test methods, that was not available at the time of permit issuance and that would have justified different permit conditions at the time of permit issuance. For general permits, this cause includes any information indicating that cumulative effects on the environment are unacceptable.

(C) The standards or regulations on which the permit was based have been changed by promulgation of amended standards or regulations or by judicial decision after the permit was issued. Permits may be modified during their terms for this cause only as follows.

(i) For promulgation of amended standards or regulations, when:

(I) the permit condition to be modified was based on an effluent limitations guideline or an EPA-approved water quality standard; and

(II) EPA revises that portion of the effluent limitations guideline on which the permit condition was based and

the commission subsequently adopts that revision by reference in subsection (m) of this section, or EPA approves a change in a water quality standard on which the permit condition was based.

(ii) For judicial decisions, a court of competent jurisdiction has remanded and stayed EPA promulgated regulations or effluent limitations guidelines, if the remand and stay concern a portion of the regulations or guidelines which has been incorporated into this section and on which the permit condition to be modified was based.

(D) The commission determines good cause exists for modifying a compliance schedule, such as an act of God, strike, flood, materials shortage, or other event over which the permittee has little or no control and for which there is no reasonably available remedy. However, no modification may extend a compliance schedule beyond an applicable CWA statutory deadline.

(E) The permittee has filed a timely request for a variance under subsection (l)(1) of this section.

(F) An applicable toxic effluent standard or prohibition, including any schedule of compliance specified in the standard or prohibition, is promulgated by EPA under the CWA, §307(a), and adopted by reference in subsection (m) of this section, and that standard or prohibition is more stringent than any limitation in the permit. For this cause, the commission must institute proceedings to modify, or revoke and reissue, the permit to incorporate the toxic effluent standard or prohibition.

(G) The commission failed to notify a state whose waters may be affected by the permitted discharge.

(H) The level of discharge of any pollutant that is not limited in the permit exceeds the level that can be achieved by the technology-based treatment requirements appropriate to the permittee under 40 Code of Federal Regulations §125.3(c).

(I) A notification level is to be established as provided in subsection (i)(5) of this section.

(J) The permittee's effluent limitations were imposed on a case-by-case basis in accordance with 40 Code of Federal Regulations §125.3(c) and the permittee demonstrates operation and maintenance costs that are totally disproportionate to the operation and maintenance costs considered in the development of a subsequently promulgated effluent limitations guideline. However, the limitations in the modified permit may not be less stringent than required by the subsequent guideline.

(K) The discharger has installed the treatment technology considered by the commission in setting effluent limitations on a case-by-case basis in accordance with 40 Code of Federal Regulations §125.3(c) and has properly operated and maintained the facilities, but nevertheless has been unable to achieve those effluent limitations. In this case, the limitations in the modified permit may reflect the level of pollutant control actually achieved, but may not be less stringent than required by a subsequently promulgated effluent limitations guideline.

(L) Technical mistakes, such as errors in calculation, or mistaken interpretations of law, were made in determining permit conditions.

(2) Modification or revocation and reissuance. The following are causes for modification, or revocation and reissuance.

(A) Cause exists for terminating a permit under paragraph (4) of this subsection, and the commission determines that modification, or revocation and reissuance, is appropriate.

(B) A transfer of the permit is proposed.

(3) Minor modifications. With the permittee's consent, the director may make minor modifications to a permit administratively, without following the procedures of subsection (k) of this section. Minor modifications may only:

(A) correct clerical or typographical errors, or clarify any description or provision in the permit, provided that the description or provision is not changed substantively;

(B) require more frequent monitoring or reporting;

(C) change an interim compliance date in a schedule of compliance, provided the interim date is not extended more than 120 days and the extension will not interfere with the attainment of final compliance by the original final compliance date;

(D) allow a transfer of the permit where the director determines that no change in the permit is necessary other than a change in the name of the permittee, provided that a written agreement between the current permittee and the new permittee containing a specific date for the transfer of permit responsibility, coverage, and liability has been submitted to the commission:

(E) change the construction schedule for a discharger that is a new source, provided the owner or operator will have all pollution control equipment required to meet permit conditions installed and operating before discharge commences; or

(F) delete a point source outfall when the discharge from the outfall is terminated and any resulting discharge of pollutants from other outfalls does not exceed permit limitations.

(4) Termination. The following are causes for terminating a permit during its term, or for denying a permit renewal application.

(A) The permittee fails to comply with any condition of the permit or this section.

(B) The permittee fails to disclose fully all relevant facts in the permit application or during the permit issuance process, or misrepresents any relevant fact at any time.

(C) A change in any condition requires a temporary or permanent reduction or elimination of any discharge controlled by the permit.

(D) The commission determines that the permitted discharge endangers human health or the environment, or that pollution of waters of the state or subsurface water is occurring or is likely to occur as a result of the permitted discharge.

(k) Permitting procedures.

(1) Review of applications. Upon receipt of an application for a permit, the director will review the application for completeness. Within 30 days after receipt of the application, the director will notify the applicant in writing whether the application is complete or deficient. A notice of deficiency will state the additional information necessary to complete the application, and a date for submitting this information. The application will be deemed withdrawn if the necessary information is not received by the specified date, unless the director has extended this date upon request of the applicant. Upon timely receipt of the necessary information, the director will notify the applicant that the application is complete. The director will not begin processing a permit until the application is complete.

(2) Permit denial. If the director administratively denies a permit application, the applicant will be so notified and will have a right to a hearing on request. If, after hearing, the commission decides that the decision to deny the application was incorrect, the director will prepare a draft permit under paragraph (3) of this subsection.

(3) Draft permits.

(A) A draft permit will be prepared when the director tentatively decides:

(i) to issue a permit;

(ii) to modify, or revoke and reissue, a permit; or

(iii) to terminate a permit, in which case the director will prepare a notice of intent to terminate, which is a type of draft permit.

(B) A draft permit will contain all permit conditions, including all conditions applicable to all permits, any compliance schedules, all monitoring requirements, all effluent limitations, standards, and prohibitions, and any variances.

(4) Fact sheets.

(A) The director will prepare a fact sheet to accompany the following draft permits:

(i) every draft general permit;

(ii) every draft permit for a major source;

(iii) every draft permit for a privately owned treatment works;

(iv) every draft permit that includes a variance, limitations to control toxic pollutants under subsection (i)(4)(D) of this section, limitations on internal waste streams under 40 Code of Federal Regulations §122.45(i), limitations on indicator pollutants under 40 Code of Federal Regulations

§125.3(g), or limitations set on a case-by-case basis in accordance with 40 Code of Federal Regulations §125.3(c); and

(v) every draft permit that the director finds is the subject of widespread public interest or raises important issues.

(B) The fact sheet will briefly set forth the principal facts and the significant factual, legal, methodological, and policy questions considered in preparing the draft permit. The fact sheet will include information satisfying the requirements of 40 Code of Federal Regulations §124.8(b) and §124.56.

(5) Notice.

(A) The commission will give notice when a draft permit is prepared under paragraph (3) of this subsection, and when a hearing is scheduled under paragraph (7) of this subsection.

(B) Notice will be given by the methods specified in this subparagraph.

(i) For all permits, a copy of the notice will be mailed to the following persons:

(I) any agency that the commission knows has issued or is required to issue a permit for the same source under any program identified in subsection (f)(4)(F) of this section;

(II) the Texas Water Commission, the Texas Water Development Board, the Texas Department of Health, the Texas Parks and Wildlife Department, EPA, the United States Army Corps of Engineers, the United States Fish and Wildlife Service, the National Marine Fisheries Service, other state and federal agencies with jurisdiction over fish, shellfish, and wildlife resources and over coastal zone management plans, the Advisory Council on Historic Preservation, state historic preservation officers, and other appropriate government authorities, including any state whose waters may be affected by the discharge;

(III) persons on a mailing list developed according to 40 Code of Federal Regulations §124.10(c)(1)(viii); and

(IV) any unit of local government having jurisdiction over the area where the source is or is proposed to be located, and each state agency having any authority under state law with respect to the construction or operation of the source.

(ii) For an individual permit, a copy of the notice will be mailed to:

(I) the applicant;

(II) any user identified in the permit application if the applicant is a privately owned treatment works; and

(III) any surface owners required to be listed in the application under subsection (f)(4)(H) of this section. If, pursuant to subsection (f)(4)(H), the director waived the requirement to list certain surface owners in the application, the applicant shall notify such persons by publishing the notice of the application. The notice shall be published by the applicant once each week for two consecutive weeks in a newspaper of general circulation in the area affected by the discharge. The applicant shall file proof of publication with the commission in Austin.

(iii) For a permit for a major source, the notice shall be published by the applicant at least once each week for two consecutive weeks in a newspaper of general circulation in the area affected by the discharge. The applicant shall file proof of publication with the commission in Austin.

(iv) For a general permit, the commission will publish the notice at least once in a daily or weekly newspaper of general circulation within the area covered by the general permit, and in the *Texas Register*.

(C) Notices will include information satisfying the requirements of 40 Code of Federal Regulations §§124.10(d), 124.57 (a), and 124.62(d), and the Administrative Procedure and Texas Register Act.

(D) A copy of any draft permit, fact sheet, and application will be mailed to the persons identified in subparagraph (B)(i)(I) and (II) of this paragraph, and to any other person upon request. The applicant will be mailed a copy of any draft permit and fact sheet.

(6) Comments and requests for hearing. Notice of a draft permit will allow at least 30 days for public comment. During the public comment period any interested person may submit written comments on the draft permit and may request a hearing if one has not already been scheduled.

(7) Hearings on draft permits.

(A) A hearing will be held:

(i) when the director finds, on the basis of requests, a significant degree of public interest in a draft permit;

(ii) when an applicant or an affected person requests a hearing on a draft permit;

(iii) when a permittee requests a hearing on a draft permit prepared when the director tentatively decides to modify, revoke and reissue, or terminate a permit; and

(iv) on draft general permits, when required by the Administrative Procedure and Texas Register Act, §5(c).

(B) The commission may hold a hearing at its discretion, for instance, when a hearing might clarify one or more issues involved in the permit decision.

(C) Notice of a hearing will be given at least 30 days before the hearing. The public comment period under paragraph (6) of this subsection will automatically be extended to the close of any hearing under this paragraph.

(8) Administrative approval. After the public comment period, the director may issue, modify, revoke and reissue, or terminate a permit administratively if no hearing is required under paragraph (7) of this subsection.

(9) Response to comments. When a final permit is issued, the commission will respond in writing to comments received during the public comment period. The response will be made available to the public and will:

(A) specify which provisions, if any, of the draft permit have been changed in the final permit, and the reasons for the changes; and

(B) briefly describe and respond to all significant comments on the draft permit raised during the public comment period, or during any hearing on the draft permit.

(1) Variances.

(2) Requests for variances.

(A) A discharger may request an extension under the CWA, §301(k), from the statutory deadline of the CWA, §301(b)(2)(A), for the application of best available technology, based on the use of innovative technology. The request shall be submitted to the commission in Austin no later than the close of the public comment period for a discharger's initial permit requiring the application of best available technology, and shall explain how the requirements of 40 Code of Federal Regulations Part 125, Subpart C, have been met.

(B) A discharger may request a variance under the CWA, §316(a), from effluent limitations for the thermal component of a discharge. The request must be filed with a timely application for a permit under this subsection, except that if the thermal effluent limitations are developed on a case-by-case basis in accordance with 40 Code of Federal Regulations §125.3(c) or are based on water quality standards, the request for a variance may be filed by the close of the public comment period for the permit. The request shall contain the information required by 40 Code of Federal Regulations Part 125, Subpart H.

(C) A discharger may request a variance, based on the presence of fundamentally different factors from those on which an applicable effluent limitations guideline was based, from effluent limitations required by the effluent limitations guideline. The request shall be submitted to the commission in Austin by the close of the public comment period for the permit in which the variance is requested to be incorporated and shall explain how the requirements of 40 Code of Federal Regulations Part 125, Subpart D have been met.

(D) A discharger may request a variance from effluent limitations for the CWA, §301(b)(2)(F) pollutants (commonly called non-conventional pollutants) that require the application of best available technology, pursuant to the CWA, §301(c), because of the economic capability of the owner or operator or pursuant to the CWA, §301(g), because of certain environmental considerations. If those effluent limitations are based on effluent limitations guidelines, the request must comply with clauses *(i)* and *(ii)* of this subparagraph. If those effluent limitations are not based on effluent limitations guidelines, the request need only comply with clause *(ii)* of this subparagraph.

(i) An initial request must be submitted to the commission in Austin and to the regional administrator not later than

270 days after adoption by EPA of an applicable effluent limitations guideline. This request must state the name of the discharger, the permit number, the outfall number(s), the applicable effluent limitations guideline, and whether the discharger is requesting a CWA, §301(c), or CWA, §301(g), variance, or both.

(ii) A complete request explaining the basis for the request must be submitted to the commission in Austin no later than the close of the public comment period for the permit in which the variance is requested to be incorporated. The director may grant an extension of time to submit a complete request under this clause, provided the extension may not exceed six months in duration.

(2) Decisions on variances.

(A) The commission may grant or deny requests for the following variances, subject to EPA objection under 40 Code of Federal Regulations §123.44:

(i) after consultation with the regional administrator, as defined in 40 Code of Federal Regulations §124.2, extensions under the CWA, §301(k), based on the use of innovative technology; or

(ii) variances under the CWA, §316(a), from effluent limitations for the thermal component of a discharge.

(B) The commission may deny, or forward to the regional administrator with a written concurrence, or submit to the regional administrator without recommendation, a completed request for:

(i) a variance based on the presence of fundamentally different factors from those on which an effluent limitations guideline was based;

(ii) a variance under the CWA, §301(c), based on the economic capability of the applicant; or

(iii) a variance under the CWA, §301(g), based upon certain water quality factors.

(m) Federal regulations. All references to the Code of Federal Regulations in this section are references to the 1985 edition of the code. The following federal regulations are adopted by reference and can be obtained at the William B. Travis Building, 1701 North Congress, Austin, Texas 78711: 40 Code of Federal Regulations §§116.4, 122.2, 122.29(b), 122.29(d)(1)-(3), 122.45, 122.50, 123.44, 124.2, 124.8(b), 124.10(c)(1)(viii), 124.10(d), 124.56, 124.57(a), 124.62(d); 40 Code of Federal Regulations Part 122, Appendix D, Tables II, III, IV, and V; 40 Code of Federal Regulations Part 125, Subparts A, C, D, H, K, and M; 40 Code of Federal Regulations Parts 129, 136, 401, and 435. Words and terms used in the federal regulations adopted by reference shall have the meanings given in the federal regulations adopted by reference or in 40 Code of Federal Regulations §122.2, unless otherwise defined in this section. Where the word "director" is used in the federal regulations adopted by reference, it should be interpreted to mean "commission."

(n) Effective date. This section becomes effective upon approval of the agency's National Pollutant Discharge Elimination System (NPDES) Program by the United States Environmental Protection Agency under the Clean Water Act, §402(b), 33 United States Code §1342(b).

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

Issued in Austin, Texas, on January 20, 1986.

TRD-8600796 Buddy Temple
Chairman
Jim Nugent
Commissioner
Mack Wallace
Commissioner
Railroad Commission of Texas

Effective date: February 12, 1986
Proposal publication date: July 30, 1985
For further information, please call (512) 463-7149.

★ ★ ★

Chapter 5. Transporation Division

Subchapter B. Operating Certificates, Permits, and Licenses

★16 TAC §5.41

The Railroad Commission of Texas adopts new §5.41, without changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4258).

This new section would eliminate conflict or confusion about the term "timber in its natural state" as the term is used in Texas Civil Statutes, Article 911b, and in commodity descriptions contained in certificates or permits issued thereunder. When this term was first used, only certain parts were used by the timber industry whereas all parts of the tree are utilized today. The proposed definition would include all wood fiber products created as a result of the harvesting process at the area of production.

Nine comments favoring the new section were received, and three of these comments were from companies which harvest wood. These companies go into the forest with the intent to remove all usable wood fiber. Wood that is marketable as pulpwood, lumber, and/or poles is trimmed and transported to processing facilities. The scraps from these trees (limbs, bark, leaves, and needles) are combined with the trees that are not usable for poles, pulpwood, or lumber, and run through a chipping machine. These chips are then transported out of the forest. A major producer of paper and forest products noted in its comment that through the use of the chipped wood product as boiler fuel, the company is able to reduce its consumption of natural gas and/or fuel oil.

Those commenting in favor of the section were Louisiana-Pacific Corporation; Owens-Illinois Forest Products Group; Champion International Corporation; Kirby Forest Industries, Inc.; J.R. Miesch, Inc.; B&W Contractors; B&R Pulpwood, Inc.; Eastex Wood Products, Inc.; and Temple-Eastex Inc.

The new section is adopted under Texas Civil Statutes, Article 911b, §4(a), which vest the Railroad Commission of Texas with power and authority to prescribe all rules and regulations necessary for the government of motor carriers.

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

Issued in Austin, Texas, on January 27, 1986.

TRD-8601104 Buddy Temple
Chairman
Jim Nugent
Comissioner
Mark Wallace
Commissioner
Railroad Commission of Texas

Effective date: February 21, 1986
Proposal publication date: November 5, 1985
For further information, please call (512) 463-7149.

★ ★ ★

Part IV. Texas Department of Labor and Standards

Chapter 77. Health Spa Act/ Labor, Licensing, and Enforcement

Procedures

★16 TAC §§77.1, 77.5, 77.9, 77.13, 77.17, 77.21

The Texas Department of Labor and Standards adopts new §77.1 and §77.5, with changes to the proposed text published in the August 6, 1985, issue of the *Texas Register* (10 TexReg 2522). Amendments to §§77.9, 77.13, 77.17, and 77.21 are adopted without changes, and will not be republished.

The new sections are adopted pursuant to Senate Bill 1388, 69th Legislature, 1985, which is the Health Spa Act.

The Health Spa Act regulates by licensing health exercise facilities as defined in the Act in Texas. The new sections provide the registration statement through which health exercise facilities are licensed.

Lambeth Townsend, Texas Chapter of National Club Association, commented that

certain facilities in which a health spa existed were not meant to be licensed by the Health Spa Act, and recommended that such an exclusion be provided by rule. The department agreed with the comment and promulgated a definition for the term "primarily" to clarify the ambiguity.

Johnny Keel, Northwest Fitness Center, commented in favor of the proposed rules.

Jo Clifton, Attorney General's Office, representing David Talbot, group manager, Consumer Protection Division of the Attorney General's Office, suggested various grammatical and references changes in §77.5, all of which were accepted by the department. The only substantive change she requested was that the registration statement be sworn to by the applicant, and the change is made.

Manny Amaya, San Antonio, disagreed with the need provided in §77.13 for a registrant to file its membership plans with the department. The department disagreed with the comment since §77.13 allows for a liberal filing date for membership plans that are in duration for more than or exceeds 90 days.

John Townsend, Livingwell, Inc., commented on the provision of the rules on which Lambeth Townsend had commented. There were certain facilities in John Townsend's organization which were not primarily health spas. John Townsend also operated facilities under a different business arrangement. Frank Beatty and David Kent, Livingwell, Inc., commented on the different membership fees offered by Livingwell, Inc.'s facilities; on the assignment of membership fees from the facility to another subsidiary of the parent corporation; and the different subsidiary operations of the parent organization operating health spa facilities. Mr. Kent also commented on the operation of facilities which are not primarily health spa facilities; the different membership plans offered by Livingwell, Inc.; lifetime memberships; the payment plans for memberships; and contract changes.

The department disagreed with these comments to the extent that the issues involved were addressed by the statute. The term "primarily" was defined, which affords exemptions for certain facilities with health spas.

The new sections are adopted under Texas Civil Statutes, Article 5521f, which provide the Texas Department of Labor and Standards with the authority to accept registration statements and to establish procedures for the acceptance of the registration statement.

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

Commissioner—The commissioner of the Texas Department of Labor and Standards.

Contract—An agreement by which one becomes a member of a health club.

Department—The Texas Department of Labor and Standards.

Facilities—Equipment, physical structures, improvements, improvements to leasehold premises, and other tangible property, real, personal, or mixed, used by a health spa at each location to conduct its business, including, but not limited to, saunas, whirlpool baths, gymnasiums, running tracks, swimming pools, shower areas, racquetball courts, martial arts equipment, and exercise equipment.

Governmental authority—Any city, township, village, county, quasi governmental authority, State of Texas, or any other political subdivision.

Health spa—A business primarily involved in the sale of memberships that provide the members instruction in a program of physical exercise or provides the members use of the facilities of the health spa for a program of physical exercise. The term does not include an organization that is tax exempt under 26 United States Code §501, *et seq.*, a private club owned and operated by its members, an entity primarily operated for the purpose of teaching dance or aerobic exercise, an entity primarily engaged in physical rehabilitation activity related to an individual's injury or disease, an individual or entity engaged in an activity authorized under a valid license issued by this state, or an activity conducted or sanctioned by a school operating under the Education Code. If an entity otherwise exempt by the provisions of Texas Civil Statutes, Article 5221l, provides the members instructions in a program of physical exercise or provides the members use of its facilities for a program of physical exercise, then such an entity must comply with the provisions of the Act and its rules and regulations.

Member—A person entitled to the benefits of membership in a health spa.

Membership—The status under a contract between an individual and a health spa that entitles the individual to the use of services or facilities of the health spa.

Owner—Any person who maintains a 10% or more equity interest in any health spa facility.

Person—An individual, corporation, association, organization, partnership, business trust, trust, estate, and any other legal entity.

Prepayment—A payment for all services or for the use of facilities made by members of a health spa before the first day the services or facilities are made available to the members.

Primarily—Any facility which has 30% or more floor space devoted to physical exercise or the support of physical exercise or derives 30% or more of its gross receipts from physical exercise services rendered by the facility.

Purchaser—A person who purchases a health spa membership.

Seller—A person who owns or operates a health spa or who offers for sale the right to use the facilities or the services of the health spa.

Services—Programs, plans, guidance, or instruction that a health spa provides for its members, including diet planning, exercise instruction, exercise programs, and instructional classes.

§77.5. Registration Statement.

(a) Each health spa location shall file a registration statement which shall contain the following information:

(1) the name and location address of the health spa;

(2) the name and address of any person who directly or indirectly owns or controls 10% or more of the issued and outstanding voting shares, if the health spa is operated through a corporation;

(3) the name and address of all the partners if the health spa is operated as a general partnership;

(4) the name and address of each general partner if the health spa is operated by a limited partnership;

(5) the name and address of each person deemed to be an owner if the health spa is operated as a sole proprietorship; and

(6) the name and address of any person or entity holding any indirect ownership of the health spa must be disclosed if a person or entity exercises control of the health spa.

(b) Required facilities disclosures include:

(1) a detail disclosure of the type of proposed facilities and services to be provided; and

(2) the approximate size of the health spa measured in square feet.

(c) The registration statement must also contain either:

(1) a full and complete disclosure of any litigation, or any complaint filed with a governmental authority, relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of a health spa that was completed within the past two years or is currently pending; or

(2) a notarized statement that states that within the past two years there has been no litigation and no complaint filed with a governmental authority, relating to the failure to open or the closing of a health spa brought against the owners, officers, or directors of the health spa for which the registration statement is being filed.

(d) The health spa shall file a statement with the department to update the registration statement not later than the 90th day after the day on which the change occurs. All material changes in a health spa's ownership, facilities, or litigation status must be reported by amendment to the registration statement.

(e) Each registration statement filed with the department must be accompanied by a fee of $100.

(f) Each registration statement must

be renewed one year from the date of the original registration and each renewal must be accompanied by a fee of $100.

(g) Texas Civil Statutes, Article 5221l, §25(g), is construed to mean a health spa that has had their facilities open within 730 days prior to September 1, 1985.

(h) Each registration statement shall be notarized and sworn to by the person submitting it.

(i) Upon receipt of the registration statement, the department shall notify the health spa that:

(1) the department has received the statement and it is complete; or

(2) that the department has received the statement and it is not complete, and inform the health spa of the missing portion(s).

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

Issued in Austin, Texas, on January 31, 1986.

TRD-8601137 Allen Parker, Sr.
Commissioner
Texas Department of
Labor and Standards

Effective date: February 21, 1986
Proposal publication date: August 6, 1985
For further information, please call
(512) 463-3127.

★ ★ ★

TITLE 22. EXAMINING BOARDS

Part IV. Texas Cosmetology Commission

Chapter 83. Sanitary Rulings

★22 TAC §§83.1, 83.9, 83.13, 83.15

The Texas Cosmetology Commission adopts amendments to §§83.1, 83.9, 83.13, and 83.15, without changes to the proposed text published in the August 9, 1985, issue of the *Texas Register* (10 TexReg 2990).

These sections all deal with sanitation requirements that must be followed by schools of cosmetology and cosmetology salons.

It has been determined that the amendments to these rules will aid in clarification of the statutes.

No comments were received regarding the adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 8451a, §4, which give the the Texas Cosmetology Commission the authority to promulgate rules.

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

Issued in Austin, Texas, on January 28, 1986.

TRD-8601077 Jo Ann Reeves
Executive Director
Texas Cosmetology
Commission

Effective date: February 20, 1986
Proposal publication date: August 9, 1985
For further information, please call
(512) 463-3183.

★ ★ ★

Chapter 89. General Provisions

★22 TAC §89.39

The Texas Cosmetology Commission adopts the repeal of §89.39, without changes to the proposed text published in the August 9, 1985, issue of the *Texas Register* (10 TexReg 2992).

The section covers procedures for opening a new beauty shop.

The repeal of this section will enable new salons to open in a more timely manner.

No comments were received regarding the adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 8451a, §4, which give the the Texas Cosmetology Commission the authority to promulgate rules.

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

Issued in Austin, Texas, on January 28, 1986.

TRD-8601076 Jo Ann Reeves
Executive Director
Texas Cosmetology
Commission

Effective date: February 20, 1986
Proposal publication date: August 9, 1985
For further information, please call
(512) 463-3183.

★ ★ ★

★22 TAC §§89.39, 89.70, 89.71

The Texas Cosmetology Commission adopts new §§89.39, 89.70, and 89.70, without changes to the proposed text published in the August 9, 1985, issue of the *Texas Register* (10 TexReg 2992).

These sections cover requirements that must be met prior to the opening of a new salon, a new private beauty culture school, or a new secondary or postsecondary public cosmetology facility.

It has been determined that these sections will aid in clarifying the statutes and save confusion due to misinterpretation.

No comments were received regarding the adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 8451a, §4, which give the the Texas Cosmetology Commission the authority to promulgate rules.

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

Issued in Austin, Texas, on January 28, 1986.

TRD-8601075 Jo Ann Reeves
Executive Director
Texas Cosmetology
Commission

Effective date: February 20, 1986
Proposal publication date: August 9, 1985
For further information, please call
(512) 463-3183.

★ ★ ★

Part VI. Texas State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

General

★22 TAC §131.18

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.18, without changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4261).

The amendment is adopted to add two new definitions and revise one of the existing definitions in §131.18.

The adoption of the amendment clarifies the board's definition of "license" and establishes clear definitions of "licensee" and "registrant."

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8, which authorize the Texas State Board of Registration for Professional Engineers to make rules in keeping with the purpose and intent of the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601038 Kenneth J. Bartosh, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 20, 1986
Proposal publication date: November 5, 1985
For further information, please call
(512) 440-7723.

Registration

★22 TAC §131.137

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.137, without changes to the proposed text published in the November 5, 1985, issue of the *Texas Register* (10 TexReg 4262).

The amendment is adopted to bring the section into agreement with existing legal precedents concerning licensure and registration.

The adoption of the amendment provides a clearer interpretation of the section and viable enforcement by the board.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8, which authorize the Texas State Board of Registration for Professional Engineers to make rules in keeping with the purpose and intent of the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601039 Kenneth J. Barlosh, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: February 20, 1986
Proposal publication date: November 5, 1985
For further information, please call
(512) 440-7723.

★ ★ ★

Part XI. Board of Nurse Examiners

Chapter 215. Nurse Education

★22 TAC §§215.1-215.22

The Board of Nurse Examiners adopts the repeal of §§215.1-215.22, without changes to the proposed text published in the November 12, 1985, issue of the *Texas Register* (10 TexReg 4351).

The repeal enables a new chapter to be adopted providing a more detailed and better organized rule which will follow a more logical format.

The repeal provides more specific and updated information in keeping with current educational standards.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 4514, §1, and Article 4518, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it; to establish standards of professional conduct for all persons licensed under the provisions of this law, in keeping with its purpose and objectives; to regulate the practice of professional nursing; and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners.

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

Issued in Austin, Texas, on January 31, 1986.

TRD-8601148 Margaret L. Rowland
Executive Secretary
Board of Nurse
Examiners

Effective date: February 21, 1986
Proposal publication date: November 12, 1985
For further information, please call
(512) 835-4880.

★ ★ ★

★22 TAC §§215.1-215.20

The Board of Nurse Examiners for the State of Texas adopts §§215.1-215.20. Section 215.1 and §215.3 are adopted with changes to the proposed text published in the November 12, 1985, issue of the *Texas Register* (10 TexReg 4351). The other sections are adopted without changes and will not be republished.

The new sections specify the standards which a nursing program must meet to be accredited by the Board of Nurse Examiners. A correction was made to §215.3(a)(3) by adding "for registered nurses." Under definitions, "Advanced placement" was modified to allow for analysis of other appropriate data.

New Chapter 215 provides rules relating to professional nurse education which have been updated to be in keeping with current educational standards. The new chapter is reorganized into a more logical format, and editorial changes are made where necessary to provide clarity in language.

Written comments were received from directors of three nursing programs. One comment concerned a minor editorial change, one was in relation to faculty qualifications, and the last concerned the advanced placement definition. None of the commenters were opposed to the rules.

Dr. Billye Brown, dean, the University of Texas at Austin School of Nursing, Dr. Teddy Langford, dean, Texas Tech University School of Nursing, Lubbock, and Marie Jackson, director, Tyler Junior College Associate Degree Nursing Program, commented on the new sections.

The agency did agree with two of the commenters and made suggested changes. They disagreed with the recommendation to require all faculty members to have at least a master's degree in nursing since they felt it would impose undue restrictions on nursing programs located away from the metroplex. The board believes the rules as stated provide ample protection of the public.

The new sections are adopted under Texas Civil Statutes, Article 4514, §1, and Article 4518, §1, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it, to establish standards of professional conduct for all persons licensed under the provisions of this law in keeping with its purpose and objectives, to regulate the practice of professional nursing and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law. It shall be the duty of the Board of Nurse Examiners to prescribe and publish the minimum requirements and standards for a course of study in programs which prepare professional nurse practitioners.

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

Accredited nursing program—A school, department, or division of nursing accredited/approved by a nursing board or other licensing authority which has jurisdiction over accreditation/approval of nursing programs.

Acting director—A registered nurse who is temporarily responsible for the administration of the nursing program and meets the requirements as specified for the director.

Advanced placement—Granting of credit for part of the required curriculum.

Baccalaureate degree program for registered nurses—A program leading to a bachelor's degree in nursing which admits only registered nurses.

Basic program—An educational unit whose purpose is to prepare practitioners of nursing and whose graduates are eligible to write the National Council Licensure Examination for Registered Nurses.

(A) Associate degree program—A program leading to an associate degree in nursing conducted by an educational unit in nursing within the structure of a college or university.

(B) Baccalaureate degree program—A program leading to a bachelor's degree in nursing conducted by an educational unit in nursing which is a part of a

senior college or university.

(C) Diploma program—A program leading to a diploma in nursing conducted by a single purpose school usually under the control of a hospital.

Board—The Board of Nurse Examiners for the State of Texas.

Clinical laboratory experiences—Faculty-planned and guided learning activities designed to assist students to meet the course objectives and to apply nursing knowledge and skills in the direct care of patients/clients. This includes associated clinical conferences and planned learning activities in skills laboratories, acute care facilities, extended care facilities, and other community resources.

Clinical preceptor—A registered nurse employee of a cooperating agency acting to facilitate student learning in a manner prescribed by a signed written agreement between the agency and the educational institution.

Clinical preceptorship—An organized system of clinical laboratory experience which allows a nursing student to be paired with a clinical preceptor for the purpose of attaining specific learning objectives.

Controlling institution—A college, university, or hospital responsible for the administration and operation of an accredited nursing program.

Cooperating agency—An agency, other than the controlling institution, which provides learning experiences for students.

Course—A specific set of learning experiences organized to meet a group of objectives within a stated time period. A course involves both organized subject matter and related activities. In a clinical nursing course, the didactic content shall be taught either prior to or concurrent with the related clinical laboratory experiences.

Curriculum—Content and teaching-learning activities designed to achieve specific educational experiences.

Director—A registered nurse who is responsible for the administration of the nursing program and who meets the requirements as stated in §215.6(c) of this title (relating to Faculty Qualifications—Diploma or Associate Degree Programs) or §215.7(d) of this title (relating to Faculty Qualifications—Baccalaureate Degree Programs).

Examination year—The time period from September 1 of one year to August 31 of the following year.

Extended campus—Any site external to the main campus of the controlling institution where a part or all of the nursing program is offered.

Faculty member—An individual employed to teach in the nursing program who meets the requirements as stated in §215.6 of this title (relating to Faculty Qualifications—Diploma and Associate Degree Programs); and §215.7 of this title (relating to Faculty Qualifications—Baccalaureate degree programs).

Pass rate—The percentage of first time candidates within one examination year who pass the National Council Licensure Examination for Registered Nurses.

Shall and must—Mandatory requirements.

Should—A recommendation.

Survey visit—An on-site visit of a nursing program, including clinical facilities, by a board representative for the purpose of evaluating the program of learning and gathering data to support whether the program is meeting the board's requirements as specified in §§215.1-215.19 of this title (relating to Definitions; New Programs; Accreditation; Pass Rate of Graduates on the National Council Licensure Examination for Registered Nurses; Administration and Organization; Faculty Qualifications—Diploma and Associate Degree Programs; Faculty Qualifications—Baccalaureate Degree Programs; Faculty Policies; Faculty Organization; Faculty Development and Evaluation; Philosophy and Objectives; Curriculum; Curriculum Changes and Expansion of Nursing Program; Extended Campus; Students; Educational Resources and Facilities; Clinical Resources; Records and Reports; and Total Program Evaluation).

§215.3. Accreditation.

(a) Types of accreditation.

(1) Initial accreditation. Initial accreditation is written authorization to admit students and is granted if the program meets the requirements of the board.

(2) Full accreditation—basic program. Full accreditation is granted to a basic program after one graduating class has taken the National Council Licensure Examination for Registered Nurses and is based upon evidence that the program is continuing to meet the board's legal and educational requirements.

(3) Full accreditation—baccalaureate degree program for registered nurses. Full accreditation is granted to a baccalaureate degree program for registered nurses after one class has completed the program and is based upon evidence that the program is continuing to meet the board's legal and educational requirements.

(4) Warning.

(A) Issuance of warning. When the board determines that a program is not meeting the legal and educational requirements, the program is issued a warning, is provided a list of the deficiencies, and is given a specified time in which to correct the deficiencies.

(B) Failure to correct deficiencies. If the program fails to correct the deficiencies within the prescribed period, it shall be placed on conditional accreditation.

(5) Conditional accreditation. Conditional accreditation is granted for one year in order to provide additional time to correct deficiencies.

(b) Withdrawal of accreditation. A program with conditional accreditation, which fails to correct the deficiencies within the specified time, shall be removed from the list of state accredited nursing programs.

(c) Accreditation procedure. The continuing accreditation status of each program shall be determined annually by the board either on the basis of a survey visit or review of annual report.

(1) Survey visit. Each nursing program will be visited at least every three years after full accreditation has been granted or at any time deemed necessary by the board. A written report of the visit together with the annual report submitted by the director will be reviewed by the board at a regularly scheduled meeting. The decision of the board concerning the accreditation status of the program will be sent to the director and the chief administrative officer of the controlling institution.

(2) Review of annual report. When a program is not visited by a board representative during an academic year, the accreditation status is determined by the board on the basis of the annual report of the program and other pertinent data.

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

Issued in Austin, Texas, on January 31, 1986.

TRD-8601149 **Margaret L. Rowland**
Executive Secretary
Board of Nurse Examiners

Effective date: February 21, 1986
Proposal publication date: November 12, 1985
For further information, please call (512) 835-4880.

★ ★ ★

Part XVI. Texas State Board of Physical Therapy Examiners

Chapter 321. Definitions

★22 TAC §321.1

The Texas State Board of Physical Therapy Examiners adopts the repeal of §321.1 without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

This agency hereby certifies that the rule as adopted has been reviewed by legal

counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 29, 1986.

TRD-8601020 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

★22 TAC §321.1

The Texas State Board of Physical Therapy Examiners adopts new §321.1 with changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The new section clarifies the intent of the Act; a charge given to members of the Physical Therapy Board by the Texas Physical Therapy Practice Act.

The new section defines the terms used in the Act in order to clarify the intent of the Physical Therapy Practice Act.

The following comments were received: Why the inclusion of a section on an aide; recommendation that supervisory provisions of aides and PTA's be within a separate section of the rules; objection to the wording that the physical therapy aide may participate in patient care treatment activities in the immediate area of the physical therapist or the physical therapist assistant; recommendation that aides be allowed to make entries into the patient's record, counter-signed by a physical therapist; and objection to the language "a physical therapist must be on call and readily available," indicating this statement should include "when the physical therapist assistant is giving treatment."

Susan McPhail, president, Texas Physical Therapy Association; Joy Davenport, past president, Texas Physical Therapy Association; Charles Bailey, Texas Hospital Association; James N. Elkins, Valley Baptist Medical Center; Jane Plumlee, Valley Baptist Medical Center commented against the new section.

The board has been made aware of many violations of the Act by unlicensed persons, improperly supervised by licensed physical therapists and/or physical therapist assistants. These many complaints have initiated the boards inclusion of defining an aide into the new section. The board feels the current language of the rules regarding supervision is appropriate. The board feels the change of language to read "within the reasonable proximity" will appropriately describe the intent. The Physical Therapy Board interprets the legislative intent of the Act to require that the Physical Therapist, educated and licensed according to the Act, include writing reports into patients' records as an integral part of the physical therapist's responsibility for the patient treatment program. Supported by the assistant attorney general, the board feels "during treatment" is already implied in the language.

The new section is adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Evidence satisfactory to the board—Should all official school records be destroyed, sworn affidavits satisfactory to the board must be received from three persons having personal knowledge of the applicant's physical therapy education. The affidavits will not be used when official school records are available.

Hearing—An adjudicative proceeding concerning the issuance, denial, suspension, reprimand, revocation of license, after which the legal rights of an applicant or licensee are to be determined by the board.

On-site supervision—The physical therapist or physical therapist assistant is on the premises and readily available to respond.

Physical therapy aide—All rules governing the direction of the physical therapist assistant are further modified for the physical therapy aide.

(A) A physical therapy aide will be under the supervision of a physical therapist or physical therapist assistant.

(B) The physical therapy aide may participate in nontreatment activities within the scope of their on-job-training.

(C) The physical therapy aide may participate in patient care treatment activities within the scope of on-job-training and within reasonable proximity of the physical therapist or the physical therapist assistant.

(D) The physical therapy aide may not:

(i) perform the initial treatment instruction, including exercise instruction to a patient; or

(ii) write or sign treatment related documents in the permanent record.

Physical therapist assistant—The supervision of the physical therapist assistant shall include the following.

(A) A physical therapist must be responsible for and participate in the patient's care.

(B) A physical therapist must be on call and readily available.

(C) A current written treatment plan will be formulated for each patient under the care of the physical therapist. Plans shall be revised following periodic reevaluations by the physical therapist, not to exceed 30 days.

(D) The physical therapist may assign responsibilities as defined in the Accreditation Handbook, The American Physical Therapy Association-January, 1985. Refer to standard VI, criterion B, subsection 2, pages 28 and 29. The physical therapist assistant may not:

(i) specify and/or perform definitive (decisive, conclusive, final) evaluative and assessment procedures;

(ii) alter treatment programs or goals;

(iii) recommend wheelchairs, orthoses, prostheses, other assistive devices, or alterations to architectural barriers to persons other than a physical therapist;

(iv) file documents for permanent record until approved by a physical therapist; or sign progress notes which include assessments used to design or modify patient care.

(E) The physical therapist assistant will respond to acute changes in the patient's physiological state.

Supervision—The person or persons responsible for the practice of the physical therapist, physical therapist assistant, or physical therapy aide.

Treatment—Employs for therapeutic effects, exercises, rehabilitative procedures, massage, manipulations, and such physical agents including, but not limited to, mechanical devices, heat, cold, air, light, water, electricity, and sound.

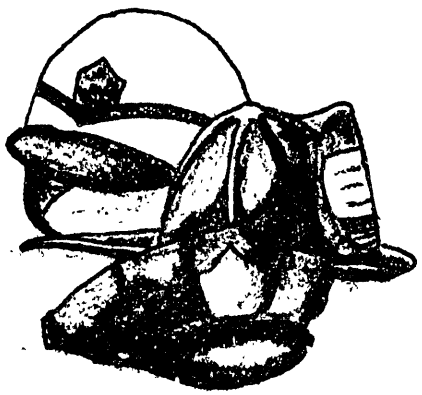
This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 29, 1986.

TRD-8601029 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★



Chapter 223. Fees

★22 TAC §223.1

The Board of Nurse Examiners adopts new §223.1, without changes to the proposed text published in the November 12, 1985, issue of the *Texas Register* (10 TexReg 4356).

The new section provides the public with the knowledge of the fee schedule set by the Board of Nurse Examiners for various services performed.

The public will be aware of certain fees charged by the board for various services, thereby eliminating the process of billing individuals in certain cases. This process will expedite the request of the individual.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4514, §1, and Article 4527, which provide the Board of Nurse Examiners with the authority to make and enforce all rules and regulations necessary for the performance of its duties and conducting of proceedings before it; to establish standards of professional conduct for all persons licensed under the provisions of this law, in keeping with its purpose and objectives; to regulate the practice of professional nursing; and to determine whether or not an act constitutes the practice of professional nursing, not inconsistent with this Act. Such rules and regulations shall not be inconsistent with the provisions of this law. The Board of Nurse Examiners shall establish reasonable and necessary fees for the administration of its functions.

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

Issued in Austin, Texas, on January 31, 1986.

TRD-8601151 Margaret L. Rowland
Executive Secretary
Board of Nurse
Examiners

Effective date: February 21, 1986
Proposal publication date: November 12, 1985
For further information, please call
(512) 835-4880.

★ ★ ★

Chapter 323. Powers and Duties of the Board

★22 TAC §323.1 and §323.2

The Texas State Board of Physicial Therapy Examiners adopts the repeal of §323.1 and §323.2, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

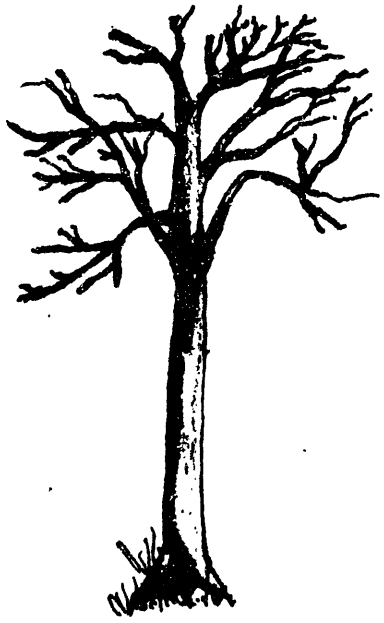
This agency hereby certifies that the rule as adopted has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Issued in Austin, Texas, on January 29, 1986.

TRD-8601021 Lois M Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★



★22 TAC §323.1, §323.2

The Texas State Board of Physical Therapy Examiners adopts new §323.1 and §323.2, with changes to the proposed text published in the December 24, 1985 issue of the *Texas Register* (10 TexReg 4933).

These new sections are proposed to offer clarification of the Act relating to examination and investigation procedures.

These new sections offer additional details to the public regarding the examination and investigation procedures utilized by the board, as advised by the state Attorney General's office.

Susan McPhail, president, Texas Physical Therapy Association, commented concerning why the 60-day notice was deleted, and requested elimination of gender from the language of the new sections.

Notice of exam time is included in applicant's package mailout; therefore, more than 60-days notice is given and does not need to be included in the new sections. Since it was brought to the board's attention that the state has made a great effort to eliminate gender from the verbage of its documents, the board has changed the language of the adopted rules to comply with this trend.

The new sections are adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

§323.1 Types of Examination. It is the duty of the board to pass on the qualifications of applicants and to conduct examinations that measure those qualifications. The examination shall be prepared by the Professional Examination Service. At the discretion of the board, oral and practical examinations may be given. Applicants will be given a 14-day notice of the place of examination.

§323.2 Investigation Procedures.

(a) Complaints must be made to the Investigation Committee or to the executive director.

(b) The complaint will be forwarded to the chairman of the Investigation Committee. This committee is composed of two members appointed by the board chairman with approval of the board.

(c) If the Investigation Committee determines that a violation of the Act has not occurred, the complainant will be so notified and the case closed.

(d) If the Investigation Committee determines a violation of the act has occurred, it will:

(1) seek legal recourse as provided for in the Act, §18; or

(2) notify the person being complained about of the complaint, specifying the sections of the Act which are alleged to have been violated, and schedule an informal conference with the individual.

(e) If the complaint is not resolved through the informal conference, the Investigation Committee will present it to the board.

(f) The board will conduct a formal hearing as provided for in the Act, §20. Members of the Investigation Committee shall not participate or vote at the hearing.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601030 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

Chapter 325. Organization of the Board

★22 TAC §§325.1-325.6

The Texas State Board of Physicial Therapy Examiners adopts the repeal of §§325.1-325.6, without changes to the proposed text published in the December 24, 1935, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601022 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

★22 TAC §§325.1-325.6

The Texas State Board of Physical Therapy Examiners adopts new §§325.1-325.6. Section 325.5 is adopted with changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933). The other sections are adopted without changes and will not be republished.

The new sections assist readers in understanding the intent of the Act, §4.

Board officers, meeting times, and rules of order are clarified by these new sections.

The board received a request to eliminate gender from the language of the new sections.

Susan McPhail, president, Texas Physical Therapy Association commented against the new sections.

Since it was brought to the board's attention that the state has made a great effort to eliminate gender from the verbage of its documents, the board has changed the language of the adopted sections to comply with this trend.

The new sections are adotped under Texas Civil Statutes, Article 4512e, §3(e) which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

§325.5. Chairman. The chairman shall be the executive officer and preside at all meetings of the board. The chairman shall appoint committees as the board may authorize and shall perform all duties usually pertaining to the office and permitted by this Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601031 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

Chapter 327. Compensation

★22 TAC §327.1

The Texas State Board of Physicial Therapy Examiners adopts the repeal of §327.1, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1983.

TRD-8601023 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

★22 TAC §327.1

The Texas State Board of Physical Therapy Examiners adopts new §327.1, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The new section determines how per diem shall be paid to board members.

This new section indicates how per diem shall be calculated.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601032 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

Chapter 328. Physical Therapist License

★22 TAC §329.1

The Texas State Board of Physicial Therapy Examiners adopts the repeal of §329.1, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

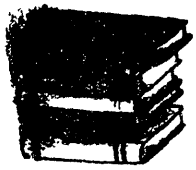
Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601024 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call (512) 835-1846.



★22 TAC §329.1

The Texas State Board of Physical Therapy Examiners adopts new §329.1, with changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

This new section clarifies the Act, §§8, 9, and 13.

Procedural directions are specified by the board in this new section, concerning license applications, examinations, and license issuance.

The board received a request to eliminate gender from the language of the rules, and was asked why "two proctors per 25 candidates" was deleted.

Susan McPhail, president, Texas Physical Therapy Association, commented against the new section.

Since it was brought to the board's attention that the state has made a great effort to eliminate gender from the verbage of its documents, the board has changed the language of the adopted sections to comply with this trend. The number of proctors were deleted in order to conserve spending excessive funds when less proctors can adequately handle the number of candidates in a room.

The new section is adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

§329.1 Physical Therapist License.

(a) Applications.

(1) The board will receive applications from persons seeking licensure under the Act. Applications received shall be examined by the executive director for conformity with rules and regulations governing application for licensure as established by the board. Applications shall include:

(A) official transcripts from colleges and/or universities;

(B) physical therapy certificate or diploma; and

(C) recent photographs (passport type).

(2) The application must be notarized.

(3) Applicants will be charged an issuance fee and temporary license fee prior to the examination. If the applicant passes the examination, the permanent license will be included with the scores. If the applicant fails the examination, another examination fee is required for a second examination. If the applicant passes the examination after the second time, the permanent license will be included with the scores.

(b) Foreign trained. The foreign trained applicant's transcripts will be evaluated by the admissions office of the University of Texas in Austin and by a board-approved credentialing agency. The admissions officer will equate the transcript to the University of Texas standards. If the standards meet the equivalence of 60 semester hours of nonprofessional training according to the University of Texas and the credentialing agency equates the physical therapy education to that of a board-approved curriculum of physical therapy, the applicant will be considered for a temporary license.

(c) Rejections. Should the board reject an application, the examination fee will be refunded and reasons for failure to qualify will be stated. The applicant may file any further information to support the claim for reconsideration. If the applicant is still dissatisfied with the decision, a hearing may be requested as specified in the Act, §20.

(d) Examinations. The board will administer three annual examinations on the Saturdays closest to the PES scheduled uniform national testing dates. Use of dictionaries, translators, or any other supportive information will not be permitted.

(e) Exam results evaluation. All examinations are prepared by the Professional Examination Service. Any score 1.0 deviation below the nationwide mean or higher on each part will be considered passing. The applicant will be sent a letter stating the applicant's scores on each part of the examination and a pass or fail status will be indicated. If an applicant fails one or more parts, the individual will be required to repeat each part failed. This must be done at the next scheduled examination. Upon receipt of notification of failure, the applicant is ineligible to practice until a new temporary license has been issued.

(f) Lost license. A duplicate license will be issued in the event of loss or destruction of the original license. The licensee shall pay the appropriate fee.

(g) Name change. A licensee requesting a name change must submit proof of name change, his original license, and an issuance fee.

(h) Licensure upgrading. Persons who qualify under the Act, §8 and §9, or are licensed under the grandfather clause, and wish to be licensed by examination may submit a written request and examination fee.

(i) Examination quidelines.

(1) Upon notification of the exam schedule, a candidate who will not be able to attend must submit the reason in writing for approval. A candidate who is scheduled to take the exam and is unable or fails to appear may be excused for:

(A) illness, with a written statement from a physician;

(B) circumstances caused by acts of God, evidence acceptable to the board;

(C) accident, evidence acceptable to the board; or

(D) other conditions as accepted by the board.

(2) If a candidate holds a temporary license awaiting Texas examination, and takes the PES examination in another state, the candidate will then be considered under the Act, §10. If the scores are not available to the Texas board 30 days prior to the next Texas exam, his temporary license shall be revoked the next working day following the Texas examination. If scores are available and any part(s) have been failed, the candidate must, on the scheduled date repeat those parts failed. The board will consider this as the second examination.

(3) If a candidate provides medical testimony of the inability to document by hand the written examination, the examination being administered at that time may be read by a proctor and oral answers recorded.

(4) If an examinee has failed the physical therapy examination and wishes to take the physical therapist assistant exam, the examinee may apply under the Act, §9.

(5) If the examinee fails the exam-

ination in Texas and takes the PES examination in another state, the examinee may apply under the Act, §10.

(6) A certificate of proficiency or a statement of official transcript that the curriculum has been complete as required in the Act, §8 or §9, signed by the director of the program and the registrar of the school, is required for taking the examination.

(j) Additional courses of study. Additional study is required for reexamination after the second or subsequent failure.

(1) Additional study acceptable to the Education Committee of the board may be institutional, continuing education, or individually tutored. The content must be submitted to the Education Committee for approval prior to enrollment.

(2) Satisfactory evidence of having completed the required courses is:

(A) an institution's official transcript;

(B) a certificate of continuing education credits;

(C) a certificate of course completion; or

(D) a notarized statement from the tutor of the course of study.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601033 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: February 19, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

Chapter 331. Endorsement License

★22 TAC §331.1

The Texas State Board of Physicial Therapy Examiners adopts the repeal of §331.1, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601025 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

★22 TAC §331.1, §331.2

The Texas State Board of Physical Therapy Examiners adopts new §331.1 and §331.2. Section 331.1 is adopted with changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933). Section 331.2 is adopted without changes and will not be republished.

The new sections clarify the Act, §10.

In these new sections, the board specifies how persons licensed in other states must meet Texas exam standards to become licensed in Texas.

The board received a request to eliminate gender from the language of the new sections by Susan McPhail, president, Texas Physical Therapy Association.

Since it was brought to the board's attention that the state has made a great effort to eliminate gender from the verbage of its documents, the board has changed the language of the new sections to comply with this trend.

The new sections are adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

§331.1. Interstate Reporting Service. Professional Examination Service scores must be reported through the Interstate Reporting Service. If the scores are 1.0 standard deviations below the nationwide mean or higher on all parts, the individual will be licensed by endorsement. If the applicant fails to meet the standards in one or more parts, the applicant will repeat the parts failed and will then be licensed according to this Act, §§8, or 9, and 11.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601034 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

Chapter 333. Temporary License

★22 TAC §333.1, §333.2

The Texas State Board of Physicial Therapy Examiners adopts the repeal of §333.1 and §333.2, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601026 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

★22 TAC §§333.1-333.3

The Texas State Board of Physical Therapy Examiners adopts new §§333.1-333.3, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

These new sections clarify the Act, §11, relating to how temporary licenses are issued.

The new sections reflect the board's adopted procedures relating to the statutory issuance of temporary licenses.

No comments were receiving regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4512, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practices Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601035 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: February 20, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

Chapter 335. Professional Title

★22 TAC §335.1

The Texas State Board of Physical Therapy Examiners adopts the repeal of §335.1 without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601027 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

Chapter 335. Professional Title

★22 TAC §335.1

The Texas State Board of Physical Therapy Examiners adopts new §335.1, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

This new section clarifies the intent of the Act §12, by indicating what professional initials may be used in relation to practice.

The board's accepted initials that can be used by licensed Texas professionals are noted in this new section.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601036 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

Chapter 337. Display of License

★22 TAC §337.1, §337.2

The Texas State Board of Physical Therapy Examiners adopts the repeal of §337.1 and §337.2, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

The board repeals this rule in order to incorporate changes and amendments advantageous to the clarification of the Act.

No comments were received regarding the adoption of this repeal.

Texas Civil Statutes, Article 4512e, §3(e), provides the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601028 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

★22 TAC §337.1 and §337.2

The Texas State Board of Physical Therapy Examiners adopts new §337.1 and §337.2, without changes to the proposed text published in the December 24, 1985, issue of the *Texas Register* (10 TexReg 4933).

Clarification of the Act, §14, was needed in relation to license display requirements.

These new sections further clarify the license display requirement of the Act.

No comments were received regarding adoption of the new sections.

The new sections are adopted under Texas Civil Statutes, Article 4512e, §3(e), which provide the Texas State Board of Physical Therapy Examiners with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties administering the Act.

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

Issued in Austin, Texas, on January 29, 1986.

TRD-8601037 Lois M. Smith
Executive Director
Texas State Board of
Physical Therapy
Examiners

Effective date: March 1, 1986
Proposal publication date: December 24, 1985
For further information, please call
(512) 835-1846.

★ ★ ★

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 37. Maternal and Child Health Services Program

Crippled Children's Services Program

★25 TAC §37.90

The Texas Department of Health adopts an amendment to §37.90, with one change to the proposed text published in the December 20, 1985, issue of the *Texas Register* (10 TexReg 4886).

The amendment provides criteria and procedures to simplify and expedite the process of approving providers for program participation.

The amendment sets forth certain requirements that physicians/dentists must meet and agree to uphold; provides procedures for the application and approval process; furnishes a means to update provider information; and provides for an appeal process for providers.

Concerning §37.90(1)(B)(iv),(III), a commentor suggested that the type of due process hearing mentioned in the rule be clarified. The department agrees and has clarified the hearing process.

An individual commented on the rules. The commentor was in favor of the rules, but offered a suggestion as outlined in the summary of comments.

The amendment is adopted under Texas Civil Statutes, Article 4419c, §8, which provide the Texas Board of Health with the authority to adopt rules concerning the criteria and procedures used to select physicians and dentists to participate in the Crippled Children's Program.

§37.90. Approved Providers and Facilities. All approved providers must agree to abide by program rules and regulations, to accept program fees as payment in full, and not to discriminate against patients on the basis of insurance or Medicaid status. The following groups of providers must be processed through an application process to determine their desire to participate within the program's rules as approved by the board and to determine their qualifications in relation to the criteria for participation as decided by the board.

(1) Physicians and dentists. To be approved for program participation the person must submit a fully completed application and attach the documents as requested on the form.

(A) Criteria. To be approved for program participation, a person must:

(i) have a Texas medical/dental practice license;

(ii) have practiced in Texas for a minimum of one year;

(iii) be certified by the American Board of Medical Specialists, or by American dental specialty boards, in the specialty area in which the physician/dentist will participate in the Crippled Children's Program;

(iv) be an active provider with the Texas Medicaid program and agree to accept Medicaid payment; and

(v) agree to abide by the rules of the Crippled Children's Program.

(B) Procedures.

(i) Applications will be reviewed by the program to assure that:

(I) all parts of the application form have been completed, including a signature and date;

(II) all of the eligibility criteria have been met;

(III) copies of documents verifying the applicant's American board or sub-board certification and state practice license are attached; if no sub-board exists for a specialty area, documentation of the applicant's training and curriculum vitae must be attached.

(ii) Review of the application will result in approval or denial. An incomplete application will be returned to the applicant with explanation of information required. The program may consider a temporary approval status when geographic need for services exists, or if the applicant does not meet eligibility requirements. The one year practice requirement may be waived in extenuating circumstances.

(I) Physicians/dentists who are board eligible, but not yet board certified, must meet the following criteria in order for a temporary approval to be considered:

(-a-) have completed their specialty training; and

(-b-) are fully eligible for certification by the American specialty boards but are awaiting completion of board examinations.

(II) Temporary approval shall be granted for a 12-month period and may be renewed pending satisfactory progress, as determined by the program, toward completion of the board examination.

(iii) Within 15 days of the program's receipt of the provider application, a letter will be sent to the applicant stating the result of the review process.

(iv) Any physician/dentist who disagrees with the result of the program's review, may appeal the decision through one of the following processes:

(I) administrative review;

(II) review by the program's General Advisory Committee; and/or

(III) due process hearing as set forth in §37.96(a)(12) of this title (relating to Appeals, Confidentiality, Gifts, and Nondiscrimination).

(C) Update activities. In an effort to maintain the accuracy and currency of provider information, the program will formally update its listing of approved providers at least once every year. Those providers that have not received any program payment for services rendered during the previous two-year period will be given the option of withdrawing from program approved status, becoming inactive, or updating information to remain active. If updated information is not received within 60 days of the date of notification, the provider will be considered inactive. This action will not remove a provider's approval, but reinstatement to active status will be made at the provider's request as soon as current information is given to the program.

(i) Updated information may include, but is not limited to, the following:

(I) current address, telephone number, and state comptroller's vendor identification number;

(II) name(s) of those hospitals where current privileges are held;

(III) notification of any additional specialty medical or dental board certifications with supporting documents attached; and

(IV) a copy of the current license to practice medicine or dentistry in Texas.

(ii) The provider will be given a current copy of program rules to review at the time reinstatement is requested.

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

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601175 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Effective date: February 24, 1985
Proposal publication date: December 20, 1985
For further information, please call (512) 465-2680.

★ ★ ★

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter V. Bingo Regulation and Tax

★34 TAC §3.545

The Comptroller of Public Accounts adopts an amendment to §3.545, without changes to the proposed text published in the November 29, 1985, issue of the *Texas Register* (10 TexReg 4624). The amendment deletes the detailed itemiza-

tion of the fee schedule for licenses, since these provisions are repetitive of the Bingo Enabling Act, Texas Civil Statutes, Article 179d. The amendment also revises the standards for determining the amount of bond required. The comptroller has determined that bingo tax revenue will be adequately protected without requiring a bond of taxpayers with a liability of less than $950 per reporting period, and the amendment establishes this standard. The amendments also provide exceptions to this standard based on the applicant's history of recordkeeping, reporting, and payment of tax.

The amendment is adopted under Texas Civil Statutes, Article 179d, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the Bingo Enabling Act.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601168 Bob Bullock
Comptroller of Public Accounts

Effective date: February 24, 1986
Proposal publication date: November 26, 1985
For further information, please call (512) 463-4606.

★ ★ ★

Chapter 5. Funds Management (Fiscal Affairs)

Claims Processing - Travel Vouchers

★34 TAC §5.22

The Comptroller of Public Accounts adopts an amendment to §5.22, without changes to the proposed text published in the September 24, 1985, issue of the *Texas Register* (10 TexReg 3681). The comptroller has updated his State Employee's Travel Allowance Guide. The amendment conforms the rule to the effective date of the revised guide.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601170 Bob Bullock
Comptroller of Public Accounts

Effective date: February 24, 1986
Proposal publication date: September 24, 1985
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §5.52

The Comptroller of Public Accounts adopts an amendment to §5.52, without changes to the proposed text published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3309). The amendments implement changes mandated by Senate Bill 233, 69th Legislature, 1985. Purchase vouchers will no longer bear a certification by the vendor that the account is true, correct, and unpaid. Instead, appropriate agency personnel will certify the validity of the account.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601165 Bob Bullock
Comptroller of Public Accounts

Effective date: February 24, 1986
Proposal publication date: September 24, 1985
For further information, please call (512) 463-4606.

★ ★ ★

★34 TAC §5.53

The Comptroller of Public Accounts adopts an amendment to §5.53, without changes to the proposed text published in the September 3, 1985, issue of the *Texas Register* (10 TexReg 3309). The amendment implements changes mandated by Senate Bill 233, 69th Legislature, 1985. Purchase vouchers will no longer bear a certification by the vendor that the account is true, correct, and unpaid, but will instead be certified by appropriate personnel of the purchasing agency. The amendment requires that different employees sign the agency approval portion and the agency certification portion of the purchase voucher.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 4344, which provide that the comptroller may prescribe, adopt, and enforce rules relating to the payment of accounts of the state.

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

Issued in Austin, Texas, on February 3, 1986.

TRD-8601169 Bob Bullock
Comptroller of Public Accounts

Effective date: February 24, 1986
Proposal publication date: September 24, 1985
For further information, please call (512) 463-4606.

★ ★ ★

Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Department of Agriculture

Monday, February 10, 1986, 10 a.m. The Texas Department of Agriculture will meet in the Commissioners Courtroom, Motley County Courthouse, Matador. According to the agenda, the department will receive public comment regarding the proposed special exemptions of the Texas Herbicide Law for Motley County.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: January 31, 1986, 12:50 p.m.
TRD-8601132

Thursday, February 13, 1986, 7:30 p.m. The Texas Department of Agriculture will meet at the Brazos High School, 14413 Highway 36, Wallace. According to the agenda, the department will receive public comments regarding the proposed change to special provisions for Austin County under the Texas Herbicide Law and regulations.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: February 4, 1986, 8:43 a.m.
TRD-8601207

★ ★ ★

State of Texas Aircraft Pooling Board

Monday, February 10, 1986, 1 p.m. The Board of Directors for the State of Texas Aircraft Pooling Board will meet in Room 107, John H. Reagan Building, 1701 North Congress Avenue, Austin. According to the agenda, the board will consider approval of minutes of previous meetings; phase II of expansion; and discuss other Aircraft Pooling Board's operational matters.

Contact: Sherry Johnson, 4900 Old Manor Road, Austin, Texas 78723, (512) 477-8900.

Filed: January 30, 1986, 11:08 a.m.
TRD-8601064

★ ★ ★

Texas Commission on the Arts

Tuesday, February 11, 1986. Committees of the Texas Commission on the Arts will meet in the Marshall Civic Center Auditorium, 2501 East End Boulevard, Marshall. Times and agendas follow.

1 p.m. The Administrative Committee will consider the appropriations request for 1988-1989 biennium.

Contact: A. Patrice Walker, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: January 30, 1986, 2:42 p.m.
TRD-8601080

2 p.m. The Minority Involvement Committee will consider the minutes of the December 3, 1985, meeting; and review the request for Proposal (RFP) on the statewide hispanic arts survey and the statewide minority arts survey.

Contact: A. Patrice Walker, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: January 30, 1986, 2:42 p.m.
TRD-8601081

3 p.m. The Education Committee will consider the minutes of the December 3, 1985, meeting; the report of subcommittee on the selection of a project director; and the report of the subcommittee on the task force membership.

Contact: A. Patrice Walker, P.O. Box 13406, Austin, Texas 78711, (512) 463-5535.

Filed: January 30, 1986, 2:41 p.m.
TRD-8601079

★ ★ ★

Texas School for the Blind

Friday, February 14, 1986, 10:30 a.m. The Local Board of Trustees for the Texas School for the Blind will meet at 1100 West 45th Street, Austin. According to the agenda, the board will consider approval of minutes of last meeting; presentation of business requiring school policies; consultant contracts; textbook committee report; contract renewals for 1986-1987 year; nonrenewal contracts; discuss business for informational purposes; hear the report of special committees; hold audiences with individuals or committees; and hear the report or discussions from board members.

Contact: Nancy Faubion, 1100 West 45th Street, Austin, Texas 78758, (512) 454-8631.

Filed: January 31, 1986, 10:54 a.m.
TRD-8601120

★ ★ ★

Texas Employment Commission

Tuesday, February 11, 1986, 8:30 a.m. The Texas Employment Commission (TEC) will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda summary, the commission will consider prior meeting notes; internal procedures of commission apeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on commission Docket 6; and set the date of the next meeting.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: February 3, 1986, 1:33 p.m.
TRD-8601184

★ ★ ★

Texas Economic Development Commission

Wednesday, February 5, 1986, 9 a.m. The Texas Small Business Industrial Development Corporation (SBIDC) of the Texas Economic Development Commission met in Room 318, Anson Jones Building, 410 East Fifth Street, Austin. According to the agenda, the corporation considered the proposed issuance of its revenue bonds (the bonds) to finance the cost of land and facilities to be used for the warehousing, printing, and distribution of business forms and other business products (the project). The project will include construction of a facility of approximately 36,000 square feet to be located at the southwest corner of the intersection of

Avenue H and Great Southwest Parkway in Arlington. The project will be owned initially by Joe N. Louis. The maximum aggregate face amount of the bonds is anticipated to be $750,000. All interested persons are invited to attend and to express any comments they have regarding the project and the proposed issuance of the bonds.

Contact: John Kirkley, Room 318, Anson Jones Building, 410 East Fifth Street, Austin, Texas 78701, (512) 472-5059.

Filed: January 28, 1986, 3:35 p.m.
TRD-8600994

★ ★ ★

Texas Education Agency

Thursday, February 6, 1986, 8:30 a.m. The Committee for Personnel of the Texas Education Agency met in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee considered the teacher appraisal process, and discussed the teacher appraisal system.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 29, 1986, 3:39 p.m.
TRD-8601054

Thursday, February 6, 1986, 2 p.m. The Committee of the Whole of the Texas Education Agency met in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee considered Textbook Proclamation 63; discussed the career ladder issues; and discussed Proclamation 63 of the State Board of Education advertising for bids textbooks.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 29, 1986, 3:40 p.m.
TRD-8601053

Thursday, February 6, 1986, 2 p.m. The Committee of the Whole of the Texas Education Agency of the State Board of Education made an emergency addition to the agenda for a meeting held in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. The addition concerned executive session to disccuss pending litigation pursuant to Texas Civil Statutes, Article 6252-17, §2(e).

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 31, 1986, 4:03 p.m.
TRD-8601154

Committees of the Texas Education Agency of the State Board of Education will meet in the William B. Travis Building, 1701 North Congress Avenue, Austin. Days, times, rooms, committees, and agendas follow.

Friday, February 7, 1986, 8:30 a.m. In Room 1-104, the Committee for Finance and Programs will consider the permanent school fund; materials available for use with textbooks; special education; school district annual performance report; nonpublic schools for handicapped students; the State Board of Education operating rules; the trustee to Lackland Independent School District; the master plan for vocational education; the school health project grant from the Texas Cancer Council; research, development, and evaluation funds; the Price Differential Index Advisory Committee; the vocational program improvement projects; the Job Training Partnership Act projects; budgeting, acounting, and auditing; and the current status of the state technology and telecommunications projects.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:18 p.m.
TRD-8601091

Friday, February 7, 1986, 8:30 a.m. In Room 1-111, the Committee for Students made an emergency addition to the agenda concerning the appointment to the Software Advisory Commission. The emergency status was necessary so the new appointee can attend the next meeting of the Software Advisory Committee which is scheduled to take place before the next meeting of the State Board of Education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 31, 1986, 4:02 p.m.
TRD-8601155

Friday, February 7, 1986, 8:30 a.m. In Room 1-100, the Committee for Personnel will consider the training for school board members; the teacher testing program; the teacher certification; the process to grant waivers for individuals who perform unsuccessfully on the Texas Examination for Current Administrators and Teachers; inservice education; appraisal of certified personnel; implementation of Houston Independent School District Alternative Teacher Certification Program; the monitoring alternative teacher certification plans; the composition of the commission on standards for the teaching profession; the state textbook program; the advanced academic training; activities to aid districts in locating qualified teachers and administrators for 1986-1987; the progress report on examination for the certification of educators in Texas; and the results of the Pre-Professional Skills Test through November 1985.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:18 p.m.
TRD-8601092

Friday, February 7, 1986, 8:30 a.m. In Room 1-111, the Committee for Students will consider the general educational development; the advanced placement examinations; special education; approved tests for special language programs; the schedule for curriculum field review; the promotion, retention, and alternatives in Los Angeles Unified School District; the state plan for Part B of Education of the Handicapped Act; the state textbook program; the Texas Educational Assessment of Minimum Skills; the guidelines for approval of non-school programs to substitute for physical education; and the status report on gifted and talented education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:19 p.m.
TRD-8601094

Friday, February 7, 1986, 2 p.m. The Committee for Long-Range Planning will consider the nonpublic elementary and secondary schools; accreditation; creation of the Texas Private School Accreditation Commission; the status report on the accreditation of school districts; the Texas Education Agency/Mental Health Mental Retardation Work Relationship for deinstitutionalization of state schools; educational activities conducted through joint efforts of education service centers and institutions of higher education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:19 p.m.
TRD-8601093

Friday, February 7, 1986, 6:30 p.m. The State Board of Education will meet in the Onion Creek Park Room; Wyndham Hotel, 4140 Governor's Road, IH 35 at Ben White Boulevard, Austin. According to the agenda, the board will have a dinner meeting to receive reports from the chairmen of the State Board of Education committees including the Committee for Finance and Programs, the Committee for Students, the Committee for Personnel, Committee for Long-Range Planning, and Committee of the Whole, concerning items discussed in the committee meetings on Thursday and Friday, February 6 and 7, 1986.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:18 p.m.
TRD-8601090

Saturday, February 8, 1986. The Texas Education Agency of the State Board of Education will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. Times and agendas follow.

8:30 a.m. According to the agenda summary, the board will consider the permanent school fund, materials available for use with textbooks; special education; school district annual perfomance report; the nonpublic schools for handicapped students; the State Board of Education operating rules; the trustee to Lackland Independent School District; the master plan for vocational education; the comprehensive school health grant from the Texas Cancer Council; general educational development; advanced placement examinations; the tests for special language programs; the training for school board members; the teacher testing program; teacher certification; nonpublic elementary and secondary schools-accreditation; the resolution regarding vocational education week; the resolution regarding the public schools week in Texas; and the resolution for the crew of the Challenger.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:17 p.m.
TRD-8601098

8:30 a.m. Addition to the agenda—appointment to the Software Advisory Committee.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 31, 1986, 4:02 p.m.
TRD-8601156

1 p.m. The Committee for Personnel will conduct a public hearing on the teacher appraisal process.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:19 p.m.
TRD-8601097

Thursday, February 13, 1986, 10 a.m. The Research Subcommittee of the Accountable Costs Advisory Committee of the Texas Education Agency will meet in Room 6-100, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will consider research contracts for studies of the Accountable Costs Advisory Committee.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: January 30, 1986, 4:17 p.m.
TRD-8601096

★ ★ ★

Office of the Governor

Friday, February 7, 1986, 8 a.m. The Task Force on Border Economic Development of the Office of the Governor will meet at the Fort Duncan Club, Fort Duncan Park, Eagle Pass. According to the agenda, the task force will tour Eagle Pass and Piedras Negras, consider the briefing on Del Rio and Eagle Pass economic development programs, public comment, and task force discussions.

Contact: Barbara J. Williams, Room 208, Sam Houston Building, Austin, Texas 78701, (512) 475-4444

Filed: January 29, 1986, 3:43 p.m.
TRD-8601055

★ ★ ★

Texas Department of Health

Friday, January 31, 1986, 1:30 p.m. The Texas Board of Health of the Texas Department of Health made an emergency revision to the agenda for a meeting held in Room T-610, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the board considered resolution approving partipation in energy efficiency improvement bond project and granting signature authority. The emergency status was necessary because the board needs to take action on this resolution at this meeting to meet deadline imposed by Texas Public Building Law.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 29, 1986, 4:13 p.m.
TRD-8601058

Saturday, February 1, 1986, 9 a.m. The Hospital Committee of the Texas Board of Health of the Texas Department of Health made an emergency revision to the agenda for a meeting held in Room 830, Embassy Suites Courtyard, 5901 IH 35 North, Austin. The revision concerned the proposed rules concerning amendments to the hospital licensing standards; the selection and approval of consulting firm to prepare a six-year plan for the State Chest Hospitals; Southwest Methodist Hospital request for reconsideration to participate as a Crippled Children's Program Cardiac Center Provider. The emergency status was necessary in order to meet deadlines on Crippled Children's Program participation and adoption of hospital licensing standards. The meeting was rescheduled from Friday, January 31, 1986.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7484.

Filed: January 29, 1986, 4:13 p.m.
TRD-8601059

★ ★ ★

Texas Commission on Human Rights

Friday and Saturday, February 7 and 8, 1986, 2 p.m. and 9 a.m., respectively. The Texas Commission on Human Rights will meet in Room 214, Senate Reception Room, State Capitol. According to the agenda summary, the commission will approve the minutes, the administrative reports, review and discussion of commission's proposed EEO conference, FEP/EEOC annual conference, discussion of final audit management letter issued by the state auditor's office, personnel matters, comissioners' issues, and unfinished business.

Contact: William M. Hale, 7215 Cameron Road, Austin, Texas 78752, (512) 459-0944.

Filed: January 29, 1986, 3:57 p.m.
TRD-8601057

★ ★ ★

Texas Industrial Accident Board

Monday, February 3, 1986, 1:30 p.m. The Texas Industrial Accident Board met in Room 107, Bevington A. Reed Building, 200 East Riverside Drive, Austin. According to the agenda, the board met in executive session to review the board files.

Contact: William Treacy, 200 East Riverside Drive, Austin, Texas 78704, (512) 448-7962.

Filed: January 29, 1986, 3:28 p.m.
TRD-8601049

★ ★ ★

State Board of Insurance

Wednesday, January 29, 1986, 2 p.m. The State Board of Insurance made an emergency revision to the agenda for a meeting held in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. The revision concerned the filing by Texas Hospital Insurance Exchange of a rate increase for hospital professional liability insurance. The emergency status was necessary because the insurer's present rate structure is inadequate for it to continue to provide a market for this coverage.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 29, 1986, 8:57 a.m.
TRD-8601002

Thursday, January 30, 1986, 2 p.m. The State Board of Insurance met in emergency session in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the board considered the filing by the Travelers Indemnity Company of an Emergency Physicians Professional Liability Program, and the rehabilitation program and conversion of occurrence type policies to claims made for the Professional Mutual Insurance Company. The emergency status was necessary because these matters required action by the board at the earliest time due to conditions in the professional liability market.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 30, 1986, 10:50 a.m.
TRD-8601063

Monday, February 10, 1986, 10 a.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda summary, the board will consider the proposal for decision in the appeal of Robert Mitchell from action of the Texas Catastrophe Property Insurance Association; the fire marshal's report on personnel matters; the Texas Commercial Liability Market Assistance Plan; the commissioner's report on personnel matters; pending and contemplated litigation; the premium tax implications of Medicare capitation fee; rules for surplus aid reinsurance treaties; and the staff report on data processing fire safety.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6328.

Filed: January 31, 1986, 2:44 p.m.
TRD-8601139

Monday, February 10, 1986, 4 p.m. The State Board of Insurance will meet in Room 414, State Insurance Building, 1110 San Jacinto Street, Austin. According to the agenda, the board will consider a prepaid legal rate filing by Midwest Mutual Insurance Company.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6328.

Filed: January 31, 1986, 2:44 p.m.
TRD-8601141

The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, State Insurance Building, 1110 San Jacinto Street, Austin. Days, times, rooms, and agendas follow.

Tuesday, February 11, 1986, 9 a.m. The section will consider Docket 9178—application for original charter of New Southern Title Guaranty Co., Inc., Austin.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78786, (512) 463-6524.

Filed: February 3, 1986, 1:20 p.m.
TRD-8601181

Tuesday, February 11, 1986, 1:30 p.m. The section will consider Docket 9177—whether disciplinary action should be taken agains. Freddie Leon Huddleston, Houston, who holds a Group I, legal reserve life insurance agent's license issued by the State Board of Insurance.

Contact: James W. Norman, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6524.

Filed: February 3, 1986, 1:20 p.m.
TRD-8601182

Thursday, February 13, 1986, 1:30 p.m. The section will consider Docket 9182—whether disciplinary action should be taken against Combined Insurance Company of America, Chicago, Illinois, which holds a certificate of authority issued by the State Board of Insurance.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6498.

Filed: February 3, 1986, 1:19 p.m.
TRD-8601180

★ ★ ★

Texas Department of Labor and Standards

Tuesday, February 4, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards met in emergency session at 131-B South Closner, Edinburg. According to the agenda, the division considered license and registration revocations, suspensions and alleged violations of various rules and regulations of the department. The emergency status was necessary in order to consider the possible violation of Texas Civil Statutes, Article 5221f, rules which jeopardize individual safety and the public welfare.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78701, (512) 463-3127.

Filed: January 30, 1986, 2:52 p.m.
TRD-8601086

Wednesday, February 5, 1986, 9 a.m. The Manufactured Housing division met in emergency session in Room 105, E. O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division considered the license and registration revocations, suspensions and alleged violations of various rules and regulations of the department. The emergency status was necessary in order to consider the possible violation of Texas Civil Statutes, Article 5221f, rules which jeopardize individual safety and the public welfare.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: January 30, 1986, 2:51 p.m.
TRD-8601085

Thursday, February 6, 1986, 9 a.m. The Manufactured Housing Division met in emergency session in Room 105, E. O. Thompson Building, 920 Colorado, Austin. According to the agenda, the division considered license and registration revocations, suspensions and alleged violations of various rules and regulations of the department. The emergency status was necessary in order to consider the possible violation of Texas Civil Statutes, Article 5221f, rules which jeopardize individual safety and the public welfare.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: January 30, 1986, 2:50 p.m.
TRD-8601083

Friday, February 7, 1986, 9 a.m. The Manufactured Housing Division will meet in Room 105, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider license and registration revocations, suspensions, and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: January 30, 1986, 2:50 p.m.
TRD-8601084

Tuesday, February 11, 1986, 9 a.m. The Manufactured Housing Division will meet in Room 105, E. O. Thompson Building, 920 Colorado Street, Austin. According to the agenda, the division will consider license and registration revocations, suspensions, and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157 Austin, Texas 78711, (512) 463-3127.

Filed: January 30, 1986, 2:47 p.m.
TRD-8601082

Tueesday, February 11, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 209, 4615 North Freeway, Houston. According to the agenda, the division will consider various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas, 78711, (512) 463-7332.

Filed: February 3, 1986, 4:31 p.m.
TRD-8601198

Wednesday, February 12, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet in Suite 209, 4614 North Freeway, Houston. According to the agenda, the division will consider various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas, 78711, (512) 463-7332.

Filed: February 3, 1986, 4:32
TRD-8601199

Wednesday, February 12, 1986, 9 a.m. The Boiler Division and the Manufactured Housing Division will consider license and registration revocations, suspensions, and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: January 31, 1986, 12:51 p.m.
TRD-8601129

Thursday, February 13, 1986, 9 a.m. The division will consider license and registration revocations, suspensions, and alleged viola-

tions of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: January 31, 1986, 12:50 p.m.
TRD-8601131

Friday, February 14, 1986, 9 a.m. The division will consider lisense and registration revocations, suspensions, and alleged violations of various rules and regulations of the department.

Contact: Orlando S. Mata, P.O. Box 12157, Austin, Texas 78711, (512) 463-3127.

Filed: January 31, 1986, 12:51 p.m.
TRD-8601130

Wednesday, February 19, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet at 3014 Sandage, Fort Worth. According to the agenda, the division will consider various consumer complaints in regard to manufacture homes which do not comply with Texas Civil Statutes, Article 5521f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas, 78711, (512) 463-7332.

Filed: February 3, 1986, 4:33 p.m.
TRD-8601200

Thursday, February 20, 1986, 9 a.m. The Manufactured Housing Division of the Texas Department of Labor and Standards will meet at 3014 Sandage, Fort Worth. According to the agenda, the division will consider various consumer complaints in regard to manufactured homes which do not comply with Texas Civil Statutes, Article 5221f.

Contact: Sharon Choate, P.O. Box 12157, Austin, Texas, 78711, (512) 463-7332.

Filed: February 3, 1986, 4:34 p.m.
TRD-8601201

★ ★ ★

Pan American University

Tuesday, February 11, 1986. Committees of the Board of Regents of Pan American University will meet in the boardroom, Administration Building, Pan American University, Edinburg. Times, committees, and agendas follow.

1 p.m. The Buildings and Grounds Committee will consider informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: January 29, 1986, 9:06 a.m.
TRD-8601004

1:15 p.m. The Finance Committee will consider budget changes, the alumni contract for use of university facilities, and informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: January 29, 1986, 9:07 a.m.
TRD-8601006

1:30 p.m. The Development Committee will consider the gifts and donations of Gertrude Neuhaus, and informational items.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: January 29, 1986, 9:07 a.m.
TRD-8601007

1:45 p.m. The Academic Affairs Committee will consider general studies degree and informational items. The committee also will meet in executive session to discuss employment of faculty and administrators for academic year 1986-1987, and the faculty hires of 1985-1986.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: January 29, 1986, 9:08 a.m.
TRD-8601012

★ ★ ★

Pardons and Paroles

Tuesday, February 11, 1986, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek, Austin. According to the agenda, the board will consider executive clemency recommendations and related actions (other than Out of Country Conditional Pardons), including full pardons/restoration of civil rights of citizenship; emergency medical reprieves; commutations of sentence; and other reprieves, remissions, and executive clemency actions.

Contact: Gladys Sommers, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2704.

Filed: January 31, 1986, 2:37 p.m.
TRD-86001136

Monday-Friday, February 10-14, 1986, 1:30 p.m. daily, except 11 a.m. on Friday. The board members of the Board of Pardons and Paroles will meet at 8610 Shoal Creek, Austin. According to the agenda, the board will receive, review, and consider information and reports concerning prisoner/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate action.

Contact: Mike Roach, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: January 31, 1986, 2:37 p.m.
TRD-86001136

★ ★ ★

Texas Department of Public Safety

Thursday, January 30, 1986, 10 a.m. The Public Safety Commission of the Texas Department of Public Safety made an emergency revision to the agenda for a meeting held in the commission room, Department of Public Safety Headquarters, 5805 North Lamar Boulevard, Austin. According to the agenda, the commission considered the Parameter Vehicle Emission Inspection and Maintenance Program. The emergency status was necessary because implementation of the Parameter Vehicle Emission Inspection and Maintenance Program has revealed unanticipated problems with the inspection standards for vehicles powered by liquefied petroleum gas or natural gas, creating an urgent public necessity for action prior to expiration of the current month's vehicle inspection certificates.

Contact: James B. Adams, 5805 North Lamar Boulevard, Austin, Texas 78773, (512) 465-2000, ext. 3700.

Filed: January 28, 1986, 3:09 p.m.
TRD-8600991

★ ★ ★

Public Utility Commission of Texas

Wednesday, January 29, 1986, 9 a.m. The Hearings Division of the Public Utility Commission of Texas made an emergency addition to the agenda for a meeting held in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The addition concerned Dockets 6477 and 6525—inquiry of the Public Utility Commission of Texas concerning the fixed fuel factor of Gulf States Utilities Company and application of Gulf States Utilities Company for authority to change rates. The appeal of Examiner's Order 18 was scheduled. (Oral argument was also requested). The emergency status was necessary because of the expiration of deadline and mooting appeal.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 28, 1986, 3:34 p.m.
TRD-8600995

Tuesday, February 4, 1986, 10 a.m. The Hearings Division of the Public Utilities Commission of Texas met in emergency session in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda, the division met in emergency executive session to discuss pending litigation. The emergency status was necessary because of immediate action in pending litigation.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1986, 2:57 p.m.;
TRD-8601142

Thursday, February 6, 1986, 9 a.m. The Hearings Division of the Public Utility Commission of Texas made an addition to the agenda for a meeting held in Suite 450N,

7800 Shoal Creek Boulevard, Austin. The addition concerned Dockets 6477 and 6525—inquiry of the Public Utility Commission of Texas concerning the fixed fuel factor of Gulf States Utilities Company and application of Gulf States Utilities Company for authority to change rates. Appeal of Examiner's Orders 18 and 20 were also scheduled. (Oral argument has been requested.)

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 30, 1986, 3:13 p.m.
TRD-8601088

Thursday, February 6, 1986, 9 a.m. The Hearings Division of the Public Utility Commission of Texas met in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commissioners will consider Dockets 6411, 6412, 6413, 6455, 6462, 6604, 6405, 6510, 6122, 6548, 6117, 6170 6171, 6172, 6384, 6264, 5026, 6142, 6549, 6574, 6633, 6310, 6544, 6576, 6577, 6616, 6638, 6379, 6487, 6528, 5206, 6037, 6416, 6491, 6493, 6497, 6530, 6542, 6551, 6554, 6582, 6583, 6586, and 6608. The division also will meet in executive session to consider pending litigation and personnel matters.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 28, 1986, 3:32 p.m.
TRD-8600998

Thursday, February 6, 1986, 9 a.m. The Hearings Division of the Public Utility Commission of Texas made an emergency addition to the agenda for a meeting held in Suite 450N, 7800 Shoal Creek Boulevard, Austin. The addition concerned Docket 6452—application of Hill Country Northwest Water Supply Corporation to transfer its entire certificate of convenience and necessity to provide water service within Travis County to W.O.A., Inc.; Docket 6494—application of Markwood Wells to transfer its entire certificate of convenience and necessity to provide water service within Dallas County to the City of DeSoto; Docket 6570—application of Creek Cliff Estates, Inc., to transfer its entire certificate of convenience and necessity to provide water service within Coryell County to the city of Gatesville.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 29, 1986, 3:27 p.m.
TRD-8601052

The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Days, times, and dockets follow.

Friday, February 7, 1986, 9 a.m. An administrative meeting will be held in Hearing Room D to approve the minutes of the commission of January 16, 1986; consider and act on the administrative policies and fiscal year 1986 budget, court reporting services, the proposed standards for rules determining commercial operation, the date of nuclear power plants, staff proposed rule changes; and discussion of action and matters carried forward from previous meetings.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 30, 1986, 3:13 p.m.
TRD-8601089

Friday, February 7, 1986, 10 a.m. A prehearing conference in Docket 6063—application of Southwestern Public Service Company for approval of standard avoided cost calculation for the purchase of firm energy and capacity from qualified facilities.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 28, 1986, 3:33 p.m.
TRD-8600997

Monday, February 10, 1986, 8:30 a.m. A prehearing conference in Docket 5914, 6506, 6516, 6584, and 6596—application of Travis County Water Control District 17 for a water certificate of convenience and necessity within Travis County; application of the Parke Utility Corporation for a water certificate of convenience and necessity within Travis County; application of Steiner Utility Company for water and sewer certificates of convenience and necessity within Travis County; application of M.A.B.D.D., Inc., Charter 755136 for water and sewer certificates of convenience and necessity within Travis County; and application of the Parke Water Supply Corporation for sewer certificate of convenience and necessity within Travis County.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 29, 1986, 3:30 p.m.
TRD-8601051

Friday, February 14, 1986, 10 a.m. A prehearing conference in Docket 6678—application of Houston Lighting and Power Company for refund of fuel savings and adjustment for fixed fuel factors.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 29, 1986, 3:31 p.m.
TRD-8601050

Tuesday, February 18, 1986, 10 a.m. A prehearing conference in Docket 6677—application of Texas Utilities Electric Company for authority to refund an over-recovery of fuel cost revenue and to reduce its fixed fuel factors.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: February 3, 1986, 3:31 p.m..
TRD-8601205

Thursday, March 6, 1986, 9 a.m. A hearing on the merits in Docket 6629—application of Chilton Water Company, Inc., for a rate increase.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1986, 2:56 p.m.
TRD-8601145

Wednesday, March 12, 1986, 9 a.m. An open meeting in Docket 6676—notice of inquiry to evaluate the appropriateness of a generic rate of return on equity to be applied to public utilities subject to regulation by the commission.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 28, 1986, 3:33 p.m.
TRD-8600996

Friday, May 16, 1986, 10 a.m. A hearing on the merits in Docket 6689—application of Southwestern Bell Telephone Company for a new tariff offering dial 976 service.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: January 31, 1986, 2:57 p.m.
TRD-8601143

★ ★ ★

Railroad Commission of Texas

Monday, February 3, 1986, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas made an emergency revision to the agenda for a meeting held in the 12th floor conference room, William B. Travis Building, 1701 North Congress Avenue, Austin. The revision concerned Docket 4931—application of South Rusk County Gas Company, Inc., to change rates in the environs of the City of Mount Enterprise. The emergency status was necessary because the item was properly noticed for the conference held on January 27, 1986, was passed and is now being considered on less than seven days notice.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: January 31, 1986, 10:34 a.m.
TRD-8601103

Monday, February 3, 1986, 9 a.m. The Oil and Gas Division made an emergency revision to the agenda for a meeting held in the 12th floor conference room, William B. Travis Building, Austin. The revision concerned a leaking well of an unknown oper-

ator, an identified lease in Wichita County. The emergency status was necessary because the well is leaking approximately 20 barrels of salt water per day into some old drilling pits located on the banks of an unnamed creek which is tributary to Wichita River and could be a threat to the public's health, safety, and welfare.

Contact: Willis Steed, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6830.

Filed: January 31, 1986, 10:47 a.m.
TRD-8601102

Monday, February 3, 1986, 9 a.m. The Railroad Commission of Texas met in the 12th floor conference room, William B. Travis Building, 1701 North Congress Avenue, Austin. The commission considered and acted on division agendas as follows.

The Administrative Services Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: January 31, 1986, 10:37 a.m.
TRD-8601112

The Automatic Data Processing Division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 445-1204.

Filed: January 31, 1986, 10:47 a.m.
TRD-8601121

The Flight Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-7149.

Filed: January 31, 1986, 10:36 a.m.
TRD-8601110

Various matters falling within the Gas Utilities Division's regulatory jurisdiction.

Contact: Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7003.

Filed: January 31, 1986, 10:33 a.m.
TRD-8601127

The Office of Information Services director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6710.

Filed: January 31, 1986, 10:45 a.m.
TRD-8601119

The LP-Gas Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6931.

Filed: January 31, 1986, 10:42 a.m.
TRD-8601117

Various matters falling within the Oil and Gas Division's regulatory jurisdiction.

Contact: Timothy A. Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: January 31, 1986, 10:41 a.m.
TRD-8601116

Additions to the previous agenda:

Consideration of category determinations under the Natural Gas Policy Act of 1978, §§102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108.

Contact: Margie L. Osborn, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6755.

Filed: January 31, 1986, 10:42 a.m.
TRD-8601118

Consideration of All American Pipeline Company's application for a pipeline permit across various counties in Texas

Contact: Susan Cory, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6923.

Filed: January 31, 1985, 10:41 a.m.
TRD-8601115

Consideration of whether to initiate rulemaking proceedings to amend 16 TAC §3.65, (statewide Rule 70) pertaining to pipeline permits.

Contact: Susan Cory, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6922.

Filed: January 31, 1986, 4:20 p.m.
TRD-8601157

The Personnel Division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark K. Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: January 31, 1986, 10:37 a.m.
TRD-8601113

The Office of Research and Statistical Analysis director's report on division administration, budget, procedures, and personnel matters.

Contact: Gail Gemberling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6976.

Filed: January 31, 1986, 10:32 a.m.
TRD-8601126

The Office of the Special Counsel director's report relating to pending litigation, state and federal legislation, and other budget, administrative, and personnel matters.

Contact: Walter Earl Lilie, 1124 IH 35 South, Austin, Texas 78704, (512) 463-7149.

Filed: January 31, 1986, 10:36 a.m.
TRD-8601111

The Surface Mining and Reclamation Division director's report on division administration, budget, procedures, and personnel matters.

Contact: J. Randel (Jerry) Hill, William B. Travis Building, 1701 North Congress Avenue, Austin, Texas, (512) 463-7149.

Filed: January 31, 1986, 10:38 a.m.
TRD-8601114

Various matters falling within the Transportation Division's regulatory jurisdiction.

Contact: Michael A. James, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: January 31, 1986, 10:35 a.m.
TRD-8601125

★ ★ ★

Texas Rehabilitation Commission

Thursday-Friday, February 20-21, 1986, 7:30 p.m. and 4:40 p.m. respectively. The Governor's Committee for Disabled Persons of the Texas Rehabilitation Commission will meet in the boardroom, third floor, 118 East Riverside Drive, Austin. According to the agenda summary, the board will consider subcommittee meetings; executive reports; discuss implementation plan priorities; and committee initiatives.

Contact: Virginia Roberts, 118 East Riverside Drive, Austin, Texas 78756.

Filed: January 31, 1986, 3:07 p.m.
TRD-8601146

★ ★ ★

State Securities Board

Tuesday, March 25, 1986, 1 p.m. According to the agenda summary, the Commissioner of the State Securities Board will determine whether the application of Blinder, Robinson, and Company, Inc., as a securities dealer should be granted or denied. The meeting is rescheduled from January 29, 1986.

Contact: Sue B. Roberts, 1800 San Jacinto Street, Austin, Texas 78701, (512) 474-2233.

Filed: January 28, 1986, 1:47 p.m.
TRD-8600977

★ ★ ★

Texas Senate

Friday, February 14, 1986, 1:30 p.m. The Joint Committee on Texas Department of Human Services Audits of the Texas Senate and House of Representatives will meet in the Senate Reception Room, State Capitol, Austin. According to the agenda, the committee will conduct the second in a series of working sessions to be conducted as part of the committee's interim study on the auditing techniques and standards used and required by the Texas Department of Human Services for contract vendors. The primary focus of the meeting will be problem identification and development of appropriate solutions.

Contact: Deborah Medders, P.O. Box 12068, Austin, Texas 78711, (512) 463-0360.

Filed: February 3, 1986, 1:02 p.m.
TRD-8601183

★ ★ ★

Texas Sesquicentennial Commission

Friday, January 31, 1986, 3 p.m. The Media Subcommittee of the Texas Sesquicentennial Commission met in emergency session in Suite 116, 510 South Congresss, Austin. Items on the agenda included the KTRK-TV broadcast, the production by Alan Gitlin, the Reverse Runaway Opera, and the silenced canon. The emergency status was necessary because of the review of the TV broadcasting.

Contact: Lynn Nabers, Suite 116, 510 South Congress Avenue, Austin, Texas 78701, (512) 475-1986.

Filed: January 28, 1986, 11:48 a.m.
TRD-8600973

★ ★ ★

Texas Southern University

Friday, January 31, 1986, 10:30 a.m. The Building and Grounds Committee of Texas Southern University met in emergency session in Room 117, Hannah Hall, 3100 Cleburne Avenue, Houston. According to the agenda, the committee approved payments for construction, change orders, improvements of land, the report on central plant expansion and renovation, the progress report on on-going construction projects, received bids on construction projects, and the purchase of real estate. The emergency status was necessary because the chairman of the committee was unable to meet at a later date. The meeting was rescheduled from Wednesday, January 29, 1986.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 29, 1986, 10:50 a.m.
TRD-8601019

Friday, January 31, 1986, 1:30 p.m. The Finance Committee of Texas Southern University met in emergency session in Room 117, Hannah Hall, 3100 Cleburne Avenue, Houston. According to the agenda, the committee considered fiscal reports on university operations, approved short term university investments; and considered matters relating to the issuance of Rosewood project bonds and Proposition II bonds. The emergency status was necessary because the chairman of the committee was unable to meet at a later date. The meeting was rescheduled from January 29, 1986.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 29, 1986, 10:50 a.m.
TRD-8601018

Friday, February 7, 1986. Committees of Texas Southern University will meet in Room 117, Hannah Hall, 3100 Cleburne Avenue, Houston. Times, committees, and agendas follow.

9:30 a.m. The Personnel and Academic Affairs Committee will consider the ratification of appointments of instructional personnel for the fall school term, the academic personnel changes, enrollment projections and reports, and the report on academic plans and projections.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 29, 1986, 9:09 a.m.
TRD-8601013

10:15 a.m. The Student Affairs Committee will review the university's administration report on impact of tuition installment payments on enrollment; consider enrollment reports for the spring semester 1986; and projections for the summer of 1986 and the fall semester of 1986.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 29, 1986, 9:09 a.m.
TRD-8601014

10:30 a.m. The Developmennt Committee will receive reports from the administration on university fund raising efforts, and reports on special funds budget.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 29, 1986, 9:09 a.m.
TRD-8601015

11 a.m. The Board of Regents will consider reports from the board's standing committees; receive reports from the president; consider the minutes; the purchase and value of real estate; and consult with the university attorney regarding contemplated and/or pending litigation. The board also will meet in executive session to discuss matters related to the employment and evaluation of personnel.

Contact: Everett O. Bell, 3100 Cleburne Avenue, Houston, Texas 77004, (713) 529-8911.

Filed: January 29, 1986, 9:09 a.m.
TRD-8601016

★ ★ ★

The Advisory Council for Technical-Vocational Education

Monday, February 10, 1986, 10 a.m. The Planning Committee of the Advisory Council of Technical-Vocational Education will meet at the Dallas County Community College district office, 701 Elm Street, Dallas. According to the agenda, the committee will review the master plan for vocational education, review and discuss the post-secondary occupational education rules, receive an update on vocational education technical committees, and discuss the state plan for vocational education.

Contact: Val Blaschke, Trinity and 12th Streets, Suite 424, Austin, Texas 78701, (512) 463-5490.

Filed: January 31, 1986, 10:59 a.m.
TRD-8601128

★ ★ ★

Board of Veterinary Medical Examiners

Sunday and Monday, February 16 and 17, 1986, 9 a.m. daily. The Board of Veterinary Medical Examiners will meet in the Hilton Palacio Del Rio, Market and Alamo Streets, San Antonio. According to the agenda, the board will conduct general board business, review practice complaints, and hold informal hearings. The board also will meet in executive session to discuss personnel and vacancies.

Contact: Judy Smith, Suite 119, 3810 Medical Parkway, Austin, Texas 78756, (512) 458-1183.

Filed: February 3, 1986, 4:02 p.m.
TRD-8601202

★ ★ ★

Texas Water Commission

Friday and Monday, February 7 and 10, 1986, 10 a.m. and 9 a.m., respectively. The Office of Hearings Examiners of the Texas Water Commission will meet in emergency session in the Harlingen Municipal Auditorium, Casa de Amistad, Lon C. Hill Park, Fair Park Boulevard, Harlingen. According to the agenda, the commission will consider the application of the City of Harlingen, P.O. Box 1950, Harlingen, Texas 78551; Valley Water Treatment Company, a Texas limited partnership, in care of Harlingen Water Inc., general partner, P.O. Box 1297, Birmingham, Alabama 35201; and McCollough Environmental Services, Inc., 630 South Church Street, Murfreesboro, Tennesee 37130 for a Permit 10490-04 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 3,250,000 gallons per day from the proposed Harlingen Wastewater Treatment Plant 3, which is to serve the City of Harlingen and surrounding areas. The emergency status was necessary because

written communication that the January 16, 1986 submission package was incomplete was received on January 30, 1986.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 31, 1986, 9:55 a.m.
TRD-8601123

The Texas Water Commission will meet in the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, rooms, and agendas follow.

Tuesday, February 11, 1986, 10 a.m. In Room 118, the commission will consider water district bond issues, the use of surplus funds, the release from escrow, proposed water quality permits, amendments and renewals, dismissal of application, final decision on applications, extension of time applications, plan of reclamation, and the temporary permit application.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 30, 1986, 1:38 p.m.
TRD-8601078

Tuesday, February 11, 1986, 10 a.m. In Room 118, the commission considered the revised agenda concerning application of the City of Austin for a minor amendment to Permit 10543-04 to authorize the use of an extended aeration plant in parallel with the existing oxidation pond system at the Hornsby Bend Wastewater Treatment Plant, Travis County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 31, 1986, 3:35 p.m.
TRD-8601147

Thursday, February 20, 1986, 10 a.m. In Room 618, the Office of the Hearings Examiners will consider Application 5011 of Milton Wentz, Jr., *et al.*

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 29, 1986, 1:56 p.m.
TRD-8601046

Friday, February 21, 1986, 10 a.m. In Room 618, the Office of the Hearings Examiners will consider Application 4080A of Beno Corporation.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 29, 1986, 1:55 p.m.
TRD-8601045

Wednesday, February 26, 1986, 10 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider application by Cecos International, Inc., for renewal and amendment to Permit WDW-146 to conform the permit to the department's existing underground injection control regulations, Ector County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 3, 1986, 3:52 p.m.
TRD-8601204

Wednesday, February 26, 1986, 7 p.m. The Texas Water Commission will meet at the West Dallas Boys Club, 3004 North Westmoreland, Dallas. According to the agenda summary, the commission received comments on a closure plan for the hazardous waste management facility at Murmur Corporation, Site III, Dallas. The purpose of this notice is to give members of the public the opportunity to submit written comment on the closure plan and request modification of the plan.

Contact: Mary Reagan, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Filed: January 31, 1986, 9:09 a.m.
TRD-8601122

Tuesday, March 11, 1986, 9 a.m. The Office of the Hearings Examiners of the Texas Water Commission will meet in Room 215, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the office will consider application of Terry Moore Properties, Inc., in care of Small, Craig, and Werkenthin, 2500 Interfirst Tower, Austin, Texas 78701 for Permit 13244-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow if 350,000 gallons per day from the proposed Brushy Creek Crossing Municipal Utility District treatment facility which is to serve a proposed subdivision in eastern Hays County.

Contact: Kay Trostle, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 28, 1986, 1:25 p.m.
TRD-8600987

Wednesday, March 12, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 109, Alford Center, Paris Junior College, 2400 Clarksville Street, Paris. According to the agenda summary, the office considered the application of the City of Blossom, P.O. Box 297, Blossom, Texas 75416 for an amendment to Permit 10715-02 in order to move the plant site and discharge point and to decrease the authorized volume of discharge from 250,000 gallons per day average to 200,000 gallons per day average. The facility which is currently authorized by the existing permit has not yet been constructed. The proposed facility is to replace the facility currently authorized by Permit 10715-01, which is to be abandoned when the new facility is completed.

Contact: Cynthia Hayes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 29, 1986, 1:55 p.m.
TRD-8601044

Thursday, March 13, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet outside auditorium, 220 North Fifth Street, Orange. According to the agenda summary, the office will consider the application of the City of Orange, P.O. Box 520, Orange, Texas 77630 for an amendment to Permit 10626-01 in order to relocate the point of discharge at its Jackson Street Wastewater Plant. The effluent is presently discharged into Adams Bayou in Segment 0508 of the Sabine River Authority. The applicant proposes a revision of the outfall point from Adams Bayou to the Sabine River by means of a twenty-inch force main which is 2,500 feet long. The authorized volume of discharge is 3,600,000 gallons per day monthly average during the interim phase and 2,900,000 gallons per day average measured over the previous consecutive 12-month period, which are the same volumes authorized by the current permit.

Contact: Charmaine Rhodes, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 28, 1986, 1:25 p.m.
TRD-8600986

Thursday, March 13, 1986, 10 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in the Conference Room, Brazos River Authority, 4400 Cobbs Drive, Waco. According to the agenda summary, the office will consider the application of Northwoods Mobile Home Park, Inc., P.O. Box 20803, Waco, Texas 76702 for a Permit 13198-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 150,000 gallons per day from the proposed wastewater treatment facilities which are to service a proposed mobile home park with some commercial and other residential development.

Contact: Marcella Sellers, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: January 28, 1986, 1:25 p.m.
TRD-8600985

The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Days, times, and agendas follow.

Wednesday, March 19, 1986, 10 a.m. The commission will consider the executive director's preliminary report and petition for a Texas Water Commission order assessing administrative penalties and requiring certain action of Robert Kacz, doing business as Aztec Mercury Company, solid waste Registration 31039.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:27 p.m.
TRD-8600993

Thursday, March 20, 1986, 9 a.m. The Office of Hearings Examiners of the Texas Water Commission will meet in Room 618, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the office will consider application by Great Northern, Inc., Heart O' Texas Mortgage Company, and Taylorbanc Mortgage Company, doing business as Heatherly/Pflugerville Joint Venture, P.O. Box 9470, Austin, Texas 78766 for Permit 13227-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 200,000 gallons per day from the proposed Greenlawn Wastewater Treatment Plant which is to service a proposed residential subdivision.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: February 3, 1986, 3:51 p.m.
TRD-8601206

Wednesday, March 26, 1986, 10 a.m. The commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the executive director's preliminary report and petition for a Texas Water Commission order assessing administrative penalties and requiring certain actions of the Atchison, Topeka, and Santa Fe Railway Company, Solid Waste Registration 31252.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: February 3, 1986, 3:53 p.m.
TRD-8601203

Tuesday, April 2, 1986, 10 a.m. The commission will consider Application 2115A by the City of Austin which seeks to amend Permit 1942 to include authorization to use a possible maximum of 2,096,000 acre-feet of water per annum for hydroelectric generating purposes. The details being more fully set out in the application, Colorado River Basin, Travis County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:27 p.m.
TRD-8600978

Tuesday, April 2, 1986, 10 a.m. The commission will consider Application 12-3607A on T.C. Mazurek, Jr., to amend Certificate of Adjudication 12-3607 to extend the expiration date of the certificate to December 31, 1993, Brazos River Basin, Comanche County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:27 p.m.
TRD-8600979

Tuesday, April 2, 1986, 10 a.m. The commission will consider C. H. Slator and Deborah Slator Gillan 5033, who seek a permit to maintain an existing off channel dam and storage reservoir. Located on separate unnamed tributary of the Llano River tributary of Colorado River, Colorado River Basin, for irrigation purposes, Llano, Llano County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:26 p.m.
TRD-8600983

Tuesday, April 2, 1986, 10 a.m. The commission will consider Doyle Leslie 5032, who seeks a permit to divert 300 accre feet of water per annum from an unnamed tributary of Brushy Creek and Brushy Creek tributary of San Gabriel River, tributary of the Little River tributary of Brazos River, Brazos River Basin, for irrigation purposes, Milam County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:26 p.m.
TRD-8600982

Tuesday, April 2, 1986, 10 a.m. The commission will consider Application 5031 of St. Anthony's Catholic Church which seeks a permit to divert one acre-foot of water per annum from Oso Creek, tributary of Corpus Christi Bay, Nueces-Rio Grande Basin, to irrigate two acres of land. The water will be diverted from the west, or right bank of Oso Creek, Nueces County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:27 p.m.
TRD-8600981

Tuesday, April 2, 1986, 10 a.m. The commission will consider Application 12-3472A on R.V. Robinson to amend Certificate of Adjudication 12-3472 to delete Special Condition 4B relating to expiration of the diversion rights from the reservoir, all being more fully set out in the application, Brazos River Basin, Eastland County.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:27 p.m.
TRD-8600980

Tuesday, April 2, 1986, 10 a.m. The commission will consider the Riverbend West, 5034, who seeks a permit for the impoundment of three lakes, of water from the West Fork Trinity River, Trinity River Basin, for construction of the proposed facilities. The impoundments will be used for recreational purposes in a proposed residential development about six miles east-northeast of the Tarrant County Courthouse, Fort Worth.

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 463-7898.

Filed: January 28, 1986, 1:26 p.m.
TRD-8600984

★ ★ ★

Texas Water Development Board

Thursday, January 30, 1986, 10 a.m. The Texas Water Development Board met in emergency session via conference call, Room 513B, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the board considered the policy regarding existing loan commitments and future financial assistance in light of potential changes in tax exempt bond financing which could result from passage of the Tax Reform Act of 1985 House Resolution 3838. The emergency status was necessary because of recent changes in the bond market resulting from pending legislation and the need to inform loan recipients and applicants at the earliest possible time of board policy regarding current and future financial commitments.

Contact: Charles E. Nemir, P.O. Box 13231, Austin, Texas 78711, (512) 463-7874.

Filed: January 29, 1986, 10:32 a.m.
TRD-8601017

★ ★ ★

Regional Agencies
Meetings Filed January 28

The Hays County Central Appraisal District, Board of Directors, met on the third floor, Courthouse Annex, 102 LBJ Drive, San Marcos, on January 3, 1986, at 7 p.m. Information may be obtained from Lynnell Sedlar, 102 LBJ Drive, Courthouse Annex, San Marcos, Texas.

The High Plains Underground Water Conservation District No. 1, Board of Directors, met in the conference room, 2930 Avenue Q, Lubbock, on January 3, 1986, at 10 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue, Lubbock, Texas.
TRD-8600963

Meetings Filed January 29

The Archer County Appraisal District, Board of Directors, will meet at 108 West Main Street, Archer City, on February 12, 1986, at 5 p.m. Information may be obtained from A. G. Reis, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Education Service Center Region VI, Board of Directors and Executive Committee, will Criminal Justice Center, Huntsville, on February 13, 1986, at 5 p.m. Information may be obtained from M. W. Schlotter, 3332 Montgomery Road, Huntsville, Texas 77340, (409) 295-9161.

The West Central Texas Council of Governments, Private Industry Council, will meet at Briarstone Manor, 101 Eplen Court, Abilene, on February 11, 1986, at 10 a.m. Information may be obtained from Tom K. Smith, 101 Eplen Court, Abilene, Texas, (915) 672-8544.
TRD-8601043

Meetings Filed January 30

The Capital Area Rural Transportation System (CARTS), Board of Directors, met in Suite 100, 2520 IH 35 South, Austin, on February 6, 1986, at 9:30 a.m. Information may be obtained from Edna Burroughs, 5021 East First Street, Austin, Texas 78702, (512) 478-7433.

The Comal Appraisal District, Appraisal Review Board, will meet at 644 North Loop 337, New Braunfels, on February 13, 1986, at 9 a.m. Information may be obtained from Glenn L. Brucks, P.O. Box 1222, New Braunfels, Texas 78130.

The Dallas Area Rapid Transit, South Africa Task Force, and Board of Directors, met at 601 Pacific Avenue, Dallas, on February 4, 1986, at 3 p.m. and 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Gillespie County Appraisal District, Board of Directors, will meet in the assembly room, City Hall, Fredericksburg, on February 11, 1986, at 9 a.m. Information may be obtained from Patrick M. Dooley, P.O. Box 429, Fredricksburg, Texas 78624.

The Hays County Central Appraisal District, Board of Directors, met on the first floor, Courthouse Annex, San Marcos, on February 3, 1986, at 6:30 p.m. Information may be obtained from Lynnell Sedlar, Courthouse Annex, San Marcos, Texas 78666.

TRD-8601062

Meetings Filed January 31

The Dallas Area Rapid Tranist, Board of Directors, met for a revised agenda at 601 Pacific Avenue, Dallas, on February 4, 1986, at 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Dallas Central Appraisal District, Board of Directors, met in Suite 500, 1420 West Mockingbird Lane, Dallas, on February 5, 1986, at 7:30 a.m. The Appraisal Review Board will meet at the same location, on February 14, 1986, at 10 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247.

The East Texas Council of Governments, Executive Committee, met at 3800 Stone Road, Kilgore, on February 6, 1986, at 2 p.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Education Service Center Region XV, Board of Directors, met at 612 South Irene Street, San Angelo, on February 6, 1986, at 1:30 p.m. Information may be obtained from Clyde Warren, P.O. Box 5199, San Angelo, Texas 76902, (915) 658-6571.

The Edwards County Appraisal District, Appraisal Review Board, will meet in the New County Annex Building, Rocksprings, on February 11, 1986, at 10 a.m. Information may be obtained from Sondra Madden, P.O. Box 378, Rocksprings, Texas 78880.

The North Plains Groundwater Conservation District 2, Board of Directors, met at 702 East First Street, Dumas, on February 4, 1986, at 1 p.m., rescheduled from February 3, 1986. Information may be obtained from Orval E. Allen, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401.

The Permian Basin Regional Planning Commission, Board of Directors, will meet at the Midland Regional Air Terminal, Midland, on February 12, 1986, at 1:30 p.m. Information may be obtained from Pam K. Weatherby, Midland Regional Air Terminal, Midland, Texas, (915) 563-1061.

The Scurry County Appraisal District, Board of Directors, met at 2612 College Avenue, Snyder, on February 4, 1986, at 7:30 p.m. Information may be obtained from L. R. Peveler, 2612 College Avenue, Snyder, Texas 79549, (915) 573-8549.

TRD-8601109

Meetings Filed February 3

The Brazos Valley Development Council, Executive Committee Meeting, will meet at 3006 East 29th Street, Bryan, on February 13, 1986, at 1:30 p.m. Information may be obtained from R. J. Holmgreen, 3006 East 29th Street, Bryan, Texas.

The Central Tax Authority of Taylor County, Board of Directors, will meet at 340 Hickory Street, Abilene, on February 12, 1986, at 10 a.m. Information may be obtained from Richard Petree, P.O. Box 1800, Abilene, Texas 79604, (915) 676-9381.

The Deep East Texas Private Industry Council, Service Delivery Area, will meet at the Rodeway Inn, Highway 59 South, Lufkin, on February 7, 1986, at 3 p.m. Information may be obtained from Don Boyd 109 Ratcliff, Lufkin, Texas 75901.

The East Texas Council of Governments, Executive Committee, met at 3800 Stone Road, Kilgore, on February 6, 1986, at 2 p.m. for a revised agenda. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641.

The Education Service Center Region II, Board of Directors, will meet in the administrative conference room, 209 North Water Street, Corpus Christi, on February 18, 1986, at 6:30 p.m. Information may be obtained from Gerald V. Cook, 209 North Water Street, Corpus Christi, Texas 78401, (512) 883-9288.

The Ellis County Tax Appraisal District, will meet at 406 Sycamore Street, Waxahachie, on February 13, 1986, at 7 p.m. Information may be obtained from Gray Chamberlain, P.O. Box 878, Waxahachie, Texas 75165, (214) 937-3552.

The Fisher County Appraisal District, Board of Directors, will meet at the Courthouse, Roby, on February 11, 1986, at 7:30 p.m. Information may be obtained from Teddy Kral, P.O. Box 516, Roby, Texas.

The Lubbock Regional Mental Health and Mental Retardation Center, Board of Trustees, met at 3800 Avenue H, Lubbock, on February 6, 1986, at 6:30 p.m. Information may be obtained from Gene Menefee, 1210 Texas Avenue, Lubbock, Texas 79408, (806) 763-4213.

The San Antonio River Authority, Board of Directors, will meet at 100 East Guenther Street, San Antonio, on February 12, 1986, at 2 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 9284, San Antonio, Texas 78204, (512) 227-1373.

The Upshur County Appraisal District, Board of Directors, will meet at Warren and Trinity Streets, Upshur County, on February 10, 1986, at 7:30 p.m. Information may be obtained from Louise Stracener.

TRD-8601160

Meetings Filed February 4

The Bexar Appraisal District, Appraisal Review Board, met in emergency session at 535 South Main, San Antonio, on January 6, 1986. Information may be obtained from Bill Burnette, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Central Appraisal District of Erath County, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on January 12, 1986, at 10 a.m. Information may be obtained from Jerry Lee, P.O. Box 94, Stephenville, Texas 76401, (817) 965-5434.

The Hockley County Appraisal District, Board of Directors, will meet at 1103-C Houston Street, Levelland, on January 10, 1986, at 7 p.m. Information may be obtained from Keith Toomire, P.O. Box 1090, Levelland, Texas 79336, (806) 894-9654.

The West Central Texas Council of Governments, Regional Advisory Council on Aging, will meet at the Holiday Inn, I-20, 1625 State Highway 351, Abilene, on January 13, 1986, at 10 a.m. The Regional Health Planning Advisory Committee will meet at 1025 East North Tenth Street, Abilene, on January 27, 1986, at 9 a.m. Information may be obtained from Lewis Lemmond/Brad Helbert, P.O. Box 3195, Abilene, Texas 79604, (915) 672-8544.

TRD-8601208

In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

State Banking Board
Notice of Hearing

The hearing officer of the State Banking Board will conduct a hearing on Friday, March 7, 1986, at 9 a.m., at 2601 North Lamar, Austin, Texas, on the change of domicile application for Marion State Bank, Marion, Texas.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, State Banking Board, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on January 28, 1986.

TRD-8601040 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: January 29, 1986
For further information, please call (512) 475-4451.

★ ★ ★

The hearing officers of the State Banking Board will conduct a hearing on March 27, 1986, at 9 a.m., at 2601 North Lamar, Austin, Texas, on the charter application for First Bank at Farmersville, Texas. Application is a conversion application from The First National Bank at Farmersville, Farmersville, Texas, to a state-chartered bank.

Additional information may be obtained from William F. Aldridge, Director of Corporate Acctivities, 2601 North Lamar, Austin, Texas, 78705, (512) 475-4451.

Issued in Austin, Texas, on January 28, 1986.

TRD-8601041 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: January 29, 1986
For further information, please call (512) 475-4451.

★ ★ ★

The hearing officer of the State Banking Board will conduct a hearing on March 26, 1986, at 9 a.m., at 2601 North Lamar, Austin, Texas, on the charter application for the First Bank of Celeste, Celeste, Texas. Application is a conversion application from the First National Bank of Celeste, to a state-chartered bank.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on January 28, 1986.

TRD-8601042 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: January 29, 1986
For further information, please call (512) 475-4451.

The hearing officer of the State Banking Board will conduct a hearing on March 31, 1986, at 9 a.m., at 2601 North Lamar, Austin, on the charter application for Security Bank of Whitesboro. The application is a conversion application from Security National Bank, Whitesboro, to a state-chartered bank.

Additional information amy be obtained from William F. Aldridge, Director of Corporate Activities, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on January 30, 1986.

TRD-8601152 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: January 31, 1986
For further information, please call (512) 475-4451.

★ ★ ★

Texas Department of Banking
Notice of Application

Texas Civil Statutes, Article 342-401a, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control fo a particular bank. A hearing may be held if the application is denied by the commissioner.

On January 27, 1986, the banking commissioner received an application to acquire control of Aledo State Bank, Aledo, by James D. Atchley, Houston.

Additional information may be obtained from William F. Aldridge, 2601 North Lamar, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on January 27, 1986.

TRD-8600992 William F. Aldridge
Director of Corporate Activities
State Banking Department

Filed: January 28, 1986
For further information, please call (512) 475-4451.

★ ★ ★

Texas Cancer Council
Consultant Proposal Request

In accordance with Texas Civil Statutes, Article 6252-11c, the Texas Cancer Council requests proposals for consultant services.

Description of Services. The consultant will review data collection process, analysis and distribution of cancer registry information and related policy options.

Background. In its interim report, the legislative task force on cancer in Texas recommended that the statewide

cancer registry be implemented in all regions of Texas (State recommendation #1, Interim Report, page 20). Expansion of the statewide registry would serve the overall goal of improving accessibility, availability, and quality of cancer resources, services, and programs in Texas. It is crucial that complete, accurate, and timely cancer incidence data be compiled for the State of Texas. The Texas Cancer Council has already given this need first priority in its Rules for Policies and Procedures. The council will establish priorities within the Texas Cancer Plan. The council recognizes the immediate need for the collection and dissemination of information about the incidence of cancer throughout Texas. (See Rules for Policies and Procedures, §701.7(b)(3)(A).) Because the knowledge of the numbers, types, and locations of new cancer cases is a prerequisite to understanding the resources, services, and programs needed throughout the state, the statewide cancer registry is the cornerstone of the Texas Cancer Plan. Since the strength of the registry determines the effectiveness of the plan, issues relating to the comprehensiveness of the registry are of utmost concern to the Texas Cancer Council. Several issues relating to the policies of the Texas Department of Health with respect to the registry were raised during the last council meeting. Because the public demand for stricter fiscal responsibility dictates the need for close scrutiny of all public programs, questions concerning selective reimbursement, policies and policy options, and costs incurred as a result must be addressed in a rigorous review. To assure objectivity, such a review should be conducted by an outside (i.e. non-state) contracting agency.

Major Tasks. The review should include analysis of the goals and objectives of the registry from the Texas Cancer Council's point of view. The goals should be examined in reference to the immediate and long-term goals of the Texas Cancer Plan.

Estimates of case abstraction by region and reimbursement as prepared in the original proposal, should be reviewed and compared to the rules put forth in §§91.1-91.5 (relating to Cancer Registry). Detailed information about the selective reimbursement modification should be included in the review. Options to the current selective reimbursement should be presented with cost implications.

The consultant will review the technical effectiveness of the data collection process using selective sample of reporting institutions. The data collection process to be reviewed should include hospital-level activities. Arrangements should be made to assess the completeness of case-finding and data capture, accuracy, and timeliness. The adequacy of training for abstractors and support for definitional problem solving should also be reviewed. The mechanisms for data transfer from the reporting institution to the central registry should be reviewed for efficiency and cost effectiveness. Receipt and processing of data at the central registry site should be reviewed for efficiency and accuracy. Since data arrive in a variety of forms (on tape, floppy disks, and forms with responses in natural language that must be coded), all forms of data collection should be reviewed. Quality control procedures for data processing are outlined in the data manual and should be compared with other large data management organizations (i.e., The centralized cancer patient data system). Analysis and use of the data, especially in reference to the standard, annual reports currently provided to participating hospitals, should also be reviewed.

The consultant will review manpower allocation at the central registry. The major components to be included in the review should be training and data abstraction, production and quality control, and analysis and report generation.

The consutlant will review current support to participating hospitals. The review should include training and problem-solving support for the reporting hospital/agency. Current routine reports should be reviewed for appropriateness to the hospital's need for data.

The consultant will review data abstraction form. Legal requirements in Texas for the data abstraction form should be reviewed, and the form should be evaluated in terms of the legal requirements. The current form should also be compared to data collection forms that are required by other agencies, (i.e., the American College of Surgeons.) Each data item should be reviewed with respect to use, availability, and cost to the reporting hospital.

Timetable. The contract should be limited to a period of about three months.

Evaluation Procedures. The criteria used to evaluate the offers include: The submission of a proposal addressing all of the required areas; the offeror's plan for completing the project on or before the deadline to be stipulated in the contract; and the background, experience, and knowledge of the offeror in health care management, information processing, medical records, and cancer registry issues.

The Texas Cancer Council reserves the right to accept or reject any or all proposals submitted. The Texas Cancer Council is under no legal requirement to execute a resulting contract on the basis of this advertisement, and intends that any material provided be used only as a means of identifying qualified contractors. The executive committee of the Texas Cancer Council will base its choice on the criteria identified above. This request does not commit the Texas Cancer Council to pay any costs incurred prior to execution of a contract. The Council may request an oral presentation from selected finalists.

Contact person. The contact person is Dr. Kathleen Pfalzgraf, temporary staff to the Texas Cancer Council, HMB Box 223, 6723 Bertner, Houston, Texas 77030, (713) 792-2277, or Mr. Richard Merkel, Executive Director, Texas Cancer Council, William B. Travis Building, Room 10.100, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Due Date. All proposals must be submitted by the close of business on the 20th day after the first date of publication of this notice. Proposals must be mailed or delivered to the contact person.

Cost. The executive committee will assess the reasonableness of the total project cost and the cost per-person-hour. Although not necessarily the deciding factor, this criterion will be significantly weighed. Respondents to this consultant proposal request should consider submission of a proposal with incremental costs. The total cost will not exceed $25,000, and the contractor is encouraged to provide service with cost sharing. The award will not necessarily be made to the bidder, but rather to the lowest and best bidder, considering price and the results of the council's evaluation.

Issued in Austin, Texas, on January 31, 1986.

TRD-8601171 James D. Dannenbaum
Chairman
Texas Cancer Council

Filed: February 3, 1986
For further information, please call (512) 463-3190.

Teacher Training Centers for School Health Educators

In accordance with Texas Civil Statutes, Article 4477-41, the Texas Cancer Council is requesting proposals for the establishment of two teacher training centers for school health educators.

Description of services. The establishment of two college level teacher training centers for teachers currently certified in health education, teachers assigned to health education, and educators in general who are serving a health education function. The program to be implemented will include special training for regional health coordinators and a statewide continuing education program for health education personnel.

Background. In its "Interim Report" the Legislative Task Force on Cancer in Texas recommended that teachers currently providing health education be required to receive special training in new motivational techniques with special emphasis on smoking prevention and cessation (state recommendation 26, "Interim Report," p.40). By providing in-service education, these centers would serve the overall goal of upgrading health education in schools through the improvement of the quality of teaching. State-of-the-art information demonstrates that efforts to help individuals stop smoking and to aid young people in foregoing smoking in the first place requires more than information dissemination. Such efforts must include skills in motivation, peer pressure resistance, and behavior modification. Heretofore, training in these skills has been lacking in teacher preparation. Two teacher training centers of this nature would contribute to cancer prevention and health promotion. Thus, support of these centers is within the purview of the Texas Cancer Council: 'The council will establish priorities within the Texas Cancer Plan. The council recognizes the immediate need for:

(c) programs to promote prevention, detection and early diagnosis of cancer;....'Given the projected mortality rate due to lung cancer, smoking prevention is clearly a program priority area. The teacher training centers would serve two functions:

(1) they would provide courses in new motivational techniques and methods in peer pressure resistance; these courses would be designed for in-service teachers to expand their undergraduate preparation and to update their skills;

(2) they would work with the health coordinators of the 20 regional education service centers to implement an outreach program which would offer training seminars in motivational techniques and methods in peer pressure resistance to educators throughout the school districts.

Evaluation procedures. Procedures used to evaluate the offers include:

(a) submission of a proposal addressing all required areas;

(b) offeror's plan for completing the project on or before the deadline to be stipulated in the award.

(c) background, experience, and knowledge in health education, state-of-the-art motivational techniques and peer pressure resistance, and teacher training. The Texas Cancer Council reserves the right to accept or reject any or all proposals submitted. The Texas Cancer Council is under no legal requirement to grant an award on the basis of this advertisement and intends that any material provided be used only as a means of identifying qualified applicants. The Texas Cancer Council will base its choice on the criteria identified above. This request does not commit the Texas Cancer Council to pay any costs incurred prior to granting an award. The council may request an oral presentation from selected finalists.

Evaluation methodology. Written proposals and oral presentations (if requested) will be evaluated by the executive committee of the council.

Contact person. The contact person is Dr. Catherine Edwards, temporary staff to the Texas Cancer Council, HMB Box 223, 6723 Bertner, Houston, Texas 77030, (713) 792-2277, or Mr. Richard Merkel, Executive Director, Texas Cancer Council, William B. Travis Building, Room 10.100, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Due date. All proposals must be submitted by close of business on the 20th day after the first date of publication of this notice. Proposals must be mailed or delivered to the contact person.

Cost. Each contract should be limited to $45,000 per year, including travel funds for the training center staff to provide in-service programs on a regional basis.

Final selection. Final selection will be made by the council, using the previously mentioned evaluation procedures. Award will not necessarily be made to the bidder offering the lowest price, but to the lowest and best bidder, considering price and results of the council's evaluation criteria.

Issued in Austin, Texas, on January 31, 1986.

TRD-8601172 James D. Dannenbaum
Chairman
Texas Cancer Council

Filed: February 3, 1986
For further information, please call (512) 463-3190.

★ ★ ★

Valley Cancer Prevention Program

In accordance with Texas Civil Statutes, Article 4477-41, the Texas Cancer Council requests proposals for delivery of cancer prevention program(s) in the Lower Rio Grande Valley.

Description of Services. The consultant will deliver a cancer prevention program(s), targeted to the population of the Lower Rio Grande Valley.

Background. The regional recommendations made by the legislative task force on cancer in Texas during Phase one clearly identify the Valley as a target area where immediate needs must be met. Regional Recommendation 5 called for the establishment of a cancer prevention program in the Valley. Extension of health promotion activities across the seven counties along the Rio Grande border and establishment of a regional program with central coordination was recommended. (See "Interim Report," page 56.)

Since approximately 30% of all cancers are directly related to cigarette smoking and about 35% are influenced by diet, cancer prevention and health promotion activities are crucial to any cancer plan. In fact, the National Cancer Institute estimates that a 25% reduction in mortality rates is possible through vigorous prevention efforts. Thus, a coordinated cancer prevention program is a priority area. The Valley contains a large Hispanic population whose health needs have been underserved. Incidence data indicate a higher rate of stomach and cervical cancers

among hispanic women than among women in the general population, while breast cancer is still the most frequent cancer. Hispanic males also experience a higher incidence rate of stomach cancer *(Cancer Facts and Figures for Minority Americans, 1983,* American Cancer Society). Moreover, deaths among the Texas Hispanic population show significantly higher mortality for stomach and liver cancers in males, and stomach, gallbladder, liver, pancreas, and cervix cancers among females *(Impact of Cancer on Texas, 3rd Edition).*

Further, a recent American Cancer Society opinion study among hispanic Americans indicates that they are not adequately aware of most of the warning signs of cancer or ways of reducing cancer risk, and that they tend not to seek early detection or treatment. A lower proportion of hispanic women conduct breast self-examination than do women in the general population, and hispanics generally believe to a lesser degree that early detection increases one's chances of a cure. The American Cancer Society survey observes that one out of two hispanic Americans tends to be fatalistic (The Cancer Letter, August 2, 1985). Clearly, the data suggest a need for cancer prevention/health promotion activities tailored to the hispanic audience.

The cancer prevention program should focus on health promotion and improvement of personal lifestyle, including activities and information related to nutrition, smoking cessation, and early detection skills (e.g., breast self examination). The program must be sensitive to the cultural characteristics of its target group and should utilize the media, small groups, and one-to-one communication to be effective. Previous efforts suggest that any successful program should be community-based and utilize the key leader approach. The program should also focus on behavior modification, in addition to information dissemination. This type of cancer prevention program will be complementary to the screening program to be implemented by the Department of Health. The community based program may help to stimulate self awareness and referral to the screening program resources.

The establishment of a cancer prevention program in the Valley would be consistent with the council's recognition of the immediate need for programs that promote prevention, early detection, and the improvement of knowledge of cancer among the public.

Evaluation Procedures. The criteria used to evaluate the offers include: the submission of a propsal addressing all of the required areas; the offeror's plan for completing the project on or before the deadline to be stipulated in the award; and the description of the offeror's organization or agency. The Texas Cancer Council invites proposals from multiple public or nonprofit agencies and organizations, or a consortium of such organizations. The Texas Cancer Council reserves the right to accept or reject any or all proposals submitted. The Texas Cancer Council is under no legal requirement to grant an award on the basis of this advertisement, and intends that any material provided be used only as a means of identifying qualified applicants. The executive committee of the Texas Cancer Council will base its choice on the criteria identified above. This request does not commit the Texas Cancer Council to pay any costs incurred prior to granting an award. The council may request an oral presentation from selected finalists.

Contact Person. Dr. Catherine Edwards, temporary staff to the Texas Cancer Council, HMB Box 223, 6723 Bertner, Houston, Texas 77030, (713) 792-2277, or Mr. Richard Merkel, Executive Director, Texas Cancer Council, William B. Travis Building, Room 10.100, P.O. Box 12097, Austin, Texas 78711, (512) 463-3190.

Due Date. All proposals must be submitted by the close of business on the 20th day after the first date of publication of this notice. Proposals must be mailed or delivered to the contact person.

Cost. Proposals must be based on a 12-month period. Multiple awards may be made; however, the total amount of awards under this item will not exceed $250,000. The award will not necessarily be made to the lowest bidder, but rather to the lowest and best bidder, considering price and the results of the council's evaluation.

Issued in Austin, Texas, on January 31, 1986.

TRD-8601173 James D. Dannenbaum
Chairman
Texas Cancer Council

Filed: February 3, 1986
For further information, please call (512) 463-3190.

★ ★ ★

Texas Department of Community Affairs

Correction of Error

The announcement of public hearings on the Texas Community Development Program proposed final statement for federal fiscal year 1986 as published in the January 31, 1986, issue of the *Texas Register* contained an error.

On pages 621 and 622, the notice of the public hearing for the Lower Rio Grande Valley, South Texas, and Coastal Bend regions should read as follows:

Lower Rio Grande, South Texas, Coastal Bend—February 18, 1986, 6 p.m., central jury room, Cameron County hall of justice 917 East Harrison, Brownsville.

Issued in Austin, Texas, on January 31, 1986.

TRD-8601150 Doug C. Brown
General Counsel
Texas Department of Community Affairs

Filed: January 31, 1986
For further information, please call (512) 834-6060.

★ ★ ★

Office of Consumer Credit Commissioner

Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer[3]/Agricultural/Commercial[4] thru $250,000	Commercial[4] over $250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 02/03/86-02/09/86	18.00%	18.00%
Monthly Rate—Article 1.04(c)[1] 02/01/86-02/28/86	18.00%	18.00%

Standard Quarterly Rate—Article 1.04(a)(2) 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Quarterly Rate—Article 1.11[3] 01/01/86-03/31/86	18.00%	N/A
Lender Credit Card Quarterly Rate—Article 15.02(d)[3] 01/01/86-03/31/86	14.58%	N/A
Standard Annual Rate—Article 1.04(a)(2)[2] 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Annual Rate—Article 1.11[3] 01/01/86-03/31/86	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 01/01/86-03/31/86	18.00%	N/A
Judgment Rate—Article 1.05, §2 02/01/86-02/28/86	10.00%	10.00%

(1) For variable rate commercial transactions only.
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
(3) Credit for personal, family, or household use.
(4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on January 30, 1986.

TRD-8601061 Al Endsley
Consumer Credit
Commissioner

Filed: January 30, 1986
For further information, please call (512) 479-1280.

★ ★ ★

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer[3]/Agricultural/Commercial[4] thru $250,000	Commercial[4] over $250,000
Indicated (Weekly) Rate—Article 1.04(a)(1) 02/10/86-02/16/86	18.00%	18.00%
Monthly Rate—Article 1.04(c)[1] 02/01/86-02/28/86	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Quarterly Rate—Article 1.11[3] 01/01/86-03/31/86	18.00%	N/A
Lender Credit Card Quarterly Rate—Article 15.02(d)[3] 01/01/86-03/31/86	14.58%	N/A
Standard Annual Rate—Article 1.04(a)(2)[2] 01/01/86-03/31/86	18.00%	18.00%
Retail Credit Card Annual Rate—Article 1.11[3] 01/01/86-03/31/86	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 01/01/86-03/31/86	18.00%	N/A
Judgment Rate—Article 1.05, §2 02/01/86-02/28/86	10.00%	10.00%

(1) For variable rate commercial transactions only.
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f).
(3) Credit for personal, family, or household use.
(4) Credit for business, commercial, investment, or other similar purpose.

Issued in Austin, Texas, on February 3, 1986.

TRD-8601179 Al Endsley
Consumer Credit
Commissioner

Filed: February 3, 1986
For further information, please call (512) 479-1280.

★ ★ ★

Texas Commission for the Deaf
Notice of Contract Award

In compliance with Texas Civil Statutes, Article 6252-11c, the Texas Commission for the Deaf furnishes this notice of consultant contract award. The consultant proposal request appeared in the October 11, 1985, issue of the *Texas Register* (10 TexReg 3989). The contract consists of providing a one-week summer outdoor training program for approximately 150 deaf and hearing impaired students, 8-17 years in age.

The contractor selected to perform this service is Camp Stewart for Boys, Inc., Hunt, Texas 78024. the total value of the contract is $34,392. The contract will begin August 14, 1986, and has an ending date of August 24, 1986.

The final report(s) prepared by Camp Stewart for Boys, Inc., under this contract shall be submitted by September 23, 1986.

Issued in Austin, Texas, on Janauary 23, 1986.

TRD-8601009 Larry D. Evans
Executive Director
Texas Commission for the Deaf

Filed: January 29, 1986
For further information, please call (512) 469-9891.

★ ★ ★

Court of Criminal Appeals
Texas Rules of Appellate Procedures

Section One. Applicability of Rules.

Rule 1. Scope of Rules. These rules govern procedure in appeals to courts of appeals from district courts, constitutional county courts, county courts at law, and other statutory courts; review by the Court of Criminal Appeals or the Supreme Court of decisions of the courts of appeals; in direct appeals of death penalty cases to the Court of Criminal Appeals from district courts; in direct appeals to the Supreme Court from district courts; and in applications for writs or other relief which a court of appeals, the Court of Criminal Appeals, the Supreme Court, or any judge of any appellate court is competent to give.

COMMENT: The source of this proposed rule is Federal Rule of Appellate Procedure 1(a). It is also patterned upon Criminal Appellate Rule 3(a) which appears to be modeled on the federal rule. If these rules are adopted on the civil side of the docket, Texas Rules of Civil Procedure 2 will require amendment.

CAVEAT: The order of the Court of Criminal Appeals promulgating rules provides:

"Unless specifically restricted to procedure in civil cases ["actions of a civil nature" (Rule 2 TRCivP)], these rules shall govern post-trial, appellate, and review procedure in criminal cases. This order does not amend any existing rule, promulgate any new rule nor repeal any rule in the Texas Rules of Civil Procedure. No rule promulgated by this order shall be applicable to any civil case unless and until it has been promulgated by the Supreme Court of Texas."

Rule 2. Relationship to Jurisdiction and Suspension.

(a) Relationship to Jurisdiction. These rules shall not be construed to extend or limit the jurisdiction of the courts of appeals, the Court of Criminal Appeals, or the Supreme Court as established by law.

(b) Suspension of Rules in Criminal Matters. Except as otherwise provided in these rules, in the interest of expediting a decision or for other good cause shown, a court of appeals or the Court of Criminal Appeals may suspend requirements and provisions of any rule in a particular case on application of a party or on its own motion and may order proceedings in accordance with its direction. Provided, however, that nothing in this rule shall be construed to allow any court to suspend requirements or provisions of the Code of Criminal Procedure.

Section Two. General Provisions.

Rule 3. Definitions; Uniform Terminology.

(a) Terms in Rules. Certain terms used in these rules are defined as follows: "Appellant" is the party taking the appeal or suing out a writ of error to the court of appeals. "Appellee" is the party adverse to "appellant." "Petitioner" is the party applying to the Supreme Court for a writ of error, "Respondent" is the party adverse to "petitioner" in the Supreme Court. "Court below" is the trial court from which the appeal or writ of error is taken. "Appellate court" includes the court of appeals, the Supreme Court, and the Court of Criminal Appeals. "Relator" is the person seeking relief in an original proceeding in the appellate court. "Respondent" is the party against whom relief is sought in an original proceeding in the appellate court. "Applicant" is a party seeking a writ of habeas corpus in the trial court.

(b) Uniform Terminology in Criminal Cases. In briefs and other papers in criminal appeals, the parties should be referred to as "the appellant" and "the State;" procedural labels such as "appellee", "petitioner", "respondent", "movant", etc., should be avoided unless they are necessary to clarify a question of procedural law. In habeas corpus proceedings, the person for whose relief the writ is asked should be referred to as "the applicant."

Rule 4. Signing, Filing, and Service.

(a) Signing. Each application, brief, motion, or other paper filed shall be signed by at least one of the attorneys for the party, shall give the State Bar of Texas identification number, the mailing address, and telephone number of each attorney whose name is signed thereto, and shall state that a copy of the paper has been delivered or mailed to each group of opposite parties or their counsel. A party who is not represented by an attorney shall sign his brief and give his address and telephone number. The statement of service on opposite parties by one who is not a licensed attorney shall be verified by affidavit.

(b) Filing. The filing of records, briefs, and other papers in the appellate court as required by these rules shall be made by filing them with the clerk, except that any justice of the court may permit the papers to be filed with him, in which event he shall note thereon the filing date and time and forthwith transmit them to the office of the clerk. If a motion for rehearing, any matter relating to taking an appeal or writ of error from the trial court to any higher court, or application for writ of error or petition for discretionary review is sent to the proper clerk by first-class United States mail in an envelope or wrapper properly addressed and stamped and is deposited in the mail one day or more before the last day for filing same, the same, if received by the clerk not more than ten days tardily, shall be filed by the clerk and be deemed as filed in time; provided, however, that a legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(c) Number of Copies.

(1) Each party shall file six copies of briefs, petitions, motions and other papers with the Clerk of the Court of Appeals in which the case is pending. Any court of appeals may by local rule authorize the filing of fewer or more copies.

(2) Each party shall file twelve copies of its application for writ of error with the Clerk of the Court of Appeals. In addition to filing his original petition for discretionary review with the Clerk of the Court of Appeals, the filing party shall deliver eleven copies. The State Prosecuting Attorney may deliver the eleven copies to the Clerk of the Court of Criminal Appeals.

(3) Each party shall file twelve copies of all other papers addressed to the Supreme Court or Court of Criminal Appeals with the clerk of the court to which it is addressed.

(d) Papers Typewritten or Printed. All applications, briefs, petitions, motions, and other papers shall be printed or typewritten. Typewritten papers must be with a double space between the lines and on heavy white paper in clear type.

(e) Service of All Papers Required. Copies of all papers filed by any party and not required by these rules to be served by the clerk shall, at or before the time of filing, be served by a party or person acting for him on all other parties to the appeal or review. Service on a party represented by counsel shall be made on counsel.

(f) Manner of Service. Service may be personal or by mail. Personal service includes delivery Of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(g) Proof of Service. Papers presented for filing shall contain an acknowledgement of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the person served, certified by the person who made the ser-

vice. Proof of service may appear on or be affixed to the papers filed. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require such to be filed promptly thereafter.

Rule 5. Computation of Time.

(a) In General. In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday, or legal holiday, as defined by Article 4591, Revised Civil Statutes, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor legal holiday. When the last day of the period is the next day which is neither a Saturday, Sunday, nor legal holiday, any paper filed by mail as provided in Rule 4 is mailed on time when it is mailed on the last day of the period.

(b) Beginning of Periods in Civil Cases.

(1) Date of Signing. In civil cases, the date a judgment or order is signed as shown of record shall determine the beginning of the periods described by these rules for filing in the trial court the various documents in connection with an appeal, including but not limited to an appeal bond, certificate of cash deposit, or notice or affidavit in lieu thereof, and bills of exception, and for filing of the petition for writ of error if review is sought by writ of error, and for filing in the appellate court of the transcript and statement of facts; but this rule shall not determine what constitutes rendition of a judgment or order for any other purpose.

(2) Date to be Shown. Judges, attorneys, and clerks are directed to use their best efforts to cause all judgments, decisions and orders of any kind in civil cases to be reduced to writing and signed by the trial judge with the date of signing stated therein. If the date of signing is not recited in the judgment or order, it may be shown in the record by a certificate of the judge or otherwise; provided, however, that the absence of a showing of the date in the record shall not invalidate any judgment or order.

(3) Notice of Judgment. When the final judgment or other appealable order is signed in a civil case, the clerk of the court shall immediately give notice to the parties or their attorneys of record by first-class mail advising that the judgment or order was signed. Failure to comply with the provisions of this rule shall not affect the periods mentioned in subparagraph (b)(1) of this rule, except as provided in subparagraph (b)(4).

(4) No Notice of Judgment. If within twenty days after the judgment or other appealable order is signed in a civil case, a party adversely effected by it or his attorney has neither received the notice required by subparagraph (b)(3) of this rule nor acquired actual knowledge of the order, then with respect to that party all the periods mentioned in subparagraph (b)(1) except the period for filing a petition for writ of error shall begin on the date that such party or his attorney received such notice or acquired actual knowledge of the signing, whichever occurred first, but in no event shall such periods begin more than ninety days after the original judgment or other appealable order was signed.

(5) Motion, Notice, and Hearing. In order to establish the application of subparagraph (b)(4) of this rule, the party adversely affected is required to prove in the trial court, on sworn motion and notice, the date on which the party or his attorney first either received a notice of the judgment or acquired actual knowledge of the signing and that this date was more than twenty days after the judgment was signed.

(c) Nunc Pro Tunc Order. In civil cases, when a corrected judgment has been signed after expiration of the court's plenary power pursuant to Rule 316 or 317 of the Texas Rules of Civil Procedure, the periods mentioned in subparagraph (b)(1) of this rule shall run from the date of signing the corrected judgment with respect to any complaint that would not be applicable to the original judgment.

(d) When Process Served by Publication. With respect to a motion for new trial in a civil case filed more than thirty days after the judgment was signed pursuant to Rule 329 of the Texas Rules of Civil Procedure, when process has been served by publication, the periods provided by subparagraph (b)(1) shall be computed as if the judgment were signed thirty days before the date of filing the motion.

(e) No Notice of Judgment of Appellate Court. Notwithstanding any provision of these rules concerning the time for filing a motion for extension of the period for filing a motion for rehearing, application for writ of error, or petition for discretionary review, an extension of such period may be granted by the appellate court in which a motion for extension would properly be filed on sworn motion showing that neither the party desiring to file such motion for rehearing, application for writ of error, or petition for discretionary review nor his attorney had notice or actual knowledge of the judgment or order from which such period began to run before the last day of such period and stating the earliest date either the party or his attorney received such notice or actual knowledge. Such a motion for extension shall be filed within fifteen days of the date either the party or his attorney first had such notice or actual knowledge, but in no event more than ninety days after the beginning of such period. When such a motion is granted, the period in question shall begin to run on the date of granting the motion.

Rule 6. Communications With the Appellate Court. Correspondence or other communications relative to any matter before the court must be conducted with the clerk and shall not be addressed to or conducted with any of the justices or judges or other members of the court's staff.

Rule 7. Substitution of Counsel. Counsel shall be permitted to withdraw or other counsel may be substituted upon such terms and conditions as may be deemed appropriate by the appellate court. The motion for leave to withdraw as counsel shall be accompanied by either a showing that a copy of the motion has been furnished to the party with a notice advising the party of any ensuing deadlines and settings of the cause or written acceptance of employment by new counsel indicated.

Rule 8. Agreements of Counsel. All agreements of parties or their counsel relating either to the merits or conduct of the case in the court or in reference to a waiver of any of the requirements prescribed by the rules, looking to the proper preparation of an appeal or writ of error or submission, shall be in writing, signed by the parties or their counsel, and filed with the transcript or be contained in it, and, to the extent that such agreement may vary the regular order of proceeding, shall be subject to such orders of the appellate court as may be necessary to secure a proper presentation of the case.

Rule 9. Substitution of Parties.

(a) Death of a Party in Civil Cases. If any party to the record in a cause dies after rendition of judgment in the trial court, and before such cause has been finally disposed of on appeal, such cause shall not abate by such death, but the appeal may be perfected and the court of appeals or the Supreme Court, if it has granted or thereafter grants a writ therein, shall proceed to adjudicate such

cause and render judgment therein as if all parties thereto were living, and such judgment shall have the same force and effect as if rendered in the lifetime of all parties thereto. If appellant dies after judgment, and before the expiration of the time for perfecting appeal, sixty days after the date of such death shall be allowed in which to perfect appeal and file the record, and all bonds or other papers may be made in the names of the original parties the same as if all the parties thereto were living.

(b) Death of Appellant in a Criminal Case. If the appellant in a criminal case dies after an appeal is perfected but before the mandate of the appellate court is issued, the appeal shall be permanently abated.

(c) Public Officers; Separation from Office.

(1) When a suit in mandamus, prohibition, or injunction is brought against a person holding a public office, in his official capacity, and after final trial and judgment in the trial court, and appeal has been taken, if such person should vacate such office, the suit shall not abate, but his successor may be made a party thereto by a motion showing such facts.

(2) Unless waived, the clerk shall give the successor ten days notice of such motion, whereupon the court shall hear and determine same, and its judgment, order or decree shall be enforced, and the successor bound thereby.

(3) In such cases, the successor shall not be liable for any costs that have accrued prior to the time he was made a party.

Rule 10. Trial Court Docket of Appealed Cases. In every case removed by appeal or writ of error to an appellate court, the clerk of the trial court shall, in making up the docket at each succeeding term, keep the said cause in its proper place on the docket for disposition after the appeal has been decided; and immediately upon return of the mandate from the appellate court shall, if the judgment has been affirmed or reversed and rendered, remove the case from the docket and proceed to issue process to enforce the judgment as in other cases; but if the judgment has been reversed and remanded he shall continue the cause on the docket with its original file number for trial.

Rule 11. Duties of Court Reporters.

(a) The duties of official court reporters shall be performed under supervision of the presiding judge of the court and shall include, but not be limited to:

(1) attending all sessions of court and making a full record of the evidence when requested by the judge or any party to a case, together with all objections to the admissibility of the evidence, the rulings and remarks of the court thereon;

(2) making a full record of jury arguments and voir dire examinations when requested to do so by the attorney for any party to a case, together with all objections to such arguments, the rulings and remarks of the court thereon;

(3) filing all exhibits with the clerk;

(4) preparing official transcripts of all such evidence or other proceedings, or any portion thereof, subject to the laws of this state, these rules and the instructions of the presiding judge of the court;

(5) performing such other duties relating to the reporter's official duties as may be directed by the judge presiding; and

(6) performing such other duties relating to the reporter's official duties as may be directed by the judge presiding.

(b) Exhibits and materials used in the trial of a case and all of the record in a case are subject to such orders as the court may enter thereon.

(c) In case of illness, press of official work, or unavoidable absence or disability of the official court reporter to perform the duties in (a) above, the presiding judge of the court may, in his discretion, authorize a deputy reporter to act in place of and perform the duties of the official reporter.

(d) When a defendant is convicted and sentenced to a term of more than two years and no appeal is taken, the court reporter shall file the nontranscribed notes of the proceeding with the district clerk within 20 days following the expiration of the time for perfecting appeal. The district clerk shall not be required to retain the notes beyond 15 years from the date of their filing.

Rule 12. Work of Court Reporters.

(a) It shall be the joint responsibility of the trial and appellate courts to insure that the work of the court reporter is accomplished timely.

(b) The presiding judge of the trial court shall insure that the work of the court reporter is timely accomplished by setting priorities on the various elements of the reporter's workload to be observed by the reporter in the conduct of the business of the court reporter's office. Duties relating to proceedings before the court shall take preference over other work.

(c) To aid the judge in setting the priorities in (b) above, each court reporter shall report in writing to the judge on a monthly basis the amount and nature of the business pending in the court reporter's office. A copy of this report shall be filed with the Clerk of the Court of Appeals of each Supreme Judicial District in which the court sits.

Rule 13. Deposit for Costs in Civil Cases.

(a) Filing Transcript. Upon filing the transcript, the appellant shall deposit with the Clerk of the Court of Appeals the sum of $50.00 as costs.

(b) Motion to Extend or to File Record. Upon filing a motion for extension of time for filing a record or to direct the clerk to file a record on appeal or for writ of error from the trial court, the movant shall deposit with the Clerk of the Court of Appeals a deposit of $5 as costs.

(c) Original Proceedings. Upon the filing of a motion for leave to file a petition for writ of mandamus, prohibition, injunction, or other like proceeding, or a petition for writ of habeas corpus, the movant or relator shall deposit with the clerk a deposit of $20 as costs if in the court of appeals or $50 if in the Supreme Court. If the motion for leave is granted, or if the petition for habeas corpus is set for argument, the movant or relator shall deposit an additional sum of $30 in the court of appeals or $75 if in the Supreme Court.

(d) On Application for Writ of Error. Upon filing an application for writ of error with the Clerk of the Court of Appeals, the petition shall deliver to the clerk of that court the sum of $50 as costs in the Supreme Court, and the clerk shall forward the deposit to the Supreme Court with the record. If the writ is granted, the petitioner shall deposit with the Clerk of the Supreme Court the additional sum of $75 as costs in the Supreme Court.

(e) Extension of Time for Application for Writ of Error. Upon filing a motion to extend the time for filing an application for writ of error, the petitioner shall file with the Clerk of the Supreme Court the sum of $50 as costs.

(f) Direct Appeals to Supreme Court. Upon filing of the record in a direct appeal from the district court to the Supreme Court as provided by Rule 150, the appellant shall deposit the sum of $100 as costs in the Supreme Court.

(g) Other proceedings. Upon filing of other motions or proceedings not specifically enumerated in this rule,

when no record has been filed with the clerk, the party filing such motion or proceeding shall deposit the sum of $10 if in the court of appeals, or $75 if in the Supreme Court as all costs in such proceedings. When a record is later filed in the same proceeding, only an additional deposit of $40 shall be required if in the court of appeals of $50 if in the Supreme Court.

(h) Amounts May Vary. The dollar amounts provided in this rule may vary from time to time as set by applicable statute, court order, or rule.

(i) Failure to Make Deposit. If the required deposit for costs is not tendered, the clerk may decline to file the record, motion, or petition, or the court may dismiss the proceeding.

(j) Exempt Party. No deposit shall be required of any party who, under these rules or any applicable statute, is not required to give security for costs.

(k) Inability to Pay. If the appellant has filed in the trial court an affidavit of inability to pay costs and has given the notice required by Rule 30(a)(3), and any contest of such affidavit has been overruled, he shall be entitled to file the record in the court of appeals, and, if the decision of the court of appeals is adverse to him, an application for writ of error, without making any deposit for costs. In all other proceedings in which a cost deposit is required by this rule, a party unable to pay such costs may make affidavit of his inability to do so and deliver it to the clerk of the appellate court upon filing the petition or motion. If the affidavit is filed in connection with an application for writ of error, it shall be delivered to the Clerk of the Court of Appeals to be forwarded to the Supreme Court with the record for action by the Supreme Court. Contest of any such affidavit in the appellate court shall be governed by Rule 30(a)(3).

Rule 14. Duty of Clerks to Account. When the Clerk of the Supreme Court receives any money due a Clerk of the Court of Appeals, or the clerk of any court of appeals receives any money due the Clerk of the Supreme Court, or the clerk of another court of appeals, the clerk so receiving same shall pay such money over to the clerk to whom it is due. If he refuses to do so upon demand, the clerk to whom the same is due may file in the Supreme Court a motion against him, and, upon ten days' notice to him, the Supreme Court may enter judgment against him and the sureties on his official bond for such amount.

Rule 15. Recusal or Disqualification of Justices of Courts of Appeals, the Supreme Court and Judges of the Court of Criminal Appeals.

(a) Within thirty days after the filing of a proceeding in a court of appeals, the Supreme Court, or the Court of Criminal Appeals, any party may file with the clerk of the court a motion stating grounds why a justice or judge before whom the case is pending should not sit in the case. The court shall allow the filing of a motion after the expiration of thirty days if the motion is grounded upon reasons not known within the thirty (30) day period and upon a showing of good cause.

(b) On the day the motion is filed, copies shall be served on all other parties or their counsel of record, together with notice that movant expects the motion to be presented to the justice or judge ten days after the filing of such motion unless otherwise ordered by the justice or judge. Any other party may file with the clerk of the court an opposing or concurring statement at any time before the motion is decided.

(c) Prior to any further proceeding in the case, the justice or judge shall either recuse himself or certify the matter to the entire court, which will decide the motion by a majority of the justices or judges of the court sitting en banc. A justice or judge who is challenged shall not sit en banc to consider the motion. If a majority of the justices or judges are challenged, the court shall nonetheless decide the motion as to each justice or judge, one at a time, by a majority of the justices or judges sitting en banc except the particular justice or judge being considered each time shall not sit en banc to consider the motion as it directly affects that justice.

(d) To the extent that a motion to recuse is granted, the matter is not reviewable. To the extent that a motion to recuse is denied, the normal appellate review process shall apply.

Rule 16. Court of Appeals Unable to Take Immediate Action. The inability of any court of appeals having jurisdiction of a cause, matter, or controversy requiring immediate action to take such immediate action by reason of the illness or absence or unavailability of at least two of the justices thereof may be established either by the certificate of the clerk or any justice of such court of appeals, or by the affidavit of counsel for any party to such proceeding establishing the facts to the satisfaction of the court of appeals from which immediate action is sought. In determining the nearest court of appeals within the meaning of Government Code §22.220, its straight-line distance from the courthouse of the county where such cause, matter, or controversy is or was last pending in the trial court shall govern. A court of appeals is available to take immediate action under the provisions of said Article when two or more justices thereof, not disqualified, are present for duty or can readily become present for duty within the time when such action must be taken. If the inability of the nearest court of appeals to take such immediate action is also established in the manner hereinabove provided, such action may be taken by the court of appeals next nearest to such courthouse.

Rule 17. Issuance of Process by Appellate Court.

(a) Any writ of process issuing from any appellate court shall bear the teste of the chief justice or presiding judge under the seal of said court and be signed by the clerk, and, unless otherwise expressly provided by law or by these rules, shall be directed to the party or court to be served, may be served by the sheriff or any constable of any county of the State of Texas within which such person to served may be found, and shall be returned to the court from which it issued according to the direction of the writ. Whenever such writ or process shall not be executed, the clerk is authorized to issue another like process or writ upon the application of the party suing out the former writ or process. Two or more writs may be issued simultaneously at the request of any party.

(b) Any party who has appeared in person or by attorney in any proceeding in the appellate court, or who has actual knowledge of the court's opinion, judgment, or order, shall be bound by such opinion, judgment, or order to the same extent as if personally served as provided in subdivision (a).

Rule 18. Duties of Clerk of Appellate Court.

(a) Docketing the Case. The clerk shall have the responsibility for docketing the appeal in accordance with Rule 47. The clerk shall put the docket number of a case on each separate item (transcript, statement of facts, brief, motion, pleading, letter, etc.) that is received in connection with that case, as well as putting the docket number on the envelope in which the record is stored.

(b) Preparing the Record. The record of each case shall be filed in one or more envelopes which in criminal cases shall conform to the following specifications: extra heavy weight stock, one-piece construction with flaps, congress-tie, non-collapsing style construction with closed corners, width of 14½ inches, height of 9 inches, thickness

of ½ inch, 1 inch, 1½ inches, 2 inches, 3 inches, or 4 inches. On the front of the first envelope containing the record, the clerk shall set forth the information required by order of the Court of Criminal Appeals.

(c) Custody of Papers. The clerk shall be responsible for every transcript or other paper in a cause that is missing from his office, unless he can produce the receipt of an attorney for the same, or otherwise show, by satisfactory evidence, that some one took it from his custody or from the courtroom without his consent, or that said transcript had passed into the hands of one of the justices of the court, and had not been returned to his custody.

(d) Withdrawing Papers.

(1) Receipt. Neither the transcript nor any of the papers in a case shall be withdrawn from the custody of the clerk, nor taken from his office or the courtroom, without a receipt left therefor.

(2) Case Under Submission. While a case is under submission, either on the merits of the appeal or on motion, the clerk shall not permit the record or any papers to be removed from his office, except on the order of one of the justices or judges of the court.

(3) Case Not Under Submission. When the case is pending in the appellate court, but is not under submission, either before submission or after decision, any party or his attorney may obtain possession of the record on leaving the receipt required by subsection (1) but when a decision on the merits has been issued, only the losing party or his attorney shall be allowed to take the record out of the clerk's office until after said party has filed his motion for a rehearing or until the time for filing such motion has expired.

(4) Original Exhibits. Original papers and exhibits sent up by order of the court below for the inspection of the appellate court, will be retained in the office, and will not be allowed to go out of the custody of the clerk, except by order of one of the justices of the court, which order must be filed with the papers of the cause. Any party or attorney withdrawing such papers or exhibits shall leave a receipt identifying the papers or exhibits which he had received, and if he fails to return them, the court may accept the opposing party's statement concerning their nature and contents.

(5) Return of Papers. The attorney or party withdrawing any record, exhibits, or other papers before submission shall return them to the clerk promptly on demand and, in any event, not later than one day before submission. If withdrawn after submission, they shall be returned on demand. No attorney or party shall take or allow to be taken any transcript, statement of facts, or other papers out of the reach of the court so that it cannot be produced in court or in the clerk's office on demand.

(6) After Decision in the Supreme Court. Attorneys desiring to withdraw papers from the clerk's office after the decision of a cause or of an application for writ of error in the Supreme Court to prepare a motion for rehearing or for some other purpose shall first file with the clerk an agreement with opposing counsel or an order of the court or a justice thereof. The clerk is not authorized to allow papers to be taken from his office without such an agreement or order. Transcripts and other papers in cases finally disposed of shall not be taken from the clerk's office.

Rule 19. Motions in the Appellate Courts.

(a) Content of Motions; Response; Reply. Unless another form is elsewhere prescribed by these rules, an application for an order or other relief shall be made by filing a motion for such order or relief with proof of service on all other parties. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order of relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response to a motion within 10 days after service of the motion, but the court may shorten or extend the time for responding to any motion.

(b) Docketing Motions. The clerk shall file each motion under the docket number assigned to the appeal and make an appropriate notation on the docket of the filing of such motion and any response thereto, together with the name of the attorney filing same, if not otherwise shown on the docket.

(c) Notice of Motions. The clerk, upon filing and docketing a motion shall, unless waived, give notice to the opposite party or his attorney of record, by transmitting a brief notice of the nature or purpose of such motion to said party or his attorneys by letter.

(d) Evidence on Motions. Motions dependent on facts not apparent in the record and not ex officio known to the court must be supported by affidavits or other satisfactory evidence.

(e) Determination of Motions. As a general rule, no motion, other than a motion to extend the time for filing the record or briefs in a criminal case, shall be heard or determined until ten days after the notice provided for in paragraph (c) of this Rule 19 has been mailed. In cases of emergency, motions may be acted upon at any time, without awaiting a response. Any party adversely affected by such action may request reconsideration, vacation or modification of such action.

(f) Power of a Single Justice or Judge to Entertain Motions. In addition to the authority expressly conferred by these rules or by law, a single justice or judge of an appellate court may entertain and may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single justice or judge may not dismiss or otherwise determine an appeal or motion for rehearing and except that an appellate court may provide by order or rule that any motion or class of motions must be acted upon by the court.

(g) Number of Copies. Six (* 4 or 6? see Rule 4(c)) copies of each motion and of each response shall be filed, but the court may by local rule permit fewer or require more copies.

Rule 20. Amicus Briefs. The clerk of the appellate court may receive but not file amicus curiae briefs. An amicus curiae shall comply with the briefing rules for the parties, and shall show in the brief that copies have been furnished to all attorneys of record in the case.

Section Two A. New Trials, Arrest of Judgment, and Nunc Pro Tunc Proceedings in Criminal Cases.

New Trials in Criminal Cases.

Rule 21. Definition and Grounds.

(a) Definition. A "new trial" is the rehearing of a criminal action after a finding or verdict of guilt has been set aside upon motion of an accused. Except to adduce facts of a matter not otherwise shown on the record, a motion for new trial is not a requisite to presenting a point of error on appeal.

(b) Grounds. A new trial shall be granted an accused for the following reasons:

(1) except in a misdemeanor case when maximum punishment may be by fine only, where the accused is an individual who has been tried in his absence, unless otherwise authorized by law, or has been denied counsel;

(2) where the court has misdirected the jury as to the law or has committed some other material error calculated to injure the rights of the accused;

(3) where the verdict has been decided by lot or in any other manner than by a fair expression of opinion by the jurors;

(4) where a juror has received a bribe to convict or has been guilty of any other corrupt conduct;

(5) where any material witness of the defendant has by force, threats or fraud been prevented from attending the court, or where any evidence tending to establish the innocence of the accused has been intentionally destroyed or withheld preventing its Production at trial;

(6) where new evidence favorable to the accused has teen discovered since trial;

(7) where after retiring to deliberate the jury has received other evidence; or where a juror has conversed with any other person in regard to the case; or where a juror became so intoxicated as to render it probable that his verdict was influenced thereby;

(8) where the court finds the jury has engaged in such misconduct that the accused has not received a fair and impartial trial; and

(9) where tne verdict is contrary to the law and evidence.

Rule 22. Motion—Filing, Presenting and Ruling.

(a) Time to File and Amend.

(1) To File. A motion for new trial if filed may be filed prior to, or shall be filed within 30 days after, date sentence is imposed or suspended in open court.

(2) To Amend. Before a motion or an amended motion for new trial is overruled it may be amended and filed without leave of court within 30 days after date sentence is imposed or suspended in open court.

(b) State May Controvert. The State may take issue in writing with the truth of any reason set forth by accused in his motion. That the State has controverted a motion for new trial will not relieve an accused of his responsibility to present his motion timely to the court.

(c) Time to Present.

(1) In Term of Court. An accused shall present his motion for new trial to the court within ten days after filing it, unless in his discretion the trial judge permits it to be presented and heard within 75 days from after date sentence is imposed or suspended in open court.

(2) New Term of Court. A motion for new trial need not be heard during the term it is filed. Within time limits prescribed in this rule an accused may file a motion for new trial, Present it and have it heard and determined during a new term of court or in vacation.

(d) Hearing. The court is authorized to hear evidence by affidavit or otherwise and to determine the issues.

(e) Determination.

(1) Time to Rule. The court shall determine a motion for new trial within 75 days after date sentence is imposed or suspended in open court.

(2) Ruling. The judge shall not sum up, discuss or comment on evidence in the case. The judge shall grant or refuse the motion for new trial.

(3) Failure to Rule. A motion not timely determined by written order signed by the judge shall be considered overruled by operation of law upon expiration of the period of time prescribed in section (e)(1) of this rule.

Rule 23. Effect of New Trial. Granting a new trial restores the case to its position before the former trial including, at the option of either party, arraignment or pretrial proceedings initiated by that party. The prior conviction shall not be regarded as a presumption of guilt, nor shall it be alluded to in argument or in presence of jury.

B. Arrest of Judgment in Criminal Cases.

Rule 24. Motion and Grounds.

(a) Definition. A motion in arrest of judgment is an oral or written suggestion to the trial court by an accused that judgment was not rendered against him in accordance with law for reasons stated in the motion.

(b) Grounds. A motion may state a reason that is a ground provided for an exception to substance of an indictment or information or that in relation to the indictment or information a verdict is defective in substance, or any other reason that renders the judgment invalid

Rule 25. Motion Time to Make and to Rule.

(a) Time to Make. A motion in arrest of judgment, if made, may be made prior to, or shall be made within thirty days after, date sentence is imposed or suspended in open court.

(b) Time to Rule. A court must determine a motion in arrest of judgment by oral order or written order signed by the judge within 75 days after date sentence is imposed or suspended in open court. A motion not timely determined shall be considered overruled by operation of law upon expiration of that period.

(c) Effect of Overruling. An order overruling a motion in arrest of judgment shall be considered as an order overruling a motion for new trial for purposes of giving notice of appeal.

Rule 26. Effect of Arresting Judgment.

(a) Effect. Arresting judgment restores an accused to his position before indictment or information was presented.

(b) Further Effect. If the trial court determines from the evidence adduced at trial that the accused may be convicted on a proper indictment or information or, in relation thereto, on a proper verdict, the judge may remand the accused to custody or fix bail; otherwise the accused shall be discharged.

C. Nunc Pro Tunc Proceedings.

Rule 27. Judgment and Sentence.

(a) When done. Unless a new trial has been granted, the judgment arrested, or an appeal has been taken, failure of the court to enter judgment and pronounce sentence may be corrected at any time by entering judgment and pronouncing sentence.

(b) Credit. The trial court shall give the defendant credit on the sentence finaly pronounced for all time the defendant has spent in confinement from the time judgment and sentence should have been entered and pronounced, as well as from the time of his arrest and confinement to the time the judgment and sentence should have been entered and pronounced.

Section Three. Appeals from Judgments and Orders of Trial Courts.

Rule 30. Ordinary Appeal How Perfected.

(a) Appeals in Civil Cases.

(1) When Security is Required. When security for costs is required by law, the appeal is perfected when the bond, cash deposit or affidavit in lieu thereof has been filed or made, or if affidavit is contested, when the contest is overruled. The writ of error is perfected when the petition and bond or cash deposit is filed or made (when bond is required), or affidavit in lieu thereof is filed, or, if contested, when the contest is overruled.

(2) When Security is Not Required. When security for costs on appeal is not required by law, the appellant shall in lieu of a bond file a written notice of appeal with the clerk or judge which shall be filed within the time otherwise required for filing the bond. Oral notice or a recital

in the judgment of notice does not comply with this rule. Such notice shall be sufficient if it states the number and style of the case, the court in which pending, and that appellant desires to appeal from the judgment or some designated portion thereof. Copy of the notice shall be mailed by counsel for appellant in the same manner as the mailing of copies of the appeal bond.

(3) When Party is Unable to Give Security.

(A) When the appellant is unable to pay the cost of appeal or give security therefor, he shall be entitled to prosecute an appeal or writ of error by filing with the clerk, within the period prescribed by Rule 31, his affidavit stating that he is unable to pay the costs of appeal or any part thereof, or to give security therefor.

(B) The appellant or his attorney shall give notice of the filing of the affidavit to the opposing party or his attorney and to the court reporter of the court where the case was tried within two days after the filing; otherwise, he shall not be entitled to prosecute the appeal without paying the costs or giving security therefor.

(C) Any interested officer of the court or party to the suit, may by sworn pleading, contest the affidavit within ten days after notice thereof, whereupon the court trying the case (if in session) or (if not in session) the judge of the court or county judge of the county in which the case is pending shall set the contest for hearing, and the clerk shall give the parties notice of such setting.

(D) The burden of proof at the hearing of the contest shall rest upon the appellant to sustain the allegations of the affidavit.

(E) If no contest is filed in the allotted time, the allegations of the affidavit shall be taken as true. If a contest is filed, the court shall hear the same within 10 days after its filing unless the court extends the time for hearing and determining the contest by a signed written order made within the 10 day period. The court shall not extend the time for more than twenty additional days after the date of the order of extension. If no ruling is made on the contest within the ten day period or within the period of time as extended by the court, the allegations of the affidavit shall be taken as true.

(F) If the appellant is able to pay or give security for a part of the costs of appeal, he shall be required to make such payment or give such security (one or both) to the extent of his ability.

(4) Notice of Limitation of Appeal. No attempt to limit the scope of an appeal shall be effective as to a party adverse to the appellant unless the severable portion of the judgment from which the appeal is taken is designated in a notice served on the adverse party within 15 days after judgment is signed, or if a motion for new trial is filed by any party, within 75 days after the judgment is signed.

(5) Judgment Not Suspended by Appeal. Except as provided in Rule 33, the filing of a bond or the making of a deposit or affidavit does not have the effect of suspending the judgment. Unless a supersedeas bond or deposit is made as provided in Rule 37, execution may issue thereon as if no appeal or writ of error had been taken.

(b) Appeals in Criminal Cases.

(1) Appeal is perfected in a criminal case by giving timely notice of appeal; except, it is unnecessary to give notice of appeal in death penalty cases. Notice of appeal shall be given in writing filed with the clerk of the trial court. Such notice shall be sufficient if it shows the desire of the defendant to appeal from the judgment or other appealable order; but if the judgment was rendered upon his plea of guilty or nolo contendere pursuant to Article 1.15, Code of Criminal Procedure, and the punishment assessed does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney, in order to prosecute an appeal for a nonjurisdictional defect or error that occurred prior to entry of the plea the notice shall state that the trial court granted permission to appeal or shall specify that those matters were raised by written motion and ruled on before trial. The clerk of the trial court shall note on copies of the notice of appeal the number of the cause and the day that notice was filed, and shall immediately send one copy to the clerk of the appropriate court of appeals and one copy to the attorney for the State.

(2) Effect of Appeal in Criminal Cases. In the appeal of a criminal case when the record has been filed in the appellate court all further proceedings in the trial court, except as provided by law or by these rules, shall be suspended and arrested until the mandate of the appellate court is received by the trial court.

Rule 31. Ordinary Appeal—When Perfected.

(a) Appeals in Civil Cases.

(1) Time to Perfect Appeal. When security for costs on appeal is required, the bond or affidavit in lieu thereof shall be filed with the clerk within thirty days after the judgment is signed, or, within 90 days after the judgment is signed if a timely motion for new trial has been filed by any party. If a deposit of cash is made in lieu of bond, the same shall be made within the same period.

(2) Extension of Time. An extension of time may be granted by the appellate court for late filing of a cost bond or notice of appeal or making the deposit required by paragraph (a)(1) or for filing the affidavit, if such bond or notice of appeal is filed, deposit is made, or affidavit is filed not later than 15 days after the last day allowed and, within the same period, a motion is filed in the appellate court reasonably explaining the need for such extension. If a contest to an affidavit in lieu of bond is sustained, the time for filing the bond is extended until ten days after the contest is sustained unless the trial court finds and recites that the affidavit is not filed in good faith.

(b) Appeals in Criminal Cases.

(1) Time to Perfect Appeal. Appeal is perfected when notice of appeal is filed within thirty days after the day sentence is imposed or suspended in open court or the day an appealable order is signed by the trial judge; except, if a motion for new trial is timely filed, notice of appeal shall be filed within ninety days after the day sentence is imposed or suspended in open court.

(2) Extension of Time. An extension of time for filing notice of appeal may be granted by the court of appeals if such notice is filed within fifteen days after the last day allowed and within the same period a motion is filed in the court of appeals reasonably explaining the need for such extension.

(c) Prematurely Filed Documents. No appeal bond or affidavit in lieu thereof, notice of appeal, or notice of limitation of appeal shall be held ineffective because prematurely filed. In civil cases, every such instrument shall be deemed to have been filed on the date of but subsequent to the date of signing of the judgment or the date of the overruling of motion for new trial, if such a motion is filed. In criminal cases, every such instrument shall be deemed to have been filed on the date of but subsequent to the imposition or suspension of sentence in open court or the signing of appealable order by the trial judge, provided that no notice of appeal shall be effective if given before a finding of guilt is made or a verdict is received.

Rule 32. Accelerated Appeals in Civil Cases.

(a) Mandatory Acceleration.

(1) Appeals from interlocutory orders (when allowed by law) shall be accelerated. In appeals from interlocutory orders, no motion for new trial shall be filed. The

trial judge need not file findings of fact and conclusions of law, but may file findings and conclusions within 30 days after the judgment is signed.

(2) Appeals in quo warranto proceedings shall be accelerated. In quo warranto, the filing of a motion for new trial shall not extend the time for perfecting the appeal or the time for filing appellant's brief; but the trial court shall have power to grant such a motion, if timely filed, until fifty days, after the judgment or order appealed from is signed. If not determined by written order within that period the motion shall be deemed overruled by operation of law.

(3) In all accelerated appeals from interlocutory orders and in quo warranto proceedings, the bond, or the notice or affidavit in lieu thereof, shall be filed, or the deposit in lieu of bond shall be made, within twenty days after the judgment or order is signed. The record shall be filed in the appellate court within thirty days after the judgment or order is signed. The appellant's brief shall be filed within twenty days after the record is filed, and appellee's brief shall be filed within twenty days after appellant's brief is filed. Failure to file either the record or appellant's brief within the time specified, unless reasonably explained, shall be ground for dismissal or affirmance under Rule 50, but shall not affect the court's jurisdiction or its authority to consider material filed late.

(b) Discretionary Acceleration. The court of appeals, on motion of any party or an order of the court, may advance any appeal and give it priority over other cases.

(c) Transcript and Briefs. The court of appeals may hear an appeal that is accelerated under paragraphs (a) or (b) of this rule on the original papers sent up from the trial court or on sworn and uncontroverted copies of such papers in lieu of a transcript, and may shorten the time for filing briefs or allow the case to be submitted without briefs.

Rule 33. Orders Pending Interlocutory Appeal in Civil Cases.

(a) Effect of Appeal. No order denying interlocutory relief shall be suspended or superseded by an appeal therefrom. The pendency of an appeal from an order authorizing a cause to proceed as a class action suspends such order and also suspends trial on the merits in such cases. Otherwise, the pendency of an appeal from an order granting interlocutory relief does not suspend the order appealed from unless supersedeas is granted in accordance with subdivision (b) or unless the appellant is entitled to supersede the judgment without security by giving notice of appeal.

(b) Supersedeas. Except as provided in subdivision (a), the trial court may permit an interlocutory order to be suspended pending an appeal therefrom by filing a supersedeas bond or making a deposit pursuant to Rule 37. Denial of such suspension may be reviewed for abuse of discretion on motion in the appellate court.

(c) Temporary Orders of Appellate Court. On perfection of an appeal from an interlocutory order, the appellate court may issue such temporary orders as it finds necessary to preserve the rights of the parties until disposition of the appeal and may require such security as it deems appropriate, but it shall not suspend the trial court's order if the appellant's rights would be adequately protected by supersedeas.

(d) Further Proceedings in Trial Court. Pending an appeal from an interlocutory order, the trial court retains jurisdiction of the cause and may issue further orders, including dissolution of the order appealed from, but the court shall make no order granting substantially the same relief as that granted by the order appealed from, or any order contrary to the temporary orders of the appellate court, or any order that would interfere with or impair the effectiveness of any relief sought or granted on appeal. The trial court may proceed with a trial on the merits, except as provided in subdivision (a).

(e) Enforcement of Temporary Orders. Pending an appeal from an interlocutory order, the order may be enforced only by the appellate court in which the appeal is pending, except that the appellate court may refer any enforcement proceeding to the trial court with instructions to hear evidence and grant such relief as may be appropriate. The appellate court may also instruct the trial court to make findings and report them with his recommendations to the appellate court.

(f) Review on Further Orders. When an appeal is pending from an interlocutory order, any further appealable interlocutory order of the trial court concerning the same subject-matter and any interlocutory order that would interfere with or impair the effectiveness of the review sought or granted on appeal may be brought before the appellate court for review on motion, either on the original record or with a supplement thereto.

(g) Mandate. The order of the appellate court on appeal from an interlocutory order takes effect when the mandate is issued. The court may issue the mandate immediately on announcing its decision if the circumstances require, or it may delay the mandate until final disposition of the appeal. All further proceedings in the trial court shall conform to the mandate. If the appellate court modifies its decision after issuing a mandate, a new mandate shall be issued accordingly.

(h) Rehearing. The appellate court may either deny the right to file a motion for rehearing or shorten the time for filing, and in that event a motion for rehearing shall not be a prerequisite to any review available in the Supreme Court.

Rule 34. Appeals in Habeas Corpus and Bail; Criminal Cases.

(a) The Record. In habeas corpus or bail proceedings when written notice of appeal from a judgment or an order is filed, the transcript and, if requested by the applicant, a statement of facts, shall be prepared and certified by the clerk of the trial court and, within 15 days after the notice of appeal is filed, sent to the appellate court for review. The appellate court may shorten or extend the time for filing the record if there is a reasonable explanation for the need for such action. When the record is received by the appellate court, the court shall set the time for the filing of briefs, if briefs are desired, and shall set the appeal for submission.

(b) Hearing. Such cases, taken to the court of appeals by appeal, shall be heard at the earliest practicable time. The appellant need not be personally present, and such appeal shall be heard and determined upon the law and the facts arising upon record. No incidental question which may have arisen on the hearing of the application before the court below shall be reviewed. The only design of the appeal is to do substantial justice to the party appealing.

(c) Orders on Appeal. In such cases, the appellate court shall render such judgment and make such orders as the law and the nature of the case may require, and may make such orders relative to the costs in the case as may seem right, allowing costs and fixing the amount, or allowing no cost at all.

(d) Stay of Mandate. Notwithstanding Rule 86 and other provisions of these rules, when an appellate court affirms the judgment of the court below in an extradition matter, thereby sanctioning extradition of appellant, or reverses the judgment of the court below in a bail matter, including bail pending appeal pursuant to Article 44.04(g),

CCP, thereby granting or reducing the amount of bail, within 15 days after the appellate court has rendered judgment a party who in good faith intends to seek discretionary review shall file with the clerk of the appellate court a motion for stay of mandate, appending thereto his petition for discretionary review showing reasons for review of the judgment of the appellate court by the Court of Criminal Appeals. The clerk shall promptly submit the motion with appendix to the appellate court or one or more judges as the court deems appropriate for immediate consideration and determination. If the motion for stay is granted, the clerk shall file the petition for discretionary review and process the cause in accordance with Rule 202(f). If the motion is denied, the clerk shall issue a mandate in accordance with the judgment of the appellate court, and the losing party may present the motion with appendix to the Clerk of the Court of Criminal Appeals who will promptly submit them to the Court or one or more judges as the Court deems appropriate for immediate consideration and determination. The Court of Criminal Appeals may deny the motion or stay or recall the mandate. If mandate is stayed or recalled, the clerk of the appellate court shall file the petition for discretionary review and process the cause in accordance with Rule 202(f).

(e) Judgment Conclusive. The judgment of the court of appeals in appeals in such cases shall be final and conclusive if discretionary review is not granted by the Court of Criminal Appeals. If discretionary review is granted, the judgment of the Court of Criminal Appeals shall be final and conclusive. In either case, no further application in the same case can be made for the writ, except in cases specially provided for by law.

(f) Appellant Detained by Other Than Officer. If the appellant in such a case is detained by any person other than an officer, the sheriff receiving the mandate of the appellate court shall immediately cause the person so held to be discharged; and the mandate shall be sufficient authority therefor.

(g) Judgment to be Certified. In such cases, the judgment of the appellate court shall be certified by the clerk thereof to the officer holding the defendant in custody or, when he is held by any person other than an officer, to the sheriff of the proper county.

Rule 35. Appeal by Writ of Error in Civil Cases to Court of Appeals. A party may appeal a final judgment to the court of appeals by petition for writ of error by complying with the requirements set forth below:

(1) Filing Petition. The party desiring to sue out a writ of error shall file with the clerk of the court in which the judgment was rendered a written petition signed by him or by his attorney, and addressed to the clerk.

(2) No Participating Party at Trial. No party who participates either in person or by his attorney in the actual trial of the case in the trial court shall be entitled to review by the court of appeals through means of writ of error.

(3) Requisites of Petition. The petition shall state the names and residences of the parties adversely interested, shall describe the judgment with sufficient certainty to identify it and shall state that the appellant desires to remove the same to the court of appeals for revision and correction.

(4) Time for Filing. The writ of error, in cases where the same is allowed, may be sued out at any time within six months after the final judgment is signed.

(5) Cost Bond or Substitute. At the time of filing the petition, or within six months provided by paragraph 4, the appellant shall file with the clerk an appeal bond, cash deposit in lieu of bond, affidavit of inability to pay costs, or a notice of appeal if no bond is required, as provided by these rules for appeals.

(6) Notice. When the petition for writ of error and cost bond, or the clerk's certificate showing cash deposit in lieu of bond, or affidavit of inability to pay costs, or the notice of appeal, if permitted, is filed, the clerk shall notify the parties by mailing a copy of the petition and bond, or the substitute for the bond to all parties to the judgment other than the party or parties filing the petition for writ of error. The failure of the clerk to notify the parties shall not affect the validity of the appeal.

(7) Recipients and Sufficiency of Notice. The notification of a party shall be given by mailing copies of the instruments to the attorney of record or, if the party is not represented by an attorney, then to the party at his last known address. Such notification is sufficient notwithstanding the death of the party or his attorney prior to the giving of the notification. The clerk shall note on the file docket the names of the parties to whom he mailed the copies, with the date of mailing.

(8) Perfection. The writ of error is perfected when the petition and bond or cash deposit in lieu of bond or affidavit of inability to pay is filed or a contest is overruled, or a notice of appeal, if permitted, is filed.

Rule 36. Bond for Costs in Appeal in Civil Cases.

(a) Cost Bond. Unless excused by law, the appellant shall execute a bond payable to the appellee in the sum of $1000 unless the court fixes a different amount upon its own motion or motion of either party or any interested officer of the court. If the bond is filed in the amount of $1000, no approval by the court is necessary. The bond on appeal shall have sufficient surety and shall be conditioned that appellant shall prosecute his appeal or writ of error with effect and shall pay all costs which have accrued in the trial court and the cost of the statement of facts and transcript. Each surety shall give his post office address. Appellant may make the bond payable to the clerk instead of the appellee, and same shall inure to the use and benefit of the appellee and the officers of the court, and shall have the same force and effect as if it were payable to the appellee.

(b) Deposit. In lieu of a bond, appellant may make a deposit with the clerk pursuant to Rule 38 in the amount of $1000, and in that event the clerk shall file among the papers his certificate showing that the deposit has been made and copy same in the transcript, and this shall have the force and effect of an appeal bond.

(c) Increase or Decrease in Amount. Upon the court's own motion or motion of any party or any interested officer of the court, the court may increase or decrease the amount of the bond or deposit required. The trial court's power to increase or decrease the amount shall continue to 30 days after the bond or certificate is filed, but no order increasing the amount shall affect perfecting of the appeal or the jurisdiction of the appellate court. If a motion to increase the amount is granted, the clerk and official reporter shall have no duty to prepare the record until the appellant complies with the order. If the appellant fails to comply with such order, the appeal shall be subject to dismissal or affirmance under Rule 50. No motion to increase or decrease the amount shall be filed in the appellate court until 30 days after the bond or certificate is filed. In determining the question of whether an appellant's bond or deposit should be increased to more than the minimum amount of $1000, the court shall credit the appellant with such sums as have been paid by appellant on the costs to the clerk of the trial court or to the court reporter.

(d) Notice of Filing. Notification of the filing of the bond or certificate of deposit shall promptly be given by counsel for appellant by mailing a copy thereof to counsel of record or each party other than the appellant or, if a

party is not represented by counsel, to the party at his last known address. Counsel shall note on each copy served the date on which the appeal bond or certificate was filed. Failure to serve a copy shall be ground for dismissal of the appeal or other appropriate action if appellee is prejudiced by such failure.

(e) Payment of Court Reporters. Even if a bond is filed or deposit in lieu of bond is made, appellant shall either pay or make arrangements to pay the court reporter upon completion and delivery of the statement of facts.

(f) Amendment: New Appeal Bond or Deposit. On motion to dismiss an appeal or writ of error for a defect of substance or form in any bond or deposit given as security for costs, the appellate court may allow the filing of a new bond or the making of a new deposit in the trial court on such terms as the appellate court may prescribe. A certified copy of the new bond or certificate of deposit shall be filed in the appellate court.

Rule 37. Supersedeas Bond or Deposit in Civil Cases.

(a) May Suspend Execution. Unless otherwise provided by law or these rules, an appellant may suspend the execution of the judgment by filing a good and sufficient bond to be approved by the clerk, or making the deposit provided by Rule 38, payable to the appellee in the amount provided below, conditioned that the appellant shall prosecute his appeal or writ of error with effect and, in case the judgment of the Supreme Court or court of appeals shall be against him, he shall perform its judgment, sentence or decree and pay all such damages and costs as said court may award against him. If the bond or deposit is sufficient to secure the costs and is filed or made within the time prescribed by Rule 30, it constitutes sufficient compliance with Rule 36.

(b) Money Judgment. When the judgment awards recovery of a sum of money, the amount of the bond or deposit shall be at least the amount of the judgment, interest, and costs.

(c) Land or Property. When the judgment is for the recovery of land or other property, the bond or deposit shall be further conditioned that the appellant shall, in case the judgment is affirmed, pay to the appellee the value of the rent or hire of such property during the appeal, and the bond or deposit shall be in the amount estimated or fixed by the trial court.

(d) Foreclosure on Real Estate. When the judgment is for the recovery of or foreclosure upon real estate, the appellant may supersede the judgment insofar as it decrees the recovery of or foreclosure against said specific real estate by filing a supersedeas bond or making a deposit in the amount to be fixed by the court below, not less than the rents and hire of said real estate; but if the amount of said supersedeas bond or deposit is less than the amount of the money judgment, with interests and costs, then the appellee shall be allowed to have his execution against any other property of appellant.

(e) Foreclosure on Personal Property. When the judgment is for the recovery of or foreclosure upon specific personal property, the appellant may supersede the judgment insofar as it decrees the recovery of or foreclosure against said specific personal property or by filing a supersedeas bond or making a deposit in an amount to be fixed by the court below, not less than the value of said property on the date of rendition of judgment, but if the amount of the supersedeas bond or deposit is less than the amount of the money judgment with interest and costs, then the appellee shall be allowed to have his execution against any other property of appellant.

(f) Other Judgment. When the judgment is for other than money or property or foreclosure, the bond or deposit shall be in such amount to be fixed by the said court below as will secure the plaintiff in judgment in any loss or damage occasioned by the delay on appeal, but the court may decline to permit the judgment to be suspended on filing by the plaintiff of a bond or deposit to be fixed by the court in such an amount as will secure the defendant in any loss or damage occasioned by any relief granted if it is determined on final disposition that such relief was improper.

(g) Child Custody. When the judgment is one involving the care or custody of a child, the appeal, with or without a supersedeas bond or deposit shall not have the effect of suspending the judgment as to the care or custody of the child, unless it shall be so ordered by the court rendering the judgment. However, the appellate court, upon a proper showing, may permit the judgment to be superseded in that respect also.

(h) For State or Subdivision. When the judgment is in favor of the State, a municipality, a State agency, or a subdivision of the State in its governmental capacity, and is such that the judgment holder has no pecuniary interest in it and no monetary damages can be shown, the bond or deposit shall be allowed and its amount fixed within the discretion of the trial court, and the liability of the appellant shall be for the face amount if the appeal is not prosecuted with effect. The discretion of the trial court in fixing the amount shall be subject to review. Provided, that under equitable circumstances and for good cause shown by affidavit or otherwise, the court rendering judgment on the bond or deposit may allow recovery for less than its full face amount.

(i) Certificate of Deposit. If the appellant makes a deposit in lieu of a bond, the clerk's certificate that the deposit has been made shall be sufficient evidence thereof.

(j) Effect of Bond or Deposit. Upon the filing and approval of a proper supersedeas bond or the making of a deposit in compliance with these rules, execution of the judgment or so much thereof as has been superseded, shall be suspended, and if execution has been issued, the clerk shall forthwith issue a writ of supersedeas.

Rule 38. Deposit in Lieu of Bond. Wherever these rules provide for the filing of a surety bond, the party may in lieu of filing the bond deposit cash or a negotiable obligation of the government of the United States of America or any agency thereof, or with leave of court, deposit a negotiable obligation of any bank or savings and loan association chartered by the government of the United States of America or any state thereof, that is insured by the government of the United States of America or any agency thereof, in the amount fixed for the surety bond, conditioned in the same manner as would be a surety bond for the protection of other parties. Any interest thereon shall constitute a part of the deposit.

Rule 39. Appellate Review of Bonds in Civil Cases.

(a) Sufficiency. The sufficiency of a cost or supersedes bond or deposit or of any other bond or deposit under Rule 37 shall be reviewable by the appellate court for insufficiency of the amount or of the sureties or of the securities deposited, whether arising form initial insufficiency or from any subsequent condition which may arise affecting the sufficiency of the bond or deposit. The court in which the appeal is pending shall, upon motion showing such insufficiency, require an additional bond or deposit to be filed in and approved by the clerk fo the trial court, and a certified copy to be filed in the appellate court.

(b) Excessiveness. In like manner, the appellate court may review for excessiveness the amount of the bond or deposit fixed by the trail court and may reduce the amount if found to be excessive.

(c) Insufficiency of Supersedeas Bond or Deposit. If the appellate court requires additional bond or other

security for supersedeas, execution of the judgment shall be suspended for twenty days after the order is served. if the appellant fails to comply with the order whitin that period, the clerk shall notify the trail court that execution may be issued on the judgment, but the appeal shall not be dismissed unless the clerk finds that the bond or deposit is insufficient to secure the costs. The additional security shall not release the liability of the surety on the original bond.

If the clerk finds that the original supersedeas bond or deposit is insufficient to secure the costs, he shall notify appellant of such insufficiency. If appellant fails, within twenty days after such notice, to file a new bond or make a new deposit in the trial court sufficient to secure payment of the costs and to file a certified copy of the bond or certificate of deposit in the appellate court, the appeal or writ of error shall be dismissed. The additional security shall not release the liability Of the surety on the original supersedeas bond.

Rule 40. Record on Appeal.

(a) Contents. The record on appeal shall consist of a transcript and, where necessary to the appeal, a statement of facts.

(b) Stipulation as to Record. The parties by written stipulation filed with the clerk of the trial court may designate the parts of the record, proceedings and evidence to be included in the record on appeal.

(c) Agreed Statement. The parties may agree upon a brief statement of the case and of the facts proven as will enable the appellate court to determine whether there is error in the judgment. Such statement shall be copied into the transcript in lieu of the proceedings themselves.

(d) Burden on Appellant. The burden is on the appellant, or other party seeking review, to see that a sufficient record is presented to show error requiring reversal.

(e) Lost or Destroyed Record. When the record or any portion thereof is lost or destroyed it may be substituted in the trial court and when so substituted the record may be prepared and transmitted to the appellate court as in other cases. If the appellant has made a timely request for a statement of facts, but the court reporter's notes and records have been lost or destroyed without appellant's fault, the appellant is entitled to a new trial unless the parties agree on a statement of facts.

Rule 41. The Transcript on Appeal.

(a) Contents. Unless otherwise designated by the parties in accordance with Rule 40, the transcript on appeal shall include copies of the following: in civil cases, the live pleadings upon which the trial was held; in criminal cases, copies of the indictment or information, any special pleas and motions of the defendant which were presented to the court and overruled, and any written waivers; the court's docket sheet; the charge of the court and the verdict of the jury, or the court's findings of fact and conclusions of law; the court's judgment or other order appealed from; any motions for new trial and the order of the court thereon; any notice of appeal; any appeal bond, affidavit in lieu of bond or clerk's certificate of a deposit in lieu of bond; any notice of limitation of appeal in civil cases made pursuant to Rule 30; any formal bills of exception provided for in Rule 42; in civil cases, a certified bill of costs, including the cost of the transcript and the statement of facts (if any), showing any credits for payments made; and, subject to the provisions of paragraph (c) of this rule, any filed paper any party may designate as material.

(b) Written Designation. At or before the time prescribed for perfecting the appeal, any party may file with the clerk a written designation specifying matter for inclusion in the transcript; the designation must be specific and the clerk shall disregard any general designation such as one for "all papers filed in the cause." The failure of the clerk to include designated matter will not be grounds for complaint on appeal if the designation specifying such matter is not timely filed. The party making the designation shall serve a copy of the designation on all other parties.

(c) Duty of Clerk. Upon perfection of the appeal, the clerk of the trial court shall prepare under his hand and seal of the court and immediately transmit the transcript to the appellate court designated by the appellant. The pages of the transcript shall be numbered consecutively and there shall be an index prepared by the clerk showing the location of each document in the transcript. The transcript shall be prepared in the form directed by the Supreme Court and the Court of Criminal Appeals which will make an order or orders in such respect for the guidance of trial clerks. In criminal cases, the transcript shall be made in duplicate and one copy shall be retained by the clerk for use by the parties with permission of the court.

(d) Original Exhibits. When the trial court is of the opinion that original papers or exhibits should be inspected by the appellate court or sent to the appellate court in lieu of copies, it may make such order therefor and for the safekeeping, transportation, and return thereof as it deems proper. The order shall contain a list of such original exhibits in numerical order, with a brief identifying description of each, and, so far as practicable, all such exhibits shall be arranged in the order listed and firmly bound together. The appellate court on its own initiative may direct the clerk of the court below to send to it any original paper or exhibit for its inspection.

Rule 42. Preservation of Appellate Complaints.

(a) General Rule. In order to preserve a complaint for appellate review, a party must have presented to the trial court a timely request, objection or motion, stating the specific grounds for the ruling he desired the court to make if the specific grounds were not apparent from the context. It is also necessary for the complaining party to obtain a ruling upon the party's request, objection or motion. If the trial judge refuses to rule, an objection to the court's refusal to rule is sufficient to preserve the complaint. It is not necessary to formally except to rulings or orders of the trial court.

(b) Informal Bills of Exception and Offers of Proof. When the court excludes evidence, no offer is necessary to preserve error if the substance of the evidence is apparent from the context within which questions were asked. Otherwise, when the court excludes evidence, the party offering same shall as soon as practicable, but before the court's charge is read to the jury, be allowed to make, in the absence of the jury, an offer of proof in the form of a concise statement. The court may, or at the request of a party shall, direct the making of the offer in question and answer form. A transcription of the reporter's notes showing the offer, whether by concise statement or question and answer, showing the objections made, and showing the ruling thereon, when included in the record certified by the reporter, shall establish the nature of the evidence, the objections and the ruling. The court may add any other or further statement which shows the character of the evidence, the form in which it was offered, the objection made and the ruling. No further offer need be made. No formal bills of exception shall be needed to authorize appellate review of the question whether the court erred in excluding the evidence. When the court hears objections to offered evidence out of the presence of the jury and rules that such evidence be admitted, such objections shall be deemed to apply to such evidence when

it is admitted before the jury without the necessity of repeating those objections.

(c) Formal Bills of Exception. The preparation and filing of formal bills of exception shall be governed by the following rules:

(1) No particular form of words shall be required in a bill of exception, but the objection to the ruling or action of the court shall be stated with such action of the court shall be stated with such circumstances, or so much of the evidence as may be necessary to explain, and no more, and the whole as briefly as possible.

(2) When the statement of facts contains all the evidence requisite to explain the bil of exception, evidence need not be set out in the bill; but it shall be sufficient to refer to the same as it appears in the statement of facts.

(3) The ruling of the court in giving or qualifying instructions to the jury shall be regarded as approved unless a proper objection is made.

(4) Formal bills of exception shall be presented to the judge for his allowance and signature.

(5) The judgment shall submit such bill to the adverse party or his counsel, if in attendance on the court, and if found to be correct, the judge shall sign it without delay and file it with the clerk.

(6) If the judge finds such bill incorrect, he shall suggest to the party of his counsel such corrections as he deems necessary therein, and if they are agreed to he shall make such corrections, sign the bill and file it with the clerk.

(7) Should the party not agree to such corrections, the judge shall return the bill to him with his refusal endorsed thereon, and shall prepare, sign and file with the clerk such bill of exception as will, in his opinion, present the ruling of the court as it actually occurred.

(8) Should the party be dissatisfied with said bill filed by the judge, he may, upon procuring the signatures of three respectable bystanders, citizens of this State, attesting to the correctness of the bill as presented by him, have the same filed as part of the record of the cause; and the truth of the matter in reference thereto may be controverted and maintained by affidavits, not exceeding five in number on each side, to be filed with the papers of the cause, within 10 days after the filing of said bill and to be considered as a part of the record relating thereto. On appeal the truth of such bill of exceptions shall be determined from such affidavits.

(9) In the event a formal bill of exceptions is filed and there is a conflict between its provisions and the provisions of the statement of facts, the bill of exceptions shall control.

(10) Anything occurring in open court or in chambers that is reported and so certified by the court reporter may be included in the statement of facts rather than in a formal bill of exception; provided that in a civil case the party requesting that all or a part of the jury arguments on the voir dire examination of the jury panel be included in the statement of facts shall pay the cost thereof, which cost shall be separately listed in the certificate of costs prepared by the clerk of the trial court, and the same may be taxed in whole or in part by the appellate court against any party to the appeal.

(11) Formal bills of exception shall be filed in the trial court within 60 days after the judgment is signed in a civil case or within 60 days after the sentence is pronounced or suspended in open court in a criminal case, or if a timely motion for new trial has been filed formal bills of exception shall be filed within 90 days after the judgment is signed in a civil case or within ninety days after sentence is pronounced or suspended in open court in a criminal case. When formal bills of exception are filed they may be included in the transcript or in a supplemental transcript.

Rule 43. The Statement of Facts on Appeal.

(a) Appellant's Request. In order to present a statement of facts on appeal, the appellant, at or before the time prescribed for perfecting the appeal, shall make a written request to the official reporter designating the portion of the evidence and other proceedings to be included therein. A copy of such request shall be filed with the clerk of the trial court and another copy served on the appellee.

(b) Other Requests. Within 10 days after service of a copy of appellant's request, any party may in the same manner request additional portions of the evidence and other proceedings to be included.

(c) Abbreviation of Statement. All matters not essential to the decision of the questions presented on appeal shall be omitted. Formal parts of all exhibits and more than one copy of any document appearing in the statement of facts shall be excluded. All documents shall be abridged by omitting all irrelevant and formal portions thereof.

(d) Partial Statement. If appellant requests or prepares a partial statement of facts, he shall include in his request or proposal a statement of the points to be relied on and shall thereafter be limited to such points. If such statement is filed, there shall be a presumption on appeal that nothing omitted from the record is relevant to any of the points specified or to the disposition of the appeal. Any other party may designate additional portions of the evidence to be included in the statement of facts.

(e) Unnecessary Portions. In civil cases if either party requires more of the testimony or other proceedings than is necessary, he shall be required by the appellate court to pay the costs thereof, regardless of the outcome of the appeal.

(f) Certification by Court Reporter. The statement of facts shall be in sufficient form to be filed in the appellate court when it is certified by the official court reporter.

(g) Reporter's Fees. The official court reporter shall include in his certification the amount of his charges for preparation of the statement of facts. The Supreme Court and the Court of Criminal Appeals may from time to time make an order providing the fees which court reporters may charge.

(h) Form. The Supreme Court and the Court of Criminal Appeals will make an order or orders directing the form of the statement of facts and the court reporter will prepare the same in conformity therewith.

(i) Narrative Statement. A statement of facts prepared by the official reporter shall be in question and answer form. In lieu of requesting such a statement of facts, a party may prepare and file with the clerk of the trial court a condensed statement in narrative form of all or part of the testimony and deliver a true copy to the opposing party or his counsel, and such opposing party, if dissatisfied with the narrative statement, may within ten days after such delivery, require the testimony in question and answer form to be substituted for all or part thereof.

(j) Free Statement of Facts.

(1) Civil Cases. In any case where the appellant has filed the affidavit required by Rule 30 to appeal his case without bond, and no contest is filed, or any contest is overruled, the court or judge upon application of appellant shall order the official reporter to prepare a statement of facts, and to deliver it to appellant, but the court reporter shall receive no pay for same.

(2) Criminal Cases. Within the time prescribed for perfecting the appeal an appellant unable to pay for the statement of facts may, by motion and affidavit, move

the trial court to have the statement of facts furnished without charge. After hearing the motion, if the court finds the appellant is unable to pay for or give security for the statement of facts, the court shall order the reporter to furnish the statement of facts, and when the court certifies that the statement of facts has been furnished to the appellant, the court reporter shall be paid from the general funds of the county, by the county in which the offense was committed the sum set by the trial judge.

(k) Duty of Appellant to File. It is the appellant's duty to cause the statement of facts to be filed with the Clerk of the Court of Appeals.

(l) Duplicate Statement in Criminal Cases. In criminal cases, if any party desires a statement of facts included in the record, a duplicate of the statement of facts shall be prepared by the court reporter and filed with the clerk of the court.

(m) When No Statement of Facts Filed in Appeals of Criminal Cases. If the clerk of the appellate court does not receive a statement of facts when due, he shall notify the trial judge and the appellant's attorney, if the appellant's attorney can be determined from the transcript, that a statement of facts has not been filed and that in the absence of a statement of facts the appeal will be submitted on the transcript alone. If no statement of facts has been filed, the appellate court may order the trial court to hold a hearing to determine whether the appellant has been deprived of a statement of facts because of ineffective counsel or for any other reason, to make findings of fact and conclusions of law, to appoint counsel if necessary, and to transmit to the appellate court the record of the hearing. The appellate court may order a late filing of statement of facts.

Rule 44. Time to File Record.

(a) In Civil Cases—Ordinary Timetable. The transcript and statement of facts, if any, shall be filed in the appellate court within 60 days after the judgment is signed, or, if a timely motion for new trial or to modify the judgment has been filed by any party, within one 100 days after the judgment is signed. If a writ of error has been perfected to the court of appeals the record shall be filed within 60 days after perfection of the writ of error. Failure to file either the transcript or the statement of facts within such time shall not affect the jurisdiction of the court, but shall be ground for dismissing the appeal, affirming the judgment appealed from, disregarding materials filed, or applying presumptions against the appellant, either on appeal or on the court's own motion, as the court shall determine. The court shall have no authority to consider a late filed transcript or statement of facts, except as permitted by this rule.

(b) In Criminal Cases—Ordinary Timetable. The transcript and statement of facts shall be filed in the appellate court within 60 days after the day sentence is imposed or suspended in open court or the order appealed from has been signed, if a motion for new trial is not filed. If a timely motion for new trial is filed, the transcript and statement of facts shall be filed within one 100 days after the day sentence is imposed or suspended in open court or the order appealed from has been signed.

(c) Extension of Time. An extension of time may be granted for late filing in a court of appeals of a transcript or statement of facts, if a motion reasonably explaining the need therefor is filed by appellant with the court of appeals not later than 15 days after the last date for filing the record. Such motion shall also reasonably explain any delay in the request required by Rule 45a.

Rule 45. Amendment of the Record.

(a) Inaccuracies on the Statement of Facts. Any inaccuracies may be corrected by agreement of the parties; should any dispute arise, after filing in the appellate court as to whether the statement of facts accurately discloses what occurred in the trial court, the appellate court shall submit the matter to the trial court, which shall, after notice to the parties and hearing, settle the dispute and make the statement of facts conform to what occurred in the trial court.

(b) Before Submission. If anything material to either party is omitted from the transcript or statement of facts, before submission the parties by stipulation, or the trial court, upon notice and hearing, either before or after the record has been transmitted to the appellate court, or the appellate court, on a proper suggestion or on its own initiative, may direct a supplemental record to be certified and transmitted by the clerk of the trial court or the official court reporter supplying such omitted matter. The appellate court shall permit it to be filed unless the supplementation will unreasonably delay disposition of the appeal.

(c) Defects Appearing At or After Submission. Should it be apparent during the submission or afterwards that the case has not been properly prepared as shown in the transcript, or properly presented in the brief or briefs, or that the law and authorities have not been properly cited, which will enable the court to decide the case, it may decline to receive the submission; or, if received, may set it aside and make such orders as may be necessary to secure a more satisfactory submission of the case; or should it appear to the court, after the submission of the cause, that the statement of facts has been prepared in violation of the rules, the court may require the appellant to furnish a proper statement of facts, and upon his failure to do so may disregard it.

Rule 46. Receipt of the Record by Court of Appeals.

(a) Duty of Clerk on Receiving Transcript. The clerks of the courts of appeals shall receive the transcripts delivered and sent to them, and receipt for same if required; but they shall not be required to take a transcript out of the post office or any express office, unless the postage or charges thereon be fully paid. Upon receipt of the transcript, it shall be the duty of the clerk to examine it in order to ascertain whether or not, in case of an appeal, a proper appeal bond, notice of appeal or affidavit in lieu thereof (when bond is required) have been given; and in case of a writ of error, whether or not the petition and bond or affidavit in lieu thereof (when bond is required) appear to have been filed. If it seems to him that the appeal or writ of error has not been duly perfected, he shall note on the transcript the day of its reception and refer the matter to the court. If upon such reference the court shall be of the opinion that the transcript shows that the appeal or writ of error has been duly perfected, they shall order the transcript to be filed as of the date of its reception. If not, they shall cause notice of the defect to issue to the attorneys of record of the appellant, to the end that they may take steps to amend the record, if it can be done; for which a reasonable time shall be allowed. If the transcript does not show the jurisdiction of the court, and if after notice it be not amended, the appeal shall be dismissed.

If a transcript, properly endorsed (when endorsement is required), is received by the clerk within the time allowed by these rules, he shall endorse his filing thereon, showing the date of its reception, and shall notify both appellant and the adverse party of the receipt of the transcript. If

it is not properly endorsed, or an original transcript is received after the time allowed, the clerk shall, without filing it, make a memorandum upon it of the date of its reception and keep it in his office subject to the direction of the person who applied for it or to the disposition of the court, and shall notify the person who applied for a transcript why it has not been filed. The transcript shall not be filed until a proper showing has been made to the court for its not being properly endorsed or received in proper time, and upon this being done, the court may order it filed, if the rules have been complied with, upon such terms as may be deemed proper, having respect to the rights of the opposite party.

(b) Duty of Clerk on Receiving Statement of Facts. Upon receipt of a statement of facts, the clerk shall ascertain if it is presented within the time allowed and also if it has been properly authenticated in accordance with these rules. If the clerk finds that the statement of facts is presented in time and has been certified by the official court reporter, the clerk shall file it forthwith; otherwise, the clerk shall endorse thereon the time of the receipt of such statement of facts, hold the same subject to the order of the court of appeals, and notify the party (or his attorney) tendering the statement of facts of the action and state the reasons therefor.

Rule 47. Docketing the Appeal.

(a) Docket Numbers. Each case filed in a court of appeals shall be assigned a docket number that consists of four parts separated by hyphens:

(1) the number of the supreme judicial district;

(2) the last two digits of the year in which the case is filed;

(3) the number which is assigned to the case; and

(4) the designation "CV" for civil cases or "CR" for criminal cases. Each case filed in the court of appeals shall be docketed in the order of filing. A motion relating to an appeal perfected but not yet filed shall be docketed likewise and shall be assigned a number, which shall be also assigned to the appeal when filed.

(b) Attorneys' Names. Before an attorney has filed his brief he may notify the clerk in writing of the fact that he represents a named party to the appeal, which fact shall be by the clerk noted upon the docket, opposite the name of the party for whom he appears, and shall be regarded by the court as having whatever effect is given to the appearance of a party to a case without brief filed. After briefs have been filed, the name of the attorney or attorneys signed to the brief shall be entered by the clerk on the docket, opposite the name of the appropriate party if such names have not already been so entered. The clerk shall add the names of additional counsel on request.

Rule 48. Premature Appeal.

(a) Proceedings relating to an appeal need not be considered ineffective because of prematurity if a subsequent appealable order has been signed to which the premature proceeding may properly be applied.

(b) If the appellate court finds that the appeal is premature because the order appealed from is not final, it may permit the defect to be cured and any subsequent proceedings to be shown in a supplemental record.

(c) In civil cases, if the trial court has signed an order modifying, correcting, or reforming the order appealed from, or has vacated that order and signed another, any proceedings relating to an appeal of the first order may be considered applicable to the second, but shall not prevent any party from appealing from the second order pursuant to Rule 329b(h) of the Texas Rules of Civil Procedure. The second order and any proceedings concerning it may be included in either the original or a supplemental record.

Rule 49. Voluntary Dismissal.

(a) Civil Cases.

(1) The appellate court may finally dispose of an appeal or writ of error as follows:

(A) in accordance with an agreement signed by all parties or their attorneys and filed with the clerk; or

(B) on motion of appellant to dismiss the appeal or affirm the judgment appealed from, with notice to all other parties; provided, that no other party shall be prevented from seeking any appellate relief he would otherwise be entitled to.

(2) If no transcript has been filed, the agreement or motion shall be accompanied by certified or sworn copies of the judgment appealed from and of the appeal bond or other document perfecting or attempting to perfect the appeal or writ of error.

(3) A severable portion of the appeal may be disposed of in like manner without prejudice to the parties remaining.

(b) Criminal Cases. The appeal may be dismissed if the appellant withdraws his notice of appeal at any time prior to the decision of the appellate court. The withdrawal shall be in writing signed by the appellant and his counsel and filed in duplicate with the clerk of the court of appeals in which the appeal is pending, who shall immediately forward the duplicate copy to the clerk of the trial court in which the notice of appeal was filed. Notice of appeal may not be withdrawn after the decision of the court of appeals is delivered without the consent of the State and approval of the court of appeals. If consent and approval are obtained, the opinion of the court of appeals shall be withdrawn and the appeal shall be dismissed. Notice of the dismissal shall be sent to the clerk of the trial court in which notice of appeal was filed.

Rule 50. Involuntary Dismissal.

(a) Civil Cases.

(1) If an appeal or writ of error is subject to dismissal for want of jurisdiction or for failure of appellant to comply with any requirements of these rules or any order of the court, the appellee may file a motion for dismissal or for affirmance and judgment for costs on the appeal bond or for the cash deposit. If the ground of the motion is failure to file the transcript, the motion shall be supported by certified or sworn copies of the judgment and the appeal bond or other document perfecting or attempting to perfect the appeal or writ of error.

(2) If it appears to the appellate court that an appeal or writ of error is subject to dismissal for want of jurisdiction or for failure to comply with any requirements of these rules or any order of the court, the court may, on its own motion, give notice to all parties that the case will be dismissed unless the appellant or any party desiring to continue the appeal or writ of error, files with the court within 10 days a response showing grounds for continuing the appeal or writ of error.

(b) Criminal Cases. An appeal shall be dismissed on the State's motion, supported by affidavit, showing that appellant has escaped from custody pending the appeal and that to the affiant's knowledge, has not voluntarily returned to lawful custody within the State within 10 days after escaping. The appeal shall not be dismissed, or, if dismissed, shall be reinstated, on filing of an affidavit of an officer or other credible person showing that appellant voluntarily returned to lawful custody within the State within 10 days after escaping. If the appellant received a life sentence and is recaptured or voluntarily surrenders within thirty days after escaping, the appellate court, in its discretion, may overrule the motion to dismiss, or, if the motion has previously been granted, may reinstate the appeal.

Rule 51. Disposition of Papers When Appeal Dismissed in Civil Cases. In all cases in which appeals or writs of error are dismissed, the appellant or party filing the transcript or statement of facts, without further leave of court, shall have the right to withdraw the transcript or statement of facts, unless it contains original papers belonging to an adverse party, in which event, leave of court shall be had before such original papers are withdrawn.

Section Four. Motions, Briefs, Argument and Submission in the Court of Appeals.

Motions in the Courts of Appeals.

Rule 60. Motions to Postpone Argument. Motions made to postpone argument of the case to a future day, unless consented to by the opposite party, shall be supported by sufficient cause, verified by affidavit, unless such sufficient cause is apparent to the court.

Rule 61. Motions Relating to Informalities in the Record. All motions relating to informalities in the manner of bringing a case into court shall be filed within 30 days after the filing of the transcript in the court of appeals; otherwise the objection shall be considered as waived, if it can be waived by the party.

Rule 62. Motions to Dismiss for Want of Jurisdiction. Motions to dismiss for want of jurisdiction to decide the appeal and for such defects as defeat the jurisdiction in the particular case and cannot be waived shall also be made, filed and docketed within 30 days after the filing of the transcript in the court of appeals; provided, however, if made afterwards they may be entertained by the court upon such terms as the court may deem just and proper.

Rule 63. Form and Content of Motions for Extension of Time. All motions for extension of time shall be in writing and shall be filed with the Clerk of the Court of Appeals in which the case will be heard. Each such motion shall specify the following:

(a) the court below and the date of judgment, together with the number and style of the case;

(b) in criminal cases, the offense for which the appellant was convicted and the punishment assessed;

(c) when extension of time is sought for filing the record, the filing dates of any original and amended motions for new trial, together with the date when they were overruled;

(d) if the appeal has been perfected, the date when the appeal was perfected;

(e) the deadline for filing of the item in question;

(f) the length of time requested for the extension;

(g) the number of extensions of time which have been granted previously regarding the item in question;

(h) the facts relied upon to reasonably explain the need for an extension; and

(i) when an extension of time is requested for filing the statement of facts, the facts relied upon to reasonably explain the need for an extension must be supported by the affidavit of the court reporter, or the certificate of the trial judge, which shall include the court reporter's estimate of the earliest date when the statement of facts will be available for filing.

B. Briefs and Argument in the Courts of Appeals.

Rule 64. Requisites of Briefs. Briefs shall be brief. Briefs shall be filed with the Clerk of the Court of Appeals. They shall be addressed to "The Court of Appeals" of the correct Supreme Judicial District. In civil cases the parties shall be designated as "Appellant" and "Appellee", and in criminal cases as "Appellant" and "State".

(a) Names of All Parties. A complete list of the names of all parties shall be listed of the appellant's brief, so the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participating in the decision of the case.

(b) Table of Contents and Index of Authorities. The brief shall contain at the front thereof a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the brief where the same are cited. The subject matter of each point or group of points shall be indicated in the table of contents.

(c) Preliminary Statement. The brief should contain a brief general statement of the nature of the cause or offense, i.e., whether it is suit for damages on a note, or a prosecution for murder, and the result in the court. Such statement should seldom exceed one-half page. The details should be reserved and stated in connection with the points to which they are pertinent.

(d) Points of Error. A statement of the points upon which an appeal is predicated shall be stated in short form without argument and be separately numbered In parentheses after each point, reference shall be made to the page of the record where the matter complained of is to be found. A point is sufficient if it directs the attention of the appellate court to the error about which complaint is made. In civil cases, complaints that the evidence is legally or factually insufficient to support a particular issue or finding, and challenges directed against any conclusions of law of the trial court based upon such issues or findings, may be combined under a single point of error raising both contentions if the record references and the argument under the point sufficiently direct the court's attention to the nature of the complaint made regarding each such issue or finding or legal conclusion based thereon. Complaints made as to several issues or findings relating to one ground of recovery or defense may be combined in one point, if separate record references are made.

(e) Brief of Appellee. The brief of the appellee shall reply to the points relied upon by the appellant in due order when practicable; and in civil cases, if the appellee desires to complain of any ruling or action of the trial court, his brief in regard to such matters shall follow substantially the form of the brief for appellant.

(f) Argument. A brief of the argument shall present separately or grouped the points relied upon for reversal. The argument shall include:

(1) a fair, condensed statement of the facts pertinent to such points, with reference to the pages in the record where the same may be found; and

(2) such discussion of the facts and the authorities relied upon as may be requisite to maintain the point at issue. If complaint is made of any part of the charge given or refused, such part of the charge shall be set out in full. If complaint is made of the improper admission or rejection of evidence, the substance of such evidence so admitted or rejected shall be set out with references to the pages of the record where the same may be found. Repetition or prolixity of statement or argument must be avoided. Any statement made by appellant in his original brief as to the facts or the record may be accepted by the court as correct unless challenged by the opposing party.

(g) Prayer for Relief. The nature of the relief sought should be clearly stated.

(h) A court of appeals may direct that a party file a brief, or another brief, in a particular case. If any brief is unnecessarily lengthy or not prepared in conformity with these rules, the court may require same to be redrawn.

(i) Number of Copies. Each party shall file six copies of his brief in the court of appeals in which the case is

pending. Any court of appeals may by rule authorize the filing therein of fewer or more copies of briefs.

(j) Briefs Typewritten or Printed. The brief of either party may be typewritten, or printed. If typewritten, it must be with a double space between the lines.

(k) Appellant's Filing Date. Appellant shall file his brief within 30 days after the filing of the transcript and statement of facts, if any, except that in accelerated appeals and habeas corpus appeals appellant shall file his brief within the time prescribed by Rule 32 or Rule 34.

(l) Failure of Appellant to File Brief.

(1) Civil Cases. In civil cases, when the appellant has failed to file his brief in the time prescribed, the appellate court may dismiss the appeal for want of prosecution, unless reasonable explanation is shown for such failure and that appellee has not suffered material injury thereby. The court may, however, decline to dismiss the appeal, whereupon it shall give such direction to the cause as it may deem proper.

(2) Criminal Cases. In criminal cases, appellant's failure to file a brief in the time prescribed shall not authorize dismissal of the appeal or, except as herein provided, consideration of the appeal without briefs. When the appellant's brief has not been filed within such time, the clerk of the appellate court shall notify counsel for the parties and the trial judge that appellant's brief has not been filed. If no satisfactory response is received within 10 days, the appellate court shall order the trial judge to immediately conduct a hearing to determine whether the appellant desires to prosecute his appeal, whether the appellant is indigent, or if not indigent, whether retained counsel has abandoned the appeal, and to make appropriate findings and recommendations. For this purpose the trial judge shall conduct such hearings as may be necessary, make appropriate findings and recommendations, and prepare a record of the proceedings. If the appellant is indigent, the judge shall take such measures as may be necessary to assure effective representation of counsel, which may include the appointment of new counsel. The record so made, including any orders and findings of the trial judge, shall be sent to the appellate court, which may take appropriate action to insure that the appellant's rights are protected, including contempt proceedings against counsel. If the trial judge finds that the appellant no longer desires to prosecute the appeal, or that he is not indigent but has failed to make necessary arrangements for filing a brief, the appellate court may consider the appeal without briefs, as justice may require.

(m) Appellee's Filing Dates. Appellee shall file his brief within 25 days after the filing of appellant's brief. In civil cases, when appellant has failed to file his brief as provided in this rule, the appellee may, prior to the call of the case, file his brief, which the court may in its discretion regard as a correct Presentation of the case, and upon which it may, in its discretion, affirm the judgment of the court below without examining the record.

(n) Modifications of Filing Time. Upon written motion showing a reasonable explanation of the need for more time, the court may grant either or both parties further time for filing their respective briefs, and may extend the time for submission of the case. The court may also shorten the time for filing briefs and the submission of the cause in case of emergency, when in its opinion the needs of justice require it.

(o) Amendment or Supplementation. Briefs may be amended or supplemented at any time when justice requires upon such reasonable terms as the court may prescribe, and if the court shall strike or refuse to consider any part of a brief, the court shall on reasonable terms allow the same to be amended or supplemented.

(p) Briefing Rules to be Construed Liberally. The purpose of briefs being to acquaint the court with the points relied upon, the manner in which they arose, together with such argument of facts and law as will enable the court to decide the same, a substantial compliance with these rules will suffice in the interest of justice; but for a flagrant violation of this rule the court may require the case to be rebriefed.

Rule 65. Argument.

(a) Right to Argument. When a case is properly prepared for submission, any party who has filed briefs in accordance with the rules prescribed therefor and who has made a timely request for oral argument under (f) hereof may, upon the call of the case for submission, submit an oral argument to the court.

(b) Subject Matter. The arguments must be upon the disputed points, whether of law or fact, in support of the points relied on, on one side, and objections and counter points on the other, and it must be confined to them, avoiding any reference or comment upon matters not involved in or pertaining to that which is found in the record.

(c) Requirement to Answer Questions. Counsel will be expected to answer questions propounded by members of the court relating to the matter in the record and to the law or authorities cited by counsel in the argument.

(d) Time Allowed. In the argument of cases in the court of appeals, each side may be allowed thirty minutes in the argument at the bar, with 15 minutes more in conclusion by the appellant. In cases involving difficult questions, the time allotted may be extended by the court, provided application is made before argument begins. The court may, in its discretion, shorten the time allowed for oral argument.

Not more than two counsel on each side will be heard, except on leave of the court.

Counsel for amicus curiae shall not be permitted to argue except that an amicus may share time allotted to one of the counsel who consents and with leave of the court obtained prior to argument.

(e) When Only One Party Files a Brief. If counsel for but one party has filed briefs, an argument by him may be allowed, conformably to the preceding provisions as nearly as practicable, under the direction of the court.

(f) A party to the appeal desiring oral argument shall file a request therefor at the time he files his brief in the case. Failure of a party to file a request shall be deemed a waiver of his right to oral argument in the case. Although a party waives his right to oral argument under this rule, the court of appeals may nevertheless direct such party to appear and submit oral argument on the submission date of the case.

The court of appeals may, in its discretion, advance civil cases for submission without oral argument where oral argument would not materially aid the court in the determination of the issues of law and fact presented in the appeal notice of the submission date of cases without oral argument shall be given by the clerk in writing to all attorneys of record, and to any party to the appeal not presented by counsel, at least 21 days prior to the submission date. The date of the notice shall be deemed to be the date such notice is delivered into the custody of the United States Postal Services in a properly addressed postpaid wrapper (envelope).

Submission in the Courts of Appeals.

Rule 66. Submission in Order of Filing; Service of Notice. Causes not advanced as otherwise provided shall be submitted in the order of filing or in such other order

as the court shall determine by rule. The clerk shall notify by letter the attorney and any party not represented by an attorney the date of submission and oral argument, but failure to receive notice will not necessarily prevent the submission of a case on the day on which it is set.

Rule 67. Order of Hearing and Deciding Civil Cases.

(a) Civil cases which have not been advanced shall be set for submission at least two weeks ahead of the date of submission. The clerk shall notify by letter the attorneys and any party not represented by an attorney of the date of submission and oral argument.

(b) Civil cases shall be decided in the order in which they are filed, but the following cases shall have precedence of all others:

(1) cases in which the Railroad Commission is a party.

(2) cases in which the State is a party.

(3) cases given precedence by law or these rules.

(4) cases submitted on oral argument for all parties to the cause.

(5) appeals for interlocutory orders.

(6) such other cases as the court, by order or rule, may direct.

Rule 68. Order of Hearing and Deciding Criminal Cases.

The courts of appeals shall hear and determine appeals in criminal actions at the earliest time it may be done, with due regard to the rights of parties and proper administration of justice.

Rule 69. Panel and En Banc Submission.

(a) Except as provided in Government Code Section 22.223 and these rules, original submissions of civil and criminal cases in a court of appeals shall be to a panel of the court consisting of three justices. A majority of the panel shall constitute a quorum and the concurrence of a majority of the panel shall be necessary for a decision. Except as otherwise provided in these rules, the decision of a panel of a court of appeals shall constitute the final decision of the court.

(b) If for any reason only two justices participate in the decision of a panel of a court of appeals consisting of more than three justices and they cannot concur in a decision because they are equally divided, the Chief Justice of the Court of Appeals shall designate another justice of the court to participate in the decision of the case. After such justice is designated, the panel may order the case reargued, at its discretion. In the alternative, the Chief Justice of the Court of Appeals may convene the court en banc for the purpose of deciding the case. The en banc court may order the case reargued at its discretion.

(c) If a court of appeals consists of only three justices and for any reason only two justices participate in the decision and they cannot concur in a decision because they are equally divided, such fact shall be certified to the Chief Justice of the Supreme Court who may temporarily assign a justice of another court of appeals or a qualified retired justice to participate in the decision of the case pursuant to Government Code §73.011 and §73.012. The reconstituted panel may order the case reargued, at its discretion.

(d) Where a case is submitted to an en banc court, whether on motion for rehearing or otherwise, a majority of the membership of the court shall constitute a quorum and the concurrence of a majority of the court sitting en banc shall be necessary to a decision. If a majority of the justices of the court sitting en banc cannot concur in a decision because they are equally divided, such fact shall be certified to the Chief Justice of the Supreme Court who may temporarily assign a justice of another court of appeals or a qualified retired justice to participate in the decision of the case pursuant to Government Code §73.011 and §73.012. The reconstituted en banc court may order the case reargued, at its discretion.

(e) A hearing or rehearing en banc is not favored and should not be ordered except in extraordinary circumstances. A vote need not be taken to determine whether a cause shall be heard or reheard en banc unless a justice of the en banc court requests a vote. If a vote is requested and a majority of the membership of the en banc court vote to hear or rehear the case en banc, the case will be heard or reheard en banc; otherwise, it will be decided by a panel of the court.

Section Five. Judgments, Opinions and Rehearing.

A. Judgment

Rule 80. Judgment of Court of Appeals.

(a) Time. When a case has been submitted, the court of appeals shall render its judgment promptly.

(b) Types of Judgment. The court of appeals may:

(1) affirm the judgment of the court below;

(2) modify the judgment of the court below by correcting or reforming it;

(3) reverse the judgment of the court below and dismiss the case or render the judgment or decree that the court below should have rendered; or

(4) reverse the judgment of the court below and remand the case for further proceedings.

(c) Other Orders. In addition, the court of appeals may make any other appropriate order, as the law and the nature of the case may require.

(d) Presumptions in Criminal Cases. The court of appeals shall presume that the venue was proved in the court below; that the jury was properly impaneled and sworn; that the defendant was arraigned; that he pleaded to the indictment or other charging instrument; that the court's charge was certified by the judge and filed by the clerk before it was read to the jury, unless such matters were made an issue in the court below, or it otherwise affirmatively appears to the contrary from the record.

Rule 81. Reversal in Civil and Criminal Cases.

(a) No Reversal If Error Correctable. If the erroneous action or failure or refusal of the trial judge to act shall prevent the proper presentation of a cause to the court of appeals, and be such as may be corrected by the judge of the trial court, then the judgment shall not be reversed for such error, but the appellate court shall direct the said judge to correct the error, and thereafter the court of appeals shall proceed as if such erroneous action or failure to act had not occurred.

(b) Reversible Error.

(1) Civil Cases. No judgment shall be reversed on appeal and a new trial ordered in any cause on the ground that the trial court has committed an error of law in the course of the trial, unless the appellate court shall be of the opinion that the error complained of amounted to such a denial of the rights of the appellant as was reasonably calculated to cause and probably did cause rendition of an improper judgment in the case, or was such as probably prevented the appellant from making a proper presentation of the case to the appellate court; and if it appears to the court that the error affects a part only of the matter in controversy and that such part is clearly separable without unfairness to the parties, the judgment shall only be reversed and a new trial ordered as to that part affected by such error, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested.

(2) Criminal Cases. If the appellate record in a criminal case reveals error in the proceedings below, the

appellate court shall reverse the judgment under review, unless the appellate court determines beyond a reasonable doubt that the error made no contribution to the conviction or to the punishment.

(c) Rendition Appropriate Unless Remand Necessary. When the judgment or decree of the court below shall be reversed, the court shall proceed to render such judgment or decree as the court below should have rendered, except when it is necessary to remand to the court below for further proceedings.

Rule 82. Judgment on Affirmance or Rendition in a Civil Case. When a court of appeals affirms the judgment or decree of the court below, or proceeds to modify the judgment and to render such judgment or decree against the appellant as should have been rendered by the court below, it shall render judgment against the appellant and the sureties on his supersedeas bond, if any, for the performance of said judgment or decree, and shall make such disposition of the costs as the court shall deem proper, rendering judgment against the appellant and the sureties on his appeal or supersedeas bond, if any, for such costs as are taxed against him.

Rule 83. No Affirmance, Reversal or Dismissal for Want of Form or Substance. A judgment shall not be affirmed or reversed or an appeal dismissed for defects or irregularities, in appellate procedure, either of form or substance, without allowing a reasonable time to correct or amend such defects or irregularities, provided the court may make no enlargement of the time for filing the transcript and statement of facts except pursuant to paragraph (c) of Rule 44 and except that in criminal cases late filing of the transcript or statement of facts may be permitted on a showing that otherwise the appellant may be deprived of effective assistance of counsel.

Rule 84. Affirmance with Damages for Delay in Civil Cases. In civil cases where the court shall find that there was no sufficient cause for taking an appeal or writ of error, then the court of appeals may award just damages and single or double costs to the appellate. A request for just damages and single or double costs shall not have the effect of authorizing the appellate court to consider allegations of error that have not been preserved for appellate review.

Rule 85. Remittitur in Civil Cases.

(a) After Appeal Perfected. If, in any judgment rendered in a civil case in the district or county court, the court below determines that an excess of damages has been allowed, and before the plaintiff has remitted the excess as provided by Rule 315 of the Texas Rules of Civil Procedure, such judgment shall be removed to the court of appeals, it shall be lawful for the party in whose favor such excess of damages has been rendered to make a remittitur in the court of appeals in the same manner as in the district or county court. After revising the judgment, the court of appeals shall proceed to render the judgment that the court below ought to have given if the remittitur had been made in the court below.

(b) Suggestion of Remittitur by Court of Appeals. In civil cases appealed to the court of appeals, if such court is of the opinion that the trial court abused its discretion in refusing to suggest a remittitur and that said cause should be reversed for that reason only, then said appellate court shall indicate to such party, or his attorney, within what time he may file a remittitur of such excess. If such remittitur is so filed, then the court shall reform and affirm such judgment in accordance therewith; if not filed as indicated then the judgment shall be reversed.

(c) Refusal to Remit Not to be Mentioned in Subsequent Trial. Whenever a court of appeals shall indicate that a verdict is excessive, and no remittitur shall be filed, no evidence shall be allowed, nor allusion made in a subsequent trial to the action of such appellate court in reference to the amount of excess of such verdict.

Rule 86. Mandate.

(a) Issuance of Mandate. The clerk shall issue a mandate in accordance with the judgment and shall deliver it to the clerk of the trial court without waiting for the payment of costs upon expiration of one of the following periods:

(1) 45 days after the judgment, if no timely motion for rehearing or petition for discretionary review has been filed, and no timely motion has been filed to extend the time for filing petition for discretionary review and no discretionary review has been granted by the Court of Criminal Appeals on its own motion;

(2) 45 days after the last timely motion for rehearing has been overruled, if no timely application for writ of error or petition for discretionary review has been filed and no timely motion has been filed to extend the time for filing application for writ of error or petition for discretionary review and no discretionary review has been granted by the Court of Criminal Appeals on its own motion;

(3) 15 days after any timely motion to extend the time for filing an application for writ of error or petition for discretionary review has been overruled;

(4) 15 days after receipt by the clerk of an order of the Supreme Court denying writ of error or an order of the Court of Criminal Appeals refusing discretionary review.

(b) The mandate may be issued earlier by agreement of the parties, or on motion showing good cause.

(c) If a writ of error has been refused by the Supreme Court or discretionary review has been denied by the Court of Criminal Appeals, the petitioner may move for a stay of mandate pending disposition by the Supreme Court of the United States of a petition for writ of certiorari. The motion shall show the grounds for such petition and the circumstances requiring a stay of the mandate. The court of appeals may grant such a stay if it finds that the grounds are substantial and that serious hardship would result to the petitioner or others from issuance of the mandate in the event of reversal by the Supreme Court of the United States.

(d) The mandate shall contain the file number of the case in the trial court. When the mandate of the court of appeals is received by the proper clerk, he shall file it with the papers of the cause, and note it upon the docket.

(e) Recall of Mandate. If a court of appeals vacates, modifies, corrects or reforms its judgment after the mandate has been issued, the mandate shall have no further effect and a new mandate may be issued. The clerk shall at once give notice of such act to the clerk of the trial court and to all parties.

Rule 87. Enforcement of Judgments After Mandate. On receipt of the mandate by the clerk of the trial court, the judgment of the appellate court shall be enforced as follows:

(a) In Civil Cases When the judgment of the appellate court affirms the judgment of the trial court or modifies the judgment of the trial court as is contemplated by Rule 80(b), or renders such judgment as the court below should have rendered as contemplated by Rule 81(c), the trial court need not make any further order or decree and the clerk of the trial court shall Proceed to issue execution thereon as in other cases.

(b) In Criminal Cases.

(1) Judgment of Affirmance. When the judgment of the appellate court affirms the judgment of the court below in a case in which bail has been allowed, the clerk of the trial court shall send an acknowledgement to the clerk of the appellate court of the receipt of the mandate and immediately file the same and forthwith issue a capias for the arrest of the defendant for the execution of the sentence of the court, which shall recite the fact of conviction, setting forth the offense and the judgment and sentence of the court, the appeal from and affirmance of such judgment and the filing of such mandate, and shall command the sheriff to arrest and take into his custody the defendant and place him in jail and therein keep him until delivered to the proper authorities, as directed by said sentence. Such capias may issue to any county of this State, and shall be executed and returned as in felony cases, except that no bail shall be taken in such cases. The sheriff shall forthwith execute such capias as directed The sheriff shall notify the clerk of the trial court and the clerk of the appellate court when the mandate has been carried out and executed.

(2) Judgment of Reversal. When the judgment of the appellate court reverses the judgment of the trial court and grants a new trial to the defendant, the cause shall stand as it would have stood in case the new trial had been granted by the trial court, and if in custody and entitled to bail the defendant shall be released upon his giving bail.

When the judgment of the appellate court reverses a judgment and orders the case to be dismissed, the defendant, if in custody, must be discharged.

(3) Judgment of Acquittal. When the judgment of the appellate court reverses a judgment and orders the acquittal of the defendant, the defendant, if in custody, must be discharged and no further order or judgment of the court below shall be necessary.

Rule 88. Execution on Failure to Pay Costs in Civil Cases. If neither party to a civil case pays the costs before the time prescribed for issuance of the mandate, the clerk of the appellate court shall prepare a bill of costs showing the party or parties against whom such costs have been adjudged and shall transmit it to the clerk of the trial court, who shall issue execution for same as for costs in the trial court. On collection, any costs due to the clerk of the appellate court shall be remitted to such clerk.

Rule 89. Appellant to Recover Costs in Civil Cases. In any civil cause reversed by the court of appeals, the appellant shall be entitled to an execution in the trial court against the appellee for costs occasioned by such appeal, including costs for the transcript and statement of facts. Nothing herein shall be construed to affect the present law with reference to the accrual and taxing of costs in tax suits, and nothing herein shall be construed to limit or impair the power of the court of appeals to otherwise tax the costs for good cause.

B. Opinions

Rule 90. Opinions, Publication and Citation.

(a) Decision and Opinion. The court of appeals shall decide every substantial issue raised and necessary to disposition of the appeal and hand down a written opinion which shall be as brief as practicable. Where the issues are clearly settled, the court shall write a brief memorandum opinion which should not be published.

(b) Signing of Opinions. A majority of the justices participating in the decision of the case shall determine whether the opinion shall be signed by a justice or issued per curiam. The names of the justices participating in the decision shall be noted on all written opinions or orders handed down by a panel.

(c) Standards for Publication. An opinion by a court of appeals shall be published only if, in the judgment of a majority of the justices participating in the decision, it is one that (1) establishes a new rule of law, alters or modifies an existing rule, or applies an existing rule to a novel fact situation likely to recur in future cases; (2) involves a legal issue of continuing public interest; (3) criticizes existing law; or (4) resolves an apparent conflict of authority.

(d) Concurring and Dissenting Opinions. Any justice may file an opinion concurring in or dissenting from the decision of the court of appeals. A concurring or dissenting opinion may be published if, in the judgment of its author, it meets one of the criteria established in paragraph (c), but in such event the majority opinion shall be published as well.

(e) Determination to Publish. A majority of the justices Participating in the decision of a case shall determine, prior to the time it is issued, whether an opinion meets the criteria for publishing, and if it does not meet the criteria for publication, the opinion shall be distributed only to the persons specified in Rule 112, but a copy may be furnished to any interested person. On each opinion a notation shall be made to "publish" or "do not publish."

(f) Rehearing. If a rehearing is granted, no opinion shall be published until after the decision on rehearing is issued.

(g) Action of Court En Banc. The court en banc may modify or overrule a panel's decision with regard to the signing or publication of the panel's opinion or opinions in a particular case. A majority of justices shall determine whether written opinions handed down by the court en banc shall be signed by a justice or issued per curiam, and whether they shall be published.

(h) Order of the Supreme Court. Upon the grant or refusal of an application for writ of error, whether by outright refusal or by refusal no reversible error, an opinion previously unpublished shall forthwith be released for publication, if the Supreme Court so orders.

(i) Unpublished Opinions. Unpublished opinions shall not be cited as authority by counsel or by a court.

Rule 91. Copy of Opinion and Judgment to Attorneys, Etc. On the date an opinion of an appellate court is handed down, it shall be the duty of the clerk of the appellate court to mail or deliver to the clerk of the trial court, to the trial judge who tried the case, and to one of the attorneys for the plaintiffs or the State and one of the attorneys for the defendants a copy of the opinion delivered by the appellate court and a copy of the judgment rendered by such appellate court as entered in the minutes. The copy received by the clerk of the trial court shall be by him filed among the papers of the cause in such court. When where is more than one attorney on each side, the attorneys may designate in advance the one to whom the copies of the opinion and judgment shall be mailed. In criminal cases, copies shall also be provided to the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711 and to the Clerk of the Court of Criminal Appeals and any appellant representing himself.

C. Rehearing

Rule 100. Motion and Second Motion for Rehearing.

(a) Motion for Rehearing. Any party desiring a rehearing of any matter determined by a court of appeals or any panel thereof must, within fifteen days after the date of rendition of the judgment or decision of the court, file with the clerk of the court a motion in writing for a rehearing, in which the points relied upon for the rehearing shall be distinctly specified.

(b) Reply. No reply to a motion for rehearing need be filed unless requested by the court.

(c) Decision on Motion. If a majority of the justices of the court of appeals or of the panel that was assigned the case are of the opinion that the case should be reheard, the motion shall be granted and the case shall be resubmitted. If a majority of the court of appeals or of the panel that was assigned the case are of the opinion that the case should not be reheard, the motion for rehearing shall be overruled. If a motion for rehearing is granted, the court or panel may make final disposition of the cause with or without rebriefing and oral argument, and may make such orders as are deemed appropriate under the circumstances of the particular case.

(d) Second Motion for Rehearing. If on rehearing the court of appeals or any panel thereof modifies its judgment, or vacates its judgment and renders a new judgment, or hands down an opinion in connection with the overruling of a motion for rehearing, a further motion for rehearing may, if a party desires to complain of the action taken, be filed within fifteen days after such action occurs. However, in civil cases, a further motion for rehearing shall not be required or necessary as a predicate for a point in the application for writ of error if the asserted point of error was overruled by the court of appeals in a prior motion for rehearing.

(e) Amendments. Any motion for rehearing may be amended as a matter of right any time before the expiration of the fifteen-day period allowed for filing it, and with leave of the court any time before its final disposition.

(f) Motion Overruled by Operation of Law. In the event a motion or second motion for rehearing is not determined by written order made within sixty days after the same is filed, it shall be overruled by operation of law on expiration of that period.

(g) En Banc Reconsideration. A majority of the justices of the court en banc may order an en banc reconsideration of any decision of a panel within 15 days after such decision is issued with or without a motion for reconsideration en banc. A majority of the justices may call for an en banc review by (1) notifying the clerk in writing within said fifteen day period, or (2) by written order issued within said fifteen day period, either with or without en banc conference. In such event, the panel decision shall not become final, and the case shall be resubmitted to the court for an en banc review and disposition.

(h) Extensions of Time. An extension of time may be granted for late filing in a court of appeals of a motion or a second motion for rehearing, if a motion reasonably explaining the need therefor is filed with the court of appeals not later than fifteen days after the last date for filing the motion.

Rule 101. Reconsideration on Petition for Discretionary Review. Within fifteen days after a petition for discretionary review to the Court of Criminal Appeals has been filed with the Clerk of the Court of Appeals which delivered the decision, a majority of justices who participated in the decision may summarily reconsider and correct or modify the opinion and judgment of the court and shall cause the clerk to certify a copy thereof and include it among the materials forwarded to the Clerk of the Court of Criminal Appeals in accordance with Rule 202(f). [now Tex. Cr. App. Rule 304(f)]

Section Six. Certified Questions in Civil Cases.

Rule 110. Certified Questions in Civil Cases.

(a) Questions of Law Certified. In exceptional cases urgently requiring accelerated disposition of the appeal, the court of appeals may certify one or more controlling questions of law to the Supreme Court for decision, but the Supreme Court may decline to decide the questions if it decides that the case should be presented by application for writ of error. After certification of such questions the cause shall be retained for judgment in harmony with the decision of the Supreme Court on the question certified.

(b) Motion to Certify. At any time within 15 days after judgment in the court of appeals, either Party may file a motion asking the court to certify a question to the Supreme Court.

(c) Certification Procedure. When any court of appeals shall certify to the Supreme Court any question of law for determination, either upon its own motion or that of any party, the certificate shall be accompanied by the briefs filed in the court of appeals. Also, the court of appeals may accompany such certificate with the entire record in the case, or any part thereof that it deems advisable. The court of appeals shall also accompany the certificate with all or any part of the record that any party to the suit may request. All cases certified to the Supreme Court shall be accompanied by a proposed or tentative opinion of the court of appeals, which proposed or tentative opinion shall set forth the views and tentative opinion of the court of appeals on the questions certified.

Rule 111. Proceedings on Certified Questions. When a certified question from a court of appeals is presented to the Clerk of the Supreme Court, he will file and docket it and send it at once to the consultation room. If the court should determine that the question is not properly certified under the statute and these rules so as to give jurisdiction to answer it, it will be dismissed without a hearing. Otherwise, it will be set down for argument on a day to be fixed by the court in regular session. The clerk shall issue notices to the attorneys whose names appear of record in the case of the day on which the question or questions shall be submitted, at least fifteen days before the said date set for hearing.

Rule 112. Answer to Question. The Supreme Court, on receiving such record, and certified question of law, from the court of appeals transmitting the same, shall examine such record and certified question of law, and render an opinion as in other cases; which opinion, when so rendered by the Supreme Court on the record and question of law presented therein, shall be final and shall be the law on the question involved until said opinion shall have been overruled by the Supreme Court or abrogated by legislative enactment, and the court of appeals shall be governed thereby. After the question is decided, the Supreme Court shall immediately notify the lower court of its decision.

Rule 113. Decision of Supreme Court. When the Supreme Court decides a question certified to it by a court of appeals, such decision shall be binding upon the court of appeals.

Section Seven. Original Proceedings.

Rule 120. Habeas Corpus in Civil Cases.

(a) Commencement. A petition seeking the issuance of a writ of habeas corpus shall be presented to the clerk of the appellate court along with the appropriate deposit for costs, as provided in Rule 13.

(b) Petition. The petition shall be in the following form and contain the following information:

(1) The party seeking the writ shall be denominated relator.

(2) The petition shall identify all parties whose interest would be directly affected by the proceedings and shall state the addresses of all such interested parties.

(3) The petition shall contain a certificate of service upon all interested parties or a certificate explaining the absence of service.

(4) The petition shall set forth in a concise and positive manner a summary of the facts necessary to establish relator's right to the relief sought.

(5) The petition shall be accompanied by a brief in support of the petition.

(6) The petition shall be accompanied by proof of restraint of the relator.

(7) The petition shall be accompanied by a certified copy of the order, judgment or decree of which relator has been held to be in violation, a certified copy of the motion and order or judgment of contempt, a certified copy of the order of judgment of commitment, and when appropriate, a statement of facts.

(8) The petition shall contain an affidavit verifying the truth of all factual allegations.

(c) Concurrent Jurisdiction. When the Supreme Court and one or more courts of appeals are authorized to exercise concurrent jurisdiction over matters of habeas corpus, the petition seeking issuance of the writ shall first be presented to a court of appeals. The petition for writ of habeas corpus filed in the Supreme Court shall state the date of any presentation to a court of appeals and that court's action on the petition.

(d) Action on Petition. If the court is of the tentative opinion that the writ should issue, the court will set the amount of bond, order relator released and schedule the petition for oral argument. Otherwise, the court shall deny the writ without further hearing.

(e) Notification by Clerk. The clerk shall notify all identified parties or their attorneys of record of the action of the court and of the date set for oral argument, if oral argument is set. In the event oral argument is set, relator shall immediately make the appropriate additional deposit for costs, as provided by Rule 13.

(f) Reply. In the event the case is set for oral argument, any interested party may submit an additional brief of authorities and a verified answer provided, however, such additional brief and answer shall be filed with the clerk and served upon all other parties at least ten days prior to the date scheduled for oral argument, unless another time is designated by the court.

(g) Order of Court. If after hearing oral argument, the court determines that the writ should be granted, it shall enter an order to that effect. Otherwise, the court shall remand relator to custody and direct the clerk to issue an order of commitment. If relator is not available for return to custody, pursuant to the order of commitment, the court may declare the bond to be forfeited.

(h) Notice of Order. When the appellate court grants, refuses or dismisses a habeas corpus proceeding or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by sending them a letter by first-class mail.

Rule 121. Mandamus, Prohibition and Injunction in Civil Cases.

(a) Commencement. An original proceeding for a writ of mandamus, prohibition or injunction in an appellate court shall be commenced by delivering to the clerk of the court the following:

(1) Motion for leave to file. When the court of appeals is authorized to exercise concurrent jurisdiction over an original proceeding, the motion should first be presented to the court of appeals. The motion for leave to file in the Supreme Court shall state the date of presentation of the petition to the Supreme Court and that court's action on the motion or petition or the compelling reason that a motion was not first presented to the court of appeals.

(2) Petition. The petition shall include this information and be in this form;

(A) The party seeking relief shall be denominated relator, and the party against whom relief is sought shall be denominated respondent.

(B) If any judge, court, tribunal or other respondent in the discharge of duties of a public character is named as respondent, the petition shall disclose the name of the real party in interest, if any, or the party whose interest would be directly affected by the proceeding. The petition shall state the address of each respondent and real party in interest.

(C) The petition shall set forth in a concise and positive manner all facts that are necessary to establish relator's right to the relief sought. It shall be accompanied by a certified or sworn copy of the order complained of and other relevant exhibits.

(D) The petition shall state the relief sought and the basis for the relief, as well as the compelling circumstances which establish the necessity for the writ to issue.

(E) The petition shall include or be accompanied by a brief of authorities and argument in support of the petition.

(F) The petition shall be contain an affidavit verifying the truth of all factual allegations.

(G) The petition shall contain a certificate of service, or a certificate explaining the absence of service.

(H) Three copies of the motion, petition and brief shall be delivered to the clerk.

(3) The deposit for costs, as provided by Rule 13.

(b) Service. Relator shall promptly serve upon respondent and each real party in interest a copy of the motion, petition and brief.

(c) Action on Motion. The court may request that respondent or the real party in interest submit a reply, and in that event, the clerk will so notify all identified parties. When it appears that relator may be unduly prejudiced by delay, or the court concludes for any other reason that a reply should not be requested, it may act upon the motion without giving prior notice to the respondent. If the court is of the tentative opinion that relator is entitled to the relief sought, the motion for leave to file will be granted, the petition filed, and the cause placed upon the docket. Otherwise, the motion will be overruled.

(d) Temporary Relief. If the facts stated in the petition show that relator will be prejudiced unless immediate temporary relief is granted, the court may grant temporary relief after granting the motion for leave to file, without notice to respondents, as the exigencies of the case require. The court may require a bond for the protection of the adverse parties as a condition to the temporary relief. An order granting temporary relief shall be effective until the final decision of the case, unless vacated or modified.

(e) Notification. The clerk shall notify by mail all identified parties of the filing of the petition and, within seven days after mailing the notice of the filing, respondent and any real party in interest, separately or jointly, may file with the clerk and serve upon the relator an answer, a brief of authorities, opposing exhibits, and a verified statement of any undisputed facts material to the proceeding. The court in its discretion may shorten or extend the time. The reply shall comply with the requirements set forth herein for the petition. In the event the motion is granted, relator shall immediately make the additional deposit for costs required by Rule 13.

(f) Oral Argument. In the event the motion is granted, the appellate court will schedule the petition for oral argument and relator, respondent or any other real party in interest, separately or jointly, may file and serve an additional brief of authorities and a verified answer pro-

vided, however, such additional brief and answer shall be filed with the clerk and served upon all other parties at least five days prior to the date scheduled for oral argument, unless another time is designated by the court.

(g) Notice of Order. When the appellate court grants, refuses or dismisses a mandamus or other original proceeding, or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by sending them a letter by first-class mail.

Rule 122. Orders of Supreme Court on Petition for Mandamus and Prohibition. In cases over which the Supreme Court has mandamus or prohibition jurisdiction and in which the action or order of the respondent is in conflict with a previous opinion of the Supreme Court or is contrary to the Constitution, a statute or a rule of civil or appellate procedure, the Supreme Court may grant leave to file the petition and may, after respondent and any real party in interest has had an opportunity to file a reply as provided by paragraph (e) of Rule 121, without hearing argument, grant the writ and make such orders in writing as may be appropriate.

Section Eight. Application for Writ of Error and Brief in Response.

Rule 130. Filing of Application in Court of Appeals.

(a) Method of Review. The Supreme Court may review final judgments of the courts of appeals upon writ of error.

(b) Time and Place of Filing. The application shall be filed with the Clerk of the Court of Appeals within thirty days after the overruling of the last timely motion for rehearing filed by any party.

(c) Successive Applications. If any party files an application within the time specified or as extended by the Supreme Court any other party who was entitled to file such an application but failed to do so shall have ten additional days from the date of filing any preceding application in which to file it.

(d) Extension of Time. An extension of time may be granted for late filing in a court of appeals of an application to the Supreme Court for writ of error if a motion reasonably explaining the need therefor is filed with the Supreme Court not later than fifteen days after the last date for filing an application. A motion for late filing of an application shall be directed to and acted upon by the Supreme Court. A copy of the motion shall be filed at the same time in the court of appeals, and the Clerk of the Supreme Court shall notify the court of appeals of the action taken on the motion by the Supreme Court.

Rule 131. Requisites of Applications. The application for writ of error shall be addressed to "The Supreme Court of Texas," and shall state the name of the party or parties applying for the writ. The parties shall be designated as "Petitioner" and "Respondent." Applications for writs of error shall be as brief as possible The respondent should file a brief in response. The application shall contain the following:

(a) Names of All Parties. A complete list of the names of all parties shall be listed on the first page of the application, so the members of the court may at once determine whether they are disqualified to serve or should recuse themselves from participation in the decision of the case.

(b) Table of Contents and Index of Authorities. The application shall contain at the front thereof a table of contents with page references where the discussion of each point relied upon may be found and also an index of authorities alphabetically arranged, together with reference to the pages of the application where the same are cited. The subject matter of each point or group of points shall be indicated in the table of contents.

(c) Statement of the Case. The application should contain a brief general statement of the nature of the suit, for instance, whether it is a suit for damages, on a note, or in trespass to try title, and that the statement as contained in the opinion of the court of appeals is correct, except in the particulars pointed out Example: "This is a suit for damages in excess of $1000.00 for personal injuries growing out of an automobile collision. The opinion of the court of appeals correctly states the nature and results of the suit, except in the following particulars: (If any.)" Such statement should seldom exceed one-half page. The details of the case should be reserved to be stated in connection with the points to which they are pertinent.

(d) Statement of Jurisdiction. Except in those cases in which the jurisdiction of the court depends on a conflict of decisions under Section 22.001(a)(2) of the Government Code, the petition should merely state that the Supreme Court has jurisdiction under a particular subdivision of Section 22.001(a). Example: "The Supreme Court has jurisdiction of this suit under Subdivision (6) of Section 22.001(a)." When jurisdiction of the Supreme Court depends on a conflict of decisions, the conflict on the question of law should be clearly and plainly stated.

(e) Points of Error. A statement of the points upon which the application is predicated shall be stated in short form without argument and be separately numbered. In parentheses after each point, reference shall be made to the page of the record where the matter complained of is to be found. Whether the matter complained of originated in the trial court or in the court of appeals, it shall be assigned as error in the motion for rehearing in the court of appeals. Points will be sufficient if they direct the attention of the court to the error relied upon. Complaints about several issues or findings relating to one element of recovery or defense may be combined in one point, if separate record references are made.

(f) Brief of the Argument The brief of the argument may present separately, or grouped if germane, the points of error relied upon for reversal, the argument to include such pertinent statements from the record as may be requisite, together with page references and such discussion of the authorities as is deemed necessary to make clear the points of error complained of. The opinion of the court of appeals will be considered with the application, and statements therein, if accepted by counsel as correct, need not be repeated.

(g) Prayer for Relief. The nature of the relief sought by the application should be clearly stated.

(h) Amendment. The application or brief in support thereof may be amended at any time when justice requires upon such reasonable terms as the court may prescribe.

(i) Court May Require Application Redrawn. If any brief or application for writ of error is unnecessarily lengthy or not prepared in conformity with these rules, the Supreme Court may require same to be redrawn.

Rule 132. Filing and Docketing Application in Supreme Court.

(a) Duty of Clerk of Court of Appeals. When an application for writ of error to the Supreme Court is filed with the Clerk of the Court of Appeals, he shall record the filing of the application, and shall promptly forward it to the Clerk of the Supreme Court with the original record in the case and the opinion of the court of appeals, the motions filed in the case, and certified copies of the judgment and orders of the court of appeals. The clerk need not forward any exhibits that are not documentary in nature unless ordered to do so by the Supreme Court.

(b) Expenses. The party applying for the writ of error shall deposit with the Clerk of the Court of Appeals a sum sufficient to pay the expressage or carriage of the record to and from the Clerk of the Supreme Court.

(c) Duty of the Clerk of Supreme Court. The Clerk of the Supreme Court shall receive the application for writ of error, shall file it and the accompanying record from the court of appeals, and shall enter the filing upon the docket, but he shall not be required to receive the application and record from the post office or express office unless the postage or express charges shall have been paid. The clerk shall notify the attorneys of record by letter of the filing of the application in the Supreme Court.

Rule 133. Orders on Applications for Writ of Error.

(a) Notation on Denial of Application In all cases where the judgment of the court of appeals is correct and where the principles of law declared in the opinion of the court are correctly determined, the Supreme Court will refuse the application with the docket notation "Refused." In all cases where the Supreme Court is not satisfied that the opinion of the court of appeals in all respects has correctly declared the law, but is of the opinion that the application presents no error which requires reversal, the Court will deny the application with the notation "Refused. No Reversible Error." In all cases where the Supreme Court is without jurisdication of the case as presented in the application, it will dismiss the application with the docket notation "Dismissed for Want of Jurisdication."

(b) Conflict in Decisions. In cases of conflict named in Section 22.001(2) of the Government Code, the Supreme Court will grant the application for writ of error, unless it is in agreement with the decision of the court of appeals in the case in which the application is filed In that event said Supreme Court will so state in its order, with such explanatory remarks as may be deemed appropriate If the decision of the court of appeals is in conflict with a previous opinion of the Supreme Court, is contrary to the constitution, the statutes or any rules, promulgated by the Supreme Court, the Supreme Court may, upon granting writ of error and without hearing argument in the case, reverse, reform or modify the judgment of the court of appeals, making, at the same time, such further orders as may be appropriate.

(c) Moot Cases. If a cause or an appealable portion thereof is moot, the Supreme Court may, in its discretion and after notice to the parties, upon granting writ of error and without hearing argument with reference thereto, dismiss such cause or the appealable portion thereof without reference to the merits of the appeal.

Rule 134. When Application Dismissed or Refused. When the application shall have been filed for a period of ten days, if the court determines to refuse or dismiss the same, whether or not the respondent has filed a brief in response, the clerk of the court will retain the application, together with the record and accompanying papers, for 15 days from the date of rendition of the judgment refusing or dismissing the writ. At the end of that time, if no motion for rehearing has been filed, or upon the overruling or dismissal of a motion for rehearing, the Clerk of the Supreme Court shall transmit to the court of appeals a certified copy of the orders denying or dismissing the application and of the order overruling the motion for rehearing and shall return all filed papers to the Clerk of the Court of Appeals, except the application for writ of error, any brief in response and any other briefs filed in the Supreme Court.

Rule 135. Notice of Granting, Etc. When the Supreme Court grants, refuses, or dismisses an application for writ of error or a motion for rehearing, the clerk of the court shall notify the parties or their attorneys of record by letter.

Rule 136. Briefs of Respondents and Others.

(a) Time and Place of Filing Briefs in response to the application for writ of error shall be filed with the Clerk of the Supreme Court within fifteen days after the filing of the application for writ of error unless additional time is granted.

(b) Form. Briefs of the respondent or other party shall comply with the provisions of the rules prescribed for an application for writ of error and particularly with the provisions of Rule 131(b), (c), (e), (f), (g), (h), (j), and (n).

(c) Objections to Jurisdiction. If the petitioner fails to assert valid grounds for jurisdiction by the Supreme Court, the respondent shall state in the brief the reasons that the Supreme Court has no jurisdiction.

(d) Reply and Cross-Points. Respondent shall confine his brief to reply points that answer the points in the application for writ of error or that provide independent grounds for affirmance and to such cross-points that respondent has preserved and that establish respondent's rights.

(e) Reliance on Prior Brief. If respondent relies upon his brief in the court of appeals, respondent shall file with the Clerk of the Supreme Court twelve legible copies of such brief.

(f) Amendment. The brief in response may be amended at any time when justice requires upon such reasonable notice as the court may prescribe.

Section Nine. Direct Appeals.

Rule 140. Direct Appeals. In compliance with Section 22.001(c) of the Government Code, the following rules of procedure for direct appeals to the Supreme Court are promulgated.

In obedience to an act of the Regular Session of the 48th Legislature approved February 16, 1943, and entitled "An Act authorizing appeals in certain cases direct from trial courts to the Supreme Court; authorizing the Supreme Court to prescribe rules of procedure for such appeals; and declaring an emergency," which act was passed by authority of an amendment known as Section 3-b of Article 5 of the Constitution, the following procedure is promulgated:

(a) In view of Section 3 of Article 5 of the Constitution which confines the appellate jurisdiction of the Supreme Court to questions of law only, this court under the present and later amendment, above cited, and such present and any future legislation under it, has and will take appellate jurisdiction over questions of law only, and in view of Sections 3, 6, 8 and 16 of such Article 5, will not take such jurisdiction from any court other than a district or county court.

(b) An appeal to the Supreme Court directly from such a trial court may present only the constitutionality or unconstitutionality of a statute of this State when the same shall have arisen by reason of the order of a trial court granting or denying an interlocutory or permanent injunction.

(c) Such appeal shall be in lieu of an appeal to the court of appeals and shall be upon such question or questions of law only, and a statement of facts shall not be brought up except to such extent as may be necessary to show that the appellant has an interest in the subject matter of the appeal and to show the proof concerning the promulgation of any administrative order that may be in-

volved in the appeal. If the case involves the determination of any contested issue of fact, even though the contested evidence should be adduced as to constitutionality or unconstitutionality of a statute, or as to the validity or invalidity of an administrative order, neither the statute or statutes, above mentioned, nor these rules, apply, and such an appeal will be dismissed.

(d) Except where they are inconsistent with this rule, the rules now or hereafter prescribed in instances of appeal to the court of appeals shall, insofar as they are applicable, apply to appeals to the Supreme Court pursuant to such amendment to the Constitution and the legislation thereunder.

Section Ten. Motions in the Supreme Court.

Rule 160. Form and Content of Motions for Extension of Time. All motions for extension of time for filing an application for writ of error shall be filed in, directed to, and acted upon by the Supreme Court. A copy of the motion shall be filed at the same time in the court of appeals and the Clerk of the Supreme Court shall notify the court of appeals of the action taken on the motion by the Supreme Court. Each such motion shall specify the following:

(a) the court of appeals and the date of its judgment, together with the number and style of the case;

(b) the date upon which the last timely motion for rehearing was overruled;

(c) the deadline for filing the application; and

(d) the facts relied upon to reasonably explain the need for an extension.

Section Eleven. Submission and Oral Argument.

Rule 170. Order of Submission. Causes may be heard and submitted in such order as the Supreme Court may deem to be in the best interest and convenience of the parties or their attorneys.

Rule 171. Submission Day.

(a) When Case Ready for Submission. A case shall stand for submission upon the first regular day of the submission of causes coming after the expiration of 20 days from the day on which the writ of error was granted; provided the notice of granting the writ shall have been given ten days before such submission day. If not so given, then the case shall be subject to submission on the first regular submission day which falls ten days after giving of notice.

(b) Regular Submission Day. Causes in the Supreme Court will be regularly submitted on Wednesday of each week, though a case may be set down for submission upon another day by the permission or direction of the court.

Rule 172. Argument.

(a) Time. In the argument of cases in the Supreme Court, each side may be allowed thirty minutes in the argument at the bar, with 15 minutes more in conclusion by petitioner. In cases involving difficult questions, the time allotted may be extended by the court, provided application is made before the day of argument. The court may, in its discretion, shorten the time for argument It may also align the parties for purposes of presenting oral argument.

(b) Number of Counsel. Not more than two counsel on each side will be heard, except on leave of the court.

(c) Amicus Curiae. Counsel for an amicus curiae shall not be permitted to argue except that he may share time allotted to one of the counsel who consents and on leave of the court obtained prior to time for argument.

Section Twelve. Decision, Judgment and Mandate.

Rule 180. Decision. In each cause, the Supreme Court shall either affirm the judgment of the court of appeals, or reverse and render such judgment as the court of appeals should have rendered, or remand the cause to the court of appeals, or reverse the judgment and remand the cause to the trial court, if it shall appear that the justice of the cause demands another trial.

Rule 181. Judgments in Open Court. In all cases decided by the Supreme Court, its judgments or decrees will be pronounced in open court; and the opinion of the court will be reduced to writing in such cases as the court deems of sufficient importance to be reported. Where the court, after the submission of a case, is of the opinion that the court of appeals has entered a correct judgment, and that the writ should not have been granted, the court may set aside the order granting the writ, and dismiss or refuse the application as though the writ had never been granted, without writing any opinion.

Rule 182. Judgment on Affirmance or Rendition. Whenever the Supreme Court shall affirm the judgment or decree of the trial court or the court of appeals, or proceeds to modify the judgment and to render such judgment or decree against the appellant in the court of appeals as should have been rendered by the trial court or the court of appeals, it shall render judgment against the appellant and the sureties upon his supersedeas bond, if any, for the performance of said judgment or decree, and shall make such disposition of the costs as the court shall deem proper, rendering judgment against the appellant or petitioner and the sureties on his appeal or supersedeas bond, if any, for such costs as are taxed against him.

Rule 183. Enforcement of Judgment. Upon the rendition by the Supreme Court of any such judgment or decree as is contemplated by the preceding rule, it shall not be necessary for the trial court from which the cause was removed to make any further order or decree therein, but the clerk of the trial court, on receipt of the mandate of the Supreme Court or the court of appeals, shall proceed to issue execution thereon as in other cases.

Rule 184. Reversal and Remand.

(a) No Reversal if Error Correctable. If the erroneous action or failure or refusal to act by either the trial judge or any judge or official employee of the court of appeals, shall prevent the proper presentation of a cause to the Supreme Court, and be such as may be corrected by the judge or official below, then the judgment shall not be reversed for such error, but the Supreme Court will direct the said judge or official to correct the error, and thereafter the Supreme Court will proceed as if such erroneous action or failure to act had not occurred.

(b) Reversible Error. No judgment shall be reversed on appeal and a new trial ordered in any cause on the ground that an error of law has been committed by the trial court in the course of the trial, unless the Supreme Court shall be of the opinion that the error complained of amounted to such a denial of the rights of the petitioner as was reasonably calculated to cause and probably did cause the rendition of an improper judgment in the case, or was such as probably prevented the petitioner from making a proper presentation of his case to the appellate courts; and if it appear to the court that the error affects a part only of the matter in controversy and that such part is clearly separable without unfairness to the parties, the judgment shall only be reversed and a new trial ordered as to that part affected by such error, provided that a separate trial on unliquidated damages alone shall not be ordered if liability issues are contested.

(c) Nature of Remand. If the judgment of a court of appeals shall be reversed, the Supreme Court may remand the case either to the court of appeals from which it came or to the trial court for another trial.

Rule 185. No affirmance, Reversal or Dismissal for Want of Form or Substance. The Supreme Court will not affirm or reverse a judgment or dismiss a writ of error for defects or irregularities in appellate procedure, either of form or substance, without allowing a reasonable time to correct or amend such defects or irregularities.

Rule 186. Mandate.

(a) Issuance of Mandate. At the expiration of 15 days from the rendition of judgment if no motion for rehearing has been filed, or at the expiration of 15 days after overruling the motion for rehearing, the clerk shall issue and deliver the court's mandate in the cause to the lower court without further payment of costs. In cases in which the Supreme Court declines to grant an application for writ of error, costs of the Supreme Court shall be paid in the court of appeals and the mandate issued from that court. Every mandate issued by the Supreme Court shall contain the file number in the trial court.

(b) Motion for Stay Order. A party may move for a stay of the mandate pending disposition by the Supreme Court of the United States of a petition for writ of certiorari. The motion shall show the grounds for such petition and the circumstances requiring a stay of the mandate. The Supreme Court may grant such a stay if it finds that the grounds are substantial and that serious hardship would result to the party or others from issuance of the mandate in the event of reversal by the Supreme Court of the United States.

(c) Recall of Mandate. If the Supreme Court vacates, modifies, corrects, or reforms its judgment after the mandate has issued, the mandate shall have no further effect and a new mandate may be issued. The clerk shall at once give notice of such action to the clerk of the court to which the mandate was directed, and to all parties.

Section Thirteen. Motion for Rehearing.

Rule 190. Motion for Rehearing.

(a) Time for Filing. A motion for rehearing may be filed with the clerk of the court within fifteen days after the date of rendition of the judgment or decision of the court or the order refusing or dismissing an application for writ of error. In exceptional cases, if the ends of justice require, the court may shorten the time within which the motion may be filed or even deny the right to file it altogether.

(b) Contents and Service. The points relied upon for the rehearing shall be distinctly specified in the motion. The motion shall state the name and address of the attorneys of record for the parties, and if there is no attorney of record, the name and address of the party. The party filing such motion shall deliver or mail to each " party, or his attorney of record, a true copy of such motion, and shall note on the motion so filed with the clerk that such copies have been so furnished.

(c) Notice of the Motion. Upon the filing of the motion, the clerk shall notify the attorneys of record or other parties by mail of the filing.

(d) Answer and Decision. The parties shall have five days after notice in which to file an answer to the motion. Upon the filing of an answer or the expiration of the five-day period, the motion shall be deemed submitted to the court and ready for disposition. The court may limit the time in which a motion for rehearing or an answer may be filed, and may act upon any motion at any time after it is filed. The court for good cause may deny leave to file a motion for rehearing. The court will not entertain a second motion for rehearing.

Section Fourteen. Discretionary Review in Criminal Cases.

Rule 200. Discretionary Review in General.

(a) The Court of Criminal Appeals, on its own motion, with or without a petition for discretionary review being filed by the appellant or the State, may review a decision of a court of appeals in a criminal case.

(b) Discretionary review by the Court of Criminal Appeals is not a matter of right, but of sound judicial discretion.

(c) In determining whether to grant or deny discretionary review, the following, while neither controlling nor fully measuring the Court of Criminal Appeals' discretion, indicates the character of reasons that will be considered:

(1) Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter;

(2) Where a court of appeals has decided an important question of state or federal law which has not been, but should be, settled by the Court of Criminal Appeals;

(3) Where a court of appeals has decided an important question of state or federal law in conflict with the applicable decisions of the Court of Criminal Appeals or the Supreme Court of the United States;

(4) Where a court of appeals has declared unconstitutional, or appears to have misconstrued, a statute, rule, regulation, or ordinance;

(5) Where the justices of the court of appeals have disagreed upon a material question of law necessary to its decision; and

(6) Where a court of appeals has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of the Court of Criminal Appeals' power of supervision.

(d) A motion for rehearing in the court of appeals shall not be a prerequisite to the granting of discretionary review, with or without petition, by the Court of Criminal Appeals.

(e) The Court of Criminal Appeals or any judge thereof may enter an order requiring the Clerk of the Court of Appeals to forward promptly the original record in the case, the opinions of the court of appeals, the motions filed therein, and certified copies of any judgments and orders of the court of appeals to the Court of Criminal Appeals in order to aid the court in deciding whether to grant or deny discretionary review. If discretionary review is not granted, the court will enter an order to return the appellate record to the Clerk of the Court of Appeals.

Rule 201. Discretionary Review Without Petition.

(a) The Court of Criminal Appeals may on its own motion by a vote of any four judges of the court grant review of a decision of a court of appeals in a criminal case at any time before the court of appeals' decision becomes final as determined by Rule 86, and this rule. An order granting review shall be filed with the Clerk of the Court of Criminal Appeals who shall send a copy to the Clerk of the Court of Appeals.

(b) In order to provide sufficient time for the Court of Criminal Appeals to decide whether to grant or deny discretionary review, the court or a judge thereof may file an order for review with the Clerk of the Court of Criminal Appeals who shall send a copy to the Clerk of the Court of Appeals.

(c) Unless otherwise limited in the order itself, an order for review shall extend the 45 days' time before issuance of the mandate of the court of appeals for an additional 45 days. An order for review shall be signed by a judge of the Court of Criminal Appeals.

(d) An order granting review prevents the issuance of the mandate of a court of appeals pending the further order of the Court of Criminal Appeals.

(e) If four judges do not agree to review a decision of a court of appeals within the time as extended under (c) above, the mandate of the court of appeals shall issue.

Rule 202. Discretionary Review With Petition.

(a) The Court of Criminal Appeals may review a decision of a court of appeals in a criminal case upon petition by the appellant or the State.

(b) The original petition shall be filed with the Clerk of the Court of Appeals which delivered the decision within 30 days after the day the judgment is entered or within 30 days after the day the last timely motion for rehearing is overruled.

(c) Even if the time specified in paragraph (b) has expired, a party who is otherwise entitled to file a petition may do so within 10 days after the timely filing of another party's petition.

(d) A petition for discretionary review shall be as brief as possible. It shall be addressed to the "Court of Criminal Appeals of Texas" and shall state the name of the party or parties applying for review. The petition-shall include the following:

(1) Index. The petition should contain at the front thereof a subject index, including an abbreviated rendition of the ground or question presented for review, with page references where the discussion of each ground or question presented may be found and also a list of authorities alphabetically arranged, together with references to pages of the petition where same are cited.

(2) Statement of the Case. The petition shall contain a brief general statement of the nature of the case Such statement should seldom exceed one-half page. The details of the case should be reserved to be stated in connection with the grounds or questions to which they are pertinent.

(3) Statement of the Procedural History of the Case. The petition should state the dates of the delivery of any opinion or order of the court of appeals, the dates of the filing of any motion for rehearing or a statement that none was filed, and the dates of the overruling of other disposition on any motions for rehearing.

(4) Grounds for Review. A statement of the grounds upon which the petition is predicated shall be stated in short form without argument and the grounds shall be separately numbered. Where the party filing the petition has access to the record, he shall (after each ground) refer to the page of the record where the matter complained of is found. In lieu of grounds for review, the petition may contain the questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail. The statement of the questions should be short and concise and should not be argumentative or repetitious.

(5) Reasons for Review. A direct and concise argument, with supporting authorities, amplifying the reasons relied on for the granting of review. See Rule 200(c). The opinions of the court of appeals will be considered with the petition, and statements therein, if accepted by counsel as correct, need not be repeated.

(6) Prayer for Relief. The nature of the relief sought by the petition should be clearly stated.

(7) The Court may strike, order redrawn or summarily refuse any petition for discretionary review that is unnecessarily lengthy or is not prepared in conformity with these rules.

(8) The petition for discretionary review may be typewritten or printed. If it is typewritten, it must be with a double space between the lines and on heavy white paper (8½ inches x 11 inches) in clear type. The Clerk of the Court of Appeals shall file the original petition and forward it, together with any copies furnished by the petitioner pursuant to Rule 4(b)(2), to the Court of Criminal Appeals.

(e) When a petition for discretionary review is filed in the court of appeals, the petitioner shall, at the same time, cause copies of the petition to be delivered to the attorney of record for the opposing party and to the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711.

(f) Within 15 days after the filing of the petition for discretionary review the Clerk of the Court of Appeals shall note upon his record the filing of said petition, and forward to the Clerk of the Court of Criminal Appeals the petition and any copies thereof furnished by counsel, together with the original record in the case, the motions filed therein, and certified copies of any judgments, opinions and orders of the court of appeals. The clerk need not so forward any exhibits that are not documentary in nature unless ordered to do so by the Court of Criminal Appeals.

(g) The petition with the original record in the case, the motions filed therein, and certified copies of any judgments, opinions, and orders of the court of appeals shall be filed with the Court of Criminal Appeals.

(h) The Clerk of the Court of Criminal Appeals shall receive all petitions for discretionary review, shall file the petition and the accompanying record from the court of appeals, shall enter the same upon the docket, and shall notify the attorneys of record by United States Mail of the filing and docketing of petitions for discretionary review in the Court of Criminal Appeals. The opposing party shall have 30 days after the timely filing of the petition in the Court of Criminal Appeals unless additional time is allowed, within which to file a reply to the petition with the Clerk of the Court of Criminal Appeals. When a reply is filed or the time for filing same has expired, the petition shall be deemed submitted to the court and ready for disposition. The court may dispense with notice and may grant or refuse the petition immediately upon the filing of the petition where, in its opinion, the circumstances require it.

(i) True copies of all replies, motions, and papers delivered to the Clerk of the Court of Criminal Appeals for filing shall be served on the opposing counsel and the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711.

(j) The petition or any reply may be amended or supplemented at any time when justice requires upon such reasonable terms as the court may prescribe. The record may be amended in the Court of Criminal Appeals under the same circumstances and on the same terms as in the court of appeals.

(k) After administrative processing, a petition for discretionary review shall be assigned by the administrative staff to a judge, in rotation, and the judge to whom such assignment is made shall have the responsibility for making an initial review and of reporting on such petition to the court for a determination of whether to grant or refuse the petition for discretionary review.

If four judges of the Court of Criminal Appeals do not vote to grant a petition for discretionary review, the court will refuse the petition with a docket notation "refused." If four judges vote to grant the petition for discretionary review, the court shall enter the docket notation that discretionary review is "granted" and the case shall be set for submission on oral argument. Provided, however, that the court, in its discretion, upon granting discretionary review and without hearing oral argument, may affirm, reverse, reform, correct, or modify the decision of the court of appeals, making such further orders as may be appropriate. Moreover, after the granting of discretionary review, if five

judges are of the opinion that discretionary review was improvidently granted, the petition may be dismissed.

(l) When the court refuses or dismisses a petition for discretionary review, whether the respondent has filed a reply or not, the clerk of the court will retain the petition, together with the record and accompanying papers, for at least 15 days from the date of rendition of the order refusing or dismissing discretionary review. At the end of that time, if no motion for rehearing has been timely filed, or upon the overruling or dismissal of such motion, in case one has been filed, the Clerk of the Court of Criminal Appeals shall transmit to the court of appeals which rendered the decision below a certified copy of the orders refusing or dismissing such petition and of any order overruling a motion for rehearing thereof, and shall return the appellate record to the clerk thereof, but shall retain the petition for discretionary review.

Rule 203. Brief on the Merits.

(a) If review is granted, the petitioning party (or, if there was no petition, the party who lost in the court of appeals) shall file a brief within 30 days after the granting of review.

(b) The opposing party shall file a brief within 30 days after the filing of the petitioning party's brief.

(c) Briefs shall comply with Rule 64. Copies shall be filed and served as required by Rule 202(i).

(d) The Court of Criminal Appeals may direct that a party file a brief, or another brief, in a particular case.

Section Fifteen. Direct Appeals and Extraordinary Matters Including Post Conviction Applications for Writ of Habeas Corpus.

Rule 210. Direct Appeals in Death Penalty Cases.

(a) Record. Rules 40 through 45 shall govern preparation and filing of the record on appeal of a case in which the death penalty has been assessed.

(b) Briefs. Appropriate provisions of Rule 64 shall govern preparation and filing of briefs in a case in which the death penalty has been assessed, except only an original and one copy need be filed.

Rule 211. Extraordinary Matters.

(a) Motion for Leave. A motion for leave to file must accompany original applications for writ of habeas corpus, mandamus, and other extraordinary writs and motions and 11 copies of such papers shall be presented to the clerk for distribution to the judges of the court (b) Initial Review. After administrative processing, all original applications for writ of habeas corpus, mandamus, and other extraordinary writs, shall be assigned by the administrative staff to a judge, in rotation, and the judge to whom such aasignment is made shall have the responsibility for making an initial review and of reporting on such case to the court for a determination of whether to grant leave to file. Upon presentation to the court, motion for leave to file may be denied or the application may be handled in accordance with such other instructions or orders as shall be issued by the court.

(c) Tentative Disposition. In the event at least five members of the court are of the tentative opinion that the case should be filed and set for submission, motion for leave to file will be granted and the case shall then be handled and disposed of in accordance with such instructions or orders as may be issued by the court. No motions for rehearing or reconsideration will be entertained from the denial of a motion for leave to file an original application. The court, however, may reconsider such a denial of a motion for leave to file on its own motion.

Rule 212. Special Cases.

(a) Presentation of Motions. Motions for extension of time and motions filed with respect to cases pending on the court's docket (e.g., to advance on the docket), after administrative processing, shall be presented by the clerk or the administrative staff to the Presiding Judge, or to a judge designated by the Presiding Judge, who may grant or deny the motion or refer it to the en banc conference for consideration.

(b) Disposition. The motion will be handled and disposed of in accordance with the instructions of the Presiding Judge, the designated judge, or the en banc conference.

Rule 213. Postconviction Applications for Writs of Habeas Corpus.

(a) Initial Review. After administrative processing, post-conviction applications for writ of habeas corpus pursuant to Article 11.07 of the Code of Criminal Procedure shall be assigned by the administrative staff to a judge, in rotation, and the judge to whom such an assignment is made shall have the responsibility of making an initial review and reporting on such case to the court. The court may deny relief upon the findings and conclusions of the trial court with or without an evidentiary hearing. The court may likewise deny relief based upon its own review of the application or may issue such other instructions or orders as may be appropriate.

(b) Tentative Disposition. In the event that at least five members of the court are of the tentative opinion that the case should be filed and set for submission to the court, the cause will be docketed and heard as though originally presented to the court or as an appeal. No motions for rehearing or reconsideration will be entertained from a denial of relief without docketing of the cause. The court, however, may on its own motion reconsider such initial disposition.

Section Sixteen. Submissions, Oral Arguments and Opinions.

Rule 220. Notification. Unless the Court of Criminal Appeals directs that a particular cause be argued orally, when a cause may be submitted on oral argument the Clerk of the Court of Criminal Appeals shall notify counsel of record to inform the clerk within 30 days from the date on the notification whether oral argument is desired. Failure to respond timely will constitute a waiver of oral argument. The clerk is directed to use all reasonable diligence to notify counsel of record of settings, but failure to receive notice will not necessarily prevent submission of the cause on the day it is set.

Rule 221. Oral Argument. Unless extended by the Court of Criminal Appeals in a special case, the total maximum time for oral argument shall be 20 minutes per side. Counsel for the appellant or petitioner is entitled to open and conclude the argument. Counsel will not be permitted to read at length from the briefs, records, or authorities. Counsel may make an oral correction to his brief, but multiple additional citations should not be made orally; they should be reduced to writing and filed with the clerk.

Rule 222. Submissions En Banc.

(a) The court shall sit en banc for hearing appeals in death penalty cases, cases of discretionary review, cases in which leave to file was granted under Rule 213(a), cases which were docketed under Rule 213(c), and rehearings under Rule 230.

(b) The clerk, as directed by the court, shall at appropriate times in advance of submission set cases for submission en banc.

(c) After they are submitted, the cases shall be arranged by the clerk in 9 separate stacks, with such stacks to be as nearly equal in terms of workload as the clerk in his judgment shall determine. The court shall then, in the presence of a majority of the judges, determine by lot which stack shall be assigned to which judge for initial study, drafting of opinion, and reporting to the en banc conference.

Rule 223. Opinions.

(a) In each case decided by it the Court of Criminal Appeals will deliver a written opinion setting forth the reason for its decision and germane precedent extant. Any judge may file an opinion dissenting from or concurring in the decision of the Court.

(b) A majority of the judges shall determine whether opinions delivered by the Court of Criminal Appeals shall be signed by a judge or be issued per curiam and whether they shall be published.

(c) Unpublished opinions shall neither be deemed nor cited as precedent.

(d) On the date of delivery of any opinion or order the Clerk of the Court of Criminal Appeals shall mail copies of said opinions or orders to (1) counsel of record (2) the State Prosecuting Attorney, (3) the clerk of the trial court, and (4) the Clerk of the Court of Appeals which rendered the decision below, and (5) an appellant representing himself.

Section Seventeen. Rehearings and Mandate.

Rule 230. Rehearings.

(a) A motion for rehearing may be filed with the Clerk of the Court of Criminal Appeals within 15 days after the initial opinion or order is delivered, unless the time is shortened or enlarged by the court. However, no motion for rehearing will be received from an order granting discretionary review.

(b) The motion for rehearing must briefly and distinctly state its grounds, together with any supporting arguments. A reply to the motion need not be filed unless requested by the court. An original and 11 copies of the motion and any reply thereto shall be filed Copies of the motion and any reply shall be delivered to the opposing party and the State Prosecuting Attorney, P.O. Box 12405, Austin, Texas 78711. Any motion for rehearing or reply thereto may be amended or supplemented with leave of the court at any time prior to final disposition. A motion for rehearing or a reply thereto is not subject to oral argument.

(c) If five members of the Court are of the opinion that a rehearing should be granted in whole or in part, the motion will be granted and the cause will be thereafter set for submission to the court. Otherwise, the motion for rehearing will be denied.

(d) The clerk will give all parties notice of the disposition of the motion.

(e) If a motion for rehearing is granted, the court may resubmit the case without oral argument. If oral argument is permitted, counsel will be limited to 15 minutes per side. The movant is entitled to open and conclude the argument. The clerk will notify all parties of the time for such resubmissions.

(f) If the court delivers an opinion on rehearing which changes the disposition of the cause from that on original submission, the losing party may file a motion for rehearing within 15 days after said opinion is delivered. In such event, the procedures outlined in (a) through (e) above will be followed.

Rule 231. Mandate. When a decision of the Court of Criminal Appeals becomes final, the clerk of the court shall issue a mandate to the court below, including the court of appeals whose decision has been reviewed on petition for discretionary review. A decision of the court shall be final at the expiration of 15 days from the ruling on the final motion for rehearing or from the rendition of the decision if no motion for rehearing is filed.

Rule 232. Stay of Mandate. The Court of Criminal Appeals may stay the mandate of the court for not more than 60 days on motion of a party to permit the timely filing of an appeal or petition for writ of certiorari to the United States Supreme Court. After the expiration of the time mentioned in this rule, the mandate of the court shall issue.

Rule 233. Stay of Execution in Death Penalty Cases. The order of a trial court setting the date for execution in a death penalty case may be modified or withdrawn by that trial court should such court determine that an evidentiary hearing or other proceedings are necessary on an application for writ of habeas corpus filed pursuant to Article 11.07 of the Code of Criminal Procedure. In such event the warrant of execution shall be recalled.

Rule 234. Undisposed Cases. All cases filed in the Court of Criminal Appeals and not disposed of at the end of the term shall be automatically continued to the next succeeding term of said court.

The following rules of posttrial, appellate, adn review procedure are adopted and promulgated by the Court of Criminal Appeals to govern criminal cases and criminal law matters Code of Criminal Procedures, Article V, §5, and Article 4.04, under authority of and in conformity with Acts 1985, 69th Legislature, Chapter 685, page 5136, §§1-4, and Code of Criminal Procedure, Articles 44.33 and 44.45. Unless specifically restricted to procedure in civil cases actions of a civil nature (Rule 2, T.R.Civ.P.), these rules shall govern posttrial, appellate, and review procedures in criminal cases and criminal law matters. Thses do not amend any existing rule, promulgate any new rule, nor rpeal ny rule in th eTexas Rules of Civil Procedure. No rule promulgated by these rules shall be applicable to any civil case unless and until it has been promulgated by the Supreme Court of Texas.

These rules become effective September 1, 1986, and remain in effect unless and until disapproved, modified, or changed by the legislature or unless and until supplemented or amended by this Court pursuant to the Act.

List of Repealed Statutes

The following enumerated articles of the Code of Criminal Procedure of 1965, enacted by Acts 1965, 59th Leg., Ch. 722, effective January 1, 1966, and amendments and additions thereto through the 1985 Regular Session of the 69th Legislature are deemed to be repealed as they relate to postrial, appellate and review procedures in criminal cases and criminal law matters pursuant to House Bill No. 13, Acts 1985, 69th Leg., Ch. 685, p. 5136. Their repeal is effective simultaneously with the effective date of the comprehensive body of rules promulgated by the Court of Criminal Appeals. All consecutive numbers in the enumeration are inclusive.

Enumeration

Articles: 36.20; 40.01-40.11; 41.01-41.05; 42.04a; 42.06; 44.02 proviso only; 44.03; 44.05; 44.06; 44.08; 44.09; 44.11; 44.21-44.24; 44.26; 44.27; 44.30-44.32; 44.33, except first sentence and section (b); 44.34; 44.36; 44.37; 44.38, including Acts 1985, 69th Leg., Ch. 440 p. 2993: 44.40; 44.40; 44.45, second sentence of section (a), subsections (1)-(7) of section (b) and section (d) only.

Texas Education Agency
Revised Notice of Request For Applications

This revised notice of request for applications is filed in accordance with the provisions of Texas Civil Statutes, Article 6252-11c. The original notice of request for applications was published in the January 28, 1986, issue of the *Texas Register* (11 TexReg 568). The description portion has been revised concerning trainers. The period of the contract has been revised to begin on April 15, 1986, rather than March 3, 1986, and to end on March 30, 1987, rather than September 30, 1987. The due dates of documents portion has been revised so that completed applications must be received on or before 5 p.m. on March 14, 1986, rather than March 3, 1986.

Description. The Texas Education Agency is requesting applications to develop and implement a series of staff development modules for mathematics teachers of prekindergarten through Grade Eight. A set of 21 modules will be developed to prepare prekindergarten through Grade Eight teachers to teach the essential elements of mathematics using manipulative materials, concept development techniques, and problem solving applications. The modules cover eight content areas, broken down as primary, intermediate, and middle school. The focus of the modules will be on teaching the essential elements of the state mathematics curriculum. Modules will also address general issues such as eliminating bias, reducing mathematics anxiety, and improving participation of all students in higher level mathematics courses.

Trainers will be identified and trained to deliver these modules. The contractor will conduct training for the delivery of each module. Districts will then receive guidelines on how to use flow-through or other funding sources to provide staff development for their staffs.

The development of modules will be contracted to one or more entities. Each contractor must apply to develop at least two modules, and may apply for as many as desired. Applications will be requested from interested districts, service centers, institutes of higher education, and private consulting firms. The development is projected for a two-year period. The approximate funding level for the first year is $409,700.

Contact Person. Any person wishing to obtain additional information about the application may contact; Dr. Cathy Seeley Peavler, Director of Mathematics, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701.

Period of Contract. The beginning date of this contract is April 15, 1986, and the ending date is March 30, 1987.

Award of Contract. A contract will be awarded based upon the applicant's demonstrated expertise in preparation of instructional materials, quality of key personnel, adequacy of resources, plan of operation, and program evaluation design. Each application will be evaluated as to the cost effectiveness of the budget.

Due Dates of Documents. Application packets may be requested from the Document Control Center, Texas Education Agency, Room 6-108, 1701 North Congress Avenue, Austin, Texas 78701, or by calling (512) 463-9304. Completed applications must be received on or before 5 p.m., March 14, 1986, at the document control center.

Issued in Austin, Texas, on January 28, 1986.

TRD-8601056 W. N. Kirby
Commissioner
Texas Education Agency

Filed: January 29, 1986
For further information, please call (512) 463-9212.

★ ★ ★

Region IX Education Service Center
Notice of Application for Place on Ballot

Applications for place on ballot for election to board of directors of the Region IX Education Service Center, 301 Loop 11, Wichita Falls, Texas, maybe obtained at the Region IX office, between the hours of 8 a.m. and 4 p.m. beginning Monday, February 3, 1986.

Open for election are place one, currently filled by Dr. J. Carl Davis, Wichita Falls, Texas; and place seven, currently filled by Mr. L. D. "Jack" Jones, Seymour, Texas. Board members are elected to three year terms. Notice of filing must be received at the headquarters office in person or by certified mail not later than 4 p.m. Thursday, February 20, 1986.

Any citizen of the United States who is over 21 years of age, a resident of the region being served by the center, who is not engaged professionally in education or who is not a member of a school district board of trustees, a county board of trustees, or a board of an institution of higher education, which is eligible for membership on the joint committee, may be elected to the board of director membership. No member of the board nor member of his or her immediate family shall be in the business of vending, or servicing materials or equipment to regional education service centers.

Issued in Austin, Texas, on January 27, 1986.

TRD-8600956 Darla Jan McAllister
Executive Secretary
Region IX Education Service Center

Filed: January 27, 1986
For further information, please call (817) 322-6928.

★ ★ ★

Employees Retirement System of Texas
Consultant Contract Award Uniform Group Insurance Program Contingency Plan of Self-insurance.

The Employees Retirement System of Texas published a request for proposal in the October 8, 1985, issue of the *Texas Register* (10 TexReg 3913) to obtain a private consultant to develop a contingency plan for self-insurance. The award of consulting services is filed under the provisions of Texas Civil Statutes, Article 6252-11c. The proposal selected was that of Rudd and Wisdom Actuaries, 7718 Wood Hollow Drive, Suite 100, Austin, Texas 78731.

The effective date of the contract was January 29, 1986, and all reports are to be filed within 60 days of that date. The total cost will be $9,500.

Issued in Austin, Texas, on January 29, 1986.

TRD-8601060 Clayton T. Garrison
Executive Director
Employees Retirement System of Texas

Filed: January 29, 1986
For further information, please call (512) 476-6431.

★ ★ ★

Texas Department of Health

Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Carrolton/Houston	GTE Products Corporation	99-3858	Danvers, MA	0	12/19/85
Dallas	Central Diagnostic Center	05-3868	Dallas	0	12/20/85
Fort Stockton	Pecos County Memorial Hospital	12-3721	Fort Stockton	0	12/31/85
Fort Worth	Radiation Sterilizers, Inc.	99-3851	Menlo Park, CA	0	12/30/85
Lubbock	Steve Marshall	02-3865	Midland	0	12/13/85
Throughout Texas	Inspection Service, Inc.	12-3867	Odessa	0	12/19/85

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Alvin/Texas City	Monsanto Fibers and Intermediates Co.	11-219	Alvin	45	12/23/85
Baytown	Mobay Chemical Corporation	11-1577	Baytown	19	12/19/85
Baytown	Exxon Chemical Company	11-3335	Baytown	6	12/30/85
Channelview	Ferromet Resources, Inc.	11-3509	Channelview	2	12/19/85
Denison	The Pillsbury Company	05-3727	Denison	4	12/30/85
El Paso	Wilbur J. Strader, III, M.D.	03-2101	El Paso	9	12/31/85
Galveston	Todd Shipyards Corporation	11-871	Galveston	38	12/18/85
Greenville	E-Systems, Inc.	05-856	Greenville	13	12/19/85
Houston	RADX Corporation	11-1372	Houston	14	12/19/85
Houston	Gammatron, Inc.	11-2148	Houston	6	12/19/85
Houston	Geochem Research, Inc.	11-3448	Houston	2	12/30/85
Houston	Mosher Steel Company	11-1539	Houston	15	12/20/85
Humble	Northeast Medical Center Hospital	11-2412	Humble	16	12/19/85
Port Arthur	Saint Mary Hospital	10-1212	Port Arthur	31	12/31/85
Ranger	Ranger General Hospital	04-3308	Ranger	3	12/19/85
San Antonio	Cardiovascular Associates, Inc.	09-2637	San Antonio	7	12/17/85
Texas City	Amoco Oil Company	11-254	Texas City	31	12/19/85
Throughout Texas	Terra-Mar, Inc.	11-3157	Houston	5	12/11/85
Throughout Texas	Davis Great Guns Logging, Inc.	12-2708	Midland	7	12/18/85
Throughout Texas	Gulf Coast Services	08-1803	Refugio	13	12/19/85
Throughout Texas	Beta Diagnostics, Inc.	09-3574	San Antonio	4	12/31/85
Throughout Texas	Crossroads Testing Laboratories	08-3401	Victoria	2	12/30/85
Throughout Texas	Testing Unlimited, Inc.	11-3520	Houston	3	12/30/85
Throughout Texas	Reece Albert	04-2296	San Angelo	3	12/30/85
Throughout Texas	Exxon Research and Engineering Company	11-1132	Baytown	26	12/30/85
Throughout Texas	Baytown Industrial X-Ray	11-2143	Baytown	20	12/20/85
Waco	Vantran Electric Corporation	06-3477	Waco	1	12/30/85
Wharton	Gulf Coast Medical Center	11-1388	Wharton	20	12/31/85

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Longview	John R. Loftis, M.D., P.A.	07-1310	Longview	5	12/12/85

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Dallas	Immutech, Inc.	05-3030	Dallas	1	12/17/85
Throughout Texas	Gilbert Central Corporation	06-3451	Temple	2	12/19/85

NEW LICENSES DENIED:

Location	Name	License #	City	Amendment #	Date of Action
Houston	Boyd Ray Yarbrough	Houston	0	12/20/85	

In issuing new licenses and amending and renewing existing licenses, the Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Texas Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and

state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday through Friday (except holidays).

Issued in Austin, Texas, on January 29, 1986.

TRD-8601008 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: January 29, 1986
For further information, please call (512) 835-7000.

★ ★ ★

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Port Arthur	Bone Scanner Associates	10-3863	Port Arthur	0	01/15/86
Winters	North Runnels Hospital	04-3861	Winters	0	01/03/86

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Amarillo	Doctors Alpar, Taylor and Weinberger	01-515	Amarillo	8	12/19/85
Baytown	Nuclear Medicine Associates	11-1904	Baytown	22	12/17/85
Carrollton	Nutopes	05-3472	Denton	8	12/20/85
Dallas	Endocrine Associates of Dallas, P.A.	05-2688	Dallas	10	01/03/86
Dinero	Everest Exploration, Inc.	08-3068	Corpus Christi	5	12/18/85
Edna	Edna Hospital	08-2902	Edna	6	01/07/86
El Paso	The University of Texas at El Paso	03-159	El Paso	18	01/03/86
Fort Worth	Huguley Memorial Medical Center	05-2920	Fort Worth	5	12/19/85
Fort Worth	Medical Plaza Hospital	05-2171	Fort Worth	15	12/31/85
Fort Worth	North Texas Diagnostic Center	05-3807	Fort Worth	1	12/31/85
Houston	Rosewood Medical Center	11-3283	Houston	3	12/31/85
Houston	Park Plaza Hospital	11-2071	Houston	17	01/13/86
Irving	Nuclear Pharmacy, Incorporated	05-2048	Irving	43	01/02/86
Irving	Irving Community Hospital	05-2444	Irving	10	01/03/86
Katy	Katy Community Hospital	11-3052	Katy	8	01/13/86
Lubbock	Texas Tech University Health Science Center	02-1869	Lubbock	36	12/19/85
McGregor	Hercules Incorporated—McGregor Plant	06-00407	McGregor	5	01/13/86
San Antonio	Cancer Therapy and Research Center	09-1922	San Antonio	17	12/19/85
San Antonio	Beta Diagnostics, Inc.	09-3574	San Antonio	4	12/31/85
Sweetwater	Rolling Plains Memorial Hospital	04-2550	Sweetwater	3	12/19/85
Throughout Texas	Longview Inspection, Inc.	07-3720	Longview	3	01/03/86
Throughout Texas	RAM Inspection, Inc.	12-3741	Odessa	3	01/03/86
Throughout Texas	PetroFac, Inc.	07-2363	Tyler	6	01/03/86
Throughout Texas	Weldtest, Inc.	10-3560	Port Arthur	11	01/03/86
Throughout Texas	Brown and Root U.S.A., Inc.	11-3371	Houston	4	01/02/86
Throughout Texas	Hamilton Drilling and Engineering Testing, Inc.	06-3849	Austin	1	01/02/86
Throughout Texas	Four Way Logging & Perforating, Inc.	04-2940	Colorado City	7	01/09/86
Throughout Texas	Petroleum Measurement Corporation	11-3060	Houston	6	01/09/86
Throughout Texas	Southwestern Laboratories	11-299	Houston	45	01/07/86
Throughout Texas	MRA/Materials Engineers, Inc.	11-3018	Houston	3	01/09/86
Waller	Progressive Metals	11-2831	Waller	10	01/13/86
Webster	Humana Hospital Clear Lake	11-1680	Webster	21	01/13/86
Winnsboro	Presbyterian Hospital of Winnsboro	07-3336	Winnsboro	4	12/31/85

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
El Paso	Louis M. Alpern, M.D.	03-2928	El Paso	1	01/03/86

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Beaumont	Southwestern Laboratories	10-259	Beaumont	30	01/02/86
Dallas	Southwestern Laboratories	05-359	Dallas	36	01/02/86
Houston	Richmond Tank Car Company	11-3090	Houston	2	01/03/86
Longview	Longview Custom Fabricating, Inc.	07-3183	Longview	4	01/02/86
Throughout Texas	Lone Star X-Ray	11-2420	Houston	10	01/03/86
Throughout Texas	Southwestern Laboratories	11-2173	Texas City	13	01/02/86
Throughout Texas	Lone Star X-Ray Company, Inc.	07-3289	Dallas	2	01/02/86
Throughout Texas	United Logging, Inc.	06-1919	Bryan	9	01/02/86

NEW LICENSES DENIED:

Location	Name	License #	City	Amendment #	Date of Action
Irving	Multilayer Technology	4-9	Irving	0	01/15/86

In issuing new licenses and amending and renewing existing licenses, the Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected"

within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Texas Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday through Friday (except holidays).

Issued in Austin, Texas, on February 3, 1986.

TRD-8601174 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of Health

Filed: February 3, 1986
For further information, please call (512) 835-7000.

★ ★ ★

State Department of Highways and Public Transportation
Correction of Error

Withdrawl of rules and adopted rules submitted by the State Department of Highways and Public Transportation contained two errors as published in the January 3, 1986, issue of the *Texas Register*.

The withdrawls on page 43 should have been of emergency, not proposed, rules.

The effective date for the adopted rules on pages 57-63 should be January 13, 1986.

State Board of Insurance
Company Licensing

The following applications have been filed with the State Board of Insurance and are under consideration.

(1) Application for admission to do business in the State of Texas of Compac Insurance Company a foreign fire and casualty insurance company. The home office is in Los Angeles, California.

(2) Application for a name change by Ohio Reinsurance Corporation, a foreign fire and casualty insurance company. The home office is in Columbus, Ohio. The proposed new name is Ohio General Insurance Company.

(3) Application for admission to do business in Texas of Phoenix General Insurance Company, a foreign fire and casualty insurance company. The home office is in Hartford, Connecticut.

(4) Application for admission to do business in Texas of Union Standard of America Life Insurance Company, a foreign life insurance company. The home office is in Washington, D.C.

(5) Application for a name change by Brazos Life Insurance Company, a domestic life insurance company. The home office is in Waco. The proposed new name is American-Amicable Life Insurance Company of Texas.

(6) Application for a name change by AID Life Insurance Company, a foreign life insurance company. The home office is in Des Moines, Iowa. The proposed new name is Iowa Allied Life Insurance Company.

(7) Application for a name change by AIDCO Insurance Company, a foreign fire and casualty insurance company. The home office is in Des Moines, Iowa. The proposed new name is Allied Property Casualty Company.

(8) Application for a name change by AID Insurance Company (Mutual). The home office is in Des Moines, Iowa. The proposed new name is Allied Mutual Insurance Company.

(9) Application for a name change by Ticor Life Insurance Company, a foreign life insurance company. The home office is in Salt Lake City, Utah. The proposed new name is Aristar Life Insurance Company.

(10) Application for a name change by Total Life Insurance Company of America, a domestic life insurance company. The home office is in Dallas. The proposed new name is Total Insurance Company.

Issued in Austin, Texas, on January 28, 1986.

TRD-8601074 Nicholas J. Murphy
Chief Clerk
State Board of Insurance

Filed: January 30, 1986
For further information, please call (512) 463-6327.

★ ★ ★

Texas State Board of Medical Examiners
Correction of Error

A proposed rule submitted by the Texas State Board of Medical Examiners contained an error as published in the January 21, 1986, issue of the *Texas Register (11 TexReg 364)*.

After §163.4, the title §163.9 was inadvertently omitted and should be "Procedural Rules for all Licensure Applicants."

Texas Rehabilitation Commission
Correction of Error

An adopted rule submitted by the Texas Advisory Board of Occupational Therapy published in the January 3, 1986, issue of the *Texas Register (11 TexReg 55)* contained an error in a photoslick.

The second half of the photoslick of 40 TAC §375.1 should read as follows:

License Fees - Renewal:

Regular (on time)	$70/year	$50/year
Late - 90 Days or Less	Regular plus late fee which is one-half of license fee	Regular plus late fee which is one-half of license fee
Late - More than 90 Days But Less Than 2 Years	All unpaid fees plus late fee that is equal to license fee	All unpaid fees plus late fee that is equal to license fee
Practitioners submitting an initial application will have total cost prorated to their next birthday	$7/month	$5/month

Texas Savings and Loan Department

Application to Establish Remote Service Units

Application has been filed with the savings and loan commissioner of Texas by San Antonio Savings Association, for approval to establish and operate remote service units at the following location(s): Docket 86-001—982, 6003 DeZavala, San Antonio, Bexar County; 983, 7125 FM Road 471, San Antonio, Bexar County; 989, 1802 Gen McMullen, San Antonio, Bexar County; and Docket 86-002—Handy Andy #6, 8353 Culebra, San Antonio, Bexar County.

The applicant association asserts that security of the association's funds and that of its account holders will be maintained, and the proposed service will be a substantial convenience to the public.

Anyone desiring to protest the application must file a written protest with the commissioner within 10 days following this notice. The commissioner may dispense with a hearing.

This application is filed pursuant to 7 TAC §§53.11-53.16 of the rules and regulations for savings and loan associations. Such rules are on file with the Office of the Secretary of State, Texas Register, or may be seen at the department's offices in the Finance Commission Building, 2601 North Lamar, Suite 201, Austin.

Issued in Austin, Texas, on January 28, 1986.

TRD-8600976 L. L. Bowman III
Commissioner
Texas Savings and Loan Department

Filed: January 28, 1986
For further information, please call (512) 479-1250.

★ ★ ★

Texas Water Commission

Notice of Application for Provisionally-Issued Temporary Permits

Notice is given by the Texas Water Commission of provisionally issued temporary permits issued during the period of January 13-24, 1986.

These permits were issued without notice and hearing pursuant to the Texas Water Code, §11.138, and commission rules 31 TAC §303.91-303.93.

The executive director has reviewed each application and found that sufficient water was available at the proposed point of diversion to satisfy the requirements of the applications as well as all existing water rights. It is further noted that these diversions are for not more than 10 acre-feet of water and for a period of not more than one year. If a complaint is received before or after diversions are commenced, a preliminary investigation shall be made by the executive director to determine whether there is a reasonable basis for such complaint. Should the investigation indicate that there is a probability that diversions could result in injury to the complainant, the permit will be canceled, and the application will revert to the status of a pending application and no further diversions may be made until a public hearing is held. Notice of the hearing shall then be sent to the complaining person.

Information concerning any aspect of these permits may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8218.

Listed are the names of the permittees, diversion point, watercourse, amount of water authorized, period of time of the permit, permit number, and the date issued/administratively-complete.

L-W-B Construction Company, Inc; from the stream crossing at State Highway 105, approximately 26 miles north of Liberty, Liberty County; Cherry Creek, tributary Neviill Bayou, tributary Trinity River; three acre-feet, one year period; TP-5371; January 15, 1986

Thomas S. West, Jr.; from the stream crossing near FM 1351, approximately 12 miles west of Giliad, Goliad County; San Antonio River; two acre-feet, three month period; TP-5372; January 16, 1986

Red River B, Inc.; from the stream crossing near SH 78, approximately 12 miles north of Bonham, Fannin County; Cottonwood Creek, tributary Red River; 10 acre-feet, one year period; TP-5373; Janaury 16, 1986

Issued in Austin, Texas, on January 24, 1986.

TRD-869895 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: January 28, 1986
For further information, please call (512) 463-7898.

★ ★ ★

Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of January 21-24, 1986.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal.

Period of January 21-24, 1986

Burza International, Limited, Galveston; sulfur slating plant and terminal; 4800 Port Industrial Boulevard, on the west side of the Galveston Port (north end) adjacent to Slip B and the Pelican Island Bridge in the City of Galveston in Galveston County; 02805; new permit

Texas Easter Transmission Corporation, Vidor; petroleum refinery and ship terminal; adjacent to the Neches River; approximately three miles southwest of the City of Vidor, Orange County, 02302; renewal

City of Lindsay, Lindsay; wastewater treatment facilities; southeast of Lindsay, approximately 600 feet east of FM Road 3108 bridge over Elm Fork Trinity River in Cooke County; 10923-10; renewal

City of Mabank, Mabank; wastewater treatment facilities; approximately 6000 feet due west of the intersection of U.S. Highway 175 and State Highway 198 in Henderson County; 10579-01; renewal

Southwestern Graphite Company, Burnet; graphite processing plant; approximately 2.1 miles north of State Highway 29 crossing over Clear Creek in Burnet County; 00350; renewal

Trinity River Authority of Texas, Arlington; Dallas/Fort Worth Regional Airport Pretreatment Plant at the southeast corner of the Dallas/Fort worth Regional Airport property near Greenglade Road on the bank of Big Bear Creek in the City of Arlington in Tarrant County; 01441; renewal

Lockhart Savings and Loan Association doing business as JML Joint Venture, Austin; wastewater treatment facilities; approximately 330 feet southeast of the intersection of Johnny Morris Road and Daffan Gin Road in Travis County; 13232-01; new permit

Western-Commercial Transport, Inc., Houston; truck tank washing facility; 8510 East Belt Drive in the City of Houston, Harris County; 01940; renewal

The Trinity River Authority of Texas, Huntsville; sewage treatment plant; approximately 1000 feet northwest of FM Road 224 which is approximately three miles southeast of the intersection of State Highway 56 and FM Road 224 in San Jacinto County; 11310-01; renewal

City of Crockett, Crockett; wastewater treatment plant; approximately 3000 feet south of the intersection of U.S. Highway 287 and State Highway Loop 304 in the southeast section of the City of Crockett, Houston County; 10154-02; renewal

Dallas County Water Control and Improvement District No. 6, Balch Springs; wastewater treatment facilities; approximately .5 mile east and .2 mile south of the intersection of Belt Line Road and Beckett Road in Dallas County; 10061-01; renewal

Huffmeister 157, Limited, Houston; wastewater treatment plant; along Little Cypress Creek, approximately 1600 feet west of Telge Road and 3000 feet north of Huffmeister Road, three miles north of Cypress in Harris County; 13237-01; new permit

City of Big Spring, Big Spring; surface water treatment plant; 16th Street and Virginia Avenue in the City of Big Spring in Howard County; 10069-02; renewal

Ellis County WCID Number One, Waxahachie; water treatment plant; south of Waxahachie, northeast of FM Road 877, approximately one mile southeast of the intersection of FM Road 877 and U.S. Highway 77 in Ellis County; 10561-01; renewal

Freedom Financial Corporation, Hawkings; wastewater treatment plant; roughly nine miles northeast of the City of Hawkins and approximately 14,000 feet south and 3,600 feet east of the intersection of FM Road 49 and 2869 in Wood County; 13254-01; new permit

The City of Brownfield, Brownfield; waste disposal facilities; approximately 5,200 feet south and 3,600 feet east of the intersection of U.S. Highway 62 and 2nd Street in the City of Brownfield, Terry County; 10677-01; amendment

The City of Grapevine, Grapevine; wastewater treatment plant; immediately northwest of the intersection of North Scribner and Shady Brook Road in Grapevine in Tarrant County; 10486-02; amendment

Issued in Austin, Texas, on January 24, 1986.

TRD-8600989 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: January 28, 1986
For further information, please call (512) 463-7898.

Consultant Proposal Request

As required by Texas Civil Statutes, Article 6252-11c, the Texas Water Commission announces that it wishes to retain the services of a consultant to perform meteorological studies in the Texas high plains, and invites offers of consulting services for the work described. This project is being conducted by the Texas Water Commission through a cooperative agreement with the U.S. Bureau of Reclamation. The Texas Water Code, Chapter 18, §18.19 and §18.20 specifically directs the commission's activities under this program.

The Texas Water Commission completed a design document for a series of experiments that will lead ultimately to the development of an operational rain-enhancement technology for west Texas, a region that would benefit greatly from increased rainfall. This weather modification research program is known as the Southwest Cooperative Program. The design of the research effort is integrated with current operational seeding efforts in the Big Spring and San Angelo areas, and incorporates accepted methods of scientific experimentation.

The approach of the cloud seeding experiments for rain enhancement involves attempts to document each step of the rain-making physical process from the introduction of the nucleant to rain on the ground. Such an undertaking requires highly trained personnel, sophisticated instrumentation, such as Doppler radars and instrumented aircraft, and substantial funding.

The research effort proposed here is projected to fall short of the ideal initially, due to limited funding. Even with twice the present funding, it will not be possible to investigate all of the physical processes that are operative to increase rainfall in west Texas. Within the constraints of the projected monetary resources, it is anticipated, however, that enough information will be obtained to verify and refine most elements of the design and establish a clear course for follow-on research experiments.

The problem to be addressed by the series of research experiments is whether seeding for dynamic effects can be used to increase rainfall from small, multiple-cell convective systems in west Texas. A believable solution to this problem is expected after five years of randomized experimentation. This will be achieved through the guidance of a plausible conceptual model and credible physical statistical evidence

The conceptual model guiding the experimentation is discussed in the design. The model invokes a chain of events beginnng with the aircraft injection of an ice nucleant into supercooled updraft regions of convective cells. This on-top injection of the nucleant is expected to produce extensive and rapid glaciation of the updraft, resulting in the release of fusion heat, an increase in bouyancy and invigoration of the cells' internal circulations, including downdrafts. It is predicted that seeded cells will grow taller, produce higher rain rates, last longer, and produce more rainfall. The enhanced down-drafts beneath the cells are expected to produce regions of enhanced convergence at the interface between down-draft outflows and the ambient flow and this will invigorate existing cells and/or produce new ones. This sequence of events is predicted to lead ultimately to a larger cloud system that lasts longer and produces more rainfall. This west Texas conceptual model is based in part on the Florida Area Cumulus Experiment program which had a similar conceptual model and which produced over 100% increases in rainfall on the scale of convective cells.

Several constraints have been recognized in conducting this year's west Texas experiment. First and foremost, the effort will be conducted within the monetary constraints of the project. Not all that might be done will be done, because of limited resources. Nevertheless, the experiment, if executed properly, is expected to produce answers to many of the key questions posed by the conceptual model. Second, the researcch will be exploratory in nature, proceed in a stepwise fashion and make allowances for changes at the end of each summer's experimentation. Third, the experimental unit will be the small, multiple-cell convective system and the treatment unit will be cell or cells contained within the system. Fourth, the experiment will be conducted in conjunction with two operational seeding efforts in such a way that neither the scientific nor the operational objectives are compromised. This will require a spirit of cooperation from all of the parties involved in the effort plus the implementation of innovative methods of cloud seeding experimentation.

The experiment will be conducted over a circular target area centered on Sterling City, and coveering nearly 15,000 square kilometers. The target will have a research volume-scan radar at its center and be instrumented with 100 recording rain gages. The rain gages will be used both to estmate total area rainfall and to adjust radar rainfall estimates.

Two seeder aircraft will be provided by the operational seeding projects and an additional seeder aircraft will be provided under contract to the program. Project headquarters, the aircraft control radar and the project aircraft will be based at airports in San Angelo and Big Spring.

The seedings of the small, multiple-cell convective systems will be randomized in pairs. One, and perhaps both, operational seeder aircraft will join the main research aircraft during the seedings. Measurements will be made in and around the seeded and control cloud system whenever possible. Silver iodide pyrotechnics will be the primary nucleant for the experiments, but some seedings with dry ice are anticipated.

The analysis phase will involve a series of physical/statistical analyses that will be based on and be guided by the conceptual model. Natural atmospheric variability will be addressed in the analyses, especially through the use of covariates in linear treatment-effect models. The bases of the statistical inferences of seeding effects are specifically in the design.

The consultant will be expected to co-direct the 1986 summer field project and, on occasion, perform the duties of a cloud physicist on board the project aircraft. The 1986 summer field project will begin on April 15, 1986, and continue seven days a week through and including July 31, 1986.

The consultant will be expected to conduct specific research studies using available radar and raingage data. The objectives of the studies are to:

(1) determine if the seeded cells have higher reflectivities at higher altitudes using volume-scan a radar measurements;

(2) determine if new growth caused by downdraft generation is more frequent and dynamic near seeded cells than unseeded cells;

(3) determine if the seeded cells grow taller and broader, last longer, produce greater rainfall rates, and more total rain volume than unseeded cells;

(4) determine if seeded clusters develoo more total cells than unseeded clusters;

(5) determine if the mean cell rainfall of the seeded cluster increased; and,

(6) determine if the seeded clusters grow larger, last longer, and produce more rainfall.

Budget and contract term. The maximum budget allowable for this contract is $67,000. The total contract period of performance will be approximately nine months. The consultant is expected to begin work on April 1, 1986, and complete all responsibilities and submit a final report by December 3, 1986.

Procedures for selecting consultant. The TWC will select a candidate for award of this contract on the basis of demonstrated competence and qualifications, such as, but not limited to, experience in this or similar work and ability to complete the work in the designated time frame. The selected candidates will be ranked by conducting a detailed evaluation of the candidates' proposals, using criteria such as, but not limited to, demonstrated technical competence, based on previous organizational experience and available facilities and equipment; the competence, related experience, and availability of personnel to be assigned to the project; the proposed technical approach to the project, including approporiate technical methods, tools, solutions, and approaches to the particular problems and objectives of the project; and the proposed management plan and schedule.

The closing date for receipt of offers is March 14, 1986.

This research is a continuation of service previously performed by a private consultant, and the Texas Water Commission intends to award the contract for the consulting services to the private consultant that previously performed the services unless a better offer is submitted.

Additional information. A copy of the Southwest Cooperative Program design document or additional information on the required services or procedures for making an offer can be obtained by writing Robert F. Riggio, Texas Water Commission, Room 225, Stephen F. Austin Building, 1700 North Congress Avenue, P.O. Box 13087, Austin, Texas 78711, (512) 463-7933.

Issued in Austin, Texas, on January 29, 1986.

TRD-8601073 James K. Rourke, Jr.
General Counsel
Texas Water Commission

Filed: January 30, 1986
For further information, please call (512) 463-8070.

★ ★ ★

Enforcement Orders

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Gainesville Foundry Inc. on January 29, 1986, assessing $35,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Haley, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 30, 1986.

TRD-8601107 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: January 31, 1986
For further information, please call (512) 463-7898.

Pursuant to the Texas Water Code, which states that if the commission finds that a violation has occurred and a civil penalty is assessed, the commission shall file notice of its decision in the *Texas Register* not later than the 10th day after the date on which the decision is adopted, the following information is submitted.

An enforcement order was issued to Monument Inn Restaurant on January 29, 1986, assessing $25,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Roger Schultz, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on January 30, 1986.

TRD-8601108 Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: January 31, 1986
For further information, please call (512) 463-7898.

★ ★ ★

Texas Water Development Board

Correction of Error

Proposed rules submitted by the Texas Water Development Board and published in the January 28, 1986, issue of the *Texas Register* (11 TexReg 522-540) should have been identified as those of the board and not the commission.