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32

Texas Register

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Pages 1945-2001

In This Issue...

Emergency Rules

Railroad Commission of Texas

1953-Transportation Division

State Board of Insurance

1953-Surplus Lines Insurance

Comptroller of Public Accounts

1958-Tax Administration

Proposed Sections

Texas Animal Health Commission

1960-Brucellosis

Banking Department of Texas

1962-Miscellaneous

1962-Orders of Commissioner

1962-Chartering, Operations, Mergers, Liquidations

1964-Commission Policies and Administrative Rules

State Securities Board

1964-Administrative Guidelines for Registration of Real Estate Programs

1967-Administrative Guidelines for Registration of Oil and Gas Programs

1968-Forms

Texas State Library and Archives Commission

1968-Library Development

State Board of Insurance

1969-General Administration

1970-Property and Casualty Insurance

1970-Surplus Lines Insurance

Industrial Accident Board

1973-Procedures for Formal Hearings by the Board

1973-Medical Examination Orders

Texas Water Commission

1974-Water Districts

Comptroller of Public Accounts

1975-Tax Administration

Adopted Sections

Credit Union Department

1976-Chartering, Operations, Mergers, Liquidations

Texas Education Agency

1979-Curriculum

1979-Foundation School Program

1981-Teacher Education

1982-Teacher Certification

Board of Nurse Examiners

1982-Licensure and Practice

Texas Air Control Board

1983-Permits

Comptroller of Public Accounts

1984-Tax Administration

Texas Adult Probation Commission

1987-Standards

Open Meetings

1988-Texas State Board of Public Accountancy

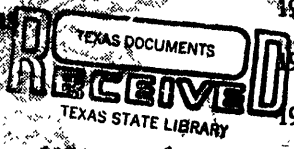
1988-Texas Department of Agriculture

1988-Texas Commission for the Blind

1989-Texas Bond Review Board

1989-Texas Department of Community Affairs

1989-Texas Commission for the Deaf



Texas Register

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- 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
- 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 accumulative quarterly and annual indexes to aid in researching material published.

How To Cite: Material published in the *Texas Register* is referenced by giving 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: "12 TexReg 2 issue date;" while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 12 TexReg 3."

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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).



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1989-Texas State Board of Dental Examiners

1989-Texas Education Agency

1989-Advisory Commission on State Emergency Communications

1990-Employees Retirement System of Texas

1990-Office of the Governor

1990-Health and Human Services Coordinating Council

1990-Texas Heroes Monument Commission

1990-Texas Historical Commission

1990-Texas Department of Human Services

1990-State Board of Insurance

1991-Texas State Library and Archives Commission

1991-Texas Motor Vehicle Commission

1991-Board of Pardons and Paroles

1992-Texas Parks and Wildlife Department

1992-Texas State Board of Pharmacy

1992-Public Utility Commission of Texas

1992-Railroad Commission of Texas

1993-Texas Savings and Loan Department

1993-Texas Statewide Health Coordinating Council

1994-Sunset Advisory Commission

1994-Transition Services Task Force

1994-University Interscholastic League

1994-The University of Texas at Austin

1994-Texas Water Commission

1995-Regional Agencies

In Addition

Banking Section of the State Finance Commission

1997-Change of Location of Public Hearing
Office of the Consumer Credit Commissioner

1997-Notice of Rate Ceilings
Texas Education Agency

1999-Requests for Applications

1999-Request for Contractor Continuance
Texas Department of Human Services

1999-Correction of Errors
Texas State Library and Archives Commission

2000-Consultant Contract Reports
Texas State Board of Medical Examiners

2001-Correction of Error
Texas Water Commission

2001-Consultant Contract Award

2001-Enforcement Order



TAC Titles Affected

TAC Titles Affected—April

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

TITLE 1. ADMINISTRATION

Part III. Office of the Attorney General

1 TAC §59.1—1702

Part V. State Purchasing and General Services Commission

1 TAC §113.6—1518

Part IV. Secretary of State

1 TAC §75.41, §75.42—1579, 1580

Part VI. Credit Union Department

Part X. Automated Information and Telecommunications Council

1 TAC §205.1—1759

Part XII. Advisory Commission on State Emergency Communications

1 TAC §252.1—1902

1 TAC §255.4—1899, 1902

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

4 TAC §§9.10, 9.12, 9.13—1538

Part II. Texas Animal Health Commission

4 TAC §34.1, §34.2—1902

4 TAC §35.2—1910

4 TAC §35.2, §35.4—1960

4 TAC §§47.1, 47.2, 47.6—1903

4 TAC §49.1—1910

TITLE 7. BANKING AND SECURITIES

Part I. State Finance Commission

7 TAC §3.7—1668

7 TAC §3.33—1911

7 TAC §3.101—1580

7 TAC §3.102—1582

7 TAC §3.103—1582

7 TAC §3.104—1583

7 TAC §3.105—1583

Part II. Texas Department of Banking

7 TAC §11.25—1903

7 TAC §11.82—1962

7 TAC §§15.1-15.3—1962

7 TAC §§15.11-15.13—1962

7 TAC §27.1—1911

7 TAC §31.7—1911

7 TAC §91.203—1962

7 TAC §91.209—1963

7 TAC §91.401—1963

7 TAC §97.114—1964

7 TAC §§117.1, 117.5, 117.6—1964

7 TAC §§121.6, 121.8, 121.10—1967

7 TAC §133.31—1968

Part VI. Credit Union Department

7 TAC §91.701—1976

7 TAC §91.802—1979

TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

13 TAC §§1.71, 1.74, 1.84, 1.85—1968

13 TAC §§13.1-13.3, 13.7, 13.8, 13.10, 13.13, 13.17, 13.20, 13.22, 13.24, 13.26—1584

13 TAC §15.1, §15.2—1585

13 TAC §§17.1-17.3—1588

Part IV. Texas Antiquities Committee

13 TAC §§41.3-41.18, 41.20, 41.22, 41.24, 41.26—1667

13 TAC §§41.1, 41.3-41.13, 41.16, 41.17, 41.19-41.23, 41.25-41.27—1667

13 TAC §§41.1, 41.3-4.18, 41.20, 41.22, 41.24, 41.26—1736

13 TAC §§41.1, 41.3-41.14, 41.18, 41.20-41.22, 41.24-41.27—1736

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

16 TAC §3.31—1758

16 TAC §5.91—1605

16 TAC §5.256—1609

16 TAC §5.316—1609

16 TAC §5.459—1911, 1953

Part II. Public Utility Commission of Texas

16 TAC §23.3—1749

16 TAC §23.28—1759

16 TAC §23.49—1749

TITLE 19. EDUCATION

Part II. Texas Education Agency

19 TAC §61.232—1710

19 TAC §75.61—1979

19 TAC §75.142—1979

19 TAC §§75.151-75.152—1912

19 TAC §81.164—1900

19 TAC §105.1—1980

19 TAC §§105.41-105.46, 105.48, 105.50, 105.53-105.55—1980

19 TAC §105.49—1980

19 TAC §105.91—1980

19 TAC §105.92—1980

19 TAC §105.111—1980

19 TAC §105.151—1980

19 TAC §105.191—1980

19 TAC §105.211—1981

19 TAC §105.231—1981

19 TAC §§105.251, 105.256, 105.57—1981

19 TAC §105.271—1981

19 TAC §105.311, §105.312—1981

19 TAC §105.331—1981

19 TAC §105.351—1981

19 TAC §105.371—1981

19 TAC §109.61—1518

19 TAC §137.41—1981

19 TAC §137.69—1982

19 TAC §§137.511, 137.555, 137.556, 137.558—1982

19 TAC §141.3—1982

Part III. Teachers Professional Practices Commission

19 TAC §177.1—1703

TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

22 TAC §109.171—1590, 1605

22 TAC §109.172—1591, 1605

22 TAC §109.173—1591, 1605

22 TAC §109.174—1591, 1605

22 TAC §109.175—1592, 1605

22 TAC §109.176—1593, 1605

22 TAC §109.177—1593, 1606

22 TAC §115.10—1668

22 TAC §§116.1-116.4—1594, 1606

Part VII. Texas Board of Examiners in the Fitting and Dispensing of Hearing Aids

22 TAC §141.37—1519

22 TAC §143.1—1519

Part IX. State Board of Medical Examiners

22 TAC §161.1—1610

22 TAC §161.3—1610

22 TAC §175.1—1752

22 TAC §179.6—1669

22 TAC §193.7—1594, 1606, 1900

Part XI. Board of Nurse Examiners

22 TAC §§217.2, 217.4, 217.5—1982

22 TAC §217.13—1983

Part XXII. Texas State Board of Public Accountancy

22 TAC §511.21—1704

22 TAC §511.163—1904

22 TAC §523.61—1520

22 TAC §523.71—1610

22 TAC §523.72—1611

22 TAC §523.73—1671

22 TAC §523.74—1671

Part XXIII. Texas Real Estate Commission

22 TAC §535.162—1595

22 TAC §535.163—1909

22 TAC §535.164—1595

Part XXXI. Texas State Board of Dietitians

22 TAC §711.11—1596

TITLE 25. HEALTH SERVICES

Part II. Texas Department of Mental Health and Mental Retardation

25 TAC §§401.681-401.692—1631, 1642

25 TAC §§402.201-402.203, 402.218, 402.222—1634

Part VII. Texas Medical Disclosure Panel

25 TAC §601.1, §601.2

Part XIII. Toxic Substances Coordinating Committee

25 TAC §§1001.1-1001.6—1522

TITLE 28. INSURANCE

Part I. State Board of Insurance

28 TAC §1.406—1901, 1969

28 TAC §3.3311—1517

28 TAC §5.2003—1970

28 TAC §§7.201-7.205, 7.209, 7.210, 7.213—1761

28 TAC §9.1—1709

28 TAC §§15.5, 15.7-15.5, 15.21, 15.23, 15.26—1953

28 TAC §§15.10, 15.11, 15.15, 15.23—1957

28 TAC §15.28—1701, 1904

28 TAC §15.101—1701, 1957, 1970

Part II. Industrial Accident Board

28 TAC §49.125—1973

28 TAC §51.7—1539

28 TAC §53.22—1539

28 TAC §55.50—1539

28 TAC §56.40—1539

28 TAC §69.33—1522

28 TAC §69.55—1973

**TITLE 31. NATURAL RESOURCES
AND CONSERVATION**

Part II. Texas Parks and Wildlife Department

31 TAC §§65.6, 65.7, 65.11, 65.14, 65.21, 65.23, 65.24, 65.31, 65.32, 65.33, 65.41, 65.42, 65.44, 65.45, 65.46, 65.47, 65.71, and 65.78—1642

31 TAC §§65.37, 65.61-65.64—1654

31 TAC §115.171, §115.176—1540

31 TAC §§115.191, 115.193, 115.194—1541

31 TAC §§115.201-115.203—1543

31 TAC §§115.291, 115.293, 111.294—1544

Part III. Texas Air Control Board

31 TAC §103.87—1705

31 TAC §116.12—1983

Part IX. Texas Water Commission

31 TAC §§285.101-285.115—1765

31 TAC §§285.121-285.135—1765

31 TAC §§285.161-285.174—1765

31 TAC §§285.181-285.192—1765

31 TAC §§285.201-285.216—1765

31 TAC §§285.221-285.236—1765

31 TAC §§285.261-285.274—1765

31 TAC §§285.281-285.294—1765

31 TAC §§285.311-285.326—1765

31 TAC §§285.341-285.356—1765

31 TAC §§285.371-285.396—1765

31 TAC §§285.401-285.414—1765

31 TAC §§285.421-285.434—1765

31 TAC §§285.451-285.464—1765

31 TAC §§285.481-285.496—1765

31 TAC §§285.511-285.523—1765

31 TAC §§285.531-285.543—1765

31 TAC §§285.551-285.560, 285.562-285.564—1765

31 TAC §§285.581-285.604—1765

31 TAC §293.63—1523

31 TAC §§293.361-293.365—1974

31 TAC §§304.1-304.3—1596

31 TAC §§304.11-304.16—1598

31 TAC §304.21—1599

31 TAC §§304.31-304.33—1599

31 TAC §§304.41-304.44—1600

31 TAC §304.51—1600

31 TAC §§304.61-304.63—1600

31 TAC §305.125—1523

31 TAC §§305.501-305.506—

31 TAC §§307.1-307.10—

31 TAC §335.13—1524

31 TAC §§335.201, 335.202, 335.204—1913

31 TAC §§423.10, 423.13, 423.22—1654

Part X. Texas Water Development Board

31 TAC §§373.2-373.5, 373.8, 373.12-373.14, 373.16, 373.17, 373.20-373.22, 373.25, 373.28, 373.30, 373.32-373.34—1753

31 TAC §375.15—1756

31 TAC §§375.34-375.37—1756

31 TAC §375.63—1757

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §3.293—1636,1655

34 TAC §3.350—1958, 1975

34 TAC §3.357—1984

34 TAC §3.391—1525, 1545

34 TAC §3.403—1526, 1545

34 TAC §3.404—1528

34 TAC §3.405—1529, 1545

34 TAC §3.413—1530

34 TAC §3.548—1638,

34 TAC §3.554—1639,

34 TAC §3.555—1640,

34 TAC §3.556—1641,

34 TAC §3.601—1531

34 TAC §3.602—1531

Part III. Teacher Retirement System of Texas

34 TAC §23.3—1672

34 TAC §25.32—1672

34 TAC §29.50, §29.51—1672

34 TAC §§43.1-43.47—1672

Part VII. State Property Tax Board

34 TAC §161.1—1611

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part I. Texas Department of Public Safety

37 TAC §1.126—1868

37 TAC §15.81—1603

Part III. Texas Youth Commission

37 TAC §81.121—1735, 1757

Part VII. Texas Commission on Law Enforcement Officer Standards and Education

37 TAC §211.70, §211.77—1603

37 TAC §211.77—1606

Part X. Texas Adult Probation Commission

37 TAC §321.1—1987

37 TAC §321.11—1987

Part XI. Texas Juvenile Probation Commission

37 TAC §341.1—1672

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §11.6008—1868

40 TAC §15.3307—1919

40 TAC §27.1206—1546

40 TAC §27.2301—1706

40 TAC §27.2409—1706

40 TAC §27.3010—1546

40 TAC §27.9801—1532

40 TAC §§30.101, 30.103, 30.105—1547

40 TAC §33.301—1905

40 TAC §§33.324-33.327—1905

40 TAC §46.2002—1906

40 TAC §46.2009, §46.2010—1906

40 TAC §§47.901-47.906—1655
40 TAC §§47.1901-47.1904—1656
40 TAC §47.1906—1657
40 TAC §§47.2901-47.2905, 47.2907-47.2912—1657

40 TAC §§47.2901-47.2914—1657
40 TAC §§47.3901-47.3905—1660
40 TAC §47.3906—1661
40 TAC §47.3907—1661
40 TAC §47.4901—1661
40 TAC §§47.4901, 47.4903, 47.4904—1661
40 TAC §47.5901—1663
40 TAC §47.6902—1663
40 TAC §48.1201—1547, 1663
40 TAC §48.2906, 48.2907—1664
40 TAC §48.2908—1664
40 TAC §48.2918—1664
40 TAC §48.2919, §48.2928—1547
40 TAC §48.2931—1711
40 TAC §48.3903—1547
40 TAC §48.5907—1548
40 TAC §48.8902—1548
40 TAC §49.316, §49.317—1907

40 TAC §§49.2105, 49.2106, 49.2110, 49.2111—1674

40 TAC §52.101—1548
40 TAC §52.301—1549
40 TAC §§52.401-52.403—1549
40 TAC §§52.501-52.503—1550
40 TAC §§52.601-52.603—1552
40 TAC §§79.2401-79.2408—1869
40 TAC §§85.6050-85.6052—1706
Part IV. Texas Commission for the Blind
40 TAC §174.5—1707

Part IX. Texas Department on Aging
40 TAC §255.35—1675
40 TAC §255.36—1552
40 TAC §267.1 §267.2—1665
40 TAC §§275.2-275.4—1553
40 TAC §§295.1, 295.3, 295.5—1665
TITLE 43. TRANSPORTATION

Part I. State Department of Highways and Public Transportation
43 TAC §§1.21, 1.23, 1.26, 1.41, 1.43, 1.46, 1.48, 1.56, 1.59, 1.60, 1.62, 1.63—1701
43 TAC §1.68—1701
43 TAC §9.5—1701

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Emergency Rules

An agency may adopt a new or amended section or repeal an existing section on an emergency basis if it determines that such action is necessary for the public health, safety, or welfare of this state. The section 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 sections. New language added to an existing section is indicated by the use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Chapter 5. Transportation Division

Subchapter U. General and Special Rules of Practice and Procedure

16 TAC §5.459

The Railroad Commission of Texas is renewing the effectiveness of the emergency adoption of amended §5.459, for a 60-day period effective April 15, 1988. The text of amended §5.459 was originally published in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4875).

Issued in Austin, Texas on April 15, 1988.

TRD-8803881 Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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Expiration date: June 14, 1988

For further information, please call: (512)
463-7149

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 15. Surplus Lines Insurance

Subchapter A. General Regulation of Surplus Lines Insurance

28 TAC §§15.5, 15.7-15.15, 15.21, 15.23, 15.26

The State Board of Insurance adopts on an emergency basis new §§15.10, 15.11, 15.15, and 15.23, and amendments to §§15.5, 15.7-15.9, 15.12-15.14, 15.21, and 15.26, concerning general regulation of surplus lines insurance. Adoption of the new sections and amendments on an emergency basis is necessary in order to conform Subchapter A to the provisions of the Insurance Code, Article 1.14-2, §6A, and other provisions of Article 1.14-2, in accordance with recent Senate Bill 989, which provides for creation of a Surplus Lines Stamping Office of Texas (the stamping

office) for filing copies of surplus lines insurance contracts and receiving reports from surplus lines agents, so that the public welfare will benefit from closer record keeping concerning surplus lines insurance contracts, from closer scrutiny of surplus liens insurance, from the greater availability of information concerning the business of surplus lines insurance in this state, and from the resulting improvement in the effectiveness of the regulation of insurance. The amendment to §15.5 clarifies and expands the bases for suspension or refusal of a surplus lines agent's license. The amendment to §15.7 provides for evaluation by the stamping office of surplus lines insurance policies, contracts, or other detailed evidences of coverage for eligibility under the Insurance Code, and provides for reporting on such evaluation to the commissioner of insurance. The amendment to §15.8 expands reference to requirements for eligibility to write surplus lines insurance under the Insurance Code, Article 1.14-2, §8, and provides for supervising, reporting, and making public information concerning the eligibility or lack of authorization of insurers to write surplus lines insurance. The amendment to §15.9 imposes an obligation on agents to report to the stamping office questionable operations of unauthorized insurers, and recites limitations on surplus lines agents' placing insurance with unauthorized insurers. New §15.10 establishes definitions for admitted or authorized insurer, person, surplus lines insurer, and unauthorized insurer. New §15.11 recites the imposition of a stamping fee on surplus lines agents for each policy, contract, or other evidence of coverage, or for alterations or cancellations thereof. The amendment to §15.12 adopts by reference two forms for semiannual reporting of taxes and for reporting of investigations or adjustments of losses or claims. The board has filed copies of these reporting forms with the Secretary of State's Office, Texas Register Section. Persons desiring copies of the forms can obtain copies from the Surplus Lines Stamping Office of Texas, P.O. Box 9906, Austin, Texas 78766-9906. The amendment to §15.13 clarifies and expands requirements for agents to provide information to the commissioner or the stamping office, for examination of agents' records, and for investigation of complaints, and provides that some requirements for information do not apply to policies or contracts issued or renewed with an effective date on or after July 1, 1988. The amendment to §15.14 provides that some requirements for reporting agent's taxes do not apply to policies, contracts, or other coverage issued with an effective date after July 1, 1988. New §15.15 recites requirements for reporting of investigations or adjustments of losses or claims. The amendment to §15.21 requires that insurance contracts, policies, and other documents shall bear a statement regarding the absence of protection against possible

insolvency of a surplus lines insurer. New §15.23 recites requirements for surplus lines agents to pay stamping fees and to file with the stamping office a copy of each executed policy, contract, or other evidence of coverage, or of alterations or cancellations thereof. The amendment to §15.26 clarifies requirements and effects of semiannual tax reporting by surplus lines agents and the interaction of the stamping office with such tax reporting.

The new sections and amendments are adopted on an emergency basis under the Insurance Code, Article 1.14-2, §3A, which authorizes the State Board of Insurance to promulgate rules concerning surplus lines insurance, and §6A, which provides that the Surplus Lines Stamping Office of Texas is subject to the rules of the board and which provides for collection of stamping fees from surplus lines agents.

§15.5. Suspension or Refusal of Surplus Lines Agent's License.

(a) Basis for suspension or refusal of surplus lines license. The commissioner may suspend or refuse to renew the license of a surplus lines agent upon any one or more of the following grounds:

(1) failure to allow the commissioner to examine the agency's accounts and records or removal of the accounts and records of the agent's [his] surplus lines business from this state during the period when such accounts and records are required to be maintained under the Insurance Code [article] 1.14-2, §15, and this chapter [these sections];

(2) failure to make and file all [affidavits and] reports when due as required by the Insurance Code, Article 1.14-2[, §6 and §16,] and this chapter [these sections];

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

(7) violation of the provisions of the Insurance Code or the provisions of this chapter. [these sections].

(b) Administrative procedure. In a proceeding to suspend or for refusal to renew the license of a surplus lines agent, the commissioner shall follow the same procedures as are applicable for the refusal or suspension of the underlying license of local recording agents under the Insurance Code, Article 21.14, §§16-19, or of managing general agents under the Insurance Code, Article 21.07-3, §§12-15, as applicable.

(c) Minimum period of suspension. No surplus lines agent whose license has

been suspended shall again be relicensed until penalties or delinquent taxes owed by the agent [him] have been paid.

§15.7. Eligibility Requirements for Surplus Lines Insurance.

(a) No insurance coverage shall be eligible for surplus lines unless the full amount of insurance required is not procurable, after a diligent effort has been made to do so, from among the insurers licensed to transact and actually writing that kind and class of insurance in this state, and the amount of insurance eligible for surplus lines shall only be the amount in excess of the amount so procurable from licensed insurers.

(b) The Surplus Lines Stamping Office of Texas (the stamping office) shall evaluate surplus lines insurance policies, contracts, or other detailed evidences of coverage which have an effective date on or after July 1, 1988, for eligibility under the Insurance Code, Article 1.14-2, §5, and other applicable provisions of the Insurance Code, Article 1.14-2, using evidence of the following facts and criteria, as applicable:

(1) the surplus lines agent's determination that the authorized insurers and other agents with which business is conducted are not writing the kind and class of insurance sought or will not write the risk involved;

(2) the kind and class of insurance that is reasonably available from authorized insurers;

(3) the rates that would be applicable to the insurance coverage if the coverage had been written by an admitted company;

(4) the rate applied to the insurance coverage procured through the surplus lines agent;

(5) the terms, conditions, and coverages of the insurance contract issued;

(6) the policy forms approved or promulgated for use by authorized insurers for similar coverage; and

(7) any other relevant evidence relating to eligibility under the statute.

(c) Policy or contract forms and the contract terms thereof shall not be eligible unless:

(1) the use is reasonably necessary for the principal purposes of the coverage;

(2) the use would not be contrary to the purposes of the coverage; or

(3) the use would not be contrary to the purposes of the Insurance Code, Article 1.14-1 and Article 1.14-2, with respect to the reasonable protection of authorized insurers from unfair com-

petition by unauthorized insurers; and

(4) the contract meets the requirements of §15.21 of this title (relating to Minimum Content of Contracts).

(d) The stamping office shall provide a written report to the commissioner of any surplus lines insurance policy or contract which appears, after evaluation under this section, to be ineligible under the Insurance Code, Article 1.14-2. Such report shall be provided to the commissioner upon a determination by the stamping office that voluntary compliance as provided in §15.101 of this title (relating to Plan of Operation of the Surplus Lines Stamping Office of Texas) cannot be obtained. Such report shall remain privileged and confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.

(e) Reports received under subsection (d) of this section shall be handled by the commissioner under the same procedure for the refusal or suspension of the underlying license of local recording agents under the Insurance Code, Article 21.14, §§16-19, or managing general agents under the Insurance Code, Article 21.07-3, §§12-15, as applicable. Notice by the commissioner of intention to institute disciplinary action shall be provided to the holder of the license under consideration for disciplinary action upon receipt of the report and determination by the commissioner that the coverage may not be eligible for surplus lines. Violations of the Insurance Code, Article 1.14-2, are subject to the provisions and sanctions of the Insurance Code, Article 1.10, §7.

§15.8. Eligibility Requirements of Surplus Lines Insurers.

(a) An unauthorized insurer [insurance company] is not eligible to write surplus lines insurance in this state under the following circumstances:

(1) it does not have capital and surplus [or its equivalent] required under the Insurance Code, Article 1.14-2, §8, and has not been granted an exemption under the Insurance Code, Article 1.14-2, §8 [that is adequate in relation to its premium writing and the exposure of risks it assumes];

(2) It does not have capital and surplus that is adequate in relation to its premium writings and the exposure of risks it assumes;

(3)[(2)] it is not of good repute and does not provide reasonably prompt service to its policyholders in the payment of valid [just] losses and claims;

(4)[(3)] if the management is not of good repute or is incompetent or untrustworthy or so lacking in insurance company managerial experience as to make its proposed operation hazardous to the insurance-buying public;

(5)[(4)] if the State Board of Insurance has good reason to believe that it is affiliated directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations, with any person whose business operations are or have been detrimental to policyholders, shareholders, investors, or creditors, or to the public;

(6)[(5)] if it is admitted to do business in this state for any purpose, except in accordance with the provisions of the Insurance Code, Article 8.24;

(7) It is an alien unauthorized insurer and does not provide evidence of an irrevocable trust fund in a Federal Reserve System member bank in the United States in an amount not less than \$1.5 million for the protection of all its policyholders in the United States. Such trust fund must comply with the Insurance Code, Article 1.14-2, §8(d);

(8) It does not provide evidence of a license or authority from its domiciliary state or country that it is authorized in that state or country to write the kind and class of business that it proposes to write in Texas.

(b) Surplus lines agents or unauthorized insurers shall provide to the Surplus Lines Stamping Office of Texas (the stamping office), and the stamping office shall examine, information relating to unauthorized insurers' eligibility to write surplus lines insurance. Such information shall include unauthorized insurers' financial statements and documents evidencing authorization to write in its domiciliary jurisdiction the same kind and class of business that it proposes to write in Texas, as well as documents evidencing U.S. Trust funds of alien unauthorized insurers.

(c) Unauthorized insurers or surplus lines agents shall provide other information relevant to the Stamping Office's examination of eligibility that is requested under §15.13 of this title (relating to Surplus Lines Insurance Requests for Information, Examination and Complaints). Such information may include but is not limited to activities of management and agents, history and competency of reinsurers, pattern of claims services, domestic trust agreements, powers of attorney, and biographical affidavits of owners, officers, directors, and the management.

(d) Information received under this section is public record and shall be available for inspection. Such information may be released upon written request. Release of such information shall not be construed as a representation as to its accuracy or reliability. The information so released shall not relieve a surplus lines agent of duties under the Insurance Code, Article 1.14-2, or under §15.9 of this title (relating to Duty of Reasonable

Effort by Surplus Lines Agents To Ascertain Financial Condition and Other Practices as Unauthorized Insurers).

(e) The State Board of Insurance, the stamping office, and the commissioner have no duty or responsibility under the Insurance Code, this section, or §15.101 of this title (relating to Plan of Operation of the Surplus Lines Stamping Office of Texas) to determine the actual financial conditions or claim practices of any unauthorized insurer. The eligibility of each unauthorized insurer underwriting or proposing to underwrite surplus lines risks in Texas is subject to the continuous scrutiny of the State Board of Insurance and the stamping office as provided by rules and regulations of the State Board of Insurance.

(f) If an unauthorized insurer's eligibility is in question, the stamping office shall provide to the surplus lines agent an opportunity to provide additional information.

(g) The stamping office shall report to the commissioner whether unauthorized insurers have submitted evidence which appears to be satisfactory evidence for eligibility under this section and the Insurance Code, Article 1.14-2. Such reports shall be maintained privileged and confidential unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.

(h) Upon receiving reports under subsection (g) of this section, the commissioner shall determine if satisfactory evidence of eligibility has been presented and notify the surplus lines agent or unauthorized insurer of that determination.

(i) A list of unauthorized insurers that have provided satisfactory evidence of eligibility shall be maintained by the State Board of Insurance and shall be public record. Such list shall be available for public inspection and may be released upon written request. Such list shall contain sufficient information to inform the public of the limitations of the Board's authority with regard to surplus lines insurers and the relevant differences between surplus lines insurers and admitted insurers.

§15.9. Duty of Reasonable Effort by Surplus Lines Agents To Ascertain Financial Condition and Other Practices of Unauthorized Insurers [Insurer].

(a) Before placing insurance with an unauthorized insurer, a surplus lines agent shall personally make a reasonable inquiry into the financial condition and operating history of an unauthorized insurer [in order that the interest of Texas policyholders and citizens may be protected].

(b) During the course of placing business with an unauthorized insurer, either foreign or alien, each surplus lines

agent shall be under a continuous duty to stay apprised of each insurer's [apprise himself that such insurer maintains a condition of] solvency and sound financial strength, and that the insurer processes claims and pays losses expeditiously.

(c) Whenever any reasonable doubt arises as to the capacity, competence, stability, claim practices, or good faith of an unauthorized insurer with whom a surplus lines agent has placed insurance [on behalf of an insurer], the agent is under a further duty to inform the commissioner and the Surplus Lines Stamping Office of Texas of such reasonable doubt.

(d) Each surplus lines agent has the duty to place surplus lines insurance on Texas risks only with an unauthorized insurer:

(1) that possesses financial solvency adequate to its business;

(2) that has a surplus to policyholders which is reasonable in relation to its outstanding liabilities;

(3) that is of good repute and is competently managed;

(4) that provides reasonably prompt claim service to policyholders; and

(5) that meets all other criteria under the Insurance Code, Article 1.14-2.

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

Admitted or authorized insurer—An insurer that is doing the business of insurance in this state as defined by the Insurance Code, Article 1.14-1, and that is licensed under the provisions of the Insurance Code.

Person—An individual or entity as defined by the Insurance Code, Article 21.21, §2(a).

Stamping office—The Surplus Lines Stamping Office of Texas created by the Insurance Code, Article 1.14-2, §6A, and operating under the plan of operation specified by §15.101 of this title (relating to Plan of Operation of the Surplus Lines Stamping Office of Texas).

Surplus lines insurer—An unauthorized insurer that is not licensed in this state but meets the eligibility requirements and otherwise complies with the Insurance Code, Article 1.14-2.

Unauthorized insurer—An insurer that is conducting the business of insurance as defined in the Insurance Code, Article 1.14-1, and that is not licensed under the Insurance Code.

§15.11. Surplus Lines Stamping Fee. For each surplus lines policy, contract, or other detailed evidence of coverage, including additions or deletions thereto or cancellations thereof, issued on Texas risks with an effective date on or after July 1, 1988, each surplus lines agent or agency shall submit a stamping fee not to exceed 0.4 of 1.0% of gross premiums on policies and contracts. Such fees shall be due and payable as provided in §15.23 of this title (relating to Policy Forms Filings and Stamping Office

Fees).

§15.12. Uniformity of Reporting Forms.

(a) Information and memorandums required under the Insurance Code, Article 1.14-2, and required by this subchapter [these sections] relating to surplus lines insurance, shall be submitted on the forms listed in [paragraphs (1)-(5) of] this subsection. These forms and Form F-SBI-SL-1 are adopted herein by reference and made a part of this subchapter [these sections] in order to establish uniformity of records and to facilitate the orderly processing of required information. These forms and Form F-SBI-SL-1 are published by the State Board of Insurance and may be obtained from the Surplus Lines Stamping Office of Texas, P.O. Box 9906, Austin, Texas 78766-9906.

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

(3) Surplus Lines Insurance Affidavit—Form F-SBI-SL-4. This form is not applicable to surplus lines policies or contracts issued with an effective date on or after July 1, 1988.

(4) Surplus Lines Agent's Semi-annual Tax Report—Form F-SBI-SL-5 (revised 1985). This form is not applicable to surplus lines policies, contracts, or other detailed evidence of coverage, including additions or deletions thereto or cancellation thereof, issued with an effective date on or after July 1, 1988.

(5) Annual Report of Surplus Lines Agent—Form F-SBI-SL-6. This form is not applicable to surplus lines policies, contracts, or other detailed evidence of coverage, including additions or deletions thereto or cancellation thereof, issued with an effective date on or after January 1, 1988.

(6) Semiannual Tax Report Form F-SBI-SL-7. This form is promulgated for surplus lines policies, contracts, or other detailed evidence of coverage, including additions or deletions thereto or cancellation thereof, issued with an effective date on or after July 1, 1988.

(7) Report of Adjuster or Claims Investigator of Policy in an Unauthorized Insurer—ISL Form 015.

(b) Several blank copies of the [Copies of these] forms to which subsection (a) of this section refers will be provided by [may be obtained from] the Surplus Lines Division of the State Board of Insurance, 1110 San Jacinto Boulevard [Street], Austin, Texas 78701-1998 [78786], or the Surplus Lines Stamping Office of Texas, P.O. Box 9906, Austin, Texas 78766-9906 to each licensed surplus lines agent or agency. Each surplus lines agent is responsible for making additional copies of the forms by photocopying or printing [and surplus lines agents are authorized to reproduce these forms using their own facilities].

§15.13. Surplus Lines Insurance Requests

for Information [Affidavit], Examination and Complaints.

(a) (This subsection does not apply to surplus lines policies and contracts issued or renewed with an effective date on or after July 1, 1988.) The agent shall execute a surplus lines insurance affidavit (Form F-SBI-SL-4) for each insurance contract or renewal to be issued. Such affidavit shall be executed in accordance with the instructions thereon and shall be notarized by a notary public.

(b) (This subsection does not apply to surplus lines policies and contracts issued or renewed with an effective date on or after July 1, 1988.) If the annual premiums paid by the insured for such surplus lines coverage exceed \$25,000, the insured may execute the surplus lines insurance affidavit in lieu of the surplus lines agent.

(c) (This subsection does not apply to surplus lines policies and contracts issued or renewed with an effective date on or after July 1, 1988.) The surplus lines insurance affidavit (Form F-SBI-SL-4) shall be filed with the State Board of Insurance on a monthly basis within 30 days after the end of the month in which the insurance was effectuated. It is not required that the agent file an exact copy of the policy issued or other documents otherwise required to be filed pursuant to the Insurance Code, Article 1.14-2, §6, if the agent completed [completes] the equivalent information section as contained in the surplus lines insurance affidavit.

(d) In addition to those documents required to be filed under §15.8 and §15.23 of this title (relating to Eligibility Requirements of Surplus Lines Insurers and Policy Forms Filings and Stamping Office Fees), a [An] surplus lines agent[, however,] may be required at the discretion of the commissioner or the stamping office to file [an exact copy of the policy issued to the insured or to file] any [other] documents necessary to evaluate the eligibility of surplus lines policies, contracts, or other detailed evidences of coverage [required to be filed by the Insurance Code, Article 1.14-2, §6,] on any risk placed by the surplus lines agent with any unauthorized insurer; to examine the eligibility of any unauthorized insurer; or to evaluate any actions relating to other provisions of the Insurance Code, Article 1.14-2. In the event that the commissioner or the stamping office shall request such [exact copies of the policy or] other documents [pertaining to the surplus lines risk], the surplus lines agent shall file the same within 10 days [of] after the receipt of notice of the request for such filings or such later date as may be allowed [the commissioner may allow] based upon good cause shown by the surplus lines agent's written request to the commissioner or the stamping office for an extension of filing time.

(e) The books and records of a surplus lines agent held, pursuant to §15.17 of this title (relating to General) and the Insurance Code, Article 1.14-2, may be examined at any time by the stamping office to evaluate compliance with §§15.7, 15.8, 15.13(e), 15.23, and 15.101 of this title (relating to Eligibility Requirements for Surplus Lines Insurance, Eligibility Requirements of Surplus Lines Insurers, Surplus Lines Insurance Requests for Information, Examination and Complaints, Policy Forms Filings and Stamping Office Fees, and Plan of Operation of the Surplus Lines Stamping Office of Texas) as adopted under the Insurance Code, Article 1.14-2. The results of such examinations by the stamping office shall be incorporated into reports to the commissioner provided under the sections enumerated in this subsection.

(f) Written complaints relating to the procurement of surplus lines coverage that are filed with the stamping office or referred by the State Board of Insurance shall be investigated by the stamping office under this section unless otherwise directed by the State Board of Insurance.

§15.14. Surplus Lines Agent's Semiannual Tax Report. (This section does not apply to surplus lines policies, contracts, or other evidence of coverage, including additions and deletions thereto and cancellation thereof, issued with an effective date on or after July 1, 1988.) The surplus lines agents shall file semiannually with the State Board of Insurance Form F-SBI-SL-5 (surplus lines agent's semiannual tax report) in accordance with §15.26 of this title (relating to Semiannual Tax Report).

§15.15. Reports of Unauthorized Insurance.

(a) Any person investigating or adjusting any loss or claim on a subject of insurance in this state which has been entered into by any insurer not authorized to transact such insurance in this state shall report such policy or contract on ISL Form 015 as provided by §15.12(a)(7) of this title (relating to Uniformity of Reporting Forms) and as required by the Insurance Code, Article 1.14-1. Such form shall be accompanied by a copy of the loss notice.

(b) Such reports shall be filed with the Surplus Lines Stamping Office of Texas, P.O. Box 9906, Austin, Texas 78766-9906. Filings made under this section shall be considered filed in accordance with the Insurance Code, Article 1.14-1, §10.

§15.21. Minimum Content of Contracts.

(a) Every new or renewal insurance contract, policy, certificate, cover note, or other confirmation of insurance procured and delivered as a surplus lines coverage pursuant to the Insurance Code, Article 1.14-2, shall contain as a minimum the following information:

(1)-(8) (No change.)

(9) a statement designating the name and address of the person to whom the commissioner of insurance shall mail service of process in accordance with the Insurance Code, Article 1.14-1 and Article 1.14-2;

(10) (No change.)

(b) Each document mentioned in subsection (a) to this section shall have stamped conspicuously in ink or affixed upon it the following words: "This insurance contract is with an insurer not licensed to transact insurance in this state and is issued and delivered as a surplus lines coverage pursuant to the Texas insurance statutes. The State Board of Insurance does not audit the finances or review the solvency of the surplus lines insurer providing this coverage, and this insurer is not a member of the property and casualty insurance guaranty association created under the Texas Insurance Code, Article 21.28-C. The Texas Insurance Code, Article 1.14-2, §12, [Insurance Code] requires payment of 3.85% tax on gross premium." *§15.23. Policy Forms Filings and Stamping Office Fees.*

(a) An exact copy of each executed surplus lines policy, contract, or other detailed evidence of coverage, including additions or deletions thereto or cancellation thereof, shall be filed by the surplus lines agent with the stamping office within 10 days of issuance. If other detailed evidence of coverage is initially filed, a copy of the policy shall be filed when issued.

(b) The stamping office shall compile information from these filings on an individual surplus lines agent or agency basis within 10 days from the end of each month. Such individual reports shall be provided to the surplus lines agent or agency with a notice of the total stamping fees due. The agent or agency shall pay such fees to the Surplus Lines Stamping Office of Texas at P.O. Box 9906, Austin, Texas 78766-9906, by the end of the month in which the notice of fee is received.

(c) Filing of such policies, contracts, or other detailed evidence of coverage under subsection (a) of this section are made in lieu of filings required under the Insurance Code, Article 1.14-2, §6(a) and (c).

(d) Subsections (a)-(c) of this section are effective for surplus lines policies, contracts, or other detailed evidence of coverage, including additions or deletions thereto or cancellation thereof, issued with an effective date on or after July 1, 1988.

(e) Under the provisions of Texas Civil Statutes, Article 6252-17a(3)(a) (4), individual filings made under this section and compilations of individual filings shall be confidential and shall not be deemed public information unless and until introduced into evidence at an administrative hearing or in a court of competent jurisdiction.

tion.
§15.26. *Semiannual Tax Report.*

(a) Each [The] surplus lines agent shall file semiannually under oath with the State Board of Insurance reports in accordance with this section [Form F-SBI-SL-5 (surplus lines agent semiannual tax report)] together with the payment of taxes [such tax] due on policies, contracts, or other detailed evidences of coverage issued within the reporting period. For the 1988 calendar year the first semiannual report shall be filed on Form F-SBI-SL-5. The second semiannual report of the calendar year 1988 and all semiannual reports thereafter shall be filed on Form F-SBI-SL-7. Such form and taxes shall be filed within 30 days from the first day of January and July of each year. These reports shall satisfy the annual report requirement under the Insurance Code, Article 1.14-2, §16.

(b) The reporting periods for purposes of accounting for the premium tax shall cover the period of January 1–June 30 and July 1–December 31 of each calendar year.

(c) Payment to the State of Texas by the surplus lines agent of the gross premium tax receipts[,] shall be made by a check drawn on the demand account maintained by the agent which comprises the premium tax trust fund. The check shall be made payable to the State Board of Insurance.

(d) (No change.)

(e) The stamping office shall prepare for each surplus lines agent or agency submitting policy forms, a summary of surplus lines policies, contracts, or other detailed evidences of coverage, including additions and deletions thereto and cancellations thereof, which are issued and reported to the Stamping office during the accounting periods specified in subsection (b) of this section. Such reports shall contain a statement of premium tax and stamping fees due. Such reports shall be compiled within 10 days of the close of the semiannual calendar period in the detail required by subsection (a) of this section and provided to the surplus lines agent or agency for submission with Form F-SBI-SL-7 to the State Board of Insurance.

(f) Errors attributable solely to stamping office compilations as described in subsection (e) of this section shall not be construed as failure to pay taxes under the Insurance Code, Article 4.13 or Article 4.14. The surplus lines agent shall be liable only for prompt payment of any additional taxes due and not for interest or penalties. Refund of any amount paid in error of fact or law shall be refunded under the Insurance Code, Article 1.31.

(g) Subsections (e) and (f) of this section shall be effective for surplus lines

policies, contracts, or other detailed evidences of coverage, including additions and deletions thereto and cancellations thereof, issued on or after July 1, 1988.

Issued in Austin, Texas, on April 15, 1988.

TRD-8803897 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 15, 1988

Expiration date: August 16, 1988

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

◆ ◆ ◆
• §§15.10, 15.11, 15.15, 15.23

The State Board of Insurance adopts on an emergency basis the repeal of §§15.10, 15.11, 15.15 and 15.23, concerning the general regulation of surplus lines insurance. Adoption of the repeals on an emergency basis is necessary to clarify Subchapter A to convey as clearly as possible to affected entities the implementation of the provisions of the Insurance Code, Article 1.14-2, §6A, and other provisions of Article 1.14-2, in accordance with recent Senate Bill 989, which provided for creation of a Surplus Lines Stamping Office of Texas for filing of copies of surplus lines insurance contracts and receiving reports from surplus lines agents, so that the public welfare will benefit from closer record keeping concerning surplus lines insurance contracts, from closer scrutiny of surplus lines insurance, from a greater availability of information concerning the business of surplus lines insurance in this state, and from the resulting improvement in the effectiveness of the regulation of insurance. The repeal of §15.10 eliminates language concerning the type of unauthorized insurer with whom an agent may place risks, and concerning the implications of scrutiny by the State Board of Insurance of the suitability of insurers underwriting surplus lines risks in Texas. In order to improve clarity, similar language is now in §15.8(e) and §15.9(b). The repeal of §15.11 eliminates language concerning information which the commissioner may request from surplus lines agent about unauthorized insurers. In order to improve clarity, similar language is now in §15.8(c). The repeal of §15.15 eliminates language concerning annual reporting by agents of surplus lines insurance activities. Section 15.12 and §15.26 and other provisions of Chapter 15 now contain reporting requirements. The repeal of §15.23 eliminates language concerning regulation of eligibility of policy or contract forms and the contract terms thereof. In order to improve clarity, similar language is now in §15.7(c).

These repeals are adopted on an emergency basis under the Insurance Code, Article 1.14-2, §3A, which authorizes the State Board of Insurance to promulgate rules concerning surplus lines insurance.

§15.10. *Suitability of Unauthorized Insurers.*

§15.11. *Special Circumstances in the Placement of Surplus Lines Insurance.*

§15.15. *Surplus Lines Agent's Annual Report.*

§15.23. *Policy Forms.*

Issued in Austin, Texas, on April 15, 1988.

TRD-8803898 Nicholas Murphy
Chief Clerk
State Board of Insurance

Effective date: April 15, 1988

Expiration date: August 16, 1988

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

◆ ◆ ◆
Subchapter D. Surplus Lines
Stamping Office of Texas

• 28 TAC §15.101

The State Board of Insurance adopts on an emergency basis an amendment to the emergency adoption of new §15.101, concerning the plan of operation of the Surplus Lines Stamping Office of Texas (the stamping office). Section 15.101 was adopted on an emergency basis and became effective on December 9, 1987. Notice of the emergency adoption appeared in the December 15, 1987, issue of the *Texas Register* (12 TexReg 4668) and notice of renewal of the effectiveness of the emergency adoption appeared in the April 12, 1988, issue of the *Texas Register* (13 TexReg 1701). An imminent peril to the public welfare requires adoption of new §15.101 and of this amendment on an emergency basis to establish a plan of operation under which the stamping office may initiate operation. Recent legislation created the stamping office to provide closer record keeping and scrutiny of surplus lines insurance contracts. This section provides for creation, organization, operation, compensation, and reimbursement of a board of directors for the stamping office. The section also provides for employment of a general manager who will be responsible for the operation and management of the stamping office in accordance with policy established by the board of directors for the stamping office. The section provides for reporting and recording of surplus lines insurance business and for charging stamping fees from surplus lines agencies. It provides for indemnification of directors, officers, employees, and agents. The section also provides a procedure for dissolution of the stamping office. This amendment explains functions of the stamping office including making inquiries, examining agents, reporting information to the commissioner of insurance, and other functions.

The amendment is adopted on an emergency basis under the Insurance Code, Article 1.14-2, §6A, which provides for approval by the State Board of Insurance of the plan of operation of the Surplus Lines Stamping Office of Texas.

§15.101. *Plan of Operation of the Surplus Lines Stamping Office of Texas.*

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

(f) Functions.

(1) The stamping office shall perform those functions specifically enumerated in the Insurance Code, Article 1.14-2, §6A, subsection (b).

(2) The stamping office shall assist the State Board of Insurance and

facilitate compliance with the insurance laws of the State and the rules and regulations promulgated thereunder by conducting the following functions under the rules promulgated by the State Board of Insurance:

(A) identifying nature and extent of potential violations;

(B) notifying surplus lines agents of such potential violations and seeking voluntary compliance;

(C) examining the eligibility of surplus lines insurance and unauthorized insurers;

(D) reporting to the commissioner the following information;

(i) evaluations of eligibility under §15.7 and §15.8 of this title (relating to Eligibility Requirements for Surplus Lines Insurance and Eligibility Requirements of Surplus Lines Insurers);

(ii) all unresolved alleged violations;

(iii) patterns and practice of any surplus lines agent that may constitute lack of compliance with the applicable insurance laws of the State;

(iv) tax due by individual surplus lines agents or agencies;

(v) compilations of premiums for property coverage written by a surplus lines insurer affiliated with a licensed insurer which information should include the total policy premium; if available, the portion of the premium that is actual extended coverage and other allied lines; and where the risk is located;

(vi) tax due from agents and brokers in other states for independently procured insurance;

(vii) Summaries of the Stamping office activities including actions relating to voluntary compliance;

(viii) results of investigations relating to complaints;

(ix) compilations of premium volume by surplus lines agent, insurer, and kinds and class of surplus lines insurance coverage; and

(x) results of any other examinations under §15.13 of this title (relating to Surplus Lines Insurance Requests for Information, Examination and Complaints);

(E) monitoring the quality of preparation of policies, contracts, or other detailed evidences of coverage, including additions and deletions thereto

and cancellations thereof, including, but not limited to, readability, lack of ambiguity, and completeness;

(F) providing seminars and other educational programs relating to the Insurance Code, Article 1.14-1 and Article 1.14-2, this chapter, and the procedures of the stamping office;

(G) collecting information as provided in this chapter and the Insurance Code, Article 1.14-2, §6A;

(H) maintaining communications with agents, adjusters, unauthorized insurers, licensed advisory associations, and related trade associations;

(I) maintaining communication with the commissioner including electronic or computer communication as required;

(J) providing information to surplus lines agents including tax reports; and

(K) conducting other activities provided by this chapter.

(3) The stamping office is authorized by §15.13 of this title (relating to Surplus Lines Insurance Requests for Information, Examination and Complaints) to make inquiries and examine agents to effect its functions under this chapter.

(4) Any information collected under this chapter that indicates violation of the laws of this state or the rules or regulations adopted thereunder that has not been resolved by voluntary compliance shall be reported to the commissioner. Such report shall not be released to the public by the stamping office. In any proceeding initiated under this chapter, stamping office personnel shall be available to provide evidence and testimony.

(g)[(f)] Records and reports.

(1) A written record of the proceedings of each meeting of the board of directors shall be retained by the secretary with copies furnished to each director.

(2) The board of directors shall, once each year, provide for an independent audit of all the books and records of the stamping office.

(h)[(g)] Indemnification. Each member of the board of directors, officer, employee, or agent of the stamping office shall be indemnified by the stamping office against all expenses, judgments, decrees, fines, penalties, and amounts paid in settlement, or incurred in the defense, of any action taken or not taken by such person in

the performance of such person's powers and duties under the Insurance Code and the rules and regulations of the State Board of Insurance and this plan, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, malfeasance, or reckless disregard of such person's responsibilities. In the event of settlement before final adjudication, such indemnity shall be provided only if the stamping office is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty. The board of directors may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the stamping office against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the stamping office can indemnify such person against such liability under this article.

(i)[(h)] Dissolution. In the event the stamping office is dissolved and all its liabilities have been satisfied, the board of directors, upon a two-thirds majority vote, shall transfer the remaining assets of the stamping office to the State Board of Insurance at the time the stamping office is dissolved or to another organization which must be established for the same or similar purpose as the stamping office and which must be exempt under the Internal Revenue Code, §501(c)(3).

Issued in Austin, Texas, on April 15, 1988.

TRD-8803899 Nicholas Murphy
Chief Clerk
State Board of Insurance

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Expiration date: June 6, 1988

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

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• §3.350

The Comptroller of Public Accounts adopts on an emergency basis the repeal of §3.350, concerning audiovisual works. A new section is being adopted on an emergency basis which is substantially different from the current section.

The repeal is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.350. Audiovisual Works.

Issued in Austin, Texas, on April 18, 1988.

TRD-8803941

BoB Bullock
Comptroller of Public
Accounts

Effective date: April 18, 1988

Expiration date: August 16, 1988

For further information, please call: (512)
463-4004

◆ ◆ ◆
The Comptroller of Public Accounts adopts on an emergency basis new §3.350 concerning motion pictures. The former section is being proposed for repeal. An emergency rule is needed since the comptroller is setting out the responsibilities of television stations, operators of motion picture theatres, motion picture distributors, and changing the responsibilities of production studios.

The new section is adopted on an emergency basis under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.350. Motion Pictures.

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

(1) Motion picture—A series of images on tape, disc, film, or other object intended to be projected to produce the visual effect of motion.

(2) Motion picture master—The master tape, disc, film, or other object in which the motion picture is first fixed for later use in the manufacture of copies of the motion picture. Typically, the production of a motion picture master involves, among other things, a script, a cast, a set, a producer, director, and the ability to do retakes.

(3) Producer—A person who has final creative control over production of a motion picture master.

(4) Production/post-production company—A service company that provides facilities, personnel, equipment, and the technical knowledge and expertise to perform production or post-production work on

a motion picture master. A production/post-production company does not have final creative control.

(5) Video photographers—Any person who makes a tape or film record of property, such as inventory, personal property, or real estate, or who records an event not staged by the photographer, such as a wedding, deposition, or court case, on tape, disc, film, or other object.

(b) Tax responsibilities of production/post-production companies.

(1) A production/post-production company or a person who provides post-production labor is considered to be providing a nontaxable service when performing production or post-production work on a motion picture master under the direction of a producer or another production/post-production company. Post-production work includes, but is not limited to, editing and synchronization of a motion picture master.

(2) The production/post-production company must pay sales or use tax on the purchase, lease, or rental of all taxable items used or consumed in providing the nontaxable service.

(3) Sales tax is due on the total amount charged for making copies of the motion picture master.

(4) A production/post-production company must collect tax on the amount charged for equipment leased or rented to another without an operator. Providing maintenance, repair, or supervision of the equipment is not furnishing an operator. See §3.294 of this title (relating to Rental and Lease of Taxable Items).

(c) Tax responsibilities of a producer.

(1) The sale, lease, or rental of a motion picture or a motion picture master by the person for whom it was produced is subject to tax.

(2) A person who produces a motion picture master for the purpose of producing copies for sale, lease, or rental is considered a manufacturer and should refer to §3.300 of this title (relating to Manufac-

turing; Custom Manufacturing; Fabricating; Processing) and §3.286 of this title (relating to Seller's Responsibilities) for additional information. A person who produces motion picture masters or copies for their own use and not for resale is not entitled to any manufacturing exemption.

(d) Tax responsibilities of video photographers. The total amount charged by a video photographer for a motion picture record of an event or item is subject to tax. See §3.312 of this title (relating to Graphic Arts or Related Occupations; Miscellaneous Activities) for additional information.

(e) Television stations. A person who provides copies of motion pictures to licensed television stations must pay tax on the cost of the processed film physically delivered to a television station. The television station is not liable for tax on the amount the station pays for use of the film.

(f) Motion picture theatres and motion picture distributors.

(1) For sales and use tax purposes, theatre operators and distributors are involved in a joint venture when motion picture film is shown in Texas theatres the admission to which is subject to tax.

(2) Texas tax is due only one time when the film is purchased or licensed in Texas or first enters the state to be shown in a motion picture theatre in Texas. The distributor is responsible for paying the tax at that time to the comptroller based on the cost of the copy. The receipts payable to a distributor as its share of the receipts from the exhibition are not taxable.

(3) The motion picture operator is not responsible for sales tax on either the cost of the film or on the portion of the receipts paid to the distributor.

Issued in Austin, Texas, on April 14, 1988.

TRD-8803859

Bob Bullock
Comptroller of Public
Accounts

Effective date: April 14, 1988

Expiration date: August 16, 1988

For further information, please call: (512)
463-4004



Proposed Sections

Before an agency may permanently adopt a new or amended section, or repeal an existing section, a proposal detailing the action must be published in the *Texas Register* at least 30 days before 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 section. Also, in the case of substantive sections, a public hearing must be granted if requested by at least 25 persons, a governmental subdivision or agency, or an association having at least 25 members.

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

TITLE 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis

4 TAC §35.2, §35.4

The Texas Animal Health Commission proposes an amendment to §35.2, concerning testing of blood by approved personnel; quarantines for brucellosis infected herds; and where to place a "V" brand on an adult vaccinated animal. The amendment clarifies the use of an international permit and adult vaccination permit and movement of rodeo bulls participating in a recognized organized performance.

In §35.2(a), the text was rewritten to more clearly and positively state the procedures to be followed by approved personnel on blood tests made for compliance with this regulation. When the commission has reason to believe a brucellosis test is controversial, contested or disputed, it may require its personnel to be present at the time of blood collection and testing.

The new language in §35.2(k) will amend the TAHC quarantine for brucellosis infected herds to allow only steers and spayed heifers to move from quarantine herds. All other cattle will be required to be "S" branded or released from quarantine by testing. This also includes heifers that presently can move provided they are vaccinated and under eight months of age. The commission proposes this amendment become effective October 1, 1988, to coincide with federal regulations that become effective the same date.

In §35.2(m) the herd owner is required to identify an adult vaccinated animal by placing a hot "V" brand on the right jaw of the animal. The amendment will allow the herd owner the option of placing the "V" brand high on the hip near the tailhead or on the right jaw.

Section 35.4(a) and (b) has been rewritten to make the rule more clear to an individual reader on vaccination requirements for cattle entering Texas from other countries and those entering Texas from other states.

In §35.4 (b)(2)(D), new language is added to allow rodeo bulls participating in an organized group performance to have more free movement. Rodeo bulls are not considered a threat because of brucellosis.

Bill Hayden, director of administration, has determined that for the first five year period the proposed amendments are 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. Hayden has also 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 a clarification of regulatory requirements. There is no anticipated economic cost to individuals who are required to comply with the amendments as proposed.

Comments on the proposal may be submitted to Jo Anne Connor, Texas Animal Health Commission, P.O. Box 12966, Austin, Texas 78711.

The amendments are proposed pursuant under Texas Civil Statutes, Agriculture Code, Chapter 161. This statute provides the commission with authority to propose rules and sets forth the duties of the commission to protect domestic animals in the state from disease.

§35.2 General Requirements.

(a) Testing of blood

(1) All[no] tests [test] shall be made by approved personnel only as the basis for compliance with these regulations. [except a test made by approved personnel]. [All samples initially tested at other than state-federal laboratories shall be submitted (mailed) within 48 hours of collection and confirmed at the state-federal laboratory.]

(2) All tests must be confirmed by a state-federal laboratory as the basis for compliance with these regulations. Test-eligible cattle may be moved based upon the card test results. All samples initially tested at other than state-federal laboratories shall be submitted (mailed) within 48 hours of collection and confirmed at the state-federal laboratory. [No test shall be made the basis for compliance with these regulations except a test which has been confirmed by a state-federal laboratory; however, test-eligible cattle may be moved based upon the card test results.]

(3) When the commission has reason to believe the tests are controversial, contested, or disputed, it may require that its personnel be present at the time of blood collection and testing as a basis for compliance with these regulations. In such case, the commission shall notify the herd owner prior to the test.

(b)-(j) (No Change).

(k) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

(1)-(3) (No change)

(4) The plan will consist of the following:

(A)-(B) (No Change.)

(C) Quarantine Provisions.

(i) Officially vaccinated heifers under six months of age for dairy and under eight months of age for beef may move from the herd without restriction.

(i)[(ii)] All cattle except steers and spayed heifers [bulls and nonvaccinated females over four months of age and official vaccinates over six months of age for dairy and over nine months of age for beef] must be "S" branded and receive an "S" permit prior to movement. (To become effective October 1, 1988.)

(ii)[(iii)] Vaccinated heifers, over six months of age for dairy and eight months of age for beef, may be removed from the infected herd and kept separate under quarantine. Such heifers shall pass a negative brucellosis test after calving or be moved in accordance with subparagraph (B) of this paragraph. The parent herd will qualify for release under subparagraph (D)(i) of this paragraph.

(iii)[(iv)] Vaccinated heifers over six months of age for dairy and eight months of age for beef may be maintained with the parent herd. The herd will qualify for release under subparagraph (D)(iii) of this paragraph.

(iv)[(v)] Dairy herds shall be negative to the last milk ring test prior to completion of a herd plan.

(D)-(E) No change.)

(l) (No Change.)

(m) Official vaccination requirements.

(1)-(2) (No Change.)

(3) Adult vaccinated cattle shall be permanently identified as vaccinates by tattoo or by hot "V" brand and by official eartag. Tattoos will be applied to the right ear. The tattoo will include the letters AV,

which will be preceded by a number indicating the quarter of the year and will be followed by a number corresponding to the last digit of the year in which the vaccination was done. Hot "V" brands will be applied to the right jaw, or high on the hip near the tailhead, open end of the "V" up. An official eartag will be placed in the right ear.

(4) (No Change.)

(n)-(v) (No Change.)

§35.4. *Entry and Change of Ownership.*

(a) Requirements for cattle entering Texas from other countries.

(1) Nonvaccinated female cattle shall be quarantined on arrival and within 14 days after reaching the destination stated in the USDA's Report of Inspection (VS Form 17-30) shall meet one of the following requirements for release of the quarantine:

(A) If between the ages of four and 12 months of age they shall be calfhood vaccinated at no expense to the State of Texas; or

(B) If over 12 months of age they shall either be adult vaccinated following development of a herd plan outlining requirements of adult vaccination or be "S" branded and under "S" permit be consigned to a quarantined feedlot or to slaughter.

(b)(a) Requirements for cattle entering Texas from other states.

(1) Vaccination. All female cattle born after January 1, 1983, and four months of age and older entering shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements:

(A)-(E) (No change.)

(F) [nonvaccinated] female cattle over 12 months of age may enter [on an international permit or] on an adult vaccination permit to the destination stated in the permit where they shall remain quarantined until released. Prior to an "AV" permit being granted, the buyer will co-sign a herd plan with a state/federal veterinarian to acknowledge the requirements following adult vaccination of cattle. Within 14 days of reaching the destination stated in the permit, such cattle shall[:]

(i) if entering on an international permit, either be:

(I) adult vaccinated;

or

(II) "S" branded and under "S" permit be consigned to a quarantined feedlot or to slaughter; or

(ii) if entering on an adult vaccination permit, be adult vaccinated.

(2) Testing. All test-eligible cattle entering Texas:

(A)-(C) (No change.)

(D) rodeo bulls participating in a recognized and organized performance group may be moved without meeting other testing requirements provided:

(i) the bulls have been subjected to an official negative test for brucellosis within the previous 12 months; and

(ii) each bull is individually identified;

(iii) there is no change of ownership; and

(vi) they are accompanied with an "E" permit.

(E)(D) shall be tested negative one or more times as described in this subparagraph:

(i) cattle from a Class "A" state or area shall:

(I) be tested negative within 30 days prior to entry and accompanied with an "E" permit; or,

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test prior to sale;

(ii) cattle from a Class "B" state or area shall:

(I) be tested negative within 30 days prior to entry, accompanied with an "E" permit, and held under quarantine for a negative retest 45-120 days at a farm, ranch or feedlot; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test and held under quarantine for a negative retest 45-120 days after sale to a farm, ranch, or feedlot;

(iii) cattle from a Class "C" state or area shall:

(I) be official vaccinates and tested negative within 30 days prior to entry and be accompanied with an "E" permit, or be consigned directly from a farm of origin to a USDA specifically approved livestock market for testing. Cattle will be held under quarantine after movement or sale for a negative retest 45-120

days at a farm, ranch or feedlot;

(II) be nonvaccinated and:

(-a-) be from a nonquarantined herd in which all test eligible cattle have been together for at least 120 days and have been subjected to a negative test as a herd within the last 365 days. Nonvaccinated females may move from the herd for up to 30 days following the herd test without further testing prior to movement. After 30 days, one additional negative test is required within 30 days prior to movement from the herd. Animals moving under this provision shall be accompanied by a written statement signed by the owner and accredited veterinarian or by other documentation which will establish that such animals originated from a herd which has been intact for at least 120 days prior to movement;

(-b-) be from a nonquarantined herd and accompanied by proof of two negative tests at least 60 days apart. The second test must be conducted within 30 days prior to movement and may be conducted at a USDA specifically approved livestock market if the cattle are moving directly from a farm of origin. The first test is valid for 12 months.

(III) Cattle from a Class "C" state area must be accompanied with or and "E" permit or be consigned directly from a farm of origin to a USDA specifically approved livestock market. Cattle will be held under quarantine after movement or sale for a negative retest 45-120 days at a farm, ranch or feedlot.

(c)(b) Change of ownership within Texas.

(1) Vaccination. It is recommended that all female cattle born after January 1, 1983, four months of age and older, and purchased or sold for use in grazing, breeding, dairying operations, or confinement in a dry lot not under quarantine be officially vaccinated.

(2) Testing. All test-eligible cattle changing ownership with Texas shall:

(A) originate from a certified free herd; or,

(B) be tested negative within 30 days prior to sale; or,

(C) consigned to a livestock market and tested negative prior to sale; or

(D) consigned to a slaughter establishment for testing or blood collection.

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 April 8, 1988.

TRD-8803824

John W. Holcombe, DVM
Executive Director
Texas Animal Health
Commission

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 479-6697

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 11. Miscellaneous

7 TAC §11.82

The Banking Department of Texas proposes an amendment to §11.82, concerning the purchase or sale of securities by a bank under resale or repurchase agreements. The amendment is proposed to provide consistency with generally accepted accounting principles.

Carlos J. Contreras, III, assistant general counsel, has determined that for the first five-year period the proposed sections are 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. Contreras also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide consistency with the generally accepted accounting principles (GAAP). There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Jorge A. Gutierrez, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705.

The amendment is proposed under Texas Civil Statutes, Article 342-113, which provide the Banking Section of the Finance Commission with the authority to promulgate rules which are not inconsistent with the constitution and statutes of this state.

§11.82. *Investments.*

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

[(c) Resale or repurchase agreement. The purchase or sale of securities by a bank, under an agreement to resell or repurchase at the end of a stated period, is not a borrowing nor an obligation.]

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 April 14, 1988.

TRD-8803851

Jorge A. Gutierrez
General Counsel
Department of Banking

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 479-1200

Chapter 15. Orders of Commissioner

• 7 TAC §§15.1-15.3

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Banking, 2601 North Lamar Boulevard, Austin or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The Banking Section of the State Finance Commission proposes the repeal of §§15.1-15.3, concerning procedures for imposition of supervision and conservatorship on state banks and trust companies. The repeals are proposed in order to enhance the ability of the banking commissioner to supervise state-chartered banks and trust companies and protect the interests of the depositors, customers, and creditors.

Carlos J. Contreras, III, assistant general counsel, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Contreras also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be enhanced ability of the banking commissioner to supervise state chartered banks and trust companies and protect the interests of depositors, customers, and creditors. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Carlos J. Contreras, III, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeals are proposed under Texas Civil Statutes, Article 342-113, which provide the Banking Section of the State Finance Commission with the authority to promulgate rules which are not inconsistent with the constitution and statutes of this state.

§15.1. *Failure to Comply.*

§15.2. *Request for Review.*

§15.3. *Appeal.*

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 April 14, 1988.

TRD-8803849

Jorge A. Gutierrez
General Counsel
Department of Banking

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 479-1200

• 7 TAC §§15.11-15.13

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Banking, 2601 North Lamar Boulevard, Austin or in the Texas Register office, Room 503, Sam Houston Building, 201 East 14th Street, Austin.)

The Banking Section of the State Finance Commission proposes the repeal of §§15.11-15.13, concerning procedures for the issuance of cease and desist orders. The repeals are proposed in order to enhance the ability of the banking commissioner to supervise state-chartered banks and trust companies and protect the interests of depositors, customers, and creditors.

Carlos J. Contreras, III, assistant general counsel, has determined that for the first five-year period the proposed repeals are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the repeals.

Mr. Contreras 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 enhanced ability of the banking commissioner to supervise state-chartered banks and trust companies and protect the interests of depositors, customers, and auditors. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted to Carlos J. Contreras, III, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The repeals are proposed under Texas Civil Statutes, which provide the Banking Section of the State Finance Commission with the authority to promulgate rules which are not inconsistent with the constitution and statutes of this state.

§15.11. *Effective Date and Appeal.*

§15.12. *Removal from Office.*

§15.13. *Disposition of Order.*

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 April 14, 1988.

TRD-8803850

Jorge A. Gutierrez
General Counsel
Department of Banking

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 479-1200

Chapter 91. Chartering, Operations, Mergers, Liquidations

Organization Procedures

• 7 TAC §91.203

The Credit Union Commission proposes an

amendment to §91.203, concerning incorporation procedures. The amendment provides requirements relative to incorporate a credit union.

John R. Hale, commissioner, has determined that for the first five-year period the proposed section is 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. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be elimination of a charter fee and investigation fee which are deemed obsolete. There is no anticipated economic cost to individuals who are required to comply with the section as proposed. Each credit union, when chartered, will avoid a \$75 expenditure.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

This amendment is proposed under Texas Civil Statutes, Article 2461-1.01, et seq., §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.203. Incorporation Procedures.

(a) No fees are assessed for processing a state credit union charter or for expenses incidental to the investigation of the application and the qualifications of applicants. [The charter fee for obtaining a state credit union charter shall be \$25. This fee will be refunded if a charter is denied.

(b) An investigation fee is required to be transmitted with each charter application in an amount of \$50 to cover departmental expenses incidental to the investigation of the application and the qualifications of the applicant. The investigation fee is not refundable.]

(c) When the commissioner has determined that an application to incorporate a credit union is complete and has been properly filed, he shall published notice of the filing of the application in the commissioner's newsletter.

(d) The commissioner's decision to approve or deny the application to incorporate shall be evidenced by a written order.

(e) Any person aggrieved by the decision of the commissioner or any incorporator may file a written appeal to the commission and request a hearing on the application to incorporate. If a hearing has been held prior to the commissioner's decision on the application to incorporate, the commission may in its sole discretion, schedule another hearing on the application. If no hearing has been held prior to the commissioner's decision, the commission shall, within 10 days of receipt of the written appeal, set a date for a hearing. Any such hearing shall be scheduled within 60 days of receipt of the written appeal. The commissioner shall notify all parties of the

date, time, and place of the hearing, by registered or certified mail, and shall publish notice of such hearing in the *Texas Register*. The commission shall affirm or reverse the decision of the commissioner after reviewing the information furnished with the application, the articles of incorporation, the results of any investigation of the application, the articles of incorporation, the results of any investigation of the application, information in the official records of the department, and the evidence adduced at any hearing by issuing a written order signed by the chairman or deputy chairman of the commission. The decision of the commission shall be determined by a majority vote of the members of the commission.

(f) An appeal of a decision of the commissioner may be informally disposed of pursuant to the provisions of §93.59 of this title (relating to Informal Disposition of Contested Case).

(g) Any hearing relating to an application to incorporate a credit union shall be conducted pursuant to the provisions of §§93.41-93.64 of this title (relating to Contested Cases).

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 April 15, 1988.

TRD-8803828

John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 837-9236

• 7 TAC §91.209

The Credit Union Commission proposes an amendment to §91.209, concerning filing fee and penalties for late filing. The amendment provides the requirement for the filing of annual reports, the penalty assessed when reports are received late, and the elimination of the filing fee.

John R. Hale, commissioner, has determined that for the first five-year period the proposed section is 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. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the elimination of a filing fee which has become uneconomical to collect. There is no anticipated economic cost to individuals who are required to comply with the section as proposed. Each credit union will realize a \$10 per year savings, and costs related to collection of the fees will be eliminated.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

This amendment is proposed under Texas Civil Statutes, Article 2461-1.01, et seq., §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.209. Filing Fee and Penalties for Late Filing.

(a) (No change.)

(b) Filing fee. No filing fee is required [Each credit union filing such a report shall remit a filing fee of \$10 to cover the cost of processing and tabulating such reports].

(c) (No change.)

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

Issued in Austin, Texas, on April 15, 1988.

TRD-8803827

John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 837-9236

Powers of Credit Unions

7 TAC §91.401

The Credit Union Commission proposes an amendment to §91.401, concerning the purchase, lease and sale of property.

John R. Hale, commissioner, has determined that for the first five-year period the proposed section is 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. Hale, commissioner, 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 the section is amended to conform with a related statute. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

This amendment is proposed under Texas Civil Statutes, Article 2461-1.01, et seq., §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.

§91.401. Purchase, Lease and Sale of Property.

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

(c) Investment or obligation of funds. Any investment or obligation of funds in a building or other fixed assets, by purchase or lease, which in an aggregate amount exceeds 5.0% of the credit union's total assets [capital as defined in the Act, §6.01(a),] at the time of the investment

shall require the prior written approval of the commissioner. Requests for such approval must be submitted to the commissioner prior to entering into any contracts to purchase, to build, or to lease, and shall be supported by the following information:

(1)-(7) (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 April 15, 1988.

TRD-8803826

John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 837-9236

Chapter 97. Commission Policies and Administrative Rules

Fees

• 7 TAC §97.114

The Credit Union Commission proposes an amendment to §97.114, concerning examination fees. The examination fees are established for state chartered credit unions by the Credit Union Commission.

John R. Hale, commissioner, has determined that for the first five-year period the proposed section is 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. Hale 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 assured through fees charged directly to the entities receiving related services. The anticipated economic cost to individuals who are required to comply with the section as proposed will be somewhat immaterial as this increase amounts to a 14% increase in the base examination fee rate established September 1, 1983.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

This amendment is proposed under Texas Civil Statutes, Article 2461-1.01, et seq., §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.
§97.114. *Examination Fee.*

(a) Effective September 1, 1988 [1983], the fee for the examination of a credit union authorized to do business under the Act shall be:

(1) \$256 [\$224] per examiner day (\$32 [\$28] per examiner hour);

(2) initial examinations [exam-

ination] of newly chartered credit unions shall be made without charge [at 50% of the regular examination rate (\$112 per examiner day or \$14 per examiner hour)]. Such fee may be waived by the commissioner for good cause shown];

(3) credit unions with total assets less than \$200,000 shall be made without charge [charged 75% of the regular rate (\$163 per examiner day or \$21 per examiner hour)];

(4) credit unions with assets between \$200,000 and \$500,000 shall be charged 75% of the regular rate (\$197 per examiner day or \$24 per examiner hour);

(5)[(4)] if the commissioner or deputy commissioner schedules a special examination in addition to the regular annual examination, the examination shall be as scheduled, except the commissioner may waive the examination fee or reduce the fee as he deems appropriate. Such waivers or reductions shall be in writing and signed by the commissioner;

(6)[(5)] the fee for the final examination of credit unions in liquidation shall be as outlined in this section except that the commissioner may waive or reduce the fee as he deems appropriate.

(b) Method of application of examination fee.

(1) (No change.)

(2) A minimum of two hours shall be charged for the preparation of each examination report by the Austin [home] office on each examination[, except those subject to subsection (a)(5) of this section]. Where special problems exist which require extraordinary time for processing an examination report [requiring extensive extra preparation and typing], additional fees may be billed, with explanation, by the commissioner or deputy commissioner, but in no event shall a report preparation fee exceed a charge of eight [four] examiner hours.

(3) (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 April 15, 1988.

TRD-8803825

John R. Hale
Commissioner
Credit Union Department

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 837-9236

Part VII. State Securities Board

Chapter 117. Administrative Guidelines for Registration of Real Estate Programs

• 7 TAC §§117.1, 117.5, 117.6

The State Securities Board proposes amendments to Chapter 117, concerning §§117.1, 117.5, and 117.6, concerning introduction, conflicts of interest and investment restrictions, and non-specified property programs. The amendments reflect provisions that were included in the most recent amendments to the North American Securities Administrators Association's real estate guidelines.

Richard D. Latham, securities commissioner, has determined that for the first five-year period the proposed sections are 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.

Mr. Latham 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 continued uniformity with other states in applying standards for the registration of real estate program offerings. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Denise Voight Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§117.1. *Introduction.*

(a) (No change.)

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

(1)-(13) (No change.)

(14) Financing-All [The] indebtedness encumbering program properties or incurred by the program, the principal amount of which is scheduled to be paid over a period of not less than 48 months, and not more than 50% of the principal amount of which is scheduled to be paid during the first 24 months. Nothing in this definition shall be construed as prohibiting a bona fide prepayment provision in the financing agreement.

(15)-(27) (No change.)

(28) Purchase price [of property]-The price paid upon the purchase or sale of a particular property, including the amount of acquisition fees and all liens and mortgages on the property, but exclud-

ing points and prepaid interest.

(29)-(30) (No change.)

§117.5. Conflicts of Interest and Investment Restrictions.

(a) Sales, leases, and related program transactions [loans].

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

(3) **Dealing with related programs.** A program shall not acquire property from a program in which the sponsor has an interest. [Loans. No loans may be made by the program to the sponsor or affiliate. Programs which make or invest in mortgage loans may provide such loans to programs formed by or affiliated with such persons in those circumstances in which such activities have been the fully justified to the securities commissioner. These affiliated transactions must, at the minimum, meet the following conditions:

[(A) the circumstances under which the loans will be made and the actual terms of the loans must be fully disclosed in the prospectus; or

[(B) in order for the adviser to be considered qualified and independent, the following conditions must be met:

[(i) the adviser must be a long established, nationally recognized investment banking firm, accounting firm, mortgage banking firm, bank, real estate financial consulting firm or advisory firm;

[(ii) the adviser must have a staff of real estate professionals;

[(iii) the compensation of the adviser must be determined and embodied in a written contract before an opinion is rendered;

[(iv) if an adviser has been engaged to render a fairness opinion who is not the adviser previously engaged to render this or the preceding fairness opinion, the sponsor shall inform investors (by no later than the next annual report) of the date when such new adviser was engaged, and whether there were any disagreements with the former adviser on any matters of valuation, assumptions, methodology, accounting principles and practice, or disclosure, which disagreements, if not resolved to the satisfaction of the former adviser would have caused him to make reference, in connection with the fairness opinion, to the subject matter of the disagreement or decline to give an opinion;

[(v) the compensation of the adviser must be paid by the sponsor and the sponsor may not claim reimbursement from the program for such expenses;

[(vi) the adviser, directly or indirectly; has no interest in, nor any material business or professional relationship with, the program, the sponsor, the borrower, or any affiliates thereof. Independ-

dence will be considered to be impaired if, for example, during the period of the adviser's engagement, or at the time of expressing his opinion, he or his firm:

[(I) had, or was committed to acquire any direct or indirect ownership interest in the program, sponsor, borrower, or affiliates thereof;

[(II) had any joint closely held business investment with the program, sponsor, borrower, or any affiliate thereof, which was material in relation to the adviser's net worth; or

[(III) had any loan to or from the program, sponsor, borrower, or affiliate thereof;

[(vii) the foregoing examples are not intended to be all-inclusive. However, for purposes of determining whether or not the business or professional relationship or joint investment is material, the gross revenue derived by the adviser from the program, the sponsor, the borrower, and their affiliates shall be deemed material per se if it exceeds 5.0% of the annual gross revenue derived by the adviser from all sources or exceeds 5.0% of the individual's or the adviser's net worth (on an estimated fair market value basis).

[(C) Loans made to third parties, the proceeds of which are used to purchase or refinance property in which the sponsor or an affiliate has an equity or security interest, must meet the requirements of subparagraph (A) or (B) of this paragraph.

[(4) Dealings with related program. A program shall not acquire property from a program in which the sponsor has an interest.]

(b)-(d) (No change.)

(e) Services rendered to the program by the sponsor.

(1) (No change.)

(2) Other services. Except as provided in §117.4 of this title (relating to Fees, Compensation, and Expenses) and paragraph (1) of this subsection other services may be performed by the sponsor for the program except in extraordinary circumstances fully justified to the securities commissioner. As a minimum, self-dealing arrangements must meet the following criteria:

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

(f)-(g) (No change.)

(h) Investments in other programs.

(1) Investments in limited partnership interests of another program shall be prohibited; however, nothing herein shall

preclude the investment in general partnerships or joint ventures which own and operate a particular property provided the program acquires a controlling interest in such other joint ventures or general partnerships (except as permitted by paragraph (3) of this subsection). In such event, duplicate property management or other fees shall not be permitted.

(2) Nothing in paragraph (1) of this subsection shall preclude an investment in limited partnerships which own and operate a particular property to be qualified pursuant to the Internal Revenue Code of 1986, §42(g), as amended. Such [prohibitions shall not apply to programs participating in the subsidized housing provisions of the National Housing Act or any similar programs that may be enacted, but unless prohibited by the applicable federal statute, such] a two-tiered partnership [(herein referred to as lower tier partnership)] shall provide for its limited partners at both tiers all of the rights and obligations required to be provided by §117.7 of this title (relating to Rights and Obligations of Participants) of these guidelines. Duplicate fees shall not be permitted.

(3) (No change.)

(i) Lending practices.

(1) No loans may be made by the program to the sponsor or an affiliate, except as provided in 117.5(i)(2) of this title (relating to Conflicts of Interest and Investment Restrictions). [On loans made available to the program by the sponsor, the sponsor may not receive interest or similar charges or fees in excess of the amount which would be charged by unrelated lending institutions on comparable loans for the same purpose, in the same locality of the property if the loan is made in connection with a particular property. No prepayment charge or penalty shall be required by the sponsor on a loan to the program secured by either a first or junior or all-inclusive trust deed, mortgage, or encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance. The sponsor shall be prohibited from providing financing for the program, except:

[(A) as permitted by paragraph (2) of this subsection; or

[(B) where financing is being provided by or acquired from an affiliated program which makes or invests in mortgage loans. In such instances, the provisions of subsection (a)(3) of the guidelines shall be applicable; and, to recognize potential conflicts of interest, there will be independent advisors for each publicly registered party to the transaction.]

(2) Programs which make or

invest in mortgage loans may provide such loans to programs formed by or affiliated with the sponsor in those circumstances in which such activities have been fully justified to the securities commissioner. These affiliated transactions must at the minimum meet the following conditions:

(A) the circumstances under which the loans will be made and the actual terms of the loans must be fully disclosed in the prospectus; or

(B) an independent and qualified adviser must issue a letter of opinion to the effect that any proposed loan to an affiliate of the program is fair and at least as favorable to the program as a loan to an unaffiliated borrower in similar circumstances. In addition, the sponsors will be required to obtain a letter of opinion from the independent adviser in connection with any disposition, renegotiation, or other subsequent transaction involving loans made to a sponsor or an affiliate of the sponsor. The adviser's compensation must be paid by the sponsor and not reimbursable by the program;

(C) loans made to third parties, the proceeds of which are used to purchase or refinance property in which the sponsor or an affiliate has an equity or security interest, must meet the requirements of subparagraph (A) or (B) of this paragraph. [An all-inclusive or wrap-around note and deed of trust (the all-inclusive note herein) may be used to finance the purchase of property by the program only if the following conditions are complied with:

[(i) the sponsor under the all-inclusive note shall not receive interest on the amount of the underlying encumbrance included in the all-inclusive note in excess of that payable to the lender on that underlying encumbrance;

[(ii) the program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance; and

[(iii) a paying agent, ordinarily a bank, escrow company, or savings and loan, shall collect payments (other than any initial payment of prepaid interest or loan points not to be applied to the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of subparagraph (A) of this subparagraph, or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the program.]

(3) On loans made available to

the program by the sponsor, the sponsor may not receive interest or similar charges or fees in excess of the amount which would be charged by unrelated lending institutions on comparable loans for the same purpose, in the same locality of the property if the loan is made in connection with a particular property. No prepayment charge or penalty shall be required by the sponsor on a loan to the program secured by either a first or junior or all-inclusive trust deed, mortgage, or encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance.

(4) The sponsor shall be prohibited from providing financing except:

(A) as permitted by paragraph (2) of this subsection, in which case there will be independent advisers for each publicly registered party to the transaction; or

(B) as permitted by paragraph (5) of this subsection.

(5) An all-inclusive or wrap-around note and deed of trust (the all-inclusive note herein) may be used to finance the purchase of property by the program only if the following conditions are complied with:

(A) the sponsor under the all-inclusive note shall not receive interest on the amount of the underlying encumbrance included in the all-inclusive note in excess of that payable to the lender on that underlying encumbrance;

(B) the program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance; and

(C) a paying agent, ordinarily a bank, escrow company, or savings and loan, shall collect payments (other than any initial payment of prepaid interest or loan points not to be applied to the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of subparagraph (A) of this paragraph or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the program.

(j)-(l) (No change.)

(m) Mortgage loan programs.

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

[(3) The program shall not invest in real estate contracts of sale otherwise known as land sale contracts unless such contracts of sale are in recordable form and are appropriately recorded in the chain of title.]

(3)[(4)] The program may not invest in or make mortgage loans on unimproved real property in an amount in excess of 25% of the capital contributions to be raised by the program.

(4) The program shall not invest in real estate contracts of sale otherwise known as land sale contracts unless such contracts of sale are in recordable form and are appropriately recorded in the chain of title.

(5) The program shall not spell make or invest in mortgage loans on any one property if the aggregate amount of all mortgage loans outstanding on the property, including the loans of the program, would exceed an amount equal to 85% of the appraised value of the property as determined by an independent appraisal, unless substantial justification exists because of the presence of other underwriting criteria. For purposes of this paragraph, the aggregate amount of all mortgage loans outstanding on the property, including the loans of the program, shall include all interest (excluding contingent participations in income and/or appreciation in value of the mortgaged property), the current payment of which may be deferred pursuant to the terms of such loans, to the extent that deferred interest on each loan exceeds 5.0% per annum of the principal balance of the loan.

(6) (No change.)

(n) Program indebtedness.

(1) Except as contained in paragraph (2) of this subsection, following the termination of the offering, the total amount of indebtedness incurred by the program shall at no time exceed the sum of 85% of the aggregate purchase price of all properties which have not been refinanced, and 85% of the aggregate fair market value of all refinanced properties, as determined by the lender as of the date of refinancing.

(2) For programs which own properties financed by:

(A) loans insured or guaranteed by the full faith and credit of the United States government, or of a state or local government, or by an agency or instrumentality of any of them; and/or

(B) loans received from any of the foregoing entities, following the termination of the offering the total amount of indebtedness the total amount of indebtedness incurred by the program shall at no time exceed the sum of 100%

of the aggregate purchase price of all properties which have not been refinanced, and 100% of the aggregate fair market value of all refinanced properties as determined by the lender as of the date of refinancing.

(3) For any program subject to the limitations of both paragraphs (1) and (2) of this subsection, the maximum percentage of indebtedness for the entire program shall be calculated as follows:

(A) divide the total value of properties as determined under paragraph (2) of this subsection by the total value of properties as determined under paragraphs (1) and (2) of this subsection;

(B) multiply the number 15 by the quotient of subparagraph (A) of this paragraph; and,

(C) add the product from subparagraph (B) of this paragraph to the number 85.

(4) For purposes of this subsection only, indebtedness shall include the principal of any loan together with any interest that may be deferred pursuant to the terms of the loan agreement which exceeds 5.0% per annum of the principal balance of such indebtedness (excluding contingent participations in income and/or appreciation in the value of the program property); and shall exclude any indebtedness incurred by the program for necessary working capital.

§117.6. Non-specified Property Programs.

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

(c) Statement of investment objectives. A nonspecified property program shall state types of properties in which it proposes to invest, such as first-user apartment projects, subsequent-user apartment projects, shopping centers, office buildings, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the program and the experience of the sponsors. As a minimum, the following restrictions on investment objectives shall be observed.

(1) Unimproved or non-income producing property shall not be acquired except in amounts and upon terms which can be financed by the program's proceeds or from cash available for distribution from operations. Investments in such property shall not exceed 25% [10%] of the gross proceeds of the offering. Properties which are expected to produce income within a reasonable period of time shall not be considered non-income producing. For purposes of this subsection, two years shall be deemed to be presumptively reasonable.

(2)-(4) (No change.)

(d)-(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 April 15, 1988.

TRD-8803892

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 474-2233

Chapter 121. Administrative Guidelines for Registration of Oil and Gas Programs

• 7 TAC §§121.6, 121.8, 121.10

The State Securities Board proposes amendments to §§121.6, 121.8, and 121.10, concerning the administrative guidelines for registration of oil and gas programs. The amendments contain items that were included in the most recent amendments to the North American Securities Administrators Association's Oil and Gas Guidelines, and the amendment to §121.8 corrects a typographical error. The entire section is renamed to eliminate the word "drilling," to make it clear that other types of oil and gas programs are covered by the guidelines.

Richard D. Latham, securities commissioner, has determined that for the first five-year period the proposed sections are 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.

Mr. Latham also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be the continued uniformity with other states in applying standards for the registration of oil and gas program offerings. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Denise Voight Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendments are proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§121.6. Transaction with Affiliates and Conflicts of Interest.

(a) (No change.)

(b) Restricted and prohibited transactions.

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

(6) Unless the terms of the transactions are allowed by these guidelines or approved by the securities commissioner, and are fully disclosed in the

prospectus, neither the sponsor nor any affiliate shall render to the program any oil field, equipment, [or] drilling, or other services nor sell or lease to the program any equipment or [related] supplies unless:

(A) such person is engaged, independently of the program and as an ordinary and ongoing business, in the business of rendering such services or selling or leasing such equipment and supplies to a substantial extent to other persons in the [oil and gas] industry in addition to programs in which he has an interest;

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

(7)-(9) (No change.)

(c) (No change.)

§121.8. Rights and Obligations of Participants

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

(f) Voting rights of limited partners.

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

(3) If the general partner(s) withdraw as general partner(s) and the limited partners elect to continue the partnership, the valuation procedure outlined in paragraph (2) of this subsection applies. The general partner(s) may not voluntarily withdraw from the partnership prior to the partnership's completion of its primary drilling and acquisition activities, and then only after giving 120 days' written notice. The withdrawing general partner(s) shall pay all expenses incurred as a result of his withdrawal.

§121.10. Prospectus and Disclosure and Marketing Requirements.

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

(c) Contents of prospectus.

(1) (No change.)

(2) Prohibited representations.

(A) In connection with the offer and sale of interests in a program, neither the sponsor(s) nor the underwriter(s) may, in writing or otherwise, directly or indirectly, represent or imply that the securities commissioner has approved the merits of the investments or any aspects thereof.

(B) Any reference to the program's compliance with these guidelines or any provisions therein which connotes or implies such approval shall be deemed to be in noncompliance with subparagraph (A) of this paragraph.

(d)-(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 April 15, 1988.

TRD-8803894

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 474-2233

◆ ◆ ◆
Chapter 133. Forms

◆ ◆ ◆
• 7 TAC §133.31

The State Securities Board proposes an amendment to §133.31, concerning the real estate guidelines cross reference sheet. The section adopts by reference the form. The amendment is necessary to reflect amendments to §§117.1, 117.5, and 117.6, concerning introduction, conflicts of interest and investment restrictions, and the nonspecified property programs provisions of the administrative guidelines for registration of real estate programs, which are being proposed simultaneously.

Richard D. Latham, securities commissioner, has determined that for the first five-year period the proposed section is 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. Latham 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 the review of real estate program offerings will be quicker than would otherwise be the case since the Cross Reference Sheet enables securities analysts to review such programs an analyze such offerings more efficiently. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Denise Voight Crawford, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

The amendment is proposed under Texas Civil Statutes, Article 581, §28-1, which provide the board with the authority to adopt rules and regulations governing registration statements and applications; classify securities, persons, and matters within its jurisdiction; and prescribe different requirements for different classes.

§133.31. Real Estate Guidelines Cross Reference Sheet. The State Securities Board adopts by reference the State Securities Board real estate guidelines cross reference sheet, a amended in **May 1988** [November, 1987]. This form is available from the State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167.

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 April 15, 1988.

TRD-8803893

Richard D. Latham
Securities Commissioner
State Securities Board

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 474-2233

◆ ◆ ◆
TITLE 13. CULTURAL RESOURCES

Part I. Texas State Library and Archives Commission

Chapter 1. Library Development

Minimum Standards for Accreditation of Public Libraries in the Texas Library System

◆ ◆ ◆
• 13 TAC §§1.71, 1.74, 1.84, 1.85

The Texas State Library and Archives Commission proposes amendments and new section to §§1.71, 1.74, 1.84, and 1.85 concerning minimum standards for accreditation of public libraries in the Texas library system. The amendment to §1.71 clarifies the intent of the section and revises it to correspond with data being collected; and permits development of a customized population formula. The amendment to §1.74 permits libraries to meet accreditation standards more easily for 1989. The amendment to §1.84 affirms practices in effect. The amendment to §1.85 corresponds to changes made in library annual reports.

Edward Seidenberg, director, Library Development Division, has determined that for the first five-year period the proposed sections are 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.

Mr. Seidenberg 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 clarity of language, nonduplication of reporting, clarification of existing policy, and less hardship on those libraries which experienced reductions in local funding in 1987. There is no anticipated economic cost to individuals who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Edward Seidenberg, Library Development Division, Texas State Library, Box 12927, Austin, Texas 78711.

The amendments and new section are proposed under Texas Civil Statutes, Article 5446a, which provide the Texas State Library and Archives Commission with the authority to approve rules and regulations for the Library Systems Act.

§1.71. Definition of Population Served. For a city, nonprofit corporation, and/or county-established library [spending] receiving public monies for public library service, the population served by a public library is the population in the most recent decennial census or official population esti-

mate of the United States Department of Commerce, Bureau of the Census, if available. **If a library does not report receiving public monies for public library service, that library will be assigned no population.** Calculations will be based upon the following.

(1) In counties with one or more public libraries that spend only city and private funds, each library is credited with serving [only the city population in which it is located] **The population of the city or cities from which it receives funds or with which it has a contract.**

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

(4) In counties with a library established by the county commissioners court and that spends no city funds or an incorporated library that spends no city funds, and one or more city libraries that spend county funds, the city [or incorporated] libraries that spend county and city funds are credited with serving their city populations plus a percentage of the county population living outside the cities. The percentage is the ratio of each city's population to the county population. The county library or incorporated library that spends county funds and no city funds serves all county residents not served by a city library.

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

(7) [In school districts that fund a public library, the population served by the library shall be the population of the school district. If a census bureau population estimate is not available for a school district, a population estimate shall be computed based upon the ratio of the school district population to the county population in the most recent decennial census.] **When school districts contract with one or more nonprofit corporations, cities, or counties for public library services as part of their student's educational program, the state library shall estimate the total population living within the school district.**

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

(10) **When a library believes that the acceptance of county funding would result in the assignment of an unrealistic population figure, it may request in writing that the library systems act advisory board approve an exception to the population served methodology. The board will use its discretion to devise a method by which data from the bureau of the census will be used to calculate the assignment of population served.**

§1.74. Local Operating Expenditures. A public library must demonstrate local effort on an annual basis by maintaining or increasing local operating expenditures or per capita local operating expenditures. Expenditures for the current reporting year shall be compared to the average of local operating expenditures or to the average of per capita expenditures for the three preceding

years. Libraries that expend at least \$10 per capita and at least \$50,000 are exempt from this membership criterion. A public library shall have minimum local expenditures of \$5,000. A library that expends 85% local fiscal year 1987 of its average local operating expenditures for the three preceding years has demonstrated local financial effort.

§1.84. Professional Librarian. A professional librarian is defined as a person holding either a fifth year degree in librarianship from a program accredited by the American Library Association or a master's degree in library or information science from a program accredited by the American Library Association or a higher credential from a library school offering an American Library Association-approved [degree] program in library or information science. Upon the written request of persons holding degrees in library or information science from schools outside the United States or Canada, the state librarian may certify them as professional librarians if their program of study is deemed comparable to that of a library school accredited by the American Library Association.

§1.85. Annual Report. A public library shall file a current and complete annual report with the Texas State Library and Archives Commission [by April 30] Within 90 days after the end of its local fiscal year; in no case shall a library file this report after April 30. Revisions to the annual report which would affect membership status for the next fiscal year will not be accepted after July 31. Staff vacancies that occur after [April 30] the report is filed shall not adversely affect applications for system membership in the next fiscal year. Staff vacancies that occur prior to [April 30] filing the report which affect system membership must be filled and reported prior to July 31. Willful falsification of annual reports shall cause the library to be disqualified for one year in the first instance and disqualified for three years in the second instance.

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 April 15, 1988.

TRD-8803857

William D. Gooch
Director and Librarian
Texas State Library and
Archives Commission

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 463-5460



TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 1. General Administration

Subchapter C. Maintenance Taxes

• 28 TAC §1.406

The State Board of Insurance proposes new §1.406, concerning assessment of maintenance taxes for 1988. New section 1.406 was adopted on an emergency basis and became effective on December 18, 1987. Notice of the emergency adoption appeared in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4876) and notice of an amendment to the emergency adoption appeared in the March 15, 1988, issue of the *Texas Register* (13 TexReg 1247). This new section is necessary to record rates of assessment for 1988 for maintenance taxes which the Insurance Code and the Texas Health Maintenance Organization Act require the board to determine annually on various types of insurance and related activities. Timely payment of the taxes is necessary to provide adequate support for the proper functioning of administrative regulation of insurance and related activities in Texas. The new section would assess maintenance taxes for 1988 on the basis of gross premiums for calendar year 1987 or on some other statutorily designated basis. New §1.406 would set rates of assessment, and would apply those rates to life insurance; motor vehicle insurance; casualty and fidelity insurance and guaranty and surety bonds; fire and allied lines insurance, including inland marine; workers' compensation insurance; title insurance; health maintenance organizations; third party administrators; and domestic and foreign risk retention groups.

Carroll Fuchs, chief of staff services, has determined that for the first five-year period the proposed section is 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. Fuchs 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 is the promulgation of a rate which will facilitate the proper collection of maintenance taxes to maintain the State Board of Insurance. The anticipated economic cost to persons who are required to comply with the proposed section will be payment of the tax at the rate specified. The amount of tax will depend on the type and amount of insurance written.

Comments on the proposal may be submitted to Nicholas Murphy, Chief Clerk, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The new section is proposed under the Insurance Code, Articles 4.17, 5.12, 5.24, 5.49, 5.68, 9.46, 21.07-5, and 21.54, and the Texas Health Maintenance Organization Act, §33, which provide authorization for the State Board of Insurance to assess maintenance taxes for the lines of insurance and related activities specified in the proposed section.

§1.406. Assessment of Maintenance Tax, 1988.

(a) The following rates for maintenance taxes are assessed on gross premiums of insurers as delineated in this section and for domestic and foreign risk retention groups under the Insurance Code, Article 21.54, for the calendar year 1987 for the lines of insurance specified.

(1) For motor vehicle insurance, pursuant to the Insurance Code, Article 5.12, the rate is .058 of 1.0%.

(2) For casualty and fidelity insurance, guaranty and surety bonds, pursuant to the Insurance Code, Article 5.24, the rate is .207 of 1.0%.

(3) For fire insurance and allied lines, including inland marine, pursuant to the Insurance Code, Article 5.49, the rate is .406 of 1.0%.

(4) For workers' compensation insurance, pursuant to the Insurance Code, Article 5.68, the rate is .180 of 1.0%.

(5) For title insurance, pursuant to the Insurance Code, Article 9.46, the rate is .122 of 1.0%.

(b) The rate for the maintenance tax to be assessed on gross premiums for the calendar year 1987 for life insurance, pursuant to the Insurance Code, Article 4.17 is .032 of 1.0%.

(c) The following rates for maintenance taxes are assessed for the calendar year 1987 for the entities specified.

(1) For health maintenance organizations, pursuant to the Texas Health Maintenance Organization Act, §33, the rate is \$1.10 for each enrollee.

(2) For third party administrators, pursuant to the Insurance Code, Article 21.07-5, the rate is 1.000 of 1.0% of the correctly reported gross amount of administrative or service fees.

(d) The taxes assessed under subsection (a) of this section shall be due and payable to the State Board of Insurance as follows: 50% on March 1, 1988, or on the date upon which the annual statement for such insurer is required to be filed during 1988 with the State Board of Insurance; and 50% on September 15, 1988. This subsection shall not apply to those insurers whose maintenance tax liability for the previous tax year was less than \$2,000 on each of the lines of insurance specified in the Insurance Code, Articles 5.12, 5.24, 5.49, 5.68 and 9.46. Insurers not qualified to remit maintenance taxes on a semiannual basis shall remit 100% of such taxes on March 1, 1988, or on the date upon which the annual statement for such insurer is required to be filed during 1988 with the State Board of Insurance.

(e) Taxes assessed under subsection (b) or (c) of this section shall be due and payable to the State Board of Insurance as

follows: 50% on March 1, 1988, or on the date upon which the annual statement for such insurer is required to be filed during 1988 with the State Board of Insurance; and 50% on September 15, 1988.

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 April 13, 1988.

TRD-8803794 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 23, 1988

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

TITLE 28. INSURANCE

Part I. State Board of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter C. Texas Medical Liability Insurance Underwriting Association

• 28 TAC §5.2003

The State Board of Insurance proposes an amendment to §5.2003, concerning participation by members and policyholders under the plan of operation of the Texas Medical Liability Insurance Underwriting Association (the JUA). This amendment to §5.2003 was adopted on an emergency basis and became effective on December 18, 1987. Notice of the emergency adoption appeared in the December 25, 1987, issue of the *Texas Register* (12 TexReg 4876). The amendment is necessary in order to provide an equitable alternative for manner and timing of payment which can reduce hardship caused by payments assessed from policyholders can delay paying up to one-half of an assessment until a second and final installment becomes due 30 days after the date on which the original installment payment is due.

Charles Sobeck, director of professional liability insurance, has determined that for the first five-year period the proposed section is 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. Sobeck 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 is an equitable alternative under which policyholders may pay assessments by the Texas Medical Liability Insurance Underwriting Association. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Charles Sobeck, Director of Professional Liability Insurance, State Board of Insurance, 1110 San Jacinto Boulevard, Austin, Texas 78701-1998.

The amendment is proposed under the Insurance Code, Article 21.49-3, §3(c) (4), which provides for amendments to the plan of operation of the JUA under the approval or direction of the State Board of Insurance.

§5.2003. *Members and Policyholders Participation in the Texas Medical Liability Insurance Underwriting Association.*

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

(d) Participation by members and policyholders of the association.

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

(3) Participation by policyholders of the association.

(A) (No change.)

(B) Procedure for assessment of policyholders. Assessment of policyholders shall be made in accordance with the following:

(i) Notice of assessment shall be sent by certified mail, return receipt requested, to each policyholder being assessed within 30 days of the meeting of the board of directors at which such assessment was levied. Such notice shall be forwarded to the address of such policyholder as it appears on the books of the association. Such notice shall state the policyholder's allocated amount of assessment and shall inform each policyholder of the sanctions imposed by clause (ii) of this subparagraph for the failure to pay such assessment within the time prescribed by this section [these sections].

(ii) Each policyholder shall remit to the association payment in full of an assessment within 30 days of receipt of notice of assessment; provided, however, that a policyholder not delinquent on any prior assessments, policyholder stabilization reserve fund charge, or premium, may remit payment of an assessment levied for a deficit incurred in calendar year 1986 and thereafter in two installments with at least one-half of the assessment due to be paid within 30 days after receipt of notice of assessment and the remaining balance due 30 days thereafter. If the association has not received payment [in full] of the policyholder's assessment or any installment payment within 10 [40] days after such payment is due [of posting of the notice of assessment], then the association shall promptly cancel any policy of insurance which the policyholder shall at that time have in force with the association, and the association shall be entitled to offset any unearned premium otherwise refundable on such policy against the amount of that policyholder's unpaid assessment. Such cancellation of current insurance coverage shall in no way affect the right of the association to proceed against such policyholder in any court of law or equity in the United States for any remedy provided by

law or contract to the association, including, but not limited to, the right to collect such policyholder's assessment.

(4)-(5) (No change.)

(e)-(j) (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 April 18, 1988.

TRD-8803944 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 23, 1988

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

Chapter 15. Surplus Lines Insurance

Subchapter D. Surplus Lines Stamping Office of Texas

• 28 TAC §15.101

The State Board of Insurance proposes new §15.101, concerning the plan of operation of the Surplus Lines Stamping Office of Texas (the stamping office). Section 15.101 was adopted on an emergency basis and became effective on December 9, 1987. Notice of the emergency adoption appeared in the December 15, 1987, issue of the *Texas Register* (12 TexReg 4668) and notice of renewal of the effectiveness of the emergency adoption appeared in the April 12, 1988, issue of the *Texas Register* (13 TexReg 1701). Notice of an amendment to the emergency adoption appears in this issue. The new section is necessary in order to establish a plan of operation under which the stamping office may initiate operation. Recent legislation created the stamping office to provide closer record keeping and scrutiny of surplus lines insurance contracts. This new section provides for creation, organization, operation, compensation, and reimbursement of a board of directors for the stamping office. The new section also provides for employment of a general manager who will be responsible for the operation and management of the stamping office in accordance with policy established by the board of directors for the stamping office. The new section explains functions of the stamping office including making inquiries, examining agents, reporting information to the commissioner of insurance, and other functions. The new section provides for reporting and recording of surplus lines insurance business and for charging stamping fees from surplus lines agencies. The new section provides for indemnification of directors, officers, employees, and agents, and also provides a procedure for dissolution of the stamping office.

R. B. Ashworth, deputy insurance commissioner for corporate and financial regulation, 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 for small businesses as a result of enforcing or administering the section.

Mr. Ashworth 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 is the implementation of the Insurance Code, Article 1.14-2, §6A, as adopted by recent legislation. The section merely implements the legislation and there is no additional anticipated economic cost to persons who are required to comply with the section as proposed.

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

The new section is proposed under the Insurance Code, Article 1.14-2, §6A, which provides for approval by the State Board of Insurance of the plan of operation of the Surplus Lines Stamping Office of Texas.

§15.101. Plan of Operation of the Surplus Lines Stamping Office of Texas.

(a) Plan of operation. The plan of operation of the Surplus Lines Stamping Office of Texas (the plan) shall become effective upon written approval of the State Board of Insurance, and shall constitute the manner in which the Surplus Lines Stamping Office of Texas (the stamping office) shall operate and discharge its responsibilities in accordance with the Insurance Code and the rules and regulations of the State Board of Insurance.

(b) Those to whom the plan applies. All persons licensed as surplus lines agents under the Insurance Code shall be subject to the provisions of the plan.

(c) Directors.

(1) Board of directors. The management of all the affairs, property, and business of the stamping office shall be vested in the board of directors, and such board of directors shall consist of no less than five nor more than nine persons. The board of directors shall be appointed by the State Board of Insurance. The initial board of directors shall consist of three directors appointed for two years, three directors appointed for three years, and three directors appointed for four years. Thereafter, directors will serve for a term of three years. Directors may not serve consecutive full terms. Directors shall serve until their successors are duly appointed. The minutes of the stamping office shall show the names of the board of directors and the term of office for each.

(2) Vacancies. Vacancies on the board of directors may be filled for the remaining period of the vacating director's term by appointment by the State Board of Insurance.

(3) Actions. A majority of the board of directors shall constitute a quorum for the transaction of business and the acts of a majority of the directors present at a meeting at which a quorum is present shall be the acts of the board of directors, except that an affirmative vote of six or more directors is required to:

(A) approve the annual budget;

(B) approve contracts with an obligation of \$5,000 or more, not contemplated within the approved annual budget;

(C) adopt a schedule for stamping fees and other fees;

(D) borrow money;

(E) amend this plan, subject to the approval of the State Board of Insurance;

(F) authorize bank signatures;

(G) adopt and amend the procedures manual.

(4) Polling by telephone. When issues listed in paragraph (3) of this subsection are presented to the directors at any annual, regular, or special meeting, those directors absent from such meeting may be polled by the chairman of the board of directors on such issues by telephone or telegraph and any vote cast by such an absentee director on such issues by telephone or telegraph shall be as valid as though such absentee director was in fact present at the meeting for purposes of determining whether a quorum is present and voting. Votes cast in this manner shall be subsequently confirmed in writing by letter from such absentee director to the chairman.

(5) Directors' annual meeting. The first regular meeting of the board of directors in the fiscal year is designated as the directors' annual meeting, and shall be held at such place designated by the board of directors. At each directors' annual meeting the board of directors shall:

(A) elect officers;

(B) review the plan and proposed amendments, if any;

(C) review operating expenses and schedule of fees; and

(D) review, consider, and act on any other matters deemed by the board of directors to be necessary to the administration and purposes of the stamping office and of the Insurance Code and rules and regulations adopted thereunder by the State Board of Insurance.

(6) Board organization. The directors of the stamping office shall elect a

chairman, a vice-chairman, and a secretary. They shall be elected at the board of directors' annual meeting and shall hold office until the next directors' annual meeting or until their successors are elected and installed.

(A) Chairman. It shall be the duty of the chairman to preside at all meetings and to perform all duties usually pertaining to the office, including the appointment of committees. The chairman shall be an ex-officio member of all committees.

(B) Vice-chairman. It shall be the duty of the vice-chairman to perform all the duties of the chairman during the absence of the chairman.

(C) Secretary. It shall be the duty of the secretary to keep full minutes of the proceedings of all meetings of the stamping office and of the board of directors and to perform all duties usually pertaining to such office or as may be assigned by the board of directors.

(7) Regular and special meetings. Regular meeting of the board of directors shall be held monthly on the third Tuesday of each month. The chairman shall designate the time and place of such regular meetings and may cancel or postpone any regular meeting when in the chairman's judgment such cancellation or postponement will not interfere with the business of the stamping office. Special meetings of the board of directors may be called by the chairman and shall be called at the request of any three directors upon not less than five days written notice to each director of the time and place, which shall be in the state of Texas, and purpose or purposes of any special meeting. Such notice for any special meeting may be waived by written waiver signed by all the directors before or after such meeting. At any regular or special meeting, the directors may consider and decide any matter deemed to be necessary for the administration of the stamping office.

(8) Telephone meetings. Any meeting of the board of directors, except the annual meeting, may be held by telephone conference call when all or certain of the directors are not physically present at the place of the meeting, but participate in the conduct thereof by telephone, and, for all voting purposes, such directors shall be considered present and acting.

(9) Consent. Any action which may be taken at regular or special meetings of the board of directors may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all the directors entitled to vote at a meeting. Any such consent signed by such directors shall have the same effect as a unanimous vote.

(10) Compensation; reimbursement. Directors shall serve without compensation, but they may be reimbursed for reasonable expenses incurred by them as member of the board of directors.

(d) General manager. The board of directors shall employ a general manager who will be responsible for the operation and management of the stamping office in accordance with policy established by the board of directors.

(e) Operations.

(1) Address. The official address of the stamping office shall be the permanent office of the stamping office.

(2) Employees. The stamping office may employ such persons, firms or corporations, attorneys, or accountants, as are necessary for the performance of the duties imposed on the stamping office.

(3) Bank accounts; borrowing. The stamping office may open one or more bank accounts. Reasonable delegation, by the board of directors, of deposit and withdrawal authority to such accounts for stamping office business may be made consistent with prudent fiscal policy. The stamping office may borrow money as the board of directors may approve.

(4) Budget and fee schedule. Prior to November 1 of each year, the board of directors shall adopt a budget for the stamping office operating and capital expenses and contingent expenses for the period from January 1 to December 31 following. The budget shall take into account unknown and unanticipated expenses as may reasonably occur and make provision for such expenses in accordance with prudent business practice. Based upon the anticipated volume of surplus lines premium during the period, the board of directors shall adopt a stamping fee to be charged on all surplus lines business submitted to the stamping office. The stamping fee shall be submitted to the State Board of Insurance for approval prior to implementation.

(5) Payment of fees. All surplus lines agents shall submit surplus line insurance documents to the stamping office as required by the Insurance Code and the rules and regulations of the State Board of Insurance and shall pay the fees therefore as permitted by law and as required by the stamping office. Any surplus lines agent who is delinquent in the payment of such fees may be reported to the commissioner of insurance; provided, however, that any delinquency of more than 60 days shall be reported to the commissioner of insurance.

(6) Reports. The stamping office shall record all surplus line insurance documents submitted to it pursuant to the Insurance Code and rules and regulations of the State Board of Insurance and shall prepare reports to the commissioner of insurance and to surplus lines agents as required therein and for such other purposes as ap-

proved by the board of directors.

(7) Procedures manual. The stamping office shall prepare, distribute, and maintain a procedures manual to each surplus lines agent setting forth the procedure for submitting surplus line insurance documents to the stamping office and other matters germane to the operation of the stamping office.

(8) Insurance. The stamping office shall procure such bonds and insurance covering the stamping office, the directors, officers, employees, and agents of the stamping office, and its properties and activities as it deems appropriate.

(f) Functions.

(1) The stamping office shall perform those functions specifically enumerated in the Insurance Code, Article 1.14-2, §6A, subsection (b).

(2) The stamping office shall assist the State Board of Insurance and facilitate compliance with the insurance laws of the State and the rules and regulations promulgated thereunder by conducting the following functions under the rules promulgated by the State Board of Insurance:

(A) identifying nature and extent of potential violations;

(B) notifying surplus lines agents of such potential violations and seeking voluntary compliance;

(C) examining the eligibility of surplus lines insurance and unauthorized insurers;

(D) reporting to the commissioner the following information:

(i) evaluations of eligibility under §15.7 and §15.8 of this title (relating to Eligibility Requirements for Surplus Lines Insurance and Eligibility Requirements of Surplus Lines Insurers);

(ii) all unresolved alleged violations;

(iii) patterns and practice of any surplus lines agent that may constitute lack of compliance with the applicable insurance laws of the state;

(iv) tax due by individual surplus lines agents or agencies;

(v) compilations of premiums for property coverage written by a surplus lines insurer affiliated with a licensed insurer which information should include the total policy premium; if available, the portion of the premium that is actual extended coverage and other allied lines; and where the risk is located;

(vi) tax due from agents

and brokers in other states for independently procured insurance;

(vii) summaries of the stamping office activities including actions relating to voluntary compliance;

(viii) results of investigations relating to complaints;

(ix) compilations of premium volume by surplus lines agent, insurer, and kinds and class of surplus lines insurance coverage; and

(x) results of any other examinations under §15.13 of this title (relating to Surplus Lines Insurance Requests for Information, Examination and Complaints);

(E) monitoring the quality of preparation of policies, contracts, or other detailed evidences of coverage, including additions and deletions thereto and cancellations thereof, including, but not limited to, readability, lack of ambiguity, and completeness;

(F) providing seminars and other educational programs relating to the Insurance Code, Article 1.14-1 and Article 1.14-2, this chapter, and the procedures of the stamping office;

(G) collecting information as provided in this chapter and the Insurance Code, Article 1.14-2, §6A;

(H) maintaining communications with agents, adjusters, unauthorized insurers, licensed advisory associations, and related trade associations;

(I) maintaining communication with the commissioner including electronic or computer communication as required;

(J) providing information to surplus lines agents including tax reports; and

(K) conducting other activities provided by this chapter.

(3) The stamping office is authorized by §15.13 of this title (relating to Surplus Lines Insurance Requests for Information, Examination and Complaints) to make inquiries and examine agents to effect its functions under this chapter.

(4) Any information collected under this chapter that indicates violation of the laws of this State or the rules or regulations adopted thereunder that has not been resolved by voluntary compliance shall be reported to the commissioner. Such report shall not be released to the public by the stamping office. In any proceeding initiated

under this chapter, stamping office personnel shall be available to provide evidence and testimony.

(g) Records and reports.

(1) A written record of the proceedings of each meeting of the board of directors shall be retained by the secretary with copies furnished to each director.

(2) The board of directors shall, once each year, provide for an independent audit of all the books and records of the stamping office.

(h) Indemnification. Each member of the board of directors, officer, employee, or agent of the stamping office shall be indemnified by the stamping office against all expenses, judgments, decrees, fines, penalties, and amounts paid in settlement, or incurred in the defense, of any action taken or not taken by such person in the performance of such person's powers and duties under the Insurance Code and the rules and regulations of the State Board of Insurance and this plan, unless such person shall be finally adjudged to have committed a breach of duty involving gross negligence, bad faith, dishonesty, willful misfeasance, malfeasance, or reckless disregard of such person's responsibilities. In the event of settlement before final adjudication, such indemnity shall be provided only if the stamping office is advised by independent counsel that such person did not, in counsel's opinion, commit such a breach of duty. The board of directors may purchase and maintain insurance on behalf of any person who is or was a director, officer, employee, or agent of the stamping office against any liability asserted against such person and incurred by such person in such capacity or arising out of such person's status as such, whether or not the stamping office can indemnify such person against such liability under this Article.

(i) Dissolution. In the event the stamping office is dissolved and all its liabilities have been satisfied, the board of directors, upon a two-thirds majority vote, shall transfer the remaining assets of the stamping office to the State Board of Insurance at the time the stamping office is dissolved or to another organization which must be established for the same or similar purpose as the stamping office and which must be exempt under the Internal Revenue Code, §501(c)(3).

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 April 18, 1988

TRD-8803943 Nicholas Murphy
Chief Clerk
State Board of Insurance

Earliest possible date of adoption: May 23, 1988

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



Part II. Industrial Accident Board

Chapter 49. Procedures for Formal Hearings by the Board

Special Formal and Other Investigative Hearings

• 28 TAC §49.125

The Industrial Accident Board proposes an amendment to §49.125, concerning notice of special formal hearing. This amendment reduces the notice to parties of special formal hearings before the board from 30 days to 14. This section proposed to expedite parties' access to a hearing before the board.

Scott McAnally, executive director, has determined that for the first five-year period the proposed section is 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. McAnally 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 expedited hearings for resolution of disputes, resulting in reduced time and expense to the parties. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Scott McAnally, Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Texas Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation act.

§49.125. Notice of Special Formal Hearing [Thirty-Day Notice]. In all other hearings except for those described in board rule §49.120 (relating to Special Statutory Notice), and unless waived by the board upon its own motion, or for good cause shown, no less than 14 [30] days written notice of the date, time, and place of such hearing will be given to the parties concerned.

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 April 15, 1988.

TRD-8803902 Scott McAnally
Executive Director
Industrial Accident Board

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 448-7962



Chapter 69. Medical Examination Orders

• 28 TAC §69.55

The Industrial Accident Board proposes an amendment to §69.55, concerning failure to attend examination. The amendment sets out the procedure for a carrier to apply to the board for an order suspending compensation when a claimant has failed to attend a medical examination ordered by the board. This amended section provides the procedure to determine whether compensation should be reduced or suspended when the injured worker does not report for the ordered medical examination.

Scott McAnally, executive director, has determined that for the first five-year period the proposed section is 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. McAnally 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 improved efficiency of administration of Texas Civil Statutes, Article 8307, §4(b), providing for examination of claimants by carrier-selected health care providers. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Scott McAnally, Executive Director, Industrial Accident Board, 200 East Riverside Drive, First Floor, Austin, Texas 78704-1287. Comments will be accepted in writing for 20 days after publication of this proposal in the *Texas Register*.

The amendment is proposed under Texas Civil Statutes, Article 8307, §4(a), which provide the Texas Industrial Accident Board with the authority to adopt rules necessary to administer the workers' compensation act. **§69.55. Failure to Attend Examination.**

(a) A claimant who agrees or is ordered to submit to an examination as requested by the carrier under this chapter is required to attend the examination.

(b) When a claimant fails to attend an examination permitted or ordered under this chapter, the carrier may notify the board in writing on a board-approved form and request a formal hearing. The board shall set the hearing on the first Friday following 10 days from receipt of the carrier's written request, and shall provide written notice to all parties [without good cause, the board shall, after immediate notice and hearing, order compensation suspended during the continuance of the refusal].

(c) The claimant may be heard at this hearing by:

- (1) making a personal appearance in Austin;
- (2) appearing by telephone conference call; or
- (3) filing a written brief.

(d) If a majority of the board determines there was no good cause for the claimant's failure to attend the medical examination, the board shall order the carrier to suspend compensation during the continuance of the claimant's refusal.

(e) The carrier may not terminate compensation because of the claimant's failure to attend a medical examination permitted or ordered under this chapter until ordered by the board.

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

Issued in Austin, Texas, on April 15, 1988.

TRD-8803901 Scott McAnally
Executive Director
Industrial Accident Board

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 448-7960

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**TITLE 31. NATURAL
RESOURCES AND
CONSERVATION**

**Part IX. Texas Water
Commission**

Chapter 293. Water Districts

**Special Actions relating to the
Harris-Galveston Coastal
Subsidence District**

• 31 TAC §§293.361-293.365

The Texas Water Commission proposes new §§293.361-293.365, concerning definitions; request to monitor delivered water; action on the request to monitor delivered water; analysis and report; and appeal of final decision of board. Recent legislation, Acts of the 70th Legislature, 1987, Senate Bill 909, provides for a procedure through which the commission, upon request of a water user, is required to monitor the percentages of groundwater and surface water supplied to the water user within Harris-Galveston Coastal Subsidence District. The new sections specify the manner in which the commission will process a request to monitor the delivered water and the information required to be submitted with the request.

Senate Bill 909 also provides for an appeal to the commission by a water user within the subsidence district who is granted a permit to use groundwater in an amount less than requested. The new sections specify the procedure before the commission for perfecting such an appeal and the manner in which the appeal will be processed, heard, and disposed of by the commission.

David Crawford, chief fiscal officer, has determined that there will not be fiscal implications on state government or small businesses as a result of enforcing or administering the sections.

The direct effect on local government for the

first five-year period the sections will be in effect is \$50,000. For the purpose of this analysis, it is anticipated that local government may request the monitoring of the percentages of groundwater and surface water in 1988. Therefore, the cost which has been forecasted for 1988 could occur in any one of the years during the 1989-1992 time frame.

Mr. Crawford 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 sections as proposed will be the availability of two remedial procedures for groundwater users within the Harris-Galveston Coastal Subsidence District who believe that they might be entitled to use a greater percentage of groundwater than authorized by the district. For each year of the first five years the sections as proposed are in effect, there is no anticipated economic cost to individuals who are required to comply with the sections.

Comments on the proposal may be submitted to Tom Bohl, Senior Staff Attorney, Legal Division, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069. Comments will be accepted 30 days following the publication of this proposal in the *Texas Register*.

The new sections are proposed under the Texas Water Code, §§5.103, 5.105, and 5.235, which provide the Texas Water Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Code and other laws of the State of Texas, to establish and approve all general policy of the commission, and to collect statutory fees from persons filing various applications with the commission.

§293.361. Definitions. When used in this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise:

Act—Acts of the 64th Legislature, Regular Session, 1975, as amended, Chapter 284.

Board—Board of directors of the Harris-Galveston Coastal Subsidence District.

Commission—The Texas Water Commission.

Monitoring—Water samples taken and analyzed, continuous water quality measurements, and/or physical measurements of water flow and pressure in certain water collection and distribution lines as deemed appropriate by the commission to determine the groundwater and surface water percentages of alternative water supply.

Permit year—A 365-day period of time during which a person is authorized by the Harris-Galveston Coastal Subsidence District to use groundwater.

Samples—Water samples taken to determine groundwater and surface water percentages in the alternative water supply.

Water chemist—A person or persons with expertise in water chemistry designated by the executive director to be the principal investigator.
§293.362. Request To Monitor Delivered Water.

(a) Upon the filing of a written request pursuant to the Act, §19A, with the executive director by a person ordered by the board to completely or partially discon-

tinue the use of groundwater, the commission shall monitor the water delivered to the person from the alternative water supply as defined in the Act to determine the percentage of that water supply that is surface water and the percentage that is groundwater. The request for monitoring must be filed, together with the following information, with the executive director no later than six months prior to the end of the permit year immediately following the board's order. The filing of an administratively complete request will entitle the person to monitoring not during that permit year, but during the first succeeding permit year, subject to the provisions of subsection (b) of this section. For purposes of the Act, §19A, a person shall be deemed to have been ordered to completely or partially discontinue the use of groundwater when the board issues a permit for less than the amount of groundwater requested by the person. For purposes of the Act, §19A, the request for monitoring shall be deemed made as of the first day of the permit year following the timely receipt by the executive director of an administratively complete request, subject, however, to the provisions of subsection (b) of this section. The following information shall be provided to the executive director with the request for monitoring:

(1) a layout of the existing facilities and distribution lines owned by the person, including, without limitation, designation of all points of connection to any alternative water supply;

(2) engineering specifications for facilities and lines described in paragraph (1) of this subsection;

(3) results of previous investigations regarding percentages of groundwater and surface water supplied to the person making the request;

(4) if the person is a political subdivision of the state, a copy of the resolution adopted by the governing body authorizing the request;

(5) a certified copy of the permit for the year covered by the board's order;

(6) if the person is a corporation, a resolution adopted by its board of directors authorizing the request; and

(7) any additional information deemed relevant to the monitoring request and requested by the executive director.

(b) If a person fails to comply fully with subsection (a) of this section, the person's alternative water supply will not be monitored during the permit year immediately succeeding the permit year covered by the board's order. Upon receipt of the information set forth in subsection (a) of this section, the monitoring request will be administratively complete.

(c) After an appropriate review of the information submitted under subsection

(a) of this section, if the executive director determines that the monitoring request is technically deficient, the executive director may request additional information from the person or the board, or both. The monitoring period shall not commence until six months from the date the application is deemed technically sufficient by the executive director.

§293.363. Action on the Request to Monitor Delivered Water. After an appropriate review of an administratively complete application, the executive director shall:

(1) designate a principal staff investigator;

(2) determine the method of investigation and monitoring consistent with good engineering practices and the Act, §19A, and which will fairly determine and reflect the annual groundwater and surface water percentage of the alternative water supply;

(3) determine requirements for field equipment;

(4) determine the type, frequency, and number of necessary physical and chemical analyses, procedures with regard to collecting water samples and location of monitoring and/or sampling stations;

(5) determine the fee necessary to compensate the commission for the requested study on the basis of one-half to the water purchaser and one-half to the water seller; and

(6) notify the board of the determinations made pursuant to paragraphs (1) - (5) of this section at a point prior to the commencement of the actual monitoring sufficient to give the board an opportunity to comment on the determinations prior to monitoring.

§293.364. Analysis and Report. The executive director shall prepare and issue not later than the 15th day after the last day of the permit year an annual certified report (written analysis) based on the investigation and monitoring, which will state the annual average percentages of surface water and groundwater provided to the purchaser by the seller of the alternative water supply for that permit year. The executive director's annual certified report shall be determinative and controlling for purposes of determining the percentages of surface water and groundwater in the alternative water supply pursuant to the Act, §19A.

§293.365. Appeal of Final Decision of Board.

(a) A person who is granted a permit authorizing withdrawal of groundwater in an amount less than that requested by the person may appeal the final decision of the board to the commission by filing a request for commission review of the board's final decision with the executive director within

60 days after the final order of the board.

(b) If the person appealing the final decision of the board to the commission has requested written findings and conclusions from the board, such findings and conclusions shall be filed with the executive director either with the request for commission review if the findings and conclusions are then available or as soon thereafter as they become available.

(c) The executive director may request additional information from the appellant, the board, or both concerning the final decision of the board. A request for commission review is administratively complete when all of the information requested, including the information requested in subsection (b) of this section, has been submitted. A complete application shall be delivered to the office of hearings examiners for the setting of a hearing on the appeal.

(d) The review on appeal by the commission under this section is governed by the substantial evidence rule as defined in the Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §19(e). The final decision of the commission may adopt, modify, or reject the findings and conclusions of the board. If the commission rejects the findings and conclusions of the board, it shall adopt its own findings of fact and conclusions of law. The commission shall issue a final ruling on the appeal no later than 60 days from the date the hearing on the appeal is closed.

(e) The hearing on the appeal shall be conducted, to the extent applicable given the limited scope of review under the substantial evidence rule, in accordance with the procedural rules of the commission, Chapters 261, 263, 265, 267, 269, and 273 of this title (relating to Introductory Provisions; General Rules; Procedures Before Public Hearing; Procedures During Public Hearing; Procedures After Public Hearings Before an Examiner; and Procedures After Final Decision); provided, however, that such hearing shall not be conducted as a contested case, and the foregoing procedural rules shall apply only to the extent that they do not exceed the scope of the commission's review under the substantial evidence rule. Nothing herein shall be interpreted to give the person a right to a trial de novo or to introduce evidence other than the record of the proceedings before the board.

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

Issued in Austin, Texas, on April 18, 1988.

TRD-8803942

William G. Newchurch
Director, Legal Division
Texas Water Commission

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 463-8087

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter O. State Sales and Use Tax

• 34 TAC §3.350

(Editor's Note: The State Board of Insurance proposes for permanent adoption the new section it adopts on an emergency basis in this issue. The text of the new section is in the Emergency Rules section of this issue.)

The Comptroller of Public Accounts proposes the repeal of §3.350, concerning audiovisual works. A new section is being adopted on an emergency basis which is substantially different from the current section.

Ben Lock, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed repeal in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of the fiscal implications for small businesses.

Mr. Lock 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 this change will benefit the public by provision of new information regarding tax responsibilities. There is no anticipated economic cost to individuals who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Mona E.ell Shoemate, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal is proposed under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.350. Audiovisual Works.

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 April 14, 1988.

TRD-8803858

Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption: May 23, 1988

For further information, please call: (512) 463-4004

Adopted Sections

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

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

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Loans

• 7 TAC §91.701

The Credit Union Commission adopts an amendment to §91.701, with changes to the proposed text published in the February 9, 1988, issue of the *Texas Register* (13 TexReg 673).

This amendment strengthens state-chartered credit unions' lending procedures and provides greater flexibility in the terms of their loans; thereby, improving their operating flexibility.

Specific guidance is provided to credit unions on the types of loans authorized, the terms that can be established and those fees which are prohibited; and nonpreferential treatment is emphasized in the granting of any loans.

Comments were received from three credit unions. Their comments were evaluated, but were not considered significant; however, the phrase, "unless prior written approval to increase such limits is granted by the commissioner," was added to two subsections to accommodate any credit union unduly impacted by some of the new loan limits.

The amendment is adopted under Texas Civil Statutes, Article 2461-1.01, et seq., §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union Act.
§91.701. *Loans.*

(a) Nonpreferential treatment. The rates, terms, conditions, and availability of any loan or line of credit made to, or endorsed or guaranteed by, any credit union official or employee or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans to other credit union members.

(b) Prohibited fees. A credit union shall not make a loan or extend a line of credit if any commission, fee, or compensation of any type from any person or entity other than the credit union is to be received by any credit union official or employee or an immediate family member of any such

individual in connection with underwriting, insuring, procuring, servicing, or collecting the loan or line of credit.

(c) Limitation on fixed rate loans. The aggregate of fixed interest rate loans having remaining maturities exceeding 10 years shall not exceed 500% of the credit union's reserves and undivided earnings unless prior written approval to increase such limit is granted by the commissioner.

(d) Personal loans.

(1) Secured installment loans.

(A) Credit unions may make loans to members when fully secured by a pledge of or security interest in personal property, the fair market value of which can reasonably be expected to equal or exceed the unpaid balance of the loan during the term of the loan.

(B) Repayment periods may not exceed 183 months from the date the loan was made.

(C) Level payment, variable interest rate loans with maturities which exceed the applicable maximums only because of interest rate variations are not considered to be in noncompliance with this subsection.

(2) Insured and guaranteed loans. A credit union may make, subject only to any limitations imposed by the Texas Credit Union Act, Chapter 7, any loan, in any amount, secured or unsecured, which is at least 90% insured or guaranteed as to both principal and interest by the State of Texas or the United States or any agency or instrumentality thereof.

(3) Unsecured installment loans.

(A) Credit unions may make loans to members which are not secured or not fully secured by a pledge of or security interest in personal or real property, for terms not to exceed 63 months from the date the loan was made.

(B) Level payment, variable interest rate loans with terms which exceed 63 months only because of interest variations are not considered to be in noncompliance with this subsection.

(4) Balloon payment loans.

Credit unions may make loans under paragraphs (1) and (2) of this subsection to members which will not fully amortize through equal periodic payments over the term of the loan. Periodic payments no less frequent than annually are required which are at least equal to those which would amortize a conventional loan of equivalent amount within legal maturity limits, unless repayment of the loan within the scheduled term is reasonably assured by a third party insurer of acceptable financial quality, or the loan is secured by collateral in which the balloon payment does not exceed the projected residual value of the collateral.

(5) Term loans. Credit unions may make loans to members which are either single payment loans or provide for payments less frequent than monthly. Term loans, unless fully secured by shares and deposits in the credit union, must have a maturity of no longer than one year from the date of the loan. Interest shall be paid at least annually. The credit union's board of directors shall determine the criteria for the granting and renewing of term loans.

(e) Real estate loans.

(1) Authority to make real estate loans. Credit unions may make real estate loans to members secured by a mortgage, deed of trust, or other instrument creating or constituting a lien on real estate. Additional security may also be taken by the credit union in connection with any such loan if deemed necessary and proper.

(2) Requirements regarding real estate loan transactions secured by first liens. No credit union shall:

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

(C) make a real estate loan unless the insurable improvements thereon are insured against loss at least equal to the amount of the lesser of the principal balance of the loan or the appraised value of the improvements, by a fire and extended coverage policy or its equivalent, issued by an insurance company authorized to do business in Texas with the credit union named as loss payee;

(D) (No change.)

(E) make a real estate loan, other than a real estate interim construction

loan, unless the credit union shall require the member-borrower to pay, in addition to payments of interest and principal, deposits to an escrow account for estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing such loan. Such deposits shall be at the same frequency as payments of principal and interest, shall be in equal increments, and at the end of an annual period shall be sufficient to enable the credit union to pay such charges as they become due from the funds so received. The total of such charges may be increased or decreased as is necessary for the payment of such charges. Every credit union shall keep a record of the amounts retained in each escrow account, submit an annual statement of the account to the borrower, and shall also keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans. The credit union may waive the escrow account requirement if an amount equivalent at least to the estimated annual insurance premium and annual taxes is maintained in an account of the member-borrower at the credit union and that account is pledged to the credit union for the term of the loan and the loan is not in arrears or delinquent at any time, provided that the credit union is furnished annually with paid-stamped tax receipts from all applicable taxing authorities and certificates of insurance coverage signed by a qualified officer of the issuing company.

(3) Requirements regarding loan transactions secured by other liens on real estate. The requirements for loans secured by liens on real estate other than first liens are the same as for those secured by first liens except as follow or as may be increased by prior written approval of the commissioner.

(A) Fire and extended coverage insurance, or its equivalent, must be maintained in an amount equal to the lesser of the total of the credit union's loan and the loans secured by all prior liens or the appraised value of the insurable improvements.

(B) The maximum maturity of a loan secured by a lien on real estate other than a first lien is 243 months.

(C) The total of the credit union's loan and the loans secured by all prior liens cannot exceed 80% of the current appraised value.

(D) No escrow arrangements are necessary if it is verified that a prior lienholder has provided for the timely payment of taxes and insurance.

(4) Maximum real estate term. Credit union real estate loans are subject to the following additional terms and condi-

tions or as may be increased by prior written approval of the commissioner.

(A) On purchase money first mortgage real estate loans secured by improved residential property, the maximum loan amount is 90% of the purchase price or appraised value of the property, whichever is less. Such loans shall be repaid, both as to interest and principal, within a period not exceeding 40 years from the date the loan is made regardless of the maximum loan amount. If such loans are insured by an agency of the United States government or by a private mortgage insurance company, the maximum loan amount is 95% of the purchase price or appraised value of the property, whichever is less. For nonpurchase money real estate loans secured by a first lien on improved residential property, the maximum loan amount is 80% of appraised value, and the maximum maturity is 243 months.

(B) On all real estate loans secured by improved non-residential property, the maximum loan amount is 80% of the current appraised value of the property and such loans shall be repaid, both as to interest and principal, within a period not exceeding 20 years from the date the loan is made. If such loans are insured by an agency of the United States government or by a private mortgage insurance company, the maximum loan amount is 95% of the purchase price or appraised value of the property, whichever is less.

(C) On all real estate loans secured by unimproved property, the maximum loan amount is 80% of the current appraised value and such loans shall be repaid, both as to principal and interest, within a period not exceeding 20 years from the date the loan is made.

(D) On all residential real estate interim construction loans, the maximum loan amount is 90% of the fair market value of the property after completion of construction. On all nonresidential real estate interim construction loans, the maximum loan amount is 80% of the fair market value of the property after completion of construction. Such interim construction loans must be repaid, both as to principal and interest, within a period not exceeding 18 months from the date of the loan. If approved beforehand and if qualified, such loans may be refinanced into permanent real estate installment loans, otherwise the credit union shall have in its file a letter of commitment to provide permanent financing from a lender regularly engaged in making real estate loans. The requirement of an escrow account as set forth in this section is waived on interim construction loans under this subsection. Fire and extended coverage insurance shall be required during construction in an amount equal to the estimated fair

market value of the property after completion of construction.

(5) Exceptions. For loans secured by a lien on real estate, but less than \$25,000 in amount and 124 months in maturity, the board of directors may establish, by written policy, requirements different from those herein stated.

(6) Applicability of rules relating to commercial loans. A loan granted under this section which is also a commercial loan as defined in subsection (f) (2) of this section must meet the requirements of both this subsection and subsection (f) (commercial loans) of this section.

(f) Commercial loans.

(1) Authority to make commercial loans. Credit unions may make loans to members subject to limitations within this section, provided that prior to engaging in commercial lending, or within 60 days of the effective date of this section if already engaged in commercial lending, the commissioner is so notified in writing.

(2) Definition. A commercial loan is a loan which meets all of the following qualifications:

(A) more than one half of the proceeds are to be used to finance a business venture or investment:

(B) more than one-half of the repayment of the loan is dependent upon income generated from a business venture or investment: and

(C) the loan plus all other commercial loans to the member and other members for a common commercial venture or investment exceeds \$50,000.

(3) Terms and amounts.

(A) Total outstanding balances of all commercial loans made in accordance with this section by any credit union, including participation loans purchased and participation loans sold with recourse, shall not exceed 500% of the credit union's reserves and surplus. Prior written approval to increase such limitation may be granted by the commissioner.

(B) The aggregate amount of commercial loans to a member or group of members for a common commercial venture or investment shall not exceed 50% of the credit union's reserves and surplus. Prior written approval to increase such limitation may be granted by the commissioner.

(C) Terms, interest rates, and frequency of payments shall be determined by written board policy.

(D) A commercial real estate loan shall be subject to the same requirements as a noncommercial real estate loan.

(4) Prohibitions. No credit union shall make a commercial loan:

(A) unless the loan is documented and administered in accordance with sound business practice and accepted industry standards;

(B) on which the entire repayment is dependent on the sale or lease of real property to an unknown purchaser or lessee;

(C) unless documentation is in place and properly signed and filed which will adequately perfect the credit union's interest in pledged collateral;

(D) in which the credit union has an equity participation; and

(E) unless the credit union has in place written loan policies specifically for commercial and investment loans.

(5) Classification of loans and allowances for loan losses requirements. The determination whether a member business loan will be classified as substandard, doubtful, or loss, for purposes of the valuation allowance for loan losses, will rely on factors not limited to the delinquency of the loan. Nondelinquent loans may be classified, depending on an evaluation of factors, including, but not limited to, the adequacy of analysis and documentation.

(A) Classifications are defined as follows.

(i) Substandard. Loan is inadequately protected by the current sound worth and paying capacity of the obligor or of the collateral pledged, if any. Loans classified must have a well-defined weakness or weaknesses that jeopardize the liquidation of the debt. They are characterized by the distinct possibility that the credit union will sustain some loss if the deficiencies are not corrected. Loss potential, while existing in the aggregate amount of substandard loans, does not have to exist in individual loans classified substandard.

(ii) Doubtful. A loan classified doubtful has all the weaknesses inherent in one classified substandard, with the added characteristic that the weaknesses make collection or liquidation in full, on the basis of currently existing facts, conditions, and values, highly questionable and improbable. The possibility of loss is extremely high, but because of certain important and reasonably specific pending factors which may work to the advantage and strengthening of the loan, its classification as an estimated loss is deferred until its more exact

status may be determined. Pending factors include proposed merger, acquisition, or liquidation actions, capital injection, perfecting liens on additional collateral, and refinancing plans.

(iii) Loss. Loans classified loss are considered uncollectible and of such little value that their continuance as loans is not warranted. This classification does not necessarily mean that the loan has absolutely no recovery or salvage value, but rather, it is not practical or desirable to defer writing off this basically worthless asset even though partial recovery may occur in the future.

(B) Loans classified shall be reserved as follows:

(i) loss loans at 100% of outstanding amount;

(ii) doubtful loans at 50% of outstanding amount; and

(iii) substandard loans at 10% of outstanding amount unless other factors (e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriated.

(g) Member business loans for credit unions insured by National Credit Union Share Insurance Fund.

(1) Applicability of rule. This section applies only to credit unions which are insured by National Credit Union Share Insurance Fund and is supplemental to the requirements of subsection (f) of this section.

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

(A) Associated member—Any member with a common ownership, investment, or other pecuniary interest in the business or agricultural endeavor for which the business loan is being made.

(B) Member business loan—Any loan or line of credit, the proceeds of which will be used for a business or agricultural purpose, except that the following shall not be considered as a member business loan regardless of the purpose:

(i) a loan or loans fully secured by a lien on a one to four-family dwelling that is any of the following:

(I) the member's primary residence;

(II) the member's secondary residence;

(III) one other such

dwelling owned by the member;

(ii) a loan fully secured by shares or deposits in the lending credit union or deposits in other financial institutions;

(iii) loans otherwise meeting the definition of a member business loan to any one obligor or associated member which, in the aggregate, do not exceed \$25,000;

(iv) a loan fully insured or guaranteed by any agency of the federal government or of a state or any of its political subdivisions;

(v) a loan containing an advance commitment to purchase in full by any agency of the federal government or of a state or any of its political subdivisions.

(3) Minimum requirements for member business policies. A member business loan made under subsection (e) of this section shall comply with the following requirements and the board of directors shall adopt specific member business loan policies which address, at a minimum, all of the following areas:

(A) types of business loans to be made;

(B) the credit union's trade area for business loan purposes;

(C) the maximum amount of credit union assets, relative to credit union's reserves and surplus, that will be invested in member business loans;

(D) the maximum amount of credit union assets, relative to credit union equity, that will be invested in a given category or type of member business loan;

(E) the maximum amount of credit union assets, relative to the credit union's reserves and surplus, that will be loaned to any one member or group of associated members, subject to paragraph (5) of this subsection;

(F) qualifications and experience requirements for personnel involved in making and servicing business loans;

(G) analysis of the obligor's initial and ongoing financial capacity to service the debt;

(H) collateral requirements, including initial and ongoing appraisal procedures to determine value and marketability, lien placement procedures, and insurance requirements;

(I) interest rates and maturity

limits for each type of member business loan to be made;

(J) listing, by name and title, of senior management employees of the credit union.

(4) Financial statement disclosures. The total number and aggregate dollar amount of member business loans shall be disclosed in the monthly financial statement of the credit union.

(5) Limitations. The aggregate amount of outstanding member business loans to any one member or group of associated members shall not exceed 20% of the credit union's reserves and surplus or the aggregate loan limit specified by the Act or rules, whichever is less, unless an exception is granted in writing by the commissioner after consulting with the regional director of the National Credit Union Administration.

(6) Prohibited transactions.

(A) A credit union shall not make member business loans to nonvolunteer credit union officials or senior management employees of the credit union or to any associated member or immediate family member of any such individual.

(B) A credit union shall not grant a member business loan in which any portion of the income to be received by the credit union is tied to the profitability of the business or commercial endeavor for which the loan is made.

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 April 15, 1988.

TRD-8803830 John R. Hale
Commissioner
Credit Union Department

Effective date: May 4, 1988

Proposal publication date: February 9, 1988

For further information, please call: (512) 837-9236

Investments

• 7 TAC §91.802

The Credit Union Commission adopts an amendment to §91.802, without changes to the proposed text published in the March 15, 1988, issue of the *Texas Register* (13 TexReg 1249).

The amendment provides sounder investment policies for state-chartered credit unions which will strengthen their investment practices and enhance their investment portfolios.

Specific guidance is provided on those investments which are permissible; thereby, reducing the possibility of investments being made in financially unsound investment offerings. Through improved investment policies and

practices, the public's savings will be more secure.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 2461-1.01, et seq. §11.07, which provide the Credit Union Commission with the authority to adopt reasonable rules necessary for the administration of the Texas Credit Union 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 April 15, 1988.

TRD-8803829 John R. Hale
Commissioner
Credit Union Department

Effective date: May 5, 1988

Proposal publication date: March 15, 1988

For further information, please call: (512) 837-9236

TITLE 19. EDUCATION Part II. Texas Education Agency

Chapter 75. Curriculum

Subchapter D. Essential Elements Grades Nine-12.

• 19 TAC §75.61

The Texas Education Agency adopts an amendment to §75.61 without changes to the proposed text published in the February 26, 1988, issue of the *Texas Register* (13 TexReg 950). The amendment will not be republished although there were several typographical errors in the proposed amendment as published.

The amendment concerns essential curriculum elements for English language arts, grades nine-12 and deletes the requirement that English IV (Academic) be divided into two semesters, one of which emphasizes British literature while the other emphasizes composition. The amendment combines the essential elements for both semesters into one course for which one unit of credit may be given. The intent of the section is to provide more flexibility in the structure of the course. Under the amended sections, districts may structure the presentation of the essential elements in the way that best meets local needs.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §21.101, which directs the State Board of Education to designate essential elements for subjects in the well-balanced curriculum.

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 April 12, 1988.

TRD-8803924 W.N. Kirby
Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: February 26, 1988

For further information, please call: (512) 463-9212

Subchapter E. Well-Balanced Curriculum

• 19 TAC §75.142

The Texas Education Agency adopts an amendment to §75.142, without changes to the text published in the February 26, 1988, issue of the *Texas Register* (13 TexReg 951).

The amendment concerns the description of a well-balanced secondary curriculum. In subsection (c)(1)(A), the requirement to offer English IV (Academic) every year or at least every other year is being deleted since English IV (Academic) is no longer a required part of the advanced high school program, although it remains an option for that program. In subsection (c)(1)(J), course names for computer science courses and cross-references to vocational education rules have been updated to reflect recent amendments to those rules. School districts will be required to offer a well-balanced curriculum in accordance with the amended section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §21.101, which directs the State Board of Education to designate essential elements for subjects in the well-balanced curriculum.

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 April 15, 1988.

TRD-8803917 W.N. Kirby
Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: February 26, 1988

For further information, please call: (512) 463-9212

Chapter 105. Foundation School Program

The Texas Education Agency adopts the repeal of §§105.1, 105.41-105.46, 105.48, 105.50, 105.53-105.55, 105.91, 105.111, 105.151, 105.191, 105.211, 105.231, 105.251, 105.256, 105.257, 105.271, 105.311, 105.312, 105.331, 105.351, and 105.371, amendments to §105.49 and §105.92, and new §105.331, without changes to the proposed text published in the March 1, 1988, issue of the *Texas Register* (13 TexReg 1075).

The sections concern the Foundation School Program. These sections were not amended after the passage of House Bill 72, 68th Leg-

islature, Second Called Session, although the funding provisions in that legislation made much of the material in the sections obsolete. All sections which reflect the funding system prior to House Bill 72 have been repealed. Section 105.92 clarifies that all paraprofessional and professional personnel are required to be certified, licensed, or otherwise qualified according to standards established by the State Board of Education. Personnel in instructional/administrative officer positions must hold appropriate supervisor's or administrator's certification. Persons assigned to the administrative officer position must hold at least the bachelor's degree. New §105.331, concerning records and audits, provides for prompt adjustments of payments when the need for such adjustments is revealed as part of a school district audit. Under the new, amended and repealed section, funding for the Foundation School Program will be in accordance with the Texas Education Code, Chapter 16, and the new and amended sections.

No comments were received regarding adoption of the repeals, amendments, and new section.

Subchapter A. Purpose of the Foundation School Program

• 19 TAC §105.1

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803906 W. N. Kirby
Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: March 1, 1988

For further information, please call: (512) 463-9212

Subchapter C. Allocation of Personnel Units

• 19 TAC §§105.41-105.46, 105.48, 105.50, 105.53-105.55

The repeals are adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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Commissioner of Education

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For further information, please call: (512) 463-9212

Subchapter C. Allocation of Funds for Windham Independent School District

• 19 TAC §105.49

The amendment is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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Commissioner of Education

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For further information, please call: (512) 463-9212

Subchapter E. Salary Schedule

• 19 TAC §105.91

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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Commissioner of Education

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For further information, please call: (512) 463-9212

Subchapter E. Salary Schedule

• 19 TAC §105.92

The amendment is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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TRD-8803911 W. N. Kirby
Commissioner of Education

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For further information, please call: (512) 463-9212

Subchapter F. Allocation of Operating Cost

• 19 TAC §105.111

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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TRD-8803922 W.N. Kirby
Commissioner of Education

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For further information, please call: (512) 463-9212

Subchapter H. State Available School Fund

• 19 TAC §105.151

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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TRD-8803921 W.N. Kirby
Commissioner of Education

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For further information, please call: (512) 463-9212

Subchapter J. Local Share of Program Cost

• 19 TAC §105.191

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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TRD-8803928 W.N. Kirby
Commissioner of Education

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For further information, please call: (512) 463-9212

**Chapter 105. Foundation
School Program**

**Subchapter K. Foundation
Entitlement to Districts**

• **19 TAC §105.211**

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

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TRD-8803927 W.N. Kirby
 Commissioner of Education

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For further information, please call: (512)
463-9212

**Subchapter L. Incentive Aid
Payments**

• **19 TAC §105.231**

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803926 W.N. Kirby
 Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: March 1, 1988

For further information, please call: (512)
463-9212

**Subchapter M. State Minimum
Sick Leave**

• **19 TAC §§105.251, 105.256,
105.257**

The repeals are adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803925 W.N. Kirby
 Commissioner of Education

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For further information, please call: (512)
463-9212

**Subchapter N. Instructional
Television Services Program
Funding**

• **19 TAC §105.271**

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803910 W.N. Kirby
 Commissioner of Education

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For further information, please call: (512)
463-9212

**Subchapter P. Categorical
Program Aid**

• **19 TAC §105.311, §105.312**

The repeals are adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803909 W.N. Kirby
 Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: March 1, 1988

For further information, please call: (512)
463-9212

**Subchapter Q. Adjustment of
Payments**

• **19 TAC §105.331**

The new section is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803914 W. N. Kirby
 Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: March 1, 1988

For further information, please call: (512)
463-9212

**Subchapter R. Local
Cooperative Teacher
Education Centers**

• **19 TAC §105.351**

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803913 W.N. Kirby
 Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: March 1, 1988

For further information, please call: (512)
463-9212

**Subchapter S. Equalization Aid
for Program Enrichment**

• **19 TAC §105.371**

The repeal is adopted under the Texas Education Code, §16.005, which authorizes the State Board of Education to make rules for administration of the Foundation School Program.

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

Issued in Austin, Texas, on April 12, 1988.

TRD-8803918 W.N. Kirby
 Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: March 1, 1988

For further information, please call: (512)
463-9212

**Chapter 137. Teacher
Education**

**Subchapter C. Standards for
Teacher Education
Institutions**

• **19 TAC §137.41**

The Texas Education Agency adopts an amendment to §137.41, without changes to the text published in the February 26, 1988, issue of the *Texas Register* (13 TexReg 953).

The amended section concerns general provisions for standards for teacher education institutions and changes the effective date for required implementation of the 1987 stan-

dards for teacher education from September 1, 1988, to September 1, 1989. This change will give colleges and universities adequate time to implement the new requirements. Individuals pursuing initial certificate or endorsement programs based on previous standards must complete all requirements for certification before September 1, 1991.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.032, which authorizes the State Board of Education to make rules for approval and disapproval of institutions and programs for teacher education.

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 April 12, 1988.

TRD-8803923 W. N. Kirby
Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: February 26, 1988

For further information, please call: (512) 463-9212

Subchapter D. Institutional Review Process

• 19 TAC §137.69

The Texas Education Agency adopts an amendment to §137.69, without changes to the text published in the February 26, 1988, issue of the *Texas Register* (13 TexReg).

The amendment concerns the annual performance report of institutions approved for teacher education. The amendment changes the due date from October 1 to November 15 and deletes several data elements which are already available in the agency or which have been determined to be no longer needed in light of the new 1987 standards for teacher education institutions. The purpose of the amendment is to reduce the paperwork burden on teacher education institutions. Under the adopted section, institutions will submit reports in compliance with the section.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.032, which gives the State Board of Education authority to make rules for approval or disapproval of colleges and universities offering teacher education; and §13.304, which requires each teacher education program to submit an annual performance report to the State Board of Education.

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 April 12, 1988.

TRD-8803916 W. N. Kirby
Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: February 26, 1988

For further information, please call: (512) 463-9212

Subchapter M. 1987 Program Requirements for Preparation of School Personnel for Initial Certificates and Endorsements

• 19 TAC §§137.511, 137.555, 137.556, 137.558

The Texas Education Agency adopts an amendment to §§137.551, 137.555, 137.556, and 137.558, without changes to the text published in the February 26, 1988, issue of the *Texas Register* (13 TexReg 954).

The amendments concern preparation programs for teacher certification and are intended to provide greater flexibility for designing the professional development sequence in initial certification programs by deleting minimum semester hour requirements for specified program segments. To ensure greater uniformity in program requirements, the requirements for student teaching have been changed to a minimum of 10 weeks rather than the eight to 12 weeks (depending on the option chosen) in prior rule. Under the revised sections, institutions must provide the training in methodology specified in §137.551(e)(2), but there is no specific semester hour requirement for this segment of the program. Students must complete the required hours of student teaching.

No comments were received regarding adoption of the amendments.

The amendments are adopted under the Texas Education Code, §13.032, which authorizes the State Board of Education to make rules for approval or disapproval of teacher education institutions and programs.

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 April 12, 1988.

TRD-8803920 W. N. Kirby
Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: February 26, 1988

For further information, please call: (512) 463-9212

Chapter 141. Teacher Certification

Subchapter A. Certification of Teachers in General

• 19 TAC §141.3

The Texas Education Agency adopts an amendment to §141.3, without changes to the text published in the February 26, 1988, issue of the *Texas Register* (13 TexReg 957).

The section concerns general requirements for teacher certification. The amendment is designed to simplify application procedures

and bring options for certification for graduates of Texas institutions in line with options for out-of-state graduates. The amendment allows Texas colleges to recommend secondary certification for persons who passed the required examination for the certification of educators in Texas (ExCET) test in professional development but only one ExCET test in a content specialization area. Persons who do not pass the content specialization requirement of the examination for the certification of educators in Texas (ExCET) test in a given discipline may be assigned to teach that subject for no more than one year until satisfactory scores on the required examination have been achieved. An employing superintendent must verify that no fully certified teacher was available for the assignment. The amendment also simplifies application procedures by eliminating the requirement that each applicant secure the signatures of three character references.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Education Code, §13.032, which authorizes the State Board of Education to make rules concerning teacher certification.

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 April 12, 1988.

TRD-8803919 W. N. Kirby
Commissioner of Education

Effective date: May 5, 1988

Proposal publication date: February 26, 1988

For further information, please call: (512) 463-9212

TITLE 22. EXAMINING BOARDS

Part XI. Board of Nurse Examiners

Chapter 217. Licensure and Practice

• 22 TAC §§217.2, 217.4, 217.5

The Board of Nurse Examiners adopts amendments to §§217.2, 217.4, and 217.5. Section 217.5 is adopted with an editorial change to the proposed text published in the February 23, 1988, issue of the *Texas Register* (13 TexReg 908). The amendments to §217.2 and §217.4 are adopted without changes and will not be republished.

These amendments are adopted to comply with the recent changes made by the National Council of State Boards of Nursing, Inc., Delegate Assembly. Effective February, 1989, candidates taking the NCLEX-RN will receive score reports of pass/fail rather than discrete scores. Failing candidates will receive an enhanced diagnostic profile to assist them in preparing to retake the exam. This will comply with Article 4518, §3, in which the board is required to set the passing score not to exceed the score required by a majority of the states. All states will use the same passing

point which is determined by a psychometrically sound criterion referenced standard setting procedure.

Candidates will be assured that the results of the examination will be used only for the purpose intended - to assist the board in determining entry level competence for initial licensure.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 4514, §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 the Act. Such rules and regulations shall not be inconsistent with the provisions of this law. §217.5. Requirements for Licensure of Nurses Not Eligible for Endorsement Under §217.4

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

(c) Passing the NCLEX-RN.

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 April 15, 1988.

TRD-8803905 Louise Sanders
Executive Secretary
Board of Nurse Examiners

Effective date: May 6, 1988

Proposal publication date: February 23, 1988

For further information, please call: (512) 835-4880

•22 TAC §217.13

The Board of Nurse Examiners adopts an amendment to §217.13 without changes to the proposed text published in the February 23, 1988, issue of the *Texas Register* (13 TexReg 908).

The section is being adopted to comply with changes in the Nurse Practice Act which occurred during the 70th Legislature. Specifically, Article 4525(a) §1, requires each registered nurse having reasonable cause to suspect that a registered nurse has exposed or is likely to expose a patient or other person unnecessarily to a risk of harm because of unprofessional conduct, failure to care adequately for a patient, or failure to conform to the minimum standards of acceptable professional nursing practice to submit a signed, written report to the board.

The amendment anticipates more alleged violations will be reported to the board and the ultimate benefit to the public is increased protection from unsafe nursing practices.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil

Statutes, Article 4514, §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 the Act. Such rules and regulations shall not be inconsistent with the provisions of this law.

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 April 15, 1988.

TRD-8803904 Louise Sanders
Executive Secretary
Board of Nurse Examiners

Effective date: May 6, 1988

Proposal publication date: February 23, 1988

For further information, please call: (512) 835-4880

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part III. Texas Air Control Board

Chapter 116. Permits

• 31 TAC §116.12

The Texas Air Control Board (TACB) adopts an amendment to §116.12, without changes to the proposed text, published in the January 8, 1988, issue of the *Texas Register* (13 TexReg 188).

The amendment replaces the previous single fee with a tiered fee schedule. The single fee of \$300 was adopted in 1986 on an interim basis because of the small number of continuances to be reviewed early in the program. However, the number of reviews and resultant resource needs are expected to increase rapidly during the next five years.

The revised fee schedule is based on the total annual allowable emissions to be authorized by the operating permit following continuance. The applicant will estimate the fee based on emission rates at the time of application for permit renewal. The tiers outlined in the schedule more accurately reflect agency costs of performing a detailed technical review of these 15-year-old permits than the previous flat fee.

The amendment is adopted under Texas Civil Statutes, Article 4477-5, §3.09(a), which provides the TACB with the authority to make rules and regulations consistent with the general intent and purposes of the Texas Clean Air Act and to amend any rule or regulation the TACB makes.

The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a, §(c)(1), requires categorization of comments as being for or against a proposal.

A commenter who suggested any changes to the proposal is categorized as against it, while a commenter who agreed with the proposal in its entirety is classified as being for it.

Six commenters testified concerning the proposed fee system. Those commenting against the proposal were the Electrical Reliability Council of Texas (ERCOT), the Texas Hot Mix Asphalt Pavement Association (Texas Hot Mix), and Transcontinental Gas Pipeline Corporation (TGPL). Those commenting in favor of the proposal were I. G. Smith, the Texas Chemical Council, and Rohm and Haas Texas, Inc.

A complete summary of comments and a discussion of issues follows. Copies of the written testimony and the hearing transcript are available for inspection at the TACB Central Office, 6330 U.S. Highway 290 East, Austin, Texas 78723.

Two commenters (ERCOT and Texas Hot Mix) questioned the validity of basing the fees on emissions. Both asserted that the quantity of emissions does not always correlate with the resources expended in continuance reviews. Texas Hot Mix recommended that the fee system be based on Standard Industrial Classification (SIC) codes or capital costs rather than emissions. Texas Hot Mix further stated that if the emissions-based system is used, the fee should be based on stack emissions only, because fugitive emissions are difficult to quantify.

In evaluating the factors on which to base a revised continuance fee system, the staff determined that an emissions-based system would be the least difficult to implement and would provide an acceptable degree of equity in the assessment of fees. Although there may not be a one-to-one correspondence between the quantity of emissions and the difficulty of review, in general, the review of a permit involving high emissions levels is more complicated and requires more staff resources than one with low levels. As part of the pre-hearing process, the TACB staff held a public meeting to discuss possible alternate systems. During the meeting, most trade group representatives agreed that a capital cost-based system would be extremely onerous because of the difficulty of retrieving 15-year-old cost information. Similarly, the staff dismissed using an SIC code-based system because SIC codes are assigned to accounts and cover the principal business involved, while the permit continuances are for specific facilities/units within such accounts. The SIC codes are not specific enough to identify the individual pieces of equipment, such as boilers and storage tanks, which are normally permitted. For instance, different SIC codes apply to gasoline terminals and to chemical plants. Both of these types of accounts could have storage tanks permitted by the TACB. Under an SIC code system, if the staff assessed a fee for continuance of a storage tank permit, the fee would be based on the SIC code applicable to the account or plant site. Because of the relative complexity of many permits related to chemical plants compared to those for gasoline terminals, the fee charged for a permit at a chemical plant under such a system would necessarily be much larger than the fee for a permit at a gasoline terminal, even though each permit could consist of storage tanks with similar emissions. This potential for disproportion-

ately large permit fees for relatively simple permits would represent a significant inequity in such a system.

More complex approaches were considered, which ultimately could provide more equity in the assessment of fees. However, the alternatives would all require significant and lengthy expenditure of staff resources to develop and implement. The cost of such development was considered unwarranted considering the relatively small amount of fees to be collected and the marginal improvement in equity that could be anticipated. The staff believes that an emissions-based system is reasonably equitable and consistent with air pollution control efforts.

Finally, limiting the basis of the fee to stack emissions would mean disregarding a potentially major source of emissions. Indeed, some industries, such as coal-handling systems and rock crushers, receive permits based solely on fugitive emissions. Additionally, comparable staff resources are expended in reviewing the quantification, composition, and control of the fugitive emissions as are expended in reviewing stack emissions. Therefore, the staff recommends that the continuance fee be based on the total annual allowable emissions listed in the permit being reviewed.

Two commenters (Texas Hot Mix and TGPL) asserted that the proposed fees are inequitable. Texas Hot Mix expressed concern about the difficulty and cost of calculating the fee assessment, and the possibility of having to pay excessive fees in years when plant operations have been cut back. TGPL maintained that the proposed fee system would cause small to moderate emitters to subsidize large emitters and suggested adding more tiers to the fee schedule.

The TACB permit staff regularly provides technical assistance, such as recommendation of emission factors, to permit applicants. The reviewers work closely with applicants, and questions about possible fee assessments can be dealt with on a case-by-case basis. Additionally, if the fee paid by the applicant is greater than the final amount required, the excess will be rebated. The proposed fees are not excessive in that they are designed to recover only a portion of the cost of administering the permit continuance program.

With regard to TGPL's assertions that more tiers are needed and that permit holders with moderate emissions are subsidizing high-level emitters, it should be noted that the staff tried to derive a range of fees that would be both acceptable to the regulated community and capable of generating enough revenue to cover a reasonable portion of the review costs. The \$300 minimum fee was not challenged as being unfair by any who commented on the proposed fee system and appears to be a sound cutoff point for small emitters. However, an initially-considered maximum fee of \$37,500 was unanimously denounced as being excessive by trade organizations. As a result, a maximum fee of \$10,000 was proposed and received no significant adverse comments.

The bulk of the continuance reviews are for small to moderate emitters. For instance, of the 350 permits to be reviewed in fiscal year 1989, 191 have emissions of 5 tons per year

or less, while only 12 have emissions of greater than 1,000 tons per year. The proposed system was set up to return an acceptable portion of the agency cost. The bulk of the work will be expended on processing permits from smaller sources. Therefore, the bulk of the permit continuance revenue must, appropriately, be generated from those smaller sources. However, fees are proportionately lower for the smaller sources. The 191 sources with emissions of five tons per year or less will pay \$300 apiece, in contrast to fees of \$10,000 for the 12 largest sources. Adding increments or tiers within the fee schedule for larger emitters would not lessen the fees for the smaller emitters nor substantially alter the fees paid by the moderate emitters. Therefore, the staff recommends retention of the existing tiers within the system.

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 April 13, 1988.

TRD-8803804 Allen Eli Bell
Executive Director
Texas Air Control Board

Effective date: May 4, 1988

Proposal publication date: January 8, 1988

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

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TITLE 34. PUBLIC FINANCE
Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration
Subchapter O. State Sales and Use Tax

• **34 TAC §3.357**

The Comptroller of Public Accounts adopts new §3.357 with changes to the proposed text published in the March 8, 1988, issue of the *Texas Register* (13 TexReg 1181).

During the last special session of the 70th Legislature, a new service was added to the sales tax base. The new section offers guidance to the public and to persons who build, repair, restore, and remodel realty which services became taxable effective January 1, 1988. The new section also addresses maintenance of real property.

Comments were received on the proposed new section. As a result of these comments, numerous changes were made. Comments were received from the following persons, businesses, and association:

The Texas Council of Painting and Decorating Contractors of America did not think the section was reflective of the statutory language of §151.0047. The association felt repainting should be classified as maintenance. The association also felt the section failed to accurately identify and categorize real property painting services and failed to provide sufficient guidelines to distinguish between repair and maintenance. They felt the risk of failing to provide taxpayers with definite guid-

ance would result in similarly situated parties being taxed differently.

The comptroller declined to accept the association's request to classify repainting as maintenance. The comptroller's response was to add a definition of restoration, to delete references to painting from the repair definition and add a paragraph to subsection (b) about repainting.

Comments were received from the W.S. Bellows Construction Corporation offering numerous suggestions for clarification. These comments were seconded by B.E. Beecroft Co. Inc. With the exception of the suggestion on local tax allocation, the suggestions were adopted. The comptroller is governed by the provisions of the Tax Code, Chapters 321, 322 and 323 regarding local tax. These chapters determine how the local tax is allocated.

The Bartlett Cocke Jr. Construction Company of San Antonio also asked the comptroller to change the local allocation provisions of the rule. The comptroller again responded that the local tax laws control the allocation procedure. The company should note, however, that if the job site is outside the boundaries of the MTA, MTA tax will not be due. There are specific provisions in the MTA statutes which exempt from the MTA tax deliveries outside the MTA boundaries.

Local tax was also the concern of Hallman & Hallman Inc. of Garland. They were concerned that contractors in the unincorporated areas of Dallas County would have a 1.0% advantage. The comptroller responded that while the local sales tax is determined by the location of the place of business of the service provider, the job site determines the local use tax rate. For example, if a service provider in an unincorporated area has a job inside an incorporated area, the service provider would not collect any local sales tax because none has been authorized at his location. Since there is no local sales tax due, the service provider would then have to collect the local use tax due based upon whatever tax rate applies at the job site.

Hallman & Hallman was also concerned about having the responsibility for determining that the proper amount of sales tax was paid on a project when the project covered both remodeling and new construction labor. They felt it should be the entire responsibility of the owner. The comptroller responded that under the sales tax law both the buyer and the seller are equally responsible for seeing that the sales tax is paid and either can be held liable if the tax is not paid. This is true of any seller and buyer, not just a service provider and customer. The only difference here is that a portion of the sales price may be exempt from tax if both parties to the transaction agree on how much of the project is new construction. The comptroller makes the service provider a party to this determination because the service provider has the knowledge and expertise to determine the cost breakdown and making both parties share in the determination should result in an accurate allocation.

Preslar Lath & Plaster of Austin were concerned about the changes made to the section from the emergency version to the proposed version as the provisions applied to a project they had just finished. Unless a section addresses a retroactive application, a

section is generally effective only from its effective date forward. So, any projects completed under the provisions of one section would be covered by that section and not a section adopted at a future date.

Preslar Lath & Plaster also commented on of subsection (a)(8) regarding the manager's office being commercial unless the space is 5.0% or less of the total space. They claim the requirement causes additional job cost because they must measure the project to determine the percentage. It is the comptroller's position that most managers' office space is so small when compared with the overall residential complex, that extensive measurements are not needed. On the other hand, if the managers' office space is so large that an exact measurement is needed, then the improvements may well be commercial and should be taxed accordingly. Regarding the documentation provisions in of subsection (b)(7), it is the comptroller's position that the taxable and exempt allocation is something that should be agreed upon by the service provider and the owner at the start of the project and the taxable allocation used throughout the project regardless of the period of time required to complete the project. The service provider should have a good idea, based on blueprints, bid sheets, tally sheets, or contracts, how much of the project to allocate to new construction. The comptroller is unable to see what privileged information the service provider would need to make a determination as to the exempt portion of the contract. However, if privileged information is needed, it will be to the owner's advantage to provide it, since the other alternative is to assess tax on the entire cost of the project.

Longview Building Systems submitted comments regarding subsection (c)(6) which explains the exemption for labor performed by employees for an employer. Longview feels that this exemption encourages employers to use employees to perform taxable services rather than use licensed and bonded contractors. Longview is concerned that, as a result, the safety and quality of remodeling construction will suffer along with the profit margins of construction professionals. The comptroller explained that the exemption for labor performed by employees for an employer is provided by law (Tax Code, §151.057) and may only be changed by the Legislature.

Finally, a suggestion was submitted by J. Andy Knudson of New Braunfels. Mr. Knudson thought an example in paragraph (a)(6) was needed for clarity.

The new section is adopted under the Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2, §3.357. *Real Property Repair and Remodeling.*

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

(1) Contractor—A person who builds new structures, completes any part of an uncompleted new structure which is an improvement to real property, or makes an

improvement to residential property. Contractors should refer to §3.291 of this title (relating to Contractors).

(2) Labor—For the purposes of this section, labor means all components of a transaction or contract directly related to the remodeling, repair, or restoration other than those components attributable to materials incorporated into the realty. Unrelated components, such as charges by engineers and architects, are also part of the labor component unless separately stated to the customer.

(3) Maintenance on real property—All scheduled periodic work on operational and functioning improvements to real property necessary to sustain or support safe, efficient, continuous operations or to keep in good working order by preventing the decline, failure, lapse, or deterioration of the improvement.

(4) New construction—All new improvements to real property including initial finish out work to the interior or exterior of the improvement. An example would be a multiple story building which has only had its first floor finished and occupied. The finishing out of each additional floor prior to occupancy will be considered new construction. New construction also includes the addition of new footage to an existing structure.

(5) Real property—Land including structures and other improvements embedded in or permanently affixed to the land.

(6) Remodeling or modification—To make over or rebuild real property or structures in a similar but different way. Replacement or upgrading of any part of an existing structure is remodeling or modification. Finish out work performed after initial finish out has been done is remodeling even though the improvement has not been occupied. An example would be a shopping complex completely finished by the developer prior to renting to tenants. A prospective tenant wants a different color scheme before taking possession. The repainting by the developer is remodeling.

(7) Repair—To mend or bring back as near as can be to its original working order real property which was broken, damaged, or defective.

(8) Residential property—Property used as a family dwelling or a multifamily apartment or housing complex, nursing homes, condominiums, or retirement homes. The term includes swimming pools, laundry rooms for tenants, and other common areas for tenants' use. Managers' offices will only be residential if the space occupied by the office is 5.0% or less of the total space of the residence. The term does not include hotels or any other facilities which are subject to the hotel occupancy tax or any other area open to nonresidents.

(9) Restoration—To bring back as near as can be to its original condition real property which is still functional but which has faded, declined or deteriorated.

(10) Unrelated service. A service will be considered as unrelated if:

(A) it is not a service involving the repair, remodeling, or restoration of real property, nor a service taxed under other provisions of the Tax Code, Chapter 151;

(B) it is of a type which is commonly provided on a stand-alone basis; and

(C) the performance of the unrelated service is distinct and identifiable. Examples of an unrelated service which may be excluded from the tax base include engineering plans or architectural designs.

(b) Tax responsibilities of repairmen and remodelers.

(1) All persons who repair, restore, or remodel real property must obtain a Texas sales and use tax permit. Persons who maintain real property are not covered by this section. Persons who are constructing new facilities or are repairing or remodeling residential property should refer to §3.291 of this title (relating to Contractors).

(2) All persons who repair, restore, or remodel real property must collect tax on the total sales price to their customers less separately stated charges for unrelated services or accept valid resale, exemption or direct payment exemption certificates in lieu of tax. Previously, lump-sum and separated contracts were treated differently for tax purposes. This distinction is no longer valid when the contract is for the repair, remodeling or restoration of real property.

(3) A contract which involves both remodeling and new construction will be taxed in total unless the charge for new construction labor is separately stated as outlined in paragraph (7) of this subsection. An example would be remodeling a restaurant's kitchen at the same time a new dining area outside the existing structure was added. Work on the kitchen would be taxable as remodeling, while the new dining area would be new construction. Minor repair, restoration, or remodeling done in connection with new construction will not be taxable if the charge attributed to repair, restoration, or remodeling is 5.0% or less of the overall charge.

(4) All tangible personal property purchased by the repairman or remodeler and incorporated into the real property may either be purchased tax free or the repairman or remodeler may pay tax on purchases and take credit against tax later collected and remitted on the total

sales price. Sales tax must be paid at the time of purchase by the repairman or remodeler on all materials and supplies used but not incorporated in the realty. The repairman or remodeler is not entitled to a credit for the tax paid on materials and supplies used but not incorporated into the realty.

(5) Items used in performing repairs, remodeling, or restoration for exempt entities.

(A) Persons who repair, remodel, or restore real property or make improvements to real property for exempt organizations may claim an exemption for taxable items used in those activities. Taxable items used in performing repairs, remodeling, or restoration activities for exempt organizations are exempt from tax to the extent of the value of the items so used or consumed.

(B) Procedures for calculating and claiming this exemption are the same as are set out in §3.291(d) of this title (relating to Contractors).

(6) Repairs, restoration, or remodeling performed upon a structure which is used both for residential and commercial purposes will be taxable in total unless the labor on the residence is separately identified. The labor to repair, restore, or remodel the residence will not be taxable if separately stated.

(7) When both remodeling and new construction are being performed under the same contract, the parties to the contract should separately identify taxable from nontaxable labor in a construction contract and the charges applicable to each or the entire contract will be presumed to be for repair, restoration, and remodeling. Documentation which clearly defines the work being performed should be retained by both parties to show that had the new construction and remodeling been done independently of each other, the cost of each would be reasonably near the allocation of charges. Examples of acceptable documentation include written contracts which detail the scope of work, bid sheets, tally sheets, schedules of values and blueprints. If there is not a written contract signed by both parties clearly showing agreement as to the taxable and nontaxable work being performed, the owner should provide the contractor with a certification verifying the contractor's allocation of remodeling and new construction labor. The Comptroller may recalculate the charges if the allocation appears unreasonable and either party may be held responsible for the additional tax due.

(8) Repainting is presumed to be a restoration or remodeling activity. Persons performing repainting or other restoration activities should collect sales tax on their total charge unless their customer provides a properly completed exemption certificate

as outlined in paragraphs (2) or (4) of subsection (c).

(c) Exemptions.

(1) It is the responsibility of the repairman or remodeler to verify any exemption claimed by the customer unless the customer is a governmental agency or a nonprofit school.

(2) A charge for labor to maintain real property is not taxable. Persons providing maintenance on real property are liable for tax on all materials used. Persons whose contracts purport to be maintenance contracts must be able to show by maintenance schedules or work orders that the services meet the definition in subsection (a)(3) of this section. If the person performing the service does not have a written contract, but is only hired as needed, the service provider must presume that the labor is for repair or restoration and collect tax. If the service provider's customer has documentation to prove that the labor qualifies as maintenance, the customer may issue an exemption certificate in lieu of paying tax to the service provider. The certificate must state that the labor is for the purpose of maintenance rather than repair or restoration and that the customer will be liable for any additional tax due in the event that it is determined that repairs rather than maintenance were performed. Repairs or restoration performed under a maintenance contract will not change a maintenance contract into a repair contract as long as the charges attributable to repairs and restoration are 5.0% or less of the overall charge. Maintenance contracts with repair and restoration charges exceeding 5.0% will be taxable in total unless the charges for repairs and restoration are separately identified to the customer.

(3) Modifying parts of existing structures for the sole purpose of supporting the addition of new space will not change a new construction contract into a remodeling contract as long as the charges attributable to remodeling are 5.0% or less of the overall charge. Examples include changing a one-story building to a two-story building and adding a stairway to the existing structure to provide access to the new space, or removing a wall to add additional structural support in the process of adding on a new room outside the original structural space. Contracts with remodeling charges exceeding 5.0% will be taxable in total unless the charges for remodeling are separately identified to the customer.

(4) An exemption certificate may be issued by a persons remodeling, restoring, or repairing buildings listed in the National Register of Historic Places or by an organization exempted under the Tax Code, §151.309 or §151.310, if the repair, restoration, or remodeling appears reasonably related to the exempt purpose of the organization. See §3.322 of this title (relating to Exempt Organizations)

(5) Repairing property lost or damaged by fire, flood, explosion, natural disasters, or other accident for which a casualty claim could have been filed if the property was insured will be considered new construction. Person having property repaired under this paragraph should issue the service provider an exemption certificate in lieu of tax. The service provider's presumption is that all work is taxable until an exemption certificate is issued.

(6) No sales tax is due on the wages or salary paid by an employer to an employee who provides the labor to repair, remodel or restore real property belonging to and used by the employer. A person will be considered the employee of the employer if the employer pays the person's salary, withholds applicable federal taxes from the employee's salary, pays employment-related benefits, such as health insurance, etc., and exercises direct control over the work performed by the person.

(d) Resale certificates.

(1) Persons who repair, restore, and remodel real property may issue a resale certificate in lieu of tax to suppliers of tangible personal property only if the tangible personal property will be incorporated into the customer's realty. For example, a repairman or remodeler purchases paint to repaint a repaired or remodeled area. The paint is transferred to the customer as a part of the finished job. The repairman or remodeler may purchase the paint tax free by issuing a resale certificate. Tax is due on the total amount charged the customer, including amounts for the paint and for the services. A resale certificate may not be issued for materials and supplies used or consumed by the repairman or remodeler which are not incorporated into the customer's realty.

(2) A resale certificate may be issued for a service if the buyer intends to transfer the service as an integral part of taxable services. A service will be considered an integral part of a taxable service if the service purchased is essential to the performance of the taxable service and without which the taxable service could not be rendered. Examples of services for which a resale certificate may be issued in lieu of tax are landscaping and surveying services if the landscaping or surveying are performed upon the property being remodeled.

(e) Local taxes. Local sales and use taxes (city, county, MTA, and CTD) apply to services in the same way as they apply to tangible personal property. Generally, service providers must collect local sales taxes if their place of business is within a local taxing jurisdiction, even if the service is actually provided at a location outside that jurisdiction. However, MTA and CTD sales taxes do not apply to services provided outside the boundaries of the transit area. If the place of business is outside such a juris-

dition but the service is provided to a customer within a local taxing jurisdiction, local use taxes apply and the service provider is required to collect it. For information on the collection and reporting responsibilities of providers and purchasers of taxable services, see §§3.374, 3.375, 3.424, and 3.425 of this title (relating to Imposition of the Sales Tax; Collection by Retailer; Bracket System Formula; Determining City Tax; Administration of Use Tax; Collection by Retailer, Imposition of Sales Tax; Administration of Use Tax; Imposition and Collection).

(f) Use tax. If a seller of a service is not doing business in Texas or in a specific local taxing jurisdiction and is not required to collect Texas tax, it is the Texas customer's responsibility to report and pay the use tax directly to this office.

(g) Effective date. Written contracts or bids signed on or before July 21, 1987, but not completed prior to January 1, 1988, shall be governed by the provisions of §3.319 of this title (relating to Prior Contracts). Contracts signed after July 21, 1987, are subject to state tax to the extent the contracts were performed on or after January 1, 1988.

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 April 12, 1988.

TRD-8803802 Bob Bullock
Comptroller of Public
Accounts

Effective date: April 4, 1988

Proposal publication date: March 8, 1988

For further information, please call: (512) 463-4004

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part X. Texas Adult Probation Commission

Chapter 321. Standards

• 37 TAC §321.1

The Texas Adult Probation Commission adopts an amendment to §321.1 with changes to the proposed text published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 833).

This section relates to payment from judicial district funds of expenses for travel to training programs on probation and community corrections.

The amendment establishes standards to govern the expenditure of travel funds for probation-related purposes.

Larance Coleman, Director, Harris County, Don Smith, Director, Tarrant County, and Montie Morgan, Director, Jefferson County, commented against the rule. They stated that the amendment was broad and could prohibit travel expenses for legitimate probation-related purposes.

The agency agrees with the comment and the proposed standard was modified to meet the objection.

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

(a)-(w) (No change.)

(x) Expenses for training. Probation departments may use judicial district funds to pay the expenses of training for employees. The training must be related to adult probation or to the employee's particular function or professional advancement within the department. Departments may also use judicial district funds to pay the expenses of training for district judges trying criminal cases and, in counties with a population of over 1,000,000 according to the most recent federal census, for county court at law judges trying criminal cases. Training for judges must be related to adult

probation or to the judge's function as an administrator of the department.

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 April 15, 1988.

TRD-8803886 David Spencer
General Counsel
Texas Adult Probation
Commission

Effective date: May 6, 1988

Proposal publication date: February 12, 1988

For further information, please call: (512) 834-8188

• 37 TAC §321.11

The Texas Adult Probation Commission adopts an amendment to §321.11 without changes to the proposed text published in the February 12, 1988, issue of the *Texas Register* (13 TexReg 833).

This section is amended to conform to statutory and programmatic changes.

The amendment will provide standards for the management of intensive supervision probation caseloads by adult probation departments.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Code of Criminal Procedure, Article 42.121, §3.01, which provides the Texas Adult Probation Commission with authority to promulgate reasonable 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 April 15, 1988.

TRD-8803887 David Spencer
General Counsel
Texas Adult Probation
Commission

Effective date: May 6, 1988

Proposal publication date: February 16, 1988

For further information, please call: (512) 834-8188

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 *Texas 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 billeting 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 agenda than what is published in the *Texas Register*.

Texas State Board of Public Accountancy

Various committees for the Texas State Board of Public Accountancy will meet in Suite 340, 1033 La Posada, Austin. Dates, times, and agendas follow.

Monday, April 18, 1988, 9:30 a.m. An officer hearing was conducted in emergency session to review and discuss complaint 84-07-09L. The emergency status was necessary as this was the only time all parties involved could meet.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 15, 1988, 10:53 a.m.

TRD-8803865

Monday, April 18, 1988, 1:30 p.m. The Long Range Planning Committee met for an emergency agenda revision to discuss possible amendments to §501, rules of professional conduct, and §503, definitions. The emergency status was necessary because prior board motion dictates amendments to these sections.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 15, 1988, 10:53 a.m.

TRD-8803863

Monday, April 18, 1988, 2 p.m. An officer hearing was conducted in emergency session to discuss and review complaint 86-07-10L. The emergency status was necessary as this was the only time all parties involved could meet.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 15, 1988, 10:53 a.m.

TRD-8803864

Monday, April 25, 1988, 9:30 a.m. A Continuing Education hearing will be held for individuals not in compliance with continuing education requirements on 1987 licenses.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 15, 1988, 10:53 a.m.

TRD-8803884

Monday, April 25, 1988, 1:30 p.m. An officer hearing will be conducted to review and discuss complaints 85-12-16L and 85-04-13L.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 15, 1988, 10:53 a.m.

TRD-8803885

Wednesday, April 27, 1988, 2 p.m. The Executive Committee will review personnel matters; review NASBA/AICPA matters: regional meeting of June 27-28, 1988, and NASBA/ACIPA conference on state regulation of the profession, August 4-5, 1988; feasibility of publication of board suspensions and revocations in the Wall Street Journal; discuss state library retention schedule, status of purchase of new computer system, and proposed recommendation for the Texas guaranteed student loan corporation; and other matters coming before the board.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 15, 1988, 10:53 a.m.

TRD-8803883

Wednesday, April 27, 1988, 2:30 p.m. The Examination Committee will review information relating to May, 1988 examination; review sites, board and staff assignments, proctor assignments, bids awarded on site services, and candidate site statistics; consider non-routine application ratification of applications; review information relating to the future examinations, exam sites available for the November, 1988 exam, and other; review other topics; consider status of exam application form; discuss with Dr. Allen Bizzell concerning methods of curbing cheating; hear report on informal conferences; and discuss other matters coming before the committee.

Contact: Bob E. Bradley, 1033 La Posada, Suite 340, Austin, Texas 78752-3892, (512) 451-0241.

Filed: April 15, 1988, 10:53 a.m.

TRD-8803882

Texas Department of Agriculture

Friday, April 29, 1988, 9:30 a.m. The Texas Department of Agriculture will meet in the Ninth Floor Conference Room, 1700 North Congress Avenue, Austin. According to the agenda, the MDSD/.MDNM/department will conduct an administrative hearing to consider possible revocation of grain warehouse license 0540 held by Swains Grain, Inc., for alleged violations of Texas Agriculture Code, §14.022 and §14.024.

Contact: Robert A. Caine, P.O. Box 12847, Austin, Texas, (512) 463-7583.

Filed: April 18, 1988, 4:19 p.m.

TRD-8803971

Friday, April 29, 1988, 1:30 p.m. The Texas Department of Agriculture will meet at 2935 Westhollow Drive, Houston. According to the agenda, the department will conduct administrative hearings to show cause for denial of Yolanda Livas Sauseda and Felix Quintero, doing business as Felix Produce Company's application for licensure as a commission merchant under Texas Agriculture Code, §101.001, et seq, and §102.001, et seq.

Contact: Margo Wilton, P.O. Box 12847, Austin, Texas, (512) 463-7583.

Filed: April 19, 1988, 9:11 a.m.

Texas Commission for the Blind

Wednesday, May 11, 1988, 7 p.m. The San Antonio District for the Texas Commission for the Blind will meet in the Ruble Center, 419 East Magnolia, San Antonio. According to the agenda, the commission

will hold a public forum offering concerned citizens the chance to comment on the state plan for vocational rehabilitation services in Texas during 1988. Such public meetings are called for in a requirement contained in the Rehabilitation Act Amendments of 1986, which stipulates state agencies must hold public meetings throughout the state to allow comment on the plan. Those who are unable to attend may send comments to the Public Information Office of the Texas Commission for the Blind, 4800 North Lamar Boulevard, Suite 320, Austin, Texas 78756.

Contact: Arnoldo Vera, (512) 223-3831, or Betty Huffman, (512) 459-2611.

Filed: April 15, 1988, 9:17 a.m.

TRD-8803855

Texas Bond Review Board

Tuesday, April 19, 1988, 10 a.m. The Texas Bond Review Board met in emergency session for an agenda revision in the Senate Chamber, State Capitol, Austin. According to the agenda, the board discussed proposed installment/purchase of an electron microscope for North Texas State University. The emergency status was necessary to allow approval this month in order to meet a requirement of the federal grant requirements that the installment/purchase be made by August 15, 1988.

Contact: Tom K. Pollard, Room 711-G, Sam Houston Building, Austin, Texas, (512) 463-1741.

Filed: April 15, 1988, 10:22 a.m.

TRD-8803860

Texas Department of Community Affairs

Friday, April 29, 1988, 10 a.m. The Advisory Council for the Texas Department of Community Affairs will meet in Room 1-96, 8317 Cross Park Drive, Austin. According to the agenda, the council will select a chairperson; introduce TDCA staff; hear the executive director's report; overview TDCA operations; discuss TDCA budget for next biennium; and consider other business.

Contact: Larry Crumpton, 8317 Cross Park Drive, Austin, Texas 78754-5124, (512) 834-6000.

Filed: April 14, 1988, 1:43 p.m.

TRD-8803831

Texas Commission for the Deaf

Friday, April 22, 1988, 9 a.m. The Texas Commission for the Deaf will meet in the Conference Room, 510 South Congress Av-

enue, Austin. According to the agenda, the commission will welcome and approve previous minutes, hear public comment and report from the executive director, consider business requiring board action, and hear chairman's report and report from the board for evaluation of interpreters. There will be a board for evaluation of interpreters workshop for commissioners directly following the meeting. The commission also will meet in executive session to consider local council update and attorney general opinion.

Contact: Larry D. Evans, 510 South Congress Avenue, Suite 300, Austin, Texas 78704, (512) 469-9891.

Filed: April 14, 1988, 4:49 p.m.

TRD-8803847

Texas State Board of Dental Examiners

Thursday-Saturday, May 5-7, 1988, 8 a.m. The Texas State Board of Dental Examiners will meet in Room 108, San Antonio Convention Center, 200 East Market Street, San Antonio. According to the agenda, the board will conduct disciplinary hearings; consider for permanent adoption-new anesthesia rules 109.171-109.177, repeal of old anesthesia rules 109.171-109.183, new laboratory rules 116.1-116.4, and amendments to 109.2, 109.017, and 119.6; hear report from Anesthesia Committee; approve of anesthesia applications; discuss exam information, rule amendment on unprofessional conduct, dental assistant educators on dental assistant duties, direct supervision of dental hygienists and requests for interpretations; Dental Laboratory Certification Council; consider requests to take board exams, license reinstatement requests, approve of honorary retired dentists and dental hygienists, cancel licenses for failure to register, and request to announce in dual specialties; discuss budget for 1990-1991, Lyda Cantu; and appearances by members of the public and profession. The board also will meet in executive session to discuss litigation.

Contact: William S. Nail, (512) 834-6021.

Filed: April 18, 1988, 9:10 a.m.

TRD-8803932

Texas Education Agency

Various committees for the Test Updating Conference for ExCET of the Texas Education Agency will meet in the Driskill Hotel, 604 Brazos Street, Austin. Dates, times, and agendas follow.

Wednesday, April 27, 1988, 8 a.m. The Bias Committee will review test items for elementary comprehensive and professional development at the all-level, secondary, and elementary levels. This portion of the meet-

ing at which actual test items will be reviewed will be closed in accordance with Texas attorney general opinions H-484 (1974) and H-780 (1976).

Contact: Pam Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: April 18, 1988, 2:03 p.m.

TRD-8803958

Thursday-Friday, April 28-29, 1988, 8 a.m. The Text Development Advisory Committee will review test items for professional development at the all-level, secondary, and elementary levels, and elementary comprehensive. This portion of the meeting at which actual test items will be reviewed will be closed in accordance with Texas attorney general opinions H-484 (1974) and H-780 (1976).

Contact: Pam Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: April 18, 1988, 2:03 p.m.

TRD-8803959

Wednesday, May 4, 1988, 8 a.m. The Bias Committee will review test items for English as a second language and bilingual education. This portion of the meeting at which actual test items will be reviewed will be closed in accordance with Texas attorney general opinions H-484 (1974) and H-780 (1976).

Contact: Pam Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: April 18, 1988, 2:03 p.m.

TRD-8803960

Thursday-Friday, May 5-6, 1988, 8 a.m. The Test Development Advisory Council will review test items for the following areas: English as a second language, and bilingual education. This portion of the meeting at which actual test items will be reviewed will be closed in accordance with Texas attorney general opinions H-484 (1974) and H-780 (1976).

Contact: Pam Tackett, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9525.

Filed: April 18, 1988, 2:03 p.m.

TRD-8803961

Advisory Commission on State Emergency Communications

Monday, April 25, 1988, 10 a.m. The Ad-Hoc Committee on Regional Plan Cost Guidelines for the Advisory Commission on State Emergency Communications will meet in emergency session in Suite 2706, 500 Throckmorton, Ft. Worth. According to

the agenda, the committee will discuss the 9-1-1 regional plan guidelines to develop criteria for state funding, and the individual cost categories in order to define the components to be covered under the state plan. The emergency status was necessary to develop 9-1-1 cost guidelines or elements which will allow for the local level public agencies to begin planning and development of enhanced 9-1-1 emergency telephone services.

Contact: Mary A. Boyd, P.O. Box 13206, Austin, Texas 78711, (512) 463-1812.

Filed: April 18, 1988, 11:33 a.m.

TRD-8803945

Employees Retirement System of Texas

Tuesday, April 26, 1988, 9 a.m. The Board of Directors of the Employees Retirement System of Texas will meet in the ERS Building, 18th and Brazos Streets, Austin. According to the agenda, the board will review and approve board minutes; consider and act on use of a commercial bank as custodian for the system's securities; hear presentations by representatives of PacificCare of Texas, Humana Health Plan of San Antonio and Share Health Plan of Texas; consider and act on final adoption of board rule amendment; discuss state auditor's management letter for fiscal year ending August 31, 1987; hear status report on state auditor's management letters; and set the date for the next meeting. The board also met in executive session to hear the executive director's report, and consider any action resulting from executive session.

Contact: James T. Herod, 18th and Brazos Streets, Austin, Texas 78701, (512) 476-6431.

Filed: April 14, 1988, 1:59 p.m.

TRD-8803833

Office of the Governor

Monday, April 25, 1988, 9 a.m. The Subcommittee on Student Performance, Select Committee on Education for the Governor's Office will meet in the Highland Park ISD Boardroom, 7015 Westchester, Dallas. According to the agenda, the subcommittee will hear presentations by selected individuals regarding proposed performance indicators to be considered by full committee.

Contact: Margaret LaMontagne, (512) 463-1845.

Filed: April 15, 1988, 2:52 p.m.

TRD-8803896

Wednesday, April 27, 1988, 4:30 p.m. The Texas Crime Stoppers Advisory Council for the Criminal Justice Division of the Office of the Governor will meet at the

Marriott Hotel, 1600 Airway Boulevard, El Paso. According to the agenda, the MDSD/MDNM/council will approve minutes, assign regions to individual council members, consider TCSAC recommendations for standing committees and their responsibilities, appoint council member as committee liaison, make crime stoppers accessible to the deaf and hearing impaired, consider I.R.S. new ruling concerning crime stoppers rewards, determine next meeting date and possible agenda, and input from the general membership.

Contact: David Cobos, Sam Houston Building, third floor, 201 East 14th Street, Austin, Texas 78701, (512) 463-1784.

Filed: April 18, 1988, 4:24 p.m.

TRD-8803978

Health and Human Services Coordinating Council

Wednesday, April 27, 1988, 9 a.m. The Service Delivery Task Force of the Health and Human Services Coordinating Council will meet at the Senate Reception Room, State Capitol, Austin. According to the agenda, the task force will hear opening remarks, approve minutes, hear presentations on service delivery by state agency personnel and clients, hold question and answer sessions with presenters, and conduct general discussion.

Contact: Patricia O. Thomas, 311-A East 14th Street, Austin, Texas 78701, (512) 463-2195.

Filed: April 18, 1988, 4:25 p.m.

TRD-8803980

Texas Heroes Monument Commission

Friday, April 22, 1988, 10 a.m. The Workshop of the Texas Heroes Monument Commission will meet in the Conference Room, Galveston County Courthouse, 722 Moody, Galveston. According to the agenda, the workshop will hear the secretary and treasurer reports and discuss items.

Contact: Cindy Sullivan, 51 Colony Park Circle, Galveston, Texas 77551, (409) 744-5632.

Filed: April 14, 1988, 1:41 p.m.

TRD-8803832

Texas Historical Commission

Thursday, April 21, 1988, 7:30 a.m. The Review and Compliance Committee for the Texas Historical Commission met in emergency session in the Ft. Brown Hotel Dining Room, 1900 East Elizabeth Street, Brownsville. According to the agenda, the

committee distributed grant funds, and discussed summary of current projects and state budget. The emergency status was necessary because the commission was undecided on meeting date/time.

Contact: Curtis Tunnell, 1511 Colorado, Austin, Texas 78701, (512) 463-6100.

Filed: April 14, 1988, 3:37 p.m.

TRD-8803837

Texas Department of Human Services

Wednesday, April 27, 1988, 9:30 a.m. The Family Self-support Services Advisory Council for the Texas Department of Human Services will meet in the Conference Room 4W, Fourth Floor, West Tower, 701 West 51st Street, Austin. According to the agenda, the council will approve minutes; announce organizational changes; hear report on restructuring of advisory task forces; family planning initiatives; coordinated allocation plan; hear report from family planning task force meeting; discuss program service plans for next LAR; program updates; refocus employment services; select committee on medicaid and family services; day care market rate and cost studies; and discuss day care and other business.

Contact: Dolores Ablowich, P.O. Box 2960, Austin, Texas 78769, (512) 450-4140.

Filed: April 18, 1988, 9:08 a.m.

TRD-8803934

State Board of Insurance

The Commissioner's Hearing Section of the State Board of Insurance will meet in the State Insurance Building, 1110 San Jacinto, Austin. Room numbers, dates, and agendas follow.

Tuesday, April 19, 1988, 2 p.m. The board met for an emergency agenda revision in Room 414 and considered claim file survey forms required of worker's compensation insurers on behalf of the Joint Select Committee on Worker's Compensation Insurance. The emergency session was necessary to protect public health and safety by obtaining information necessary for consideration of legislative action and administrative regulation toward protection against injuries in the workplace.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803969

Monday, April 25, 1988, 10 a.m. The board will meet in Room 414 to consider the revised servicing company contract be-

tween Texas Medical Liability Insurance Underwriting Association and the Medical Protective Company; extension of emergency effectiveness of 28 TAC §§5.4601-5.4603, 25.712, 3.3039, and 19.001-19.1011; board orders on several different matters as itemized on the complete agenda; state fire marshal: personnel and litigation; statistical and rate development: personnel; research and information services: personnel; and commissioner: personnel and litigation.

Contact: Pat Wagner, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6328.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803900

Tuesday, April 26, 1988, 9 a.m. The hearing section will meet in room 342 to consider whether disciplinary action should be taken against Mark Allen Meurer, Lubbock/Slaton, who holds a group I, legal reserve life insurance agent's license.

Contact: Earl Corbitt, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803986

Wednesday, April 27, 1988, 9 a.m. The hearing section will meet in room 353 to consider application for amendment to the Articles of Incorporation of American Insurance Company of Texas, Waco, increasing the authorized capital.

Contact: J.C. Thomas, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803987

Friday, April 29, 1988, 9 a.m. The hearing section will meet in room 353 to consider whether disciplinary action should be taken against Andy Eugene Anderson, Burleson, who holds a group I, legal reserve life insurance agent's license and a group II, health and accident insurance agent's license.

Contact: O. A. Cassity, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803985

Friday, April 29, 1988, 9 a.m. The hearing section will meet in room 342 to consider whether disciplinary action should be taken against Alberto C. Hinojosa, San Antonio, who holds a group I, legal reserve life insurance agent's license.

Contact: Earl Corbitt, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803986

Monday, May 2, 1988, 9 a.m. The hearing section will meet in room 353 to consider whether disciplinary action should be taken against Jim Jordan, Dallas/ Frisco/

Lewisville, who holds a group I, legal reserve life insurance agent's license, a group II, health and accident insurance agent's license, and a local recording agent's license.

Contact: J.C. Thomas, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803983

Monday, May 2, 1988, 9 a.m. The hearing section will meet in room 342 to consider whether disciplinary action should be taken against Manuel Tarango, Jr., El Paso, who holds a group I, legal reserve life insurance agent's license.

Contact: J.C. Thomas, 1110 San Jacinto, Austin, Texas 78701-1998, (512) 463-6526.

Filed: April 18, 1988, 4:09 p.m.

TRD-8803984

Texas State Library and Archives Commission

Monday, May 2, 1988; 10:30 a.m. The Texas State Library and Archives Commission will meet in Room 314, 1201 Brazos Street, Austin. According to the agenda, the commission will approve minutes of the November 10, 1987, meeting; elect commission chairman and vice-chairman; consider approval of recommendations from the Records Management and Preservation Advisory Committee; receive the audit of the Records Management Division of the Texas Library and Archives Commission conducted by the state auditor's office; consider request from the University of Houston at Clear Lake to be designated a depository under the state documents depository program; consider and approve the State Library budget request to the legislature for the 1990-1991 biennium; consider and approve amendments to the rules for the Library Systems Act; discuss resolution from the Northeast Texas Library System; and hear committee reports.

Contact: William D. Gooch, P.O. Box 12927, Austin, Texas 78711, (512) 463-5460.

Filed: April 15, 1988, 9:20 a.m.

TRD-8803853

Texas Motor Vehicle Commission

Thursday, April 28, 1988, 9 a.m. The Texas Motor Vehicle Commission will meet in Suite 302, 815 Brazos Street, Austin. According to the agenda, the commission will adopt minutes of March 23, 1988, meeting; consider proposals for decision and orders-license and other cases, proposals for decision-Lemon Law cases; agreed orders for approval and entry; orders

for dismissal; discuss pending litigation, agency procedures relating to formats for proposals for decision in lemon law cases, and review of agency budget and financial condition.

Contact: Russel Harding, 815 Brazos Street, Suite 300, Austin, Texas 78701, (512) 476-3587.

Filed: April 15, 1988, 1:03 p.m.

TRD-8803888

Board of Pardons and Paroles

Wednesday, April 20, 1988, 9:30 a.m. The Board of Pardons and Paroles met in emergency session at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the board met in workshop session to discuss presentations by staff concerning return to custody facilities and recommendations for improving procedures for the issuance and use of blue warrants. The emergency status was necessary because board members cannot adjust their schedules to meet at any other reasonable time.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2713.

Filed: April 18, 1988, 4:18 p.m.

TRD-8803970

Monday-Friday, April 25-29, 1988, 1:30 p.m. daily except 11 a.m. on Friday. A three-member panel of the Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, Austin. According to the agenda, the panel will receive, review, and consider information and reports concerning prisoners/inmates and administrative releases 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: April 15, 1988, 10:43 a.m.

TRD-8803861

Tuesday, April 26, 1988, 1:30 p.m. The Board of Pardons and Paroles will meet at 8610 Shoal Creek Boulevard, 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: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78758, (512) 459-2749.

TRD-8803862

Texas Parks and Wildlife Department

Tuesday, April 26, 1988, 10 a.m. The Operation Game Thief Committee for the Texas Parks and Wildlife Department will meet for an agenda revision in the department headquarters, 4200 Smith School Road, Austin. According to the agenda, the department will discuss finance report; consider payment of awards; discuss and adopt amendment to rules relating to the operation game thief program; and determine date for next meeting.

Contact: M. Stanley Brooks, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4626.

Filed: April 14, 1988, 3:30 p.m.

TRD-8803836

Wednesday, May 11, 1988, 8:30 a.m. The Wildlife Division of the Texas Parks and Wildlife Department will meet in Room A-200, 4200 Smith School Road, Austin. According to the agenda, the division will conduct a hearing in accordance with Chapter 26, to receive comments regarding an easement request by Winnie Pipeline Company for placement of a pipeline across a portion of the Lower Neches wildlife management area in Orange County.

Contact: John Foshee, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4800.

Filed: April 15, 1988, 2:01 p.m.

TRD-8803890

Texas State Board of Pharmacy

Tuesday-Wednesday, April 26-17, 1988, noon on Tuesday, and 8 a.m. Wednesday. The Texas State Board of Pharmacy will meet at the Embassy Suites North, 5901 IH 35, Austin. Referencing the open meeting notice submitted April 14, 1988, the following correction is made to the agenda. Delete reference to a proposed rule amendment to 303.4; add a proposed rule amendment to 303.1, regarding instructions for pharmacies/pharmacists on destruction of returned prescriptions.

Contact: Fred S. Brinkley, Jr., R.Ph., 8505 Cross Park Drive, Suite 110, Austin, Texas 78754, (512) 832-0661.

Filed: April 18, 1988, 9:09 a.m.

TRD-8803933

Public Utility Commission of Texas

Various committees for the Public Utility Commission of Texas will meet at in Suite 450N, 7800 Shoal Creek Boulevard, Austin.

Dates, times, and agendas follow.

Monday, April 18, 1988, 10 a.m. The Administrative Division met in Room A for an emergency agenda revision and considered the following: Public Utility Commission letter in response to the possible impact on ratepayers from the proxy contest by "The Committee for Maximizing Shareholder Value of CENTEL Corporation." The emergency status was necessary as time was expiring for this decision and determination was required prior to the April 28, 1988, annual corporate meeting.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 15, 1988, 4:25 p.m.

TRD-8803935

Monday, April 25, 1988, 1:30 p.m. The Hearings Division will conduct a prehearing conference in Docket 8054 regarding the application of GTE-Southwest, Inc., to amend 976 service tariff to block access to 976 NXX at four central offices.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 15, 1988, 4:25 p.m.

TRD-8803834

Thursday, April 28, 1988, 2 p.m. The Hearings Division will conduct a prehearing conference in Docket 8075 regarding the application of Southwestern Bell Telephone Company to provide optional hunting service.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 15, 1988, 4:25 p.m.

TRD-8803835

Monday, May 2, 1988, 10 a.m. The Hearings Division will conduct a prehearing conference in Docket 6668 and 6753 regarding the inquiry into the prudence and efficiency of the planning and management of the construction of the South Texas Nuclear Project, and inquiry into the treatment of proceeds from the South Texas Project settlement.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: April 18, 1988, 4:25 p.m.

TRD-8803962

Railroad Commission of Texas

Monday, April 25, 1988, 9 a.m. The Railroad Commission of Texas will meet in the 12th Floor Conference Room, William B. Travis Building, 1701 North Congress Ave-

nue, Austin. Agendas follow.

The Administrative Services Division will consider and act on the division director's report on division administration, budget, procedure, and personnel matters, including but not limited to discussion, and/or action on the following: management study, oil and gas general counsel, oil field investigator personnel and their operations, the creation and designation of an executive director with related positions and matters, and personnel matters relating to the office of general counsel and special counsel.

Contact: Roger Dillon, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7527.

Filed: April 15, 1988, 11:14 a.m.

TRD-8803878

The Automatic Data Processing Division will consider and act on the division director's report on division administration, budget, procedures, equipment acquisitions, and personnel matters.

Contact: Bob Kmetz, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7251.

Filed: April 15, 1988, 11:18 a.m.

TRD-8803867

The Flight Division will consider and act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Ken Fossler, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6787.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803870

The Gas Utilities Division will consider various matters within the regulatory jurisdiction of the Railroad Commission of Texas. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in its entirety or for particular action at a future time or date.

Contact: Shelley A. Dreiling, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7009.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803873

The Office of General Counsel will consider and act on the general counsel's report on division administration, budget, procedures, and personnel matters, including, but not limited to, discussion and/or action on the following: Hufo Oils, et al v. Railroad Commission C-5937 in the Supreme Court of Texas, Walker Operating, et al v. Federal Energy Regulatory Commission, U.S. Court of Appeals for the 10th Circuit, 85-2683 and 86-2698 et al in relation of Oil and Gas Docket 10-87,017.

Contact: Gail Watkins, P.O. Drawer

12967, Austin, Texas 78711, (512) 463-6921.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803872

The Office of Information Services will consider and act on the Division Director's report on division administration, budget, procedures, and personnel matters.

Contact: Brian W. Schaible P.O. Drawer 12967, Austin, Texas 78704, (512) 463-6710.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803866

The Investigation Division will consider and act on division director's report on administration, investigations, budget, and personnel matters.

Contact: Mary Anne Wiley, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6828.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803880

LP-Gas Division will consider and act on division director's report on division administration, budget, procedures, and personnel matters. Proposed rulemaking to adopt 16 TAC §13.84, pertaining to insurance requirements for persons licensed by the compressed natural gas section of the Railroad Commission of Texas.

Contact: Thomas D. Petru, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6931.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803871

The Oil and Gas Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including but not limited to scheduling an item in its entirety or for particular action at a future time of date.

Contact: Tim Poe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6713.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803874

The Oil and Gas Division will consider 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: April 15, 1988, 11:17 a.m.

TRD-8803879

The Personnel Division will consider and

act on the division director's report on division administration, budget, procedures, and personnel matters.

Contact: Mark Bogan, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6981.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803877

The Office of Research and Statistical Analysis will consider and act on the division 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: April 15, 1988, 11:17 a.m.

TRD-8803868

The Office of Special Counsel will consider and act on division director's report relating to state and federal legislation, budget, administrative and personnel matters, and proposed and pending litigation, including, but not limited to, consideration of proposed settlement in cause 7022, Edward Kennon v. Railroad Commission, in San Augustine.

Contact: Walter E. Lillie, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7149.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803869

The Surface Mining Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in its entirety or for particular action at a future time of date.

Contact: Jerry Hill, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6900.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803876

The Transportation Division will consider various matters within the regulatory jurisdiction of the commission. In addition, the commission will consider items previously posted for open meeting and at such meeting verbally postponed or continued to this date. With regard to any item, the commission may take various actions, including, but not limited to, scheduling an item in its entirety or for particular action at a future time or date.

Contact: C. Tom Clowe, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-7122.

Filed: April 15, 1988, 11:17 a.m.

TRD-8803875

Monday, April 25, 1988, 1:30 p.m. The

Oil and Gas Division will hear oral arguments for Docket 5-90, application of Meredith Mallory, Jr., for an exception to statewide rule 39, Mallory Gladney Unit Lease, well 2, Tri-Cities (Bacon Lime) field, Henderson County.

Contact: Dilma Scimeca, P.O. Drawer 12967, Austin, Texas 78711, (512) 463-6746.

Filed: April 15, 1988, 2 p.m.

TRD-8803889

Texas Savings and Loan Department

Tuesday, April 26, 1988, 9 a.m. The Texas Savings and Loan Department will meet in Suite 201, 2601 North Lamar Boulevard, Austin. According to the agenda, the department will conduct a hearing to accumulate a record of evidence in regard to the application of a branch office for executive Bank Savings Association, New Braunfels, Comal County, to be located at 8610 Broadway, San Antonio, Bexar County (purchase from TCF Banc Savings Association), from which record the commissioner will determine whether to grant or deny the application.

Contact: Laura M. Hale, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, (512) 479-1250.

Filed: April 15, 1988, 10:11 a.m.

TRD-8803856

Texas Statewide Health Coordinating Council

Wednesday, April 27, 1988, 9 a.m. The State Health Plan Development Committee of the Texas Statewide Health Coordinating Council will meet in Room T-709, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda, the committee will review and act on recommendations from previous meeting concerning draft chapters to State Health Plan and review additional draft chapters to the State Health Plan.

Contact: Carol S. Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: April 14, 1988, 4:10 p.m.

TRD-8803845

Thursday, April 28, 1988, 9 a.m. The Texas Statewide Health Coordinating Council will meet in the Houston I Room, Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda, the council will hear minutes of the February 11, 1988, meeting; hear reports by the bureau chief, special bylaws committee, legislative report, report on status of U.S.-Mexico border health situation, and nominating com-

mittee report; elect officers; and select the next meeting date.

Contact: Carol S. Daniels, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7261.

Filed: April 14, 1988, 4:10 p.m.

TRD-8803446

Sunset Advisory Commission

Thursday, April 28, 1988, 9 a.m. The Ad Hoc Study Committee on Medicaid Liens and Estate for the Sunset Advisory Commission will meet in the Senate Chamber, State Capitol Building, Austin. According to the agenda, the committee will receive public testimony on medicaid liens and estate recovery provision contained in Senate Bill 298.

Contact: Jeri Kramer, 105 West 15th Street, Austin, Texas 78701, (512) 463-1300.

Filed: April 18, 1988, 11:46 a.m.

TRD-8803947

Transition Services Task Force

Monday, April 25, 1988, 8:30 a.m. The Models Subcommittee for the Transition Services Task Force will meet at the Wyndham Southpark Hotel, 4140 Governor's Row, Austin. According to the agenda, the subcommittee will consider model programs for Dallas County MHMR-Barry Waller, Dallas Independent School District-Bill Quinones, Amarillo Junior College-Marshall Mitchell, and project passage-Eileen Humphrey; vulnerable populations for managing conservatorship issues-Thomas Chapman TDHS, drop-outs, children at TEA residential placements-Gene Lenz, TEA, and children in adolescent treatment facilities-Regina Hicks and May Jackson, TDMHMR.

Contact: Mary Faithfull, 7800 Shoal Creek Boulevard, Room 171-E, Austin, Texas 78757, (512) 454-1469.

Filed: April 15, 1988, 1:17 p.m.

TRD-8803895

University Interscholastic League

Thursday, April 21, 1988, 10 a.m. A three-member panel for the State Executive Committee of the University Interscholastic League met in the Thompson Conference Center Room, 26th and Red River Streets, Austin. According to the agenda, the heard allegations of league violations by public schools and sponsors.

Contact: Bonnie Northcutt, P.O. Box 8028, University Station, Austin, Texas 78713, (512) 471-5883.

Filed: April 15, 1988, 4:20 p.m.

TRD-8803929

The University of Texas at Austin

Monday, April 25, 1988, 3 p.m. The Intercollegiate Athletics for Women of the University of Texas at Austin will meet in Room 606, Belmont Hall, U.T. Campus, 21st and San Jacinto Streets, Austin. According to the agenda, the university will approve minutes of the previous meeting; hear announcements and information reports; and old and new business.

Contact: Donna A. Lopiano, Belmont Hall, Room 606, U.T. Campus, 21st and San Jacinto Streets, Austin, Texas 78705, (512) 471-7693.

Filed: April 15, 1988, 3:42 p.m.

TRD-8803903

Texas Water Commission

Monday, April 18, 1988, 10 a.m. The Texas Water Commission met in emergency session in Room 123, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the commission will consider the executive director's report on agency administration, policy, budget, procedures, and personnel matters. The emergency status was necessary as commissioner's must meet immediately to decide on pleadings to be filed with the state district court for a case beginning April 20, 1988.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803940

Monday, April 25, 1988, 10 a.m. The Office of the Hearings Examiner will meet in Room 512, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda, the examiner will consider dockets 7600-C, 7485-C, 7607-D, and 7372-C.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7875.

Filed: April 15, 1988, 4:19 p.m.

TRD-8803938

Tuesday, April 26, 1988, 9 a.m. The Texas Water Commission will meet in Room 118, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. Agendas follow.

Hearing on TA-5916 of E.E. Hood and Sons, Inc., for a permit to divert and use 30

acre-feet of water for a one-year period from a reservoir, tributary Nueces River, Nueces River Basin for industrial purposes (highway construction FM Road 624) in La Salle County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803838

Hearing on TA-5918 of J.H. Strain and Sons, Inc., for a permit to divert and use 20 acre-feet of water for a one-year period from Sweetwater Creek, tributary Clear Fork Brazos River, tributary Brazos River, Brazos River Basin for industrial purposes (highway construction, Loop 549) in Nolan County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803839

Hearing on TA-5915 of E.E. Hood and Sons, Inc., for a permit to divert and use 25 acre-feet of water for a six-month period from Nueces River, Nueces River Basin, for industrial (highway construction, FM Road 624) in LaSalle County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803840

Hearing on TA-5913 of Tennessee Gas Pipeline Company for a permit to divert and use 48 acre-feet of water for a one year period from Navidad River, tributary Lavaca River, Lavaca River Basin, for industrial purposes (hydrostatic pipeline test) in Jackson County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803841

Hearing on TA-5908 of Thomas L. Petross for a permit to divert and use 60 acre-feet of water for a three-year period based upon a waste supply contract with Brown County WCID 1, from Hog Creek, tributary Pecan Bayou, tributary Colorado River, Colorado River Basin for irrigation purposes (peanut crop) in Brown County.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803842

Hearing regarding water district surplus funds, release from escrow, change order, rate increases, certificates of convenience

and necessity, proposed water quality permits, amendments, and renewals, proposed hazardous waste permit, applications for temporary permits, water right applications, extension of time applications, amendments to certificates of adjudication, forfeiture and abandonment of certificates of adjudication, and consideration of superfund contracts.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803843

Thursday, April 28, 1988, 9 a.m. In Room 1-111, the commission will consider executive director's motion requesting setting of interim rates in application of J&J Raw Water Utility, Inc., for a rate increase in Gray County, docket 7544-G.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803939

Wednesday, May 4, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 1149A to consider an appeal protesting Aqua Water Supply Corporation's fee for new connections, docket 7509-X.

Contact: Carol Wood, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803936

Friday, May 13, 1988, 10 a.m. The Office of Hearings Examiner will meet in Room 618 to consider rate increase of Cedar Ridge Water, docket 7502-G.

Contact: Clay Harris, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803937

Wednesday, May 25, 1988, 9 a.m. The commission will consider petition for creation of Tower Oaks Plaza Municipal Utility District, containing 146.3453 acres of land.

Contact: Peggy O. Maxwell, P.O. Box 13087, Austin, Texas 78711, (512) 463-7899.

Filed: April 15, 1988, 4:18 p.m.

TRD-8803968

Regional Meetings

Meetings Filed April 14, 1988

Atascosa County Appraisal District, Board of Directors, met at 1010 Zanderson Avenue, Jourdanton, on April 21, 1988, at 1:30 p.m. Information may be obtained from Vernon A. Warren, 1010 Zanderson

Avenue, Jourdanton, Texas 78026, (512) 769-2730.

The Central Texas Council of Governments, Executive Committee, will meet at 302 East Central, Belton, on April 28, 1988, at noon. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Golden Crescent Regional Planning Commission, Board of Directors, will meet in the Boardroom, Regional Airport, Building 102, Victoria, on April 27, 1988, at 5 p.m. Information may be obtained from Patrick J. Kennedy, P.O. Box 2028, Victoria, Texas 77902, (512) 578-1587.

The Limestone County Appraisal District, Board of Directors, met in the Meeting Room, Limestone County Courthouse, Groesbeck, on April 20, 1988, at 5 p.m. Information may be obtained from Clydene Hyden, P.O. Drawer 831, Groesbeck, Texas 76642, (817) 729-3009.

The Swisher County Appraisal District, Board of Directors, met at 130 North Armstrong, Tulia, on April 21, 1988, 7:30 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

TRD-8803818

Meetings Filed April 15, 1988

The Austin-Travis County MHMR Center, will meet in Room 107, 611 South Congress Avenue, Austin, on April 22, 1988, at 7:30 a.m. Information may be obtained from Sharon Taylor, 611 South Congress Avenue, Austin, Texas, (512) 447-4141.

The Bexar Appraisal District, Appraisal Review Board, will meet at 535 South Main, San Antonio, on April 28, May 2-6, 9-12, 16-20, 23-26, and 31. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Central Texas Council of Governments, Private Industry Council, will meet at 302 East Central, Belton, on April 28, 1988, at 10 a.m. Information may be obtained from A.C. Johnson, P.O. Box 729, Belton, Texas 76513, (817) 939-3771.

The Coastal Bend Council of Governments, Executive Board, will meet in the Captain's Boardroom, Sheraton Marina Hotel, 300 North Shoreline, Corpus Christi, on April 22, 1988, 12:30 p.m. and 2 p.m. Information may be obtained from John P. Buckner, P.O. Box 9909, Corpus Christi, Texas 78469, (512) 883-5743.

The Comal Appraisal District, Board of Directors, met at 430 West Mill Street, New Braunfels, on April 18, 1988, at 9 a.m. Information may be obtained from R. Richard Rhodes, Jr., P.O. Box 311222, New Braunfels, Texas 78131-1222, (512) 625-8597.

The Dallas Area Rapid Transit, Mobility Impaired Committee Meeting and Budget and Finance Committee, met in 601 Pacific Avenue, Dallas, on April 19, 1988, at 2 p.m. and 4 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 638-6237.

The Dallas Central Appraisal District, Appraisal Review Board, will meet in Suite 500, 1420 West Mockingbird Lane, Dallas, on April 29, 1988, at 10 a.m. Information may be obtained from Rick L. Kuehler, 1420 West Mockingbird Lane, Suite 500, Dallas, Texas 75247, (214) 631-0520.

The East Texas Council of Governments, Private Industry Council, met in ETCOG Offices, Kilgore, on April 21, 1988, at 9:30 a.m. Information may be obtained from Glynn J. Knight, 3800 Stone Road, Kilgore, Texas, (214) 984-8641.

The Guadalupe-Blanco River Authority, Board of Directors, will meet in the Coletto Creek Headquarters, two miles west of Coletto Creek at Highway 59 and north approximately 1/2 mile adjacent to county road in Goliad County, on April 21 and 22 and 10 a.m. daily. Information may be obtained from John H. Specht, P.O. Box 271, Seguin, Texas 78156-0271, (512) 379-5822.

The Heart of Texas Council of Governments, Private Industry Council, met at 320 Franklin Avenue, Waco, on April 21, 1988, at 5:30 p.m. Information may be obtained from Mary McDow, 320 Franklin Avenue, Waco, Texas 76701-2297, (817) 756-6631.

The Houston-Galveston Area Council, Greater Houston Area Water Quality Management Plan, will meet in the Board of Directors Conference Room, 3555 Timmons, Houston, on May 17, 1988, at 5:30 p.m. Information may be obtained from Carl E. Masterson, 3555 Timmons, Houston, Texas 77227-2777, (713) 627-3200.

TRD-8803848

Meetings Filed April 18, 1988

The Barton Springs-Edwards Aquifer Conservation District, Board of Directors, met in Suite F, 909 North Loop 4, Buda, on April 18, 1988, at 7 p.m. Information may be obtained from Larry G. Hada, 909 North Loop 4, Suite F, Buda, Texas 78610, (512) 282-2441.

The Bastrop County Appraisal District, Board of Directors, met at 1200 Cedar Street, Bastrop, on April 21, 1988, at 7:30 p.m. Information may be obtained from Lorraine Perry, 1200 Cedar Street, Bastrop, Texas 78602, (512) 321-3925.

The Deep East Texas Regional MHMR Services, Board of Trustees, will meet in Ward R. Burke Community Room, Administration Facility, 4101 South Medford

Drive, Lufkin, on April 26, 1988, at 5:30 p.m. Information may be obtained from Jim McDermott, 4101 South Medford Drive, Lufkin, Texas 75901.

The Deep East Texas Council of Governments, Board of Directors, will meet in the American Legion Building Center, Shelby County, on April 28, 1988, 11 a.m. Information may be obtained from Katie Bayliss, 274 East Lamar Street, Jasper, Texas 75951, (409) 384-5704.

The Education Service Center, Region V, Board of Directors, in the Boardroom, 2295 Delaware Street, Beaumont, on April 28, 1988, at 1:15 p.m. Information may be obtained from Fred J. Waddell, 2295 Delaware Street, Beaumont, Texas, (409) 835-5212.

The Education Service Center, Region XVI, Board of Directors, in the Texas Empire Room, Amarillo Club, Texas American Bank Building, 30th Floor, Seventh and Tyler, Amarillo, on April 29, 1988, at 1 p.m. Information may be obtained from Dr. Kenneth M. Laycock, 1601 South Cleveland, Amarillo, Texas 79120, (806) 376-5521.

The Henderson County Appraisal District, Appraisal Review Board, met at 1751 Enterprise, Athens, on April 21, 1988, at 9:30 a.m. Information may be obtained

from Helen Marchbanks, 1751 Enterprise, Athens, Texas (214) 675-9296.

The Lower Colorado River Authority, Energy Operations Committee, Planning and Public Policy Committee, Audit and Budget Committee, Finance and Administration Committee, and Natural Resources Committee, met at 500 East Wallace, San Saba, on April 20, 1988, at 9 a.m. The Board of Directors will meet at the same location on April 21, 1988, at 9 a.m. Information may be obtained from Thomas G. Mason, 3700 Lake Austin Boulevard, Austin, Texas.

The Northeast Texas Municipal Water District, Board of Directors, will meet at Highway 250 South, Hughes Springs, on April 25, 1988, at 10 a.m. Information may be obtained from J.W. Dean, P.O. Box 955, Hughes Springs, Texas 75656, (214) 639-7538.

The South Texas Development Council, STED Corporation Board of Trustees, will meet in the Commissioners Courtroom, Courthouse Annex, Zapata, on April 22, 1988, at 10 a.m. and 11 a.m. Information may be obtained from Robert Mendiola, P.O. Box 2187, Laredo, Texas 78044 (512) 723-3995.

The Tarrant Appraisal District, Board of Directors, will meet at 2309 Gravel Drive,

Fort Worth, on April 22, 1988, at 9 a.m. Information may be obtained from Olive Miller, 2309 Gravel Road, Fort Worth, Texas 76118, (817) 284-0024.

The Upper Leon River Municipal Water District, Board of Directors, will meet in the General Office of the Filter Plant, Proctor Lake, Comanche County, on April 28, 1988, at 6:30 p.m. Information may be obtained from Garry W. Godfrey, P.O. Box 67, Comanche, Texas 76442, (817) 879-2258.

TRD-8803931

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Meetings Filed April 19, 1988

The South Texas Development Council, Project CAUSE Advisory Council, will meet in the County Commissioner's Courthouse Annex, Zapata, on April 29, 1988, at 10 a.m. Information may be obtained from Judith Garcia, P.O. Box 2187, Laredo, Texas 78044-2187, (512) 722-3995.

The South Texas Private Industry Council, Inc., will meet in the IBOC Mini Bank, Zapata, on April 28, 1988, at 4 p.m. Information may be obtained from Ruben M. Garcia, P.O. Box 1757, Laredo, Texas 78044.

TRD-8803988
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In Addition

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Banking Section of the State Finance Commission

Change of Location of Public Hearing

The public hearing on the proposed new 7 TAC §§3.101-3.105, concerning certain insurance sales activities to be engaged in by state banks, will be held in Room 2.102 of the Joe C. Thompson Conference Center, 26th Street at Red River, instead of in the Department of Banking's Hearing Room, 2601 North Lamar, as originally planned. The original notice for this hearing was published in the April 19, 1988, issue of the *Texas Register*.

Additional information may be obtained from Hubert Bell, Jr., Assistant General Counsel, Banking Department of Texas, 2601 North Lamar, Austin, Texas 78705-4294, (512) 479-1200.

Issued in Austin, Texas, on April 15, 1988.

TRD-8803852 Jorge A. Gutierrez
 General Counsel
 Texas Department of Banking

Filed: April 15, 1988

For further information, please call (512) 479-1200.



Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 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).

<u>Type of Rate Ceilings</u>	<u>Effective Period (Dates are Inclusive)</u>	<u>Consumer⁽³⁾/Agri- cultural/Commercial⁽⁴⁾ thru \$250,000</u>	<u>Commercial⁽⁴⁾ over \$250,000</u>
Indicated (Weekly) Rate - Art. 1.04(a)(1)	04/18/88-04/24/88	18.00%	18.00%
Monthly Rate ⁽¹⁾ Art. 1.04(c)	04/01/88-04/30/88	18.00%	18.00%
Standard Quarterly Rate - Art. 1.04(a)(2)	04/01/88-06/30/88	18.00%	18.00%
Retail Credit Card Quarterly Rate - Art. 1.11 ⁽³⁾	04/01/88-06/30/88	18.00%	N.A.
Lender Credit Card Quar- terly Rate - Art. 15.02(d) ⁽³⁾	04/01/88-06/30/88	14.00%	N.A.
Standard Annual Rate - Art. 1.04(a)(2) ⁽²⁾	04/01/88-06/30/88	18.00%	18.00%
Retail Credit Card Annual Rate - Art. 1.11 ⁽³⁾	04/01/88-06/30/88	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:	04/01/88-06/30/88	18.00%	N.A.
Judgment Rate - Art. 1.05, Section 2	04/01/88-04/30/88	10.00%	10.00%

(1) For variable rate commercial transactions only.

(2) Only for open-end credit as defined in Art. 5069-1.01(f) V.T.C.S.

(3) Credit for personal, family or household use.

(4) Credit for business, commercial, investment or other similar purpose.

Issued in Austin, Texas, on April 11, 1988.

TRD-8803797 Al Endsley
Consumer Credit Commissioner

Filed: April 13, 1988

For further information, please call (512) 479-1280

Texas Education Agency Requests for Applications

The Texas Education Agency is requesting applications for vocational education projects for fiscal year 1988, as provided for in Public Law 98-524, the Carl D. Perkins Vocational Education Act.

Applications are requested in the areas of single parents and homemakers, sex equity, curriculum development, personnel development, program development, adult training and retraining, apprenticeship training, and joint community based organization/local education agency projects. The following public education institutions are eligible to submit applications: school districts, community/junior colleges, technical institutes, senior colleges, universities, and education service centers. Additional information and/or a standard application package may be obtained by calling the appropriate contact person listed following.

Singled parents and homemakers and sex equity projects-contact: Christine Smart, (512) 463-9311.

Curriculum development, personnel development, and program development projects-contact: Robert S. Patterson, (512) 463-9446.

Adult training and retraining, apprenticeship training, and joint community based organization/local education agency projects-contact: James C. Woodman, (512) 463-9294.

Issued in Austin, Texas, on April 13, 1988.

TRD-8803815 W. N. Kirby
Commissioner of Education

Filed: April 13, 1988

For further information, please call (512) 463-9212.

Request for Contractor Continuance

This notice of request for contract continuance is filed pursuant to Texas Civil Statutes, Article 6252-11c.

The Texas Education Agency must revise existing tests for 15 certification areas required by the Texas Education Code, §13.032. This contract will coordinate the development and revision of test items and test forms, including the assembling of committees of Texas educators to examine and revise items and to recommend passing standards to the State Board of Education. The contract will be awarded based on an evaluation of the contractor's ability to provide the requested services. Services have been provided in past years by National Evaluation Systems, Inc., for the initial development and administration of these tests and others in the Teacher Testing Program. It is the intent of the Texas Education Agency to contract with National Evaluation Systems, Inc., in the amount of \$149,900, unless a better offer is received.

Closing Date for Receiving Offers. By this announcement and by direct mailing to major test development companies, the Texas Education Agency is inviting a

better offer. The deadline for receipt of offers is May 6, 1988.

Contact. Specifications may be reviewed in the Office of the Assistant Commissioner for Assessment and Evaluation, Texas Education Agency. For additional information, contact the Assistant Commissioner for Assessment and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9533.

Issued in Austin, Texas, on April 13, 1988.

TRD-8803816 W. N. Kirby
Commissioner of Education

Filed: April 13, 1988

For further information, please call (512) 463-9212.

This notice of request for contractor continuance is filed pursuant to Texas Civil Statutes, Article 6252-11c.

The Texas Education Agency must revise the teacher recertification test required by the Texas Education Code, §13.047. This contract is for developing and printing new forms of the recertification test. The contract will be awarded based on an evaluation of the contractor's ability to provide the requested services. Services have been provided in past years by National Computer Systems, Inc., for the initial development and continuing administration of the test. It is the intent of the Texas Education Agency to contract with National Computer Systems, Inc., in the amount of \$53,875, unless a better offer is received.

Closing Date for Receiving Offers. By this announcement and by direct mailing to major test development companies, the Texas Education Agency is inviting a better offer. The deadline for receipt of offers is May 6, 1988.

Contact. Specifications may be reviewed in the Office of the Assistant Commissioner for Assessment and Evaluation, Texas Education Agency. For additional information, contact the Assistant Commissioner for Assessment and Evaluation, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9533.

Issued in Austin, Texas, on April 13, 1988.

TRD-8803823 W. N. Kirby
Commissioner of Education

Filed: April 13, 1988

For further information, please call (512) 463-9212.

Texas Department of Human Services Correction of Errors

The Texas Department of Human Services submitted an adopted amendment which contained an error as published in the April 8, 1988, issue of the *Texas Register* (13 TexReg 1675).

In §49.2110, paragraph (1) should read:

"(1) Allowable sources of certified local resources include the following:

(A)-(D) (no change.)

(E) Federal funds, unless prohibited by federal laws.

The Texas Department of Human Services submitted proposals which contained errors as published in the April 12, 1988, issue of the *Texas Register* (13 TexReg 1706).

In §27.2301, the preamble which appears under §27.2409 also applies and should appear under §27.2301.

In §27.2409, the second paragraph to the preamble should read: "Brian Packard, associate commissioner for budget, planning, and economic analysis, has determined that for the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the proposal."

The third paragraph to the preamble should read: "Mr. Packard also has determined that for each year of the first five years the proposal is in effect the public benefit anticipated as a result of enforcing the sections will be to inform providers of current regulations and to delete obsolete regulations. There is no anticipated economic cost to individuals who are required to comply with the proposal."

Texas State Library and Archives Commission

Consultant Contract Reports

Senate Bill 737 of the 65th Texas Legislature (Article 6252-11c, Texas Revised Civil Statutes) requires state agencies and regional councils of governments to file with the Office of Secretary of State invitations to bid and details on bidding on private consultant contracts expected to exceed \$10,000. Within 10 days of the award of the contract, the agency is required to file with the Secretary of State a description of the study to be conducted, the name of the consultant, the amount of the contract, and the due dates of the reports. Additionally, the Act directs the contracting agencies to file copies of the resulting reports with the Texas State Library. The Library is required to compile a list of the reports received and submit the list quarterly for publication in the *Texas Register*.

Below is a list of reports received for the first quarter of 1988. The reports may be examined in Room 300, Texas State Library, 1201 Brazos Street, Austin, Texas.

Agency: Air Control Board

Consultant: Radian Corporation

Title 1. Data Management System for the El Paso County I/M Program: Technical Specifications, System Outline and Documentation.

2. System Documentation for the El Paso County Vehicle Inspection and Maintenance Program.

Agency: Department on Aging

Jane Morrow

Title: 1. Manual for Coordination of Joint Purchasing for Nutrition Programs for the Elderly.

2. Final Report--Expanded Purchasing Power for Nutrition Programs for the Elderly: A Demonstration in Texas.

Agency: Department of Agriculture

Consultant: 1. Judy Fleishman, Community Responses to Nuclear Waste: Research as a Public Participation Strategy.

2. Julie Brody, Community Responses to Nuclear Waste: Research as a Public Participation Strategy.

Department of Community Affairs

Agency: Department of Community Affairs

Consultant: 1. Arthur Andersen & Company, Case History of a Monitoring System: Technical Assistance Guide.

2. Enterprise Advisory Services, Inc., Job Training Partnership Act Financial Management Manual.

3. Intercultural Development Research Association, Selected Characteristics of JTPA PY 1985 Adult and Youth Parti-

cants by High School Education.

National Alliance of Business, Linking JTPA with Economic Development.

Agency: Central Texas Council of Governments

Consultant: DeShazo, Starek and Tang, Inc., Population and Employment Projections for the Killeen-Temple Study Area.

2. Killeen and Copperas Cove Feasibility Studies Prepared for the Killeen-Temple Urban Transportation Study.

Agency: General Land Office

Title: Nature Conservancy

Title: Natural Heritage of Texas

Agency: Department of Human Services

1. Arthur Anderson & Company

a. Analysis and Design of an Automated Accounting System: Detailed Design Document (Final Report).

b. Analysis and Design of an Automated Accounting System: Second Written Interim Report.

2. Educational Enrichment School for Educational Enrichment: Case Mix Study: Final Report

3. Robert C. Godbout, PhD Final Report on Data Processing and Statistical Consulting Work for the Department of Human Services

Agency: Property Tax Board

Consultant: 1. Capitol Appraisal Group

a. Preliminary Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

b. Preliminary Report of the Findings of the 1987 Property Value Study of School and Appraisal Districts.

c. Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

2. Thomas Y. Pickett and Company

a. Preliminary Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

b. Preliminary Report of the Findings of the 1987 Property Value Study of School and Appraisal Districts.

c. Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

3. Pritchard and Abbott

a. Preliminary Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

b. Preliminary Report of the Findings of the 1987 Property Value Study of School and Appraisal Districts.

c. Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

4. Dr. Elbert Whorton, Jr.

a. Preliminary Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

b. Report of the Findings of the 1986 Property Value Study of School and Appraisal Districts.

Agency: Texas Education Agency

Consultant: 1. Coopers and Lybrand Company Planning Recommendations for the Effective Use of Information Technology Systems in Public Education.

2. MGT of America, Inc.

a. A Study of Public School Teacher Supply in the State of Texas.

b. A Study of the Texas Annual Performance Report.

3. Performance Assessment Systems, Inc. Summary Analysis of Texas Teacher Appraisal System (TTAS): Observations in Six Pilot Districts During 1985.

Agency: Texas Tech University
Consultant: Peat, Marwick, Mitchell, and Company
Title: Budget/Personnel/Payroll Requirements Definition.
Agency: Water Development Board
Consultant: 1. Arthur Young and Company

a. Evaluation of Financial, Legal and Institutional Factors Affecting the Provision of Water and Sewerage Services.

b. Evaluation of Financial, Legal and Institutional Factors Affecting the Provision of Water and Sewerage Services: Executive Summary.

2. Radian Corporation

a. Feasibility Study: Industrial Transformer Superfund Site (Final Draft).

b. Quality Assurance and Quality Control Report: Industrial Transformer Superfund Site.

c. Site Investigation Report: Industrial Transformer Superfund Site, Final Draft.

Issued in Austin, Texas, on April 8, 1988.

TRD-8803799 William D. Gooch
Director and Librarian
Texas State Library and Archives
Commission

Filed: April 13, 1988

For further information, please call (512) 463-5460.

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**Texas State Board of Medical
Examiners**

Correction of Error

The Texas State Board of Medical Examiners submitted a proposed amendment which contained an error as published by the office of the Texas Register in the April 15, 1988, issue of the *Texas Register* (13 TexReg 1752).

In §175.1, the first sentence should read: "The board shall charge the following fees:"

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**Texas Water Commission
Consultant Contract Award**

Pursuant to Texas Civil Statutes, Article 6252-11c, the Texas Water Commission announces that it has entered into a consulting contract with Arthur Andersen and Company, 816 Congress Avenue, Suite 1500, Austin, Texas 78701.

The consultant proposal request was published in the January 29, 1988, issue of the *Texas Register* (13 TexReg 566).

The consultant will be required to assist in the development of a four-year plan to upgrade the information processing capability of the agency. The deliverable is the most cost-effective implementation strategy considering costs of staff, capital, and other resources and benefits of meeting agency information requirements. The strategy must be documented according to Automated Information and Telecommunications Council planning guidelines and legislative appropriations request submission requirements.

The effective date of the contract is April 1, 1988, and the ending date of the contract is August 31, 1988. The total cost of the consultant contract is not to exceed \$75,000.

For further information, please call (512) 463-8380.

Issued in Austin, Texas, on April 13, 1988.

TRD-8803822 William G. Newchurch
Director, Legal Division
Texas Water Commission

Filed: April 13, 1988

For further information, please call (512) 463-8087.

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Enforcement Order

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 Huntington Tile, Inc. on April 12, 1988, assessing \$7,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michelle A. McFaddin, Staff Attorney, Texas Water Commission, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-8069.

Issued in Austin, Texas, on April 13, 1988.

TRD-8803844 Gloria A. Vasquez
Notices Coordinator
Texas Water Commission

Filed: April 14, 1988

For further information, please call (512) 463-8069.



West Publishing Company
 50 W. Kellogg Blvd.
 P.O. Box 64526
 St. Paul, MN 55164-0526
 (612) 228-2500

GERARD L. CAFESJIAN
 Vice President
 Marketing and Sales

Dear Texas Register Subscriber,

We at West Publishing are very pleased to announce that we have signed an agreement with the state of Texas to publish the Official Texas Administrative Code (TAC). Texas Secretary of State Jack Rains, in his February news release, said, "I am pleased to see a company with West's credentials and experience undertaking this job. Texans deserve to have access to the state's constantly changing rules and regulations. They cannot afford to wait more than a year for updates."

With West as the official publisher of the TAC, you will not have to wait more than a year for updates; we plan on supplementing the TAC as often as necessary to keep you current. In addition to regular updates, the West Official TAC will continue to be supplemented twice each week by the Texas Register.

As this letter is being written, the following TAC titles are being scheduled for publication:

- Title 1 Administration
- Title 7 Banking and Securities
- Title 16 Economic Regulation
- Title 19 Education
- Title 25 Health Services
- Title 28 Insurance
- Title 31 Natural Resources and Conservation

We will be publishing the TAC in softbound pamphlet form, which is much easier to use and maintain than a looseleaf service. If you've ever subscribed to a looseleaf service, you know how easily material can be misfiled or important information can be discarded. And you know how expensive it can be! West also plans to immediately add a workable index.

We will be notifying you in the very near future as to the exact publication dates and prices of the TAC. We look forward to fulfilling your needs for accurate, easy-to-use and timely Texas Administrative Code Titles and updates. Please feel free to contact Myrna Currier at 1-800-328-9352 with any comments or questions that you might have.

Sincerely,

G. L. Cafesjian