

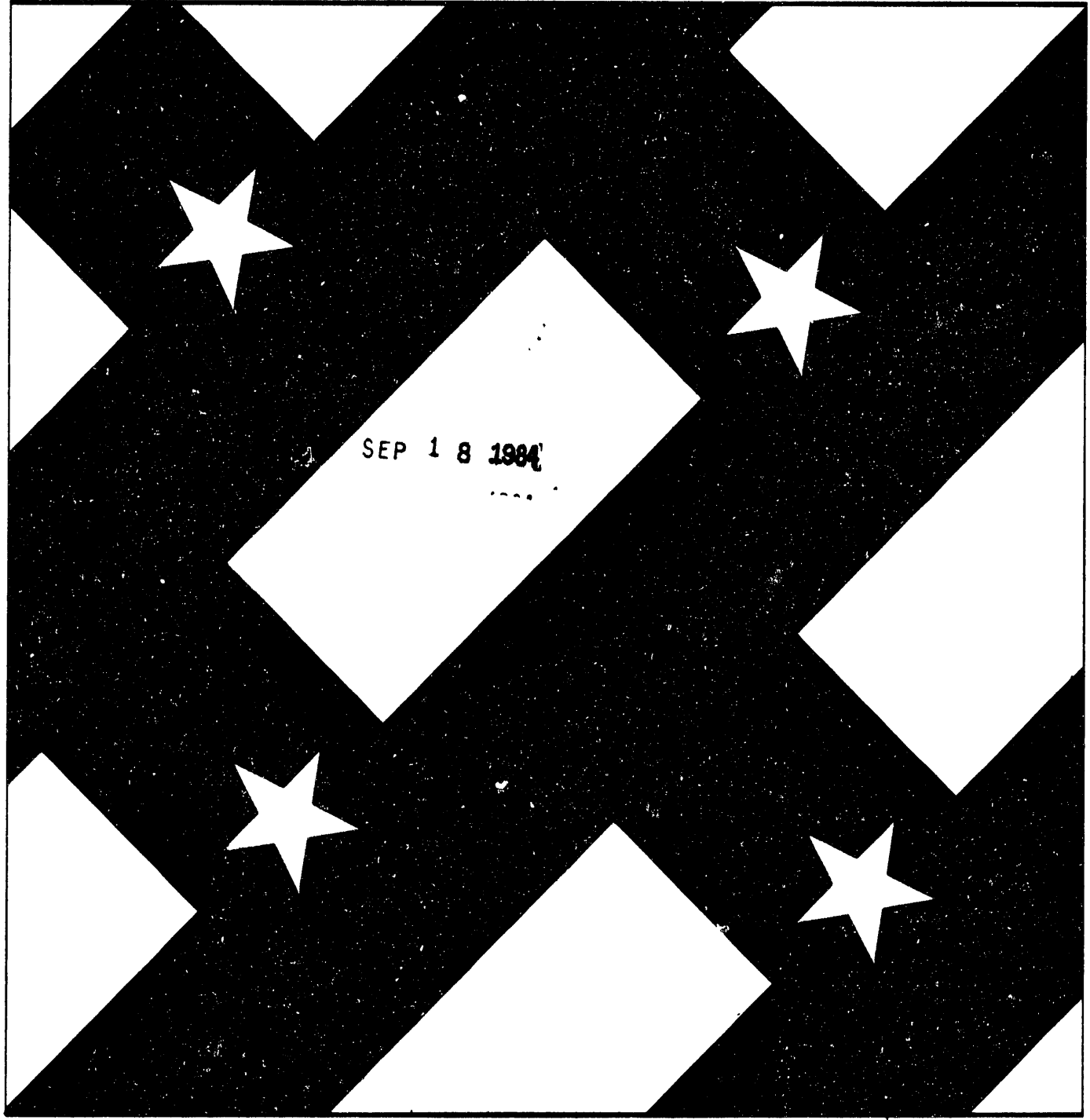
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Texas Register

Volume 9, Number 68, September 11, 1984

Pages 4799 - 4842



Highlights

The State Board of Insurance adopts on an emergency basis amendments concerning the Amusement Ride Safety Inspection and Insurance Act
 Effective date - August 31 page 4803
 The Texas Parks and Wildlife Department adopts

on an emergency basis amendments concerning the Statewide Hunting and Fishing Proclamation
 Effective date - September 4 page 4804
 The Railroad Commission of Texas proposes new sections in a chapter concerning the Oil and Gas Division. Proposed date of adoption - November 5 page 4808

**Office of
 the Secretary
 of State**

Texas Register

The *Texas Register* (ISN 0362-4781) is published twice each week at least 100 times a year. Issues will be published on every Tuesday and Friday in 1984 with the exception of January 28, July 10, November 27, and December 28, by the Office of the Secretary of State.

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

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* 90 days after proposal publication date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 monthly, quarterly, and annual indexes to aid in researching material published.

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

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2, in the lower left-hand corner of the page, would be written "9 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 9 TexReg 3."

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

Texas Administrative Code

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

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

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

TAC stands for the *Texas Administrative Code*,

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



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Emergency Rules

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

An agency must submit written reasons, published in the *Register*, for emergency action on a rule. The submission must also include a statement of the legal authority under which the emergency action is promulgated and the text of the emergency adoption. Following each published emergency document is certification information containing the effective and expiration dates of the action and a telephone number from which further information may be obtained.

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

TITLE 22. EXAMINING BOARDS Part XV. Texas State Board of Pharmacy

Chapter 291. Pharmacies Community (Class A) Pharmacy

22 TAC §291.32, §291.36

The Texas State Board of Pharmacy is renewing the effectiveness of the emergency adoption of amended §291.32 and new §291.36 for a 60-day period effective September 20, 1984. The amendments and new section were originally adopted on an emergency basis in the June 1, 1984, issue of the *Texas Register* (9 TexReg 2948).

Issued in Austin, Texas, on September 1, 1984.

TRD-849027 Bob Watson
Director of Operations and
Administrative Services
Texas State Board of Pharmacy

Effective date: September 20, 1984
Expiration date: November 20, 1984
For further information, please call (512) 478-9827.

Part XVI. Texas State Board of Physical Therapy Examiners Chapter 339. Fees

22 TAC §§339.1-339.3

(Editor's note. The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas State Board of Physical Therapy Examiners, Suite 260, Building C, 1300 East Anderson Lane, Austin, or in the Texas

Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Physical Therapy Examiners adopts on an emergency basis the repeal of §§339.1-339.3, concerning fees. The examination service which handles the board's physical therapy licensure exam had proposed an escalated price to the board which was to become effective July 1, 1984. The sections were proposed to enable the board to cover its operating costs. After the sections were adopted, the executive director was able to negotiate a postponement of the cost escalation until July 1, 1985. The board does not want to overtax the public of Texas by charging an escalated fee prior to the escalated cost to the board, and is therefore repealing the sections on an emergency basis. The emergency repeal was passed by a full vote of the board membership at the August 27, 1984, board meeting. The board desires that this emergency repeal become effective September 1, 1984 (The original sections were to become effective on this same date.)

The Texas State Board of Physical Therapy Examiners adopts the repeal on an emergency basis under Texas Civil Statutes, Article 4512e, §3(e), which provide the board with the authority to adopt rules consistent with the Texas Physical Therapy Practice Act to carry out its duties in administering the Act

§339.1. *Examination.*

§339.2. *Application.*

§339.3. *License.*

Issued in Austin, Texas, on August 31, 1984.

TRD-849003 Lois M. Smith
Executive Director
Texas State Board of Physical
Therapy Examiners

Effective date: September 1, 1984
Expiration date: December 30, 1984
For further information, please call (512) 835-1846.

TITLE 28. INSURANCE

Part I. State Board of Insurance

(Editor's note: Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register numbers. However, the rules will be published under the agency's correct TAC title and part.)

Powers and Duties

Examination and Corporate Custodian and Tax

059.01.15.271

The State Board of Insurance is renewing the effectiveness of the emergency adoption of new 059.01.15.271 for a 60-day period effective September 1, 1984. The new section was originally adopted on an emergency basis in the May 11, 1984, issue of the *Texas Register* (9 TexReg 2587).

Issued in Austin, Texas, on August 31, 1984.

TRD-849034 James W. Norman
Chief Clerk
State Board of Insurance

Effective date: September 1, 1984
Expiration date: October 31, 1984
For further information, please call (512) 475-2950.

General Provisions

Rules to Implement the Amusement Ride Safety Inspection and Insurance Act

059.21.53.004

The State Board of Insurance adopts on an emergency basis amendments to Rule 059.21.53.004, which was adopted on an emergency basis in the May 22, 1984, issue of the *Texas Register* (9 TexReg 2806). Rule 059.21.53.004 is one of a set of emergency rules adopted by Board Order 44762 to implement the Insurance Code, Article 21.53 (the Amusement Ride Safety Inspection and Insurance Act). These rules became effective on May 15, 1984.

Among other things, Rule 059.21.53.004 requires that a person may not operate an amusement ride unless he or she files with the board an amusement ride safety inspection certificate, or a photocopy of such certificate, certifying with respect to each amusement ride that at the time of the inspection the amusement ride was found to be either safe or unsafe for use by the public. The statute does not require a certification that a ride is safe or unsafe for public use. It requires that a person may not operate an amusement ride unless he or she has the amusement ride inspected at least once annually for safety by an insurer or a person with whom the insurer has contracted, and obtains from that insurer or person a written certificate that the inspection has been made and that the amusement ride meets the standards for coverage and is co-

vered by the insurance required by Article 21.53, §4(2). It is the board's opinion that the rule should be changed to track the statute.

It is also the board's opinion that the amusement ride inspection certificate form which is adopted by reference in Rule 059.21.53.004(2)(E) should be amended to track statutory language. This form presently requires a certification that a ride be found to be either safe or unsafe. It is changed to track the statute. A line for the date of inspection is also added to the form to make sure that the date of inspection will be certain.

It is the board's opinion and the board finds that an imminent peril to the public welfare requires that these amendments be adopted on an emergency basis. The reason for the emergency is to cause the rule to track precisely the certification required by Article 21.53, §4(1), and to make the certificate form certain as to the date of inspection. This will clear up any possible ambiguity as to the meaning of the certification required by this rule. There are also indications that it may be difficult for insureds to obtain coverage with the present certification requirements. The need to clear up any possible problem respecting insurance coverage for amusement rides, including the need for the availability of insurance coverage for amusement rides, presents an imminent peril to the public welfare and requires these emergency amendments.

The amendments are adopted on an emergency basis generally under the Insurance Code, Article 21.53, which sets forth various requirements respecting amusement rides, and specifically under Article 21.53, §3, which authorizes the board to administer and enforce Article 21.53; and under authority of the Insurance Code, Article 1.04, and Texas Civil Statutes, Article 6252-13a, pursuant to which the board may enact procedural rules necessary or appropriate for it to carry out its statutory duties.

.004. Amusement Ride Operation Requirements. A person may not operate an amusement ride unless:

- (1) (No change.)
- (2) he or she also files an amusement ride safety inspection certificate (SBI Form AR-100), or photocopy of such certificate, certifying with respect to each amusement ride the matters required by the Act, §4(1) [; and certifying that at the time of inspection the amusement ride was found to be either "safe" or "unsafe" for use by the public]. A separate inspection certificate for each amusement ride showing the name, serial number, and manufacturer of the ride is required.

(A) If an inspection reveals that an amusement ride [is unsafe for public use at the time of inspection or that it] does not meet the [insurance company's] standards for coverage, the inspection certificate shall specifically describe the safety hazard(s) and the necessary repair(s) or replacement(s) required for [to render] the amusement ride [safe for public use and] to meet the [company's] standards for coverage. It shall be the responsibility of the owner or operator of the amusement ride to make the necessary repairs or replacements before the amusement ride is offered for public use.

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

(E) SBI Form AR-100 as amended on August 31, 1984, is adopted herein by reference and may be ob-

tained by contacting Amusement Ride Regulation, Casualty Division, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

(3) (No change.)

Issued in Austin, Texas, on August 31, 1984.

TRD-849035 James W. Norman
Chief Clerk
State Board of Insurance

Effective date: August 31, 1984
Expiration date: September 12, 1984
For further information, please call (512) 476-2950.

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part II. Texas Parks and Wildlife Department

Chapter 65. Wildlife

Subchapter A. Statewide Hunting and Fishing

31 TAC §§65.6, 65.71, 65.81

The Texas Parks and Wildlife Commission adopts on an emergency basis amendments to §§65.6, 65.71, and 65.81, concerning the Statewide Hunting and Fishing Proclamation. The amendments ban the use of snaglines, but allow for the use of trotlines with the main fishing line off the bottom but still under the water's surface.

The commission finds that imminent peril to the public welfare and an immediate danger of depletion of saltwater fish populations require the adoption of the amendments on an emergency basis.

The amendments are adopted on an emergency basis under the Texas Parks and Wildlife Code, §61.055, which provides the commission with the authority to amend its proclamations to prevent depletion of the wildlife resources.

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

[Snagline—A type of trotline set only in saltwaters not more than two feet in depth at mean low tide with unbaited hooks spaced not less than six inches apart.]

§65.71. Saltwater Fish.

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

(c) Means and methods.

(1) (No change.)

(2) Only the following means and methods may be used for taking fish, except where noted in §65.81 of this title (relating to Special Coastal Laws).

(A) Devices.

(i) Pole and line, rod and reel, artificial and natural baits, trotline with the main fishing line and attached hooks and stagings under the water's surface [on the bottom], sail line, [snagline,] spear gun and spear, bow and arrow, and gig, except it is unlawful to use a

spear gun and spear, bow and arrow, or gig to take red drum and spotted seatrout. Cast nets and 20-foot minnow seines may be used for taking bait. Dip nets and gaffs may be used only in aiding to land fish caught on other legal devices, except that gaffs may not be used to land fish below the minimum or above the maximum size limits. Snagging or jerking fish (a method of taking fish by means of one or more hooks attached to a line and periodically jerking the line) is specifically defined as an illegal method for taking saltwater fish, artificial lures not included.

(ii)-(vii) (No change.)

(B) (No change.)

(C) Trotlines.

(i) [Snaglines,] Throwlines [,] and sail lines are types of trotlines, and all trotline regulations apply to each type of trotline except where noted.

(ii)-(v) (No change.)

(vi) No trotline or trotline (except sail line and snagline) component shall have flotation devices attached except as end markers.]

(vi)(vii) No trotline or portions thereof shall be placed closer than 50 feet from any other trotline or set within 200 feet of the edge of the Intracoastal Waterway or its tributary channels.

(vii)(viii) No trotline or trotline components, including lines and hooks but excluding poles, may be left in or on coastal waters between the hours of 1 p.m. on Friday through 1 p.m. on Sunday of each week, except that attended sail lines are excluded from the restrictions imposed by this clause.

(viii)(ix) The minimum hook interval for trotlines (except sail lines [and snaglines]) is three horizontal feet.

(ix) Trotlines (except sail lines and snaglines) must have the main fishing line on the bottom.

(xi) Snaglines.

(I) Snaglines may only be used in Baffin Bay, Alazan Bay, and their tributaries.

(II) Snaglines may be used each day of the week from December 1 through May 31. Snaglines may not be used at any other time.]

(ix) All trotlines, except sail lines, must be identified by a legible tag bearing the name and address of the fisherman and the date it was set out.

(x) All hooks used on trotlines shall be tuna circle-type hooks with points curved in (such as the Mustad Part No. 3996OST or a comparable type hook) and having a gap of no less than one-half inch (for example, such as the Mustad-Viking No. 8 or larger). Attended sail lines are excluded from the restrictions imposed by this clause.

(xi)(xii) Sail lines.

(I)-(IX) (No change.)

(D)-(I) (No change.)

§65.81. Special Coastal Laws.

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

(d) Cameron County: fishing. It is unlawful for a person to have in possession, in or on the waters, islands, spoil areas, or mud flats of the Laguna Madre lying within Cameron County, a seine, net, trap, or other device for the purpose of catching fish, other than the ordinary pole and line, rod and reel, artificial and natural baits,

and trotline [except snagline], cast nets and dip nets, 20-foot minnow seine for taking bait, perch trap not exceeding 18 cubic feet for taking bait, spear gun and spear, bow and arrow, and gig.

(e)-(n) (No change.)

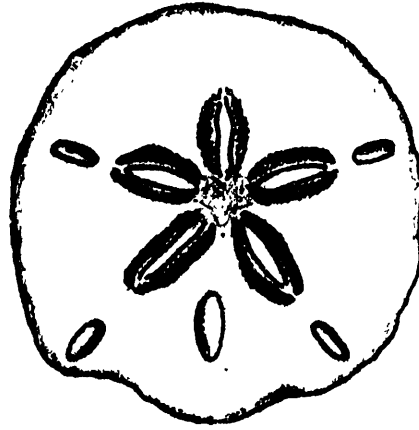
Issued in Austin, Texas, on September 4, 1984.

TRD-849086 Maurine Ray
 Administrative Assistant
 Texas Parks and Wildlife
 Department

Effective date: September 4, 1984

Expiration date: January 2, 1985

For further information, please call (512) 479-4862
or (800) 792-1112.



Proposed Rules

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

The proposal, as published in the *Register*, must include a brief explanation of the proposed action; a fiscal statement indicating effect on state and local government and small businesses; a statement explaining anticipated public benefits and possible economic costs to individuals required to comply with the rule; a request for public comments; a statement of statutory authority under which the proposed rule is to be adopted (and the agency's interpretation of the statutory authority); the text of the proposed action; and a certification statement. The certification information, which includes legal authority, the proposed date of adoption or the earliest possible date that the agency may file notice to adopt the proposal, and a telephone number to call for further information, follows each submission.

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

TITLE 4. AGRICULTURE Part II. Texas Animal Health Commission Chapter 35. Brucellosis Subchapter A. Eradication of Brucellosis 4 TAC §35.4, §35.5

The Texas Animal Health Commission proposes amendments to §35.4 and §35.5, concerning Class B and Class C areas.

An annual review of the brucellosis status for all Texas counties is required by the United States Department of Agriculture (USDA). The proposed amendment to §35.4(a) will allow the commission to add counties to the Class B area at the time statistics are submitted to the USDA for reclassification of the area. The present regulation prevents the addition of counties to the Class B area unless they individually meet the criteria for the entire area. Under the USDA rules, counties are not required to individually meet the classification standards when added to an area being submitted for annual brucellosis classification.

Following four public hearings in the Class C area of Texas and after review of testimony received at those hearings as well as written comments, the Texas Animal Health Commission withdraws the amendments to §35.5 published in the July 17, 1984, issue of the *Texas Register* (9 TexReg 3837). This new

proposal is in response to overwhelming support from the public in the Class C area for the mandatory vaccination program. The proposal now requires vaccination for heifers between four and 12 months of age born after January 1, 1984, when acquired and used for grazing, breeding, dairying operations, or confinement in a dry lot not under quarantine in the Texas Class C area. These amendments would require females born after January 1, 1984, and over 12 months of age which are changing ownership within the Class C area to be vaccinated, spayed, or consigned to a livestock market to be spayed or "S" branded prior to sale; or consigned to slaughter or a quarantined feedlot. This substitute proposal places responsibility for vaccination on the person acquiring the animal rather than the livestock market.

Ken Welch, administration director, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules. While the overall number of heifers vaccinated will increase as a result of these rules, the cost to the state should remain relatively constant. This is due to the combined effect of a change in rates paid by the state and an anticipated decrease in the proportion of heifers which will be vaccinated at state expense.

Mr. Welch also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing

the rules as proposed is the increase of calfhood vaccinations of heifers changing ownership for purposes other than slaughter or quarantine feedlots. This translates into a higher degree of immunity in the breeding herds in the Texas Class C area, thereby reducing the incidence and spread of brucellosis in this part of the state. More freedom of movement of cattle is expected once the incidence is reduced to a level that allows the area to be reclassified to a higher classification. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed.

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

The amendments are proposed under the Agriculture Code, Chapter 161 and Chapter 163, Texas Civil Statutes, which provides the commission with authority to propose rules and set forth the duties of the commission to protect domestic animals in the state from disease.

§35.4. Class B Area.

(a) General provisions. The purpose of a Class B area is to use all feasible methods of finding and eliminating brucellosis in an area so that the area will become an area of higher classification at a later date. The commission on its own motion or in response to a petition to the commission may add counties to this area. A county to be considered for inclusion into the Class B area shall be contiguous to a county that is part of the B area. **If a county transfer is to occur at other than the submission of the annual application for reclassification, the herd infection rate for the county shall not exceed an accumulated 12 months herd infection rate due to field strain *Brucella abortus* of 1.5% or 15 herds per 1,000, and a 12-month adjusted MCI reactor prevalence rate not to exceed three reactors per 1,000 cattle tested (0.30%) must be maintained at the time of filing the petition. The commission may consider the transfer of a contiguous county at the time of the submission of the annual application for reclassification if the county does not meet the preceding requirements at the time of petition.** Once the commission has approved a [the] transfer, the county will be included in the next submission of the application for brucellosis classification or reclassification to the USDA, Animal and Plant Health Inspection Service, Veterinary Services. Upon approval of this application, the county will become a part of the "B" area. Petitions are available from the central office. The provisions in §35.1 of this title (relating to Definitions), §35.2 of this title (relating to General Requirements), and §35.3 of this title (relating to Requirements for Certified Brucellosis-Free Herd of Cattle) shall apply, in addition to the following requirements.

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

§35.5. Class C Area.

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

(d) Change of ownership within the Class C area.

(I) Vaccination.

(A) All female cattle born after January 1, 1983, 18 months of age and older, except cattle from certified free herds, which are purchased or sold for use in

grazing, breeding, dairying operations, or confinement in a dry lot not under quarantine, shall be officially vaccinated, or meet the testing requirements in paragraph (2)(B) of this subsection.

(B) Heifers born after January 1, 1984, and between four and 12 months of age which are acquired and used in grazing, breeding, dairying operations, or confinement in a dry lot not under quarantine must be officially vaccinated. Females born after January 1, 1984, which have not been officially vaccinated and are over 12 months of age may change ownership only after being spayed; or

(i) consigned to a livestock market to be spayed or "S" branded prior to sale; or

(ii) consigned direct to a slaughter establishment; or

(iii) consigned direct to a quarantined feedlot or quarantined pasture.

(2) (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 September 5, 1984.

TRD-849Q62

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

Earliest possible date of adoption

October 12, 1984

For further information, please call (512) 475-4111.

Chapter 59. General Practice and Procedures

4 TAC §59.1

The Texas Animal Health Commission (TAHC) proposes new §59.1, concerning the appointment of a vice-chairman for the commission. The TAHC commissioners believe it would be to the advantage of the commission to name a vice-chairman to act in the event the commission chairman is absent or unavailable to conduct business.

Ken Welch, administration director, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Welch also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is the prevention of delays of necessary commission meetings in the absence of the chairman. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed.

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

The new section is proposed under the Agriculture Code, Chapter 161, Texas Civil Statutes, which provides the commission with authority to propose rules.

§59.1. Designation of Commission Vice-Chairman.

(a) The commission will name a vice-chairman following the designation of a chairman by the governor of Texas.

(b) The vice-chairman will act for the chairman in the absence or unavailability of the chairman.

(c) The vice-chairman will have the same powers and authority as those of the designated chairman.

(d) An ad hoc chairman may be named to act by majority vote of the commission in the event an emergency situation arises in which the chairman and vice-chairman cannot be present for a commission meeting.

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 September 5, 1984.

TRD-849063 John W. Holcombe, DVM
Executive Director
Texas Animal Health Commission

Earliest possible date of adoption:
October 12, 1984

For further information, please call (512) 475-4111.

**TITLE 16. ECONOMIC
REGULATION
Part I. Railroad Commission of
Texas
Chapter 3. Oil and Gas Division
Conservation Rules and Regulations
16 TAC §§3.28, 3.30, 3.31**

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Railroad Commission of Texas, 1124 IH 35 South, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin.)

The Railroad Commission of Texas proposes the repeal of §§3.28, 3.30, and 3.31, concerning gas well potentials, gas nominations, and gas well allowables. The repeal will allow adoption of new versions of the rules.

Patrick Thompson, Oil and Gas Division legal examiner, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal.

Mr. Thompson also has determined that for each year of the first five years the repeal as proposed is in effect the public benefit anticipated as a result of the repeal is accommodation for the adoption of new sections. The merits of the new sections are discussed

in a separate proposal. The anticipated economic cost to individuals who are required to comply with the current sections will not vary under the proposed new sections.

Comments on the proposal may be submitted to Patrick Thompson, Legal Section, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

The repeal is proposed under the Texas Natural Resources Code, §§86.041, 86.042, and 86.081, which provides the Railroad Commission of Texas with the authority to prorate and regulate the production of natural gas to prevent waste and adjust the correlative rights and opportunities of owners of gas to use or sell their gas.

§3.28. Potential of Gas Wells to Be Ascertained and Reported.

§3.30. Gas Nominations Required.

§3.31. Gas Well Allowables.

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 August 28, 1984.

TRD-849088 Walter Earl Lille
Special Counsel
Railroad Commission of Texas

Proposed date of adoption:
November 5, 1984

For further information, please call (512) 445-1186.

The Railroad Commission of Texas proposes new §§3.28, 3.30, and 3.31, concerning gas well potentials, gas nominations, and gas well allowables, respectively. The proposed new sections are designed to provide for more fair and accurate regulation of gas production and allocation.

Patrick Thompson, Oil and Gas Division legal examiner, has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules.

Mr. Thompson also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is increased understanding of the new sections, more fair and accurate gas proration through more accurate and reliable deliverability tests and more fair nominations, and improved conservation through changes in priority for gas production. The anticipated economic cost to individuals who are required to comply with the rules as proposed will not vary from those under the rules simultaneously proposed for repeal.

Comments on the proposed new sections may be submitted to Patrick Thompson, Legal Section, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

The new sections are proposed under the Texas Natural Resources Code, §§86.041, 86.042, and 86.081, which provides the Railroad Commission of Texas with the authority to prorate and regulate the production of natural gas to prevent waste and adjust the correlative rights and opportunities of owners of gas to use or sell their gas.

§3.28. Deliverability of Gas Wells to Be Ascertained and Reported.

(a) The absolute daily open flow potential of each producing associated or nonassociated gas well shall be ascertained and a report shall be filed in duplicate in the appropriate district office within 30 days of the completion of the well. The absolute daily open flow potential shall be determined in accordance with the instructions contained in the commission's publication, *Back Pressure Test for Natural Gas Wells, State of Texas*, and shall be reported on the commission's prescribed form. Any backdating of allowables will be performed in accordance with §3.31 of this title (relating to Gas Well Allowables).

(b) After conducting the test required by subsection (a) of this section, each operator of a gas well shall conduct an initial deliverability test not later than 10 days after the start of production for one or more legal purposes and shall report such initial deliverability on the prescribed form. After the original deliverability tests have been conducted, each operator of a gas well shall conduct a deliverability test semiannually, unless otherwise provided by the applicable field rules. All deliverability tests shall be conducted in accordance with subsection (c) of this section and the instructions printed on the Form G-10. The results of each test shall be attested to by the operator or his appointed agent and by a designated representative of the purchaser, in the place provided on the Form G-10. Gas meter charts, printouts, or other documents showing the actual measurement of the gas produced during any deliverability test conducted under this section shall be preserved by the maker for a period of no less than two years after the performance of the test and shall be furnished to the Railroad Commission of Texas, operator, or purchaser upon request. In the event that the purchaser refuses to sign the G-10 form and both parties cannot agree upon the validity of the test results, then either party may request a retest of the well. The retest will be witnessed by a representative of the commission and will be scheduled within seven working days of the request, if possible. The results of a commission-witnessed test shall be conclusive for the purposes of this section until the next regularly scheduled test of the well. In the event a retest is performed by the commission, the retest shall be signed by the representative of the commission. In the event that downhole remedial work or a compressor, pumping unit, or other substantial production enhancement work has been performed on any well subject to the testing procedure described in this subsection, then a new test may be requested and shall be performed according to the procedure outlined in this subsection.

(c) Unless the director of the Oil and Gas Division or his delegate grants an exception due to limited production capacity, all deliverability tests shall be performed by producing the subject well for a minimum time period of 72 hours. The average daily producing rate for each 24-hour period, the wellhead pressure before the commencement of the 72-hour test, and the flowing wellhead

pressure at the beginning of each 24-hour period shall be recorded and reported as required on the Form G-10. In addition, a 24-hour shut in the wellhead pressure shall be recorded on the Form G-10 either before or after the flow test. The flow rate during the first 48 hours of the test must be as close as possible to the flow rate during the final 24 hours of the test, but must equal at least 75% of such flow rate. The deliverability of the well during the last 24 hours of the flow test shall be used for allowable and allocation purposes. Deliverability tests shall be scheduled by either the producer or purchaser with the concurrence of the other and within the testing period designated by the Railroad Commission of Texas. A deliverability test shall be conducted under normal and usual operating conditions using the normal and usual operating equipment in place on the well being tested, and produced against the normal and usual line pressure prevailing in the line into which the well produces.

(d) First purchasers with packages of gas dedicated entirely to a downstream purchaser shall coordinate testing with and provide test results to that downstream purchaser if requested by the downstream purchaser. In such cases, the downstream purchaser shall have the right to witness all deliverability tests and retests.

(e) The appropriate district office shall be notified at least 24 hours prior to any back pressure, production, or shut-in test. Tests of wells connected to a pipeline shall be made in such manner that no gas is flared.

§3.30. Gas Nominations Required.

(a) All first purchasers of gas produced from wells shall file by the ninth day of each month nominations of requirements for gas to be used by them from each reservoir during the following month. Purchasers who gather gas from various gas fields and reservoirs or who purchase gas at the wellhead of the wells or purchase gas at a common purchase point must determine if they are the initial purchaser and, if so, shall file gas nominations. An operator using 100% of the gas from a gas well for his own operations, either on leases or in a fuel system, shall file gas nominations. An operator using a portion of the gas produced from a well must notify the nominator of the volume or percentage of total volume required, including lease separation extraction or percentage loss. The initial nominator must include that amount in its nominations. After initial notification, the operator need only inform the nominator of changes in the volume or percentage of total volume required. Operators of processing plants who operate field gathering systems and who are the purchasers of gas at the wellhead shall file gas nominations.

(b) The first purchaser shall act as initial nominator. By the fourth day of each month, each initial nominator shall inform its producers of the amount it intends to nominate from each producer. Each initial nominator shall nominate for a total quantity of gas equal to the sum of:

(1) the quantity for which the operator or the initial nominator are the ultimate consumers. This amount will include lease shrinkage, line loss, plant fuel, compressor use, as well as the gas which the initial purchaser may consume at the point of final delivery; and

(2) the total quantity of gas nominated by its downstream purchasers in accordance with the following provisions:

(A) all downstream purchasers who take more than 10 MMcf per day shall submit monthly to their initial or first nominators of gas a downstream purchaser's nomination based on a firm forecast of that purchaser's actual demand;

(B) if a downstream purchaser takes gas from more than one source of supply, that downstream purchaser's nomination shall show expected demand from each source;

(C) written monthly nominations from downstream purchasers shall be kept on file by the initial nominator for commission inspection and shall be filed with the commission on its request;

(3) the remaining quantity of gas which the initial nominator expects to take for direct sale to end-users and any other volumes for which no nomination has been made under paragraph (1) or paragraph (2) of this subsection.

(c) Nominations by a purchaser for a field may not exceed the deliverability to that nominator from that field. The initial nominator of gas shall ratably apportion its nominations among the various fields on a system from which it purchases gas without unjust or unreasonable discrimination. The nomination for each field shall be a consistent percentage of the total deliverability available to the nominator from each field. The nominator shall include the following on the nomination form:

(1) the nomination as a volume of gas in MCF;

(2) the nomination as a percentage of the total deliverability of wells connected to the nominator's system in each field;

(3) the nomination which the nominator filed for that field for the second preceding month (including revisions which were properly filed);

(4) the volume of gas (in MCF) actually taken by the nominator from that field during the second preceding month.

(d) First priority in the nominations for the purchase of gas shall be given to casinghead gas so that gas produced in association with oil production shall not be wastefully vented and oil production shall not be unnecessarily curtailed. Second priority shall be given to special allowable gas. Third priority shall be given to Statewide Rule 49(b) gas. Refer to §3.34 of this title (relating to Gas to Be Taken Ratably) for instructions on priority of takes for various categories of gas.

§3.31. Gas Well Allowables.

(a) General. Allowables of gas wells not currently assigned an allowable will not be made effective:

(1) prior to the well's completion or reclassification date; or

(2) more than 15 days prior to the date all reports or information necessary to the assignment of an allowable are received in the proper commission office. If any report or item of information necessary to the assignment of an allowable is not filed on time, there shall be a one-day allowable reduction for each day the report or information is late.

(b) Changes in gas well allowables.

(1) Changes in allowables of gas wells currently assigned an allowable will be effective on the date of the test or date of the change affecting the well's allowable (when the operator submits special tests or information),

provided this is not more than 15 days prior to the date the special test or information is received in the appropriate district office.

(2) With respect to a multicompleted well, the allowable of the second and succeeding zones will be made effective as of the date the multicompletion is approved by the commission or as of the date the last report or item necessary to the assignment of an allowable is received in the commission's office, whichever is the later of the two dates.

(3) When a well is recompleted as a gas well in a different reservoir, any overproduction that has occurred in the old reservoir must be made up before an allowable will be assigned in the new reservoir.

(c) Requirements for gas wells in a field for which an allocation formula has been adopted. In addition to the general requirements set out in subsection (a) and subsection (b) of this section, the following requirements must be met where an allocation formula is applicable before an allowable will be assigned

(1) If acreage is a factor in the allocation formula, a certified plat showing the acreage to be assigned to the well for proration purposes must be submitted. The plat must be accompanied by a statement that all of the acreage claimed can reasonably be considered productive of gas in that reservoir, and that the distance limitations of the field rules have not been exceeded. If all of the acreage claimed is not contained in a single lease, a certificate of pooling authority must be submitted, stating that the acreage has been pooled. If the distance limitations of the field rules are shown to have been exceeded, the plat must show the number of acres within and beyond the distance limitations. If all of the acreage cannot be considered productive, the plat must also show the productive limit of the acreage. If a plat shows acreage in the proration unit in excess of the maximum number of acres permitted by the field rules, it will not be accepted. The commission shall also be advised if an exception to the distance limitations is desired.

(2) If bottom-hole or reservoir pressure is a factor in the allocation formula, it must be submitted on the appropriate form and must be measured at, or corrected to, the proper datum plane

(d) Ascertaining allowables by adjustment of gas nominations.

(1) The allocation of allowables to all wells in prorated gas reservoirs will be determined from the nominations submitted, and after consideration at statewide hearing. However, in order to ascertain the reasonable market demand for the gas, nominations for gas shall be adjusted by comparing the latest reported production from the field to the nominations filed for that period by purchasers from the field

(2) The total nominations for gas from prorated wells for any month shall be determined by subtracting the total allowable assigned to nonprorated wells during the month from the total nominations for gas from all wells in the reservoir for that month.

(3) Nothing in this subsection shall be interpreted, however, as binding on the commission to the extent that any adjustment of nominations cannot be made which is necessary to adjust the allowables for gas to an amount equal to market demand as is required of the commission by the statutes.

(e) Allowables for prorated and nonprorated wells.

(1) Prorated wells. A prorated well is a well whose allowable is determined by the field allocation formula.

(2) Nonprorated wells. A nonprorated well is a well whose allowable is not determined by the field allocation formula and includes the following types of wells.

(A) A limited well is a well incapable of producing the allowable it would receive under the allocation formula. A limited well shall be assigned an allowable at the rate that the well is capable of producing.

(B) A special allowable well is a well that has been granted a fixed allowable pursuant to commission action. Gas from special allowable wells has priority over prorated gas. A well is classified as a special allowable well based on evidence that producing the well below a specified level will cause loss of the well or loss of recoverable gas.

(3) Allowable adjustments and balancing provisions for limited wells.

(A) A limited well shall not be allowed to accumulate underproduction.

(B) If the most recent production figures reported to the commission show a limited well to be overproduced, the allowables will be revised to an amount attributable to it under the field allocation formula. If a well's capability to produce, plus its latest overproduction, is less than its formula allowable, it will be assigned its ability to produce, plus its latest overproduction.

(C) If a limited well is assigned an allowable that results in its removal from the nonprorated classification, the underage status of the well shall be reinstated in the amount discontinued at the time the well was placed in the nonprorated category. However, credit will not be given for underproduction attributable to those months when the well was in a nonprorated category, nor can credit be given to underproduction that accumulated prior to the immediately preceding balancing period.

(f) Balancing provisions for overproduction and underproduction of gas for wells completed in nonassociated gas reservoirs. For the purpose of computing and balancing overproduction and underproduction in a gas field in which distribution of allowables to the several wells completed in a common reservoir is governed by special operating rules, the dates 7 a.m., March 1, and 7 a.m., September 1, are to be known as "balancing dates"; and the six months' periods beginning 7 a.m., March 1, and ending 7 a.m., September 1, and beginning 7 a.m., September 1, and ending 7 a.m., March 1, will be considered as separate entities and will be known as "balancing periods."

(1) Underproduction.

(A) If a prorated gas well during the balancing period does not produce as much gas as is allocated to it by the order of the commission, the operator of the well shall be permitted to carry such underproduction forward to the next succeeding balancing period, as future allowable credit to be produced during that period.

(B) The amount of underproduction to be carried forward into any new balancing period as allowed production during such new balancing period shall consist of the actual underproduction that accrued in the balancing period immediately preceding such new balancing period, and the accumulative well status, as to underpro-

duction, will be adjusted on each balancing date accordingly. Underproduction which accrued prior to the previous balancing period will be canceled. Applications to carry forward underproduction accrued prior to the previous balancing period may be filed with the director of technical hearings. Such applications will be granted only pursuant to hearing with notice to all operators in the field.

(C) Underproduction applicable to any well shall not be made up at a rate in excess of twice the daily average rate required to produce the normal monthly allowable of the well. Under emergency conditions, exceptions to this provision may be granted by the director of the Oil and Gas Division or his delegate.

(D) If a producing well has been accumulatively underproduced on each of two successive balancing dates, the well shall not be assigned a monthly allowable greater than the maximum monthly production from the well during the immediately preceding balancing period; provided, however, the limited allowable assigned to the well may be adjusted to a value not to exceed the allowable applicable to the well under the allocation formula, upon certification to the commission from the operator that such well is producing gas in excess of the limited allowable assigned it.

(2) Overproduction.

(A) Each operator of each gas well, subject to the hereinafter prescribed conditions, may produce the well in excess of the monthly allowable allocated to the well; provided that no well shall in any one month produce in excess of twice the current monthly allowable of the well. Exceptions to this limit may be granted by the commission upon application. No more than two exceptions may be given to a well during one balancing period.

(B) Except where a well is shut-in to make up overproduction (see subparagraph (C) and subparagraph (D) of this paragraph), overproduction existent as of any balancing date shall be made up during the balancing period immediately following, and may be made up at any time during such period.

(C) Any well overproduced as of a balancing date, which was also overproduced on the balancing date immediately preceding and remained overproduced for the entire period between the two balancing dates, shall be shut in until the overproduction, existent as of the later of such two balancing dates, is made up, unless exception is granted as provided for in subparagraph (D) of this paragraph.

(D) The operator of a well which, under the provisions of subparagraph (C) of this paragraph, would be required to be shut in, may request authority to produce the well at a reduced rate. Authority to produce at a reduced rate until the end of the balancing period may be granted administratively by the director of proration if no protest is received from other operators in the field. If a protest is received, reduced rate authority may be granted only pursuant to hearing. Notice of the hearing will be given to all operators in the field. If, after consideration of the evidence submitted at the hearing, the commission finds that the well would be damaged if shut in, the commission may allow the overproduction charged against it to be made up at a lesser rate than it would be made up if the well were shut in. Production of the

well in any one month may not exceed half the normal rate.

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 August 28, 1984

TRD-849090 Walter Earl Lillie
Special Counsel
Railroad Commission of Texas

Proposed date of adoption:
November 5, 1984

For further information, please call (512) 445-1186.

16 TAC §3.34

The Railroad Commission of Texas proposes new §3.34, concerning ratable taking of natural gas.

The new section, if adopted, will replace §3.91, which is simultaneously proposed for repeal. The proposed new section alters the commission's regulation of ratable taking to make it responsive to changes in the gas industry.

Patrick Thompson, Oil and Gas Division legal examiner, has determined that for the first five-year period the rule will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rule.

Mr. Thompson also has determined that for each year of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing the rule as proposed is increased understanding of the rule, greater flexibility in the purchasing and transporting of natural gas, and increased accessibility of gas and transportation facilities. The anticipated economic cost to individuals who are required to comply with the rule as proposed will not vary from that under the rule currently proposed for repeal.

Comments on the proposal may be submitted to Patrick Thompson, Legal Section, Oil and Gas Division, Railroad Commission of Texas, P.O. Drawer 12967, Austin, Texas 78711.

A public hearing on the proposed new section is scheduled in Room 221, Railroad Commission of Texas Building, 1124 IH 35 South, Austin, at 9 a.m. on Monday, October 22, 1984. Written comments will be accepted through October 23, 1984.

The new section is proposed under the Texas Natural Resources Code, §111.083 and §111.090, which provides the Railroad Commission of Texas with the authority to adopt rules to prevent discriminatory purchasing or taking of natural gas.

§3.34. Gas to Be Taken Ratably.

(a) This rule is promulgated to promote and maintain ratable production of natural gas and to protect correlative rights through the enforcement of ratable taking by natural gas pipelines. Enforcement of this rule is also intended to prevent the exercise of monopoly power by natural gas pipelines. A purchaser or transporter of gas from gas wells may not discriminate between different

wells in the same field, nor may it discriminate unjustly or unreasonably between wells in separate fields. The provisions of this rule requiring ratable taking of gas apply to takes from all gas wells on a pipeline system, excluding Statewide Rule 49(b) wells and special allowable wells. The taking of casinghead gas is also excluded. Subsection (g) of this section governs takes from the excluded wells.

(b) Purchasers of natural gas, including pipelines and their subsidiaries or affiliates, which purchase gas from different wells in the same field shall purchase the same percentage of allowable from all such wells in the field which offer their gas for purchase. Purchases from limited wells shall be in accordance with subsection (e) of this section. When purchasing from split stream wells, this percentage should be applied to that portion of the total allowable dedicated to the particular purchaser on the commission Form P-4, and not to the total allowable for the well. If takes from different wells in the same field become nonratable, the purchaser shall take commission-assigned underproduction and overproduction into consideration in establishing an appropriate pattern of takes to restore ratability.

(c) Purchasers of natural gas, including pipelines and their subsidiaries or affiliates, which purchase gas from more than one field must take a consistent percentage of the aggregate deliverability to that purchaser from each field, unless the purchaser can demonstrate a just and reasonable basis for discriminating between fields.

(d) A pipeline which transports gas from producing wells in a field may not discriminate between wells in the field which offer their gas for transport. Pipelines which transport gas for hire shall make their transportation facilities available on a fair and equitable basis to all wells in the field which offer their gas for transport.

(e) Purchases from limited wells (wells incapable of producing the full allowable they would receive under the allocation formula, designated by the commission with a # or @ symbol) shall not be reduced until all other wells in the field connected to that pipeline are reduced to the level at which that limited well can produce. Below that point, purchases from all prorated wells and limited wells should be reduced ratably.

(f) Operators shall apportion purchasers' take requests ratably to all wells in each field without discrimination as provided in subsections (a)-(d) of this section.

(g) Purchasers of gas shall satisfy their demand for gas by taking gas, up to the assigned allowable or limit for each well, from the following categories, in order:

- (1) all casinghead gas and/or "garbage gas" connected directly to the pipeline;
- (2) all gas from wells which have been assigned special allowables by the commission;
- (3) gas from wells subject to Statewide Rule 49(b), but only to the extent of one full allowable in the case of multiple 49(b) wells;
- (4) gas from prorated wells, including limited wells (see subsection (d) of this section).

(h) Any producer who is denied the opportunity to produce a ratable share of gas by a pipeline or purchaser, in violation of this rule, may file a complaint with the commission and request an order to end the discriminatory practices.

(i) If a producer fails to comply with a purchaser's request to ratably reduce production after reasonable no-

tice by the purchaser, the purchaser may file a complaint with the commission and request an order directed at the producer to reduce production to ratable levels.

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 August 28, 1984

TRD-849087 Walter Earl Lilie
 Special Counsel
 Railroad Commission of Texas

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November 5, 1984

For further information, please call (512) 445-1186.

Miscellaneous

16 TAC §3.91

(Editor's note The text of the following rule proposed for repeal will not be published. The rule may be examined in the offices of the Railroad Commission of Texas, 1124 IH 35 South, Austin, or in the Texas Register office, Room 503E, Sam Houston Building, 201 East 14th Street, Austin)

The Railroad Commission of Texas proposes the repeal of §3.91, concerning the ratable taking of natural gas. The repeal is being replaced by simultaneously proposed new §3.34.

Patrick Thompson, Oil and Gas Division legal examiner, has determined that for the first five-year period the repeal will be in effect there will be no fiscal implications for state or local government or small businesses as a result of the repeal

Mr Thompson also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of the repeal is the accommodation of the adoption of the proposed new section. The merits of the new section are discussed in a separate proposal. The anticipated economic cost to individuals who are required to comply with the new rule will not vary from the cost under the existing section in any definable way.

Comments on the proposal may be submitted to Patrick Thompson, Legal Section, Oil and Gas Division, Railroad Commission of Texas, P O Drawer 12967, Austin, Texas 78711

The repeal is proposed under the Texas Natural Resources Code, §111.083 and §111.090, which provides the Railroad Commission of Texas with the authority to prevent, by regulation, discriminatory purchasing or taking of natural gas.

§3.91. *Gas Market Demand, Allocation of Gas Well Allowables, and Ratable Take Between Gas Wells and Gas Fields.*

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 August 28, 1984

TRD-849089 Walter Earl Lilie
 Special Counsel
 Railroad Commission of Texas

Proposed date of adoption

November 5, 1984

For further information, please call (512) 445-1186

TITLE 28. INSURANCE

Part I. State Board of Insurance

(Editor's note Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register numbers. However, the rules will be published under the agency's correct TAC title and part.)

Life, Health, and Accident Insurance Standard Valuation Law

059.03.28.101-.105

The State Board of Insurance proposes new Rules 059.03.28.101-105, which permit the same minimum nonforfeiture standards for individual life insurance used in employer pension plans for men and women insureds under the commissioners 1980 standard ordinary (1980 CSO) and the commissioners 1980 extended term (1980 CET) insurance tables.

These rules give insurance companies the option of substituting a mortality table which is a blend of the 1980 CSO table (M) and the 1980 CSO table (F), with or without 10-year select mortality factors, for the 1980 CSO table, with or without 10-year select mortality factors; and give insurance companies the option of substituting a mortality table which is a blend of the 1980 CET mortality table (M) and the 1980 CET mortality table (F) for the 1980 CET mortality table for use in determining minimum cash surrender values and amounts of paid-up nonforfeiture benefits or benefits under any extended term insurance provision included in the policy. Other provisions of the rules define some of the technical terms used, provide that it is not a violation of law for the insurers to issue the same kind of life insurance policy on either a sex distinct or a sex neutral basis under the conditions described herein, state the purpose of the rules; and provide a severability provision. Certain tables for use in applying these rules are adopted into the rules by reference. These rules were previously adopted on an emergency basis in the June 1, 1984, issue of the *Texas Register* (9 TexReg 2950) and became effective on May 23, 1984.

The reason for these rules is that the United States Supreme Court determined in *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v Norris*, 103 Supreme Court 3492 (1983), that the Civil Rights Act of 1964, Title VII, as amended, 42 United State Code §200e, *et seq*, prohibits an employer from offering its employees the option of receiving retirement benefits from one of several plans of companies selected by the employer, all of which pay a woman lower monthly retirement benefits than a man who has made the same contributions. The court held the foregoing practice to constitute discrimination on the basis of sex in violation of Title VII, and that all retirement benefits derived from contributions subsequent to the decision and on or after August 1, 1983, must be calculated without regard to the sex of the beneficiary. These rules deal with non-

forfeiture values. Since nonforfeiture values are benefits that arise from contributions under individual life insurance policies, the court's ruling poses a dilemma for those insurers who wish to use the 1980 CSO and 1980 CET mortality table to calculate nonforfeiture values under individual life insurance policies that are sold in the employer pension market. Those mortality tables generate minimum nonforfeiture values which differ by sex. Since the Norris decision, employer pension plans may need to be funded by life insurance products that have identical nonforfeiture values for men and women. It is very difficult, if not impossible, for insurers to determine actual nonforfeiture values that are identical for men and women and also satisfy a sex-differentiated minimum standard. These rules permit the same minimum nonforfeiture standards for men and women under the 1980 CSO and 1980 CET mortality tables. This will make it possible for insurers to legally offer products under which employers will be able to comply with federal law.

Ted Becker, staff actuary (life), has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the rules. Any fiscal implications from these rules are caused by the Norris decision heretofore cited and explained.

Mr. Becker also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is provisions which facilitate compliance with the Norris decision. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. Any economic cost from the rules is caused by the Norris decision heretofore cited and explained.

Comments on the proposal may be submitted to Ted Becker, Staff Actuary (life), State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

These new rules are proposed under authority of the Insurance Code, Article 3.44a, §8(e)(6), which provides that all adjusted premiums and present values shall, for all policies of ordinary insurance covered by these rules, be calculated on the basis of the 1980 CSO mortality table or, at the election of the company for any one or more specified plans of life insurance, the 1980 CSO mortality table with 10-year select mortality factors, except that any ordinary mortality tables adopted after 1980 by the National Association of Insurance Commissioners that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the 1980 CSO mortality table, with or without 10-year select mortality factors, or the 1980 CET mortality table. The proposed new rules are based on a National Association of Insurance Commissioners model and are a substitute for the 1980 CSO or 1980 CET mortality tables. These new rules are also adopted under authority of the Insurance Code, Article 21.21, §4(7)(a) and §13, pursuant to which the board may enact rules respecting unfair discrimination in life in-

surance, including rules to affect uniformity with the adopted procedures of the National Association of Insurance Commissioners.

101. Purpose The purpose of these rules is to permit individual life insurance policies to provide the same cash values and paid-up nonforfeiture benefits to both men and women. (No change in minimum valuation standards is implied by these rules. For example, the reserve held for any policy must be at least as large as the corresponding cash value for that particular policy, calculated on an individual policy basis.)

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

1980 CET table—That mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 National Association of Insurance Commissioners (NAIC) amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the commissioners 1980 extended term insurance table.

1980 CET table (F)—That mortality table consisting of the rates of mortality for female lives from the 1980 CET table.

1980 CET table (M)—That mortality table consisting of the rates of mortality for male lives from the 1980 CET table.

1980 CSO table, with or without 10-year select mortality factors—That mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the commissioners 1980 standard ordinary mortality table, with or without 10-year select mortality factors.

1980 CSO table (F), with or without 10-year select mortality factors—That mortality table consisting of the rates of mortality for female lives from the 1980 CSO table, with or without 10-year select mortality factors.

1980 CSO table (M), with or without 10-year select mortality factors—That mortality table consisting of the rates of mortality for male lives from the 1980 CSO table, with or without 10-year select mortality factors.

103. Standard

(a) For any policy of insurance on the life of either a male or female insured delivered or issued for delivery in this state before January 1, 1989, and after the operative date of the Insurance Code, Article 3.44a, §8, for that policy form, the following tables may be used as specified in subsection (b) of this rule in determining minimum cash surrender values, amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision included in the policy:

(1) a mortality table which is a blend of the 1980 CSO table (M) and the 1980 CSO table (F), with or without 10-year select mortality factors, may, at the option

of the company, be substituted for the 1980 CSO table, with or without 10-year select mortality factors; and

(2) a mortality table which is of the same blend as used in paragraph (1) of this subsection, but applied to form a blend of the 1980 CET table (M) and the 1980 CET table (F) may, at the option of the company, be substituted for the 1980 CET table

(b) The following tables shall be considered as the basis for acceptable tables:

(1) 100% male, 0% female for tables to be designated as the "1980 CSO-A" and "1980 CET-A" tables;

(2) 80% male, 20% female for tables to be designated as the "1980 CSO-B" and "1980 CET-B" tables;

(3) 60% male, 40% female for tables to be designated as the "1980 CSO-C" and "1980 CET-C" tables;

(4) 50% male, 50% female for tables to be designated as the "1980 CSO-D" and "1980 CET-D" tables;

(5) 40% male, 60% female for tables to be designated as the "1980 CSO-E" and "1980 CET-E" tables;

(6) 20% male, 80% female for tables to be designated as the "1980 CSO-F" and "1980 CET-F" tables; and

(7) 0% male, 100% female for tables to be designated as the "1980 CSO-G" and "1980 CET-G" tables.

(c) Values of 1,000 q_x for the blended tables as specified in subsection (b)(2)-(6) of this rule can be found in *Proceedings of the NAIC*, Volume I, 1984, pages 396-400. *Proceedings of the NAIC*, Volume I, 1984, page 457, shows the method by which 10-year select mortality factors may be obtained. The tables specified in subsection (b)(1) of this rule are the same as the 1980 CSO table (M) or the 1980 CET table (M), as applicable. The tables specified in subsection (b)(7) of this rule are the same as the 1980 CSO table (F) or the 1980 CET table (F), as applicable. The tables specified in subsection (b)(2)-(6) of this rule are adopted herein by reference. Copies of those tables may be obtained by contacting the Staff Actuary Life, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786. The tables in subsection (b)(1) and (7) of this rule are already adopted by statutory law under alternate names.

(d) The tables specified in subsection (b)(1) and (7) of this rule may not be used with respect to policies issued on or after January 1, 1985, except where the proportion of persons insured is anticipated to be 90% or more of one sex or the other or except for certain policies converted from group insurance. Such group conversions issued on or after January 1, 1986, must use mortality tables based on the blend of lives by sex expected for such policies if such group conversions are considered as extensions of the decision in *Arizona Governing Committee for Tax Deferred Annuity and Deferred Compensation Plans v. Norris*, 103 Supreme Court 3492 (1983). This consideration has not been clearly defined by court or legislative action in all jurisdictions, as of the date of promulgation of these rules.

(e) Notwithstanding any other provision of these rules, an insurer shall not use these blended tables unless the Norris decision is known to apply to the policies involved, or unless there exists a bona-fide concern on the part of the insurer that the Norris decision might reasonably be construed to apply by a court having jurisdiction.

.104. Unfair Discrimination. It is not a violation of the Insurance Code, Article 21.21, §4(7), for an insurer

to issue the same kind of policy of life insurance on both a sex distinct and sex neutral basis, as permitted by these rules.

.105. Severability. If any provision of these rules or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rules and the application of such rules to other persons or circumstances shall not be affected thereby. The effectiveness of these emergency rules may, by order of the board, be extended for an additional 60 days as provided in the Administrative Procedure and Texas Register Act.

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

Issued in Austin, Texas, on September 4, 1984

TRD-849081

James W Norman
Chief Clerk
State Board of Insurance

Earliest possible date of adoption

October 12, 1984

For further information, please call (512) 475-2950.

059.03.28.201-.205

The State Board of Insurance proposes new Rules 059.03.28.201-.205, concerning smoker or non-smoker or composite mortality tables for use in determining minimum reserve liabilities and nonforfeiture benefits in individual life insurance policies. These rules permit insurers to substitute the commissioners 1958 standard ordinary (1958 CSO) smoker and non-smoker mortality tables for the commissioners 1980 standard ordinary (1980 CSO) mortality table, and permit insurers to substitute the commissioners 1958 extended term (1958 CET) smoker and nonsmoker mortality tables for the commissioners 1980 extended term (1980 CET) mortality table for use in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits or benefits under any extended term insurance provision. Certain additional procedures and conditions are specified in the rules for the use of the 1958 CSO and 1958 CET smoker and nonsmoker mortality tables. The rules also permit the substitution of the 1980 CSO smoker and nonsmoker mortality tables, with or without 10-year select mortality factors, for the 1980 CSO table, with or without 10-year select mortality factors, and permit insurers to substitute the 1980 CET smoker and nonsmoker mortality tables for the 1980 CET mortality tables for use in calculating benefits under any extended term insurance provision. In addition, the rules specifically permit, for each plan of insurance with separate rates for smokers and nonsmokers, the use of composite mortality tables to determine minimum reserve liabilities, cash surrender values, and amounts of paid-up nonforfeiture benefits or benefits under any extended term insurance provision; the use of smoker and nonsmoker mortality tables to determine the valuation net premiums and any additional minimum reserves required by

the Standard Valuation Law and composite mortality tables to determine basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits or benefits under any extended term insurance provision; and the use of smoker and nonsmoker mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision. The rules also define certain technical terms, state their purpose, and set forth a severability provision. Certain tables setting forth smoker and nonsmoker mortality rates based on the various tables specified in the rules are adopted into the rules by reference. These rules were previously adopted on an emergency basis in the June 1, 1984, issue of the *Texas Register* (9 TexReg 2952), and became effective on May 23, 1984.

Ted Becker, staff actuary (life), has determined that for the first five-year period the rules will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. The cost of compliance for small businesses will be the cost to insurance companies which are also small businesses. Any cost to small business insurers is purely voluntary since the rules are permissive. No company is required to use the smoker or nonsmoker tables. There could be a cost effect to companies from reduced premiums occasioned from marketing insurance to nonsmokers. Theoretically, this would be offset by nonsmokers being better risks and by a likely lesser reserve liability in early policy years. Similarly, there would likely be greater premium volume from marketing insurance to smokers. However, this would theoretically be offset by smokers being worse risks and by a likely greater reserve liability in early policy years.

Mr. Becker also has determined that for each year of the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcing the rules as proposed is the permitting of insurance companies to define appropriate minimum net premiums, reserves, and nonforfeiture values based on a group having either smoker or nonsmoker characteristics. This makes it possible for those companies to charge an appropriately low gross premium for nonsmokers without being required to set up redundant reserves for those gross premiums. Insurance companies will be able to more accurately determine nonforfeiture values.

The anticipated economic cost to individuals who are required to comply with the rules as proposed is the cost effect to insurers and insureds. The costs to insurers is purely voluntary since the rules are permissive. No company is required to use the smoker or nonsmoker tables. There could be a cost effect to companies from reduced premiums occasioned from marketing insurance to nonsmokers. Theoretically, this would be offset by nonsmokers being better risks and by a likely lesser reserve liability in early policy years. Similarly, there would likely be greater premium volume from marketing insurance to smokers.

However, this would theoretically be offset by smokers being worse risks and by a likely greater reserve liability in early policy years. The cost effect to insureds would presumably be either greater or lesser premiums for life insurance depending on whether the insured is a smoker or nonsmoker and whether the insurance policy is based on smoker or nonsmoker tables.

Comments on the proposal may be submitted to Ted Becker, Staff Actuary (life), State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

These new rules are proposed under authority of the Insurance Code, Article 3.44a, §8(e)(6), which provides that all adjusted premiums and present values shall, for all policies of ordinary insurance covered by these rules, be calculated on the basis of the 1980 CSO mortality table or, at the election of the company for any one or more specified plans of life insurance, the 1980 CSO mortality table with 10-year select mortality factors, except that any ordinary mortality tables adopted after 1980 by the National Association of Insurance Commissioners that are approved by regulation promulgated by the State Board of Insurance for use in determining the minimum nonforfeiture standard may be substituted for the 1980 CSO mortality table, with or without 10-year select mortality factors or the 1980 CET mortality table. The rules are also proposed under authority of the Insurance Code, Article 3.28, §3(a), which permits, for certain policies issued on and after the operative date of the Insurance Code, Article 3.44a, §8, the use of any appropriate ordinary mortality table adopted after 1980 by the National Association of Insurance Commissioners that is approved by regulation adopted by the State Board of Insurance for use in determining the minimum standard of valuation for such policies. The rules are based on a National Association of Insurance Commissioners model adopted after 1980 and are a substitute for the 1980 CSO or 1980 CET mortality tables.

.201. Purpose The purpose of these rules is to permit the use of mortality tables that reflect differences in mortality between smokers and nonsmokers in determining minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits or benefits under any extended term insurance provision for plans of insurance with separate premium rates for smokers and nonsmokers.

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

1958 CET table—That mortality table developed by the Society of Actuaries Special Committee on New Mortality Tables, incorporated in the National Association of Insurance Commissioners (NAIC) Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the commissioners 1958 extended term insurance table.

1980 CET table—That mortality table consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to

Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC amendments to the Model Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the commissioners 1980 extended term insurance table.

1958 CSO table—That mortality table developed by the Society of Actuaries Special Committee on New Mortality Tables, incorporated in the NAIC Model Standard Nonforfeiture Law for Life Insurance, and referred to in that model as the commissioners 1958 standard ordinary mortality table.

1980 CSO table, with or without 10-year select mortality factor—That mortality table, consisting of separate rates of mortality for male and female lives, developed by the Society of Actuaries Committee to Recommend New Mortality Tables for Valuation of Standard Individual Ordinary Life Insurance, incorporated in the 1980 NAIC amendments to the Model Standard Valuation Law and Standard Nonforfeiture Law for Life Insurance, and referred to in those models as the commissioners 1980 standard ordinary mortality table, with or without 10-year select mortality factors. The same select factors will be used for both smokers and nonsmokers tables.

Composite mortality tables—The mortality tables previously defined in this rule as they were originally published with rates of mortality that do not distinguish between smokers and nonsmokers.

Smoker and nonsmoker mortality tables—The mortality tables with separate rates of mortality for smokers and nonsmokers derived from the tables defined elsewhere in this rule which were developed by the Society of Actuaries Task Force on Smoker/Nonsmoker Mortality and the California Insurance Department staff and recommended by the NAIC Technical Staff Actuarial Group.

.203. Alternate Tables.

(a) For any policy of insurance delivered or issued for delivery in this state after the operative date of the Insurance Code, Article 3.44a, §8, for that policy form and before January 1, 1989, at the option of the company and subject to the conditions stated in Rule 059.03.28.204 of this title (relating to Conditions):

- (1) the 1958 CSO smoker and nonsmoker mortality tables may be substituted for the 1980 CSO table, with or without 10-year select mortality factors; and
- (2) the 1958 CET smoker and nonsmoker mortality table may be substituted for the 1980 CET table.

(b) The tables specified in subsection (a) of this rule shall be used as described in subsection (a) of this rule to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision. Provided, however, that for any category of insurance issued on female lives with minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits or benefits under any extended term insurance provision determined using the 1958 CSO or 1958 CET smoker and nonsmoker mortality tables, such minimum values may be calculated according to an age not more than six years younger than the actual age of the insured. Provided further that the substitution of the 1958 CSO or 1958 CET

smoker and nonsmoker mortality tables is available only if made for each policy of insurance on a policy form delivered or issued for delivery on or after the operative date for that policy form and before a date not later than January 1, 1989.

(c) For any policy of insurance delivered or issued for delivery in this state after the operative date of the Insurance Code, Article 3.44a, §8, for that policy form, at the option of the company and subject to the conditions stated in Rule 059.03.28.204 of this title (relating to Conditions):

- (1) the 1980 CSO smoker and nonsmoker mortality tables, with or without 10-year select mortality factors, may be substituted for the 1980 CSO table, with or without 10-year select mortality factors; and
- (2) the 1980 CET smoker and nonsmoker mortality tables may be substituted for the 1980 CET table.

(d) The tables specified in subsection (c) of this rule shall be used as provided in subsection (c) of this rule to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision.

(e) Values of 1,000 qx for the tables specified in this rule can be found in *Proceedings of the NAIC*, Volume I, 1984, pages 402-413. These tables are adopted herein by reference for use in an appropriate manner as described in these rules. Copies may be obtained by contacting the Staff Actuary Life, State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786. These tables are more particularly identified as follows:

- (1) 1958 CSO nonsmokers and smokers mortality table;
- (2) 1958 CET nonsmokers and smokers mortality table;
- (3) 1980 CSO female nonsmokers and smokers mortality table;
- (4) 1980 CSO male nonsmokers and smokers mortality table;
- (5) 1980 CET female nonsmokers and smokers mortality table; and
- (6) 1980 CET male nonsmokers and smokers mortality table.

.204. Conditions. For each plan of insurance with separate rates for smokers and nonsmokers, an insurer may:

- (1) use composite mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits or benefits under any extended term insurance provision;
- (2) use smoker and nonsmoker mortality tables to determine the valuation net premiums and additional minimum reserves, if any, required by the Insurance Code, Article 3.28, §10, and use composite mortality tables to determine the basic minimum reserves, minimum cash surrender values, and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision; or
- (3) use smoker and nonsmoker mortality tables to determine minimum reserve liabilities and minimum cash surrender values and amounts of paid-up nonforfeiture benefits, or benefits under any extended term insurance provision.

.205. *Severability.* If any provision of these rules or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rules and the application of such provision to other persons or circumstances shall not be affected thereby.

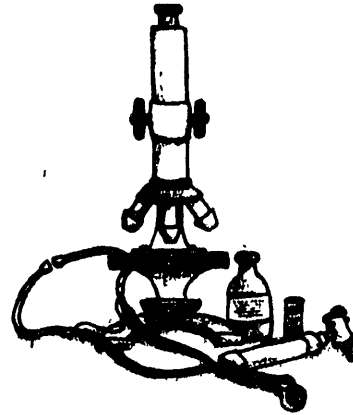
This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued in Austin, Texas, on September 4, 1984.

TRD-849082 James W Norman
 Chief Clerk
 State Board of Insurance

Earliest possible date of adoption:
October 12, 1984

For further information, please call (512) 475-2950.



An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is generally effective immediately upon filing with the *Register*

If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register*. Notice of the withdrawal will appear in the next regularly scheduled issue of the *Register*. The effective date of the automatic withdrawal will appear immediately following the published notice

No further action may be taken on a proposal which has been automatically withdrawn. However, this does not preclude a new proposal of an identical or similar rule following normal rulemaking procedures.

Withdrawn Rules

TITLE 4. AGRICULTURE
Part II. Texas Animal Health Commission
Chapter 35. Brucellosis
Subchapter A. Eradication of Brucellosis
4 TAC §35.5

The Texas Animal Health Commission has withdrawn from consideration for permanent adoption a proposed amendment to §35.5, concerning brucellosis. The text of the amended section as proposed appeared in the July 17, 1984, issue of the *Texas Register* (9 Tex-Reg 3857)

Issued in Austin, Texas, on September 4, 1984

TRD-849061 Jo Anne Conner
Executive Secretary
Texas Animal Health Commission

Filed September 4, 1984
For further information, please call (512) 475-4111.

TITLE 22. EXAMINING BOARDS
Part XX. Texas Board of Private Investigators and Private Security Agencies
Chapter 451. Registration of Employees or Private Investigators
22 TAC §451.7

Pursuant to Texas Civil Statutes, Article 6252-13a, §5(b), and 1 TAC §91.24(b), proposed new §451.7 submitted by the Texas Board of Private Investigators and Private Security Agencies has been automatically withdrawn, effective September 5, 1984. The proposed new section appeared in the March 2, 1984, issue of the *Texas Register* (9 TexReg 1251).

TRD-849095
Filed. September 5, 1984



Adopted Rules

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

The document, as published in the *Register*, must indicate whether the rule is adopted with or without changes to the proposal. The notice must also include paragraphs which: explain the legal justification for the rule, how the rule will function; contain comments received on the proposal; list parties submitting comments for and against the rule; explain why the agency disagreed with suggested changes; and contain the agency's interpretation of the statute under which the rule was adopted.

If an agency adopts the rule without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. The text of the rule, as appropriate, will be published only if final action is taken with alterations to the proposal. The certification information, following the submission, contains the effective date of the final action, the proposal's publication date, and a telephone number to call for further information.

TITLE 10. COMMUNITY DEVELOPMENT

Part I. Texas Department of Community Affairs

Chapter 1. Administration

Subchapter C. Administrative Hearings

10 TAC §1.21

The Texas Department of Community Affairs adopts new §1.21, with changes to the proposed text published in the June 15, 1984, issue of the *Texas Register* (9 TexReg 3209).

The new section governs the practices and procedures applicable to administrative hearings authorized under Texas Civil Statutes, Article 6252-13a, and for the review of other agency action as authorized by the executive director of the Texas Department of Community Affairs. The new section covers general requirements, location, notice, parties to the hearing, subpoenas, depositions, prehearing conferences, and the hearing procedure.

No comments were received regarding adoption of the new section. The Texas Department of Community Affairs made changes from the proposed text of the new section to correct errors and to provide clarification. In particular, provisions concerning the burden of proof, proposed findings of fact and conclusions of law, and final orders have been added.

The new section is adopted under Texas Civil Statutes, Article 4413(201), §4(13), which provide the Texas Department of Community Affairs with the authority to promulgate and adopt such rules as are

necessary to carry out its programs and responsibilities.

§1.21. Administrative Hearing Procedures.

(a) Purpose. This subchapter sets forth procedures and practices that will be utilized by the Texas Department of Community Affairs to conduct hearings authorized under Texas Civil Statutes, Article 6252-13e, and for the review of other agency action as authorized by the executive director of the Texas Department of Community Affairs.

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

(1) Agency—The Texas Department of Community Affairs.

(2) APTRA—The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

(3) Hearing—A hearing conducted in accordance with these rules.

(4) Hearing examiner—The person appointed by the Texas Department of Community Affairs to conduct hearings under these rules on behalf of the agency. When the agency determines it to be appropriate, a committee may be appointed to perform the functions of the hearing examiner.

(5) Party—Each person or entity named by the hearing examiner as having a justiciable interest in the matter being considered or any person or entity meeting the requirements of a party as prescribed by applicable law.

(6) Pleading—Any written allegation filed by a party concerning its claim or position.

(c) Exceptions. These practices and procedures shall be adhered to by all parties, unless the agency de-

termines that variances in the procedure would not result in hardship or inequity to any party. The agency may waive specific provisions of this rule upon application of a party or upon the agency's own motion.

(d) General.

(1) Request for hearing. The agency on its own motion or on petition or application from a party may initiate a hearing and shall conduct it in accordance with the provisions of the APTRA, other state statutes, and agency rules applying to the hearing. A petition or application for a hearing by a party must be submitted within 30 days of receipt of notice of the action giving rise to the request for hearing.

(2) Location. All hearings, unless otherwise determined by the agency, shall be held in Austin, Texas.

(e) Notice.

(1) The hearing examiner shall give notice of the hearing according to the notice requirements of the applicable law or rules authorizing the hearing. If no such requirements exist, the hearing examiner shall give notice to the parties by personal service or by registered or certified mail, return receipt requested. All notices under this subsection must be given not less than 10 days prior to the hearing.

(2) If a party fails to appear or be represented at a hearing after receiving notice, the hearing examiner may proceed with the hearing or take whatever action is fair and appropriate under the circumstances.

(f) Parties to the hearing.

(1) Justiciable interest. All parties must have a justiciable interest in the proceedings to be designated as parties. All appearances are subject to a motion to strike upon a showing that the party has no justiciable interest in the proceedings.

(2) Duties and privileges of a party. A party has the privilege to participate fully in any prehearing and hearing, to appeal as provided by law, and to perform any duties and assert any privileges provided by the APTRA and other applicable laws.

(3) Interested persons. Any person not wishing to be designated as a party but desiring only to appear for the purpose of showing support or opposition or to make any general relevant statement showing support or opposition may appear at the hearing and make or file statements.

(4) Time of designation as a party. The hearing examiner shall designate parties prior to final closing of the hearing, and no person will be admitted as a party later except upon a finding by the hearing examiner of good cause and extenuating circumstances and that the hearing in progress will not be unreasonably delayed.

(5) Different classifications for parties. In their pleadings, parties may classify themselves as applicants, petitioners, respondents, protestants, complainants, etc., but regardless of such classification, the hearing examiner has the authority to determine and designate their true status whenever necessary.

(6) Representation. A party may appear personally and/or be represented by counsel or other authorized representative.

(7) Consolidation of parties. The hearing examiner may require parties of each class of affected persons to select one person to represent them in the proceedings.

(g) Subpoenas

(1) On the hearing examiner's own motion or on the written request of any party to the hearing, the hearing examiner may issue a subpoena to the appropriate sheriff or constable to require the attendance of witnesses or the production of documents at the hearing.

(2) There has to be a showing of good cause for the subpoena; i.e., the witnesses or documents must have information that is relevant and material to the hearing, and the subpoena should not result in undue inconvenience or expense to a party or witness.

(3) A party or witness may seek to quash a subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure, Rule 186b.

(4) Witnesses may be subpoenaed from any place in the State of Texas.

(5) Documents include books, papers, accounts, and similar materials or objects.

(6) The payment of subpoena costs or fees and the failure to comply with a subpoena shall be governed by the APTRA, §14.

(h) Depositions. The taking and use of depositions in any contested case proceeding shall be governed by the APTRA, §14.

(i) Prehearing conference.

(1) In a contested case, the hearing examiner, on his own motion or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (A) the formulation and simplification of issues;
- (B) determining the necessity or desirability of amending the pleadings;
- (C) determining the possibility of making admissions or stipulations;
- (D) specifying the procedure of the hearing;
- (E) specifying the number of witnesses;
- (F) the mutual exchange of prepared testimony and exhibits;
- (G) the designation of parties; or
- (H) determining other matters which may expedite the hearing.

(2) The hearing examiner shall conduct the prehearing conference in such a manner so as to expedite the conference while reaching a fair, just, and equitable determination of any matters or issues being considered.

(3) The hearing examiner shall have the minutes of the conference recorded in an appropriate manner and shall issue whatever orders are necessary covering the said matters or issues.

(4) Any action taken at the prehearing conference shall be reduced to writing, signed by the parties, and made a part of the record.

(j) The hearing procedure.

(1) Procedure for hearing. The hearing examiner shall preside over and conduct the hearing. On the day and time designated for the hearing, the hearing examiner shall:

- (A) convene and call the hearing to order;
- (B) state the purpose of and legal authority for the hearing;
- (C) announce that a record of the hearing will be made;

(D) outline the procedure and order of presentation that will be followed;

(E) administer oaths to those who intend to testify; and

(F) take any and all other actions as authorized by applicable law and these rules to provide for a fair, just, and proper hearing.

(2) Order of presentation.

(A) After making the necessary introductory and explanatory remarks on the purpose, etc., of the hearing, the hearing examiner will begin receiving testimony and evidence from the witnesses.

(B) Each party may present evidence and testimony and cross-examine or ask clarifying questions of any witness who presents evidence or testimony.

(C) In the request for relief or action of any kind, the party seeking such relief or action has the burden of proving by a preponderance of the evidence the entitlement to the same; provided, however, that the order of proceeding may be altered or modified by the hearing examiner either upon agreement of the parties or upon his own motion when such action will expedite the hearing without prejudice to any party.

(D) When the party first proceeding finishes his case, the remaining party or parties will be allowed to present evidence and testimony in the same manner. Each witness is subject to cross-examination and clarifying questions by the hearing examiner and by other participants to the proceedings.

(E) The hearing examiner may limit the number of witnesses whose testimony will be repetitious, and the hearing examiner may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(F) When the parties have concluded their testimony and evidence, the hearing examiner will ask the audience if any interested person desires to make a statement. If so, the interested person will be allowed to make his or her statement subject to cross-examination and clarifying questions by any party.

(G) After interested persons make statements, or if there are no such statements, the hearing examiner, at his discretion, may allow final arguments, take the case under advisement, note the time, and close the hearing. For sufficient cause, the hearing examiner may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(3) Consolidation. The hearing examiner, upon his own motion or upon motion by any party, may consolidate for hearing two or more proceedings which involve substantially the same parties or issues. Proceedings before the agency shall not be consolidated without consent of all parties to such proceedings, unless the hearing examiner finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(4) Conduct and decorum of the hearing. Every party, witness, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the hearing examiner and all other persons participating in or observing the hearing. The hearing examiner is authorized to take whatever action he deems necessary and appropriate to maintain the proper level of decorum

and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the hearing examiner deems fair and just.

(5) The hearing record. The hearing record will include:

(A) all pleadings, motions, and intermediate rulings;

(B) evidence received or considered;

(C) statement of matters officially noticed;

(D) questions and offers of proof, objections, and rulings of them;

(E) proposed findings and exceptions;

(F) any decision, opinion, or report by the hearing examiner; and

(G) all staff memoranda or data submitted to or considered by the hearing examiner or members of the agency who are involved in making the decision.

(6) Recording the hearing. The hearing examiner will keep either a stenographic, magnetic tape, or other appropriate verbatim record of the hearing proceedings. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the agency shall bear the cost of the per diem or other appearance fee for such reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and shall be responsible for payment of same pursuant to the authority of the APTRA, §13(g). In those cases when a magnetic tape recording of the formal hearing is made, the agency shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the agency necessitating the forwarding of the record to a court of law, the agency may assess the cost of the transcript to the appealing party.

(7) Rules of evidence. The hearing examiner, with the assistance of the agency legal division if requested, will apply the rules of evidence under the APTRA, §14(a), and also the following rules.

(A) Consolidation. The hearing examiner may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the hearing examiner should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(B) Documentary evidence. Documentary evidence should be presented in its original form, but if the original is not readily available, documentary evidence may be received in the form of copies or excerpts. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the hearing examiner may limit those admitted to a number which is typical and representative, and may, at his discretion, require the abstracting of the rele-

vant data from the documents and presentation of the abstracts in the form of exhibits; provided, however, that before making such requirements, the hearing examiner shall require that all parties of record or their representatives be given the right to examine the documents from which such abstracts were made. Any party may make an offer of proof of the documents which are excluded by the hearing examiner.

(C) Exhibits.

(i) Form. Exhibits of documentary character shall be limited to facts material and relevant to the issues involved in a particular proceeding, and the parties shall make a reasonable effort to introduce exhibits which will not unduly encumber the files and records of the agency.

(ii) Tender and service. The original of each exhibit offered shall be tendered to the hearing examiner or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(iii) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number for purposes of identification and shall be included in the record.

(iv) After hearing. Unless specifically directed by the hearing examiner, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or rehearing.

(D) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interest of the parties will not be prejudiced, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his testimony would be if he were to testify orally. The witness shall be subject to clarifying questions and to cross-examination, and his prepared testimony shall be subject to a motion to strike either in whole or in part.

(E) Offer of proof. When testimony is excluded by the hearing examiner, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the agency. The hearing examiner may ask such questions of the witness as he deems necessary to satisfy himself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

(F) Official notice. Official notice by the hearing examiner shall be governed by the APTRA, §14(q). Further, official notice may be taken of any statute, ordinance, or duly promulgated and adopted rules or regulations of any governmental agency. The examiner shall indicate during the course of a hearing that information of which he will take official notice. When an examiner's findings are based upon official notice of a material fact not appearing in the evidence of record, the examiner shall set forth in his proposal for decision those items with

sufficient particularity so as to advise the parties of the matters which have been officially noticed. The parties shall have the opportunity to show the contrary through the filing of exceptions to the examiner's proposal for decision.

(G) Action after the hearing.

(i) Reopening of hearing for new evidence.

(I) The agency may reopen a hearing where new evidence is offered which was unobtainable or unavailable at the time of the hearing.

(II) The agency will reopen a hearing to include such new evidence as part of the record if the agency deems such evidence necessary for a proper and fair determination of the case. The reopened hearing will be limited to only such new evidence.

(III) Notice and procedural requirements will be the same as for the original hearing.

(ii) Proposal for decision.

(I) If a proposal for decision is necessary under the APTRA, §15, the hearing examiner shall prepare the proposal and provide copies of the same to all parties.

(II) Each party having the right and desire to file exceptions and briefs shall file them with the hearing examiner within the time designated by the hearing examiner.

(III) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same, and within the time designated by the hearing examiner.

(IV) All exceptions and replies to them shall be succinctly stated.

(iii) Filing of documents. At any time after the record has been closed in a contested case, and prior to the administrative decision becoming final in such case, all briefs, exceptions, written objections, motions (including motion for rehearing), replies to the foregoing, and all other written documents shall be filed with the hearing examiner; and further, the party filing such instrument shall provide copies of the same to all other parties of record by first class U.S. mail or personal service and certify, in writing thereon, the names and addresses of the parties to whom copies have been furnished, as well as the date and manner of service.

(iv) Proposed findings of fact and conclusions of law. At the direction of the hearing examiner, a party may submit proposed findings of fact and/or conclusions of law.

(v) Final orders or decisions

(I) The final order or decision will be rendered by the executive director of the agency.

(II) All final orders or decisions shall be in writing and shall be rendered in accordance with the APTRA, §16.

(vi) Motion for rehearing. A motion for rehearing shall be governed by the APTRA, §16, or other pertinent statute, and shall be sent by registered or certified mail to the executive director of the agency. A copy of the motion shall also be sent by first class mail to the hearing examiner.

(vii) Action on appeals. All appeals from final orders or decisions shall be governed by the APTRA, §19 and §20, or other pertinent statute, and communica-

tions regarding any appeal shall be to the executive director of the agency.

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

Issued in Austin, Texas, on August 31, 1984

TRD-849049 Douglas C Brown
General Counsel
Texas Department of Community
Affairs

Effective date September 21, 1984

Proposal publication date June 15, 1984

For further information, please call (512) 443-4100,
ext. 210.

TITLE 22. EXAMINING BOARDS

Part IX. State Board of Medical Examiners

Chapter 171. Institutional Permits

22 TAC §171.1, §171.4

The Texas State Board of Medical Examiners adopts amendments to §171.1, with changes to the proposed text published in the July 13, 1984, issue of the *Texas Register* (9 TexReg 3785). Section 171.4 is adopted without changes and will not be republished.

The amendments set out new requirements for the issuance of institutional permits and visiting professor permits. More requirements for verification of credentials are set out for those wishing to hold institutional permits. For visiting professor permits, the period of time for which the permit may be valid has been extended and the deadline for submission of the application is shortened.

It is expected that the amendments, by clarifying certain rule areas, will help verify that those persons receiving institutional permits have received quality medical education. It is also expected that the application processing will be somewhat reduced for those persons wishing to receive visiting professor permits.

The board received favorable comments and a few suggestions for changes to the proposed version of the amendments to §171.1. Suggestions were in the areas of documentation of the applicants for institutional permits. Louis A. Fallace, M.D., University of Texas-Houston, commented against the amendments. Marvin R. Dunn, M.D., and John A. Mangos, M.D., both of the University of Texas-San Antonio, commented in favor of the amendments.

Although all comments were taken into consideration, the board felt the amount of documentation as called for in the amendments is necessary to ensure that individuals with fraudulent documents do not receive any type of permit to practice medicine in Texas.

The amendments are adopted under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations, and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulations of the practice of medicine in this state, and the enforcement of this Act.

§171.1. Interns, Residents, or Fellows Permit. Institutional permits may be granted to persons desiring to serve in this state as an intern, resident, or fellow in graduate medical programs in hospitals and medical institutions approved by the American Medical Association and the American Osteopathic Association for internship, residency, and fellowship programs under the following conditions.

(1) (No change)

(2) The provisions of this paragraph apply only to persons who seek to acquire institutional permits, hereinafter referred to as applicant(s), and who are not graduates of institutions approved by the board for licensure.

(A) The director of medical education or the person acting in that capacity, hereinafter referred to as director, of each hospital or medical institution where an applicant desires to serve as an intern, resident, or fellow in graduate medical education shall inspect, verify, and approve all of the credentials which reflect and represent the education of the applicant prior to approving his or her service as an intern, resident, or fellow. The director of the institution shall issue the applicant a document which specifies those credentials and certify that he or she, on behalf of the institution, has so reviewed the applicant's credentials. The applicant shall attach that certification to his or her request for an institutional permit.

(B) The educational credentials as set forth in subparagraph (A) of this paragraph which the director must inspect, verify, and approve include, without limitation, the following:

(i) medical school diploma;

(ii) certified transcript from each medical school attended;

(iii) certified transcript of all college education;

(iv) letters of reference from each physician who has supervised training of the applicant which did not actually occur within the country of the medical school;

(v) proof of eligibility to practice medicine in the country of the medical school from which the applicant graduated;

(vi) a statement from all medical schools attended by the applicant identifying all courses of study actually attended at the school's primary classroom facility;

(vii) an explanation by all medical schools of all convalidation reflected on the applicant's medical school transcript to include, without limitation, identification of the other school and the course content. This explanation shall specifically address each convalidated course;

(viii) a certification by the medical school dean of the applicant's graduation from medical school; and

(lx) a valid Education Commission for Foreign Medical Graduates (ECFMG) document.

(C) Each institution shall keep on file the credentials of the applicant during the entire period of the permit and shall provide originals or certified copies of same to this board at the time the application for institutional permit is submitted to the board. The applicant must apply in person at the board office before he or she begins the initial training program.

(D) If any of the documents are not in the English language and are requested by the board to be provided, the applicant shall furnish an official, word-for-word translation of each document. A translation is defined as one which a government official, official translation agency, or college or university official performs which is on the official letterhead of the official or agency. The translator must certify that it is a true translation to the best of his or her knowledge, that he or she is fluent in the language, and that he or she is qualified to translate the original documents. The translator must sign the translation, and the signature must be notarized by a notary public. The translator must sign his or her name and title under the signature.

(E) Failure of any hospital or medical institution to comply with these provisions shall be grounds for the denial of the institutional permit and any future permits for persons wishing to serve at that institution.

(3) Interns, residents, and fellows may be issued an institutional permit for each year of their training program and must confine their training to the designated teaching institution or affiliated hospitals. If an intern, resident, or fellow violates §3.08 or any other provision of the Medical Practice Act of Texas, the application for institutional permit may be denied or the permit may be canceled or withdrawn. If he or she used the institutional permit to practice medicine outside the designated teaching institution or affiliated hospitals, the permit may be canceled. If the training is terminated for any reason other than illness or other reasons acceptable to the board, the permit is void, and no additional permit will be issued.

(4) Except as hereinafter provided, foreign medical school graduates must have satisfied the examination requirements for ECFMG certification and must present to the board a document from that commission indicating that they have met such examination requirements.

(5) A permit issued to a foreign medical school graduate shall automatically become void at any time when the document provided for in paragraph (4) of this subsection or a successor document is not valid. At the time that said document or successor document becomes invalid, the permit holder shall return the permit to the board.

(6) Foreign graduates who have not satisfied the examination requirements for ECFMG certification are not permitted to serve in a training program unless they hold a full and unrestricted license issued by a state of the United States or by another United States jurisdiction authorized to license physicians, or unless they hold a license issued by a Canadian province.

(7) Foreign graduates who are citizens of the United States and residents of the State of Texas may be granted an institutional permit without an examination

by the ECFMG, as provided in Texas Civil Statutes, Article 4437(g).

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 August 31, 1984

TRD-849099

A. Bryan Spires, Jr., M.D.
Executive Director
Texas State Board of Medical
Examiners

Effective date: September 26, 1984

Proposal publication date: July 13, 1984

For further information, please call (512) 452-1078.

TITLE 28. INSURANCE

Part I. State Board of Insurance

(Editor's note: Because the State Board of Insurance's rules have not yet been published in the Texas Administrative Code (TAC), they do not have designated TAC numbers. For the time being, the rules will continue to be published under their Texas Register numbers. However, the rules will be published under the agency's correct TAC title and part.)

Rating and Policy Forms

Rate Deviations and the Payment of Dividends to Policyholders for Fire and Allied Lines Insurance and Multiperil Insurance

059.05.28.003

The State Board of Insurance adopts Rule 059.05.28.003, without changes to the proposed text published in the June 19, 1984, issue of the *Texas Register* (9 TexReg 3294)

The new rule sets forth a procedure and requirement for board approval of rate deviations for commercial multiperil insurance. The new rule embodies the board's present practices respecting such rate deviations. No present practice or requirement of the board is expected to change as a result of this new rule.

The only comments received regarding adoption of the new rule were from the staff of the State Board of Insurance. The staff suggested that the form adopted by reference in subsection (i) be updated to reflect current statistical years and the board's expense factors. The board agreed and the form is changed accordingly, however, no language in the new rule itself changed.

The new rule is adopted under the Insurance Code, Article 5.26(b), which governs rate deviations for multiperil insurance; and under the rule-making authority in the Insurance Code, Article 5.81, pursuant to which the board may enact such rules as in its best judgment are necessary and desirable in carrying out

the purposes and achieving the objectives of Article 5.81.

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 September 4, 1984

TRD-849083 James W. Norman
 Chief Clerk
 State Board of Insurance

Effective date: September 25, 1984
Proposal publication date: June 19, 1984
For further information, please call (512) 475-2950.

Texas Title Insurance Act Policy Forms and Premiums

059.09.07.001

The State Board of Insurance adopts by reference an amendment to Rule 059.09.07.001, the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas*, with changes to the proposed text published in the July 17, 1984, issue of the *Texas Register* (9 TexReg 3863). The amendment will become effective on October 1, 1984. This effective date changes the previously selected effective date of September 16, 1984.

The amendment will appear in and be part of the *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas* for use by agents, insurance companies, and other interested parties. The amendment (a copy of which is available from and on file at the State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786) states that:

an abstract plant as further defined in Rule P-12 and is further provided for in the Insurance Code, Article 9.02(f) and Article 9.30, must include an abstract plant for each county in which a title insurance agent maintains an office.

This language clarifies the existing laws as provided for in the Insurance Code, Article 9.02(f) and Article 9.30, as they relate to the abstract plant requirement for title insurance agencies. The rule and the justifications for it are more fully explained in the summary of comments of the proponents (those commenting in favor of the amendment) and opponents (those commenting against the amendment) and the board's reaction to those comments.

The proponents of this amendment have noted the historical basis of the abstract plant requirement for the licensing of title insurance agents and have indicated that this amendment reaffirms and clarifies the current mandatory requirement for licensure as a title insurance agent. The proponents also cite the Insurance Code, Article 9.02(f), which provides for the board to define the term "abstract plant" as well as the Insurance Code, Article 9.21, which vests in the board the authority to promulgate and enforce rules

and regulations necessary to accomplish the purposes of the Title Insurance Act, the Insurance Code, Chapter 9. Also cited by the proponents are the requirements of the Insurance Code, Article 9.30, which are that an agent must be appointed by an underwriter for a particular county and must own and operate an abstract plant of such county. The proponents noted the geographical nature of the abstract plant and indicated that the purpose of having the geographical requirement of the abstract plant was to assure the public that any title insurance agent licensed by the board has available the title information necessary to issue title insurance policies. Also cited by the proponents is the Insurance Code, Article 9.35, which requires that no person, firm, or corporation shall act within this state as agent for any title insurance company without first having been licensed by the board.

The proponents indicated that if there was no abstract plant requirement and no license requirement prior to title agents opening an office as a title insurance agency, there would be no incentive for any person, firm, or corporation to acquire and maintain an abstract plant and this condition would result in diminished services available to the public for title information. The proponents cite statutes which indicate that the business of title insurance shall:

in all respects be totally regulated by the State of Texas so as to provide for the protection of every consumer and purchaser of a title insurance policy.

The proponents have summarized the definition of the business of title insurance, which includes solicitation of contracts or policies of title insurance, and they have stated that the amendment they proposed concerning the definition of abstract plant will clarify the requirement of an abstract plant for the county in which a title agent is engaged or seeks to be engaged in the business of title insurance.

The board agreed with the arguments and positions of the proponents.

The opponents have indicated that the proponents have written the amendment in a way not to affect the referral of business from one agent to another by leaving out the term "transacting business" and instead using the term "office." The board does not believe that the opponents offer this as a basis for denying adoption and further believes that the term "transacting business" would be vague and unenforceable in this context.

The opponents discussed the Insurance Code, Article 9.30, as it relates to payments to persons. The opponents have indicated that it is their position that a title insurance agent who closes a real estate transaction is not in the business of title insurance. The board disagrees. The board has a promulgated definition of "closing the transaction" and further indicates that the premium rate set by the board for policies of title insurance included "closing the transaction."

The opponents indicate that the amendment does not define an abstract plant but prohibits the maintenance of an office by a title insurance agent in a county other than the county for which it owns an abstract plant.

The board notes that it has the authority to define the requirements of an abstract plant to accomplish the statutory purposes and requirements of the Insurance Code, Article 9.02 and Article 9.30. Nothing in this amendment prohibits an agency from becoming duly licensed as a title insurance agent in any county

The opponents have said that the amendment does not further the expressed legislative intent of the Insurance Code, Chapter 9. The board disagrees. The protection of every consumer and purchaser of a title insurance policy will be assured only if each office of a title insurance agent wherein the business of title insurance is conducted is based upon compliance with the multiple requirements of an appointment to act as an agent on behalf of a title company in a particular county (counties), an abstract plant of that county, and a license to act as an agent issued by the board which indicates the county (counties) of authority to so act. This amendment clarifies these requirements.

The opponents have indicated that the board has exceeded its authority in promulgating this rule. The board disagrees. The legislative purpose and intent in passing the Texas Title Insurance Act (the Insurance Code, Chapter 9) as stated in the Insurance Code, Article 9.01, was to assure that

the business of title insurance shall in all respects be totally regulated by the State of Texas so as to provide for the protection of every consumer and purchaser of a title insurance policy. It is the expressed legislative intent that this Chapter 9 accomplish such a result

In the Insurance Code, Article 9.02(f), the term "abstract plant" was defined and in that definition the board was provided the authority to further define the term. Further, the Insurance Code, Article 9.07, provides that

the board may, on its own motion, following notices required for the annual hearing, hold at any time a public hearing to consider the adoption of premium rates and other such matters and subjects relative to the regulation of the business of title insurance as the board shall determine necessary or proper

Also, the Insurance Code, Article 9.21, states that the board is hereby vested with power and authority to promulgate and enforce all such rules and regulations which in the discretion of the board are deemed necessary to accomplish the purposes of this Act

The Insurance Code, Article 9.30, provides that a title insurance company may appoint "as its title insurance agent in any county, any person, firm, or corporation owning and operating an abstract plant of such county as its title insurance agent," and shall make such arrangements for division of premiums as may be approved by the board. It is therefore clear that the adoption of this rule is within the board's authority as provided for by the legislature of the State of Texas

The opponents state that this amendment would create an unauthorized restriction on corporate activity. The board disagrees. Only title insurance agents or persons, firms, or corporations acting as title insurance agents will be subject to the operation of this rule.

The opponents state that no case law or legislation supports the adoption of this amendment. The board disagrees. The geographical nature of the agency appointment-abstract plant and license requirements have been established over a long period of time. Also, the Board of Insurance Commissioners *et al v. Title Insurance Association of Texas et al*, 272 S.W.2d95 (1954), which case was cited by the proponents and discussed by the opponents, clearly recognized the abstract plant requirement of the then existing Insurance Code, Article 9.22, and nothing stated in this case provides the opponents with support for their arguments. The Insurance Code, Article 9.30, requires title insurance companies to appoint its agents. According to the Insurance Code, Article 9.02(f), this appointment must be in writing and is the only authorization recognized by the board. This authorization permits the title agent to solicit insurance, collect premiums, and issue or countersign policies on behalf of the company as stated in Article 9.02(f). It has been a historical fact that these appointments designate a specific county (counties) of authority to act, and the premium division between the agent and company must be approved by the board. Article 9.30 further provides that the appointed agent must have an abstract plant of such county of appointment. These requirements and definitions are mandatory according to Article 9.36A (4) and no person, firm, or corporation may act as an agent prior to receiving a license from the board. The title insurance agent's licenses issued by the board are valid only for the county (counties) designated in the appointment contract approved by the board

The opponents have requested a statement from the board concerning how this proposed rule can be construed as being consistent with the 1967 and 1975 legislative revisions to the Insurance Code, Article 9. The board notes that none of the previously mentioned statutory procedures, definitions, and requirements of an agent were decreased, deleted, or diminished by the 1975 legislature or any subsequent legislative session. The actions of the 1967 legislature to revise the old Article 9.22 to Article 9.30 have the effect of clarifying the abstract plant requirement by specifying that the physical location of the plant was not relevant, but rather the plant had to be of the county of appointment. The board notes that this change substantially strengthened the county aspect of the appointment-plant relationship. Therefore, the only relevant legislative change supports the proposed amendment to the abstract plant definition, and the absence of subsequent legislative action on this specific issue gives no authority for lessening or diminishing in any way the historical and current abstract plant requirement

The opponents indicate that the real purpose of this amendment is to further anticompetitive behavior through the use of the board. The board disagrees. The board intends this amendment to further clarify the historical abstract plant requirement. The availability, price, and cost of maintaining these required abstract plants is based upon market factors which operate outside of the regulatory framework of the board.

The opponents have indicated that it is their belief that the adoption of this rule by the board would be in violation of the Sherman Antitrust Act, § 1 and § 2. The board disagrees with the opponents' interpretation of these sections of the Sherman Antitrust Act.

Those commenting in favor of the amendments were Will D. Davis, attorney, on behalf of the Independent Metropolitan Title Insurance Agents of Texas; C. E. Seal II, on behalf of the Independent Metropolitan Title Insurance Agents of Texas and Hexter-Fair Title Company; David C. Young, on behalf of Trinity-Western Title Company and the Independent Metropolitan Title Insurance Agents of Texas; Charles Newman, on behalf of Trinity-Western Title Company and the Independent Metropolitan Title Insurance Agents of Texas; Burt Massey II, on behalf of himself; Malcolm Morris, on behalf of Stewart Title Guaranty Company; A. B. Waldron, on behalf of Southwest Land Title Company of Fort Worth, Inc.; Edward S. Cutrer, on behalf of Capital Title Company, Inc., and the Independent Metropolitan Title Insurance Agents of Texas; Phillip D. McCullough, on behalf of Rattikin Title Company; Elsie Herring, on behalf of Elliott & Waldron Abstract & Title Company (Mineral Wells); Lawrence A. Davis, Jr., on behalf of Stewart Title Guaranty Company; Joel Houston, on behalf of First American Title Insurance Company; Guy C. Jackson III, on behalf of Chambers County Abstract Company, Inc.; Jack Rattikin, on behalf of Rattikin Title Company, Margaret Grynwald, O. E. Davis; Royce C. Johnston; Elizabeth Cox; William R. Griffin, Jr.; Vernon A. Leissner; D. M. Howeth; Wendell L. Strahan, J. D. Starnes, Jr.; and Frank J. Turner, Jr.

Those commenting against the amendments were Fred Werkenthin, attorney, on behalf of Sunbelt Empire Title Company; Frank A. St. Claire, on behalf of Sunbelt Empire Title Company; Jim Koehn, attorney, on behalf of Title Escrow Services, Inc.; John F. Rothermel III, on behalf of Title Resources Corporation; Stephen Hughes, on behalf of Sunbelt Empire Title Company; Patsy Cumbie; James A. Montgomery; Betty T. Post; Dorothy C. Morrow; Lisa Hatfield; Mary Anne Jones; Lori D. Welsh; Martin K. Myrick; William D. Cleveland, John Weatherby; Trudie Wood, Tom G. Holmer; Cathy L. Botello; Carla Hamilton, Martha Saunders; Gil Ernst; Earl Young; Paul J. Babsta; Nan Hardaway; Bill Kramer; A. C. Barley, Zinda Sakelaris; Douglas F. Pollard, Betty Lemons; Clara N. Vick; Larry Ables; Thomas M. Myers; Kirk D. Moffett; A. G. Crouch III; Jeanie V. Adams; Lavon St. Claire; William J. Hix; Josephine Anderson; Sara Greenwood Hogan;

J. J. Broussard; James Andrew; Mary Sakelaris; Frank B. Lloyd; M. G. Davis; Laurie Crim Johnson; Larry Lambert; Dale P. Norris; Mark Anderson; Sherry Conaway; Kathryn Coward; Ms. St. Claire; Tony Johnson; Freida H. McFadden; Shirley Eaves Fewell; Daniel M. Dural; Mr. Flanagan; Ron Wilde; Wanda F. Sloyan; Rita Sparks; Randall J. Hogan; Burl C. Brown; Susan B. Andrew; Robert F. Salter; Dolly Kyle; Christina Hibbard; Joe Carothers; Billie J. Pratt; Boyd M. Bailey; Jim Rutta; Guy W. Shaw; Karole E. Neumann; Dallas Matthews III; Robert Askins; Ann Robertson; Lona Jordon; J. M. Carpenter; James L. Anderson, Jr.; Inez B. Sakelaris; and Karla Bybee.

The amendments are adopted under the Insurance Code, Article 9.07, which authorize the State Board of Insurance to hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the board shall determine necessary and proper; and the Insurance Code, Article 9.21, which authorizes the board to promulgate and enforce rules and regulations prescribing underwriting standards and practices and to promulgate and enforce all other rules and regulations which in the discretion of the board are deemed necessary to accomplish the purposes of the Act. As previously discussed, the express legislative purposes of the Insurance Code, Chapter 9, will be served by adoption of this rule which specifies the abstract plant requirement in the promulgated definition of abstract plant

.001. *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas.* The State Board of Insurance adopts by reference *Basic Manual of Rules, Rates, and Forms for the Writing of Title Insurance in the State of Texas*, as amended, effective October 1, 1984. This document is published by and is available from Hart Graphics, P.O. Box 968, Austin, Texas 78767, and is available from and on file at the State Board of Insurance, 1110 San Jacinto Street, Austin, Texas 78786.

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 August 31, 1984

TRD-849036 James W. Norman
Chief Clerk
State Board of Insurance

Effective date: October 1, 1984

Proposal publication date: July 19, 1984

For further information, please call (512) 475-2950.

State Board of Insurance Exempt Filings

**State Board of Insurance
Notifications Pursuant to the
Insurance Code, Chapter 5,
Subchapter L**

(Editor's note: As required by the Insurance Code, Article 5.96 and Article 5.97, the Register publishes notices of actions taken by the State Board of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure and Texas Register Act, and the final actions printed in this section have not been previously published as proposals.

These actions become effective 15 days after the date of publication or on a later specified date.

The text of the material being adopted will not be published, but may be examined in the offices of the State Board of Insurance, 1110 San Jacinto Street, Austin.)

The State Board of Insurance has approved the following 1984 calls for statistical experience as prepared by the Insurance Services Office:

- (1) 1984 call for PPNF automobile liability;
- (2) 1984 call for PPNF automobile physical damage;
- (3) 1984 call for PPNF—minimum plan—automobile liability;
- (4) 1984 call for PPNF—minimum plan—automobile physical damage;
- (5) 1984 call for statistics under the commercial statistical plan (CSP);
- (6) 1984 call for excess loss statistics—commercial statistical plan (CSP) for general liability, automobile liability, and boiler and machinery;
- (7) 1984 call for statistics under the commercial minimum statistical plan (CMSP);
- (8) 1984 call for excess loss statistics—commercial minimum statistical plan (CMSP); and
- (9) 1984 call for boiler machinery inspection cost.

These calls will be used for the submission of statistical experience by members, subscribers, or other companies using the statistical coding plans of this bureau. It is mandatory that all companies writing such lines of insurance in the State of Texas and coding their statistics in accordance with the statistical plans of the Insurance Services Office submit their experience to conform with the instructions as provided in these calls.

The effective date is September 27, 1984.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on August 30, 1984.

TRD-849056 James W. Norman
 Chief Clerk
 State Board of Insurance

Effective date September 27, 1984
For further information, please call (512) 475-2950.

The State Board of Insurance has approved the following 1984 statistical calls as prepared by the National Independent Statistical Services:

- (1) 1984 call for automobile liability quarterly, outstanding and excess loss reports;
- (2) 1984 call for automobile liability experience;
- (3) 1984 call for automobile physical damage experience;
- (4) 1984 call for burglary, robbery, and theft experience;
- (5) 1984 call for general liability (including malpractice and professional liability experience);
- (6) 1984 call for fidelity, surety, and foreign experience;
- (7) 1984 call for glass experience, and
- (8) 1984 call for inland marine experience.

These calls will be applicable to members, subscribers, or other companies using the statistical plans of this association and it is mandatory that all companies writing such lines of insurance in the State of Texas submit their experience to conform with the instructions as provided in these calls.

The effective date is September 27, 1984

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the requirements of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on August 30, 1984

TRD-849057 James W. Norman
 Chief Clerk
 State Board of Insurance

Effective date September 27, 1984
For further information, please call (512) 475-2950

The State Board of Insurance has approved the following 1984 statistical calls as prepared by the National Association of Independent Insurers.

- (1) 1984 call for automobile physical damage experience;
- (2) 1984 call for countrywide allocated and unallocated loss adjustment expense—automobile bodily injury and property damage liability;
- (3) 1984 call for automobile liability quarterly, outstanding and excess loss reports;
- (4) 1984 call for burglary, robbery, and theft experience;
- (5) 1984 call for fidelity, surety, and foreign experience;
- (6) 1984 call for general liability experience;
- (7) 1984 call for glass experience;
- (8) 1984 call for inland marine experience;
- (9) 1984 call for malpractice and professional liability; and
- (10) 1984 call for boiler and machinery experience.

These calls will be applicable to members, subscribers, or other companies using the statistical plans of this

association and it is mandatory that all companies writing such lines of insurance in the State of Texas submit their experience to conform with the instructions as provided in these calls.

The effective date is September 27, 1984.

This notification is made pursuant to the Insurance Code, Article 5.97, which exempts it from the require-

ments of the Administrative Procedure and Texas Register Act.

Issued in Austin, Texas, on August 30, 1984.

TRD-849058

James W Norman
Chief Clerk
State Board of Insurance

Effective date. September 27, 1984

For further information, please call (512) 475-2950

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. Although some notices may be received too late for publication before the meeting is held, all those filed are published in the *Register*. Notices concerning state agencies, colleges, and universities must contain the date, time, and location of the meeting, and an agenda or agenda summary. Published notices concerning county agencies include only the date, time, and location of the meeting. These notices are published alphabetically under the heading "Regional Agencies" according to the date on which they are filed.

Any of the governmental entities named above must have notice of an emergency meeting, or 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. However, notices of emergency additions or revisions to a regional agency's agenda will not be published since the original agenda for the agency was not published.

All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Open Meetings

Texas Antiquities Committee

Tuesday, September 18, 1984, 9:30 a.m. The Texas Antiquities Committee (TAC) will meet in Room 503G, Sam Houston Building, 201 East 14th Street, Austin. According to the agenda summary, the committee will approve Minutes 75 and consider state archaeological landmark nominations and designations, an antiquities permit change of format, the development of the TAC blanket permit policy, and a report for staff activities. The committee will also meet in executive session to discuss personnel matters.

Contact: Debra Frierson, P.O. Box 12276, Austin, Texas 78711, (512) 475-6328.

Filed: September 5, 1984, 10:32 a.m.
TRD-849104

State Banking Board

Thursday, September 13, 1984, 3 p.m. The State Banking Board will meet at 2601 North Lamar Boulevard, Austin. According to the agenda, the board will consider an application for change of domicile by American Bank, Houston; applications for charter by Allied Bank, Fort Worth, Texas Bank and Trust, Krugerville, and Hutto

State Bank, Hutto; and applications for interim charters for New Guaranty Bank, Austin, New First State Bank, Cleburne, New Fayetteville Bank, Fayetteville, New Clear Lake Bank, Houston, and Claydesta Bank, Midland.

Contact: William F. Aldridge, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Filed: September 5, 1984, 9:58 a.m.
TRD-849102

State Bar of Texas

Thursday, September 13, 1984, 10 a.m. The Executive-Budget Committee of the State Bar of Texas will meet in the president's room, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda summary, the committee will consider the president's report concerning general and committee matters, the Federal Trade Commission, minimum CLE, and an IRS ruling concerning the state bar's tax status; budgetary matters; reports of the executive director, the president-elect, the immediate past president, the board chairman, the Supreme Court liaison, the general counsel, the Committee on Scope and Correlation, the Special Committee on Facilities and Equip-

ment, and the Goals and Implementation Committee; a report on mandatory malpractice insurance; convention reports; a report on the Thurgood Marshall School of Law; the IOLTA report; the infomart contract; and the Texas legal protection plan and the Texas lawyers' care audit.

Contact: Evelyn Avent, 1414 Colorado Street, Austin, Texas 78711, (512) 475-4746.

Filed: September 5, 11:50 a.m.
TRD-849107



Battleship Texas Advisory Board

Saturday, September 15, 1984, 1 p.m. The Battleship Texas Advisory Board will meet at the Battleship Texas, 3527 Battleground Road, La Porte. Items on the agenda summary include the chairman's address, an up-

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date of the Texas Parks and Wildlife Department's work on the battleship, a discussion of House Bill 586, advisory board positions, regular scheduling of the advisory board, discussion and assessment of duties, topics of discussion for the next meeting, and open discussion from board members. The board also will meet in executive session to consider bids and money and take a private tour of the battleship.

Contact: Denny G. Hair, 1003 Eastlake, Houston, Texas 77034, (713) 947-8089 or (713) 230-2300, ext. 361.

Filed: September 5, 1984, 4:16 p.m.
TRD-849121

Texas Education Agency

Saturday, September 8, 1984, 8:30 a.m. The State Board of Education of the Texas Education Agency (TEA) made an emergency addition to the agenda of a meeting held in the Joe Kelly Butler Boardroom, TEA North Building, 1200 East Anderson Lane, Austin. The addition concerned the consideration of the cancellation of the October 13, 1984, board meeting. The emergency status was necessary because the decision to consider this item was not made in time for inclusion with the regular posting of this meeting.

Contact: Raymon L. Bynum, 201 East 11th Street, Austin, Texas 78701, (512) 475-3271.

Filed: September 5, 1984, 8:50 a.m.
TRD-849097

Texas Employment Commission

Wednesday-Friday, September 12-14, 1984, 1 p.m. Wednesday and 9 a.m. daily Thursday and Friday. The Texas Employment Commission (TEC) will meet in the McNelly Room, First State Bank, Uvalde. According to the agenda, on Wednesday the commission will consider 1985 priorities and internal communications reorganization. On Thursday, the commission will consider external communications planning, unemployment insurance priorities, employment service programs priorities, labor exchange, the Job Training Partnership Act, and administrative programs priorities. On Friday, the commission will conduct a summary discussion concerning action plans.

Contact: Steve Hollahan, TEC Building, Room 660, 15th Street and Congress Avenue, Austin, Texas, (512) 397-4400.

Filed: September 4, 1984, 4:14 p.m.
TRD-849141

Finance Commission of Texas

Friday, September 14, 1984, 2 p.m. The Savings and Loan Section of the Finance Commission of Texas will meet at the Texas Savings and Loan Department, 1004 Lavaca Street, Austin. According to the agenda summary, the section will review and discuss the final adoption of regulatory changes to the fees for administrative offices and subsidiaries and subsidiary corporations; propose regulatory amendments to the use of approved forms, an interim charter, the fee for charter and bylaws amendments, the fee for remote service unit application, general provisions (loans and investments), and reserves; propose additional regulations for the fee for charter application for a supervisory merger and abeyance of other applications; and consider an update on the building program. The section also will meet in executive session regarding personnel and supervisory matters.

Contact: L. L. Bowman III, 1004 Lavaca Street, Austin, Texas 78701, (512) 475-7991.

Filed: September 6, 1984, 9:35 a.m.
TRD-849120

Office of the Governor

Monday, September 17, 1984, 10 a.m. The Governor's Task Force on State Employees Health Insurance Quality and Cost Containment of the Office of the Governor will meet in Room 104, Texas Law Center, 1414 Colorado Street, Austin. According to the agenda, the task force will consider the August 16, 1984, minutes; hear a wellness report, including a summary of recommendations and a presentation by John M. Bragg, actuary; and consider a final report and any other business.

Contact: Evelyn Ireland, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-4285.

Filed: September 4, 1984, 2:20 p.m.
TRD-849066

State Board of Insurance

Wednesday, September 5, 1984, 2 p.m. The State Board of Insurance met in emergency session in Room 414, 1110 San Jacinto Street, Austin. According to the agenda, the board conducted a public hearing to consider the appeal of Great Southwest Life Insurance Company from a commissioner's decision upholding an action of the supervisor as set forth in a letter dated August 20, 1984, with respect to certain insurance policies of Great Southwest Life Insurance Company. The emergency status was neces-

sary because of a statutory requirement stating that appeals of this nature be heard at the earliest possible time.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 4, 1984, 3:27 p.m.
TRD-849079

Thursday, September 6, 1984, 10 a.m. The State Board of Insurance submitted an emergency revised agenda for a meeting held in Room 414, 1110 San Jacinto Street, Austin. According to the revised agenda, the board considered proposed rules to implement the Insurance Code, Article 21.53, the Amusement Ride Safety Inspection and Insurance Act; a proposed rule which would specify the amount of penalties for the late reporting of annual and quarterly premium tax returns within the limits established by the Insurance Code, Article 4.13, the late reporting of annual and quarterly premium tax returns of insurers taxed under Texas Civil Statutes, Article 4769; and the late payment of annual and quarterly prepayments of premium taxes assessed under Texas Civil Statutes, Article 4769, and the Insurance Code, Article 4.10 and Article 4.11. The emergency status was necessary because immediate action was necessary on both items to have permanent rules in effect before the emergency rules expired.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 5, 1984, 4:08 p.m.
TRD-849113

Thursday, September 13, 1984, 1:30 p.m. The Commissioner's Hearing Section of the State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the section will consider Docket 7783—application for original charter of Associated Gulf Capital Life Insurance Company, Corpus Christi.

Contact: John Brady, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2287.

Filed: September 5, 1984, 4:11 p.m.
TRD-849115

The State Board of Insurance will meet at 1110 San Jacinto Street, Austin. Days, times, rooms, and agendas follow.

Friday, September 14, 1984, 2 p.m. In Room 414, the board will conduct a public hearing to consider revision of stevedoring rates based on experience and the statutory mandated benefits increase. This matter is necessitated by a change in rules adopted August 30, 1984, which reinstates the \$300 weekly payroll limitation for all stevedore classes.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 4, 1984, 3:27 p.m.
TRD-849080

Thursday, September 20, 1984, 9 a.m. In Room 414, the board will consider staff-recommended legislative proposals for inclusion in the report required by the Insurance Code, Article 1.25, §(a).

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950

Filed: September 6, 1984, 9:50 a.m.
TRD-849122

Tuesday, October 9, 1984, 9 a.m. In Room 342, the board's designate will conduct a public hearing to consider the appeal of Alex A. Arthur from action of the Texas Catastrophe Property Insurance Association.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950.

Filed: September 6, 1984, 9:50 a.m.
TRD-849123

Monday, October 15, 1984, 9 a.m. In Room 342, the board's designate will conduct a public hearing to consider the appeal of D. Fred Micks from action of the Texas Catastrophe Property Insurance Association.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950

Filed: September 6, 1984, 9:50 a.m.
TRD-849124

Monday, October 22, 1984, 9 a.m. In Room 342, the board's designate will conduct a public hearing to consider the appeal of H. R. Huckaby from action of the Texas Catastrophe Property Insurance Association.

Contact: Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, (512) 475-2950

Filed: September 6, 1984, 9:50 a.m.
TRD-849125

Texas Advisory Commission on Intergovernmental Relations

Friday, September 14, 1984. Committees of the Texas Advisory Commission on Intergovernmental Relations and the full commission will meet at the Texas Law Center, 15th and Colorado Streets, Austin. Times, rooms, committees, and agendas follow.

8:30 a.m. In Room 201, the Special Committee on Operations and Funding will re-

view the status of fiscal year 1984 year-end finances and consider grant and contract revenue sources and the operating budget and work program for fiscal year 1985.

9:30 a.m. In Room 201, the New Federalism Committee will consider a potential new project on local government fiscal capacity and review progress reports on the low-level radioactive waste project and the Data Management Program.

9:30 a.m. In Room 204, the State-Local Issues Committee will consider potential recommendations concerning central appraisal districts and will review progress reports on county fiscal capacity and indigent health care projects.

10:30 a.m. In Room 202 and Room 203, the commission will consider the executive director's report; committee reports, including the Operations and Funding Committee, the New Federalism Committee, and the State-Local Issues Committee; the 1985 operating budget and work program; potential recommendations concerning central appraisal districts; a new commission publication on criminal justice statistical sources in Texas state government; and new business.

Contact: Jay G. Sanford, P.O. Box 13206, Austin, Texas 78711, (512) 475-3728.

Filed: September 4, 1984, 4:44 p.m.
TRD-849091-849094

Lamar University

Thursday, September 13, 1984. Committees of the Board of Regents and the full board of Lamar University will meet at Lamar University, Beaumont. Times, rooms, and committees follow.

12:30 p.m. In the Lamar Room, Gray Library, the Finance Committee and the Building and Grounds Committee will consider the finance report for July 1984, approval of a petty cash fund for the student health center, financial system upgrade proposals, the system budget for 1984-1985, and bids received on building projects.

1:30 p.m. In the Lamar Room, Gray Library, the Personnel Committee and the Academic Affairs Committee will review the personnel handbook revisions, consider approval of degree programs, and consider revisions of names for colleges and/or departments.

2:30 p.m. In the Plummer Administration Building boardroom, the Board of Regents will consider the August 8, 1984, minutes; the chancellor's reports; a resolution for

Proposition II; the financial report for July; approval of degree programs; personnel handbook revisions; approval of a petty cash fund for the student health center; a report on the presidential search; approval of bids received on building projects; a financial system upgrade; the systems budget for 1984-1985; and the revision of names for colleges and/or departments. The board also will meet in executive session.

Contact: Andrew J. Johnson, P.O. Box 10014, Beaumont, Texas 77710, (409) 838-8403.

Filed: September 6, 1984, 9:39 a.m.
TRD-849126-849128

Texas Legislative Council

Thursday and Friday, September 13 and 14, 1984, 9 a.m. daily. The Legislative Oversight Committee on Mental Health and Mental Retardation of the Texas Legislative Council will meet in Room 255, Coordinating Board, Texas College and University System, 200 East Riverside Drive, Austin. Items on the agenda include approval of the August 17 and 18, 1984, minutes; discussion of mental retardation issues and the *Lelsz v. Miller* lawsuit; and discussion of issues to be included in a final report, including priority populations, the range of treatment, residential and service opportunities, planning and managing an accountable system, human resources development, financing the system, and legal issues.

Contact: Karen F. Hale, 4600 Burnet Road, Austin, Texas 78756, (512) 459-6584.

Filed: September 4, 1984, 3:45 p.m.
TRD-849085

Long-Term Care Coordinating Council for the Elderly

Monday, September 17, 1984, 9 a.m. The Long-Term Care Coordinating Council for the Elderly will meet in Room T610, Texas Department of Health, 1100 West 49th Street, Austin. According to the agenda summary, the council will approve a summary of the August 6 and 7, 1984, minutes; elect a vice-chairperson; discuss the draft of the revised long-term care plan for the elderly; review written comments on the draft of the plan, and consider adoption of the plan; hear a report on the AARP legislative meeting from Reverend Robert Greene and a report on the AAA's input on proposed guidelines for establishing area-wide long-

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term care committees; and discuss legislative issues priorities.

Contact: Peggy Davidson, 210 Barton Springs Road, Austin, Texas 78711, (512) 475-2717.

Filed: September 5, 1984, 2:30 p.m.
TRD-849110

Texas Board of Licensure for Nursing Home Administrators

Tuesday, September 4, 1984, 2 p.m. The Texas Board of Licensure for Nursing Home Administrators met in emergency session via conference call originating from 3407 IH 35 North, Austin. According to the agenda, the board considered the legislative appropriation request (LAR) finalization. The emergency status was necessary because the Legislative Budget Board staff presentation required immediate finalization of the LAR.

Contact: Dottie Mathieson, 3407 IH 35 North, Austin, Texas 78722, (512) 479-0922.

Filed: September 4, 1984, 11:21 a.m.
TRD-849064



Pan American University

Saturday, September 15, 1984, 9 a.m. The Board of Regents of Pan American University will meet in the Casita Meeting Room, Bahia Mar Hotel, South Padre Island. According to the agenda summary, the regents will conduct a workshop consisting of goals of the university presented by the president, goals of academic affairs by the vice-president for academic affairs, goals of institutional advancement by the vice-president for institutional advancement, goals of student affairs by the dean of students, and goals of Pan American University at Brownsville (PAU-B) by the president of PAU-B; the role of the regents by chairman Bob Shepard; policy development by the general counsel; finances, including the reading of financial reports and the university's financial status; appropriations strategy for the legislative session; and questions and concerns of board members.

Contact: Miguel A. Nevarez, Pan American University, Edinburg, Texas 78539, (512) 381-2100.

Filed: September 4, 1984, 2:40 p.m.
TRD-849069

Texas State Board of Examiners of Psychologists

Thursday-Saturday, September 13-15, 1984, 8 a.m. Thursday and 9 a.m. daily Friday and Saturday. The Texas State Board of Examiners of Psychologists will meet in Suite C-270, 1300 East Anderson Lane, Austin. According to the agenda, the board will consider complaints; informal hearings; an order for John Abell, Ed.D.; reports on the oral exam task force, the 1983 audit, industrial organizational supervision guidelines, school supervision guidelines, AASPB, and the Ad Hoc Committee on Law Changes; supervision guidelines for exempt agencies; rules; a retirement certificate; the jurisprudence exam; reconsideration of applications, complaints, and requests for information from licensed psychologists; opinion letters; the 1985 budget; application files; the minutes; and a CLEAR convention report.

Contact: Patti Bizzell, 1300 East Anderson Lane, Suite C-270, Austin, Texas 78752, (512) 835-2036

Filed: September 4, 1984, 2:43 p.m.
TRD-849070

Public Utility Commission of Texas

Friday, September 14, 1984. The Hearings Division of the Public Utility Commission of Texas will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Times and dockets follow.

9 a.m. A hearing on the merits in Docket 5873—emergency petition of Southwestern Bell Telephone Company, and Docket 5876—complaint of AT&T Communications of the Southwest, Inc., against Southwestern Bell Telephone Company

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 5, 1984, 4:16 p.m.
TRD-849116

10 a.m. A prehearing conference in Docket 5747—application of Texas Utilities Electric Company to amend its certificate of convenience and necessity for the Twin Oak Steam Electric Station.

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 5, 1984, 4:15 p.m.
TRD-849117

1:30 p.m. A prehearing conference in Docket 5890—application of JAC Electric Cooperative, Inc., for a rate increase

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: September 5, 1984, 3:55 p.m.
TRD-849112

2 p.m. A prehearing conference in Docket 5709—application of Texas Utilities Electric Company for a proposed transmission line in Rusk County

Contact: Rhonda Colbert Ryan, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: September 5, 1984, 4:15 p.m.
TRD-849118

Texas Rehabilitation Commission

Tuesday, September 18, 1984, 9:30 a.m.

The Texas Advisory Board of Occupational Therapy of the Texas Rehabilitation Commission will meet in the commissioner's boardroom, third floor, 118 East Riverside Drive, Austin. Items on the agenda include approval of the June 4, 1984, minutes; a report on the Continuing Education Task Force; a report on recommendations of the Sunset Advisory Commission; discussion of renewal fees; discussion of participation in the TOTA conference scheduled for October 5-7, 1984, in Dallas; an office report; a report from the executive session, if held; and other business. The board may also meet in executive session, if required, in accordance with Texas Civil Statutes, Article 6252-17, §2(g), to discuss possible litigation which may arise from the implementation of the licensing program.

Contact: Cary Westhause, 118 East Riverside Drive, Room 243, Austin, Texas 78704.

Filed: September 4, 1984, 2:40 p.m.
TRD-849071

Veterans Land Board

Thursday, September 6, 1984, 10 a.m.

The Veterans Land Board (VLB) of the General Land Office submitted an emergency revised agenda for a meeting held in Room 831, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the board approved the July 2, 1984, minutes; appointed an executive secretary; authorized the issuance of State of Texas veterans bonds, Series 1984B, and the giving of notice of sale and taking such other action as was

consistent with the sale of additional bonds as the board determined was warranted; and considered the nonvet interest rate, mortgage documents relating to VHAP, a second participation request, the Ray Fred Groomes (VLB #455-99883) settlement, previous participation by David Spivey, Jr., reinstatement of a vet's eligibility under VHAP concerning Fay H. Martin, Jr., Rich Tillman's requests of the board's interpretation of home mortgage, forfeiture on VLB accounts, and general business of the board. The emergency status was necessary to authorize the issuance of State of Texas veterans bonds, Series 1984B, and give notice of sale and other board action relating to the sale of additional bonds

Contact: Richard Keahey, Stephen F. Austin Building, Room 738, 1700 North Congress Avenue, Austin, Texas 78701, (512) 475-6755

Filed: September 4, 1984, 2:24 p.m.
TRD-849067

Texas Water Commission

Tuesday-Friday, September 25-28, 1984, 9 a.m. daily Tuesday-Thursday and 8:30 a.m. Friday. The Texas Water Commission revised the agenda for a meeting to be held in the assembly room, Grayson County Courthouse, Sherman. According to the revised agenda, the commission will conduct adjudication hearings for the Lower Red River Segment on the Red River Basin

Contact: Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, (512) 475-4514

Filed: September 4, 1984, 1:44 p.m.
TRD-849074

Wednesday, October 17, 1984, 9 a.m. The Texas Water Commission will meet in the auditorium, Bank of the Southwest, 910 Travis, Houston. According to the agenda summary, the commission will consider the application of Rene Hinojosa, 11902 Suburban, Houston, Texas 77050, to the Texas Department of Water Resources for proposed Permit 12944-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 24,000 gallons per day from a proposed wastewater treatment plant which is to serve the needs of an existing mobile home park currently being served by poorly operating septic tanks

Addition to the previous agenda:

The commission will consider the application of Fatima Family Village, Inc., 1003 Gulf Bank, Houston, Texas 77037, to the

Texas Department of Water Resources for proposed Permit 12932-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 9,000 gallons per day from the proposed sewage treatment plant which is to serve a mobile home park that is currently being served by malfunctioning septic tanks.

Contact: Kevin McCalla, P.O. Box 13087, Austin, Texas 78711, (512) 475-1418.

Filed: September 4, 1984, 1:44 p.m.
TRD-849075, 849076

Monday, October 22, 1984, 10 a.m. The Texas Water Commission rescheduled a meeting to be held in Classroom III, South Central Texas Regional Training Center, Texas A&M University System, HemisFair Plaza, San Antonio. According to the agenda summary, the commission will consider the application of Lackland City Water Company, P.O. Box 5470, San Antonio, Texas 78201, to the Texas Department of Water Resources for proposed Permit 12901-01 to authorize a discharge of treated domestic wastewater effluent at a volume not to exceed an average flow of 2.26 million gallons per day from the proposed wastewater treatment plant which is to serve a proposed 1,250-acre development consisting of residential housing and some light commercial businesses. The application originally was submitted in the name of Westcreek Utility Company, P.O. Box 1810, San Antonio, Texas 78296. The hearing on this application was convened July 19, 1984, wherein jurisdiction was taken by the commission to conduct the public hearing. Subsequent to the original session, the Lackland City Water Company entered into a contract to operate the sewage treatment facility for Westcreek Utility Company. The meeting originally was scheduled for July 19, 1984, as published at 9 TexReg 3264.

Contact: Carl X. Forrester, P.O. Box 13087, Austin, Texas 78711, (512) 475-1418.

Filed: September 4, 1984, 1:44 p.m.
TRD-849077

Texas Youth Commission

Thursday, September 13, 1984, 10 a.m. The Board of the Texas Youth Commission will meet in Suite 322, 8900 Shoal Creek Boulevard, Austin. According to the agenda summary, the board will consider medical contracts; the fiscal year 1985 budget and appropriation transfers; fiscal year 1984 appropriation transfers; an endowment funds report; a proposal for use of endowment funds; and construction items concerning

Corsicana State Home, Gainesville State School, and Crockett State School.

Contact: Ron Jackson, P.O. Box 9999, Austin, Texas 78766, (512) 452-8111.

Filed: September 4, 1984, 3:42 p.m.
TRD-849084

Regional Agencies

Meetings Filed September 4

The Austin-Travis County Mental Health and Mental Retardation Center, Board of Trustees, will meet in the boardroom, 1430 Collier Street, on September 12, 1984, at 7 a.m. Information may be obtained from Sharon Taylor, 1430 Collier Street, Austin, Texas 78704, (512) 447-4141

The Bexar-Medina-Atascosa Counties Water Control and Improvement District 1, Board of Directors, met at the district office, Highway 81, Natalia, on September 10, 1984, at 8 a.m. Information may be obtained from C. A. Mueller, P.O. Box 180, Natalia, Texas 78059, (512) 663-2132

The Carson County Appraisal District, Board of Directors, will meet at 220 Main Street, Panhandle, on September 12, 1984, at 8 a.m. Information may be obtained from Dianne Lavake, Box 970, Panhandle, Texas 79068, (806) 537-3569

The Eastland County Appraisal District, Appraisal Review Board, will meet in the commissioners' courtroom, Eastland County Courthouse, Eastland, on September 13, 1984, at 9:30 a.m. Information may be obtained from Steve Thomas, Box 914, Eastland, Texas 76448, (817) 629-8597

The East Texas Council of Governments, Executive Committee, met in emergency session at 3800 Stone Road, Kilgore, on September 6, 1984, at 2 p.m. Information may be obtained from Glynn Knight, 3800 Stone Road, Kilgore, Texas 75662, (214) 984-8641

The Edwards Underground Water District, Board of Directors, submitted a revised agenda for a meeting to be held at 1615 North St. Mary's, San Antonio, on September 11, 1984, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's, San Antonio, Texas 78215, (512) 222-2204

The Central Appraisal District of Erath County, Board of Directors, will meet at 1390 Harbin Drive, Stephenville, on Sep-

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tember 12, 1984, at 10 a.m. Information may be obtained from James Bachus, 1390 Harbin Drive, Stephenville, Texas 76401, (817) 965-5434.

The Gregg County Appraisal District, Board of Directors, will meet at 2010 Gilmer Road, Longview, on September 11, 1984, at noon. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Hale County Appraisal District, Board of Directors, will meet at 302 West Eighth, Plainview, on September 13, 1984, at 7:30 p.m. Information may be obtained from Linda Jaynes, P.O. Box 29, Plainview, Texas 79072, (806) 293-4226.

The Hansford County Appraisal District, Board, will meet at 13 West Kenneth Avenue, Spearman, on September 12, 1984, at 9 a.m. Information may be obtained from Alice Peddy, Box 567, Spearman, Texas 79081, (806) 659-5575

The Hood County Appraisal District, Board of Directors, will meet at 1902 West Pearl, Granbury, on September 11, 1984, at 7:30 p.m. Information may be obtained from Ben H. Griffin, P.O. Box 819, Granbury, Texas 76048, (817) 573-2471.

The Lamb County Appraisal District, Board of Directors, will meet at 318 Phelps Avenue, Littlefield, on September 13, 1984, at 8:30 p.m. The board will also meet at the same location and the same time on September 20, 1984. Information may be obtained from Jack Samford, P.O. Box 552, Littlefield, Texas 79339, (806) 385-6474.

The Lampasas County Appraisal District, Appraisal Review Board, will meet at 403

East Second, Lampasas, on September 11, 1984, at 10 a.m. The district will meet at the same location on September 12, 1984, at 3 p.m. Information may be obtained from Dana Ripley, P.O. Box 175, Lampasas, Texas 76550, (512) 556-8058.

The Palo Pinto Appraisal District, Board of Directors, will meet at the Palo Pinto Courthouse, Palo Pinto, on September 12, 1984, at 2 p.m. The board will also meet at the same location on the same day at 3 p.m. Information may be obtained from Edna Beaty, P.O. Box 250, Palo Pinto, Texas 76072, (817) 659-3651.

The Central Appraisal District of Rockwall County, Board of Directors, will meet at 106 North San Jacinto, Rockwall, on September 11, 1984, at 7 p.m. The board will also meet at the same location on the same day at 7:45 p.m. Information may be obtained from Eugene "Bo" Daffin, 106 North San Jacinto, Rockwall, Texas 75087, (214) 722-2034.

The Upshur County Appraisal District, Appraisal Review Board, met in emergency session at Warren and Trinity Streets, Gilmer, on September 7, 1984, at 8:30 a.m. The Board of Directors met at the same location on September 10, 1984, at 7:30 p.m. Information may be obtained from Louise Stracener, P.O. Box 31, Gilmer, Texas 75644, (214) 843-3041.

TRD-849065

Meetings Filed September 5

The Central Texas Council of Governments, Executive Committee submitted a revised agenda for a meeting to be held at

302 East Central, Belton, on September 13, 1984, at 12:45 p.m. Information may be obtained from Walton B. Reedy, P.O. Box 729, Belton, Texas 76513, (817) 939-1801.

The Concho Valley Council of Governments, Executive Committee, will meet at 5002 Knickerbocker Road, San Angelo, on September 12, 1984, at 7 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Angelo, Texas 76906, (915) 944-9666.

The Copano Bay Soil and Water Conservation District 329 will meet at 106 South Alamo, Shay Plaza, Refugio, on September 12, 1984, at 8:30 a.m. Information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, (512) 526-2334

The Dallas Area Rapid Transit Authority, Service Plan/Work Program-Committee of the Whole, met in emergency session at 601 Pacific Avenue, Dallas, on September 7, 1984, at 2 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 748-3278.

TRD-849103

Meeting Filed September 6

The Dallas Area Rapid Transit, Personnel Committee, met in emergency session at 601 Pacific Avenue, Dallas, on September 7, 1984, at 1 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 748-3278.

TRD-849129

The *Register* is required by statute to publish applications to purchase control of state banks (filed by the banking commissioner), notices of rate ceilings (filed by the consumer credit commissioner); changes in interest rate and applications to install remote service units (filed by Texas Savings and Loan commissioner); and consultant proposal requests and awards (filed by state agencies, regional councils of government, and the Texas State Library and Archives Commission).

In order to aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows. This often includes applications for construction permits (filed by the Texas Air Control Board); applications for amendment, declaratory ruling, and notices of intent (filed by the Texas Health Facilities Commission), applications for waste disposal permits (filed by the Texas Water Commission); and notices of public hearing.

In Addition

Texas Air Control Board Applications for Construction Permits

The Texas Air Control Board gives notice of applications for construction permits received during the period of August 27-31, 1984.

Information relative to the following applications, including projected emissions and the opportunity to comment or to request a hearing, may be obtained by contacting the office of the executive director at the central office of the Texas Air Control Board, 6330 Highway 290 East, Austin, Texas 78723.

A copy of all material submitted by the applicant is available for public inspection at the central office of the Texas Air Control Board at the previously mentioned address, and at the regional office for the Air Quality Control Region within which the proposed facility will be located.

Listed are the names of the applicants and the cities in which the facilities are located, type of facilities, location of the facilities (if available), permit numbers; and type of application—new source or modification.

Stone Container Corporation, Tyler; steam generator, Tyler, Smith County, 2874A, modification.

Badische Corporation, Freeport, washwater incinerator, 602 Copper Road, Brazoria County; 9514; new source.

Monsanto Company, Alvin, crystal purification process, FM Road 2917, Brazoria County, 9515; new source.

Koch Refining Company, Corpus Christi; east plant expansion, Corpus Christi, Nueces County; 9516; new source.

Wilbarger Elevators, Inc., Vernon, elevator and feed mill; Mill Block, Wilbarger County; 1248B; modification.

Amoco Chemicals Corporation, Alvin; cogeneration facility; FM Road 2004 and FM Road 2917, Brazoria County; 9517; new source.

Issued in Austin, Texas, on August 31, 1984.

TRD-849072

Paul M. Shinkawa
Director of Hearings
Legal Division
Texas Air Control Board

Filed: September 4, 1984.

For further information, please call (512) 451-5711, ext. 354.

Public Hearings

The Texas Air Control Board (TACB) will hold public meetings in October to discuss proposed revisions to the Texas state implementation plan (SIP) for ozone in Dallas, Tarrant, and El Paso Counties and for carbon monoxide in El Paso County. The meetings are cosponsored by the TACB, the North Central Texas Council of Governments, and the City of El Paso Metropolitan Planning Organization, in cooperation with the City of Dallas Department of Health and Human Services, the City of Fort Worth Public Health Department, and the El Paso City-County Health Unit.

The meetings will be held at the following times and places: 7 p.m. on October 3, 1984, Public Health Center Auditorium, ground floor, 1800 University Drive, Fort Worth; 6:30 p.m. on October 4, 1984, Dallas Public Library Auditorium, 1515 Young Street, Dallas; and 7 p.m. on October 10, 1984, El Paso City Council Chambers, Second Floor, 2 Civic Center Plaza, El Paso.

Information will be provided regarding Environmental Protection Agency (EPA) requirements for volatile organic compound (VOC) and carbon monoxide (CO) emis-

sion reductions in post-1982 ozone and CO nonattainment areas. The EPA is requiring that the SIP for these areas be revised by February 1985 to provide sufficient emission reductions to demonstrate attainment of the standards by 1987. Failure to provide an approvable revision may result in the EPA imposing economic sanctions in these areas. Information on the cost and feasibility of reducing VOC emissions in Dallas, Tarrant, and El Paso Counties and of reducing CO emissions in El Paso County will also be presented.

The TACB invites comments regarding the levels of VOC and CO emission reduction requirements for three counties. In addition, comments are invited on the specific measures identified to provide such reductions which are appropriate for inclusion in the SIP revisions and on the severity of controls which may be necessary to satisfy EPA requirements. Comments received at the public meetings will help the TACB staff develop SIP revisions which respond to EPA post-1982 SIP requirements in a manner that considers local conditions.

Three issue papers have been prepared to present and discuss background and technical information, legal requirements, and decision options relating to the SIP revisions required for Dallas, Tarrant, and El Paso Counties in 1984. Copies of these papers may be obtained from the TACB regional office, 6421 Camp Bowie Boulevard, Suite 312, Fort Worth, Texas 76116, (817) 732-5531; from the TACB regional office, 9615 Sims Drive, El Paso, Texas 79925, (915) 591-8128; or from the TACB central office, 6330 Highway 290 East, Austin, Texas 78723, (512) 451-5711.

Issued in Austin, Texas, on September 4, 1984.

TRD-849060 Bill Stewart, P E
Executive Director
Texas Air Control Board

Filed: September 4, 1984
For further information, please call (512) 451-4711,
ext. 354.

State Banking Board Public Hearing

The hearing officer of the State Banking Board will conduct a hearing at 9 a.m. on Tuesday, October 23, 1984, at 2601 North Lamar Boulevard, Austin, on the charter application for Prairie State Bank, to be located at 726 Highway 303, Grand Prairie.

Additional information may be obtained from William F. Aldridge, Director of Corporate Activities, Banking Department of Texas, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 475-4451.

Issued in Austin, Texas, on August 30, 1984

TRD-849028 William F. Aldridge
Director of Corporate Activities
State Banking Board

Filed: August 31, 1984
For further information, please call (512) 475-4451.

Office of Consumer Credit Commissioner Rate Ceilings

The consumer credit commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Texas Civil Statutes, Title 79, Articles 1.04, 1.05, 1.11, and 15.02, as amended (Texas Civil Statutes, Articles 5069-1.04, 1.05, 1.11, and 15.02).

Type of Rate Ceilings Effective Period (Dates are Inclusive)	Consumer ⁽³⁾ Agricultural/Commercial ⁽⁴⁾ thru \$250,000	Commercial ⁽⁴⁾ over \$250,000
Indicated (Weekly)		
Rate—Article 1.04(a)(1)		
09/10/84-09/16/84	21.50%	21.50%
Monthly Rate—		
Article 1.04(c)(1)		
09/01/84-09/30/84	21.31%	21.31%
Standard Quarterly		
Rate—Article 1.04(a)(2)		
10/01/84-12/31/84	21.19%	21.19%
Retail Credit Card		
Quarterly Rate—		
Article 1.11⁽³⁾		
10/01/84-12/31/84	21.00%	N/A
Lender Credit Card		
Quarterly Rate—		
Article 15.02(d)⁽³⁾		
10/01/84-12/31/84	21.19%	N/A
Standard Annual		
Rate—		
Article 1.04(a)(2)⁽²⁾		
10/01/84-12/31/84	21.19%	21.19%
Retail Credit Card		
Annual Rate—		
Article 1.11⁽³⁾		
10/01/84-12/31/84	21.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983,		
Retail Credit Card and		
Lender Credit Card		
Balances with Annual		
Implementation Dates		
from		
10/01/84-12/31/84	19.32%	N/A
Judgment Rate—		
Article 1.05, §2		
09/01/84-09/30/84	10.79%	10.79%

(1) For variable rate commercial transactions only
(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069.101(f)
(3) Credit for personal, family, or household use
(4) Credit for business, commercial investment, or other similar purpose

Issued in Austin, Texas, on September 5, 1984

TRD-849096 Sam Kelley
Consumer Credit Commissioner

Filed: September 5, 1984
For further information, please call (512) 475-2111.



Texas Department of Health Correction of Error

An adopted rule submitted by the Texas Department of Health contained an error as published in the August 21, 1984, issue of the *Texas Register* (9 TexReg 4499). Section 61.3(d)(3)(C) should read:

(C) Inpatient dialysis treatments will be reimbursed at the rate of outpatient dialysis for the geographic area

Texas Health Facilities Commission Applications Accepted for Amendment, Declaratory Ruling, and Notices of Intent

Notice is hereby given by the Texas Health Facilities Commission of applications accepted as of the date of this publication. In the following list, the applicant is listed first, file number second, the relief sought third, and a description of the project fourth. DR indicates declaratory ruling; AMD indicates amendment of previously issued commission order; CN indicates certificate of need; PFR indicates petition for reissuance; NIE indicates notice of intent to acquire major medical equipment; NIEH indicates notice of intent to acquire existing health care facilities; NIR indicates notice of intent regarding a research project; NIE/HMO indicates notice of intent for exemption of HMO-related project; and EC indicates exemption certificate.

Should any person wish to become a party to any of the previously stated applications, that person must file a proper request to become a party to the application within 15 days after the date of this publication of notice. If the 15th day is a Saturday, Sunday, state or federal holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, state or federal holiday. A request to become a party should be mailed to the chair of the commission at P.O. Box 50049, Austin, Texas 78763, and must be received at the commission no later than 5 p.m. on the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to any of these applications must meet the criteria set out in 25 TAC §515.9. Failure of a party to supply the necessary information in the correct form may result in a defective request to become a party.

Amburg, Inc., and Medical Care International, Inc., (formerly known as Medical 21 Corporation) for Southwest Houston Surgical Center, Houston
AS82-1231-317A(082484)

CN/AMD—Request for an extension of the completion deadline from September 1, 1984, to October 30, 1984, in Certificate of Need AS82-1231-317, as amended by Certificate of Need AS82-1231-317A(010984), which authorized the certificate holder to establish a freestanding ambulatory

surgical center in 6,000 square feet of leased and renovated space in southwest Houston.

Harris County Hospital District for Ben Taub General Hospital, Jefferson Davis Hospital, and North-Northeast Hospital, Houston
AH83-1025-223A(080784)

CN/AMD—Request for an increase in the total project cost from \$303,653,650 to \$333,812,000 in Certificate of Need AH83-1025-223, which authorized the certificate holder to terminate services at the existing Ben Taub General Hospital facility and Jefferson Davis Hospital facility and to construct two new hospital facilities, a parking garage, and a service facility.

Victoria Outpatient Diagnostic Clinic, Ltd.,
Victoria
AO84-0828-545

NIE—Request for a declaratory ruling that a certificate of need is not required for Victoria Outpatient Diagnostic Clinic, Ltd., to purchase and operate a 0.5 Tesla magnetic resonance imaging system with a multiimager camera and computer system. The equipment will be located at Victoria Outpatient Diagnostic Clinic, 115 Medical Drive, Victoria, and utilized on an outpatient basis and for inpatients on a temporary basis as provided by commission rules.

Fort Worth Radiological Corporation/
Neurodiagnostic CAT San Venture,
Fort Worth
AO84-0828-546

NIE—Request for a declaratory ruling that a certificate of need is not required for Fort Worth Radiological Corporation/Neurodiagnostic CAT Scan Venture to purchase a General Electric 8800 scanner. The proposed equipment will be located in an outpatient privately owned radiology office at 815 Pennsylvania Avenue, Fort Worth, and will be utilized on an outpatient basis and for inpatients on a temporary basis as provided by commission rules.

Issued in Austin, Texas, on September 5, 1984.

TRD-849100 John R. Neel
General Counsel
Texas Health Facilities
Commission

Filed: September 5, 1984

For further information, please call (512) 475-6940.

Petition for Reissuance of Certificate of Need

Notice is hereby given by the Texas Health Facilities Commission of an application (including a general project description) for petition of reissuance of certificate of need which has been filed with the commission.

The commission may require a hearing on a petition for reissuance of certificate of need when it is determined that good cause exists for such a hearing. A request for a hearing on a petition for reissuance of certificate of need must

be submitted to the commission within 15 days after publication of notice and show reason why a hearing should be held. Requests for a hearing are to be mailed to the chairperson of the commission, P.O. Box 50049, Austin, Texas 78763, and must be postmarked no later than the day prior to the last day allowed for filing requests for hearing.

The petition will be approved only if the commission determines that it qualifies under the criteria of Texas Civil Statutes, Article 4418h, §3.13, and 25 TAC §§509.81-509.85 and §§513.51-513.53.

In the following petition, the applicant is listed first, the file number second, and the relief sought and description of the project third.

Ganot Corporation and Beverly Enterprises for
Corpus Christi Nursing Center, Corpus Christi
AN83-0728-068R(082484)

PFR—Petition for reissuance of Certificate of
Need AN83-0728-068, which authorized the certificate holder to offer skilled nursing services through the reclassification of 22 ICF-III beds to skilled at Corpus Christi Nursing Center, 5607 Everhart, Corpus Christi.

Issued in Austin, Texas, on September 5, 1984.

TRD-849101 John R. Neel
 General Counsel
 Texas Health Facilities
 Commission

Filed: September 5, 1984
For further information, please call (512) 475-6940.

Texas Department of Human Resources Correction of Consultant Proposal Request

The Texas Department of Human Resources (DHR) is correcting the request for proposals for consultant services to perform psychological and development testing in several DHR regions as published in the August 24, 1984, issue of the *Texas Register* (9 TexReg 4603).

The contact person for DHR Region 10 was omitted in the published request. The contact person for Region 10 is Tom Milstead, P. O. Box 767, 202 East Pillar, Nacogdoches, Texas 75961, (409) 569-7931, ext. 298.

Issued in Austin, Texas, on September 4, 1984.

TRD-849078 Marlin W. Johnston
 Commissioner
 Texas Department of Human
 Resources

Filed: September 4, 1984
For further information, please call (512) 450-3766.

Office of Public Utility Counsel Public Meeting

The Citizens' Advisory Committee of the Office of Public Utility Counsel (OPC) will meet at 9:30 a.m. on Friday, September 14, 1984, in Suite 120, 8140 Mopac, Westpark III, Austin. The meeting agenda includes discussions on general guidelines for the committee and public utility issues affecting residential consumers.

For additional information, contact Brenda Sevier at (512) 345-9900.

Issued in Austin, Texas, on September 4, 1984.

TRD-849098 Brenda Sevier
 Business Manager
 Office of Public Utility Counsel

Filed: September 5, 1984
For further information, please call (512) 345-9900.

Texas Water Commission Applications for Waste Disposal Permits

Notice is given by the Texas Water Commission of public notices of waste disposal permit applications issued during the period of August 27-31, 1984.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 475-2678.

Listed is the name of the applicant and the city in which each facility is located; type of facility; location of the facility; permit number; and type of application—new permit, amendment, or renewal

Period of August 27-31, 1984

Uranium Resources, Inc., Kingsville; waste disposal well; approximately 19,320 feet from the east line and 12,300 feet from the south line of the "Rincon Del Grullo" Hrs. of Leonardo L. De La Garza Survey, Abstract 101, Kleberg County, approximately 10 miles southeast of Kingsville; WDW-236; new permit



Caithness Mining Corporation, Hebbronville; waste disposal well; approximately two miles north of Hebbronville on company property approximately 1,000 feet from the south line and 3,400 feet from the east line of the H. & G.N. Survey, Abstract 304, Duval County; WDW-185; amendment

Issued in Austin, Texas, on August 31, 1984.

TRD-849073

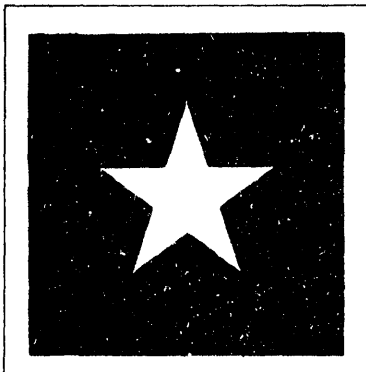
Mary Ann Hefner
Chief Clerk
Texas Water Commission

Filed: September 4, 1984

For further information, please call (512) 475-4514.

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