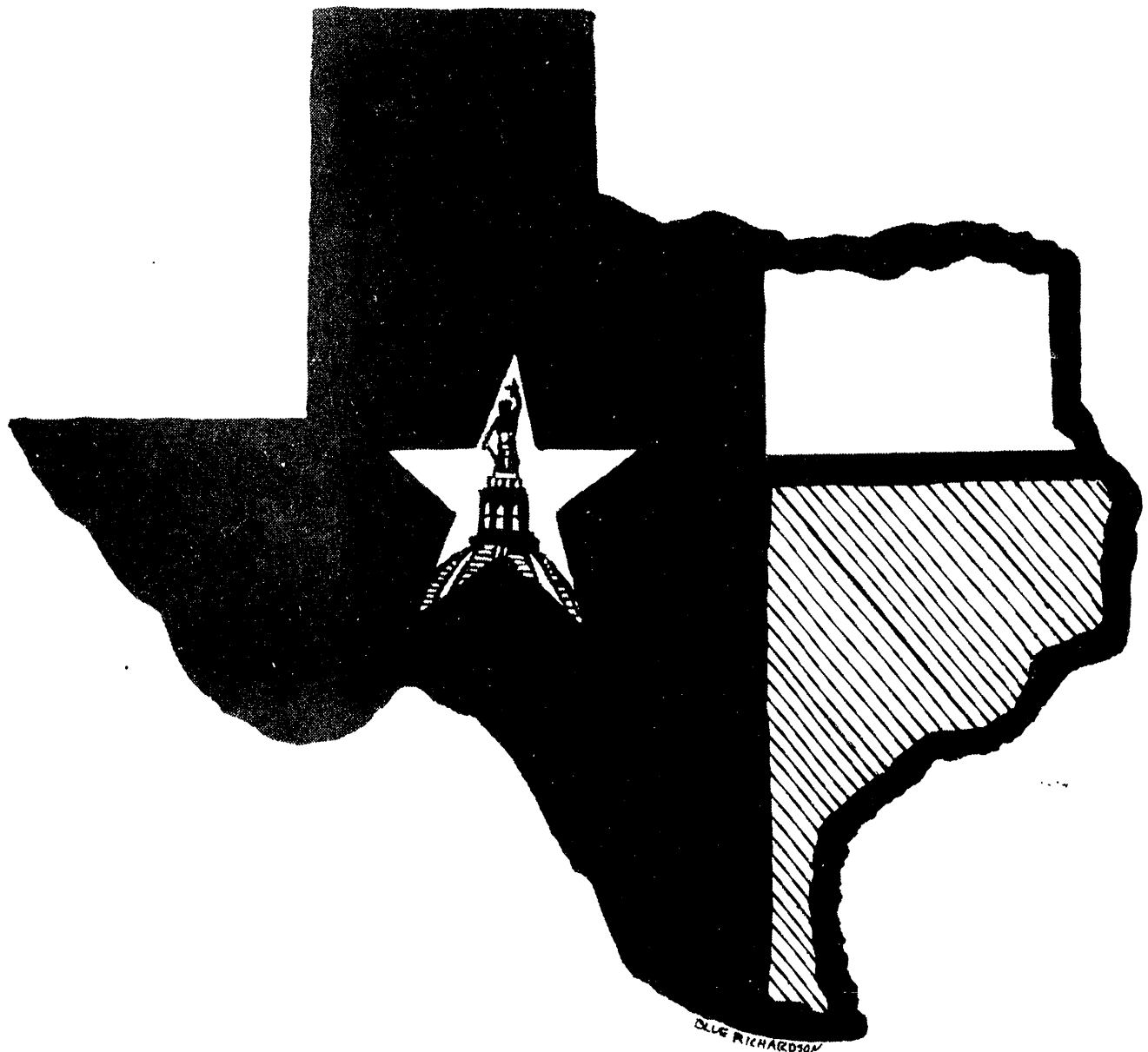


● Texas Register

Volume 12, Number 84, November 10, 1987

Pages 4151-4218



Highlights

The **Railroad Commission of Texas** adopts on an emergency basis a new section concerning gas to be produced and purchased ratably, in the Oil and Gas Division. Effective date - November 3, 1987 **page 4158**

The **Finance Commission of Texas** proposes a new section concerning an attachment, injunction, or execution against a state bank or its pro-

perty as a result of any suit prior to a final judgment in such cause. Earliest possible date of adoption - December 11, 1987 **page 4169**

The **Credit Union Department** proposes an amendment concerning minimum bond requirements. Effective date - November 11, 1987 **page 4169**

**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 1987 with the exception of January 6, September 1, December 1, and December 29 by the Office of the Secretary of State.

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Information Available: The 10 sections of the *Register* represent various facets of state government. Documents contained within them include:

- Governor—appointments, executive orders, and proclamations
- Secretary of State—summaries of opinions based on election laws
- State Ethics Advisory Commission—summaries of requests for opinions and opinions
- Attorney General—summaries of requests for opinions, opinions, and open records decisions
- Emergency Rules—rules adopted by state agencies on an emergency basis
- Proposed Rules—rules proposed for adoption
- Withdrawn Rules—rules withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the *Texas Register* six months after proposal publication date
- Adopted Rules—rules adopted following a 30-day public comment period
- Open Meetings—notices of open meetings
- In Addition—miscellaneous information required to be published by statute or provided as a public service

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

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

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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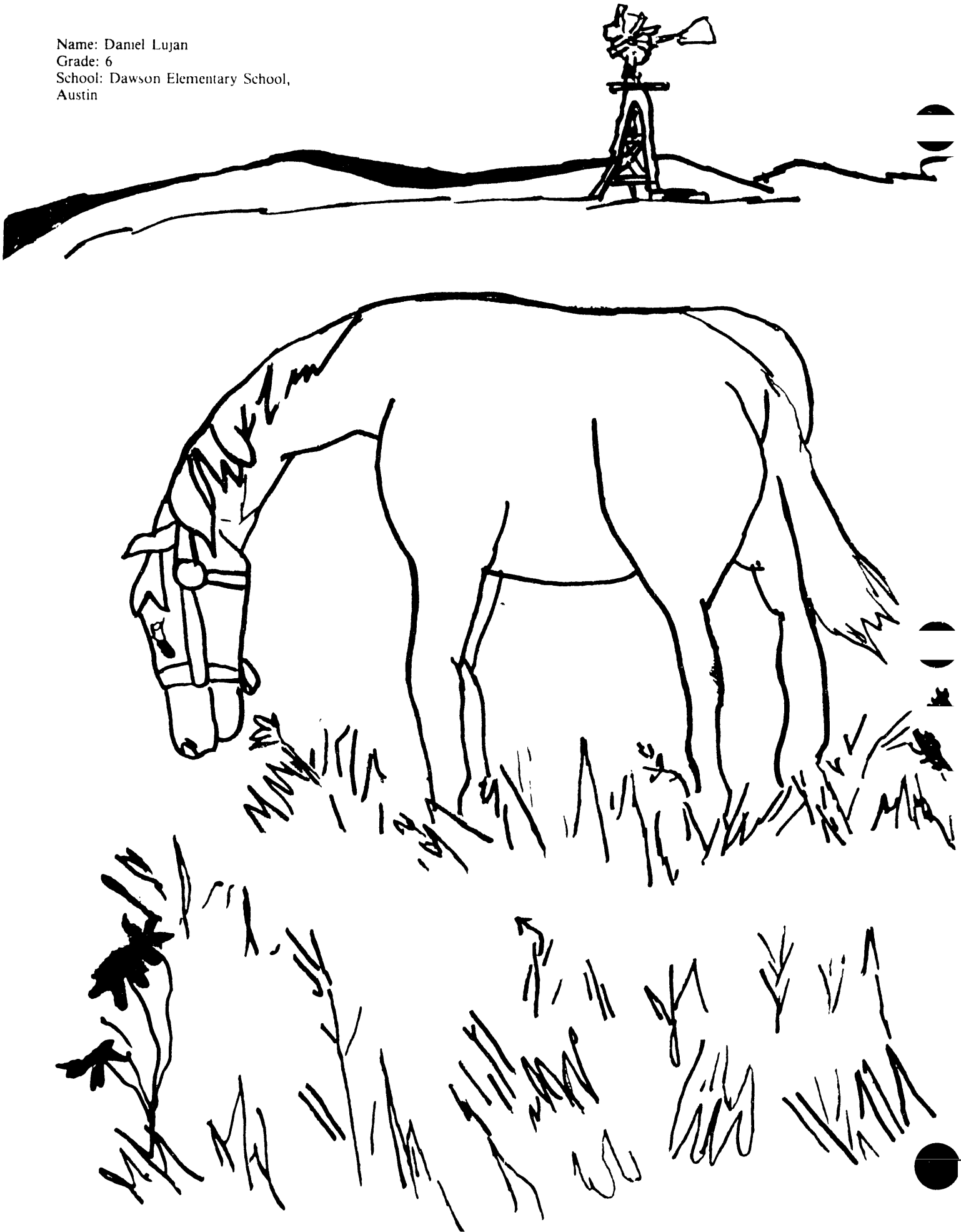
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Name: Daniel Lujan
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The

Governor

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1814.

Appointments Made November 2

To be a member of the **Lamar University System Board of Regents** for a term to expire October 4, 1993:

Amelie Cobb, 1385 Thomas Road, Beaumont, Texas 77706. Mrs. Cobb will be replacing Donna R. Davis of Bryan, whose term expired.

To be a member of the **Lamar University System Board of Regents** for a term to expire October 4, 1993:

Ted E. Moor, Jr., 755 South 11th Street, Beaumont, Texas 77701. Mr. Moor will be replacing George Dishman, Jr. of Beaumont, whose term expired.

Appointments Made November 3

To be a member of the **Special Committee on Organization of State Agencies** pursuant to House Concurrent Resolution 36, 70th Legislature, 1987, for a term at the pleasure of the governor:

Judy W. Walsh, 2000 MBank Tower, Austin, Texas 78701.

To be chairman of the **Special Committee on Organization of State Agencies** pursuant to House Concurrent Resolution 36, 70th Legislature, 1987, to serve at the pleasure of the governor:

Judy Walsh of San Antonio.

To be a member of the **Special Committee on Organization of State Agencies** pursuant to House Concurrent Resolution 36, 70th Legislature, 1987, for a term at the pleasure of the governor:

Richard F. Smith, 1500 Diamond Shamrock Tower, Dallas, Texas 75201.

To be a member of the **Special Committee on Organization of State Agencies** pursuant

to House Concurrent Resolution 36, 70th Legislature, 1987, for a term at the pleasure of the governor:

Phillip A. Aronoff, 1717 East Loop, Suite 400, Houston, Texas 77029.

To be a member of the **Special Committee on Organization of State Agencies** pursuant to House Concurrent Resolution 36, 70th Legislature, 1987, for a term at the pleasure of the governor:

David A. Hartman, 2244 Trawood Drive, Suite 210, El Paso, Texas 79935.

To be a member of the **Special Committee on Organization of State Agencies** pursuant to House Concurrent Resolution 36, 70th Legislature, 1987, for a term at the pleasure of the governor:

Richard P. Thomas, Governor's Office—State Affairs, Sam Houston Building, Austin, Texas 78711.

Issued in Austin, Texas, on November 3, 1987.

TRD-8709784

William P. Clements, Jr.
Governor of Texas

Issued in Austin, Texas, on November 3, 1987.

RD-8709783

William P. Clements, Jr.
Governor of Texas



Emergency

Rules

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

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

TITLE 16. ECONOMIC REGULATION

Part I. Railroad

Commission of Texas

Chapter 3. Oil and Gas

Division

Conservation Rules and Regulations

★16 TAC §3.34

The Railroad Commission of Texas adopts on an emergency basis an amendment to §3.34, concerning gas to be produced and purchased ratably. The amendment is to subsection (h)(3), regarding one of the requirements for qualifying an affiliate as a separate first purchaser. The amendment prohibits an offer to purchase gas in the special marketing program or for any release of gas for sale in the special marketing program to require modification of any existing contract provisions; and clarifies that volume-for-volume credits are to be credited against the contract from which gas is released for sale in the special marketing program. The Railroad Commission is adopting this amendment on an emergency basis to protect the state's public welfare interest in the ratable production of natural gas and the conservation of natural resources and prevention of waste of gas.

The amendment is adopted on an emergency basis under the Natural Resources Code, §§81.052, 85.202, 86.012, 86.041, 86.042, 111.083, 111.090, and 111.113, which provides the Railroad Commission of Texas with the authority to adopt sections for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Railroad Commission; to prevent waste of oil and gas in drilling and producing operations; to effectuate the provision and purposes of the Texas Natural Resources Code, Chapter 86; to conserve and prevent waste of gas; and to regulate common purchasers of oil and gas to achieve the prior purposes.

§3.34. *Gas to be Produced and Purchased Ratably.*

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

(h) If a first purchaser elects to qualify an affiliate as a separate first purchaser in §3.30(a)(1) of this title (relating to Gas Nominations Required) (Statewide Rule 30),

the first purchaser may designate the affiliate as a special marketing program. The special marketing program must comply with the following with respect to the nomination, purchase, and acceptance of delivery of natural gas:

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

(3) It is unreasonably discriminatory, and therefore prohibited, for the offer to purchase gas in the special marketing program, or for any release of gas for sale in the special marketing program to require release of any claims under any existing contract or **require modification of any existing contract provisions** other than a release of the gas for sale in the special marketing program or a requirement of a volume-for-volume basis for gas taken in the special marketing program to be credited against the [any existing] contract **from which gas is released for sale in the special marketing program**, if the credit provision is limited to the period of actual participation in the special marketing program. Nothing in this paragraph shall prohibit an operator of any well from offering terms inconsistent with these provisions. The making of an offer which is not accepted shall not affect rights under existing contracts.

(4)-(7) (No change.)

(i)-(l) (No change.)

Issued in Austin, Texas, on November 2, 1987.

TRD-8709791 Jim Nugent
Commissioner
Railroad Commission of
Texas

Effective date: November 3, 1987
Expiration date: March 3, 1988
For further information, please call
(512) 463-7149.



TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 501. Professional Conduct Definitions

★22 TAC §501.2

The Texas State Board of Public Accountancy adopts on an emergency basis the

repeal of §501.2, concerning definitions. The repeal is adopted on an emergency basis to allow for a new section, containing updated definitions to be utilized in the rules of professional conduct, to be adopted on an emergency basis.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to definitions used in the rules of professional conduct.

§501.2. *Definitions.*

Issued in Austin, Texas, on October 30, 1987.

TRD-8709706 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.



General Provisions

★22 TAC §501.2

The Texas State Board of Public Accountancy adopts on an emergency basis new §501.2, concerning definitions. The new section is adopted on an emergency basis to conform with national standards as set out by the National Association of State Boards of Accountancy, and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to applicability of the rules of professional conduct.

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

Act—The Public Accountancy Act of 1979, as amended, Texas Civil Statutes, Articles 41a-1, 1981.

Advertisement—A message which is transmitted to multiple persons by or at the direction of, a certificate or registration holder and which has reference to the availability of the certificate or license holder to perform professional services. If messages are transmitted orally or by any written or electronic medium, they must be recorded, transcribed, or otherwise preserved. The message must be in identical form. In the case of transmissions in written form (letter or postcard), salutations are considered a part of the message and must be in identical form.

Board—The Texas State Board of Public Accountancy.

Certificate or registration holder—The holders of all currently valid:

(A) certificates issued to individuals who have been awarded the designation certified public accountant by the board pursuant to the Act or pursuant to corresponding provisions of a prior public accountancy Act; and

(B) registrations with the board for the practice of public accounting in this state issued to:

(i) individuals registered as public accountants under the Public Accountancy Act of 1945;

(ii) individuals registered under the Act, §14;

(iii) partnerships qualified under the Act or prior Acts;

(iv) professional corporations qualified under the Act or prior Acts; and

(v) offices established or maintained in this state for the practice of public accounting by a certified public accountant or partnership or professional corporation of certified public accountants, or by a public accountant or a partnership or professional corporation of public accountants, or by an individual registered under of the Act, §14.

Client—The person or entity which retains a certificate or registration holder for the performance of professional services. The term "client" shall be deemed to include any person or entity upon whose financial statements the certificate or registration holder is retained to report or opine, whether or not this is the same person or entity which retains the certificate or registration holder.

Competitive bid—Any communication by a certificate or registration holder which is a proposal, other than an advertisement or a fee estimate, to a prospective client to perform professional services when:

(A) such proposal refers to the

compensation to be charged or received, whether referred to as a lump sum, a maximum or minimum amount, or any form of unit price, including per diem or per hour rates with or without a maximum, minimum, or average sum; and

(B) the proposal is given with the knowledge that similar proposals are being sought concurrently from one or more other certificate or registration holders. The fact that a certificate or registration holder is invited to make a proposal by a person not already a client is indicative that similar proposals are being invited from other certificate or registration holders, and it shall be incumbent upon the certificate or registration holder to ascertain by direct inquiry whether other proposals have been or will be invited.

Contingent fee—Compensation for the performance of services, payment of which, or the amount of which, is contingent upon the finding, or results of such services.

Fee estimate—Any written communication by way of which a certificate or registration holder provides to a prospective client, at his or its request, an estimate of the charges proposed by the certificate or registration holder for specific services and which clearly states:

(A) that the amount quoted is an estimate and that the certificate or registration holder will not be bound to provide the subject services for the estimated amount;

(B) the estimated number of people by classification to be involved in performing the work and the range of education and experience in each classification; and

(C) the estimated time to be required for the engagement by personnel classification and the anticipated completion date.

Financial statements—Statements and footnotes related thereto that purport to show actual or anticipated financial position which relates to a point in time, or results of operations, cash flow, or changes in financial position which relate to a period of time, on the basis of generally accepted accounting principles or another comprehensive basis of accounting. The term includes specific elements, accounts, or items of such statements, but does not include incidental financial data included in management advisory services reports to support recommendations to a client, nor does it include tax returns and supporting schedules.

Firm—A proprietorship, partnership, or professional corporation engaged in the practice of public accountancy.

He, his, him—Masculine pronouns when used in this chapter also include the feminine and the neuter.

Holding out to the public as a licensee—As that term is used in the definition of practice of (or practicing) public accountancy, any representation of the fact that a person holds a certificate or registration made in

connection with an offer to perform or performance of professional services for the public. Any such representation is presumed to invite the public to rely upon the professional skills implied by the certificate or registration in connection with the professional services offered to be performed. For purposes of this definition, a representation shall be deemed to include any oral or written communication conveying the fact that the person holds a certificate or registration, including, without limitation, the use of titles or legends displayed in letterheads, business cards, office doors, advertisements, and listings. Holding out to the public does not include:

(A) the display of the original of a currently valid certificate or registration unless a currently-valid license also is displayed;

(B) any representation by a faculty member in an educational institution that such faculty member holds a certificate or registration when the purpose of such representation reasonably relates to his functioning in the capacity of faculty member; or

(C) any representation in a book, article, or other publication or in any promotional advertising for such book, article, or other publication that the author holds a certificate or registration, provided that such book, article, or other publication does not offer the performance of services or the sale of any products (other than the book, article, or publication itself) of any kind.

Licensee—The holder of a license issued by the board to a certificate or registration holder pursuant to the Act, or pursuant to provisions of a prior law or prior public accountancy act.

Other compensation—Compensation received by a certificate or registration holder who is engaged in the practice of public accountancy for other than the performance of professional services, including compensation for the sale of products (other than work product of the certificate or registration holder) or for referral of products or services of others.

Person—An individual, sole proprietorship, partnership, corporation, or other entity.

Practice of (or practicing) public accountancy—The performance or offering to perform by a person holding himself out to the public as a certificate or registration holder, for a client or potential client, of one or more kinds of services involving the use of accounting or auditing skills, including the issuance of reports on financial statements, or of one of more kinds of management advisory or consulting services or the preparation of tax returns or the furnishing of advice on tax matters. The phrase "services involving the use of accounting or auditing skills," as used in this definition, includes the provisions of advice or recommendations in connection with the sale or offer for sale of products, when the advice or recommendations require or imply the possession of ac-

counting or auditing skills or expert knowledge in auditing or accounting.

Professional services—Any services performed or offered to be performed in the course of the practice of public accountancy.

Quality review—A study, appraisal, or review of one or more aspects of the professional work of a firm in the practice of public accountancy, by a person or persons who hold certificates and who are not affiliated with the firm being reviewed.

Report—When used with reference to financial statements, an opinion, report, or other form of language that states or implies assurance as to the reliability of any financial statements and that also includes or is accompanied by any statement or implication that the person or firm issuing it has special knowledge or competence in accounting or auditing. Such a statement or implication of special knowledge or competence may arise from use by the issuer of the report of names or titles indicating that he or it is an accountant or auditor or from the language of the report itself. The term "report" includes any form of language which disclaims an opinion when such form of language is conventionally understood to imply any positive assurance as to the reliability of the financial statements to which reference is made and/or special competence on the part of the firm issuing such language; and it includes any other form of language that is conventionally understood to imply such assurance and/or such special knowledge or competence.

Solicitation—A communication, other than an advertisement, by a certificate or registration holder which has reference to the performance or offer of performance of professional services for the persons to whom the message is transmitted.

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(512) 450-7066.

★ 22 TAC §501.3

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.3, concerning applicability. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conform-

ing them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to applicability of the rules of professional conduct.

§501.3. Applicability. All of the rules of professional conduct shall apply to and be observed by **certificate or registration holders** [licensees] engaged in the practice of public accountancy. Notwithstanding anything herein to the contrary, only §501.11 of this title (relating to Independence), [§501.12 of this title (relating to Integrity and Objectivity),] §501.25 of this title (relating to Mandatory Continuing Education), [§501.31 of this title (relating to Confidential Client Information),] §501.41 of this title (relating to Discreditable Acts), §501.42 of this title (relating to Acting through Others), and §501.48 of this title (relating to Responses), shall apply to and be required to be observed by **certificate or registration holders** [licensees] not in public practice.

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Professional Practices

★ 22 TAC §501.11

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §501.11 to allow a new section, which will more clearly define areas of impairment relating to independence, to be adopted on an emergency basis elsewhere in this issue.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to independence requirements of public accountancy practitioners.

§501.11. Independence.

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(512) 450-7066.

The Texas State Board of Public Accountancy adopts on an emergency basis new §501.11, concerning independence. The new section is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to independence requirement of public accountancy practitioners.

§501.11. Independence.

(a) A certificate or registration holder who is performing an engagement in which the certificate or registration holder will issue a report on financial statements of any client (other than a report in which lack of independence is disclosed) must be independent with respect to the client in fact and in appearance.

(b) Independence will be considered to be impaired if, for example, during the period of his professional engagement or at the time of issuing his report, the certificate or registration holder:

(1) had or was committed to acquire any direct or material indirect financial interest in the client;

(2) was a trustee of any trust or executor or administrator of any estate if such trust or estate had or was committed to acquire any direct or material indirect financial interest in the client;

(3) had any joint closely-held business investment with the client or any officer, director, partner, or principal stockholder thereof which was material in relation to the net worth of either the client or the certificate or registration holder; or

(4) had any loan to or from the client or any officer, director, partner, or principal stockholder thereof other than loans of the following kinds made by a financial institution under normal lending procedures, terms, and requirements:

(A) loans obtained by the certificate or registration holder which are not

material in relation to the net worth of the borrower;

(B) home mortgage; and

(C) other secured loans, except those secured solely by a guarantee of the certificate or registration holder.

(c) Independence also will be considered to be impaired if, during the period covered by the financial statements, during the period of the professional engagement, or at the time of issuing his report, the certificate or registration holder:

(1) was connected with the client as a promoter, underwriter, or voting trustee, a director or officer, or in any capacity equivalent to that of a member of management or of an employee;

(2) was a trustee for any pension or profit-sharing trust of the client;

(3) receives from a third party, or had a commitment to receive from the client or third party, with respect to services or products procured or to be procured by the client, other compensation which was material in relation to the aggregate normally-recurring fees charged annually to the client for reports on financial statements; or

(4) had a commitment from the client for a contingent fee unless the contingent fee was clearly immaterial in relation to the aggregate, normally recurring fees charged annually to the client for reports on financial statements.

(d) The examples of impaired independence described in subsections (b) and (c) of this section are not intended to be all-inclusive.

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(512) 450-7066.

★ 22 TAC §501.12

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.12, concerning integrity and objectivity. The amendment is adopted on an emergency basis to conform it to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to integrity and objectivity of public accountancy practitioners.

§501.12. *Integrity and Objectivity.* A certificate or registration holder [licensee] in the performance of professional services shall not [neither] knowingly misrepresent facts nor subordinate a judgment to [that of] others. In tax practice, however, a certificate or registration holder [licensee] may resolve doubt in favor of his [the] client as long as there is reasonable support for the position.

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★ 22 TAC §501.13

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.13, concerning payment of commissions. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to by public accountancy practitioners.

§501.13. *Payment of Commissions.* A certificate or registration holder [licensee] shall not pay a commission to a third party to obtain a client unless, prior to being engaged by such client, the certificate or registration holder [licensee] discloses to the client in writing the fact[,] and the amount[,] [and the circumstances of the payment] of such commission. This section does not apply to payments made to a certificate or registration holder [licensee] for the purchase of all, or a material part, of an accounting

practice, or to retirement payments to persons formerly engaged in the practice of public accountancy.

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★ 22 TAC §501.14

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.14, receipt of other compensation. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to receipt of other compensation by public accountancy practitioners.

§501.14. *Receipt of Other Compensation.*

(a) A certificate or registration holder [licensee] who receives or agrees to receive other compensation with respect to services or products recommended, referred, or sold by him to another person shall, no later than the making of such recommendation, referral, or sale, make the following disclosures in writing to such other persons:

(1) if the other person is a client—the nature, source, and amount of all such other compensation; or [and]

(2) if the other person is not a client—the nature[,] and source only [source and amount] of any such other compensation received from a third party.

(b) the disclosure required by this section shall be made regardless of the amount of other compensation involved.

(c) this section does not apply to payments received from the sale of all, or a material part, of an accounting practice, or to retirement payments to persons formerly engaged in the practice of public accountancy.

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★ 22 TAC §501.21

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.21, concerning competence. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to competence of public accountancy practitioners.

§501.21. Competence. A certificate or registration holder [licensee] shall not undertake any engagement for the performance of professional services which he cannot reasonably expect to complete with due professional competence, including compliance, where applicable, with §501.22 of this title (relating to [Professional] Auditing Standards [And Accounting Principles]), [and] §501.23 of this title (relating to Accounting Principles [Other Standards]), and §501.24 of this title (relating to Other Professional Standards).

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★ 22 TAC §501.22

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §501.22, concerning auditing

standards. The repeal is adopted on an emergency basis to allow a new section, which will provide updated definitions of terms utilized within the rules of professional conduct, to be adopted on an emergency basis elsewhere in this issue.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to definitions used in the rules of professional conduct.

§501.22. Auditing Standards.

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(512) 450-7066.



The Texas State Board of Public Accountancy adopts on an emergency basis new §501.22, concerning auditing standards. The new section is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to auditing standards applicable to public accountancy practitioners.

§501.22. Auditing Standards. A certificate or registration holder shall not permit his name to be associated with financial statements in such a manner as to imply that he is acting as an independent public accountant with respect to such financial statements, unless he has complied with applicable generally accepted auditing standards. Statements on auditing standards issued by the American Institute of Certified Public Accountants, auditing standards included in Standards for Audit of Government Organizations, Programs, Activities and Functions, issued by the United States General Accounting Office, and in other pronouncements having similar generally

recognized authority, are considered to be interpretations of generally accepted auditing standards, and departures from such pronouncements, where they are applicable, must be justified by those who do not follow them.

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★ 22 TAC §501.23

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §501.23, concerning accounting principles. The repeal is adopted on an emergency basis to allow a new section, which will state the accounting principles applicable to public accountancy practitioners, to be adopted on an emergency basis elsewhere in this issue.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules which will state accounting principles applicable to public accountancy practitioners.

§501.23. Accounting Principles.

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The Texas State Board of Public Accountancy adopts on an emergency basis new §501.23, concerning accounting principles. The new section is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to accounting principles governing public accountancy practitioners.

§501.23. Accounting Principles. A certificate or registration holder shall not issue a report asserting that financial statements are presented in conformity with generally accepted accounting principles if such financial statements contain any departure from such accounting principles which has a material effect on the financial statements taken as a whole, unless the certificate or registration holder can demonstrate that by reason of unusual circumstances the financial statements would otherwise have been misleading. In such a case, the certificate or registration holder's report must describe the departure, the approximate effects thereof, if practicable, and the reasons why compliance with the principle would result in a misleading statement. For purposes of this section, generally accepted accounting principles are considered to be defined by pronouncements issued by the Financial Accounting Standards Board and its predecessor entities and similar pronouncements issued by other entities having similar generally recognized authority.

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(512) 450-7066.



★ 22 TAC §501.24

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §501.24, concerning forecasts. The repeal is adopted on an emergency basis to allow a new section, which will clearly state the other professional standards applicable to public accountancy professionals, to be adopted on an emergency basis elsewhere in this issue.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules and other professional standards applicable to public accountancy practitioners.

§501.24. Forecasts.

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★ 22 TAC §501.24

The Texas State Board of Public Accountancy adopts on an emergency basis new §501.24, concerning other professional standards. The new section is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to other professional standards required to be met by public accountancy practitioners.

§501.24. Other Professional Standards. A certificate or registration holder in the performance of management advisory services or accounting and review services, shall conform to the professional standards applicable to such services. For purposes of this section, such professional standards are considered to be defined by statements on management advisory service and statements on standards for accounting and review services, respectively, in each instance issued by the American Institute of Certified Public Accountants, and by similar pronouncements by other entities having similar generally recognized authority.

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★ 22 TAC §501.25

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.25, concerning mandatory continuing education. The amendment is adopted on an emergency basis

to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to mandatory continuing education requirements.

§501.25. Mandatory Continuing Education.

(a) A certificate or registration holder [licensee] engaged in the practice of public accountancy shall comply with §523.62 of this title (relating to Mandatory Continuing Education Reporting) and §523.63 of this title (relating to Mandatory Continuing Education Attendance).

(b) A certificate or registration holder [licensee] not engaged in public practice shall comply with §523.62 of this title (relating to Mandatory Continuing Education Reporting).

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(512) 450-7066.



Client Records

★ 22 TAC §501.31

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §501.31, concerning confidential client communications, to be adopted on an emergency basis elsewhere in this issue.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to confidential client communications.

§501.31. Confidential Client Information.

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(512) 450-7066.



The Texas State Board of Public Accountancy adopts on an emergency basis new §501.31, concerning confidential client communication. The new section is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to confidential client communication.

§501.31. Confidential Client Communications. Except by permission of the client, or the heirs, successors, or personal representatives of the client, a certificate or registration holder or any partner, officer, shareholder, or employee of a certificate or registration holder shall not voluntarily disclose information communicated to him by the client relating to, and in connection with, professional services rendered to the client by the certificate or registration holder. Such information shall be deemed confidential, provided, however, that nothing herein shall be construed as prohibiting the disclosure of information required to be disclosed by the standards of the public accounting profession in reporting on the examination of financial statements or as prohibiting disclosures in court proceedings, in investigations or proceedings under the Act, §21 and §22, in ethical investigations conducted by private professional organizations, or in the course of quality reviews.

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(512) 450-7066.

★22 TAC §501.32

The Texas Board of Public Accountancy adopts on an emergency basis an amendment to §501.32, concerning records. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules relating to records utilized in the performance of public accounting.

§501.32. Records.

(a) Upon request, regardless of the status of the client or former client's account, a **certificate or registration holder** [licensee] shall provide to the client or former client any accounting or other records belonging to, or obtained from or on behalf of, the client which the **certificate or registration holder** [licensee] removed from the client's premises or received on behalf of the client, but the **certificate or registration holder** [licensee] may make and retain copies of such documents when they form the basis for work done by him. For a reasonable charge, a **certificate or registration holder** [licensee] shall furnish to his client or former client, upon request made within a reasonable time after original issuance of the document in question:

- (1) (No change.)
- (2) a copy of any report or other document issued by the **certificate or registration holder** [licensee] to or for such client;
- (3) a copy of the **certificate or registration holder's** [licensee's] working papers, to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client.

(b) Working papers developed by a **certificate or registration holder** [licensee] during the course of a professional engagement as a basis for, and in support of, an accounting, audit, consulting, tax, or other professional report prepared by the **certificate or registration holder** [licensee] for a client, shall be and remain the property of the **certificate or registration holder or holders** [licensee or licensees] who developed the working papers.

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Advertising and Soliciting

★22 TAC §501.41

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.41, concerning discreditable acts. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy the authority to promulgate rules of professional conduct relating to discreditable acts relating to public accounting practitioners.

§501.41. Discreditable Acts. A **certificate or registration holder** [licensee] shall not commit any act that reflects adversely on his fitness to engage in the practice of public accountancy.

Issued in Austin, Texas, on October 30, 1987.

TRD-8709742 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.



★22 TAC §501.42

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.42, concerning acting through others. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section.

tion and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy the authority to promulgate rules of professional conduct relating to the restriction in acting through others in the practice of public accountancy.

§501.42. Acting through Others. A **certificate or registration holder** [licensee] shall not permit others to carry out on his behalf, either with or without compensation, acts which, if carried out by the **certificate or registration holder** [licensee], would place him in violation of these rules of professional conduct.

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TRD-8709743 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
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For further information, please call
(512) 450-7066.



★ 22 TAC §501.43

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.43, concerning advertising. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy the authority to promulgate rules of professional conduct relating to advertising in the practice of public accountancy.

§501.43. Advertising.

(a) A **certificate or registration holder** [licensee] shall not use or participate in the use of:

(1) any communication (written, oral, or electronic) having reference to the **certificate or registration holder's** [licensee's] professional services, which contains a false, fraudulent, misleading, deceptive, or unfair statement or claim; nor

(2) any form of communication having reference to the **certificate or registration holder's** [licensee's] professional services, which is accomplished or accompanied by coercion, duress, compulsion, intimidation, threats, overreaching, or vexatious or harassing conduct.

(b) (No change.)

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TRD-8709744 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.



★ 22 TAC §501.44

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.44, concerning soliciting. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to soliciting by public accounting practitioners.

§501.44. Soliciting.

(a) A **certificate or registration holder** [licensee] may make a solicitation if and only if:

(1) the solicitation is made to a person who is at that time a client of the **certificate or registration holder** [licensee];

(2) (No change.)

(3) the solicitation is made to a person seeking to secure the performance of professional services currently not being provided by another **certificate or registration holder** [licensee].

(b) A **certificate or registration holder**

[licensee] making a solicitation shall have the burden of ascertaining and proving that such solicitation meets the criteria of one or more parts of subsection (a) of this section.

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TRD-8709745 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066



★ 22 TAC §501.45

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.45, concerning competitive bidding. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to competitive bidding in the practice of public accountancy.

§501.45. Competitive Bidding.

(a) **Certificate or registration holders** [Licensees] shall have the right to engage in competitive bidding on contracts or engagements for professional services except as stated in this section.

(b) (No change.)

(c) Contracts or engagements for the preparation of or opinion on any financial statement which is or can be used by or given to a person **other than the person whose financial statements are being reported** [or entity not a party to the contract or engagement] for the purpose of inducing reliance thereon may not be competitively bid. This prohibition does not apply to:

(1) services for entities having sales or other revenues for the most recent complete fiscal year of not more than \$300,000 (adjusted on the first day of each calendar year by the percent change from January 1, 1979, in the Consumer Price Index for All Urban Consumers, published by the Department of Labor) **unless the opinion and/or financial statements are used in a public offering of securities;**

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

Issued in Austin, Texas, on October 30, 1987.

TRD-8709746 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.46

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.46, form of practice. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to form of practice to be utilized in the practice of public accountancy.

§501.46. *Form of Practice.* A certificate or registration holder [licensee] may practice public accountancy only in a proprietorship, a partnership, or a professional corporation organized in accordance with the Texas Professional Corporation Act, or as an employee of one of these entities.

Issued in Austin, Texas, on October 30, 1987.

TRD-8709747 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.47

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §501.47, concerning firm names. The repeal is adopted on an emergency basis to allow a new section, which will provide guidelines for the use of firm names, to be adopted on an emergency basis elsewhere in this issue.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to firm names which may be utilized by public accountancy practitioners.

§501.47. *Firm Names.*

Issued in Austin, Texas, on October 30, 1987.

TRD-8709748 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.47

The Texas State Board of Public Accountancy adopts on an emergency basis new §501.47, concerning firm names. The new section is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to firm names to be utilized in the practice of public accountancy.

§501.47. *Firm Names.*

(a) No certificate or registration holder shall engage in the practice of public accountancy using a professional or firm name or designation that includes descriptive words relating to the quality of services offered or that is misleading about the legal form of the firm, or about the persons who are partners, officers, or shareholders of the firm, or about any other matter, provided, however, that names of one or more former partners or shareholders may be included in the name of a firm or its successor.

(b) A professional or firm name or designation shall not be considered to be misleading solely because it contains words describing the geographical area in which the services are offered and/or words describing the type of services actually being performed by licensees who are owners, partners, officers, or shareholders of the firm.

(c) A professional or firm name or designation will be considered to be misleading if:

(1) the name contains a misrepresentation of facts;

(2) the name is likely to mislead or deceive because it fails to make full disclosure of relevant facts;

(3) the name is intended or likely to create false or unjustified expectations of favorable results;

(4) the name implies educational or professional attainment or licensing recognition of the firm and/or of its owners, partners, or shareholders which are not supported in fact;

(5) the name of the firm that is incorporated does not include corporation, incorporated, professional corporation, or company, or in each case, an abbreviation thereof, as a part of the firm name, the words "professional corporation" or "P.C." are not included with the firm name each time it is used;

(6) the name includes the designation "and company" or "and associates" or abbreviations thereof unless there are at least two licensees involved in the practice;

(7) the name of a firm that is a partnership or professional corporation fails to contain the personal name or names of one or more individuals presently or previously a partner, officer, or shareholder thereof;

(8) the name of a firm that is a sole proprietorship fails to contain the name of the sole proprietor; or

(9) the name contains other representations or implications that in reasonable probability will cause a person of ordinary prudence to misunderstand or be deceived.

(d) A partner surviving the death or withdrawal of all other partners may continue to practice under a partnership name for up to two years after becoming a sole practitioner.

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TRD-8709749 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.

★ 22 TAC §501.48

The Texas State Board of Public Accountancy adopts on an emergency basis the repeal of §501.48, concerning responses. The repeal is adopted on an emergency basis to allow a new section, relating to responses by certificate and registration holders to board communications, to be adopted on an emergency basis elsewhere in this issue.

The repeal is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to responses by certificate and registration holders.

§501.48. Responses.

Issued in Austin, Texas, on October 30, 1987

TRD-8709750 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066



★ 22 TAC §501.48

The Texas State Board of Public Accountancy adopts on an emergency basis new §501.48, concerning responses. The new section is adopted on an emergency basis to conform it to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The new section is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a) which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to responses to board inquiries of certificate or registration holder.

§501.48. Responses. A certificate or registration holder shall respond in writing to any communication from the board requesting a response, within 30 days of the mailing of such communication by registered or certified mail to the last address furnished to the board by the certificate or registration holder

Issued in Austin, Texas, on October 30, 1987.

TRD-8709751 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.



Quality Control Review

★ 22 TAC §501.50

The Texas State Board of Public Accountancy adopts on an emergency basis an amendment to §501.50, concerning contract. The amendment is adopted on an emergency basis to conform to national standards as set out by the National Association of State Boards of Accountancy and to correct ambiguities between the definitions in this section and those found elsewhere in the substantive rules. Further, it is the board's contention that the promulgation of these rules of professional conduct will better protect and serve the public by conforming them to Federal Trade Commission guidelines, thus preventing the possibility of infringement on the public's rights and consequently anti-trust action against the board and the State of Texas.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Article 41a-1, §6(a), which provide the Texas State Board of Public Accountancy with the authority to promulgate rules of professional conduct relating to quality reviews performed by certified public accountants and public accountants.

§501.50. Contract.

(a) In order to protect the confidentiality of privileged information held by a certificate or registration holder [licensee] during the course of a quality review or peer review of the certificate or registration holder's [licensee's] practice, each such quality review shall be preceded by an agreement which provides, at a minimum:

(1) that the quality review will be conducted only by individuals, groups, or firms who are certificate or registration holders [licensees] under this Act or who hold a temporary permit issued by the board;

(2) that the individual, group, or firm conducting the review (the reviewer) is obligated to the certificate or registration holder [licensee] being reviewed and to the clients of the certificate or registration holder [licensee] being reviewed to maintain the confidentiality of all confidential client information;

(3) that all information which identifies or could lead to the identification of a client of the certificate or registration holder [licensee] being reviewed shall not be transmitted to any person without having been reviewed and approved for release by the certificate or registration holder [licensee] being reviewed;

(4) that all questions as to the transmission of particular client information which cannot be agreed upon by the reviewer and the certificate or registration holder [licensee] being reviewed shall be resolved by the client or clients involved.

(b) Confidential client information acquired by a certificate or registration holder [licensee] or temporary permit holder in the course of conducting a quality review shall

be protected by that certificate or registration holder [licensee] or temporary permit holder just as if it were confidential information of his own client, and shall be subject to the same rules of disclosure. A disclosure or information to the board for the purpose of a disciplinary complaint or disciplinary investigation shall not constitute an impermissible disclosure of confidential information.

Issued in Austin, Texas, on October 30, 1987.

TRD-8709752 Bob E. Bradley
Executive Director
Texas State Board of
Public Accountancy

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 450-7066.



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Practice and Procedure

★ 34 TAC §1.5

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §1.5, concerning initiation of a hearing. The amendment is adopted on an emergency basis to allow taxpayers requesting a redetermination hearing 60 days from the date of acknowledgement of the request to present supporting documents.

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

§1.5. Initiation of a Hearing.

(a) Redetermination of a deficiency or jeopardy determination. A taxpayer may request a redetermination hearing by sending the agency a written request for redetermination within the time limits provided by the determination. The limit is 30 days for a deficiency determination and 20 days for a jeopardy determination. The request is defined to include a statement of grounds which sets out in detail the reasons the taxpayer does not agree with the determination [and all supporting documentary evidence as required by subsection (b) of this section on audits begun on or after February 1, 1987]. If the statement of grounds is not received within the time limit or an extension of the statement of grounds due date granted prior to the expiration of the time limit, no hear-

ing will be commenced and the taxpayer will be required to pay the deficiency and request a refund before any objection to the assessment is considered.

(b) Required documentary evidence. If the auditor has requested documentary evidence on any issue relating to a tax assessment in an audit or if a taxpayer has indicated it has possession or control of documentary evidence on any issue relating to a tax assessment in an audit and such documentary evidence has not been provided by the taxpayer to the auditor, the auditor may request in writing that the taxpayer produce such documentary evidence for inspection. The written request must be made no later than two working days following the exit conference and shall identify with specificity the nature of the documents sought, including the schedule or examination to which the documents relate. If such documentary evidence is not submitted **within 60 days from which** [with] a petition for redetermination is **acknowledged** [and statement of grounds], such documentary evidence shall be inadmissible for purposes of the redetermination hearing in all audits begun on or after **November 1** [February 1], 1987.

(c) Refund of tax paid. Within the time limits provided in the Tax Code, §111.104(c), a taxpayer may request a refund of any tax, penalty, or interest paid to the comptroller by sending the agency a written request. The request is defined to include a statement of grounds which sets out in detail the grounds on which the claim is founded. If no grounds are stated as a basis for the claim, no hearing will be commenced and the claim will be denied. If the claim is granted as to any tax amount, the corresponding penalty and interest amount previously paid will be refunded.

(d) Hearings involving licenses and permits. The agency will initiate hearings concerning the denial, suspension, or revocation of licenses or permits by sending written notice to the taxpayer, including a statement of the matters asserted and procedures to be followed.

(e) **Request for redetermination.** If the request for a redetermination is based exclusively on a factual dispute for which documentary evidence is the best evidence and the documentary evidence requested in accordance with subsection (b) of this section [and] is not submitted **in accordance with subsection (b) on** [with the petition on] any audit begun on or after **November 1** [February 1], 1987, no hearing will be granted.

Issued in Austin, Texas, on November 2, 1987.

TRD-8709728 Bob Bullock
Comptroller of Public
Accounts

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 463-4004.



★ 34 TAC §1.7

The Comptroller of Public Accounts adopts on an emergency basis an amendment to §1.7, concerning content of statement of grounds. The amendment is adopted on an emergency basis to allow taxpayers requesting a redetermination hearing 60 days from the date of acknowledgement of the request to present supporting documents.

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

§1.7. Content of Statement of Grounds.

(a) The statement of grounds must contain the reasons the taxpayer disagrees with the action of the agency. The taxpayer must list and number the items, individually or by category, with which there is disagreement and list and number the factual and legal grounds why the tax should not be assessed or should be refunded. Any documentary evidence required under §1.5 of this title (relating to Initiation of a Hearing) to support each ground must be submitted **in accordance with subsection (b) of §1.5 of this title (relating to Initiation of a Hearing)** [with the statement of grounds]. [If it is not practical to submit the documentary evidence with the statement of grounds on audits begun on or after February 1, 1987, written authorization to allow examination elsewhere must be obtained from the legal services director prior to the filing deadline for the redetermination or refund request.] Legal authority should be cited if the taxpayer disagrees with the agency's interpretation of the law.

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

Issued in Austin, Texas, on November 2, 1987.

TRD-8709722 Bob Bullock
Comptroller of Public
Accounts

Effective date: November 2, 1987
Expiration date: March 2, 1988
For further information, please call
(512) 463-4004.



Proposed

Rules

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

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

TITLE 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 3. Banking Section

Subchapter B. General

★7 TAC §3.27

The Banking Section of the Finance Commission proposes new §3.27, concerning an attachment, injunction, or execution against a state bank or its property as a result of any suit, action, or proceeding in any court prior to a final judgment in such cause. No such attachment, injunction, or execution shall be effective before a final judgment has been entered. A final judgment is defined in the section to mean a judgment on the merits that is no longer subject to appeal, either because of disposition on appeal and conclusion of the appellate process, or because of the passage, without action, of the time for seeking appellate review.

Jorge A. Gutierrez, general counsel, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Gutierrez also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be the prevention of any potential bank insolvency situation and possibly unjust and premature regulatory action as a result of litigation, before a final judgment has been entered in any such litigation. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Jorge A. Gutierrez, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

The new section is proposed under Texas Civil Statutes, Article 342-113, which provide the Banking Section with the authority to promulgate rules and regulations not inconsistent with the Texas Constitution and statutes of this state.

§3.27. *Enforcement of a Final Judgment Against a State Bank.* No attachment, injunction, or execution against any state bank or its property shall be effective if issued before final judgment in any suit, action, or proceeding in any court. As used in this section, the term "final judgment" means a judgment on the merits which is no longer subject to examination on appeal, either because of disposition on appeal and conclusion of the appellate process, or because of the passage, without action, of the time for seeking appellate review.

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

Issued in Austin, Texas, on November 3, 1987.

TRD-8709762

Jorge A. Gutierrez
General Counsel
Department of Banking

Earliest possible date of adoption:
December 11, 1987
For further information, please call
(512) 479-1200



Part VI. Credit Union

Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Direction of Affairs

★7 TAC §91.506

The Credit Union Commission proposes an amendment to §91.506, concerning minimum bond requirements. The amendment sets forth proof of loss rider as part of the minimum bond requirements.

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

Mr. Hale also has determined that for each year of the first five years the sec-

tion is in effect the public benefit anticipated as a result of enforcing the section will be improved protection for the funds of Texas state chartered credit union members as a result of increased recoveries of audit expenses resulting from bond claims. The possible economic cost to individuals who are required to comply with the section as proposed will be negligible. The additional cost to the credit unions subject to the section depends on asset size, but the largest increase in cost, for those credit unions over \$20 million in assets, will be \$220 per year.

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

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

§91.506. *Director Meeting Fees and Bond Requirements.*

(a) (No change.)

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

(1) The following schedule sets forth the minimum requirements for bonds:

<u>Assets</u>	<u>Basic Minimum Coverage</u>	<u>Proof of Loss Rider</u>
\$ to \$ 500,000	Equal to Assets	<u>\$ 5,000</u> [\$ 2,000]
\$ 500,000 to \$ 1,000,000	Equal to Assets	<u>\$10,000</u> [\$ 5,000]
\$ 1,000,000 to \$ 5,000,000	\$1,000,000	<u>\$15,000</u> [\$10,000]
\$ 5,000,000 to \$10,000,000	\$2,000,000	<u>\$20,000</u> [\$10,000]
\$10,000,000 to \$20,000,000	\$3,000,000	<u>\$20,000</u> [\$15,000]
\$20,000,000 to \$50,000,000	\$4,000,000	<u>\$20,000</u> [\$15,000]
\$ OVER \$50,000,000	\$5,000,000	\$20,000

(2)-(6) (No change.)

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

Issued in Austin, Texas, on October 30, 1987.

TRD-8709797 John R Hale
Commissioner
Credit Union Department

Earliest possible date of adoption:
December 11, 1987

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



Loans

★7 TAC §91.701

The Credit Union Department proposes an amendment to §91.701, concerning loans. The amendment changes loans, both personal and real estate, to include their limitations, restrictions, and terms.

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

Mr. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a reduction in losses to credit unions resulting from unsound lending, greater flexibility in the terms of loans available to Texas credit union members, and improved operating flexibility for Texas state chartered credit unions. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Harry L. Elliott, Staff Services

Officer, 914 East Anderson Lane, Austin, Texas 78752-1699.

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

§91.701. Loans.

(a) **Nonpreferential treatment.** The rates, terms, conditions, and availability of any loan or line of credit made to, or endorsed or guaranteed by, any credit union official or employee or an immediate family member of any such individual shall not be more favorable than the rates, terms, conditions, and availability of comparable loans to other credit union members. [The board of directors may establish loan limitations and restrictions, not inconsistent with the law and these rules, relating to loan terms and amounts and applicable to all borrowers or to classes of borrowers; provided such loan restrictions and limitations shall be based upon financial factors and, in accordance with Federal Reserve Regulation B, shall not discriminate against any applicant:

[(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

[(2) because all or part of the applicant's income derives from any public assistance program; or

[(3) because the applicant has in good faith, exercised any right under the Consumer Credit Protection Act.]

(b) **Prohibited fees.** A credit union shall not make a loan or extend a line of credit if any commission, fee, or compensation other than salary is to be received by any credit union official or employee or an immediate family member of any such individual in connection with underwriting, insuring, procuring, servicing, or collecting the loan or line of credit. [Modification of an existing outstanding loan, whether by extension or renewal thereof, shall be evidenced by appropriate documentation retained in the credit union's files.]

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

(d)[(c)] Personal loans.

(1) Secured installment loans.

[(1) Loan terms. Credit unions may make personal loans to members, either secured or unsecured, for any lawful purpose. The maximum terms for such loans shall be 63 months from the date the loan was made unless specifically authorized elsewhere in this section.]

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

(B) Repayment periods may not exceed 123 months from the date the loan was made, except for manufactured home loans, including travel trailer loans, which may be made for periods up to 183 months.

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

[(2) Term loans. Interest shall be paid at least annually on all term loans.]

(2)[(3)] Insured and guaranteed loans. A credit union may make, subject only to any limitations imposed by the Texas Credit Union Act, Chapter 7 [without regard to the terms], any loan, in any amount, secured or unsecured, which is at least 90% [80%] insured or guaranteed as to both principal and interest by the State of Texas or the United States or any agency or instrumentality thereof.

(3) Unsecured installment loans.

(A) Credit unions may make loans to members which are not secured or not fully secured by a pledge of or security interest in personal or real property, for

terms not to exceed 63 months from the date the loan was made.

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

(4) Balloon payment loans. Credit unions may make loans under paragraphs (1) and (2) of this subsection to members which will not fully amortize through equal periodic payments over the term of the loan. Periodic payments no less frequent than annually are required which are at least equal to those which would amortize a conventional loan of equivalent amount within legal maturity limits, unless repayment of the loan within the scheduled term is reasonably assured by a third party insurer of acceptable financial quality. [Loans secured by shares, United States government bonds, or other funds on deposit or by insurance policies. Loans fully secured by a pledge of unrestricted or unencumbered shares and/or deposits in the credit union, or by an irrevocable assignment of a life insurance policy or savings account in another financial institution such as a bank, savings and loan association, or other credit union, may be made for a term not exceeding 123 months from the date the loan was made; provided, the cash surrender value of the insurance policies or the cash value of the shares, savings, or deposit accounts shall be sufficient at all times during the term of the loan to fully pay or satisfy the unpaid balance of the loan.]

(5) Term loans. Credit unions may make loans to members which are either single payment loans or provide for payments less frequent than monthly. Term loans, unless fully secured by shares and deposits in the credit union, must have a maturity of no longer than one year from the date of the loan. Interest shall be paid at least annually. The credit union's board of directors shall determine the criteria for the granting and renewing of term loans. [Manufactured home loans. Loans secured by a first lien in a manufactured home may be made for a term not to exceed 180 months from the date the loan was made.

(6) Motor homes and travel trailers. Loans secured by a first lien in a motor home or travel trailer may be made for a term not to exceed 123 months from the date the loan was made.

(7) Property improvement loans. If the proceeds of a loan are to be used exclusively for improvement of real property or the maintenance, repair, modernization, or equipment of real property, such loan may be made for a term not to exceed 180 months from the date the loan was made, provided that the credit union obtains a materialmen's and mechanic's lien to secure payment of the obligation pursuant to the applicable laws of this state, except loans made under paragraph (3) of this subsection.

(8) Other secured loans. Credit

unions may make loans to members (other than the special type loans set out herein) for periods not exceeding 123 months from the date the loan was made, when adequately secured by a pledge of, or security interest in, personal or real property, the fair market value of which can reasonably be expected to equal or exceed the unpaid balance of the loan at all times during the term of the loan. Loans granted under the provisions of this subsection may be made on real property without such loans being classed as real estate loans under subsection (d) of this section.]

(e)[(d)] Real estate loans.

(1) Authority to make real estate loans. Credit unions [with assets of \$500,000 or more,] may make real estate loans to members secured by a mortgage, deed of trust, or other instrument creating or constituting a [first and prior] lien on real estate. Additional security may also be taken by the credit union in connection with any such loan if deemed necessary and proper.

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

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

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

(D) (No change.)

(E) make a real estate loan, other than a real estate interim construction loan, unless:[]

[(i)] the credit union shall require the member-borrower to pay [monthly], in addition to payments of interest and principal, deposits to an escrow account for [an amount equal to one-twelfth of the] estimated annual taxes, assessments, insurance premiums, and other charges upon the real estate securing such loan. Such deposits shall be at the same frequency as payments of principal and interest, shall be in equal increments, and at the end of an annual period shall be sufficient [, to be held in an escrow account so as] to enable the credit union to pay such charges as they become due from the funds so received. The total of such [monthly] charges may be increased or decreased as is necessary for the payment of such charges. Every credit union shall keep a record of the amounts retained in each escrow account, submit an annual statement of the account to the borrower, and shall also keep a record of the status of taxes, assessments, insurance premiums, and other charges on all real estate securing its loans. The credit union may waive the escrow account requirement if an amount equivalent at least to the estimated annual insurance premium and annual taxes is maintained in

an [the share] account of the member-borrower at the credit union and that account is pledged to the credit union for the term of the loan and the loan is not in arrears or delinquent at any time, provided that the credit union is furnished annually with paid-stamped tax receipts from all applicable taxing authorities and certificates of insurance coverage signed by a qualified officer of the issuing company.[] or]

[(ii)] in lieu of the requirements for establishing escrow accounts for payment of taxes and/or insurance premiums, as required by clause (i) of this subparagraph, a credit union may require monthly payments (in addition to principal and interest payments), equal to one-twelfth of the estimated annual taxes and insurance premiums. Such additional payments shall be applied to the principal balance each month. The credit union shall then pay the annual taxes and insurance premiums when due and add the costs thereof to the principal amount of the loan on the dates payment is made. The credit union shall retain tax receipts and copies of the remittance (check or check voucher) in each individual loan file.]

(3) Requirements regarding loan transactions secured by other liens on real estate. The requirements for loans secured by liens on real estate other than first liens are the same as for those secured by first liens except as follows.

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

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

(C) The total of the credit union's loan and the loans secured by all prior liens cannot exceed 80% of the lesser of the purchase price (if the credit union's lien resulted from a purchase transaction) or appraised value.

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

(4)[(3)] Maximum real estate term. Credit union real estate loans are subject to the following additional terms and conditions.

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

purchase price or appraised value of the property, whichever is less. For nonpurchase money real estate loans secured by a first lien on improved residential property, the maximum loan amount is 80% of appraised value, and the maximum maturity is 243 months.

(B) On all real estate loans secured by improved nonresidential property, the maximum loan amount is 80% [90%] of the purchase price or appraised value of the property, whichever is less, and such loans shall be repaid, both as to interest and principal, within a period not exceeding 20 years from the date the loan is made. If such loans are insured by an agency of the United States government or by a private mortgage insurance company, the maximum loan amount is 95% of the purchase price or appraised value of the property, whichever is less.

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

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

(E) Total outstanding balances of all loans secured by real estate mortgages made in accordance with subsection (d) of this section by any credit union shall not exceed 25% of the outstanding shares and deposits of such credit union unless prior written approval to increase such limit is granted by the commissioner.

(4) Exceptions. Credit unions with assets under \$500,000 may, with prior written approval of the commissioner, make first mortgage real estate loans pursuant to this

section. Such written approval may be limited to individual loans.]

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

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

(f) Commercial loans.

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

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

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

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

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

(3) Terms and amounts.

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

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

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

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

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

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

(B) on which ultimate repayment is dependent on the sale or lease of real prop-

erty to an unknown purchaser or lessee;

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

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

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

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

(A) Classifications are defined as follows.

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

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

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

(B) Loans classified shall be reserved as follows:

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

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

(iii) substandard loans at 10% of outstanding amount unless other factors

(e.g., history of such loans at the credit union) indicate a greater or lesser amount is appropriated.

(g) Member business loans for credit unions insured by national credit union share insurance fund.

(1) Applicability of rule. This section applies only to credit unions which are insured by national credit union share insurance fund and is supplemental to the requirements of subsection (f) of this section.

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

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

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

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

(I) the member's primary residence;

(II) the member's secondary residence;

(III) one other such dwelling owned by the member;

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

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

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

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

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

(A) types of business loans to be made;

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

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

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

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

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

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

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

(I) interest rates and maturity limits for each type of member business loan to be made;

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

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

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

(6) Prohibited transactions.

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

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

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

Issued in Austin, Texas on October 30, 1987.

TRD-8709798

John R Hale
Commissioner
Credit Union Department

Earliest possible date of adoption:

December 11, 1987
For further information, please call
(512) 837 8236

Investments

★7 TAC §91.802

The Credit Union Department proposes an amendment to §91.802, concerning investments by credit unions. The Credit Union Commission finds that there is unwarranted risk to the credit union members' savings by the unregulated investment by credit unions in investment trusts. Such investments could result in an adverse effects on the credit union's retained earnings and reserves.

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

Mr. Hale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be sounder investment policies and practices. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

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

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

§91.802. *Other Investments.*

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

(c) Authorized activities.

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

(9) Investment trusts. A credit union may invest funds not used in loans to members in an investment trust established for investing directly or collectively in any authorized investment (a mutual fund that is organized as an investment trust may qualify under this provision). A credit union shall record each investment in an investment trust at the low of its cost or market value, determined at the end of each month, and net of all purchase and load fees.

(10) Government-sponsored enterprises. A credit union may invest in obligations of federal home loan banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Student Loan Marketing Association.

(d) Evidence of prudent investment practice. A credit union shall maintain files containing financial information adequate to demonstrate evidence of prudent business practice in exercising the investment powers granted under the Act and these sections. Additionally, the files shall contain evidence

of at least a semiannual review by the board of directors of the financial condition of any credit union depository.

(e) Reporting investment activities to the department. Whenever a credit union's total investments in securities having remaining maturities exceeding three years (from the reporting date) and in investment trusts (including mutual funds) which could invest in securities with remaining maturities in excess of three years (regardless of actual practice at any given time) exceed 50% of the credit union's reserves and undivided earnings (net of deductions used in calculating the estimated solvency ratio), the credit union shall file a report of the investments to the department on a form supplied by the department for this purpose within 15 days following each monthend in which the excess amount occurred. Such filing shall be by certified mail or other means of delivery that will assure prompt receipt by the department. A threshold level lesser or greater than 50% may be announced from time to time by the commissioner and shall become effective 30 days following publishing in the department's monthly newsletter to credit unions.

(f) Reporting investment activities to the board of directors. The board of directors shall be provided by the president a monthly comprehensive report of investment activities, including:

- (1) investments purchased and sold during the month;
- (2) unrealized market gains or losses compared to book value at monthend;
- (3) calculated yield to maturity (current yield on mutual funds) on each outstanding investment as of monthend;
- (4) net asset value (NAV) or market value of each marketable investment;
- (5) total book value of investments outstanding at monthend;
- (6) the total amount of investments having maturities exceeding three years and the ratio of such investments to total reserves and undivided earnings;
- (7) unrecorded and unreported obligations to buy or sell investments; and
- (8) amounts of investments, other than designated depositories, in other institutions which are not fully insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, national credit union share insurance fund, Texas Share Guaranty Credit Union, or federal or state governments or their agencies.

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

Issued in Austin, Texas, on October 30, 1987

TRD-8709799

Johr R. Hale
Commissioner
Credit Union
Department

Earliest possible date of adoption.

December 11, 1987

For further information, please call
(512) 837 9236

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**TITLE 16. ECONOMIC
REGULATION**
Part I. Railroad
Commission of Texas
**Chapter 9. Liquefied
Petroleum Gas Division**
Subchapter A. General
Applicability and Requirements

◆ ◆ ◆

★ 16 TAC §9.1

The Railroad Commission of Texas proposes an amendment to §9.1, concerning division headings. This amendment includes an explanation of what new proposed Division XIII of the LP-Gas safety rules applies to

Thomas D. Petru, director, LP-Gas Division, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section

Mr Petru also has determined that for each year of the first five years the section is in effect there will be no public benefit anticipated as a result of enforcing the section. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to C. Kingsbery Ottmers, Assistant General Counsel, Railroad Commission of Texas, LP-Gas Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

The amendment is proposed under the Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote or tend to promote the health, safety, and welfare of the general public.

§9.1. Application of Rules. The LP-Gas Division safety rules are intended to apply to the design, construction, location, and operation of liquefied petroleum gas systems, equipment, and appliances. These standards do not apply to marine terminals, natural gasoline plants, refineries, tank farms, gas manufacturing plants, plants engaged in processing liquefied petroleum gases, or to railroad loading racks used in connection with such establishments; provided that such standards shall apply to truck loading racks.

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

(14) **Division XIII. Division XIII**

applies to the installation or repair of LP-gas container(s), piping, or appliances in recreational vehicles.

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

Issued in Austin, Texas, on October 26, 1987.

TRD-8709704

Walter Earl Lilie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:

December 11, 1987

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

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Subchapter F. Division IV

★ 16 TAC §9.162

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Railroad Commission of Texas, 1701 North Congress Avenue, Austin, or in the Texas Register office, Room 5021, Sam Houston Building, 201 East 14th Street, Austin.)

The Railroad Commission of Texas, LP-Gas Division, proposes the repeal of §9.162, concerning smoking. The repeal eliminates the current section which does not establish a minimum distance. A new §9.162 is being simultaneously proposed which prohibits lighted materials within 25 feet of a transport or bobtail.

Thomas D. Petru, director, LP-Gas Division, has determined that for the first five-year period the proposed repeal 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 repeal.

Mr. Petru also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be the elimination of a safety rule which only prohibits smoking and does establish a minimum distance. There is no anticipated economic cost to individuals who are required to comply with the proposed repeal.

Comments on the proposal may be submitted to C. Kingsbery Ottmers, Assistant General Counsel, Railroad Commission of Texas, LP-Gas Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

The repeal is proposed under the Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote or tend to promote the health, safety, and welfare of the general public.

§9.162. *Smoking.*

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

Issued in Austin, Texas, on November 4, 1987

TRD-8709814

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

Earliest possible date of adoption:
December 11, 1987
For further information, please call
(512) 463-7008.

The Railroad Commission of Texas, LP-Gas Division, proposes new §9.162, concerning lighted materials prohibited. The new section establishes a definite distance requirement.

Thomas D. Petru, director, LP-Gas Division, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Petru also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be increased level of safety due to the additional prohibition against lighted materials within 25 feet of an LP-gas bobtail or transport. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to C. Kingsbery Ottmers, Assistant General Counsel, Railroad Commission of Texas, LP-Gas Division, P.O. Drawer 12967, Austin, Texas 78711-2967.

The new section is proposed under the Natural Resources Code, §113.051, which provides the Railroad Commission of Texas with the authority to promulgate rules and standards to be used in the LP-gas industry which promote or tend to promote the health, safety, and welfare of the general public.

§9.162. *Lighted Materials Prohibited.* No person may have lighted materials (i.e. cigarettes, cigars, pipes) within 25 feet of an LP-gas bobtail or transport.

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

Issued in Austin, Texas, on November 4, 1987.

TRD-8709815

Walter Earl Lillie
Special Counsel
Railroad Commission of
Texas

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December 11, 1987
For further information please call
(512) 463-7008

TITLE 22. EXAMINING
BOARDS
Part IX. Texas State Board
of Medical Examiners
Chapter 187. Procedure

★ 22 TAC §§187.1-187.52

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Medical Examiners, P.O. Box 13562, Austin, or in the Texas Register office, Room 503F, Sam Houston Building, 201 East 14th Street, Austin.)

The Texas State Board of Medical Examiners proposes the repeal of §§187.1-187.52, concerning procedure. The repeal covers all sections of the chapter on procedure. The repeal is necessary because the Texas State Board of Medical Examiners is extensively rewriting the chapter to reflect both new statutory changes and general updating. A new chapter is proposed simultaneously elsewhere in this issue.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, have determined that for the first five-year period the proposed repeals 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 repeals.

Ms. Davis also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing the repeals will be the removal of any outdated statutory provisions presently contained in the chapter. There is no anticipated economic cost to individuals who are required to comply with the proposed repeals.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. It is expected that a public hearing will be held at the board's November 30-December 3 meeting. More information may be had by contacting the office.

The repeals are proposed 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 the Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the Act

- §187.1. *Definitions.*
- §187.2. *Object of Rules.*
- §187.3. *Scope of Rules.*
- §187.4. *Filing of Documents.*
- §187.5. *Computation of Time.*
- §187.6. *Agreement to be in Writing.*
- §187.7. *Service in Nonrulemaking Proceedings.*
- §187.8. *Conduct and Decorum.*
- §187.9. *Classification of Parties.*
- §187.10. *Parties in Interest.*
- §187.11. *Appearances Personally or by Representative.*
- §187.12. *Classification of Pleadings.*
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- §187.14. *Examination by the Secretary.*
- §187.15. *Motions.*
- §187.16. *Amendments.*
- §187.17. *Incorporation by Reference of Agency Records.*
- §187.18. *Docketing and Numbering of Causes.*
- §187.19. *Licenses.*
- §187.20. *Contested Proceedings.*
- §187.21. *Personal Service.*
- §187.22. *Prehearing Conference.*
- §187.23. *Motions for Postponement, Continuance, Withdrawal, or Dismissal of Application or Other Matters before the Agency.*
- §187.24. *Joint Hearings.*
- §187.25. *Place and Nature of Hearings.*
- §187.26. *Presiding Officer.*
- §187.27. *Order of Procedure.*
- §187.28. *Reporters and Transcript.*
- §187.29. *Formal Exceptions.*
- §187.30. *Dismissal Without Hearing.*
- §187.31. *Rules of Evidence.*
- §187.32. *Documentary Evidence and Official Notice.*
- §187.33. *Prepared Testimony.*
- §187.34. *Limitations on Number of Witnesses.*
- §187.35. *Exhibits.*
- §187.36. *Offer of Proof.*
- §187.37. *Depositions.*
- §187.38. *Subpoenas.*
- §187.39. *Proposals for Decision.*
- §187.40. *Filing of Exceptions, Briefs, and Replies.*

- §187.41. *Form and Content of Briefs, Exceptions, and Replies.*
- §187.42. *Oral Argument.*
- §187.43. *Final Decisions and Orders.*
- §187.44. *Administrative Finality.*
- §187.45. *Motions for Rehearing.*
- §187.46. *Rendering of Final Decision or Order.*
- §187.47. *The Record.*
- §187.48. *Show Cause Orders and Complaints.*
- §187.49. *Ex Parte Consultations.*
- §187.50. *Amendments to Rules Subsequent to January 1, 1976.*
- §187.51. *Effective Date.*
- §187.52. *Petition for Adoption of a Rule.*

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

issued in Austin, Texas, on November 3, 1987

TRD-8709790 G. V. Brindley, Jr.
 Executive Director
 Texas State Board of
 Medical Examiners

Earliest possible date of adoption
 December 11, 1987

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



Subchapter A. General Provisions

★ 22 TAC §§187.1-187.16

The Texas State Board of Medical Examiners proposes new §§187.1-187.36, concerning procedure. The new chapter conforms with recent statutory changes which should be reflected in the board's sections. The new sections also generally update the board's procedure. The repeal of the existing chapter is proposed simultaneously elsewhere in this issue.

Florence Allen, business manager, and Jean Davis, Texas Register liaison, have determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the sections.

Ms. Davis also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the new sections will contain all updates, including those of a statutory nature. This should help all those having procedural dealings before the board. There is no anticipated economic cost to individuals who are required to comply with the proposed sections.

Comments on the proposal may be submitted to Jean Davis, P.O. Box 13562, Austin, Texas 78711. A public hearing is expected sometime between November 30 and December 3. More information can be obtained from the board office around mid-November.

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

§187.1. *Definitions.* The following words and terms, when used in this chapter, shall have the following meanings, unless the contents clearly indicate otherwise.

Act—The Medical Practice Act, Texas Civil Statutes, as amended, Article 4495b.

APTRA—The Administrative Procedures and Texas Register Act, Texas Civil Statutes, Article 6252-13a.

Applicant or petitioner—A party seeking a license or rule from the board.

Board—The Texas State Board of Medical Examiners.

Board member—One of the members of the board, appointed pursuant to the Act, §2.03, and qualified under the Act, §2.05.

Contested case—A proceeding, including but not restricted to, licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for adjudicative hearing.

Documents—Applications, petitions, complaints, motions, protests, replies, exceptions, answers, notices, or other written instruments filed with the board in a licensure proceeding or by a party in a contested case.

Executive director—The incumbent of the position designated executive director in accordance with the Act, §2.09(b) or the secretary-treasurer of the board if and whenever the executive director is unavailable.

Hearings examiner or examiner—An attorney or a physician, duly licensed in the State of Texas, appointed by the board to perform the duties specified in §187.26 of this title (relating to Hearing Examiners).

License—Includes the whole or part of any board permit, certificate, approval, registration, or similar form of permission required by law; specifically, a license and a registration.

Licensing—Includes the board's process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

Party—Each person named or admitted as a party whether an applicant, protestant, petitioner, complainant, respondent, or intervenor, and the board.

Person—Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character.

Pleading—Written documents filed by parties, concerning their respective claim.

Presiding officer—The president, duly qualified successor in accordance with Sturgis rules, a hearing examiner, or other person presiding over the board.

Register—The *Texas Register*.

Rule—Any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of this board. The term includes the amendment or repeal of a prior section but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. This definition includes substantive regulations.

Secretary—The secretary-treasurer of the Texas State Board of Medical Examiners.

§187.2. *Applicability.* These sections shall govern the procedures for the institution, conduct, and determination of all causes and proceedings before the board. The purpose of these sections is to provide for a simple and efficient system of procedure before the board, to insure uniform standards of practice and procedure, public participation and notice of board actions, and a fair and expeditious determination of causes.

§187.3. *Construction.* These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the board or the substantive rights of any party. They shall be liberally construed, with a view towards the purpose for which they were adopted.

§187.4. *Computation of Time.*

(a) Computing time. In computing any period of time prescribed or allowed by these sections, order of the board, or any applicable statute, the period shall begin on the day after the act, event, or default in controversy and end on the last day of such computed period, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday, nor a state recognized holiday.

(b) Extensions. Unless otherwise provided by statute, the time for filing any document may be extended by agreement of the parties or order of the secretary or hearing examiner upon written verified motion duly filed prior to the expiration of the applicable time period, showing good cause for an extension of time and stating that the need therefor is not caused by the neglect, indifference, or lack of diligence of the movant. A copy of any such motion shall be served upon all other parties of record to the proceeding contemporaneously with the filing thereof.

§187.5. *Agreement to be in Writing.* No stipulation or agreement between the parties, their attorneys or representatives, with regard to any matter involved in any proceeding before the board shall be enforced unless it shall have been reduced to writing and signed by the parties or their authorized representatives, or unless it shall have been dictated into the record by them during the course of a hearing, or incorporated in an order bearing their written approval. This section does not limit a party's ability to waive, modify, or stipulate any right or privilege afforded by these sections, unless precluded by law.

§187.6. *Expiration of Licenses.* When a licensee has made timely and sufficient application for the renewal of a license or a new license for any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, or unless it has been terminated according to statute and rule, and in case the application is denied or the terms

of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court

§187.7. *Pleadings.*

(a) Form. Pleadings shall be typewritten or printed upon paper 8½ inches wide and 11 inches long with left and right margins at least one inch wide. Exhibits annexed thereto shall be folded to the same size and conform to §187.30(h) of this title (relating to Evidence). Reproductions are acceptable, provided all copies are clear and permanently legible.

(b) Content. Pleadings shall state their purpose, contain a concise statement of the facts in support thereof and a prayer for the desired relief.

(c) Signature and address. The original of every pleading shall be signed in ink by the party filing the paper, his or her attorney, or by his or her authorized representative. Pleadings shall contain the name, address, and telephone number of the party

filing the document or the name, telephone number, and business address of the representative.

(d) Certificate of service. A certificate of service by the party, attorney, or representative who files a pleading, stating that it has been served on the other parties, shall be prima facie evidence of such service. The following form of certificate will be sufficient in this connection: "I hereby certify that I have this _____ day of _____, 19____, served copies of the foregoing pleading upon all other parties to this proceeding, by (here state the manner of service). Signature." Service of pleadings on and by party shall be as specified in §187.12(c) of this title (relating to Service in Nonrulemaking Proceedings).

(e) Numbering and heading. In a contested case the complaint and each pleading shall be numbered with the licensee's license number, centered, and underscored six lines down from the top of the first page. Double spaced below the number shall be the heading, as follows:

X-0000

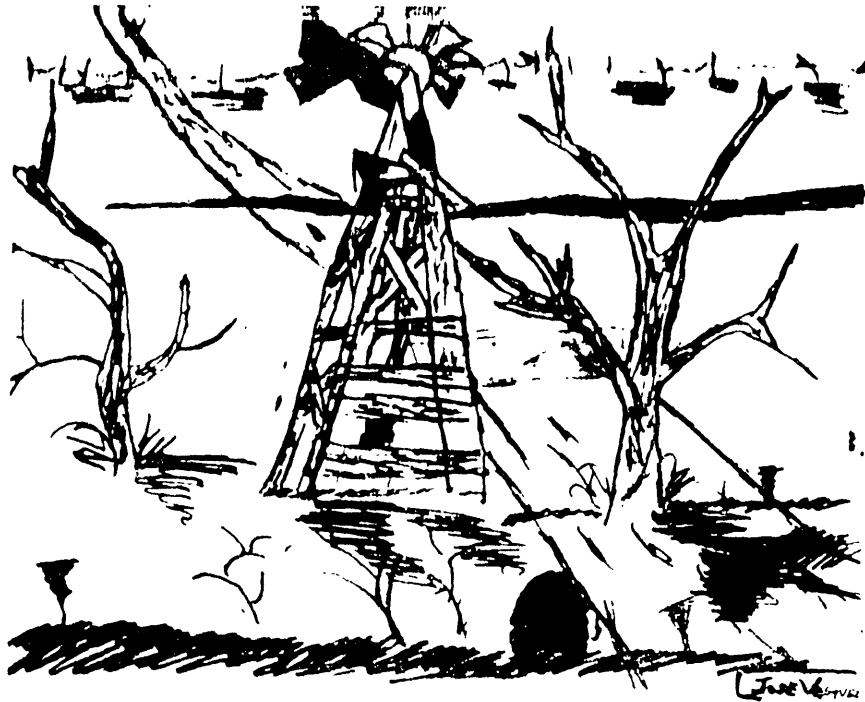
IN THE MATTER OF THE)(
COMPLAINT AGAINST)(
RESPONDENT)(
)

BEFORE THE
TEXAS STATE BOARD
OF MEDICAL EXAMINERS

NAME OF PLEADING



Name: Larry Weaver
Grade: 6
School: Dawson Elementary School,
Austin



Name: Jose Vasquez
Grade: 6
School: Dawson Elementary School,
Austin

(f) Other pleadings. All pleadings for which no official form is prescribed shall contain:

- (1) the name of the party seeking to bring about or prevent action by the board;
- (2) the names of all other known parties in interest;
- (3) a concise statement of the facts relied upon by the pleader;
- (4) a prayer stating the type of relief, action, or order desired by the pleader;
- (5) any other matter required by statute; and
- (6) a certificate of service, if required by §187.12(c) of this title (relating to Service in Nonrulemaking Proceedings).

(g) Amendments. Any pleading may be amended at any time upon motion or the filing of an amended application, complaint, or petition for which notice, if required, shall be issued pursuant to §187.8 of this title (relating to Notice of Adjudicative Hearing Proceedings).

(h) Incorporation by reference of agency records. Any pleading may adopt and incorporate, by specific reference thereto, any part of any document or entry in the official files and records of the agency. This section shall not relieve any applicant of the necessity of alleging in detail, if required,

facts necessary to sustain his burden of proof imposed by law.

(i) Classification. Regardless of any error in the designation of a pleading, it shall be accorded its true status in the proceeding in which it is filed.

(j) Docketing. Upon receipt of a complaint, an application or other pleading which is intended to institute a proceeding before the board, the secretary, executive director, or designee shall docket the same as a pending proceeding and serve notice thereon as specified in §187.12 of this title (relating to Service in Nonrulemaking Proceedings).

(k) Filing of documents. All documents relating to any proceeding pending or to be instituted before the board shall be filed with the secretary, executive director, or designee. Documents shall be deemed filed only when actually marked with the official stamp of the board, accompanied by the filing fee, if any, required by statute or board rules.

§187.8 Notice of Adjudicative Hearing Proceedings

(a) Notice. Before revoking or suspending any license or registration, or denying an application for a license or regis-

tration, or reprimanding any licensee or registrant, the board will afford all parties an opportunity for an adjudicative hearing after reasonable notice of not less than 10 days.

(b) Content. Such notice of adjudicative hearing shall include:

- (1) a statement of time, place, and nature of the hearing;
- (2) a statement of the legal authority and jurisdiction under which the hearing is to be held;
- (3) a reference to the particular sections of the statutes and rules involved; and
- (4) a short and plain statement of the matters asserted.

(c) More definite statement. If the board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, on timely written application, a more definite and detailed statement must be furnished not less than three days prior to the date set for the hearing; however, the board shall not be required to plead its evidence in its complaint.

(d) Service. The notice of adjudicative hearing shall be served as specified in §187.12 of this title (relating to Service in Nonrulemaking Proceedings).

§187.9 *Conduct and Decorum*. Each person, party, witness, attorney, or other representative shall comport himself in all proceedings with proper dignity, courtesy, and respect for the board, the secretary, executive director, the examiner, and all other parties. Disorderly or disruptive conduct will not be tolerated. Attorneys and other representatives of parties shall observe and practice the standards of ethical behavior prescribed for attorneys at law by the Texas State Bar.

§187.10 *Classification of Parties*. Regardless of errors as to designation of a party, parties shall be accorded their true status in the proceeding.

§187.11 *Parties in Interest*. Any party in interest may appear in any proceeding before the board. All appearances shall be subject to a motion to strike upon a showing that the party has no justiciable or administratively cognizable interest in the proceeding.

§187.12 *Service in Nonrulemaking Proceedings*.

(a) Personal service. Where personal service of notice by the board is required, the board shall serve in person or by mailing the notice of adjudicative hearing, certified or registered mail, return receipt requested, to the last address filed with the board by the person entitled to receive such notice.

(b) Service by publication. Where personal service cannot be made as contemplated in subsection (a) of this section, then service of notice shall be by publication of the notice of adjudicative hearing in a newspaper of general circulation in the county in which the licensee was last known to have his or her other practice for once each week for two consecutive weeks, the last publication to be at least 10 days prior to the date of the hearing. When the licensee's whereabouts are unknown or his or her last known place of practice is outside the State of Texas, notice by publication is to be made by having published once a week for two consecutive weeks in a newspaper of general circulation published in the county of the last known place of practice, in Texas if known, the last publication, to be at least 10 days prior to the date of the hearing. Return of the service of notice by publication shall be by publisher's affidavit together with a copy of the published notice which shall be introduced into the record at the hearing.

(c) Service of pleadings. A copy of any document filed by any party in any proceeding subsequent to the institution thereof shall be mailed or otherwise delivered to other party of record by the filing party. If any party has appeared in the proceeding by attorney or other representative authorized under these sections to make appearances, service shall be made upon such attorney or other representative. The willful failure of any party to make such service shall be sufficient grounds for the entry of an order by

the presiding officer or hearings examiner striking the document from the record.

§187.13 *Appearance Personally or by Representative*. Any party may appear and be represented by an attorney at law authorized to practice law before the highest court of this state. This right may be waived. Any person may appear on his own behalf or by a bona fide full-time employee. A corporation, partnership, or association may appear and be represented by any bona fide officer, partner, or full-time employee.

§187.14 *Filing Fees*. Each application, petition, or complaint which is intended to institute a proceeding before the board shall be accompanied by the filing fee, if any, prescribed by law and these sections.

§187.15 *Forms*. Official forms for use in certain board proceedings are incorporated in the appendix to these sections. The previously-mentioned official forms shall be printed, when appropriate, under the supervision of the secretary or executive director who shall furnish copies thereof to any person upon request.

§187.16 *Ex Parte Consultations*. Unless required for the disposition of ex parte matters authorized by law, members or employees of the board assigned to render a decision or to make findings of fact and conclusions of law in a contested case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

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

Issued in Austin, Texas, on November 3, 1987.

TRD-8709789

G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption:
December 11, 1987
For further information, please call
(512) 452-1078.

Subchapter B. Prehearing

★ 22 TAC §§187.17-187.24

The new sections are proposed 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 the Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the Act.

§187.17 *Depositions*. The taking and use of depositions in any proceeding shall be governed by APTRA, §14.

§187.18 *Subpoenas*.

(a) Authority. Pursuant to the Act, §2.09(i), the board has the authority to issue subpoenas to compel the attendance of witnesses and subpoena duces tecum to compel the production of books, records, or documents when requested by a party or on the board's own motion.

(b) Request. A party may request at any time during the pendency of a proceeding, including a contested case, that the board issue its subpoena or subpoena duces tecum upon a showing of good cause. The relevancy, and necessity of the testimony or documents, lack of undue inconvenience, imposition, or harassment of the party required to produce the testimony or documents, and the deposit of sums sufficient to insure payment of expenses incident to the subpoenas.

(1) The party requesting the subpoena shall be responsible for the payment of any expense incurred in serving the subpoena, as well as reasonable and necessary expenses incurred by the witness who appears in response to the subpoena.

(2) The party requesting a subpoena duces tecum shall describe and recite with great clarity, specificity, and particularity the books, records, and documents to be produced.

(c) Ministerial act. When requested by a party to issue a subpoena or subpoena duces tecum the board is performing a ministerial act and shall do so in accordance with the law; however, the board shall not be responsible for inadequacies, insufficiencies, or lack of pleading by the requesting parties or the consequences thereof.

(d) Service and expenses. A subpoena issued at the request of the board's staff may be served either by a board investigator or by certified mail. The board shall pay reasonable charges for photocopies produced in response to a subpoena requested by the board's staff, but such charges may not exceed those billed by the board for producing copies of its own records.

(e) Fees and travel. A witness called at the request of the board shall be paid a fee of \$25 per day and reimbursed for travel in like manner as board employees. An expert witness called at the request of the board shall be paid a fee of \$300 per day and reimbursed for travel in like manner as board members.

§187.19 *Show Compliance Conference*. Prior to the institution of the board's proceedings to revoke, suspend, annul or withdraw any license, the board shall:

(1) Notice. Give notice to the licensee of such proceeding as required by §187.12 of this title (relating to Service in Nonrulemaking Proceedings); and

(2) Opportunity. Provide the licensee an opportunity to show compliance with the Act or the rules of the board which shall consist of the following:

(A) the licensee may present his or her evidence to the staff of the board;

(B) the licensee may be represented by counsel;

(C) the licensee may elect to have the show compliance proceeding reduced to writing at his or her expense.

(D) the licensee's testimony and evidence shall be under oath;

(E) the evidence may include the licensee's office records, x-rays, and other film recordings, diagrams, drawings, and other illustrative or explanatory matters relevant to the facts and the conduct of the licensee.

§187.20. Prehearing Conferences.

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

- (1) formulating issues;
- (2) simplifying issues;
- (3) discussing matters to be officially noticed;

(4) discussing the possibility of making admissions of certain averments of fact or stipulations concerning the use by either or both parties of matters of public record, such as official records of the board to the end of avoiding the unnecessary introduction of proof;

(5) ruling on any previously filed motions;

(6) discussing the procedure at a hearing;

(7) discussing the limitation, where possible, of the number of witnesses; and

(8) discussing such other matters as may aid in the simplification of the proceedings.

(b) Order. Action taken at the conference shall be recorded in an appropriate order by the hearings examiner.

§187.21. Motions.

(a) Any motion filed in a pending proceeding shall, unless made during a hearing:

- (1) be in writing;
- (2) set forth the specific grounds and reasons therefor, and the relief sought;
- (3) be distributed to all parties of record over a certificate of service as outlined in §187.7(d) of this title (relating to Pleadings) and §187.12(c) of this title (relating to Service in Nonrulemaking Proceedings).

(4) be filed with the hearing examiner not less than five days prior to the hearing date;

(5) if based on facts or matters which are not of record, be supported by an affidavit; and

(6) be ruled on by the hearings examiner at the prehearing conference or at the hearing.

(b) Motions for continuance or for dismissal of complaint shall:

- (1) comply with subsection (a)(1)-(6);

(2) make reference to all prior motions of the same nature filed in the same proceeding

(c) When a complaint has proceeded to its hearing date, pursuant to the notice issued therein, no continuance or dismissal shall be granted by the examiner without the consent of all parties involved

§187.22. Consolidated Hearings. A motion for consolidation of two or more complaints, applications, petitions, or other proceedings shall comply with §187.21 of this title (relating to Motions). Proceedings shall not be consolidated unless the board shall find:

(1) that the proceedings involve common questions of law and fact; and

(2) that separate hearings would result in unwarranted expense, delay, or substantial injustice.

§187.23. Place and Nature of Hearings. All hearings conducted in any proceedings shall be open to the public. All hearings shall be held in Austin, unless for good and sufficient cause the board shall designate another place of hearing in the interest of the public.

§187.24. Informal Disposition. As authorized by the Act, §4.04(b), and the APTRA, §13(e), ultimate disposition may be made of any complaint or matter pending before the board by stipulation, agreed settlement, or consent order. If before or during the course of a contested case, or other matter pending before the board, the respondent offers to or proposes the ultimate disposition of the matter which is the subject of the complaint or hearing, the terms and conditions communicated by the respondent to the staff of the board shall be discussed by the staff with the executive director who shall then discuss the terms of the proposed settlement with the disciplinary process review committee (DPRC), the executive committee, or other appropriate committees of the board, or with the board for acceptance, rejection, or counter proposal which shall be reported to the respondent or his or her counsel. The submission or contemplation of settlement proposals shall not be grounds for a motion for continuance, and may not be used as a reason to postpone the hearing or to delay the taking of testimony in a particular proceeding after the hearing has commenced.

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

Issued in Austin, Texas, on November 3, 1987

TRD-8709788 G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption
December 7, 1987

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

Subchapter C. Hearing

★ 22 IAC §§187.25-187.30

The new sections are proposed 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 the Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of the Act.

§187.25. Presiding Officer. When the board en banc, or a committee or panel of the board, conducts a hearing pursuant to the Act, §4.05(a)(1) or (2), then the following apply.

(1) The hearing will be presided over by the president or other presiding officer.

(2) The presiding officer shall have the authority to:

- (A) administer oaths;
- (B) examine witnesses;
- (C) rule on the admissibility of evidence;
- (D) rule on motions;
- (E) rule on amendments to pleadings;
- (F) recess the hearing from day to day; and
- (G) refer the hearing to a hearing examiner to be appointed by the board.

§187.26. Hearing Examiners.

(a) Authority. When the board appoints a hearing examiner pursuant to the Act, §4.05(a)(3), then such hearings shall be conducted in accordance with the APTRA, the Act, the rules of this board, and all other applicable law.

(b) Duties. Except for accepting or rejecting proposed findings of fact or conclusions of law, issuing final orders on the merits, dismissing complaints, and making recommendations as to a licensee's discipline, the hearings examiner shall have all the authority which the board has regarding the conduct of hearings, including, without limitation, the following:

- (1) to hold hearings and issue notices;
- (2) to administer oaths and affirmations;
- (3) to direct all parties to enter their appearance on the record;
- (4) to subpoena and examine witnesses;
- (5) to subpoena documents and other physical evidence;
- (6) to hold conferences, including prehearing conferences, before or during the hearing to consider the matters specified in §187.20 of this title (relating to Prehearing Conferences);
- (7) to regulate the course and conduct of the hearing, including, without limitation, setting the time and place of the hearing and/or continued hearings; fixing

the time for filing of briefs and other documents, receiving relevant evidence, excluding evidence which is irrelevant, immaterial, repetitious, or cumulative, ruling on offers of proof, regulating the manner of examination to prevent needless and unreasonable harassment, intimidation, expense, inconvenience or embarrassment of any witness or party at a hearing, removing disruptive individuals, and ruling on motions;

(8) to submit in writing to the parties, a proposal for decision containing the elements specified in §187.31 of this title (relating to Proposals for Decision);

(9) to present and explain in person his or her proposal for decision to the board for its consideration and final action; and

(10) to dispose of any other matter that arises in the course of a hearing and to take any action authorized by these sections, the Act, the APTRA, and all other applicable law.

§187.27. *Order of Proceeding.*

(a) Hearings. In all proceedings, the petitioner, applicant, or complainant, respectively, shall be entitled to open and close. Where several proceedings are heard on a consolidated record, the examiner shall designate who shall open and close. The examiner in all cases shall determine whether and at what stage intervenors shall be permitted to offer evidence. After all parties have completed the presentation of their evidence, the examiner may call upon any party or the board for further material or relevant evidence upon any issue, to be presented at further public hearing after notice to all parties of record.

(b) Before the board. During proceedings before the board, the order of proceeding shall be the following:

(1) The examiner shall present his or her proposal for decision and recommended order, explaining them as specified in §187.26(8) and (9) of this title (relating to Hearing Examiners);

(2) The party adversely affected shall briefly state their reasons for being so affected supported by the evidence of record.

(3) The other party or parties shall be given the opportunity to respond.

(4) The board as complainant shall have the right to close.

(5) The president or a member of the board may question any party as to any matter relevant to the proceeding.

(6) At the end of any argument by the parties, the board shall deliberate the matter and announce its final decision in open meeting.

(c) Limitation. A party shall not inquire into the mental processes used by the board in arriving at its decision, nor be disruptive of the orderly procedure of the board's routine.

§187.28. *Reporter and Transcripts.*

(a) Option. A party has the option of furnishing his or her own stenographic

reporter at his or her own expense or using the reporter on the staff of the board. If a party elects to provide his or her own reporter, then the party shall notify the board prior to the commencement of the hearing.

(b) Original. The original transcript shall be delivered to the board as soon as practicable. A stenographic reporter may sell copies of a transcript. If the respondent in the proceedings requests the original record (statement of fact) of the testimony and evidence of a disciplinary hearing, the costs for the original record (transcript) shall be borne by the respondent (appellant) physician. Any subsequent copies of the record (transcript) shall be borne by any person requesting same.

(c) Corrections. Suggested corrections to the transcript of the record may be offered within 10 days after the transcript is filed in the proceeding, unless the board shall permit suggested corrections to be offered thereafter. Suggested corrections shall be served in writing upon each party of record, the official reporter, and the board. If suggested corrections are not objected to, the board will direct the corrections to be made and the manner of making them. In case the parties disagree on suggested corrections, they may be heard by the board which shall then determine the manner in which the record shall be changed, if at all.

§187.29. *Dismissal Without Hearing.*

(a) The board may entertain motions for dismissal for the following reasons:

(1) failure to prosecute;

(2) unnecessary duplication of proceedings or res adjudicata;

(3) withdrawal;

(4) moot questions or stale petitions; or

(5) lack of jurisdiction.

(b) Such motions must meet the criteria of §187.21 of this title (relating to Motions).

(c) These motions may be argued prior to the board ruling thereon.

§187.30. *Evidence.*

(a) Rules. The rules of evidence as applied in nonjury civil cases in the district courts of this state shall be followed. In all cases, irrelevant, immaterial, or unduly repetitious evidence shall be excluded. When necessary to ascertain facts not reasonably susceptible of proof under those rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. The board shall give effect to the rules of privilege recognized by law. Opportunity must be afforded all parties to respond and present evidence and argument of all issues involved.

(b) Objections. Objections to evidentiary offers shall be made and shall be noted in the record. Formal exceptions to rulings of the presiding officer during a hearing shall

be unnecessary. It shall be sufficient that the party at the time any ruling is made or sought shall have made known to the presiding officer or the examiner the action which he or she desires.

(c) Offer of proof. If evidence is excluded from the record by an exclusionary ruling of the examiner, the evidence may be included in the record by an offer of proof by the sponsoring party by dictating into the record or submitting in writing the substance of the evidence. An offer of proof shall be sufficient to preserve the evidence for review.

(d) Physician's office records. When subpoenaed by the board, the office records of each patient shall have stapled thereto an affidavit in the form approved and furnished by the board which contains the requisite elements to comply with the Texas Rules of Evidence, §902(10)b, relating to form of affidavits.

(e) Documents. Subject to these requirements, if a hearing will be expedited and the interests of the parties will not be substantially prejudiced, any part of the evidence may be received in written form.

(1) Copies. Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. On request, parties shall be given an opportunity to compare the copy with the original. When numerous documents are offered, the examiner may limit those admitted to a number which are typical and representative and may, in his or her discretion, require the abstracting of the relevant data from the documents and the presentation of the abstracts in the form of an exhibit; provided, however, that before making such requirement the 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.

(2) Prepared testimony. In all contested proceedings and after service of copies upon all parties of record at such time as may be designated by the examiner, 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. Such witness shall be subject to cross-examination and the prepared testimony shall be subject to a motion to strike in whole or in part.

(f) Official notice. Official notice may be taken of all facts judicially cognizable and records of the board. In addition, notice may be taken of generally recognized facts within the area of the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise, of the material officially noticed, including any staff memoranda or data, and the parties shall be afforded an opportunity to contest the material so noticed. The special skills or knowledge of the agency and its staff may be utilized in evaluating the evidence.

(g) Limitations on number of witnesses. The examiner shall have the right in any proceeding to limit the number of witnesses whose testimony is merely cumulative.

(h) Exhibits.

(1) Form. Documentary exhibits shall be of such size as set forth in §187.7 of this title (relating to Pleadings), or shall be 8 inches by 14 inches in length, so as to not unduly encumber the files and records of the board. There shall be a brief statement on the first sheet of the exhibit of what the exhibit purports to show. Exhibits shall be limited to facts material and relevant to the issues involved in a particular proceeding.

(2) Marking and service. The original of each exhibit offered shall be marked sequentially for identification and tendered for inclusion in the evidentiary record. One copy shall be furnished to the examiner, and one copy to each party of record or his or her attorney or representative.

(i) After hearing. No exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing unless specifically directed by the examiner, presiding officer, or by the board with copies of the late-filed exhibit served on all parties of record.

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

Issued in Austin, Texas, on November 3, 1987.

TRD-8709787

G V Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption:

December 11, 1987

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



Subchapter D. Post Hearing

★ 22 TAC §§187.31-187.36

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

§187.31. *Proposals for Decision.*

(a) Elements. In addition to any other requirement of the Act or the APTRA, an examiner shall serve on the parties a proposal for decision which shall contain:

(1) a summary of the evidence adduced by each party;

(2) a statement of the examiner's reasons for the proposed decision;

(3) findings of fact expressed in clear, concise factual terms, neither summarizing nor reciting the evidence. Findings of fact must be based explicitly on the evidence and on matters officially noticed;

(4) conclusions of law necessary to the proposed decision; and

(5) a listing and explanation of all mitigating and aggravating circumstances necessary to a complete understanding of the case by the board;

(6) recommended disposition or discipline.

(b) Service. When a proposal for decision is prepared, a copy of the proposal shall be served forthwith by the examiner on each party, his or her attorney of record or representative, and the board. Service of the proposal for decision shall be in accordance with §187.7(d) of this title (relating to Pleadings) and §187.12(c) of this title (relating to Service in Nonrulemaking Proceeding).

(c) Statutory statement. If findings of fact are stated in statutory language, each finding must be accompanied by a concise and explicit statement of the facts supporting the finding.

(d) Proposed findings. Only when the examiner requests a party or parties to submit findings of fact will it be necessary for the examiner to rule on each proposed finding in the recommended order.

§187.32. *Exceptions and Replies.*

(a) Entitlement. Any party of record who is aggrieved by the examiner's proposal for decision shall have the opportunity to file exceptions to the proposal for decision within 20 days from the date of service of the proposal for decision. Replies to the exceptions may be filed by other parties within 10 days of the filing of the exceptions. Exceptions and replies shall be filed with the examiner. Any extensions of time shall be as provided by §187.4 of this title (relating to Computation of Time).

(b) Form. The form of exceptions and replies are as specified in §187.7 of this title (relating to Pleadings).

(c) Content. Each exception or reply to a finding of fact shall be concisely stated and summarize the evidence in support thereof. Arguments shall be logical and citations to authorities shall be complete.

(d) Briefs. Briefs shall be filed only when requested or permitted by the board, presiding officer or examiner.

(e) Service. Exceptions and replies shall be served upon every party of the record by the filing party pursuant to §187.12(c) of this title (relating to Service in Nonrulemaking Proceedings).

§187.33. *Oral Argument.* Any party may request oral argument prior to the final determination of any proceeding, but oral argument shall be allowed only in the sound discretion of the board. A request for oral argument may be incorporated in exceptions, briefs, replies to exceptions, motions for rehearing or in separate pleadings.

§187.34. *Final Decisions and Orders.*

(a) Board action. The proposal for decision may be acted on by the board after the expiration of 10 days after the filing of exceptions to the proposal for decision. Parties shall be notified either personally or by mail of any decision or order. On written request, a copy of the decision or order shall be delivered or mailed to any party and to his or her attorney of record.

(b) Recorded. All final decisions and orders of the board shall be in writing or stated in the record and shall be signed by the president, the vice-president, or the secretary-treasurer. A final order shall include findings of fact and conclusions of law, separately stated.

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

(d) Amended order. If the board modifies, amends, or changes the examiner's recommended order, the examiner shall prepare an order reflecting the board's changes as stated in the record.

(e) Administrative finality. A final order or board decision is administratively final:

(1) upon a finding of imminent peril to the public health, safety or welfare, as outlined in §187.34(c) of this title (relating to Final Decisions and Orders);

(2) when absent the filing of a timely motion for rehearing upon the expiration of 15 days from the date of the final order or board decision is entered; or

(3) when a timely motion for rehearing is filed and the motion for rehearing is overruled by board order or operation of law as outlined in §187.35 of this title (relating to Motions for Rehearing).

(f) Rendering of final decision or order. The final decision or order must be rendered within 60 days after the date the hearing is finally closed. In a contested case heard by an examiner, an extension of time for the issuing of a proposal for decision may be announced at the conclusion of the hearing.

§187.35. *Motions for Rehearing.*

(a) Filing times. A motion for rehearing must be filed within 15 days after the date of rendition of a final decision or order. Replies to a motion for rehearing must be filed with the board within 25 days after the date of rendition of the final decision or order.

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

overruled by operation of law 45 days after the date of rendition of the final decision or order. The board may by written order extend the period of time for filing the motions and replies and taking board action, except that an extension may not extend the period of board action beyond 90 days after the date of rendition of the final decision or order. In the event of an extension, the motion for rehearing is overruled by operation of law on the date fixed by the order, or in the absence of a fixed date, 90 days after the date of the final decision or order. The parties may by agreement with the approval of the board provide for a modification of the times provided in this section.

§187.36. *The Record.* The record in a contested case shall include:

- (1) all pleadings, motions, and intermediate rulings;
- (2) evidence received or considered;
- (3) a statement of matters officially noticed;
- (4) questions and offers of proof, objections, and rulings on them;
- (5) proposed findings of fact, conclusions of law, exceptions, and replies;
- (6) any decision, opinion, or report by the officer presiding at the hearing; and
- (7) all staff memoranda or data submitted to or considered by the hearing officer or members of the agency who are involved in making the decision.

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

Issued in Austin, Texas, on November 3, 1987

TRD-8709786 G. V. Brindley, Jr.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption:
December 11, 1987
For further information, please call
(512) 452-1078.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 141. Massage Therapists

★ 25 TAC §141.4

The Texas Department of Health proposes an amendment to §141.4, concerning fees. The amendment reduces the application, registration, renewal, and penalty for late renewal fees for registration as a massage therapist.

Stephen Seale, chief accountant III, has determined that for the first five-year period the section will be in effect there

will be fiscal implications as a result of enforcing or administering the section. The effect on state government will be an estimated loss in revenue of \$73,488 each year for fiscal years 1988-1991. There will be no effect on local government or small businesses.

Mr. Seale also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section as proposed will be to return to the registrants who have paid the fees credited to the massage therapists and establishments fund the benefits of any surplus which might accrue if fees are not reduced. The anticipated economic cost to individuals who are required to comply with the proposed section will be the fees as set out in the section. The amendment as proposed will reduce fees paid by massage therapists for application processing by \$20, for registration by \$36, for renewal by \$36, and for penalty for late renewal by \$18 for each year for fiscal years 1988-1991.

Comments on the proposal may be submitted to Gerald Guthrie, Director, Hospital and Professional Licensure Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7531. Comments will be accepted for 30 days after publication in the *Texas Register*

The amendment is proposed under the Massage Therapy Act, Texas Civil Statutes, Article 4512k, §7, which provides the Texas Board of Health with the authority to adopt rules concerning the regulation of massage therapists and set fees imposed by the Act without accumulating an unnecessary surplus in the massage therapists and establishments fund.

§141.4. Fees.

- (a) (No change.)
- (b) The schedule of fees for registration as a massage therapist is as follows:
 - (1) application processing fee—\$30 [\$50];
 - (2) registration fee—\$24 [\$60] (prorated at \$2.00 [\$5.00] per month);
 - (3) renewal fee—\$24 [\$60];
 - (4)-(5) (No change.)
 - (6) penalty for late renewal—\$12 [\$30];
 - (7) (No change.)

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

Issued in Austin, Texas, on November 3, 1987

TRD-8709779 Robert A. MacLean
Deputy Commissioner
Professional Services
Texas Department of
Health

Proposed date of adoption:
January 9, 1988
For further information, please call
(512) 458-7531

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 1. Central Administration

Practice and Procedure

★ 34 TAC §1.5

The Comptroller of Public Accounts proposes an amendment to §1.5, concerning initiation of a hearing. The amendment allows taxpayers requesting a redetermination hearing 60 days from the date of acknowledgement or the request to present supporting documents. The amendment allows a more efficient handling of hearings. It has been determined that the change will result in an increase in the speed and efficiency of the administrative hearings process and will decrease disruption of taxpayer's business operations.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Moore also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient handling of these issues and a speedier hearings process. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Wade Anderson, Executive Counsel, P.O. Box 13528, Austin, Texas 78711.

The amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§1.5. Initiation of a Hearing.

- (a) Redetermination of a deficiency or jeopardy determination. A taxpayer may request a redetermination hearing by sending the agency a written request for redetermination within the time limits provided by the determination. The limit is 30 days for a deficiency determination and 20 days for a jeopardy determination. The request is defined to include a statement of grounds which sets out in detail the reasons the taxpayer does not agree with the determination [and all supporting documentary evidence as required by subsection (b) of this section on audits begun on or after February 1, 1987]. If the statement of grounds is not received within the time limit or an extension of the

statement of grounds due date granted prior to the expiration of the time limit, no hearing will be commenced and the taxpayer will be required to pay the deficiency and request a refund before any objection to the assessment is considered.

(b) Required documentary evidence. If the auditor has requested documentary evidence on any issue relating to a tax assessment in an audit or if a taxpayer has indicated it has possession or control of documentary evidence on any issue relating to a tax assessment in an audit and such documentary evidence has not been provided by the taxpayer to the auditor, the auditor may request in writing that the taxpayer produce such documentary evidence for inspection. The written request must be made no later than two working days following the exit conference and shall identify with specificity the nature of the documents sought, including the schedule or examination to which the documents relate. If such documentary evidence is not submitted **within 60 days from which** [with] a petition for redetermination is **acknowledged** [and statement of grounds], such documentary evidence shall be inadmissible for purposes of the redetermination hearing in all audits begun on or after **November 1** [February 1], 1987.

(c)-(d) (No change.)

(e) Request for a redetermination. If the request for a redetermination is based exclusively on a factual dispute for which documentary evidence is the best evidence and the documentary evidence requested in accordance with subsection (b) of this section **is not submitted in accordance with subsection (b) of this section on** [and is not submitted with the petition on] any audit begun on or after **November 1** [February 1], 1987, no hearing will be granted.

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

Issued in Austin, Texas, on November 4, 1987.

TRD-8709812 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
December 11, 1987
For further information, please call
(512) 463-4004.



★ 34 TAC §1.7

The Comptroller of Public Accounts proposes an amendment to §1.7, concerning content of statement of grounds. The amendment allows taxpayers requesting a redetermination hearing 60 days from the date of acknowledgement or the request to present supporting documents. The amendment allows a more efficient handling of hearings. It has been determined that the change will result in an increase in the speed and efficiency of the administrative hearings process and will decrease disruption of taxpayer's business operations.

John Moore, director of the comptroller's economic analysis center, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government or small businesses as a result of enforcing or administering the section.

Mr. Moore also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be a more efficient handling of these issues and a speedier hearings process. There is no anticipated economic cost to individuals who are required to comply with the proposed section.

Comments on the proposal may be submitted to Wade Anderson, Executive

Counsel, P.O. Box 13528, Austin, Texas 78711.

This amendment is proposed under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§1.7. *Content of Statement of Grounds.*

(a) The statement of grounds must contain the reasons the taxpayer disagrees with the action of the agency. The taxpayer must list and number the items, individually or by category, with which there is disagreement and list and number the factual and legal grounds why the tax should not be assessed or should be refunded. Any documentary evidence required under §1.5 of this title (relating to Initiation of a Hearing) to support each ground must be submitted **in accordance with §1.5(b) of this title (relating to Initiation of a Hearing)**. [with the statement of grounds. If it is not practical to submit the documentary evidence with the statement of grounds on audits begun on or after February 1, 1987, written authorization to allow examination elsewhere must be obtained from the legal services director prior to the filing deadline for the redetermination or refund request.] Legal authority should be cited if the taxpayer disagrees with the agency's interpretation of the law.
(b)-(c) (No change.)

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

Issued in Austin, Texas, on November 4, 1987.

TRD-8709813 Bob Bullock
Comptroller of Public
Accounts

Earliest possible date of adoption:
December 11, 1987
For further information, please call
(512) 463-4004

Withdrawn

Rules

An agency may withdraw proposed action or the remaining effectiveness of emergency action on a rule by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately on filing or 20 days after filing. If a proposal is not adopted or withdrawn within six months after the date of publication in the *Register*, it will automatically be withdrawn by the *Texas Register* office and a notice of the withdrawal will appear in the *Register*.

TITLE 7. BANKING AND SECURITIES

Part VI. Credit Union Department

Chapter 91. Chartering, Operations, Mergers, Liquidations

Investments

★7 TAC §91.802

The Credit Union Department has withdrawn from consideration for permanent adoption a proposed amendment, concerning investments. The text of the proposed amendment appeared in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2541). The effective date of this withdrawal is November 4, 1987.

Issued in Austin, Texas, on November 4, 1987.

TRD-8709801

Harry L. Elliott
Staff Services Officer
Credit Union Department

Filed: November 4, 1987

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

TITLE 22. EXAMINING BOARDS

Part XXII. Texas State Board of Public Accountancy

Chapter 519. Practice and Procedure

Hearings in Disciplinary Actions

★22 TAC §519.27

The Texas State Board of Public Accountancy has withdrawn from consideration for permanent adoption proposed new

§519.27, concerning hearings in disciplinary actions. The text of the proposed new section appeared in the May 8, 1987, issue of the *Texas Register* (12 TexReg 1489). The effective date of this withdrawal is November 2, 1987.

Issued in Austin, Texas, on November 2, 1987.

TRD-8709705

William A. Sansing
Attorney
Texas State Board of
Public Accountancy

Filed: November 2, 1987

For further information, please call
(512) 450-7066.

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 141. Massage Therapy Registration

★25 TAC §141.5, §141.16

The Texas Department of Health has withdrawn the emergency adoption of the amendment to §141.5 and new §141.16, concerning massage therapist registration. The text of the proposed amendment and new section appeared in the August 28, 1987, issue of the *Texas Register* (12 TexReg 2899). The effective date of this withdrawal is November 23, 1987. The amendment and new section are being adopted on a permanent basis in this issue of the *Texas Register*.

Issued in Austin, Texas, on November 3, 1987.

TRD-8709780

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

Filed: November 3, 1987

For further information, please call
(512) 458-7245

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-support Services

Child Day Care Services

★40 TAC §10.3164

The Texas Department of Human Services has withdrawn from consideration for permanent adoption proposed new §10.3164, concerning termination for excessive absences in provider agreement facilities. The text of the proposed new section appeared in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2086). The effective date of the withdrawal is November 4, 1987.

Issued in Austin, Texas, on November 4, 1987.

TRD-8709795

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Filed: November 4, 1987

For further information, please call
(512) 450-3766.

Adopted Rules

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

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

TITLE 4. AGRICULTURE Part 1. Texas Department of Agriculture Chapter 7. Pesticides

★4 TAC §7.41

The Texas Department of Agriculture (TDA) adopts an amendment to §7.41, with changes to the proposed text published in the July 21, 1987, issue of the *Texas Register* (12 TexReg 2368).

The TDA is authorized to regulate pesticides under the Texas Pesticide Act, the Texas Agriculture Code, Chapter 76 (the Act). In conjunction with final rulemaking on certain termiticides, the TDA repropoed amendments on the distribution of information under its authority pursuant to the Act, Subchapters B and C, §§76.003, 76.004, and 76.104.

In response to continuing problems involving the treatment of structures for subterranean termites and problems involving illegal use of certain pesticides, the TDA originally proposed sections on April 14, 1987. That proposal included sections to classify and regulate certain pesticides as state-limited-use pesticides, and to require reporting by dealers and registrants on the misuse and illness relating to the use of termite-control pesticides. Those sections were adopted by the department on July 21, 1987. A proposal for consumer information sheets and tagging of buildings was repropoed with changes on July 21, 1987. The department held public hearings and received extensive comments on these issues.

The commissioner has considered all comments filed and testimony given in response to that proposal and has determined that the adopted section provides a balanced compliment to the regulation on termiticides adopted on July 21, 1987.

Subsection (c)(1) is changed to eliminate the requirement that registrants prepare and distribute the consumer information sheet. This change is made in response to concerns of the Texas Structural Pest Control Board. In addition, an applicator may now provide the sheet to either an owner or a manager, instead of only an owner. This change is made to facilitate distribution by applicators, as an owner may not always be available at the time of treatment.

Subsection (d) is changed to place the responsibility for preparation of the consumer information sheet with the TDA. Consumer information sheets are to be prepared and distributed by the TDA to businesses currently licensed by the Structural Pest Control Board and to non-commercial certified applicators within 60 days of final publication of the section in the *Texas Register*. In addition, the section now requires that copies reproduced must be legible. The reference to alternative pesticides is deleted from subsection (d) because it is redundant to the wording "available pesticides."

The date in subsection (e) is changed to January 1, 1988, for the effective date of subsections (c) and (d). This allows ample time for distribution of the consumer information sheets. The effective date of subsections (a) and (b) is November 1, 1987, as proposed.

Appendix A (consumer information sheet) is changed to include additional information as well as revised language. These additions and revisions are in response to comments received.

Two new subsections and an appendix are added. Subsection (c) requires that consumer information sheets be provided prior to treatment. It also requires that structures be tagged to provide notice that they have been treated. Subsection (d) provides for the development and distribution of consumer information sheets. Appendix A sets out the consumer information sheet.

Numerous comments were received on the proposed and repropoed section, many of which have been incorporated in the adoption.

The use of the consumer information sheet was generally supported by Dow Chemical Company and FMC Corporation and other commenters, including consumer representatives and environmental groups. Opposed to the distribution of the consumer information sheet were some pest control operators, their professional associations, and the agricultural chemical associations. In addition, the Structural Pest Control Board questioned whether the TDA has the authority to require registrants to distribute the consumer information sheet to Texas applicators.

Some who objected to the consumer information sheet did so because they believe the language will cause public alarm. These commenters suggested changes in wording and tone, such as changing poison to harm, and exposure to overexposure.

Several pest control operators stated that some suggestions on the sheet were impractical or misleading.

Some objected to the department providing information to consumers about available alternatives. They perceived this as an intrusion into the domain of private enterprise.

Some comments were made by the pest control industry that consumer information sheets are unnecessary because pesticide labels are EPA approved documents and are adequate consumer information. Some commenters felt that the consumer information sheet should deal exclusively with chlordane because of that chemical's controversial safety status with EPA and other regulatory agencies.

Several pest control industry representatives objected to the inclusion of what they consider nonfactual, unsubstantiated statements about the health effects of termiticides. They disagreed with TDA's and EPA's description of chlordane as a potential human carcinogen and a known animal carcinogen.

On the other hand, consumer groups and several individual consumers stated that the consumer information sheet does not provide enough health data to help reduce public health risks from pesticide exposure. They urged TDA to acknowledge that data gaps exist in EPA pesticide health effects studies and that incomplete or inconclusive scientific studies warrant concern and closer scrutiny of the pesticides in question.

All consumer representatives commented that the public must have easy access to information on chemical options, health risks, and proper application methods for termiticides. Some commenters stated that all occupants of a building, not just the landlord or property management company, should have access to the consumer information sheet. Commenters suggested that the fact sheet include poison control center telephone numbers. There were no comments in opposition to the proposed tagging rule.

Those making comments generally in support of the proposal were the Texas Consumers Union, Central Pest Control, Action Pest Control, Dow Chemical Company, East Texas Pest Control Association, FMC Corporation, Public Citizen, Sierra Club, Texas Committee on Natural Resources, Texas Center for Policy Studies, and Velsicol. Requests for changes in the proposal were often included in their comments.

Those making comments generally against the proposal were HPC Services, ICI Americas, National Agricultural Chemicals Association, Structural Pest Control Board, Texas Agricultural Chemicals Association, Texas Pest Control Association, and Stroppe Pest Control. Statements of support for certain aspects of the proposal were often included in their comments.

The commissioner has determined that the benefits of the consumer information sheet significantly outweigh any problems or costs of implementation, and that many of the objections to the original proposal can be resolved with changes in the wording of the sheet.

First, the TDA disagrees that termiticide product labels contain adequate consumer information and therefore a consumer information sheet is not necessary. Termiticide labels do provide limited information about ingredients and health and environmental effects; however, they are product specific and therefore do not provide a comprehensive overview of how termiticides vary in toxicity and effectiveness and the trade-offs to be considered. Nor do labels provide consumers with certain information needed to make informed decisions about contracting for termite treatment.

The overriding purpose of the consumer information sheet is consumer protection. The consumer information sheet is a complement to individual termiticide labels. Second, the TDA disagrees that consumers will not read product labels or information sheets. Extensive testimony received indicates that consumers are requesting readable, forthright information to help them with termite treatment options and to provide them with appropriate agency contacts and telephone numbers in case problems arise. Increasingly, the public is demanding the right-to-know in every area of exposure to chemicals. The section as adopted is consistent with a number of initiatives recently taken by the Texas Legislature to protect public and worker health and allow for making better informed decisions about toxic chemical exposure.

Third, the TDA disagrees that the consumer information sheet will cause consumer panic. The information sheet offers clear, factual information and practical action consumers can take to protect themselves. Knowledgeable consumers will also help improve the quality of pest

control in Texas, and thus reduce consumer concern. In addition, some language is revised at the suggestion of members of the pest control industry. These changes should eliminate any risk of causing alarm.

Fourth, the TDA disagrees that only chlordane should be addressed in the consumer information sheet or that separate information sheets be prepared for each termiticide. The consumer information sheet provides an overview of termite treatment and all the pesticides labeled for this purpose. The sheet provides the basis from which more informed consumer questions about particular chemicals can be pursued. Chlordane has been the predominately used termiticide, but it should not be the entire focus of the consumer information sheet. With the withdrawal of chlordane from the market and increasing consumer demand for safer materials, other chemicals are being used more often. Consumers need to know their options on the relative effectiveness and risks of all pesticides.

Fifth, the TDA disagrees that information provided on health effects is nonscientific. The basis for this information frequently is laboratory animal exposure studies which are widely accepted by the scientific and regulation community as the best way to obtain these data. Moreover, as the agency mandated to protect human health, the TDA cannot always wait until adverse effects are proven absolutely, since this proof may involve human lives or irreversible environmental damage.

Sixth, the TDA disagrees with the Structural Pest Control Board that the TDA does not have the legal authority to require the distribution of consumer information sheets by registrants and applicators. The TDA is willing, nonetheless, to take on some of the responsibility for distribution. As originally proposed, the sheets would be provided by the registrant to applicators. At the urging of the executive director of the Structural Pest Control Board, however, the TDA agrees that it can reduce the burden on registrants of the termite pesticides. These changes will increase the burden on TDA and the licensed applicators. The section is revised to require the TDA to provide copies of the consumer information sheet to licensed applicator businesses initially and whenever any changes are made. The licensed business then must reproduce sufficient copies to assure that each consumer is provided with a copy before a treatment is made or a contract for treatment is signed. The TDA will also distribute the sheet through dealers and request that registrants also assist applicators by distributing copies.

Finally, the TDA has not added additional information suggested by a number of commenters in order to keep the information sheet concise.

The amendment is adopted under the Texas Agriculture Code, §76.003, which provides the TDA with the authority to classify a pesticide as state-limited-use (SLU) and authorizes the TDA to regulate the time and conditions of use of a SLU pesticide; §76.004, which authorizes the TDA to establish rules to carry out Chapter 76; §76.104, which authorizes the TDA to adopt rules regarding the manner and method of pesticide application; §§76.021-76.023, which authorizes the TDA to require certain information on labels of pesticides distributed in this state; and §§76.041-76.048, which establishes conditions of registration of a pesticide in this state.

§7.41. Treatments for Control of Subterranean Termites: Notices and Records.

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

(c) Any licensed or certified applicator who is responsible for the treatment for subterranean termites must take the following actions in conjunction with the treatment of an existing house, apartment, hotel, restaurant, office, or other building in which people reside or work.

(1) Prior to treatment or the execution of a contract for treatment, the applicator must assure that the owner or manager of the building has received a legible copy of the consumer information sheet for subterranean termite control described in subsection (d) of this section.

(2) Following the application, the applicator must post a durable sign adjacent to the hot water heater or electric meter or beneath the kitchen sink giving the name and address of the applicator, the date of the treatment, the name of the active ingredient used, and a statement that the notice should not be removed.

(d) The commissioner shall prepare and revise as necessary, pursuant to the rulemaking requirements of Texas Civil Statutes, Article 6252-13(a), as Appendix A, the consumer information sheet for subterranean termite control. The Texas Department of Agriculture adopts by reference Appendix A. Copies may be obtained from the Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711-2847. Within 60 days of publication of the final section in the *Texas Register*, the commissioner shall distribute no less than 10 copies of the initial consumer information sheet and any subsequent revisions to each business licensed at that time by the Structural Pest Control Board to apply pesticides for termite control and to each noncommercial applicator certified at that time for termite treatment. The businesses or applicators shall reproduce sufficient legible copies to assure that the requirements of subsection (c) of this section are met. The consumer information sheet shall provide information on the available pesticides registered in Texas for use on subterranean termites, including, but not limited to, information on health, safety, and environmental risks associated with

these pesticides, proper application techniques, and other consumer information.

(c) Subsections (a) and (b) of this section take effect on November 1, 1987. Subsections (c) and (d) of this section take effect on January 1, 1988.

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

Issued in Austin, Texas, on November 4, 1987.

TRD 8709793 Dolores Alvarado Hibbs
Director of Hearings
Texas Department of
Agriculture

Effective date: November 25, 1987
Proposal publication date: July 21, 1987
For further information, please call
(512) 463 7583.



TITLE 7. BANKING AND SECURITIES

Part 1. Finance Commission of Texas

Chapter 3. Banking Section

Subchapter B. General

★ 7 TAC §3.25

The Finance Commission of Texas, Banking Section, adopts new §3.25, with changes to the proposed text published in the July 17, 1987, issue of the *Texas Register* (12 TexReg 2327).

Guidance to state banks as to proper accounting for other real estate (ORE) is needed as a result of the repeal of Texas Civil Statutes, Article 342-502(c), which heretofore required state banks to depreciate ORE at the rate of 10% each year.

The new section provides that with reference to accounting for ORE, a state bank should follow generally accepted accounting principles (GAAP). The new section further requires a state bank to dispose of ORE within five years of its acquisition. However, one five-year extension may be granted by the banking commissioner.

A total of seven comments were received regarding adoption of the new section. The majority of commenters expressed opposition to establishing regulatory accounting treatment for ORE under the proposed section different than that imposed by GAAP. Several commenters also suggested that the section should address the question of whether previously taken depreciation under the recently repealed law could be restored to the particular asset account. Another commenter suggested that rather than imposing a requirement that a bank dispose of ORE within a maximum of 10 years, a bank should be allowed to simply write-off the asset and continue to

hold the asset for an indefinite period of time.

No comments were received against the adoption of the new section, however, commenters did suggest or recommend the changes as stated previously. Comments were received from Lloyd D. Ellison, Joe Fletcher, Daniel G. Jobe, Jimmy O. Junkin, Wayne McFaul, Steve Pace, and Larry T. Sanders.

The agency agrees with the commenters' suggestion that regulatory accounting treatment of ORE be consistent with GAAP treatment and therefore modified the section accordingly. The agency also believes that GAAP should be followed in determining whether any previously taken depreciation should be restored to the particular asset account. It is further the opinion of the agency that a maximum of 10 years (five years initially plus a possible five-year extension) should provide a state bank sufficient time in which to dispose of ORE without suffering an undue loss due to a short holding period.

The new section is adopted under Texas Civil Statutes, Article 342-113, which provide the Banking Section of the Finance Commission with authority to promulgate rules and regulations not inconsistent with the Texas Constitution and statutes of this state.

§3.25. Accounting for Other Real Estate Owned by a State Bank.

(a) Background and purpose. Texas Civil Statutes, Article 342-502(c), prior to its repeal by the 70th Legislature in 1987, provided that a bank may not assign an original book value to other real estate in excess of its reasonable value at the time of acquisition, and further required that such real estate be depreciated at the rate of 10% each year until charged down to 25% of its original book value. This law was repealed as of April 29, 1987. The purpose of this section is to establish the manner in which banks must, henceforth, account for other real estate and to set a time limit for holding such property.

(b) Accounting treatment. A state bank shall account for other real estate in accordance with generally accepted accounting principles (GAAP). The term "other real estate" (ORE) means and includes real property not used as banking facilities, nor intended for use as banking facilities. Real property becomes other real estate owned through:

- (1) purchase by bank under judicial or nonjudicial foreclosure where the real property was security for debts previously contracted;
- (2) purchase by the bank to protect its interest in debts previously contracted;
- (3) acquisition by the bank in partial or complete satisfaction of debts previously contracted;
- (4) owned by the bank and which has been, but is no longer, used or intended to be used as bank premises; or

(5) the acquisition of an employee's principal residence to facilitate a change of duty assignment.

(c) Holding period. A state bank shall dispose of other real estate within five years from the date it is acquired or transferred to that asset category. Provided, however, the banking commissioner may grant an extension of time of up to five additional years for disposing of such property if, in his opinion, the bank has made a good faith effort to dispose of such property, or if he determines that disposal of the property within the initial five-year period would be detrimental to the bank. Banks currently holding other real estate must dispose of the property within five years of the effective date of this regulation. However, extensions for such currently held other real estate will not normally be granted if the extended time exceeds 10 years from the original date of acquisition.

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 November 4, 1987.

TRD-8709817 Jorge A. Gutierrez
General Counsel
Banking Department of
Texas

Effective date: November 25, 1987
Proposal publication date: July 17, 1987
For further information, please call
(512) 479-1200.



TITLE 16. ECONOMIC REGULATION

Part 1. Railroad Commission of Texas

Chapter 3. Oil and Gas Division

Conservation Rules and Regulations

★ 16 TAC §3.8

The Railroad Commission of Texas adopts an amendment to §3.8, with changes to the proposed text published in the August 11, 1987, issue of the *Texas Register* (12 TexReg 2610).

The amendment adopts by reference a revised memorandum of understanding (MOU) between the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health concerning the division of jurisdiction among the agencies over wastes that result from activities associated with the exploration, development, and production of oil or gas and the refining of oil. The MOU was originally executed by the agencies effective January 1, 1982, pursuant to House Bill 1407, 67th Legislature, 1981,

§10. The revisions to the MOU incorporate recent statutory amendments relating to the jurisdictional issues addressed by the MOU. The revisions also reflect the experience gained by the agencies in working with the MOU.

The revised MOU clarifies the division of waste management jurisdiction among the agencies over various oil and gas activities. This clarification will promote efficient administration of the agencies' waste management programs, avoid duplication of effort among the agencies, and aid the regulated community in its efforts to comply with applicable regulations.

The amendment adopts by reference the revised MOU between the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health. The revised MOU contains the agencies' interpretation of the division of jurisdiction among the agencies over wastes that result from activities associated with the exploration, development, and production of oil or gas and the refining of oil. The agencies have adopted the revised MOU as proposed. The Texas Water Commission and the Texas Department of Health have published their notices of adoption elsewhere in this issue of the *Texas Register*. The effective date of the revised MOU will be December 1, 1987.

The following commenters expressed general support for the proposed amendment, although they suggested some changes: Alice Specialty Company Inc.; Cities Service Oil and Gas Corporation; Conoco Inc.; Gas Processors Association; Texaco Inc.; and Texas Mid-Continent Oil and Gas Association. The Sierra Club also commented, expressing concern about certain aspects of the proposed amendment.

The Railroad Commission of Texas received several comments suggesting that §3.8(i), which adopts the revised MOU by reference, should identify the revised MOU by its effective date. The commenters believe this addition to §3.8(i) to be necessary to identify the document properly and to assure that any future amendments to the MOU will be made through rulemaking proceedings to amend §3.8(i).

The Railroad Commission of Texas believes that any future amendments to the MOU will have to be made through rulemaking proceedings regardless of whether the effective date of the current MOU is specified in §3.8(i). However, for the sake of clarity, the commission has changed the language of §3.8(i) to include the effective date of the revised MOU.

One commenter sought clarification on the question of which agency has jurisdiction over a drum of mystery chemical found at an oil and gas production facility. If it is reasonable for the Railroad Commission of Texas to assume that the drum

contains material associated with a production activity then the Railroad Commission of Texas has jurisdiction. Under the Texas Natural Resources Code §91.101, the Railroad Commission of Texas has jurisdiction over wastes and other substances and materials associated with the exploration, development, and production of oil or gas. The wastes and other substances and materials regulated by the Railroad Commission of Texas pursuant to §91.101 are excluded from regulation by the Texas Water Commission under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

This same commenter also sought confirmation that it is interpreting the MOU correctly with respect to tank bottoms from breakout tankage along crude oil pipelines. This commenter reads the MOU to place these wastes under the jurisdiction of the Railroad Commission of Texas, because they result from the storage of crude oil before it enters the refinery. The agencies agree with the commenter's reading of the MOU.

One commenter raised questions about which agency is responsible for wastes generated at station facilities of companies providing well treatment services to the oil and gas industry. The language in the revised MOU reflects an understanding reached by the agencies in response to inquiries from oil field service companies performing fracturing, acidizing, and cementing services. This understanding recognizes that the activities typically conducted at well treatment service company stations, in particular the mixing and storing of well treatment chemicals and the servicing of company vehicles, are not closely enough tied to exploration, development, and production operations to be subject to the jurisdiction of the Railroad Commission of Texas. Instead, the wastes generated at the station facilities are regulated as industrial wastes by the Texas Water Commission.

The commenter notes that the same wastes generated at the well treatment service company station facilities would be regulated by the Railroad Commission of Texas if they were generated at the well site, and suggests that the division of jurisdiction among the agencies should be based on the character of the wastes rather than the point of generation. The agencies disagree for the following reasons. First, although the wastes generated at the station facilities may be similar to some wastes generated at the well site, regulatory responsibility is based upon the nature of the waste-generating activity rather than the character of the waste. The activities of the well treatment service company at the well site, which are subject to the supervision of the well operator, are considered to be associated with exploration, development, and production. Therefore, they are subject to the jurisdiction of the Railroad Commission of Texas. The ac-

tivities at the station facilities are not considered to be associated with exploration, development, and production and are therefore under the Texas Water Commission jurisdiction. Second, the wastes described in the revised MOU as being generated at station facilities are not wastes that are typically generated at the well site. Wastes such as chemical residue rinsate and vehicle washbay wastewater are wastes generated during clean-up operations that typically occur at the station facility. Therefore, these wastes would seldom be subject to regulation by any agency other than the Texas Water Commission. Finally, the division of jurisdiction based upon the point of generation of the wastes is justified because it avoids the duplication of effort entailed when multiple agencies regulate the same site.

The commenter indicated that there are other types of well treatment services performed by service companies besides fracturing, acidizing, and cementing, although the commenter gave no specific examples. The agencies believe that the well treatment services listed in the revised MOU are the most common types of well treatment services performed by these service companies. The listed services are included solely for the purpose of identifying the type of service company being addressed.

One commenter expressed concern about the paragraph in the revised MOU entitled "Field Treatment of Produced Fluids." The commenter asserted that wastes from field treatment in facilities such as sweetening units are not subject to the jurisdiction of the Railroad Commission of Texas. The commenter states that field treatment processes are not listed in the Texas Water Code, §26.131, or the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, as activities associated with the exploration, development, and production of oil or gas.

The agencies disagree with the commenter. It is true that field treatment processes are not specifically identified as activities associated with the exploration, development, or production of oil or gas in the Texas Natural Resources Code, §91.101, or in the counterparts in the Texas Water Code and the Solid Waste Disposal Act. However, a number of activities, including the drilling and operation of fluid injection wells for secondary or enhanced recovery of oil and gas, are not specifically listed in the status although they are clearly production activities. The agencies agree that the field treatment of produced fluids is an activity associated with the production of oil and gas and that wastes that result from this activity are subject to the jurisdiction of the Railroad Commission of Texas.

One commenter suggested that the revised MOU should be specific as to the ability of Texas Water Commission inspectors to gain entry to any facility at which

waste under its jurisdiction may be generated, stored, or disposed. The commenter also indicated that the revised MOU should address coordination of enforcement activities between the Texas Water Commission and the Railroad Commission of Texas, including provision for interagency notice of inspections and enforcement actions.

The agencies do not see the need to address enforcement issues in this MOU. The MOU interprets the division of jurisdiction among the agencies over the management of wastes from various activities. Each agency has its own statutes providing it authority to enter property for the purpose of inspecting and investigating conditions relating to its waste management jurisdiction. These statutes need not be enumerated in the MOU. With regard to the coordination of enforcement activities, the agencies have a practice of cooperating in matters of mutual concern.

One commenter states that reclamation plants that process both oil and gas wastes and other types of wastes should be subject to the primary jurisdiction of the Texas Water Commission. The agencies agree with the implication that this type of facility would be subject to the jurisdiction of both the Texas Water Commission and the Railroad Commission of Texas. However, it is not clear what the commenter intends by describing the Texas Water Commission as the agency of primary jurisdiction. The agencies would characterize the situation as one of joint jurisdiction.

One commenter expressed uncertainty over the nature of the Railroad Commission's jurisdiction over refining activities. The Railroad Commission of Texas has regulatory authority to prevent the waste of crude oil. The term "waste" is defined in the Texas Natural Resources Code, §85.046. For refineries, the applicable Railroad Commission rules require the reporting of crude oil streams into or out of the refinery for accounting purposes.

The amendment is adopted under the Texas Natural Resources Code, §§81.052, 85.201, 85.202, 91.101, and 141.012, and the Texas Water Code, §27.034, which provide authority for the Railroad Commission of Texas to adopt rules to prevent the waste of oil, gas, or geothermal resources and to prevent the pollution of surface and subsurface water that might result from activities associated with the exploration, development, and production of oil, gas, or geothermal resources. The amendment is also adopted under House Bill 1407, 67th Legislature, 1981, §10, which requires the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health to adopt and to amend, as necessary, a memorandum of understanding concerning the division of jurisdiction among the agencies over waste materials that result from, or are related to, activities associated with the

exploration, development, and production of oil or gas and the refining of oil.

§3.8 Water Protection.

(a)-(h) (No change.)

(i) Adoption of memorandum of understanding by reference. The memorandum of understanding between the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health, which concerns the division of jurisdiction among the agencies over wastes that result from, or are related to, activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil, is adopted by reference. The effective date of the memorandum of understanding adopted by reference is December 1, 1987. Copies of the memorandum of understanding are available upon request from the Railroad Commission of Texas, Oil and Gas Division, Underground Injection Control Section, P.O. Drawer 12967, Austin, Texas 78711-2967, (512) 463-6790.

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 October 26, 1987

TRD 8709803 John Sharp
Commissioner
Railroad Commission of
Texas

Effective date December 1, 1987
Proposal publication date August 11, 1987
For further information, please call
(512) 463-7149

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health Chapter 133. Hospital Licensing Standards

★ 25 TAC §133.21

The Texas Department of Health adopts an amendment to §133.21, without changes to the proposed text published in the August 11, 1987, issue of the *Texas Register* (12 TexReg 2620). However, the department made a few changes to the hospital licensing standards, which §133.21 adopts by reference.

The amendment establishes a specific licensure category for private college infirmaries, changes a present requirement in the dietary standards that is burdensome, and incorporates chemical dependency guidelines into the present psychiatric nursing unit standards.

The amendments establishes regulations for a new special hospital category for licensure of private college infirmaries for

the exclusive use of students enrolled in the college; changes a present standard for dietary equipment storage that is contradictory to dietary storage manufacturer's specifications; and, adds language to the present psychiatric nursing unit standards to include chemical dependency nursing units.

The following changes are made to the hospital licensing standards in response to comments received and department review.

Regarding proposed new §§1-2.9.5.—1-2.9.11., one commenter said the referenced sections contained standards that are already stated elsewhere in the standards. The agency agrees that some redundancy did occur and has made appropriate adjustments.

Regarding §7-7.1, a commenter recommended that language be added in the chemical dependency unit regulations pursuant to compliance with agency methadone detoxification and maintenance rules. The agency agrees and has added that the units must meet the standards of the Texas Department of Health Synthetic Narcotic Drug Program, Texas Civil Statutes, Article 4476-11, and regulations of the United States Food, Drug and Cosmetic Investigational Methadone Program, described in Title 21 Code of Federal Regulations §291.501.

The comments were made by the department's Office of General Counsel. The counsel supported of the adoption with recommended changes. There was no opposition to the adoption of the amendment.

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

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 November 3, 1987.

TRD-8709781 Robert A. Maclean
Deputy Commissioner
Professional Services
Texas Department of
Health

Effective date, December 1, 1987
Proposal publication date: August 11, 1987
For further information, please call
(512) 458-7531.



Chapter 141. Massage Therapists

★25 TAC §§141.2, 141.3, 141.5, 141.6, 141.9, 141.11, 141.14-141.17

The Texas Department of Health adopts amendments to §§141.2, 141.3, 141.5, 141.6, 141.9, 141.11; and new §§141.15-141.17. New §141.15 is adopted with changes to the proposed text published in the August 21, 1987, issue of the *Texas Register* (12 TexReg 2770). The amendments to §§141.2, 141.3, 141.5, 141.6, 141.9, 141.11, and new §§141.16, and 141.17 are adopted without changes and will not be republished.

The amendments to §§141.2, 141.3, 141.5, 141.6, and 141.9, expand definitions, modify procedures of the advisory council on massage therapy, cover application and certification procedures during the reopening of the grandfather clause until January 1, 1988, allow audiovisual aids as part of classroom instruction, and modify the complaint procedure concerning prohibited acts. In addition, the amendments to §141.5 and §141.6 bring the sections into compliance with Texas Civil Statutes, Article 4512K, §7 as amended by House Bill 2466, 70th Legislature, 1987, by adding the criteria and procedures for registration during the reopening of the grandfather clause until January 1, 1988.

The amendments assure that the registration of massage therapists will identify and register competent practitioners. New §§141.15-141.17 establish the acts that represent unprofessional conduct by a massage therapist; adds requirements concerning crimes or offenses involving prostitution or sexual offenses; and adds a requirement concerning local ordinances.

Several commenters expressed concerns and made comments regarding the Massage Therapy Act and existing sections not being proposed for amendment. Since the comments did not affect the proposed sections, the department did not make any changes.

Concerning §141.5(c)(5), several commenters stated the late fee required for applications filed under the reopened grandfather period is excessive. The Advisory Council on Massage Therapy and the department disagree. The late fee, in addition to the required registration fee, required by House Bill 2466. The fee is reasonable to cover the costs associated with reopening the grandfather period. The costs include, but are not limited to, printing applications, the rulemaking process, and additional staff time to evaluate the additional documentation necessary to qualify under this provision.

Regarding §141.9(b)(1)(G), one commenter said that schools should not be required to have instructors physically present in the classroom when audiovisual aids are

used. The council declined to change the wording to allow nonsupervised audiovisual courses. This matter will be researched and evaluated by the council and the school/instructor committee of the council and the section amended on its recommendation, as appropriate.

Regarding §141.15, two commenters requested inclusion of a dress code. The department disagrees because the proposed sections are adequate to govern the practice of massage therapy.

Concerning §141.15, numerous commenters requested that the department clarify whether it is regulating professional and/or private conduct. The proposed section was intended to regulate professional rather than private conduct. The council and the department agree that clarification is needed and has rewritten the section to specify prohibited activities during working hours.

One group, the Lesbian/Gay Rights Lobby of Texas, commented on the new sections. It was supportive of the new sections with reservations and concerns about §141.15 and made recommendations for changes to this section.

The amendments are adopted under Texas Civil Statutes, Article 4512K, §7, which provide the Texas Department of Health with the authority to adopt rules concerning the regulation of massage therapists.

§141.15. *Unprofessional Conduct.*

(a) A registered massage therapist is engaging in unprofessional conduct that has endangered or is likely to endanger the public health, welfare and safety, if a registered massage therapist:

- (1) provides false information on material submitted to the department;
- (2) uses a work area, equipment, or clothing that is unclean or unsanitary;
- (3) consumes, during working hours, alcohol or takes controlled substances not prescribed by a physician licensed to practice medicine in the State of Texas;
- (4) makes deceptive, untrue, or fraudulent representations in the practice of massage or employing a trick or scheme in the practice of massage, including, but not limited to, warranty of results of such services and false claims of proficiency in any field;

(5) is, in session with a client, found by a preponderance of the evidence to have engaged in sexual conduct. For the purposes of this section, "sexual conduct" means any type of sexual behavior that is described in Chapters 21, 22, and 43 of the Texas Penal Code.

(b) A registered massage therapist shall immediately discontinue the activity or the professional relationship when a client initiates any verbal or physical contact with the therapist that is intended to arouse or gratify the sexual desire of either person.

(c) A registered massage therapist who offers massage services to clients may not

operate from a place of business in which any floor space is devoted to the offering of materials or services which are characterized by an emphasis on sexual activities. Such businesses include, but are not limited to, nude modeling or nude photographic studios, adult arcades, adult bookstores, adult theatres, adult novelty shops, escort services, and topless bars. However, this shall not be construed to prohibit a registered massage therapist from providing massage services off-premises at a business that emphasizes sexual activities, if the client is the owner or employee of the business.

Chapter 325. Solid Waste Management

Subchapter Q. Memorandum of Agreement and Joint Rules with Other State Agencies Memorandum of Understanding on Oil and Gas and Geothermal Wastes

★25 TAC §325.721

The Texas Department of Health adopts new §325.721, with changes to the proposed text published in the August 11, 1987, issue of the *Texas Register* (12 TexReg 2629).

Section 325.721 adopts by reference a memorandum of understanding (MOU) among the Texas Department of Health, the Texas Water Commission, and the Railroad Commission of Texas, containing the agencies' interpretation of jurisdiction over waste associated with exploration, production, and refining of oil and gas, and geothermal resources development. The language in §325.721 is changed to include the effective date of the MOU. There are no changes to the text of the MOU as a result of comments received on the proposal. House Bill 1407, §10, enacted by the 67th Legislature, 1981, required a memorandum of understanding (MOU) be developed by the Texas Water Commission (then the Texas Department of Water Resources), the Texas Department of Health, and the Railroad Commission of Texas. The MOU was to specify the agencies' interpretation of their jurisdiction over waste

associated with exploration, production, and refining of oil and gas and was to be updated and amended as necessary. The first MOU was effective on January 1, 1982, and addressed geothermal resources as well as oil and gas, but was not adopted as a rule. House Bill 2091, Article 8, §1, enacted by the 69th Legislature, 1985, required all MOU's entered into by the Texas Department of Health, and related to solid waste management, be adopted as a rule. This, plus several changes in conditions, including the transfer of jurisdiction over municipal hazardous waste from the Texas Department of Health to the Texas Water Commission, has required the MOU to be updated.

The rule (MOU) clarifies the relationship and jurisdiction of the Texas Department of Health, the Texas Water Commission, and the Railroad Commission of Texas over waste associated with oil and gas exploration, production, and refining, and geothermal resources development activities, by summarizing the agencies' authority described in several laws. Related state laws include the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, the Texas Radiation Control Act, Texas Civil Statutes, Article 4590f, and several laws codified in the Texas Water Code and the Texas Natural Resources Code. Related federal laws include the Resource Conservation and Recovery Act, Public Law 94-580, and the Comprehensive Environmental Response, Compensation and Liability Act (Superfund), Public Law 967-510, as amended.

Several commenters suggested that the adoption language should identify the revised MOU by its effective date. The commenters believe this addition would be necessary to assure that future revisions will be made through the rulemaking procedure. It will also assure that anyone inspecting a copy of the MOU will be able to check whether the MOU copy being studied is the most current document. Future amendments to the MOU are required to go through the rulemaking process regardless of whether the effective date is mentioned in §325.721. However, the agencies agree that the effective date of the most current MOU would be easier to identify if the effective date is stated in the adoption language in §325.721. The effective date is added. One commenter sought clarification on the question whether the Texas Water Commission or the Railroad Commission of Texas would have jurisdiction over a drum of mystery chemical found at an oil and gas production facility. If it is reasonable to assume that the drum contains material associated with a production activity, the Railroad Commission of Texas would have jurisdiction. Under the Texas Natural Resources Code, §91.101, the Railroad Commission of Texas has jurisdiction over wastes and other substances and materials associated with the exploration, development, and production of oil or gas. The wastes and other substances and materials regulated by the Railroad Commission of Texas pursuant to §91.101 are excluded from regulation by the Texas Water Commission under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7. The same commenter also sought confirmation that it is interpreting the MOU correctly with respect to tank bottoms from breakout tankage along crude oil pipelines. (This commenter interprets the MOU to place these wastes under the jurisdiction of the Railroad Commission of Texas, because they result from the storage of crude oil before it enters the refinery.) The agencies agree with the commenter's reading of the MOU.

One commenter raised questions about which agency is responsible for wastes generated at station facilities of companies providing well treatment services to the oil and gas industry. The language in the revised MOU reflects an understanding reached by the agencies in response to inquiries from oil field service companies performing fracturing, acidizing, and cementing services. This understanding recognizes that the activities typically conducted at well treatment service company stations, in particular, the mixing and storing of well treatment chemicals and the servicing of company vehicles, are not closely enough tied to exploration, development, and production operations to be subject to the jurisdiction of the Railroad Commission of Texas. Instead, the wastes generated at the station facilities are regulated as industrial wastes by the Texas Water Commission. The commenter notes that the same wastes generated at the well treatment service company station facilities would be regulated by the Railroad Commission of Texas if they were generated at the well site and suggests that the division of jurisdiction among the agencies should be based on the character of the wastes rather than the point of generation.

The agencies disagree for the following reasons. First, although the wastes generated at the station facilities may be similar to some wastes generated at the well site, regulatory responsibility (by law) is based upon the nature of the source of the waste rather than the composition or character of the waste. The activities of the well treatment service company at the well site, which are subject to the supervision of the well operator, are considered to be associated with exploration, development, and production, and therefore are subject to the jurisdiction of the Railroad Commission of Texas. The activities at the station facilities are not considered to be associated with exploration, development, and production, and therefore are subject to Texas Water Commission jurisdiction.

Second, the wastes described in the revised MOU as being generated at station facilities are not wastes that are typically generated at the well site. Wastes such as chemical residue rinsate and vehicle washbay wastewater are wastes generated during cleanup operations that typically occur at the station facility. Therefore, these wastes would seldom be subject to regulation by any agency other than the Texas Water Commission.

Finally, the division of jurisdiction based upon the point of generation of the wastes is justified because it avoids the duplication of effort entailed when multiple agencies regulate the same site. The commenter indicated that there are other types of well treatment service performed by service companies besides fracturing, acidizing, and cementing, although the commenter gave no specific examples.

The agencies believe that the well treatment services listed in the revised MOU are the most common types of well treatment performed by these service companies. The listed services were included solely for the purpose of identifying the type of service company being addressed.

One commenter expressed concern about the paragraph entitled "Field Treatment of Produced Fluids." The commenter asserted that wastes from field treatment in facilities, such as sweetening units, are not subject to the jurisdiction of the Railroad Commission of Texas. The commenter states that field treatment processes are not listed in the Texas Water Code, §26.131, or the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, as activities associated with the exploration, development, and production of oil or gas. The agencies disagree with the commenter. It is true that field treatment processes are not specifically identified as activities associated with the exploration, development, or production of oil or gas in the Texas Natural Resources Code, §91.101, or in the counterparts in the Texas Water Code and the Solid Waste Disposal Act. However, a number of activities, including the drilling and operation of fluid injection wells for secondary or enhanced recovery of oil and gas, are not specifically listed in the statutes, although they are clearly production activities. The agencies agree that the field treatment of produced fluids is an activity associated with the production of oil and gas and that wastes that result from this activity are subject to the jurisdiction of the Railroad Commission of Texas.

One commenter suggested that the revised MOU should be specific as to the ability of Texas Water Commission inspectors to gain entry to any facility at which waste under its jurisdiction may be generated, stored, or disposed. The commenter also indicated that the revised MOU should address coordination of enforcement activities between the Texas Water Commission and the Railroad Commission of Texas, including provision for interagency notice of inspections and enforcement actions. The agencies do not see the need to address enforcement issues in this MOU. The MOU interprets the division of jurisdiction among the agencies over the management of wastes from various activities. Each agency has its own statutes providing it authority to enter property for the purpose of inspecting and investigating conditions relating to its waste management jurisdiction. These statutes need not be enumerated in the MOU. With regard to the coordination of enforcement activities, the agencies have a practice of cooperating in matters of mutual concern.

One commenter stated that reclamation plants that process both oil and gas wastes and other types of wastes should be subject to the primary jurisdiction of the Texas Water Commission. The agen-

cies agree with the implication that this type of facility would be subject to the jurisdiction of both the Texas Water Commission and the Railroad Commission of Texas. However, it is not clear what the commenter intends by describing the Texas Water Commission as the agency of primary jurisdiction. The agencies would characterize the situation as one of joint jurisdiction

One commenter expressed uncertainty over the nature of the Railroad Commission's jurisdiction over refining activities. The Railroad Commission of Texas has regulatory authority to prevent the waste of crude oil. The term waste is defined in the Texas Natural Resources Code, §85.046. For refineries, the applicable Railroad Commission rules require the reporting of crude oil streams into or out of the refinery for accounting purposes.

There were no comments against the rule, only in support of the rule or suggestions to improve the MOU. Those making comments at the public hearing or in writing include Lone Star Chapter, Sierra Club, Austin; Alice Specialty Company, Inc., Alice; Gas Processors Association, Tulsa, Oklahoma; Texas Mid-Continent Oil and Gas Association, Austin; Cities Service Oil and Gas Corporation, Conoco, Inc.; Texaco, Inc.

This new section is adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, as amended by House Bill 1407, §10, enacted by the 67th Legislature, 1981, and House Bill 2091, Article 8, §1, enacted by the 69th Legislature, 1985, which requires the Texas Department of Health to adopt as a rule a memorandum of understanding covering waste management §325.721. *Adoption by Reference.*

(a) The Texas Department of Health adopts by reference the memorandum of understanding among the Texas Department of Health, the Texas Water Commission, and the Railroad Commission of Texas. The memorandum contains the agencies' interpretation of their jurisdiction over wastes associated with oil and gas exploration, production, and refining, and with wastes which result from geothermal resource development activities.

(b) Copies of the memorandum of understanding, are on file with the Texas Department of Health and may be reviewed during regular business hours.

(c) The effective date of the memorandum of understanding is December 1, 1987.

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 November 3, 1987.

TRD-8709782

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

Effective date: November 24, 1987
Proposal publication date: August 11, 1987
For further information, please call
(512) 458 7271

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part I. General Land Office Chapter 11. Legal Division Oil and Gas Leases, Mineral Classified Lands

★31 TAC §11.13

The General Land Office adopts an amendment to §11.13, without changes to the proposed text published in the July 31, 1987, issue of the *Texas Register* (12 TexReg 2502).

The amendment clarifies the agency's filing procedures and requirements.

The amendment will bring about greater governmental and administrative efficiency due to clarification of General Land Office rules for filing procedures and requirements.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Natural Resources Code, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law.

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

Issued in Austin, Texas, on November 3, 1987.

TRD-8709767

Garry Mauro
Commissioner
General Land Office

Effective date: November 24, 1987
Proposal publication date: July 31, 1987
For further information, please call
(512) 463-5009.

★31 TAC §11.17

The General Land Office adopts new §11.17, without changes to the proposed text published in the July 31, 1987, issue of the *Texas Register* (12 TexReg 2505).

The new section achieves uniformity between the administrative rules and the amendment to the Natural Resources Code, §52.175, enacted by House Bill 2143, 70th Legislature, 1987.

The new section specifies how oil and gas will be leased after a Relinquishment Act lease and/or a surface owner's rights under the Relinquishment Act have been forfeited; the surface owner's share of the revenue generated by a lease executed under this section; and the conditions

under which the surface owner's rights will be reinstated.

No comments were received regarding adoption of the amendment.

The new section is adopted under the Natural Resources Code, Title 2, Subtitle C, Chapter 31, §31.051, which provides the commissioner of the General Land Office with the authority to make and enforce rules consistent with the law

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

Issued in Austin, Texas, on November 3, 1987

TRD-8709768

Garry Mauro
Commissioner
General Land Office

Effective date: November 23, 1987
Proposal publication date: July 31, 1987
For further information, please call
(512) 463 5009

Part IX. Texas Water Commission

Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste Management in General

★31 TAC §335.28

The Texas Water Commission (TWC) adopts an amendment to §335.28, with changes to the proposed text published in the August 11, 1987, issue of the *Texas Register* (12 TexReg 2634).

Amended §335.28 now references three memoranda of understanding (MOUs) between the TWC and other state agencies. The MOUs concerning public participation in the state hazardous waste enforcement process and concerning the regulation and management of radioactive mixed wastes have previously been adopted by the TWC, as described in the preamble to this proposed amendment that was published in the August 11, 1987, issue of the *Texas Register*. No comments were received on those two MOUs, since this proposed amendment merely consolidated the reference to them in one section and they had previously been revised in response to public comment. The MOU concerning radioactive mixed wastes became effective on September 1, 1987, and was adopted by reference in §335.35.

The amendment adopts by reference a memorandum of understanding between the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health concerning the division of jurisdiction among the agencies

over wastes that result from activities associated with the exploration, development, and production of oil or gas and the refining of oil. An MOU was originally executed by the agencies effective January 1, 1982, pursuant to House Bill 1407, §10, 67th Legislature, 1981. The MOU adopted in this rulemaking has been revised to incorporate recent statutory amendments relating to the jurisdictional issues addressed by the MOU and to reflect the experience gained by the agencies in working with the MOU since 1982.

The revised MOU clarifies the division of waste management jurisdiction among the agencies over various oil and gas activities by interpreting the division of jurisdiction among the agencies over wastes that result from activities associated with the exploration, development, and production of oil or gas and the refining of oil. The agencies have adopted the text of the MOU as proposed. The language of §335.28 is revised to clarify that the MOU concerning oil and gas wastes referenced in this section is effective December 1, 1987. The effective dates of the sections adopting the other two MOUs is also added to §335.28, to provide greater clarity in identifying those documents. The agencies are hopeful that the adoption of the MOU concerning oil and gas wastes will promote efficient administration of the agencies' waste management programs, avoid duplication of effort among the agencies, and aid the regulated community in its efforts to comply with applicable regulations. The Railroad Commission of Texas and the Texas Department of Health will also publish their notices of adoption in the *Texas Register*.

The following commenters expressed general support for the proposed amendment, although they suggested some changes: Alice Specialty Company Inc.; Cities Service Oil and Gas Corporation; Conoco Inc., Gas Processors Association; Texaco Inc.; and the Texas Mid-Continent Oil and Gas Association. The Sierra Club also commented, expressing concern about certain aspects of the proposed amendment.

The agencies received several comments suggesting that §335.28(3) should identify the MOU on oil and gas wastes by its effective date. The commenters believe this addition to be necessary to properly identify the document and to assure that any future amendments to the MOU will be made through rulemaking proceedings. The TWC has revised the language of §335.28 in response to this comment in order to clarify the effective date of the referenced MOU. As required by the Texas Water Code, §5.104, the TWC shall adopt by rule any MOU between the commission and any other state agency.

One commenter sought clarification on the question of whether the Texas Water Commission or the Railroad Commission of Texas would have jurisdiction over a

drum of mystery chemical found at an oil and gas production facility. If it is reasonable for the Railroad Commission to assume that the drum contains material associated with production activities, the Railroad Commission of Texas has jurisdiction. Under the Texas Natural Resources Code, §91.101, the Railroad Commission of Texas has jurisdiction over wastes and other substances and materials associated with the exploration, development, and production of oil or gas. The wastes and other substances and materials regulated by the Railroad Commission of Texas pursuant to §91.101 are excluded from regulation by the Texas Water Commission under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7.

This same commenter also sought confirmation that it is interpreting the MOU correctly with respect to tank bottoms from breakout tankage along crude oil pipelines. This commenter reads the MOU to place these wastes under the jurisdiction of the Railroad Commission of Texas, because they result from the storage of crude oil before it enters the refinery. The agencies agree with the commenter's reading of the MOU.

One commenter raised questions about which agency is responsible for wastes generated at station facilities of companies providing well treatment services to the oil and gas industry. The language in the MOU reflects an understanding reached by the agencies in response to inquiries from oil field service companies performing fracturing, acidizing, and cementing services. This understanding recognizes that the activities typically conducted at well treatment service company stations, in particular the mixing and storing of well treatment chemicals and the servicing of company vehicles, are not closely enough tied to exploration, development, and production operations to be subject to the jurisdiction of the Railroad Commission. Instead, the wastes generated at the station facilities are regulated as industrial wastes by the Texas Water Commission.

The commenter notes that the same wastes generated at the well treatment service company station facilities would be regulated by the Railroad Commission if they were generated at the well site and suggests that the division of jurisdiction among the agencies should be based on the character of the wastes rather than the point of generation. The agencies disagree for the following reasons. First, although the wastes generated at the station facilities may be similar to some wastes generated at the well site, regulatory responsibility is based upon the nature of the waste-generating activity rather than the character of the waste. The activities of the well treatment service company at the well site, which are subject to the supervision of the well operator, are considered to be associated

with exploration, development, and production. Therefore, they are subject to the jurisdiction of the Railroad Commission of Texas. The activities at the station facilities are not considered to be associated with exploration, development, and production, and therefore are subject to Texas Water Commission jurisdiction. Second, the wastes described in the revised MOU as being generated at station facilities are not wastes that are typically generated at the well site. Wastes such as chemical residue rinsate and vehicle washbay wastewater are wastes generated during cleanup operations that typically occur at the station facility. Therefore, these wastes would seldom be subject to regulation by an agency other than the Texas Water Commission. Finally, the division of jurisdiction based upon the point of generation of the wastes is justified because it avoids the duplication of effort entailed when multiple agencies regulate the same site.

One commenter indicated that there are other types of well treatment services performed by service companies besides fracturing, acidizing, and cementing, although the commenter gave no specific examples. The agencies believe that the well treatment services listed in the MOU are the most common types of well treatment performed by these service companies. The listed services were included solely for the purpose of identifying the type of service company being addressed.

One commenter expressed concerns about the paragraph in the MOU entitled "Field Treatment of Produced Fluids," and asserted that wastes from field treatment in facilities such as natural gas sweetening units is not subject to the jurisdiction of the Railroad Commission of Texas. The commenter notes that field treatment processes are not listed in the Texas Water Code, §26.131, or the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §2, as activities associated with the exploration, development, and production of oil or gas. The agencies disagree with the commenter. It is true that field treatment processes are not specifically identified as activities associated with the exploration, development, or production of oil or gas in the Texas Natural Resources Code, §91.101, or in the counterparts in the Texas Water Code and the Solid Waste Disposal Act. However, a number of activities, including the drilling and operation of fluid injection wells for secondary or enhanced recovery of oil and gas, are not specifically listed in the statutes, although they are clearly production activities. The agencies agree that the field treatment of produced fluids is an activity associated with the production of oil and gas and that wastes that result from this activity are subject to the jurisdiction of the Railroad Commission of Texas.

One commenter suggested that the MOU should be specific as to the ability of

Texas Water Commission inspectors to gain entry to any facility at which waste under its jurisdiction may be generated, stored, or disposed. The commenter also indicated that the MOU should address coordination of enforcement activities between the Texas Water Commission and the Railroad Commission of Texas, including provision for interagency notice of inspections and enforcement actions.

The agencies do not see the need to address enforcement issues in this MOU. The MOU interprets the division of jurisdiction among the agencies over the management of wastes from various activities. Each agency has its own statutes providing it authority to enter property for the purpose of inspecting and investigating conditions relating to its waste management jurisdiction. These statutes remain in force and need not be enumerated in the MOU. With regard to the coordination of enforcement activities, the agencies have a practice of cooperating in matters of mutual concern.

One commenter states that reclamation plants that process both oil and gas wastes and other types of wastes should be subject to the primary jurisdiction of the Texas Water Commission. The agencies agree with the implication that this type of facility would be subject to the jurisdiction of both the Texas Water Commission and the Railroad Commission of Texas. However, it is not clear what the commenter intends by describing the Texas Water Commission as the agency of primary jurisdiction. The agencies would characterize the situation as one of joint jurisdiction.

One commenter expressed uncertainty over the nature of the Railroad Commission's jurisdiction over refining activities. The Railroad Commission of Texas has regulatory authority to prevent the waste of crude oil. The term "waste" is defined in the Texas Natural Resources Code, §85.046. For refineries, the applicable Railroad Commission rules require the reporting of crude oil streams into or out of the refinery for accounting purposes.

This amendment is adopted under the Texas Water Code, §5.103 and §5.105, which provides the Texas Water Commission with the authority to adopt any regulations necessary to carry out its powers and duties under the Water Code and other laws of this state and to establish and approve all general policy of the commission. This amendment is also adopted under the Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(c), which authorizes the commission to adopt and promulgate regulations consistent with the general intent and purposes of the Act and to establish minimum standards of operation for all aspects of the management and control of municipal hazardous waste and industrial solid waste, including requirements relating to the siting of hazardous waste facilities. Under the Solid Waste Disposal Act, §3(b), the Texas Water Commission is designated the state solid waste agency with respect to the management of all industrial solid waste and hazardous municipal waste and is required to seek the accomplishment of the purposes of the Act through the control of all aspects of industrial solid waste and municipal hazardous waste management by all practical and economically feasible methods consistent with the powers and duties prescribed under the Act and other existing legislation. Section 3(b) also grants to the commission the powers and duties specifically prescribed in the Act and all other powers necessary or convenient to carry out its responsibilities. The amendment is also adopted under House Bill 1407, 67th Legislature, 1981, §10, which requires the Railroad Commission of Texas, the Texas Water Commission, and the Texas Department of Health to adopt and to amend, as necessary, a memorandum of understanding concerning the division of jurisdiction among the agencies over waste materials that result from, or are related to, activities associated with the exploration, development, and production of oil or gas and the refining of oil.

§335.28. *Adoption of Memoranda of Understanding by Reference.* The follow-

ing memoranda of understanding between the commission and other state agencies, required to be adopted by rule as set forth in the Texas Water Code, §5.104, are adopted by reference. Copies of these documents are available upon request from the Texas Water Commission, Legal Division, P O Box 13087, Austin, Texas 78711-3087, (512) 463-8078:

(1) the memorandum of understanding (effective July 14, 1987) between the attorney general of Texas and the Texas Water Commission, which concerns public participation in the state hazardous waste enforcement process;

(2) the memorandum of understanding (effective September 1, 1987) between the Texas Department of Health and the Texas Water Commission, which concerns the regulation and management of radioactive mixed wastes; and

(3) the memorandum of understanding (effective December 1, 1987) between the Railroad Commission of Texas, the Texas Department of Health, and the Texas Water Commission, which concerns the division of jurisdiction among the agencies over wastes that result from or are related to activities associated with the exploration, development, and production of oil, gas, or geothermal resources, and the refining of oil.

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 November 3, 1987

TRD-8709753

J. D. Head
Director
Legal Division
Texas Water Commission

Effective date: December 1, 1987
Proposal publication date: August 11, 1987
For further information, please call
(512) 463-8087

✦ ✦ ✦

TITLE 34. PUBLIC FINANCE

Part 1. Comptroller of Public Accounts

Chapter 3. Tax Administration Subchapter F. Motor Vehicle Sales Tax

★ 34 TAC §3.65

The Comptroller of Public Accounts adopts an amendment to §3.65, without changes to the proposed text published in the September 22, 1987, issue of the Texas Register (12 TexReg 3310).

This amendment responded to action of the 70th Legislature, 1987, which increased the motor vehicle tax rate to 6.0% effective September 1, 1987. The amendment deleted references to the tax rate.

No comments were received regarding adoption of the amendment.

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

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 November 3, 1987.

TRD-8709776 Bob Bullock Comptroller of Public Accounts

Effective date: November 24, 1987 Proposal publication date: September 22, 1987 For further information, please call (512) 463-4004.



★ 34 TAC §3.77

The Comptroller of Public Accounts adopts an amendment to §3.77, without changes to the proposed text published in the September 22, 1987, issue of the Texas Register (12 TexReg 3310).

The amendment allows the comptroller to deposit certain protest payments to the General Revenue Fund and the foundation school fund, and eliminates the payment of interest on taxes paid in error after October 3, 1986. The amendment reflects action taken by the legislature.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the motor vehicle tax.

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 November 3, 1987

TRD-8709775 Bob Bullock Comptroller of Public Accounts

Effective date November 24, 1987 Proposal publication date September 22, 1987 For further information, please call (512) 463-4004.



Subchapter F. Motor Vehicle Sales Tax

★ 34 TAC §3.90

The Comptroller of Public Accounts adopts an amendment to §3.90, without changes to the proposed text published in the September 22, 1987, issue of the Texas Register (12 TexReg 3311).

The amendment responds to action of the 70th Legislature, 1987, which increased the motor vehicle tax rate to 6.0% effective September 1, 1987. The amendment deletes the references to the tax rate.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the motor vehicle tax.

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 November 3, 1987.

TRD-8709777 Bob Bullock Comptroller of Public Accounts

Effective date: November 24, 1987 Proposal publication date: September 22, 1987 For further information, please call (512) 463-4004.



Subchapter O. State Sales and Use Tax

★ 34 TAC §3.285

The Comptroller of Public Accounts adopts an amendment to §3.285, with changes to the proposed text published in the September 22, 1987, issue of the Texas Register (12 TexReg 3312).

The amendment requires the purchaser to state the type of business the purchaser is engaged in and what the purchaser sells in the regular course of business. In addition to the purchaser's name and ad-

dress, the amendment also requires the seller's name and address. Items removed from a valid tax-free inventory and taken outside Texas for use are subject to Texas sales tax at the time the items are removed. Items may be purchased tax free if a person intends to sell, rent, or lease the items in the regular course of business. If a person is unsure whether the items will be sold or used, tax must be paid at the time of purchase.

The change appears in the certificate form where the space for the purchaser's name and address has been moved to the top of the form.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

§3.285. Resale Certificate; Sales for Resale.

- (a) (No change.) (b) Acceptance of resale certificate.

(1) All gross receipts of a seller are subject to sales or use tax unless a resale or exemption certificate is accepted by the seller. See also §3.287 of this title (relating to Exemption Certificates).

(2) A sale is exempt if the resale certificate is accepted in good faith and the seller lacks actual knowledge that the sale is not a sale for resale. It is the seller's responsibility to take notice of the type business generally engaged in by the purchaser as shown on the resale certificate.

(3) A resale certificate may not be signed by a purchaser who does not know at the time of purchase if the taxable item will be resold, leased, rented, or used for some other purpose.

(4) The seller should obtain the properly executed resale certificate at the time the sale occurs. If the certificates are not obtained at the time of the sale, the seller has 60 days from the date written notice is given by the comptroller to the seller in which to deliver them to the comptroller. Any certificates delivered to the comptroller during the 60-day period will be subject to independent verification before any deductions will be allowed. Certificates delivered after the 60-day limit will not be accepted and the deduction will not be granted. See §3.282 of this title (relating to Auditing Taxpayer Records) and §3.286 of this title (relating to Seller's Responsibilities).

- (c) (No change.) (d) Retailers outside Texas.

(1) (No change.)

(2) The resale certificate must show the signature and address of the purchaser, the state to which the property is taken for resale, the sales tax permit number, if any, or the registration number assigned to the purchaser by the purchaser's home state. An invoice describing the taxable item purchased

and showing the exact street address or office address from which the taxable item will be resold must be attached to the resale certificate. The resale certificate must also state the type business engaged in by the purchaser and the type items sold in the regular course of business.

(e) Improper use of items purchased for resale.

(1) When an item is removed from a valid tax-free inventory for use, Texas sales tax is due whether the use is in Texas or outside the state. When an item purchased under a resale certificate is used for any purpose other than retention, demonstration, or display, the purchaser is liable for sales tax based on the fair market rental value of the item for the period of time used. The fair market rental value is the amount that a purchaser would pay on the open market to rent the item for use. If the item has no fair

market rental value, the sales tax is due based upon the purchase price.

(2) (No change.)

(3) Sales tax is not due when a seller removes an item from a valid tax-free inventory and donates the item to an organization exempt under the Texas tax Code, §151.309 or §151.310(a)(1) and (a)(2).

(f) (No change.)

(g) Content of a resale certificate. A resale certificate must show:

(1) the name and address of the purchaser;

(2) the number from the sales tax permit held by the purchaser or a statement that an application for a permit is pending before the comptroller with the date the application for a permit was made. If the application is pending, the resale certificate is valid for only 60 days, after which time the resale certificate must be renewed to show

the permanent permit number. If the purchaser holds a Texas sales tax permit, the number must consist of 11 digits which begin with a 1, 2, or 3. Federal employer's identification (FEI) numbers or social security numbers are not acceptable evidence of resale;

(3) a description of the taxable items generally sold, leased, or rented by the purchaser in the regular course of business and a description of the taxable items to be purchased tax free by use of the certificate. The item to be purchased may be generally described on the certificate or itemized in an order or invoice attached to the certificate;

(4) the signature of the purchaser and the date; and

(5) the name and address of the seller.

(h) Form of a resale certificate. A resale certificate must be substantially in the form set out as follows:

TEXAS CERTIFICATE OF RESALE

Purchaser: _____

Street Address: _____

City, State, Zip Code: _____

I hold Limited Sales Tax Permit No. _____ *

The taxable item described below, or on the attached order or invoice, will be resold, rented or leased by me within the geographical limits of the United States of America, its territories and possessions, in its present form or attached to other personal property to be sold. I understand that if I make any use of the item other than retention, demonstration or display while holding it for sale, lease or rental, I must pay sales tax on the item at the time of use based upon either the purchase price or on the fair market rental value for the period of time used.

I understand that it is a misdemeanor to give to the seller a resale certificate for taxable items which I know, at the time of purchase, are purchased for use rather than for the purpose of resale, lease, or rental and that upon conviction I may be fined not more than \$500 per offense.

Seller: _____

Street address: _____

City, state, zip code: _____

Description of the property to be purchased:

Provide a description of the type of business activity generally engaged in or the type of items normally sold by the purchaser:

Sign Here: _____ Date: _____ Phone: _____

*Or, registration number from retailer's state or date permit was applied for.

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 November 3, 1987

TRD-8709770 Bob Bullock
Comptroller of Public
Accounts

Effective date November 24, 1987
Proposal publication date September 22, 1987
For further information please call
(512) 463-4004



***34 TAC §3.287**

The Comptroller of Public Accounts adopts an amendment to §3.287, without changes to the proposed text published in the September 25, 1987, issue of the *Texas Register* (12 TexReg 3356).

The amendment limits the time a person has in which to obtain exemption certificates after being notified by the comptroller in writing. The amendment provides that certificates must be delivered to the comptroller in writing. The amendment provides that certificates must be delivered to the comptroller within 60 days. All sales are presumed taxable unless the seller obtains an exemption certificate from the purchaser in lieu of tax. The seller's name is required on the certificate as well as the purchaser's name.

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 November 3, 1987

TRD-8709771 Bob Bullock
Comptroller of Public
Accounts

Effective date: November 24, 1987
Proposal publication date: September 25, 1987
For further information, please call
(512) 463-4004



***34 TAC §3.320**

The Comptroller of Public Accounts adopts an amendment to §3.320, without changes to the proposed text published in the September 25, 1987, issue of the *Texas Register* (12 TexReg 3359).

The amendment responds to action by the second called special legislative session which exempted ice used exclusively on commercial fishing boats in the storage of aquatic species.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 November 3, 1987.

TRD-8709772 Bob Bullock
Comptroller of Public
Accounts

Effective date: November 24, 1987
Proposal publication date: September 25, 1987
For further information please call
(512) 463-4004.



***34 TAC §3.336**

The Comptroller of Public Accounts adopts an amendment to §3.336, without changes to the proposed text published in the September 25, 1987, issue of the *Texas Register* (12 TexReg 3360).

The amendment is in response to action taken by the 70th Legislature, 1987, which authorized the State Purchasing and General Services Commission to designate

and arrange for the production of official state coins to be minted of pure gold or silver in various weights. The coins may not be produced, sold, or otherwise distributed by any person except under a contract with the State Purchasing and General Services Commission. The legislature also added §151.340 to the Tax Code, exempting from sales tax coins designated as official state coins. During the special session, the legislature repealed §151.334, the lone star medallion exemption, and §151.336, an exemption for certain coins and precious metal.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2.

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 November 3, 1987.

TRD-8709773 Bob Bullock
Comptroller of Public
Accounts

Effective date: November 24, 1987
Proposal publication date: September 25, 1987
For further information, please call
(512) 463-4004.



Subchapter P. Local Sales and Use Tax

***34 TAC §3.378**

The Comptroller of Public Accounts adopts an amendment to §3.378, without changes to the proposed text published in the September 22, 1987, issue of the *Texas Register* (12 TexReg 3317).

The amendment responds to action taken by the legislature which allows cities, if approved by voters, to impose an additional 0.5% city tax. If imposed, the new tax cannot apply to the sale of natural gas and electricity for residential use unless

the city already imposes the city tax on residential use of natural gas and electricity authorized by Texas Civil Statutes, Article 1066c, §2.

No comments were received regarding adoption of the amendment

The amendment is adopted under the Texas Tax Code, §111.002, which provides that the comptroller may prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Tax Code, Title 2

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 November 3, 1987

TRD-8709774 Bob Bullock
Comptroller of Public
Accounts

Effective date: November 24, 1987
Proposal publication date: September 22, 1987
For further information, please call
(512) 463-4004

Part III. Teacher Retirement System of Texas

Chapter 25. Membership Credit

Service Eligible for Membership

★34 TAC §25.9

The Teacher Retirement System of Texas (TRS) adopts the repeal of §25.9, without changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2556).

The 70th Legislature, 1987, repealed the exception to mandatory participation in the Teacher Retirement System for employees who first become employed in Texas public education after reaching age 60. The section incorporating and applying that exception is no longer valid and has, therefore, been repealed.

No comments were received regarding adoption of the repeal

The repeal is adopted under Texas Civil Statutes, Title 110B, §35.102(1) and (2), which provide the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility and to administer the funds of the retirement system.

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

Issued in Austin, Texas, on November 2, 1987

TRD-8709733 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: November 23, 1987
Proposal publication date: August 7, 1987
For further information, please call
(512) 397-6478

Compensation

★34 TAC §25.27

The Teacher Retirement System of Texas (TRS) adopts the repeal of §25.27, without changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2556).

Retirement credit for any compensation is limited by Texas Civil Statutes, Title 110B, §32.201. Because this statute generally permits crediting only normal periodic payments of money for service the right to which accrues on a regular basis in proportion to the service performed, this section is repealed to prevent the granting of any credit for lump sum payoffs of the remaining amounts that would have been due under an employment contract that has been terminated before the performance of all work contemplated by the contract. The section, adopted prior to the more restrictive limits of the present law, had been used to permit contributions and retirement credit for such payoffs.

No comments were received regarding adoption of the repeal

The repeal is adopted under Texas Civil Statutes, Title 110B, §33.201(b) and §35.102(2), which provide the board of trustees of the Teacher Retirement System with the authority to adopt rules with respect to membership service credit and to adopt rules to administer the funds of the retirement system.

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

Issued in Austin, Texas, on November 2, 1987.

TRD-8709732 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: January 31, 1988
Proposal publication date: August 7, 1987
For further information, please call
(512) 397-6478

★34 TAC §25.31

The Teacher Retirement System of Texas (TRS) adopts amendments to §25.31 without changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2557).

Texas Civil Statutes, Title 110B, §35.110, authorizes the Teacher Retirement System to adopt rules to limit the percentage

increases in a member's annual compensation in the last years before retirement. Retirement benefits are calculated as a percentage of the member's best three years' average salary. This section imposes a 20% limit on increases in annual salary contained for the last five years of employment before retirement in order to mitigate the effect on benefits of disproportionately large increases in salary before retirement. It also provides for a refund of deposits on salaries not credited because of this limit. There has been some uncertainty as to the availability of such a refund in the event that the 20% limit would limit some annual compensation, generally in the fourth and fifth years before retirement, but would not affect the calculation of the member's benefit because the member's best three years' average salary would be unchanged.

This amendment to the section clarifies that no refund of deposits will be made if the application of the 20% limit has no effect on the calculation of a retiring member's benefits.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Title 110B, §35.110, which provides the board with the authority to adopt rules in determining annual compensation.

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 November 2, 1987

TRD-8709731 Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: November 23, 1987
Proposal publication date: August 7, 1987
For further information, please call
(512) 397-6478.

Chapter 29. Benefits Death Before Service Retirement

★34 TAC §29.32

The Teacher Retirement System of Texas (TRS) adopts an amendment to §29.32 without changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2557).

The 70th Legislature, 1987, increased the lump sum death benefit option payable to the designated beneficiary of deceased active Teacher Retirement System members. The existing section contains a reference to the lump sum death benefit amount provided by prior law.

The amendment conforms to applicable statutes by substituting the proper lump sum benefit amount—two times annual

compensation but not more than \$60,000—for the benefit amount provided by prior law

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Title 110B, §35.102, which provide the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administer the funds of the retirement system, and conduct its business and House Bill 2623, 70th Legislature, 1987.

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 November 2, 1987.

TRD-8709730

Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: November 23, 1987

Proposal publication date: August 7, 1987

For further information, please call
(512) 397-6478



Chapter 31. Employment After Retirement

★ 34 TAC §31.12

The Teacher Retirement System of Texas (TRS) adopts an amendment to §31.12 without changes to the proposed text published in the August 7, 1987, issue of the *Texas Register* (12 TexReg 2557).

Under previous law a retiree who wished to work up to full time for a period not to exceed five consecutive months within the period of September-June of the school year, and still draw retirement benefits, had to notify the Teacher Retirement System of that choice before beginning that employment. A statutory change enacted by the 70th Legislature, 1987, allows the retiree to notify the retirement system by the end of the first month of employment of the desire to proceed under that exception.

The amendment incorporates the statutory changes.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Title 110B, §35.102(2), which provides the board of trustees of the Teacher Retirement System with the authority to adopt rules for membership eligibility, administer the funds of the retirement system, and conduct its business.

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 November 2, 1987

TRD-8709729

Bruce Hineman
Executive Secretary
Teacher Retirement
System of Texas

Effective date: November 23, 1987

Proposal publication date: August 7, 1987

For further information, please call
(512) 397-6478.



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 10. Family Self-support Services

The Texas Department of Human Services (DHS) adopts the repeal of §§10.3101-10.3111, 10.3113, 10.3114, 10.3118, 10.3119, 10.3121, 10.3122, 10.3124-10.3151, 10.3153, and 10.3154; and new §§10.3101-10.3136, 10.3150-10.3163, and 10.3165—10.3180. New §§10.3101, 10.3106, 10.3107, 10.3111, 10.3119-10.3122, 10.3129, 10.3130, 10.3136, 10.3154, 10.3155, 10.3159, 10.3160, 10.3162, 10.3169, 10.3172, and 10.3180 are adopted with changes to the proposed text published in the June 30, 1987, issue of the *Texas Register* (12 TexReg 2086). All of the repealed sections and new §§10.3102-10.3105, 10.3108-10.3110, 10.3112-10.3118, 10.3123-10.3128, 10.3131-10.3135, 10.3150-10.3153, 10.3156-10.3158, 10.3161, 10.3163, 10.3165-10.3168, 10.3170, 10.3171, and 10.3173-10.3179 are adopted without changes and will not be republished. Section 10.3164 is being withdrawn from consideration in a separate simultaneous submission to the *Texas Register*.

DHS is adopting the new sections to ensure clear and concise policies and procedures for its day care services program and to provide more continuity in day care for families in training sessions.

The new sections reorganize, clarify, and further define policies concerning enrollment, attendance, absenteeism, hours of care, contracting, and payment.

Comments were received from the Day Care Association of Fort Worth and Tarrant County; Child, Inc.; the Crockett Independent School District Early Childhood Development Program; Bickerstaff, Heath & Smiley Law Office; Magic Moments Children's Learning Centers; Austin Community Nursery Schools; Child Care, Inc.; Young Women's Christian Association; and Child Care Dallas. The commenters were generally favorable to the proposals but had specific concerns and suggestions for change.

Commenters requested that §10.3101 and §10.3154 be changed to allow day care

facilities to bill for up to four additional days when a child's care ends without notice. A commenter also stated that elimination of the four additional billing days reduces DHS funds to facilities thus causing a fiscal impact on small businesses. DHS disagrees in part with these comments. The Legislative Budget Board, in July 1986, required DHS to review its absenteeism policies and to do an attendance study because of concerns about the cost of absenteeism in DHS purchased day care. Although there may be some fiscal impact to a particular day care center, the elimination of the four billing days would allow more DHS children to receive more actual days of care. Many facilities have discontinued this billing practice because of the difficulty in documenting, monitoring, and auditing it. Because existing contracted rates are based on the additional billing days, DHS has reinstated the extra days until current day care contracts or agreements end. Sections 10.3101 and §10.3154 were changed by adding this language as new paragraph (9) and renumbering the rest of the paragraphs.

Commenters were concerned that in §10.3103 and §10.3156 DHS too narrowly defines who may sign the authorization form for handicapped children and that the time frame for giving the authorization to the facility is too restrictive. DHS believes that more information is needed regarding the commenter's concerns. Rather than making an interim change now, DHS will propose changes to these sections after studying the matter.

One commenter requested information on who pays for the physician's or specialist's assessment of handicapped children enrolled in purchase of service contracts described in §10.3103 and §10.3156. Payment for the screening and assessment of handicapped children is made by parents, Medicaid, the contractor, or other local resources (such as early childhood intervention programs).

Commenters requested that §10.3106 and §10.3159 be changed to extend the length of time that AFDC parents are allowed to enroll children in day care while they seek employment. The department agrees with the commenters and has changed the sections to extend the period from 30 days to eight weeks for initial job seeking as part of DHS employment case plans. This corresponds with the federal requirements for mandatory clients.

Commenters requested a change in §10.3107 and §10.3160, regarding the number of hours a week that parents must work for their children to receive full-time care. DHS agrees and has changed the requirements to 25 hours in subsections (b) and (c) of those sections. DHS also added the stipulation that full-time participation in high school is equivalent to 25 hours of work per week in subsection (b) of §10.3107 and §10.3160.

Regarding §10.3110, commenters were concerned about the type of DHS staff that is responsible for monitoring that the contractor follows up on a child's absence within a billing period since a possible suspension of payment for noncompliance is involved. No changes were made to §10.3110 as a result of the comment. The department feels that it is the responsibility of the DHS contract manager and other designated personnel to monitor and ensure that contract obligations are met.

A commenter recommended that §10.3119 be changed to read "applicable regulations" instead of "state and federal regulations." DHS made this change.

A commenter recommended that the word "federal" be removed from §10.3120. The department believes that the word "federal" should be left in the section because federal regulation changes can occur. DHS has changed the section to read "state or federal regulations."

A commenter requested that §10.3124 be changed to reduce or eliminate the 10-day waiting period or that DHS should reimburse the provider for lost parent/caretaker fee income. DHS does not agree with the commenter because all clients receiving DHS services are guaranteed the right to appeal a reduction or denial of services within 10 days of notification. In purchase of service contracts, DHS does not adjust payments based on the parent/caretaker fees. The contractor has the right to waive or reduce fees in purchase of service facilities as described in §10.3123.

A commenter, when referring to §10.3136, stated that DHS has increased provider's administrative costs through single audit requirements without increasing the unit rate. Commenters also requested information on how §10.3136 and §10.3180 relate to the Single Audit Act. DHS has received its board's approval to develop and publish rules that describe under what conditions DHS will reimburse providers for costs of obtaining a single audit as required by Single Audit Act of 1984. These rules will be published in the near future for public comment. DHS has changed the language in §10.3136 and §10.3180 to indicate that contractors that are subject to the Single Audit Act may be audited by independent auditors.

Commenters requested changes in the restrictions in purchase of day care through provider agreements. In §10.3150, commenters wanted an increase in the maximum from 30% to 50% of the licensed capacity of the center. DHS disagrees and the percentage will remain as proposed. The primary consideration in establishing a 30% maximum was to be fair to facilities willing to serve a small number of children referred by DHS and maintain the integrity of the competitive procurement system. Concerns have been presented to DHS' day care advisory

groups and to executive staff that excessive funds are spent with some facilities through the noncompetitive arrangement. Providers that want more than 30% of their licensed capacity to be purchased by DHS may apply for a day care purchase of service contract.

Two commenters stated that adequate notice of the proposal was not received. DHS regrets that the commenters did not believe they had adequate time to review the changes or to comment on them. The department, however, encouraged input from all interested parties. Copies of the *Child Day Care Handbook*, which contains the proposed rules, were sent on July 31, 1986, to the Title XX Day Care Providers Association, the Day Care Task Force, and the Family Self-support Advisory Council, and comments were invited. The department also published the proposed changes in the *Texas Register* on June 30, 1987, and comments were accepted for the full 30-day period ending on July 30, 1987. DHS also held a public hearing to accept comments on proposed changes and published the public hearing date in the *Texas Register*.

DHS made the following additional changes to the sections as proposed. Section 10.3111 was changed significantly to provide more details about terminating enrollment for excessive absences and notice requirements. Although the section is substantially reformatted and contains new language, the policy content remains the same. In §10.3121, language was added to subsection (a) to clarify the policy regarding fees for priority 1 and priority 2 children. Section 10.3129 was clarified by specifying in paragraph (b)(2) the qualifications of a child development specialist. Paragraph (3) of §10.3154 was changed to specify that DHS authorizes the eligibility and care of children served through provider agreements. Sections 10.3101, 10.3106, 10.3122, 10.3130, 10.3155, 10.3159, 10.3162, 10.3169, and 10.3172 contain minor changes to provide additional information and to further clarify the intent of the sections. DHS is withdrawing proposed §10.3164 because it conflicted with other provider agreement policies.

Day Care and Child Development Services

★ 40 TAC §§10.3101-10.3111, 10.3113, 10.3114, 10.3118, 10.3119, 10.3121, 10.3122, 10.3124-10.3151, 10.3153, 10.3154

The repeals are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs and financial assistance and related services.

§10.3101. *Types of Purchased Day Care Services.*

§10.3102. *Eligibility for Day Care Services.*

§10.3103. *Priorities for Provision of Purchased Day Care Services.*

§10.3104. *Services to Abused and Neglected Children.*

§10.3105. *Employment and Training-Related Day Care.*

§10.3106. *Children Served in Purchase of Service (POS) Facilities.*

§10.3107. *Children Served in Provider Agreement Facilities.*

§10.3108. *Determination of Need for Employment or Training-related Day Care.*

§10.3109. *Working with Providers.*

§10.3110. *Serving Eligible Handicapped Children.*

§10.3111. *Authorization for Additional Payment.*

§10.3113. *Individual Developmental Plans.*

§10.3114. *Determination of Compliance with Day Care Purchase Specifications (POS Contracts).*

§10.3118. *Provider Agreement Purchase Procedures.*

§10.3119. *Determining Provider's Potential for a Provider Agreement.*

§10.3121. *Renewal of Provider Agreements.*

§10.3122. *Service Plans for Day Homes.*

§10.3124. *Methods of Rate Determination for Provider Agreements.*

§10.3125. *Published Rate Method.*

§10.3126. *Standard Rate Method.*

§10.3127. *Notification of Possible Suspension or Termination of Contract.*

§10.3128. *Finalization of Contract Suspension or Termination.*

§10.3129. *Basis of Payment—Purchase of Service (POS) Contract.*

§10.3130. *Unit of Service Determination.*

§10.3131. *Purchasable Calendar Days of Enrollment for POS Contracts.*

§10.3132. *Enrollment Days.*

§10.3133. *Payment for Enrollment.*

§10.3134. *Payment for Continued Enrollment.*

§10.3135. *Facilities Documentation of Attendance/Absenteeism.*

§10.3136. *Absenteeism Follow-up for Children in Family Support Case Plans.*

§10.3137. *Absenteeism Follow-up for Protective Services Children.*

§10.3138. *Absenteeism Follow-up for Other Children Served by POS Contractors.*

§10.3139. *Overenrollment.*

§10.3140. *Drop-in Care of DHS Ineligible Children.*

§10.3141. *Other Plans for Supplementing Capacity.*

§10.3142. *Maximum Rates for Day Care.*

§10.3143. *Transportation for Day Care in Provider Agreement Facilities.*

§10.3144. *Cost Reimbursement.*

§10.3145. *Audited Unit Rate Method.*

§10.3146. *Published Unit Rate.*

§10.3147. *Budget Based Unit Rate.*

§10.3148. *Rate Renegotiation.*

§10.3149. *Co-pay by Families to POS Facilities.*

§10.3150. *Co-pay by Families to Provider Agreement Facilities.*

§10.3151. *Food Program Reimbursements to POS Facilities.*

§10.3153. *Deficits and Surplus Funds.*

§10.3154. *Required Forms.*

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 November 4, 1987

TRD-8709796

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date: March 1, 1988

Proposal publication date: June 30, 1987

For further information, please call

(512) 450-3765.



Child Day Care Services

***40 TAC §§10.3101—10.3136,
10.3150—10.3163,
10.3165—10.3180**

The new sections are adopted under the Human Resources Code, Title 2, Chapters 22 and 31, which provides the department with the authority to administer public assistance programs and financial assistance and related services.

§10.3101. *Basis of Payment for Purchase of Service Contracts.* For the purchase of service (POS) contractor to be paid, the following criteria must be met when services are provided.

(1) There must be a signed contract between DHS and the contractor on the first date services are delivered.

(2) The child care facility must be licensed or registered and comply with the appropriate set of minimum standards for child care facilities.

(3) The contractor must document that children served are eligible and meet the criteria for one of the priorities for service.

(4) The contractor must comply with the general family self-support policies and procedures for eligibility determination, authorization, and documentation.

(5) The owner of the facility must not have a parental relationship with the child, as described in the Texas Family Code, Title 2, (usually a biological parent, adoptive parent, or legal guardian).

(6) The contractor must document that children are within the age group specified in the DHS contract and in the facility's license or registration.

(7) The contractor must document that the children are enrolled according to either:

(A) the DHS worker's authorization; or

(B) for self referrals, the client's need for care (number of hours the parents or caretakers work or are in training including transportation time to and from work or training).

(8) The contractor bills DHS for units of service provided to enrolled children on specified days of operation and subject to the limits in the contract, including:

(A) any day the facility routinely provides care;

(B) up to nine additional days per year, including holidays;

(C) any additional days the facility normally provides care but cannot because of inclement weather, natural disasters, or other circumstances that make operation of the facility impossible. The contract manager must give written approval before the contractor bills for this type of enrollment day.

(9) Between March 1, 1988, and the ending date specified in the contract, facilities may bill DHS for up to four days after a child's enrollment ends if it ends without four days advance notice. The number of days that may be billed after a child's enrollment ends depends on the amount of advance notice the facility had that the enrollment was ending.

(10) The care must not exceed one full-day unit of care for a child per 24-hour period unless authorized by DHS.

(11) The contractor must have an attendance record for each child showing whether the child is present or absent on each day the child is enrolled.

(12) The contractor must follow up on an enrolled child who is absent depending on the type of authorization under which the child was enrolled.

(13) The contractor's rate of payment must not exceed the DHS maximum rate for the age group served or the rate specified in the contract.

(14) The contractor's payment rate must be based on the rate or budgeted costs in the DHS contract and is subject to DHS rate setting procedures, allowable costs, and the limit on the DHS funds allocated in the contract.

(15) The contractor is not paid for any child in the facility for any day or time

that attendance exceeds the licensed capacity for the facility.

(16) Any facility providing care must be identified in the DHS contract, or the contract terms must explicitly allow the contractor to subcontract for services to other facilities without prior approval by DHS.

§10.3106. *Employment-Related and Training-Related Day Care in POS Facilities.*

(a) DHS purchases day care for children in Priorities two, three, and four to allow parents or caretakers to obtain or retain employment or to participate in training. At the time of enrollment, a child's parent or caretaker must be employed, in training, or actively participating in DHS employment services unless incapacitated.

(b) If one parent or caretaker is incapacitated, the child must also have a parent or caretaker participating in employment, training, or DHS employment services.

(c) If children are enrolled in employment-related or training-related day care and the parent or caretaker is temporarily incapacitated, day care may continue for up to two additional months. The parent or caretaker must obtain a doctor's statement verifying the incapacity and that the condition should end within the two-month timeframe.

(d) Children of employed students may receive day care services needed to support their parents' or caretakers' employment.

(e) As a condition of the DHS employment services case plan, parents or caretakers may enroll their children for up to eight calendar weeks while they initially seek employment. If the employment of a parent or caretaker is interrupted or if participation in training ends, day care may be continued for a currently enrolled child for up to 30 calendar days while the parent or caretaker seeks employment.

(f) Training-related day care is provided for children to allow their parents or caretakers to:

(1) complete high school or the equivalent; or

(2) obtain additional training to assist them to become self supporting.

(g) The training should be expected to lead to employment. For DHS employment services clients, the training must be part of an employability plan.

(h) The parents or caretakers must participate in training through institutions that are approved, licensed, or accredited by the state or a professional regulatory body. The regional director for family self-support may grant exceptions for programs that are:

(1) designed to train and place the types of clients served by DHS; and

(2) successful in placing clients in employment as a result of the training.

(i) To determine if the training program can be expected to lead to employment, the success of recent graduates in obtaining

employment as a result of the training is considered.

(j) Training-related day care may continue until the parent or caretaker completes one of the following:

- (1) an associate degree;
- (2) 65 semester hours of college credit; or
- (3) two years of adult vocational education or training.

(k) A maximum of two years of post high school, training-related day care purchased by DHS may be received regardless of the training completed.

(l) The regional director for family self-support or designee may grant extensions for up to six weeks if they will enable parents or caretakers to complete a term or a course of study.

(m) Parents or caretakers who have completed training or education identified in subsection (j)(1), (2), or (3) of this section are considered employable and their children are not eligible for training-related day care.

(n) The regional director for family self-support services or designee may grant exceptions to the requirements concerning time in training if a four- to six-week refresher course will enable parents or caretakers to qualify for employment or a better job.

§10.3107. Hours of Care in POS Facilities.

(a) Children in Priorities two, three, and four are enrolled based on the hours needed to support the parent's or caretaker's employment and training.

(b) Full-time care is authorized only if the parent or caretaker works or is in training 25 hours or more a week. For a high school student, full-time participation in high school is equivalent to 25 hours of work per week. For a college student, 12 or more semester hours of coursework is equivalent to 25 hours of training per week.

(c) Part-time care is authorized if the parent or caretaker works or is in training 15 hours or more per week, but less than 25. Six semester hours of coursework is equivalent to 15 hours of training per week.

(d) Combinations of work and training may be used to determine the amount of day care to authorize.

(e) An employed parent or caretaker should earn gross pay of at least \$200 per month to be considered employed full time and eligible for full-time day care. To receive part-time care, the gross pay should be at least \$100 a month.

§10.3111. Termination for Excessive Absence in POS Facilities.

(a) A child's enrollment should be terminated for excessive absences if the child has been absent for:

- (1) five consecutive days without the parent or caretaker contacting the contractor or without authorization to continue the enrollment from the DHS child protective or family self-support worker; or
- (2) more than 10 days during a

month.

(b) For special circumstances such as illness, the DHS contract manager may authorize continuation of the enrollment. In these cases, the contractor must request authorization to continue enrollment from the DHS contract manager before billing DHS for the month in which the excessive absences occurred.

(c) In situations described in subsection (a)(2) of this section, clients must be notified of the intent to terminate day care enrollment 10 or 12 days before the termination date depending on whether the notice is given to the client or mailed. The child's enrollment continues until the termination date or until an appeal decision.

§10.3119. Budget Based Unit Rate Method in POS Facilities. Any contractor may use the budget based unit rate. The contractor and DHS negotiate a budget of expected allowable costs based on applicable regulations for the contracted period and an estimate of expected enrollment days. The contracted rate is the budget total divided by expected enrollment days not to exceed the maximum rate for the age group served.

§10.3120. Rate Renegotiation in POS Facilities.

(a) The contractor's rate is effective for the period of the contract, unless renegotiation is needed because of substantial losses or gains by the contractor that were not predictable when the contract was negotiated. The contract manager renegotiates the rate, if necessary.

(b) The contractor must notify the contract manager if substantial losses or gains are expected or experienced. The contract manager must review a contractor's rates every six months and whenever any of the following changes occur:

- (1) a change in the minimum wage;
- (2) a change in state or federal regulations or policies affecting staffing ratios;
- (3) an extended strike or shutdown of a major industry that seriously affects enrollment;
- (4) receipt of a grant or subsidy that replaces budgeted salaries included when the current rate was negotiated;
- (5) denial of a grant or subsidy that requires inclusion of salaries not included when the current rate was negotiated; and
- (6) a change in the Child Care Food Program reimbursement rate.

(c) If circumstances other than the preceding six occur and rate renegotiation seems appropriate, the assistant commissioner for family self-support must approve a higher rate before renegotiation is completed. The Texas Constitution provides that once a contract is entered into, extra compensation cannot be granted for the work originally agreed upon. Therefore, rates may not be increased or the certified local resources percentages may not be lowered unless services to be performed increase.

DHS will not approve retroactive rate changes.

§10.3121. Parent or Caretaker Fees in POS Facilities.

(a) Contractors must establish their own fee schedule, based on a family's ability to pay. DHS must approve the schedule and any changes to it before implementation. Contractors must assess a weekly amount to all income eligible and nonpublic assistance food stamp clients. Contractors must not assess a fee to parents of Priority 1 children unless it is allowed under child protective services policy and is authorized by child protective services staff. Contractors must not assess a fee to parents or caretakers of Priority 2 children.

(b) The weekly fee for a family with one child receiving day care is 2.0% to 3.0% of the family's gross monthly income. The weekly fee for a family with more than one child receiving day care is 2.5% to 4.0% of the family's gross monthly income. The family's gross monthly income is the amount recorded on the most recent eligibility certification. Contractors must not charge more than the cost of the service to DHS as determined by the contracted rate.

(c) Parents who receive a child care allocation from another state or federal program such as JTPA must pay that amount in addition to the assessed parent or caretaker fee. Contractors should request documentation of child care allocations from parents or caretakers.

§10.3122. Collection of Parent or Caretaker Fees in POS Facilities.

Contractors must collect the fees from the family at least monthly either before or after services are delivered. Contractors keep the collected fees and may use them as the local participation share or to provide additional day care services. Contractors must document compliance with their collection policies and keep copies of receipts given to the parents or caretakers.

§10.3129. Broker Contracts.

(a) Day care brokers are contractors that provide all or part of the care through subcontracts or agreements with facilities from which the brokers purchase care on an individual basis.

(b) Brokers must:

- (1) meet the requirements for contracting, including the capacity to provide quality day care services and eligibility determination and documentation;
- (2) have a child development or early childhood specialist on staff or under contract to monitor service delivery and to deliver training and technical assistance to subcontractors. Qualifications are those for a child development specialist III in the *DHS Personnel Handbook*. Child development specialist II qualifications may suffice for a system serving fewer than 100 children;
- (3) monitor service delivery on-site at each facility at least twice annually;

(4) offer training and technical assistance to subcontractor's staff, and

(5) subcontract only with facilities that are licensed, registered, or certified.

§10.3130. Broker Subcontracts with Day Care Centers.

(a) Brokers must have written subcontracts with the centers that deliver the day care services. These subcontracts must contain the following information:

- (1) rates of payment;
- (2) location, days, and hours of service;
- (3) maximum number of children to be served;
- (4) description of service;
- (5) beginning date and ending date of agreement;
- (6) responsibility for collection and disposition of parent or caretaker fees;
- (7) absenteeism follow-up requirements;
- (8) recordkeeping requirements;
- (9) payment procedures; and
- (10) responsibility to report suspected child abuse and neglect to DHS.

(b) DHS staff must approve each subcontract individually or approve the broker's subcontract form and minimum facility requirements, thereby waiving the right of prior approval for each individual subcontract. Subcontracts must be signed before enrolling children in the facility.

§10.3136. Audits of POS Facilities.

(a) Day care facilities are subject to DHS audit or review. DHS may audit all relevant records or statistically sample records and project overpayments based on that sample. Contractors subject to the Single Audit Act are subject to audit by an independent auditor.

(b) Contractors must submit any reports required by DHS. DHS may audit cost or rate study data submitted.

§10.3154. Basis of Payment for Provider Agreements. For the provider to be paid, the following criteria must be met when services are provided.

(1) There must be a signed provider agreement between DHS and the provider on the first date services are delivered.

(2) The facility must be licensed or registered and comply with the appropriate set of minimum standards for child care facilities.

(3) The provider must document that the care of the children was authorized by DHS staff.

(4) The provider must comply with the general family self-support policies and procedures for eligibility determination, authorization, and documentation.

(5) The owner of the facility must not have a parental relationship with the child as described in Title 2 of the Texas Family Code (usually a biological parent, adoptive parent, or legal guardian)

(6) The provider must document that the children are within the age group

specified in the provider agreement and in the facility's license or registration.

(7) The provider must document that the children are enrolled according to a DHS worker's authorization.

(8) The provider bills DHS for units of service provided to enrolled children on specified days of operation and subject to the limits in the provider agreement including:

(A) any day the facility routinely provides care;

(B) up to nine additional days per year, including holidays;

(C) any additional days the facility normally provides care but cannot because of inclement weather, natural disasters, or other circumstances that make operation of the facility impossible. DHS staff must give written approval before the provider bills for this type of enrollment day.

(9) Between March 1, 1988, and the ending date specified in the provider agreement, facilities may bill DHS for up to four days after a child's enrollment ends if it ends without four days advance notice. The number of days that may be billed after a child's enrollment ends depends on the amount of advance notice the facility had that the enrollment was ending.

(10) The care must not exceed one full-day unit of care for each child per 24-hour period unless authorized by DHS.

(11) The provider must have an attendance record for each child showing whether the child is present or absent on each day the child is enrolled.

(12) The provider must follow up on an enrolled child who is absent depending on the type of authorization under which the child is enrolled.

(13) The provider's payment rate must not exceed the DHS maximum rate for the age group served or the rate specified in the provider agreement.

(14) The provider's payment rate is the rate in the provider agreement and is subject to DHS rate setting procedures and allowable costs.

(15) The provider is not paid for any child in the facility for any day or time that attendance exceeds the licensed capacity for the facility.

(16) Any facility providing care must be identified in the DHS provider agreement, or the provider agreement terms must explicitly allow the provider to subcontract for services at other facilities without prior approval by DHS.

§10.3155. Eligibility and Priorities for Service in Provider Agreement Facilities.

(a) DHS purchases day care services from provider agreement facilities for children from birth through 10 years of age who meet the eligibility criteria specified in §10.1001 of this title (relating to People Who Are Eligible) and the criteria for one of the following priorities:

(1) Priority one—children referred by DHS child protective services staff

without regard to income;

(2) Priority two—children who receive or whose parents or caretakers receive AFDC, SSI, or refugee/entrant cash assistance who need day care so their parent or caretakers can participate in employment or training;

(3) Priority three—children who receive or whose parents or caretakers receive food stamps who need day care so their parents or caretakers can participate in employment or training;

(4) Priority four—other children who meet income eligibility guidelines and who need day care so their parents or caretakers can participate in employment or training.

(b) DHS also purchases day care for children who are 11—13 years of age if they are in Priority one or have a documented handicap that makes day care necessary but allows for mainstreaming.

(c) Providers must enroll children in order of priority.

(d) Children must be in Priority one or two when initially referred to a provider agreement facility by a DHS worker. Children in Priority one may receive day care for six months, unless child protective services staff authorizes continued care. Children in Priority two may receive day care while they or their parents or caretakers receive an assistance grant and the parents or caretakers are employed or participating in training. Children may continue receiving day care for up to two years after grant denial under Priorities three or four if they are still eligible and their parents or caretakers are employed or participating in training.

§10.3159. Employment-Related and Training-Related Day Care in Provider Agreement Facilities.

(a) DHS purchases day care for children in Priorities two, three, and four to allow parents or caretakers to obtain or retain employment or to participate in training. At the time of enrollment, a child's parent or caretaker must be employed, in training, or actively participating in DHS employment services unless incapacitated.

(b) If one parent or caretaker is incapacitated, the child must also have a parent or caretaker participating in employment, training, or DHS employment services.

(c) If children are enrolled in employment-related or training-related day care and the parent or caretaker is temporarily incapacitated, day care may continue for up to two additional months. The parent or caretaker must obtain a doctor's statement verifying the incapacity and that the condition should end within the two-month time frame.

(d) Children of employed students may receive day care services needed to support their parents' or caretakers' employment.

(e) As a condition of the DHS employment services case plan, parents or caretakers may enroll their children for up to eight calendar weeks while they seek employment.

(f) Training-related day care is provided for children to allow their parents or caretakers to:

(1) complete high school or its equivalent; or

(2) obtain additional training to assist them to become self supporting.

(g) The training should be expected to lead to employment. For DHS employment services clients, the training must be part of an employability plan.

(h) The parents or caretakers must participate in training through institutions that are approved, licensed, or accredited by the state or a professional regulatory body. The regional director for family self-support may grant exceptions for programs that are:

(1) designed to train and place the types of clients served by DHS; and

(2) successful in placing clients in employment as a result of the training.

(i) To determine if the training program can be expected to lead to employment, the success of recent graduates in obtaining employment as a result of the training is considered.

(j) Training-related day care may continue until the parent or caretaker completes one of the following:

(1) an associate degree;

(2) 65 semester hours of college credit; or

(3) two years of adult vocational education or training.

(k) A maximum of two years of post high school training-related day care purchased by DHS may be received regardless of the training completed.

(l) The regional director for family self-support or designee may grant extensions for up to six weeks if they will enable parents or caretakers to complete a term or a course of study.

(m) Parents or caretakers who have completed training or education identified in subsection (j)(1), (2), or (3) of this section are considered employable and their children are not eligible for training-related day care.

(n) The regional director for family self-support or designee may grant exceptions to the requirements concerning time in training if a four-to six week refresher course will enable parents or caretakers to qualify for employment or a better job.

§10.3160. Hours of Care in Provider Agreement Facilities.

(a) Children in Priorities two, three, and four are enrolled based on the hours needed to support the parent's or caretaker's employment and training.

(b) Full-time care is authorized only if the parent or caretaker works or is in training 25 hours or more a week. For a high school student, full-time participation in high school is equivalent to 25 hours of work per

week. For a college student, 12 or more semester hours of coursework is equivalent to 25 hours of training per week.

(c) Part-time care is authorized if the parent or caretaker works or is in training 15 hours or more per week but less than 25. Six semester hours of coursework is equivalent to 15 hours of training per week.

(d) Combinations of work and training may be used to determine the amount of day care to authorize.

(e) An employed parent or caretaker should earn gross pay of at least \$200 a month to be considered employed full time and eligible for full-time day care. To receive part-time care, the gross pay should be at least \$100 a month.

§10.3162. Enrollment Days in Provider Agreement Facilities.

(a) DHS bases the units of service on the duration of an eligible child's enrollment. The provider is neither penalized when a child enrolled for full days attends occasionally for a part day nor paid extra when a child enrolled for part days attends occasionally for a full day.

(b) Enrollment begins when a child's name is placed on the rolls of the facility after being determined eligible and the child's parent or caretaker or DHS worker assures the provider that the child will attend on a specified basis. The provider must document the child's expected arrival and departure times and the unit of service (full day or part day) in the child's folder.

(c) All clients must meet the following basic requirements for enrollment:

(1) the eligibility criteria;

(2) a day care priority;

(3) the intake documentation requirements;

(4) the provider's rules for enrollment; and

(5) the requirements for attendance.

(d) If these requirements are not met, providers may drop the child from the enrollment rolls.

(e) A parent or caretaker must sign a statement of understanding that the child's care will end if the child is absent five consecutive days or more than 10 days in a month without the parent or caretaker contacting the facility or DHS.

§10.3169. Standard Rate Method in Provider Agreement Facilities.

(a) DHS uses the standard rate method for providers that do not qualify to use a published rate or those that choose the standard rate. DHS determines the rate for full-day or part-day basic care. The administrative fee and applicable special fees are already included in the standard rate.

(b) The standard rate is \$6.40 per child, per day. For part-day care the standard rate is \$4.16 per child, per day. Providers may receive up to \$1.50 extra per child, per day for transportation.

§10.3172. Collection of Parent or Caretaker Fees in Provider Agreement Facilities.

(a) Providers must collect the fees from the family at least monthly either before or after services are delivered. Providers may use the same collection procedures for DHS purchased day care as for other families served.

(b) Providers must inform the parent or caretaker about collection procedures and provide a receipt for fees paid.

(c) Providers must notify DHS within 10 work days after the due date if the parent or caretaker does not pay the assessed fee. Providers are not reimbursed for the uncollected fees if DHS is not notified of the overdue amount.

§10.3180. Audits of Provider Agreement, Facilities.

(a) Day care facilities are subject to DHS audit or review. DHS may audit all relevant records or statistically sample records and project overpayments based on that sample. Facilities subject to the Single Audit Act are subject to audit by an independent auditor.

(b) Providers must submit any reports required by DHS. DHS may audit cost or rate study data submitted.

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 November 4, 1987

TRD-8709794

Marlin W. Johnston
Commissioner
Texas Department of
Human Services

Effective date March 1, 1988

Proposal publication date June 30, 1987

For further information, please call

(512) 450-3765

Part IV. Texas Commission
for the Blind
Chapter 163. Vocational
Rehabilitation Program

★ 40 TAC §163.8

The Texas Commission for the Blind adopts the repeal of §163.8 without changes to the proposed text published in the September 22, 1987, issue of the *Texas Register* (12 TexReg 3321).

The repeal allows for the adoption of a new section which bases the provision of services on client participation in the cost of certain services

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Rehabilitation Act of 1973 amended fed-

eral regulations (45 Code of Federal Regulations Part 34); and Human Resources Code, Title 5, Chapter 91, which provide the Texas Commission for the Blind with the authority to adopt rules governing the provision of services to blind and visually impaired individuals.

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 November 1, 1987

TRD-8709723

Pat D Westbrook
Executive Director
Texas Commission for
the Blind

Effective date: November 23, 1987

Proposal publication date: September 22, 1987

For further information, please call

(512) 459-2600



★ 40 TAC §163.8

The Texas Commission for the Blind adopts new §163.8, with changes to the proposed text published in the September 22, 1987, issue of the *Texas Register* (12 TexReg 3321).

The new section addresses the provision of services based upon client participation in the cost of certain services.

The new section delineates the services that are subject to client participation in their cost as determined by application of certain economic resources, and those circumstances that constitute hardships and allow adjustments to a client's income.

No comments were received regarding adoption of the new section.

The new section is adopted under the Rehabilitation Act of 1973, as amended (45 Code of Federal Regulations Part 84); and the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to adopt rules governing the provision of services to blind and visually impaired individuals.

§163.8. *Client Participation in Cost of Service.*

(a) The purpose of client participation in service costs is to encourage the client's commitment to a vocational rehabilitation goal, to create a cooperative relationship between the client and the agency, and to conserve the agency's limited funds. Since clients may be required to pay for some services, they will be informed of the agency's policy at the time they are in applicant status.

(b) All services are subject to client participation in their cost except:

- (1) diagnostic and related services (included maintenance and transportation for diagnostic services);
- (2) counseling, guidance, and referral services by agency staff;
- (3) employment assistance services by agency staff;
- (4) training at Criss Cole Rehabilitation Center (includes transportation to and from the center);
- (5) vocational rehabilitation teacher services (including consumable supplies);
- (6) Form 10 (tuition exemption);
- (7) reader and interpreter services;
- (8) orientation and mobility services; and
- (9) services paid for or reimbursed by a source other than the agency.

(c) The client's participation in the cost of services will be determined by application of the economic resources table contained in this subsection after the eligibility criteria contained in §163.5 of this title (relating to Eligibility for Vocational Rehabilitation Services) and order of selection criteria contained in §163.30 of this title (relating to Order of Selection for Payment of Services) have been applied and approved. Clients having economic resources in excess of the amounts listed in the table are required to use the excess to pay for the cost of vocational rehabilitation services.

Economic Resources Table		
Number of Persons Depending on Family Income	Net Monthly Income	Liquid Assets
1	\$ 696	\$2,100
2	1,196	3,600
3	1,396	4,200
4	1,596	4,800
5	1,796	5,400
6	1,996	6,000
7	2,196	6,600
8	2,396	7,200

For each additional family member, raise net monthly income amount by \$200 and liquid assets by \$600.

(d) The term "economic resources" refers to the net monthly income of an individual and their liquid assets. Net monthly income is all income, less adjustments as described in subsection (g) and (h) of this section. Liquid assets are cash, bank accounts, and stocks and bonds.

(e) Similar benefits will be used prior to the expenditure of commission funds.

(f) A client's economic resources will be evaluated at least annually or at any time the counselor has reason to believe the client's economic status has changed. The evaluations will be placed on the client's individualized written rehabilitation plan.

(g) Financial resources which are considered income in the calculation of net monthly income are:

(1) monthly income from wages and salaries, defined as the pay of an individual after deductions for:

- (A) income tax;
- (B) Social Security tax;
- (C) one qualified retirement program;
- (D) health insurance premiums; and
- (E) trade or professional dues and assessments; and

(2) other income such as:

(A) contributions received on a regular basis from family, individuals, or interested organizations;

- (B) net rentals from property;
- (C) scholarships and fellowships;
- (D) public assistance payments;
- (E) assistance from private welfare agencies;

(F) income from stock dividends and bond interest;

(G) income from child support payments;

(H) income from self-employment which is defined as gross receipts, minus allowable Internal Revenue Service ex-

penses, from one's own business which results in income. Gross receipts include the value of all goods sold and services rendered. Expenses include:

- (i) cost of goods purchased;
- (ii) rent;
- (iii) utilities;
- (iv) wages and salaries paid;

and

(v) business taxes (not personal income taxes or self-employment Social Security taxes);

(l) any available pension or insurance, including:

- (i) SSDI;
- (ii) health/hospitalization insurance plans;
- (iii) workmen's compensation;
- (iv) veteran's benefits;
- (v) old age and survivors insurance (OASI) from the Social Security Administration;

(vi) labor union insurance and/or health and welfare benefits; and

(vii) unemployment compensation; and

(J) participation in savings plans.

(h) It is not the intent of the commission to impose a financial hardship upon a client. Therefore, adjustments may be made to allow for hardships in order to arrive at net monthly income. The amount of total monthly income may be adjusted by subtracting the following expenses:

- (1) rent or home mortgage payments;
- (2) medical payments made as a result of disability and/or illness of client or family member;
- (3) prescribed medications and diets used by the client or a family member; and
- (4) obligations imposed by court order.

(i) For purposes of determining economic resources, the family of the client is considered to be the client, his or her parents or legal guardians, and all individuals residing in the household for whom the client or parents or legal guardians have legal and/or financial responsibility.

(j) If the client is a minor, the economic resources of the family will be used to determine participation in cost of services. An individual is considered a minor if he or she has been adjudged legally incompetent or is under the age of 18 and:

- (1) is normally dependent upon parents, foster parents, or a legal guardian or conservator; or
- (2) is married but not living with the spouse and the major source of income is from parents or guardians.

(k) A minor who is married and living with the spouse is not considered a minor under subsection (j) of this section and the economic resources of the spouse will be

considered.

(l) If an individual is under the age of 18 and the parents are estranged and are not contributing substantially to his or her support, the economic resources table will be applied to the client's income.

(m) An individual age 18 and older may be considered a dependent if he or she is carried as a dependent by the parents, foster parents, legal guardian, or conservator for income tax purposes during the current tax year. In such instances, the economic criteria are applied to the family.

(n) The purchase of occupational tools and sophisticated technological equipment cannot always be anticipated before a client is employed. If special equipment needs are discovered after the client starts to work and without the equipment the client's job would be verifiably in jeopardy, client participation in the cost of purchase will be based on the level of participation immediately preceding employment.

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 October 30, 1987.

TRD-8709726 Pat D. Westbrook
Executive Director
Texas Commission for
the Blind

Effective date: November 23, 1987
Proposal publication date: September 22, 1987
For further information, please call
(512) 459-2600.



Chapter 169. Visually Handicapped Children's Program

★ 40 TAC §169.5, §169.6

The Texas Commission for the Blind adopts the repeal of §169.5 and §169.6 without changes to the proposed text published in the September 22, 1987, issue of the *Texas Register* (12 TexReg 3323).

The repeal allows for the adoption of new sections which allow more blind children to meet the economic need criteria and provides the commission's caseworkers with more flexibility in meeting the needs of these children in their efforts to achieve their potential.

No comments were received regarding adoption of the repeal.

The repeal is adopted under the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for

the Blind with the authority to adopt rules governing the provision of services to blind and visually impaired individuals.

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 November 1, 1987.

TRD-8709724 Pat D. Westbrook
Executive Director
Texas Commission for
the Blind

Effective date: November 23, 1987
Proposal publication date: September 22, 1987
For further information, please call
(512) 459-2600.



★ 40 TAC §169.5, §169.6

The Texas Commission for the Blind adopts new §169.5 and §169.6, without changes to the proposed text published in the September 22, 1987, issue of the *Texas Register* (12 TexReg 3323).

The new sections allow more blind children to meet the economic need criteria and provides the commission's caseworkers with more flexibility in meeting the needs of these children in their efforts to achieve their potential.

The new sections delineate the services of the agency that do not require that the family meet economic need criteria, contain the economic need criteria for purchase of all other services, and include a monthly income table that will be used to determine the economic status of the family.

No comments were received regarding adoption of the new sections.

The new sections are adopted under the Human Resources Code, Title 5, Chapter 91, which provides the Texas Commission for the Blind with the authority to adopt rules governing the provision of services to blind and visually impaired individuals.

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 October 30, 1987.

TRD-8709725 Pat D. Westbrook
Executive Director
Texas Commission for
the Blind

Effective date: November 23, 1987
Proposal publication date: September 22, 1987
For further information, please call
(512) 459-2600.



Open Meetings

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours prior to a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Register*.

Emergency meetings and agendas. Any of the governmental entities named above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. Emergency meeting notices filed by all governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board outside the Office of the Secretary of State on the first floor of the East Wing in the State Capitol, Austin. These notices may contain more detailed agendas than what is published in the *Register*.

Texas Department of Agriculture

The Produce Recovery Fund Board of the Texas Department of Agriculture will meet in the Ninth Floor Conference Room, 1700 North Congress Avenue, Austin. Dates, times, and agendas follow.

Tuesday, November 17, 1987, 10 a.m. The board will conduct an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001 by E.L. Key, Daniel C. Heath, Jr., Daniel C. Heath, Sr., W.C. Schneider and Progressive Groves, Inc., as petitioned by Joe F. Ackerman and Salome Saenz.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 4, 1987, 9:13 a.m.
TRD-8709804

Tuesday, November 17, 1987, 1:30 p.m. The board will conduct an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001 by South Texas Citrus Association, as petitioned by Shields Farms, Inc.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 4, 1987, 9:13 a.m.
TRD-8709805

Wednesday, November 18, 1987, 10 a.m. The board will conduct an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001 by Syndex Corporation, doing business as Schoemann Produce, Cary Hoffman and G.D. Farrell, Sr.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 4, 1987, 9:13 a.m.
TRD-8709806

Wednesday, November 18, 1987, 1:30 p.m. The board will conduct an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001 by Triple S Distributing Company, as petitioned by R.D. Angeley.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 4, 1987, 9:13 a.m.
TRD-8709807

Thursday, November 19, 1987, 10 a.m. The board will conduct an administrative hearing to review alleged violation of Texas Agriculture Code, §103.001 by Val-Mex Fruit Company, as petitioned by Israel Salinas.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 4, 1987, 9:13 a.m.
TRD-8709808

Thursday, November 19, 1987, 1:30 p.m. The board will conduct an administrative hearing to review alleged violation of the Texas Agriculture Code, §103.001 by Robert Ruiz, Inc., Robert Ruiz, Sr., and Lucia Ruiz, as petitioned by Valley Farmers Co-op.

Contact: Margo P. Wilton, P.O. Box 12847, Austin, Texas 78711, (512) 463-7583.

Filed: November 4, 1987, 9:14 a.m.
TRD-8709809

State Banking Board

Thursday, November 12, 1987, 10 a.m. The State Banking Board will meet for an agenda revision at 2601 North Lamar Boulevard, Austin. According to the agenda, the board will consider interim charter applications.

Contact: Jorge A. Gutierrez, 2601 North Lamar Boulevard, Austin, Texas 78705, (512) 479-1200.

Filed: November 4, 1987, 10:55 a.m.
TRD-8709820

Texas Board of Chiropractic Examiners

Saturday, November 21, 1987, 1 p.m. The Texas Board of Chiropractic Examiners will meet in the Ramada Hotel, South Highway

69, Tyler. According to the agenda, the board will hold a public forum for public input to aid in defining the chiropractic scope of practice.

Contact: Bobbye Ferris, 1300 East Anderson Lane, Suite 245, Building C, Austin, Texas 78752, (512) 835-2006.

Filed: November 5, 1987, 9:12 a.m.
TRD-8709872

Texas Department of Corrections

Monday, November 9, 1987, 8 a.m. The Board of the Texas Department of Corrections met in emergency session in the Senate Chamber, State Capitol, Austin. According to the agenda, the board considered operations, inmate affairs, medical and financial issues, agriculture and business, and construction and industry; discussed director's items, inmate legal services, personnel, and the Windham School System. The board also met in executive session. The emergency status was necessary due to a change in the meeting time and location.

Contact: James A. Lynaugh, P.O. Box 99, Huntsville, Texas 77340, (409) 295-6371, ext. 1101.

Filed: November 2, 1987, 10:41 a.m.
TRD-8709830

East Texas State University

Tuesday, November 10, 1987, 1 p.m. The Board of Regents for East Texas State University will meet in the Boardroom, McDowell Administration Building, East Texas State University, Commerce. Committees and agendas follow.

The Academic Affairs Committee will hear reports from faculty workload, undersized class, and curriculum modifications for ETSU, Commerce; faculty workload, undersized class, and degree program inventory for ETSU, Texarkana; and hear the student/faculty relations report.

Contact: Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: November 4, 1987, 1:56 p.m.
TRD-8709831

The Planning and Finance Committee will conduct a workshop on university financial management; receive a financial review for fiscal year 1987 and review final adjustments in the fiscal year operating budgets for ETSU, Commerce and Texarkana; consider appropriations of accounts and balances, and adjustments in the fiscal year operating budget and capital budget items for ETSU, Commerce; consider reappropriations of accounts and balances and adjustments in the fiscal year 1988 operating budget for ETSU, Texarkana; discuss disposal of surplus property, selection of institutional depositories, and amendment of policy on Texas public educational grants.

Contact: Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: November 4, 1987, 1:56 p.m.
TRD-8709832

The Executive Committee will hear a report on honorary awards and citations; consider an amendment of intellectual property policy (II Q); and discuss rules and regulations governing East Texas State University. The board also will meet in executive session to consult with the board's attorney and discuss personnel matters.

Contact: Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: November 4, 1987, 1:59 p.m.
TRD-8709833

The Student and University Advancement Committee will discuss intercultural affairs and hold consultation over the Development Program.

Contact: Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: November 4, 1987, 1:58 p.m.
TRD-8709834

Wednesday, November 11, 1987, 10 a.m. The Board of Regents for East Texas State University will meet in the Boardroom, McDowell Administration Building, East Texas State University, Commerce. According to the agenda, the board will approve its agenda and minutes of August 19, 1987; receive a report by the president; consider motions from the Student and University Advancement Committee, the Academic Affairs Committee, Campus Planning and Finance Committee, and the Executive Committee. The board also will meet in executive session to consult with its attorney and discuss personnel matters.

Contact: Dayton Cole, ETSU, Commerce, Texas 75428, (214) 886-5539.

Filed: November 4, 1987, 1:59 p.m.
TRD-8709835

Texas Education Agency

Thursday, November 12, 1987, 10 a.m. The Committee on Awards and Recognition for the Texas Education Agency will meet in Room 2-115, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will meet to discuss an analysis of the campus-level achievement results which has the potential for grouping campuses and districts in a variety of ways.

Contact: W. N. Kirby Commissioner, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:28 p.m.
TRD-8709850

Thursday, November 12, 1987, 1:30 p.m. The State Board of Education Committee of the Whole of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will hold a public hearing on textbooks; hear the report of the commissioner of education on alleged irregularities in the textbook adoption process; hear the report of the state textbook committee on textbooks and the report of the commissioner of education concerning the recommended changes and corrections; consider recommendations for the readoption of textbooks; discuss the pending litigation. The discussion of pending litigation will be held in executive session in accordance with Texas Civil Statutes, Article 6252-17, §2(e).

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:29 p.m.
TRD-8709851

Friday, November 13, 1987, 8:30 a.m. The Committee for Finance and Programs of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will meet to discuss the vocational education; gifted/talented education; permanent school fund; equity brokers; grievance procedures for the local districts; determination of allocation; student attendance accounting; price differential index; tutorial programs for at-risk students; contract with the Texas Department of Community Affairs; public education information management system (PEIMS); fund allocations, contracts and agreements; small businesses; state textbook program; textbooks for visually handicapped; days of operation; budgeting, accounting and auditing; research, development and evaluation funds; PEIMS related projects; committee on Texas Textbook System; grants under Immigration Reform and Control Act; and the rules for the compensatory education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:29 p.m.
TRD-8709852

Friday, November 13, 1987, 8:30 a.m. The Committee for Personnel of the Texas Education Agency will meet in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will meet to discuss the related services personnel; appraisal of the certified personnel; program requirements for preparation of the school personnel; general requirements for inservice education; inservice training in management/leadership for the district administrators; testing requirements; Texas certificates based on certificates and college credentials from other states; classes of certificates; emergency teaching permits—requirements and procedures; examination for certification of educators in Texas; master teacher assessment and appraisal; administrator appraisal; standards for teacher education institutions; employment of substitute teachers; alternative teacher certification; and discussion of certification in only one area for persons who have passed one but not both examination for certification of educators in the Texas Tests in Teaching Fields.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:29 p.m.
TRD-8709853

Friday, November 13, 1987, 8:30 a.m. The Committee for Students of the Texas Education Agency will meet in Room 1-111, 1701 North Congress Avenue, Austin. According to the agenda summary, the committee will meet to discuss the vocational education; gifted/talented education; bilingual education; alternatives to social promotion; assessment; advanced high school program; school-community guidance centers; curriculum; instructor hours, class size and age level; handicapped students; adult and community education; university interscholastic league; college entrance exams; selection of valedictorians; and master plan for vocational education.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:29 p.m.
TRD-8709854

Friday, November 13, 1987, 3 p.m. The Committee for Long-Range Planning of the Texas Education Agency will meet in Room 1-100, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda, the committee will meet to discuss the update on the development of the Long-Range Plan for technology; evaluate the alternative summer tutorial programs for

the at-risk students; hear the status report on the accreditation of the school districts; discuss the ethnic/gender distribution of agency and education service center personnel; and discuss the review of the state plan for regional education service centers.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:29 a.m.
TRD-8709855

Friday, November 13, 1987, 6:30 p.m. The State Board of Education of the Texas Education Agency will meet in the Longhorn Room, Guest Quarters Hotel, 303 West 15th Street, Austin. According to the agenda, the board will meet to hear reports from the chairmen of the state board of education committees, i.e., committee for finance and programs, committee for students, committee for personnel, committee for long-range planning, committee on awards and recognition, and committee of the whole, concerning items discussed in the committee meetings on Thursday, November 12, 1987, and on Friday, November 13, 1987.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:30 p.m.
TRD-8709856

Saturday, November 14, 1987, 8:30 a.m. The State Board of Education of the Texas Education Agency will meet in Room 1-104, William B. Travis Building, 1701 North Congress Avenue, Austin. According to the agenda summary, the board will meet to discuss the textbook bids; state textbook committee; textbook adoption; changes/corrections in textbooks; re-adoption of textbooks; vocational education; gifted/talented education; permanent school fund; grievance procedures for districts; determination of allocation; attendance accounting; price differential index; at-risk students; Texas Department of Community Affairs; public education information management system; fund allocations, contracts and agreements; small businesses; state textbook program; textbooks for visually handicapped; textbook depository; days of operation; research, development and evaluation funds; alternatives to social promotion; assessment; advanced high school program; school-community guidance centers; curriculum; handicapped students; University Interscholastic League; appraisal of certified personnel; examination for certification of educators in Texas; master teacher assessment/appraisal; inservice education; and agency administration.

Contact: W. N. Kirby, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-8985.

Filed: November 4, 1987, 3:30 p.m.
TRD-8709857

Texas Employment Commission

Thursday, November 12, 1987, 8:30 p.m. The Texas Employment Commission will meet in Room 644, TEC Building, 101 East 15th Street, Austin. According to the agenda, the commission will consider prior meeting notes and internal procedures of commission appeals; consider and act on tax liability cases and higher level appeals in unemployment compensation cases listed on Commission Docket 45, and set the next meeting date.

Contact: Courtenay Browning, 101 East 15th Street, Austin, Texas 78778, (512) 463-2226.

Filed: November 4, 1987, 3:40 p.m.
TRD-8709860



Texas Department of Health

Friday, November 13, 1987, 3:30 p.m. The Crippled Children's Services General Advisory Committee for the Texas Department of Health will meet in the Fifth Floor Boardroom, La Mansion Hotel, 6505 IH-35 North, Austin. According to the agenda, the committee will review minutes from the July 24, 1987, meeting; discuss ambulatory surgical center guidelines; present the task force report; consider proposed rule changes concerning inpatient rehabilitation guidelines for approval and health insurance interface and premium coverage; consider task force on medical coverage issues, case management pilots, and nominations for vacant positions on committee (if necessary); and set yearly calendar based on ballot.

Contact: J.S. Barkley-Booher, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 465-2666

Filed: November 4, 1987, 4:04 p.m.
TRD-8709862



Texas Hospital Equipment Financing Council

Friday, November 13, 1987, 10 a.m. The Texas Hospital Equipment Financing Council will meet in Room 503G, Sam Houston State Office Building, 14th and San Jacinto Streets, Austin. According to the agenda, the council will approve an investment contract, elect officers, and discuss other business.

Contact: Charles W. Bailey, P.O. Box 15587, Austin, Texas 78761, (512) 465-1000.

Filed: November 4, 1987, 3:45 p.m.
TRD-8709861



Texas Housing Agency

Thursday, November 12, 1987, 7 a.m. The Finance and Audit Committee for the Texas Housing Agency will meet in Room 204, Holiday Inn Crown Plaza, 2222 West Loop South, Houston. According to the agenda, the committee will consider revised guidelines and procedures associated with agency investments; hear a report regarding the use of a long range management planning task force; discuss cash flow analysis and process; consider a financing proposal and authorizing the issuance, sale, and delivery of the Texas Housing Agency's Residential Mortgage Bonds, Series 1987A; and discuss direct loan proposals. The committee also will meet in executive session to discuss personnel matters pertaining to staff evaluations, personnel policy review, and THA organizational structure.

Contact: Dan A. McNeil, P.O. Box 13941, Capitol Station, Austin, Texas 78711, (512) 474-2974.

Filed: November 4, 1987, 4:44 p.m.
TRD-8709866

Thursday, November 12, 1987, 11 a.m. The Ad Hoc Tax Credit Committee of the Texas Housing Agency will approve minutes of October 21, 1987, meeting, and discuss applications for low income rental housing tax credit program; and hear requests for increases in allocation amounts for low income rental housing tax credit program.

Contact: Dan A. McNeil, P.O. Box 13941, Capitol Station, Austin, Texas 78711, (512) 474-2974.

Filed: November 4, 1987, 4:43 p.m.
TRD-8709867

Thursday, November 12, 1987, 1 p.m. The Single Family Committee of the Texas Housing Agency will meet in the THA Conference Room, Suite 300, 811 Barton Springs Road, Austin. According to the agenda, the committee will hear quarterly reports; discuss allocation process for single family mortgage purchase programs, issuance, sale, and delivery of Texas Housing Agency Residential Development Bonds Series 1987A; select real estate owned management contractors; discuss status report on single family loan defect curative measures and repurchase demands; and discuss excess loan purchases in the current bond programs.

Contact: Dan A. McNeil, P.O. Box 13941, Capitol Station, Austin, Texas 78711, (512) 474-2974.

Filed: November 4, 1987, 4:44 p.m.
TRD-8709868



State Board of Insurance

Monday, November 16, 1987, 9 a.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 board will reopen a public hearing to consider renewal of application by Jose L. Dovalina, Eagle Pass, for a solicitor for local recording agent license.

Contact: J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 4, 1987, 3:37 p.m.
TRD-8709859

Monday, November 16, 1987, 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 board will conduct a public hearing to consider the application by John Milton Money, Tennessee Colony, for an insurance adjuster's license, to be issued by the State Board of Insurance.

Contact: Lisa Lyons, 1110 San Jacinto Street, Austin, Texas 78701-1998, (512) 463-6526.

Filed: November 4, 1987, 9:01 a.m.
TRD-8709810



State Board of Land Surveying

Sunday, November 15, 1987, 3 p.m. The Second Called Meeting of 1987 for the Texas Board of Land Surveying will be held in Suite 304, 7703 North Lamar Boulevard, Austin. According to the agenda, the board will hear committee reports, review correspondence and conduct any other business coming before the board. On Monday, November 16, 1987, the board will attend the attorney general's conference on administrative law and liability.

Contact: Betty J. Pope, 7703 North Lamar Boulevard, Suite 304, Austin, Texas 78752, (512) 452-9427.

Filed: November 3, 1987, 1:39 p.m.
TRD-8709763



Board for Lease of State-owned Lands

Thursday, November 5, 1987, 3 p.m. The Board for Lease of Texas Parks and Wildlife Lands of the Board for Lease of State-owned Lands met in emergency session in Executive Inference Room 201, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin. According to the agenda, the board approved minutes of the previous

board meeting, considered and approved bid received for the October 6, 1987, lease sale, and renewed easement application. The emergency status was necessary because the applicant needed to have the lease issued for drilling.

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78744, (512) 463-5016.

Filed: November 4, 1987, 4:22 p.m.
TRD-8709865



Board of Nurse Examiners

Tuesday-Thursday, November 17-19, 1987, 8 a.m. The Board of Nurse Examiners will meet at the Sunrise Motor Hotel, 7622 North IH-35, Austin. According to the agenda, the board will consider possible action on disciplinary hearings, consent orders, and other action as recommended by the executive secretary in relation to hearings; consider two reinstatement requests; review proposed rule changes in regard to fees; consider education matters such as survey visits, curriculum change requests, faculty petitions, two public hearings for extended campuses on November 19 at 9 a.m. for Pan American University and 10 a.m. for Dallas Baptist University; and a public hearing regarding proposed rule changes to §218, Delegation of Selected Nursing Tasks on November 18 at 3 p.m..

Contact: Louise Sanders, 1300 East Anderson Lane, Suite C-225, Austin, Texas 78752, (512) 835-4880.

Filed: November 4, 1987, 1:58 p.m.
TRD-8709839



Texas Parks and Wildlife Department

Thursday, November 5, 1987. The Texas Parks and Wildlife Commission of the Texas Parks and Wildlife Department met for an emergency agenda revision in Complex Building "B", Parks and Wildlife Headquarters, 4200 Smith School Road, Austin. Times and agendas follow.

9 a.m. The commission added to the agenda: briefing on Turtle Excluder Devices. The emergency status was necessary because it was a matter of urgent public necessity and required immediate action for the commission to be briefed concerning federally mandated turtle excluder devices.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: November 4, 1987, 2:08 p.m.
TRD-8709836

Noon. The commission added to the agenda: oyster closure rule litigation. The emergency status was necessary because it was a matter of urgent public necessity and required immediate action to have legal consultation concerning pending litigation relating to the oyster closure rule.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: November 4, 1987, 2:09 p.m.
TRD-8709837

Noon. The commission added to the agenda: Paluxy River impoundment releases. The emergency status was necessary because it was a matter of urgent public necessity requiring immediate action to consider litigation concerning releases from the Paluxy River impoundment order to protect the Dinosaur Valley State Park and fish and wildlife resources.

Contact: Charles D. Travis, 4200 Smith School Road, Austin, Texas 78744, (512) 389-4802.

Filed: November 4, 1987, 2:10 p.m.
TRD-8709838



Public Utility Commission of Texas

The Public Utility Commission of Texas met or will meet in Suite 450N, 7800 Shoal Creek Boulevard, Austin. Committees, dates, times, and agendas follow.

Wednesday, November 4, 1987, 1 p.m. The Hearings Division met in emergency session to consider litigation matters: discussion and decision regarding pending or threatened litigation, including but not limited to the following: AT&T Communications of the Southwest, et al. v. Public Utility Commission of Texas, Cause 409,474 (Appeal of Docket 6095) and C 6880, State of Texas v. Dennis Thomas, et al. The emergency status was necessary in response to Supreme Courts' granting of motions for leave to file writs of mandamus in Cause C 6811 and C 6880.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 4, 1987, 10:25 a.m.
TRD-8709816

Thursday, November 12, 1987, 9 a.m. The Hearings Division will consider Dockets 5023, 7502, 7599, 7600, 7477, 7525, 7629, 7641, and 7593; and consider Rules 23.15, 23.26, 23.27, 21.86, 23.31, 23.32; and 21.65.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 4, 1987, 1:42 p.m.
TRD-8709841

Thursday, November 12, 1987, 11 a.m. The

Administrative Division will approve minutes; report, discuss, and act on budget and fiscal matters; discuss matters considered in executive session; and set the time and place for the next meeting. The division also will meet in executive session to consider personnel and litigation matters.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: November 4, 1987, 1:41 p.m.
TRD-8709840

Monday, November 23, 1987, 10 a.m. The Hearings Division will conduct a hearing on the merits in Docket 7756, petition of Brazos Electric Power Cooperative, Inc. to lower fixed fuel factor and request for interim order.

Contact: Phillip A. Holder, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100.

Filed: November 3, 1987, 3:02 p.m.
TRD-8709769



Texas Rehabilitation Commission

Thursday, November 12, 1987, 10:30 a.m. The Texas Planning Council for Developmental Disabilities, Executive Committee for the Texas Rehabilitation Commission, will meet in Room 302, Texas Rehabilitation Commission, 118 East Riverside Drive, Austin. According to the agenda, the council will approve the summary report; discuss consumer input and access to the council; process public input; consider ADD Volunteer of the Year award; and discuss DD Act reauthorization.

Contact: Roger Webb, 118 East Riverside Drive, Austin, Texas 78704, (512) 445-8867.

Filed: November 4, 1987, 9:13 a.m.
TRD-8709811



State Securities Board

Tuesday, December 1, 1987, 9:30 a.m. The Securities Commissioner of the State Securities Board will hold a hearing at 1800 San Jacinto, Austin. According to the agenda, the commissioner will determine whether the application of Charles F. Weck, also known as Stephen C. Fisher, for registration as a salesman for Snider-Lund and Associates, Inc. should be granted or denied and whether the registration for Snider-Lund and Associates, Inc. as a securities dealer should be revoked or suspended.

Contact: Peggy Peters, 1800 San Jacinto, Austin, Texas 78701, (512) 474-2233.

Filed: November 4, 1987, 3:15 p.m.
TRD-8709849



Teacher Retirement System of Texas

Thursday, November 12, 1987, 2 p.m. The Board of Trustees of the Teacher Retirement System of Texas will meet in the East Tower, International Parkway, Hyatt Regency DFW, DFW Airport. According to the agenda, the board will consider proposed staff reorganization and salary adjustments, amendment of 1987-1988 operating budget, and consider the use of title holding corporations. The board also will meet in executive session to discuss duties and salaries of particular employees.

Contact: Mary Godzik, 1001 Trinity, Austin, Texas 78701, (512) 397-6400.

Filed: November 4, 1987, 2:55 p.m.
TRD-8709848



Texas State Technical Institute

Friday, November 6, 1987, 10 a.m. The TSTI System Search Committee for Texas State Technical Institute met in an emergency session in the TSTI System Office, Central Administration Building via conference call, Waco. According to the agenda, the committee discussed activities necessary in selecting a president for TSTI Institute Systems. The emergency status was necessary because the board has to decide on a selection method before November 10, 1987.

Contact: Theodore A. Talbot, Campus Services, Waco, Texas 76705, (817) 799-3611.

Filed: November 5, 1987, 9:25 a.m.
TRD-8709873

Monday, November 16, 1987, 7 a.m. The Board of Regents TSTI System Search Committee for Texas State Technical Institute will meet at the Hilton, Waco. According to the agenda, the board will establish criteria for applicants and a method of developing an applicant pool for filling the system president's position.

Contact: Theodore A. Talbot, Campus Services, Waco, Texas 76705, (817) 799-3611.

Filed: November 5, 1987, 9:25 a.m.
TRD-8709874



Texas Water Commission

Friday, December 4, 1987, 10 a.m. The Office of Hearings Examiner of the Texas Water Commission will meet in Room 1149A, Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According

to the agenda, the commission will conduct a public hearing on a rate increase by Russwood Water System, Docket 7290-G.

Contact: Carol Wood, P.O. Box 13087, Capitol Station, Austin, Texas 78711, (512) 463 7875.

Filed: November 4, 1987, 11:12 a.m.
TRD-8709824



Regional Agencies Meetings Filed November 3

The Brown County Appraisal District, Board of Directors, met at 403 Fisk, Brownwood, on November 3, 1987, at 7 p.m. Information may be obtained from Alvis Sewalt, 403 Fisk, Brownwood, Texas, (915) 643-5676.

The Dallas Area Rapid Transit, Board Workshop, met at Snowhill Farm, Collin County, on November 6, 1987, at 12:30 p.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

TRD-8709761



Meetings Filed November 4

The Archer County Appraisal District, Board of Directors, will meet in the Appraisal District Office, 211 South Center, Archer City, on November 18, 1987, at 4:30 p.m. Information may be obtained from Jean James, P.O. Box 1141, Archer City, Texas 76351, (817) 574-2172.

The Dallas Area Rapid Transit, Operations Committee, met in the DART Office, 601 Pacific Avenue, Dallas, on November 4, 1987, at 4 p.m. A workshop was held at the same location on November 6, 1987, at 9 a.m. Information may be obtained from Nancy McKethan, 601 Pacific Avenue, Dallas, Texas 75202, (214) 658-6237.

The Edwards Underground Water District, will meet at 1615 North St. Mary's Street, San Antonio, on November 10, 1987, at 10 a.m. Information may be obtained from Thomas P. Fox, 1615 North St. Mary's Street, San Antonio, Texas 78215, (512) 222-2204.

The Erath County Appraisal District, Board of Directors, will meet in the Boardroom, 1390 Harbin Drive, Stephenville, on November 10, 1987, at 10 a.m. Information may be obtained from Jerry Lee, 1390 Harbin, Stephenville, Texas 76401, (817) 965-5434.

The Gregg Appraisal District, Board of Di-

rectors, will meet at 2010 Gilmer Road, Longview, on November 12, 1987, at 10:30 a.m. Information may be obtained from William T. Carroll, P.O. Box 6700, Longview, Texas 75608, (214) 759-0015.

The Lavaca County Central Appraisal District, Board of Directors, will meet at the Appraisal District Office, 113 North Main, Hallettsville, on November 16, 1987, at 4 p.m. Information may be obtained from Diane Munson, P.O. Box 386, Hallettsville, Texas 77964, (512) 798-4396.

The Liberty County Central Appraisal District, Board of Directors, will meet at 1820 Sam Houston, Liberty, on November 18, 1987, at 9:30 a.m. The Appraisal Review Board will meet at the same location, on November 19, 1987, at 9:30 a.m. Information may be obtained from Shery Greak, P.O. Box 10016, Liberty, Texas 77575, (409) 336-5722.

The Sulphur River Basin Authority, Board of Directors, will meet at Mt. Pleasant Chamber of Commerce, 1604 North Jefferson Street, Mt. Pleasant, on November 10, 1987, at 1:30 p.m. Information may be obtained from C.B. Wheeler, 500 Texarkana National Bank Building, P.O. Box 1838, Texarkana, Texas 75504, (214) 794-3121.

The Swisher County Appaisal District, Board of Directors, will meet at 130 North Armstrong, Tulia, on November 12, 1987, at 7:30 p.m. Information may be obtained from Rose Lee Powell, P.O. Box 8, Tulia, Texas 79088, (806) 995-4118.

The Tyler County Tax Appraisal District, Appraisal Review Board, will meet at 103 Pecan, Woodville, on November 12, 1987, at 10 a.m. Information may be obtained from Mary F. Mann, P.O. Drawer 9, Woodville, Texas 75979, (409) 283-3736.
TRD-8709892



Meetings Filed November 5

The Bexar Appraisal District, Board of Directors, met in emergency session at 535 South Main, San Antonio, on November 6, 9-10, 12-13, 16-19, 23-24, 30, 1987, at 9 a.m. on the 6th, and at 8:30 a.m. the rest of the days. Information may be obtained from Walter Stoneham, 535 South Main, San Antonio, Texas 78204, (512) 224-8511.

The Burnet County Appraisal District met in emergency session at 215 South Pierce Street, Burnet, on November 5, 1987, at 5:30 p.m. Information may be obtained from Alvin C. Williams, P.O. Drawer E, Burnet, Texas 78611.

The Cass County Appraisal District, Board of Directors, met at the Appraisal District, 400 North Main, Linden, on November 9, 1987, at 6:30 p.m. Information may be obtained from Janelle Clements, P.O. Box 1150, Linden, Texas 75563, (214) 756-7545.

The Education Service Center, Region XVI, Board of Directors, will meet in the Petroleum Room, Amarillo Club, Texas American

Bank Building, Seventh and Tyler, Amarillo, on November 12, 1987, at 1 p.m. Information may be obtained from Kenneth M Laycock, 1601 South Cleveland, Amarillo, Texas 79102, (806) 376-5521.

The Henderson County Appraisal District, Board of Directors, met at 101 East Corsicana, on November 9, 1987, at 7:30 p.m. Information may be obtained from Helen Marchbanks, 101 East Corsicana, Suite 202, Athens, Texas 78751, (214) 675-9296.

The North Plains Water District, Board of Directors, will meet in the District Office, 702 East First Street, Dumas, on November 16, 1987, at 10 a.m. Information may be obtained from Ann M. Simms, P.O. Box 795, Dumas, Texas 79029, (806) 935-6401.

The Rio Grande Valley Municipal Water Authority, Board, will meet in the Boardroom, Chamber of Commerce, 10 North Broadway, McAllen, on November 17, 1987, at 7 p.m. Information may be obtained from Ersel Lantz, 3505 Boca Chica, Suite 303, Brownsville, Texas 78520, (512) 541-1660.

The South Plains Association of Governments, Board of Directors (workshop and business meeting), will meet at Lubbock Plaza, 3201 Loop 289 South, Lubbock, on November 10, 1987, at 9 a.m. and 1 p.m., respectively. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730 Freedom Station, Lubbock, Texas 79452.

TRD-8709870



In Addition

The *Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

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

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) 11/09/87-11/15/87	18.00%	18.00%
Monthly Rate— Article 1.04(c)(1) 11/01/87-11/30/87	18.00%	18.00%
Standard Quarterly Rate—Article 1.04(a)(2) 10/01/87-12/31/87	18.00%	18.00%
Retail Credit Card Quarterly Rate— Article 1.11(3) 10/01/87-12/31/87	18.00%	N/A
Lender Credit Card Quarterly Rate— Article 15.02(d)(3) 10/01/87-12/31/87	14.00%	N/A
Standard Annual Rate—Article 1.04(a)(2) ⁽²⁾ 10/01/87-12/31/87	18.00%	18.00%
Retail Credit Card Annual Rate— Article 1.11(3) 10/01/87-12/31/87	18.00%	N/A
Annual Rate Applicable to Pre-July 1, 1983, Retail Credit Card and Lender Credit Card Balances with Annual Implementation Dates from 10/01/87-12/31/87	18.00%	N/A
Judgment Rate—Article 1.05, §2 11/01/87-11/30/87	10.00%	10.00%

(1) For variable rate commercial transactions only

(2) Only for open-end credit as defined in Texas Civil Statutes, Article 5069-1.01(f)

(3) Credit for personal, family, or household use

(4) Credit for business, commercial, investment, or other similar purpose

Issued in Austin, Texas, on November 2, 1987.

TRD-8709802
Al Endsley
Consumer Credit
Commissioner

Filed: November 4, 1987

For further information please call (512) 479-1280.



Governor's Office of Budget and Planning

Request for Proposals

This request for consulting services is filed pursuant to the provisions of Texas Civil Statutes, Article 6252-11c.

The Governor's Office of Budget and Planning invites proposals from qualified firms, institutions of higher education, or individuals to provide engineering reviews for technical assistance (TA) reports submitted to the Institutional Conservation Program (ICP) in support of capital retrofit grant applications. TA reports, which are prepared according to a prescribed format, analyze recommended capital retrofit energy efficiency projects for institutional buildings. Approximately 60 TA reports will be reviewed by the contractor chosen for the project.

The contractor selected will possess a comprehensive knowledge of energy-using systems for institutional buildings, energy auditing, and energy savings calculation methodologies; a broad understanding of the Institutional Conservation Program; and a specific understanding of the federal and state regulations governing the preparation of the TA report.

The technical review of each TA report will include an evaluation of the report for technical accuracy, soundness of engineering principles, and project cost estimates. Each report will then be assigned a technical review score based on established criteria. The contractor will also be expected to contact applicants as necessary to resolve technical problems and be available to ICP staff for consultation on problems as they develop.

Each proposal will be judged according to the proposer's ability to assign experienced and qualified personnel to the project; the proposer's previous work and experience relative to this type of project; the proposer's ability to provide objective assessments of the studies to be evaluated (firms currently involved in preparing a significant number of TA reports for the current cycle are not encouraged to apply); the proposed method of evaluation; and the proposer's ability to complete the review in a timely manner. Proposals should address each of the preceding criteria in the order listed.

The technical review period for this program cycle will extend from January 20, 1988-May 30, 1988. Final selection of a contractor will be based on the recommendations of a review committee. If, upon conclusion of the evaluation

of proposals received pursuant to this solicitation, two or more proposals are ranked so closely that a final selection cannot reasonably be made, the review committee may request each proposer to provide additional information. Such information may include written materials not specified in this solicitation. Proposers may also be requested to meet with ICP staff in Austin to review or clarify their proposals prior to the final selection of a contractor.

Contractor selection will be made on or before January 1, 1988, and the contract period will extend from the date of signing through May 31, 1988. Contract amount will not exceed \$25,000.

Further information concerning this project may be obtained by contacting Mel Roberts, Manager, Institutional Conservation Program, Energy Management Center, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, (512) 463-1931.

Five copies of the proposal should be sent to Mel Roberts at the previously listed address. Proposals should be sent by registered mail or by courier and must arrive no later than 5 p.m. on December 11, 1987. Proposals received after this time will not be considered.

Issued in Austin, Texas, on November 3, 1987

TRD-8709766 Robert E. Davis
Governor's Office of Budget and
Planning

Filed: November 3, 1987
For further information, please call (512) 463-1931.



Texas Department of Health Licensing Actions for Radioactive Materials

The Texas Department of Health has taken actions regarding licenses for the possession and use of radioactive materials as listed in the table below. The subheading labeled "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Dallas	Texas Instruments Incorporated	L04096	Dallas	0	10/13/87
Fort Worth	All Saints Hospital Cityview	L04105	Fort Worth	0	10/22/87
Throughout Texas	Goodyear Tire and Rubber Company Proving Grounds	L04127	San Angelo	0	10/13/87
Throughout Texas	BP Chemicals International Sohio Division	L04124	Port Lavaca	0	10/13/87
Throughout Texas	The Housing Authority of the City of El Paso	L04115	El Paso	0	10/13/87
Throughout Texas	Granstaff Directional Drilling Company, Inc.	L04125	Corpus Christi	0	10/21/87

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Abilene	Abilene State School	L02797	Abilene	2	10/06/87
Arlington	The University of Texas at Arlington	L00248	Arlington	22	10/13/87

Austin	Allan Shivers Radiation Therapy Center	L01761	Austin	15	10/22/87
Austin	Holy Cross Hospital	L02751	Austin	18	10/23/87
Austin	Radian Corporation	L01692	Austin	22	10/22/87
Baytown	Exxon Chemical Americas	L01135	Baytown	40	10/13/87
Beaumont	St. Elizabeth Hospital	L00269	Beaumont	39	10/23/87
Beaumont	Beaumont Medical Surgical Hospital	10-2102	Beaumont	22	10/23/87
Brownwood	Brownwood Regional Hospital, Inc.	L02322	Brownwood	14	10/22/87
Carrollton	GTE Products Corporation	L03858	Danvers, MA	2	10/20/87
Dallas	The Women's Diagnostic Center	L03980	Dallas	1	10/23/87
Fort Worth	Texas Christian University	L01096	Fort Worth	19	10/13/87
Galveston	Todd Shipyards Corporation	L00871	Galveston	40	10/22/87
Gatesville	Coryell Memorial Hospital	L02391	Gatesville	12	10/16/87
Gonzales	ECC America Inc.	L04103	Gonzales	2	10/16/87
Houston	Memorial Care System	L00439	Houston	35	10/22/87
Houston	GeoChem Research, Inc.	L03448	Houston	3	10/15/87
Houston	Radiology Associates of Bellaire	L03747	Houston	5	10/23/87
Houston	University of Houston	L01886	Houston	29	10/22/87
Houston	Gammatron, Inc.	L02148	Houston	10	10/22/87
Houston	IMAGENTS, Inc.	L04107	Houston	1	10/22/87
Irving	Organon Tenika Corporation	L01376	Irving	43	10/13/87

AMENDMENTS TO EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amend- ment #	Date of Action
Junction	Kimble Hospital	L03312	Junction	2	10/23/87
Lewisville	Lewisville Memorial Hospital	L02739	Lewisville	10	10/23/87
Odessa	Medical Center Hospital	L01223	Odessa	38	10/21/87
San Angelo	Ethicon, Inc.	L00720	San Angelo	23	10/13/87
San Antonio	Cancer Therapy & Research Foundation of South Texas	L03350	San Antonio	4	10/16/87
San Antonio	Humana Women's Hospital South Texas	L03656	San Antonio	4	10/22/87
San Antonio	Synco International Corp.	L02033	San Antonio	37	10/21/87
San Antonio	Southwest Texas Methodist Hospital	L00594	San Antonio	73	10/15/87
San Antonio	Sherwyn L. Schwartz, M.D.	L02647	San Antonio	9	10/16/87
San Antonio	Northeast Medical Center Radiology	L02926	San Antonio	4	0/20/87
Three River	Intercontinental Energy Corporation	L02538	Three Rivers	28	10/19/87
Throughout Texas	Testmasters, Inc.	L03651	Houston	3	10/13/87
Throughout Texas	American Inspection Company, Inc.	L04073	Beaumont	1	10/13/87
Throughout Texas	Brown & Root, Inc.	L03371	Houston	6	10/14/87
Throughout Texas	Brown and Root, Inc	L03391	Houston	9	10/14/87
Throughout Texas	Southwest Texas Services, Inc.	L03956	Laredo	2	10/16/87
Throughout Texas	M. W. Inspection	L03885	Mineral Wells	1	10/14/87
Throughout Texas	Stephen F. Austin State University	L01839	Nacogdoches	14	10/16/87
Throughout Texas	H & H X-Ray Services, Inc.	L02516	Tyler	13	10/14/87
Throughout Texas	Mississippi X-Ray Services of Texas, Inc.	L03246	Mont Belvieu	17	10/16/87
Throughout Texas	Pro-Technics, II, Inc.	L03835	Houston	6	10/13/87

Throughout Texas	Radio Hughes Diagnostic Services, Inc.	1-00916	Houston	40	10-13-87
Throughout Texas	Radio Vacuums	1-03513	Houston	6	10-13-87
Throughout Texas	Petroleum Measurement Corporation	1-03060	Houston	10	10-15-87
Throughout Texas	Berger Materials Engineering, Inc.	1-03332	Bryan	7	10-12-87
Throughout Texas	Abbott Laboratories, Inc.	1-03340	Austin	2	10-15-87
Throughout Texas	C-S Leak Detector, Inc.	1-03268	South Houston	4	10-13-87
Throughout Texas	Comal County Line Road System	1-03386	New Braunfels	4	10-20-87
Throughout Texas	Cooper Electronic Laboratories, Inc.	1-01296	Res. Tr. Pk., NC	23	10-15-87
Throughout Texas	Radiation Services	1-03931	Tyler	4	10-19-87
Throughout Texas	Team Consultants, Inc.	1-04012	Dallas	1	10-22-87
Throughout Texas	Penwood, Inc.	1-02644	Fort Worth	23	10-15-87
Throughout Texas	Texas State Technical Institute	1-01926	Waco	19	10-22-87
Throughout Texas	Sumed, Inc.	1-02129	Denton	36	10-21-87
Wichita Falls	Wichita General Hospital	1-00350	Wichita Falls	32	10-19-87

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	South Austin Medical Center	1-03273	Austin	11	10-15-87
Beaumont	Texas Metal Works, Inc.	1-02239	Beaumont	4	10-09-87
Dallas	Texas Instruments, Inc.	1-00946	Dallas	42	10-13-87
Harlingen	Valley Baptist Medical Center	1-00154	Harlingen	20	10-22-87
Houston	The Zimmerman Medical Clinic	1-00244	Houston	16	10-16-87
Houston	Sun Belt Regional Medical Center	1-03306	Houston	4	10-23-87
Midland	Deep Well Pipe Inspection of Texas, Inc.	1-03085	Midland	6	10-13-87
Nassau Bay	St. John Hospital	1-03291	Nassau Bay	6	10-23-87
Palestine	Anderson County Memorial Hospital	1-02728	Palestine	7	10-23-87
Port Arthur	Chevron USA, Inc.	1-00054	Port Arthur	33	10-21-87
San Antonio	Humana Hospital—Metropolitan	1-02232	San Antonio	16	10-14-87

RENEWALS OF EXISTING LICENSES ISSUED CONTINUED:

Location	Name	License #	City	Amendment #	Date of Action
San Antonio	Trinity University	1-01668	San Antonio	12	10-22-87
Throughout Texas	Non-Destructive Inspection Corporation	1-02712	Lake Jackson	7	10-15-87
Throughout Texas	Ludlum Measurements, Inc.	1-01963	Sweetwater	34	10-15-87
Throughout Texas	Schlumberger Well Services	1-01833	Houston	61	10-21-87
Throughout Texas	Atomic Energy of Canada Limited	1-00721	Kanata, Canada	26	10-21-87
Throughout Texas	Gearhart Industries, Inc.	1-03284	Fort Worth	13	10-21-87

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amendment #	Date of Action
Austin	Texas Department of Health	1-03358	Austin	1	10-14-87
Kerrville Post	Robert R. Shelton Garza Memorial Hospital	1-03216 1-03296	Kerrville Post	2 5	10-14-87 10-23-87
Throughout Texas	Houston Inspection Services, Inc.	1-02633	Houston	19	10-16-87
Throughout Texas	Culbertson Well Service, Inc.	1-03242	Victoria	4	10-16-87

In issuing new licenses and amending and renewing existing

licenses, the Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with *Texas Regulations for Control of Radiation* in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities, and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable special requirements in the *Texas Regulations for Control of Radiation*.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage due to emissions of radiation. A licensee, applicant, or "person affected" may request a hearing by writing David K. Lacker, Chief, Bureau of Radiation Control (Director, Texas Radiation Control Program), 1100 West 49th Street, Austin, Texas 78756.

Any request for a hearing must contain the name and address of the person who considers himself affected by agency action, identify the subject license, specify the reasons why the person considers himself affected, and state the relief sought. If the person is represented by an agent, the name and address of the agent must be stated.

Copies of these documents and supporting materials are available for inspection and copying at the office of the Bureau of Radiation Control, Texas Department of Health, 1212 East Anderson Lane, Austin, from 8 a.m. to 5 p.m. Monday through Friday (except holidays).

Issued in Austin, Texas, on November 3, 1987.

TRD-8709764 Robert A. MacLean
Deputy Commissioner
Texas Department of Health

Filed: November 3, 1987

For further information, please call (512) 465-2640.



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 October 16-30, 1987.

No public hearing will be held on these applications unless an affected person has requested a public hearing. Any such request for a public hearing shall be in writing and contain the name, mailing address, and phone number of the person making the request; and a brief description of how the requester, or persons represented by the requester, would be adversely affected by the granting of the application. If the commission determines that the request sets out an issue which is relevant to the waste discharge permit decision, or that a public hearing would serve the public

interest, the commission shall conduct a public hearing, after the issuance of proper and timely notice of the hearing. If no sufficient request for hearing is received within 30 days of the date of publication of notice concerning the applications, the permit will be submitted to the commission for final decision on the application.

Information concerning any aspect of these applications may be obtained by contacting the Texas Water Commission, P.O. Box 13087, Austin, Texas 78711, (512) 463-7905.

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

Period of October 16-30, 1987

The Dow Chemical Company, Texas Operation, Freeport; hazardous waste storage, processing, and disposal facility; along and adjacent to the intersections of State Highways 288, 332, and State FM 523 north of Freeport, Brazoria County; HW-50161-001; new

Poly Products Corporation, Spring; metal heat exchanger fabrication plant; 26027 Aldine-Westfield Road in the Community of Spring in Harris County; 02056; renewal

Texas Department of Corrections, Ramsey III Cannery, Angleton; cannery where vegetables are processed and canned; on the east bank of Oyster Creek along FM 655, approximately nine miles northwest of the City of Angleton, Brazoria County; 02952; new

T and N Lone Star Warehouse Company, Lone Star; wastewater treatment facilities; on the southeast side of the intersection of U.S. Highway 259 and Ranch Road 250, approximately 2.5 miles east of the City of Lone Star in Morris County; 13326-01; renewal

USX Corporation, Texas Uranium Operations, George West; mining project; approximately eight miles southwest of George West, along and northwest of U.S. Highway 59 in J. Poitevaut Survey Number 67, H. and G. N. R. R. Survey Number 69, and H. and G. N. R. R. Survey Number 71 in Live Oak County; UR02130-001; amendment

USX Corporation, Texas Uranium Operations, George West; mining project; approximately eight miles southwest of George West, on FM 889, within the A.C.H. and B. Survey 165, B.S. and G. Survey 151, W.F. Hodges Survey 152, W.N. Fant Survey 166, and the W.C. Anderson Survey 228 in Live Oak County; UR02154-001; amendment

Occidental Electrochemicals Corporation, Battleground Plant, LaPorte; chloro-alkali manufacturing plant; on the east side of State Park Road 1836 (Vista Road), approximately 1,000 feet north of its intersection with State Highway 134 (Battleground Road) in the City of La Porte, Harris County; 01539; renewal

City of Dallas; water treatment plant; approximately 300 yards west of IH 35E and approximately 300 yards south of Sandy Lake Road in the City of Carrollton in Dallas County; 10060-05; renewal

Interox America, A Partnership of Soltex Peroxygen, Inc., and Laporte Peroxygen, Inc., Deer Park; hydrogen peroxide process and storage area; 1230 Battleground Road (State Highway 134) in the City of Deer Park, Harris County; 02544; renewal

The Lubrizol Corporation, Deer Park; chemical plant manufacturing additives for gasoline and lubricating oil and greases; north of State Highway 225, south of the Port Terminal Railroad, east of Patrick Bayou and west of the East Fork of Patrick Bayou in the City of Deer Park, Harris County; 00639; renewal

Housing Authority of Cameron County, Brownsville; wastewater treatment facilities; approximately 500 feet north of State Highway 100 and 3,400 feet generally east of the intersection of FM Road 803 and State Highway 100 in Cameron County; 12580-01; renewal

Houston Lighting and Power Company, Houston; steam electric station; approximately 1,000 feet south of the intersection of Grant Road and FM Road 149, approximately 17 miles northwest of the City of Houston, Harris County; 01039; renewal

Interwood Municipal Utility District, Houston; wastewater treatment plant; south of Aldine Bander Road on the west bank of Harris County Flood Control Ditch Number P135-00-00, and approximately 4,500 feet east of John F. Kennedy Boulevard in Harris County; 12526-01; renewal

Wellman Industries, Inc., Longview; wastewater treatment plant; approximately 1.3 miles west of the intersection of FM Road 729 and FM Road 1969 and approximately four miles southwest of the intersection of Texas State Highway 49 and FM Road 1969 in Marion County; 12563-01; renewal

Gifford-Hill and Company, Inc., Ferris Plant Number 19, Ferris; sand and gravel mine on 150 acres at the Ferris Plant Number 19; approximately eight miles east of the City of Ferris, near the old settlement of Walnut Springs, Ellis County; 02519; amendment

Union Carbide Corporation, Line Division, Deer Park; air separation plant; at the southeast corner of the intersection of Old Tidal Road and Port Terminal Railroad, about .5 mile north of State Highway 225 in the City of Deer Park, Harris County; 01173; amendment

William C. Yancey, Jr. and Charles T. Richardson, Houston; sewage treatment plant; approximately one mile southeast of the intersection of U.S. Highway 59 and North Belt and 500 feet southeast of the crossing of Harris County Flood Control Ditch Number P133-00-00 by Smith Road in Harris County, Texas; 11376-01; renewal

Donna Refinery Partners LTD., Donna; oil refinery; on the 700 block of Eleventh Street, near the City of Donna, Hidalgo County; 02957; new

City of Center; surface water plant; north of Lake Center, approximately three miles south-southeast of the intersection of U.S. Highway 96 and State Highway Spur 500 in Shelby County; 10063-04; new

City of Center; surface water plant; south of Pinkston Reservoir and west of State Highway 7, approximately three miles east-northeast of the intersection of State Highway 7 and FM Road 2913 in Shelby County; 10063-05; new

Continental Savings, Bellaire; wastewater treatment facilities; at the northeast quadrant of the intersection of Brazoria County Road Number 257 and Brazoria County Road 257-South in Brazoria County; 13402-01; new

Gifford-Hill and Company, Inc., Cobb Plant, Dallas;

sand and gravel mining operation; approximately 3.1 miles south of Seagoville near Bilindsay Road and Mailoy Bridge Road, Dallas County; 02970; new

City of Los Fresnos; wastewater treatment facilities; southwest of Los Fresnos, approximately 2,000 feet west of FM Road 1847 and 3,300 feet south of State Highway 100 at the end of Nogal Street in Cameron County; 10590-02; renewal

Texas A&M University, Physical Plant Department, College Station; plant which produces 4,000 tons of chilled water for air conditioning; within the West Campus, west of Wellborn Road and north of Highway 60, just north of the Veterinary Medical complex in the City of College Station, Brazos County; 02969; new

Houston Lighting and Power Company, H.O. Clarke Steam Electric Station, Houston; steam electric station; at the southwest corner of the intersection of Hiram Clarke Road and U.S. Highway 90A in the City of Houston, Harris County; 01027; renewal

Town of San Felipe; wastewater treatment facilities; on Town of San Felipe property adjacent to Sixth Street, east of First Avenue in the Town of San Felipe, Austin County; 13390-01; new

City of Harlingen Waterworks System; wastewater treatment facilities; approximately 800 feet southwest of the intersection of 15th Street and Commerce Street in the City of Harlingen, Cameron County; 10490-02; renewal

Klaus Peterson, Argyle; package plant; at 294 Country Club Road approximately 1¼ miles northeast of the intersection of U.S. Highway 377 and Country Club Road in Denton County; 13401-01; new

Mesa Point, Inc., Azle; wastewater treatment plant; approximately 3.5 miles southwest of the intersection of State Highway 199 and FM Road 730 (City of Azle), 2,000 feet west-northwest of the intersection of FM Road 730 and 3325, .5 mile northwest of the Azle Elementary School building, in Parker County; 13375-01; new

Red Lick Independent School District, Texarkana; wastewater treatment plant; approximately 1.5 miles east of the intersection of IH 30 and FM Road 2253; approximately 1,000 feet west of the intersection of Earnest Road and FM Road 2148 in Bowie County; 13392-01; new

City of Nederland; wastewater treatment facilities; immediately east of the intersection of Hardy Avenue and 32nd Street, east of the main drainage canal in the City of Nederland, Jefferson County; 10483-02; amendment

Harris-Fort Bend Counties Municipal Utility District Number 3, Houston; wastewater treatment facilities; approximately 4,200 feet south of IH 10 and 800 feet east of Katy-Fort Bend Road in Harris and Fort Bend Counties; 12498-01; renewal

Schmidt Manufacturing, Inc., Arcola; wastewater treatment facilities; 1.7 miles northwest of the intersection of State Highway 6 and FM Road 521 (the City of Arcola) in Fort Bend County; 12658-01; renewal

Johnson Inn, Inc., doing business as Holiday Inn IH-10 East, Houston; wastewater treatment plant; approximately one mile east of the intersection of IH Loop 610 and IH 10, adjacent to the northwest quadrant of the intersection of IH 10 and Mercury Dr., at 10155 East Freeway in Harris County; 11848-01; renewal

U.S.X. Corporation, Baytown; hazardous/industrial solid waste disposal facility; on a 740-acre tract of land in Chambers County, approximately .75 mile east of FM 1405 on McKinney Road, southeast of Baytown; HW-50192-000; new

Issued in Austin, Texas, on October 30, 1987

TRD-8709727 Karen A Phillips
Chief Clerk
Texas Water Commission

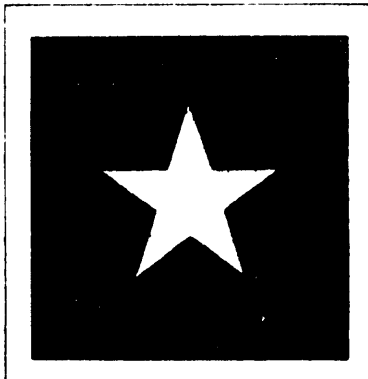
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