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Volume 5, Number 33, May 2, 1980
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TEXAS REGISTER

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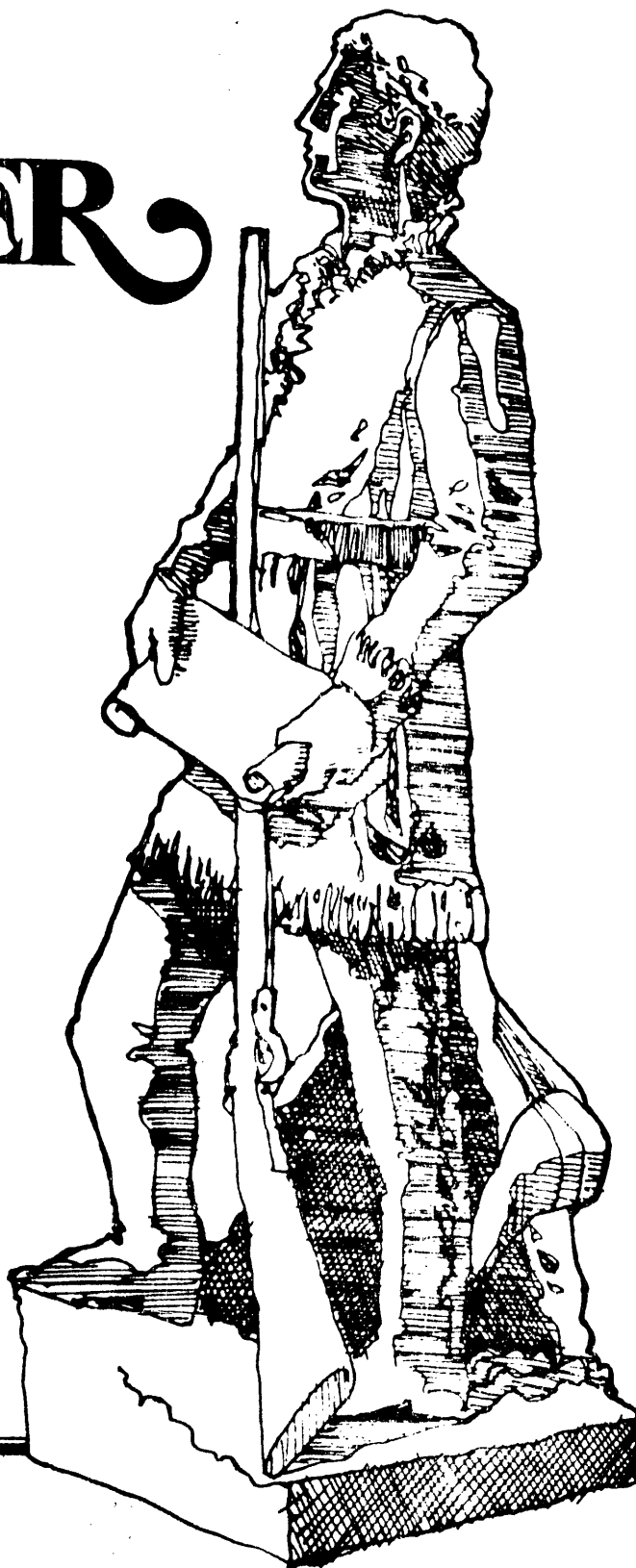
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Office of the Secretary of State

The *Texas Register* is currently in the process of converting to the numbering system found in the *Texas Administrative Code* (TAC). To aid the reader in this conversion, both the 10-digit *Register* number and the new TAC number will be listed for agencies whose rules have been published in the TAC. Emergency, proposed, and adopted rules sections of the *Register* are divided into two classifications: codified and noncodified. Codified rules appear in title number order. Non-codified rules appear in alphabetical order as they have in the past. An "Index of TAC Titles Affected" appears at the end of this issue.

Titles 1, 4, 7, 10, 13, 31, 34, 37, and 43 only of the TAC have now been published. Documents classified in the *Texas Register* to titles not yet published and certain documents affecting titles of the code have been accepted in the non-TAC format and may be renumbered or revised, or both, when initially codified in the TAC.

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

1 is the title (agencies grouped together by subject title which are arranged alphabetically)

TAC is the *Texas Administrative Code*

§27.15 is the section number (27 represents the chapter number and 15 represents the individual rule within the chapter)

Latest Texas Code Reporter
(Master Transmittal Sheet): No. 1, Oct. 79

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Cover illustration represents Elisabet Ney's statue of Stephen F. Austin, which stands in the foyer of the State Capitol.

TEXAS REGISTER

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George W. Strake, Jr.
Secretary of State

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Article 4399, Vernon's Texas Civil Statutes, requires the attorney general to give written opinions to certain public officials. The Texas Open Records Act, Article 6252-17a, Section 7, Vernon's Texas Civil Statutes, requires that a governmental body which receives a request for release of records seek a decision of the attorney general if the governmental body determines that the information may be withheld from public disclosure. Opinions and open records decisions issued under the authority of these two statutes, as well as the request for opinions and decisions, are required to be summarized in the *Texas Register*.

Copies of requests, opinions, and open records decisions may be obtained from the Opinion Committee, Attorney General's Office, Supreme Court Building, Austin, Texas 78701, telephone (512) 475-5445.

Requests for Opinions

Summary of Request for Opinion RQ-312

Request from James M. Windham, chairman, Texas Board of Corrections, Livingston.

Summary of Request: May the Texas Department of Corrections lease lands for the removal of sand and gravel?

Doc. No. 802888

Summary of Request for Opinion RQ-313

Request from Joe Resweber, county attorney, Harris County.

Summary of Request:

(1) Is Harris County (which has adopted its own rabies control regulations pursuant to Article 2372m, Vernon's Annotated Civil Statutes) excepted from the provisions contained in Article 4477-6a, Vernon's Annotated Civil Statutes?

(2) If not, is Harris County required under Article 4477-6a, Vernon's Annotated Civil Statutes, to hold a domestic animal for an additional 15 days following the final day of quarantine even though said animal has been held (pursuant to Article 2372m, Vernon's Annotated Civil Statutes, and the Harris County regulations to control rabies) for 10 days under a licensed veterinarian for the purpose of determining whether or not said animal is rabid?

(3) Since the county does not have facilities for the housing and disposition of animals seized in the unincorporated areas of the county and the county has arrangements with the City of Houston for the boarding and disposition of said animals at the city's facilities within the city limits, should said county animals be boarded and disposed of pursuant to the county regulations to control rabies adopted under Article 2372m, the provisions of Article 4477-6a or the ordinance of the city relating thereto?

Doc. No. 802889

Summary of Request for Opinion RQ-314

Request from Melvin Rowland, chairman, Texas Health Facilities Commission, Austin.

Summary of Request:

(1) Considering the language in Sections 7(b)(1) and 7(b)(2) of Article 4447(u), is it the responsibility of the Texas Department of Health or the Texas Health Facilities Commission to make the determinations as to what home health agency services and in what counties were such services being rendered prior to September 1, 1979?

(2) Following the determination of services rendered by county prior to September 1, 1979, is it the commission's responsibility to determine whether the provision of particular services prior to September 1, 1979, qualifies the applicant for licensure as a Class A home health agency, a Class B home health agency, or both?

Doc. No. 802890

Summary of Request for Opinion RQ-315

Request from Bill D. Jackson, CPA, county auditor, County of Galveston, Galveston.

Summary of Request: Does the county auditor have the authority to approve a claim for delinquent tax attorney commissions out of farm to market lateral tax fund revenues?

Doc. No. 802891

Summary of Request for Opinion RQ-316

Request from Bob Bullock, Comptroller of Public Accounts, Austin.

Summary of Request: For the purpose of reporting franchise tax, which of the following methods should be used for determining the cost of investments in a subsidiary when the acquisition qualifies as a pooling of interest and the acquired subsidiary is not dissolved:

(1) the par value of the stock issued by the parent corporation in exchange for the shares of stock in the subsidiary or;

(2) the net book value of the subsidiary acquired as reflected on the books of the subsidiary or;

(3) the fair market value at the date of acquisition of the stock issued by the parent in exchange for the shares of stock of the subsidiary.

Doc. No. 802892

Opinions

Summary of Opinion MW-167

Request from Ben Z. Grant, chairman, Judiciary Committee, house of representatives, Austin, concerning authority of a municipality to enact an ordinance providing for a fine for possession of marihuana.

Summary of Opinion: There can be no offense of "criminal intent" (or criminal attempt) to possess marihuana. A municipality is preempted by state law from enacting an ordinance providing for the imposition of a fine for possession of marihuana.

Doc. No. 802893

Summary of Opinion MW-168

Request from John B. Holmes, Jr., district attorney, Harris County, concerning whether a slot machine-like device is prohibited by Chapter 47 of the Penal Code.

Summary of Opinion: A plastic bank known as a "one-armed banker" is not a gambling device, the possession of which is prohibited by the Penal Code, because neither the element of chance nor that of consideration must be present for either the operation or payoff of the device.

Doc. No. 802894

Summary of Opinion MW-169

Request from Selden N. Snedeker, criminal district attorney, Cameron County, concerning whether Cameron County may transfer funds within the 1979 county budget after the 1979 fiscal year to pay a claim for county membership dues incurred during the fiscal year.

Summary of Opinion: Cameron County may transfer funds within the 1979 county budget after the 1979 fiscal year to pay an obligation incurred during the fiscal year.

Doc. No. 802895

Summary of Opinion MW-170

Request from Wilhelmina Delco, chairwoman, Committee on Higher Education, house of representatives, Austin, concerning dual membership on the board of the Texas Guaranteed Student Loan Corporation and the boards of higher education authorities.

Summary of Opinion: It is not unlawful for a member of the board of a higher education authority to be appointed to the board of the Texas Guaranteed Student Loan Corporation, but the two offices are incompatible, and a person who accepts and qualifies for the second office automatically forfeits the first.

Doc. No. 802896

Summary of Opinion MW-171

Request from Joe Resweber, county attorney, Harris County, concerning authority of certain counties to require building permits for structures outside the area designated by the Federal Flood Insurance Administration.

Summary of Opinion: Article 1581e-1, Vernon's Texas Civil Statutes, gives the Commissioners Court of Harris County authority to require building permits in unincorporated areas for structures constructed or placed in the defined flood-, or rising water-prone, areas which are outside the flood plain areas designated by the Federal Flood Insurance Administration as having special hazards.

Doc. No. 802897

Summary of Opinion MW-172

Request from Reynaldo F. Luna, county attorney, Duval County, concerning authority of commissioners court with regard to appointment of an assistant county attorney.

Summary of Opinion: Article 332a, Vernon's Texas Civil Statutes, authorizes the county attorney to employ his assistants without the consent of the commissioners court. The commissioners court may, however, reject the salary proposed by the county attorney. The county attorney may pay his assistant additional salary out of his own funds.

Doc. No. 802898

Summary of Opinion MW-173

Request from Mable Staton, executive secretary, Texas Board of Licensure for Nursing Home Administrators, Austin, concerning whether members of the board of Licensure for Nursing Home Administrators may participate in certain trade association activities.

Summary of Opinion: The ex officio members of the board may receive per diem and actual expenses. A member of the board should not accept any sort of payment for services rendered from a trade association in the nursing home industry. Board members may not serve as a director or other officer of these associations, but they are not absolutely barred from acting as unpaid advisors as long as their independence is not jeopardized. Whether Article 6252-9b, Vernon's Texas Civil Statutes, prohibits unpaid service as an advisor must be determined by the board on a case-by-case basis. The National Association of Boards of Examiners for Nursing Home Administrators is not a trade association under Article 4442d, Vernon's Texas Civil Statutes.

Doc. No. 802899

Summary of Opinion MW-174

Request from Gibson D. (Gib) Lewis, Committee on Intergovernmental Affairs, house of representatives, Austin, concerning whether a board of firemen's relief and retirement fund trustees is covered by the Open Meetings Act.

Summary of Opinion: Boards of firemen's relief and retirement fund trustees are governmental bodies covered by the Texas Open Meetings Act.

Doc. No. 802900

Open Records Decisions

Summary of Open Records Decision ORD-240

Request from Robert E. Stewart, commissioner, Department of Banking, Austin, concerning whether records relating to correspondence received by the Department of Banking alleging manipulation of securities pledged as collateral for a bank loan are public under the Open Records Act.

Summary of Decision: A letter from the banking commissioner to a legislator indicating that he is not the subject of any investigation of a bank by the banking department is an open record under the Open Records Act. It is not excepted under Section 3(a)(12) of the Open Records Act since it does not relate to the financial condition of a state bank and is not an examination, operating, or condition report of a financial institution.

Issued in Austin, Texas, on April 22, 1980.

Doc. No. 802996 C. Robert Heath
Opinion Committee Chairman
Attorney General's Office

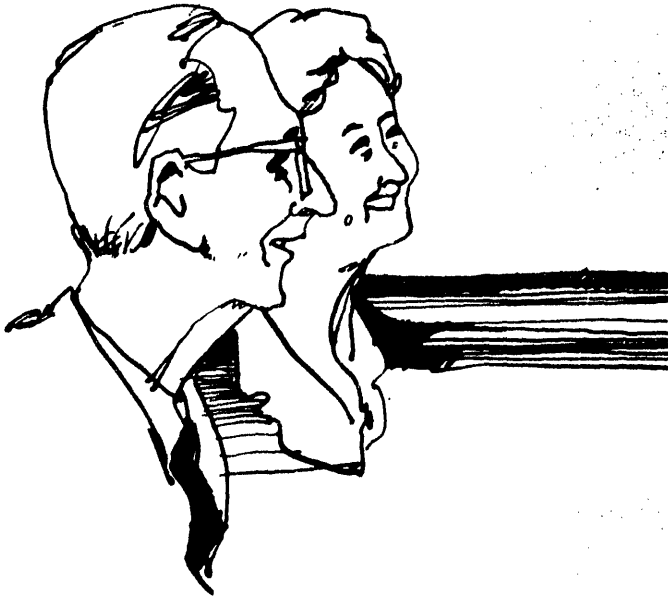
For further information, please call (512) 475-5445.



An agency may adopt emergency rules after determining what it considers to be an imminent peril to the public health, safety, or welfare. These rules may be effective immediately on filing with the secretary of state for no more than 120 days, renewable once for no more than 60 days. An agency must submit written reasons, published in the *Register*, for the emergency adoption of rules.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."

Symbology—Changes to existing material are indicated in ***bold italics***. [Brackets] indicate deletion of existing material.



NONCODIFIED

Texas Department of Health

Home Health Care Agencies 301.50.01

The Texas Department of Health is renewing the effectiveness of the emergency adoption of subject Rules 301.50.01.001-.006 for a 60-day period, effective May 8, 1980. The texts of the rules were originally published in the January 15, 1980, issue of the *Texas Register* (5 TexReg 121).

Issued in Austin, Texas, on April 16, 1980.

Doc. No. 802947 Dan LaFleur
 Attorney
 Texas Department of Health

Effective Date: May 8, 1980

Expiration Date: July 7, 1980

For further information, please call (512) 458-7538.

Texas Department of Human Resources

Child Welfare Services 326.50.74

The Texas Department of Human Resources is renewing the effectiveness of the emergency adoption of amendments to Rules 326.50.74.062 and .070 for a 60-day period, effective April 30, 1980. The texts of the rule amendments were originally published in the December 21, 1979, issue of the *Texas Register* (4 TexReg 4649).

Issued in Austin, Texas, on April 22, 1980.

Doc. No. 802960 & Susan L. Johnson, Assistant Chief
 802961 Systems and Procedures Bureau
 Texas Department of Human Resources

Effective Date: April 30, 1980

Expiration Date: June 29, 1980

For further information, please call (512) 475-4601.

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, except where a federal statute or regulation requires implementation of a rule on shorter notice.

Upon request, an agency shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement from the agency before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling objections to the agency's decision.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Non-codified."

Symbology—Changes to existing material are indicated in **bold italics**. [Brackets] indicate deletion of existing material.

CODIFIED

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter M. Inheritance Tax Division

(Editor's note: A lengthy proposal by the Comptroller of Public Accounts concerning filing of the inheritance tax return is being published serially beginning in the April 22 issue. The sections affected by this action are §§3.211-3.224 (026.02.14.101-.115). The final installment of this serialization, §§3.216-3.224 (.106-.114), appears in this issue. The proposed date of adoption for the serialized sections is May 23, 1980.)

The Comptroller of Public Accounts proposes to amend §§3.211-3.213 and 3.215-3.223 (026.02.14.101-.103 and .105-.113), repeal §3.214 (026.02.14.104), and to adopt new §§3.224 and 3.214 (026.02.14.114 and .115). The amendments are necessary to clarify existing rules and policy with the hope of eliminating routine questions which the Inheritance Tax Division receives on a daily basis and to reflect changes required by law.

Section 3.211 (.101) will be changed to address the question of when the estate of a nonresident decedent owning only intangible personal property within the jurisdiction of Texas must nevertheless file a Texas inheritance tax return. The present section leaves this question unanswered.

Section 3.212 (.102) will be changed to add a section which explains a new tax return (declaration of no tax due) and to include that part of former §3.218(c) (.108(c)) which lists what additional documents must be submitted if the estate also files a federal estate tax return. It was decided to consolidate into one section all documents which an estate may be required to furnish. The dollar limit on the small estate return will be increased to \$200,000 and can be used when no federal estate tax is due and use of the Declaration of No Tax Due form is not appropriate.

The proposed changes to §3.213 (.103) dealing with duties of the county or probate court are clarifying changes and do not represent new matter.

Present §3.214 (.104) simply lists assets to be reported on a return and is of little help to the practitioner; therefore, it is proposed for repeal.

The proposed changes to §3.215 (.105) dealing with valuation are numerous. First, the section will be reorganized by placing both the longer examples and the actuarial tables which are in the body of the current section into appendices appearing at the end of the proposed section. It was determined that the present arrangement of §3.215 (.105), because of the placement of certain illustrative material, is cumbersome and does not lend itself to quick reference. Subsection (b)(2) will clarify that the alternate valuation method must be elected on a timely filed return. Subsection (c)(2)(D) on the valuation of producing mineral interests will be expanded to define the measurement period for the five-year payout which the Inheritance Tax Division now uses when the estate fails to provide other satisfactory evidence of value. The present section fails to address those situations where there was less than 12 months of actual production immediately preceding death, or where the alternate valuation date is elected. Subsection (f)(1)(D) on the disposition of insurance proceeds when a simultaneous death occurs will be changed to incorporate the language of Section 47, Texas Probate Code Annotated. Subsection (f)(2)(C) will be changed to (f)(2)(B) and will provide that the full amount of National Service Life Insurance proceeds and not just a community one-half must be reported. Subsection (f)(5), formerly (4), listing certain elements of insurance which are not eligible for the insurance exemption will be changed to clarify where on the returns these items should be reported. In addition, the amendment will explain that debts secured by insurance are not to be netted against the principal amount but should be reported separately. Subsection (f)(6) is new and will clarify that if insurance proceeds are payable to more than one beneficiary, the \$40,000 life insurance exemption will be prorated. Subsection (m) dealing with annuities will be expanded to include benefits exempt from inheritance taxation and accruing under laws not presently listed. There will be added a new paragraph (4) explaining the procedure for obtaining a valuation of a civil service annuity. Subsection (n)(2) concerning valuation of household and personal effects will be subdivided into two parts. The first will delete the existing requirement that the executor provide a declaration under penalties of perjury as to the disinterested character and the qualifications of any appraiser. The second will clarify what information must be submitted to the Inheritance Tax Division if any household or personal effects must be sold or distributed before the due date of the return. Subsection (p) on the valuation of charitable remainder trusts and pooled income funds will be deleted. Finally, additional

illustrations on the valuation of concurrent and consecutive life estates will appear in proposed Appendix II, a new illustration on the valuation of life insurance where there has been a simultaneous death will be added and will appear in Appendix IV, and the annuity tables and examples which will appear in Appendix V will be changed to correct several numerical mistakes that now exist.

Section 3.216 (.106), Transfers of Property Interests, will contain minor clarifying changes. In addition, Example (B) in subsection (c)(5) will be changed to eliminate the appearance of any conflict with the case of *Estate of Wylly v. Commissioner of Internal Revenue*, 610 F.2d 1282 (5th Circuit 1980).

Section 3.217 (.107), dealing with deductions, will reflect several changes. First, subsection (b) will provide that a bequest or devise of property to an executor in lieu of commissions is deductible to the extent not in excess of reasonable compensation. Reasonable compensation fixed by will is also an allowable deduction. However, in all situations, whether in lieu of commissions, fixed by will, or otherwise, the amount of compensation, in general, cannot exceed 5.0% of the gross estate subject to administration. Second, subsection (d)(1) will be changed to clarify existing Inheritance Tax Division policy that the only miscellaneous expenses allowed as deductions are those incurred in connection with the assessment and collection of the inheritance tax. Expenses incurred because an administration is held open during the period of an extension or payout are not deductible. Moreover, expenses incurred in preserving or maintaining property of the estate will not be allowed to reduce the net taxable estate. Third, subsection (d)(2) will be amended to clarify that not all expenses for selling property are deductible. If the sale of property is not specifically provided for by will and proceeds from the sale exceed the amount necessary to satisfy the estate's obligations, then only a percentage of such expenses is allowed. An illustration of prorating expenses will be included. Fourth, subsection (e) dealing with debts of the decedent will be expanded to include additional statements of which debts are allowable and which are not. Of particular interest is the provision that interest expense incurred to pay either estate or inheritance tax will not be allowed. Fifth, subsection (g) will be changed to refer to the deduction, as opposed to the credit, for property previously taxed. Sixth, subsection (i) dealing with prorating of debts in a multistate estate situation will be deleted to conform to the comptroller's decision in Administrative Hearing 9897, which is discussed below more fully in connection with the amendment to §3.220(b) (.110(b)).

Section 3.218 (.108), Audit Procedures, will contain minor clarification changes. As previously noted, the former section on submitting federal returns and audit results will be incorporated into §3.212 (.102).

Section 3.219 (.109) will be changed to include a written explanation of the disposition of an estate under the Texas laws of descent and distribution. The charts now appearing in the section which graphically represent intestate distribution will be reformatted. Examples of the distribution of the decedent's net estate in a "widow's election" situation will also be included. Moreover, the definitions of community and separate property found in subsection (e) will be amended to conform to the definitions found in the Texas Family Code.

Section 3.220 (.110) will be changed to reflect the new exemption for Class A beneficiaries passed by the 65th Legislature

and to include examples illustrating the tax computation in several factual situations. In addition, it was decided simply to identify the appropriate class designation for various miscellaneous beneficiaries. This list will appear in subsection (a)(2). Subsection (b) discussing the tax computation for estates situated partly within and partly without Texas will be amended to conform to the comptroller's decision in Administrative Hearing 9897, which concerned the interpretation of Texas Taxation—General Annotated, Article 14.07. The tax imposed on that part of the estate subject to Texas inheritance tax is to be calculated with respect to each beneficiary's share of the total net estate wherever situated. To arrive at the actual amount of basic inheritance tax due, the tax computed on this share is then multiplied by the percentage that the Texas gross estate bears to the total gross estate. The present illustration of prorating debts appearing in §3.217(i) (.107(i)) will be deleted.

Section 3.221 (.111) dealing with the payment of tax, penalties, and interest will be changed to clarify the current policy of the Inheritance Tax Division in these areas. Moreover, the interest rate on delinquent taxes was increased by the 66th Legislature from 6.0% to 7.0% effective January 1, 1980. Subsection (f) dealing with refunds will be changed to incorporate the amendments to Texas Taxation—General Annotated, Article 1.11A, passed by the 66th Legislature. Finally, subsection (g) will be enlarged to explain additional methods to provide sufficient security to obtain release of the inheritance tax lien.

Section 3.222 (.112) will be retitled "Collection Action" and will be expanded to explain more fully the collection procedures invoked for delinquent estates. In particular, the circumstances triggering the issuance of a deficiency determination and the taxpayer's rights resulting therefrom will be clarified.

Section 3.223 (.113), Closing an Estate, will be changed to incorporate the procedure for closing an estate which has filed the new return (declaration of no tax due). In addition, the section will make clear that the issuance by the comptroller of either a receipt or a no tax due certificate, or the acceptance of a declaration of no tax due automatically releases the comptroller's lien on all assets of the estate. It is intended for this clarification to eliminate the many requests for a release of liens on estate property even after a receipt or certificate has been issued. Furthermore, the change should make clear that it is the issuance and not the recording of the receipt or certificate which effects a release of the statutory lien.

Proposed §3.224 (.114), Property of the Estate in Possession of Another, is new. It attempts to clarify the complexity of Texas Taxation—General Annotated, Article 14.21 and 14.22, regarding the responsibilities of persons or entities in possession of assets and papers of a decedent. In general, these statutes require that, prior to the delivery of any of the decedent's property, the delivering entity must give the comptroller notice of the intended transfer. There are exceptions to this general rule depending on whether or not a court order has been issued. Moreover, the statutory notice is not required where an agent, properly commissioned by the comptroller, timely files a report form after the delivery.

Section 3.214 (.115) is proposed as a new section. The terms "Texas gross estate" and "total gross estate," which are the measure of the inheritance tax and which terms appear on

the various returns, are defined. "Texas gross estate" is defined to include not only the value of the decedent's property interests on the date of death, but also the value of transfers in contemplation of death as well as transfers taking effect at death. Excluded from the term are \$40,000 or less of qualifying life insurance proceeds, property exempt from inheritance taxation under Texas Taxation—General Annotated, Article 14.015, and property exempt from inheritance taxation under the provisions of other laws enumerated in §3.215(m) (.105(m)).

There are no significant fiscal implications expected from the proposed amendments (source: revenue estimating staff, Comptroller of Public Accounts).

Public comment on the proposal is invited. Comments should be submitted in writing to Robert T. Storey, director, Inheritance Tax Division, Drawer SS, Austin, Texas 78774.

This proposal is made under the authority of Texas Taxation—General Annotated, Article 14.13(A).

§3.216 (026.02.14.106). Transfers of Property Interests (14.01).

(a) Transactions in contemplation of death [Article 14.01].

(1) General rule. The taxable estate shall include the value of any transfer made within three years prior to death for other than full and adequate consideration. Such a transfer will be presumed to have been made in contemplation of death unless evidence warrants a finding to the contrary.

(2) Definition. Transfers "in contemplation of death," as used in this subsection, does not refer simply to the general expectation of death that all persons entertain, nor is its meaning restricted to an apprehension that death is imminent or near. A transfer in contemplation of death is a disposition of property prompted at least in part by the thought of death if made with the purpose of avoiding death taxes, made as a substitute for a testamentary disposition of the property, or made for any other motive associated with death. The health and mental attitude of the decedent and all other attendant facts and circumstances are to be scrutinized in order to determine whether or not the thought of death is the primary motivation for the transfer. The question of motive is principally one of fact determinable by evidence. When evidence shows several different motives, the dominant motive shall control.

(3) Testamentary motives. The following are considered testamentary motives requiring the inclusion of property or property interests in the gross taxable estate:

(A) transfers made prior to an impending marriage to assure control of the testamentary disposition of the property;

(B) transfers that are testamentary in nature, particularly to the natural objects of a decedent's estate;

(C) generally, all transfers of life insurance because of the *testamentary* [peculiar] nature of the instrument itself; and

(D) a transfer to save death taxes or to substitute *intervivos* gifts for testamentary dispositions.

(4) Motives other than death motives. The following have been considered motives other than death motives:

(A) transfers to isolate property for nontestamentary reasons;

(B) transfers motivated by promises, agreements, or feelings of moral obligations;

(C) habits and generosity of the decedent;

(D) transfers for income tax savings;

(E) transfers to assist the donee in an immediate need; and

(F) transfers to avoid management responsibility.

(5) Facts and circumstances to be considered. All facts and circumstances shall be considered, including but not limited to:

(A) the age and health of the donor;

(B) the interval between the gift and death;

(C) the last illness of the donor and his knowledge of such illness;

(D) the relationship of donee to donor;

(E) existence of an overall testamentary scheme;

(F) the donor's prior history of giving; and

(G) the testamentary nature of the property.

(b) Transfers with retained life estate [Article 14.01].

(1) General.

(A) A decedent's taxable estate includes the value of any property interest retained or reserved by a decedent:

(i) for his life,

(ii) for any period not ascertainable without reference to his death, or

(iii) for any period which does not *in fact* end before his death, in property *not* [otherwise] transferred for full and adequate consideration.

(B) A retained or reserved interest exists if one of the following is present:

(i) the use, possession, right to the income, or other enjoyment of the transferred property; or

(ii) the right, either alone or in conjunction with any other person or persons, to designate the person or persons who shall possess or enjoy the transferred property or its income. If the decedent retained or reserved an interest or right with respect to all of the property transferred by him, the amount of his includable property is the value of the entire property, less the value of any outstanding income interest which is not subject to the decedent's interest or right and which is actually being enjoyed by another person at the time of the decedent's death. If the decedent retained or reserved an interest in only a part of the property transferred by him, the amount to be included is a corresponding proportion of the amount described above. An interest or right is retained or reserved, if at the time of the transfer, there was an understanding, *expressed* [express] or implied, that the interest or right would later be conferred.

(2) Meaning of terms. A reservation by the decedent "for any period not ascertainable without reference to his death" may be illustrated by the following examples.

(A) A decedent reserved the right to receive the income from transferred property in quarterly payments, with the provision that no part of the income between the last quarterly payment and the date of the decedent's death was to be received by the decedent or his estate.

(B) A decedent reserved the right to receive the income from transferred property after the death of another person who was in fact enjoying the income at the time of the decedent's death. In such a case, the amount to be included does not include the value of the outstanding income interest of the other person. It may be noted that if the other person predeceased the decedent, the reservation by the decedent

may be considered to be either "for his life" or "for a period which does not end before his death."

(C) The "use, possession, right to the income, or other enjoyment of the transferred property" is considered as having been retained by or reserved to the decedent to the extent that the use, possession, right to the income, or other enjoyment may be applied toward the discharge of legal obligations of the decedent, or for his pecuniary benefit.

(D) The phrase "right to designate the person or persons who shall possess or enjoy the transferred property or the income therefrom" includes a reserved power to designate the person or persons to receive the income from the transferred property, or to possess or enjoy property which produces no income, during any other period described in **subsection (b)(1) above** [paragraph (A) of this section.] With respect to such a power, it is immaterial:

(i) whether the power was exercisable alone or only in conjunction with another person or persons, whether or not having an adverse interest;

(ii) in what capacity the power was exercisable by the decedent or by another person or persons in conjunction with the decedent; and

(iii) whether the exercise of the power was subject to a contingency beyond the decedent's control which did not occur before his death (e.g., the death of another person during the decedent's life-time). This does not include a power over transferred property which does not affect the enjoyment of income received or earned during the decedent's life, nor does it apply to a power held solely by a person other than the decedent. If the decedent reserved the unrestricted power to remove or discharge a trustee at any time and appoint himself as trustee, the decedent is considered to have the powers of the trustee.

(c) Transfers taking effect at death [Article 14.01].

(1) General. Except to the extent that the transfer was for full and adequate consideration, a decedent's taxable estate includes the value of any interest in property transferred by the decedent in trust or otherwise if:

(A) possession or enjoyment of the property could, through ownership of such interest, have been obtained only by surviving the decedent; or

(B) the decedent had retained a possibility (a "reversionary interest") that the property, other than the income would return to the decedent's estate. The value of the reversionary interest is to be determined by actuarial techniques.

(2) Condition of survivorship. As indicated above, the value of an interest in transferred property is not included in a decedent's taxable estate unless possession or enjoyment of the property could, through ownership of such interest, have been obtained only by surviving the decedent. Thus, property is not included in the decedent's gross estate if immediately before the decedent's death possession or enjoyment of the property could have been obtained by any beneficiary either by surviving the decedent or through the occurrence of some other event, such as the expiration of a term of years. However, if a consideration of the terms and circumstances of the transfer as a whole indicates that the "other event" is unreal and if the death of the decedent does, in fact, occur before the "other event," the beneficiary will be considered able to possess or enjoy the property only by surviving the decedent. However, an interest in transferred property is not includable in a decedent's taxable estate if

possession or enjoyment of the property could have been obtained by any beneficiary during the decedent's life through the exercise of a general power of appointment which in fact was exercisable immediately before the decedent's death. (See **paragraph (5)(D) of this subsection** [Example (D) in paragraph (5) of this section].

(3) Reversionary interest. "Reversionary interest" includes the possibility that property transferred by the decedent may return to him or his estate and a possibility that property transferred by the decedent may become subject to a power of disposition by him. The term is not used in its strict technical sense, but has reference to any reserved right under which the transferred property may be returned to the grantor. The term encompasses an interest arising either by the express terms of the instrument of transfer or by operation of law. The term "reversionary interest" does not include **rights** [right] to income only, such as the right to receive the income from a trust after the death of another person, nor does the term include the possibility that the decedent during his lifetime might have received back an interest in transferred property by inheritance through the estate of another person. Similarly, a statutory right of a spouse to receive a portion of whatever estate a decedent may leave at the time of his death is not a "reversionary interest." For purposes of this subsection, the value of the decedent's reversionary interest is computed as of the moment immediately before his death, without regard to whether or not the executor elects the alternate valuation method and without regard to the fact of the decedent's death. The value is ascertained in accordance with recognized valuation principles for determining the value for inheritance tax purposes of future or conditional interests in property. For example, if the decedent's reversionary interest was subject to an outstanding life estate in his wife, his interest is valued according to actuarial rules. On the other hand, if the decedent's reversionary interest was contingent on the death of his wife without issue surviving, and if it cannot be shown that his wife is incapable of having issue (so that his interest is not subject to valuation according to actuarial rules), his interest is valued according to general rules. A possibility that the decedent may be able to dispose of property under certain conditions is considered to have the same value as a right of the decedent to the return of the property under those same conditions.

(4) Transfers partly taking effect at death. If separate interests in property are transferred to one or more beneficiaries, paragraphs (1) to (3) of this **subsection** [section] are to be separately applied with respect to each interest. For example, assume that the decedent transferred an interest in Blackacre to A which could be possessed or enjoyed only by surviving the decedent, and that the decedent transferred an interest in Blackacre to B which could be possessed or enjoyed only on the occurrence of some event unrelated to the decedent's death. Assume further that the decedent retained a reversionary interest in Blackacre. Only the value of the interest transferred to A is includable in the decedent's taxable property. Similar results would be obtained if possession or enjoyment of the entire property could have been obtained only by surviving the decedent, but the decedent had retained a reversionary interest in only a part of such property.

(5) Examples. The provisions of paragraphs (1) to (4) of this **subsection** [section] may be further illustrated by the following examples.

(A) The decedent transferred property in trust with the income payable to his son for life and, at his son's death, remainder to the son's then surviving children, or if none, to the son's estate. Since each beneficiary can possess or enjoy the property through ownership of such interest without surviving the decedent, no part of the property is includable in the decedent's taxable estate, regardless of the value of the decedent's reversionary interest.

(B) The decedent transferred property in trust with the income payable to his wife for life and with the remainder payable to the decedent or, if he is not living at his wife's death, to his daughter or her estate. The daughter cannot obtain possession or enjoyment of the property without surviving the decedent. *Therefore*, [However, by reason of Texas community property law,] the decedent has retained a *reversionary* [an income] interest. *The value of this interest, immediately before his death*, [for life, and the entire value of the decedent's interest in the transferred property] is includable in the decedent's estate.

(C) The decedent transferred property in trust with the income to be accumulated for a period of 20 years or until the decedent's prior death, at which time the principal and accumulated income was to be paid to the decedent's son if then surviving. Assume that the decedent does, in fact, die before the expiration of the 20-year period. If, at the time of the transfer, the decedent was 30 years of age, in good health, etc., the son will be considered able to possess or enjoy the property without surviving the decedent. If, on the other hand, the decedent was 70 years of age at the time of the transfer, the son will not be considered able to possess or enjoy the property without surviving the decedent. In this latter case, the value of the property interest is includable in the decedent's gross estate.

(D) The decedent transferred property in trust with the income to be accumulated for his life and, at his death, the principal and accumulated income to be paid to the decedent's then surviving children. The decedent's wife was given the unrestricted power to alter, amend, or revoke the trust. Assume that the wife survived the decedent but did not, in fact, exercise her power during the decedent's lifetime. Since possession or enjoyment of the property could have been obtained by the wife during the decedent's lifetime under the exercise of a general power of appointment, which was, in fact, exercisable immediately before the decedent's death, no part of the property is includable in the decedent's gross estate.

§3.217 (026.02.14.107). Deductions (14.10).

(a) **Funeral expenses.** Funeral expenses are allowed as a deduction from a decedent's gross estate to the extent actually expended. A reasonable expenditure for a tombstone, monument, or for a burial lot for the decedent and the decedent's spouse will also be allowed.

(b) **Executor's commission (14.09).** In filing the inheritance tax return, the executor or administrator may deduct *reasonable* commissions he has actually been paid, or which at the time of filing the return may reasonably be expected to be paid, but no deduction may be taken if no commissions are to be collected. If the deduction is allowed in advance of payment and is thereafter waived or changed, the executor shall notify the Inheritance Tax Division and pay the resulting tax with interest. *If the testator bequeaths or devises property to the executor in lieu of commissions, the value of such property to the extent that it represents reasonable compensation is an allowable deduction. The value of such*

property in excess of reasonable compensation, however, is not an allowable deduction. If the decedent fixed by will the amount of compensation, the amount so fixed is an allowable deduction. In all situations, the amount of compensation considered reasonable generally cannot exceed 5.0% of the gross estate subject to administration.

Texas Probate Code Annotated, Section 241. [A bequest or devise to the executor in lieu of commissions is not deductible. However, if the decedent fixed by his will the amount of executor's commissions to be paid, the deduction may be taken. Generally, the executor or administrator shall not be entitled in the aggregate to more than 5.0% of the gross estate subject to administration. The 5.0% limitation may not be applied when the executor or administrator manages a farm, ranch, factory, or other business of the estate, or if the compensation calculated above is unreasonably low and the court has allowed additional compensation.]

(c) **Attorney's fees.** A deduction will be allowed for *reasonable* attorney's fees actually paid or which at the time of filing may reasonably be expected to be paid for the following:

- (1) fees incurred for will probate.
- (2) fees attributable to determination of the estate's liability for:
 - (A) the decedent's final income tax,
 - (B) federal estate and gift taxes, and
 - (C) Texas inheritance tax.

(3) **Fees** [A deduction for reasonable attorney's fees actually] paid in contesting an asserted inheritance tax deficiency or in prosecuting a claim for an inheritance tax refund [will be allowed] even though the deduction was not claimed in the inheritance tax return or in the claim for refund.

[(4)] **Fees** [Attorney's fees] incurred by beneficiaries incident to litigation as to their respective interest do not constitute a proper deduction, since expenses of this character are incurred on behalf of the beneficiaries personally [and are not administration expenses].

(d) **Miscellaneous [administration] expenses.**

(1) *Only miscellaneous expenses incurred in connection with the assessment and collection of the Texas inheritance tax, such as court costs, accountant's fees, and appraiser's fees, are deductible. Expenses incurred because an administration is held open during the period of an extension or payout of any estate or inheritance taxes are not deductible. Expenses for preserving, caring, storing, or maintaining property of the estate are not deductible.* [Miscellaneous administration expenses include court costs, accountant's fees and appraiser's fees. Expenses necessary to preserve and distribute the estate are deductible, including the cost of storing or maintaining property of the estate, only if it is impossible to effect immediate distribution to the beneficiaries. Expenses for preserving and caring for the property do not include outlays for additions or improvements, nor will such expenses be allowed for a period longer than the executor is reasonably required to retain the property.]

(2) **Expenses for selling property.** *Expenses for selling property of the estate are deductible only if the will specifically provides that the property is to be sold or the sale is necessary to acquire sufficient cash to pay the decedent's debts, taxes, or expenses of administration. The phrase "expenses for selling property" includes brokerage fees and other expenses attending the sale such as*

the reasonable fees of an auctioneer if it is necessary to employ one.

(A) If the will specifically provides that the property is to be sold, expenses of sale are deductible in full.

(B) If the will does not so provide and the proceeds from the sale exceed the amount necessary to meet the estate's obligation, then only a percentage of the selling expenses is allowed. For example, decedent dies leaving an estate consisting of:

Land	\$750,000	Debts	\$25,000
Cash	\$17,500	Less Cash	\$17,500
Debts	\$25,000	Cash Needed	\$7,500

If the estate chooses to sell the entire \$750,000 worth of land and incurs selling expenses of \$10,000, the deduction allowed is calculated as follows: \$7,500 divided by \$750,000 multiplied by \$10,000 equals \$100.

[Expenses for selling property of the estate are deductible if the sale is necessary in order to pay the decedent's debts, taxes, or expenses of administration, or if the will specifically states the property is to be sold. The phrase "expenses for selling property" includes brokerage fees and other expenses attending the sale such as the reasonable fees of an auctioneer if it is necessary to employ one.]

(e) Debts of decedent.

(1) Allowable deductions. Only valid debts of the decedent which were due and unpaid at the time of death may be deducted. These include:

(A) state, county, municipal, and school property taxes to the extent that such taxes had accrued prior to the date of the decedent's death;

(B) taxes on income received during the decedent's lifetime (taxes on income received after death are not deductible);

(C) unpaid gift taxes for gifts made by a decedent before his death;

(D) notes unsecured by mortgage or other lien, including interest accrued to date of decedent's death;

(E) unpaid inheritance or estate taxes from a prior decedent;

(F) expenses incident to the last illness of the decedent unpaid at the date of death and not subject to reimbursement by medical insurance are deductible in full not just to the extent of the decedent's community interest; and

(G) debts secured by insurance.

(2) Deductions not allowable:

(A) homestead exemption (Texas Attorney General's Opinion, September 22, 1934);

(B) family allowance provided by Texas Probate Code Annotated, Section 286;

(C) attorney fees not incurred by executor or administrator (Texas Attorney General Opinion No. 0-6035 (1944));

(D) federal estate tax (Walker v. Mann, 143 S.W.2d 152 (Texas Civil Appeals—Austin 1940, writ ref'd));

(E) interest or penalties on any estate or inheritance taxes or interest on a debt incurred to pay such taxes; and

(F) foreign death taxes.

[(A) homestead exemption (Attorney General Opinion, September 22, 1934);

[(B) attorney fees not incurred by executor or administrator (Texas Attorney General Opinion 0-6035 (1944));

[(C) federal estate tax, Walker v. Mann, 143 S.W.2d 152, (Texas Civil Appeals—Austin, 1940 writ. ref'd); or

[(D) foreign death taxes.]

(f) Mortgages and liens.

(1) A deduction is allowed for obligations secured by property included in the gross estate only when the decedent's estate is liable. These include:

(A) mortgages;

(B) liens;

(C) notes and other obligations secured by deposit of collateral, such as stocks, bonds, and life insurance policies; and

(D) interest on obligations which had accrued to the date of death.

(2) Deductions not allowable. No deduction may be taken for any mortgage on property which does not form a part of the decedent's gross estate.

(g) Deduction [Credit] for property previously taxed.

(1) A deduction is allowable for a percentage of the value of any property which was received from any person dying within 10 years prior to the death of the decedent. The deduction shall be determined as follows:

Time Interval between the Dates of Death of Present and Prior Decedents	Percentage of the Value of Property Received from a Prior Decedent Allowable as a Deduction from the Gross Estate
Within one year	100%
Within two years	90%
Within three years	80%
Within four years	70%
Within five years	60%
Within six years	50%
Within seven years	40%
Within eight years	30%
Within nine years	20%
Within 10 years	10%
After 10 years	No Deduction

(2) The deduction is to be only the percentage of the value of the property upon which an inheritance tax was actually paid and shall not include any legal exemptions claimed by and allowed the heirs or legatees of the estate of the prior decedent. A full statement of facts authorizing deductions must be made a part of the inheritance tax return. The property inherited from the prior decedent which is still in the second decedent's estate must be identified before any deduction will be allowed.

(3) No deduction [credit] is allowable on an amount inherited as a life estate (Texas Attorney General Opinion No. M-1196 (1972)).

(4) No deduction [credit] is allowable on an amount received from an estate in another state if that state did not impose an inheritance tax.

(5) Example. The deduction for property previously taxed (DPPT) where the decedent had previously inherited property in fee simple and all property received was in Texas is computed as follows: Niece B, the decedent, died within five years after inheriting \$142,800 in fee simple from her uncle, A. All of the property A devised to B can be identified in B's estate.

PROPERTY INHERITED BY B	\$142,800
LESS EXEMPTION (FOR CLASS C BENEFICIARY)	<u>(10,000)</u>
PROPERTY ON WHICH INHERITANCE TAX PAID	\$132,800
PERCENTAGE ALLOWABLE (60% FOR WITHIN 5 YRS.)	<u>X .60</u>
ALLOWABLE DPPT	\$ 79,680

(6) Example. Nephew B died within five years after inheriting \$142,800 from his uncle A. All of the inherited property was within Texas. Of this amount, \$96,200 was received in fee simple and \$46,600 was received as a life estate. All of the property A devised to B can be identified in B's estate. (The applicable exemption must be prorated between the fee portion and the life estate portion. No deduction from the gross estate is allowable on the life estate portion.)

$$60\% \times \$96,200 - \left(\frac{96,200}{142,800} \times 10,000 \right) = \$53,677.99$$

$$y \times f - \left(\frac{f \times e}{t} \right) = \text{DPPT}$$

f = AMOUNT RECEIVED IN FEE (96,200)

t = TOTAL AMOUNT RECEIVED (142,800)

e = EXEMPTION FOR BENEFICIARY CLASS (CLASS C = \$10,000)

y = DEDUCTION FACTOR (B DIES WITHIN 5 YRS. OF A = 60%)

DPPT = DEDUCTION FOR PROPERTY PREVIOUSLY TAXED

(7) Example. Computation of the deduction for property previously taxed where the decedent had previously inherited property both in Texas and outside Texas is illustrated by the following example based on the facts set out:

Facts: Decedent A, a Texas resident, dies owning \$125,000 in Texas real and personal property plus \$50,000 real property in another state. He leaves all his estate to B, his nephew. Debts of the estate were \$27,000.

B, the nephew, also a Texas resident, dies within four years of A's death owning \$152,000 in Texas real and personal property plus \$50,000 real property in another state. All of the property A devised to B can be identified in B's estate. Debts of the estate were \$40,000. B makes a charitable bequest of \$2,000 and gives the residue equally to C, his nephew, and D, his niece.

(A) Computation in A's estate:

TEXAS GROSS	\$125,000
OUT-OF-STATE GROSS	50,000
GROSS	\$175,000
DEBTS	(27,000)
NET	\$148,000

TAX FOR NEPHEW B (CLASS C) ON \$148,000 = \$6,830.

$\frac{\$125,000}{\$175,000} \times \$6,830 \text{ Tax} = \$4,878.57$ TEXAS TAX DUE

$\frac{125,000}{175,000} = .714286 \times \$27,000.00 = \$19,285.72$ (TEXAS DEBTS)

$\$27,000.00 - \$19,285.72 = \$7,714.28$ (OUT-OF-STATE DEBTS)

$\$125,000.00$ (TEXAS GROSS) - $\$19,285.72$ (TEXAS DEBTS) =
 $\$105,714.28$ (TEXAS NET)

$\$50,000.00$ (OUT-OF-STATE GROSS) - $\$7,714.28$ (OUT-OF-STATE DEBTS) =
 $\$42,285.72$ (OUT-OF-STATE NET)

(B) Calculations with respect to B's estate.

(i) Computation of the deduction for property previously taxed (DPPT):

TEXAS NET FROM ESTATE A	\$105,714.28
LESS CLASS C EXEMPTION	(10,000.00)
	\$ 95,714.28
FACTOR FOR DEATH WITHIN 4 YRS.	x .70
TOTAL TEXAS DPPT	\$ 67,000.00
OUT OF STATE NET FROM ESTATE A	\$42,285.72
LESS CLASS C EXEMPTION FROM OTHER STATE	(2,000.00)
	\$40,285.72
FACTOR FOR DEATH WITHIN 4 YRS.	x .70
TOTAL OUT-OF-STATE DPPT	\$28,200.00

(ii) Computation of B's net estate:

TOTAL TEXAS GROSS	\$152,000.00
TOTAL OUT-OF-STATE (OOS) GROSS	50,000.00
TOTAL GROSS	\$202,000.00
TOTAL DEBTS	(40,000.00)
TOTAL TEXAS DPPT	(67,000.00)
TOTAL OOS DPPT	(28,200.00)
TOTAL NET	\$ 66,800.00

(iii) *Distribution of B's net estate.*(I) *To Nephew C (one-half of the residue):*

\$ 75,000.00 TEXAS GROSS
 (((\$152,000 - \$2,000) ÷ 2 = \$75,000)
 25,000.00 OOS GROSS (\$50,000 ÷ 2 = \$25,000)
~~\$100,000.00~~ GROSS
 (20,000.00) DEBTS (\$40,000 ÷ 2 = \$20,000)
 (33,059.21) TEXAS DPPT (\$75,000
 (\$152,000 × \$67,000)
 (14,100.00) OOS DPPT (\$25,000
 (\$50,000 × \$28,200)
\$ 32,840.79 NET

TAX FOR NEPHEW C (CLASS C) ON \$32,840.79
 = \$763.63 (TAX)

~~\$ 75,000~~ × \$763.63 TAX = \$572.72 TEXAS TAX DUE
~~\$100,000~~

(II) *To Niece D (one-half of the residue):*

same distribution as Nephew C above.

(III) *To charity (specific bequest of \$2,000):*

\$2,000.00 TEXAS GROSS
 0 OOS GROSS
~~\$2,000.00~~ GROSS
 (0) DEBTS
 (881.58) TEXAS DPPT (\$ 2,000
 (\$152,000 × \$67,000 DPPT)*
 (0) OOS DPPT
\$1,118.42 NET

**Even though no tax is due because the transfer is to an exempt beneficiary, the DPPT is still allocated.*

(5) Example. The credit for property previously taxed (CPPT) where the decedent had previously inherited property in fee simple and all property received was in Texas is computed as follows: B, the decedent, had inherited \$142,800 in fee simple from her father, A, who died within the past five years.

Property inherited by A	\$142,800.00
Less exemption (for Class A Beneficiary)	(25,000.00)
Property on which inheritance tax paid	\$117,800.00
Property allowable (60% for within 5 yrs.)	.60
Allowable CPPT deduction	\$ 70,680.00

[(6) Example. A decedent previously inherited property, all within Texas, part received in fee simple and part received as a life estate. (Applicable exemption must be prorated between fee portion and life estate portion, and no deduction from the gross estate is allowable on the life estate portion.) Son B received \$142,800 from his father, A, of which \$96,200 was in fee.

$$60\% \times 96,200 - \left(\frac{96,200}{142,800} \times 25,000 \right) = \$47,614.95$$

$$y \times f \left(\frac{f \times e}{t} \right) = \text{CPPT}$$

f = amount received in fee (96,200)

t = total amount received (142,800)

e = exemption for beneficiary Class (Class A = \$25,000)

y = credit factor (B dies within 5 yrs. of A = 60%)

CPPT = Credit for Property Previously Taxed

[(7) Example. The credit for property previously taxed where the decedent had previously inherited property in Texas and outside Texas is computed as follows.

[(A) Decedent A, a Texas resident, dies owning \$125,000 in Texas real and personal property plus \$50,000 real property in another state. He leaves all his estate to B, his son. Debts of the estate were \$27,000.

[(B) B, also a Texas resident dies within four years of A owning \$152,000 in Texas real and personal property plus \$50,000 real property in another state. Debts of the estate were \$40,000. He gives a charitable bequest of \$2,000 and the residue equally to C, his son, and D, his daughter.

[(C) Computation in A's estate:

Texas Gross	\$125,000.00
Other Gross (out of state)	50,000.00
Gross wherever located	\$175,000.00
Less debts & expenses	(27,000.00)
Net wherever located	\$148,000.00

$$\frac{125,000.00}{175,000.00} = .714286 \times \$27,000.00 = \$19,258.72$$

$$\$125,000.00 \text{ (Texas Gross)} - \$19,258.72 \text{ (Texas debt percentage)} = \$105,741.28 \text{ (Texas Net Estate)}$$

Son "B" receives entire net estate \$148,000.00 (\$2,690.00 tax on entire estate)

$$\frac{105,714.23}{148,000.00} \text{ Texas Net Total Net} = .714286$$

$$\$2,690.00 \times .714286 = \$1,921.43 \text{ (Texas Tax Due)}$$

(D) Computation of decedent B's net estate:

Texas Gross	\$152,000.00
Other Gross (out of state)	50,000.00
Gross wherever located	<u>\$202,000.00</u>
Less debts and expenses	40,000.00
Net wherever located	<u>\$162,000.00</u>

$$\frac{\$152,000 \text{ (Texas Gross)}}{\$202,000 \text{ (Total Gross)}} = .752475 \times \$40,000 = \$30,099.00$$

$$\begin{aligned} & \$152,000 \text{ (Texas Gross)} - \$30,099 \text{ (Texas Debt Percentage)} = \\ & \$121,901.00 \text{ (Texas Net Estate)} \end{aligned}$$

$$\frac{\$50,000 \text{ (Other Gross)}}{\$202,000 \text{ (Total Gross)}} = .247525 \times \$40,000 = \$9,901.00$$

$$\begin{aligned} & \$50,000 \text{ (Other Gross)} - \$9,901 \text{ (Other Debt Percentage)} = \\ & \$40,099.00 \text{ (Out of State Net)} \end{aligned}$$

(E) Computation of credit for property previously taxed (CPPT) in decedent B's estate:

Texas net from estate A	\$105,714.28
Less Class A exemption	(25,000.00)
	<u>\$80,714.28</u>
Factor for death within 4 yrs.	.70
CPPT from Texas estate	<u>\$56,500.00</u>
Out of State net from estate A	\$42,285.72
Less Class A exemption from other state	(5,000.00)
	<u>\$37,285.72</u>
Factor for death within 4 yrs.	.70
CPPT for out of state estate	<u>\$26,100.00</u>
Texas	\$56,500.00
Out of State	26,100.00
Total CPPT	<u>\$82,600.00</u>
B's Net Texas before CPPT	\$121,901.00
Less Texas portion of CPPT	(56,500.00)
B's Net Texas	<u>\$65,401.00</u>
B's Net out of state before CPPT	\$40,099.00
Less out of state portion of CPPT	(26,100.00)
B's Net out of state	<u>\$13,999.00</u>

[(F) Distribution of decedent B's estate:

Charitable	\$2,000.00
Less CPPT	(927.00)
	<u>\$1,073.00</u> No Tax
 Son C	
1/2 residue	\$80,000.00
Less CPPT	(40,836.55)
	<u>\$39,163.50</u> (\$141.64
	Tax on
	Entire
	Estate)

$$\frac{\$32,164.00 \text{ Texas Net}}{\$39,163.50 \text{ Total Net}} = .821275 \times \$141.64 = \$116.33 \text{ Texas Tax Due}$$

Daughter D

Same as son above	<u>\$116.33</u>
Tax Due	<u>\$232.66]</u>

(h) Proration of debts.

(1) Proration of debts when the decedent dies testate shall be in accordance with the provisions of the will.

(2) Unless the will provides otherwise:

(A) debts shall be deducted from the rest and residue of the estate;

(B) debts in excess of the rest and residue shall be charged against bequests or devises in the following order:

- (i) general gifts;
- (ii) demonstrative gifts;
- (iii) specific gifts;

(C) if the will provides for the protection of the burden of the debts of the estate against a specific bequest, the debts shall be prorated against these specific bequests only after all other assets have been exhausted.

[(i) Proration of debts; out of state property (14.07, 14.12). In the computation of taxes due under Article 14.07 or 14.12, the deductions, such as fees, commissions, debts, mortgages, notes, liens, and expenses, are deducted on percentage basis using the Texas gross estate as the numerator and the total gross estate, wherever located, as the denominator to arrive at a percentage of the debts and expenses to be deducted from the Texas gross estate. Example:

Texas Gross Estate	\$200,000
Illinois Gross Estate	300,000
Total Gross Estate	<u>\$500,000</u>

Debts and expenses:	
Fees & Commissions	\$14,000
Ordinary Debts	6,000
Texas Mortgage	20,000
Illinois Mortgage	30,000
Total Debts and Expenses	<u>\$ 70,000</u>
Net Estate Wherever Located	<u>\$430,000</u>

$$\frac{\$200,000 \text{ Texas Gross}}{\$500,000 \text{ Total Gross}} = .40 \times \$70,000 = \$28,000$$

$$\begin{aligned} & \$200,000 \text{ (Texas Gross)} - \$28,000 \text{ (Texas Percentage of Debts)} = \\ & \$172,000 \text{ (Net Texas Estate).} \end{aligned}$$

§3.218 (026.02.14.108). *Audit Procedures (1.032, 14.11, 14.13) [Article 14.11 and Article 14.13].*

(a) General.

(1) Compliance shall be monitored by examining all inheritance tax returns. The scope of the audit applied to each return shall generally depend on the strength of evidence submitted to support valuation of property interests. Evidence may be required if descriptions of assets are inadequate or if the return is selected for detailed examination. Adequate descriptions of assets shall include sufficient information to fix the location, quality, quantity, and value of all property.

(2) When a detailed audit is necessary, audit procedures shall consist of collection of evidence to verify the correct valuation of assets, the appropriate application of deductions, and the correct computation of tax. Evidence may be required to be submitted to the Office of the Comptroller or may be examined at its location.

(b) Documentation required ([Article] 14.13(B)).

(1) The comptroller is authorized to examine books, records, documents, or property deemed necessary to assess the tax *including*. This includes but is not limited to the following:

- (A) books of account of businesses including supporting documents to the entries;
- (B) insurance policies and supporting documents;
- (C) minutes of boards of directors meetings;
- (D) legal instruments pertaining to debts, trusts, partnerships, contractual agreements, and litigation;
- (E) federal income, gift, and estate tax returns of the decedent and those individuals and business entities relevant to the estate;
- (F) any financial records of the decedent or related individuals or businesses;
- (G) copies of any appraisals completed or required by federal estate regulations including attendant statements and affidavits;
- (H) life insurance policies including the applications for the policy and any interim changes in the policy, its ownership, or designation of beneficiary; and
- (I) information from probate courts, county clerks, financial institutions, title companies, brokerage firms, insurance companies, and federal agencies, or any other organization having information which may be helpful in determination of compliance with the inheritance tax law.

(2) When attempting to rebut the statutory presumption of transfers in contemplation of death, the estate representative shall be required to submit the following on request:

- (A) death certificate,
- (B) statement from the decedent's physician regarding the decedent's health at the date of the transfer,
- (C) statement from the decedent's physician regarding the cause of death and the length of the last illness, and
- (D) any other evidence helpful in establishing the decedent's state of mind at the time the gift was transferred.

(c) Federal returns and audit results: Article 14.11 and Article 14.14.

(1) If any estate is of sufficient size to require the filing of a federal estate tax return, copies of all statements, appraisals, and any supplementary information filed with the federal estate tax return shall also be filed with the Texas inheritance tax return. A copy of the entire federal estate tax return is not required to be submitted to the division initially; however, a copy of the return may be required during any audit.

(2) The estate representative shall, within 30 days after receipt of information of the final assessment by the federal government, forward to the Inheritance Tax Division a copy of all federal audit changes and a copy of the acceptance letter (along with the remittance of any additional tax, interest, and penalty due). If more than one audit was made, copies of all audits, such as preliminary audit, conference audit, and appellate audit shall be forwarded.]

(c)(d) Adjustments to estates resulting from audit.

(1) General. The final determination of the amount of inheritance tax due is based on the results of the audit performed by the Inheritance Tax Division with consideration given to any federal audit adjustments.

(2) Property valuation. If the value of any property appears to be incorrect, the comptroller may appraise the property or have it appraised to determine the value for inheritance tax purposes. Information submitted by the estate, as well as the federal valuation of any property for estate tax purposes, will be taken into consideration.

(3) Determination of tax. *If a preliminary audit by the Inheritance Tax Division results in a determination that additional tax, interest, and/or penalty is due, a deficiency notice may be issued at this time in accordance*

with the provisions of Texas Taxation—General Annotated, Article 1.032. If, moreover, the estate files a federal estate tax return, then upon receipt of the federal audit information required by §3.212(b)(2) (.102(b)(2)), a final review of the estate will be made. If any additional amounts owed to the State of Texas as a result of a federal audit are not remitted with the copy of the federal audit changes, a deficiency notice may be issued at this time as well. If the federal audit changes establish an overpayment of tax, a refund will be forwarded to the estate. (Section 3.222 (.112) should be consulted in regard to deficiency determinations.) [Upon completion of the preliminary audit, the estate may be billed for any additional tax, interest, and penalty. If the estate is of sufficient size, it will be held in abeyance until the final federal determination is made. Upon receipt of the federal audit changes or acceptance letter of the return, as filed, a final review of the estate and any necessary changes will be made.]

[(4) Payment of tax. If the correct tax, interest, and penalty was not remitted with the federal audit information, the estate will be billed for any additional tax due. If the valuation changes result in an overpayment of tax, a refund will be forwarded to the estate.]

§3.219 (026.02.14.109). Distribution.

(a) General: Article (14.13)]. The total value of the net taxable estate shall be allocated, for purposes of inheritance taxation, to the beneficiaries of the decedent's estate in accordance with the last will and testament as probated or under the laws of descent and distribution. The rate of the inheritance tax is dependent upon the relationship of the beneficiary to the decedent. If there is more than one beneficiary and beneficiaries do not share the estate equally, the assets distributed to each shall be fully disclosed and the allocation explained either on the return or in attached papers. The net taxable estate must be distributed to the beneficiaries in existence at the date of death. If discretionary distributions are to be made to a class of beneficiaries, the distributions are assumed to be made equally to the members of that class.

(b) Certain U.S. government bonds: Article 14.01 and Article 14.08)]. Interests in certain U.S. government bonds, such as Series E bonds, shall be determined in accordance with the contractual obligation as stated on the bonds and not under the last will and testament of the decedent.

(c) Spouse's homestead right: Article 14.08]. For inheritance tax purposes, the spouse's homestead right to occupy the decedent's community one-half of their residence for life shall not be taxed as a life estate unless the language of the decedent's will specifically creates a life estate.

(d) Transfers by will or intestacy: Article 14.01, et seq].

(1) Transfers by will or intestate laws, as used in inheritance and estate tax laws, shall include the actual assets owned by a decedent at the date of death. The executor or administrator shall account for the entire estate in the probate proceedings and is responsible for the distribution of these assets to those entitled to receive either by will or intestacy laws.

(2) The word "transfer" shall include the passing of property or any interest therein, in possession or enjoyment, present or future, by inheritance, descent, devise, succession, bequest, grant, deed, sale, gift, or appointment in the manner herein prescribed.

(3) Transfers by "intestacy laws" shall include transfers under the statutes of descent and distribution of the state where the decedent died or the state where the property passing is located, depending on the wording of the statutes, and transfers by operation of law upon the death of a person who died without a valid will.

(4) *Disposition of an estate under the Texas laws of descent and distribution is as follows:*

(A) *Surviving spouse and child.*

(i) *Separate property.*

(I) *Real estate: 1/3 to surviving spouse for life, all the rest equally divided among children.*

(II) *Other property: 1/3 to surviving spouse, 2/3 equally divided among children.*

(ii) *Community property. The decedent's 1/2 interest is equally divided among children, the other 1/2 is retained by the surviving spouse.*

(B) *Surviving spouse but with no child surviving.*

(i) *Separate property.*

(I) *Real estate: 1/2 to surviving spouse, the other 1/2 as follows:*

(-a-) *if both parents survive, 1/4 to mother, 1/4 to father;*

(-b-) *if only one parent survives, 1/4 to surviving parent, other 1/4 equally divided among decedent's surviving brothers and sisters and their descendants; if neither brothers nor sisters nor their descendants survive, 1/2 to the surviving parent;*

(-c-) *if neither parent survives, 1/2 equally divided among decedent's surviving brothers and sisters and their descendants; if neither brothers nor sisters nor their descendants survive, then all to surviving spouse.*

(II) *Other property: all to surviving spouse.*

(ii) *Community property: all to surviving spouse.*

(C) *No surviving spouse but with child surviving. All property is equally divided among children.*

(D) *No surviving spouse or child. All property, both real estate and other, is distributed as follows:*

(i) *if both parents survive, 1/2 to mother, 1/2 to father;*

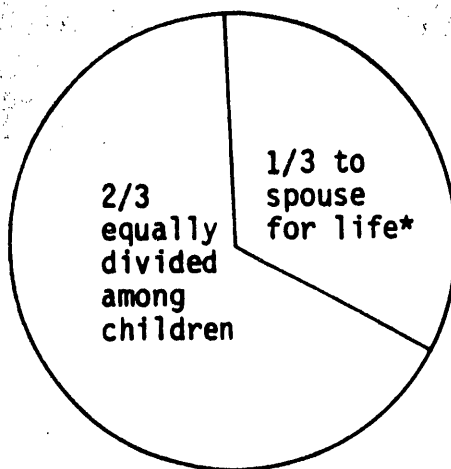
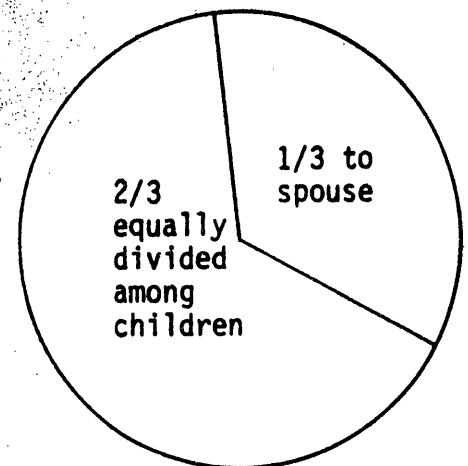
(ii) *if only one parent survives, 1/2 to surviving parent, 1/2 equally divided among the decedent's brothers and sisters and their descendants;*

(iii) *if neither parent survives, all property equally divided among the decedent's brothers and sisters and their descendants.*

(5)(4) See the graphic charts on the following pages for proper distribution of an estate under the Texas laws of descent and distribution.

DISTRIBUTION OF PROPERTY WHERE NO WILL IS LEFT

Shown by GRAPHIC CHARTS

EXAMPLE (1). SURVIVING SPOUSE AND CHILDA. SEPARATE PROPERTYREAL ESTATEOTHER PROPERTY

*REMAINDER TO CHILDREN AND THEIR DESCENDANTS.

B. COMMUNITY PROPERTY (DECEDENT'S 1/2 ONLY)ALL PROPERTY

THE SURVIVING SPOUSE RETAINS HIS OR HER ONE-HALF INTEREST IN THE COMMUNITY WHILE THE DECEDENT'S ONE-HALF INTEREST IN THE COMMUNITY IS EQUALLY DIVIDED AMONG THE CHILDREN. CHILDREN OF DECEASED CHILDREN TAKE THEIR PARENT'S SHARE. ADVANCEMENTS TO CHILDREN MUST BE ACCOUNTED FOR.

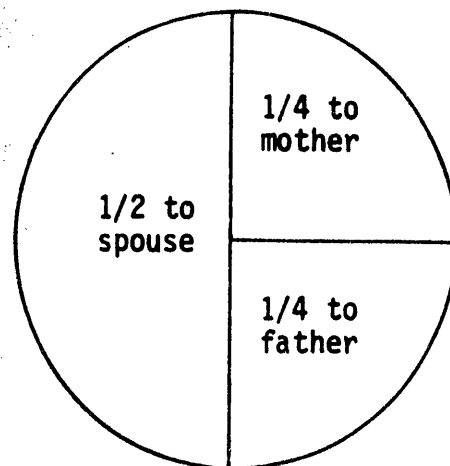
Equally divided among children

EXAMPLE (2). SURVIVING SPOUSE BUT WITH NO CHILD SURVIVING

A. SEPARATE PROPERTY

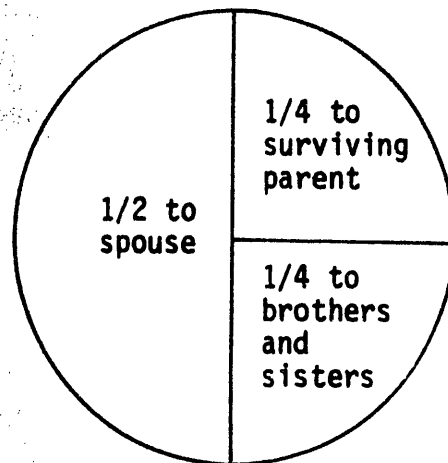
(1) BOTH DECEDENT'S PARENTS SURVIVE.

REAL ESTATE



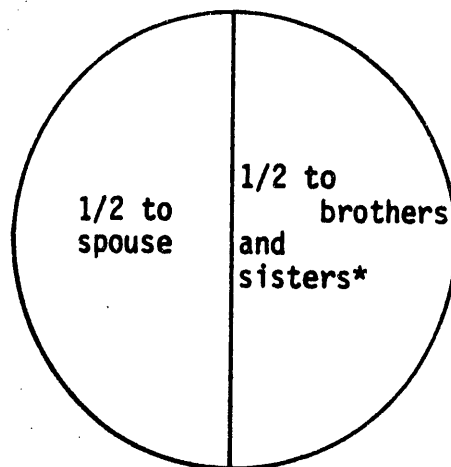
(2) ONLY ONE PARENT SURVIVES.
*IF NO BROTHERS OR SISTERS
OR THEIR DESCENDANTS SURVIVE,
THEN 1/2 TO THE SURVIVING
PARENT

REAL ESTATE




(3) NO PARENT SURVIVES.
*IF NO BROTHERS OR SISTERS OR
THEIR DESCENDANTS SURVIVE, THEN
ALL SEPARATE REAL PROPERTY TO
THE SURVIVING SPOUSE

REAL ESTATE



OTHER PROPERTY

ALL SEPARATE PROPERTY OTHER THAN REAL ESTATE GOES TO THE SURVIVING SPOUSE, REGARDLESS OF WHETHER THE DECEDENT'S PARENTS AND BROTHERS OR SISTERS SURVIVE.



All to spouse

B. COMMUNITY PROPERTY

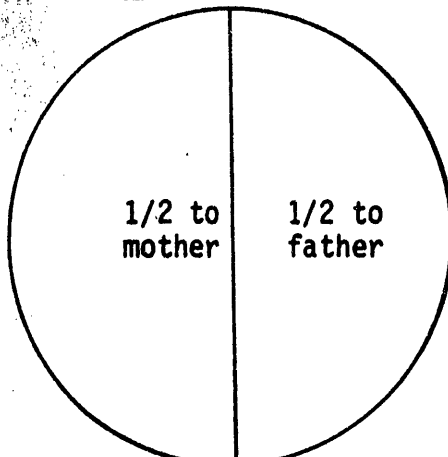
The decedent's one-half interest in the community passes to the surviving spouse.

EXAMPLE (3). NO SURVIVING SPOUSE BUT WITH CHILD SURVIVING

ALL PROPERTY IS EQUALLY DIVIDED AMONG THE CHILDREN. CHILDREN OF DECEASED CHILDREN TAKE THEIR PARENT'S SHARE. ADVANCEMENTS TO CHILDREN MUST BE ACCOUNTED FOR.

EXAMPLE (4). NO SURVIVING SPOUSE OR CHILDALL PROPERTY

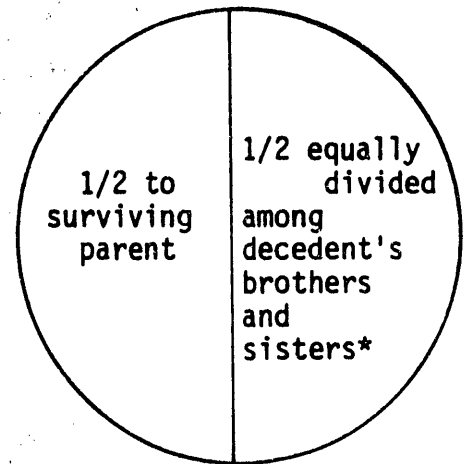
(1) BOTH DECEDENT'S PARENTS SURVIVE



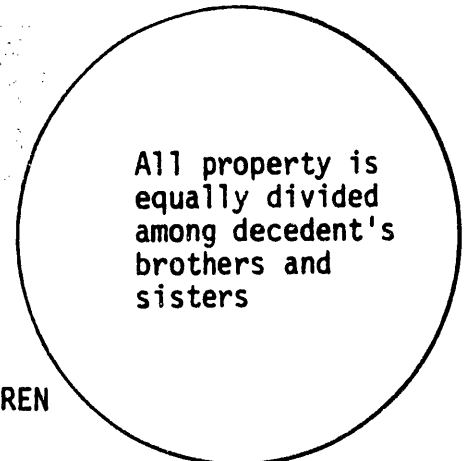
1/2 to
mother

1/2 to
father

- (2) ONLY ONE PARENT SURVIVES.
*CHILDREN OF DECEASED BROTHERS
OR SISTERS TAKE THEIR PARENT'S
SHARE.

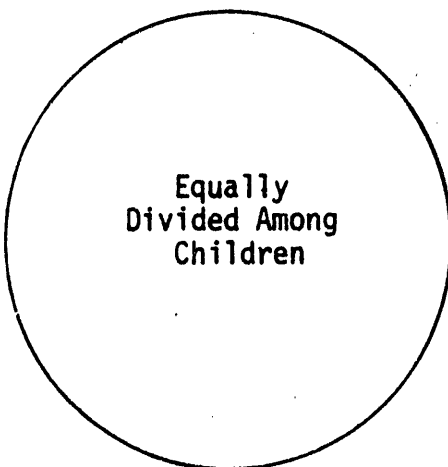


- (3) NO PARENT SURVIVES.
*CHILDREN OF DECEASED BROTHERS OR
SISTERS TAKE THEIR PARENT'S SHARE.

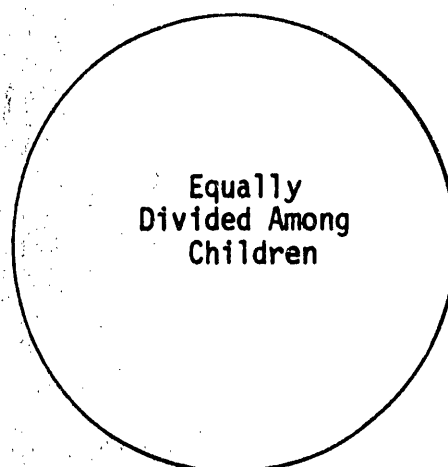


[WIDOW OR WIDOWER with CHILD OR CHILDREN

Real Estate



Other Property

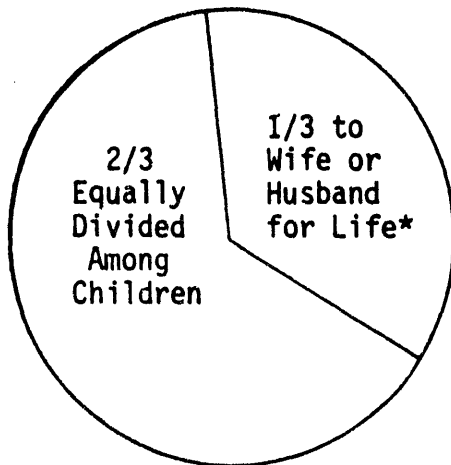


Children of deceased children take parent's share. Advancements to children must be accounted for.

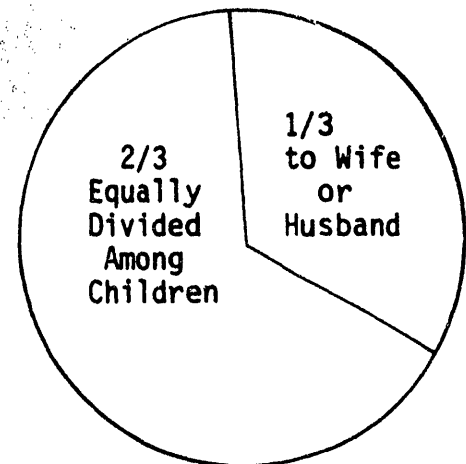
MARRIED MAN OR WOMAN with CHILD OR CHILDREN

A. Separate Property

Real Estate



Other Property

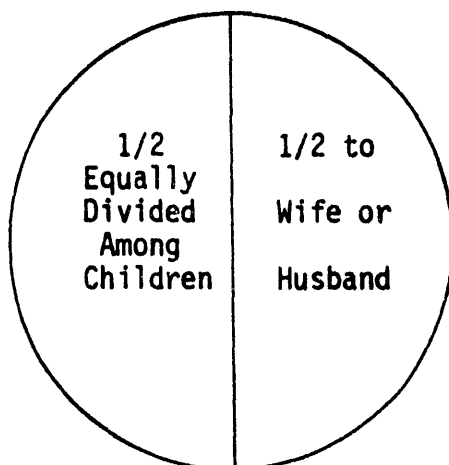


*To children and their descendants upon death of surviving wife or husband.

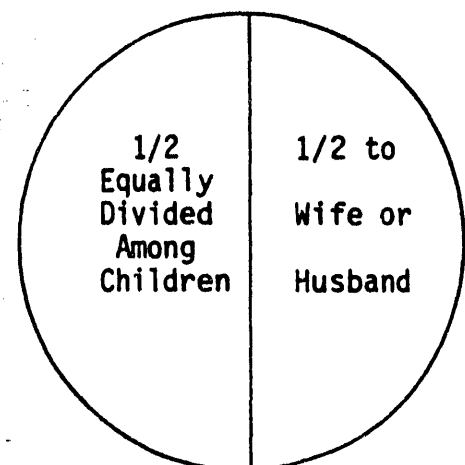
MARRIED MAN OR WOMAN with CHILD OR CHILDREN

B. Community Property (Entire)

Real Estate



Other Property

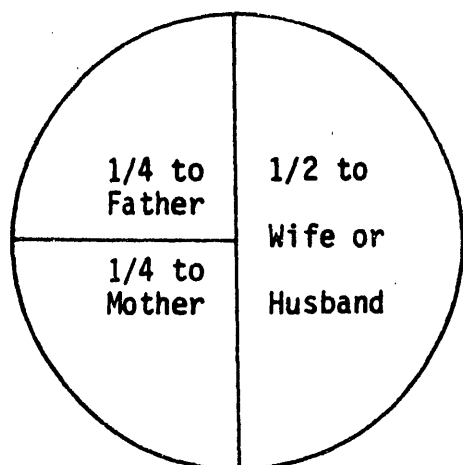


Children of deceased children take their parent's share. Advancements to children must be accounted for.

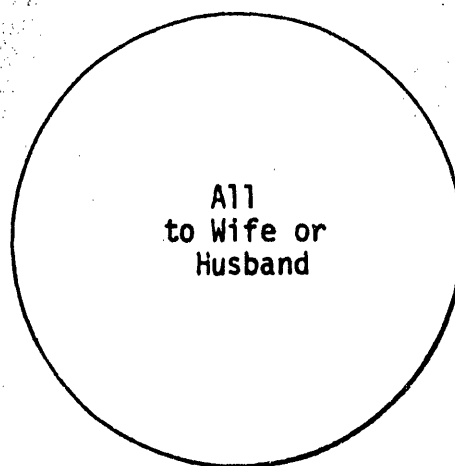
**MARRIED MAN OR WOMAN with NO CHILD OR CHILDREN
(Mother and Father Surviving)**

A. Separate Property

Real Estate



Other Property



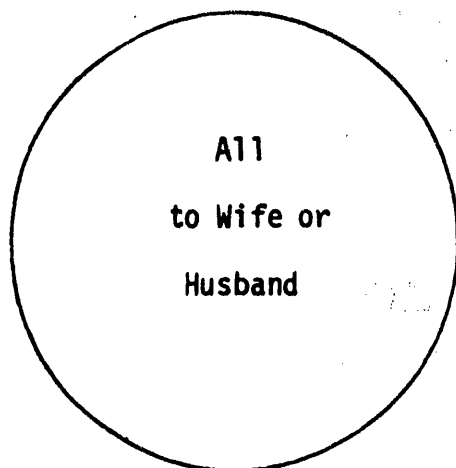
If only one parent survives, he or she takes 1/4 of the real estate in the separate property, and 1/4 is equally divided between brothers and sisters of the deceased, and their descendants. If there are no brothers and sisters or their descendants, then surviving parent takes 1/2 of the real estate.

If neither parent survives, then 1/2 of the real estate is equally divided among brothers and sisters of the deceased and their descendants; if none of them, all to surviving husband or wife.

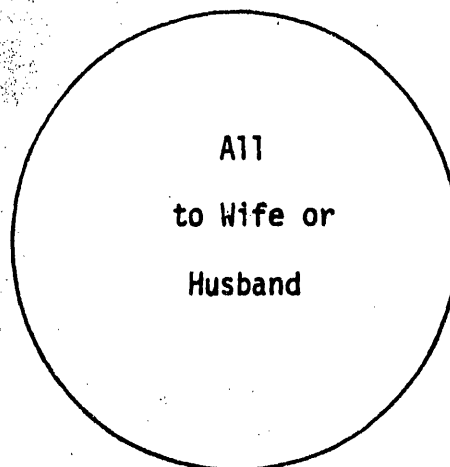
MARRIED MAN OR WOMAN with NO CHILD OR CHILDREN

B. Community Property

Real Estate

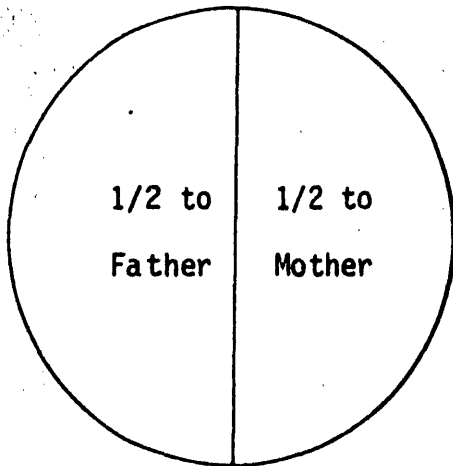


Other Property

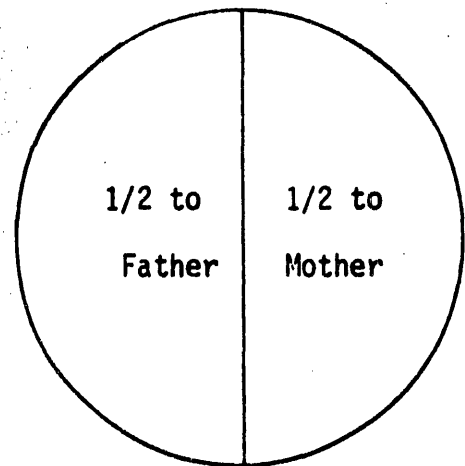


UNMARRIED MAN OR WOMAN or WIDOW OR WIDOWER WITH NO CHILDREN
with MOTHER AND FATHER SURVIVING

Real Estate



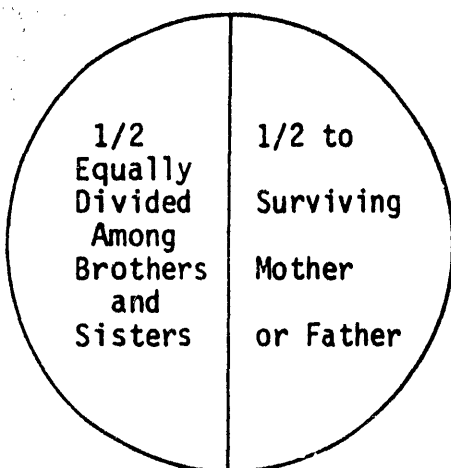
Other Property



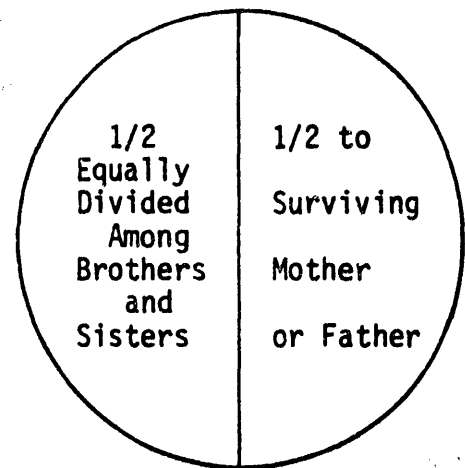
If neither mother or father survive, then equally divided among brothers and sisters. Children of a deceased brother or sister take his or her share..

UNMARRIED MAN OR WOMAN or WIDOW OR WIDOWER WITH NO CHILDREN
with MOTHER OR FATHER AND BROTHERS AND SISTERS SURVIVING

Real Estate



Other Property



Children of deceased brothers or sisters take their share.]

(e) Community and separate property[: Article 14.00A, et seq.].

(1) The taxable estate for state inheritance tax purposes shall include all of the decedent's separate property and one-half of the community estate.

(A) *Separate property. A decedent's separate property consists of:*

(i) *the property owned or claimed by the decedent before marriage;*

(ii) *the property acquired by the decedent during marriage by gift, devise, or descent; and*

(iii) *the recovery for personal injuries sustained by the decedent during marriage, except any recovery for loss of earning capacity during marriage.*

(B) *Community property consists of the property, other than separate property, acquired by either the decedent or his or her spouse during marriage.*

[Community property shall include all assets acquired during the marriage of the decedent and his or her spouse except where property is separately received by gift, devise, descent, or from an award for personal injury action that arose during the marriage.]

(C) In states where the community property system is used (Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Washington, Texas, and Hawaii), on the death of a spouse, the survivor shall *retain* [take] his or her half of the community assets, not as an heir, but by virtue of the marriage relationship. Only one-half of the *community* property shall be taxable upon the death of the first spouse. If, however, the decedent attempts to dispose of the entire community property and not just his or her one-half interest, then the surviving spouse may elect either to retain his or her one-half interest in the community or to take under the provisions of the will. The following examples, based on the facts set out, illustrate the distribution of the decedent's net estate where the widow elects to take under the will. (See Texas Attorney General Opinion No. C-575 (1965)):

Facts: °All property of the estate is Texas property.

°Husband's (H) will leaves both his separate property and the entire community property to his wife (W) for life with the remainder to his daughter (D).

°The value of the property disposed of by H in his will is as follows:

H'S SEPARATE PROPERTY	= \$200,000
H'S COMMUNITY ONE-HALF	= 150,000
DEBTS OF THE ESTATE	= -0-
H'S NET ESTATE	= \$350,000
W'S COMMUNITY ONE-HALF	= 150,000
TOTAL VALUE	\$500,000

EXAMPLE (1). W RECEIVES LESS UNDER THE WILL THAN THE VALUE OF HER COMMUNITY ONE-HALF SHARE.

IF:	VALUE OF W'S LIFE ESTATE IN TOTAL AMOUNT =	\$130,000
	VALUE OF D'S REMAINDER IN TOTAL AMOUNT =	370,000
	TOTAL AMOUNT	500,000

THEN: VALUE OF SHARE OF ENTIRE NET WHEREVER LOCATED IS

W'S SHARE	= \$ -0-*	
D'S SHARE	= 350,000	(H'S ENTIRE NET ESTATE IS TAXED TO D)
	350,000	H'S NET ESTATE (TAXED)
	150,000	W'S COMMUNITY ONE-HALF (NOT TAXED)
	\$500,000	TOTAL AMOUNT

*VALUE OF W'S SHARE IS \$-0- SINCE THE \$130,000 LIFE ESTATE SHE RECEIVED UNDER THE WILL IS LESS THAN HER \$150,000 COMMUNITY ONE-HALF SHARE SHE GAVE UP TO OBTAIN THE LIFE ESTATE.

EXAMPLE (2). W RECEIVES MORE UNDER THE WILL THAN THE VALUE OF HER COMMUNITY ONE-HALF SHARE.

IF:	VALUE OF W'S LIFE ESTATE IN TOTAL AMOUNT	=	\$190,000
	VALUE OF D'S REMAINDER IN TOTAL AMOUNT	=	<u>310,000</u>
	TOTAL AMOUNT		\$500,000

THEN: VALUE OF SHARE OF ENTIRE NET ESTATE WHEREVER LOCATED IS:

W'S SHARE	=	\$ 40,000*	
D'S SHARE	=	<u>\$310,000</u>	(H'S NET ESTATE OF \$350,000 LESS THE \$40,000 TAXED TO W)
		\$350,000	H'S NET ESTATE (TAXED)
		<u>150,000</u>	W'S COMMUNITY ONE-HALF (NOT TAXED)
		\$500,000	TOTAL AMOUNT

*VALUE OF W'S SHARE IS \$40,000 SINCE THE \$190,000 LIFE ESTATE SHE RECEIVED UNDER THE WILL IS \$40,000 MORE THAN HER \$150,000 COMMUNITY ONE-HALF SHARE SHE GAVE UP TO OBTAIN THE LIFE ESTATE.

(2) Property acquired prior to marriage shall be considered separate property with a deduction allowed for one-half of the amount of community funds used in making payments on such property.

(3) If a resident of Texas owned personal property located in another state, the law of Texas shall determine if the property is community or separate for inheritance tax purposes. If a nonresident acquires property in Texas, the law of Texas applies to determine its character. However, in applying the law of Texas one looks to the law of the state of residence to determine if the funds used to acquire the property were separate or community *funds*.

(f) Disclaimer and renounced legacies[: Article 14.01, et seq]. No tax shall be imposed by the comptroller on the legatee when the legacy is renounced or disclaimed in accordance with Texas *Probate* [Probation] Code Annotated, Section 37A [(1956)].

(g) Compromise agreements[: Article 14.00, et seq]. Compromise agreements do not have the same effect for inheritance tax purposes as a renunciation by the legatee. The tax is properly computed and due according to the provisions of the probated will even though a compromise agreement may ultimately alter the actual distribution (*Crane v. Mann*,

162 SW2d 117 (Texas Civil Appeals—Beaumont 1942, writ ref'd)).

§3.220 (026.02.14.110). Tax Computation.

(a) Classes of beneficiaries[: Articles] (14.02-14.06).

(1) There are six classes of beneficiaries: A, B, C, D, E, and Exempt. *Schedules* [Tables] for rapid determination of the tax follow:

Classification, Exemptions, and Rates for Beneficiaries

Class A. [Article] (14.02). Husband or wife, or any direct lineal descendant of husband or wife, or any direct lineal descendant or ascendant of the decedent, or to legally adopted child or children, or any direct lineal descendant of adopted child or children of decedent, or to the husband of a daughter, or the wife of a son. *For Class A beneficiaries only, the following calculations must be made to arrive at the "value of taxable share" (after exemption) appearing in column (e). This result is then used to determine the tax from the schedule below. (The exemption is not included in the Class A schedule but is included in the schedules for Classes B, C, D and E.)*

(a)	(b)	(c)	(d)	(e)
VALUE OF SHARE OF ENTIRE NET ESTATE WHERE- EVER LOCATED	PERCENTAGE OF SHARE RECEIVED TO TOTAL OF ALL CLASS A SHARES	EXEMPTION \$200,000 (SEE NOTE 1)	PRO RATA SHARE OF EXEMPTION MULTIPLY (B) BY (C) (SEE NOTE 2)	VALUE OF TAXABLE SHARE (A) MINUS (D)

Notes:

(1) The amount of "exemption" (C) increases to \$250,000 for decedents whose deaths occur on or after September 1, 1982, and to \$300,000 for decedents whose deaths occur on or after September 1, 1985. For decedents whose deaths occurred prior to September 1, 1978, use the schedule for Class B beneficiary for each Class A beneficiary.

(2) The amount of "pro rata share of exemption" (D) must always be at least \$25,000 regardless of the pro rated amount.

VALUE OF TAXABLE SHARE
(From (e) above)

EQUAL TO OR MORE THAN	LESS THAN	TAX ON AMOUNT IN COLUMN (1)	RATE OF TAX ON EXCESS OVER AMOUNT IN COLUMN (1)
(1)	(2)	(3)	(4)
\$ -0-	\$ 50,000	\$ -0-	1%
50,000	100,000	500	2%
100,000	200,000	1,500	3%
200,000	500,000	4,500	4%
500,000	1,000,000	16,500	5%
1,000,000	---	41,500	6%

Class B. (14.03) If passing to or for the use of the United States, to be used in Texas.

VALUE OF SHARE			
EQUAL TO OR MORE THAN	LESS THAN	TAX ON AMOUNT IN COLUMN (1)	RATE OF TAX ON EXCESS OVER AMOUNT IN COLUMN (1)
(1)	(2)	(3)	(4)
\$ -0-	\$ 25,000	Exempt	0
25,000	50,000	---	1%
50,000	100,000	\$ 250	2%
100,000	200,000	1,250	3%
200,000	500,000	4,250	4%
500,000	1,000,000	16,250	5%
1,000,000	---	41,250	6%

[Value of Share]		Tax on Amount in Column (1)	Rate of Tax on Excess over Amount in Column (1)
Equal to or More Than	Less Than		
(1)	(2)	(3)	(4)
\$ -0-	\$ 25,000	Exempt	0
25,000	50,000	---	1%
50,000	100,000	\$ 250	2%
100,000	200,000	1,250	3%
200,000	500,000	4,250	4%
500,000	1,000,000	16,250	5%
1,000,000	---	41,250	6%

Class B. Article 14.03. If passing to or for the use of the United States, to be used in Texas.

Value of Share		Tax on Amount in Column (1)	Rate of Tax on Excess over Amount in Column (1)
Equal to or More Than	Less Than		
(1)	(2)	(3)	(4)
Same as Class A	Same as Class A	Same as Class A	Same as Class]

Class C. [Article] (14.04). Brothers, sisters, or their descendants.

Value of Share		Tax on Amount in Column (1)	Rate of Tax on Excess over Amount in Column (1)
Equal to or More Than	Less Than		
(1)	(2)	(3)	(4)
\$ -0-	\$ 10,000	Exempt	0
10,000	25,000	---	3%
25,000	50,000	\$ 450	4%
50,000	100,000	1,450	5%
100,000	250,000	3,950	6%
250,000	500,000	12,950	7%
500,000	750,000	30,450	8%
750,000	1,000,000	50,450	9%
1,000,000	---	72,950	10%

Class D. [Article] (14.05). Uncles, aunts, or their descendants.

<u>Value of Share</u>		<u>Tax on Amount in Column (1)</u>	<u>Rate of Tax on Excess over Amount in Column (1)</u>
<u>Equal to or More Than</u>	<u>Less Than</u>		
(1)	(2)	(3)	(4)
\$ -0-	\$ 1,000	Exempt	0
1,000	10,000	---	4%
10,000	25,000	\$ 360	5%
25,000	50,000	1,110	6%
50,000	100,000	2,610	7%
100,000	500,000	6,110	10%
500,000	1,000,000	46,110	12%
1,000,000	---	106,110	15%

Class E. [Article] (14.06). If passing to another person, organization, or institution not included in any of the classes mentioned in the preceding Articles or unless specifically exempted.

<u>Value of Share</u>		<u>Tax on Amount in Column (1)</u>	<u>Rate of Tax on Excess over Amount in Column (1)</u>
<u>Equal to or More Than</u>	<u>Less Than</u>		
(1)	(2)	(3)	(4)
\$ -0-	\$ 500	Exempt	0
500	10,000	---	5%
10,000	25,000	\$ 475	6%
25,000	50,000	1,375	8%
50,000	100,000	3,375	10%
100,000	500,000	8,375	12%
500,000	1,000,000	56,375	15%
1,000,000	---	131,375	20%

Note: In using the preceding tax rate schedules for Classes B, C, D, and E for the basic inheritance tax, the statutory exemption has already been taken into account. The following two examples illustrate the application of the preceding tax schedules to the given facts.

Example (1):

Date of death: November 1, 1978

Facts: Decedent leaves all his estate to his spouse (Class A beneficiary).

Net taxable estate: \$410,000

Computation of basic inheritance tax for spouse:

STEP 1: ARRIVE AT THE "VALUE OF TAXABLE SHARE".

\$410,000 SHARE OF NET TAXABLE ESTATE
~~-200,000 EXEMPTION~~
 \$210,000 VALUE OF TAXABLE SHARE

STEP 2: COMPUTE THE TAX DUE.

VALUE OF TAXABLE SHARE	RATE	TAX DUE
0- 50,000	1%	\$ 500
50,000- 100,000	2%	1,000
100,000- 200,000	3%	3,000
200,000- 210,000	4%	400
TOTAL DUE		\$ 4,900

Example (2):

Date of death: September 5, 1978

Facts: Decedent left her estate to her three children (Class A beneficiaries) and to a niece (Class C beneficiary) as follows:

Steve—\$25,000; Carol—\$75,000; John—\$400,000; Niece Karen—\$50,000

Net taxable estate: \$550,000

Computation of basic inheritance tax for children and niece:

Step 1: Arrive at the "value of taxable share" for each beneficiary:

NAME	VALUE OF SHARE OF ENTIRE NET ESTATE WHEREVER LOCATED	PERCENTAGE OF SHARE RECEIVED TO TOTAL OF ALL CLASS A SHARES	EXEMPTION	PRO RATA SHARE OF EXEMPTION MULTIPLY (B) BY (C)	VALUE OF TAXABLE SHARE (A) MINUS (D)
STEVE	\$ 25,000	$\frac{25,000}{500,000} = 5\%$	\$200,000	\$ 25,000*	-0-
CAROL	75,000	$\frac{75,000}{500,000} = 15\%$	\$200,000	30,000	\$ 45,000
JOHN	400,000	$\frac{400,000}{500,000} = 80\%$	\$200,000	160,000	240,000
	\$500,000	100%		\$215,000	

*This amount shall always be at least \$25,000.

Step 2: Compute the tax due.

NAME	VALUE OF TAXABLE SHARE	RATE	TAX DUE
STEVE	-0-	-0-	-0-
CAROL	0- 45,000	1%	450.00
JOHN	0- 50,000	1%	500.00
	50,000- 100,000	2%	1,000.00
	100,000- 200,000	3%	3,000.00
	200,000- 240,000	4%	1,600.00
KAREN	(SEE BELOW)		1,450.00
TOTAL DUE			8,000.00

NIECE (KAREN)
COMPUTE THE TAX DUE USING CLASS C TAX TABLE

VALUE OF TAXABLE SHARE	RATE	TAX DUE
0- 10,000	0%	EXEMPT
10,000- 25,000	3%	\$ 450
25,000- 50,000	4%	1000
TOTAL DUE		\$ 1450

[Important note: In using the proceeding tax rate schedules for computing the basic inheritance tax, note that the statutory exemption provided for each of the above classes of beneficiaries has already been taken into account in such schedules.

[Example: Beneficiaries computation of the basic inheritance tax. A sister received a bequest in the amount of \$75,000. According to the tax rate schedule for a Class "C" beneficiary, the inheritance tax would be computed as follows:

Tax on \$50,000	\$1,450
Tax rate on excess over \$50,000 equals 5.0%	
\$25,000 (\$75,000 less \$50,000)	
x .05	\$1,250
Basic inheritance tax	\$2,700]

(2) **Classification of miscellaneous beneficiaries.** An asterisk (*) means that the person does not take under the law of descent and distribution.

(A) **Class A beneficiaries.** Common-law spouse; step children and their children* (while such a relationship will survive the death of either parent, it will terminate upon their divorce); adopted children and their children or adopted children; children's adopted children; spouses of children or adopted children* (unless remarried at time of death). Note: Adoption by estoppel will not be considered "legal adoption." A certificate of adoption will be sufficient evidence for proof of adoption.

(B) **Class C beneficiaries.** Adopted brothers or sisters and their children; half-brothers or sisters (under the law of descent and distribution, they only receive one-half as much as a full brother or sister).

(C) **Class E beneficiaries.** Children adopted by estoppel; foster children*; brothers or sister-in-law and their children*; mother or father-in-law*; step-mother or father*; step-brothers or sisters*; children's step-children*; spouses of step-children*; step-nieces or nephews*; spouses of grandchildren*.

[Distributions miscellaneous: Article 14.13.

[(A) A stepchild qualifies as a Class A beneficiary; however, while such a relationship will survive the death of either parent, it will terminate upon their divorce.

[(B) A common-law spouse, as recognized by law, will qualify as a Class A beneficiary.

[(C) Adoption by estoppel shall not be considered "legal adoption" within the meaning of Article 14.02. Adopted children's adopted children, children's adopted children, and their children are Class A beneficiaries. A certificate of adoption shall be sufficient evidence for proof of adoption.

[(D) Brothers-in-law or sisters-in-law do not qualify as Class C beneficiaries but, rather, are Class E beneficiaries. Adopted brothers and sisters and their descendants are Class C beneficiaries.]

[(D)](E)] Distribution to exempt beneficiaries must be reported to show how the entire net taxable estate has been allocated, even though there will be no tax rate applied to that value.

[(E)](F)] Property shall not be subject to inheritance tax if it passes to or for the use of charitable, educational, or religious societies or institutions, incorporated, unincorporated, or in trust, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual. Property transferred to or

for the use of this state or any town therein for public purposes shall also be exempt.

(F)(G) Only those cemetery perpetual care organizations that have been organized strictly in accordance with Texas Revised Civil Statutes Annotated, Article 912 (1969), for charitable or eleemosynary purposes, will be exempt. The state comptroller may request the personal representative of the estate to furnish a copy of the cemetery association's charter to determine the status of the request.

(b) Tax computation on estates situated within and without Texas: Article (14.07). Articles 14.07(1) and 14.07(2) provide that in the event a nonresident or a resident of this state dies leaving an estate situated partly within and partly without this state, the tax imposed on that part of the estate subject to Texas inheritance tax is computed *with respect to each beneficiary's share* as follows:

$$\frac{\text{TOTAL GROSS ESTATE} - \text{TOTAL DEDUCTIONS}}{\text{TOTAL NET ESTATE}} \rightarrow \text{TAX} \times$$

(1) (2)

(1) determine the beneficiary's share of the total net estate by subtracting his share of the estate's total deductions from his share of the total gross estate;

(2) compute the Texas inheritance tax on the beneficiary's share of the total net estate as if it consisted entirely of property situated in Texas;

(3) determine the percentage of Texas property each beneficiary is to receive by dividing his share of the Texas gross estate by his share of the total gross estate;

(4) calculate the final amount of Texas inheritance tax due for each beneficiary by multiplying the tax computed in step (2) by the percentage determined in step (3).

The calculations in steps (1)-(4) can be expressed by the following formula to be used with respect to each beneficiary's share:

$$\frac{\text{TEXAS GROSS ESTATE}}{\text{TOTAL GROSS ESTATE}} = \text{BASIC INHERITANCE TAX DUE}$$

(3) (4)

(1) divide the Texas gross estate by total gross estate to arrive at a percentage of the estate in Texas;

(2) multiply the percentage of the estate in Texas by debts and expenses of the estate to arrive at a percentage of debts and expenses to be deducted from the Texas gross;

(3) determine the Texas net estate by subtracting the Texas percentage of debts from the Texas gross estate;

(4) distribute the net estate, wherever situated, to each beneficiary and compute the applicable tax on each beneficiary's share;

(5) distribute the net Texas estate to each beneficiary and divide this share by the beneficiary's net share, wherever situated, to arrive at the percentage of each beneficiary's net share in Texas;

(6) the percentage of the beneficiary's net share in Texas is then multiplied by the tax previously computed on the beneficiary's net share, wherever situated, to arrive at the tax on each beneficiary's share.]

(c) Additional tax associated with the federal credit: Article (14.12)

(1) Article 14.12 imposes a tax in addition to the basic inheritance tax levied by Texas under existing laws. The tax shall be levied upon the entire net value of the taxable estate located and taxable in Texas and shall be equal to the difference between the basic inheritance tax due and the maximum federal credit allowable for state death taxes.

(2) In the event the amount of basic inheritance tax assessed against an estate exceeds the maximum allowable credit for state death taxes, no additional tax shall be collected pursuant to Article 14.12, as the purpose of the article is to collect only a sufficient additional tax to get full benefit of the maximum federal credit allowable for state death taxes.

(3) When no basic inheritance tax is due on an estate but an estate tax is imposed by the United States, there shall

be levied an inheritance tax equal to the maximum amount of federal credit for state death taxes as determined and allowed by the Internal Revenue Service.

(4) In the event an estate is located partly within Texas, the credit allowable for state death taxes shall be prorated. The maximum credit allowable for state death taxes shall be multiplied by a percentage equal to the ratio of the gross Texas estate to the total gross except as noted in paragraph (5) of this subsection.

(5) When the federal credit is computed on an estate and a charitable deduction is allowed by the United States, the amount of the charitable bequest shall be deducted from the gross estate of the state having jurisdiction of the property for which the charitable deduction is allowable and from the total gross estate, wherever located, before computing the percentage of the estate located in each state.

§3.221 (026.02.14.111). *Payment of Tax, Penalties and Interests; Refunds.*

(a) *General (14.16).*

(1) *Inheritance taxes are due nine months after the date of death unless an extension of time to pay has been requested on or before the due date and granted by the Inheritance Tax Division.*

(2) *Payment of the tax to the comptroller can be by personal check made payable to the treasurer of the State of Texas. However, the Inheritance Tax Division may require payment by cashier's check or United States money order where warranted.*

(3) *If a payment is insufficient to cover all taxes, interest, and/or penalties due, the payment will be applied first against penalties, then interest, and then to the payment of tax.*

(4) *Any part-owner or coparcener of property against which inheritance taxes have been assessed may*

pay his pro rata share of such taxes, thus relieving his property from any lien, interest, or penalties after such payment.

(b) Penalties (14.14, 14.17).

(1) A penalty of \$10 will be assessed for failure to file the inheritance tax return on time. If any tax is not paid on or before the due date or approved extension date, a penalty of 5.0% of the unpaid tax shall become due and payable. If the tax is not paid within 30 days after the due date or approved extension date, an additional penalty of 5.0% of the unpaid tax shall become due and payable.

(2) Penalties will be assessed, if not already assessed, if a deficiency determination is not paid within 30 days of the postmark date of the determination, unless a redetermination hearing has been timely requested or an extension of time to pay has been granted.

(3) Penalties shall not be waived except when it is shown that late payment of tax is due to reasonable cause and not due to willful neglect. In the absence of satisfactory evidence establishing reasonable cause, willful neglect automatically follows. The burden of proving reasonable cause is on the personal representative. Failure to request an extension of time to file and pay on or before the due date is evidence of willful neglect and penalties will be assessed.

(4) Estates that have been granted a payout schedule will be required to pay on the agreed date to avoid assessment of penalties.

(c) Interest (14.17). Interest at the rate of 6.0% per annum through December 31, 1979, and 7.0% per annum thereafter is due on any tax not paid within nine months from the date of death, regardless of extensions granted. Interest will not be waived unless the computed amount is less than \$5.00. Interest on payout agreements is calculated on the total balance of the tax remaining unpaid.

(d) Extension of time to file and pay (14.16(A), (B)).

(1) An estate representative may apply for an extension by filing an application for extension of time to file inheritance tax return and/or pay inheritance tax (Form 17-200), with the Inheritance Tax Division.

(2) The extension request must be filed on or before the due date and granted by the Inheritance Tax Division to avoid penalty.

(3) Extension of time to file. The request for an extension of time to file must establish a good and sufficient reason why it is impossible or impractical for the estate representative to file a complete return on or before the due date. Generally, an extension of time to file will not be granted for more than six months.

(4) Extension of time to pay. The extension of time to pay may be granted if evidence is submitted which establishes that the payment of tax will result in undue hardship to the beneficiaries of the estate. Generally, an extension of time to pay will not be granted for more than one year or for that portion of taxes due which can be paid with cash on hand.

(5) If the estate is involved in a redetermination hearing or litigation which affects the amount of tax due, an extension of time to pay the tax in question will be granted for a period not to exceed 30 days from the date of termination of the hearing or litigation.

(6) If an extension of time to file and pay is needed, both must be requested. The request for one will not be reviewed or considered as a request for both.

(e) Payout agreements (14.16).

(1) When an estate furnishes proof of undue hardship in the payment of inheritance tax, the comptroller may allow the taxpayer to pay the tax over a period of time not to exceed 10 years. The approved payout must be evidenced by written agreement between the Inheritance Tax Division and the estate representative. Penalty, interest, and at least 10% of the tax due must be paid on or before the day the payout agreement becomes effective.

(2) If any installment due under a payout agreement is not paid on or before the agreed date, the total tax remaining unpaid, including penalty and interest on the delinquent amount, becomes immediately due and payable.

(3) Sufficient supporting evidence to warrant a payout agreement shall include the following:

- (A) date taxes are due,
- (B) amount of inheritance tax due,
- (C) amount of federal estate tax due,
- (D) amount of debts and expenses,
- (E) value of real property in Texas,
- (F) amount of cash wherever located,
- (G) value of stocks and bonds,
- (H) provisions of any payout agreement granted by the Internal Revenue Service,
- (I) proposed down payment, and
- (J) proposed number and amounts of monthly, quarterly, semiannual, or annual payments.

(4) Reason for requesting payout agreement. The extension provided on the basis of undue hardship to the estate shall not be granted upon a general statement of hardship or merely upon a showing of reasonable cause. The term "undue hardship" means more than an inconvenience to the estate. The evidence must establish all of the following:

- (A) the estate does not have adequate cash on hand to pay the tax;
- (B) the estate does not have assets which may be converted to cash without incurring a substantial loss;
- (C) the liquid assets which are available are needed to preserve the estate;
- (D) the estate does not have the ability to borrow money without inflicting severe hardship on the estate.

(f) Refunds (1.045, 1.11A, 14.16(E)).

(1) Any person, executor, or administrator who has overpaid inheritance tax directly to the state may file a claim for refund with the Inheritance Tax Division within seven years from the date the tax is due and payable or within six months after any jeopardy or deficiency determination becomes final, whichever period is last to expire. Failure to file within time constitutes a waiver of any demand for the alleged overpayment.

(2) A claim for refund will be considered by the comptroller only if it is in writing and specifically sets out the grounds upon which it is based. If requested by the person overpaying the tax, an oral hearing shall be granted with at least 20 days notice of the time and place.

(3) The comptroller's decision upon the refund claim is final 15 days from the date rendered unless a written motion for rehearing is filed on or before the 15th day. This motion must set out each specific ground on which the claimant contends the decision is erroneous. Filing the motion timely is prerequisite to bringing an action in the courts of this state.

(4) *If the motion is granted, a notice will be issued advising the parties of further proceedings.*

(5) *If the motion is denied, the claimant may bring an action against the comptroller in the District Court of Travis County within 30 days from the date of the denial of the motion. Only those grounds asserted in the motion for rehearing may be considered in the court action. (See, generally, §§1.1-1.43 (026.01.01.001-.043) on the practice and procedure governing administrative hearings before the comptroller).*

(6) *If a refund is approved, the refund check will be made payable to the estate unless it is specifically requested in writing that it be made payable to an individual. The granting of this request is within the discretion of the Inheritance Tax Division.*

(g) *Waivers (14.19(B)).*

(1) *An estate representative may apply for a release of the inheritance tax lien on estate property by filing an inheritance tax waiver (Form 17-302) with the Inheritance Tax Division.*

(2) *A release or partial release of the inheritance tax lien may be granted if the return is not delinquent and one of the following circumstances exists:*

(A) *no tax is due or will be due,*

(B) *tax is due and not delinquent or tax will be due, provided:*

(i) *sufficient surety arrangement is made, such as an escrow agreement, or a written personal guaranty of payment from a third party, such as an attorney or an accountant representing the estate, or*

(ii) *the remaining property of the estate is sufficient to assure payment of any taxes due. The remaining property should consist of Texas real estate and/or securities which, in order to be transferred, require a transfer agent;*

(C) *tax is due and delinquent, provided:*

(i) *the sale or transfer is necessary to pay inheritance or estate taxes, or to preserve the estate, and*

(ii) *arrangement is made to withhold the tax from the proceeds of the sale.*

[(a) General: Article 14.16.

[(1) Inheritance taxes are due nine months after the date of death of the decedent unless an extension of time to pay has been requested and granted.

[(2) Payment of inheritance tax to the comptroller may be by personal check made payable to the treasurer of the State of Texas.

[(3) The Inheritance Tax Division may require that payment be by cashier's check or United States money order where warranted.

[(4) If a payment received is insufficient to cover all taxes, interest, and/or penalties due, the payment will first be applied against interest and penalties with the remainder to payment of the tax.

[(5) Any part-owner or coparcener of property against which inheritance taxes have been assessed may pay his pro rata share of such taxes, thus relieving his property from any lien, interest, or penalties after such payment.

[(b) Penalties: Article 14.14 and Article 14.17.

[(1) A penalty of \$10 shall be assessed for failure to file the final inheritance tax return within the period provided. If any tax imposed is not paid on or before the due date or approved extension date, a penalty of 5.0% of the unpaid tax shall become due and payable. If the tax is not paid with-

in 30 days after the due date or approved extension date, an additional penalty of 5.0% of the unpaid tax shall become due and payable.

[(2) Penalties shall not be waived except when it is shown that the late payment of tax is due to reasonable cause and not due to willful neglect. In the absence of evidence showing reasonable cause, willful neglect follows.

[(3) Estates that have been granted a payout schedule shall be required to make payment on the agreed dates to avoid assessment of penalties.

[(c) Interest: Article 14.17.

[(1) General. Interest at the rate of 6.0% per annum shall be due on any tax not paid within nine months from the date of death. Interest will not be waived unless the computed amount is less than \$5.00. Interest will be calculated from the due date regardless of extensions granted. Interest on authorized payout agreements shall be accumulated and paid on the balance of the tax due on each installment made. Interest is computed on the amount of tax only.

[(d) Extension of time to file and pay.

[(1) The estate representative may request Application for Extension of Time to File Inheritance Tax Return and/or Pay Inheritance Tax forms from the Inheritance Tax Division.

[(2) The extension request should be filed at least 30 days before the inheritance tax due date.

[(3) If the extension date requested is the same for both paying the tax and filing the return, then the appropriate forms shall be filed in duplicate. If one extension date is being requested for filing the return and a different date for paying the tax, then the application for extension shall be filed in triplicate.

[(4) Generally, an extension of time to file will not be granted for more than six months. The reasons for the extension must establish good and sufficient cause why it is impossible or impractical for the executor to file a complete return on or before the due date. Approval of an extension of time to file does not extend the time to pay.

[(5) Generally, extensions to pay may be granted up to one year if submitted evidence establishes the payment of tax will result in undue hardship to the beneficiaries of the estate. If a redetermination hearing or litigation affects the amount of tax due, an extension of time to pay will be granted not to exceed 30 days from the date of termination of the hearing or litigation.

[(6) A statement of the amount of cash on hand, including certificates of deposit, savings accounts, and checking accounts must be submitted with the request for extension of time to pay. Generally, an extension of time to pay will not be granted for that portion of taxes due which can be paid with cash on hand. Approval of an extension of time to pay does not extend the time to file. If the request is denied and the estate representative desires to submit any additional substantiation, a request for a reconsideration may be submitted.

[(e) Payout agreements: Article 14.16.

[(1) General. When an estate furnishes proof of undue hardship in the payment of inheritance tax, the comptroller may allow the taxpayer to pay the tax over a period of time not to exceed 10 years. The approved payout shall be evidenced by written agreement between the Inheritance Tax Division and the estate representative. Penalty interest and at least 10% of the tax due must be paid on or before the day the payout agreement becomes effective.

(2) If an installment of tax and interest due under a payout agreement is not paid on or before the due date, the agreement shall be terminated and the total tax liability become due immediately, including interest on the delinquent amount.

(3) Sufficient supporting evidence to warrant a payout agreement shall include the following:

- (A) date taxes are due,
- (B) amount of inheritance tax due,
- (C) amount of federal estate tax due,
- (D) amount of debts and expenses,
- (E) value of real property in Texas,
- (F) amount of cash wherever located,
- (G) value of stocks and bonds,
- (H) provisions of any payout agreement granted by the Internal Revenue Service,
- (I) proposed down payment, and
- (J) proposed number and amount of monthly, quarterly, semiannual, or annual payments.

(4) Reason for requesting payout agreement,

(A) The extension provided under the basis of undue hardship to the estate shall not be granted upon a general statement of hardship or merely upon a showing of reasonable cause. The term "undue hardship" means more than an inconvenience to the estate. The evidence must establish the following:

- (i) the estate does not have adequate cash on hand to pay the tax,
- (ii) the estate does not have assets which may be converted to cash without incurring a substantial loss,
- (iii) the liquid assets which are available are needed to preserve the estate,
- (iv) the estate does not have the ability to borrow money without inflicting severe hardship upon the estate.

(f) Refunds: Article 14.16(E).

(1) An estate that has overpaid inheritance tax may apply for a refund by notifying the Inheritance Tax Division and explaining the facts surrounding the overpayment and claim for refund. If evidence supporting the validity of a refund is not on file with the Inheritance Tax Division, substantiating documents shall be required.

(2) The Inheritance Tax Division may, on its own initiative, refund overpayment of inheritance tax.

(3) Refund checks are made payable to the estate. Requests to have refund checks made payable to a person rather than to the estate of the decedent will be considered individually; the granting of this request is within the discretion of the Inheritance Tax Division.

(g) Waivers: Article 14.19.

(1) The estate representative may apply for a release of the inheritance tax lien on estate property by filing an Inheritance Tax Waiver form with the Inheritance Tax Division.

(2) A release of inheritance tax lien on the property of an estate may be granted by the Inheritance Tax Division if one of the following requirements is satisfied:

- (A) no inheritance tax is due and return is not delinquent,
- (B) all inheritance tax is paid,
- (C) all inheritance tax has not been paid but,
 - (i) inheritance tax is not delinquent, and
 - (ii) one of the following occurs:
 - (I) an estimated tax has been paid, or

(II) an escrow agreement is entered into and approved by the Inheritance Tax Division, which provides that the tax will be submitted to the comptroller upon sale of the property.

(3) The inheritance tax lien may also be released provided that:

(A) such sale or transfer is necessary to pay the inheritance tax or the federal estate tax or such sale is necessary to preserve the estate; and

(B) such sale is made for full and adequate consideration; and

(C) sufficient assets subject to inheritance tax lien remain in the estate after issuance of the requested release to assure payment of inheritance tax; or a written personal guarantee of payment of all inheritance taxes is made by a third party such as an attorney, accountant, bank, or savings and loan official representing the estate, delivered to the Inheritance Tax Division, and approved.

§3.222 (026.02.14.112). *Collection Action (Delinquent Estates.)*

(a) *Deficiency determination (1.032).*

(1) If the comptroller is not satisfied with the amount of tax reported, he may compute and determine the amount required to be paid upon the basis of the information contained in the return or upon the basis of any information within his possession or which may come into his possession. (See §3.18(c) (1.08(c)) on adjustments to estates resulting from an audit.)

(2) If any amounts owed by an estate are delinquent, or if the comptroller determines that a deficiency exists, then a deficiency determination may be issued in accordance with the provisions of Texas Taxation—General Annotated, Article 1.032, which will state the amount of tax, interest, and/or penalty due.

(3) Any person against whom a determination is made has the right to an administrative hearing if a petition for redetermination is filed with the comptroller within 30 days from the date the deficiency determination is served. The requirement of requesting a hearing within the 30-day period may be satisfied by filing a "petition for relief" (Form 78-108) which can be obtained from any comptroller field office. If a petition is not timely filed, the determination becomes final at the expiration of the 30-day period. (See §2.221(f) (1.11(f)) on claiming a refund of taxes overpaid and §§1.1-1.43 (026.01.01.001-.043) on the practice and procedure governing administrative hearings before the comptroller.)

(a) Collection of amount due.

(1) When the taxes owned by an estate are determined to be delinquent, the estate representative shall be contacted by letter, telephone, or in person to secure the information necessary to make a tax determination or to have the previously determined tax paid. The comptroller may also issue a deficiency determination.

(2) If the estate representative is unable to pay all delinquent taxes at one time, arrangements may be made for suitable payments. If no appropriate arrangement can be made, the attorney general may be notified for collection.

(b) Tax lien (14.18, 14.20).

(1) If the comptroller has been unable to collect the delinquent tax, penalty, or interest from an estate and it is determined that real property in the estate has been

transferred [sold] without a waiver of *the* inheritance tax lien, *then the transferee of such property may* [the comp-any issuing a title policy shall] be assessed the delinquent tax, penalties, and interest.

(2) Delinquent tax, interest, and penalties may also be assessed against the executor, administrator, trustee, estate representative, or transfer agent who has delivered any stocks or bonds of any domestic corporation, or any other property to a legatee or heir, before a release of *the* tax lien has been obtained.

(c) *Court action (1.04). If the person against whom a determination was issued does not pay the amounts determined on or before the date of the final order or decision of the comptroller, and if no appropriate arrangement for payment has been made, then the attorney general may be notified to institute a suit for collection and/or foreclosure of the lien.*

§3.223 (026.02.14.113). *Closing an Estate*: Article (14.16).

(a) Receipt (Form 17-308) [for taxes paid: Article (14.16).

(1) After *a determination that* an estate has paid all inheritance taxes due, the Inheritance Tax Division will *issue a receipt*. [send the] *The original* [receipt] *will be sent* to the county court of record, one copy *will be sent* to the estate representative, and [retain] one copy *will be retained* for the estate file. If *there is no probate or administration*, [the will is not probated,] the original and one copy of the receipt shall be sent to the estate representative.

(2) The original receipt is a recordable certificate and *when issued* [the filing of the receipt with the appropriate county clerk] releases the comptroller's lien on all assets [as reported].

(3) *If the estate is required to file a federal estate tax return, then the receipt will not be issued until the final federal determination is made. (See §3.18(c)(3) (.108(c)(3)).*

(b) *No tax due certificate (Form 17-307)*: Article (14.10).

(1) After [an audit resulting in] a determination of no inheritance tax liability, the Inheritance Tax Division shall issue a no tax due certificate. The original shall be sent to the county court of record, one copy *will be sent* to the estate representative, and one copy *will be retained for* [to] the estate file. If *there is no probate or administration* [the will is not probated], the original and one copy of the certificate shall be sent to the estate representative.

(2) The original no tax due certificate is a recordable certificate and *when issued* [the filing of the certificate with the appropriate county clerk] releases the comptroller's lien on all assets [as reported].

(c) *Declaration of no tax due (Form 17-102).*

(1) *After a declaration of no tax due has been accepted by the Inheritance Tax Division, the original will be sent to the county court of record, one copy will be sent to the personal representative, one copy will be sent to the preparer, and one copy will be retained for the estate file. If there is no probate or administration, the original will also be sent to the personal representative.*

(2) *The original declaration of no tax due is a recordable certificate and when issued releases the comptroller's lien on all assets of the estate.*

(d)[(c)] Rendering the [a] receipt [or], no tax due certificate, or *declaration of no tax due* void: Article (14.16(c)).

(1) *The* [A] receipt [or], no tax due certificate, or *declaration of no tax due is* [may be] rendered void by the comptroller by his filing an affidavit with the county clerk with *whom* [which] the original document was filed [, voiding such receipt or no tax due certificate].

(2) Circumstances which may warrant such action are:

(A) erroneous issuance of a receipt [or], no tax due certificate, or *declaration of no tax due*, or

(B) the issuance of a receipt for taxes which were paid by a [personal] check which is later returned *uncollectible* [due to insufficient funds].

(e)[(d)] Release *from* [of] personal liability (Form 17-304): Article (14.20). Release *from* [of] personal liability *will* [shall] not be granted until *a receipt, no tax due certificate, or declaration of no tax due is issued* [all inheritance tax, penalties, and interest have been paid].

§3.224 (026.02.14.114). *Property of the Estate in Possession of Another* (14.21, 14.22).

(a) General. If a bank, corporation, institution, or any person delivers to another any estate property in its possession or under its control, such entity or person will be liable for any inheritance tax due thereon, unless:

(1) the property is delivered in the presence of the comptroller or his agent, or

(2) at least 10 days notice of the time and place of the intended delivery is served on the comptroller and, prior to the delivery, the comptroller gives written consent to the transfer.

(b) Exceptions. If a bank, corporation, institution, or any person has possession of the decedent's papers, such entity or person may permit an examination of and deliver only certain of those papers without notice to the comptroller and without incurring liability for inheritance tax in the following situations.

(1) If there is a court order authorizing an examination, then:

(A) only the person named in the order may examine the papers,

(B) such examination must be conducted in the presence of the following persons:

(i) the judge who signed the order or his representative or an agent of the comptroller, and

(ii) an officer of the entity or the person or an agent of the person who has possession of the papers, and

(C) only the following papers may be delivered:

(i) the will may be delivered to the probate court clerk of the county of the judge issuing the order, in which case the clerk will furnish a receipt for delivery of the will,

(ii) a deed to a burial plot may be delivered to the person named in the order authorizing the examination, and

(iii) an insurance policy on the life of the decedent may be delivered to a beneficiary named therein.

(2) If there is no court order, then:

(A) a spouse, parent, or adult descendant of the decedent or a person named as executor in a copy of a purported will produced by such executor may examine the papers,

(B) such examination must be conducted in the presence of an officer of the entity or the person or an agent of the person who has possession of the papers, and

(C) only the following papers may be delivered and only after the delivering party has obtained a signed receipt therefor:

(i) the will may be delivered to the person named as executor or co-executor therein or to the county probate clerk of the county where the decedent resided, in which case the delivering party must retain a copy of the will for a period of four years from the date of delivery.

(ii) a deed to a burial plot or papers giving burial instructions may be delivered to any person listed in (b)(2)(A) above who requests the same, and

(iii) an insurance policy on the life of the decedent may be delivered to a beneficiary named therein.

(c) Comptroller's agent.

(1) The comptroller may commission any officer or employee of a bank, corporation, or other entity as an agent once the following information is given, either in writing or by telephone, to the Inheritance Tax Division:

(A) the name, mailing address, and telephone number of the entity, and

(B) the names of those officers or employees to be commissioned as agents.

(2) The comptroller will then forward to the requesting entity a commission letter (Form 17-309) confirming the authorization and a report form (Form 17-104) to record the property delivered.

(3) Once an agent is properly commissioned, the 10 days statutory notice referred to in (a)(2) above does not have to be given. The agent, however, must file the report form with the Inheritance Tax Division as soon as delivery of an asset is made. Assets to be reported include but are not limited to checking accounts, certificates of deposit, stocks, and bonds.

Issued in Austin, Texas, on April 16, 1980.

Doc. No. 802815 Bob Bullock
Comptroller of Public Accounts

Proposed Date of Adoption: May 23, 1980

For further information, please call (512) 475-1937.

Subchapter D. Sales Tax Division

The Comptroller of Public Accounts is proposing to amend §3.291 (026.02.20.011). Definitions have been added and the overall language has been revised for purposes of clarification. The only substantive change is the incorporation of the decision in Attorney General Opinion MW-94 (1979), which was summarized as follows:

Contracts with tax exempt entities for improvements by non-exempt persons or organizations of realty for the primary use and benefit of such nonexempt persons or organizations do not afford such contractors the exemption provided in Article 20.04(Y), Taxation—General.

In addition, the section has been reformatted to conform to *Texas Register* requirements.

There are no significant fiscal implications expected from the proposed rule. (Source: Revenue Estimating staff, Comptroller of Public Accounts.)

Public comment on proposed §3.291 (026.02.20.011) is invited. Persons should submit their comments in writing to Jim Phillips, Drawer SS, Austin, Texas 78711.

This amendment is promulgated under the authority of Texas Taxation—General Annotated, Article 20.11(A).

§3.291 (026.02.20.011) *Contracts/Contractors* (Texas Taxation—General Annotated, Article 20.01(T); 20.04(H) and (Y)).

(a) Definitions.

(1) "Agreed contract price of materials" means the price the contractor charges for the materials plus any additional charges directly attributable to the materials. For example, profit calculated as a percentage of the cost of materials, mark up or handling charges related directly to the materials charge are includable in the agreed contract price. A charge calculated as a percentage of the total contract cost will not be considered a part of the material's selling price. The agreed contract price of materials cannot be less than the price the contractor paid for materials.

(2) "Contractor" means any person who improves real estate and who, in making such improvement, incorporates tangible personal property into property being improved. The term includes subcontractors but does not include materialmen and suppliers.

(3) "Improvements to realty." See §3.347 (.067) for the definition of "Improvements to Realty."

(4) "Lump-sum contract" means a contract in which the agreed contract price is a lump-sum amount which does not separate the cost of materials from the charge for skill and labor.

(5) "Separated contract" means a contract in which the agreed contract price is broken down into a charge for materials and a separate charge for skill and labor. Cost-plus contracts are generally regarded as separated contracts.

(b) Tax responsibilities of contractors improving real property belonging to nonexempt customers.

(1) Consumable supplies and equipment. Tax must be paid by a contractor at the time of purchase on those supplies, tools, and equipment used to perform a contract but which are not physically incorporated into the property of a customer. This tax may not be passed directly to a customer.

(2) Lump-sum contracts.

(A) Contractors performing lump-sum contracts are consumers of all materials, supplies, and equipment used or incorporated into a customer's property. As a consumer, a contractor must pay tax to suppliers at the time the materials are purchased. A contractor will not collect tax from a customer on a lump-sum charge or on any portion of the charge.

(B) Contractors who, in addition to performing lump-sum contracts, sell taxable items over the counter or who also perform separated contracts, may maintain a tax-free inventory of items held for resale. Items purchased exclusively for resale may be purchased tax-free by issuing a resale certificate to suppliers in lieu of tax. A contractor must hold a Sales Tax Permit to issue a resale certificate, and must collect, report and remit tax to the comptroller as required by §3.286 (.006)—Seller's Responsibilities, when items purchased for resale are sold.

(C) If the contractor incorporates materials from the resale inventory into a lump-sum contract, the contractor owes tax on the materials based upon the purchase price of the materials. The tax should be remitted to the comptroller for the reporting period in which the materials were used. A contractor purchasing items

specifically for use in a lump-sum contract may not issue resale certificates in lieu of tax for such items.

(D) Contractors performing lump-sum contracts for persons having direct payment permits may not accept a direct payment exemption certificate from those persons in lieu of tax. Direct payment permit holders cannot authorize the contractor or any other person to purchase any taxable item using their permit. See §3.288 (.008)—Direct Payment Procedures.

(3) Separated contracts.

(A) Contractors performing separated contracts are considered retailers of all materials physically incorporated into the realty being improved. As a retailer, a contractor must collect tax from the customer based upon the agreed contract price of the materials.

(B) Contractors performing separated contracts must hold sales tax permits and collect, report, and remit the tax as required by §3.286 (.006)—Seller's Responsibilities. Contractors purchasing materials specifically for incorporation into realty under separated contracts may issue suppliers a resale certificate in lieu of tax. See §3.285 (.005)—Sales for Resale.

(C) A contractor may maintain an inventory of materials upon which tax was paid to suppliers at the time of purchase. If these materials are used to perform a separated contract or are sold over the counter, the contractor shall collect tax from the customer based upon the agreed contract price of the materials. Tax is due and must be remitted to the Comptroller on any difference between the price paid by the customer and the price paid by the contractor. See §3.338 (.058)—Allowance of Credit for Tax Paid to Suppliers.

(D) Contractors performing separated contracts for persons having direct payment permits may accept a direct payment exemption certificate from those persons in lieu of tax for all tangible personal property incorporated into customer's realty. A direct payment exemption certificate may not be accepted for tax liability incurred by the contractor on machinery or equipment rented or leased by the contractor and used in the performance of the contract. See §3.288 (.008)—Direct Payment Procedures.

(4) Materials furnished by customers. A contract may specify that a customer will furnish materials and the person performing improvements will furnish the skill and labor necessary to perform the contract. Under this type of contract, the person furnishing the skill and labor will not incur tax liability on the materials. The customer is liable for the tax on the materials. The tax should be paid to the supplier when the materials are purchased.

(5) A person who manufactures an item for sale but does not install the item as an improvement to realty is a manufacturer subject to provisions of §3.300 (.020)—Manufacturing, Custom Manufacturing, Fabricating, Processing. Example: cabinet makers or drapery makers who do not affix the cabinets or draperies to realty as a part of a construction contract.

(6) A contractor's responsibility for local sales and use taxes depends upon the type of contract used. See local §3.379 (.009)—Contractors.

(c) Tax responsibilities of contractors improving real property for exempt customers.

(1) Exempt customers are those listed in Texas Taxation—General Annotated, Article 20.04(H). Contractors improving realty for an organization claiming an exemption from tax under Article 20.04(H) should obtain a properly completed exemption certificate to substantiate the exemption. (An exemption certificate is not required for contracts with federal or state agencies.) If the validity of the exemption is not clear, a contractor cannot accept the exemption certificate in good faith and should request additional evidence of the exempt status of the organization. A sales tax letter of exemption from the Comptroller addressed to an organization is evidence of its exempt status and will relieve a contractor from further inquiry, except under the circumstances set out in subsection (c)(2), below.

If a contractor claims an exemption in lieu of paying tax on a purchase by reason of performing a contract with an exempt organization and the comptroller subsequently determines the organization is not exempt, the contractor shall be liable for all taxes, penalties, and interest accruing upon such purchase unless the contractor accepted in good faith a properly completed exemption certificate.

(2) A contract with a private party or an exempt entity to improve real property belonging to an exempt entity for the primary use and benefit of the private party is not a contract exempt from sales or use taxes. Materials may be purchased tax free only when a contractor has a contract with an exempt entity to improve realty for the direct use of the exempt entity and any required exemption certificate has been obtained.

(3) Materials furnished by exempt customers. A contract may specify that a customer which is an organization exempt from tax under Article 20.04(H) will furnish the materials and the contractor will furnish the skill and labor necessary to perform the contract. Under this type of contract, the contractor will not incur tax liability on materials. The customer may issue an exemption certificate to suppliers in lieu of tax when purchasing the materials, unless the contract for improvements is of the type outlined in subsection (c)(2) of this section or for improvements that are unrelated to the activity which qualifies the customer for exemption. In either of the last two cases, the exempt customers must pay tax to suppliers at the time the materials are purchased. See also §3.322 (.042)—Exempt Organizations.

(4) Transactions exempt from sales and use taxes include:

(A) The purchase by a contractor of all materials, supplies, equipment, and other tangible personal property incorporated into the property being improved.

(B) The purchase, rental, or lease by a contractor of all materials, supplies, equipment, and other tangible personal property directly used to incorporate such materials into the property being improved.

(5) Transactions on which sales and use taxes are due: the purchase, rental or lease by a contractor of overhead supplies and supplies used indirectly or incidentally to perform a contract with an exempt organization.

(6) An exemption certificate may be issued to suppliers for the purchase, rental, or lease by a contractor of those items identified in subsection (c)(3). See §3.287 (.007)—Exemption Certificates. Under "reasons said purchaser is claiming this exemption," a contractor must

identify the exempt entity and the project for which the equipment, materials and supplies are being purchased or rented.

(7) Nonexempt uses of equipment; tax due; method of computation:

(A) The purchase, rental, or lease of equipment for use in performing a nonexempt contract is subject to tax. No credits, refunds, or offsets of tax are applicable if the equipment is subsequently used in performing an exempt contract.

(B) If a contractor purchases, rents or leases, materials or supplies tax free for use in performing a contract with an exempt organization and uses the items in some manner or for some purpose other than the improvement to realty for an exempt organization, the contractor is, at the time of such nonexempt use, liable for tax based upon the purchase price of the items. The tax should be reported and remitted to the comptroller for the reporting period in which the taxable use occurred. For local tax responsibilities, see local §3.377 (.026.02.22.007)—Purchaser's Liability-Exemption Certificates.

(C) Equipment purchased for use on an exempt job and subsequently used on a nonexempt job is subject to tax for the period of nonexempt use. The amount of tax due shall be based on the equipment's value, as determined by straight-line depreciation, for the period of non-exempt use.

When a piece of equipment or machinery has been depreciated to 10% of its cost, this 10% of cost figure times the period of nonexempt use will be used as its taxable value for any and all future periods of nonexempt use.

The total amount of tax due from the nonexempt use of machinery or equipment initially purchased tax free by the issuance of an exemption certificate shall never exceed the total amount of tax that would otherwise have been due at the time of purchase.

(D) To qualify for exemption from tax on materials, supplies, and/or equipment claimed to have been used in the performance of exempt contracts, a contractor must keep records which clearly substantiate such exempt use. The records must identify the item claimed to be exempt, and designate each job upon which it has been used. To qualify for a partial exemption from tax on equipment claimed to have been used on both exempt and nonexempt jobs, the records must identify the equipment, designate each job upon which it has been used, and indicate the date of use and the length of time the equipment was used on each exempt or nonexempt job. Tax is due on the full purchase price of the materials, supplies, and/or equipment unless such records are maintained.

(a) Contractors. A contractor is any person who performs any improvement upon real estate and who, in performing such improvement, incorporates tangible personal property belonging to him into the property being improved. The term includes subcontractors but does not include materialmen and suppliers.

(b) Tax responsibility. This paragraph prescribes the tax responsibility of contractors who perform improvements to real estate belonging to nonexempt customers.

(1) Consumable supplies and equipment. Tax must be paid by the contractor at the time of purchase on those supplies, tools, and equipment which are used in the performance of the contract but which are not physically incorpor-

ated into the property of the customer. This tax may not be passed directly to the customer.

(2) Lump sum contracts. With regard to the tangible personal property which is physically incorporated into the realty belonging to the customer, the contract may call for a lump sum price; that is, a price which does not separate the cost of materials from the cost of skill and labor. Under the terms of such a contract, the contractor is considered by law to be the ultimate consumer of all such materials. As the ultimate consumer, he assumes responsibility for tax on the materials and must pay tax to his supplier at the time of purchase. In such cases, he will not collect tax from his customer on the lump sum charge or any portion of the charge. He has in effect absolved both himself and his customer from any further tax liability at the time he pays the tax to his supplier. The occasion may arise when the contractor will incorporate materials from his stock on hand which materials were originally purchased for resale by use of a resale certificate. In such instances, he shall create a tax liability upon himself based upon the purchase price of the materials, which amount shall be reported and remitted to the Comptroller of Public Accounts.

(3) Separated contracts. A contract may recite the charges for skill and labor separately from the charges for materials for the purpose of causing the customer to be the ultimate consumer of materials physically incorporated into the realty being improved. In such instances, the contractor may execute and deliver a resale certificate to his supplier for such materials and the customer must pay the tax on the agreed contract price of the materials, which price must not be less than the amount the contractor paid to his supplier. The contractor must in this instance obtain a limited sales, excise, and use tax permit. This will permit him to buy the materials without having to pay tax at the time of purchase. Thereafter, when he bills his customer, he will collect tax on the agreed contract price of materials incorporated into the property of his customer. The contractor must report and remit to the Comptroller of Public Accounts the tax on all such materials. The purchaser is jointly liable for the tax unless he produces a receipt from the contractor showing the tax has been paid to the contractor. In fulfilling such a contract, he may also use materials from his stock on hand upon which tax was paid at the time of purchase from his supplier. In such instances, he shall collect the tax from his customer as if the materials had been purchased with a resale certificate and he will remit the tax measured only by the difference between the agreed contract price and the price he paid to his supplier.

(4) Materials furnished by customer. A contract may specify that the customer will furnish the materials and the person performing improvements will furnish the skill and labor necessary to perform the contract. In this case, the person performing the improvements will not incur liability for tax on the materials, but the customer must pay the tax at the time he purchases the materials.

(5) Over-the-counter sales. When a contractor sells tangible personal property over-the-counter for which a resale certificate was given in lieu of the tax, he shall collect the tax based upon the sales price to his customer. If, however, he has paid the tax on such items, he shall collect tax on the sales price to his customer but shall remit the tax measured by the amount his sales price exceeds the price paid to his supplier.

[(c) Contractors improving realty belonging to exempt customer. There are exempted from the computation of the amount of taxes imposed by the Limited Sales, Excise, and Use Tax Act, the receipts from the sale, lease, or rental of any tangible personal property to, or the storage, use, or other consumption of tangible personal property by any contractor for the performance of a contract for the improvement of realty for an organization exempted by Article 20.04 of the Act. The contractor may issue an exemption certificate in lieu of the tax on the purchase, rental, or lease on all materials, supplies, equipment, and other tangible personal property incorporated into the property being improved as well as all materials, supplies, equipment, and other tangible personal property used or consumed by the contractor in performing the contract with the exempt organization. Materials and supplies "used in the performance of a contract" include only those materials actually incorporated into the property being improved and those supplies directly used to incorporate such materials into the property being improved. Overhead supplies and supplies used indirectly or only incidental to the performance of the contract with the exempt organization are not included in the exemption. The contractor, before issuing an exemption certificate in lieu of the tax, has the responsibility to ascertain the validity of the exemption claimed in behalf of its customer. A sales tax letter of exemption from the comptroller directed to the exempt organization shall be prima facie evidence of the exempt status of the organization and will relieve the contractor from further inquiry. In the absence of such letter of exemption from the comptroller, should the contractor claim an exemption in lieu of paying the tax on his purchases by reason of performing a contract with an exempt organization and should the comptroller subsequently determine that the organization is not exempt, the contractor shall be liable for all taxes, penalties and interest accruing upon such purchases.

[(d) Exemption certificate. For the purchase or rental of materials, and supplies which will be incorporated into the realty being improved for an exempt organization and for the purchase or rental of equipment, materials, and supplies used or consumed for performance of a contract with an exempt organization the contractor may execute and deliver the exemption certificate as provided by Rule 026.02.20.007 and deliver the same to his supplier in lieu of paying the tax on such purchases. Under "reasons said purchaser is claiming this exemption" the contractor must identify the exempt entity and the project for which the equipment, materials, and supplies are being purchased or rented.

[(e) Nonexempt uses of equipment, materials, and supplies.

[(1) A contractor may issue an exemption certificate in lieu of the tax, as provided above, on the purchase or rental of equipment, materials, and supplies used in the performance of a contract with an exempt organization; however, if the contractor uses the equipment, materials, and supplies in some other manner or for some purpose other than the improvement of realty for an exempt organization, the contractor shall be liable for the payment of the limited sales tax as if he were a retailer making a retail sale of tangible personal property at the time of such use.

[(2) The taxable value of materials or supplies at the time of the nonexempt use shall be the amount paid for such materials or supplies at the time of purchase.

[(3) The taxable value of any equipment used in a nonexempt manner shall be equal to the amount of depreciation computed on a straight-line depreciation method for the period of time that it is used in a nonexempt manner. At the time a piece of equipment or machinery is depreciated down to 10% of its cost, this 10% of cost figure shall be used as the taxable value on which tax shall be due for any and all future, nonexempt uses made of the machinery. The total amount of tax due from nonexempt use(s) of machinery or equipment initially purchased tax free by the issuance of an exemption certificate shall never exceed the total amount of tax that would otherwise have been due at the time of purchase.]

Doc. No. 802974

The Comptroller of Public Accounts is proposing to amend §3.315 (026.02.20.035). The proposed amendment would increase the number of taxpayers qualifying to file the state sales and use tax returns on a yearly basis by raising the tax tolerance level from \$300 to \$500. The language is also simplified and the section is reformatted to conform to *Texas Register* requirements.

Fiscal impacts from the proposed section fall into three categories: (1) a cash flow change from revenues formerly paid quarterly now received yearly; (2) the interest loss from the delay of revenues; and (3) administrative savings from the reduced number of quarterly returns. The cash flow change occurs because quarterly payments will be delayed for two quarters when these taxpayers begin to file yearly. To estimate the fiscal impact of these changes, the growth in sales tax receipts was projected through 1984 using forecast growth rates in 1980 (12.5%) and 1981 (14%). Revenues are projected to grow at a constant rate of 14% thereafter. An interest loss results from the anticipated revenue shift—the quarterly payments for April, July, and October would be delayed until January—and interest on this revenue during the delay will be foregone. Administrative savings result from the reduction of approximately 170,000 sales tax returns each year. Projections of savings are from the operating divisions that this reduction will effect. Savings result from reduction in manpower, postage, forms, computer time, and office supplies. Savings are projected to grow by 15% in 1981-1984 for supplies, computer time, postage and forms, and salaries are projected to grow by 5.1% for 1981 and are constant thereafter.

Fiscal Effects (In Thousands)	
Fiscal Year	Cash Flow Change
1980*	\$4,217,000
1981	\$590,000
1982	\$673,000
1983	\$767,000
1984	\$875,000

*Effects for 1980 are for two quarters.

Fiscal Effects (In Thousands)

Fiscal Year	Interest Loss	Administrative Savings
1980*	\$-70,000	+\$263,000
1981	\$-204,000	+\$423,000
1982	\$-234,000	+\$435,000
1983	\$-251,000	+\$457,000
1984	\$-263,000	+\$478,000

*Effects for 1980 are for two quarters.

Source: Legislative Budget Board, Comptroller of Public Accounts.)

Public comment on proposed section is invited. Persons should submit their comments in writing to Jim Phillips, Drawer SS, Austin, Texas 78711.

The amendment is proposed under the authority of Texas Taxation—General Annotated, Article 20.11(A).

§3.315 (026.02.20.035). *Yearly Filing of Reports.*

(a) *A taxpayer having less than \$500 state sales and use tax to report during a calendar year may request authorization from the Comptroller's Office to file returns on a yearly basis.*

(b) *Authorization to file returns on a yearly basis will be conditional upon the correct filing of prior returns.*

(c) *Authorization to file returns on a yearly basis will be denied if a taxpayer's liability exceeded \$500 in the prior calendar year.*

(d) *A taxpayer filing on a yearly basis without authorization will be liable for applicable penalty and interest on any previously unreported quarter.*

(e) *Authority to file on a yearly basis is automatically revoked if a taxpayer's state sales and use tax liability exceeds \$500 during a calendar year and the taxpayer must file a return for all previously unreported quarters of that year.*

(f) *Once each year all accounts will be reviewed to confirm yearly filing status and to authorize permit holders who meet the filing requirements to begin filing yearly returns.*

[(a) The requirements for a yearly filer are that they must have been in business one year, have paid less than \$300 state sales and use tax per annum, or an average of \$75 per quarter, and are not delinquent; provided, however, that the Comptroller may consider the sales probability factor of any particular business and waive the requirement of being in business for one year.

[(b) Permission to file on a yearly basis must be obtained in writing from the Comptroller's Office. A taxpayer who has not obtained written permission and who attempts to file on a yearly basis is liable for all applicable penalty and interest.

[(c) Permission is conditional and is based on prior returns and will be revoked if past returns are incorrectly reported.

[(d) If at any time during any calendar year a taxpayer exceeds \$300 state sales and use tax liability, permission to file yearly is automatically revoked and a return must be filed for any unreported periods of that year. Failure to file a return results in applicable tax, penalty, and interest.]

Doc. No. 802975

The Comptroller of Public Accounts is proposing to amend §3.327 (026.02.20.047) relating to retailer's bond or other security. The proposed amendments will provide that a retailer whose bond amount is calculated to be less than \$100 will not be required to post an initial bond. The amendments will provide that the security required from a retailer reporting on a yearly basis will be determined by the same formula used for quarterly filers. In addition, the example of the assignment form appearing in the current section will be deleted. Finally, the section will be reformatted to conform to *Texas Register* style.

There are no significant fiscal implications expected from the proposed rule. (Source: Revenue Estimating Staff, Comptroller of Public Accounts.)

Public comment on proposed §3.327 (026.02.20.047) is invited. Persons should submit their comments in writing to Jim Phillips, Drawer SS, Austin, Texas 78711.

This amendment is proposed under the authority of Texas Taxation—General Annotated, Article 20.11(A).

§3.327 (026.02.20.047). *Retailer's Bond or Other Security* (Texas Taxation—General Annotated, Articles 20.021(N), 20.031(M)).

(a) *Who must post bond or security. Every person who applies for a tax permit or who becomes delinquent in the payment of any taxes, penalties, or interest, must furnish security in the amount determined by the comptroller to be sufficient to protect the state against failure to pay any amounts or costs which may become due under the state, city, and metropolitan transit authority sales and use tax laws.*

(b) *Conditional permit. An applicant may be issued a conditional permit to do business for a period of time not to exceed 14 days in order to furnish the security required.*

(c) *The amount of bond or security required.*

(1) *Monthly filers. Retailers reporting on a monthly basis shall post bond or security in an amount equal to two times the amount of such person's average monthly tax liability.*

(2) *Quarterly and yearly filers. Retailers reporting on a quarterly or yearly basis shall post bond or security in an amount equal to one and one-half times the amount of such person's average quarterly tax liability.*

(3) *If a bond amount is calculated to be less than \$100 an initial bond will not be required.*

(4) *If it is determined at any time that the amount of bond on file is inadequate or that a retailer is delinquent in the payment of any amount due, the comptroller may redetermine the amount of security and require new or additional bond to be posted. Under no circumstances, however, will the amount required exceed \$50,000 or be less than \$100.*

(d) *Types of security.*

(1) *Acceptable types of security.*

(A) *Irrevocable assignments of accounts in banks, savings and loan institutions, and credit unions, whose deposits are insured by an agency of the U.S. Government,*

(B) *cash (personal checks are acceptable),*

(C) *bank letters of credit,*

(D) *U.S. Treasury Bonds, readily convertible to cash, or*

(E) surety bonds.**(2) Unacceptable types of security:****(A) corporate stocks and bonds, or****(B) personal guarantees.**

(e) Assignments. An assignment of either a savings account or a certificate of deposit in an institution insured by an agency of the U.S. Government must be irrevocable and must be executed on an assignment form approved by the comptroller.

(f) Surety bonds. A surety bond must be executed on a form approved by the comptroller and can be issued only by a surety company chartered or authorized to do business in the State of Texas. The bond shall constitute a new and separate obligation in the penal sum named therein for each calendar year or a portion thereof while such bond is in force. The bond must be executed by an attorney-in-fact appointed by the surety. The appointing instrument must be properly notarized and physically attached to the bond.

(g) Forfeiture. In the event of forfeiture, the comptroller will notify the person holding the security and demand payment. The comptroller will also notify the retailer and demand that another or additional bond or security be furnished within 10 days of the date of such notice. The amount of bond or security specified in the notice shall be fixed by the comptroller subject only to the limitations stated in subsection (c)(4). This notice shall become final at the expiration of 10 days. Failure to comply with the requirements of the notice within the 10-day period will result in the suspension of the retailer's tax permit.

(h) Retailer's bond or security when ownership is changed.

(1) Article 20.021(D) requires a retailer holding a tax permit to apply for a new permit when the legal structure of the retailer's business changes; for example, a change from a sole ownership to a partnership, a partnership to a corporation, etc.

(2) When a retailer applies for a new permit because of a change in legal structure, the retailer must comply with the provisions of this rule. The comptroller will review all records and such other information as the comptroller may require regarding the prior taxpaying performance of the retailer.

(3) If after such review it appears that the interests of the state will not be endangered by the new ownership, the comptroller may determine that no new or additional bond is required.

(4) If, however, it appears that there has been a substantial change in ownership or that security is required to guarantee payment of taxes by the new entity, the comptroller may require security in accordance with the provisions of this rule.

(a) Every person who holds a sales tax permit under Chapter 20 and is delinquent in the payment of any taxes, penalties and/or interest on January 1, 1974, and every person who applies for a sales tax permit on or after January 1, 1974, shall furnish to the comptroller a bond or security covering the collection of both state and local sales and use taxes. The amount of such bond or security shall be fixed by the comptroller in an amount sufficient to protect the State of Texas against failure to pay the amount of taxes, including interest, penalties and costs which may become due from

such person under Chapter 20 and under the local sales and use tax act.

(b) The amount of bond or security required shall be determined in the following manner:

(1) Monthly filers. Taxpayers reporting on a monthly basis will be required to post bond or security in an amount equating two times the amount of such person's average monthly tax liability.

(2) Quarterly filers. Taxpayers reporting on a quarterly basis will be required to post bond or security in an amount equating one and one-half times the amount of such person's average quarterly tax liability. The comptroller may require security in an amount greater than the amount required by the formula above if he deems it necessary to secure payment of taxes under Chapter 20, but shall not exceed \$50,000 nor be less than \$25.00.

(c) The security furnished shall be irrevocably assigned to the comptroller, convertible to cash upon demand by the comptroller only, and may be reassigned by the comptroller to the person furnishing the security or to his estate, but to no other. In the event of certificates of deposit or certificates of savings, the issuing institution must acknowledge such assignments in writing, providing, however, that interest earned by the deposit may be paid to the person making the deposit. Certificates of deposit or certificates of savings must be automatically renewable and be issued by an institution insured by an agency of the U.S. Government. Time certificates of deposit or savings dated prior to July 5, 1973, will not be accepted.

(d) The form for assignment of accounts, certificates, or deposits is prescribed herein:

Assignment**Security for Sales and Use Taxes**

Articles 20.021, 20.031, Chapter 20,

Title 122A, Taxation—General

Revised Civil Statutes of Texas, 1925, As Amended

(1) (We) _____ hereinafter called assignor, whose principal place of business is _____

(name, street, city, state) do (does) hereby assign, and set over to the Comptroller of Public Accounts of the State of Texas, all right, title, and interest of whatever nature, of assignor, in and to the insured account of assignor in the (2) _____ evidence by (3) _____ in the amount of (4) _____ (\$ _____) numbered (5) _____

which is delivered to the (2) _____ herewith. Assignor agrees that this assignment carries with it the right to the insurance of the account by the (6) _____

and includes and gives the right to the Comptroller of Public Accounts of the State of Texas to redeem, collect, and withdraw any part or the full amount of such account at any time *without notice to the assignor*. This assignment is given as security for liability for sales and use taxes, including interest and penalties, which may accrue under the state and local sales and use tax laws of the State of Texas.

Assignor hereby notifies the above named _____ of the assignment.

Dated this _____ day of _____, 19 _____.

Assignor

Receipt for Notice of Assignment

Receipt is hereby acknowledged to the Comptroller of Public Accounts of the State of Texas of written notice of the assignment to said Comptroller of Public Accounts of the account identified above. We have noted in our records the Comptroller's interest in said account as shown by the above assignment and have retained a copy of this sheet. We certify that we have received no notice of lien, encumbrance, hold

claim, or obligation of the above-identified account prior to the assignment to the Comptroller of Public Accounts. We agree to make payment by mail to the Comptroller of Public Accounts upon demand by mail in accordance with the (8) _____ laws applicable to this (9) _____

Dated this _____ day of _____, 19 ____.

(2) _____ (name, street, city, state)

By _____ (name and title of officer)

Receipt for Security and Directions to Pay Earnings

Receipt is acknowledged of the above assignment. The (10) _____ named in the above assignment is hereby authorized and directed to pay any earnings on the above-identified account to the above-named assignor until otherwise notified by mail by the Comptroller of Public Accounts.

Dated this _____ day of _____, 19 ____.

By _____

Title _____ District or Division _____

- (1) Name of taxpayer making the assignment
- (2) Name of bank or association
- (3) Description of security, cash deposit, automatically renewable time certificate of deposit or savings, savings account, etc.
- (4) Amount in words and figures
- (5) Number of account or certificate
- (6) Name of U.S. agency insuring deposit in bank or association
- (7) Name of bank or association
- (8) Banking or savings and loan
- (9) Bank or association
- (10) Bank or association

This assignment form may be copied or duplicated by the users in any quantity desired.

[(e) In the event of forfeiture, the comptroller shall forward a demand for payment by mail to the institution holding the deposit, and payment shall be forwarded to the Comptroller of Public Accounts by mail only.

[(f) The following bond securities are acceptable:

- (1) Assignments of accounts in banks, savings and loan institutions, and credit unions;
- (2) cash;
- (3) bank letters of credit;
- (4) U.S. Treasury Bonds, readily convertible to cash.
- (5) Any surety bond furnished shall be on the form prescribed by the comptroller, issued by a surety company chartered or authorized to do business in the State of Texas, and shall constitute a new and separate obligation in the penal sum named therein for each calendar year or a portion thereof while such bond is in force. The bond must be executed by an attorney-in-fact appointed by the surety, and a copy of the appointment as attorney-in-fact must acknowledge his execution of the instrument before the notary public. Such bond shall remain in effect until the surety or sureties are released or discharged.

[(g) Corporate stocks and bonds or personal guarantees will not be accepted.

[(h) Applicants for sales tax permits on or after January 1, 1974, may be issued temporary authority to do business for a period of time not to exceed 14 days in order to arrange for and provide the bond or security required. A sales or use tax permit will not be issued by the comptroller on or after January 1, 1974, until the applicant provides the comptroller with the required bond or security.

[(i) In the event the bond or security is forfeited in whole or in part, the comptroller shall notify the person and demand that such person furnish another or additional bond or security within 10 days of the date of such notification. The amount of bond or security specified in the notice shall be fixed by the comptroller, subject only to the limitations as to maximum amounts stated in paragraph 1. This notice shall become final at the expiration of the 10 days.

[(j) Retailer's bond or security when the business changes name, location, or form.

[(1) Attorney General Opinion H-468 holds that the non-assignability clause of Article 20.021(D) requires a taxpayer holding a valid sales tax permit to apply for a new permit at such time that said taxpayer changes the legal entity of his business, and upon such application for a new permit, if same occurs after January 1, 1974, said taxpayer must comply with the provisions of Article 20.021(N).

[(2) In those instances where a taxpayer with a satisfactory taxpaying history changes his type of business entity, thereby requiring an application for a new sales tax permit, upon receipt of said permit application the comptroller shall examine all of the records on file indicating the taxpaying performance of said taxpayer, and such other and further information as the comptroller may require said taxpayer to furnish.

[(A) If upon such examination, it appears there will not be a substantial change in the ownership of such business entity and the interests of the state will not be endangered in the operation of such subsequent entity, the comptroller, in his discretion, may consider the good taxpaying record of the predecessor entity as sufficient security to guarantee the payment of those sales taxes which the new entity may incur, and therefore deem the requirements of Article 20.021(N) to have been satisfied and a new permit shall be issued, requirements of Article 20.021(N) to have been satisfied and a new permit shall be issued, showing the new name, if any, of the subsequent entity and such further information as the comptroller may require.

[(B) If it appears to the comptroller that there have been substantial changes in the ownership of the business, the comptroller, in his discretion, may require the taxpayer to provide other security pursuant to Article 20.021(N) and this ruling and to further comply with the provisions of Chapter 20, Title 122A.]

Doc. No. 802976

The Comptroller of Public Accounts is proposing to amend §3.340 (026.02.20.060). The proposed amendment would add definitions for clarification purposes. It would also set out that multistate tax credits will be applied first against use tax due the state then against MTA use tax due and finally against any city use tax due.

There are no significant fiscal implications expected from the proposed section. (Source: Revenue Estimating Staff, Comptroller of Public Accounts.)

Public comment on proposed §3.340 (026.02.20.060) is invited. Persons should submit their comments in writing to Jim Phillips, Drawer SS, Austin, Texas 78711.

This amendment is proposed under the authority of Texas Taxation—General Annotated, Article 20.11(A).

§3.340 (026.02.20.060) *Multistate Tax Credits* (Texas Taxation—General Annotated, Article 20.04(J), 7359a) [20.04(J)].

(a) *Definitions.*

(1) *Multistate tax compact.* The multistate compact is an agreement between member states to promote uniform tax treatment and to avoid double taxation of multistate taxpayers.

(2) *Sales tax.* A tax imposed on the transfer for a consideration of title, ownership, or possession of tangible personal property. See Texas Taxation—General Annotated, Article 20.01(K).

(3) *Use tax.* For the definition of use tax, See §3.346 (.066). Use tax is complimentary to the sales tax and is imposed on the storage, use, or other consumption of taxable items.

(b) *Credits.*

(1) As a member of the multistate compact, Texas will allow as a credit against Texas use tax due, any combined amounts of legally imposed sales or use taxes paid on the same property to another state or any subdivision of another state. Credit will be allowed even though the other state may not be a member of the multistate compact.

(2) The credit shall be applied first against the amount of any use tax due the state. Any remaining credit shall then be applied against MTA use tax due, if any, and then against the amount of any city use tax due.

Example: John Doe purchases a taxable item in another state. he takes possession of the item there and pays a 5.0% sales tax to that state. The item is brought directly into the City of Houston for use there. The 5.0% sales tax paid to the other state is credited against the 4.0% Texas use tax and 1.0% Houston MTA use tax and liquidates those liabilities. The taxpayer owes the additional 1.0% use tax, which remained after credit was exhausted, to the City of Houston.

(3) Sales tax legally imposed by the State of Texas will not be refunded because of subsequent payment of a use tax imposed by another state.

(4) Credit against the Texas use tax will not be allowed for sales tax paid to another state which was not legally due and paid to another state.

(5) Credit against the Texas use tax will not be allowed for any gross receipts tax imposed on retailers in another state which is not considered a "like tax."

(6) Use tax collected by the State of Texas will be refunded to the extent of a subsequent payment of use tax to another state, if the other state's use tax was imposed as a result of the property's use in that state prior to its use in Texas.

[As a member of the Multistate Compact, Texas will allow credit against use tax due for a like tax due and paid to other states on the same transaction whether or not the other state allows such a credit for tax paid to this state as specified in Article 20.04(J).]

Issued in Austin, Texas, on April 23, 1980.

Doc. No. 802992 Bob Bullock
Comptroller of Public Accounts

Proposed Date of Adoption: June 2, 1980
For further information, please call (512) 475-1931.

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Council

(Editor's note: Proposals by the Texas Youth Council, including new sections, as well as amendments and repeals of existing sections, are being published serially beginning in this issue. The chapters, subchapters, and sections affected by the proposal are listed below. All sections included in each issue which are proposed for repeal will appear at the beginning of the applicable chapter. The proposed date of adoption for all the proposals being serialized is June 2, 1980. Proposed action affecting §§81.1-81.51 appears in this issue.)

Chapter 81. General Provisions

General Policy Statement

§81.1 (203.01.01.001)

Student Rights

§81.11 (203.01.02.001)

Standards for Service Delivery

§81.21 (203.01.03.001)

§§81.21-81.37 (203.01.03.002-.017)

Training and Rehabilitation

§81.31 (203.01.04.001)

Discipline

§81.41 (203.01.05.001)

Religious Training

§81.51 (203.01.06.001)

Case Management System for Delinquent Youth

§§81.111, 81.112, 81.114-81.116, 81.118-81.120
(203.01.10.001, .002, .004-.006, .008-.010)

Case Management System for Dependent and Neglected Youth

§§81.141-81.147 (203.01.11.001-.007)

Relationships with Other Agencies

§§81.171-81.173 (203.01.12.001-.003)

Control of Youth

§§81.191-81.197 (203.01.13.001-.007)

Records and Reports

§§81.221-81.225 (203.01.14.001-.005)

Federal Offenders

§§81.251-81.259 (203.01.15.001-.009)

Chapter 83. Appeals to the Executive Director

Contents of Appeal

§83.21 (203.02.03.001)

Notice of Appeal to the Respondent and Interested Persons

§83.31 (203.02.04.001)

Time of Decision on the Appeal by the Executive Director

§83.41 (203.02.05.001)

Written Statement of Respondent and Interested Persons

§83.51 (203.02.06.001)

Duplicate Tape-Recording of Proceeding

§83.61 (203.02.07.001)

Evaluation by the Appeals Committee
§§83.81-83.85 (203.02.09.001-.005)

Chapter 85. Practice and Procedure

General

§85.1 (203.05.01.001)

Chapter 87. Reception and Regional Receiving Centers

Purpose and Philosophy

§§87.1, 87.2 (203.10.01.001, .002)

Admissions

§§87.11-87.13 (203.10.02.001-.003)

§87.14 (203.10.02.004)

Clinical Services

§§87.31, 87.33-87.35 (203.10.03.001, .003-.005)

§87.36 (203.10.03.006)

Placement Alternatives

§§87.41, 87.42 (203.10.04.001, .002)

Procedure for Decision of Placement

§§87.51-87.53 (203.10.05.001-.003)

§87.54 (203.10.05.004)

§87.55 (203.10.05.005)

Rules of Conduct—Range of Penalties

§§87.61, 87.62 (203.10.06.001, .002)

Recreation

§87.71 (203.10.07.001)

Volunteers

§87.81 (203.10.08.001)

Student Funds

§87.92 (203.10.09.002)

Mail Procedures

§87.101 (203.10.10.001)

Visitation

§§87.111, 87.113 (203.10.11.001, .003)

Clothing

§§87.121-87.123 (203.10.12.001-.003)

Emergency Notification Procedures

§§87.131-87.133 (203.10.13.001-.003)

Placement in Intensive Care or Security

§§87.141, 87.142 (203.10.14.001, .002)

Vocational Rehabilitation

§§87.151-87.153 (203.10.15.001-.003)

Chapter 89. Institutional Services for Children

Committed for Delinquent Behavior

Purpose and Philosophy

§89.2 (203.20.01.002)

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§§89.11-89.15 (203.20.02.001-.005)

Rehabilitation

§§89.21-89.24 (203.20.03.001-.004)

§89.25 (203.20.03.005)

Education

§§89.31-89.33 (203.20.04.001-.003)

Daily Living

§§89.41, 89.42 (203.20.05.001, .002)

§89.41 (203.20.05.003)

Recreation

§§89.51-89.53 (203.20.06.001-.003)

Food Service

§§89.71-89.74 (203.20.08.001-.004)

Medical, Psychological, and Psychiatric Services

§89.83 (203.20.09.003)

§89.84 (203.20.09.004)

Student Funds

§89.92 (203.20.10.002)

Mail Procedure

§89.101 (203.20.11.001)

Clothing

§§89.121-89.123 (203.20.13.001-.003)

Student Council

§§89.131, 89.132 (203.20.14.001, .002)

Rules of Conduct

§§89.141-89.144 (203.20.15.001-.004)

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§§89.151-89.155 (203.20.16.001-.005)

Solitary Confinement, Security, and Dormitory Confinement

§§89.161, 89.162, 89.164 (203.20.17.001, .002, .004)

Physical Force

§89.171 (203.20.18.001)

Unauthorized Absence or Escape

§§89.181-89.185 (203.20.19.001-.005)

Transfers between Institutions

§§89.201-89.203 (203.20.21.001-.003)

Release from the Institution

§§89.211-89.215 (203.20.22.001-.005)

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§89.231 (203.20.23.001)

Replacement of Damaged Property by Students

§89.251 (203.20.24.001)

General Campus Security and Control

§89.271 (203.20.25.001)

Student Employment and Work Responsibilities

§§89.291-89.294 (203.20.26.001-.004)

Chapter 91. Programs for Dependent and Neglected Children

Purpose and Philosophy

§§91.1, 91.2 (203.30.01.001, .002)

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§§91.11-91.16 (203.30.02.001-.006)

Child Care

§§91.31-91.33, 91.35 (203.30.03.001-.003, .005)

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§§91.41, 91.43, 91.44 (203.30.04.001, .003, .004)

Daily Living in Residential Programs

§91.53 (203.30.05.003)

Volunteer Programs

§§91.71-91.73 (203.30.07.001-.003)

Foster Care

§§91.81-91.83 (203.30.08.001-.003)

Food Service

§91.91 (203.30.09.001)

§§91.92, 91.93 (203.30.09.002, .003)

Medical Services

§§91.101-91.103 (203.30.10.001-.003)
 §§91.104, 91.105 (203.30.10.004, .005)

Student Funds

§91.112 (203.30.11.002)

Visitation

§91.131 (203.30.13.001)
 §91.132 (203.30.13.002)

Clothing

§§91.141-91.143 (203.30.14.001-.003)

Student Council

§§91.151-91.154 (203.30.15.001-.004)

Rules of Conduct

§§91.161-91.164 (203.30.16.001-.004)

Discipline

§§91.171, 91.172, 91.175 (203.30.17.001, .002, .005)

Physical Force

§91.181 (203.30.18.001)

Unauthorized Absence or Escape

§§91.191-91.195 (203.30.19.001-.005)

Student Furloughs

§§91.201-91.203 (203.30.20.001-.003)

Transfer between Institutions

§§91.211, 91.212 (203.30.21.001, .002)

Release from the Institution

§§91.221-91.224 (203.30.22.001-.004)

Chapter 93. Assistance to Community Programs**Philosophy and Purpose**

§§93.2, 93.3 (203.40.01.002, .003)

Method of Contract Funds Availability

§93.12 (203.40.02.002)

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§§93.21-93.23 (203.40.03.001-.003)

General Funding Requirements

§§93.31, 93.32, 93.34, 93.39 (203.40.04.001, .002, .004, .009)
 §93.33 (203.40.04.003)

Programs Funded through Community Assistance

§§93.51, 93.54-93.56, 93.58-93.60, 93.62, 93.63, 93.65, 93.66 (203.40.05.001, .004-.006, .008-.010, .012, .013, .015, .016)
 §93.68 (203.40.05.018)

Contract Application Procedures

§§93.82, 93.85, 93.87 (203.40.06.002, .005, .007)
 §93.83 (203.40.06.003)
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Youth Service System Development Projects

§§93.101-93.105 (203.40.07.001-.005)

Chapter 95. Residential Contract Service**Philosophy and Purpose**

§§95.1, 95.2 (203.41.01.001, .002)

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Standards for Personnel and Staffing

§§95.63-95.67 (203.41.05.003-.007)

Standards Relating to Treatment Program

§§95.81, 95.84-95.88, 95.91-95.97
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Standards Relating to Records and Reporting

§§95.112, 95.113 (203.41.07.002, .003)
 §§95.115-95.117 (203.41.07.005-.007)

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§§95.131, 95.132, 95.134, 95.135
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Standards on Physical Care

§§95.151-95.155, 95.159-95.161, 95.163
 (203.41.09.001-.005, .009-.011, .013)

§§95.156-95.158, 95.164 (203.41.09.006-.008, .014)

Resident's Rights

§§95.171-95.179 (203.41.10.001-.009)

Chapter 97. Parole Services**Philosophy and Purpose**

§97.1 (203.42.01.001)
 §§97.2, 97.3 (203.42.01.002, .003)

Procedure for Release to Field Placement

§§97.11-97.15 (203.42.02.001-.005)

Placement Criteria

§§97.21-97.23 (203.42.03.001-.003)

Community Residential Facility Placements

§§97.31-97.33 (203.42.04.001-.003)

Purchase of Nonresidential Services

§97.43 (203.42.05.003)

Transfers between Field Placements

§§97.62, 97.63 (203.42.06.002, .003)

Field Services to Dependent and Neglected Children

§97.81 (203.42.07.001)
 §§97.82, 97.83 (203.42.07.002, .003)

Discharge

§§97.91-97.98 (203.42.08.001-.008)

Chapter 99. Halfway House Program**Philosophy and Purpose**

§99.3 (203.43.01.003)

Placement Qualifications

§§99.11-99.14 (203.43.02.001-.004)

Student's Rights

§99.21 (203.43.03.001)
 §§99.22-99.24 (203.43.03.002-.004)

Discipline

§§99.41-99.48 (203.43.04.001-.008)

Rehabilitation

§§99.61-99.68 (203.43.05.001-.008)

Education, Work, and Training

§§99.81-99.83 (203.43.06.001-.003)

Daily Living

§§99.91-99.96 (203.43.07.001-.006)

Medical and Dental Care

§§99.111-99.115 (203.43.08.001-.005)

Nutrition

§§99.121-99.126 (203.43.09.001-.006)

Release and Transfer of Residents

§§99.141-99.144 (203.43.10.001-.004)

Chapter 101. Interstate Compact on Juveniles Forms

§101.68 (203.50.05.008)

Chapter 103. Student Remedies General Policy and Procedures

§§103.1, 103.2 (203.03.01.001, .002)

Appeal of Administrative Decision

§§103.21, 103.22 (203.03.02.001, .002)

Complaints Regarding Abuse or Neglect

§103.41 (203.03.03.001)

Grievances Regarding Conditions, Policies, or Procedures

§§102.51, 103.62 (203.03.04.001, .002)

Chapter 81. General Provisions

(Editor's note: The text of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Youth Council, 8900 Shoal Creek Boulevard, Austin, or in the Texas Register Division offices, 503E Sam Houston Building, Austin.)

Standards of Care

The Texas Youth Council proposes to repeal §81.21 (203.01.03.001). The agency is in the process of a major restructuring and updating of its rules. It is proposed that the subchapter currently entitled Standards of Care be renamed to Standards of Service Delivery, the primary set of rules that define the service, program, and care wards that the agency will receive. With the adoption of §§81.21-81.36 (.002-.017) being proposed at this time, this section is no longer relevant.

This agency has determined that the repeal has no fiscal implications.

Written comments and suggestions are invited and may be sent to Ron Allen, executive assistant, Texas Youth Council, P.O. Box 9999, Austin, Texas 78766, within 30 days from this publication.

This section is proposed for repeal under authority of Chapter 61, Vernon's Texas Codes Annotated, Human Resource Code.

§81.21 (203.01.03.001). *Physical Facility.*

Doc. No. 803041

Training and Rehabilitation Program

The Texas Youth Council proposes to repeal §81.31 (203.01.04.001). This section is superseded by the subchapter entitled Standards for Service Delivery filed simultaneously with this proposal. The new subchapter, Standards for Service Delivery, more accurately describes the training and treatment contained in TYC child care programs.

There are no fiscal implications to the state or local governments by repealing this section.

Inquiries should be sent to Ron Allen, P.O. Box 9999, Austin, Texas 78766, telephone (512) 452-8111.

This repeal is proposed under authority of Chapter 61, Vernon's Texas Codes Annotated, Human Resource Code.

§81.31 (203.01.04.001). *Program.*

Doc. No. 803043

Discipline

The Texas Youth Council proposes to repeal §81.41 (203.01.05.001). In the revision of its rules, the rule affecting discipline of youth is contained in the subchapter entitled Standards for Service Delivery, §81.30 (203.01.03.011), which is being proposed for adoption simultaneously with this proposed repeal. The proposed section provides more comprehensively the policies, procedures, and guidelines related to discipline of youth in the care and custody of this agency.

There are no fiscal implications related to the repeal of this section.

Inquiries or comments should be sent to Ron Allen, P.O. Box 9999, Austin, Texas 78766, telephone (512) 452-8111.

This repeal is proposed under authority of Chapter 61, Vernon's Texas Codes Annotated, Human Resource Code.

§81.41 (203.01.05.001). *Student Discipline.*

Doc. No. 803044

Religious Training

The Texas Youth Council proposes to repeal §81.51 (203.01.06.001). In the revision of its rules, the rule affecting this topic is contained in §81.33 (203.01.03.014), Moral Values and Religious Worship, which is being proposed for adoption simultaneously with this proposed repeal.

There are no fiscal implications to state or local governments by the repeal of this section.

Inquiries or comments should be sent to Ron Allen, P.O. Box 9999, Austin, Texas 78766, telephone (512) 452-8111.

This repeal is proposed under authority of Chapter 61, Vernon's Texas Codes Annotated, Human Resource Code.

§81.51 (203.01.06.001). *Services Provided.*

Doc. No. 803045

General Policy Statement

The Texas Youth Council proposes to amend §81.1 (203.01.01.001) to cite revised statutory references and more completely state the agency's major duties and functions.

There are no fiscal implications to state or local government as a result of this amendment.

Inquiries or comments about this amendment should be sent to Ron Allen, P.O. Box 9999, Austin, Texas 78766, telephone (512) 452-8111.

This amendment is proposed under the authority of Chapter 61, Vernon's Texas Codes Annotated, Human Resources Code.

§81.1 (203.01.01.001). Responsibility. The following are the agency's major duties and functions:

(1) *to carry on a continuing study of the problem of juvenile delinquency in this state and to focus public attention on special solutions to this problem;*

(2) *to cooperate with all existing agencies, and to encourage the establishment of new agencies, both local and statewide, if their object is services to delinquent and predelinquent youth of this state;*

(3) *to assist local authorities of any county or municipality when requested by the governing body thereof in the developing, strengthening, and coordinating educational, welfare, health, recreational, or law enforcement programs which have as their object the prevention of juvenile delinquency and crime;*

(4) *to administer the diagnostic treatment, training, and supervisory facilities and services of the state for delinquent children committed to the state, and manage and direct all institutions and facilities under its jurisdiction;*

(5) *to assist local communities by providing services and funding for programs for the predelinquent and delinquent through contracts with local public and private nonprofit entities which volunteer for such assistance when funds are available for this purpose.*

[The Texas Youth Council is charged by Article 5143d, Texas Civil Statutes, with the responsibility to manage programs for the care, rehabilitation, and control of children committed to or placed with the Texas Youth Council. The Texas Youth Council is also charged with the responsibility to assist communities with services and funding of programs for delinquent and predelinquent children in the prevention of delinquency as funds are made available.]

Doc. No. 803039

Student Rights

The Texas Youth Council proposes to amend §81.11 (203.01.02.001), pertaining to the rights of youth who are in the care, custody, and control of the agency. The revised list of rights includes the substantive points of the current list and expands it to include the areas of equal treatment, free speech and expression, religious freedom, mail and telephone, earnings and monetary gifts, right to be informed and know the policies and rules that affect him or her, and accuracy and fairness in decision making. The existing rights pertaining to protection from physical and psychological harm and basic and necessary medical and dental care

have been made more distinct. Further, the proposed amendment includes a discussion of each right to amplify or qualify the practice of the right for students in the care, custody, and control of the agency.

The agency has determined that the proposed amendment has no fiscal implications for the state or units of local government.

Inquiries or comments concerning this proposed amendment should be directed to Ron Allen, executive assistant, Texas Youth Council, P.O. Box 9999, Austin, Texas 78766, telephone (512) 452-8111, within 30 days of this publication.

These amendments are proposed under the authority of Chapter 61, Vernon's Texas Codes Annotated, Human Resource Code.

§81.11 (203.01.02.001). Student Rights. Each youth committed to the care and custody of TYC shall be accorded certain basic rights. If a student feels that TYC in the administration of its programs, has violated one or more of his basic rights, or in some way has treated him unfairly, abusively, or neglectfully, he may initiate action to remedy his situation and may expect staff assistance in doing so. The basic rights accorded each TYC student are not absolute, but may be limited to the extent reasonably necessary for TYC to discharge its statutory responsibilities with respect to public protection, treatment, and care and supervision. [Each child committed to the Texas Youth Council shall retain all civil rights accorded him as a citizen of the United States and the State of Texas except those which are necessarily and by due process of law denied him for his care, custody, control, or training. Such rights include but are not limited to:]

(1) *Equal treatment.*

(A) *Right. Students have the right not to be discriminated against because of race, sex, language, national origin, physical or other handicaps, religion, or personal opinions.*

(B) *Discussion. The law requires that all citizens be treated equally, and not discriminated against because of their status. This does not mean that programmatic decisions cannot be made based on the particular needs of the individual.*

(2) *Free speech and expression.*

(A) *Right. Students have the right to express themselves freely, so long as their expressions do not interfere with the safe and orderly operation of the program, or except where totally free expression would be inappropriate due to the unique vulnerability of children to improper influences.*

(B) *Discussion.*

(i) *Foreign languages. Spanish-speaking students should be allowed to speak their own language at any occasion where English is allowed, except during classroom discussion, organized activities such as group, or in answer to a staff member who does not understand Spanish.*

(ii) *Symbolic expression. This relates to non-verbal expression, such as the display of posters, wearing of slogans, mottoes, or emblems on clothing. Such non-verbal expressions are permissible so long as they do not advocate illegal or immoral conduct, hold individuals or groups up to ridicule, or reinforce delinquent subcultural values.*

(iii) **Criticism.** As TYC has recognized through its student remedies system, students have the right to engage in responsible criticism of agency policies or practices. Students do not have the right to engage in personal abuse of others, disrupt program activities, or incite others to do so.

(3) Religious freedom.

(A) **Right.** Students have the right to participate in religious activities of their choice, subject to the availability of such activities. The Texas Youth Council shall not compel students to participate in any religious activity.

(B) **Discussion.** TYC will make reasonable efforts to provide religious activities consistent with the religious beliefs and preferences of its students.

(4) Personal possessions.

(A) **Right.** Students have the right to keep and use personal possessions so long as these possessions do not endanger the safety of staff and students, disrupt programs and activities, encourage delinquent subcultural values, or appeal to the unique vulnerability of children to improper influences.

(B) Discussion.

(i) Contraband includes:

(I) anything whose possession is a crime under municipal ordinances or state or federal law, including solvent inhalants, drugs, and alcohol;

(II) narcotics paraphernalia;

(III) items which can be used, made, or adapted to use as weapons;

(IV) pictures which depict sexually explicit male or female nudity or sexual acts, including magazines or periodicals which routinely publish such pictures;

(V) items such as posters which convey prohibited expressions. See free speech and expression, above.

(ii) **Searches.** Routine searches to detect contraband within a residential program may be conducted without probable cause, so long as the search is conducted at a reasonable time and in a reasonable manner. The presence of the student whose property is being searched is preferable when routine searches are conducted. However, contraband which is in plain view may be confiscated at any time. Strip searches may be conducted when a student arrives at a residential program following initial commitment, an unauthorized absence, or transfer to a more secure facility. Students may otherwise be strip-searched only when there is probable cause to believe the student is in possession of contraband. Strip searches shall be conducted by staff members of the same sex as the student being searched, in a manner which causes a minimum of embarrassment to the student. Body cavity searches are permissible only on probable cause, and must be conducted by medical personnel.

(iii) **Seizures and disposition of seized contraband.** Seized contraband which consists of property which is prohibited by law must promptly be either turned over to law enforcement authorities or destroyed in the presence of at least two staff members, with documentation of the disposition placed in the student's file. Seized contraband consisting of sexually explicit pictures, narcotics paraphernalia, or items which advocate delinquent subcultural values shall be either destroyed

or forwarded to the student's parent or managing conservator when the property is seized, at the student's option. Other items seized may be returned to the student upon release from the residential program.

(iv) **Student locks.** Students may keep locks on their personal lockers, suitcases, etc., only if staff members have a key or combination to the lock.

(v) **Stereos, radios, TVs, musical instruments, bicycles, and other large, expensive, or potentially disruptive items** may be restricted based on considerations of facility safety (space limitation, fire hazards) or order (liability for loss or destruction, cost of return transportation, disturbance to other residents).

(5) Visitors.

(A) **Right.** Students have the right to receive visitors, limited only by considerations of facility security and order. Students have a corresponding right to refuse to receive visitors.

(B) **Discussion.** Residential programs may place reasonable restrictions on the number of visitors and time and place of visits as necessary to ensure the safe and orderly operation of the program. Limitations on the right to receive visitors shall not be imposed for disciplinary reasons. Visitors may be searched for contraband only where probable cause exists to suspect the presence of contraband, and only to the extent necessary to assure that no contraband is present. Visitors who are disorderly, intoxicated, or create disturbances may be prohibited from visiting or asked to leave the premises.

(6) **Mail and telephone: right.** Students have the right to correspond freely through the mail. Staff may not read incoming or outgoing mail, but may open mail in the student's presence to inspect it for contraband. Students will be provided access to telephones to the extent possible within physical plant limitations, with equal opportunities for telephone use being provided to all residents within a facility. Students will have access to a telephone in the event of an emergency. The Youth Council does not have a responsibility to pay for incoming or outgoing long distance calls, except in an emergency.

(7) Earnings and monetary gifts.

(A) **Right.** The Youth Council may limit the amount of money in a student's personal possession, but may not withdraw money from a trust fund without the student's consent.

(B) **Discussion.** When students damage or destroy property belonging to the state, other students, or staff, it is tempting to make restitution by withdrawing money from the student's trust fund. However, only the student can withdraw money from the trust fund: for anyone else to do so without the student's consent constitutes theft. If a student consents to pay for damage which he has caused to property, he may do so, but he cannot be forced to do so. A student may be required to perform work restitution by doing work reasonably comparable in value to the damage caused by the student's conduct.

(8) Protection from Physical and Psychological Harm.

(A) **Right.** Students have the right to be protected from physical and psychological harm. They have the right to adequate food, clothing, and shelter, and shall not be deprived of food or sleep in the interests of treatment of discipline. Students shall not be ad-

ministered tranquilizers and other drugs in the interest of discipline or order. Repetitive purposeless, degrading make-work is prohibited. Corporal punishment is prohibited.

(B) *Discussion.* Every TYC staff member has an affirmative obligation to take every reasonable precaution to protect students from harm. This obligation may take many forms, from ensuring adequate coverage on the dorm to providing a qualified lifeguard at poolside. Some children will suffer injury: that is an inevitable part of growing up. The agency's obligation is to ensure that it does nothing which contributes to or causes such injury.

(9) *Medical and dental care.*

(A) *Right.* Students have the right to basic and necessary medical and dental care, both routine and emergency.

(B) *Discussion.* Students have the right to receive prompt treatment of their legitimate medical and dental needs.

(10) *Access to attorneys.*

(A) *Right.* Students have the right to confer with their attorneys in privacy, with appropriate restrictions on the time and place of meetings except in legitimate emergencies.

(B) *Discussion.* The principal difference between attorneys and other visitors is the student's right to confer in absolute privacy with the attorney. Thus, it is permissible to require visitors who assert that they are attorneys to produce some evidence of the fact, such as a State Bar membership card.

(11) *Right to be informed.*

(A) *Right.* Students have the right to be informed of all rights, policies, procedures, and rules affecting them as TYC students and as participants in specific TYC programs.

(B) *Discussion.* A basic principle of law holds that it is unfair to punish a person for conduct which the person did not know was prohibited. Of course, the law presumes that everyone knows that certain conduct is prohibited—that it is wrong to hit another person or take someone's property, for example. Within TYC programs there are many rules which a student cannot be expected to know without being told: when and where smoking is permitted, what to do with dirty clothes, levels systems, behavior in group, criteria for placement in security, eligibility for release. Students have a right to be informed of all the "rules of the game" by which they will be affected.

(12) *Accuracy and fairness in decision making.*

(A) *Right.* Students have the right to expect accuracy and fairness in all decisions made concerning them. The degree of procedural protection afforded a student shall be consistent with the requirements of due process of law.

(B) *Discussion.* Students have the right to be free from decisions which are merely arbitrary or based on an erroneous idea of the facts. The more a decision affects a student's rights, the greater the degree of safeguards which are required to ensure that the decisions were made fairly, based on accurate facts.

(13) *Confidentiality of records.*

(A) *Right.* Students have the right to expect that their records will not be released to anyone other than:

(i) the staff and professional consultants of the Youth Council;

(ii) the judge, probation officers, and professional staff or consultants of the juvenile court;

(iii) an attorney for the student;

(iv) with leave of the juvenile court or any other person, agency, or institution having a legitimate interest in the work of the Texas Youth Council.

(B) *Discussion.* Confidentiality of records is an important concept in juvenile law. Any information which could directly or indirectly identify an individual as a TYC student, should be disclosed only to authorized persons or agencies.

(14) *Right to express grievances and appeal decisions: right.* Students have the right to have access to a method of resolving grievances which is prompt and fair, without fear of reprisal. Students have the right to appeal to the executive director from any decision made regarding them.

(1) the right to services which provide living, learning, and working skills;

(2) the right to a residential placement which can reasonably meet the needs of the child and the public;

(3) the right to receive all services characterized by humaneness, consideration, and kindness;

(4) the right to appeal decision made with regard to him to the executive director in accordance with the procedure for appeal to the executive director;

(5) the right to keep and use their personal possessions so long as they pose no threat to other children or staff and cause no disturbance and disruption;

(6) the right to legal counsel;

(7) the right to visitation by family and friends limited only in each residential placement by such rules as may be promulgated to provide for control of visitors and restrict the traffic of contraband materials;

(8) the right to express grievances in accordance with the grievance procedure.]

Doc. No. 803040

Standards for Service Delivery

The Texas Youth Council is proposing §§81.21-81.37 (203.01.03.002-.018) on standards for services delivery for the facilities and programs operated by the agency. As proposed, these sections will constitute the primary requirements for the treatment programs of the agency. Additionally, they set requirements for family involvement, discipline, security, nutrition, clothing, shelter, and medical and dental services.

The services and related programs represented by these standards and requirements are currently being provided by the agency. Their adoption will create no additional costs to the state or local governments.

Written comments and suggestions are invited and may be sent to Ron Allen, executive assistant, Texas Youth Council, P.O. Box 9999, Austin, Texas 78766, telephone (512) 452-8111, within 30 days from this publication.

These sections are proposed under authority of Chapter 61, Vernon's Texas Civil Statutes Annotated, Human Resource Code.

§81.21 (203.01.03.002). Skills-Based Treatment Program.

The primary goal of the Texas Youth Council's treatment program is to deliver basic academic, career development, and interpersonal skills to TYC students.

§81.22 (203.01.03.003). Basic Skills. It is the policy of the Texas Youth Council to establish standard definitions of the basic skills to be delivered to students. Skills one to five are academic skills, six to eight are career development skills, and nine to 15 are interpersonal skills.

(1) **Learning to learn.** The ability to acquire, study, and digest new learning material.

(2) **Reading.** The ability to decipher and comprehend printed material.

(3) **Spelling.** The ability to form words from alphabetic letters according to accepted usage.

(4) **Writing.** The ability to represent verbal communications graphically in either cursive or print fashion according to accepted usage.

(5) **Math.** The ability to solve numerical problems. This skill includes the ability to apply mathematical knowledge in everyday situations.

(6) **Career exploration.** The ability to comprehend the various career opportunities available in contemporary society and to increase the number of job opportunities that are available to the student. This skill includes an orientation to the student's future role as a paid employee.

(7) **Job selection.** The ability to prioritize personal values and to make job choices that are most related to those values as well as to the student's interests and skills.

(8) **Job preparation.** The ability to prepare for the job of the student's choice and to acquire the necessary vocational skills to perform that job. This skill includes the ability to prepare for and participate in a job interview and to complete a job application form. This skill also includes the ability to function effectively on the job.

(9) **Greeting.** The ability to communicate interest and attentiveness in greeting another person. This skill includes the abilities to say hello in a friendly manner and to shake hands firmly with another person.

(10) **Politeness.** The ability to say thank you to another person when another person does something for or gives something to the student. The skill also includes the ability to say you're welcome when thanked by another person and the ability to say please when making a request.

(11) **Attending.** The ability to pay attention to the verbal communication and behavior of others and to convey attentiveness.

(12) **Responding to self.** The ability to explore and understand personal feelings and behavior and the reasons for such feelings and behavior. This skill also includes the ability to recognize and describe one's own role in a problem situation.

(13) **Responding to others.** The ability to explore and understand others' feelings and behavior and the reasons for such feelings and behavior. This skill also includes the ability to recognize and describe to another person his role in a problem situation.

(14) **Initiating with self.** The ability to act on personal understanding by developing an appropriate course of action through systematic problem solving techniques. This skill also includes the ability to develop a plan to implement that course of action.

(15) **Initiating with others.** The ability to act on personal understanding by helping others develop an appropriate

course of action through systematic problem solving techniques. This skill also includes the ability to assist in the development of a plan to implement that course of action.

§81.23 (203.01.03.004). Academic Education. The Texas Youth Council shall deliver basic academic skills to its students. The following requirements shall be met:

(1) Within 30 days following admission to TYC, each student will have an individualized program plan (IPP), such plan to include an academic education section (individual education plan), which will be regularly updated until the student's discharge from TYC.

(2) Each student enrolled in an academic program will receive an initial orientation to the program.

(3) All staff will provide students with appropriate reinforcement and recognition for academic accomplishments and improvement in academic performance.

(4) All staff will work with students on the application of skills acquired in the academic program to other program areas and to everyday situations.

(5) Academic programs will be operated in compliance with the standards of appropriate external regulatory agencies.

§81.24 (203.01.03.005). Career Development. The Texas Youth Council shall deliver basic career development skills to its students. The following requirements and criteria shall be met:

(1) Within 30 days following admission to TYC, each student will have an individualized program plan (IPP), such plan to include a career development section, which will be regularly updated until the student's discharge from TYC.

(2) Students 15 1/2 years of age and older will be given opportunities to participate in vocational training programs and to receive payment for work performed within the facility or in the community.

(3) Each student enrolled in a career development program will receive an initial orientation to the program. Special provisions will be made for youth in TYC halfway houses, or parole, or in residential contract placement.

(4) All staff will provide students with appropriate reinforcement and recognition for accomplishments and improvements in performance in career development activities.

(5) All staff will work with students on the application of skills acquired in the career development program to other program areas and to everyday situations.

(6) Career development staff and employers of TYC students will share relevant information and will coordinate their efforts with appropriate noncareer development child care staff.

(7) Career development programs will be operated in compliance with standards of appropriate external regulatory agencies.

§81.25 (203.01.03.006). Counseling. The Texas Youth Council shall provide its students with basic interpersonal skills through a balanced program of individual and group counseling. The following requirements shall be met:

(1) Within 30 days following admission to TYC, each student will have an individualized program plan (IPP), such plan to include a counseling section, which will be regularly updated until the student's discharge from TYC.

(2) Each student will participate in individual and/or group counseling consistent with his personal needs.

(3) Each student will receive an initial orientation to the counseling program in which he is involved.

(4) All staff will provide students with appropriate reinforcement and recognition for improved performance in interpersonal skills as they pertain to oneself and to others.

(5) All staff will work with students on the application of interpersonal skills acquired in the counseling program to other program areas and to everyday situations.

(6) Counseling programs will be operated in compliance with the standards of appropriate external regulatory agencies.

§81.26 (203.01.03.007). Physical Education. Within its academic educational programs, the Texas Youth Council shall provide physical educational programs which foster the physical well-being and growth of its students. The following requirements shall be met:

(1) Within 30 days following admission to TYC, each student will have an individualized program plan (IPP), such plan to include a physical education section, which will be regularly updated until the student's discharge from TYC.

(2) Each student enrolled in a physical education program will receive an initial orientation to the program.

(3) All staff will provide students with appropriate reinforcement and recognition for physical education accomplishments and improvements in physical education performance.

(4) All staff will work with students on the application of skills acquired in the physical education program to other program areas and to everyday situations.

(5) Physical education programs will be operated in compliance with the same external standards as academic programs.

§81.27 (203.01.03.008). Recreation. The Texas Youth Council shall provide programs which foster the constructive use of leisure time among its students. The following requirements shall be met:

(1) Students will have opportunities to participate in hobbies, crafts, games, organized sports, and other activities which foster the constructive use of leisure time.

(2) Students will have opportunities to participate in the planning and development of recreational programs.

(3) All staff will provide students with appropriate reinforcement and recognition for recreational accomplishments.

(4) Recreational programs will be operated in compliance with the standards of appropriate external regulatory agencies.

§81.28 (203.01.03.009). Daily Living. Texas Youth Council programs shall be operated so as to ensure the practice of effective personal hygiene and proper grooming among students and the cleanly and orderly maintenance of all living areas. The following requirements shall be met:

(1) Each student will receive an initial orientation to the daily living program and to staff expectations with respect to proper daily living practices.

(2) Daily living staff will instruct students in proper daily living practices and will enforce staff expectations with respect to those practices.

(3) All staff will provide students with appropriate reinforcement and recognition for improved performance in daily living practices.

(4) All staff will work with students on the application of proper daily living practices in other program areas and in everyday situations.

(5) Daily living programs will be operated in compliance with the standards of appropriate external regulatory agencies.

§81.29 (203.01.03.010). Family Involvement. The Texas Youth Council shall provide for the involvement of students' families in its treatment programs. The following requirements shall be met:

(1) Students' families will be involved in the agencies' institutional and community-based treatment programs.

(2) Family involvement will be encouraged by prompt notification of the student's placement location.

(3) Family involvement will be encouraged by notifying families of their visitation rights.

(4) Family involvement will be encouraged through off-campus visiting privileges.

(5) Family involvement will be provided through student furlough programs.

(6) Family involvement will be encouraged by providing non-English speaking families with all necessary information in their native language.

§81.30 (203.01.03.011). Community Involvement. The Texas Youth Council shall provide for the involvement of residents of surrounding communities including youth in all its programs.

(1) A community advisory committee shall be established in each community having a TYC institution or community-based treatment program.

(2) Volunteers shall be sought in each community to provide positive interaction between TYC students and community residents.

§81.31 (203.01.03.012). Discipline. The Texas Youth Council recognizes responsibly administered discipline as an integral part of its treatment programs and will so discipline its students when appropriate. The following requirements shall be met:

(1) All rules and regulations regarding student behavior will be specific and concise and will clearly identify expectations.

(2) During the initial orientation to any TYC program in which he is involved, each student will be thoroughly familiarized with all rules and regulations so that he can understand the reasons for the rules and regulations and is able to behave in accordance with them.

(3) In all instances, disciplinary action will be appropriate for the individual student and the particular situation involved.

(4) Corporal punishment is prohibited.

(5) All staff will be trained in those skills necessary for them to effectively and responsibly discipline TYC students.

(6) All disciplinary policies and procedures will be in compliance with the standards of appropriate external regulatory agencies.

§81.32 (203.01.03.013). Security. The Texas Youth Council, in administering its programs, shall provide for the safety and security of students, staff, and residents of surrounding communities. The following requirements shall be met:

(1) Physical force will be used when necessary for the purpose of restraining students from harming themselves, from harming others, from destroying or damaging property, or from escaping, but not for the purpose of punishment.

(2) Acceptable and unacceptable uses of physical restraint will be clearly identified and defined in writing for all staff.

(3) All instances in which physical restraint is utilized will be reported and thoroughly documented.

(4) For each TYC security unit, there will exist documentation which addresses all matters relating to the operations and programs of the unit, such matters to include:

(A) clearly defined criteria for admission;

(B) personnel eligible to admit;

(C) professional staff involved in a student's stay in the unit;

(D) behavioral expectations and criteria for release;

(E) well-defined monitoring system and line of authority which assures that security operations and programs are carried out in accordance with the document;

(F) security staff specifically trained to work in the unit;

(G) release procedures;

(H) ongoing logging system for behavior and security; and

(I) complete description of the student's daily routine during his stay in the unit.

(5) In all TYC-operated residential programs, visitation policies and procedures will provide for the selective screening of visitors for weapons, drugs, and other contraband.

(6) In all TYC-operated residential programs, policies and procedures for monitoring mail will provide for the selective screening of mail for weapons, drugs, and other contraband. Mail may be opened in the presence of the student to screen for contraband, but reading of student mail by staff is prohibited.

(7) TYC security staff will be trained in those skills necessary for them to function effectively with TYC students. Training of TYC security staff will be delivered in accordance with TYC's minimum training requirements for staff.

(8) Use of local detention and jail facilities shall be governed by policies and procedures in the TYC manuals system.

(9) TYC security units will be operated in compliance with the standards of appropriate external regulatory agencies.

§81.33 (203.01.03.014). Moral Values and Religious Worship. The Texas Youth Council shall provide students with opportunities to develop and internalize a set of personal moral values, and, if they should so desire, to reinforce those values through participation in formalized religious worship.

(1) Each student will have the opportunity to explore and clarify his personal moral values as they pertain to matters of concern to contemporary youth. This requirement does not apply to the parole program.

(2) To the extent feasible, each student will have the opportunity to attend worship services of his choice. This requirement does not apply to the parole program.

(3) To the extent feasible, each student will have the opportunity to relate to a clergyman who represents the religion of his choice. This requirement does not apply to the parole program.

(4) Students will have opportunities to participate in the planning and development of religious programs and activities. This requirement does not apply to the parole program.

§81.34 (203.01.03.015). Nutrition. The Texas Youth Council shall provide for the complete nutritional needs of the students in its care and custody. The following requirements shall be met:

(1) To the extent feasible, students will participate in the planning of menus. This requirement does not apply to the parole program.

(2) To the extent feasible, family-style serving will be implemented in all dining areas. This requirement does not apply to the parole or Crockett Wilderness programs.

(3) To the extent feasible, feeding in the dining area will be limited to no more than six places per table. This requirement does not apply to the parole or Crockett Wilderness programs.

(4) To the extent feasible, tablecloths, place mats, centerpieces, and other similar items which reflect and encourage a family-style dining atmosphere will be used in dining areas. This requirement does not apply to the parole or Crockett Wilderness programs.

(5) TYC food service staff will be trained in those skills necessary for them to function effectively with TYC students.

(6) Food service programs will be operated in compliance with the standards of appropriate external regulatory agencies.

§81.35 (203.01.03.016). Clothing. The Texas Youth Council shall provide adequate and appropriate clothing for its students. The following requirements will be met.

(1) Each student will have at least three complete changes of outer clothing and five complete changes of under clothing at all times. This requirement does not apply to the parole program, although parole students will be provided clothing if needed.

(2) At any given time, clothes worn by youth will be appropriate to the particular season of the year. This requirement applies to the parole program only when clothing is purchased by parole.

(3) To the extent feasible, each student's clothing will reflect present fashion trends and personal style preferences. This requirement applies to the parole program only when clothing is purchased by parole.

(4) All policies and procedures pertaining to the provision of student clothing shall be in compliance with the standards of appropriate external regulatory agencies.

§81.36 (203.01.03.017). Shelter. The Texas Youth Council shall provide for the adequate and appropriate shelter and living space of its students. The following requirements will be met:

(1) All living areas will be made as homelike as possible through the use of pictures, hanging lamps, plants, homelike furniture, and other similar items. This requirement does not apply to the parole or Crockett Wilderness program.

(2) To the extent feasible, student input will be sought and considered when painting or other improvements are being planned for a given living area. This requirement does not apply to the parole program.

(3) The living area for each student will be as private and as individualized as is structurally possible. This requirement does not apply to the parole program.

(4) Within reasonable guidelines, students will be allowed to personalize their rooms or living areas. This requirement does not apply to the parole program.

(5) All living areas will be maintained in accordance with the standards of appropriate external regulatory agencies.

§81.37 (203.01.03.018). Medical and Dental Services. The Texas Youth Council shall provide basic professional medical and dental care for its students. The following requirements shall be met:

(1) Each student will receive thorough medical and dental examinations upon admission to TYC.

(2) Each student will receive an initial orientation to the medical and dental program and the procedure for gaining access to medical services.

(3) Deficiencies found through medical and dental examinations administered upon admission to TYC will receive immediate follow-up attention upon the student's arrival at the facility of placement.

(4) Each student will receive appropriate medical and dental services throughout his stay in any TYC program or facility.

(5) Emergency first aid services will be available for all students. This requirement does not apply to the parole program.

(6) Arrangements will be made with community hospitals and related community medical facilities to provide major medical care on a 24-hour basis. This requirement does not apply to the parole program.

(7) Psychotropic drugs will not be administered for the purpose of program management or control. The use of psychotropic drugs will be monitored.

(8) Family planning services will be available to all students by referral to an appropriate community organization.

(9) Medical services either at the facility or by referral to an appropriate community organization shall be provided to meet health care needs of female students.

(10) TYC facilities shall comply with federal and state laws pertaining to the acquisition, storage, and administration of prescription drugs.

(11) Within 30 days following admission to TYC, each student will have an individualized program plan (IPP), such plan to include a medical and dental section, which will be regularly updated until the student's discharge from TYC.

(A) The medical and dental section of the IPP will reflect deficiencies found through admission physical and dental examinations.

(B) The medical and dental section of the IPP will include specific objectives to meet the needs.

(12) Medical and dental programs will be operated in compliance with the standards of appropriate external regulatory agencies.

Issued in Austin, Texas, on April 25, 1980.

Doc. No. 803042 Ron Jackson
Executive Director
Texas Youth Council

Proposed Date of Adoption: June 2, 1980
For further information, please call (512) 452-8111.

Part V. Texas Board of Pardons and Paroles

Chapter 141. General Provisions

Board of Pardons and Parole

The Texas Board of Pardons and Paroles is proposing the amendment of §141.3 (205.01.01.003), first adopted by the agency on December 30, 1975. This section deals with selection of the agency chairman and the amendment would delete language reflecting the policy that the board rotate the chairmanship so that each member occupies that position during the last two years of his or her term.

The executive director of the Board of Pardons and Paroles has determined that the amendment entails no adverse fiscal effects.

The Texas Board of Pardons and Paroles proposes to adopt the amendment 30 days after publication.

Public comment on this amendment is invited. Any such comment shall be accepted for 20 days following publication and should be directed to Charles E. Walker, Jr., general counsel, Board of Pardons and Paroles, Room 711, Stephen F. Austin Building, P.O. Box 13401, Austin, Texas 78711.

This amendment is proposed pursuant to the authority of Article 42.12, Sections 1, 12, and 13, Texas Code of Criminal Procedure.

§141.3 (205.01.01.003). Chairmanship. The chairmanship is decided by majority vote of the members and is for a term of two years and until his or her successor is qualified (Code of Criminal Procedure, Article 42.12, Section 13). [It is the policy of the board to rotate the chairmanship so that each member will occupy that position for the last two years of his or her term.] The chairman acts as spokesman for the board after obtaining the views and collaboration of his or her colleagues whenever possible and practicable. A majority of the board may elect a temporary chairman in the event the chairman is incapacitated or for any reason fails to serve a full term.

Issued in Austin, Texas, on April 24, 1980.

Doc. No. 803028 Connie L. Jackson
Chairman
Texas Board of Pardons and Paroles

Proposed Date of Adoption: June 2, 1980
For further information, please call (512) 475-3675.



NONCODIFIED

Coordinating Board, Texas College and University System

Administrative Council

General Provisions 251.20.01.011

The Administrative Council of the Coordinating Board, Texas College and University System, is proposing to amend Rule 251.20.01.011 to change the date for certification of Advisory Committee members during election years.

The proposed amendment has no fiscal implications to the state or to units of local government.

Public comments on the proposed amendment to Rule .011 are invited. Comments may be submitted for a period of 30 days from the date of publication by telephoning the office of the Administrative Council at (512) 475-2033 or by writing to the Administrative Council at P.O. Box 12788, Austin, Texas 78711.

This amendment is proposed under the authority of Senate Bill 95, Acts of the 65th Legislature, Regular Session, 1977.

.011. Election Process—Advisory Committee. The election process for the elections of the Advisory Committee members every two years shall be as follows:

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

(3) The president or chief executive officer shall then certify to the Administrative Council through the Coordinating Board staff the institution's Advisory Committee member on or before **November** [December] 1.

Doc. No. 802874

251.20.01.014

The Administrative Council of the Coordinating Board, Texas College and University System, is proposing to amend Rule 251.20.01.014 to change the number of members constituting a quorum of the Advisory Committee.

The proposed amendment has no fiscal implications to the state or to units of local government.

Public comments on the proposed amendment to Rule 251.20.01.014 are invited. Comments may be submitted for a period of 30 days from the date of publication by telephoning the office of the Administrative Council at (512) 475-2033 or by writing to the Administrative Council at P.O. Box 12788, Austin, Texas 78711.

This amendment is proposed under the authority of Senate Bill 95, Acts of the 65th Legislature, Regular Session, 1977.

.014. Meetings—Advisory Committee. The Advisory Committee shall meet annually in December and at such other times and places as called by the chairman. A **25% atten-**

dance [majority] of the membership of the committee constitutes a quorum.

Issued in Austin, Texas, on April 10, 1980.

Doc. No. 802875

James McWhorter, Executive Secretary
Administrative Council
Coordinating Board, Texas College and
University System

Proposed Date of Adoption: June 27, 1980

For further information, please call (512) 475-2033.

Texas Education Agency

Teacher Certification

Paraprofessional Certification 226.62.25.010

The Texas Education Agency proposes to amend Rule 226.62.25.010 concerning certification of paraprofessionals to delete subsection (a)(2) of the rule. This subsection directed the Commission on Standards for the Teaching Profession to recommend standards for certification of paraprofessionals to be effective for the 1980-81 school year. Such standards have been recommended by the commission, and are contained in proposed Rules .020-.100.

The Texas Education Agency does not anticipate the proposed amendment to Rule .010 will have state or local fiscal implications.

Public comment on the proposed amendment to Rule .010 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner for Policies and Services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701.

All requests for a public hearing on proposed rules submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

This rule amendment is proposed under the authority of Section 16.056, Texas Education Code.

.010. Policy [General Provisions].

[(a) Policy.]

[(1)] Each person employed in the public schools of this state who is assigned to a position as an educational aide or educational secretary must be certified according to the certification requirements or standards for each position as established by rule adopted by the State Board of Education.

[(2) Education aides and educational secretaries shall be safeguarded for the 1979-80 school year. Permanent certification standards shall be recommended by the Commission on Standards for the Teaching Profession to the State Board of Education by April 1, 1980, to be effective for such personnel employed for the 1980-81 school year.]

[(b) Administrative procedure. (Reserved for expansion.)]

Doc. No. 803181

226.62.25.020, .030, .040, .050, .060, .070, .080, .090, .100

The Texas Education Agency proposes to adopt new Rules 226.62.25.020, .030, .040, .050, .060, .070, .080, .090, and .100 concerning standards for paraprofessional certification. The proposed standards have been recommended to the State Board of Education by the Commission on Standards for the Teaching Profession.

The rules set out requirements for certificates for educational aides I, II, and III, and educational secretaries I, II, and III. Each person employed as a paraprofessional shall be required to hold a paraprofessional certificate. Individuals employed as educational aides or educational secretaries by a school district for the 1979-80 school year will be safeguarded. Certificates will be issued for the level of assignment the individual held in 1979-80.

The Texas Education Agency estimates the cost to the state for implementation of Rules .020, .030, .040, .050, .060, .070, .080, .090, and .100 at approximately \$215,000 for 1980-81 and at approximately \$71,800 for 1981-82 and subsequent years. These estimates are for the certification of an estimated 43,000 aides and secretaries, all of whom will be certified in the first year, at an estimated cost of about \$5.00 per certificate. The agency anticipates processing about 14,300 certificates per year after the first year. There will be some cost to local school districts also, since each paraprofessional must be recommended for certification by the employing school superintendent. This cost will vary from district to district depending on the number of paraprofessionals employed.

Public comment on the proposed adoption of Rules .020, .030, .040, .050, .060, .070, .080, .090, and .100 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner for Policies and Services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701.

All requests for a public hearing on proposed rules submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

These rules are proposed under the authority of Section 16.056(g), Texas Education Code.

.020. Procedures in General.

(a) Three pay groups are activated in the Texas Public Education Compensation Plan. Two kinds of paraprofessionals are described in each of the three pay groups: educational aides and educational secretaries.

(b) School district administrators have the authority and responsibility to determine the number of paraprofessionals and level of job performance desired for the operation of the school district's program. They are also responsible for preparing accurate job descriptions for each assignment, classifying each assignment, and filling these assignments with qualified personnel in accordance with the provisions of Section 16.056, (g), Texas Education Code, and these rules.

(c) Individuals employed as educational aides or educational secretaries by a school district for the 1979-80 school

year will be safeguarded. Certificates will be issued for the level of assignment the individual held in 1979-80.

(d) All paraprofessional certificates shall be permanent.

(e) An appropriate certificate shall be issued to a qualified individual who is recommended by an employing superintendent or other authorized representative of the district. The school district shall submit the following materials to the Texas Education Agency, Division of Teacher Certification:

(1) an accurately completed application and recommendation for educational aide or educational secretary; and

(2) a \$2.00 fee (money order or cashier's check).

(f) Upon employment in a school district, individuals with paraprofessional experience in other states must have that experience verified on a teacher service record.

.030. *Requirements for Educational Aide I.* The applicant for an educational aide I certificate shall:

(1) be a high school graduate or hold a GED certificate;

(2) have experience related to working with students or parents as approved by employing superintendent. Experience may be work in church-related schools, day camps, youth groups, private schools, licensed day-care centers, or similar experience; and

(3) be recommended by the employing superintendent.

.040. *Requirements for Educational Aide II.* The applicant for an educational aide II certificate shall:

(1) be a high school graduate or hold a GED certificate;

(2) have two years of experience as an educational aide I or a minimum of fifteen semester hours of college credit with some emphasis on child growth and development or similar background; or have demonstrated proficiency in a specialized skill area as determined by the local school district;

(3) have experience related to working with students or parents as approved by the employing superintendent; and

(4) be recommended by the employing superintendent.

.050. *Requirements for Educational Aide III.* The applicant for an educational aide III certificate shall:

(1) be a high school graduate or hold a GED certificate;

(2) have three years of experience as either an educational aide I or II; or 30 semester hours of college credit with some emphasis on child growth and development or related areas;

(3) have experience related to working with students or parents as approved by the employing superintendent; and

(4) be recommended by the employing superintendent.

.060. *Requirements for Educational Secretary I.* The applicant for an educational secretary I certificate shall:

(1) be a high school graduate or hold a GED certificate;

(2) have appropriate clerical or secretarial experience or background as approved by employing superintendent; and

(3) be recommended by the employing superintendent.

.070. Requirements for Educational Secretary II. The applicant for an educational secretary II certificate shall:

- (1) be a high school graduate or hold a GED certificate;
- (2) have two years of experience as an educational secretary I; or 15 semester hours of college credit with some business orientation or equivalent business school background; or three years of general clerical/secretarial experience;
- (3) have appropriate clerical or secretarial experience or background as approved by employing superintendent; and
- (4) be recommended by the employing superintendent.

.080. Requirements for Educational Secretary III. The applicant for an educational secretary III certificate shall:

- (1) be a high school graduate or hold a GED certificate;
- (2) have 30 semester hours of college credit with some business orientation or equivalent business school training; or successful demonstration of seven areas of competency as identified in the professional standards program of the National Association of Education Office Personnel, including competencies in typing, transcription, filing procedures, office records, management, and business writing; or five years of general clerical/secretarial experience;
- (3) have three years of general clerical/secretarial experience; or three years of experience as either an educational secretary I or II; and
- (4) be recommended by the employing superintendent.

.090. Assignments in Specialized Areas. Each person employed as a paraprofessional shall be required to hold a paraprofessional certificate. Paraprofessionals assigned to specialized areas, such as, but not limited to, vocational education, special education, and title programs, shall meet eligibility requirements to be assigned to those specialized areas; however, no additional certification beyond a paraprofessional certificate will be required for assignment in specialized areas.

.100. Role Descriptions. School districts shall utilize the following guidelines for assignment of educational aides and secretaries:

(1) **Educational aide I.** Assigned to and performs routine tasks under the direction and supervision of a certified teacher or teaching team. Releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating. Assists teacher in clerical operations. Assists teacher in supervising students in routine movement from one recreational activity to another. Assists in supervising playground, bus duty, and lunchroom. Assists teacher in instructional media preparation and usage. Duplicates instructional materials for teachers. Performs classroom clerical operations under the supervision of a certified teacher; or performs equivalent activities as determined by the local school district.

(2) **Educational aide II.** Assigned to and performs tasks under the general supervision of a certified teacher or teaching team. Releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating. Provides assistance to teacher in preparing and using instructional materials. Conducts drills and exercises as directed by the teacher. Assists and scores objective measurement instruments. Assists in working with individual students and with groups. Duplicates materials; records grades and attendance; prepares instructional aids including displays and mock-ups; assists with play area activities; assists with operation and use of educational media; assists in testing routines; works with individual students in drills and exercises; conducts group drills and exercises; assists students with programmed or precise units of instruction; or performs equivalent activities as determined by the local school district.

(3) **Educational aide III.** Performs and assumes responsibilities for tasks under the general guidance of a certified teacher or teaching team. Releases the teacher from routine tasks and participates in selecting, planning, organizing, and evaluating. Assists the teacher in implementing methodology and using instructional media to yield an educational environment for all students. Assists teacher with instructional activities. Works with individuals or groups of students in a variety of educational experiences. Relieves teacher of selected exercises and instructional drills with students; or performs equivalent activities as determined by the local school district.

(4) **Educational secretary I.** Performs assigned routine clerical tasks under direction and supervision of professional staff. Performs tasks such as routine filing in general office operation; maintains records as directed—attendance, student transcripts, reports, stencils, letters, and documents; operates office equipment—issues consumable teaching and office supplies and maintains supply inventory; and performs other duties as assigned at the file clerk level; or performs equivalent activities as determined by the local school district.

(5) **Educational secretary II.** Performs assigned clerical tasks under general supervision of professional personnel; performs tasks such as functions of secretary I; takes dictation in shorthand or other forms of speedwriting; operates electronic transcription equipment; schedules appointments, conferences, and interviews; assumes some limited supervisory functions; and does other assigned duties at this level, such as bookkeeping operations; or performs equivalent activities as determined by the local school district.

(6) **Educational secretary III.** Performs and assumes clerical/secretarial tasks under general guidance of professional personnel, including preparation of correspondence, reports, requisitions, and administration and district calendars; makes routine decisions in accordance with established priorities and policies; accepts responsibilities for making office reports and supervising the office operations; is capable of fulfilling the functions of secretary I and II; performs other duties assigned at educational secretary III level, which may include establishing and maintaining fiscal accounts, maintaining payroll, attending to insurance matters; and operating technical business machines; or performs equivalent activities as determined by the local district.

Doc. No. 803182

Rules and the Rulemaking Process

Rules of the Texas Education Agency

226.93.01.010, .020, .030, .040, .050

The Texas Education Agency proposes to amend Rules 226.93.01.010, .020, .030, .040, and .050 concerning rules and the rulemaking process. The agency proposes to consolidate what have in the past been two distinct, though correlated, sets of rules, the policies of the State Board of Education, and administrative procedures of the commissioner of education. The agency proposes instead to have one set of rules which will incorporate both general policy directives of the board and the regulations necessary for policy implementation. All rules will be adopted by the State Board of Education.

Rules .010 and .020 define "rule" and "policy." Material concerning adoption, amendment, or repeal of a rule is moved from Rule .020 to Rule .030 with minor editorial changes. Similarly, material in Rules .030 and .040 is moved to Rules .040 and .050, with the word "rule" used instead of "policy" or "administrative procedure." Material previously in Rule .050 is moved to proposed new Rule .070.

The Texas Education Agency does not anticipate the proposed amendments of Rules .010, .020, .030, .040, and .050 will have state or local fiscal implications.

Public comment on the proposed amendments to Rules .010, .020, .030, .040, and .050 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner for Policies and Services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701.

All requests for a public hearing on proposed rules submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

These rule amendments are proposed under the authority of Sections 11.02(b) and 11.24(a)-(b), Texas Education Code.

.010. Policy: General Description of Texas Education Agency Rules [State Board of Education Policies].

(a) **"Rule"** means any agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedure or practice requirements of an agency. The term includes the amendment or repeal of a prior rule but does not include statements concerning only the internal management or organization of any agency and not affecting private rights or procedures. (6252-13a, Section 3, (7), *Vernon's Texas Civil Statutes*.)

(b) To increase clarity and ensure completeness, Texas Education Agency rules, including policies, as adopted by the State Board of Education, shall be accompanied by relevant statutory citations where appropriate.

(c) Rules submitted to the Office of the Secretary of State for publication in the *Texas Register* shall conform to such requirements for submission as may be promulgated by the Secretary of State.

[The policies of the State Board of Education are the statements of the board regarding the discharge of its legal responsibilities as the governing body of the Texas Education

Agency for the public school system of Texas. As expressed intentions of the board, policies direct and provide a framework by which administrative procedures may be developed and carried out through the commissioner of education.]

.020. [Adoption and Amendment of] State Board of Education Policies.

(a) **"Policy"** means a statement expressing the board's intentions on a given subject. It is a general guide designed to convey the direction in which the board desires to move and to provide a framework within which specific procedural decisions can be made.

(b) Policy statements shall be adopted, or amended, as appropriate and included among the rules of the Texas Education Agency. Procedures for adoption or amendment of policy statements are the same as those provided for adoption and amendment of rules.

[Policy. Policies may be adopted or amended under the following conditions. Each member of the board shall be furnished a copy of a proposed new policy or a proposed amendment in the preliminary and official agendas for the meeting at which it is to be considered and after proper notice has been given in the *Texas Register*. If a substantial revision as determined by a board committee is to be considered for the proposed amendment other than how it was printed in the agenda, consideration for final action by the board shall not be prior to the succeeding board meeting. Proposed State Board of Education policies or amendments to policies are listed in the agendas as "adoption of policy" or "amendment to policy." An affirmative vote by a majority of the board membership is required for the adoption of a new policy or policy amendment. A new or amended policy shall be effective 20 days after it appears as passed by the board in the *Texas Register* or on a later date otherwise specified.]

.030. Adoption, Amendment, and Repeal of Texas Education Agency Rules. [Emergency Policy.] Rules may be adopted, amended, or repealed under the following conditions. Each member of the board shall be furnished a copy of a proposed new rule or a proposed amendment or repeal in the preliminary and official agendas for the meeting at which it is to be considered and after proper notice has been given in the *Texas Register*. If a board committee determines that a substantial revision of the material as presented in the agenda shall be considered, final action by the board shall not be prior to the succeeding board meeting. An affirmative vote by a majority of the board membership is required for the adoption, amendment, or repeal of a rule. A new or amended rule shall be effective 20 days after it has been filed with the secretary of state as an adopted rule or on a later date otherwise specified. [Policy. The State Board may adopt without prior notice or hearing an emergency policy. The policy would be in effect for 120 days unless renewed for an additional 60 days. Immediately after adoption, the commissioner will file with the secretary of state for publication of the policy and a written reason for its adoption which will cite the danger to the public health, safety, or welfare affecting the public schools of the state. The emergency policy will then be placed with appropriate notice on an agenda of the State Board of Education for adoption as a permanent policy.]

.040. Emergency Rule. The State Board may adopt without prior notice or hearing an emergency rule. The rule may be in effect for a maximum of 120 days unless

renewed for an additional 60 days. Immediately after adoption, the commissioner will file with the secretary of state for publication the rule and a written reason for its adoption which will cite the danger to the public health, safety, or welfare affecting the public schools of the state. The emergency rule will then be placed with appropriate notice on an agenda of the State Board of Education for adoption as a permanent rule. [Policy. If time does not allow the operation of Rule 226.93.01.030, the commissioner after finding that there is an "imminent peril" to the public health, safety, or welfare affecting the public schools of the state may without prior notice or hearing adopt, promulgate, and cause to be enforced as an emergency rule as if it were a policy or an administrative procedure. The emergency rule and the commissioner's written reasons for its adoption shall be filed with the secretary of state for publication. It will timely be placed before the State Board of Education with appropriate notice for their consideration as a possible addition to the policies and/or administrative procedures of the State Board.]

.050. Emergency Rulemaking Authority Delegated to the Commissioner of Education. [Petition for Adoption or Amendment of a Policy.] *If time does not allow the operation of Chapter 93.01.040, the commissioner after finding that there is an "imminent peril" to the public health, safety, or welfare affecting the public schools of the state may without prior notice or hearing adopt, promulgate, and cause to be enforced an emergency rule. The emergency rule and the commissioner's written reasons for its adoption shall be filed with the secretary of state for publication. It will timely be placed before the State Board of Education with appropriate notice for their consideration as a possible permanent addition to the rules of the Texas Education Agency.* [Any interested person may petition for the adoption or amendment of a policy. A form for petitions may be secured from the associate commissioner for policies and services and the petition shall be submitted to him. In consultation with the persons in the Texas Education Agency who are responsible for the area with which the rule is concerned, the commissioner of education shall evaluate the merits of the proposal to determine whether to initiate policy-making proceedings or to deny the petition. Within 60 days after submission of a petition, the petition shall be either denied in writing, with reasons for the denial stated, or policy-making proceedings shall be initiated.]

Doc. No. 803183

226.93.01.060, .070, .080

The Texas Education Agency proposes to adopt new Rules 226.93.01.060, .070, and .080. These continue the amendments to Rules .010, .020, .030, .040, and .050.

Rule .060 provides that all rules of the Texas Education Agency shall be adopted by the State Board of Education, even in those areas where rulemaking authority has been granted to the commissioner of education by statute. Rule .070 repeats material previously contained in Rule .050, with minor changes. Rule .080 provides for the systematic review of all Texas Education Agency rules during each biennium, with revisions to be made where appropriate.

The Texas Education Agency does not anticipate the proposed adoption of new Rules .060, .070, and .080 will have state or local fiscal implications. Rules .060, .070, and .080 will have state or local fiscal implications.

Public comment on the proposed adoption of Rules .060, .070, and .080 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner, for Policies and Services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701.

All requests for a public hearing on proposed rules submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

These rules are proposed under the authority of Sections 11.02(b) and 11.24(a)-(b), Texas Education Code.

.060. Rulemaking Authority Granted to the Commissioner of Education by Statute. Except for emergency rules adopted under Rule .050, all rules of the Texas Education Agency shall be approved by the State Board of Education, including rules in those areas where rulemaking authority has been granted to the commissioner of education by statute.

.070. Petition for Adoption or Amendment of a Rule. Any interested person may petition for the adoption or amendment of a rule. A form for petitions may be secured from the associate commissioner for Policies and Services and the petition shall be submitted to him or her. In consultation with the persons in the Texas Education Agency who are responsible for the area with which the rule is concerned, the commissioner of education shall evaluate the merits of the proposal to determine whether to initiate rulemaking proceedings or to deny the petition. Within 60 days after submission of a petition, the petition shall either be denied in writing with reasons for the denial stated, or rulemaking proceedings shall be initiated.

.080. Systematic Review of the Texas Education Agency Rules. During each biennium, the rules of the Texas Education Agency shall be systematically reviewed and revised where appropriate.

Doc. No. 803184

Administrative Procedures 226.93.02

(Editor's note: The texts of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Education Agency, 201 East 11th Street, Austin, or in the Texas Register Division offices, 503E Sam Houston Building, Austin.)

The Texas Education Agency proposes to repeal Rules 226.93.02.010 and .020, Administrative Procedures. Procedural rules of the Texas Education Agency will be addressed in amended Rules 226.93.01.010-.080, Rules of the Texas Education Agency.

The Texas Education Agency does not anticipate the proposed repeal of Rules 226.93.02.010 and .020 will have state or local fiscal implications.

Public comment on the proposed repeal of Rules 226.93.02.010 and .020 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner for Policies and Services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701.

All requests for a public hearing on proposed rules submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

This repeal is proposed under the authority of Section 11.24, Texas Education Code.

- .010. *General Description of Administrative Procedures.*
- .020. *Approval and Revision of Administrative Procedures.*

Doc. No. 802905

Public Comments Regarding Rules 226.93.04.001

The Texas Education Agency proposes to adopt Rule 226.93.04.001. The new rule is a State Board of Education policy statement that the board encourages the submission of comments on proposed rule changes.

The Texas Education Agency does not anticipate the proposed adoption of Rule .001 will have state or local fiscal implications.

Public comment on the proposed adoption of Rule .001 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner for policies and services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701. All requests for a public hearing on proposed rules submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

This rule is proposed under the authority of Section 11.02(a), Texas Education Code, and Article 6252-13a, Vernon's Texas Civil Statutes.

.001. *Policy.* The State Board of Education encourages the submission of comments on proposed rule changes.

Doc. No. 803185

226.93.04.010, .030, .060

The Texas Education Agency proposes to amend Rules 226.93.04.010, .030, and .060, concerning public comments on rules. The proposed changes delete references to "policy, administrative procedures, and state plans," and refer instead simply to "rules." All rulemaking authority rests with the State Board of Education.

The Texas Education Agency does not anticipate the proposed amendments to Rules .010, .030, and .060 will have state or local fiscal implications.

Public comment on the proposed amendment to Rules .010, .030, and .060 is invited. Comments may be submitted by telephoning the office of Dr. J. B. Morgan, associate commissioner for policies and services, at (512) 475-7077, or by writing to him at 201 East 11th Street, Austin, Texas 78701. All requests for a public hearing on proposed rules submitted in accordance with the Administrative Procedure and Texas Register Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in rules has been published in the *Texas Register*.

These amendments are proposed under the authority of Section 11.02(a), Texas Education Code, and Article 6252-13a, Vernon's Texas Civil Statutes.

.010. *Requests from the Public to be Heard on Proposed Rules [Policies, Administrative Procedures, and State Plans.]*

(a) Nothing in *these rules* [this policy] shall be interpreted to prohibit a committee of the board or the board itself requesting testimony from an individual or group to provide pertinent information to the committee or to the board.

(b) All requests to be heard on a proposed change in *rules* [policy, administrative procedure, or state plan] shall be directed in writing to the commissioner of education. A request to be heard must be received by the commissioner not more than 15 calendar days after notice of a proposed change in *rules* [policy, administrative procedure, or state plan] has been published in the *Texas Register*.

.030. *Request for Public Hearing under the Administrative Procedure and Texas Register Act.*

(a) A public hearing shall be held on proposed *rules* [policies, administrative procedures, or state plans] when such a hearing is requested in writing by at least 25 persons, by a governmental subdivision or agency, or by official action of an association having at least 25 members.

(b) All requests for a public hearing under the Administrative Procedure and Texas Register Act shall be directed in writing to the commissioner of education. A request must be received by the commissioner of education not more than 15 calendar days after notice of a proposed *rule* change [in policy, administrative procedure, or state plan] has been published in the *Texas Register*.

(c) A public hearing requested under the Administrative Procedure and Texas Register Act may be held by the commissioner of education, or *the commissioner's* [his] designee, a committee of the board, or the board. The appropriate forum in each instance shall be determined by the chairman of the board in consultation with the chairman of appropriate board committees and the commissioner of education.

.060. *Consideration of [Other] Public Comments.*

(a) The board encourages the submission of comments orally or in writing on proposed changes in policy, administrative procedures, and state plans.]

(b) The commissioner shall consider fully all written and oral submissions in *making* [his deliberations on the adoption of administrative procedures and in his] recommendations to the State Board concerning *rules* [policies and state plans]. The commissioner shall provide the board with information obtained from written or oral submissions which

would aid the board in actions regarding proposed *rules* [policies or state plans].

Issued in Austin, Texas, on April 25, 1980.

Doc. No. 803186 A. O. Bowen
Commissioner of Education

Proposed Date of Adoption: June 14, 1980

For further information, please call (512) 475-7077.

Texas Department of Health

Home Health Care Agencies

Licensing and Regulation 301.50.01

On January 8, 1980, the Texas Department of Health promulgated the subject rules on an emergency basis. (See the January 15, 1980, issue of the *Texas Register* (5 TexReg 121) for a copy of rules. The department now proposes to adopt the subject rules on a permanent basis.

The purpose of the rules is to implement the provisions of Article 4447u, Texas Revised Civil Statutes, covering the licensing and regulation of home health care agencies and persons who provide home health services. A home health care agency is a place of business that provides a home health service for pay or other consideration in a patient's residence, ordinarily according to a written and signed plan of treatment.

The major parts of the proposed rules are: introduction; definitions; qualification of personnel; treatment and services provided; supervision of professional and nonprofessional personnel; organizational structure of an agency; clinical records; and business records.

It is estimated the costs to the state to implement the rules on licensing of home health care agencies will be as follows:

fiscal year 1980	\$ 48,722
fiscal year 1981	\$118,464
fiscal year 1982	\$118,464
fiscal year 1983	\$118,464
fiscal year 1984	\$118,464

Written comments are invited and should be submitted in writing no later than 30 days after publication in the *Register* to Maurice B. Shaw, chief, Bureau of Licensing and Certification, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. In addition, a public hearing on the proposed rules will be held at 9 a.m. Thursday, May 15, 1980, first floor auditorium, Texas Department of Health, 1100 West 49th Street, Austin, Texas. All interested parties are invited to appear and will be given a reasonable opportunity to submit data, views, or arguments, orally or in writing.

These rules are proposed under authority of Articles 4418a, 4447u, and 6252-13a, Texas Revised Civil Statutes.

.001. Introduction. In order to be licensed as a home health care agency, hereafter referred to as "agency," the following rules must be followed for either a Class "A" home health care agency or a Class "B" home health care agency (Class "A" agency must be certified by Medicare, Class "B" that are not certified by Medicare) except where the individual rules specify otherwise.

.002. Definitions. Definitions used in these rules are the same as those set out in Section 1 of Senate Bill 767, 66th Legislature, 1979, (Article 4447u, Texas Revised Civil Statutes) relating to the licensure and regulation of home health care agencies.

.003. Qualifications of Personnel. Qualifications of personnel must meet criteria as set out by their appropriate professional standards (state, national, or federal).

.004. Treatment and Services Provided. Patients are accepted for treatment of health services on the basis of a reasonable expectation that the patient's medical, nursing, and social needs can be met adequately by the agency in the patient's place of residence. Care follows a written plan of treatment established and reviewed, at least every six months, by a physician.

.005. Supervision of Professional and Nonprofessional Personnel. Supervision of professional personnel must be under the direction of the agency director or his designate. Nonprofessional personnel must be supervised by the appropriate professional staff of the agency on site at least monthly.

.006. Organizational Structure of the Agency. Organizational structure, lines of authority, and delegation of responsibility must be clearly set forth in writing for the agency as well as duties of the personnel.

.007. Clinical Records. Clinical records must be kept by the agency and shall contain pertinent past and current findings in accordance with accepted professional standards for every patient receiving home health services.

.008. Business Records. Business records shall be maintained by the agency.

Issued in Austin, Texas, on April 22, 1980.

Doc. No. 802948 A. M. Donnell, Jr., M.D.
Deputy Commissioner
Texas Department of Health

Proposed Date of Adoption: June 2, 1980

For further information, please call (512) 458-7538.

Texas Department of Human Resources

Legal Services

Hearing Procedure 326.79.14

The Department of Human Resources proposes to amend Rule 326.79.14.006 concerning action by a DHR hearing officer in its legal services rules. The proposed amendment incorporates policy that gives a hearing officer the authority to reverse a department decision in an appeal, when the appellant or representative is not present and the case record clearly shows an error was made.

The department has determined that the proposed amendment will have no fiscal implications for the state or units of local government.

Written comments are invited and may be sent to Susan L. Johnson, Administrator, Handbook and Procedures Development Division-109, Department of Human Resources, P.O.

Box 2960, Austin, Texas 78769, within 30 days of publication in this *Register*.

The following amendment is proposed under the authority of the Human Resources Code, Title II.

.006. Action by Hearing Officer.

(a) (No change.)

(b) Dismissal. If *neither* the appellant *nor* the *apellant's representative appears* [fails to appear] for the hearing *and no reason is given for the failure to appear* [without a reason], the hearing officer sends an inquiry to the appellant as to whether the appellant wishes any further action on the request for a hearing. If within 10 days after mailing of the inquiry, no reply is received, the hearing officer summarizes the pertinent facts *and* [,] records them *on the appropriate form* [, and dismisses the appeal on the basis that the request for hearing has been abandoned by the appellant]. *If the record alone clearly indicates that the caseworker's decision should be reversed, the hearing officer may enter a decision for the appellant. In all other cases, the hearing officer dismisses the appeal on the basis that the request for hearing has been abandoned by the appellant.*

If the appeal is dismissed, the hearing officer records the decision as the official action. A letter will be directed to the appellant advising of the dismissal.

In 10-day appeals, the appeal is considered abandoned if the appellant or representative does not appear and has not requested a postponement for sufficient cause. He will notify the recipient that the worker's recommended action will become effective. If the hearing officer notes error(s) which would affect the recommended decision of the worker, the hearing officer will notify the recipient and the worker so that appropriate action may be taken to correct the error(s). The recipient retains the right to request a regular hearing without continued assistance if not more than 90 days have passed since the recipient was notified of the department action which is being appealed.

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

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802924 Jerome Chapman
Commissioner
Texas Department of Human Resources

Proposed Date of Adoption: June 2, 1980
For further information, please call (512) 475-4601.

Texas Department of Labor and Standards

Boiler Division

(Editor's note: The texts of the following rules proposed for repeal will not be published. The rules may be examined in the offices of the Texas Department of Labor and Standards, third floor, Sam Houston State Office Building, Austin, or in the Texas Register Division offices, 503E Sam Houston Building, Austin.)

The Boiler Inspection Division of the Texas Department of Labor and Standards is proposing to repeal Rules 063.33.01.101-.145 and 063.33.02.101 and .109. The department proposes to repeal these rules because they are nothing more than a duplication of the language of the Texas Boiler Inspection Law, Article 5221c, Texas Civil Statutes. The existing duplication has been confusing to many in the industry and serves no useful purpose.

The department has determined that the repeal of these rules will have no fiscal impact upon the state or any local government.

Written comment is invited and should be submitted in writing to Blake Travis, legal counsel, Texas Department of Labor and Standards, P.O. Box 12157, Austin, Texas 78711.

Definitions 063.33.01

This repeal is proposed pursuant to the authority granted in Section 6 of Article 5221c, Texas Civil Statutes.

- .101. "Act" or "The Act."
- .102. "Alteration."
- .103. "Approved."
- .104. "ASME."
- .105. "Authorized Inspector."
- .106. "Board."
- .107. "Boiler."
- .108. "Chief Inspector."
- .109. "Code."
- .110. "Commissioner."
- .111. "Condemned Boiler."
- .112. "Certificate Inspection."
- .113. "Certificate of Operation."
- .114. "Deputy Inspector."
- .115. "Existing Installation."
- .116. "External Inspection."
- .117. "Electric Boiler."
- .118. "Heating Boiler."
- .119. "High-Temperature Water Boiler."
- .120. "Hot Water Heating Boiler."
- .121. "Hot Water Supply Boiler."
- .122. "Inspection Agency."
- .123. "Inspector."
- .124. "Internal Inspection."
- .125. "Lined Potable Water Heater."
- .126. "Major Repair."
- .127. "Miniature Boiler."
- .128. "National Board."
- .129. "National Board Inspection Code."
- .130. "New Installations."
- .131. "Nuclear Boiler."
- .132. "Non-Standard Boiler."
- .133. "Owner or User."
- .134. "Portable Boiler."
- .135. "Power Boiler."
- .136. "Preliminary Order."
- .137. "Reinstalled."
- .138. "Repair."
- .139. "Rules and Regulations."
- .140. "Safety Appliance."
- .141. "Secondhand Boiler."

- .142. "Special Inspection."
- .143. "Standard Boiler."
- .144. "Steam-Heating Boiler."
- .145. "Unfired Steam Boiler."

Doc. No. 802867

Administration 063.33.02

This repeal is proposed pursuant to the authority granted in Section 6 of Article 5221c, Texas Civil Statutes.

- .101. Board of Boiler Rules.
- .109. Certificate Inspections.

Issued in Austin, Texas, on April 17, 1980.

Doc. No. 802866 Lias B. "Bubba" Steen
Commissioner
Texas Department of Labor and
Standards

Proposed Date of Adoption: June 2, 1980
For further information, please call (512) 475-6560.

Texas State Board of Physical Therapy Examiners

Definitions

The purpose of this board, as created by an Act of the 62nd Legislature, Article 4512E of Vernon's Annotated Civil Statutes, is to license only qualified physical therapists and enforce the law through investigation in order to protect the public welfare and to provide optimal physical therapy service to the citizens of the State of Texas.

The purpose of these proposed amendments is to clarify and further define the intent of the Act.

These amendments will have no fiscal impact.

Comment or inquiry from any person is invited and may be directed to Lois M. Smith, executive director, Texas State Board of Physical Therapy Examiners, 5555 North Lamar, H-135, telephone (512) 475-7956.

394.01.00.003

This amendment is proposed under the authority of Vernon's Annotated Civil Statutes, Article 4512E.

003. Physical Therapist Assistant. "Physical therapist assistant" means a person who assists a physical therapist in the practice of physical therapy and whose activities require an understanding of physical therapy. A **licensed** physical therapist assistant is one who has satisfied the requirements as set forth in Section 9 of this Act. The **licensed** physical therapist assistant practices under the direction of a licensed physical therapist. The direction of the **licensed** physical therapist assistant shall include:

- (1) A **licensed** physical therapist shall be responsible for and participate in the patient's care.
- (2) A licensed physical therapist must be on call and readily available for on-site supervision of the assistant.
- (3) A **licensed** physical therapist or a **licensed** physical therapist assistant must have in evidence written treatment plans formulated by the **licensed** physical

therapist for each patient under his care. Treatment plans shall be revised following periodic re-evaluations by the licensed physical therapist.

(4) *The physical therapist may assign to the physical therapist assistant responsibilities within the limits of their learning experiences as defined in the Accreditation Handbook, the American Physical Therapy Association—January 1979. Refer to Standard VI, Criterion B Sub 2, pages B-9, 10; but the licensed physical therapist assistant may not be delegated to:*

(A) *Specify and/or perform definitive (decisive, conclusive, final) physical therapy evaluative and assessment procedures.*

(B) *Plan or alter treatment programs or goals except by direction from the licensed physical therapist.*

(C) *Make recommendations regarding wheel chairs, orthoses, prostheses, other assistive devices, and architectural barriers to persons other than the licensed physical therapist.*

(D) *File progress notes or other documents for permanent record until they are approved by the licensed physical therapist or sign progress notes which include assessment findings used to design or modify patient care plans. Nothing above shall preclude the licensed physical therapist assistant from responding to acute changes in the patient's physiological state.*

Doc. No. 802949

394.01.00.004

This amendment is proposed under the authority of Vernon's Annotated Civil Statutes, Article 4512E.

.004. Physical Therapy Aide. "Physical therapy aide" means a person who aids in the practice of physical therapy and whose activities require on-the-job training by the **licensed physical therapist** and on-site supervision by the licensed Physical Therapist or **licensed physical therapist assistant**. Since the **licensed physical therapist** has the responsibility for supervising the treatments comprising his practice, on-site supervision [of a physical therapy aide] is interpreted to mean that the [a] licensed physical therapist is on premise and readily available to respond, if necessary, during any given treatment procedure. [shall be available for periodic checks during any procedure or treatment involving a patient.]

Doc. No. 802950

Denial, Suspension, Revocation, Grounds 394.16.00

This amendment is proposed under the authority of Vernon's Annotated Civil Statutes, Article 4512E.

.001. Grounds for Denial, Suspension, or Revocation of a License. A license may be denied, or after hearing, suspended or revoked if the applicant or licensee has:

- (1) practiced physical therapy other than upon the referral of a physician licensed to practice medicine by the Texas State Board of Medical Examiners or the Texas State Board of Dental Examiners in this state, or a doctor licensed

to practice chiropractic by the Texas Board of Chiropractic Examiners; or, in the case of practice as a *licensed physical therapist assistant* [physical therapist assistant], has practiced other than under the direction of a licensed physical therapist;

(2) used drugs or intoxicating liquors to an extent which affects his professional competency;

(3) been convicted for violating any municipal, state or federal narcotic law;

(4) been convicted of a felony or a crime involving moral turpitude;

(5) obtained or attempted to obtain a license by fraud or deception;

(6) been grossly negligent in the practice of physical therapy or in acting as a physical therapist assistant [;]. *Gross negligence shall include (but not be limited to) having:*

(A) *permitted patients to be treated by physical therapist assistants or physical therapy aides prior to an initial evaluation or in the absence of regular subsequent evaluations;*

(B) *sanctioned patient care by aides without the on-site supervision of a licensed physical therapist or physical therapist assistant;*

(C) *endangered the patient by failing to inspect and maintain equipment;*

(7) been adjudged mentally incompetent by a court of competent jurisdiction;

(8) been guilty of conduct unbecoming a person licensed as a physical therapist or physical therapist assistant or of conduct detrimental to the best interest of the public;

(9) been guilty of soliciting patients, advertising, or any form of self-aggrandizement.

The following is included for interpretive purposes:

(A) *Advertisement shall not be interpreted to mean providing the consumer with:*

(i) *accurate information regarding qualifications to practice physical therapy;*

(ii) *information stating the physical therapist's ability to communicate in specified foreign languages;*

(iii) *statements concerning acceptable financial arrangements;*

(iv) *office and telephone answering service hours;*

(v) *information about fees for physical therapy services, provided:*

(I) *the description of the treatment is given;*

(II) *the period of time for which the fee schedule is included;*

(III) *the publication date is evident.*

(B) *The physical therapist shall not:*

(i) *use any form of communication containing false, fraudulent, misleading, deceptive, self-laudatory, or unfair statement or claim;*

(ii) *make statements which promise favorable results following a course or series of treatments;*

(iii) *attempt to obtain patients by persuasion, influence or bribery.*

(iv) *employ printed or verbal communications which are unacceptable to the standards of the local medical community.*

Issued in Austin, Texas, on April 17, 1980.

Doc. No. 802951

Lois M. Smith

Executive Director

Texas State Board of Physical Therapy
Examiners

Proposed Date of Adoption: June 2, 1980

For further information, please call (512) 475-7956.

Structural Pest Control Board

Introductory Provisions

The Board 406.01.01

The Structural Pest Control Board is proposing to amend Rule 406.01.01.002, concerning the board. The proposal amends Rule .002 concerning the decisions of the board, the minimum number of times the board may meet each year, and procedure for calling a board meeting. The board has always adopted decisions by a simple majority vote of the board; however, it is believed by the board that a formal procedure for voting should be established in order to prevent any question as to how many "yes" votes are needed to adopt a decision of the board. In the past the board established a minimum of six board meetings each year. Past experience has shown that in certain years there is not a need to hold six meetings each year; therefore, a minimum of four meetings has been established. This change does not prohibit more meetings of the board if the need arises.

There has never been a formal procedure for calling a board meeting and this is done now by spelling out the procedure.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The amendment is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.002. *Composition of the Board* The board is composed of *nine* [seven] members; *six* [four] appointed by the governor, and three ex officio members (Texas Department of Agriculture, Texas Department of Health [Resources], and Texas A&M University! Department of Entomology) *There shall be a majority of board members* [of the board] *present at any board meeting in order to have a quorum to transact business. All decisions of the board will be by simple majority of board members present. The board shall hold at least four meetings each year and meetings shall be authorized by the chairman.* [The board shall hold a minimum of six meetings each year.] *A meeting shall be called when two or more members petition the chairman, in writing, to call such meeting.*

Doc. No. 803002

Rules 406.01.02

The Structural Pest Control Board is proposing to amend Rule 406.01.02.005, concerning amending of rules. The board has determined that it would be necessary to have a representative of the public members and ex officio members present when an amendment to the rules were considered.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The amendment is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.005. Amending of Rules. These rules and regulations may be amended from time to time and new rules and regulations adopted by the board; provided, however, that notice of such amendment or new rule shall be given in the manner required by law. *When there are proposed changes to regulations there shall be at least one public member and one ex officio member present at the board meeting when such proposed changes are made.*

Doc. No. 803003

Records 406.01.03

The Structural Pest Control Board is proposing to amend Rule 406.01.03.002, concerning records, by changing the title of the individual who presides over board meetings in the absence of the chairman. That office holder has previously been referred to as pro tem chairman and is changed to vice chairman in order that the title would be consistent throughout the rules.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The amendment is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.002. Copies and Certification. Copies of official records may be made and certified by the chairman, *vice chairman* [pro tem chairman], or the executive director, the expense thereof to be borne by the person or party requesting same.

Doc. No. 803004

Definitions 406.01.04

The Structural Pest Control Board is proposing to amend Rule 406.01.04.001, concerning definitions by correctly numbering the subsections; referring to a certain subsection for requirements; adding inspection to pest control categories; changing a category of pest control; and defining certain words or terms.

Branch office is defined and there are more requirements for branch office in the regulations. It is believed that rather than repeat those requirements it would be more prudent to just refer readers to the section rather than repeat it.

Heretofore, the definition of all categories of pest control began with the word "control." The Act requires licenses for inspection as well as control so the word "inspection" was added for clarification.

The categories of pest control contained a "general" category of pest control and this category has been changed to "wood preservation" category. This category is needed to fit the needs of those individuals using restricted use pesticides. There are certain companies or individuals that treat wood with preservatives for the protection against damage caused by insects and a category was needed to fit their needs.

Employees of the board have, in the past, been classified as "inspectors," but now are classified as "investigators." Business entity is used in the regulations to describe certain businesses and to meet certain requirements so there was a need to define this term. "Contract" is mentioned in the Act and those individuals issuing contracts must meet certain requirements; therefore, there is a need to define the term. "Endorsement of license" is another term in the Act and since this term applies to certain individuals that must meet requirements in the regulations there is a need to define this term.

The regulations contain the words "revoke" and "suspend" and it is believed there is a need to define the two terms for clarification. The board has elected a vice chairman for the first time and since this is an active officer there is a need to define the term and spell out the responsibilities.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The amendment is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.001. Definitions of Terms. For the purpose of these regulations, the following words, names, and terms shall be construed with the meaning and purpose of Sections 1 through 12 [11], Structural Pest Control Act as amended:

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

(4) "Branch office" shall mean any place of business other than the primary office that has at least one employee during normal business hours who is capable of answering customers' normal questions, scheduling normal inspections or work, or performing structural pest control functions; provided, however, that a facility serving solely as a telephone answering service shall not be a branch office. *(Refer to Rule 406.01.05.001 for requirements.)*

(5) (No change.)

(6) "Category" shall mean the type of service or services a person or business entity is authorized to perform. These categories are as follows:

(A) Pest control. That phase of *inspection and/or control of pests* [structural pest control] other than wood-destroying organisms or pests and fumigation and shall in-

clude the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradication, and repelling insect pests, rodents, birds, and mammals that occur in any type of structure of man and his immediate environs.

(B) Termite control. That phase of *inspection and/or control of pests* [structural pest control] which includes the *inspection or control* of termites, beetles, other insects or fungi which may invade, inhabit, devour, or destroy wood or wood products and cellulose material found in, on, under, in contact with and around structures.

(C) Lawn and ornamental. That phase of *inspection and/or control of pests* [pest control] which includes the application of remedial measures for the purpose of curbing, reducing, preventing, controlling, eradication and repelling insect and mite pests, plant diseases, nematodes, or pest animals of ornamental plants, shade trees (which may include fruit or nut trees if used as ornamental plants of shade trees), lawns, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street.

(D) Fumigation. That phase of *inspection and/or control of pests* [pest control] which includes the application of fumigants to one or more rooms and their contents in a structure, a localized space or harborage within, on, under, outside of, or adjacent to a structure; or an enclosed space, or in, or under a structure, at the desired concentration and for the necessary length of time to control rodents, insects, or other pests.

(E) Weed. That phase of *inspection and/or control of pests* [pest control] which includes the control of weeds or noxious plants around homes and industrial environs.

(F) Wood preservation. That phase of pest control that involves the addition of preservatives to wood to extend the life of wood products by protecting them from damage caused by insects, fungi, and marine borers. Such wood products will include but not limited to, crossties, poles, and posts. This category is intended only for use by those persons using wood preservatives that may be classified as restricted-use pesticides. [General. Those phases of pest control that a person or business entity offers services described for all categories above—1 through 5 inclusive.]

(7)-(11) (No change.)

(12) "*Investigator*" [inspector] shall mean a structural pest control *investigator* [inspector] employed by the board.

(13)-(19) (No change.)

(20) "*Business entity*" shall mean each primary office and each branch office of a pest control company.

(21) "*Contract*" shall mean a binding agreement between two or more persons or parties that spells out in writing the terms and conditions of such agreement. The documents will include, but not be limited to, proposals, bids, warranties or guarantees for pest control work.

(22) "*Endorsement of license*" means an individual who establishes residence in Texas and who has been determined by the board to meet the qualifications of a certified applicator by taking the appropriate examination in a state other than Texas.

(23) "*Revoke*" shall mean to cancel a license issued under authority of the pest control act. When a business license is revoked, the holder of said license

must acquire a new license by completing a new application and paying the required fee. In the case of the certified applicator, the holder of such certified applicators license must acquire a new license by completing a new application, paying the required fee and be re-examined in each category desired by said person.

(24) "*Suspend*" shall mean to cease operations for a period of time as specified by the board.

(25) "*Vice chairman*" shall mean an individual appointed board member elected by the board, who presides at the board meeting in the absence of the chairman.

Doc. No. 803005

Licenses 406.01.05

The Structural Pest Control Board is proposing to amend Rules 406.01.05.001-.004, pertaining to licenses, which concern the operation of primary and branch offices, information to be included on the application for a license, endorsement of license, fee change for taking written exam, changing the letters or numbers of certain sections, the addition of the word "inspection" to each pest control category, the addition of the "wood preservation" category, establishing expiration date of licenses, making it mandatory for re-examination of certified applicator in case license has been expired over 60 days, the changing of fee for business license, changing fee for issuing a duplicate license and reissuing a business license and certified applicators license, the granting of permission to continue operation of business in case of loss of certified applicator under certain conditions, prohibiting magnetic devices to display numbers on vehicle, and requiring owners of businesses to allow inspection of licenses by the investigators.

The present rules allow an individual to act as certified applicator for more than one office and also act as certified applicator for more than one company. This change will require a separate certified applicator for each office and each company. This change will serve to correct the situation whereby a certified applicator could hire out to more than one company or office and not perform the services intended under the Act. Some pest control firms, in furnishing the board with a business address, furnish the board with the office address of their telephone answering service and with this address the investigators could not locate the business firm in case there was a need. This change will prohibit the use of telephone answering service address as an address where they could be contacted. The Act provides for an endorsement of license to be issued to an individual that has taken and passed an exam in a state other than Texas and then established residence in Texas. This section clarifies the requirements for issuing an endorsement of license. The current regulations require a fee of \$10 for taking an exam and this section raises the fee to \$25 for each exam. The fee was established in 1975 and five years experience indicates a need for change.

The requirement in paragraph (1) of Rule .003 was dropped and this changed the lettering of each following paragraph. The only change here is to correctly assign the proper letter to each paragraph.

The addition of the category "wood preservation" has already been addressed under "definitions." The Pest Control Act, as

amended, requires the expiration of all licenses on December 31 of each year or the staggering of expiration dates. Since the board has an option, they chose to propose that all licenses expire on December 31 of each year. In the past the board had a choice as to whether an individual with an expired license should retake the exam and this proposal will eliminate the option and make it mandatory to retake the exam or exams when license expires. The fee for the business license was established in 1971 at \$50.00 and the board proposes this fee be raised to \$75. Of course, the Act allows the board the option of raising the fee to \$75.

The fee for issuing a duplicate license or issuing a new license because of name change of the company has been \$10 and the board proposed to change the fee to \$20 for each of the changes. During the year some companies will lose their certified applicator because of retirement or death and the board is proposing they be allowed to operate the business until the next exam date. The current regulations require pest control companies to have their license number on vehicles used for pest control and the numbers be permanently affixed to vehicles. This change just simply states that magnetic devices do not qualify as permanently affixed. It is necessary that investigators see licenses of pest control operators in order to determine if they hold a current license and to determine if they are operating in categories not licensed. This section states that pest control operators must present licenses to board investigators for inspection.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from these amendments.

Public comment on the proposed amendments is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The amendments are proposed pursuant to the authority of Article 135b-6, Ve. non's Annotated Civil Statutes.

.001. Persons Required to Secure License. The owner or manager of a business entity, including *each primary business office and* (a) *branch business* or branch office engaged in structural pest control operations must secure a business license *and a certified applicators license* from the board in accordance with the Act and the rules and regulations. *Each business entity shall have a certified applicator who is not also serving as a certified applicator for another business entity.* No person shall advertise in any manner to render services or solicit business within the meaning of the Act without first obtaining a license.

.002. License Application.

(a) **Structural pest control business license.**

(1) Application for a business license shall be submitted on a regular form furnished by the board.

(2) *Each business license applicant, when applying for a renewal of said license must submit with the application an insurance policy or contract in the amount of not less than \$25,000 in bodily injury coverage and \$5,000 in property damage coverage insuring him against liability for damages to persons or property occurring as a result of operations performed in the course of the business of structural pest control to premises or any other property under his care, custody, or control. No new business license will be issued until insurance requirements*

are met. [Effective February 29, 1976, each business license applicant whether applying for an initial license or for a renewal, shall accompany his application with an insurance policy or contract in the amount of \$30,000 for board approval. This policy will provide liability insurance for damage claims arising as a result of activities carried out during the course of the business of structural pest control.] This policy shall contain a cancellation provision whereby notification of cancellation is received by the board not less than 30 days prior to cancellation.

(3) *Application for license must contain an address whereby license may be located. Address of answering service is not acceptable.*

(b) Certified applicators license. Application for a certified applicators license shall be submitted on a regular form furnished by the board.

(c) *Endorsement of license. The applications for this license will be the same as used for regular business license or regular certified applicators license and such applications shall be furnished by the board. In order to qualify for an endorsement of license, the test or tests taken in a state other than Texas must meet Texas standards. If the test or tests do not meet Texas standards, then the director is authorized to prepare an exam for said person. The exam or exams will be given by the director in the board office.*

.003. Requirements. Examinations for Certified Applicator License. Having previously qualified by written examination in a category, an individual shall receive a certified applicators license for the qualified category without re-examination, or without having to take another examination in that category. Each individual not previously examined is required to secure a certified applicators license in accordance with the Act as amended and when examined shall be examined as follows:

(1) All persons now licensed by the board must obtain a certified applicators license or employ a certified applicator on or before October 1, 1976. All persons licensed after October 1, 1976, must obtain a business license and a certified applicators license or employ a certified applicator.]

(1)(2) A fee of \$25 [\$10] shall be charged for each category in which an applicant is examined [after September 30, 1976].

(2)(3) All examination fees are payable by personal check or money order and payment should be submitted with the completed application.

(3)(4) All examinations shall be maintained and administered by the board. Complete examination shall be retained by the director for a period of two years.

(4)(5) The applicant shall take an examination which shall be in written form, and, in general, cover the subject of the services designated in the application, *except those covered by endorsement of license.*

(5)(6) A grade of 70% will be the minimum grade required for passing. Examinations will be given at the discretion of the board at least once each quarter based on the calendar year.

(6)(7) The applicant must be able to read and write the English language.

(7)(8) All examinations will be given in Austin, Texas, unless otherwise designated by the board and the applicants so notified.

(8)(9) An applicant who gives or receives unauthorized assistance during an examination shall be dismissed from the examination and his results shall be voided.

(9)(10) Categories in which examinations are to be given for which licenses will be issued are as follows:

(A) **Inspection and/or** control of termites and other wood-destroying organisms. This category includes persons engaged in the **inspection and/or** control of termites, beetles, or other wood-destroying organisms in building, including homes, warehouses, stores, docks, or any other structures.

(B) **Inspection and/or** control of pests in homes, businesses, and industries. This category shall include persons engaged in the **inspection and/or** control of insect pests or pest animals which may invade homes, restaurants, stores, and other buildings, attacking their contents or furnishings, or being a general nuisance, but do not normally attack the building itself, as for example, roaches, silverfish, ants, flies, mosquitoes, rats, mice, etc.

(C) **Inspection and/or** control of pest of ornamental plants, shade trees, and lawns. This category includes persons engaged in the **inspection and/or** control of pests or diseases of trees, shrubs, or other plantings in a park or adjacent to a residence, business establishment, industrial plant, institutional building, or street.

(D) Fumigation. This category includes persons engaged in pest **inspection and/or** control through fumigation of structures, food stuffs, warehouses, ships, railroad cars, etc.

(E) Weed control. This category includes persons engaged in the **inspection and/or** control of weeds around homes and industrial environs.

(F) **Wood preservation. That phase of pest control that involves the addition of preservatives to wood to extend the life of wood products by protecting them from damage caused by insects, fungi, and marine borers. Such wood products will include but not be limited to cross-ties, poles, and posts. This category is intended only for use by those persons using wood preservatives that may be classified as restricted-use pesticides.**

.004. License Expiration and Renewal. Licenses shall expire **December 31** [March 1] of each calendar year and must be renewed by submitting an application to the board and paying the required fee on or before **December 31** [March 1] of each calendar year. **Licenses issued to expire on December 31, 1981, shall be prorated.** The board may grant to an untimely applicant for renewal of a structural pest control business license or a certified applicators license if such applicant pays a late renewal fee of \$25 and if his **or her** application is filed with the board not more than 30 days after the expiration of **said** [his] license. If such application is received between 30- and 60-days after the expiration of the applicants' license, the board may grant the renewal of license when said application is accompanied by a late renewal fee of \$50. An applicant who applies for **the** [a] renewal of a **certified applicators** license more than 60 days after the expiration of **said** [his] license, **must be re-examined by the board** [is subject to re-examination by the board].

(1) Neither licenses nor employee identification card fees shall be prorated. License and employee identification card fees shall be paid in full in advance of the issuance of the license.]

(1)(2) Licenses and employee identification cards issued by the board are not transferable.

(2)(3) A fee of **\$75** [\$50] will be charged for a business license or a renewal of a business license.

(3)(4) A fee of \$20 will be charged for a certified applicators license or the renewal of a certified applicators license.

(4)(5) A fee of \$10 will be charged for each employee of a business licensee.

(5)(6) A fee of **\$20** [\$10] will be charged for the issuance of a duplicate license when the original has been lost or destroyed.

(6)(7) A fee of **\$20** [\$10] will be charged for reissuing a business license or certified applicators license due to a name change in the license.

(7)(8) In the event of disability, incapacity, or death, of the **business** owner or certified applicator, **if they are the same person**, upon application of **heir or license holder** [by a person] wishing to continue the business, the board may require their presence at the next scheduled board meeting, for the purpose of allowing the prospective licensee the opportunity to show that the policies and **services** [service] will continue substantially as before with due protection to the public and the environment and state or federal regulations. [If satisfied] The board may issue a temporary hardship license to be valid for a period not to exceed six months. **If a certified applicator for a business licensee leaves the employment of the business licensee, the business licensee may request the board to allow the company to continue the business and if approved by the board may continue until the next state examination date. The business licensee must notify the board on the date of the loss of his or her certified applicator.**

(8)(9) It shall be the duty of the business licensee to inform the board in writing of the employment of all employees, as the term employee is defined in 406.01.04.001(10) of these rules and regulations. Such notice shall be furnished **on date of** [immediately upon] employment, and shall include the full name and home address of the employee, the date of employment, and if applicable, the branch office at which he will be employed. Within 90 days of such employment, the business licensee shall obtain from the board an identification card for such employee. It shall be the responsibility of every business licensee who has requested employee identification cards to collect all cards from employees whose employment has terminated. Employee identification cards collected in this manner shall be mailed to the Structural Pest Control Board within 10 days after termination of employment for cancellation. If, for any reason, such cards cannot be collected, the Structural Pest Control Board shall be so notified in writing. Any registration fee paid for an employee shall not be refundable or transferred to another employee.

(9)(10) The license number of each business licensee shall be prominently displayed on all vehicles of that business entity, but shall not be required on unmarked management vehicles. Vehicles of a company may have more than one licensee number, provided, however, notice is made in writing to the board and the board approves the license number used in such cases. The numbers and letters must be permanently affixed to the vehicle in a prominent place on each front fender and/or front door panel in two-inch letters in a color which would contrast to the background color of the truck or vehicle and shall be designated as. Texas pest con-

trol license (number). This may be abbreviated to Texas PCL (number) or TPCL (number). ***Any numbers or letters that adhere to vehicle by way of magnetic device or magnets is not considered to be permanently affixed.***

(10)(11) All structural pest control licenses shall be displayed in a conspicuous place of the business of the license holder. In the case of a nonresident license holder, the license shall be displayed in a conspicuous place of the residence or place of business of the license holder's resident agent. ***All structural pest control licenses shall be presented for visual inspection upon request of a board investigator.***

Doc. No. 803006

Procedure and Practice at Public Meetings

Hearings and Meetings 406.02.01

The Structural Pest Control Board is proposing to amend Rules 406.02.01.005 and .007, concerning regular board meetings and public hearings. Currently, Rule .005 requires a minimum of six regular board meetings each year and because of past experience, the board has determined that it may not be necessary to hold at least six meetings each year and is proposing the minimum number be lowered to four. The board can still meet as many times each year as is necessary. Rule .005 also refers to the person conducting board meetings in the absence of the chairman as "chairman pro tem," and the board is proposing to change this office to "vice chairman." In the past, board meetings were open to the public for all items discussed (Rule .007), and the board is proposing to make this open to all meetings "except when discussing personnel matters."

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from these amendments.

Public comment on the proposed amendments is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

These amendments are proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.005. Regular Meetings. At least ***four*** [six] regular meetings per year will be held in order to allow disposition of such matters as may come before the board. Appropriate notice shall be given by the executive director to the board members of the date and place of meeting at least seven days prior to the meeting date. The ***vice chairman*** [chairman pro tem] shall preside over the meeting in the absence of the chairman.

.007. All Hearings Public. Any and all hearings or meetings of the board shall be open to the public ***except when discussing personnel matters***. The board will give due consideration to all matters properly presented by an interested party.

Doc. No. 803007

Evidence 406.02.05

The Structural Pest Control Board is proposing to amend Rule 406.02.05.002, concerning whether the hearings would be reported and transcribed or just recorded and establishing the cost of transcribing the minutes of board meetings. The current rule requires board meetings to be transcribed and there is not always a need for this. The board believes the minutes should be reduced to writing only when requested to do so. Tapes of the meetings are on file but not reduced to writing unless requested to do so. The board also believes that a fee should be established by rule for transcribing board meetings and is proposing to establish a fee of \$1.00 per page.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

This amendment is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.002. Reporting of Hearings. All testimony given at any public hearing shall be ***recorded*** [reported and transcribed] by some person appointed by the board. In those instances where any proper party at such hearing requests it, the testimony will be reduced to writing. Copies of any hearing thus transcribed may be obtained from the Texas Structural Pest Control Board and paid for ***at the rate of \$1.00 per page*** [as prescribed by law].

Doc. No. 803008

Additional Provisions

Complaints 406.04.03

The Structural Pest Control Board is proposing to amend Rule 406.04.03.001, concerning the board sending a notice of a complaint to the accused party. The current rule requires a notice of complaint be sent to the accused and this is being changed to be permissible rather than mandatory. There should be an investigation commenced to determine if a complaint has merit before a notice is sent to the accused. In many cases, it is not necessary to send a notice to the accused, but if the complaint has merit then the board will send a notice. The board always sends a notice to the accused before they are called before the board to answer an alleged violation of the Act or rules.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The amendment is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.001. Specific Complaint. When there is an alleged violation of any statute of the State of Texas or the rules of the board, the board may take remedial action on its own initiative without any complaint or a complainant can seek relief as follows:

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

(3) Notice and hearing. The board *may* [will] send a notice of the complaint to the person accused of violating the terms of his license and *may* [will] request from him a statement as to the merits of the complaint. If the complaint has merit on its face, a field investigation may be ordered to gather additional facts. If these facts indicate that the board has probable jurisdiction of the matter and that grounds for the complaint exist, a hearing will be called and a show-cause order will be sent by certified mail to the party against whom the complaint is brought. Notice of this hearing will also be sent by first-class mail to all interested parties of record at least 20 days prior to the date set for hearing.

(4) (No change.)

Doc. No. 803009

Contracts 406.04.05

The Structural Pest Control Board is proposing to add Rule 406.04.05.001, concerning contracts. During the last session of the legislature, the Structural Pest Control Act was amended to require certain language on contracts issued by pest control operators. This new rule clarifies the requirement. The Act requires each licensee issuing a contract to put certain information on the contract. This new rule spells out the exact wording, where the wording will be on the contract, and the size of print of the wording.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this new rule.

Public comment on the proposed rule is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The new rule is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.001. Contracts.

(a) In each written contract in which a licensee under the Act agrees to perform structural pest control services in this state, the licensee shall include the mailing address and telephone number of the board and the following statement: "The Board has jurisdiction over individuals licensed under this Act."

(b) The requirement in (a) above shall be on the face of the bid, proposal, warranty, or guarantee issued by the pest control operator.

(c) The requirement in (a) above shall be legible and printing shall be in at least seven point type.

Doc. No. 803010

Grounds for Revocation 406.05.00

The Structural Pest Control Board is proposing to amend Rule 406.05.00.001, concerning the addition of certain grounds for revocation, suspension, reprimanding, refusal to examine, refusal to issue or renew licenses. The additional grounds are already listed as violations in the Act and rules, but enforcement of listed grounds and revocation can better be enforced when moved or added to Rule .001.

The staff of the board has determined that there are no fiscal implications for the state or any unit of local government that would result from this amendment.

Public comment on the proposed amendment is invited and may be submitted in writing to Charlie Chapman, executive director, Structural Pest Control Board, 5555 North Lamar, Building H, Suite 123, Austin, Texas 78751.

The amendment is proposed pursuant to the authority of Article 135b-6, Vernon's Annotated Civil Statutes.

.001. Grounds for Revocation, Suspension, Reprimanding, Refusal to Examine, Refusal to Issue or Renew Licenses. Any such action may be accomplished by a majority vote of the board, after notice and hearings, as provided for by Article 135b-6, Vernon's Annotated Civil Statutes, and the Administrative Procedure and Texas Register Act. No revocation, suspension, annulment, or withdrawal of any license is effective unless, prior to the institution of agency proceedings, the agency gave notice by personal service or by registered or certified mail to the licensee of facts or conduct alleged to warrant the intended action, and the licensee was given an opportunity to show compliance with all requirements of law for the retention of the license. The following are grounds for revocation, suspension, reprimanding, refusal to examine, refusal to issue or renew licenses:

(1)-(12) (No change.)

(13) *failure of business licensee to notify the board when a certified applicator leaves their employment;*

(14) *failure of business licensee to put identifying letters and numbers on vehicles as required by regulations;*

(15) *failure to print in proper size type address and telephone number of board and the statement that the board has jurisdiction over individuals licensed by the board and the Act;*

(16) *failure of business licensee to notify the board of a change of address of their company;*

(17) *failure of business licensee to give the board an address where licensee may be located.*

Issued in Austin, Texas, on April 25, 1980.

Doc. No. 803011 Charlie Chapman
Executive Director
Structural Pest Control Board

Proposed Date of Adoption: June 2, 1980

For further information, please call (512) 454-3617.

ADOPTED RULES

An agency may adopt a proposed rule no earlier than 30 days after publication in the *Register*, and the adoption may go into effect no sooner than 20 days after filing, except where a federal statute or regulation requires implementation of a rule on shorter notice.

Upon request, an agency shall provide a statement of the reasons for and against adoption of a rule. Any interested person may request this statement from the agency before adoption or within 30 days afterward. The statement shall include the principal reasons for overruling objections to the agency's decision.

This section now contains two classifications: codified and noncodified. Agencies whose rules have been published in the *Texas Administrative Code* will appear under the heading "Codified." These rules will list the new TAC number, which will be followed immediately by the *Texas Register* 10-digit number. Agencies whose rules have not been published in the TAC will appear under the heading "Noncodified." The rules under the heading "Codified" will appear first, immediately followed by rules under the heading "Noncodified."



NONCODIFIED

Coordinating Board, Texas College and University System

Administrative Council

Administration of the Texas State College and University Employees Uniform Insurance Benefits Program 251.20.02.004

Under the authority of Article 3.50-3 of the Texas Insurance Code, the Administrative Council of the Coordinating Board, Texas College and University System, has adopted Rule 251.20.02.004 to read as follows:

- .004. *Basic Procedural and Administrative Practices.*
(a)-(i) (No change.)

(j) When an employee or retiree enrolls in a group life insurance and/or group accidental death and dismemberment insurance program, the institution shall obtain the designation of a beneficiary or beneficiaries in a signed and witnessed writing. The witness must be over 14 years of age and cannot be one of the designated beneficiaries.

(k) Upon the death of an employee, the institution shall provide in writing a summary of the benefits available and offer assistance and counseling to the surviving spouse, members of the immediate family, and/or the beneficiary of record, whichever is applicable.

(l) The institutions shall apply the following practices and procedures with respect to the notification and enrollment of retirees and dependents of retirees in the uniform group insurance plan established for retired employees:

(1) The institutions shall make a good faith effort to publicize the insurance program, informing retirees of their right and the right of their dependent(s) to participate in the uniform group insurance plan, and specifying the steps a retiree and his or her dependents must take in order to enroll in an institution's retiree plan.

(2) Institutions shall offer open enrollment (enrollment without evidence of insurability) to retirees and their dependent(s) for a period of not less than six months following the effective date of the Act, September 1, 1979, after which time any retiree or dependent wishing to participate in the plan may be required by the institution to provide evidence of insurability.

(3) Individuals retiring after September 1, 1979, and their dependent(s) will not be required to provide evidence of insurability; provided, however, there is not an intervening time period between the date of termination from active employee plan and enrollment in the retiree plan (e.g., the individual enrolls in the retiree plan during the first premium due date following the date of retirement).

(4) Individuals retiring after September 1, 1979, and their dependent(s) who do not enroll in the retiree plan during the first premium due date following the date of retirement may be required by the institution to provide evidence of insurability prior to enrollment in the retiree plan.

(5) Retirees shall be allowed to enroll new dependents in the uniform group health insurance plan upon the acquisition of the new dependents (e.g., marriage, adoption, birth of children, etc.) provided the retiree enrolls the new dependents in the insurance plan within 31 days of the acquisition date or during the first premium due date following the date of acquisition.

Issued in Austin, Texas, on April 10, 1980.

Doc. No. 802876 James McWhorter, Executive Secretary
Administrative Council
Coordinating Board, Texas College
and University System

Effective Date: May 8, 1980

Proposal Publication Date: March 4, 1980

For further information, please call (512) 475-2033.

251.20.02.008

Under the authority of Article 3.50-3 of the Texas Insurance Code, the Administrative Council of the Coordinating Board, Texas College and University System, has adopted Rule 251.20.02.008 to read as follows:

.008. Bidding Contracts. Each institution shall prepare a set of specifications, encompassing at least the basic coverage standards, and shall submit these specifications to authorized carriers for competitive bidding with instructions that sealed bids must be submitted to the institution by a specified date. The State Board of Insurance shall, upon request by the institution, examine and evaluate the bidding contracts and certify their actuarial soundness to the institution within 15 days from the date of request.

Issued in Austin, Texas, on April 10, 1980.

Doc. No. 802877 James McWhorter, Executive Secretary
Administrative Council
Coordinating Board, Texas College
and University System

Effective Date: May 8, 1980

Proposal Publication Date: February 22, 1980

For further information, please call (512) 475-2033.

Texas Education Agency

Texas Education Agency in General

General Powers and Duties 226.11.02

The Texas Education Agency has adopted Rule 226.11.02.040, concerning the Texas State Government Effectiveness Program. The new rule is adopted pursuant to the "resolution calling for reduction in the number of state employees," which was adopted by the board in January 1980.

Public review and discussion of the proposed rule were held. The rule is adopted with one change from the text as proposed. The words "Acts of the" have been deleted before the 66th Legislature. The remainder of the rule is unchanged.

This rule is promulgated under the authority of House Bill 558, Acts of the 66th Legislature, and Section 11.62(b), Texas Education Code.

.040 Texas State Government Effectiveness Program. The Texas Education Agency shall actively support the Texas State Government Effectiveness Program where such support is appropriate and in the interest of the school children of Texas. Reductions in the number of full-time positions shall be accomplished in accordance with House Bill 558, 66th Legislature. The number of seasonal and contractual employees shall be held to a minimum. To every possible extent, qualified and satisfactorily performing employees shall be retained. The Texas Education Agency shall reassign and retrain such employees where necessary.

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802903 A. O. Bowen
Commissioner of Education

Effective Date: May 9, 1980

Proposal Publication Date: March 4, 1980

For further information, please call (512) 475-7077.

State Commissioner of Education

Adoptions by Reference: General 226.13.90

The Texas Education Agency has amended Rule 226.13.90.040, the adoption by reference of the Network-System Plan for Computer Services. The Network-System Plan serves as the master plan for implementation of computer services for school districts. The revised plan for 1979-80 incorporates most of the recommendations of the Browne-Reinken-Rogers Report on computer services. All recommendations contained in that evaluation were endorsed by the Statewide Advisory Committee for Computer Services. The plan also incorporates a new chapter (IV) which delineates specific tasks, schedules, and responsibilities for achieving the goals and objectives of the plan.

It is the intent of the Texas Education Agency to provide leadership and direction in the following areas:

- (1) Support the computer network concept as an integral part of the Texas Education Agency mission.
- (2) Discourage the proliferation of innumerable incompatible computers in school districts and in education service centers.
- (3) Encourage the sharing of administrative application software within the network.
- (4) Develop and adopt standards for the network in the areas of data, hardware, software, communications, and personnel.
- (5) Provide arrangements and incentives for centralized program development and documentation.
- (6) Provide arrangements and incentives for implementation of the common core of data concept. Under this concept, districts would maintain data required for state and federal reports in accordance with state data standards. These records would be maintained on the designated network facility.
- (7) Improve the equality of access to the network for school districts.
- (8) Establish procedures, standards, and controls which will significantly increase the cooperation and collaboration between the regional processing centers, the multiregional processing centers, and the Texas Education Agency. The objective of these measures will be to improve services to districts and to the state through a true information management services network in both a logical and physical sense.

This rule is adopted with no change from the text as proposed.

This rule is promulgated under the authority of Section 11.33(d), Texas Education Code.

.040. Network-System Plan for Computer Services. The rules for computer services are described in the official Texas Education Agency bulletin, Network-System Plan for Computer Services, 1979-1980, which is adopted by this reference as the agency's official rule. A copy is available for examination during regular office hours, 8 a.m. to 5 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency.

cy Building, (headquarters), 201 East 11th Street, Austin, Texas.

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802904 A. O. Bowen
Commissioner of Education

Effective Date: May 9, 1980

Proposal Publication Date: March 11, 1980

For further information, please call (512) 475-7077.

School Districts

Mineral Leases by School Districts 226.23.12

The Texas Education Agency has amended Rules 226.23.12.001, .010, and .020, concerning mineral leases by school districts. Section 23.29 of the Texas Education Code requires the commissioner of education to approve mineral leases executed by independent school districts. The amendment updates references to those statutes which have been codified in the Texas Natural Resources Code. It also adds a paragraph on limits for the primary term of leases for oil, gas, and sulphur, and adds the requirement that requests for approval for leases shall include verification that the required notice of intent to lease was published.

Public review and discussion of the proposed amendments were held. The amendments are adopted with no change from the text as proposed.

These amendments are adopted under the authority of Section 23.29, Texas Education Code.

.001. Policy. The commissioner of education shall approve mineral leases for certain school districts in accordance with Section 23.29, Texas Education Code, and Chapter 71, Subtitle F, Texas Natural Resources Code.

.010. Common School Districts. Mineral leases executed by common school districts and rural high school districts classified as common shall be in accordance with Section 22.10(b), Texas Education Code, and Chapter 71, Subtitle F, Texas Natural Resources Code. The right to lease rests with the board of trustees subject to the approval of the county school trustees or county board of education having jurisdiction over the district. Approval of such leases by the commissioner of education is not required.

.020. Independent School Districts.

(a) Mineral leases executed by independent school districts shall be in accordance with Section 23.29, Texas Education Code, Chapter 71, Subtitle F, Texas Natural Resources Code, and these rules. Approval of such leases by the commissioner of education is required and shall be granted upon satisfactory compliance by the district with the following conditions and procedures.

(b) General requirements.

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

(c) Oil, gas, and sulphur leases. In addition to the general requirements of Rule .020 (a) and (b) above, the following rules shall apply to all leases for oil, gas, or sulphur.

(1) Royalty retained. The district as lessor shall retain at least one-eighth royalty on oil and gas. If sulphur is leased, the royalty retained shall not be less than \$2.00 per long ton.

(2) Pooling clause. In leases of lands consisting of less than 40 acres, the lease shall contain a pooling clause.

(3) Primary term. No lease, other than for coal or lignite, may be for a primary term of more than 10 years from the date of execution and approval of the lease by the commissioner of education.

(d) Coal and lignite leases. In addition to the general requirements of Rule .020(a) and (b) above, the following rules shall apply to all leases for coal and lignite.

(1) Royalty retained. No lease for coal and lignite may be executed unless the district as lessor retains at least a royalty based on one of the following or a combination of the following:

(A) a sum certain per ton;

(B) a percentage certain of the gross sale price FOB at the mine site of the coal and lignite; or

(C) a sum certain for each acre-foot of coal and lignite mined and removed from the premises.

Royalties paid under this paragraph may be paid as advanced mineral royalties.

(2) Primary term. No lease for coal and lignite may be for a primary term of more than 35 years from the date of execution.

(e) Applications for approval. Mineral leases executed by independent school districts shall be submitted for approval by the commissioner of education in accordance with the following procedure.

(1) When a mineral lease has been fully executed by all parties thereto, the president of the board of trustees shall request approval of the same by letter to the commissioner of education, 201 East 11th Street, Austin, Texas 78701, enclosing the original and one copy of the lease with attached copies of the board resolution authorizing the lease. The request letter should state whether the lease was awarded as a result of competitive bidding or granted by a public auction, and should contain sufficient information for the commissioner to determine whether the bidding or auction requirements of these rules have been met, including verified proof of the publication of notice required by Rule .020(b), above.

(2) The commissioner shall review the request letter and enclosed materials upon receipt and shall determine whether the lease is in compliance with these rules.

(A) If the commissioner determines that the lease is in compliance with these rules, the commissioner shall attach a notarized signature of approval to the original of the lease and shall return the original to the district, retaining the request letter, one copy of the lease, and any other supporting materials for agency files.

(B) If the commissioner determines that the lease is not in compliance with these rules, the commissioner shall return all copies of the lease to the district with a letter specifying the corrective action the district should take to obtain approval of the lease.

(C) Corrected leases may be resubmitted for approval as provided in paragraph (1) above, in which case the commissioner shall likewise make the determinations and take the actions as herein provided for original submissions.

Issued in Austin, Texas, on April 23, 1980.

Doc. No. 802993 A. O. Bowen
Commissioner of Education

Effective Date: May 14, 1980

Proposal Publication Date: February 22, 1980

For further information, please call (512) 475-7077.

Adaptations for Special Populations

Special Education Program 226.35.73

The Texas Education Agency has amended the administrative procedure portion of Rule 226.35.73.030, regarding the regional day school program for the deaf. The amendment eliminates the stipulation that at least one member of the campus referral committee be a specialist in the education of the deaf, and adds the stipulation that a professional certified in the education of the deaf be available to the committee.

Public review and discussion of the proposed rule were held. The rule is adopted with no change from the text as proposed.

This amendment is adopted under the authority of Sections 11.03, 11.10, 11.052, 16.005, and 16.104, Texas Education Code.

.030. *Regional Day School Program for the Deaf.*

(a) Policy. (No change.)

(b) Administrative procedure.

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

(6) Student eligibility, identification, assessment, and individual educational plan development and review.

(A) Any person, birth through 22, who has a hearing impairment which severely impairs processing linguistic information through hearing, with or without amplification, and adversely affects educational performance is eligible for consideration of services through the Regional Day School Program for the Deaf.

(B) The child identification standards, Administrative Procedure 35.72.020, apply to the hearing impaired population with the following additional requirement. When a campus referral committee is considering a student with a possible significantly serious auditory handicap, a professional certified in the education of the deaf is available to the committee.

(C)-(D) (No change.)

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

Issued in Austin, Texas, on April 23, 1980.

Doc. No. 802994 A. O. Bowen
Commissioner of Education

Effective Date: May 14, 1980

Proposal Publication Date: March 21, 1980

For further information, please call (512) 475-7077.

Assessment

Student Assessment of Basic Skills 226.38.01

The Texas Education Agency has adopted Rule 226.38.01.080 concerning the provision of funding for the Student Assessment of Basic Skills to be administered in grades 5 and 9 in 1979-80, and in grades 3, 5, and 9 in 1980-81 and thereafter. This replaces an identical rule adopted on an emergency basis.

Public review and discussion of the proposed rules was held. The rule is adopted with no change from the text as proposed.

This rule is promulgated under the authority of Sections 16.005 and 16.176, Texas Education Code.

.080. *Funding.*

(a) Policy. The Texas Education Agency will withhold an average cost per pupil from the state compensatory allocation of each district receiving such funds to pay for the cost of developing and administering the assessment instruments.

(b) Administrative procedure. (Reserved for expansion.)

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802905 A. O. Bowen
Commissioner of Education

Effective Date: May 9, 1980

Proposal Publication Date: February 29, 1980

For further information, please call (512) 475-7077.

Foundation School Program

Funding for Compensatory Education Programs 226.41.22

The Texas Education Agency has amended Rule 226.41.22.020, concerning funding for state compensatory education assistance. Funds under the state compensatory education program will be allocated after funds for the student assessment of basic skills have been removed. State compensatory education funds may be used only for instructional programs and directly related activities to increase student performance on essential language arts and mathematics competencies.

Public review and discussion of the proposed rule were held. The rule is adopted with changes from the text as proposed. In subsection (b)(2), the words "compensatory instructional services" are used instead of "special programs." Subsection (b)(3) has been edited for clarity, with no substantive change. In subsection (b)(5), the words "supportive activities" and the entire last sentence have been deleted as redundant.

This rule is promulgated under the authority of Sections 16.005 and 16.176, Texas Education Code.

.020. *State Compensatory Education Assistance.*

(a) (No change.)

(b) Administrative procedure.

(1) Districts shall receive an allocation according to the formula established by law after funds for the student assessment of basic skills have been removed in accordance with Policy 38.01.080.

(2) No detailed applications will be required from districts to receive state compensatory education funds. Only statements of intent will be submitted by the districts to the Texas Education Agency, Division of State Funding, to indicate the district's desire to receive state compensatory education funds for compensatory instructional services for children who through testing/assessment procedures have been determined to be performing below district expectancy levels in basic skills areas (reading, writing, and mathematics).

(3) State compensatory education funds must be used to serve children who, through assessment procedures, have been determined to be performing below local education agency expectancy levels in basic skills areas (reading, writing, and mathematics). State compensatory education funds

may be used only for instructional programs, including summer programs if desired, and directly related activities, such as in-service, instructional supervision and counseling, to increase student performance on essential language arts and mathematics competencies.

(4) State compensatory education funds may be expended for supplies, materials, and equipment only to the extent that such expenditures are necessary and can be justified for the effective implementation of instructional programs in the basic skills areas.

(5) State compensatory education funds may not be used for administration, construction, building rental, or other noninstructional purposes. (Supportive activities previously planned and proposed in the local education agency's 1979-80 consolidated application for state and federal assistance under state compensatory education funding may be implemented in the 1979-80 school year only.)

(6) State compensatory education program funds have been removed from a direct alignment with the federal ESEA Title I funds. However, these funds must be reported in the ESEA Title I comparability reports.

Issued in Austin, Texas, on April 25, 1980.

Doc. No. 803187 A. O. Bowen
Commissioner of Education

Effective Date: May 16, 1980

Proposal Publication Date: March 7, 1980

For further information, please call (512) 475-7077.

Teacher Certification

Requirements for Issuance of Texas Certificate Based on Certificates and College Credentials from Other States 226.62.13.010, .020, .060

The Texas Education Agency has adopted Rules 226.62.13.010, .020, and .060, concerning requirements for issuance of Texas certificate based on certificates and college credentials from other states. Two major changes have been made. First, out-of-state institutions which offer teacher education programs or courses in Texas must be accredited by the Southern Association of Colleges and Schools before such work may be accepted for salary increment or certificate purposes. Second, individuals with out-of-state credentials seeking Texas certification must hold a valid out-of-state certificate in order for the Texas Education Agency to evaluate their credentials. Individuals with a degree but no certificate must have their credentials evaluated by an approved Texas institution and be recommended by the Texas institution for a teaching certificate. These changes will help ensure that the quality of preparation of education professionals being certified on the basis of out-of-state training will be comparable to the training required of Texas residents in Texas teacher training institutions.

Public review and discussion of the proposed rules were held. The rules are adopted with minor editorial changes from the text as proposed.

These rules are promulgated under the authority of Sections 13.032 and 13.042, Texas Education Code.

.010. General Provisions.

(a) Policy.

(1) Individuals with out-of-state credentials seeking Texas certification must hold the bachelor's or higher degree and a valid out-of-state teaching certificate. Upon presentation of the out-of-state certificate and official college transcripts to the Texas State Commissioner of Education, the individual's credentials shall be evaluated. In accordance with law, the commissioner of education shall issue the out-of-state applicant a valid Texas certificate if the degree and certificate presented are considered equivalent to the requirements for a Texas certificate. Degreed but noncertificated individuals from another state must have their credentials evaluated through an approved Texas institution and be recommended for a Texas teaching certificate.

(2) Out-of-state institutions which offer teacher education programs or courses in Texas must be accredited by the Southern Association of Colleges and Schools before such work may be accepted for salary increment or certificate purposes.

(b) Administrative procedure. The commissioner of education issues an appropriate Texas teacher certificate to a person who holds a valid teaching certificate from another state and desires to teach in Texas. The issuance is made in accordance with the law and the following requirements. Out-of-state certificates must meet full teacher certification criteria, as specified below.

(1) Standard certification issued by the other state and equivalent to the certificate(s) issued by the Texas Education Agency:

(A) may not be temporary permits or substandard certificates;

(B) may not be issued by a city or school district;

(C) may not be in the form of approval letters or entitlement cards from a teacher training institution, state department of education, city, or school district.

(Note: The applicant whose teacher education program was completed in a state which does not issue a certificate until the individual is under contract must submit a letter from that state's department of education verifying the applicant's completion of all degree and standard certification requirements. The letter may be used for employment purposes; however, a Texas teacher certificate will not be issued in reciprocity until the applicant has been issued a standard certificate by another state.)

(2) Certification based upon at least a bachelor's degree and completion of a teacher education program:

(A) recommended by a college or university accredited by a recognized accrediting agency as an approved teacher training institution, acceptable by the state's recognized accrediting or approval agency for teacher certification purposes;

(B) valid (current) certification in the issuing state at the time application is made for the Texas certificate.

(3) The teacher education program upon which the out-of-state certificate is issued must be at least equal to the Texas requirements in semester hours, but not necessarily in content or kind. No area is recorded on the Texas certificate unless it is an area approved by the Texas State Board of Education and is approximately equal in semester hours to the Texas requirements.

(A) If the out-of-state certificate (or area) is not equivalent to Texas requirements in semester hours, the Texas Education Agency will prepare a deficiency plan for

the comparable Texas certificate (or area). The Texas certificate would be issued directly by the Texas Education Agency upon completion of the deficiencies outlined.

(B) The Texas Education Agency will prepare an evaluation for an area not listed on the out-of-state certificate if it is the applicant's initial assignment area in a Texas public school. The Texas certificate would be issued directly by the Texas Education Agency upon completion of the deficiencies outlined.

(C) The applicant must contact an approved Texas teacher preparation institution for evaluation of areas which do not appear on the out-of-state certificate or are not initial assignment areas. The Texas certificate(s) would be issued upon recommendation by the institution.

(4) An applicant with an out-of-state certificate must complete course credits in government or political science and/or examination(s) which give special emphasis to the Texas and federal constitutions.

(5) An applicant with an out-of-state certificate is not required to complete course credits or examination(s) in United States history.

.020. Texas Certificates which may be Issued Based on Certificates from Other States.

(a) If all the requirements specified are met except the Texas and/or federal constitution (government or political science) requirement, the applicant may be issued a certificate valid for 12 months.

(1) The applicant should submit the following materials to the Division of Teacher Certification:

(A) the completed application, signed and notarized (the employing superintendent may also wish to complete the permit section);

(B) official transcripts;

(C) copy of valid (current) out-of-state certificate (both front and back);

(D) fee (money order or cashier's check) as recommended by the commissioner of education and approved by the State Board of Education; and

(E) statement of commitment, signed and notarized, committing the applicant to complete the required government within the 12-month validity period of the certificate.

(2) When employed by a public school district, the applicant should provide two completed and notarized Statement of Commitment forms for the personnel files of the employing superintendent.

(3) The Texas and/or federal government requirement must be completed within 12 months of issuance of the certificate for the applicant to receive a provisional certificate.

(A) If the government requirement is not fulfilled within the 12-month validity period, the one-year certificate will be revoked.

(B) The individual's credentials will then be re-evaluated and the individual will be required to meet full Texas certification requirements before a provisional certificate can be issued. Full Texas requirements for the various certificate levels, including areas of specialization and teaching fields, are stated in subchapters .08-.12.

(b) The applicant who holds a valid, standard out-of-state special subject certificate, but who does not meet requirements for a classroom teaching certificate, may be issued a Texas certificate valid for 12 months. If the government requirement is completed within the validity period of

the certificate, it converts to a special assignment permit to allow for the completion of requirements for a classroom teaching certificate.

(1) The special assignment permit is valid for the 12 months immediately following the validity period of the one-year certificate.

(A) No Texas Education Agency action is required other than placing proof of completion of the government requirement in the individual's certification file.

(B) A cover letter and transcript(s) or test score(s) showing successful completion of the government requirement should be submitted to the Texas Education Agency by the employing superintendent or authorized representative.

(C) The special assignment permit remains the property of the individual to whom it was issued and may be transferred from one school district to another school district.

(2) The special assignment permit may be extended for 12 months immediately following the first permit year provided that:

(A) requirements for extension are completed before August 31 of the first permit year; and

(B) a cover letter, deficiency plan, and transcripts showing completion of six semester hours or one-third of the deficiencies are on file in the Division of Teacher Certification.

(3) The provisions for one-year certification and conversion to special assignment permit status are only valid for three consecutive years; therefore, all deficiencies for the classroom certificate must be completed by the end of the second permit year.

(4) If the government requirement is not completed within the validity period of the certificate, the certificate will be revoked. The individual's credentials will then be re-evaluated and the individual will be required to meet full Texas certification requirements before another credential can be authorized.

(c) Providing that all certificate requirements are met, the applicant may be issued a Texas provisional certificate, valid for life. The applicant should submit to the Division of Teacher Certification the following materials:

(1) another accurately completed application;

(2) fee (money order or cashier's check) as recommended by the commissioner of education and approved by the State Board of Education; and

(3) official transcript or examination score(s) showing successful completion of Texas and/or federal constitution; or the individual may submit official verification of successful completion of Texas and/or federal government to the school district. The superintendent or the authorized representative may then complete and submit an affidavit recommending to the Division of Teacher Certification that a provisional certificate be issued to replace the one-year certificate.

.060. Graduates of Institution in Other States without Certificates. Degreed but noncertified individuals from other states must have their credentials evaluated by an approved Texas teacher preparation institution and be recommended for a Texas teacher certificate.

Doc. No. 803188

Evaluation of Out-of-State Applicants for Professional Certificates 226.62.13.070

The Texas Education Agency has repealed Rule 226.62.13.070, concerning evaluation of out-of-state applicants for professional certificates. Under the proposed amendment to Rule .060, individuals with an out-of-state degree but no certificate must have their credentials evaluated by a Texas institution of higher education approved for teacher education and must be recommended by the Texas institution for a teaching certificate. Provisions for evaluation of such credentials by the Texas Education Agency are being repealed.

Public review and discussion of the proposed rule were held.

This repeal is effected under the authority of Sections 13.032 and 13.042, Texas Education Code.

Issued in Austin, Texas, on April 25, 1980.

Doc. No. 803189 A. O. Bowen
Commissioner of Education

Effective Date: May 16, 1980

Proposal Publication Date: March 4, 1980

For further information, please call (512) 475-7077.

Organization of the State Board of Education Committees of the Board 226.91.03

The Texas Education Agency has amended Rule 226.91.03.010, concerning the delegation of committee authority. The amendment adds the committee for special schools to the policy and changes the name of the committee to reflect responsibilities for athletics as well as those responsibilities concerning special schools which remain with the State Board of Education. The State Board of Education is required by Section 11.26(a)(9), Texas Education Code, to "consider the athletic necessities and activities of the public schools of Texas."

Public review and discussion of the proposed rule were held. The rule is adopted with one change from the text as proposed. The Title of Policy 12.03, which is referenced in the rule, has been changed.

This rule amendment is promulgated under the authority of Sections 11.23 and 11.26(a)(9), Texas Education Code.

.010. Delegation of Committee Authority.

(a) All decisions (except as provided in Policy 12.03, Investment of the Permanent School Fund) are made by the board in open session and are not delegated to any committee of the board. The volume and complexity of matters coming before the board require the use of committees to investigate, study, and report to the board. The chairman of the board appoints the following committees: Programs and Personnel Development; Policy, Budget, and Finance; Investment of the Permanent School Fund; Priorities, Accountability, and Accreditation; and Special Schools and Athletics.

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

Doc. No. 802906

Designation of the Board of the Texas School for the Blind and the Texas School for the Deaf 226.91.04

The Texas Education Agency has repealed Rule 226.91.04.010 concerning the Board for the Texas School for the Blind and the Texas School for the Deaf. The governance structure for the Texas School for the Blind and the Texas School for the Deaf was altered by the 66th Legislature. The new governance structure for the schools has been addressed in Chapter 81.

Public review and discussion of the proposed rule were held.

This repeal is adopted under the authority of Sections 11.061, 11.02(a), 11.23, 11.24, and 11.26, Texas Education Code.

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802907 A. O. Bowen
Commissioner of Education

Effective Date: May 9, 1980

Proposal Publication Date: February 22, 1980

For further information, please call (512) 475-7077.

Texas Department of Labor and Standards

Manufactured Housing Division

The Texas Department of Labor and Standards, Manufactured Housing Division, has amended terminology within existing rules for clarity and compatibility with terminology of the Texas Manufactured Housing Standard Act, Article 5221f, Texas Revised Civil Statutes, which became effective September 1, 1979.

Fee Structure 063.55.06

Proposed Rule 063.55.06.013 was originally published on August 21, 1979, (4 TexReg 2920) as emergency Rule 063.55.09.002; proposed Rule .014 was originally published November 6, 1979, (4 TexReg 4045) as proposed Rule 063.55.09.005. These rules have been consolidated within the same category for subject clarity.

Terminology and sequence changes are made under the authority of Article 5221f, Texas Revised Civil Statutes.

.001. *Engineering Services Fees.* There shall be a fee of \$21 per hour for engineering services, including inspections, and for review of manufactured housing blueprints and supporting data when the department acts as design approval primary inspection agency. The fee shall be paid to the department by the manufactured housing manufacturer for whom the services are performed and shall be received by the department prior to release. The manufacturer shall also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the location of the manufacturer when such travel is incidental to the engineering services performed.

.002. *Initial 100% Inspection Fees.* There shall be a fee of \$15 per hour, not to exceed \$120 per day, for conducting in-

initial 100% inspections at manufacturer locations when the department acts as an in-plant primary inspection agency for the purpose of certifying the manufacturer as required under Title VI of the Housing and Community Development Act of 1974. This fee shall be paid to the department by the manufactured housing manufacturer for whom the inspection is conducted. The manufacturer shall also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the location of the manufacturer.

.003. *Plant Inspection Fee.* There shall be a fee of \$15 for the inspection of all manufactured homes manufactured or assembled within the State of Texas. This fee shall be paid to the department by the manufacturer of the manufactured home by the 10th of each following month and shall accompany a monthly production report of all manufactured homes manufactured. The manufacturer shall also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the location of the manufacturer.

.004. *Manufactured Housing Increased Frequency Inspection Fee.* There shall be a fee of \$15 per man hour not to exceed \$120 per man day for increased frequency inspections. An increased frequency inspection shall be scheduled by the department when inspections at a manufacturing facility reveal repeated failures to conform to the design or when there is evidence that the manufactured housing manufacturer is not performing under its approved quality control manual. The department may advise the manufacturer prior to the date of the scheduled inspection and the manufacturer shall comply with instructions, if any, relative to the increased frequency inspection. The manufacturer shall also be charged for reimbursement of mileage and per diem incurred by department personnel to and from the location of the manufacturer.

.005. *Retailer Alteration Fee.* There shall be a fee of \$15 per hour for the inspection of alterations made upon the structure, plumbing, heating, or electrical systems of manufactured homes. The fee shall be paid to the department by the person making the alterations.

.006. *Installation Inspection Fee.* There shall be a fee of \$15 to be paid by the installer, for the inspection of all mobile homes installed within 300 feet of another building or within the corporate limits of a municipality. Forms for reporting shall be furnished by the department and shall contain such information for the installer to provide in order to comply with the requirements of Section 11(a) of the Act. Installer reports shall be due on the 10th of the following month. If no homes were installed during the month, the installer shall submit a summary form, reporting no homes installed.

.007. *Retailer Monitoring Fees for Used Mobile Homes.* There shall be a fee of \$3.00 for the inspection of used mobile homes at retailer locations for compliance with Section 8 of the Act. The fee shall be paid to the department by the retailer at whose location the inspection is performed at the time of the inspection. If a used mobile home on which an inspection is performed is consignment inventory, the retailer shall pay the inspection fee and seek reimbursement in accordance with the sales agreement between the retailer and the consignor or owner. The inspection fee shall not be assessed more than one time for each mobile home inspected, but subsequent inspections may be performed at the option of the department. The retailer shall also be charged for reim-

bursement of mileage and per diem incurred by department personnel to and from the location of the retailer.

.008. *Texas Seal Fee for Used Mobile Homes.* There shall be a fee of \$5.00 for the issuance of Texas seals. Mobile home retailers who have acquired a used mobile home manufactured after June 15, 1976, that does not have a federal label affixed or a used mobile home manufactured prior to June 15, 1976, that does not have a Texas seal affixed, shall file an application to the department for a Texas seal. The application shall include an affidavit stating that the mobile home is habitable. The application shall be accompanied by the seal fee of \$5.00 made payable to the department. At the option of the department a compliance inspection may be scheduled prior to the release of the seal.

.009. *Monitoring Inspection Fee.* There shall be a fee of \$19 to be paid by each mobile home manufacturer in this state for each mobile home produced in this state. The monitoring inspection fee has been established by the secretary of the Department of Housing and Urban Development, (pursuant to Rule 307 at 24 Code of Federal Regulations 3282) who shall distribute the fees collected from all mobile home manufacturers among the approved and conditionally approved states based on the number of new mobile homes whose first location after leaving the manufacturing plant is on the premises of distributor, dealer, or purchaser in that state, and the extent of participation of the state in the joint monitoring program established under the National Mobile Home Construction and Safety Standards Act of 1974.

.012. *Modular Decal Fee.* There shall be a fee of \$25 for the issuance of modular decals. Application for decals shall be provided by the department and shall include an affidavit stating that the modular home meets code/standard requirements in effect at the time of manufacturer. Modular decals shall remain the property of the state.

.013. *Modular Home Monitoring Fee.* There shall be a fee of \$25 for the inspection of all modular homes manufactured within the state and for shipment into the state. This fee shall be paid to the department by the manufacturer of the modular home by the 10th of each following month and shall accompany a report of all modular homes manufactured within the state or for shipment into the state. The monthly report shall provide the name and location of the purchaser and the decal number affixed to the modular home. The modular manufacturer shall also be charged for reimbursement of travel costs and per diem incurred by department personnel to and from the location of the modular home manufacturer.

.014. *Modular Home Installation Inspection Fee.* There shall be a fee of \$25 for the inspection of modular home installations. The fee shall be paid by the installer of the modular home by the 10th of each following month. Forms for reporting the installation shall be provided by the department and shall contain an affidavit that the installation has been performed in accordance with requirements of the department.

Doc. No. 802926

Standards and Requirements 063.55.07

The Texas Department of Labor and Standards adopts amendments to existing Rules 063.55.07.001, .003, .012, .015, .016, and .028-.037. Rules .017-.027 are new and relate to requirements for modular manufacturers with respect to engineering standards, plant certification, design approval, and installations of modular homes manufactured and offered for sale in Texas.

These rules are promulgated under the authority of Article 5221f, Texas Revised Civil Statutes.

.001. Mobile Home Installation Requirements.

(a) All mobile homes which are installed within this state are required to be installed as follows:

(1) All mobile homes manufactured on or after June 15, 1976, shall be installed in accordance with the manufacturer's installation instructions. Manufacturers shall file with the department installation instructions approved by the manufacturers' design approval primary inspection agency and shall provide changes, modifications, and updates as they occur in order that each manufacturer's current installation instructions may be on file with the department.

(2) All mobile homes manufactured on or after March 20, 1974, and prior to June 15, 1976, shall be installed in accordance with:

(A) the standards approved and promulgated by the department or

(B) the manufacturer's installation instructions as may be filed with the department.

(3) All mobile homes manufactured prior to March 20, 1974, shall be installed in accordance with the standards approved and promulgated by the department.

(4) All materials, anchoring devices, and components used for the installation of a mobile home shall be in conformance with standards promulgated by the department.

.003. Provisions for Anchoring Systems.

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

(j) Multisection mobile homes require only diagonal ties. These shall be placed along the main frame and below the outer side wall.

(k)-(n) (No change.)

.012. Blocking Standards.

(a) Installation of mobile homes for which there are no manufacturer's instructions must meet or exceed the following support and blocking requirements.

(b)-(h) (No change.)

.015. Procedures for Retailer Alterations.

(a) (No change.)

(b) The installation of self-contained or split system ("A" coil) comfort cooling devices shall not be considered an alteration, unless any internal system is reworked to accomplish the installation.

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

.016. *Texas Manufactured Housing Standards Code.* The Texas Manufactured Housing Standards Code shall be the federal standards established under Title VI of the Housing and Community Development Act of 1974, and each change, amendment, or requirement shall become effective in conjunction with the effective date set by the federal program.

.017. *Modular Home Installation Requirements.* All modular homes on which construction was begun on or after May

9, 1980, shall be installed in accordance with the manufacturer's installation instructions. Modular manufacturer's installation instructions shall bear the seal of a registered professional engineer and shall include details of the construction of the foundation and materials, hardware, devices, and components for attachment of the modular home to the foundation system.

.018. *Modular Custom Construction.* Section 6(D) of Article 5221f, Texas Civil Statutes, means that the manufactured home must have affixed to it the appropriate seal, label, or decal when construction is completed, and should not be interpreted to prevent the offering for sale of custom built manufactured homes.

.019. *Modular Housing Identification Number.* Each transportable section of every modular home shall be assigned an identification number. The identification number shall be permanently affixed to an integral structural member of the modular home at the first production station identified by the quality control manual. The identification number shall be of sufficient size and shall be so located as to be readily visible during the construction process. The manufacturer will identify in the design manual the location where the identification number will be affixed to the unit.

.020. *Modular Home Decal.* Every modular home, including each section of multisectional modular homes, shall have a decal affixed. The decal will be affixed only after the modular home is in compliance with the Texas Manufactured Housing Modular Code. The decal will be affixed in a readily visible location on the exterior of each transportable section of the modular home. The modular home manufacturer in the home owner's manual will specify the location where the decal will be affixed. The decal will be attached by non-removable fasteners so that the decal may not be removed without being defaced. The manufacturer will obtain decals from the department. The decals will remain the property of the department and may be reclaimed by the department when necessary to assure compliance with the standards or the Act. The manufacturer will assign a decal number to a modular home or a section of a multisectional modular home at the time it enters production. The manufacturer will keep accurate records of all decals in its possession.

.021. Modular Manufacturer Self-Certification Decal.

(a) After the effective date of these standards and prior to completion of the certification inspection, the modular home manufacturer may self-certify its modular homes as being in compliance with the Texas Manufactured Housing Standards Code by adopting the construction, electrical, mechanical, plumbing, and installation codes as specified in these standards and by attaching to each transportable section of each modular home produced a self-certification decal of the form given below:

_____(name of mfg.) certifies that to the best of our knowledge, this modular home has been built in compliance with the requirements of the Texas Manufactured Housing Standards Code.

(b) The self-certification decal will be no smaller than 4-1/2 inches by two inches and will be permanently affixed to each transportable section of the modular home as specified in Rule .020(d) of these standards.

.022. *Modular Home Data Plate Requirements.* All modular homes entering production on or after the effective date of these standards shall have affixed near the main electrical

distribution panel box or in another conspicuous location a data plate containing the following information:

- (1) name and address of the manufacturer; "for warranty information;"
- (2) name and address of the Texas Department of Labor and Standards; "for warranty information;"
- (3) the identification number, decal number, model designation, and date of manufacture of the unit;
- (4) the structural wind and seismic load zones for which the unit was designed, including duplicates of the applicable load zone maps as set out in the various sections of the standards;
- (5) the comfort heating certificate as required in Rule .027(b)(1)(B)(xii) of these standards;
- (6) roof load followed by the statement, "This modular home is designed for a live load of _____ psf."

.023. Modular Home Manufacturer Certification Requirements. Prior to being issued decals, each modular home manufacturing facility will undergo a plant certification inspection. The plant certification inspection will be conducted by a team of at least one engineer and one or more inspectors. The purpose of the plant certification inspection will be to assure that the quality control program in the manufacturing facility is functioning according to the approved quality control manual for that facility and that the manufacturing facility is capable of producing modular homes in compliance with the Texas Manufactured Housing Standards Code in effect at the time of the inspection. The engineer assigned to the team will become familiar with all aspects of the manufacturer's approved design and quality control manuals. The engineer will direct the inspection of the facility by the inspectors and will brief them on any unique aspects of the design. Modular homes on the production line will be checked to assure that failures to conform located by the inspection team are being located by the plant quality control program and are being corrected by the plant personnel. The inspection team will work closely with the plant quality control personnel to assure that the approved design and quality control manuals for that facility are clearly understood and are being complied with. The plant certification inspection will terminate when the inspection team has fully evaluated all aspects of the manufacturing facility. At the completion of the plant certification inspection the department will prepare a plant certification report or deviation report.

.024. Modular Manufacturer Certification Report.

(a) Following completion of the plant certification inspection the department will issue a plant certification report. The plant certification report will contain the following:

- (1) name and address of manufacturer;
- (2) names and titles of personnel performing the certification inspection;
- (3) serial and decal numbers of the unit(s) inspected;
- (4) a list of nonconformances observed on the unit(s) inspected and corrective action taken in each case;
- (5) a list of each deviation from the approved quality control procedures observed during the certification;
- (6) the statement, "This report concludes that the Manufactured Housing Division of the Texas Department of Labor and Standards, after evaluating the facility, certifies that _____ of _____ is capable of producing modular homes in accordance with the approved

design and quality control manuals on file in the manufacturing facility and in compliance with the requirements of the Texas Manufactured Housing Standards Code."

(b) Deviation report. At the completion of the plant certification inspection, if in the opinion of the department, the manufacturer is not capable of building modular homes in compliance with the Texas Manufactured Housing Standards Code, the department will issue a deviation report. The deviation report will detail the specific areas in which the manufacturer was found to be deficient and will make recommendations for improvement. In the deviation report the department will specify the amount of time the manufacturer will be given to improve those areas which are deficient and will schedule the second plant certification inspection no later than 30 days after the first inspection. In the interim the manufacturer may continue to self-certify in accordance with Rule .021 of these standards. The department may provide 100% monitoring of the manufacturer's production during this interim period. If, following completion of the second plant certification inspection, the department finds that the manufacturer is still incapable of building modular homes in compliance with the requirements of the Texas Manufactured Housing Standards Code, the manufacturer's registration may be cancelled in accordance with Section 7, Paragraph (k), of the Act.

.025. Modular Design Review Agency Requirements.

(a) Design review agency. The department may approve qualified, independent organizations to review the modular home manufacturer's design submittal for compliance with the Texas Modular Housing Standards Code. The design review agency will be composed of professional and technical personnel qualified to evaluate the various aspects of a manufacturer's design. The design review agency may not provide design services for the manufacturers for whom they act as design review agency.

(b) Submittal requirements.

(1) A statement of certification by the chief officer of the organization that the agency will not perform design service and design review service for the same modular manufacturer.

(2) That the design review agency will implement the policies and determinations of the department with regard to interpretation of the standards and administration of the Act.

(3) That all information contained in the design review agency submittal for approval to the department is true and correct.

(4) Resume of key personnel:

- (A) areas of expertise;
- (B) experience in their fields;
- (C) duties in the organization.

(5) A justification of the organization's ability to evaluate a design for compliance with the standards in the areas of structure, foundation, electrical, plumbing, and HVAC. This justification may include an example of a design which the organization has evaluated for compliance with an accepted code or set of standards.

(6) An organizational chart.

(7) Example of the organization's approval stamp structure.

.026. Modular Design Review Agency Responsibilities. The design review agency will obtain from the manufacturer such information as is compatible with the requirements of Rule

.027 of these standards and such other information as the design review agency may reasonably deem necessary to assure the manufacturer's designs and procedures are in compliance with the Texas Modular Housing Standards Code. The design review agency will signify approval of a drawing, specification, calculation, or other material by application of an approval stamp and an approval date which may be included on the stamp. The design review agency will forward one approved copy of the manufacturer's design and quality assurance package to the department and will return one approved copy to the manufacturer. The design review agency may maintain a copy of the package for their future review.

.027. Modular Manufacturer Design Submittal Requirements.

(a) The manufacturer shall submit to the design review agency such information as the design review agency may reasonably require, consistent with the requirements of these standards, to assure compliance with these standards. The manufacturer may select any approved design review agency to enter into contract with. A list of approved design review agencies, including mailing addresses, will be available from the department.

(b) Submittal requirements. Each manufacturer shall have copies of all tests, floor plans, drawings, specifications, schedules, the quality assurance manual, and other information reviewed by an approved design review agency. The approved design review agency will indicate approval by application of an approval stamp to each page. A copy of the information must be in the factory for use by in-plant inspectors. A floor plan, construction detail, specification, drawing, calculation, or other document must be stamped as approved and in the factory before the applicable portion of the modular home is inspected or constructed. The manufacturer must submit to the approved design review agency the following:

(1) One copy of a modular home design manual. The manual shall have all pages numbered and be arranged according to the submitted table of contents. The pages shall be 8-1/2 inches by 11 inches, or 17 inches by 22 inches folded into 8-1/2 inches by 11 inches. The floor plans shall have no scale smaller than 1/8 inch equals one foot. The manufacturers modular home design manual shall contain, as a minimum:

(A) Table of contents with provision for numbering each page of the design manual, including all specifications, drawings, and calculations, and cross referencing each drawing or specification to the applicable calculation pages.

(B) Specifications or detail drawings for all materials used in the construction of the modular home:

- (i) detail drawings of all assemblies and components;
- (ii) floor plans for all models and options;
- (iii) electrical schematics for all models and options;
- (iv) plumbing drawings for all models and options;
- (v) gas piping drawings for all models and options;
- (vi) a typical foundation system design (certified by a registered professional engineer or architect) including specifications of those materials, if any, that are unique to the design, and details of connection and classification and description of soils suitable for the typical foundation design;

- (vii) details for connection of utilities;
- (viii) fire protection details for kitchen range, water heater compartments, and furnace compartments;
- (ix) thermal resistance and air infiltration details, drawings, and specifications;
- (x) structural, thermal, electrical load, and hydraulic calculations as applicable;
- (xi) such other information as may reasonably be deemed necessary to assure safe construction of modular homes in compliance with these standards;
- (xii) heat loss and comfort cooling certificate information. The modular home manufacturer shall permanently affix a heat loss certificate to an interior surface of the home that is readily visible to the homeowner. The certificate shall contain the following:

(I) the statement, "This modular home has been thermally insulated for all locations within Texas having 4,000 annual Fahrenheit heating degree days (65 F base) or less," or the statement, "This modular home has been thermally insulated for _____ County, having _____ annual Fahrenheit heating degree days (65 F base).";

(II) the lowest outdoor temperature at which the installed heating equipment will maintain a 68 F inside the home;

- (III) name of modular home manufacturer;
- (IV) plant location;
- (V) home model;
- (VI) heating equipment manufacturer;
- (VII) heating equipment model;

(VIII) the statement, "This heating equipment has the capacity to maintain an average 68 F temperature in this home at outdoor temperatures of _____ F. To maximize furnace operating economy and to conserve energy, it is recommended that this home be installed where the outdoor winter design temperature (97-1/2%) is not lower than _____ degrees Fahrenheit." The temperature to be specified shall be 20 F or 30% of the design temperature difference, whichever is greater, added to the temperature specified as the heating system capacity certification temperature. Design temperature difference is 68 F minus the heating system capacity certification temperature in degrees Fahrenheit. The comfort heating certificate may be a part of the data plate.

(2) One copy of a quality assurance manual. The manual shall reflect the quality control procedures of the manufacturer providing for such inspections and testing of each modular home as to assure conformance to the standards. The manual shall be properly indexed. All pages shall be consecutively numbered on 8-1/2 inches by 11 inches format. The manual shall contain copies of all inspection forms, records, checklists, labels, and tags. The manual shall at a minimum contain the following:

(A) a brief introductory statement describing the type of modular housing involved and the Q.A. program general policy within the construction process;

(B) a chart depicting the manufacturer's organizational structure and functional relationships for quality assurance and production;

(C) a functional statement which defines the obligation, responsibility, and authority of the manufacturer's quality assurance program;

(D) identification of Q.A. personnel, their accountability by position, responsibility for each inspection,

method for marking nonconformances observed, and the identification by title of the person authorized to remove marks;

(E) construction materials handling methods including:

- (i) inspection checklist for receiving materials;
- (ii) marking and removal of rejected materials both upon receipt and from production line;

(F) identification numbering system to mark each individual unit at a uniform, accessible location in the first stage of production;

(G) a schematic of the manufacturing sequence with the plant layout including a station-by-station description of the activities to be performed;

(H) inspection checklist including:

(i) list of inspections to be made at each production station;

(ii) accept/reject criteria (i.e. each significant dimension and component should be given tolerances);

(I) step-by-step procedures and the station at which each production test will be performed including:

(i) dielectric test, continuity test, polarity test, operational electrical test, gas supply pressure test, water supply pressure test, DWV system test;

(ii) description of required testing equipment;

(iii) procedures for periodic checking, recalibration, and readjustment of test equipment;

(J) storage procedures for completed units at plant (and other locations prior to installation);

(K) changes to the quality assurance manual. All changes to the quality assurance manual reflecting additions to the quality assurance program and production process shall be resubmitted to the design review agency for approval.

(3) Modular homes homeowners' manual. Each manufacturer shall provide a homeowners' manual with each modular home. The homeowners' manual shall be delivered to the consumer with the home. The contents of the homeowners' manual shall be:

(A) cover page titled "Modular Home Homeowners' Manual:"

(i) name, location of facility, address, phone number;

(ii) table of contents;

(B) the statement, "This homeowners' manual has been provided in accordance with the requirements of the Texas Manufactured Housing Standards Act.:"

(C) information about the standards, "Information about the standards, rules, regulations, administrative orders, and requirements of the Texas Manufactured Housing Standards Act is available from the Texas Department of Labor and Standards, Manufactured Housing Division, P.O. Box 12157, Austin, Texas 78711, telephone (512) 475-5712.:"

(D) location of the data plate and an explanation of the significance of the information printed on it;

(E) details of typical foundation systems (may be the same as that in the modular home manufacturer manual);

(F) installation instructions for connection of utilities (may be the same as that in the modular home manufacturer manual);

(G) typicals or schematics of the major systems of the modular home:

(i) electrical;

(ii) plumbing;

(iii) air supply ducting;

(H) comfort cooling information;

(I) The modular home manufacturer shall provide the homeowner with modular comfort cooling information. This comfort cooling information shall be included in the homeowner manual. The comfort cooling information shall include a statement to read as follows:

(i) To determine the required capacity of equipment to cool a home efficiently and economically, a cooling load (heat gain) calculation is required. The cooling load is dependent on the orientation, location, and structure of the home. Central air conditioners operate most efficiently and provide the greatest comfort when their capacity closely approximates the calculated cooling load. Each home's air conditioner should be sized in accordance with Chapter 22 of the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE) Handbook of Fundamentals, once the location and orientation are known.

(ii) Information provided by the manufacturer necessary to calculate sensible heat gain:

(I) walls (without windows and doors)	"U" _____
(II) ceiling and roofs of light color ..	"U" _____
(III) ceiling and roofs of dark color ..	"U" _____
(IV) air ducts in floor	"U" _____
(V) air ducts in ceiling	"U" _____
(VI) air ducts installed outside the home	"U" _____

(iii) The air distribution system installed in this home is sized for a central air conditioning system of up to _____ BTU/hr.

.028. Modular Housing Construction Standards. Scope. This standard covers the construction and design of modular housing, including the structural, mechanical, electrical, energy, and transportation systems. It is the intent of the department that to the fullest extent possible this standard should be a performance standard. However, in certain instances, precise specifications are cited because of lack of other information to identify the desired performance. The citing of a precise specification is not intended to prohibit or inhibit the development of alternate methods, materials, equipment, or design. Where evidence is presented that any method, material, equipment, or design which does not meet the precise specification, as cited in the applicable section of this standard, is capable of meeting the level of performance intended by that section of the standard, the department will review the evidence submitted, and if satisfied, may waive the specifications cited in the standard for that method, material, equipment, or design. Such waivers shall be subject to whatever limitations the department deems necessary. The following sets of codes and standards are incorporated by reference into the Texas Modular Housing Standards Code. In the event of a conflict between the Texas Modular Housing Standards Code and any code or standard incorporated by reference into that code, the Texas Modular Housing Standards Code shall have full force and effect.

.029. Codes and Standards Incorporated by Reference. The Manufactured Housing Division of the Department of Labor and Standards herein adopts by reference the following codes and standards:

(1) One and Two Family Dwelling Code, 1979 Edition, Building Officials and Code Administrators Interna-

tional, Inc., Southern Building Code Congress International, and International Conference of Building Officials: Part II—Building Planning; Part III—Construction; Part IV—Mechanical; Part V—Plumbing; Part VII—Standards. As the scope of these standards is broader than that originally envisioned by the One and Two Family Dwelling Code, the following alterations have been made to the One and Two Family Dwelling Code:

(A) Delete sections R-101, R-102, R-103, R-104, R-105, R-106, R-107, R-109, R-110, R-111, R-111.2, R-112, R-113, R-203, M-1904, Chapter 25, third paragraph of Section P-2003, the third paragraph of R-207.

(B) Any structure, meeting the definition of modular home as defined in the Act and which is not detached and/or which exceeds three stories in height, shall be submitted on the basis of accepted engineering practice as approved by the manufacturer's design review agency and reviewed by the department to insure total compliance with accepted engineering design criteria, any established construction standards, and compliance with local building or zoning codes in effect at the proposed location of the structure.

(2) National Electrical Code, 1978 Edition, National Fire Protection Association.

(3) The Model Code for Energy Conservation in New Building Construction, 1977 Edition, Building Officials and Code Administrators International, Inc., International Conference of Building Officials, Southern Building Code Congress International, Inc., for National Conference of States on Building Codes and Standards, Inc.

(4) These codes and standards may be obtained as follows:

(A) National Electrical Code, 1978 Edition, from the National Fire Prevention Association, 470 Atlantic Avenue, Boston, Massachusetts 02210.

(B) One and Two Family Dwelling Code, 1979 Edition, from the Building Officials and Code Administrators International, Inc., 17926 South Halsted Street, Homewood, Illinois 60430.

(C) Model Code for Energy Conservation in New Building Construction from the National Conference of States on Building Codes and Standards, 1970 Chain Bridge Road, McLean, Virginia 22102.

.030. Building Planning.

(a) Roof live load. Roof live load 20 psf minimum. Wind velocity: horizontal—see wind pressures on the sample data plate; uplift—normal to the roof and equal to 75% of the values on the wind pressure map of the sample data plate.

(1) Roof of unenclosed buildings, roof overhangs, architectural projections, eaves, canopies, cornices, marquees, or similar structures unenclosed on one or more sides shall be designed and constructed to withstand upward pressures equal to 1-1/4 times those values set forth on the wind pressure map. The upward pressures shall be assumed to act over the entire roof area.

(2) Roofs or sections of roofs with slopes greater than 30° shall be designed and constructed to withstand pressures, acting inward normal to the surface, equal to those specified for the horizontal wind load, and applied to the windward slope only.

(3) The overturning moment calculated from the wind pressure shall in no case exceed two-thirds of the dead load resisting moment. The weight of earth superimposed over footings may be used to calculate the dead load resisting moment.

(b) Exterior egress doors.

(1) One exterior egress door must be accessible from the doorway of each bedroom without traveling more than 35 feet. For modular structures exceeding two stories in height the manufacturer shall make provision for emergency egress systems for all stories above the second story.

(2) Required egress doors shall not be located in rooms where a lockable interior door must be used in order to exit.

(3) Locks for egress doors shall not require the use of a key for operation from the inside.

.031. Fire Detection Equipment.

(a) General. At least one smoke detector (which may be a single-station alarm device) shall be installed in each modular home.

(b) Smoke detector location. A smoke detector shall be installed in the hallway or space communicating with the bedroom area.

(c) The specific location shall be in the hallway between the living room area and the first bedroom area. When a door separates the living and sleeping areas, the detector shall be installed on the living area side as close to the door(s) as practicable.

(d) Homes having bedrooms separated by any one or combination of common use areas such as kitchen, dining room, living room, or family room (but not a bathroom or utility room), shall have at least two smoke detectors, one detector protecting each bedroom area.

(e) Where practicable, the detector shall be located between the return air intake of the furnace and the living area.

(f) The architectural planning of the home shall not isolate a smoke detector so as to impair its effectiveness.

(g) Smoke detectors. Smoke detectors shall be either the ionization chamber or the photoelectric wall mounted type and shall comply with all the requirements of Underwriters' Laboratories Standard No. 217 for single and multiple station smoke detectors. Detectors shall bear the label of a testing and approval laboratory that indicates the smoke detectors have been tested and approved under the requirements on UL 217. The testing and approval laboratory shall be one which maintains a periodic follow-up service of the labeled devices to ensure compliance with the original approval.

(h) Installation. Smoke detectors shall be installed according to the manufacturer's installation instructions. The detector mounting shall be attached to an electrical outlet box and the electric detector connected by a permanent wiring method into a general electrical circuit. There shall be no switch in the circuit to the detector other than the overcurrent protective device protecting the branch circuit, which could render the smoke detector inoperable. The smoke detector shall not be placed on any branch circuit protected by a ground fault circuit interrupter.

(i) Battery operated smoke detectors, installed in compliance with the terms of their listings and the requirements of these standards, are acceptable.

.032. Fire Protection.

(a) Furnace and water heater spaces shall be enclosed by walls, ceiling, and door(s) having an interior finish material with the following properties:

- (1) flame spread rating not exceeding 25;
- (2) fuel contributed rating not exceeding 25;

(3) smoke developed rating not exceeding 25;

(4) thermal resistance not less than .30(hr)(ft²)(F) divided by BTU.

(b) A furnace listed for an alcove installation may be installed without a door to the enclosure, but if a door to the enclosure is provided, it shall have a finish on the side facing the furnace with the same fire protective properties as the walls and ceiling.

(c) This finish may be interrupted by louvers for ventilation of the enclosure. The louvers may not be constructed of a material which provides a greater fire hazard than the door itself.

(d) All openings for pipes and vents shall be tight-fitted or fire-stopped in furnace and water heater compartments.

(e) Wall to wall, wall to floor, and wall to ceiling joints in furnace and water heater compartments shall be tight-fitting or sealed with a noncombustible caulking compound.

(f) Combustible kitchen cabinet doors, countertops, exposed bottoms, and end panels shall not exceed a flame spread rating of 200. Cabinet rails, stiles, mullions, and strips are exempted.

(g) Finish surfaces of plastic bath tubs, shower units, and tub or shower doors shall not exceed a flame spread rating of 200.

(h) Carpeting shall not be used under a furnace or water heater. Fire stopping of two inches minimum nominal lumber or the equivalent shall be provided to cut off all concealed draft openings in all stud walls and partitions, including furred spaces, so placed that the maximum vertical dimension of any concealed space is not over eight feet.

(i) Flame spread requirements are applicable to bathrooms.

(j) Wood shakes or shingles are not permitted as roof covering in the construction of manufactured housing.

(k) Exposed interior surfaces adjacent to the cooking range shall have a finish material with the following properties:

(1) Flame spread rating not exceeding 50.

(2) Fuel contributed rating not exceeding 25.

(3) Smoke developed rating not exceeding 25.

(4) Thermal resistance not less than .30(hr)(ft²)(F) divided by BTU.

(5) Adjacent surfaces are the exposed surfaces between the range top height and the overhead cabinets and/or ceiling and within six horizontal inches of the cooking range, including the bottom and sides of kitchen cabinets. There shall be a protective metal hood over the range with not less than a three-inch eyebrow (overhang) (measured horizontally from face of cabinet). The hood shall be centered over and at least as wide as the cooking range. The 26 gauge sheet metal range hood shall provide at least a 3/8 inch enclosed air space between the bottom surface of the cabinet and a material having a flame spread rating which does not exceed 50 and fire protective properties equivalent to 5/16 inch gypsum board. The material shall be adequately supported.

(6) Vertical dimensional clearance between the cook top surface and the bottom of the combustible cabinet does not constitute equivalent protection for the cabinet.

.033. Typical Foundation Design. The modular home manufacturer shall provide with the home one typical foundation system design and installation instructions certified by a registered professional engineer or architect.

.034. Moisture Protection of Floors.

(a) Wood, wood fiber, or plywood floors or subfloors in kitchens, bathrooms (including toilet compartments), laundry rooms, water heater compartments, and any other areas subject to excessive moisture shall be made moisture resistant by sealing or by an overlay of nonabsorbent material applied with water resistant adhesive. CDX plywood used as subflooring shall not require moisture proofing except at exposed edges.

(b) Carpet and/or carpet pads shall not be installed in concealed spaces subject to excessive moisture such as plumbing fixture spaces.

.035. Mechanical.

(a) Appliance installation. All fuel burning appliances, except ranges, ovens, illuminating appliances, clothes dryers, solid fuel burning fireplaces, and solid fuel burning fireplace stoves shall be installed to provide for the complete separation of the combustion system from the interior atmosphere of the modular home. Combustion air inlets and flue gas outlets shall be listed or certified as components of the appliance. The required separation may be obtained by:

(1) The installation of direct vent system (sealed combustion system) appliances.

(2) The installation of appliances within enclosures so as to separate the appliance combustion system and venting system from the interior atmosphere of the modular home. Any door, removable access panel, or other opening into the enclosure from inside of the modular home, when in the closed position, and any opening for ducts, wiring, or piping, including joints of walls shall have a positive seal to separate the enclosure from the interior of the modular home.

(b) A forced air appliance and its return air system shall be designed and installed so that negative pressure created by the air circulating fan cannot affect its or another appliance's combustion air supply or act to mix products of combustion with circulating air.

(1) The circulating fan of a furnace installed in an enclosure with another fuel burning appliance shall be operable only when any door or panel covering an opening in the furnace fan compartment or in a return air plenum or duct is in the closed position. This does not apply if both appliances are direct vent system (sealed combustion) appliances.

(2) If a warm air appliance is installed within an enclosure for separation of the combustion system from the interior atmosphere, each warm air outlet and each return air inlet shall extend to the exterior of the enclosure. Ducts, if used for that purpose, shall not have any opening within the enclosure and shall terminate at a location exterior to the enclosure.

(c) Cooling coils installed as a portion of, or in connection with, any forced air furnace shall be installed on the downstream side unless the furnace is specifically listed otherwise.

(d) If a cooling coil is installed with a forced air furnace, the coil shall be installed in accordance with its listing. When a furnace cooling coil unit has a limited listing, the installation must be in accordance with that listing.

(e) When an external heating appliance or combination cooling/heating appliance is to be applied to a modular home, the manufacturer shall make provision for proper location of the connection to the modular home supply system and return air system of the external ducts connected to the appliance.

(f) The installation of a self-contained air conditioner comfort cooling appliance shall meet the following requirements:

(1) The installation on a duct common with an installed heating appliance shall require the installation of an automatic damper or other means to prevent the cooled air from passing through the heating appliance unless the heating appliance is certified or listed for such application and the supply system is intended for such an application.

(2) The installation shall prevent the flow of heated air into the external cooling appliance and its connecting ducts to the modular home supply and return air system during the operation of the heating appliance installed in the modular home.

(3) The installation shall prevent simultaneous operation of the heating and cooling appliances.

(g) Sizing of ducts for heating.

(1) Ducts shall be so designed that when a labeled forced air furnace is installed and operated continuously at its normal heating air circulation rate in the modular home with all registers in the full open position, the static pressure measured in the casing shall not exceed 90% of that shown on the label of the appliance. For upflow furnaces the static pressure shall be taken in the duct plenum. For external heating or combination heating/cooling appliances the static pressure shall be taken at the point used by the agency listing or certifying the appliance.

(2) When a cooling coil specifically designed for the particular furnace is installed between the furnace and the duct plenum, the total static pressure shall be measured downstream of the coil in accordance with the appliance label and shall not exceed 90% of that shown on the label of the appliances.

(3) When any other listed cooling coil is installed between the furnace and duct plenum, the total static pressure shall be measured between the furnace and the coil, and it shall not exceed 90% of that shown on the label of the furnace.

(4) The minimum dimension of any branch duct shall be at least 1-1/2 inches and of any main duct, 2-1/2 inches.

(h) Airtightness of supply duct systems.

(1) A supply duct system shall be considered substantially airtight when the static pressure in the duct system with all registers sealed and with the furnace air circulator at high speed is at least 80% of the static pressure measured in the furnace casing with its outlets sealed and the furnace air circulator operating at high speed. For the purpose of this paragraph, pressures shall be measured with a water manometer or equivalent device calibrated to read in increments not greater than 1/10 inch water column.

(2) Expandable or multisectional modular home connections. An expandable or multisectional modular home may have ducts of the heating system installed in the various units. The points of connection must be so designed and constructed that when the modular home is fully expanded or coupled, the resulting duct joint will conform to the requirements of these standards.

(3) Installation instructions for supporting the crossover duct from the modular home shall be provided for on-site installation. The duct shall not be in contact with the ground.

(i) Prohibited fittings. Right and left hand threaded nipples shall not be used in the gas piping system for modular homes.

(j) Testing for leakage. Each modular home shall be subjected to the following gas piping tests. The required tests shall be performed in the manufacturing facility if possible. When the required gas piping tests cannot be performed in the manufacturing facility, such tests shall be performed at the modular home installation site in the presence of an inspector, authorized by the department to witness and approve such gas piping tests. Decals shall not be affixed to the modular home until the required gas piping tests have been successfully completed.

(1) Before appliances are connected, piping systems shall stand a pressure of at least six inches mercury or three PSI gage for a period of not less than 10 minutes without showing any drop in pressure. Pressure shall be measured with a mercury manometer or slope gage calibrated so as to be read in increments of not greater than 1/10 pound, or an equivalent device. The source of normal operating pressure shall be isolated before the pressure tests are made. Before a test is begun, the temperature of the ambient air and of the piping shall be approximately the same, and constant air temperature shall be maintained throughout the test.

(2) After appliances are connected, the piping system shall be pressurized to not less than 10 inches nor more than 14 inches water column and the appliance connections tested for leakage with a soapy water solution. The gas piping supply system shall be designed for a pressure not exceeding 14 inches water column (1/2 psi) and not less than seven inches water column (1/4 psi). The manufacturer shall indicate in his written installation instructions the design pressure limitations for safe and effective operation of the gas piping system.

.036. Electrical.

(a) Prohibited material. Aluminum conductors are not allowed for use in modular home branch circuit wiring.

(b) Electrical tests. Each modular home shall be subjected to the following electrical tests. The required tests are to be performed in the manufacturing facility. If the required tests cannot be performed in the manufacturing facility, they shall be performed at the modular home installation site in the presence of an inspector authorized by the department to witness and approve such electrical tests. Decals shall not be affixed to the modular home until the required electrical tests are successfully completed.

(1) Dielectric strength test. The wiring of each modular home shall be subjected to a dielectric strength test for one minute at a voltage higher than 900 volts but not greater than 1,000 volts (with all switches closed) between live parts (including neutral) and the modular home ground. Alternatively, the test may be performed for one second at a voltage higher than 1,080 but not greater than 1,250 volts. This test shall be performed after branch circuits are complete and after fixtures or appliances are installed. The manufacturer shall assure that appliances and fixtures are not connected to the branch circuit wiring and are not subjected to these voltages.

(2) A continuity test to assure that all noncurrent carrying metallic parts are properly bonded.

(3) An operational test to demonstrate that all equipment is connected and in working order.

(4) A polarity check to determine that connections have been properly made.

(c) Bonding of noncurrent carrying metal parts. Metallic ducts, exposed metal parts, metal pipes, and metal exterior coverings must be bonded to assure electrical con-

tinuity and the capacity to conduct safely any fault current likely to be imposed.

(d) Switches in damp locations. The switch for shower lighting fixtures and exhaust fans located over a tub or in a shower stall shall be located outside and 30 inches away from the tub and/or shower space.

(e) The distribution panelboard shall not be located in a bathroom or in any other inaccessible location but shall be permitted just inside a closet entry if the location is such that a clear space of six inches to easily ignitable materials is maintained in front of the distribution panelboard, and the distribution panelboard door can be extended to its full open position (at least 90°).

(f) Grounding bar. The panelboard shall contain a solderless type of grounding bar, for the purposes of grounding, with sufficient terminals for all grounding conductors. All available terminals shall be used before two or more grounding conductors are connected to a terminal listed for this use.

.037. Plumbing.

(a) Drainage of piping. All piping, except the fixture trap, shall be designed to allow drainage.

(b) Passage for wiring. Piping and electrical wiring shall not pass through the same holes in walls, floors, or roofs. Plastic piping shall not be exposed to heat in excess of manufacturers' recommendation or radiation from heat producing appliances.

(c) Plastic water supply pipe. Plastic water supply pipe used in modular homes shall conform to the following standards:

(1) Chlorinated poly (vinyl/chloride) (CPVC) plastic hot water distribution systems conforming to ASTM D2846-1973 and NSF-1970.

(2) Polybutylene (PB) plastic pipe (SDR-PR) conforming to ASTM D2662-1973.

(3) Polybutylene (PB) plastic hot water distribution systems conforming to ASTM D3309-1974.

(d) Water systems tests. The following tests will be performed at the manufacturing facility if possible. When such tests cannot be performed at the manufacturing facility, the required tests will be performed at the modular home installation site, in the presence of an inspector authorized by the department to witness and approve such tests. Decals shall not be affixed to the modular home until the required water system tests are successfully completed.

(1) Test and inspection. Water system. All water piping in the water distribution system shall be subjected to a pressure test. The test shall be made by subjecting the system to air or water at 100 psi for 15 minutes without loss of pressure.

(2) Drainage and vent system and plumbing fixtures. The waste and vent system shall be tested by one of the three following alternate methods for evidence or indication of leakage:

(A) Water test. Before plumbing fixtures are connected, all of the openings into the piping shall be plugged and the entire piping system subjected to a static water test for 15 minutes by filling it with water to the top of the highest vent opening. There shall be no evidence of leakage.

(B) Air test. After all fixtures have been installed, the traps filled with water, and the remaining openings securely plugged, the entire system shall be subjected to a two-inch (manometer) water column air pressure test. If the system loses pressure, leaks may be located with smoke

pumped into the system or with a soap solution spread on the exterior of the piping (bubble test).

(C) Flood level test. The modular home shall be in a level position, all fixtures shall be connected, and the entire system shall be filled with water to the rim of the toilet bowl. (Tub and shower drains shall be plugged.) After all trapped air has been released, the test shall be sustained for not less than 15 minutes without evidence of leaks. Then the system shall be unplugged and emptied. The waste piping above the level of the toilet bowl shall then be tested and shall show no indication of leakage when the high fixtures are filled with water and emptied simultaneously to obtain the maximum possible flow in the drain piping.

(3) Fixture test. The plumbing fixtures and connections shall be subjected to a flow test by filling them with water and checking for leaks and retarded flow while they are being emptied.

Doc. No. 802927

General Requirements 063.55.08.

Rules 063.55.08.006-.009 are adopted and clarify procedural practices relating to the subject content of each rule.

These rules are promulgated under the authority of Article 5221f, Texas Revised Civil Statutes.

.001. *Installation Responsibilities.* The responsibility for the proper installation of all manufactured homes shall be that of the registered installer. Failure to install homes in accordance with all standards, rules, regulations, administrative orders, and requirements of the department may be grounds for the revocation of the installer's certificate of registration pursuant to 7, TMHSA. For all new manufactured homes sold and installed, the retailer shall be responsible for the fulfillment of the installation warranty requirement as required by Section 14(C), TMHSA, even if one or more registered installers perform installation functions. For all installations not subject to Section 14(C), TMHSA, the registered installer shall be responsible for fulfillment of the installation warranty required by Section 14(E), TMHSA, and the warranty shall specify the functions performed. The responsibility for adequate site preparation and for providing proper facilities for the connection of utilities shall be that of the purchaser, subject to applicable local requirements, unless otherwise expressly provided by written provision of the sales contract.

.002. *Correction Requirements.*

(a) The retailer or manufacturer shall take immediate corrective action when notification is received from a consumer and the nature of the complaint indicates an imminent safety hazard or serious defect. A reasonable period of time required by Section 14(c)(5) for correction of all other defects or failures to comply with the code shall be considered to be 30 days after the retailer or manufacturer has received written notification from a consumer. The retailer or manufacturer should confirm in writing to the consumer the date that personnel are scheduled to the consumer location. The retailer or manufacturer shall keep a record of the date the notification was received, the disposition, and the date of correction.

(b) The manufacturer and retailer shall make available for review by department personnel records to assure that

warranty work, including corrections of failures to comply with design, has been accomplished and that such warranty work has been done in accordance with the design and properly completed.

.003. Retailer Sales Information.

(a) Manufactured housing retailers shall report all sales to the department. Forms shall be provided by the department and shall contain information related to the sale and installation of the manufactured home. When the home is installed by a registered installer other than the retailer, the retailer shall deliver a copy of the sales report to the installer prior to the installation. All retailer sales reports are due by the 10th of the following month.

(b) Manufactured housing retailers shall make available for review by department personnel as a part of each sales record the following information:

- (1) name and address of the purchaser and the date of purchase;
- (2) verification that the new manufactured home warranty was delivered to the purchaser;
- (3) verification that the purchaser received written notice of the two-year limitation of notice for filing a claim against the bond;
- (4) verification of the date that the mobile home information card was mailed to the manufacturer.

.004. Security Requirements.

(a) For purposes of meeting the security requirements of Section 13 "cash deposit or security" means an assignment of a certificate of deposit from or on a state or federally chartered bank or savings and loan association, properly signed and filed with the department. Such deposits are hereinafter referred to as "security." Forms shall be furnished by the department for filing an assignment of such security. If such security is reduced by a claim, the depositor shall within 20 days make up the deficit as required by subsection (b). No advance notice is required by the department to the depositor, but the department shall verify receipt of the deposit.

(b) An assignment of such security filed with the department for compliance with Section 13 of the Act shall remain on file with the department for two years after written notice to the department that the depositor has ceased doing business. An assigned certificate of deposit, deposited with the department may be withdrawn after two years following written notice by the depositor that:

- (1) the depositor has ceased doing business; or
- (2) the filing of a bond or certificate of deposit in lieu of or to replace the assigned security.

In the event a bond is filed to replace the assigned security and the initial effective date of the bond is the same or prior to the date of the assignment of security, such security or deposit may be immediately withdrawn upon request.

.005. Rules for Hearings. Unless otherwise expressly set forth in the TMHSA, all hearings shall be held and conducted pursuant to the applicable provisions of the APTRA. Any person receiving a notice of an alleged violation of the TMHSA or any standard, requirement, rule, regulation, or administrative order of the department may avoid a hearing by correcting the alleged violation within 40 days after receipt of such notice and notifying the department of such correction. Failure to effect such correction will result in the issuance of a notice of hearing. Any party to a hearing may request that a record of the hearing be made and transcribed

by an independent court reporter, other than an employee of the department. Such request must be made not later than seven days prior to the hearing. The additional cost and expense of the independent court reporter may be assessed against the party making the request. In all hearings, the published rules and regulations of the Secretary of the U.S. Department of Housing and Urban Development shall be considered, if relevant. If the department believes that such rules and regulations are relevant to any issue to be involved in the hearing, the notice of hearing shall specifically refer to such HUD rules and regulations.

.006. Delivery of Warranty. For purposes of Sections 7 and 14, TMHSA, the written warranty documents shall have been timely delivered if given to the homeowner at the time of tender of possession of the manufactured home.

.007. The Terms "TMHSA" and "APTRA." The terms "TMHSA" and "APTRA" shall, respectively, refer to and mean the Texas Manufactured Housing Standards Act (Article 5221f, Vernon's Texas Civil Statutes) and the Administrative Procedure and Texas Register Act (Article 6252-13c, Vernon's Texas Civil Statutes).

.008. The Term "Title Document." For purposes of Section 13(e)(2), delivery of proper title documents relating to the sale of a modular home shall have been satisfied when full ownership has been transferred upon completion of the sale by whatever documents the manufacturer or retailer normally use.

.009. The Term "Modular Home." The term "modular home" applies to a dwelling which is constructed in modules, whether one or more, at a location other than the homesite utilizing assembly-line type production techniques, or other construction methods unique to a manufacturing process. The term shall not include nor apply to:

- (1) "sectional" or "panelized" housing where the basic components assembled at the homesite are not at least three dimensional modules;
- (2) a home which is singly and separately constructed for relocation, and built to a recognized building code;
- (3) modules incorporating concrete or masonry as the primary structural component; or
- (4) a mobile home.

For purposes of the Act (Article 5221f) and of these rules, the term shall only apply to those modular homes on which construction was begun on or after May 9, 1980.

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802928 Lias B. "Bubba" Steen
Commissioner
Texas Department of Labor and
Standards

Effective Date: May 9, 1980
Proposal Publication Date: March 14, 1980
For further information, please call (512) 475-5712.

State Board of Nurse Examiners

Licensure and Practice 388.04.00

The Board of Nurse Examiners adopts amendments to Rule 388.04.00.006 regarding temporary permits.

Written comments were submitted to the board regarding the licensure of Canadian nurses. No negative comments were received regarding the issuance of permits to Canadian nurses, therefore, the board adopts the amendments with no changes in the proposed text.

Under the authority of Article 4514 and Article 4523, Vernon's Texas Civil Statutes, the State Board of Nurse Examiners adopts the amendments to Rule .006.

.006. Temporary Permits.

(a) Candidates for registration by examination in Texas.

(1) A nurse graduating from an accredited school in the United States or Canada, who has never taken the examination, will be issued a permit to practice professional nursing after the application for the examination has been approved and the fee paid.

(2) A nurse graduating from an accredited school in Canada, who took the Canadian Nurses' Association Testing Service examination after July 1980, will be issued a permit to practice professional nursing after the application for the examination has been approved and the fee paid.

(3) A nurse graduating from an accredited school of nursing outside of the United States, who has never taken the State Board Test Pool examination, and who has passed the Commission on Graduates of Foreign Nursing Schools examination, will be issued a permit to practice professional nursing after the application for the examination has been approved and the fee paid.

(4) This permit expires when the results of the examination are released.

(5) The permit of an unsuccessful candidate must be returned to the board and is not renewable.

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

Issued in Austin, Texas, on April 24, 1980.

Doc. No. 803035 Margaret L. Rowland, R.N.
Executive Secretary
State Board of Nurse Examiners

Effective Date: April 4, 1980

Proposal Publication Date: March 4, 1980

For further information, please call (512) 478-9602.

amend subsection (a) or Rule .004. Pursuant to Section 5 of the Administrative Procedure and Texas Register Act of 1975, Texas Revised Civil Statutes Annotated, Article 6252-13a (Supplement 1978), notice of the institution of this proceeding was published in the *Texas Register* on August 3, 1979, and November 23, 1979. Public comment on the proposed amendment was invited. By notice published in the *Texas Register*, (5 TexReg 485) February 12, 1980, a public hearing was set for February 28, 1980, in the Rockwall County Courthouse, Rockwall.

Red Arrow Freight Lines (Red Arrow), and Merchants Fast Motor Lines, Inc., (Merchants), filed comments opposing the proposed expansion. Merchants withdrew its protest; Red Arrow, relying on its comment, did not appear at the public hearing held at the Rockwall County Courthouse. The comments of Red Arrow and Merchants have been considered.

Forty-five Rockwall County residents with varied economic interests support this application; of approximately 20 persons that appeared at a hearing held in the Rockwall County Courthouse, seven testified, and additional support was submitted in writing.

Urban and rural areas of Rockwall County, the smallest Texas county, are undergoing the effects of commercial, residential, and industrial development as a consequence of the territorial expansion and population growth in Dallas and adjoining suburban communities. The Cities of Dallas and Rowlett, already a part of the Dallas-Fort Worth commercial zone, occupy territory in Rockwall County. Dallas, by annexing Lake Roy Hubbard, extended its jurisdiction into Rockwall County and is now contiguous to Rockwall, a community of approximately 6,500 inhabitants. The southeastern sector of the City of Rowlett has spread into Rockwall County.

U.S. Highway 30, a major highway, traverses the cities of Rowlett, Garland, Mesquite, Dallas, Grand Prairie, Arlington, and Fort Worth (cities already within the commercial zone) and the Rockwall County communities of Rockwall, Fate, and Royse City (presently outside the zone). Daily, there is a two-way flow of passenger and freight traffic between Dallas-Fort Worth Metroplex and Rockwall County.

Within the last six years the city of Rockwall has had an 8% to 10% growth. Home subdivisions are being developed throughout the County of Rockwall. Some industrial plants, including light industries, have moved into Rockwall County; other industries are inquiring about the county's potential, stressing transportation availability as a major factor in their relocation decisions; an industrial park is being developed in Royse City, Rockwall County. The communities in Rockwall County have mercantile establishments where goods, wares, and merchandise are kept in stock for sale to the public; in addition, repair shops, as well as retailers, in Rockwall, perform repairs. The main suppliers for these retailers and artisans are located in the metroplex.

With the intensive construction in Rockwall County there is a need for expedited transportation of building materials, decorations, appliances, etc.; with compelling repairs there is an urgent need for parts; with vital productions there is an essential need for raw materials and parts; and some of these items must be transported from the Metroplex to a job-site in Rockwall County. In addition, the Rockwall County producers regularly ship to customers throughout the metroplex.

Railroad Commission of Texas

Transportation Division

Existing Commercial Zones 051.03.16

The purpose of this order is to amend subsection (a) of Rule 051.03.16.004 which defines the geographical area comprising the Dallas commercial zone.

Pursuant to a petition filed by the Rockwall Chamber of Commerce, the Railroad Commission of Texas instituted a rulemaking proceeding to consider whether or not it should

Rockwall County locations are served by Central Freight Lines, Inc., and Tex-Pack, but neither has terminals in the county. In addition, although Red Arrow Freight Lines protested this application, it does not directly serve the county. Further, there is no intrastate package express service into Rockwall, as there is no bus service into the county. Although normal regular route common carrier service is now available to Rockwall County, sometimes parts and materials must be moved expeditiously and some of the commodities that are urgently needed by Rockwall County receivers cannot have the delays that are accompanied by peddlerun, pickup and delivery, and cross-dock operations. Presently, some of the retailers and artisans, at some inconvenience, travel to Dallas to transport their own needed commodities. In addition, there are instances where goods being shipped by common carriers from points outside of Texas arrive at Rockwall County destinations quicker than goods being shipped by common carriers from the metroplex to Rockwall County. There are drayage companies within the metroplex ready and willing to provide service between the metroplex and Rockwall County.

Rockwall County, together with the Dallas-Fort Worth Metroplex, constitute a single local market within which motor carrier transportation is and will continue as local transportation. Further, an economic and enforcement necessity exist to redefine and prescribe an amendment to the Dallas-Fort Worth commercial zone.

From the foregoing, therefore, the commission is of the opinion that the application of the Rockwall Chamber of Commerce to amend Rule .004, Motor Transportation Regulations before the Transportation Division, to include the County of Rockwall within the Dallas-Fort Worth commercial zone should be approved.

Accordingly, pursuant to Texas Revised Civil Statutes Annotated, Article 911b Section 1(g) (Vernon 1964), and the Motor Transportation Regulations before the Transportation Division, it is ordered by the Railroad Commission of Texas that Rule .004 is hereby amended to include the County of Rockwall in the Dallas-Fort Worth commercial zone, under the same conditions as those communities which were originally considered within the Dallas-Fort Worth commercial zone, to read as set out below:

.004. Existing Commercial Zones. Commercial zones defined and prescribed by the commission after notice and hearing are as follows:

- (1) The Dallas commercial zone shall include:
 - (A)-(D) (No change.)
 - (E) The County of Rockwall.
- (2)-(5) (No change.)

Issued in Austin, Texas, on April 22, 1980.

Doc. No. 802933 John Poerner, Chairman
James E. (Jim) Nugent and
Mack Wallace, Commissioners
Railroad Commission of Texas

Effective Date: May 13, 1980

Proposal Publication Date: September 21, 1979

For further information, please call (512) 445-1335.

State Board of Examiners in Social Psychotherapy

Continuing Education Requirements for Relicensure 407.04.00

The Texas State Board of Examiners in Social Psychotherapy has withdrawn from consideration for adoption the proposed amendments to Rules 407.04.00.001-.005, concerning continuing education requirements for relicensure. The rules were published in the February 13, 1979, issue of the *Texas Register* (4 TexReg 476).

Issued in Austin, Texas, on April 16, 1980.

Doc. No. 802873 Dan LaFleur
Attorney
Texas Department of Health

Effective Date: May 8, 1980

Proposal Publication Date: February 13, 1979

For further information, please call (512) 458-7511.

The Open Meetings Act (Article 6252-17, Texas Civil Statutes) requires that an agency with statewide jurisdiction have notice posted for at least seven days before the day of a meeting. A political subdivision covering all or part of four or more counties, or an institution of higher education, must have notice posted for at least 72 hours before the scheduled meeting time. Notice of an emergency meeting or an emergency addition or amendment to an agenda must be posted for at least two hours before the meeting is convened. Although some notices may be received and filed too late for publication before the meetings are held, all filed notices will be published in the *Register*. Each notice published includes an agenda or a summary of the agenda as furnished for publication by the agency and the date and time of filing. Notices are posted on the bulletin board outside the offices of the secretary of state on the first floor in the East Wing of the State Capitol. These notices may contain more detailed agendas than space allows to be published in the *Register*.

Texas Department of Agriculture

Thursday, May 8, 1980, 9:30 a.m. The Family Farm and Ranch Security Program of the Texas Department of Agriculture will meet in Room 1046, Stephen F. Austin Building, 17th Street and North Congress Avenue, Austin. An orientation and organizational meeting of the Advisory Council for the Family Farm and Ranch Security Program will be held; and a review of responsibilities of the council and TDA, and overview of potential and problem areas in implementation of the program will be discussed.

Additional information may be obtained from Renal B. Rosson, P.O. Box 12847, Austin, Texas 78711, telephone (512) 475-6346.

Filed: April 25, 1980, 4:37 p.m.
Doc. No. 803210

State Bar of Texas

Thursday and Friday, May 1 and 2, 1980, 9 a.m. daily. The Board of Directors of the State Bar of Texas met in the Board of Directors Room, first floor south wing of the Texas Law Center, 14th and Colorado Streets, Austin. According to the summarized agenda, the board has or will consider reports from the following: president on litigation, ratification of actions, and appointments; president-elect on general plans, organization of the bar report, and appointments; executive director on personnel, LEAA funding of grant programs; general counsel on policy re obsolete files, litigation, and grievance matters; budget—amendments to 1979-80 budget; judicial section; Texas Young Lawyers Association; director of professional development; board committees; standing and special committees; and sections. The board has or will also discuss the Bankers Legal Service Corporation matter; approval of budget; appointments at the Shareholders of TexLex, Inc., meeting; Texas Legal Protection Plan, Inc.; Texas Department of Corrections matter; *Texas Bar Journal*; written reports on grant programs; written reports of committees and sections for publication in *Texas Bar Journal*; and Clients Security Fund.

Additional information may be obtained from Evelyn Avent, 1414 Colorado, Austin, Texas 78711, telephone (512) 475-4746.

Filed: April 23, 1980, 2:09 p.m.
Doc. No. 802977

State Commission for the Blind

Tuesday, April 22, 1980, 9:30 a.m. The Board of Directors of the State Commission for the Blind met in emergency session in Suite 511 of the Stokes Building, 314 West 11th Street, Austin. Urgent public necessity required that the board meet in executive session to discuss personnel matters pursuant to Article 6252-17, Section 2(g), Vernon's Annotated Civil Statutes. The board also discussed the commission's computer-based information system and budget policy guidelines for 1982-83 biennium.

Additional information may be obtained from Jean Wakefield, P.O. Box 12866, Austin, Texas 78711, telephone (512) 475-6810.

Filed: April 18, 1980, 3:34 p.m.
Doc. No. 802918

Texas Department of Community Affairs

Thursday and Friday, May 1 and 2, 1980, 10 a.m. and noon, respectively. The Private Industry Council Manpower Services Division of the Texas Department of Community Affairs has scheduled emergency sessions in the first floor auditorium of the TDCA Building, 210 Barton Springs Road, Austin. According to the agenda, the division will consider the following: status report on the execution of Title VII contracts; council's role in the Private Sector Initiative Program; status report on the establishment of private sector task forces; planning for the future analysis of private sector activities in the Texas balance of state; programming of fiscal year 1980 unobligated Title VII funds; programming of fiscal year 1981 Title VII funds; presentation by Neal Spelce Associates, Inc.; briefing on Title VII and related activities. Urgent public necessity required the Private Industry Council's consideration of the preceding matters during the two-day meeting.

Additional information may be obtained from Pat Herron, P.O. Box 13166, Austin, Texas 78711, telephone (512) 475-6216.

Filed: April 25, 1980, 3:16 p.m.
Doc. No. 803203

Texas Department of Corrections

Monday, May 12, 1980, 8 a.m. The Board of Corrections of the Texas Department of Corrections will meet at the La Posada Motor Hotel, 100 North Main, McAllen, to consider matters relating to the following: inmate affairs; personnel; business; agriculture; construction; industries; legal; research, planning, and development; and the Windham School District.

Additional information may be obtained from W. J. Estelle Jr., P.O. Box 99, Huntsville, Texas 77340, telephone (713) 295-6371, ext. 160.

Filed: April 18, 1980, 1:41 p.m.
Doc. No. 302901

Credit Union Department

Monday, June 23, 1980, 10 a.m. The Credit Union Department Commission has rescheduled a hearing to be held in the Texas Department of Banking's Hearing Room, 2601 North Lamar, Austin, which concerns an appeal of charter denial for the proposed Henderson County Credit Union. The hearing was originally scheduled for Tuesday, April 22, 1980 at 10 a.m., but was rescheduled as requested by representatives of the credit union.

Additional information may be obtained from Harry L. Elliott, 914 East Anderson Lane, Austin, Texas 78752, telephone (512) 837-9236.

Filed: April 22, 1980, 3:57 p.m.
Doc. No. 802945

Office of the Firemen's Pension Commissioner

Wednesday, May 7, 1980, 10 a.m. The State Board of Trustees (Administrative Division) of the Office of the Firemen's Pension Commissioner will meet in 503-F of the Sam Houston Building, Austin, to discuss the Firefighter's Relief Fund of S.B. 411, as prescribed by Article 6243 Section (e)3, Vernon's Texas Civil Statutes.

Additional information may be obtained from Hal H. Hood, 503-F Sam Houston Building, Austin, Texas, telephone (512) 475-5879.

Filed: April 23, 1980, 2:41 p.m.
Doc. No. 802984

Texas Grain Sorghum Producers Board

Tuesday, May 13, 1980, 10 a.m. The Texas Grain Sorghum Producers Board of the Texas Department of Agriculture will meet at Sutphen's Barbeque, Amarillo. According to the agenda, the board will consider its financial report; processor violations; the market development report; and research study review.

Additional information may be obtained from Elbert Harp, 1708-A 15th Street, Lubbock, Texas 79401, telephone (806) 763-4425.

Filed: April 22, 1980, 4:55 p.m.
Doc. No. 802952

Texas Department of Health

Monday, May 12, 1980, 1:30 p.m. The Hospital Licensing Advisory Council Task Force of the Texas Department of Health will meet in Conference Room T-507, 1100 West 49th

Street, Austin. According to the agenda summary, the group will discuss organization of the task force; free-standing ambulatory surgical centers; the Texas Hospital Licensing Law; and the Hospital Licensing Standards. It will also hold open discussion of subject matter for next meeting.

Additional information may be obtained from Walter Dick, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7245.

Filed: April 24, 1980, 3:38 p.m.
Doc. No. 803016

Thursday, May 15, 1980, 9 a.m. The Bureau of Licensing and Certification of the Texas Department of Health will conduct a public hearing in the first floor auditorium, 1100 West 49th Street, Austin, to consider proposed new rules on the licensing and regulation of home health care agencies and persons who provide home health services.

Additional information may be obtained from Maurice Shaw, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7538.

Filed: April 24, 1980, 3:24 p.m.
Doc. No. 803013

Saturday, May 17, 1980, 10 a.m.-4 p.m. The Texas Emergency Medical Services Advisory Council of the Texas Department of Health will meet at the Shamrock Hilton, Houston, to consider standardization of paramedic guidelines.

Additional information may be obtained from Charles H. Gregory, M.D., 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7551.

Filed: April 24, 1980, 3:24 p.m.
Doc. No. 803014

Texas Health Facilities Commission

Friday, May 2, 1980, 9:30 a.m. The Texas Health Facilities Commission will meet in Suite of 305 of the Jefferson Building, 1600 West 38th Street, Austin, to consider an application for certificate of need by West Central Home Health Agency, Abilene—AS78-0703-038.

Further information may be obtained from O. A. Cassity III, P.O. Box 15023, Austin, Texas 78761.

Filed: April 23, 1980, 11:28 a.m.
Doc. No. 802973

Friday, May 9, 1980, 9:30 a.m. The Texas Health Facilities Commission will meet in Suite 305 of the Jefferson Building, 1600 West 38th Street, Austin. According to the agenda summary, the commission will consider the following applications:

certificate of need
Panola General Hospital, Carthage
AH79-1105-012
Medical Center Hospital, Odessa
AH79-1228-003

Henderson County Memorial Hospital, Athens
AH79-1030-017

Cypress-Lakewood Medical Center, Houston
AH79-0425-009

Spring Branch Memorial Hospital, Houston
AH79-0622-025

Cypress-Fairbanks Medical Center, Houston
AH79-0702-041

exemption certificate

Memorial Medical Center, Corpus Christi
AH80-0225-071

All Saints Episcopal Hospital, Fort Worth
AH80-0311-028

Dallas County MH/MR Community Living
Residences III and IV, Dallas
AA79-1206-033

transfer of certificate of need

Spohn Hospital, Corpus Christi
AH79-0829-007T(040380)

Spohn Hospital, Corpus Christi
AH79-0925-022T(040380)

Spohn Hospital, Corpus Christi
AH78-0530-003T(040380)

transfer of declaratory ruling

Spohn Hospital, Corpus Christi
AH75-0811-018T(040380)

amendment of certificate of need order

Home Health-Home Care, Inc., Nacogdoches
AS79-0606-002A(032080)

exemption certificate order

Delta Personal Care Unit, Cooper
AN79-1016-018A(031780)

A routine business meeting will follow the open meeting.

Further information may be obtained from O. A. Cassity III,
P.O. Box 15023, Austin, Texas 78761, telephone (512)
475-6940.

Filed: April 25, 1980, 11:50 a.m.
Doc. No. 803191

University of Houston

Thursday, May 1, 1980, 8 a.m. The Audit Committee of the University of Houston Board of Regents met in the fifth floor conference room of the Houston United Bank Building, 4600 Gulf Freeway, Houston. According to the agenda, the committee discussed Department of Auditing procedures; audits in progress; and recently completed audits.

Additional information may be obtained from Deborah Selden, 911 Walker, Suite 765, Houston, Texas 77002, telephone (713) 749-3083.

Filed: April 23, 1980, 9:22 a.m.
Doc. No. 802954

Thursday, May 1, 1980, 9 a.m. The Academic Affairs Committee of the University of Houston Board of Regents met for a rescheduled meeting in the fifth floor conference room of the Houston United Bank Building, 4600 Gulf Freeway,

Houston. According to the agenda, the committee discussed the following: approval of a proposed bachelor of applied arts and sciences degree at UH-Victoria; personnel recommendations and actions for the UH-System and all component campuses; academic year 1981 faculty salary recommendations; and grants.

Additional information may be obtained from Deborah Selden, 911 Walker, Suite 765, Houston, Texas 77002, telephone (713) 749-3083.

Filed: April 23, 1980, 9:22 a.m.
Doc. No. 802955

Monday, May 5, 1980, 9:30 a.m. The Building Committee of the University of Houston Board of Regents will meet in the Board Room, 220 E. Cullen Building, UH-central campus, Houston. According to the agenda, the committee will discuss UH-central campus—approval of project program guide and Cullen College of Engineering addition; granting of water easement for 400-bed student housing project; UH-Clear Lake City—approval of fee bid, MCIP-1980 rehabilitation; approval of easement to the Clear Lake City Water Authority for access road to sewage treatment plant; UH-downtown campus—major repair and rehabilitation, Phase 1; schematic presentation; program amendment; program approval, third floor partial rehabilitation; all campuses—adoption of university energy conservation plan; construction status report; and financial status of construction projects.

Additional information may be obtained from Deborah Selden, 911 Walker, Suite 765, Houston, Texas 77002, telephone (713) 749-3083.

Filed: April 23, 1980, 9:22 a.m.
Doc. No. 802956

Monday, May 5, 1980, 2 p.m. The University of Houston Board of Regents will meet in the Board Room, 220 E. Cullen Building, UH-Central Campus, Houston. According to the agenda, the committee will discuss the following: quarterly reports for the broadcast stations; resolution to amend the bylaws of C.A.B.; proposed bachelor of applied arts and science degree, UH-Victoria; personnel recommendations, entire system; faculty salary recommendations for academic year 1981; grants and gifts, entire system; monthly investment changes, February 1980; receipt and acquittance; educational and general budget summary; quarterly investment report; resolutions governing closing of bank demand deposit accounts, UH-Central Campus; building committee report; changes in room and board rates, UH-Central Campus; student service fees; return check charge; and short-term loan charge.

Additional information may be obtained from Deborah Selden, 911 Walker, Suite 765, Houston, Texas 77002, telephone (713) 749-3083.

Filed: April 23, 1980, 9:22 a.m.
Doc. No. 802957

Texas Department of Human Resources

Tuesday and Wednesday, May 6-7, 1980, 10 a.m. The Advisory Committee on Child Care Facilities of the Texas Department of Human Resources will meet in Room 3-122 of the Joe C. Thompson Center, 26th and Red River, Austin. According to the agenda summary, the committee will elect officers; discuss Texas Youth Council correctional facilities standards; review revisions to General Licensing Handbook; and read the director's report.

Additional information may be obtained from Doug Sanders, P.O. Box 2960, Austin, Texas 78769, telephone (512) 441-3355, ext. 6039.

Filed: April 24, 1980, 9:37 a.m.
Doc. No. 802998

State Board of Insurance

Monday, April 28, 1980, 9 a.m. The Commissioner's Hearing Section of the State Board of Insurance conducted a public hearing in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the public hearing in Docket 5966 concerned an application for a certificate of authority by Navton Life Insurance Company, Houston.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 18, 1980, 2:19 p.m.
Doc. No. 802902

Tuesday, April 29, 1980, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance met in emergency session in Room 342, 1110 San Jacinto Street, Austin, to conduct a public hearing in Docket 5999. The hearing concerned an application of American General Insurance Company, Houston, to reinsure its entire insurance obligations to Maryland Casualty Company, Baltimore, Maryland, on an assumption basis. Urgent public necessity required the hearing be held with less than seven days notice.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 22, 1980, 3:07 p.m.
Doc. No. 802934

Wednesday, April 30, 1980, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance conducted a public hearing in Room 342, 1110 San Jacinto Street, Austin, to determine whether the Commissioner's previous approval of Occidental Life Insurance Company of California policy forms GME-3070 1272, GME-3071 173, and GME-3073 273 should be withdrawn for being contrary to the provisions of Article 3.51-6 Section 1(a) (f) of the Texas Insurance Code—Docket 6002.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 22, 1980, 3:06 p.m.
Doc. No. 802935

Wednesday, April 30, 1980, 2 p.m. The State Board of Insurance met in Room 408, 1110 San Jacinto Street, Austin, to consider Texas Automobile Manual rule 19.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 22, 1980, 10:15 a.m.
Doc. No. 802930

Thursday, May 1, 1980, 9:30 a.m. The Commissioner's Hearing Section of the State Board of Insurance conducted a rescheduled public hearing in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the public hearing in Docket 5973 concerned agent William C. Jackson. The meeting was originally set for April 4, 1980.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 22, 1980, 3:07 p.m.
Doc. No. 802936

Thursday, May 1, 1980, 2 p.m. The State Board of Insurance conducted a hearing in Room 342, 1110 San Jacinto Street, Austin, and considered proposed insurance premium finance rules—Docket 1146.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 22, 1980, 3:07 p.m.
Doc. No. 802937

Friday, May 2, 1980, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, to consider an application for charter amendment by North American Lloyds of Texas, Dallas—Docket 5980.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 22, 1980, 3:07 p.m.
Doc. No. 802938

Friday, May 2, 1980, 2 p.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, to consider an application for authority to issue variable annuity contracts in Texas by Anchor Life Insurance Company, Phoenix, Arizona—Docket 5987.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 22, 1980, 3:07 p.m.
Doc. No. 802939

Monday, May 5, 1980, 10 a.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin, to consider an application by General American Fidelity and Guaranty Corporation, Dallas, for original incorporation—Docket—5998.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 22, 1980, 3:07 p.m.
Doc. No. 802940

Monday, May 5, 1980, 2 p.m. The Commissioner's Hearing Section of the State Board of Insurance will conduct a public hearing in Room 342, 1110 San Jacinto Street, Austin. According to the agenda, the commission will consider whether any and all insurance licenses issued to Gilbert C. Tenorio and Kyle Insurance Agency, Inc., San Marcos, should be suspended or revoked.

Additional information may be obtained from J. C. Thomas, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-4353.

Filed: April 22, 1980, 3:07 p.m.
Doc. No. 802941

Tuesday, May 6, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the commissioner's report. The board will also meet in executive session to discuss personnel matters.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:27 a.m.
Doc. No. 802963

Wednesday, May 7, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the Fire Marshal's report.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:28 a.m.
Doc. No. 802964

Tuesday, May 13, 1980, 10 a.m. The State Board of Insurance will meet in Room 342, 1110 San Jacinto Street, Austin, to consider a request by Texas Association of Realtors

for interpretation of certain provisions of Real Estate Errors and Omissions Policy and, specifically, insurer's obligation to defend the insured against actions brought under the Deceptive Trade Practices-Consumer Protection Act.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:26 a.m.
Doc. No. 802965

Tuesday, May 13, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the commissioner's report. The board will also meet in executive session to discuss personnel matters.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:27 a.m.
Doc. No. 802966

Wednesday, May 14, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the Fire Marshal's report.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:28 a.m.
Doc. No. 802967

Tuesday, May 20, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the commissioner's report. The board will also meet in executive session to discuss personnel matters.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:27 a.m.
Doc. No. 802968

Wednesday, May 21, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the Fire Marshal's report.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:28 a.m.
Doc. No. 802969

Tuesday, May 27, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the commissioner's report. The board will also meet in executive session to discuss personnel matters.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:28 a.m.
Doc. No. 802970

Wednesday, May 28, 1980, 2 p.m. The State Board of Insurance will meet in Room 408, 1110 San Jacinto Street, Austin, to consider the Fire Marshal's report.

Additional information may be obtained from Pat Wagner, 1110 San Jacinto Street, Austin, Texas 78786, telephone (512) 475-2950.

Filed: April 23, 1980, 9:28 a.m.
Doc. No. 802971

Texas Department of Labor and Standards

Tuesday, May 6, 1980, 10 a.m. The Boxing and Wrestling Division of the Texas Department of Labor and Standards will conduct an administrative hearing in Room 316 of the Sam Houston Building, Austin. The purpose of the hearing is to settle the obligations due and owing between the parties named which resulted from the Cuevas-Volbrecht fight.

Additional information may be obtained from Blake Travis, P.O. Box 12157, Austin, Texas, telephone (512) 475-6560.

Filed: April 18, 1980, 4:01 p.m.
Doc. No. 802919

Tuesday, May 6, 1980, 3 p.m. The Boxing and Wrestling Division of the Texas Department of Labor and Standards will meet in Room 316 of the Sam Houston Building, Austin. According to the agenda summary, the division will conduct an administrative hearing to determine whether the boxing promoter license of Mario Hernandez should be suspended or revoked.

Additional information may be obtained from Blake Travis, P.O. Box 12157, Austin, Texas, telephone (512) 475-6560.

Filed: April 18, 1980, 4:02 p.m.
Doc. No. 802920

Wednesday, May 21, 1980, 10 a.m. The Auctioneer Division of the Texas Department of Labor and Standards will meet in Room 316 of the Sam Houston Building, Austin. According to the agenda summary, the division will conduct an administrative hearing to determine whether the license of Shlomo Yacoby to auctioneer should be suspended or revoked.

Additional information may be obtained from Blake Travis, P.O. Box 12157, Austin, Texas, telephone (512) 475-6560.

Filed: April 18, 1980, 4:02 p.m.
Doc. No. 802921

Board for Lease of State-Owned Lands

Thursday, May 1, 1980, 9:30 a.m. The Board for Lease of Texas Department of Mental Health and Mental Retardation of the Board for Lease of State-Owned Lands met in Room 831 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to consider bids received at the April 1, 1980, oil, gas, sulphur, and uranium lease sale.

Additional information may be obtained from Linda Fisher, 1700 North Congress Avenue, Stephen F. Austin Building, Room 835, Austin, Texas 78701, telephone (512) 475-2071.

Filed: April 23, 1980, 2:42 p.m.
Doc. No. 802978

Thursday, May 1, 1980, 10 a.m. The Board for Lease of Texas Department of Corrections of the Board for Lease of State-Owned Lands met in Room 831 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to consider bids received at the April 1, 1980, oil, gas, sulphur, and uranium lease sale.

Additional information may be obtained from Linda Fisher, 1700 North Congress Avenue, Stephen F. Austin Building, Room 835, Austin, Texas 78701, telephone (512) 475-2071.

Filed: April 23, 1980, 2:42 p.m.
Doc. No. 802979

Texas State Library and Archives Commission

Monday and Tuesday, May 12 and 13, 1980, 10 a.m. daily. The Library Services and Construction Act Advisory Council of the Texas State Library and Archives Commission will meet in Room 202 of the Lorenzo de Zavala Archives and Library Building, 12th and Brazos Streets. According to the agenda, the council will consider member orientation to the LSCA program; election of chairman; review of procedures of LSCA, Title III grant applications; review and approve the federal fiscal year 1981 LSCA annual program, and 1981 long-range plan update.

Additional information may be obtained from Pat Smith, P.O. Box 12927, Austin, Texas 78711, telephone (512) 475-4119.

Filed: April 28, 1980, 11:20 a.m.
Doc. No. 803229

Texas Board of Mental Health and Mental Retardation

Thursday, May 1, 1980, 7:30 p.m. The Texas Board of MH/MR met at 909 West 45th Street, Austin, to consider the duties of commissioner, and reorganization of the department.

Additional information may be obtained from John J. Kavanagh, M.D., P.O. Box 12668, Austin, Texas 78711, telephone (512) 454-3761.

Filed: April 23, 1980, 4:28 p.m.
Doc. No. 802982

Friday, May 2, 1980, 9 a.m. The Texas Board of MH/MR will meet at 909 West 45th Street, Austin. According to the summarized agenda, the board will consider the following: presentation of TDMH/MR energy conservation plan; El Paso State Center for Human Development's report on solar cottage status; 5.0% reduction of staff status report; Texas State Government Effectiveness Program—status of operational audits and operational audit on board effectiveness (Texas Research League); citizens' comments; Rusk State Hospital land bids consideration—six tracts out of 453.89 acres, and 53.24 acres; application approval of 1980-81 construction program funds for repair or replacement of roofs at Denton State School and San Angelo State Center; fund transfer from Abilene State School to San Angelo Center; quarterly budget additions and revisions; proposed rule on continuity of care—302.04.30; proposed amendments of rules governing the Texas Board of MH/MR—302.01.04.011; TDH and UT System medical facilities plans used to augment salaries and expenses; legislative and budgetary issues review; and duties of the commissioner—organization of TDMH/MR. The board will also discuss fiscal year 1982-83 budget guidelines amendments regarding deaf access to MH/MR programs; exempt salaries; and state school bed capacities and average daily census.

Additional information may be obtained from John J. Kavanagh, M.D., P.O. Box 12668, Austin, Texas 78711, telephone (512) 454-3761.

Filed: April 23, 1980, 4:27 p.m.
Doc. No. 802983

Midwestern State University

Tuesday, April 29, 1980, 3 p.m. The Personnel and Curriculum Committee of the Midwestern State Board of Regents met in Room 114 of the Hardin Administration Building, Midwestern State University, Wichita Falls, to discuss rank, tenure, and promotions.

Additional information may be obtained from Dr. Jesse Rogers, Midwestern State University, Wichita Falls, Texas 76308, telephone (817) 692-6611, ext. 226.

Filed: April 24, 1980, 11:29 a.m.
Doc. No. 803000

Texas National Guard Armory Board

Sunday, May 4, 1980, 9:30 a.m. The Texas National Guard Armory Board will meet in Building 64, Camp Mabry, Austin. According to the agenda summary, the board will consider purchasing; repairs and improvements; construction; use of lands; and fiscal and administrative matters.

Additional information may be obtained from T. W. Meek, West Austin Station, Austin, Texas 78763, telephone (512) 475-5481.

Filed: April 23, 1980, 10:57 a.m.
Doc. No. 802958

Board of Nurse Examiners

Monday-Wednesday, May 5-7, 1980, 8 a.m. daily. The Board of Nurse Examiners will meet in Convention Center E of Howard Johnson's Motor Lodge; 7800 North IH-35, Austin. According to the agenda summary, the board will hold disciplinary hearings, reinstatement hearings, informal hearings; hear the education report on school visits, annual reports, new director, new school; review the executive secretary report, and examination report. The board will also adjourn to closed session to review drafts of examination questions on the afternoons of May 5, and 7.

Additional information may be obtained from Margaret L. Rowland, R.N., 510 South Congress, Room 216, Austin, Texas, telephone (512) 478-9602.

Filed: April 23, 1980, 9:26 a.m.
Doc. No. 802972

Pan American University

Tuesday, May 6, 1980, 8:30 a.m. The Pan American University-Brownsville Committee of the Pan American University Board of Regents will meet in the conference room of the Administration Building, Edinburg, to consider the proposed faculty handbook for PAU-Brownsville.

Additional information may be obtained from Dr. Ralph F. Schilling, Pan American University, Edinburg, Texas 78539, telephone (512) 381-2101.

Filed: April 23, 1980, 3:47 p.m.
Doc. No. 802988

Tuesday, May 6, 1980, 9:30 a.m. The Academic and Developmental Affairs Committee of the Pan American University Board of Regents will meet in the conference room of the Administration Building, Edinburg, to hear testimony concerning the Mental Health/Human Services Program. At noon, the committee will meet in executive session to consider employment of personnel as authorized by Article 6252-17, Section 2g, Vernon's Annotated Texas Statutes.

Additional information may be obtained from Dr. Ralph F. Schilling, Pan American University, Edinburg, Texas 78539, telephone (512) 381-2101.

Filed: April 23, 1980, 3:48 p.m.
Doc. No. 802989

Tuesday, May 6, 1980, 1:30 p.m. The Buildings and Grounds Committee of the Pan American University Board of Regents will meet in the conference room of the Administration Building, Edinburg, to consider and approve the following: contract with architect to construct a three-story administration building; service contract for elevators; and a traffic safety contract.

Additional information may be obtained from Dr. Ralph F. Schilling, Pan American University, Edinburg, Texas 78539, telephone (512) 381-2101.

Filed: April 23, 1980, 3:48 p.m.
Doc. No. 802990

Tuesday, May 6, 1980, 3 p.m. The Pan American University Board of Regents will meet in the conference room of the Administration Building, Edinburg, to consider minutes of the previous meeting; reports of the Buildings and Grounds Committee, Academic and Developmental Affairs Committee, and PAU-Brownsville Committee; leaves of absence; signature authorizations for purchasing department; and budget changes.

Additional information may be obtained from Dr. Ralph F. Schilling, Pan American University, Edinburg, Texas 78539, telephone (512) 381-2101.

Filed: April 23, 1980, 3:48 p.m.
Doc. No. 802991

Texas Board of Pardons and Paroles

Monday-Friday, May 5-9, 1980, 9 a.m. daily. The Board of Pardons and Paroles will meet in Room 711, Stephen F. Austin Building, Austin. According to the agenda, the board will review cases of inmates for parole consideration; act on emergency reprieve requests and other acts of executive clemency; review reports regarding persons on parole; review procedures affecting the day-to-day operation of support staff; review and initiate needed rule changes relating to general operation, executive clemency, parole, and all hearings conducted by this agency; and take action upon gubernatorial directives.

Additional information may be obtained from Ken Casner, 711 Stephen F. Austin Building, Austin, Texas, telephone (512) 475-3363.

Filed: April 23, 1980, 9:28 a.m.
Doc. No. 802962

Texas Parks and Wildlife Department

Wednesday, May 21, 1980, 1 p.m. The Parks Division of the Texas Parks and Wildlife Department will meet in Room A-100, 4200 Smith School Road, Austin, to consider an application by the City of Port Arthur to install a potable waterline across approximately 1,239 feet of Sabine Pass Battleground State Historical Park, Jefferson County.

Additional information may be obtained from Loyd K. Booth, 4200 Smith School Road, Austin, Texas 78744, telephone (512) 475-4995.

Filed: April 22, 1980, 3:51 p.m.
Doc. No. 802942

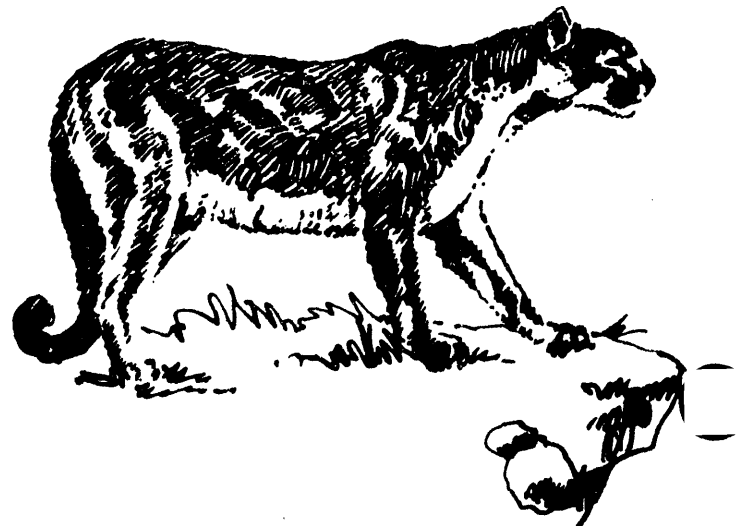
Texas Board of Private Investigators and Private Security Agencies

Tuesday, May 6, 1980, 9 a.m. The Texas Board of Private Investigators and Private Security Agencies will meet in Room 127, 105 West Riverside Drive, Austin. According to the agenda, the board will approve minutes of the March 3, 1980, meeting, and staff action on new licenses, suspension

orders, etc.; request for waiver of board rule; and discuss and take possible board action on the following: first aid training requirements; psychological testing for applicants for security officer commissions; 1982-83 budget requests; matters relating to the Sunset Review Process; and qualifications for handgun instructors.

Additional information may be obtained from Clema D. Sanders, P.O. Box 13509, Austin, Texas 78711, telephone (512) 475-3944.

Filed: April 25, 1980, 2:55 p.m.
Doc. No. 803204



Texas Prosecutors Coordinating Council

Tuesday, May 6, 1980, 9 a.m. The Texas Prosecutors Coordinating Council will meet in Room 602 of the Texas Law Center, 1414 Colorado, Austin. According to the agenda, the council will consider the report of executive director for April; departmental explanations of functions; technical assistance guidelines; grant adjustment for technical assistance; amendments to council statute; and date for next meeting. The council will also meet in executive session to discuss disciplinary matters.

Additional information may be obtained from Andy Shuval, P.O. Box 13555, Austin, Texas 78711, telephone (512) 475-6825.

Filed: April 23, 1980, 10:32 a.m.
Doc. No. 802959

Tuesday, May 6, 1980, 9 a.m. The Texas Prosecutors Coordinating Council will meet in Room 602 of the Texas Law Center, 1414 Colorado, Austin. According to the summarized amended agenda, the council will approve minutes of February 22, 1980, meeting; hear the report of the executive director and explanations of each department and its function;

meet in executive session: re disciplinary matters; and consider technical assistance guidelines, grant adjustment for technical assistance, amendments to council statute, and reasonable fees for publications in accordance with Article 4413(33) Vernon's Texas Civil Statutes. The council will also set the date for next meeting.

Additional information may be obtained from Andy Shuval, P.O. Box 13555, Austin, Texas 78711, telephone (512) 475-6825.

Filed: April 28, 1980, 11:13 a.m.
Doc. No. 803235

Texas Department of Public Safety

Thursday, May 8, 1980, 10 a.m. The Public Safety Commission of the Texas Department of Public Safety will meet at 5805 North Lamar, Austin, to consider minutes of the previous meeting; budget matters; and personnel matters.

Additional information may be obtained from James B. Adams, 5805 North Lamar, Austin, Texas, telephone (512) 452-0331, station-3700.

Filed: April 25, 1980, 9:04 a.m.
Doc. No. 803036

Public Utility Commission of Texas

Tuesday, April 29, 1980, 9 a.m. The Public Utility Commission of Texas conducted a meeting in Suite 450N, 7800 Shoal Creek Boulevard, Austin. According to the agenda summary, the commission considered final orders and heard oral argument in the following dockets: 2869; 2396; 2919 and 2897; 2994; 2880 and 2856; 2934; 2707; 2053; 3077; 2822; 3005; 3019; 3102; 3103; 3106; 2834; 2903; 3131; 3132; 3141; 3142; 3146; 3154; 3155; 3167; and 3171.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 18, 1980, 3:08 p.m.
Doc. No. 802908

Tuesday, April 29, 1980, 9 a.m. The Public Utility Commission of Texas made an emergency addition to the agenda of a meeting held in Suite 450N, 7800 Shoal Creek Boulevard, Austin, regarding Docket 3006. The commission issued a final order on the application of Texas Power and Light Company for authority to change rates. The emergency addition notice was necessary so that an order could be issued prior to the date the proposed rates take effect.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 25, 1980, 4:37 p.m.
Doc. No. 803211

Monday, May 5, 1980, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3094. The hearing involves an application of General Telephone Company of the Southwest for authority to change rates.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 25, 1980, 3:34 p.m.
Doc. No. 803202

Tuesday, May 6, 1980, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, on the merits in Docket 3111, application of Southwestern Public Service Company for authority to increase rates.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 25, 1980, 3:53 p.m.
Doc. No. 803207

Wednesday, May 7, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, to consider a complaint of Southwestern Bell Telephone Company against San Marcos Telephone Company—Docket 2466.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 28, 1980, 11:03 a.m.
Doc. No. 803230

Wednesday, May 7, 1980, 10:30 a.m. The Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 2765. The commission will be examining certain rates of Southwestern Bell Telephone Company concerning MCI Telecommunications Corporation.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 24, 1980, 9:37 a.m.
Doc. No. 802997

Thursday, May 8, 1980, 1:30 p.m. The Hearings Division of the Public Utility Commission of Texas will conduct a prehearing conference in Suite 450N, 7800 Shoal Creek Boulevard, Austin, to consider a complaint of Pine Forest Water Company against the City of Longview within Gregg County—Docket 3203.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 28, 1980, 11:03 a.m.
Doc. No. 803231

Friday, May 9, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, to consider an application of Beeville Communications for certificate of convenience and necessity within Bee County—Docket 2935.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 28, 1980, 11:03 a.m.
Doc. No. 803232

Monday, June 9, 1980, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3170—application of Central Texas Electric Cooperative, Inc., for an electric rate increase.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 22, 1980, 3:55 p.m.
Doc. No. 802943

Wednesday, June 11, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 3148. The hearing involves an application of Airsignal International, Inc., for a rate increase for radio-telephone utility services within Dallas, Tarrant, Harris, and appropriate surrounding counties.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 22, 1980, 3:56 p.m.
Doc. No. 802944

Monday, June 16, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, to consider an application of Pelican Bay Utility Company, Inc., for a rate increase within Tarrant County—Docket 3143.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 28, 1980, 11:03 a.m.
Doc. No. 803233

Tuesday, June 17, 1980, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, in Docket 2991. The commission will consider a petition of Lamb County Electric Cooperative, Inc., for a cease and desist order against Southwestern Public Service Company within Hockley and Lamb Counties.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 24, 1980, 3:26 p.m.
Doc. No. 803015

Thursday, June 26, 1980, 10 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, regarding an inquiry by the commission into the actions of Windy's Water Works, Inc., concerning rates charged—Docket 3135.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 28, 1980, 11:04 a.m.
Doc. No. 803234

Monday, June 30, 1980, 9 a.m. The Hearings Division of the Public Utility Commission of Texas will conduct a hearing in Suite 450N, 7800 Shoal Creek Boulevard, Austin, on the merits in Dockets 3042 and 3064, applications of Rockett Water Supply Corporation and the City of Waxahachie to amend certificates of convenience and necessity for water utility service within Ellis County.

Additional information may be obtained from Philip F. Ricketts, 7800 Shoal Creek Boulevard, Suite 450N, Austin, Texas 78757, telephone (512) 458-0100.

Filed: April 25, 1980, 3:53 p.m.
Doc. No. 803206

Texas Committee on Purchases of Blind-Made Products and Services

Thursday, May 15, 1980, 10 a.m. The Texas Committee on Purchases of Blind-Made Products and Services will meet at 4245 Office Parkway, Dallas. According to the agenda, the committee will introduce new members and visitors; approve minutes; hold an orientation for new members; and review the following: committee rules; legal status of committee; feasibility study; sales report, new products and/or services or both. Members will break for a tour of the facility at approximately 11 a.m. and will reconvene following the tour.

Additional information may be obtained from Austin Scott, 4245 Office Parkway, Dallas, Texas, telephone (214) 821-2377.

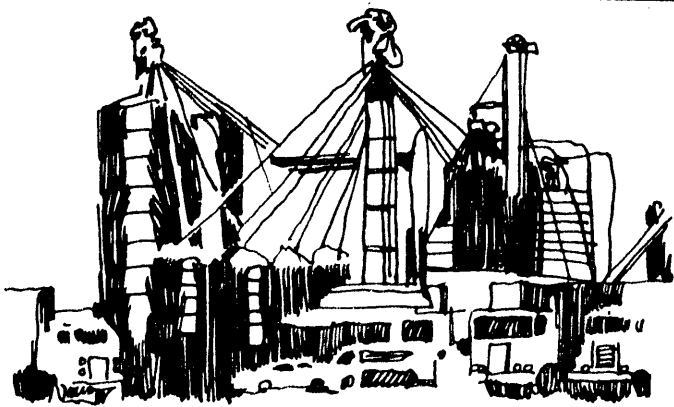
Filed: April 22, 1980, 2:12 p.m.
Doc. No. 802931

State Purchasing and General Services Commission

Friday, April 25, 1980, 10 a.m. The State Purchasing and General Services Commission made emergency additions to an agenda, and changed the location of a meeting to Room 916 of the Lyndon Baines Johnson Building, 111 East 17th Street, Austin. The additions concerned consideration of requests by National Advanced Systems Corporation to reconsider a pending award under requisition DPS-0-705-B, and by Travenol Corporation for a full hearing before the commission concerning Class 270 annual contract. Travenol also requested that prior to this hearing, no action be taken by the commission to reject its bid for the Class 270 contract. Urgent public necessity existed to consider added agenda items because of the need to award contract in a timely manner.

Additional information may be obtained from Homer A. Foerster, 111 East 17th Street, LBJ Building, Room 914, Austin, Texas 78701, telephone (512) 475-2211.

Filed: April 24, 1980, 11:29 a.m.
Doc. No. 803001



Railroad Commission of Texas

Tuesday, April 22, 1980, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas made an emergency addition to a meeting held in Room 107, 1124 South IH 35, Austin. The addition concerned Gas Utilities Docket 2574, a request from Harold Freeman, Inc., for approval to purchase gas from Valero Transmission Company. Consideration on less than seven days notice was required as a matter of urgent public necessity because a delay of this matter might have resulted in irreparable damage to the applicant's rice crop.

Additional information may be obtained from Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1126.

Filed: April 18, 1980, 3:24 p.m.
Doc. No. 802909

Tuesday, April 22, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting held in the first floor auditorium, 1124 South IH 35, Austin. The addition concerned an application of Texas Land Specialist, Inc., for a reclamation plant permit—Docket 3-74,933. The matter was considered on less than seven days notice as a matter of urgent public necessity because failure to act quickly might have resulted in the loss of reclaimable oil to the consuming public.

Additional information may be obtained from John G. Soule, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1285.

Filed: April 18, 1980, 3:25 p.m.
Doc. No. 802910

Tuesday, April 22, 1980, 9 a.m. The Railroad Commission of Texas made an emergency addition to the agenda for a meeting held in the first floor conference room, 1124 South IH 35, Austin. The addition concerned a request for extension of the deadlines provided by 18 C.F.R. section 273.202 and 273.203. Consideration on less than seven days notice was required as a matter of public necessity because the pendency of the deadlines imposed on the preceding sections.

Additional information may be obtained from Carla S. Doyne, 1124 South IH 35, Austin, Texas 78704, telephone (512) 445-1186.

Filed: April 18, 1980, 4:31 p.m.
Doc. No. 802923

Tuesday, April 29, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas met in the first floor auditorium, 1124 South IH 35, Austin, to consider category determinations under Sections 102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Additional information may be obtained from Linda D. Carr, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1273.

Filed: April 18, 1980, 3:25 p.m.
Doc. No. 802911

Tuesday, April 29, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas made an emergency addition to the agenda of a meeting in the first floor auditorium, 1124 South IH 35, Austin. The addition concerned consideration of Natural Gas Policy Act of 1978, Docket F-7B-011249, Section 103 category determination. This matter was considered on less than seven days notice as a matter of urgent public necessity, because of the May 3, 1980, interim collection termination deadline imposed by the Federal Energy Regulatory Commission.

Additional information may be obtained from Linda D. Carr, P.O. Drawer 12967, Austin, Texas 78711.

Filed: April 25, 1980, 12:09 p.m.
Doc. No. 803192

Monday, May 5, 1980, 9 a.m. The Railroad Commission of Texas will meet in the third floor conference room, 1124 South IH 35, Austin. According to the agenda, the commission will go into executive session to discuss personnel actions for all divisions and to consult with its legal staff on prospective and pending litigation pursuant to Sections 2g and 2e of the Act, respectively.

Additional information may be obtained from Carla S. Doyne, 1124 South IH 35, Austin, Texas 78704, telephone (512) 445-1186.

Filed: April 25, 1980, 12:11 p.m.
Doc. No. 803197

Monday, May 5, 1980, 9 a.m. The Finance Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 South IH 35, Austin. According to the agenda, the division will consider the commission's semi-annual performance report for the period September 1, 1979, to February 29, 1980, which will be submitted to the Legislative Budget Board and the Governor's Budget Office.

Additional information may be obtained from H. Roger Dillon, 1124 South IH 35, Austin, Texas, telephone (512) 445-1226.

Filed: April 25, 1980, 12:13 p.m.
Doc. No. 803200

Monday, May 5, 1980, 9 a.m. The Gas Utilities Division of the Railroad Commission of Texas will meet in Room 107, 1124 South IH 35, Austin. According to the agenda, the division will consider Gas Utilities Dockets 2103 (Consolidated), 2087, 2595, 2448, 2562, 2571, 2581, 2241, 2268, 2586, 2593, and the director's report.

Additional information may be obtained from Lucia Sturdevant, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1126.

Filed: April 25, 1980, 3:44 p.m.
Doc. No. 803205

Monday, May 5, 1980, 9 a.m. The Liquefied-Petroleum Gas Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 South IH 35, Austin. According to the agenda, the division will consider the director's report.

Additional information may be obtained from Guy G. Mathews, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1189.

Filed: April 25, 1980, 12:13 p.m.
Doc. No. 803199

Monday, May 5, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the first floor auditorium, 1124 South IH 35, Austin. According to the agenda summary, the division will consider various matters falling within the Railroad Commission's oil and gas regulatory jurisdiction.

Additional information may be obtained from Jan Burris, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1307.

Filed: April 25, 1980, 12:10 p.m.
Doc. No. 803194

Monday, May 5, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas has made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 South IH 35, Austin. The addition concerns a discussion of whether or not to publish proposed amendments to Statewide Rules 41 (051.02.02.041) and 42 (051.02.02.042) in the *Texas Register*.

Additional information may be obtained from John Soule, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1285.

Filed: April 25, 1980, 12:10 p.m.
Doc. No. 803195

Monday, May 5, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas has made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 South IH 35, Austin. The addition concerns consideration of Kilgore District Office telephone contract.

Additional information may be obtained from John Soule, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1285.

Filed: April 25, 1980, 12:11 p.m.
Doc. No. 803196

Monday, May 5, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas has made an addition to the agenda of a meeting to be held in the first floor auditorium, 1124 South IH 35, Austin. The addition concerns consideration of a staff recommendation to file an application with the Environmental Protection Agency for reallocation grant funds for the Underground Injection Control Program in the amount of \$96,050.

Additional information may be obtained from Jerry W. Mullican, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1373.

Filed: April 25, 1980, 12:12 p.m.
Doc. No. 803198

Monday, May 5, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas has made an addition to the agenda for a meeting to be held in the first floor auditorium, 1124 South IH 35, Austin. According to the agenda summary, the division will consider category determinations under Sections 102(c)(1)(B), 102(c)(1)(C), 103, 107, and 108 of the Natural Gas Policy Act of 1978.

Additional information may be obtained from Linda D. Carr, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1273.

Filed: April 25, 1980, 12:14 p.m.
Doc. No. 803201

Monday, May 5, 1980, 9 a.m. The Transportation Division of the Railroad Commission of Texas will meet in Room 107, 1124 South IH 35, Austin. According to the agenda summary, the division will consider various matters falling within the Railroad Commission's transportation regulatory jurisdiction.

Additional information may be obtained from Owen T. Kinney, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1330.

Filed: April 25, 1980, 12:09 p.m.
Doc. No. 803193

Tuesday, May 20, 1980, 9 a.m. The Oil and Gas Division of the Railroad Commission of Texas will meet in the Hilton Inn, 6000 Middle Fiskville Road, Austin, for a statewide oil and gas hearing.

Additional information may be obtained from Harriet Perkins, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1297.

Filed: April 18, 1980, 3:26 p.m.
Doc. No. 802912

State Securities Board

Thursday, May 1, 1980, 10 a.m. The Securities Commissioner of the State Securities Board conducted a hearing at 1800 San Jacinto Street, Austin. The hearing was held to determine whether an order of prohibition or suspension should be entered prohibiting or suspending the sale in Texas by Sno Kone Industries, Inc., of securities known and described as 500,000 shares no par common stock at \$2.

Additional information may be obtained from Lee Polson, 1800 San Jacinto Street, Austin, Texas.

Filed: April 23, 1980, 2:08 p.m.
Doc. No. 802980

Thursday, May 1, 1980, 11 a.m. The Securities Commissioner of the State Securities Board conducted a hearing at 1800 San Jacinto Street, Austin, to determine whether a cease and desist order should be issued prohibiting the sale of securities issued by the Reserve Bullion Exchange Corporation and Stephen C. Cox.

Additional information may be obtained from Lee Polson, 1800 San Jacinto Street, Austin, Texas.

Filed: April 23, 1980, 2:08 p.m.
Doc. No. 802981

Texas State Board of Examiners in Social Psychotherapy

Saturday, May 3, 1980, 1:30 p.m. The Texas State Board of Examiners in Social Psychotherapy will meet in Conference Room T-507, 1100 West 49th Street, Austin. According to the summarized agenda, the board will consider the following: minutes of previous meeting; committee reports on application screening, examination development, Sunset Committee, accreditation and training program, Executive Committee; letters to licensees concerning withdrawal of continuing education rules, yellow page listings, and other announcements of services; matters pertaining to licensure, regulation, and practice of social psychotherapists; and date of next meeting.

Additional information may be obtained from Daniel L. Boone, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7511.

Filed: April 24, 1980, 3:40 p.m.
Doc. No. 803012

Texas A&M University

Friday, May 2, 1980, 9 a.m. The Texas A&M University Board of Regents will meet in the MSC Annex, Texas A&M University, College Station, to consider the operating budgets for 1980-81; revolving bank accounts; and policy guidelines for 1982-83 legislative budget requests.

Further information may be obtained from Robert G. Cherry, Texas A&M University, College Station, Texas 77843, telephone (713) 845-4334.

Filed: April 25, 1980, 1:49 p.m.
Doc. No. 803190

Texas Southern University

Thursday, May 8, 1980, 9:30 a.m. The Finance Committee of the Texas Southern University Board of Regents has rescheduled a meeting to be held in Hannah Hall 117, 3201 Wheeler Avenue, Houston. The committee will conduct a routine meeting to consider monthly financial reports from the administration.

Additional information may be obtained from Everett O. Bell, 3201 Wheeler Avenue, Houston, Texas 77004, telephone (713) 529-8911.

Filed: April 25, 1980, 10:15 a.m.
Doc. No. 803031

Thursday, May 8, 1980, 1:30 p.m. The Building and Grounds Committee of the Texas Southern University Board of Regents has rescheduled a meeting to be held in Hannah Hall 117, 3201 Wheeler Avenue, Houston. The committee will consider approval of contracts for payment acquisition of real estate, and awarding of contracts.

Additional information may be obtained from Everett O. Bell, 3201 Wheeler Avenue, Houston, Texas 77004, telephone (713) 529-8911.

Filed: April 25, 1980, 10:13 a.m.
Doc. No. 803032

Thursday, May 8, 1980, 3 p.m. The Faculty and Curriculum Committee of the Texas Southern University Board of Regents has rescheduled a meeting to be held in Hannah Hall 117, 3201 Wheeler Avenue, Houston. The committee will conduct a routine meeting to receive enrollment and curricula data from the administration.

Additional information may be obtained from Everett O. Bell, 3201 Wheeler Avenue, Houston, Texas 77004, telephone (713) 529-8911.

Filed: April 25, 1980, 10:14 a.m.
Doc. No. 803033

Friday, May 9, 1980, 10 a.m. The Texas Southern University Board of Regents has rescheduled a meeting to be held in Room 203 of the Student Life Center, Texas Southern University, Houston. The board will consider fiscal and curriculum reports from the administration, and approval of short-term investments as recommended by the Finance Committee.

Additional information may be obtained from Everett O. Bell, 3201 Wheeler Avenue, Houston, Texas 77004, telephone (713) 529-8911.

Filed: April 25, 1980, 10:15 a.m.
Doc. No. 803034

Veterans Land Board

Tuesday, April 29, 1980, 2 p.m. The Veterans Land Board filed an emergency meeting notice for a session held in the Stephen F. Austin Building, Austin. The notice was sent to correct the wording in the original notice. According to the new agenda, the board considered minutes of the April 15, 1980, meeting and bids received at the April 1, 1980, oil and gas lease sale (Veterans Land Board Accounts 12941, 14571, and 13184, Reeves County). The board also discussed a future bond sale and board policy.

Additional information may be obtained from Richard Keahey, 738 Stephen F. Austin Building, Austin, Texas.

Filed: April 28, 1980, 11:20 a.m.
Doc. No. 803228

Texas Water Commission

Tuesday, April 22, 1980, 11:45 a.m. The Texas Water Commission met in emergency session in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to set a hearing date on application by Anthony Duke for a temporary permit to divert and use 2000 acre-feet of water within a one-year period from Victoria Barge Canal,

Lavaca-Guadalupe Basin for irrigation purposes in Calhoun County. Inasmuch as the applicant has an application for a regular permit pending before the commission and is seeking an alternative for rice irrigation until the commission reaches a final decision on the regular application, the commission set a hearing date on the application for a temporary permit as soon as possible.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 22, 1980, 9:26 a.m.
Doc. No. 802929

Monday, April 28, 1980, 10 a.m. The Texas Water Commission met in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission considered the following: applications for bond issues; increase in bond amount and interest rate; escrow releases; change in plans; use of surplus funds; water quality amendments; renewals; transfer and reactivation of permit; final decision on water right applications; partial cancellation of permit; voluntary withdrawal and dismissal of claim; and setting of hearing dates.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 18, 1980, 3:37 p.m.
Doc. No. 802913

Thursday, May 5, 1980, 10 a.m. The Texas Water Commission will conduct a hearing in Room 618 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider application 14-1072A of the City of Ballinger for an amendment to Certificate of Adjudication 14-1072 to authorize construction of 6050 acre-foot capacity reservoir, transfer of 3200 acre-feet of storage, modification of the existing dam to impound not more than 800 acre-feet, transfer of the 1000 acre-feet of water per year, and increase the amount of water authorized for diversion for municipal use from 1000 acre-feet per year to 1600 acre-feet per year.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 18, 1980, 3:36 p.m.
Doc. No. 802914

Monday, May 5, 1980, 10 a.m. The Texas Water Commission will conduct a hearing in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider the following: an application for release from escrow; water quality permits; amendments; renewals; water rights applications for final decision; and an extension of time application.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 24, 1980, 3:28 p.m.
Doc. No. 803018

Monday May 12, 1980, 10 a.m. The Texas Water Commission will meet in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will conduct a hearing on TA-3745 of Mr. or Mrs. Anthony Duke for a temporary permit to divert and use 2,000 acre-feet of water for a one-year period from Victoria Barge Canal, tributary of Intracoastal Canal, Lavaca-Guadalupe Coastal Basin for irrigation purposes in Calhoun County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 23, 1980, 3:25 p.m.
Doc. No. 802985

Tuesday, May 13, 1980, 9:30 a.m. The Texas Water Commission will conduct hearings in Room 124A of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the summarized agendas, the commission will consider the following applications:

TA-3691, submitted by Ivan Dement, Inc., seeking a permit to divert and use 10 acre-feet of water for three years from Reservoir, unnamed creek, Hackberry Creek, Tierra Blanca Creek, Prairie Dog Town Fork Red River, Red River, Red River Basin for industrial (highway construction) purposes in Randall County.

TA-3698 submitted by Farco Mining Company seeking a permit to divert and use 90 acre-feet of water for three years from Rio Grande, Rio Grande Basin for mining (coal mine dust control) purposes in Webb County.

TA-3693 submitted by R. W. McKinney and T. L. James and Company, seeking a permit to divert and use three acre-feet of water for two years from Turkey Creek, Cow Creek, Brazos River, Brazos River Basin, for industrial (highway construction) purposes in Fort Bend County.

TA-3694 submitted by Marshall Paving Products, Inc., seeking a permit to divert and use 10 acre-feet of water for three years from Sabine River, Sabine River Basin, for industrial (highway construction) purposes in Harrison County.

TA-3662 submitted by Pecans Unlimited seeking a permit to divert and use 50 acre-feet of water for one year from West Frio River, Frio River, Atascosa River, Nueces River, Nueces River Basin, for irrigation purposes in Real County.

TA-3723 submitted by Sunoco Terminals, Inc., seeking a permit to divert and use 129 acre-feet of water for three years from Viola Turning Basin on Corpus Christi Ship Channel, Corpus Christi Bay, Nueces River Basin, for industrial (hydrostatic test for tanks) purposes in Nueces County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 24, 1980, 3:34 p.m.
Doc. Nos. 803019-803024

Monday-Friday, May 19-23, 1980, Monday-2 p.m. Tuesday-Friday 9 a.m. daily. The Texas Water Commission will conduct adjudication hearings in the basement conference room of the Cherokee County Courthouse, Rusk, on the Upper Neches River Segment, Neches River Basin.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 24, 1980, 3:29 p.m.
Doc. No. 803025

Wednesday, May 21, 1980, 10 a.m. The Texas Water Commission will conduct a hearing in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, concerning a petition for creation of West Harris County Municipal Utility District 17, which will contain approximately 173 acres of land wholly within Harris County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 23, 1980, 3:25 p.m.
Doc. No. 802986

Wednesday, May 21, 1980, 10 a.m. The Texas Water Commission will meet in Room 118 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to conduct a public hearing on a petition for creation filed by Denton County Municipal Utility District 3, containing approximately 468 acres of land located wholly within Denton County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 23, 1980, 3:26 p.m.
Doc. No. 802987

Friday, May 30, 1980, 10 a.m. The Texas Water Commission will conduct a hearing in Room 618 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin. According to the agenda summary, the commission will consider application 4041 of Floyd B. Neuman for a permit to directly divert 25 acre-feet of water from San Miguel Creek, tributary of Frio River, tributary of Nueces River, Nueces River Basin for irrigation purposes in Frio County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 18, 1980, 3:36 p.m.
Doc. No. 802915

Friday, May 30, 1980, 10 a.m. The Texas Water Commission will meet in Room 618 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, to conduct a public hearing on application 4043 filed by B. A. Harper and J. Emmett Harper for a permit to divert and use not to exceed 150 acre-feet of water per annum from the San Marcos River, tributary of the Guadalupe River, Guadalupe River Basin for irrigation purposes in Guadalupe County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 18, 1980, 3:38 p.m.
Doc. No. 802917

Friday, June 6, 1980, 10 a.m. The Texas Water Commission will conduct a hearing in Room 618 of the Stephen F. Austin Building, 1700 North Congress Avenue, Austin, regarding application RE-0126 of American Container Service, Inc., for approval of preliminary plans for construction of certain levee improvements on Elm Fork of the Trinity River, Trinity River Basin in Denton County.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 18, 1980, 3:37 p.m.
Doc. No. 802916

Monday-Friday, June 16-20, 1980, Monday-2 p.m. Tuesday-Friday 9 a.m. daily. The Texas Water Commission will conduct adjudication hearings in the County Courtroom, Anderson County Courthouse, Palestine, on the Upper Neches River Segment, Neches River Basin.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

Filed: April 24, 1980, 3:29 p.m.
Doc. No. 803026

Monday-Friday, June 23-27, 1980, Monday-2 p.m. Tuesday-Friday 9 a.m. daily. The Texas Water Commission will conduct adjudication hearings in Room 322 of District Court 2, Matagorda County Courthouse, 1700 Seventh Street, Bay City, on the Colorado-Lavaca Coastal Basin to establish jurisdiction.

Additional information may be obtained from Mary Ann Hefner, P.O. Box 13087, Austin, Texas 78711, telephone (512) 475-4514.

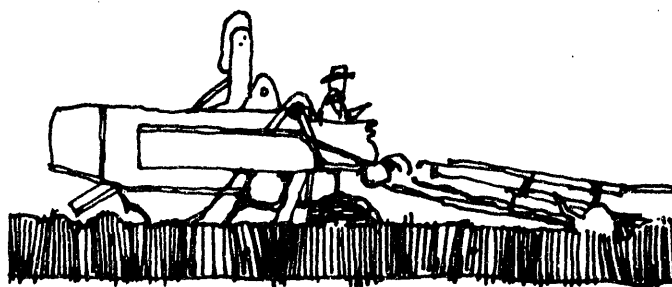
Filed: April 24, 1980, 3:28 p.m.
Doc. No. 803027

Texas Wheat Producers Board

Wednesday and Thursday, May 7 and 8, 1980, 1 p.m. daily. The Texas Wheat Producers Board will meet in the executive meeting room of the Hilton Inn, Amarillo, to consider the 1980 budget review; officers report; bread fair promotion report; and set the assessment for 1980-81.

Additional information may be obtained from Bill Nelson, Bank of the Southwest, Suite 600, Amarillo, Texas 79109, telephone (806) 352-2191.

Filed: April 25, 1980, 4:36 p.m.
Doc. No. 803208



Regional Agencies

Meetings Filed April 18, 1980

The Copano Bay Soil Conservation District 329, met at 106 South Alamo, Shay Plaza, Refugio, on April 28, 1980, at 7:30 p.m. Further information may be obtained from Jim Wales, Drawer 340, Refugio, Texas 78377, telephone (512) 526-2334

The Education Service Center, Region IV, Board of Directors, will meet in the Nantucket Room, Anchorage Restaurant, 2504 North Loop West, Houston, on May 12, 1980, at 6 p.m. Further information may be obtained from Dr. Tom Pate, Jr., P.O. Box 863, Houston, Texas 77001, telephone (713) 868-1051.

Doc. No. 802922

Meetings Filed April 23, 1980

The Central Counties Center for MH/MR Services, met in emergency session at 302 South 22nd, Temple, on April 24, 1980, at 7:45 p.m. Further information may be obtained from Dr. Steven Schnee, P.O. Box 518, Temple, Texas 76501, telephone (817) 778-4841.

The Central Plains MH/MR Center, Board of Trustees, met in emergency session at 2601 Dimmitt Road, Plainview, on April 24, 1980, at 7 p.m. Further information may be obtained from J. C. Thomas, 2700 Yonkers, Plainview, Texas 79072, telephone (806) 296-2726.

The CETA Consortium, Region XI, McLennan County Non-Urban Administrative Unit, met in emergency session at the County Courthouse, Waco, on April 24, 1980, at 10 a.m. Further information may be obtained from Nancy Miller, 130 North 6th Street, Waco, Texas, telephone (817) 756-1851.

The Education Service Center, Region X, Board of Directors, met in the Region X Board Room, 400 East Spring Valley, Richardson, on April 30, 1980, at 12:30 p.m. Further information may be obtained from H. W. Goodgion, 400 East Spring Valley, Richardson, Texas, telephone (214) 231-6301.

The Education Service Center, Region XI, Board of Directors, will meet at 3001 North Freeway, Fort Worth, on May 13, 1980, at 11:30 a.m. Further information may be obtained from R. P. Campbell, Jr., 3001 North Freeway, Fort Worth, Texas 76106, telephone (817) 625-5311.

The Education Service Center, Region XVII, Board of Directors, will meet in Room S-107, Lubbock Memorial Civic Center, on May 20, 1980, at 1 p.m. Further information may be obtained from Ray Lanier, 700 Texas Commerce Bank Building, Lubbock, Texas, telephone (806) 763-4127.

The Education Service Center, Region XIV, Board of Directors, met at 3001 North 3rd Street, Abilene, on May 1, 1980, at 6 p.m. Further information may be obtained from Dr. Thomas Lawrence, 3001 North Third Street, Abilene, Texas 79604, telephone (915) 677-2911.

The Education Service Center, Region XX, Board of Directors, will meet at ESC, Region XX, Instructional Media Center, 1314 Hines Avenue, San Antonio, on May 7, 1980, at 2 p.m. Further information may be obtained from Dr. Dwain M. Estes, 1550 Northeast Loop 410, San Antonio, Texas 78209, telephone (512) 828-3551.

The Houston-Galveston Area Council, Board of Directors, met at University Club, 455 Post Oak Tower, 5051 Westheimer (Galleria), Houston, on April 29, 1980, at 6 and 8 p.m. Further information may be obtained from Jack Steele, P.O. Box 22777, Houston, Texas 77027, telephone (713) 627-3200.

The Middle Rio Grande Development Council, A-95 Project Review Committee, met in City Council Chambers, City Hall, Uvalde, on April 30, 1980, at 2 p.m. Further information may be obtained from Elia G. Santos, P.O. Box 1461, Del Rio, Texas 78840, telephone (512) 775-1581.

The Northeast Texas Municipal Water District, Board of Directors, 1003 Linda Drive, Daingerfield, on April 28, 1980, at 8 p.m. Further information may be obtained from Homer Tanner, P.O. Box 680, Daingerfield, Texas 75638, telephone (214) 645-2241.

The Panhandle Regional Planning Commission, Board of Directors, met in emergency session in the Chamber of Commerce Conference Room, Amarillo Building, 3rd and Polk, Amarillo, on April 25, 1980, at 1:30 p.m. Further information may be obtained from George Loudder, P.O. Box 9257, Amarillo, Texas 79105, telephone (806) 372-3381.

The Pecan Valley MH/MR Region, Board of Trustees, met in rescheduled session at the First United Methodist Church, 204 East Pearl Street, Granbury, on April 30, 1980, at 12:15 p.m. Further information may be obtained from Dr. Theresa Mulloy, 455 North Belknap, Stephenville, Texas, telephone (817) 965-7806.

The Trinity River Authority of Texas, Executive Committee, met in emergency session at the Arlington Public Library, 101 East Abram, Arlington, on April 23, 1980, at 11:30 a.m. Further information may be obtained from Geri Elliott, P.O. Box 5768, Arlington, Texas 76011, telephone (817) 461-3151.

The Tri-Region Health Systems Agency, West Central Texas Cardiovascular Task Force, will meet At Tri-Region HSA Office, 2642 Post Oak Road, Abilene, on May 6, 1980, at 7 p.m. Further information may be obtained from Taras Hetzel, 2642 Post Oak Road, Abilene, Texas 79605, telephone (915) 698-9481.

The West Central Texas Council of Governments, Manpower Advisory Committee, met at 1025 East North 10th Street, Abilene, on April 30, 1980, at 10:30 a.m. Further information may be obtained from Brad E. Holbert, P.O. Box 3195, Abilene, Texas, telephone (915) 672-8544.

Doc. No 802953

Meetings Filed April 24, 1980

The Ark-Tex Council of Governments, Executive Committee (First Session), met at the Black Angus Restaurant, corner of 1st and Madison, Mt. Pleasant, on May 1, 1980, at 5:30 p.m. The Executive Committee (Second Session), met in the Gold Room at the Titus County Civic Center, Mt. Pleasant, on the same date at 7 p.m. Further information may be obtained from Vivienne Arvin, P.O. Box 5307, Texarkana, Texas 75501, telephone (214) 794-3481.

The Central Texas MH/MR Center, Board of Trustees, met at 308 Lakeway, Brownwood, on April 29, 1980, at 4:30 p.m. Further information may be obtained from Jannie Clements, P.O. Box 250, Brownwood, Texas 76801, telephone (915) 646-9574, ext. 35.

The North Plains Water District, Board of Directors, will meet at 702 East 1st Street, Dumas, on May 5, 1980, at 10 a.m. Further information may be obtained from Orval E. Allen, Box 935, Dumas, Texas 79029, telephone (806) 935-6401.

The Panhandle Regional Planning Commission, Texas Panhandle Employment and Alliance Training, met in the conference room at the Travelodge Civic Center, 2nd floor, 321 S. Polk, Amarillo, on April 30, 1980, at 10:30 a.m. Further information may be obtained from James Barrington, P.O. Box 9257, Amarillo, Texas, 79105, telephone (806) 372-3381.

Doc. No. 802999

Meetings Filed April 25, 1980

The Golden Crescent Council of Governments, Board of Directors, met in the LaSalle Room at the Victoria Bank and Trust Building, 120 South Main, Victoria, on April 30, 1980, at 5 p.m. Further information may be obtained from Robert W. Burr, P.O. Box 2028, Victoria, Texas 77901, telephone (512) 578-1587, ext. 30.

The High Plains Underground Water Conservation District No. 1, Board of Directors, will meet at 2930 Avenue Q, Lubbock, on May 5, 1980, at 10 a.m. Further information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, telephone (806) 762-0181.

The Panhandle Regional Planning Commission, Nominating Committee of the Panhandle Health Systems Agency, will meet at the student lounge at Texas Tech University Regional Academic Health Center, 1400 Wallace Boulevard, Amarillo, on May 8, 1980, at 7 p.m. Further information may be obtained from George Loudder, P.O. Box 9257, Amarillo, Texas 79105, telephone (806) 372-3381.

The Panhandle Regional Planning Commission, Panhandle Health Systems Agency, will meet at the Texas Tech University Regional Academic Health Center, 1400 Wallace Boulevard, Amarillo, on May 8, 1980, at 7:30 p.m. Further information may be obtained from George Loudder, P.O. Box 9257, Amarillo, Texas 79105, telephone (806) 372-3381.

Doc. No. 803030



Texas Air Control Board

Applications for Construction Permits

Notice is given by the Texas Air Control Board of applications for construction permits received during the period of April 14-18, 1980.

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

A copy of all material submitted by the applicant is available for public inspection at the Central Office of the Texas Air Control Board at the address stated above and at the regional office for the air quality control region within which the proposed facility will be located.

Listed are the name of the applicant and the city in which the facility is located; type of facility; location of the facility (if available); permit number; and type of application—new source or modification.

Freeway Ready Mix, Inc., Rowlett; ready mix concrete plant; 2200 Gordon Smith Drive; 8329; new source

Birdsong Peanuts, Gorman; farmers stock cleaner; 8325; new source

Ethyl Corporation, Houston; dowtherm furnace and improved material handling equipment; 1000 North South Street; 8326; new source

Ethyl Corporation, Houston; alkyl distillation system; 1000 North South Street; 8327; new source

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802946 Ramon Dasch
Hearing Examiner
Texas Air Control Board

Filed: April 22, 1980, 3:57 p.m.

For further information, please call (512) 451-5711 ext. 401

Week Ending April 18, 1980

Ike Jackson and Sons, Inc., New Caney; air curtain destructor; 935 South Highway 59; 4108B; new source

Longview Refining Division of Crystal Oil Company, Longview; unleaded gasoline blend tank; Premier Road; 8336; new source

Gulf Oil Chemicals Company, Orange; high density polyethylene production; Orange Plant; 8334; modification

Gulf Oil Chemicals Company, Orange; high density polyethylene production; Orange Plant; 8335; modification

Interox America, Deer Park; peroxide—percarbonate of soda unit; 1230 Battleground Road; 6754A; new source

Dallas Ceramic Company, Dallas; ceramic tile production; 7834 Hawn Freeway; 8333; new source

Halliburton Services, Jacksboro; bulk cement handling plant; South Highway 380; 1922C; new source

Austin White Lime Company, Walberg; quarrying and rock crushing; State Highway 195; 8331; new source

Apollo Technologies, Inc., Marshall; powder blending; 700 Meldred Lee Street; 8332; new source

Cal Tex Oil Company, Stinnett; DEA gas sweetening unit; Carver Gas Inj Plant; 8330; new source

Texas Refining Company, Midland; topping unit; U.S. Highway 80; 8328; new source

Zack Burkett Company, Joshua; asphalt concrete plant; 254M; new source

Strain Brothers, Inc., El Paso; rock crusher; 299 El Paso; 6897A; new source

State Banking Department

Applications to Purchase Control of State Banks

Article 342-401a, Vernon's Texas Civil Statutes, requires any person who intends to buy control of a state bank to file an application with the banking commissioner for the commissioner's approval to purchase control of a particular bank. A hearing may be held if the application is denied by the commissioner.

On April 24, 1980, the banking commissioner received an application to acquire control of First State Bancorp, Inc./The First State Bank of Dimmitt, Dimmitt, by Charles McLean, J. Craig Fuller, Jerry Matthews of Dimmitt Truman Touchstone, Robert McLean, Donald J. Wright, Carl Lee Kemp, J. Kenn Justice, Bruce B. Fuller, and Jimmy L. Ross, all of Dimmitt, Johnny Webb and James Horton of Hart, and Lowell Neumayer of Hereford. Additional information may be obtained from Robert E. Stewart, 2601 North Lamar, Austin, Texas 78705, telephone (512) 475-4451.

Issued in Austin, Texas, on April 24, 1980.

Doc. No. 803029 Daniel A. Flynn
Deputy Banking Commissioner

Filed: April 25, 1980, 10:10 a.m.

For further information, please call (512) 475-4451.

Comptroller of Public Accounts

Consultant Proposal Request

The Comptroller of Public Accounts of the State of Texas requests proposals to provide the following data processing consultant and computer support services.

Description of Project. This project involves the construction and implementation of a new metropolitan transit authority (MTA) sales tax system by March 1981, as provided

by Senate Bill 1079 (Acts of the 66th Legislature). This new system has been designed to facilitate the implementation of the tax system for the Dallas/Fort Worth MTA District, which may be adopted and ratified under the new statute. This system will incorporate the existing San Antonio and Houston MTA Districts, any future MTA districts, as well as the state and city sales and use tax into a combined sales tax system.

Proposal Specifications. The MTA combined sales tax system will be constructed and implemented according to the System Development Standard and Procedures Manual published by the Data Services Division of the Comptroller of Public Accounts. System products will be subject to project plan review and monitoring by Data Services project control personnel, and to quality review and acceptance by Data Services quality control personnel. The application development cycle (milestones and products), project management and control approach, and status reporting procedures are outlined in that document. The basic tasks to be performed by the contractor include:

- (1) develop and test programs according to design specifications;
- (2) test system and acquire user signoff;
- (3) prepare operations manual and other system documentation including program folders for the system;
- (4) implement the system.

The system will have to maintain an estimated 450,000 sales tax accounts maintained by the Comptroller's Office. The number of accounts is expected to grow at a rate of at least 5.0% per year.

The vendor, working with existing design specifications, will be required to code, test, document, and implement phase one, consisting of the following functions by November 17, 1980:

- (1) special mailings;
- (2) MTA transaction processing;
- (3) MTA collection scan for initial billings;
- (4) MTA histories;
- (5) MTA allocation;
- (6) number changes of MTA files;
- (7) MTA compute balance;
- (8) MTA balance with accounting
- (9) conversion of MTA files (both manual and automated);
- (10) MIS reports.

The second phase, to be complete by March 3, 1981, involves coding, testing, documenting, and implementing:

- (1) combined transaction processing (state, city, MTA);
- (2) combined collection scan;
- (3) combined histories;
- (4) city allocation;
- (5) compute balance for state and city;
- (6) balance with accounting for state and city funds;
- (7) number changes of new files not used in phase one;
- (8) additional MIS reports;
- (9) purge collection file;
- (10) conversion.

Deadlines for Proposal. All interested parties must comply with all guidelines and detailed specifications established in the RFP which can be obtained from the comptroller after April 28, 1980. Proposals are to be submitted by 5 p.m., May 27, 1980, to Jack Rutkowski, director, Data Services Division,

Comptroller of Public Accounts, Lyndon Baines Johnson State Office Building, Room 401, Austin, Texas 78774, telephone (512) 475-2873.

Selection Criteria. This contract will be a continuation of consultation work done by Arthur Andersen and Company. Arthur Andersen and Company will be selected unless a better offer is submitted. Final selection will be made by the comptroller of public accounts based upon staff recommendations.

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802887 Bob Bullock
Comptroller of Public Accounts

Filed: April 18, 1980, 8:48 a.m.

For further information, please call (512) 475-1720.

Texas Department of Health

Health Education-Risk Reduction Grant

Notice of availability of grants from the Center for Disease Control (CDC), Bureau of Health Education, Atlanta, Georgia.

The Chronic Disease Division within the Texas Department of Health has been designated as the focal point to administer a grant program authorized under Section 402(a)(2) of the Health Services and Centers Amendments of 1978 to discourage children and youth in school or community settings from smoking and alcohol use. These grant programs will be carried out in conjunction with the state program on health education-risk reduction grant authorized under Section 1703 of the Public Health Service Act.

This is to notify interested parties of the procedure to apply for the \$10 million available nationally. CDC guidelines and application forms can be obtained from:

H. L. Harle, M.D., Director
Chronic Disease Division
Texas Department of Health
1100 West 49th Street
Austin, Texas 78756

Attention: Roger Diamond, M.P.H., Coordinator
Texas Life Program
(512) 458-7534 Tex-An 824-9662

For applications to be submitted with the state program grant application, the deadline is May 9, 1980. For those not able to meet this deadline, a submittal procedure is available whereby applications can go through the HSA and A-95 clearinghouse review later than the state grant application. Applicants using this procedure will need to coordinate closely with appropriate health system agency and A-95 clearinghouse(s). The deadline for submitting applications to the appropriate health system agency and A-95 clearinghouse(s) and the Texas Department of Health under this procedure is June 10, 1980.

Issued in Austin, Texas, on April 24, 1980.

Doc. No. 803017 Dan LaFleur
Attorney
Texas Department of Health

Filed: April 24, 1980, 3:37 p.m.

For further information, please call (512) 458-7534.

Texas Health Facilities Commission

Applications for Declaratory Ruling, Exemption Certificate, and Transfer and Amendment of Certificate

Notice is hereby given by the Texas Health Facilities Commission of application (including a general project description) for declaratory ruling, exemption certificate, transfer of certificate, and amendment of certificate accepted during the period of April 17-24, 1980.

Should any person wish to become a formal party to any of the above-stated applications, that person must file a request to become a party to the application with the chairman of the commission within 25 days after the application is accepted. The first day for calculating this 25-day period is the first calendar day following the date of acceptance of the application. The 25th day will expire at 5 p.m. on the 25th consecutive day after the date said application is accepted. If the 25th day is a Saturday, Sunday, or state holiday, the last day shall be extended to 5 p.m. of the next day that is not a Saturday, Sunday, or state holiday. A request to become a party should be mailed to the chairman of the commission, P.O. Box 15023, Austin, Texas 78761, and must be received at the commission no later than 5 p.m. of the last day allowed for filing of a request to become a party.

The contents and form of a request to become a party to an application for a declaratory ruling, exemption certificate, transfer of certificate, or amendment of certificate must meet the minimum criteria set out in Rule 315.20.01.050. Failure of a party to supply the minimum necessary information in the correct form will result in a defective request to become a party and such application will be considered uncontested.

The fact that an application is uncontested will not mean that it will be approved. The application will be approved only if the commission determines that it qualifies under the criteria of Sections 3.02 or 3.03 of Article 4418(h), Texas Revised Civil Statutes, and Rules 315.17.04.010-.030, 315.17.05.010-.030, 315.18.04.010-.030, and 315.18.05.010-.030.

In the following list, the applicant and date of acceptance are listed first, the file number second, the relief sought third, and description of the project fourth. EC indicates exemption certificate, DR indicates declaratory ruling, TR indicates transfer of ownership of certificate, AMD indicates amendment of certificate, and CN indicates certificate of need.

Golden Age Home, Lockhart (4/23/80)

AN80-0416-006

EC—Construct an addition containing 2,400 square feet to be used for activities and meetings, with a portion to be utilized for a small laundry, a kitchen, office, restrooms, and storage

West Texas Hospital, Lubbock (4/24/80)

AH80-0417-026

EC—Acquire a Picker Linear Ray B-Mode Realtime Ultrasound Unit for use in the existing radiology department

Upjohn Healthcare Services, San Angelo (4/24/80)

AS80-0422-004

EC—Upjohn Healthcare Services has acquired the offices of Schlesingers Home Health Services in San Angelo and desires to consolidate the Schlesingers office located at 127 Beauregard with the Upjohn office located at 2402 West Avenue N in San Angelo

Southern Manor Nursing Home No. 1, San Angelo (4/24/80)

AN80-0422-022

EC—Enclose a 22 by 30 foot porte cochere at the west end of the facility in order to convert a 10 by 30 foot sun porch into a 32 by 30 foot patient activities/recreation room

Vida-Y-Salud-Health Systems, Inc., Crystal City (4/24/80)

AO80-0422-012

EC—Establish an adolescent pregnancy prevention program in Zavala County to educate teenagers in family planning practices, nutrition, child care, and provide contraceptives and referral services for prenatal, obstetrical, post partum, and pediatric care

Hendrick Medical Center, Abilene (4/24/80)

AH80-0418-014

EC—Expansion of the ambulatory surgery program by using 10 beds for holding beds and necessary renovation

Home Care and Health Services, Inc., Tyler (4/24/80)

AS80-0418-019

EC—Relocation of the existing parent office and branch office of Home Care and Health Services from 500 South Beckham in Tyler to two new offices in Tyler

St. Joseph Hospital, Houston (4/24/80)

AH80-0423-015

EC—Purchase a mobile gamma scintillation camera, with accessories, to provide nuclear medicine services to patients at their bedside

Glenwood General Hospital, Inc., Tyler (04/24/80)

AH80-0423-011

EC—Create approximately 2,400 square feet of storage in an existing area originally constructed as crawl space for the floor above

Westgate Hospital and Medical Center, Denton (04/24/80)

AH80-0423-007

EC—Purchase a new Beckman 16-channel electroencephalograph EEG unit in order to perform studies on an in-house basis

El Paso Convalescent Center, El Paso (4/24/80)

AN78-1222-001A (042280)

AMD/CN—To change the completion deadline in CN AN78-1222-001, which authorizes construction and operation of a 150-bed ICF III facility in El Paso, from May 11, 1980, to January 11, 1981

Santa Rosa Medical Center, San Antonio (4/24/80)

AH79-0507-0111A (041880)

AMD/CN—To change the completion deadline in CN AH79-0507-011, which authorizes consolidation of two existing children's ICU's into one ICU, purchase of monitoring equipment, and other related equip-

ment, and use of the vacated areas on the fifth and seventh floors for storage, office space, and other ancillary departments

Issued in Austin, Texas, on April 25, 1980.

Doc. No. 803038 O. A. Cassity III
Director of Hearings
Texas Health Facilities Commission

Filed: April 24, 1980, 11:50 a.m.

For further information, please call (512) 475-8940.

Railroad Commission of Texas

Notice of Public Meeting

In re: to consider the impact of a decision by the Railroad Commission of Texas to seek or to decline delegation of the National Pollutant Discharge Elimination System (NPDES) Program Under the Federal Clean Water Act.

Notice is hereby given of a public meeting on Friday, May 23, 1980, beginning at 9 a.m. in Room 107 (first floor auditorium) of the Railroad Commission building at 1124 South Interstate Highway 35, Austin, Texas.

The commission is seeking the public's assessment of the impact of a decision to seek or to decline delegation of the National Pollutant Discharge Elimination System (NPDES) Program. This program was promulgated by the Environmental Protection Agency pursuant to the federal Clean Water Act. The meeting will be an informal discussion of the impact of either decision.

The commission is interested in receiving input on the advantages and disadvantages of state delegation in light of the no-discharge standard for onshore wells (Effluent Guidelines and Standards, Oil and Gas Extraction Point Source Category, 44 *Federal Register* 22069 et seq., April 13, 1979). In particular, the commission would appreciate data on the percentage of wells in the onshore subcategory which qualify for the stripper oil well exemption.

Interested persons are encouraged to attend the meeting. Questions regarding the meeting should be addressed to Susan Cory Kovar, Legal Counsel, Underground Injection Control, P.O. Drawer 12967, Austin, Texas 78711, telephone (512) 445-1373.

Issued in Austin, Texas, on April 25, 1980.

Doc. No. 803037 Jerry W. Mullican
Director of Underground Injection
Control
Railroad Commission of Texas

Filed: April 25, 1980, 11:53 p.m.

For further information, please call (512) 445-1373.

Senate

Subcommittee on Consumer Affairs

The Senate Subcommittee on Consumer Affairs, Senator Ron Clower, chairman, will meet on Friday, April 25, 1980, beginning at 9:30 a.m. in the Dallas County Commissioners Court Room, Records Building, 500 Main Street, Dallas, Texas.

The subcommittee will hold the last of its scheduled public hearings regarding the adequate protection of the rights of the elderly and/or disabled Texans in such areas as competency hearings, assignments of property, powers of attorney, guardianship, and commitment proceedings.

For information contact Ira Hillyer, chief counsel, Senate Subcommittee on Consumer Affairs, telephone (512) 475-3758.

Issued in Austin, Texas, on April 18, 1980.

Doc. No. 802925 Ron Clower
Senator
Senate Subcommittee on Consumer
Affairs

Filed: April 18, 1980, 3:44 p.m.

For further information, please call (512) 475-3758.

Texas Register

Corrections of Error

An open meeting notice of the *Texas Health Facilities Commission* contained an error as published in the April 24, 1980, issue of the *Texas Register* (5 TexReg 1537). The meeting date and time should read May 2, 1980, at 9:30 a.m.

An open meeting notice of the *State Board of Insurance* contained an error as published in the April 22, 1980, issue of the *Texas Register* (5 TexReg 1539). The first sentence of the agenda should read: "The State Board of Insurance will hold a public hearing in the Highway Building at 11th and Brazos in Austin."

The *Texas Register* quarterly index for the first quarter of 1980, dated April 29, 1980, was published with an error on the front cover. The January through March 1980 issues should be numbered 1-24.



TAC Titles Affected in This Issue

The following is a list of the chapters of each title of the *Texas Administrative Code* affected by documents published in this issue of the *Register*. The listings are arranged in the same order as the table of contents of the *Texas Administrative Code*.

TITLE 16. ECONOMIC REGULATION

Part I. Railroad Commission of Texas

Noncodified (051.03.16.004) 1683

Part IV. Texas Department of Labor and Standards

Noncodified (063.33.01.101-.145) 1657

Noncodified (063.33.02.101-.109) 1657

Noncodified (063.55.06.001-.014) 1672

Noncodified (063.55.07.001-.036) 1674

Noncodified (063.55.08.001-.009) 1681

TITLE 19. EDUCATION

Part I. Coordinating Board, Texas College and University System

Noncodified (251.20.01.011) 1650

Noncodified (251.20.01.014) 1650

Noncodified (251.20.02.004) 1666

Noncodified (251.20.02.008) 1666

Part II. Texas Education Agency

Noncodified (226.11.02.040) 1667

Noncodified (226.13.90.040) 1667

Noncodified (226.23.12.001, .010, .020) 1668

Noncodified (226.35.73.030) 1669

Noncodified (226.38.01.080) 1669

Noncodified (226.41.22.020) 1669

Noncodified (226.62.13.010, .020, .060) 1670

Noncodified (226.62.13.070) 1672

Noncodified (226.62.25.010) 1650

Noncodified (226.62.25.020-.100) 1651

Noncodified (226.91.03.010) 1672

Noncodified (226.91.04.010) 1672

Noncodified (226.93.01.010-.050) 1653

Noncodified (226.93.01.060-.080) 1654

Noncodified (226.93.02.010, .020) 1654

Noncodified (226.93.04.001) 1655

Noncodified (226.93.04.010, .030, .060) 1655

TITLE 22. EXAMINING BOARDS

Part XI. State Board of Nurse Examiners

Noncodified (388.04.00.006) 1683

Part XVI. Texas Board of Physical Therapy Examiners

Noncodified (394.01.00.003) 1658

Noncodified (394.01.00.004) 1658

Noncodified (394.16.00.001) 1658

Part XXV. State Board of Examiners in Social Psychotherapy

Noncodified (407.04.00.001-.005) 1684

Part XXVI. Structural Pest Control Board

Noncodified (406.01.01.002) 1659

Noncodified (406.01.02.005) 1660

Noncodified (406.01.03.002) 1660

Noncodified (406.01.04.001) 1660

Noncodified (406.01.05.001) 1661

Noncodified (406.02.01.005) 1664

Noncodified (406.02.05.002) 1664

Noncodified (406.04.03.001) 1664

Noncodified (406.04.05.001) 1665

Noncodified (406.05.00.001) 1665

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Noncodified (301.50.01.001-.006) 1598

Noncodified (301.50.01.001-.008) 1656

TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

34 TAC §§3.216-3.224 (026.02.14.106-.114) 1599

34 TAC §3.291 (026.02.20.011) 1632

34 TAC §3.315 (026.02.20.035) 1635

34 TAC §3.327 (026.02.20.047) 1636

34 TAC §3.340 (026.02.20.060) 1638

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Council

37 TAC §81.1 (203.01.01.001) 1643

37 TAC §81.11 (203.01.02.001) 1643

37 TAC §81.21 (203.01.03.001) 1642

37 TAC §§81.21-81.37 (203.01.03.002-.018) 1645

37 TAC §81.31 (203.01.04.001) 1642

37 TAC §81.41 (203.01.05.001) 1642

37 TAC §81.51 (203.01.06.001) 1642

Part V. Texas Board of Pardons and Paroles

37 TAC §141.3 (205.01.01.003) 1649

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Resources

Noncodified (326.50.74.062) 1598

Noncodified (326.50.75.070) 1598

Noncodified (326.79.14.006) 1656