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TEXAS REGISTER



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a section of the
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Texas Register, ISSN 0362-4781, is published semi-weekly 100 times a year except March 11, July 22, November 11, and November 29, 1994. Issues will be published by the Office of the Secretary of State, 1019 Brazos, Austin, Texas 78701. Subscription costs: one year - printed, \$95 and electronic, \$90; six-month printed, \$75 and electronic, \$70. Single copies of most issues are available at \$7 per copy.

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

How to Use the Texas Register

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

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

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

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 19 (1994) is cited as follows: 19 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "19 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 19 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the official compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*. West Publishing Company, the official publisher of the *TAC*, releases cumulative supplements to each printed volume of the *TAC* twice each year.

The *TAC* volumes are arranged into Titles (using

Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency. The *Official TAC* also is available on WESTLAW, West's computerized legal research service, in the TX-ADC database.

To purchase printed volumes of the *TAC* or to inquire about WESTLAW access to the *TAC* call West: 1-800-328-9352.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 21, April 15, July 12, and October 11, 1994). In its second issue each month the *Texas Register* contains a cumulative *Table of TAC Titles Affected* for the preceding month. If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
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The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

Update by FAX: An up-to-date *Table of TAC Titles Affected* is available by FAX upon request. Please specify the state agency and the *TAC* number(s) you wish to update. This service is free to *Texas Register* subscribers. Please have your subscription number ready when you make your request. For non-subscribers there will be a fee of \$2.00 per page (VISA, MasterCard). (512) 463-5561.

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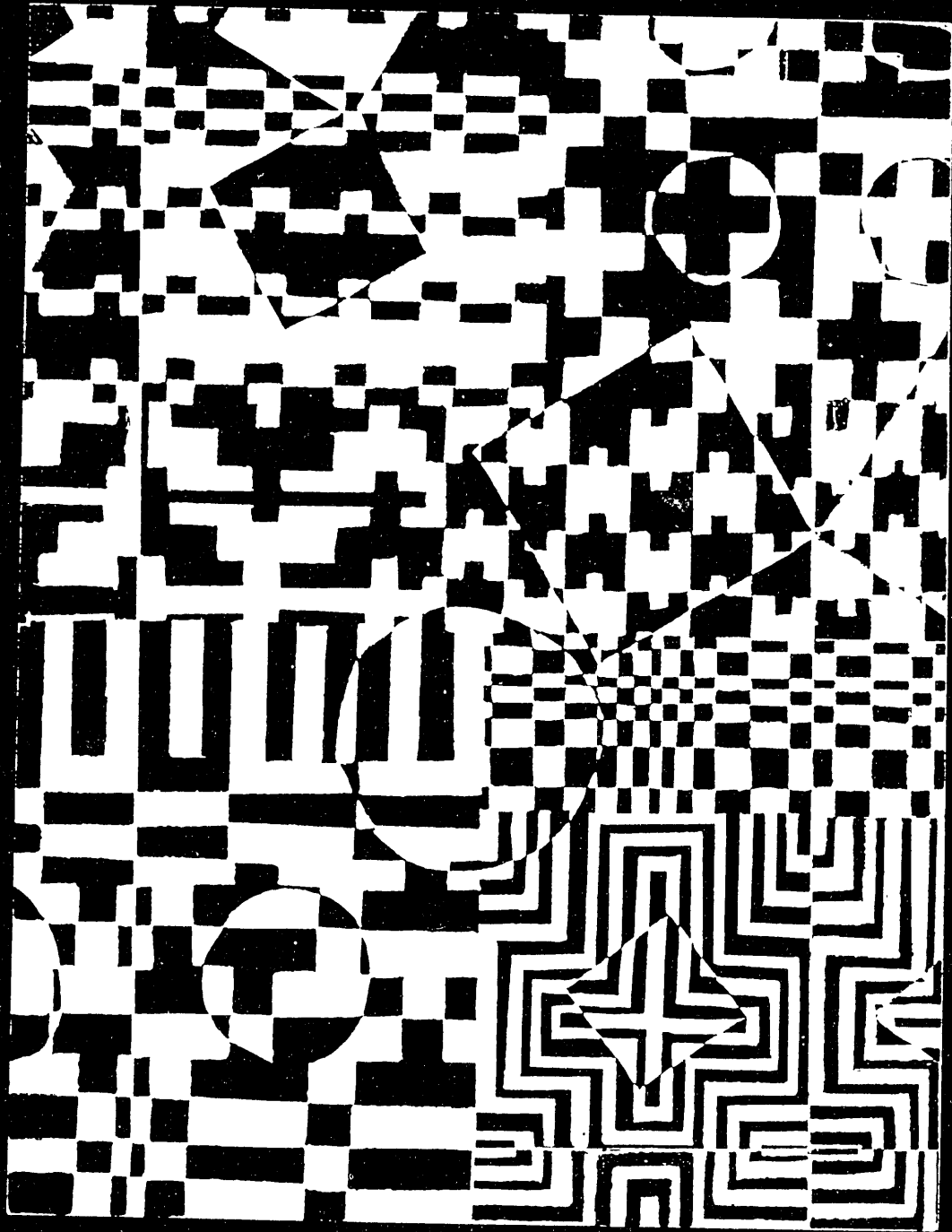
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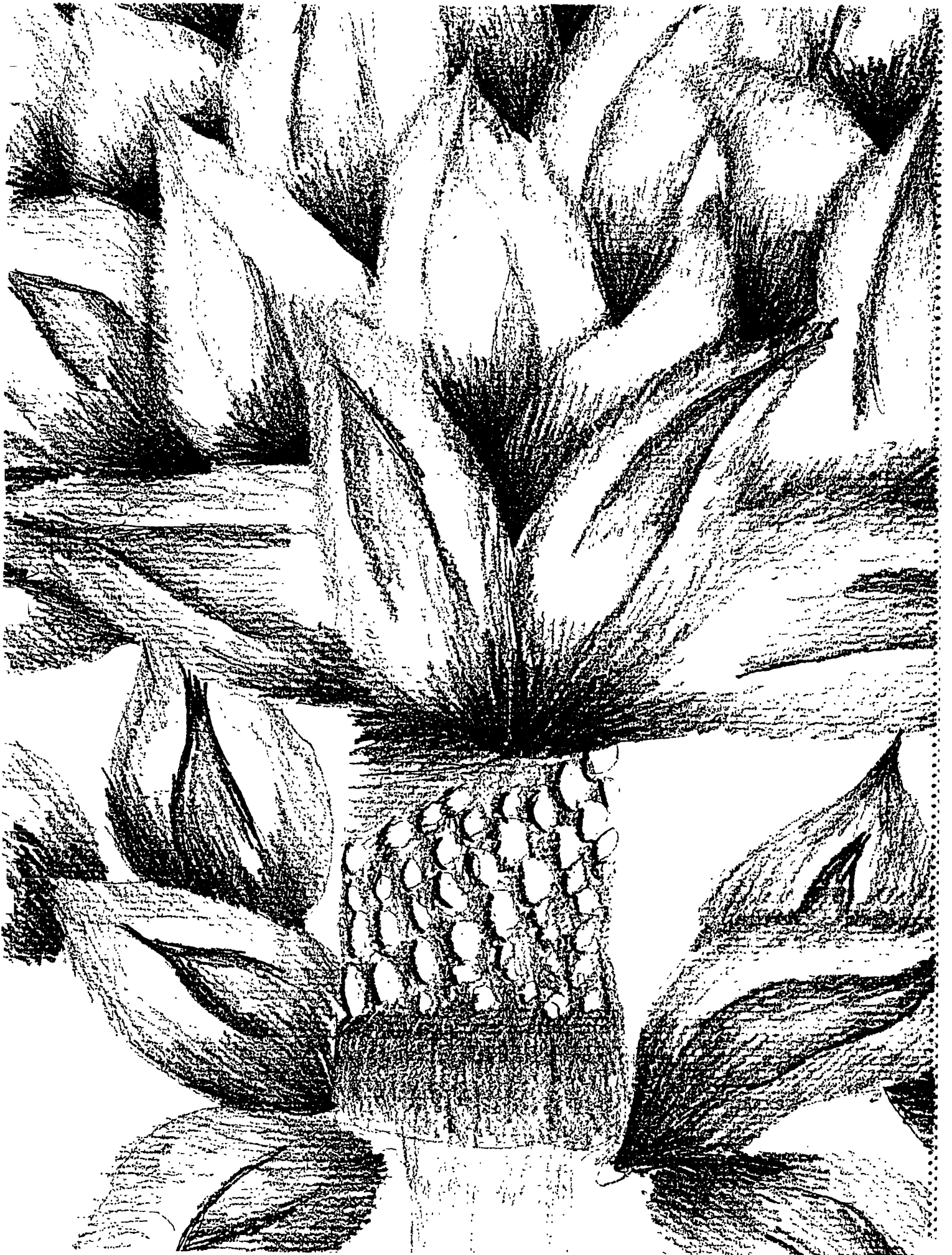
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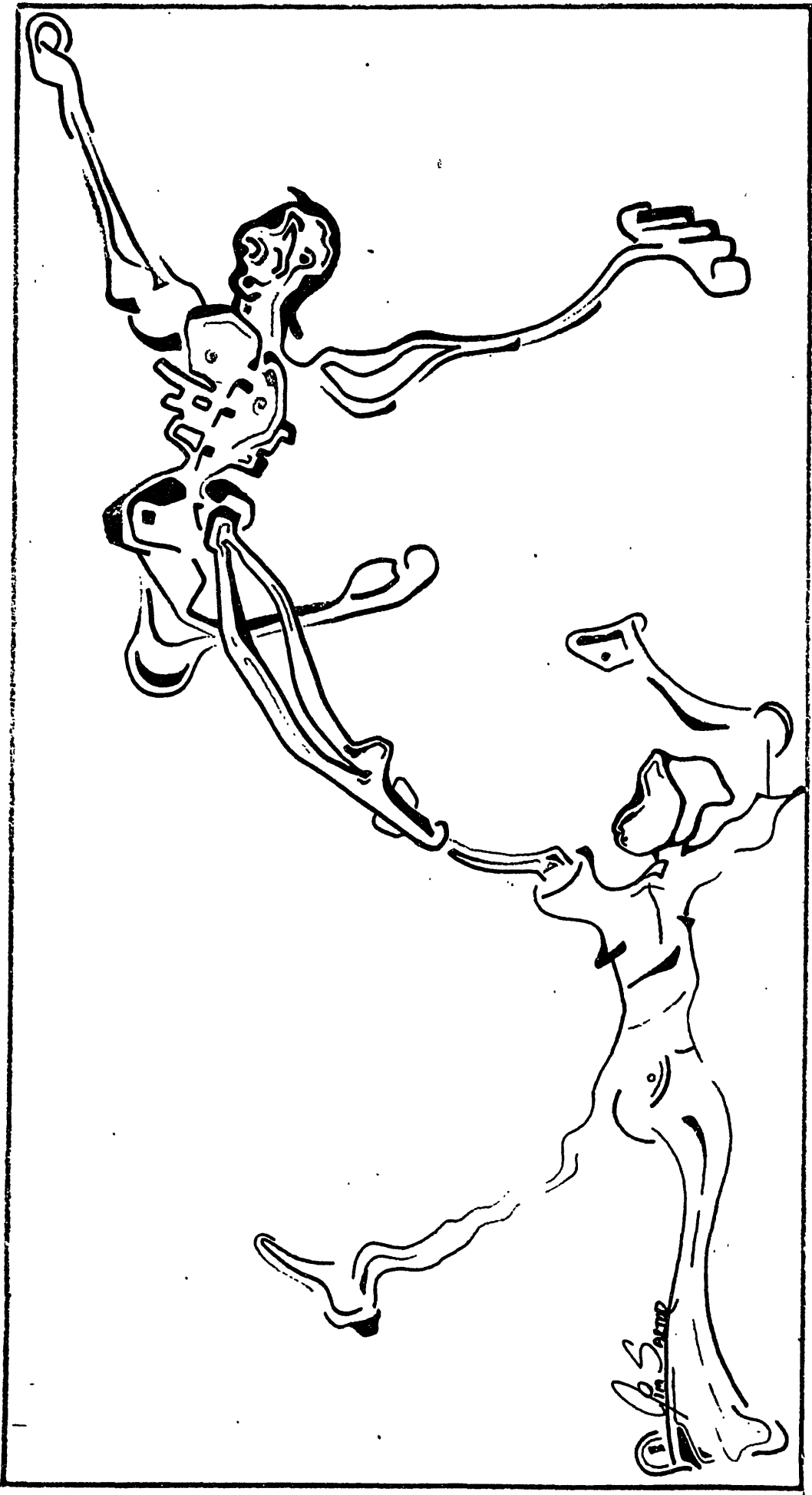
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John Hill

THE GOVERNOR

As required by Texas Civil Statutes, Article 6252-13a, §6, the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments Made April 18, 1994

To be a member of the Texas Juvenile Probation Commission for a term to expire August 31, 1999: Jane Allman Wetzel, 4250 Westway Avenue, Dallas, Texas 75205. Ms. Wetzel is being reappointed.

To be a member of the Texas Juvenile Probation Commission for a term to expire August 31, 1999: Raul C. Garcia, 3209 Rock Brook Drive, San Angelo, Texas 76904. Mr. Garcia will be replacing Kimball Hillencamp of Jacksonville, whose term expired.

To be Judge of the 270th Judicial District Court, Harris County until the next General Election and until her successor shall

be duly elected and qualified, effective May 24, 1994: Susan S. Soussan, 5437 Cedar Creek, Houston, Texas 77056. Ms. Soussan will be replacing Judge Ann T. Cochran of Houston, who resigned.

To be a member of the Texas Veterans Commission for a term to expire December 31, 1999: Patsy L. Palmquist, P.O. Box 264, Devine, Texas 78016. Ms. Palmquist will be replacing William R. Crawford of Richardson, whose term expired.

To be a member of the Texas Veterans Commission for a term to expire December 31, 1999: Herbert W. Odell, 6409 Dovenshire Terrace, Fort Worth, Texas 76112. Mr. Odell will be replacing Bernie O. Henderson, Jr. of Cameron, whose term expired.

To be a member of the Executive Committee of the Center for Rural Health Initiatives for a term to expire August 31, 1999: Faye Rainey Thomas, 4901 Kinsey Drive #2013, Tyler, Texas 75703. Ms. Thomas will be replacing Lynda Calcote of Abilene, whose term expired.

Appointments Made April 21, 1994

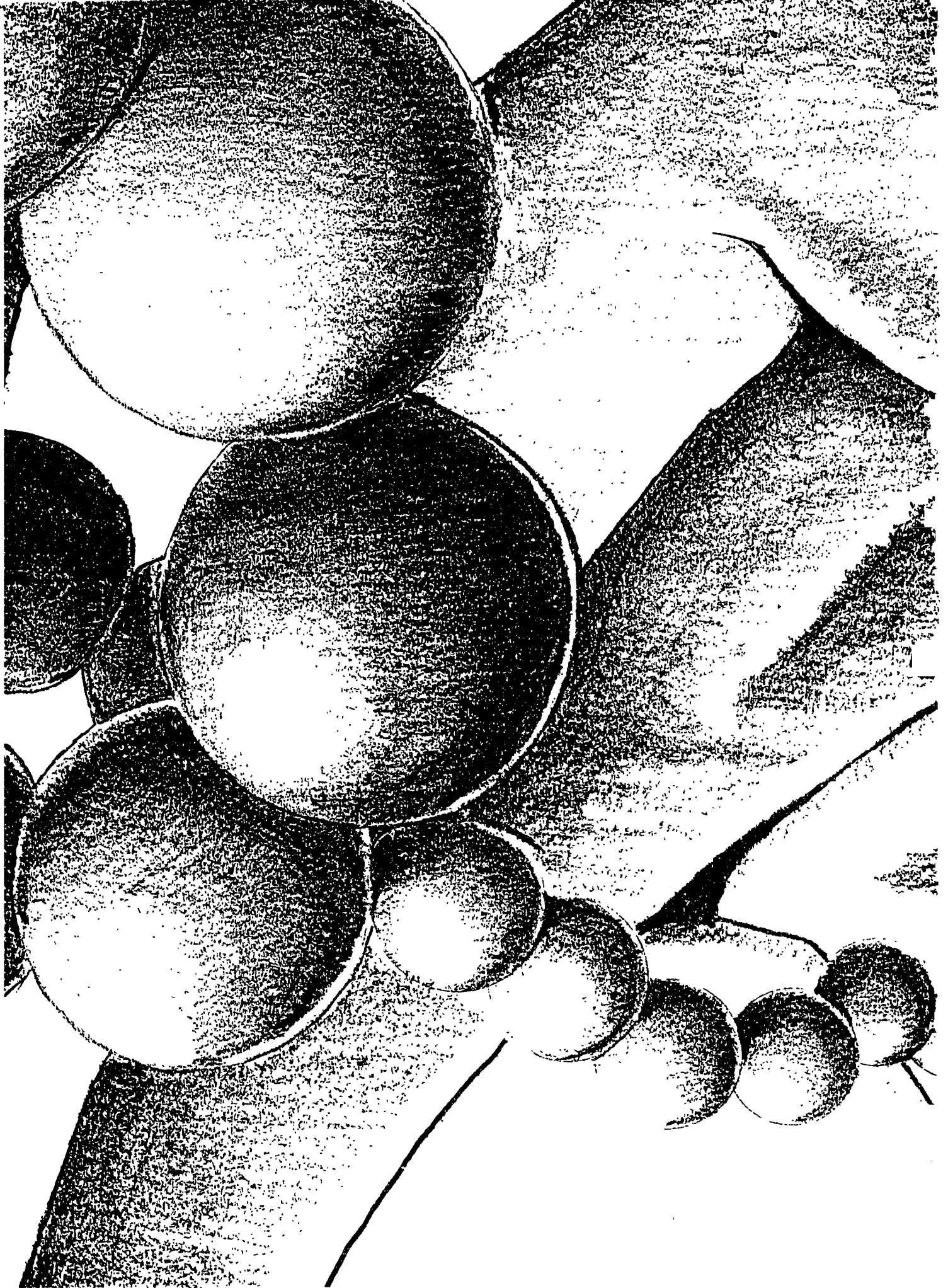
To be a member of the Texas Commission on Jail Standards for a term to expire January 31, 1999: Manuel Rivera, M.D., 855 Via Alta, El Paso, Texas 79912. Dr. Rivera will be replacing Dr. Charles Hurst of Tyler, who resigned.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439822

Ann W. Richards
Governor of Texas





EMERGENCY RULES

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

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

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 183. Acupuncture

• 22 TAC §183.17, §183.18

The Texas State Board of Medical Examiners adopts on an emergency basis new §183.17 and §183.18, concerning auricular acupuncture and automatic licensure for acupuncturists. The new sections set forth the requirements for licensing those persons practicing acupuncture in the state of Texas on September 1, 1993, and provide a limited exemption for those individuals practicing auricular acupuncture only Section 183.17 and §183.18 are being simultaneously proposed for public comment elsewhere in this issue of the *Texas Register*.

The statute related to automatic licensure expires on June 2, 1994, and adoption on an emergency basis is necessary to implement appropriate rules for licensing to avoid an absence of licensed acupuncturists to provide acupuncture care to the public

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

§183.17. Auricular Acupuncture for Treatment of Chemical Dependency. Those individuals practicing auricular acupuncture solely for the purpose of detoxification and treatment of alcohol abuse, substance abuse, or chemical dependency, shall be exempted from the provisions of this chapter until September 30, 1994.

§183.18. Automatic Licensure.

(a) Pursuant to the Medical Practice Act, §6.14, an acupuncturist shall be eligible for automatic licensure by submitting a

written application for automatic licensure on a form provided by the medical board postmarked on or before June 1, 1994, which contains complete information as requested on the form along with the following attachments, as well as appropriate documentation as required in subsections (c), (d), (e), or (h) of this section:

(1) a typed affidavit in English by the applicant indicating that the applicant:

(A) is at least 21 years of age;

(B) was in the active practice of acupuncture in Texas on September 1, 1993; and

(C) has not engaged in any of the activities which serve as grounds to deny licensure under the Medical Practice Act, §6.11;

(2) two typed affidavits in English executed by Texas residents with personal knowledge of the applicant's acupuncture practice and not related to the applicant by blood, adoption, or marriage, confirming that the applicant was in the active practice of acupuncture in Texas on September 1, 1993;

(3) a black and white or color passport photograph of the applicant of two inches by two inches in size taken no more than one year from the date of the application,

(4) the fingerprints of the applicant on a fingerprint card provided by the medical board;

(5) a fee in the amount of \$300; and

(6) proof of proficiency in the English language in a manner satisfactory to the Executive Director of the medical board if an applicant is not a United States citizen.

(b) Falsification of any affidavit or submission of false information to obtain a license shall subject an acupuncturist to de-

nial of an application for licensure or to discipline pursuant to the Medical Practice Act, §6.11.

(c) If an applicant can document consecutive acupuncture practice in Texas for at least the five years immediately preceding September 1, 1993, and can document 500 patient visits for each of the three years immediately preceding September 1, 1993, the applicant shall be eligible for automatic licensure by submitting the following:

(1) documentation as required under subsection (a) of this section;

(2) a certified opinion by a certified public accountant which indicates an examination of an applicant's records has been conducted and that the records indicate that the applicant has practiced acupuncture consecutively in Texas for the five years immediately preceding September 1, 1993, and that the records indicate at least 500 patient visits in each of the three years immediately preceding September 1, 1993; and

(3) verification by February 2, 1996, in the manner provided for in subsection (f) of this section, that the applicant has taken and passed the National Commission for the Certification of Acupuncturists (NCCA) or the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) Clean Needle Technique (CNT) course and practical examination.

(d) If the applicant can document consecutive acupuncture practice in Texas for more than the three years, but less than five years, immediately preceding September 1, 1993, and can document 500 patient visits for each of the three years immediately preceding September 1, 1993, the applicant shall be eligible for automatic licensure by submitting the following:

(1) documentation as required under subsection (a) of this section; and

(2) a certified opinion by a certified public accountant which indicates an examination of an applicant's records has been conducted and that the records indicate

that the applicant has practiced acupuncture consecutively in Texas for at least the three years but less than the five years immediately preceding September 1, 1993, and that the records indicate at least 500 patient visits in each of the three years immediately preceding September 1, 1993;

(3) verification by February 2, 1996, in the manner provided for in subsection (f) of this section, that the applicant has taken in his language of choice and passed the full National Commission for the Certification of Acupuncturists (NCCA) examination as defined in §183.2 of this title (relating to Definitions); and

(4) verification by February 2, 1996, in the manner provided for in subsection (f) of this section, that the applicant has taken and passed the National Commission for the Certification of Acupuncturists (NCCA) or the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) Clean Needle Technique (CNT) course and practical examination.

(e) If the applicant can document consecutive acupuncture practice in Texas for less than three years immediately preceding September 1, 1993, the applicant shall be eligible for automatic licensure by submitting the following:

(1) documentation as required under subsection (a) of this section; and

(2) a typed affidavit in English by the applicant outlining the applicant's training, education, and experience to include the names and addresses of schools attended, training and degrees received, and addresses where the applicant has previously practiced acupuncture. This affidavit shall include corresponding dates for school attendance, training, receipt of degrees, and periods of practice;

(3) verification by February 2, 1996, in the manner provided for in subsection (f) of this section, that the applicant has taken in his language of choice and passed the full National Commission for the Certification of Acupuncturists (NCCA) examination as defined in §183.2 of this title (relating to Definitions);

(4) verification by February 2, 1996, in the manner provided for in subsection (f) of this section, that the applicant has taken and passed the National Commission for the Certification of Acupuncturists (NCCA) or the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) Clean Needle Technique (CNT) course and practical examination; and

(5) has completed 1,350 instructional (didactic and clinical) hours in acupuncture or the number of similar hours required by NCCA at the time the examination was taken by the applicant.

(f) Documentation for the verification of the requirements of subsections regarding passage of the examinations shall be requested by the applicant and shall be submitted directly to the acupuncture board through the offices of the medical board, in writing and in English by the association(s), institution(s), organization(s), or governmental body(ies) which administered the examination(s) or, for good cause shown, by a mechanism which meets the approval of the acupuncture board.

(g) Documentation for the verification of the requirements of subsection (e)(5) of this section regarding the completion of instructional hours in acupuncture shall include certified copies of transcripts, licenses, or diplomas showing that the applicant has successfully completed the required number of hours in acupuncture and shall be submitted directly to the acupuncture board through the offices of the medical board, in writing and in English by the academic institution(s), organization(s), or governmental body(ies) which awarded the transcript, license, or diploma or, for good cause shown, by a mechanism which meets the approval of the acupuncture board.

(h) If the applicant was practicing acupuncture in Texas on September 1, 1993, under the supervision of a licensed Texas physician who was registered to supervise the applicant, and can document two years of acupuncture practice, the applicant shall be eligible for automatic licensure upon submission of the following documents:

(1) documentation as required in subsection (a) of this section;

(2) a typed affidavit in English by the applicant indicating the name(s) of the supervising physician(s), previous practice address(es), and the period(s) of supervision;

(3) a certified opinion by a certified public accountant which indicates an examination of an applicant's records has been conducted and that the records indicate that the applicant has practiced acupuncture for the two years immediately preceding the postmark date of their application to the acupuncture and medical boards; and

(4) verification by February 2, 1996, in the manner provided for in subsection (f) of this section, that the applicant has taken and passed the National Commission for the Certification of Acupuncturists (NCCA) or the Council of Colleges of Acupuncture and Oriental Medicine (CCAOM) Clean Needle Technique (CNT) course and practical examination.

Issued in Austin, Texas, on April 25, 1994.

TRD-9439755

Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: April 25, 1994

Expiration date: July 25, 1994

For further information, please call: (512) 834-7728, Ext. 402

Part XVIII. Texas State Board of Podiatry Examiners

Chapter 371. Examinations

• 22 TAC §371.2

The Texas State Board of Podiatry Examiners adopts on an emergency basis, an amendment to §371.2, concerning Examinations. The amendment changes the examination fee to conform with §379.1, regarding fees, which has already been amended to list all fee charges. The amendment is also being simultaneously proposed for public comment elsewhere in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§371.2. Application of License.

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

(f) The full examination fee is \$125 [100]. Only certified check, postal service money order or express money order shall be accepted. No examination fee will be refunded. The examination fee must be received by the secretary-treasurer at least 15 days before the date the applicant is scheduled to begin the examination.

(g)-(h) (No change.)

Issued in Austin, Texas, on April 25, 1994.

TRD-9439788

Janie Alonzo
Staff Services Officer I
Texas State Board of
Podiatry Examiners

Effective date: April 26, 1994

Expiration date: August 25, 1994

For further information, please call: (512) 794-0145

Chapter 373. Identification of Practice

• 22 TAC §373.2

The Texas State Board of Podiatry Examiners adopts on an emergency basis, an amendment to §373.2, concerning Practitioner Identification. This amendment clarifies the terms a podiatrist must use to profession-

ally identify himself or herself. The emergency is needed to delete the reference to the term "clinic," which has also been removed from §373.4(d). This amendment to §373.2 is also being simultaneously proposed for public comment elsewhere in this issue of the *Texas Register*.

The amendment is adopted on an emergency basis under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the

United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§373.2. Practitioner Identification.

(a)-(d) (No change.)

(e) A practitioner shall not use a trade name or assumed name to identify his practice, except as authorized in §373.4 of this title (relating to Trade Names and Assumed Names) [with respect to clinics, and specifically limited by §373.4(d) of this title (relating to Trade Names and Assumed Names)].

Issued in Austin, Texas, on April 25, 1994.

TRD-9439790

Janie Alonzo
Staff Services Officer I
Texas State Board of
Podiatry Examiners

Effective date: April 26, 1994

Expiration date: August 25, 1994

For further information, please call: (512)
794-0145

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ANGELA HOBDY
GR. 9
MARKER
"DRAPERY"



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

Part IV. Office of the Secretary of State

Chapter 91. Texas Register

The Office of the Secretary of State, Texas Register, proposes amendments to §§91.1, 91.21, 91.23-91.25, 91.28, 91.42, 91.43, 91.73-91.75, 91.97, 91.112, 91.113, and 91.135, new §91.26 and §91.51 and the repeal of §91.51, concerning policies and procedures. The amendments are being proposed to clarify policies and procedures for submitting documents. New §91.26 is being proposed to add a rule regarding cross-referencing statute requirements and §91.51 is being repealed and proposed new to implement standards for electronic submissions of documents.

Dan Procter, director, Texas Register, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Procter also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of confusing terminology. There will be no effect on small businesses. There is no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Dan Procter, Director, Office of the Secretary of State, Texas Register, 1019 Brazos, Room 245, Austin, Texas 78701.

Definition of Terms

• 1 TAC §91.1

The amendment is proposed under the Government Code, Chapter 2002, Subchapter B, Texas Register, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

The proposed amendments do not affect other statutes, articles, or codes.

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

[ACA] Administrative Code—The Texas Administrative Code [Act], Government Code, Chapter 2002, Subchapter C, §2002.051 [Texas Civil Statutes, Article 6252-13b], also referred to as TAC.

APA[APTRA]—Administrative Procedure Act, Government Code, Chapter 2001 [The Administrative Procedure and Texas Register Act, Texas Civil Statutes, Article 6252-13a].

Certify—To assure that submitted documents have been reviewed by legal counsel, whose responsibility it is according to the Administrative Procedure Act (APA) [APTRA] to determine whether the action is within the agency's legal authority.

Certifying official—A person authorized by an agency to certify documents submitted for filing with the Texas Register [Division], Office of the Secretary of State. [Code—The Texas Administrative Code established by the ACA, also referred to as the TAC.]

Register—The Texas Register established by the Government Code, Chapter 2002, Subchapter B [APTRA].

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

Issued in Austin, Texas, on April 23, 1994

TRD-9439953

Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 463-5561

Filing of Documents

• 1 TAC §§91.21, 91.23-91.26, 91.28

The new section and amendments are proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

The new section and amendments do not affect other statutes, articles, or codes.

§91.21. Compliance; Nonacceptance of Documents.

(a) (No change.)

(b) Agencies shall file all documents with the Texas Register, Office of the Secretary of State, in accordance with the format, content, and procedural requirements specified by the Government Code, Chapters 2001 and 2002, and by the rules and the Form and Style Manual of the Texas Register, Office of the Secretary of State. The Office of the Secretary of State has the authority to administer the governing laws [statutes] cited in this section as they relate to the Texas Register. Under the requirements contained in the Government Code, Chapter 551, Chapter 2001, Chapter 2002, Chapter 2254, as they relate to the Texas Register contained in this chapter, the Texas Register, Office of the Secretary of State, may reject for filing and publication any document that does not conform to these requirements. If the Texas Register rejects a document, the staff of the Texas Register shall notify the liaison of the issuing agency by letter and explain why the document was rejected. After filing a document with the Texas Register, the liaison or alternate shall be available to answer questions about the document. If the Register fails to reach the liaison, the Register may reject or postpone publication of the document.

§91.23. Filing Procedures. [General Filing Procedures: Sections.]

(a) Agencies shall submit all documents except open meeting notices in electronic format. Documents submitted on paper may be subject to a later publication date without notice by the Texas Register. Agencies may submit documents in electronic format by diskette or telecommunication. See §91.51 of this title (relating to Electronic Format). Agencies may submit open meeting notices on paper or by fax. See §91.28 of this title (relating to Procedure for Filing Notice of Open Meeting).

(b)(a) Agencies may submit more than one rule in a document if the rules share the same chapter, subchapter, and undesignated heading. Chapters, subchapters, and undesignated head titles shall not be combined on one form. [Sections must be filed individually, by subchapter or by an undesignated heading; where chapters are not divided into subchapters or undesignated headings, sections may be filed by chapter.]

(c)(b) Agency policies based in whole or part upon opinions or similar determinations of the attorney general of Texas shall be promulgated and filed with the Texas Register, Office of the Secretary of State as rules [sections] when applicable.

(d)(c) Rules [Sections which have been] rendered obsolete or invalid by legislation, constitutional amendment, or court decision shall be formally revised or repealed in accordance with rulemaking procedures and filed with the Texas Register [Division], Office of the Secretary of State.

(e) If legislation transfers rulemaking authority from one agency to another, an agency may request the Texas Register to administratively transfer rules. Requests shall be in writing to the director of the Texas Register stating the legislation that requires this transfer, a copy of the legislation, effective date of the transfer, and a conversion chart with all old and new chapters, subchapters, undesignated headings and rules that are affected. The Texas Register will notify the agencies of the transfer notice publication date.

(f) All graphic material submitted for rules by an issuing agency will be published in an appendix section of the Texas Register. Each graphic will be labeled with a reference code indicating the word Figure, the TAC citation, and the level of the rule that references the material. Example: "Figure: 1 TAC §91.3(a)(1)." The rule will reference the same label at the appropriate level. If multiple materials are contained within this level the label should reflect the order in which they occur by adding the number after the word Figure. Example: "Figure 1: 1 TAC §91.31(a)(1), Figure 2: 1 TAC §91.31(a)(1)."

(g) All graphic material submitted for miscellaneous items will be published with the submission. Each graphic will be labeled with the agency code, title of document, and a unique graphic number. Example: 004-Request for Proposal-graphic 1. If multiple materials are contained in the submission, the label should reflect the order in which they occur by adding a number after the word graphic. Example: 004-Request for Proposal-graphic 1 and 004-Request for Proposal-graphic 2.

(h) Rules submitted must incorporate any substantive changes made by the Texas Register staff as published in the *Texas Register*. If the rules are submitted without accounting for these changes, the document will be rejected. The document and rejection letter will be returned by mail.

§91.24. Procedure for Filing Withdrawals.

(a) Agency withdrawals

(1) (No change.)

(2) Withdrawal of proposed rules [sections].

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

(C) No further action may be taken on a proposal which has been withdrawn by the agency. However, this does not preclude a new proposal of an identical or similar rule [section] following normal rulemaking procedure.

(b) (No change.)

§91.25. Procedure for Filing Emergency Rules.

(a) (No change.)

(b) The notice of adoption of emergency action shall contain the following information in the order shown:

(1)-(4) (No change.)

(5) certification by an authorized agency official [according to §91.58 of this title (relating to Certification)].

(c)-(g) (No change.)

§91.26. Cross-Reference to Statute. Under the Government Code, §2001.024(3)(B), state agencies shall include a cross-reference to statute statement in the preamble of a proposed rule action. The statement shall follow the paragraph that contains the statutory authority. Example: Government Code, §2001.024(3)(B) is affected by this proposed (new, amended, or repealed) action.

§91.28. Procedure for Filing Notice of Open Meeting

(a) (No change.)

(b) Notice of an open meeting shall be submitted on two copies of Form TR-3, Submission Form-Notice of Open Meeting [and on one three-inch by five-inch index card] or by faxing one copy of the Form TR-3 [and a copy of the index card.] according to the requirements in the Texas Register Form and Style Manual.

(c) If the complete agenda cannot be stated in the space provided on the submission form, the agency shall summarize the agenda in the space provided. [for publi-

cation purposes only.] The agency shall then attach two [three] copies of the complete agenda for filing, one copy attached to each submission form [and one copy attached to the index card]. When an agenda is summarized, the Register shall publish with the notice a statement that the agenda is summarized for publication purposes. When agencies fax open meeting notices to the Texas Register, they shall fax only one copy. Agencies may not fax documents with more than a five-page agenda. The agency shall not follow-up a faxed open meeting notice by mailing a duplicate.

(d) The [Both] submission forms [and the index card] shall be certified by an authorized agency official, according to the requirements set forth in the current copy of the Texas Register *Form and Style Manual* [§91.94 of this title (relating to Form for Notice of Open Meeting)].

(e) (No change.)

(f) An agency is not required by the Open Meetings Law to file and post a cancellation notice of a meeting which has previously been filed and posted. However, if an agency desires, it may notify the Texas Register in writing [by telephone] of a meeting cancellation. The Texas Register will then remove the notice from the bulletin board [in the State Capitol. If a meeting is cancelled by telephone, the agency shall submit a follow-up letter to the Texas Register].

(g) (No change.)

(h) Open meetings that are rescheduled for a new day/date, time, and/or location shall [must] be submitted according to the requirements of this rule [section] and the Texas Register *Form and Style Manual* [§91.94 of this title (relating to Form for Notice of Open Meeting)].

(i) The text of open meeting notices are published in the Texas Register as submitted by the issuing agency. The meetings must be typed using Courier, Times, or Helvetica typestyles, 10 or 12 picas point size, and only on the front page of the submission form. Agencies are discouraged from using nonstandard abbreviations.

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439954

Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 463-5561

Adoption By Reference: Adoption Under Federal Mandate

• 1 TAC §91.42 and §91.43

The amendments are proposed under the Government Code, Chapter 2002, Subchapter B., §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

The proposed amendments do not affect other statutes, articles or codes.

§91.42. Procedure for Filing a Document by Reference.

(a) The procedure for filing a document by reference shall be the same as that required for other rules, except that the actual text of the document need not conform to the Texas Register format requirements. However, notice of intention to adopt by reference shall be given in the form of a numbered section. The notice shall follow usual rulemaking and filing procedures for emergency, proposed or final action on rules.

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

(e) Notice periods are as [a] follows.

(1) (No change.)

(2) Abbreviated notice.

(A) An abbreviated notice period is allowed if a federally specified effective date is less than 30 days after publication in the Register. The agency shall indicate in the blank provided on the submission form the date on which the document shall [must] take effect.

(B) If a federally specified effective date does not allow time for 20 days to elapse before the date the document takes effect, the agency shall indicate in the blank provided on the submission form the date on which the document shall [must] take effect.

§91.43. Procedure for Filing a Federally Mandated Document.

(a) (No change.)

(b) If time allows, the agency shall [must] give notice of its intention to adopt a new rule [section] or an amendment to an existing rule [section]. Notice shall be in the form of proposed action and shall fulfill all format and content requirements prescribed for proposed action on rules [sections]. The agency shall [must] state in the preamble of the proposal the circumstances under which the rule [section] action is proposed and that the notice period is abbreviated, if applicable.

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

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439955 Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption:

For further information, please call: (512) 463-5561

Document Format

(Editor's note: The text of the following §91.51 proposed for repeal will not be published. The section may be examined in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

• 1 TAC §91.51

The repeal is proposed under the Government Code, §2002.017, which authorizes the Secretary of State to adopt rules to ensure the effective administration of the subchapter, including rules prescribing paper size and the format of documents required to be filed for publication.

The repeal does not affect other statutes, articles or codes.

§91.51. Paper Size and Form.

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439956 Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption:

For further information, please call: (512) 463-5561

Format

• 1 TAC §91.51

The new section is proposed under the Government Code, §2002.017, which authorizes the Secretary of State to adopt rules to ensure the effective administration of the subchapter, including rules prescribing paper size and the format of documents required to be filed for publication.

The new section does not affect other statutes, articles, or codes.

§91.51. Electronic Format.

(a) Agencies shall submit documents (except submission forms and notices of open meetings) in electronic format using

a modem or on 5-1/4" or 3-1/2" diskettes. Files shall conform to the American Standard Code for Information Interchange (ASCII) format. Files shall be named using the date of the submission, a decimal point, and the agency code. If an agency submits more than one file on the same day, the agency shall insert a alphabetic letter in sequence after the date and before the decimal point. For example: 715.004 indicates that this file was sent on July 15 by the Office of the Secretary of State; 715b.004 would indicate a second file was sent on July 15th.

(b) Codes to designate boldface italics, new paragraph and other formatting commands shall be enclosed in "[]" brackets. The codes are as follows.

(1) <*>-This code will be used in place of the section symbol.

(2) <p>-This code indicates a new paragraph.

(3) <hi>-This code indicates italics in the preamble.

(4) <h>-This code indicates regular type in the preamble.

(5) <etb>-This code indicates boldface type in the text except in the preambles.

(6) <et>-This code indicates regular type in all text except preambles.

(7) <eti>-This code indicates italics in all text except preamble.

(8) <sup>-This code indicates a superscript and is inserted before the number; <sup> shall be inserted after the superscripted number.

(9) <sub>-This code indicates a subscript and is inserted before the number; <sub> shall be inserted after the subscripted number.

(10) Deleted text shall be indicated by square brackets [].

(11) *n-This code indicates the end of a document within a file.

(c) Agencies using telecommunications to submit their documents shall do the following.

(1) A password shall be established by contacting the staff of the Register. This password allows the user to access the system.

(2) The necessary submission forms that correspond to the files being sent shall be faxed to the Register before transmitting.

(3) Files shall be named in accordance with subsection (a) of this section.

(4) If files are compressed using PKZip software, the issuing agency shall

contact the staff of the Register before transmitting.

(5) Agencies shall not submit files larger than 200,000 bytes uncompressed.

(6) Graphic material shall be delivered to the Texas Register before the deadlines as specified in §91.113 of this title (relating to Deadlines).

(7) Files may be transmitted using 1200 or 2400 baud rate.

(d) Agencies submitting their documents on diskettes shall do the following.

(1) The diskette shall be hand-delivered or mailed with the appropriate submission forms attached, including any graphic material properly marked as specified in §91.23(e) of this title (relating to Filing Procedures).

(2) Files shall be named in accordance with subsection (a) of this section.

(3) Diskettes shall be formatted using DOS 3.1 or newer version of the operating system. The Texas Register accepts high- and low-density diskettes, but high-density is preferred.

(4) Diskettes shall contain only the files being submitted. Diskettes containing files not relating to the submission may be rejected.

(5) Files may be compressed using PKZip software. A notation on the diskette is required notifying the Register of this.

(6) The Register will not return diskettes to the issuing agency. An agency upon submission may request a diskette in exchange for the submitted diskette, or go through the Register files periodically to retrieve its diskettes.

(7) Agencies shall attach a label to the diskette identifying the submitting agency and the date of the submission.

(e) Electronic files submitted by an agency shall follow the requirements set forth in the Texas Register *Form and Style Manual*.

(f) If the Register is unable to access a file, if the files do not match the submission forms, or if an error occurred in the creation of the AscII file, the issuing agency will be contacted immediately. The agency will be asked to resubmit their files, if time allows for processing of documents without delaying the production of the Texas Register. If there is not sufficient time, the submission will be retained for the next issue of the Texas Register.

(g) Training sessions will be given periodically by the Register staff to all agencies. Agencies may request individual training sessions.

(h) Agencies will be notified at least one month prior to any changes being made to the Register programs or computer systems.

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439857

Maehree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption:

For further information, please call: (512) 463-5561

Classification Systems

• 1 TAC §§91.73-91.75

The amendments are proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

The amendments do not affect other statutes, articles, or codes.

§91.73. Structure; Terminology.

(a) An agency shall subdivide a rule [section] according to the following structure, in the order shown, subject to the provisions of subsections (b), (c), and (e) of this section. The appropriate terminology shall be used in all preambles to rule [section] action.

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

(6) An item shall be designated by a lower-case letter of the alphabet with a dash on both sides (e.g.: (-a-), (-b-), etc.).

(7) A subitem shall be designated by a Arabic numeral with a dash on both sides (e.g.: (-1-), (-2-), etc.).

(b) An agency shall [must] not designate a subsection if it is the only subsection in the section. This policy shall apply to all subdivisions, as set forth in subsection (a)(1)-(7) [(1)-(5)] of this section.

(c) (No change.)

(d) When amending a subdivision within a rule, the following procedures shall be followed.

(1) When an agency amends only one subdivision within a rule, those subdivisions not affected may be labeled "No change." However, the higher-level subdivision, which contains the lower-level subdivision being amended, shall be printed for clarification. For example: If paragraph (1) under subsection (a) is be-

ing amended, then the language in subsection (a) shall be printed. If the agency decides to include the entire text of a rule, the Texas Register staff will insert "No change" in the appropriate areas for publication.

(2) When renumbering a subdivision that contains lower-level subdivisions, the agency shall submit the language contained in those subdivisions for clarification. For example: If subsection (a) is being redesignated as subsection (b) and the subsection contains paragraphs (1)-(3), the agency shall submit the language contained in those paragraphs.

[(d) The (No change.) policy is as follows.

[(1) The term "(No change.)" means that neither a change, deletion, nor addition of wording is made to a subdivision of an existing section, nor to the format of an existing section structure. When no change occurs in the language or structure of a section subdivision, the subdivision may be designated as (No change.). The text of a subdivision designated as (No change.) need not be submitted, subject to the provisions of paragraph (2) of this subsection.

[(2) When the text of a subdivision is amended, the agency shall include the text of the preceding higher-level subdivision. Although the higher-level subdivision may not have any changes itself, its publication is necessary for clarification. For example, if paragraph (2) of subsection (a) is being amended, the entire text of subsection (a) must be included in the submission. Paragraph (1) of the subsection may designated as (No change.) if there are no changes in the paragraph.]

(e) (No change.)

(f) Any reference to another section within the same title shall [must] be followed by the phrase "of this title (relating to..)" and the title of the section inserted within the parenthesis. Any reference to another TAC section shall [must] be cited by the title and section number, followed by the phrase "(relating to..)", with the title of the section inserted within the parenthesis. For example: 1 TAC §91.75 (relating to Identification).

§91.74. Rule [Section] Titles.

(a) Each chapter, each subchapter, each undesignated head, and each section of each submission of section action shall [must] be titled.

(b) (No change.)

§91.75. Identification.

(a) The TAC number of a proposed rule [section] must be used to identify the rule [section] as adopted.

(b) The TAC number of a rule [section] adopted on an emergency basis shall [must] be used to identify a rule [section] if it is proposed or adopted on a nonemergency basis.

(c) The amendment or repeal of a rule [section] shall [must] be identified by the TAC number of the affected rule [section].

(d) The TAC number of a proposed rule [section] which is not adopted or is withdrawn may be used to identify another rule [section].

(e) The code number of a repealed section may be used to identify another rule [section].

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439958

Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption:

For further information, please call: (512) 463-5561

Submission Forms

• 1 TAC §91.97

The amendment is proposed under the Government Code, Chapter 2002, Subchapter B, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

The amendment does not affect other statutes, articles, or codes.

§91.97. *Reproduction of Forms.*

(a) Each agency shall reproduce each submission form from blank sample copies or electronic WordPerfect files provided by the Texas Register, Office of the Secretary of State. An agency may create an exact duplicate form(s) using its own software.

(b) The format for Texas Register submission forms (TR-2, TR-3, TR-4, TR-5, TR-6) shall [must] not be altered by state agencies without the permission of the director of the Texas Register.

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

Issued in Austin, Texas, on April 23, 1994

TRD-9439959

Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption:

For further information, please call: (512) 463-5561

Publication Schedule

• 1 TAC §91.112, §91.113

The amendments are proposed under the Government Code, Chapter 2002, Subchapter B, Texas Register, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

The amendments do not affect other statutes, articles or codes.

§91.112. *Indexes , TAC Titles Affected, and Cross-Index to Statute Publications.*

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

(c) TAC Titles Affected shall be published in the second issue of each month for the prior month. Cumulative TAC Titles Affected will be published in the indexes.

(d) Cross-Index to Statute shall be available upon request only.

§91.113. *Deadlines.*

(a) For a Tuesday edition, all copy except notices of open meetings shall [must] be received by 10:00 a.m. the previous Wednesday. All notices of open meetings shall be received by 10:00 a.m. the previous Thursday.

(b) (No change.)

(c) The Register shall [must] notify agencies in advance of any changes that may occur in the publication schedule and deadlines for submission of documents by notice published in the Register.

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439960

Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption:

For further information, please call: (512) 463-5561

Miscellaneous Provisions

• 1 TAC §91.135

The amendment is proposed under the Government Code, Chapter 2002, Subchapter B, Texas Register, §2002.017, which provides the secretary of state with the authority to promulgate rules consistent with the Code.

The amendments do not affect other statutes, articles or codes.

§91.135. *Form for Correction of Error.*

(a) (No change.)

(b) The written notification shall [must] include the following information:

(1) the name of the agency [involved];

(2) the specific section of the Register where the error occurred (i.e., Proposed Rules, Open Meetings, etc.) and a copy of the page from the Register with the error highlighted.

(3) (No change.)

(4) the nature of the error , and whether it was introduced by the Texas Register or the submitting agency.

(c) (No change.)

(d) The Register will not make corrections after the effective date of a rule, with the exception of an emergency rule.

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

Issued in Austin, Texas, on April 23, 1994.

TRD-9439961

Machree Garrett Gibson
Assistant Secretary of
State
Office of the Secretary of
State

Earliest possible date of adoption:

For more information, please call: (512) 463-5561.

TITLE 7. BANKING AND SECURITIES

Part II. Banking Department of Texas

Chapter 13. Practice and Procedures

The Finance Commission of Texas (the Commission) proposes the repeal of §§13.1-13.12, 13.21-13.26, 13.31-13.35, 13.41-13.44, 13.51-13.55, 13.61-13.71, 13.81-13.89, 13.101-13.106, and 13.121-13.131, concerning practice and procedure before the Commission and the Banking Commissioner. The sections are being repealed as part of a comprehensive revision

and recodification of all Commission, State Banking Board, Banking Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of other sections with new section numbers assigned. The new proposed sections for Chapter 13 of Title 7 are published for comment in this issue of the *Texas Register*.

Everette D. Jobe, general counsel of the Texas Department of Banking, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Jobe also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing these repeals and recodification is that regulations regarding practice and procedure will be updated to eliminate superseded references to statutes that have been amended, repealed, or recodified, and will be better organized and easier to follow and apply. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

Subchapter A. Hearing Procedures

General Provisions

• 7 TAC §§13.1-13.12

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.1. Purpose.

§13.2. Scope.

§13.3. Construction.

§13.4. Definitions.

§13.5. Office and Mailing Address.

§13.6. Suspension of Rules.

§13.7. Conduct and Decorum.

§13.8. Computation and Extension of Time.

§13.9. Notice of Hearing.

§13.10. Agreements To Be in Writing.

§13.11. Filing of Documents.

§13.12. Ex Parte Communications.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-8439855
Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

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• 7 TAC §§13.1, 13.3-13.11,
13.13-13.20

The Finance Commission of Texas (the Commission) proposes new §§13.1, 13.3-13.11, and 13.13-13.20, comprised of Subchapter A, §§13.50-13.56, Subchapter B, and §§13.101-13.103, Subchapter C, concerning practice and procedure before the Commission, the Banking Commissioner, and the Texas Department of Banking. The sections are being proposed as part of a comprehensive revision and recodification of all Commission, Banking Commissioner, State Banking Board, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Existing §§13.1-13.12, 13.51-13.55, and 13.101-13.103 are proposed for repeal, together with the remainder of Chapter 13 of Title 7, in this issue of the *Texas Register*.

Everette D. Jobe, general counsel, Texas Department of Banking, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of the repeal and recodification of Chapter 13 of Title 7 is that regulations regarding practice and procedure rules will be updated to eliminate superseded references to statutes that have been amended, repealed, or recodified, and will be better organized and easier to follow and apply than the rules that are proposed for repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The new sections are proposed under Government Code §2001.004(1) and §2001.021(b), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures and to adopt rules regarding petitions for adoption of rules.

The following are the articles and sections affected by the proposed repeal and recodification—Texas Civil Statutes, Articles 342-305, 342-307, 342-309, 342-332, 342-368, 342-401a, 342-412, 342-801a, 342-913, 342-1006, 342-1007, 342-1103, 342-1104, 342-1105, 350, 489d, and 548b; Health and Safety Code, Chapter 712; Government Code, Chapter 2001; and 7 TAC §§3.4, 3.7, 3.38, 3.41, 3.61, 3.91, 4.1, 4.5, 10.10, 10.11, 15.1, 15.3, 15.11-15.13, 25.1, and 27.1.

§13.1. Definitions and Interpretation.

(a) The principles of interpretation and definitions set out in the Government Code, Chapter 311, the definitions in Government Code, §2001.003, and the definitions set forth in subsection (b) of this section shall govern the interpretation of this chapter.

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

(1) Applicant—A party seeking a license, permit, or other action from the Commissioner.

(2) Banking Code—Texas Civil Statutes, Article 342-101 et seq.

(3) Commissioner—The Banking Commissioner of Texas.

(4) Department—The Texas Department of Banking.

(5) Protestant—Any party opposing an application for a license, permit, or other action filed with the Commissioner, who has paid the filing fee required pursuant to §3.37 of this title (relating to Application Fees and Cost Deposits).

(c) Unless otherwise provided by statute, the time for filing any document or pleading under this chapter may be extended by order of the hearing officer upon showing of good cause.

(d) In the event of conflict between this chapter and a provision of the Banking Code, the Banking Code shall prevail. In the event of a conflict between this section and another section of this title that specifically governs a type of hearing before the Commissioner, such other section of this title shall prevail.

(e) If any section contained in this chapter is found to be unconstitutional or invalid by a court of competent jurisdiction, the validity of the remaining sections in this chapter shall not be affected.

§13.3. Notice.

(a) Notices of hearings shall comply with the provisions of Government Code, §2001.051, which requires all hearings in contested cases to be preceded by a notice of at least ten days, unless such provision conflicts with a provision of the Banking Code. In the event of such a conflict, the Banking Code shall prevail.

(b) Pursuant to Government Code, §2001.052, the notice must include:

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

§13.4. *Pleadings and Other Writings.* Copies of all pleadings, briefs and letters addressed to the hearing officer shall be sent to the applicant, the Department of Banking, protestants, and intervenors, if any. If a party is represented by an attorney, service shall be made on the attorney. Briefs and pleadings shall include a certification that copies have been served on all other parties of record, stating names and addresses of those served, together with the date and manner of service. Letters shall indicate that copies have been sent to opposing counsel.

§13.5. *Appearances and Representation.* Every party may present its case through an attorney. A private individual may appear pro se. Any officer, partner, or regular employee may represent a corporation, partnership, association, or firm in a hearing before the Commissioner or Department even if that person is not a licensed attorney, provided that proper decorum and the instructions of the hearing officer are observed. Attorneys who are not licensed in Texas but who are licensed in other states may represent a client before the Department of Banking with permission of the hearing officer.

§13.6. *Protest.* Any person or agency with a justiciable interest may protest an application within 14 days of publication of the

notice of proceeding, but not thereafter. The protest must allege in writing, with particularity, the injury that the protestant expects to suffer if the application is granted; the issues on which the protest is based; and the statutory or other basis on which the protestant is entitled to participate in the hearing on the protested application. A certificate of service shall be included showing that a copy of the protest has been served on the applicant's representative. To be considered, the pleading initiating a protest must be accompanied by any filing fee required pursuant to §3.37 of this title (relating to Application Fees and Cost Deposits).

§13.7. *Participation by Interested Persons Other Than Protestants.* In the discretion of the hearing officer, persons who are not parties may be permitted to make or file statements in a proceeding. The hearing officer may direct the time and the manner in which this may be done.

§13.8. *Motion for More Definite Statement.* If a pleading is so vague or ambiguous that a party is unable to fully understand what is intended to be placed in issue, the party may move for a more definite statement and the hearing officer shall grant the motion if it is well taken and direct that a more definite statement be made.

§13.9. Prehearing Conferences.

(a) Sua sponte or on the motion of any party, the hearing officer may direct that the parties or their authorized representatives appear at a prehearing conference to consider such matters as:

- (1) simplification and settlement of issues;
- (2) disclosure of names, identities, and location of proposed witnesses and a brief statement of what is proposed to be established by the testimony of each;
- (3) the limitation of the number of and the exchange of reports of expert witnesses expected to be called by either party;
- (4) obtaining:
 - (A) admissions of fact; and
 - (B) stipulations as to the admissibility into evidence of documents and other exhibits;
- (5) the exchange of documentary evidence to be submitted at the hearing; and
- (6) any other matter which may expedite the hearing or otherwise facilitate the hearing process.

(b) The hearing officer may require the parties to prepare prehearing briefs prior to or subsequent to the prehearing conference covering such matters as the hearing officer may specify.

(c) In the hearing officer's discretion, the prehearing conference may be formal or informal, may be conducted in person or by telephone, and may be conducted with or without a court reporter. In the event that no court reporter is used, the hearing officer shall prepare a memorandum encompassing any agreements reached and decisions made including any admissions, stipulations, or agreed proposals.

§13.10. Discovery.

(a) All parties are entitled to use the following discovery procedures as set forth in the Texas Rules of Civil Procedure: interrogatories, requests for admissions, depositions, discovery and production of documents, and entry upon designated land and other property. Use of such forms of discovery shall be in accordance with and subject to limitations provided for discovery under the Texas Rules of Civil Procedure.

(b) A party upon whom a request for discovery is served may object and move for a protective order and the hearing officer shall promptly set such motion for a hearing which may be held either in person or by telephone. For good cause shown, the hearing officer may direct that discovery be made in some other place or manner than originally proposed, that certain matters are not discoverable, that the scope of examination be limited to certain matters, that the examination be held with no one present except parties and their officers or counsel, that the deposition be sealed and opened only by order of the hearing officer, that business secrets need not be disclosed, or may make such other orders as justice may require, including an order terminating all further discovery upon a showing that discovery is being conducted in bad faith or unreasonably.

(c) In the event that a request for discovery is not honored, or only partially honored, the requesting party may file a motion to compel discovery and the hearing officer may compel compliance with the discovery request.

§13.11. Subpoenas.

(a) The issuance of subpoenas in any proceeding shall be governed by Government Code, §2001.089. Following written request by a party, or sua sponte, the hearing officer may issue a subpoena addressed to a sheriff or any constable to require the attendance of witnesses from any place in the State of Texas and the production of books, records, papers, or

other objects as may be necessary and proper for the purposes of the proceedings.

(b) The requesting party shall pay all costs associated with a subpoena, including fees for attendance and travel, and witnesses who are not parties shall be paid the same fees for attendance and travel as in civil cases before the courts. At the time the request for a witness' attendance is filed, the requesting party shall deposit the estimated amount to which the witness will be entitled with the Department.

§13.13. Conduct of Hearings. Hearing procedures shall be as specified in this chapter and in Government Code, §§2001.051-2001.147. The hearing officer may be the Commissioner or a Department staff member designated by the Commissioner or by the Finance Commission. The hearing officer shall have authority analogous to that of a district judge sitting without a jury in a civil case and may make such rulings and issue such orders as may be required to provide a fair, just, expeditious, orderly, and proper hearing. Hearings shall be open to the public, except that matters made confidential by law shall be considered in closed session. The Banking Code prevails in a conflict between Government Code, §§2001.051-2001.147 and the Banking Code.

§13.14. Order of Proceedings.

(a) In proceedings initiated by filing an application with the Department, the applicant shall open and shall present evidence and testimony first. The protestant, if any, shall present its evidence and testimony upon completion of the applicant's case in chief. The Department shall present its evidence and testimony following the protestant(s).

(b) In hearings initiated as a result of Department investigations or show cause orders, the Department shall open and shall present evidence and testimony first. The respondent shall present its evidence and testimony upon completion of the Department's case in chief.

(c) Where evidence is peculiarly within the knowledge of one party, or in any proceedings not covered by application of subsections (a) and (b) of this section, the hearing officer shall direct who shall open and the order of presentation.

(d) Each party shall be permitted to put on rebuttal witnesses and evidence as necessary to present a complete case.

§13.15. Prefiled Testimony. Sua sponte or on motion of any party, the hearing officer may omit oral presentation of the direct testimony of any witness and may allow prefiled written testimony to be presented in

its place. The written testimony shall be received with the same force and effect as though stated orally by the witness; provided that the witness shall be present at the hearing at which such testimony is offered, shall adopt such testimony under oath, and shall be made available for cross-examination.

§13.16. Stipulations. Parties may by written stipulation agree upon the facts or any portion thereof and their stipulation may be regarded and used as evidence at the hearing. The hearing officer in such cases may require any additional evidence as may be deemed necessary.

§13.17. Reporters and Transcripts.

(a) In all proceedings when requested by the Department or by any party, an official reporter shall make a stenographic record of the hearing.

(b) The hearing officer may allocate the cost of the reporter and transcript among the parties.

(c) In all proceedings initiated by the filing of an application with the Department, the cost of the reporter and transcript will be assessed against the applicant, or divided, if there is a protestant, between the applicant and protestant(s).

(d) In hearings based on Department investigations or show cause orders, if a respondent is found to have violated the Banking Code or applicable sections of this title, the entire cost of the reporter and transcript will be assessed against that respondent.

§13.18. Recovery of Administrative Costs.

(a) The filing of a protest against granting an application previously filed with the Department is itself an application seeking action from the Department. For purposes of subsection (b) of this section, the original applicant and all protestants are collectively referred to as the applicants.

(b) The Commissioner may for good cause, after notice and hearing, impose direct administrative costs incurred by the Department on the applicants before the Commissioner, in addition to other sanctions and cost recoveries provided by law or this chapter. Direct administrative costs incurred by the Department include, but are not limited to, the estimated, fully allocated cost of Department employees participating in the hearing, internal and external or out-of-pocket expenses incurred by the Department, hearing officer fees and expenses, court reporter fees and expenses, investigative costs, witness fees and deposition expenses, witnesses' travel expenses, reasonable fees for professional services of

expert witnesses, and the reasonable cost of a study, analysis, audit or other project the Commissioner finds to have been necessary in preparation of the state's case.

§13.19. Filing of Exceptions and Replies to the Proposal for Decision. Any party of record may, within ten days after the date of service of a proposal for decision, file exceptions to the proposal for decision. Replies to such exceptions may be filed within ten days after the last day for filing of such exceptions. Copies of exceptions and replies shall be served on all parties of record.

§13.20. Consideration of Proposal for Decision.

(a) The Commissioner may:

- (1) adopt the proposal for decision, in whole or in part;
- (2) modify and adopt the proposal for decision, in whole or in part;
- (3) decline to adopt the proposal for decision, in whole or in part;
- (4) remand the proceeding for further examination by the hearing officer; or
- (5) direct the hearing officer to give further consideration to the proceeding with or without reopening the hearing.

(b) If on remand additional evidence is received which results in a substantial revision of the hearing officer's recommendation for final action, a new proposal for decision shall be prepared and served on the parties and they shall be given an opportunity to file exceptions and make replies to the new proposal for decision the same as if it were the original proposal for decision.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439843

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

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Pleadings

• 7 TAC §§13.21-13.26

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.21. *Form and Content of Pleadings.*

§13.22. *Amended Pleadings.*

§13.23. *Classification of Pleadings.*

§13.24. *Written Motions.*

§13.25. *Adoption by Reference.*

§13.26. *Service.*

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439856

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Parties

• 7 TAC §§13.31-13.35

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.31. *Classification and Alignment of Parties.*

§13.32. *Parties Defined.*

§13.33. *Representative Appearances.*

§13.34. *Intervention.*

§13.35. *Participation by Interested Persons.*

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439857

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Prehearing Procedures

• 7 TAC §§13.41-13.44

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.41. *Informal Disposition.*

§13.42. *Prehearing Conferences.*

§13.43. *Continuances.*

§13.44. *Consolidation.*

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439858

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Subchapter B. Appeals to Finance Commission

• 7 TAC §§13.50-13.56

The new sections are proposed under Government Code, §2001.004(1) and §2001.021(b), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures and to adopt rules regarding petitions for adoption of rules.

The following are the articles and sections affected by the proposed repeal and recodification—Texas Civil Statutes, Articles 342-305, 342-307, 342-309, 342-332, 342-368, 342-401a, 342-412, 342-801a, 342-913, 342-1006, 342-1007, 342-1103, 342-1104, 342-1105, 350, 489d, and 548b; Health and Safety Code, Chapter 712; Government Code, Chapter 2001; and 7 TAC §§3.4, 3.7, 3.38, 3.41, 3.61, 3.91, 4.1, 4.5, 10.10, 10.11, 15.1, 15.3, 15.11-15.13, 25.1, and 27.1

§13.50. *Procedure.* A hearing before the Finance Commission, including an original proceeding or an appeal of a decision of the Commissioner if permitted or required by the Banking Code, shall be conducted in accordance with the hearing procedures set forth in Subchapter A of this chapter (relating to Hearing Procedures). References to the Commissioner in Subchapter A shall be read to be references to the Finance Commission where necessary to apply the hearing procedures to hearings before the Finance Commission.

§13.51. *Right to Review.* Any party to an action of the Commissioner which is appealable to the Finance Commission pursuant to the Banking Code shall the right to have such action reviewed by the Finance Commission upon timely filing of a written notice of appeal and a written application for review.

§13.52. *Contents of Review Application.* The application shall state the identities of the parties, the action complained of, the interests of the parties, specific objections, and the action sought from the Finance Commission.

§13.53. *Filing.* The notice of appeal and the application for review shall be filed with the presiding officer of the Finance Commission together with a certification that true copies of such notice and application have been filed with the Commissioner and with all parties of record.

§13.54. *Time of Filing.*

(a) Notice of appeal must be filed within ten days of the decision of the Commissioner for which review is sought.

(b) The application for review must be filed within 30 days of the decision of the Commissioner for which review is sought.

(c) No extension of the time periods for filing notice of appeal and application for review shall be granted.

(d) Failure to comply with this section forfeits the right to review by the Finance Commission.

§13.55. *Scope of Review.* The Finance Commission shall consider the questions raised by the application for review and may also consider such additional matters pertinent to the appeal as it shall determine, whether or not included in the application.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439845

Everette D. Jobe
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Texas Department of
Banking

Proposed date of adoption: June 17, 1994
For further information, please call: (512)
475-1300



Discovery

• 7 TAC §§13.51-13.55

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.51. Subpoenas.

§13.52. Depositions.

§13.53. Additional Discovery.

§13.54. Witness Fees.

§13.55. Protective Orders.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439859

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994
For further information, please call: (512)
475-1300



Hearings

• 7 TAC §§13.61-13.71

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.61. Hearing Officer.

§13.62. Powers of the Hearing Officer.

§13.63. Reporters and Transcripts.

§13.64. Public Hearings.

§13.65. Place of Hearings.

§13.66. Dismissal.

§13.67. Order of Presentation.

§13.68. Briefs.

§13.69. Cross-examination.

§13.70. The Record.

§13.71. Recovery of Administrative Costs.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439860

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994
For further information, please call: (512)
473-1300



Evidence

• 7 TAC §§13.81-13.89

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.81. Witnesses To Be Sworn

§13.82. Rules of Evidence.

§13.83. Official Notice.

§13.84. Documentary Evidence.

§13.85. Written Testimony.

§13.86. Exhibits.

§13.87. Formal Exceptions Not Required.

§13.88. Offers of Proof.

§13.89. Witnesses Limited.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439861

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994
For further information, please call: (512)
473-1300



Proposal for Decision and Orders

• 7 TAC §§13.101-13.106

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.101. Proposal for Decision.

§13.102. Filing of Exceptions and Replies.

§13.103. Consideration of Proposals for Decision.

§13.104. Final Decision.

§13.105. Motion for Rehearing.

§13.106. Granting of Motion for Rehearing.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439862

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994
For further information, please call: (512)
473-1300



Subchapter C. Rulemaking

• 7 TAC §§13.101-13.103

The new sections are proposed under Government Code §2001.004(1) and §2001.021(b), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures and to adopt rules regarding petitions for adoption of rules.

The following are the articles and sections affected by the proposed repeal and recodification—Texas Civil Statutes, Articles 342-305, 342-307, 342-309, 342-332, 342-368, 342-401a, 342-412, 342-801a, 342-913, 342-1006, 342-1007, 342-1103, 342-1104, 342-1105, 350, 489d, and 548b; Health and Safety Code, Chapter 712; Government Code, Chapter 2001; and 7 TAC §§3.4, 3.7, 3.38, 3.41, 3.61, 3.91, 4.1, 4.5, 10.10, 10.11, 15.1, 15.3, 15.11-15.13, 25.1, and 27.1.

§13.101. Rulemaking. Rulemaking proceedings shall comply with Government Code, Chapter 2001, Subchapter B.

§13.102. Petitions To Initiate Rulemaking Proceedings. Petitions to initiate rulemaking proceedings pursuant to Government Code, §2001.021 must be submitted to the Commissioner in writing. Any petition shall include:

- (1) a brief explanation of the proposed rule;
- (2) the full text of the proposed rule, and, if the petition is to modify an existing rule, the text of the proposed rule prepared in a manner that clearly identifies any words to be added or deleted from the existing text;
- (3) a concise explanation of the legal authority to adopt the proposed rule including a specific reference to the particular statute or other authority that authorizes it;
- (4) an explanation of how the public would be benefitted by its adoption;
- (5) any available data or information showing a need for the proposed rule; and
- (6) such other or additional information as the Commissioner may request.

§13.103. Agency Action On Petitions To Initiate Rulemaking Proceedings.

(a) When the Department receives a rulemaking petition, the Department shall review it for compliance with the requirements of §13.102 of this title (relating to Petitions To Initiate Rulemaking Proceedings). If the petition is determined to comply, the Department shall notify the applicant that it has been accepted for filing and the petition shall be processed in accord

with Government Code, §2001.021(c). If the petition is determined not to comply, the Department shall notify the applicant in writing as to all deficiencies found and shall give the petitioner an opportunity to cure them by filing an amended petition. If no amended petition curing such deficiencies has been filed with the Department by 5:00 p.m. on the 15th day following the date that the Department mailed a notice of deficiencies to the applicant, the petition shall be deemed to have been denied for the reasons stated in the notice.

(b) If a petition is accepted for filing, it shall be denied for reasons stated in writing, or a rulemaking proceeding shall be initiated, within 60 days of the date that it was accepted for filing.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-8439844

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call. (512) 475-1300

Subchapter B. Appeals to Finance Commission

• 7 TAC §§13.121-13.131

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§13.121. Scope.

§13.122. Procedure

§13.123. Right to Review.

§13.124. Contents of Review Application.

§13.125. Filing

§13.126. Time of Filing.

§13.127. Scope of Review.

§13.128. Public Hearings.

§13.129. Precedence over Other Business.

§13.130. Presiding Officer on Appeal.

§13.131. Proposal for Decision.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-8439863

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call. (512) 473-1300

Part III. State Banking Board

Chapter 17. Rulemaking

The Finance Commission of Texas (the Commission) proposes the repeal of §§17.1-17.4 and 17.11-17.16, concerning rulemaking procedures. The sections are generally considered unnecessary because Government Code, §2001.021 et seq provides comparable requirements regarding rulemaking procedures. Further, the sections are being repealed as part of a comprehensive revision and recodification of all Commission, State Banking Board, Banking Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Rulemaking proceedings will be governed by proposed new §§13.101-13.103, published in this issue of the *Texas Register* for comment. No sections are proposed for Chapter 17 of Title 7, and the chapter will be reserved for future use.

Everette D. Jobe, general counsel of the Texas Department of Banking, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Jobe also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing these repeals and recodification is that regulations regarding practice and procedure rules will be updated to eliminate superseded references to statutes that have been amended, repealed, or recodified, and will be better organized and easier to follow and apply than the rules that are proposed for repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

Adoption of Rules

• 7 TAC §§17.1-17.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§17.1. Rulemaking Procedure.

§17.2. Public Hearings.

§17.3. Hearing Officer.

§17.4. Request for Statement.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439842 Everett D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Petition for Rules

• 7 TAC §§17.11-17.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§17.11. Who May Petition.

§17.12. Submission.

§17.13. Content.

§17.14. Failure to Comply.

§17.15. Disposition of Petition.

§17.16 Notice.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439841 Everett D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Chapter 31. Miscellaneous

• 7 TAC §§31.1-31.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

Pursuant to §35.6, the Banking Commissioner of Texas (the Commissioner), on behalf of the State Banking Board (the Board), proposes the repeal of §§31.1-31.7, concerning miscellaneous rules governing the affairs of the Board. The sections are proposed to be repealed to remove obsolete or ineffective provisions, to eliminate superseded references to statutes that have been amended, repealed, or recodified, and to correct erroneous cross-references. The proposed repeal is also part of a comprehensive revision and recodification of all Board, Finance Commission, Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Several new proposed sections for Chapter 31 of Title 7 are published for comment in this issue of the *Texas Register*.

Everette D. Jobe, general counsel of the Texas Department of Banking, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Jobe also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing these repeals and recodification is that regulations regarding practice and procedure will be updated to eliminate superseded references to statutes that have been amended, repealed, or recodified, and will be better organized and easier to follow and apply. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

The repeals are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§31.1. Definitions.

§31.2. Purpose.

§31.3. Scope.

§31.4. Investigation.

§31.5. Members of the Board.

§31.6. Minimum Capital for Interim Bank Charters.

§31.7. Notices to Applicants; Application Processing Times; Appeals.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439838 Everett D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Pursuant to §35.6, the Banking Commissioner of Texas (the Commissioner), on behalf of the State Banking Board (the Board), proposes new §§31.1-31.4, Subchapter A, §§31.20-31.22, Subchapter B, and §31.40 and §31.41, Subchapter C, concerning rules and procedural regulations considered necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before the Board. All existing sections of Chapter 31 are proposed for repeal in this issue of the *Texas Register*. All sections of Chapters 33 and 35 of Title 7 are also currently proposed for repeal in this issue of the *Texas Register*.

The proposed sections will comprise all of Chapter 31 and generally are part of a comprehensive revision and recodification of all Board, Finance Commission, Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of

some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. However, substantive revisions are proposed in new §31.4 from its predecessor section (§31.7), consistent with and pursuant to the provisions of Government Code, §2005.003, as discussed further elsewhere in this preamble. Further, proposed §31.40 and §31.41 are new, have no counterparts in existing regulations, and are also discussed in more detail elsewhere in this preamble.

Proposed §31.1 and §31.2 are new sections designed to replace Chapters 33 and 35 of Title 7, by incorporating the procedures of Chapter 13 of such title to apply to proceedings on behalf of the Board, although a portion of §31.2 is directly derived from existing §35.6. The proposed §§31.3, 31.4, and 31.20 are amendments to and relocation of certain sections presently contained in Chapter 31 of Title 7 (existing §§31.5, 31.7, and 31.6, respectively) and that are currently proposed for repeal. Substantive amendments are made to proposed §31.4 and §31.20, as discussed further in the following paragraphs.

Proposed new §31.4 concerns notice and processing time requirements for certain applications to engage in a business. This new section treats the same subject matter as existing §31.7, proposed for repeal in this issue of the *Texas Register*. As proposed, §31.4 comports with the intent of source law, accurately describes the agency's processing of applications for permits, provides for uniformity in notification periods, and promotes consistency and clarity in organization and terminology. New §31.4 does not propose notice and processing times for applications other than those to engage in a business because such applications do not fall within the parameters of Government Code, §2005.003 and §2005.006.

The agency's processing times for applications for state bank and trust companies for the 12-month period prior to the publication of this proposal is as follows: the minimum time is 104 days from the date the completed application is received; the maximum time, 194 days; and median time, 160; for an interim bank charter, the minimum, maximum and median times are 10, 91, and 42, respectively. Finally, the minimum, maximum and median times for processing a conversion of a financial institution into a state bank are 89, 98, and 94, respectively.

Proposed §§31.20-31.22, comprising Subchapter B, are relocations of existing §§31.6, 33.34 and 33.61, respectively. Section 31.20 is amended from existing §31.6 to define the interim bank charter application process and alter the notice and hearing requirements that would otherwise be applicable. Existing practice has been to ignore the applicable notice and hearing requirements because they serve no public policy purpose, the Board believes the better practice will be to specify the applicable requirements by rule. Section 31.22 is amended from existing §33.61 to take into account amendments to Texas Civil Statutes, Article 342-311 and to specify applicable notice and hearing requirements.

Proposed Subchapter C, §31.40 and §31.41, is new. Proposed §31.40 concerns applicability of the Banking Code to trust company applications, and expressly negates the possibility of a trust company organizing as a limited banking association. Further, the section cross-references to §31.22 for change of domicile applications by trust companies. Proposed §31.41 clarifies application of Banking Code provisions to exempt trust companies by correcting erroneous statutory cross-references, and specifically addresses the requirements of a change of domicile application for an exempt trust company.

Everette D. Jobe, general counsel of the Texas Department of Banking, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections and recodification is that regulations regarding practice and procedure rules will be updated to eliminate superseded references to statutes that have been amended, repealed, or recodified, and will be better organized and easier to follow and apply than the rules that are proposed for repeal. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

Subchapter A. Procedures

• 7 TAC §§31.1-31.4

The new sections are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board; Texas Civil Statutes, Article 342-115(6) and Article 342-1106(a), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; Government Code, §2005.003, which requires an agency to adopt procedural rules for processing permit applications and issuing permits; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The following are the articles and sections affected by the proposed repeal and recodification—Texas Civil Statutes, Articles 342-115, 342-306, 342-310, 342-311, 342-331, 342-363, 342-903a, and 342-1101; and Government Code, §2005.003 and §2005.006.

§31.1. Rules Governing Administrative Hearings Before The Banking Board. All administrative hearings before the State Banking Board or its designated hearing officer shall be governed by the rules and

procedures forth in Chapter 13, Subchapter A of this title (relating to Hearing Procedures), governing hearings conducted on behalf of the Banking Commissioner and the Texas Department of Banking, except that those sections governing appeals to the Finance Commission shall not be applicable and references to the Commissioner shall be understood as references to the Banking Board unless the context requires otherwise.

§31.2. Rulemaking.

(a) Rulemaking proceedings shall comply with Government Code, Chapter 2001, Subchapter B. Petitions to initiate rulemaking proceedings pursuant to Government Code, §2001.021 shall be handled in the manner stated in Chapter 13, Subchapter C of this title (relating to Rulemaking).

(b) The State Banking Board hereby delegates to the Banking Commissioner the nonexclusive authority on behalf of the Banking Board to initiate rulemaking proceedings, by proposing sections and holding hearings for the purpose of receiving comments on proposed sections, as the Banking Commissioner from time to time deems appropriate, including rulemaking proceedings urged by petition of interested persons. The Banking Board reserves the exclusive power to conclude rulemaking proceedings by adopting or refusing to adopt sections and may, as it deems appropriate, initiate rulemaking proceedings.

(c) If the Banking Commissioner chooses to initiate rulemaking proceedings by proposing sections for publication and comment, the Banking Commissioner shall on or before publication notify the members of the Banking Board of the proposed rulemaking action and the justification for the proposed action in writing.

§31.3. Substitute Members of the Banking Board. When either the State Treasurer or the Banking Commissioner is unable to personally attend an official meeting of the Banking Board, the respective first deputy of such member may appear and vote. The present first deputy to the State Treasurer is Michael D. Doyle, Deputy Treasurer, and the present first deputy to the Banking Commissioner is Randall S. James, Deputy Banking Commissioner. Two such deputies may not sit as substitute members of the Banking Board at the same time.

§31.4. Applications to Engage in Certain Businesses: Notices to Applicants; Application Processing Times; Appeals.

(a) Form of Application. An application to engage in a business under Texas Civil Statutes, Articles 342-331, 342-363, or 342-1101 must be filed on a form pre-

pared and prescribed by the Banking Commissioner.

(b) Notice to Applicant. The Department of Banking shall issue a written notice within ten days of receiving an application for state bank, trust company, or interim bank charter or an application for conversion of a financial institution to a state bank informing the applicant either that the application is complete and accepted for filing, or that the application is deficient and specific additional information is required.

(c) Action on Applications. Once a completed application has been accepted for filing, the Banking Board shall determine whether to approve or deny that application within the following period of time and in the following manner:

(1) State Bank or Trust Company Charters. A hearing will be held within 90 days of the date the application is accepted for filing, and a decision to deny or approve the application shall be rendered in accordance with Chapter 13 of this title (relating to Practice and Procedures).

(2) Interim Bank and Trust Company Charter Applications. A decision to approve or deny the application shall be rendered within 60 days of the date the application is accepted for filing.

(3) Applications for Conversion of a Financial Institution to a State Bank. A decision to approve or deny the application shall be rendered within 180 days of the date the application is accepted for filing; provided that, if the application is contested, a hearing will be held within 90 days of the date the protest is received, and a decision shall be rendered in accordance Chapter 13 of this title.

(d) Violation of Notice and Processing Times. An applicant may appeal directly to the Commissioner, as Chair of the Banking Board, for a timely resolution of a dispute arising from a violation of a period set forth in this section. An applicant shall perfect an appeal by filing a written request with the Department of Banking within 30 days of the date the decision is made on the application requesting review by the Commissioner, to determine whether the established period for the granting or denying of the application has been exceeded. The decision on the appeal shall be based on the written appeal filed by the applicant and any response by the Department, and, if the Commissioner deems necessary, a hearing may be set to take evidence on the matter.

(e) Decision on Appeal. The Commissioner, as Chair of the Banking Board, shall decide the appeal in the applicant's favor if the Commissioner determines that the time periods established in this section

have been exceeded and the Department has failed to establish good cause for the delay. The Commissioner shall issue a written decision to the applicant within 60 days of the filing of an appeal. If an appeal is decided in an applicant's favor, the applicant will be reimbursed the application fee which the applicant has paid to the Department under §3-37 of this title. A decision in favor of the applicant under this subsection does not affect any decision to grant or deny the application, which shall be based on applicable substantive law without regard to whether the application was timely processed.

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439840

Everette D Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call (512) 475-1300

Subchapter B. Bank Applications

• 7 TAC §§31.20-31.22

The new sections are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board; Texas Civil Statutes, Article 342-115(6) and Article 342-1106(a), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; Government Code, §2005.003, which requires an agency to adopt procedural rules for processing permit applications and issuing permits, and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

The following are the articles and sections affected by the proposed repeal and recodification—Texas Civil Statutes, Articles 342-115, 342-306, 342-310, 342-311, 342-331, 342-363, 342-903a, and 342-1101, and Government Code, §2005.003 and §2005.006.

§31.20 Interim Bank Charters.

(a) An interim state bank charter may be issued solely for the purpose of facilitating the acquisition, reorganization, or merger of a pre-existing bank, if the resulting bank will engage in the business of banking at the pre-existing locations. The application for an interim bank charter must be submitted on a form prescribed by the Banking Commissioner. The applicant shall

describe in detail the entire transaction in which the interim bank charter is proposed to be used and identify the resulting bank after completion of the transaction.

(b) If the resulting bank will be the interim bank, simultaneously with or within a reasonable period of time following initial submission of its application, the applicant shall publish notice of the application in a newspaper of general circulation in the community where the resulting bank is to be located. The applicant shall supplement the application with a copy of the notice and a publisher's affidavit attesting to the date of its publication.

(c) No hearing will be held regarding the issuance of an interim bank charter. Persons submitting comments will not be entitled to further notice of or participation in the interim bank charter application proceedings but all comments submitted will be considered by the Banking Board.

(d) The Banking Board shall determine the adequacy of capital for a proposed interim bank charter. However, in no case shall an interim bank be chartered with a capital less than \$5,000.

§31.21. Option to Withhold Identity of Officer. An applicant for a state bank charter may, at its option, withhold the identity of prospective officers until such time as the Banking Board rules upon the applications. If an applicant exercises the option of this section and the Banking Board chooses to grant the application, such grant will be conditional upon the applicant's submitting resumes of qualified proposed officers to the Banking Commissioner. Upon receipt of the resumes, the Banking Commissioner shall review the qualification of the proposed officers and deliver the certificate of authority pursuant to Texas Civil Statutes, Article 342-304 if the Banking Commissioner finds the proposed officers to be qualified.

§31.22. Applications for Change of Domicile

(a) General. A state bank may not change its domicile without prior written approval in accordance with Texas Civil Statutes, Article 342-311. An application for a change of domicile subject to approval of the Banking Board must be in writing on a form prescribed by the Banking Commissioner and be filed with the Banking Commissioner.

(b) Public Notice

(1) Simultaneously with or within a reasonable period of time following initial submission of its application, the applicant shall publish notice of the application, together with the statement set forth in paragraph (2) of this subsection, in a news-

paper of general circulation in the community where the proposed domicile of the bank is to be located and, if the bank facility at its current domicile may be abandoned within two years after the date of the application, in the community where the current domicile of the bank is located. The applicant will furnish the Department with a copy of each notice and a publisher's affidavit attesting to the date of its publication.

(2) The notice shall state the fact of the application, the proposed domicile location, and substantially the following text as a separately stated paragraph: "Any person wishing to comment on this application, either for or against, may file written comments with the State Banking Board, c/o the Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294 within 14 days of the date of this publication. Such comments will be made a part of the record before and considered by the State Banking Board. Any person wishing to formally protest and oppose the proposed domicile and participate in the application process may do so by filing a written notice of protest with the State Banking Board within 14 days of the date of this publication, together with a filing fee of \$2,500. The protest fee may be reduced or waived by the Banking Commissioner upon a showing of substantial hardship."

(c) Public Comment and Protest. For a period of 14 days after publication of notice or such longer period as the Commissioner may allow for good cause shown, the public may submit written comments or protests regarding the application. Persons submitting comments shall not be entitled to further notice of or participation in the proceedings but all comments submitted will be considered by the Banking Board. In the event of any properly filed protest, each protestant shall have the rights and responsibilities of a protestant to a new bank charter application, and the application will be set for hearing with notice to the applicant and all protestants. In the absence of a properly filed protest, the Banking Board may act on the application without holding a hearing.

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439853

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Subchapter C. Trust Company Applications

• 7 TAC §31.40, §31.41

The new sections are proposed under §35 6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6) and Article 342-1106(a), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; Government Code, §2005.003, which requires an agency to adopt procedural rules for processing permit applications and issuing permits; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures

The following are the articles and sections affected by the proposed repeal and recodification—Texas Civil Statutes, Articles 342-115, 342-306, 342-310, 342-311, 342-331, 342-363, 342-903a, and 342-1101, and Government Code, §2005.003 and §2005.006.

§31.40. Applicability of Banking Code.

(a) Applications for state trust company charters shall be made pursuant to Texas Civil Statutes, Article 342-1101 and Article 342-331. A trust company is required to incorporate and may not organize as a limited banking association pursuant to Texas Civil Statutes, Article 342-363

(b) A state trust company may not change its domicile without prior approval from the State Banking Board in accordance with Texas Civil Statutes, Article 342-311. Any trust company that desires to change its domicile shall file an application with the Banking Commissioner in accordance with §31.22 of this title (relating to Applications for Change of Domicile) and Article 342-311

§31.41 Exempt Trust Companies

(a) Texas Civil Statutes, Article 342-1103, §6, states that a trust company that has been granted an exemption by the Banking Commissioner remains subject to certain provisions of the Banking Code, including "Article 5 and 14, Chapter III of this code (Articles 342-305 and 342-314, Texas Civil Statutes) " Such statutory references are to provisions regarding the granting of charters, currently Texas Civil Statutes, Article 342-331, and change of domicile, currently Texas Civil Statutes, Article 342-311, as they were numbered prior to renumbering and rearrangement by Acts 1993, 73rd Legislature, Chapter 765, effective August 30, 1993 Texas Civil Statutes, Articles 342-331 and 342-311 shall be applied to exempt trust companies as if correctly referenced in Article 342-1103, §6.

(b) A trust company that has been granted an exemption by the Banking Commissioner and that files an application to change domicile shall not be required to prove that: a public necessity exists for the trust company at its proposed location; its proposed capital structure is adequate; the anticipated volume of business in the community where the trust company is to be located is such as to indicate profitable operation of the trust company at that location; or the proposed officers and directors have sufficient trust experience, ability, and standing to render success of the trust company probable; provided that any approval granted for a change of domicile without such proof shall be conditioned upon the trust company maintaining its exempt status. An exempt trust company that is granted such a conditional change of domicile may not transact business with the general public from its new domicile, regardless of any change in its exempt status, until and unless the Banking Board makes all findings required by Texas Civil Statutes, Article 342-311(b).

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439854

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call (512) 475-1300

Chapter 33. Procedures for Hearings

Pursuant to §35 6, the Banking Commissioner of Texas (the Commissioner), on behalf of the State Banking Board (the Board), proposes the repeal of §§33.1-33.10, 33-21-33.34, 33.51-33.55, 33 61, 33 71, and 33 101-33.115, concerning practice and procedure before the Board. The sections are being repealed as part of a comprehensive revision and recodification of all Board, Finance Commission, Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of other sections with new section numbers assigned. No new sections are proposed for Chapter 33 of Title 7, and the chapter will be reserved for future use.

Everette D. Jobe, general counsel of the Texas Department of Banking, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals

Mr. Jobe also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing these repeals and recodification is that regulations regarding practice and procedure will be updated to eliminate superseded references to statutes that have been amended, repealed, or recodified, and will be better organized and easier to follow and apply. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

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

Pleadings and Applications

• 7 TAC §§33.1-33.10

(Editor's note. The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§33.1. Designation.

§33.2. Form.

§33.3. Official Filing.

§33.4. Motions.

§33.5. Stipulations.

§33.6. Amendments.

§33.7. Incorporation by Reference.

§33.8. Motions for Continuance.

§33.9. Consolidated Hearings.

§33.10. Briefs.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439848

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Evidence and Witnesses

• 7 TAC §§33.21-33.34

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§33.21. Oath.

§33.22. Cross-Examination.

§33.23. Rules of Evidence.

§33.24. Official Notice.

§33.25. Limitation of Witnesses.

§33.26. Documentary Evidence.

§33.27. Exhibits.

§33.28. Bill of Exception.

§33.29. Correction of Transcript.

§33.30. Depositions.

§33.31. Subpoenas.

§33.32. Record.

§33.33. Findings of Fact.

§33.34. Option to Withhold Identity of Officers.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439847

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Hearings

• 7 TAC §§33.51-33.55

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§33.51. Presiding Officer.

§33.52. Order of Presentation.

§33.53. Formal Exceptions Unnecessary.

§33.54. Rehearing.

§33.55. Motions for Rehearing.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439848

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Change of Domicile

• 7 TAC §33.61

The repeal is proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§33.61. Procedure.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439849

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Conversion of National Bank to State Bank

• 7 TAC §33.71

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeal is proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§33.71. Procedure.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439850

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

General Rules

• 7 TAC §§33.101-33.115

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, Texas Civil Statutes, Article 342-115(6), which authorize the Board to adopt such rules and procedural regulations as may be necessary to facilitate the fair hearing and adjudication of charter applications and such other business to come before it; and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§33.101. Hearing Officer.

§33.102. Filing of Papers.

§33.103. Time.

§33.104. Service.

§33.105. Representatives of Parties.

§33.106. Notice of Hearing.

§33.107. Prehearing Conference.

§33.108. Place for Hearings.

§33.109. Proposal for Decision.

§33.110. Exceptions to Proposal for Decision.

§33.111. Form of Exceptions to Proposal for Decision.

§33.112. Finality

§33.113. Costs for Transcripts.

§33.114. Parties.

§33.115. Appearances.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439852

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

Pursuant to §35.6, the Banking Commissioner of Texas (the Commissioner), on behalf of the State Banking Board (the Board), proposes the repeal of §§35.1-35.6 and §35.11-35.16, concerning rulemaking by the Board. The sections are generally considered unnecessary because Government Code, §2001.021 et seq provides comparable requirements regarding rulemaking procedures. Further, the sections are being repealed as part of a comprehensive revision and recodification of all Board, Finance Commission, Commissioner, and Department of Banking practice and procedure rules related to matters regulated by the Department of Banking. This revision and recodification will result in the deletion of some sections, the adoption of new sections, and the revision and reenactment of others with new section numbers assigned. Rulemaking proceedings will be governed by proposed new §31.2, published in this issue of the *Texas Register* for comment. No new sections are proposed for Chapter 35 of Title 7, and the chapter will be reserved for future use.

Everette D. Jobe, general counsel of the Texas Department of Banking, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Jobe also has determined that for each year of the first five years the repeals are in effect the public benefit anticipated as a result of enforcing these repeals and recodification is that regulations regarding practice and procedure will be updated to eliminate superseded reference to statutes that have been amended, repealed, or recodified, and will be better organized and easier to follow and apply. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the repeals as proposed.

Comments on the proposal may be submitted within 30 days after publication of this proposal in the *Texas Register* to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294.

Chapter 35. Rulemaking

Procedure

• 7 TAC §§35.1-35.6

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Banking Board or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§35.1. *General.*

§35.2. *Public Hearings.*

§35.3. *Hearing Officer.*

§35.4. *Request for Statement.*

§35.5. *Costs of Transcripts.*

§35.6. *Nonexclusive Delegation of Authority to Propose Rules.*

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439865

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

◆ ◆ ◆
Petitions

• 7 TAC §§35.11-35.16

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Banking Department of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under §35.6, which authorizes the Commissioner to promulgate proposed rules for comment on behalf of the Board, and Government Code, §2001.004(1), which requires all administrative agencies to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

§35.11. *Who May Petition.*

§35.12. *Submission*

§35.13. *Content.*

§35.14. *Failure to Comply.*

§35.15. *Disposition of Petition.*

§35.16. *Notice.*

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439864

Everette D. Jobe
General Counsel
Texas Department of
Banking

Proposed date of adoption: June 17, 1994

For further information, please call: (512) 475-1300

◆ ◆ ◆
**TITLE 16. ECONOMIC
REGULATIONS**
**Part I. Railroad
Commission of Texas**
**Chapter 5. Transportation
Division**

**Subchapter DD. Vehicle Stor-
age Facilities**

• 16 TAC §5.902

The Railroad Commission of Texas proposes an amendment to §5.902, concerning definitions as they pertain to vehicle storage facilities. The proposed amendment clarifies what is necessary to preserve, protect, or service a stored vehicle, for which a vehicle storage facility operator would be entitled to charge a one-time \$10 preservation fee.

Jackye Greenlee, Assistant Director-Central Operations, has determined that, for the first five-year period the rule as proposed will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the rule.

Barbara H. Owens, Hearings Examiner, has determined that for each year of the first five years the amendment is in effect, the public benefit anticipated as a result of administering the rule as proposed will be clarification of what conduct is necessary to preserve, protect, or service a stored vehicle. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amendment as proposed.

Comments may be submitted to Barbara H. Owens, Hearings Examiner, Legal Division, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967.

The amendment is proposed under Texas Civil Statutes, Article 6687-9a, §4(b), which require the commission to adopt rules establishing requirements for the licensing of persons to operate vehicle storage facilities to ensure that licensed storage facilities maintain adequate standards for the care of stored vehicles.

The following article is affected by this rule: §5.902-Texas Civil Statutes, Article 6687-9a.

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

Preservation-An action taken by or at the direction of the owner or operator of a vehicle storage facility that is necessary to preserve, protect, or service a vehicle stored or parked at the facility. Reasonable efforts necessary for the storage of a vehicle, such as locking doors, rolling up windows, and closing doors, hatchbacks, or convertible tops, are included in the fee for storage of a vehicle, as set forth in §5.919(f) of this title (relating to technical requirements-storage fees/charges), and do not constitute "preservation." A vehicle storage facility operator will be entitled to charge a fee for preservation if, in addition to the requirements set for in §5907(d) of this title (relating to responsibilities of the licensee-storage requirements), the vehicle storage facility performs, at a minimum, the following duties:

(A) conducts a written inventory of any personal property contained in the vehicle and removes and stores for safe keeping all such property; and

(B) obtains motor vehicle registration information for the vehicle from the Texas Department of Transportation.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439800

Mary Ross McDonald
Assistant Director, Legal
Division-Gas Utilities
Railroad Commission of
Texas

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 463-7095

◆ ◆ ◆
**TITLE 22. EXAMINING
BOARDS**

**Part IX. Texas State
Board of Medical
Examiners**

**Chapter 161. General
Provisions**

• 22 TAC §161.1

The Texas State Board of Medical Examiners proposes an amendment to §161.1, concerning board meetings. The proposed amendment will define the regulations related to board member attendance.

Tim Weitz, general counsel, has determined that during the first five-year period the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Weitz also has determined that during the first five-year period the rule is in effect, the public benefits anticipated as a result of enforcing the section as proposed will be to provide a means for determining board member absences and to ensure that sufficient board members are available for a quorum.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

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

The amendment affects Texas Civil Statutes, Article 4495b, §2.04(a).

§1611 Meetings.

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

(c) It is a ground for removal from the board if a board member is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during a calendar year. If the executive director of the board has knowledge that a potential ground for removal exists due to a member's failure to attend an adequate number of regularly scheduled board meetings, the executive director shall notify the president of the board of the ground. The president shall then notify the governor that a potential ground for removal exists. A board member shall be considered to have been absent from a regularly scheduled board meeting if the member fails to attend at least a portion of either a full board session or a portion of a regularly scheduled committee meeting to which the member is assigned during such board meeting. Any dispute or controversy as to whether or no an absence has occurred shall be submitted to the full board for resolution by a majority vote after giving the purported absentee an opportunity to be heard and after allowing discussion by other members of the board. [It shall be incumbent upon each member of the Texas State Board of Medical Examiners to be in attendance at each meeting of the board in fulfillment of his or her duties as a member. If for any good and sufficient reason he or she determines that

he or she will be unable to attend any regular or called meeting, he or she shall notify the executive director or secretary of the board of his or her impending absence before such meeting is called to order and give the reason for such absence. The executive director or secretary will then report to the board in session the absence of such member and the reason therefore. Any member of the board believing the reason for such absence insufficient may institute a motion for the reprimand or censorship of such member.]

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439739

Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 834-7728, Ext. 402

Chapter 187: Procedure

Subchapter D. Posthearing

• 22 TAC §187.40

The Texas State Board of Medical Examiners proposes new §187.40, concerning temporary suspensions. The proposed new section establishes the guidelines for the disciplinary panel of the board to consider the temporary suspension of a license.

Tim Weitz, general counsel, has determined that for the first five-year period the rule as proposed is in effect there will not be fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to clarify the procedures for the disciplinary panel of the board to temporarily suspend a license when the licensee's practice would constitute a continuing threat to the public welfare.

There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

The new section is proposed under Texas Civil Statutes, Article 4495b, which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this act as may be necessary for the governing of its own proceedings, the performance of its du-

ties, the regulation of the practice of medicine in this state, and the enforcement of this act.

The proposed new rule implements Texas Civil Statutes, Article 4495b, §4. 13.

§187.40. Temporary Suspensions.

(a) In accordance with the Medical Practice Act (the Act), Article 4495b, §4.13, Temporary Suspension of License, the president of the board, with the approval of the board, shall appoint a three-member disciplinary panel consisting of members of the board for the purpose of determining whether a person's license to practice medicine in this state should be temporarily suspended under this section.

(b) If the disciplinary panel determines from the evidence or information presented to it that a person licensed to practice medicine in this state by his continuation in practice would constitute a continuing threat to the public welfare, the disciplinary panel shall temporarily suspend the license of that person.

(c) The license may be suspended under this section without notice or hearing on the complaint, provided institution of proceedings for a hearing before the board is initiated simultaneously with the temporary suspension and provided that a hearing is held as soon as can be accomplished under the Administrative Procedure Act and the Act.

(d) Notwithstanding the Open Meetings Act, Government Code, Chapter 551, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and the convening at one location of the disciplinary panel is inconvenient for any member of the disciplinary panel.

(e) In the event of the recusal of a disciplinary panel member or the inability of a panel member to attend a temporary suspension proceeding, an alternate disciplinary panel member may serve on the panel if previously appointed by the president, acting president, or presiding officer of the board, and approved by the board.

(f) To the extent practicable, in the discretion of the chairman or acting chairman of the disciplinary panel, the sequence of events will be as follows:

- (1) Call to Order;
- (2) Roll Call;
- (3) Calling of the Case;
- (4) Recusal Statement;
- (5) Introductions/Appearances

on the Record;

- (6) Presentation by Board Staff;

(A) Synopsis of Allegations/Opening Statement; and

(B) Introduction of Evidence and Information;

(7) Presentation of Respondent;

(A) Opening Statement; and

(B) Introduction of Evidence and Information;

(8) Rebuttal by Board Staff/Surrebuttal by Respondent;

(9) Closing Arguments;

(A) Argument by Board Staff;

(B) Argument by Respondent; and

(C) Final Argument by Board Staff;

(10) Deliberations;

(11) Announcement of Decision; and

(12) Adjournment.

(g) Witnesses may provide sworn statements in writing or verbally or choose to provide statements which are not sworn; however, whether or not a statement is sworn may be a factor to be considered by the disciplinary panel in evaluating the weight to be given to the statement. Questioning of witnesses by the parties or panel members shall be at the discretion of the chairman or acting chairman of the disciplinary panel with due consideration being given to the need to obtain accurate information and prevent the harassment or undue embarrassment of witnesses.

(h) Presentations by the parties may be based on evidence or information and shall not be excluded on objection of a party unless determined by the chairman or acting chairman that the evidence or information is clearly irrelevant or unduly inflammatory in nature; however, objections by a party may be noted for the record.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439738

Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 834-7728, Ext. 402

Chapter 188. Complaint Procedure Notification

• 22 TAC §188.1

The Texas State Board of Medical Examiners proposes an amendment to §188.1, concerning complaint procedure notification. The proposed amendment will clarify what information is to be included in the notification to the public.

Tim Weitz, general counsel, has determined that for the first five-year period the rule as proposed is in effect there will not be fiscal implications to state or local governments as a result of enforcing or administering the rule.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefits anticipated as a result of enforcing the section as proposed will be to provide a method for the purpose of directing complaints to the Texas State Board of Medical Examiners.

There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134. A public hearing will be held at a later time.

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

The proposed amendment affects Texas Civil Statutes, Article 4495b, §2. 09(s)(2).

§188.1. Complaint Procedure Notification.

(a) Methods of Notification. Pursuant to the Medical Practice Act (the Act), Article 4495b, §2.09(s)(2), for the purpose of directing complaints to the board, the board and its licensees shall provide notification to the public of the name, mailing address, and telephone number of the board by one or more of the following methods:

(1) displaying in a prominent location at their place of business, signs in English and Spanish of no less than 8-1/2 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement; or

(2) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point 12-pitch typewriter print on each bill for services with no alterations, deletions, or additions to the language of the board-approved statement; or

(3) placing the board-approved notification statement printed in English and Spanish in black type no smaller than standard 10-point, 12-pitch typewriter print on each registration form, application, or written contract for services with no alterations, deletions, or additions to the language of the board-approved statement.

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

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439741

Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 834-7728, Ext. 402

Chapter 196. Voluntary Surrender of a Medical License

• 22 TAC §§196.1-196.5

The Texas State Board of Medical Examiners proposes amendments to §§196. 1-196.5, concerning voluntary surrender of a medical license. The proposed amendments will clarify the circumstances under which the voluntary surrender of a license may be accepted by the board.

Tim Weitz, general counsel, has determined that for the first five-year period the rules are in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Mr. Weitz also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of procedures concerning the acceptance of a voluntary surrender of a license in lieu of further disciplinary action, the return of a surrendered license, and limitations on the cancellation of a license due to nonpayment of registration fees if a formal complaint has been filed against the physician.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Pat Wood, P.O. Box 149134, Austin, Texas

78714-9134. A public hearing will be held at a later time.

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

The proposed amendments affect Texas Civil Statutes, Article 4495b, §4. 05(e).

§196.1. Surrender of License.

(a) (No change.)

(b) Acceptance by the board.

(1) The board, based on a petition or request presented to the full board by a licensee or based on the recommendation of a committee, a panel, or representative(s) of the board, may [The board, at its next duly scheduled meeting, shall] consider whether to formally accept the voluntary surrender of the Texas medical license; [...] however, surrender [Surrender] of a Texas medical license without acceptance thereof by the board, or a licensee's failure to pay his or her annual registration fee after initiation of disciplinary action, but prior to imposition of a disciplinary order [revocation of the physician's license] by the board, shall not result in cancellation of the license and shall not deprive the board of jurisdiction in regard to disciplinary action against the licensee [under Texas Civil Statutes, Articles 6252-13a, 6252-13c, and 6252-13d for alleged violations of the Medical Practice Act, Texas Civil Statutes, Article 4495b, or other laws].

(2) The board shall safeguard and keep secure any and all Texas medical licenses tendered [surrendered] to the board for purposes of a voluntary surrender until such time as the board determines an appropriate disposition of the license.

§196.2. Surrender Associated with Disciplinary Action.

(a) When a licensee has surrendered his or her Texas medical license in lieu of a hearing or further investigation of alleged violations of the Medical Practice Act, Article 4495b, and its subsequent amendments, such a [after a complaint alleging violation(s) of Texas Civil Statutes, Article 4495b, that] surrender shall be considered [is deemed] a surrender associated with a disciplinary action.

(b) (No change.)

(c) If the surrender of a Texas medical license was associated with disciplinary action based on findings of fact substantiating misconduct, the Texas medical li-

cence shall not be returned to the licensee if the board's order on the merits of the disciplinary action is inconsistent with the return of that license.

§196.3. Surrender Associated with Impairment.

(a) (No change.)

(b) A Texas medical license surrendered in accordance with this section shall not be returned to a licensee until after the board has determined that the licensee is competent to resume practice based on adequate medical and treatment information provided to the board [following discharge from a recognized treatment program and documented participation in any aftercare program].

§196.4. Return of License to Licensee. Whenever a licensee voluntarily surrenders his or her Texas medical license under circumstances not associated with disciplinary or impairment action, the licensee may have his or her license returned after a determination by the board that the licensee is competent to resume practice, following payment of applicable fees, and after completion of training, courses, examinations, or seminars as directed by the board.

§196.5. Competence to Resume Practice.

(a) Unless otherwise specified in an agreed order, consent order, or stipulation of the board and a licensee, the [The] board shall determine whether or not a licensee is competent to resume practice based on [by hearing] evidence of the licensee's competence or lack thereof as adduced through the procedures provided for in [in open hearing, en banc, by a panel of the board or a hearings examiner duly appointed in accordance with] Chapter 187 of this title (relating to Procedure).

(b) (No change.)

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439740

Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 834-7728, Ext. 402



Part XVIII. Texas State Board of Podiatry Examiners

Chapter 371. Examinations

• 22 TAC §371.2

The Texas State Board of Podiatry Examiners proposes an amendment to §371.2, concerning Examinations. The amendment changes the examination fee to conform with §379.1, regarding fees, which has already been amended to list all fee charges. The amendment is also being adopted on an emergency basis elsewhere in this issue of the *Texas Register*.

Robert A. Lansford, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Lansford also has determined that for each year of the first five years the section is in effect the public benefits anticipated as a result of enforcing the section as proposed will be that the section is consistent with the rules of the board. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendment is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439789

Janie Alonzo
Staff Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 794-0145



Chapter 373. Identification of Practice

• 22 TAC §373.2

The Texas State Board of Podiatry Examiners proposes an amendment to §373.2, con-

cerning Practitioner Identification. The amendment clarifies the terms a podiatrist must use to professionally identify himself or herself. The amendment functions by removing a reference to the term "clinic," which is also being removed from §373.4(d). The amendment is also being adopted on an emergency basis elsewhere in this issue of the *Texas Register*.

Robert A. Lansford, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Lansford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be clarification of the previously adopted §373.4. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendment is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439791 Janie Alonzo
Staff Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call. (512) 794-0145

Chapter 378. Continuing Education

• 22 TAC §378.2, §378.4

The Texas State Board of Podiatry Examiners proposes amendments to §378.2 and §378.4, concerning Continuing Education. The amendments clarify the requirements for continuing education.

Robert A. Lansford, executive director, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Lansford also has determined that for each year of the first five years the sections as in effect the public benefits anticipated as a result of enforcing the sections as proposed will be the defining of requirements of continuing education. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendments are proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board of Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry.

§378.2. *Exceptions and Allowances.*

[(a) Excess hours of continuing education obtained in the last three months of the preceding fiscal year may be carried forward to the following year, providing they do not exceed five hours in number.]

(a)[(b)] Delinquency for continuing education may be allowed in cases of hardship as determined on an individual basis by the Texas State Board of Podiatry Examiners. In cases of such hardships [instances], hours of delinquency must be current at the end of a three year period.

(b)[(c)] Any practitioner not actively practicing podiatric medicine shall be exempt from these requirements; however, upon resuming practice of podiatry, that person shall fulfill the requirements of the preceding year from the effective date prior to his resumption of practice.

(c)[(d)] All cases not covered by the above shall be considered individually by the board for continuing education

§378.4. *Methods of Reporting Continuing Education Requirements.* Hours of continuing education are to be reported prior to September 1, of each year, [on the form submitted or a reproduction of same.] to the office of the Texas State Board of Podiatry Examiners, Austin, Texas. Each separate occurrence must include a certificate of attendance or a letter from the sponsoring organization that includes the practitioner's name, course attended, date location and number of CME hours credited, [Each separate occurrence is to list the date, place subject hours and total hours.] Reproduced copies of verification of an individuals attendance of each program shall be presented to the Board [on this form].

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439792 Janie Alonzo
Staff Services Officer I
Texas State Board of
Podiatry Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 794-0145

Chapter 379. Fees and License Renewal

• 22 TAC §379.1

The Texas State Board of Podiatry Examiners proposes an amendment to §379.1, concerning Fees and License Renewal. The amendments were needed to comply with House Bill 1009

Robert A. Lansford, executive director, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Lansford also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be in compliance with House Bill 1009. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Janie Alonzo, 3420 Executive Center Drive, Suite 305, Austin, Texas 78731, (512) 794-0145.

The amendment is proposed under Texas Civil Statutes, Articles 4568(j) and 4590(e), which provide the Texas State Board Podiatry Examiners with the authority to adopt all reasonable or necessary rules, regulations, and by-laws not inconsistent with the law regulating the practice of podiatry, the laws of this state, or of the United States; to govern its proceedings and activities, the regulation of the practice of podiatry, and the enforcement of the law regulating the practice of podiatry

§379.1. *Fees.*

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatry Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

- (1) Examination—\$125,
- (2) Re-examination—\$125;

- (3) Renewal-\$250;
- (4) Renewal penalty-as specified in statute;
- (5) Duplicate license-\$50;
- (6) Copies of public records-The fee charged to any person requesting copies of any public record of the Board will be the charge established by the General Services Commission. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit; and [provided at cost to the agency];

[(7) Copies of mailing lists-\$100; and]

(7)[(8)] Statute and rule notebook-provided at cost to the agency.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439793
 Janie Alonzo
 Staff Services Officer I
 Texas State Board of
 Podiatry Examiners

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 794-0145

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

Clinical Health Services

• 25 TAC §1.91

The Texas Department of Health (department) proposes an amendment to §1.91, concerning fees for clinical health services

provided at public health clinics. Section 1.91(b) provides that the department shall base the calculation of fees in the schedule of fees upon the current federal poverty income guidelines. The amendments implement changes in poverty income levels at which clients will be charged fees. The amendments add that Medicaid eligible clients or recipients are not subject to the fee schedule, and list two additional conditions under which patients or clients whose incomes exceed 200% of the poverty level may continue to receive services at public health clinics. The amendments are proposed for the following reasons. The Omnibus Budget Reconciliation Act of 1981 requires all states to charge fees for clinical services based on the federal poverty income guidelines. Under authority of 42 United States Code, §9902(2), poverty income guidelines shall be revised annually. The most recent revisions of the guidelines became effective upon their publication in the Federal Register on February 10, 1994.

Bryan Shirley, Director, Revenue and Fund Analysis Division, has determined that for the first five year period the section will be in effect there will be no measurable fiscal implications for state or local government as a result of enforcing or administering the section as proposed.

Mr. Shirley also has determined that for each year of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing the amendment as proposed will be that the department will remain in compliance with federal law and regulations. There is no anticipated cost or effect on small or large businesses. No impact on individuals other than clients who receive clinical services provided at public health clinics is anticipated. The impact on persons who receive services will vary according to their individual incomes

Comments on the proposal may be submitted to Linda Linville, MS, RN, Division Director, Community Health Nursing, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3199, (512) 458-7773. Public comments will be accepted for 30 days after publication of the section in the *Texas Register*.

The amendment is proposed under the Texas Health and Safety Code, §12.001, which provides the board with the authority to implement by rule each duty imposed by law upon the board, the department, or the commissioner, and §12.032 authorizes the board to charge fees for public health services. Under this authority, the board has adopted a schedule of fees in §1.91. The proposed amendments change the percentages of poverty income which require the department to charge families of various sizes fees for clinical health services provided at public health clinics. Those changes in the percentages of poverty income will then be multiplied by the revised poverty income levels for various family sizes and published in the *Texas Register* as the department's fee schedule, upon approval by the commissioner.

§1.91. Fees for Clinical Health Services.

- (a) (No change.)
- (b) Schedule of fees.

(1) The department shall base the calculation of fees upon the current federal poverty income guidelines. The commissioner of health shall adjust the [its] income guidelines as needed to conform to changes in federal guidelines as those changes occur. The current income guidelines will be filed with this section in the Bureau of Community Oriented Primary Care [Office of the Associate Commissioner for Community and Rural Health] of the department and available for public inspection during office hours. Income guideline adjustments will also be published in the *Texas Register* not later than 30 days after the date on which they have been adopted by the commissioner of health.

(2) The following schedule of fees lists the fees covering clinical health services provided at public health clinics. Local health department contractors may use the following schedule or their own schedule. Public health regions will use the following schedule

**Schedule of Fees for
Clinical Health Services**

Poverty Income	Family Size	Charge/Visit	Maximum Charge/Family
0-99%	1-8	\$00.00	\$00.00
100-199%	1-8	\$ 5.00	\$10.00
200-299%	1-8	\$10.00	\$30.00
300%+	1-8	\$30.00	No Maximum

[Poverty Income	Family Size	Charge/Visit
0-132	1-8	\$00.00
133-199	1-8	\$4.00
200+	1-8	\$15.00]

(3) No recipient or client eligible for Medicaid shall be charged a fee in addition to the amount reimbursable by Medicaid.

(4)[(3)] The clinic will determine if a person is able to pay in accordance with the appropriate schedule; however, the clinic will not deny services because of a person's inability to pay.

(5)[(4)] Patients or clients whose incomes are above the 200%+ poverty level will be referred to the private sector for care unless extenuating circumstances exist. Such circumstances include provision of immunization services, prevention and control of communicable diseases, unusually high medical expenses or the unavailability of specific care needed. Such exceptions may receive care at the public health clinic in accordance with the schedule of fees.

(6)[(5)] A clinic may not charge a fee which exceeds the cost to the clinic of providing service or if prohibited by federal funding requirements.

(7)[(6)] The clinic shall make a reasonable effort to collect the fees, but the clinic may waive collection if the administrative cost of collection will exceed the fee to be collected.

(8)[(7)] The clinics covered by this section are those operated by public health regions and local health departments.

(9) [(8)] Fees collected by local health department clinics shall be retained

by those departments and be accounted for and expended under the rules relating to program income.

(10)[(9)] Fees collected by public health region clinics shall be deposited in the state treasury to a special fee fund to be entitled Texas Department of Health Services Fees Fund.

(c) Modification, suspension, or termination of services.

(1) (No change.)

(2) The department will conduct the hearing in accordance with §§1.21-1.34 [1.32] of this title (relating to Formal Hearing Procedures).

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439818

Susan K. Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: June 3, 1994

For further information, please call: (512) 458-7773



Standards for Conduct Governing the Relationship Between the Texas Department of Health and Private Donors and Private Organizations

• 25 TAC §§1.221-1.228

The Texas Department of Health (department) proposes new §§1.221-1.228, concerning the relationship of the department with private donors and private organizations which exist to further the duties and purposes of the department.

The purpose of the new sections will be to establish the criteria, procedures, and standards of conduct to implement the provisions of the Health and Safety Code, §12.011, concerning the acceptance by the department of donations and contributions to be spent for public health purposes, and the provisions of the Government Code, §2255.001, concerning the relationship between the department and the donors and private organizations. The new sections cover: purpose; definitions; donations by private donors to the department; donations by private donors to private organizations which exist for the department's benefit; organizing a private organization which exists for the department's benefit; relationship between a private organization and the department; standards of conduct between department employees and private donors; and miscellaneous provisions.

Susan K. Steeg, General Counsel, has determined that for the first five-year period that the proposed new sections are in effect there will be no fiscal implications to state or local government as a result of enforcing or admin-

istering the sections. Ms. Steeg bases this determination on the fact that neither state nor local government will experience any additional cost or any increased revenue as a result of enforcing or administering the rules.

Ms. Steeg also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the state and private donors and private organizations will be able to develop public-private partnerships in implementing public health initiatives by establishing the criteria and procedures for their relationship. There is no anticipated economic cost to persons who are required to comply with the proposed sections and no impact on local employment.

Public comments on the proposed new sections should be submitted to Susan K. Steeg, General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7236. Ms. Steeg will accept comments for 30 days after publication of the proposed new rules in the *Texas Register*.

The new sections are proposed under the Health and Safety Code, §12.011, which provides the department with authority to accept donations and contributions to be spent in the interest of public health; Health and Safety Code, §12.001, which provides the Texas Board of Health (board) with authority to adopt rules to implement every duty imposed by law on the board, the department and the commissioner of health; and the Government Code, §2255.001, which provides the department with authority to adopt rules governing the relationship between the department and private donors and private organizations which exist to further the department's duties and purposes. The new sections will affect the Health and Safety Code, Chapter 12, and the Government Code, Chapter 2255.

§1.221. Purpose. The purpose of these sections is to establish the criteria, procedures, and standards of conduct governing the relationship between the Texas Department of Health (department) and its officers and employees with private donors and private organizations which exist to further the duties and purposes of the department.

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

Commissioner—The commissioner of the Texas Department of Health.

Department—The Texas Department of Health.

Donation—A contribution of anything of value (financial or in-kind gifts such as goods or services) given to the department for public health purposes or to a private organization which exists to further the duties or functions of the department. The department may not accept donations of real property (real estate) without the express permission and authorization of the legislature.

Employee—A regular, acting, exempt, full-time, or part-time employee of the department.

Private donor—One or more individuals or private organizations which give a donation to the department for public health purposes or to a private organization which exists to further the duties and purposes of the department.

Private organization—A nonprofit organization recognized by the Internal Revenue Service as a nonprofit corporation and granted the right to receive tax deductible contributions as a 501(c)(3) organization. The private organization must exist to serve the duties and purposes of the department.

§1.223. Donations by Private Donors to the Texas Department of Health.

(a) A private donor may make donations to the Texas Department of Health (department) to be spent for specified or unspecified public health purposes. If the donor specifies the public health purpose, the department must expend the donation only for that purpose.

(b) All donations shall be expended in accordance with the provisions of the State Appropriations Act and shall be deposited in the State Treasury unless exempted by specific statutory authority.

(c) All donations will be coordinated through the commissioner of the Texas Department of Health (commissioner).

(d) The department may not transfer a private donation to a foundation or private/public development fund without specific written permission from the donor and the written approval of the commissioner.

§1.224. Donations by a Private Donor to a Private Organization which exists for the Purposes and Duties of the Texas Department of Health.

(a) A private donor may make donations to a private organization which exists for the purposes and duties of the Texas Department of Health (department).

(b) The private organization shall administer and use the donation in accordance with the provisions in the memorandum of understanding between the private organization and the department as described in §1.226(c) of this title (relating to Relationship Between a Private Organization and the Texas Department of Health).

§1.225. Organizing a Private Organization which Exists to Further the Duties and Purposes of the Texas Department of Health.

(a) The commissioner of the Texas Department of Health (commissioner) and

the membership of a private organization covered by these sections may cooperatively appoint a board of directors for the organization. The commissioner shall be a non-voting member. Texas Department of Health (department) employees may hold office and vote provided there is no conflict of interest in accordance with all federal and state laws and department policies. This provision applies to the employee's spouse and children.

(b) As an alternative to the method described in subsection (a) of this section, the private organization may decide not to have its board cooperatively appointed.

§1.226. Relationship between a Private Organization and the Texas Department of Health.

(a) The Texas Department of Health (department) may provide to a private organization covered by these sections:

- (1) fundraising and solicitation assistance;
- (2) staff services to coordinate activities;
- (3) administrative and clerical services;
- (4) office and meeting space;
- (5) training; and
- (6) other miscellaneous services as needed to further the duties and purposes of the department.

(b) The private organization may provide.

- (1) postage;
- (2) printing, including letterhead and newsletters;
- (3) special event insurance;
- (4) recognition of donors; and
- (5) bond and liability insurance for organization officers.

(c) The private organization and the department shall enter into a memorandum of understanding (MOU) which contains specific provisions regarding:

- (1) the relationship between the private organization and the department, and a mechanism for solving any conflicts or disputes;
- (2) fundraising and solicitation;
- (3) the use of all funds and other donations from fundraising or solicitation, less legitimate expenses as described in the MOU, for the benefit of the department;
- (4) the maintenance by the private organization of receipts and documentation of all funds and other donations received, including furnishing such records to the department; and

(5) the furnishing to the department of any audit of the private organization by the Internal Revenue Service or a private firm.

§1.227. Standards of Conduct between Texas Department of Health Employees and Private Donors.

(a) A Texas Department of Health (department) officer or employee shall not accept or solicit any gift, favor, or service from a private donor that might reasonably tend to influence his/her official conduct.

(b) An officer or employee shall not accept employment or engage in any business or professional activity with a private donor which the officer or employee might reasonably expect would require or induce him/her to disclose confidential information acquired by reason of his/her official position.

(c) An officer or employee shall not accept other employment or compensation from a private donor which could reasonably be expected to impair the officer's or employee's independence of judgment in the performance of his/her official position.

(d) An officer or employee shall not make personal investments in association with a private donor which could reasonably be expected to create a substantial conflict between the officer's or employee's private interest and the interest of the department.

(e) An officer or employee shall not solicit, accept, or agree to accept any benefits for having exercised his/her official powers on behalf of a private donor or performed his official duties in favor of private donor

(f) An officer or employee who has policy direction over the department and who serves as an officer or director of a private donor shall not vote on any measure, proposal, or decision pending before the private donor if the department might reasonably be expected to have an interest in such measure, proposal, or decision.

(g) An officer or employee shall not authorize a private donor to use property of the department unless the property is used in accordance with a contract or memorandum of understanding between the department and the private donor, or the department is otherwise compensated for the use of the property.

§1.228. Miscellaneous. The relationship between a private donor and a private organization and the Texas Department of Health, including fundraising and solicitation activities, is subject to all applicable federal and state laws, rules and regulations, and local ordinances governing each entity and its employees.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439784

Susan K. Steeg
General Counsel
Texas Department of
Health

Proposed date of adoption: June 24, 1994

For further information, please call (512) 458-7236

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Chapter 181. Vital Statistics

Vital Records

• 25 TAC §181.27

The Texas Department of Health (department) proposes new §181.27 concerning a memorandum of understanding (MOU) between the department and the Texas Funeral Service Commission (TFSC). The new section will implement the provisions of Senate Bill 284, 72nd Legislature, Regular Session, 1991, which requires the department and the TFSC to enter into a MOU to facilitate cooperation between the two agencies by describing the duties of each agency under the authority of Health and Safety Code, Chapter 193 and Chapter 195, and Texas Civil Statutes, Article 4582b. The bill also requires the agencies to adopt the MOU by rule. The new section will cover the joint procedures to be used by the two agencies for the referral, investigation and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

Richard B. Bays, chief, Bureau of Vital Statistics, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Bays also has determined that for each year of the first five years the new section as proposed is in effect the public benefit anticipated as a result of enforcing the proposed section will be to have a closer working relationship between the two agencies, expedite the filing of death certificates, and enhance the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments. There will be no cost to small businesses. There is no expected economic cost to persons who are required to comply with the proposed new section. There will be no impact on local employment.

Public comments on the proposed new section may be submitted to Richard B. Bays, Chief, Bureau of Vital Statistics, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3191, (512) 458-7692. Mr. Bays will accept comments for 30 days following publication of the proposal in the *Texas Register*.

The new section is proposed under Senate Bill 284, 72nd Legislature, Regular Session, 1991, which provides the Board of Health (board) with authority to adopt by rule a memorandum of understanding with the Texas Funeral Service Commission to facilitate cooperation between the two agencies in implementing and enforcing the Health and Safety Code, Chapter 193 and Chapter 195, and Texas Civil Statutes, Article 4582b; and the Health and Safety Code, §12.001, which provides the board with the authority to adopt by rule each duty imposed by law on the board, the department, and the Commissioner of Health. This new rule affects the Health and Safety Code, Chapters 193 and 195, and Texas Civil Statutes, Article 4582b.

§181.27. Memorandum of Understanding with the Texas Funeral Service Commission.

(a) Purpose. The purpose of this section is to implement Texas Civil Statutes, Article 4582b, as amended by Senate Bill 284, 72nd Legislature, 1991; and Health and Safety Code, Chapters 193 and 195. In an effort to better protect the public health, safety and welfare, it is the legislative intent of the laws for the Texas Department of Health (department) and the Texas Funeral Service Commission (TFSC) to adopt by rule a memorandum of understanding to facilitate cooperation between the agencies by establishing joint procedures and describing the actual duties of each agency for the referral, investigation, and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

(b) Scope.

(1) The MOU includes the respective responsibilities of the department and the TFSC in regulating any person or entity under the Health and Safety Code, Chapters 193 and 195, relating to the completion and filing of death records.

(2) The department and the TFSC will implement the cooperative procedure described in this memorandum to refer complaints to the other agency when that complaint falls within the other agency's jurisdiction or may have an affect on the administration and enforcement of the law for which the other agency is responsible.

(3) The department and the TFSC will implement the cooperative procedure described in this MOU in order to notify the other agency of violations of Health and Safety Code, Chapters 193 and 195; and Texas Civil Statutes, Article 4582b, by funeral directors and funeral establishments, and to assist and encourage funeral directors, embalmers and funeral establishments to conform their activities re-

lating to the completion and filing of death records.

(4) The MOU does not limit the authority of either agency, acting in its own capacity under state or federal law, to investigate complaints that fall within that agency's statutory jurisdiction.

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

(1) Agency-Texas Department of Health or the Texas Funeral Service Commission

(2) Death record-A report of death, death certificate, or a burial-transit permit, and such other forms as the department or the Texas Board of Health determine to be necessary

(3) Funeral director-A person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than by embalming, for the burial or disposition of dead human bodies, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies

(4) Funeral establishment-A place of business used in the care and preparation for burial or transportation of dead human bodies, or any place where one or more persons, either as sole owner, in co-partnership, or through corporate status, represent themselves to be engaged in the business of embalming and/or funeral directing, or as so engaged. Such funeral directing and embalming shall be performed only under the supervision and direction of a licensed funeral director and/or embalmer

(5) Local registrar-

(A) The justice of the peace is a local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(B) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(C) If a local registrar fails or refuses to register each birth and death in the district or neglects duties, the county judge or the mayor, as appropriate, shall appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar

(6) Person-

(A) includes corporation, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity, or

(B) includes individual, corporation, or association where enforcement of Health and Safety Code, Chapter 195, is involved

(7) Physician-Any individual licensed by the Texas Board of Medical Examiners to practice medicine in this state

(d) Delegation of responsibilities. The department and TFSC agree that the agencies shall have the following responsibilities

(1) The department shall have primary responsibility for the enforcement of the laws, rules, and policies governing the collection and maintenance of a system of vital statistics, including the collection and maintenance of death records for the State of Texas. Except as may be otherwise provided by law, the department shall

(A) design the format and prescribe the data to be entered on all forms that constitute the death records of the state,

(B) prescribe the rules and procedures to be followed by a funeral director licensed by TFSC in executing his/her responsibility to secure the required data and file the completed death record,

(C) establish rules or policies to determine when a local registrar may accept the filing of a death record by a funeral director or the funeral director's designee and the purposes for which each record may be used, including the filing and uses of a delayed death certificate, and

(D) enforce the provisions of the Health and Safety Code (Code), Chapter 193, in accordance with Chapter 195 of the code relating to criminal penalties for violations of laws relating to vital statistics. These laws include Chapters 191, 192, and 193 of the code and rules adopted thereunder. If the state registrar knows or suspects that a funeral director or a funeral establishment has violated the provisions of §195.003 or other provisions of Title 3 of the code, he or she shall report the violation to the appropriate district or county attorney for prosecution

(2) The Texas Funeral Service Commission (TFSC) shall have primary responsibility for the enforcement of the laws, rules, and policies governing the licensing

of funeral directors and funeral establishments. Except as may be otherwise provided by law, the TFSC has authority:

(A) to inspect a funeral establishment for violations of Chapter 193 of the code, and

(B) after a hearing in accordance with Texas Civil Statutes, Article 4582b, to reprimand, assess an administrative penalty, revoke, suspend, or probate the suspension of a license, impose any combination of the sanctions against a licensed funeral director or funeral establishment if the licensee has violated Chapter 193 of the Code;

(3) Referral, Investigation, and Resolution of Complaints

(A) If the department receives a complaint that alleges conduct by a funeral director or a funeral establishment that constitutes possible violations of Texas Civil Statutes, Article 4582b or the rules adopted by TFSC under authority of Article 4582b, the department shall immediately refer the complaint to the TFSC for investigation and disposition, however, if the complaint describes conduct by any person or entity licensed under Article 4582b that constitute possible violations of Chapters 193 and 195 of the Code, the department shall retain jurisdiction over the subject matter of the complaint, investigate the complaint, and if valid, shall immediately file a complaint with TFSC.

(B) If TFSC receives a complaint that alleges conduct by any person that constitutes possible violations of Title 3 of the code, TFSC shall immediately refer the complaint to the department for investigation and disposition.

(C) If either agency receives a complaint that alleges facts that constitute a violation of any other law, the complaint shall be referred to the appropriate state administrative agency or state or local law enforcement agency.

(D) Each agency shall appoint at least one person to an interagency team that will meet at least biannually and at that time review each unresolved complaint that affects the agencies jointly.

(i) If the complaint has not been referred for investigation and resolution, the team will refer the complaint to the department, TFSC, or other appropriate state administrative or law enforcement agency, including the State Board of Medical Examiners, or local law enforcement agency.

(ii) If the department and the TFSC determine that a complaint has been incorrectly referred, they will refer the complaint appropriately.

(E) To the extent allowed by law, each agency shall cooperate and assist the other in the investigation and resolution of complaints. The following actions may be taken where indicated in the other's enforcement actions.

(i) Either agency may request the assistance of the other in the investigation of a complaint.

(ii) Each agency may share information obtained during the complaint investigation with the other agency when the subject matter of the complaint affects both agencies.

(iii) Any information obtained by the TSFC as a result of a complaint investigation is not subject to public disclosure under the Government Code, §552.101, by virtue of Texas Civil Statutes, Article 4582b, §6.D.d

(iv) Each agency shall make its personnel available to testify in an administrative or judicial proceeding brought on behalf of the other agency, when the personnel has knowledge of information that is material to the subject matter of the proceeding.

(e) Effective date. This section shall become effective on August 1, 1994. The MOU may be amended at any time upon mutual agreement of the agencies and the amendments shall be effective as to each agency upon the effective date of the respective amendments to the rules.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439785

Susan K. Steeg
General Counsel
Texas Department of
Health

Proposed date of adoption: July 22, 1994

For further information, please call: (512) 458-7692

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Chapter 289. Radiation Control
Texas Regulations for the
Control of Radiation

• 25 TAC §289.121

The Texas Department of Health (department) proposes an amendment to §289.121, concerning the control of radiation. Section 289.121 adopts by reference Part 41 of the Texas Regulations for Control of Radiation (TRCR) titled "Licensing of Radioactive Mate-

rial." The amendment allows licensees who process and prepare radiopharmaceuticals for human use to deviate from instructions accompanying the radioactive material if such processing and preparation is done according to procedures approved by the department or according to the provisions of the practice of pharmacy as recognized by the Texas State Board of Pharmacy. The amendment also identifies training and experience requirements for a nuclear pharmacist

Bill Harris, Chief of Staff Services for the Environmental and Consumer Health Association, has determined that for each year of the first five-year period that the section will be in effect there will be no fiscal implications to state or local government as a result of enforcing or administering the section as proposed.

Ruth E. McBurney, C.H.P., director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, has determined that for each year of the first five years the section is in effect, the public health benefit anticipated as a result of enforcing the section will be to ensure appropriate and adequate regulatory control of the use of radioactive materials in the preparation of radiopharmaceuticals. The amendment also provides for the use of improved technologies in the preparation of radiopharmaceuticals. There may be a slight cost savings for individuals and small businesses required to comply with the section as proposed since it allows the use of improved and, in some cases, cost-saving technologies in radiopharmaceutical preparation.

No impact is anticipated on local employment as a result of implementing this section.

Comments on the proposals may be presented in writing to Ruth E. McBurney, C.H.P., Director, Division of Licensing, Registration and Standards, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189, (512) 834-6688. Public comments will be accepted for 30 days following publication of these proposed amendments in the *Texas Register*. In addition, a public hearing will be held at 9:00 a.m., Wednesday, June 1, 1994, in conference room N-218, Texas Department of Health, Bureau of Radiation Control, located at The Exchange Building, 8407 Wall Street, Austin, Texas.

The amendment is proposed under the Health and Safety Code, Chapter 401, which provides the Board of Health with the authority to adopt rules and guidelines relating to the control of radiation; and §12.001 which provides the Board of Health with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§289.121. *Licensing of Radioactive Material.*

(a) The Texas Department of Health adopts by reference Part 41, "Licensing of Radioactive Material" of the department's document titled Texas Regulations for Control of Radiation, as amended in September, 1994 [September, 1993].

(b) (No change.)

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

Issued in Austin, Texas, on April 25, 1994

TRD-9439786

Susan K. Steeg
General Counsel
Texas Department of
Health

Proposed date of adoption July 22, 1994

For further information, please call (512) 458-7236

◆ ◆ ◆
Chapter 295. Occupational
Health

Texas Asbestos Health Protec-
tion

• 25 TAC §§295.31-295.56,
295.58-295.62, 295.64, 295.65,
295.67-295.71

The Texas Department of Health (department) proposes amendments to §§295.31-295.40, 295.42-295.52, 295.54-295.56, 295.58-295.62, 295.64, 295.65, and 295.67-295.71, and new §§295.41 and 295.53 concerning the Texas Asbestos Health Protection Rules (TAHPR)

The proposed amendments and new sections include new requirements for licensing; a new license category, a state accreditation examination, new requirements for asbestos operations; new training requirements in compliance with the amended Model Accreditation Plan, and implements provisions in House Bill 1680, including a fee for notifications, and House Bill 1826, 73rd Legislature, 1993 which amended Texas Civil Statutes, Article 4477-3a, §12 (Texas Asbestos Health Protection Act) to provide an exemption from certain provisions for cities.

Jerry Lauderdale, director, Division of Occupational Health, has determined that for each year of the first five-year period the new sections are in effect, there will be fiscal implications as a result of administering the rules as proposed. The effect on State government will be an estimated increase in revenue to the state of approximately \$250,000 per year as a result of proposed fee increases. It is estimated that costs to the state to administer the new provisions will equal to the estimated fee increases. The estimated impact on local government will be \$100,000 per year in payment of increased fees. It is also estimated that there will be a reduction in costs to cities of \$250,000 per year as a result of new provisions affecting cities only.

Mr. Lauderdale also has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections will be an estimated savings of \$1,000,000 each year as a result of the transfer of asbestos programs from the Texas Natural Resource Conservation Commission to the Texas Department of Health. The savings result from

greater efficiency of inspection and enforcement functions. The cost per employee for small business is estimated to be the same as the cost per employee for large businesses, since notification and licensing fees would be the same if calculated on a per employee basis (about \$30 per employee)

Comments on the proposed new sections and the amendments may be directed to Mr. Jerry Lauderdale, Director, Division of Occupational Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 834-6610, or (800) 572-5548. Mr. Lauderdale will accept comments for 30 days after publication of the proposed revised rules in the *Texas Register*. In addition public hearings will be held at the following times and places: 9:00 a.m., Monday, May 23, 1994, Texas Department of Health complex at 1100 West 49th Street, Room K100, Austin, 9:00 a.m., Wednesday, May 25, 1994, Texas at the University of Texas at Arlington, Lone Star Auditorium in the Activities Building, Arlington; and 9:00 a.m., Friday, May 27, 1994, Texas Department of Health Region 6, 10500 Forum Place, Houston. Individuals with disabilities needing special assistance please contact either Todd Wingler or Don Willhouse at (800) 572-5548 at least three working days prior to the meeting so that appropriate arrangements can be made. The hearing impaired may contact Richard Butler at T.D.D. (512) 458-7708.

The amendments and new sections of the rules affect and are proposed under Texas Civil Statutes, Article 4477-3a, §12, which provides the Board of Health (board) with the authority to adopt rules covering asbestos removal, encapsulation or enclosure, including licensing and regulation, Senate Bill 1341 and House Bill 79, 72nd Legislature, 1991, House Bill 1680 and House Bill 1826, 73rd Legislature, 1993, which amended Article 4477-3a; and Health and Safety Code, §12.001, which provides the board with authority to adopt rules to implement every duty imposed by law on the board, the department, and the commissioner of health.

§295.31. General Provisions.

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

(c) Scope

(1) For the purposes of the Texas Asbestos Health Protection Act:

(A) Rules application.

These sections apply to all buildings which are subject to public occupancy, or to which the general public has access, and to all persons [individuals or organizations] disturbing, removing, encapsulating, or enclosing asbestos within public buildings for any purpose, including repair, renovation, dismantling, demolition, installations, or maintenance operations, or any other activity that may involve the disturbance or removal of asbestos-containing material (ACM) whether intentional or unintentional. Also included are the qualifications for licensure [accreditation] of persons

[these individuals and organizations], and requirements for compliance with these sections and all applicable standards of the United States Environmental Protection Agency and the United States Occupational Safety and Health Administration.

(B)[(d)] Exclusions. Industrial or manufacturing facilities, in [to those] which access is controlled and limited principally to employees therein because of processes or functions dangerous to human health and safety are excluded from coverage by [of] these rules except as noted in subsection (c)(2) of this section [sections]. Private residences, federal buildings, military installations, and apartment buildings with no more than four dwelling units are also excluded

(2) For the purposes of Federal National Emission Standards for Hazardous Air Pollutants (NESHAP) enforcement only: §§295.32; 295.34(a), (b)(1)-(3) and (d); 295.61; 295.67-68; 295.70; and 295.71 of this title (relating to Texas Asbestos Health Protection) apply to all facilities.

(d)[(e)] Severability. Should any section or subsection in this chapter [these sections] be found to be void for any reason, such finding shall not affect all other sections

(e) License possession requirements. Anyone engaged in asbestos work must provide proof of a current license to any inspecting official from the Texas Department of Health (department), to an employer, or to a prospective employer upon request. All licensed individuals must have the Identification Card issued by the department on the work site at all times while engaged in any asbestos related activity. For individuals, this is the only proof of a valid license.

[(f) Implementation Upon adoption, the department will receive applications and begin issuing licenses. As of January 1, 1993, the department shall enforce the licensing and registration requirements of these sections. Existing licenses shall be valid until they expire, at which time they must be renewed under these sections. Workers registered before January 1, 1993, must renew their registration in 1993 in the month shown on their original registration certificate, and annually thereafter.]

§295.32 Definitions. The following words and terms, when used with these sections, shall have the following meaning, unless the context clearly indicates otherwise.

Asbestos-containing material (ACM)-Materials or products that contain more than one percent (1%) of any kind or combination of [mineral] asbestos, as

determined by Environmental Protection Agency (EPA) recommended methods as listed in 40 Code of Federal Regulations (CFR), Part 763, Subpart F and 40 CFR 763, Subpart E, Appendix A. This means any one material component of a structure. Floor tile analyzed by Polarized-light Microscopy (PLM), which is found to contain one percent (1%) or less of asbestos shall be analyzed by Transmission Electron Microscopy (TEM).

Asbestos abatement activity-Asbestos abatement, [or] any on-site preparations, [or] clean-up related to the abatement, contracting for, or bidding for asbestos work.

Asbestos abatement contractor-A person who undertakes to perform asbestos removal, enclosure, or encapsulation for others under contract or other agreement, or who bids to undertake asbestos activities.

Asbestos-containing waste material-Includes mill tailings or any waste that contains commercial asbestos and is generated by a source subject to the provisions of 40 CFR, Part 61, Subpart M. This term includes filters from control devices, friable asbestos waste material, and bags or other similar packaging contaminated with asbestos. As applied to demolition and renovation operations, this term also includes regulated asbestos-containing materials, and materials contaminated with asbestos, including disposable equipment and clothing.

Asbestos-related activity-The disturbance (whether intentional or unintentional), removal, encapsulation, or enclosure of asbestos, including preparations or final clearance, the performance of asbestos surveys, the development of management plans and response actions, asbestos project design, the collection or analysis of asbestos samples, monitoring for airborne asbestos, bidding for a contract for any of these activities, or any other activity required to be licensed under the Texas Asbestos Health Protection Act.

Asbestos survey-An [A comprehensive] inspection of a building or facility to determine the location, quantity, and condition of asbestos-containing material (ACM) therein by taking samples for analysis and by visual inspection.

Building owner-The owner of record of any [public] building [or the agent for operations management thereof, under written contract or similar agreement] or any person who exercises control over a building to the extent that said person contracts for or permits renovation to or demolition of said building.

Commercial asbestos-Any material containing asbestos that is extracted from ore and has value because of its asbestos content (NESHAP definition, 1990).

Containment-A portion of the regulated area that has been sealed and

placed under negative air pressure with high-efficiency particulate air-filter (HEPA) filtered negative air machines.

Designated person—The individual designated under Asbestos Hazard Emergency Response Act (AHERA) to oversee all asbestos activities to include compliance with all laws, regulations, and rules.

Enclosure—The construction of an airtight, impermeable, semi-permanent barrier surrounding asbestos to prevent the release of asbestos fibers into the air.

Environmental Protection Agency (EPA) Regulations—Regulations found in 40 Code of Federal Regulations (CFR).

Facility—Any institutional, commercial, public, industrial or residential structure, installation or building (including any structure, installation, or building containing condominiums or individual dwelling units operated as a residential cooperative, but excluding residential buildings having four or fewer dwelling units); any ship; and any active or inactive disposal site. Any structure, installation or building that was previously subject to 40 CFR, §61.141, Subpart M is not excluded, regardless of its current use or function.

Independent third-party monitor—A person retained to collect area air samples to be analyzed by and for the owner of the building or facility being abated. The person must not be employed by the contractor to analyze any area samples collected during the abatement projects or the clearance samples.

Installation—A building or structure, or group of buildings or structures, at a single demolition or renovation site controlled by the same owner or operator (NESHAP definition, 1990).

License—Any license or registration issued under this chapter.

Licensee—A person who meets all qualifications and has been issued a license or registration by the Texas Department of Health in accordance with these sections.

Operations and maintenance (O&M) contractor—A person who holds an Asbestos Operations and Maintenance Contractor (Restricted) license for general asbestos O&M work in a public building for himself or herself, as a building owner or agent, or as a contractor, if working for others, and follows the guidance contained in the EPA "Green Book". A contractor working for others must have the specified insurance for an abatement contractor.

OSHA—The Occupational Safety and Health Administration of the United States Department of Labor (29 CFR, §1926.58).

OSHA Regulations—Regulations found in 29 Code of Federal Regulations.

PEL—Permissible Exposure Limit as defined by OSHA regulations (29 CFR, §1926.58).

Person—A person is [defined in the law as]:

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

Public building—A building used or to be used for purposes that provide for public access or occupancy, including prisons and similar buildings. The term includes any building during a period of vacancy, including the period during preparations prior to actual demolition. The term does not include:

(A) (No change.)

(B) a federal building or installation (civilian or military).

(C)-(E) (No change.)

(F) a building, facility, or any portion of which has been determined to be structurally unsound and in danger of imminent collapse by a Professional Engineer.

Start date—The date on which the removal of asbestos begins or any other asbestos related activity begins, such as site preparation, that would break up, dislodge, or similarly disturb asbestos.

Stop date (completion date)—The date upon which visual and/or air monitoring clearance of asbestos activities has been completed or containment materials have been removed.

Third-party air monitor—Party contracted by the owner to perform the required air monitoring; this person may not be in the employment of or contracted by the abatement contractor for the project being monitored.

Working days—Monday through Friday excluding [including] holidays which fall on those days.

§295.33 Adoption by Reference of Federal Standards.

(a) Adoption by reference. The Texas Department of Health (department) adopts by reference the following federal requirements in the Code of Federal Regulations (CFR), as amended:

(1) 40 CFR, Part 61, Subpart M, titled, "National Emissions Standards for Hazardous Air Pollutants" (NESHAP), November 20, 1990;

(2) 40 CFR, Part 763, Subpart G, §§763.120-763.126, and Appendices A, C, D, and E, titled, "Asbestos Abatement Projects: Worker Protection Rule", February 25, 1987;

(3) 40 CFR, Part 763, Subpart E, §§763.80-763.99, and Appendices A and B, titled, "Asbestos-Containing Materials in Schools" (AHERA rules), July 1, 1992;

(4) 40 CFR, Part 763, Subpart E, Appendix C, titled, "Model Accreditation Plan", February 3, 1994;

(5) 40 CFR, Part 763, Subpart E, Appendix B, titled, "Work Practices and Engineering Controls for Small-Scale, Short-Durations Operations Maintenance and Repair (O&M) Activities Involving ACM", July 1, 1992;

(6) 40 CFR, Part 763, Subpart E, Appendix D, titled, "Transport and Disposal of Asbestos Waste", July 1, 1992;

(7) 40 CFR, Part 763, Subpart F, Appendix A, Section 1, titled, "Polarized Light Microscopy", July 1, 1992;

(8) 29 CFR, §1926.58, titled, "Occupational Exposure to Asbestos, Tremolite, Anthophyllite, and Actinolite", July 20, 1990;

(9) 29 CFR, §1926.58, Appendix G, titled "Work Practices and Engineering Controls for Small-Scale, Short-Duration Asbestos Renovation and Maintenance Activities", July 20, 1990; [and]

(10) 29 CFR, §1910.134, titled, "Occupational Health Standards for A Respiratory Protection Program", July 20, 1990;

(11) 40 CFR, Part 763, Subpart E, Appendix A, titled, "Transmission Electron Microscopy Analytical Methods", July 1, 1992;

(12) 49 CFR, Chapter 1, Part 172, Appendix A, Subchapter C, October 1, 1992; and

(13) 49 CFR, Chapter 1, Part 172, Appendix A, Subpart H, October 1, 1992.

(b) Availability. Copies of the documents in subsection (a) of this section are available for review at any department-licensed training provider or the Texas Department of Health, Division of Occupational Health, Austin, Texas, and may be reviewed during normal business hours

(c) (No change.)

§295.34 Asbestos Management in Facilities and Public Buildings.

(a) (No change.)

(b) Statement of responsibility. The building owner retains the primary responsibility for the presence, condition, disturbance, renovation, demolition, and disposal of any asbestos encountered in the construction, operations, maintenance, or furnishing of that building, including:

(1) the responsibility for the periods of building vacancy, and for all preparations prior to actual demolition; all regulated asbestos-containing material

(RACM) must be removed prior to demolition in accordance with the National Emission Standards for Hazardous Air Pollutants (NESHAP) or comply with §295. 60 of this title (relating to Operations: Abatement Practices and Procedures) and all provisions of 40 Code of Federal Regulations (CFR), Part 61, Subpart M;

(2) the obligation to inform those who enter the building for purposes of construction, maintenance, installation, repairs, etc., of the presence and location of asbestos that could be disturbed by those activities, and to arrange for proper handling of any asbestos that would be disturbed or dislodged by such activity; [and]

(3) the responsibility for periods when the building is under management by others [, including lessees or agents, does not diminish the responsibility of the building owner for the asbestos or any activity affecting asbestos in that building.] ; and

(4) the responsibility for assuring that his/her contracts with licensees provide for workers compensation insurance as required under these sections.

(c) Conditions requiring a mandatory asbestos survey. Prior to any renovation or dismantling within a public building, including preparations for partial or complete demolition, as required by 40 CFR, §61.145 Environmental Protection Agency (EPA), building owners must have the building surveyed by a licensed asbestos inspector. The work area and all immediately surrounding areas must be surveyed prior to partial renovations or demolition. This survey must be produced upon request by the Texas Department of Health (department).

(d) Asbestos control and abatement. A building owner has the following options for managing the asbestos found in his/her buildings:

(1) (No change.)

(2) Building owners may hire or retain a licensed [an] asbestos abatement contractor or a licensed asbestos Operations and Maintenance (O&M) [(O&M)] contractor to conduct small-scale, short-duration work activities or cleanup affecting asbestos. This requirement is mandatory for asbestos activities in conjunction with work performed by a utility contractor (such as electrical, mechanical, plumbing, etc.) installing new or replacing old service lines and structures, unless the utility contractor is licensed as an O&M contractor (restricted) or the building owner performs the asbestos activity work, as in paragraph (3) of this subsection.

(3) Building owners may conduct asbestos O&M activities with their own employees for their own account if they obtain an asbestos operations and maintenance contractor (restricted) license, according to §295.43 of this title (relating to Licensure: Asbestos Operations and Maintenance Contractor (Restricted)), have a licensed supervisor according to §295.44 of this title (relating to Licensure: Asbestos Operations and Maintenance Supervisor (Restricted)), and have registered workers according to §295.42 of this title (relating to Registration: Asbestos Abatement Workers);

(4) Building owners may conduct asbestos abatement projects, including asbestos O&M activities, if they obtain an asbestos abatement contractor's license, as set forth in §295.45 of this title (relating to Licensure: Asbestos Abatement Contractor);

(5) Building owners may inspect their own facilities if they are licensed as an inspector in accordance with §295.50 of this title (relating to Licensure: Asbestos Inspector) and may perform management plans if licensed as a management planner in accordance with §295.51 of this title (relating to Licensure: Individual Asbestos Management Planner). They may not perform their own laboratory analysis.

(e) Prohibition. The owner of a public building and any other person who contracts with or otherwise permits any person [individual or organization] without appropriate valid license, registration, accreditation, or approved exemption to perform any asbestos-related activity [in that building] is subject to administrative or civil penalty under the Texas Asbestos Health Protection Act (Act), not to exceed \$10,000 a day for each violation.

(f) Mandatory notification. Notification is required under the following conditions.

(1) Notification is required for any demolition of a facility whether or not asbestos has been identified.

(2) A notification [of intent] to abate any amount of asbestos must be submitted to the Texas Department of Health (department) by the building owner [or his designated agent] at least ten working days (not calendar days) prior to the start date of the abatement project, disturbance, renovation, or demolition in accordance with [as described in] §295.61 of this title (relating to Operations: Notifications) All blanks on the notifications form are to be completed; if not applicable it must be so stated.

(g) (No change)

[(h) Requirement for management plan Where asbestos is found in a public

building, as a result of an inspection performed under subsection (i) of this section, a written management plan must be developed by a licensed asbestos management planner that identifies, locates, and assesses the condition of that asbestos. The plan shall include a schedule to periodically reinspect for changes in the condition of the materials containing asbestos and for conducting operations and maintenance activities within the building so as to minimize the potential for release of asbestos fibers. Copies of the plan shall be submitted to the Department and shall be on file with the owner, management, and any employee in charge of building operations and maintenance.]

(h)[(i)] Requirement for inspection and management plan. [Requirement for asbestos in poor condition.] If, in the opinion of the department following a site inspection of a public building, there appears to be a danger or potential danger from asbestos materials in poor condition to the occupants of a building, workers in a building, or the general public, the department shall require the building owner or authorized representative to complete an immediate survey and management plan for asbestos by a licensed asbestos inspector and licensed management planner and to send a copy of the management plan for review and approval to the department. Copies of the plan shall be on file with the owner or management agency, and in the possession of any employee in charge of building operations and maintenance.

§295.35. Licensing and Registration: Conditions.

(a) Licensing requirement. A person must be appropriately licensed or registered in compliance with these sections to engage in asbestos abatement or any asbestos-related activity within the scope of these sections. Individuals not eligible for employment in the United States will not be licensed or registered. Contractors (i.e., electrical, mechanical, plumbing) who will disturb asbestos when installing new utility lines or structures shall be licensed as Operations and Maintenance (O&M) contractors (restricted) as a minimum.

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

(e) Condition of issuance. No license or [worker] registration issued under these sections may be sold, assigned, or transferred. Individual licenses (Identification (ID) Card issued by the department) must be present at the work site any time the individual is engaged in asbestos activities. ID Cards issued by the department are the property of the individual until they expire or are revoked by the department. Any cards which have been altered may be revoked.

(f) Responsibilities of licensees. Licensees who become aware of violations of these sections must report these violations within 24 hours to the department if the violations are not immediately corrected by the responsible party. A notice of violation reporting procedure developed by the department shall be posted at the entrance to the regulated area in accordance with §295.58(j) of this title (Relating to Operations: General Requirements).

(g) License application. Each license application must be complete. Documentation submitted for an application will be considered for that application only, regardless of any other applications submitted at the same time. All blanks on the application form are required to be completely filled in or the application will be deficient for lack of information.

(h) Penalties. Penalties for fraudulent applications for licenses, attempting to bribe, or threatening a state employee are as follows. It is a violation of criminal law to alter documents for the purpose of obtaining an asbestos license, to submit a fraudulent application for such a license, or to alter original documents in order to qualify for asbestos activities. It is also a violation to attempt to bribe a State employee to issue a license, to disregard an illegal activity, or to threaten an employee. The foregoing may be a second degree felony with a maximum penalty of 20 years in prison and a \$10,000 fine for each violation. Notices of violation and citations, state or federal, become a part of the licensing records for the individuals involved and must be reported with subsequent license applications.

(i) Examination. Each applicant for an individual license must take and pass an accreditation examination administered by the department in the category for which an individual wishes to be licensed. This requirement must be completed prior to applying for renewal of a license following the required initial examination or the tri-annual examination. For further information regarding the testing requirements, refer to §295.41 of this title (Relating to Licensure: State Accreditation Examination).

§295.36. Licensing and Registration: Exemptions; Emergency.

(a) Exemption [requirements]. Those who remove resilient floor-covering materials in public buildings are exempt from the licensing and registration requirements of these sections, provided that:

(1) (No change.)

(2) all those engaged in removal of resilient floor coverings shall have received training in an eight-hour course

which covers the elements described in the document titled, "Recommended Work Practices for the Removal of Resilient Floor Coverings," published by the Resilient Floor Covering Institute (RFCI) in 1990;

(3) employees of schools (kindergarten through 12th grade) who elect to use this exempt method must first complete the 16-hour custodial training, as required by federal regulations adopted under authority of the Asbestos Hazard Emergency Response Act of 1986 (AHERA). Possession of a valid worker registration or supervisor license eliminates the individual's need for the 16-hour training; [and]

(4) the actual removal of floor coverings and adhesive under this exemption is limited to the exempted methods of removal and must be conducted according to the work practices published for distribution by the [Resilient Floor Covering Institute] RFCI, or as directed by the commissioner of health[.]; and

(5) the asbestos activity permitted by the exemption is limited to the removal of resilient floor covering, and does not apply to any other asbestos-related activity, nor does the training or experience gained from such practices qualify for any other asbestos-related activity. The exemption is strictly limited to flooring materials maintained in a non-friable state. Floor tile analyzed by Polarized-light Microscopy, and found to contain one percent (1%) or less of asbestos shall be analyzed by Transmission Electron Microscopy. It is the goal to remove all asbestos-containing materials in one piece as much as possible and maintain it in a nonfriable state. Each tile is not to be broken more than five times on an average nor is vinyl floor covering to be broken into pieces smaller than 15 square inches on an average. RFCI guidelines are to be used, however, the Permissible exposure Limit (PEL) may not be exceeded. If these conditions existed prior to the start of the removal or become the case due to the removal, then the person removing the floor covering is required to be licensed.

(b) Notification required. The Texas Department of Health shall receive written notification [be notified by mail] at least ten working days prior to commencing any removal of floor coverings from public buildings permitted under the terms of this exemption, as required in §295.61 of this title (relating to Operations: Notifications) Telephone facsimile (FAX) is not acceptable.

[(c) Limitations of exemption. The asbestos activity permitted by the exemption under the Texas Asbestos Health Protection Act, §15A, (House Bill 79), relating to the removal of resilient floor covering, does not apply to any other asbestos-related activity, nor does the training or experience

gained from such practices qualify for any other asbestos-related activity. The exemption is strictly limited to flooring materials in a non-friable state.]

(c)[(d)] Failure to comply. Persons who intentionally fail to comply with subsection (a)(1)-(4) of this section are subject to a civil penalty of not more than \$5,000. Persons who fail to comply with notification requirements, or other applicable sections of the Texas Asbestos Health Protection Act (Act) or rules, are subject to administrative, civil, or criminal penalties as provided by the act

(d)[(e)] Abatement emergency. In an abatement emergency affecting public health or safety that results from a sudden, unexpected event that is not a planned renovation or demolition the department, on notification, may waive the requirement for a license. Call the servicing department regional office, environmental and consumer health division or (512) 834-6600 for consultation about emergencies.

§295.37 Licensing and Registration: Conflict of Interests.

(a) Independent third-party monitoring. Third-party area monitoring and project clearance monitoring for airborne concentrations of asbestos fibers during an abatement project shall be performed [done] by a person under contract to the building owner [retained] to collect samples by and for the owner of the public building or facility being abated. Such persons must not be employed or subcontracted by the contractor hired to conduct the asbestos abatement project, except that:

(1) this restriction in no way applies to personal samples taken to evaluate worker exposure, as required by the Occupational Health Safety Administration (OSHA) regulations, and

(2) an air monitoring technician providing the service for the contractor meeting his/her responsibilities under OSHA regulations must also be licensed to perform that function; and

(3)[(2)] those who are licensed to perform asbestos abatement for their own account in their buildings shall employ an independent [a third-party] monitor for the purpose of obtaining area monitoring and final clearance.

(b) Licensee conflict of interest. Any person licensed according to these sections to perform asbestos surveys, write management plans, or design asbestos abatement projects under a contract or other hire agreement shall not also engage in the removal of asbestos from those buildings or facilities, except for subsection (c) of this section. It is a conflict of interest for an instructor to train himself in order to

qualify for a license, or for a person to give himself/herself a physical in order to qualify for a license.

(c) **Municipalities exemption.** Municipalities are exempt from the conflict of interest requirement only for the purpose of retaining a licensed person who may perform asbestos inspections and surveys, write management plans, design abatement projects and abate asbestos from the same building or facility. This exemption does not include air monitoring which shall be performed by an independent third party.

§295.38. Licensing and Registration: Applications and Renewals.

(a) (No change.)

(b) **Inquiries.** Potential applicants who wish to discuss or obtain information concerning qualification requirements may do so by calling the department's Asbestos Programs Branch at (512) 834-6610 or (800) 572-5548.

(c) **Denials.** The department may deny an application for licensing, for the time periods specified below, to those [registration, or renewal to any applicant] who fail [fails] to meet the standards established by these sections, including, but not limited to:

(1) past history of substantial violations of these sections by the applicant and/or the applicant's employees or agents [as demonstrated by the department's issuance of administrative orders, court judgments, or similar actions by other federal or state agencies;]-three years;

(2) evidence that the applicant cannot be legally employed in the United States -90 days;

(3) fraud, misrepresentation, or deception in obtaining, attempting to obtain, or renewing a license or registration-three years;

(4) failure to submit the required information and/or documentation within 90 days of a written request by the department-90 days;

(5) failure to submit the required fee-90 days;

[(6) failure at any time to comply with the provisions of these sections;]

(6)[(7)] failure to maintain or to permit inspection of the records required of all licensees-one year;

(7)[(8)] employing or permitting an unauthorized person or individual to work on any asbestos project or operation-one year;

(8)[(9)] engaging in or attempting to engage in an asbestos-related activity without a valid license three years;

(9)[(10)] failure to comply with any rule adopted by the board or order issued by the department-three years;

(10)[(11)] failure to provide notice of an asbestos project or operation as required by these sections-two years;

(11)[(12)] conviction within the past five years of a felony or a misdemeanor related to conditions for which a person engaged in asbestos activities [(involving fraudulent activities relating to construction or the building trades in general)] -three years;

(12)[(13)] failure of a licensee to complete their responsibilities during an asbestos project or operation due to insufficient financial resources-three years;

(13) [(14)] failure to protect workers from asbestos exposures in excess of the current permissible exposure limit (PEL)-three years;

(14) [(15)] failure to prevent asbestos contamination of areas adjacent to the abatement area-three years;

(15)[(16)] failure to decontaminate any part of a facility or its environment, or any persons inadvertently contaminated with asbestos as a result of the persons' [their] actions while exercising their duties under these sections-three years; or

(16)[(17)] employing or permitting a qualified person to represent the company or firm applying for a license if the person already represents another company that is licensed, with the exception of instructors with licensed training providers-three years.

(d) **Administrative penalty.** In accordance with §295.70 of this title (relating to Compliance: Administrative Penalty) an administrative penalty may be assessed, for fraud or misrepresentation [deception] in obtaining, attempting to obtain, or renewing a license or registration.

(e) **Processing applications and renewals.**

(1) **Time periods.** Applications for licensure [as asbestos contractors, abatement supervisors, and abatement workers] shall be processed in accordance with the following time periods:

[(A) The first period is a] the time from the receipt of a written application to the date of issuance of a written notice [approving the application or] outlining the reasons why the application is unacceptable [The time period for each application type] is 30 [90] days [for the initial contractor or supervisor license; 30 days from the renewal of contractor or supervisor license; and 30 days for the abate-

ment worker certificate.]; the license will be issued within 60 days of the applicant meeting all the licensing requirements and receipt of all acceptable documents at the department.

[(B) The second period is a time from receipt of the last item necessary to complete the application to the date of issuance of written notice approving or denying approval of the application. The time period for each application type is 60 days for the initial contractor or supervisor license; 15 days for renewal of the contractor or supervisor license; and 30 days for the abatement worker certification.]

(2) **Reimbursement of fees.** Initial application or renewal fees will be refunded only when the department does not process a completed application in the time period specified, or when fee amounts are in excess of the correct fee amount or there is a double payment [incorrect or submitted for the wrong purpose]. Otherwise, fees for applications and renewals are not eligible for refund.

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

(3) **Appeal.** If the request for full reimbursement authorized by this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner by writing to the administrator, asbestos licensing program, the designated representative of the commissioner, requesting [that he request] full reimbursement of all filing fees paid because his/her application was not processed within the adopted time period. The program administrator shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will determine the final action and provide written notification of his/her decision to the applicant and the program administrator.

(4) **Contested case hearing.** If at any time during the processing of the [permit] application, a contested case proceeding arises [hearing becomes involved], the time periods in the department's formal hearing procedures §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearings) are [is] applicable.

(f) **Renewal notices.** At least 30 days before a license expires the department, as a service to the licensee, shall send a renewal notice to the licensee or registrant, by first-class mail to the last known address of the licensee[, a renewal notice that states:]. It remains the responsibility of the licensee to keep the department informed of their current address, change of address, or change of employer

for all license categories, and to take action to renew their certificate whether or not they have received the notification from the department. The renewal notice will state:

(1) the type of license requiring renewal; [the date on which the current license or registration expires;]

(2) the time period allowed for renewal; and [the date by which the renewal application must be received by the department for the renewal to be issued and mailed before the license or registration expires; and]

(3) (No change.)

(g) Renewal requirements No sooner than 60 days before the license or registration expires, it may be renewed for an additional one year term providing that the licensee or worker:

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

(3) submits to the department a renewal application on the prescribed form along with all required documentation;

(4) completes successfully the requirements for renewal and examination, if required; [and]

(5) has complied with all final orders resulting from any violations of these sections; and [.]

(6) submits the required current training certificates. Training must be more recent than used for the previous license application.

(h) Prohibition. To [It is prohibited to] practice with lapsed licenses and registrations is prohibited, regardless of when the renewal application is received. Also, licenses or registrations which have lapsed for a period exceeding 180 days cannot otherwise be renewed. A new application subject to current qualifications is required.

(i) Replacements. A licensee or registrant may obtain [request] a replacement certificate by submitting such request in writing along with the reissuance fee of \$20 [completion of an appropriate application. The fee for reissuance is \$20]

(j) (No change.)

§295.39. Licensing and Registration Out-of-State Applicants.

(a) Terms of reciprocity. Persons [Individuals or organizations] may enter the state for purposes of asbestos abatement or other asbestos-related activity under the Texas Asbestos Health Protection Act (Act) provided [that] they are licensed according to the terms of these sections prior to soliciting business or commencing such activities.

(b) Applicant status All persons residing in other states, applying for any category of license, [Contractors based in other states seeking an initial or renewal license under these sections] must comply with all licensing requirements which would be imposed on a Texas resident [contractor] seeking licensure in the out-of-state person's [contractor's] base state

(c) (No change)

(d) Compulsory training. All out-of-state licensees and registrants or Texas resident applicants who have received all of their training out-of-state must complete a minimum of three hours training by a department licensed training provider on Texas law and regulations affecting asbestos prior to applying for licenses or commencement of any such activity. Licensee organizations must have at least one officer complete this training [This requirement shall be enforced as of January 1, 1993.]

(e) Required documents To do business in Texas, an out-of-state applicant corporation or other business entity applicant must.

(1)-(2) (No change)

(3) submit a certificate of insurance for liability coverage written by a Texas-approved carrier if the applicant is an asbestos abatement contractor, asbestos consultant, asbestos inspector, asbestos laboratory, or asbestos transporter performing work for hire as required by §295.40 (relating to Licensing and Registration Insurance Requirements), and

(4) provide workers' compensation insurance issued by a company authorized to do business in Texas and written on the Texas form, or evidence of self-insurance, when such insurance is required by contract specification or other agreement. Self-insurance is allowed for governmental agencies and for persons who meet the self-insurance requirements under the insurance laws of Texas and receive approval from the Texas Department of Insurance or Texas Workers' Compensation Commission. Proof of approval by the appropriate authority is required for nongovernmental persons.

§295.40 Licensing and Registration Insurance Requirements Persons required to have insurance must obtain policies for required coverage as specified in these sections, and in the amounts specified, which meet the following requirements

(1) (No change)

(2) The certificate of insurance must be complete, including all applicable coverage forms and endorsements, and must name the Texas Department of Health, Division of Occupational Health, as a certifi-

cate holder with at least a ten day-notice of cancellation; a Form #CG02051185 may be requested from the insurance provider and submitted with the application to the Texas Department of Health (department).

(3) (No change.)

(4) In the event of policy cancellation or expiration, the policy shall promptly be replaced or renewed without any lapse in coverage. A certificate of the renewal policy must be provided to the department upon receipt by the licensee. In no event shall a licensee be uninsured for more than 30 days or fail to have the required coverage at the time of engaging in asbestos activities. Failure to become reinsured when required may result in the imposition of an administrative penalty and/or revocation of the license.

§295.41 Licensure: State Accreditation Examination

(a) General. The Texas Department of Health (department) shall administer an examination to persons seeking asbestos accreditation and who have successfully completed the required training from a training provider licensed or approved by the department. All persons seeking accreditation in a specific category shall pass the examination for that category. For example, a person seeking accreditation as an asbestos inspector must pass the department's inspector accreditation examination. Persons receiving their training from training providers outside of Texas must complete the approved three-hour Texas law course prior to applying for the accreditation exam

(b) Testing requirements. Beginning September 1, 1994, an applicant for accreditation will be required to pass an initial state examination and a re-examination every three years thereafter. Persons licensed prior to September 1, 1994, shall take and pass the examination prior to September 1, 1997. Failure to pass the examination will be cause for denial of license renewal. The application for the examination and the required fee shall be included with the initial license application form. Examinations shall be based upon the requirements for the license category for which a person has applied. The applicant shall be required to take the test within 60 days of applying for that license. If they fail either the initial examination or re-examination, they shall be required to take another examination within 30 days, as specified in subsection (f) of this section for re-examination guidance. The examination will cover the topics included in the training course for that license category. Out-of-state applicants must take the test for their respective category following completion of

the required three-hour course in Texas law. Misconduct or dishonesty during the examination, or an individual taking the examination other than the person scheduled, will constitute grounds for the issuance of a failing grade and revocation or denial of license. Failure to pass the accreditation examination prior to license renewal shall constitute grounds for revoking or denying a license.

(c) Fees. There will be an examination fee of \$25 for the initial test or for any reexamination at department administered test locations. A fee of \$50 shall be paid for examinations to be administered by the department at locations and times other than the published schedule. A request to the department must be submitted in sufficient time to permit scheduling and administration of the examination. Fees must be paid to the department prior to the taking of the examination. The required fee may not be paid at the examination location, but must be mailed to the department.

(d) Scheduling and registration. Annually, a schedule of examination dates and locations will be published by the department, listing the schedule for the twice-monthly testing in Austin, Dallas, Houston, Midland and other cities as a system to administer the examination is developed. Each month, make-up examinations will be available in Austin, Texas at a location and time specified in the published schedule. Registration must be submitted by mail or phone and must be received by the department no later than five days prior to the desired test date. Entrance into the test site will be allowed only upon presentation of a valid photo ID card from a training provider. Schedules will be provided by the training providers as a part of their instruction. Training providers should ensure that special requirements for tests are annotated on the application form. For example, if an applicant is unable to read, needs to have the test in Spanish, or any other special requirements must be listed in order to provide the applicant the greatest opportunity. Additional assistance is available by calling the department's asbestos training section. Companies with 30 or more persons to be tested may call the department to arrange an additional examination date.

(e) Grading and reporting of examination scores. A grade of 70% must be achieved in order to pass the examination. Scores will be reported only by mail, the notification will, if appropriate, contain information regarding re-examination.

(f) Re-examination. An individual may take only two re-examinations after failing the initial examination. Following the third failure, the applicant must repeat the initial training course required for the license for which he/she is applying, submit a new application for the department test,

and provide a copy of the training certificate for the additional training. Re-examination questions will be different from the initial examination.

§295.42. Registration: Asbestos Abatement Workers.

(a) (No change.)

(b) Fee. The fee for an initial application and for the [for an] annual renewal of registration of an asbestos abatement worker shall be \$30.

(c) (No change.)

(d) Annual renewal. Annual renewal may be accomplished by submitting the following documentation: [Asbestos workers who were registered on or before the effective date of this rule, may apply for annual renewal of their registration by completing annual worker refresher training and medical re-examination. The renewal must be issued no later the month shown on the original certificate during the year 1993 and annually thereafter.]

(1) current workers refresher training certificate;

(2) current physicians written statement on the specified Texas Department of Health (department) form;

(3) current department accreditation test score (if required); and

(4) the required license fee.

(e) Qualifications. Applicants for registration as asbestos abatement workers shall provide [submit evidence of qualifications with his/her applications which shall include].

(1) a certificate of training from a training provider approved by or acceptable to the department indicating successful completion within the past 12 months of the approved training course, but not used for a previous license application, for abatement workers or the annual refresher training course, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses). Evidence of successful completion of the contractor/supervisor course may be substituted for the initial worker course.

(2) an acceptable written opinion of a physical examination of the applicant within the past 12 months, but not used for a previous license application, that was performed by a physician in accordance with Occupational Safety and Health Administration of the United States Department of Labor (OSHA) regulations in 29 Code of Federal Regulations (CFR), §1926.58(m), or Environmental Protection Agency (EPA) regulations in 40 CFR, §763.121(m) [Part 763, Subpart G(m)], relating to medical surveillance. This opinion

must be submitted on the Texas Department of Health (department) "Physicians Written Statement" form only, must be signed by the doctor and include certification of the following elements:

(A) (No change)

(B) if applicant is employed, the employer must have provided, and a review made of, the description of the employee's duties as they relate to asbestos exposure, the anticipated exposure level, the personal protective and respiratory equipment to be utilized by the employee, and information from previous medical examinations of the affected employee that is not otherwise available to the physician.

(C)-(F) (No change)

(3) a copy of the wallet-size photo-identification card from the training course, as required from all trainers in Texas in accordance with §295.65 (f)(2) of this title (relating to Training: Approval of Training Courses). [If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; [and]

(4) a one-inch by one-inch photograph of the face; and [.]

(5) proof of successfully passing the department examination for asbestos workers.

(f)-(g) (No change)

§295.43. Licensure: Asbestos Operations and Maintenance Contractor (Restricted)

(a) Licensing requirement. Persons must be licensed as asbestos abatement contractors or as asbestos operations and maintenance (O&M) contractors (restricted) to conduct building O&M in the presence of asbestos within any public building. Building owners that would have their own employees perform such activities for their buildings shall be licensed according to this section. Such licenses are valid for one year and shall be renewed on the expiration date.

(b)-(d) (No change)

(e) Qualifications. Applicants for licensing as asbestos operations and maintenance contractors shall provide [submit, as applicable]

(1) a certificate of training from a training provider approved by or accept-

able to the Texas Department of Health (department), indicating successful completion within the past 12 months of the approved training course, but not used for a previous license application, for asbestos abatement contractors and supervisors or the [continuing] annual refresher training, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses). An applicant organization shall designate at least one individual who will comply [corporate officer, general partner, or proprietor, according to the kind of organization, for the purpose of complying] with this training requirement. This person must be responsible for asbestos operations and compliance with all asbestos rules and regulations;

(2) a certificate of good standing, issued by the Texas State Comptroller's Office [state comptroller's office], stating that all franchise taxes due from the applicant have been paid;

(3) (No change.)

(4) workers' compensation insurance issued by a company authorized and licensed to issue workers compensation insurance in this state and written in the state on the Texas form or evidence of self-insurance, if workers compensation is required by the specifications or owner (see §295.43(e)(4) of this title (relating to Licensure: Asbestos Operations and Maintenance Contractor (Restricted) for additional information) ;

(5)-(14) (No change.)

(15) a list of inspections performed by other agencies; [and]

(16) copies of all citations issued; and[.]

(17) proof of successfully passing the department examination for asbestos abatement contractors and supervisors.

(f) Responsibilities. O&M contractors who obtain restricted licenses shall be responsible for:

(1) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements) and §295.59 of this title (relating to Operations: Operations and Maintenance Requirements) and with the plans and specifications for the asbestos activity being performed;

(2)-(9) (No change.)

(g) (No change.)

§295.44. Licensure: Asbestos Operations and Maintenance Supervisor (Restricted).

(a) Licensing requirement. Individuals employed by licensed operations

and maintenance (O&M) or abatement contractors to directly supervise personnel and work practices limited to the conduct of O&M activities affecting asbestos-containing materials (ACM) shall be licensed as asbestos O&M supervisors (restricted). Such licenses are valid for a period of one year, and shall be renewable.

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

(d) Qualifications. The applicant for an O&M supervisor (restricted) license shall provide [submit the following]:

(1) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department) indicating successful completion within the past 12 months of the approved training course, but not used for a previous license application, for abatement contractors and project supervisors, or the annual refresher training as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(2) [furnish] a physician's statement of the required physical examination submitted on the department "Physicians Written Statement" form only done within the past year, but not used for a previous license application, as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers);

(3) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). [If the training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their application may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; [and]

(4) a one-inch by one-inch photograph of the face; and[.]

(5) proof of successfully passing the department examination.

(e) (No change.)

(f) Restrictions and prohibitions. Licensing as an asbestos O&M supervisor is specifically restricted, as follows:

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

(3) The licensee shall not supervise full-scale asbestos abatement projects or act as a contractor.

(4) (No change.)

§295.45. Licensure: Asbestos Abatement Contractor.

(a) Licensing requirement. Persons must be licensed as asbestos abatement contractors in compliance with these sections to engage in asbestos abatement or removal in a public building. This requirement does not apply to the removal of asbestos samples taken during an inspection or survey by someone licensed to inspect.

(b) Licensee authorization. Asbestos abatement contractor licensees are specifically authorized to employ asbestos abatement supervisors and asbestos abatement workers who are currently licensed under these sections to carry out asbestos abatement or removal procedures. They may employ licensed operations and maintenance (O&M) supervisors for building O&M activities, or as workers. Licensees are cautioned to observe the prohibited acts in §295.37 of this title (relating to Licensing and Registration: Conflict of Interests).

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

(e) Qualifications. Applicants for licensing as asbestos abatement contractors shall provide [submit as applicable]:

(1) a certificate of training from a training provider approved by or acceptable to the department, indicating successful completion within the past 12 months of the approved training course, but not used for a previous license application, for asbestos abatement contractors and project supervisors or the continuing annual refresher training, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses). An applicant [organization] shall designate at least one individual [corporate officer, general partner, or proprietor, according to the kind of organization,] for the purpose of complying with this training requirement. This individual must be responsible for asbestos operations and compliance with all asbestos rules and regulations;

(2) a certificate of good standing, issued by the Texas State Comptroller's Office [state comptroller's office], stating that all franchise taxes due from the applicant have been paid;

(3)-(5) (No change.)

(6) workers' compensation insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance if workers compensation is required by the specifications or owner (see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings) for further guidance);

(7)-(16) (No change.)

(17) a list of inspections performed by other agencies; [and]

(18) copies of all citations issued ; and []

(19) **proof of successfully passing the department examination for asbestos contractors.**

(f) (No change.)

§295.46 *Licensure: Asbestos Abatement Supervisor.*

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

(d) Qualifications. Applicants for licensing as asbestos abatement supervisors are required to provide [submit]:

(1) work experience to qualify for an asbestos abatement supervisor license. verifiable written documentation must be provided of at least 90 days of legally qualifiable work experience as a trained and licensed worker performed over a period of not less than 12 months and within the past 24 months Qualifiable experience includes:

(A)-(I) (No change.)

(2) a certificate of training from a training provider approved by or acceptable to the Texas Department of Health (department) indicating successful completion within the past 12 months, but not used for a previous license application, of the approved course for abatement contractors and supervisors, or the current annual refresher training, as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) a physician's statement of the required physical examination done within the past year, but not used for a previous license application, as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the department "Physician's Written Statement" form only;

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses) [If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title, [and]

(5) a one-inch by one-inch photograph of the face ; and [.]

(6) **proof of successfully passing the department examination for asbestos contractors and supervisors.**

(e)-(f) (No change.)

§295.47. *Licensure: Individual Asbestos Consultant.*

(a) Licensing requirements. An individual must be licensed as an asbestos consultant to design asbestos abatement projects. **Individual consultants may not hire an inspector, project manager, or an air monitor technician without obtaining an Asbestos Consultant Agency license.** [(Texas Civil Statutes, Article 4477-3a, §4B(g), as amended, 1991.)]

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

(b) Scope: individual licenses. In addition to the design of asbestos abatement projects, individual asbestos consultants are licensed to provide:

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

(3) the collection of bulk material samples, airborne substance samples, and the planning of sampling strategies. A consultant desiring to perform field air sample analysis must complete the National Institute for Occupational Safety and Health (NIOSH) 582 course, submit a comprehensive quality control/quality assurance program, and comply with the requirements of §295.52(e)(2) of title (relating to Licensure: Air Monitoring Technician and Air Monitoring Technician (Upgrade) with Field Analysis);

(4)-(6) (No change.)

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

(e) Eligibility for licensing. Verifiable evidence of current eligibility must be submitted with all applications for licensing as an individual asbestos consultant, which includes any one of the following:

(1) current registration in the State of Texas as an architect or professional engineer; or

(2) current highest full-qualification memberships in a national professional organization devoted to technical proficiency in environmental or occupational health protection, which includes:

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

(C) admission requirements that specify college courses and other training, a bachelor's or higher degree, at least three years' experience in specified fields, and a qualification examination (examples include the American Academy of Industrial Hygiene and the Board of Certified Safety Professionals); or

(3) possession of a bachelor's degree in architecture, engineering, physical or natural science from an accredited four-year college or university, and including four years' experience in areas affecting environmental or occupational health matters. [; or]

[(4) for individuals making application before January 1, 1993, only: possession of a high school diploma (or GED) together with a qualifying minimum of four years' abatement experience, including at least two years of full-time practice as an asbestos consultant.]

(f) Qualification for licensing. To qualify as an individual asbestos consultant, individuals shall provide [must]:

(1) [submit] verifiable documentation of their asbestos-related activity in conjunction with at least six asbestos abatement projects covering a period of at least a year within the past five years. **All asbestos work must be documented as having been performed under the applicable licensed or accredited rules or regulations** [(Applicants made eligible under subsection (e)(4) of this section must comply with these experience qualifications)];

(2) [furnish] a physician's statement of the required physical examination done within the past year, but not used for a previous license application, as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the Texas Department of Health (department) "Physician's Written Statement" form only;

(3) **proof of having [have] successfully completed the following training courses or the necessary annual refresher training within the past 12 months, but not used for a previous license application at an approved training facility:**

(A) the approved training course for abatement project designers, according to §295.64(b) of this title (relating to Training: Required Asbestos Training Courses), or for applications received prior to December 31, 1993 [June 30, 1993], the contractor/supervisor training, according to §295.64(c) of this title (relating to Training: Required Asbestos Training Courses [Relating to Registration: Asbestos Abatement Workers]);

(B) a modified three-day [two-day] training course in sampling techniques and use of monitoring equipment, as required for air monitor technician [(this course is not required of certified industrial hygienists)] according to [see] §295.64(g) of this title (relating to Training: Required Asbestos Training Courses); [and]

(C) (No change.)

(D) an annual refresher training course, consisting of two days [eight hours] of instruction and designed specifically for asbestos consultants.

(4) [submit] a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses) [If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas Asbestos rules, as required in accordance with §295.64(h) of this title (relating to Training: Required Asbestos Training Courses), [and]

(5) [submit] a one-inch by one-inch photograph of the face; and [.]

(6) proof of successfully passing the department examination for consultant/project designer.

(g) Insurance. A licensed individual asbestos consultant [performing work for hire] must obtain professional liability coverage in the amount of \$1 million for errors and omissions, or be covered under the consultant's employer's policy, as specified in §295.40 of this title (relating to Licensing and Registration: Insurance Requirements)[, when doing work for hire].

(h)-(i) (No change.)

§295.48. Licensure: Asbestos Consultant Agency

(a) (No change.)

(b) Authorization and conditions. A licensed asbestos consultant agency is specifically authorized to employ asbestos consultants, asbestos project managers, asbestos inspectors and management planners, and air monitoring technicians who are currently licensed under these sections to assist in the conduct and fulfillment of the agency's asbestos consultation activity, as necessary. As a condition of licensure, an asbestos consultant agency must comply with the following.

(1)-(3) (No change.)

(4) refrain entirely from engaging as an asbestos abatement contractor in abatement or operations and maintenance activities [(Texas Civil Statutes, Article 4477-3a, §4C, amended 1991)].

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

(e) Qualification for licensing. Applicants for licensing as an asbestos consultant agency shall submit as applicable:

(1) professional liability insurance coverage for errors and omissions in the amount of \$1 million to cover the asbestos consultants and inspectors in its employ [(Texas Civil Statutes, Article 4477-3a, §4A(4), amended 1991)]; [and]

(2) evidence of insurance issued by a company authorized and licensed to issue workers' compensation insurance in this state and written in this state on the Texas form, or evidence of self-insurance, if workers' compensation is required by the specifications or owner (see §295.34(b)(4) of this title (relating to Asbestos Management in Facilities and Public Buildings) for additional guidance);

(3) a certificate of good standing issued by the State Comptroller of Public Accounts Office [state comptrollers' office] for the State of Texas for a corporation or other business entity [(Texas Civil Statutes, Article 4477-3a, §4A(1), amended 1991)], and

(4) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in the state.

(f) [(g)] Responsibilities. A licensed asbestos consultant shall be responsible for:

(1) employing generally accepted principles and practices in designing asbestos abatement projects;

(2) monitoring and observing asbestos abatement projects for general compliance with the contract documents, specifications, and relevant regulations, and

(3) reviewing asbestos disposal documentation to account for and confirm adequate waste disposal.

§295.49. Licensure: Asbestos Project Manager.

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

(d) Qualifications. To qualify for a license, an applicant must [demonstrate, in a manner acceptable to the department, that he/she has] provide:

(1) (No change.)

(2) a certificate of training from a training provider approved by or acceptable to the department indicating successful completion within the past 12 months of the approved course, but not used for a previous license application, for abatement contractors and project supervisors or the annual refresher training as described in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(3) [furnish] a physician's statement of the required physical examination done within the past year, but not used for

a previous license application, as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the Texas Department of Health (department's) "Physician's Written Statement" form only;

(4) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses) [If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title.[and]

(5) a one-inch by one-inch photograph of the face; and [.]

(6) proof of successfully passing the department examination for asbestos management planner.

(e) (No change.)

§295.50. Licensure: Asbestos Inspector

(a) Licensing. An individual must be licensed as an asbestos inspector to conduct asbestos surveys in public buildings. An asbestos inspector may be self-employed or must be employed by a licensed asbestos consultant agency or licensed asbestos management planner agency if he/she is to perform asbestos building surveys for hire. The scope of duties include the collection of bulk samples of suspected asbestos-containing material (ACM); determining the location and condition of asbestos in a public building; and documenting survey results

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

(d) Qualification. To qualify for a license, an applicant must [demonstrate, in a manner acceptable to the department, that he/she has] provide:

(1) (No change.)

(2) a certificate of training from a training provider approved by or acceptable to the department indicating successful completion of approved three-day training course for asbestos inspectors or the annual refresher training, but not used for a previous license application, as described in §295.64 of the title (relating to Training: Required Asbestos Training Courses).

(3) a physician's statement of the required physical examination done within the past year, but not used for a previous license application, as described

in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers) and submitted on the department's "Physician's Written Statement" form only;

(4) (No change.)

(5) work experience. applicants for licensing as asbestos inspectors are required to submit verifiable written documentation of prior work experience, including professional references for subparagraphs (A) and (B) of this paragraph, with their application forms, as follows:

[(A) Verifiable written documentation must be submitted as follows:]

(A)[(i)] completion of at least five asbestos surveys, these plans must have been performed under the direction of a licensed inspector or a licensed management planner; or

(B)[(ii)] current employment with and doing work under the supervision of a licensed management planner or asbestos consultant,

[(B) The burden of proof for all points of the qualifying experience is on the individual applicant. Applicants for asbestos inspector licenses must furnish contacts or sources that can fully verify the documented experience. Descriptions of surveys are not acceptable if the personal involvement of the applicant cannot be determined by the reviewer. If, in the opinion of the reviewing staff members, applicant experience cannot be properly and sufficiently verified, such experience must be rejected;]

(6) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). [If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required in accordance with §295.64(h) of this title; [and]

(7) a one-inch by one-inch photograph of the face; and [.]

[(8) proof of successfully passing the department examination for asbestos inspector.

(e)-(f) (No change.)

§295.51. *Licensure: Individual Asbestos Management Planner.*

(a) Licensing. A person must be licensed under these sections to develop an asbestos management plan, which shall include a written schedule and procedures to protect occupants from asbestos health hazards in a public building. An individual management planner can not hire an inspector nor another management planner without becoming an asbestos management planner agency.

(b) Scope. In addition to the development of management plans, a licensed management planner may be licensed to perform [provide] surveys and assess the condition of asbestos-containing material (ACM), as provided in §295.50 of this title (relating to Licensure: Asbestos Inspectors).

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

(e) Qualification. To qualify for a license as an asbestos management planner, an applicant must demonstrate in a manner acceptable to the Texas Department of Health (department) [department] that they meet the following applicable qualifications.

[(1)] The applicant must:

(1)[(A)] have completed an Environmental Protection Agency (EPA) or state-approved inspector training course [courses together with the additional] and the management planner course of instruction within the past 12 months, or has remained certified by completing annual refresher training for management planners and inspectors, but not used for a previous license application, as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(2)[(B)] have an associate's degree from an accredited college or university or successfully complete a minimum of 60 credit hours from an accredited [a] college or university, [or]

(3)[(C)] complete five [currently be performing] management plans under the direction of a licensed management planner or licensed consultant [and pass a competency test to be administered by the department] ;

(4)[(D)] provide a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). [If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos

rules, as required, in accordance with §295.64(h)[(g)] of this title (relating to Training; Required Asbestos Training Courses);

(5)[(E)] provide a one-inch by one-inch photograph of the face;[and]

[(F) furnish a physician's statement of the required physical examination done within the past year as described in §295.42(e)(2) of this title (relating to Registration: Asbestos Abatement Workers).]

(6) proof of successfully passing the department examination for an individual management planner;

(7) provide the required insurance for asbestos inspectors as appropriate in accordance with §295.52(d)(4) of this title (relating to Licensure: Air Monitoring Technician and Air Monitoring Technician (Upgrade) with Field Analysis); and

(8) if the applicant is an asbestos management planner working for hire, proof of professional liability insurance coverage in the amount of \$1 million for errors and omissions, or be covered under an employers policy.

[(2) An applicant organization, shall designate a corporate officer, general partner, or proprietor, according on the kind of organization, for the purpose of complying with the training and education requirements in paragraph (1) of this subsection].

(f) (No change.)

(g) Signature. All asbestos management plans must be signed by the licensed asbestos management planner or the licensed individual consultant preparing the plan [or the consultant].

§295.52. *Licensure: Air Monitoring Technician and Air Monitoring Technician (Upgraded) with Field Analysis.*

(a) Licensing. An air monitoring technician (AMT) must be licensed to perform air monitoring services for an asbestos abatement project or related activity in a public building. An air monitoring technician may obtain baseline, area, personal, and clearance samples. For purposes of asbestos abatement, a licensed air monitoring technician shall be an employee of an asbestos laboratory or an asbestos consultant when taking area or clearance samples, or an asbestos abatement contractor, when taking personal samples.

(b) Authority of air monitoring technicians. Air monitoring technicians may obtain baseline, area, personal and clearance samples, if qualified in accordance with subsection (e)(1) [(2)] of this section,

and may perform the analysis of airborne fibers in the field if qualified in accordance with subsection (e)(2) of this section. An AMT employed by an abatement contractor is limited to taking personal samples for compliance with Occupational Safety and Health Administration (OSHA) regulations (29 Code of Federal Regulations, §1926.58), which must then be sent to a laboratory for analysis.

(c)-(d) (No change)

(e) **Qualifications** An applicant, in order to qualify for either an air monitoring technician license or an upgraded license for field analysis of airborne fibers [To qualify for an air monitoring technician license or for an upgraded license to perform analysis of airborne fibers in the field, an] shall submit the following.

(1) For a basic license the following must be submitted:

(A) (No change)

(B) a certificate of training indicating successful completion within the past 12 months, but not used for a previous license application, of the approved training course for air monitoring technicians or the current annual refresher training as described in §295.64 of this title (relating to Training Required Asbestos Training Courses).

(C) a physician's statement of the required physical examination done within the past year, but not used for a previous license application, as described in §295.42(e)(2) of this title (relating to Registration Asbestos Abatement Workers) and submitted on the Texas Department of Health (department) "Physician's Written Statement" form only.

(D) a copy of the wallet-size photo-identification card from the training course as required from all trainers in Texas in accordance with §295.65(f)(2) of this title (relating to Training: Approval of Training Courses). [If training course was taken in Texas before January 1, 1993, a copy of a valid photo-identification card will be acceptable.] Persons submitting out-of-state training certificates with their applications may obtain the necessary photo-identification when attending the mandatory course on Texas asbestos rules, as required, in accordance with §295.64(h) of this title (relating to Training: Required Asbestos Training Courses; [and]

(E) a one-inch by one-inch photograph of the face; and[]

(F) **proof of successfully passing the department examination for air monitoring technician.**

(2) In addition to the requirements in paragraph (1) of this subsection [for the basic license], an air monitoring technician wishing to obtain an upgraded license to perform analysis of airborne fibers in the field, must also submit evidence of successful completion of the National Institute for Occupational Safety and Health (NIOSH) Number 582 training course, or equivalent, titled "Analysis of Asbestos Dust" (7400 method) and current accreditation by the Asbestos Analyst Registry (AAR) [or must comply with §295.54(e)(3) of this title (relating to Licensure: Asbestos Laboratory) if employed by a licensed asbestos laboratory].

(f) (No change.)

(g) **Limitations.** Only an [An] air monitoring technician may perform the analysis of airborne fibers in the field only if he/she has obtained an upgraded license in accordance with subsection (e)(2) of this section and is also employed by a licensed asbestos laboratory or asbestos consultant agency.

§295.53. Licensure: Asbestos Management Planner Agency.

(a) **Licensing** An applicant desiring to be an asbestos management planner agency shall designate one or more individuals licensed as asbestos management planners, who shall have responsibility for the asbestos activity

(b) **Scope.** The agency may perform all those responsibilities allowed an individual management planner and may also perform inspections if the appropriate individuals are licensed to do so

(c) **Fee.** The initial and renewal fee for a management planner agency is \$200.

(d) **Applications and renewals.** Applications and renewals shall be submitted as required by §295.38 of this title (relating to Licensing and Registration. Applications and Renewals). Out-of-state applicants must comply with §295.39 of this title (relating to Licensing and Registration Out-of-State Applicants)

(e) **Qualification for licensing.** Applicants for licensing as an Asbestos Management Planner Agency shall submit the following

(1) professional liability insurance coverage for errors and omissions in the amount of \$1 million to cover the asbestos management planners and inspectors in its employ [(Texas Civil Statutes, Article 4477-3a, Section 4A

(4) . amended in 1991)]; and

(2) evidence of insurance by a company authorized and licensed to issue workers' compensation insurance in this state and written on the Texas form, or evidence of self-insurance under Texas law, if workers compensation is required by the specifications or owner;

(3) a certificate of good standing issued by the State Comptroller of Public Accounts Office for the State of Texas for a corporation or other business entity;

(4) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in this state; and

(f) **Responsibilities.** A licensed asbestos management planner agency shall be responsible for:

(1) employing generally accepted principles and practices in performing asbestos inspections and producing asbestos management plans;

(2) complying with standards of operation, as described in §295.58 of this title (relating to Operations: General Requirements); and

(3) complying with the responsibilities for the individual licenses as listed in §295.50 of this title (relating to Licensure: Asbestos Inspector) and §295.51 of this title (relating to Licensure: Individual Asbestos Management Planner).

§295.54. Licensure: Asbestos Laboratory.

(a) **Licensing requirement.** A person must be licensed in compliance with the provisions of this section to provide analysis of samples collected in public buildings for bulk asbestos or for final clearance of asbestos abatement projects. **Branch offices must fulfill the same equipment and operational standards as the main office which has been licensed, and must be separately licensed.**

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

(d) **Laboratory accreditation.** To be eligible for licensure, applicants must submit evidences of accreditation, of at least one of the following [as follows]:

(1) (No change.)

(2) accreditation as an industrial hygiene laboratory by the American Industrial Hygiene Association, which includes the PAT program; or

(3) proficiency according to the standards of [accreditation by] the PAT Program, which includes quarterly sample tests for airborne fibers or bulk materials and a quality assurance/quality control program. [or]

— [(4) accreditation by Asbestos Analysts Registry (AAR) listing, which includes quarterly sample tests (PAT) for airborne fiber counting.]

— (e) (No change.)

(f) Qualifications. Applicants for licensing as an asbestos laboratory shall submit as applicable:

(1) (No change.)

(2) if the applicant is a Texas corporation, a certificate of good standing, issued by the Texas State Comptroller's Office;

(3) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State, authorizing the corporation to do business in the state;

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

§295.55. Licensure: Asbestos Training Provider.

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

(d) Qualification. To qualify for a license, an applicant must demonstrate to the department that they meet the applicable requirements. Documentation required of applicants for licensing as asbestos training providers is as follows.

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

(6) Information requirements. The training provider shall discuss and inform each prospective trainee of the requirements for the type of license being sought, and of necessary qualifications he/she must have, [as follows] The training provider shall refund any course-related fees a prospective trainee may have incurred due to a failure to provide this information to the student. Necessary qualifications include the following.

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

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

(9) Training facilities. Training facilities used will be those commonly used and accepted as classrooms or conference rooms. Classrooms must have sanitary facilities available for the students. Unacceptable facilities are rooms which by their arrangement or contents would readily distract students, or rooms open to the general public.

(10) Training requirements. A training provider must provide each course as a separate entity, as follows.

(A) Initial training courses shall not be combined with refresher courses.

(B) Courses shall be conducted in only one language and not combined with courses taught in another language, i.e. English or Spanish.

(C) Basic courses shall be conducted in only one discipline and not be combined with courses of other disciplines, i.e. an abatement worker course and a contractor/supervisor course cannot be taught as a combined course; however, the hands on practical exercise may be combined.

(11) Methods of instruction. Standard methods of instruction are as follows.

(A) At least 50% of the instruction will be conducted with instructors presenting the material.

(B) Training films or video tapes must be interactive and may be used to enhance understanding, but they may not be used as a substitute for the formal class conducted by a certified instructor or the Model Accreditation Program required hands-on training. Any of these materials must support and convey the understanding of the subject to the student.

(12) Hours of operation. Classes will be conducted during normal business hours of 8 a.m. to 5 p.m. Monday through Friday exclusive of recognized state or Federal holidays. More than eight hours of training in a calendar day shall not be authorized. Exceptions to this rule must be obtained in writing from the department in advance. A facsimile (FAX) may be used for emergency or unusual situations.

(13) The applicant must submit the following with the application:

(A) publications listed in §295.65(d)(3) of this title (relating to Training: Approval of Training Courses);

(B) if the applicant is a Texas corporation, a certificate of good standing issued by the Texas State Comptroller's Office must be submitted with the application for licensure; and

(C) if the applicant is a resident outside the State of Texas, a certificate of authority issued by the Texas Secretary of State authorizing the corporation to do business in the state, must be submitted with the application for licensure.

(e) Conditions of issuance. The following conditions and agreements shall apply to issuance of licenses under this section.

(1) (No change.)

(2) The department shall be furnished a copy of all scheduled courses and shall be advised at least 24 hours in advance of any scheduled course cancellations. Course schedules shall be provided to the department 14 days prior to the conduct of any course on the schedule. Exceptions may be made only with a complete justification being provided to the department and approval received. The department may consider variances with this rule. Requests for variances shall be submitted in writing to the Asbestos Programs Branch, Occupational Health Division. Approval will be granted, if appropriate, in writing.

(3)-(4) (No change.)

(f) Course instructors. The training provider shall submit a resume of each instructor and guest speaker who [that] will participate in the conduct of any asbestos training course to be approved by the department. Prior approval of instructors and guest speakers is required. The training provider will notify the department of additions and deletions to their instructor roster within 15 days of actual occurrence.

(g) Instructor qualifications. Training instructors shall be qualified in any one of the categories in paragraphs (1)-(5) of this subsection. Training qualifications must be fully documented, and verifiable by the department. Instructors shall have current accreditation training from an Environmental Protection Agency (EPA) approved course for the discipline in which the instructor desires to teach. The categories include:

(1) at least two years of actual hands-on experience in asbestos-related activities (abatement or consulting) with current training accreditation from Environmental Protection Agency (EPA) asbestos courses for the subject which the instructor will teach, and a high school diploma and completion of at least one [or more] teacher education course[s] in vocational or industrial teaching. As an example, if an instructor will teach a worker course, then he/she must also have attended and successfully completed a worker course conducted by another training provider;

(2) graduation from an accredited college or university with a Bachelor's [college] degree in natural or physical sciences or a related field, with one year's hands-on experience in asbestos related activities (abatement or consulting), and current accreditation in at least one EPA asbestos course;

(3)-(5) (No change.)

(h) Professional references. Each instructor application [submitted] shall include three [be accompanied by] professional references attesting to teaching experience and asbestos related qualifications [qualification]. No more than one reference will be accepted from an employee of the same company as the applicant. References will be submitted on a form provided by the department which will be completed by the person providing the reference and mailed directly to the department for inclusion with the instructor application.

(i) (No change.)

(j) Responsibilities. The asbestos training provider shall be responsible for:

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

(3) providing the environment, training, and testing of sufficient quality that the student retains the required elements of the course, [and]

(4) cooperating with department personnel in the discharge of their official duties to conduct inspections and investigations as described in §295.68 of this title (relating to Compliance: Inspections and Investigations); and [.]

(5) taking an aggressive approach in meeting the needs of the student to include providing course review in preparation for the examination and specialized attention to enhance comprehension.

§295.56. *Licensure: Asbestos Transporters.*

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

(d) Qualifications. To qualify for a transporter license, an applicant must submit the following: [demonstrate, in a manner acceptable to the department, that he/she meet the applicable qualifications. The applicant must submit with the application.]

(1) if the applicant is a Texas corporation, a certificate of good standing, issued by the Texas State Comptroller's Office [state comptrollers' office] must be submitted with the application for licensure;

(2) if the applicant is situated outside the State of Texas, a certificate of authority issued by the Texas Secretary of State authorizing the corporation to do business in the state, must be submitted with the application for licensure;

(3)-(5) (No change.)

(e) Responsibilities. An asbestos transporter shall.

(1) comply with federal regulations in 49 Code of Federal Regulations

(CFR), Parts 100-199 titled "Hazardous Materials Regulations", 40 CFR, Part 61 titled "National Emission Standards for Hazardous Air Pollutants (NESHAP)", specifically the provisions concerning asbestos transport, and, where applicable 40 CFR, Part 763, Subpart E, Appendix D, titled "Transport and Disposal of Asbestos Waste";

(2) qualify [register] all employees who will be transporting [handling], loading and unloading asbestos, in accordance with 49 CFR, Parts 171-177 [as asbestos workers in accordance with §295.42 of this title (relating to Registration: Asbestos Abatement Workers)];

(3)-(4) (No change.)

(5) comply with Department personnel in the discharge of their official duties to conduct inspections and investigations, as set forth in §295.68 of this title (relating to Compliance: Inspections and Investigations); [and]

(6) train employees in compliance with OSHA regulations in 29 CFR, §1910.120(a)(v), in anticipation of possible spills of asbestos; and [.]

(7) deliver all asbestos-containing waste material for disposal to a facility authorized by the Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

§295.58. *Operation: General Requirements.*

(a) (No change.)

(b) Supervision.

(1)-(6) (No change.)

(7) All licensed supervisors are responsible for respirator fit testing and [.] personal protection[,] of the workers' security[,] and control of access at the job site.

(8) (No change.)

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

(e) Compliance inspections. Each licensee shall assist and cooperate with all properly-identified representatives of the department in the conduct of asbestos inspections or investigations [, surveys, or monitoring procedures] at all reasonable or necessary times, with or without prior notice. Such inspections may be made at proposed, actual, or former sites of asbestos-related activities, or of the premises, records, equipment and personnel of licensees or applicants, or of those who have held active licenses previously. It is a violation to interfere with or delay an inspection or investigation conducted by a department representative. A licensee may not deny entry to a properly identified representative of the department.

(f) Respirator program. Each employer licensee shall be responsible for establishing and maintaining a written respiratory protection program, as required by OSHA regulations in 29 Code of Federal Regulations (CFR), §1910.134, as amended. Respirators shall be properly worn at all times in containment.

(g) Individual respirator fit. The licensee must maintain in safe working condition a sufficient number of respirators of the types and styles approved by the National Institute of Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA) to meet all anticipated requirements of his/her employees; and any employee whose facial characteristics, hair, mustache, or beard preclude a tight fit of a negative-pressure respirator shall not be allowed to enter the containment area of an asbestos operation using this type of respirator.

(h) Sampling for asbestos. Any licensed supervisor [licensee] may obtain a bulk or wipe sample to determine or confirm the presence of asbestos prior to the beginning of an asbestos-related activity or before performing O&M activities wherever suspect material is encountered. (A survey by a licensed asbestos inspector is required for actual abatement). Only laboratories licensed by the State of Texas may be used to evaluate samples taken from within public buildings in Texas.

(i) Project monitoring.

(1) Baseline.

(A) The consultant shall make a determination of the need to collect baseline samples. This determination shall be made a part of the specifications for an asbestos project. Air samples for analysis by Phase-contrast Microscopy will be collected under normal building conditions for any abatement activity prior to the disturbances of asbestos-containing material (ACM) as a part of the activity. A minimum of three samples shall be collected on 0.45 micron mixed cellulose ester (MCE) filters loaded in conducting cassettes with extension cowl. Sampling and analysis will be in accordance with the latest edition of NIOSH 7400 protocol, counting rules A. The minimum sample volume will be 1,000 liters.

(B) These samples may be analyzed or archived at the consultant's discretion. The samples shall be preserved for no less than 60 days following achieving clearance.

(2) Ambient.

(A) Ambient samples will be collected during the project and analyzed in accordance with the latest edition of NIOSH 7400 protocol, counting rules A.

(B) Ambient samples will be collected: inside containment; outside containment but inside the building (if applicable); the negative air unit discharge; immediately outside the entrance to the decontamination facility (representative of the air being drawn into the facility); outside the bag out facility; and any other locations required by the specifications.

(3) Clearance.

(A) All project activities shall be cleared by using aggressive air sampling. The maximum levels of residual fibers shall be as cited in subparagraphs (C) and (D) of this paragraph.

(B) A visual inspection of the abatement area shall be made to determine if the project has been properly conducted in accordance the specifications and with applicable state and federal regulations and all ACM has been properly removed, encapsulated, or maintained.

(C) For projects of less than 160 square feet on surfaces, 260 linear feet on pipes, or 35 cubic feet on facility components, samples may be collected and analyzed by the latest edition of the NIOSH 7400 protocol, counting rules A. At least three samples must be taken inside the abatement area except that five samples are required for public schools under Asbestos Hazard Emergency Response Act (AHERA) regulations (40 CFR, Part 763). At least one sample will be collected near the entrance of the decontamination facility. Clearance samples shall be collected at a rate of one to less than ten liters per minute on 0.45 micron MCE filters in conducting cassettes with extension cowls. Minimum sample volume will be 1,200 liters. Clearance will be achieved if no sample is reported greater than 0.01 f/cc by the analysis report from the licensed laboratory.

(D) All projects greater than 160 square feet, 260 linear feet on pipes, or 35 cubic feet on foundation components will be cleared in accordance with AHERA protocol for Transmission Electron Microscopy (TEM) analysis and clearance (40 CFR, §763.90, (g), (h), (i)-(ii), (i)(3), (4), and (8)). The visual inspection

must be conducted by a properly licensed or accredited consultant.

(E) All floor tile projects greater than three square feet shall be cleared by TEM in accordance with subparagraph (3)(D) of this paragraph. This includes all projects conducted under the provisions for floor tile project exemptions in these rules.

(F) All samples, including clearance samples, may be collected by licensed air monitoring technicians or a licensed consultant. The sample pumps will be monitored during the sampling period by the person collecting the samples, or some other means of control will be established to ensure the integrity of the samples and prevent tampering.

(j) Posting of documents The following documents are required to be posted in a conspicuous spot on a bulletin board at the entrance to the regulated area and must not be covered by any other documents

(1) the asbestos information poster issued by the department; and

(2) copies of any violations issued by the Federal or state asbestos regulating authorities within the preceding 12 months from any asbestos project.

(k) Documents required to be on-site are as follows:

(1) EPA "Green Book" for O&M work; and

(2) appropriate publications as listed in §295.33 of this title (relating to Adoption by Reference of Federal Standards) for the asbestos activity which is being performed.

§295.59 Operations, Operations and Maintenance (O&M) Requirements

(a) Restrictions O&M activities involving asbestos-containing materials (ACM) are restricted to small-scale, short-duration activities, according to §295.33(a)(5) and (9)(7) of this title (relating to Adoption by Reference of Federal Standards) Asbestos O&M licensees shall not engage in any activity for which the primary purpose is asbestos abatement.

(b) Work practices Work practices shall include the following requirements

(1) (No change)

(2) All persons not performing work shall be excluded from the work areas. Only licensed persons and governmental inspectors may enter regulated areas.

(3) Physical barriers shall be used [where necessary] to limit access to the work area

(4)-(8) (No change.)

(9) Air clearance and visual inspections shall be performed as required by references listed in §295.33 of this title.

(10) The O&M book or manual developed for the building on which O&M is being performed shall be on site during all O&M operations.

§295.60. Operations: Abatement Practices and Procedures

(a) General provisions. The following general work practices are minimum requirements for protection of public health, and do not constitute complete or sufficient specifications for an asbestos abatement project. More detailed requirements in plans and specifications for a particular abatement project, or requirements that address the unusual or unique circumstances of a project, may take precedence over the provisions of this section. The specifications written for the abatement project shall also include the required air clearance procedures.

(1) Federal work practices for asbestos abatement are referenced in 40 Code of Federal Regulations (CFR) [CFR], §61.145 Environmental Protection Agency (EPA) titled "Standard for Demolition and Renovation", as amended.

(2) An asbestos [abatement] project consultant [designer] who is licensed under §295.47 of this title (relating to Licensure: Individual Asbestos Consultant) may specify work practices that vary from the provisions of this section as long as the work practices specified are at least as protective of public health, and are described in the project notification submitted to the Texas Department of Health (department)

(3) (No change.)

(4) Only licensed persons or governmental inspectors may enter the regulated area.

(b) Critical barriers. Regulated areas within which asbestos abatement is to be conducted shall be separated from adjacent areas by impermeable barriers such as plastic sheeting attached securely in place. All openings between [isolated] containment areas and adjacent areas, including but not limited to windows, doorways, elevator openings, corridor entrances, ventilation openings, drains, ducts, grills, grates, diffusers and skylights, shall be sealed. All penetrations that could permit air infiltration or air leaks through the barrier [plastic sheeting] shall be sealed, with exceptions of the make-up air provisions and the means of entry and exit

(c) Movable objects. All movable objects shall be removed from the containment [work] area. Cleaning of contaminated items shall be performed if the items are to be salvaged or reused. Otherwise, they shall be properly disposed of as asbestos waste. All non-movable objects that remain in the containment [work] area shall be covered with a minimum of four-mil plastic sheeting, secured in place.

(d) Floor and wall preparation. Floor sheeting shall completely cover all floor surfaces and consist of a minimum of two layers of sheeting of at least six-mil true thickness, or equivalent. Floor sheetings shall extend up sidewalls at least 12 inches and be sized to minimize seams. No seams shall be located at wall-to-floor joints. Sealing of all floor penetrations against water leakage is mandatory. Wall sheeting shall completely cover all wall surfaces and consist of a minimum of one layer of four-mil sheeting, or equivalent. It shall be installed so as to minimize joints and shall extend beyond wall/floor joints at least 12 inches. No seams shall be located at wall-to-wall joints.

(e) Decontamination system. A worker decontamination enclosure system in the regulated area shall be used consisting of a clean room, shower room, and equipment room, each separated from the other and from the containment [work] area by airlocks accessible through doorways. Except for the doorways and the make-up air provisions for the enclosure, the worker decontamination system shall be sealed against leakage of air. All personnel must exit the containment area through the shower before entering the clean room. No asbestos-contaminated individuals or items shall enter the clean room.

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

(h) High-efficiency particulate air (HEPA) cleaning. Except with prior written approval from the department [where not feasible], cleaning procedures shall use wet methods and HEPA vacuuming, and visual inspections shall be performed in accordance with 40 CFR, Chapter 1, §763.90(i)(1) [American Society for Testing Materials (ASTM) Standard E-1368, "Standard Practice for Visual Inspection of Asbestos Abatement Projects", available from the American Society for Testing Materials, 1916 Race Street Philadelphia, PA 19103]. Exceptions shall be obtained by writing to the Texas Department of Health, Asbestos Programs Branch, Occupational Health Division, 1100 West 49th Street, Austin, Texas 78756.

(i) (No change.)

(j) Requirements for removal. The requirements for removing ACM are that:

(1) (No change.)

(2) asbestos covered components that are going to be removed from the building may either be stripped in place and cleaned (and pass a visual inspection by the consultant or O&M supervisor as appropriate), or the ACM may be thoroughly wetted and the entire component wrapped in two layers of six-mil plastic, labeled and sealed, providing that:

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

(3) (No change.)

(k)-(l) (No change.)

(m) Safety requirements. The following safety requirements shall be in effect for an abatement project:

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

(3) Air monitoring. Air monitoring shall include base line sampling, personal samples, area sampling, and clearance sampling according to 40 CFR, Part 763, Subpart E.

§295.61. Operations: Notifications.

(a) General provision. The Texas Department of Health (department) shall [must] be notified on a form specified by the department of [the intent to perform] any asbestos abatement, demolition, or operations and maintenance (O&M) activity affecting asbestos-containing materials (ACM) in facilities or public buildings. Notification shall be made to the department no less than ten working days (not calendar days) prior to commencement of the activity and shall be submitted on the form specified by the department. The department notification form will be used for all facilities and public building asbestos activities and is required to be filled out completely and properly. Blanks which do not apply shall be marked N/A. The designation of N/A will not be accepted for references requiring identification of the work site, building description, building owner, abatement and transportation companies, individuals required to be identified on the notification form, nor start and completion dates in compliance with 40 Code of Federal Regulations (CFR), Part 61.145 and this section. National Emission Standards for Hazardous Air Pollutants (NESHAP) requirements apply equally to both the NESHAP and Texas Asbestos Health Protection Act (TAHPA) notification requirements. This notification is in addition to any required by Environmental Protection Agency (EPA) (NESHAP), Occupational Safety and Health Administration of the United States Department of Labor (OSHA), or the Texas Natural Resource Conservation Commission (TNRCC) [Air Control Board]. Beginning

September 1, 1994, all notifications shall be sent to the department with the required fee. The notification shall be improper unless it contains an original signature and the fee is included. A separate notification will no longer be made to TNRCC.

(b) Responsibility. It is the responsibility of the building owner to notify the department under this section. This task, but not the responsibility, may be delegated to an asbestos licensed contractor or consultant [a licensed abatement contractor] in writing, however, this does not relieve the building owner of responsibility nor the payment of the required notification fee. It is the task of the person designated to file the notification on the form specified by the department. The notification shall have all information completed with no blocks left blank.

(c) Timeliness of notification. Written notifications of asbestos activity or demolition must be hand delivered, express mailed, or postmarked at least ten working days (not calendar days) before the start of activities which may disturb asbestos [such activity]. Notifications must be delivered by United States Postal Service, commercial delivery service, or by hand delivery. Telephone facsimile (FAX) is not permitted. [(Federal regulations require that original notifications are to be sent by mail.)] The start date for asbestos activity is considered to be the date when operations which might disturb asbestos [actual abatement or O&M] begin [begins].

(d) Start-date change to later date. When asbestos abatement, demolition, or O&M will begin later than the date contained in the notice, the department shall [the licensee shall]:

(1) be notified [notify the department] (Asbestos Programs Branch) of the changed start date by telephone [(or FAX)] as soon as possible but prior to the original start date. An amended notification is required in writing immediately following the foregoing notification ; and

(2) be provided [provide the department] with a written notice of the new start date as soon as possible before, but no later than the original start date. Delivery of the updated notice by the United States Postal Service, commercial delivery service, or hand delivery [, or telephone facsimile (FAX)] is acceptable.

(e) Start-date change to earlier date. When asbestos abatement, demolition, renovation, or O&M [covered by these sections] will begin on a date earlier than the date contained in the notice [specified for the original start], the [licensee shall provide the] department shall be provided with a written notice of the new start date at least ten working days before [beforehand] the start of work.

(f) [State and federal] Start-date/stop-date (completion date) requirement. In no event shall demolition or renovation [actual abatement], as covered by this section, begin or be completed on a date other than the date contained in the written notice [of start date]. Amendments to start date changes are to be submitted as required in subsections (d) and (e) of this section. An amendment is required for any stop dates which change by more than one work day for each week (seven calendar day period) for which the project has been scheduled and notification submitted. The building owner shall provide schedule changes to the department no less than 24 hours prior to the change or completion of the project. Emergency notification can be confirmed by the department telephonically and followed up in writing.

(g) Consolidated notifications of small operations. Notifications involving a series of small, separate asbestos O&M or abatement operations (each less than 160 square feet or 260 linear feet or 35 cubic feet in size) may be combined by listing and attaching the information to a single notification form, provided that any listing period does not exceed 31 days in length. All asbestos demolitions must be updated individually, regardless of size. Predict the combined additive amount of asbestos to be removed or stripped during a calendar year of January 1 through December 31. The department shall be notified at least ten working days (not calendar days) before the end of the calendar year preceding the year for which notice is being given.

(h) Provision for emergency. In the event of emergency renovations made necessary by an unexpected or unplanned asbestos incident, notification will be made as soon as practicable, but not [in no event] later than the following work day [24 hours] after the occurrence of the incident. Initial notification can be made by telephone, followed by formal notification on the department's notification form. Emergencies shall be documented to the extent that the need for the emergency is evident. Public health and safety are the qualifications for an emergency rather than expediency or economic concerns.

(i) Demolition notifications. The department shall be notified of all demolitions regardless of size. If the facility is being demolished under an order of a state or local government agency, issued because the facility is structurally unsound and in danger of imminent collapse, then the department notification must be delivered as early as possible before, but not later than, the following working day of the commencement of demolition. The judgement that a struc-

ture is in danger of imminent collapse or that it is unsafe for anyone to enter shall be made by a professional engineer or registered architect. Emergencies shall be documented to the extent that the need for the emergency is evident. Public health and safety are the qualifications for an emergency rather than expediency or economic concerns.

(j) Asbestos notification fees.

(1) Applicability. The owner of an asbestos abatement or renovation activity shall remit to the department a fee that is based upon the amount of asbestos removed.

(2) Payment. The required fee shall accompany the notification form sent to the department. Fee amounts, address, and fund numbers are included on the form.

(3) Basis for fees. The fees shall be based on the total amount of the regulated asbestos-containing material reported to be removed as defined in 40 CFR, §61.141. The fee shall be calculated at the rate of \$30 per asbestos reporting unit (ARU). The number of ARUs associated with the removal activity is determined by dividing the number of linear feet by 260, the number of square feet reported by 160, and the number of cubic feet by 35. The sum of these ARUs, rounded to the nearest tenth of a whole number, shall then be multiplied by the \$30 rate to calculate the fee due with the notification. The minimum fee shall be \$50 per original notification and the maximum fee shall be \$10,000 per notification. The fee, rounded to the nearest whole dollar, shall be assessed only for the amount of asbestos to be removed. If no asbestos is removed or if the amount of asbestos removed is less than one ARU, no fee shall be assessed. Annual notifications of maintenance activities subject to 40 CFR, Part 61, Subpart M, are included in the fee requirement. Refunds will be made when appropriate minus a \$50 administrative fee. If less than the reported amount will be removed, a request for refund must be provided to the department no later than ten working days prior to the completion of the project. Revision of the form will require an additional fee only if the amount of reportable asbestos to be removed is increased.

(4) Nonpayment of fees. Failure to pay the required fee at the time of notification shall be considered an incomplete filing of a notification and may subject the building owner to administrative penalties as listed in §295.70 of this title (relating to Compliance: Administrative Penalty). The building owner and his agent may also be subject to criminal

penalties if applicable. Governmental organizations may submit a copy of the interagency transfer document or a statement that a check has been requested and is in processing. Payment must then be received no later than 60 days following notification.

§295.62. Operations: Recordkeeping.

(a) Record retention. Records and documents required by this section shall be retained for a period of 30 years from the date of project completion unless otherwise stated. Persons [Organizations or individuals] ceasing to do business, shall notify the Texas Department of Health (department) in writing within 30 days of such event. The department, on receipt of such notification may instruct that the records be surrendered and may specify a repository for such records. The persons [organizations or individuals] shall comply with the department's instructions within 60 days.

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

(d) Analytical services. Licensed providers of asbestos analytical services shall maintain copies of all records and documents for 30 years, which are required by these sections and copies of all analyses performed, including the sample identification number and analytical results, and make such documents available to the department for inspection upon request. Samples which have been taken as part of an inspection are required to be retained by the analyzing laboratory for ten days after the completion of the project or for 30 days, whichever is longer.

(e) (No change.)

(f) Asbestos O&M contractors (restricted). O&M contractors licensed to perform small-scale, short-duration operations and maintenance (O&M) activities affecting asbestos shall maintain, at the place of business, copies of all documents which constitute the application of each O&M restricted supervisor's license and the registration of each asbestos worker. [All such restricted operations performed shall be recorded in chronological order and made available for inspection as requested by the department.]

§295.64. Training: Required Asbestos Training Courses.

(a) General provisions. Applicants for licensing or renewal must submit evidence of fulfillment of specific training requirements acceptable to the Texas Department of Health (department) under these sections. Course content, hours of instruction, refresher training, etc., are subject to change or modification. At the conclusion of each training course, the instructor shall provide the student a copy of the registration form for the state accredita-

tion examination and a copy of the examination schedule. The training provider shall also assist the applicant if needed to complete the application to include listing any special requirements of the student, such as the need for an oral test or a test in Spanish.

(1) The revisions of the Environmental Protection Agency (EPA) Model Accreditation Plan (MAP) reaffirm the principle that each of the accredited training disciplines is distinct from the others, because each reflects a different functional job role.

(2) Each initial and refresher training course offered for accreditation must be specific to a single discipline, and not combined with training for any other discipline. The past practice of combining the worker and supervisor training courses is not allowed as of April 4, 1994

(3)[(1)] Training courses shall be conducted by training providers licensed by the department. Training within the confines of this State by unlicensed providers shall not be accepted by the department [after January 1, 1993]

(4)[(2)] Valid training courses performed in other states, in the past 12 months, by Environmental Protection Agency (EPA) approved training providers shall be accepted by the department provided that applicants have completed an approved course in Texas asbestos law and rules from a training provider licensed by the department. The training course accreditation may not have been used for a previous license application. [This requirement is effective January 1, 1993]

(5)[(3)] The one-year period of validity following the effective date of a required asbestos course may be extended by completing the appropriate annual refresher training. Failure to complete annual refresher training within two years of the most recent training shall require that the original course be repeated.

(6)[(4)] A day of training shall consist of eight hours of actual classroom instruction, hands-on practical training sessions, and field trips in any suitable combination, including break periods. Two ten-minute breaks are authorized in each four hour period of training. The one hour lunch break is not a part of the required eight hours of training. No more than eight hours of instruction are authorized within a 24-hour period.

(7)[(5)] Courses requiring hands-on practical training must be presented in an environment that permits the trainees individually to have actual experience performing tasks associated with the appropriate asbestos activity studied. Hands-on training sessions shall maintain a

student to instructor ratio of not more than 15 to one. Demonstrations and audio-visuals shall not substitute for required hands-on training.

(b) Asbestos project designer [consultant] training. The project designer training course shall be three days in length. Persons seeking to be licensed as an asbestos consultant under these sections shall complete the approved project design training course as described in this subsection. (See also the other training required for consultants in §295.47(f)(3) of this title (relating to Licensure Individual Consultant)) Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the course examination. The course shall adequately address

(1) background information on asbestos [general information concerning asbestos, including health effects related to exposure].

(2) potential health effects related to asbestos exposure [the role of the asbestos consultant and other consultants].

(3) overview of abatement construction projects to include clearance of the project area [regulatory, insurance, and legal aspects].

(4) safety system design specifications, including written sampling rationale for air clearance [personal hygiene and protective equipment].

(5) field trip [work practices and procedures].

(6) employee personal protective equipment [abatement project design, including control of airborne fibers, abatement options and evaluation, asbestos activity in occupied buildings, safety, and the preparation of drawings and specifications].

(7) additional safety hazards [asbestos sampling description and demonstration of bulk material and air sampling methods and analysis].

(8) fiber aerodynamics and control [sampling for airborne fibers, equipment, calibration and usage].

(9) designing abatement solutions and written project design [compliance sampling area, personal, clearance, and background sampling].

(10) budgeting/cost estimation [recordkeeping and reporting calculations, chain of custody, reports and preparation of records].

(11) writing abatement specifications [hands-on training including a demonstration and explanation of the procedures of a complete abatement project, respirator fit-testing and maintenance, and sampling calibration and calculations, and];

(12) preparing abatement drawings [course review and manual];

(13) contract preparation and administration;

(14) legal/liabilities/defenses;

(15) replacement;

(16) role of other consultants;

(17) occupied buildings;

(18) how to accomplish a complete visual inspection;

(19) relevant Federal, Texas, and local regulatory requirements; and

(20) course review.

(c) Contractor/supervisor training. The contractor/supervisor course consists of five days of training. Persons seeking to be licensed as an asbestos abatement contractor, asbestos abatement supervisor, project manager, asbestos competent person (under Occupational Health and Safety Administration requirements), or operations and maintenance (O&M) (restricted) supervisor shall successfully complete this approved contractor/supervisor training course as described in this subsection. The course may be substituted for the asbestos abatement worker course, this substitution also applies to annual refresher training. This training shall include lectures, demonstrations, audio-visuals and hands-on training, including individual respirator fit testing, course review, and a written examination of 100 multiple-choice questions. Each trainee must score at least 70% or better on this exam to successfully complete the course. The course shall adequately address

(1)-(10) (No change)

(11) 14 hours of hands-on training, including work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit testing and maintenance.

(12)-(16) (No change)

(d) Asbestos abatement worker training. The worker training course consists of four days of training. Persons seeking registration as asbestos abatement workers shall successfully complete the approved training course, as described in this subsection. Successful completion of the contractor/supervisor training course shall also be acceptable as qualification for asbestos worker applicants. Worker training courses are required [recommended] to have a classroom student-instructor ratio of not more than 25 to one (25:1). The worker training course shall include lectures, demonstrations, hands-on training including individual respirator fit testing, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated

by achieving a score of at least 70% on the examination. The course shall adequately address:

(1)-(10) (No change.)

(11) 14 hours of hands-on training, including work area preparation, decontamination chamber construction, cleaning and disposal, and respirator fit testing and maintenance; and

(12) course review and manual.

(e) Asbestos inspectors. The inspector course shall consist of 3 days of training. Persons seeking to be licensed as asbestos inspectors shall successfully complete the approved training course as described in this subsection. The inspector training course shall include lectures, demonstrations, hands-on individual respirator fit testing, course review, and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) -(16) (No change.)

(f) Management planners. The management planner course is two days long, following the completion of the three-day inspector course. Persons seeking to be licensed as management planners shall successfully complete the training program for Inspectors, as described in subsection (d) of this section, plus the approved asbestos management planner training course, as described in this subsection. The management planner course shall include lectures, demonstration, course review and a written examination consisting of 50 multiple choice questions. Successful completion of the course shall be demonstrated by achieving a score of at least 70% on the examination. The course shall adequately address:

(1) -(12) (No change.)

(g)-(h) (No change.)

(i) Refresher training. All disciplines shall receive refresher training annually. Satisfactory completion of such training shall be a condition of renewal, and evidence of satisfactory completion shall be included in the annual renewal application. No refresher training can be accredited if the training course for licensure or registration was never completed. Refresher training courses for all disciplines shall be in accordance with the Model Accreditation Plan (MAP) and shall adequately address and include:

(1) Federal and Texas regulations;

(2) State-of-the-art developments for the topic specialty of the course; and

(3) Review of the training manual and key aspects of the initial training course.

§295.65. Training: Approval of Training Courses.

(a) (No change.)

(b) Contingent [Conditional] approval. Contingent [Conditional] approval of an asbestos training course shall be granted to an applicant after all required information and documentation submitted has been found to meet the requirements set forth in these sections for approval of the course by the department. Once the department grants contingent approval, a training provider license will be issued and its status will be regarded as contingent. The license will be valid for a one year period after it has been issued.

(c) Full [Complete] approval. Full [Complete] approval of an asbestos training course and the training provider license shall be granted for a period of one year [two years] after the department has granted contingent [conditional] approval, has had the opportunity to conduct [conducted] an on-site observation and evaluation of the training course, its instructors and its facilities, and has determined that the applicant's asbestos training course meets the requirements set forth in these sections.

(d) Applications. An applicant for approval of an asbestos training course must submit an application in writing to the department. Within 30 working days after receiving an application, the department shall acknowledge receipt of the application and notify the applicant of any deficiency in the application. The department will approve or deny the application only upon receipt of the completed application which shall contain the following information:

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

(3) a detailed outline of the course curriculum including the amount of time allotted to each topic, the name and qualifications of the individual developing the instruction program for each topic, and copies of all written materials to be distributed to the student;

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

(6) administration of a written multiple choice examination at the conclusion of the course. If copies of the exam are required by the department, measures to protect the confidentiality of the exam as proprietary information will be maintained by the department to the extent authorized by law [No later than July 1, 1993, the department will institute standardized testing questions for all categories requiring testing to be administered by the trainer], and

(7) (No change.)

(e) Re-training (refresher) courses. For all disciplines except inspectors and air monitoring technicians, a state accreditation program shall include a one-day annual refresher training course for reaccreditation. Refresher courses for inspectors shall be a half-day in length. Management planners shall attend the inspector and management planner refresher courses. [course, plus an additional half-day on management planning. Consultants need attend only a single annual refresher course for the project designer.] Consultants shall attend an approved two day annual refresher training course, or four separate refreshers consisting of project designer, inspector, management planner, and air monitoring technician. The inspector, management planner, and air monitoring refresher courses shall each be four hours in length and include: Federal, state, and local regulations; state-of-the-art developments; and review of key aspects of the initial training course.

(f) Issuance of certificates. All training certificates shall bear the name, address, and telephone number of the licensed training facility and the name of the instructor. The training provider shall:

(1) issue certificates (with their social security numbers) to students who successfully pass the training course's examination. The certificate shall indicate the name of the student and the course completed, the date of the course and examination and include the signature of the instructor;

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

(g)-(h) (No change.)

§295.67. Compliance: Policy of the Texas Department of Health. The department's policy is to gain compliance with these sections through voluntary efforts by all persons involved in asbestos-related activity in public buildings. Appropriate administrative or [and] legal action will be [sought where timely] taken for non-compliance with this chapter [is not accomplished]. The type of action to be taken is within the discretion of the department.

§295.68. Compliance: Inspections and Investigations.

(a) The Texas Department of Health (department) shall maintain the right to inspect or investigate the practices of any person involved with asbestos abatement or related activity in a facility or public building.

(b) Advance notice of inspections or investigations by the department is not required.

(c)[(b)] A department representative, upon presenting the department identification (ID) card [appropriate credentials], shall have the right to enter at all reasonable times any area or environment, including but not limited to any containment work area, building, construction site, storage, vehicle, or office area to inspect and investigate for compliance with these sections, to review records, to question any person, or to locate, to identify, and to assess the condition of asbestos and asbestos-containing material.

(d)[(c)] A department representative in pursuance of his official duties is not required to notify or seek permission to conduct inspections or investigations. It is a violation of this chapter for a person to interfere with, deny, or delay an inspection or investigation conducted by a department representative. Neither the building owner, consultant, nor the contractor are responsible for the actions of the inspector nor his/her exposure to asbestos as long as the correct procedures are in use as specified in the appropriate references.

(e)[(d)] Authority and responsibility for the qualifications, health status, and personal protection of department representatives resides with the department by law. A department representative shall not be impeded or refused entry in the course of his official duties by reason of any regulatory or contractual specification.

(f) All persons engaged in asbestos related activities must have the department issued ID Card present at the worksite.

§295.69. Compliance: Reprimand, Suspension, Revocation.

(a) After notice to the licensee of an opportunity for a hearing in accordance with subsection (e) of this section, the Texas Department of Health (department) may reprimand the licensee or modify, suspend, suspend on an emergency basis, or revoke a license under the [this] Texas Asbestos Health Protection Act.

(b) (No change.)

(c) The department may reprimand any licensee or registrant, or may suspend or revoke a license [or registration] for.

(1)-(4) (No change.)

(5) fraudulently, by misrepresentation, or deceptively obtaining or attempting to obtain a license or contract for an asbestos-related activity.

(d) (No change.)

(e) The contested-case hearing provisions of the Administrative Procedure [and Texas Register] Act, Texas Govern-

ment Code, Chapter 2001 [Civil Statutes, Article 6252-13a] shall apply to any enforcement action proposed to be taken under this section. The formal hearing procedures of the department in Chapter 1 of this title (relating to the Board of Health) shall also apply.

(f) If a license issued under these sections has been suspended, the person(s) [individual(s)and/or organizations] named in the suspension are not eligible to reapply for licensing under this section for one year.

(g) If a license issued under these sections has been revoked, the person(s) [individual(s) and or organization(s)] named in the revocation are not eligible to reapply for licensing under these sections for three years.

§295.70. Compliance: Administrative Penalty.

(a) (No change.)

(b) The penalty shall not exceed \$10,000 a day per violation. Each day a violation continues will [may] be considered a separate violation. The total penalty will be the sum of all individual violation penalties.

(c)-(e) (No change.)

(f) Violations shall be placed in one of the following severity levels.

(1) Critical violation. Severity Level III covers violations that are most significant and have a direct negative impact on public health and safety. The base penalty for a Level III violation, first occurrence will not exceed \$10,000 [\$2,000] per day, per violation. Examples of Level III violations include, but are not limited to:

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

(C) working without a license or with improper (forged, altered, etc.) license;

(D) failure to adequately prevent public entry to potentially contaminated areas; [and]

(E) failure to submit a notification;[.]

(F) submitting a forged or altered training certificate in order to obtain a training provider or other license;

(G) training providers training without a license or with an improper license;

(H) training providers providing training certificates to persons who have not attended the required training course as specified by the department and/or the Model Accreditation Plan; and

(I) failure to submit a notification or to pay the required fee.

(2) Serious violation. Severity Level II covers violations that are significant and which, if not corrected, could threaten public health and safety. The base penalty for Level II violations on a first occurrence will not exceed \$1,000 [\$200] per day, per violation. Examples of Level II violations include, but are not limited to:

(A) failure to maintain material in a wet condition;

(B) working with a lapsed or suspended license; [and]

(C) submitting an improper notification;[.]

(D) a training provider failing to conduct a training course for the specified time period as specified in §295.64 of this title (relating to Training: Required Asbestos Training Courses);

(E) training with a lapsed training provider license. If this results in a suspension, the organization and principals will not be allowed to be licensed for a period of one year; and

(F) failure of a licensed person to maintain current training or physical.

(3) Significant violation. Severity Level I covers violations that are of more than minor significance and, if left uncorrected, could lead to more serious circumstances. This category shall include fraud and misrepresentation. The base penalty for Level I violations on first occurrence will not exceed \$100 [\$50] per day, per violation. Examples of Level I violations include, but are not limited to:

(A) (No change.)

(B) inadequate storage for clothing in the "clean room;" [and]

(C) failure to have worker certificate on a job site;[.]

(D) failure of a training provider to submit information to the department regarding training course schedules or to notify the department of cancellations within the specified time periods;

(E) failure of a training provider to submit course completion information within the specified time period as described in §295.65(f)(3) of this title (relating to Training: Approval of Training Courses); and

(F) a training provider exceeding the maximum trainee-instructor ratio.

(g) The person charged with the violation will be given the opportunity for a hearing conducted in accordance with the applicable provisions of the Administrative Procedure [and Texas Register Act, Texas Civil Statutes, Article 6252-13a] Act, Texas Government Code, Chapter 2001, and the department's formal hearing procedures in Chapter 1 of this title (relating to the Board of Health).

(h)-(i) (No change.)

§295.71. National Emission Standards for Hazardous Air Pollutants (NESHAP) Compliance.

(a) Authority. The Texas Department of Health (department) adopts by reference rules regarding demolition and renovation activities covered under 40 Code of Federal Regulations (CFR) [CFR], Part 61, Subpart M, §§61.140, 61.141, 61.145, 61.146, 61.148, 61.150, 61.152, and 61.157 (NESHAP) effective February 3, 1994.

(b) Scope. An owner or operator of a demolition or [of] renovation activity (as defined in 40 Code of Federal Regulations, Part 61, §61.141) shall assure compliance with NESHAP for all covered activities.

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

(e) Enforcement. The department will enforce the provisions of the NESHAP in accordance with §295.70 of this title (relating to Compliance: Administrative Penalty)[and with the Texas Asbestos Health Protection Act, Article 4477-3a].

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439819

Susan K. Steeg
General Counsel
Texas Department of
Health

Earliest possible date of adoption: June 3, 1994

For further information, please call (512) 834-6610

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter L. Rules of Practice and Procedure for Industry-Wide Rate Cases

• 28 TAC §§1.1301-1.1317

The Texas Department of Insurance proposes new §§1.1301-1.1317, concerning practice and procedures for all industry-wide rate cases in which the hearing is held at the State Office of Administrative Hearings, including benchmark/flexibility band hearings held under Article 5.101 of the Texas Insurance Code, rate cases for assigned risk automobile insurance, rate cases for the Texas Catastrophe Insurance Pool, title insurance rate cases, and credit insurance presumptive rate cases. These procedural rules are passed under the authority of Texas Insurance Code, Article 5.121, which authorizes the Department to adopt procedures to streamline insurance rate proceedings. The Department will consider the adoption of new §§1.1301-1.1317 in a public hearing under Docket Number 2098, schedule for 9:00 a.m. on June 6, 1994 in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas.

The objective of these sections is to obtain a just, fair and equitable determination of insurance rates with the greatest expedition and at the least expense possible to the parties and the state by streamlining the process of rate cases.

D. J. Powers, counsel to the commissioner, has determined that for the first five-year period the proposed new sections are in effect there will be no fiscal implications for local government as a result of enforcing or administering the sections. The costs for state government to conduct industry-wide rate cases will be reduced under the proposed rules. The rules will shorten the length of the hearing of rate cases, eliminate decisions on key procedural matters, and otherwise streamline the administrative process for rate cases.

Mr Powers also has determined that for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections will be to insure due process, provide understandable procedures for those persons who participate in proceedings before the Department, give appropriate notice of required filings, reduce the costs of lengthy hearings, and provide the Administrative Law Judge and parties notice of certain policy positions of the Commissioner. These sections will also insure that rate cases before the Department are conducted in an efficient and economical manner

by providing uniform procedures. There is no anticipated new direct economic cost to individuals who are required to comply with these proposed new sections.

Comments on the proposal may be submitted to Chief Clerk, Texas Department of Insurance, 333 Guadalupe Street, P.O. Box 149104, Austin, Texas 78714-9104, Mail Code 113-2A, within 30 days following the date of this publication.

The new sections are proposed under the Texas Insurance Code, Article 1.03A, which authorizes the Commissioner to adopt rules and regulations for the conduct and execution of the duties and functions of the department as authorized by statute and Texas Insurance Code, and Article 5.121, which authorizes the Department to adopt procedures to streamline insurance rate proceedings.

The new sections affect Texas Insurance Code, Articles 5.101 and 5.121.

§1.1301. Scope. This subchapter applies to all industry-wide rate cases: benchmark/flexibility band rate cases held under the Texas Insurance Code, Article 5.101, rate cases for assigned risk automobile insurance (Texas Automobile Insurance Plan Association), rate cases for the Texas Catastrophe Insurance Pool, title insurance rate cases, and credit insurance presumptive rate cases. This subchapter does not apply to proceedings to approve the rates of an individual insurer.

§1.1302. Definitions. The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise:

Administrative Procedure Act—Texas Government Code, Title 10, Subtitle A.

Article 5.101—Texas Insurance Code, Article 5.101, Subchapter M. Flexible Rating Program For Certain Insurance Lines, as amended from time to time

Department—The Texas Department of Insurance

ALJ—The Administrative Law Judge, an employee of the State Office of Administrative Hearings, who presides over a rate case.

Rate case—Any proceeding for the promulgation of industry-wide insurance rates in which the hearing is held at SOAH: benchmark/flexibility band rate cases held under the Texas Insurance Code, Article 5.101, rate cases for assigned risk automobile insurance (Texas Automobile Insurance Plan Association), rate cases for the Texas Catastrophe Insurance Pool, title insurance rate cases, and credit insurance presumptive rate cases

Register—The Texas Register established by the Texas Register and Administrative Code Act.

SOAH—State Office of Administrative Hearings.

§1.1303. Construction.

(a) These rules shall be construed to ascertain the truth in an efficient and expeditious manner, to promote fundamental fairness to all affected parties, and to narrow the contested issues.

(b) Except as provided by statute, these rules govern the procedure for the institution, conduct and determination of rate cases. In the absence of a rule in this subchapter, Subchapter A of this title (relating to Rules of Practice and Procedure) will govern.

§1.1304. Notice of Hearing.

(a) The Department will publish notice of a rate case in the Register no later than 60 days prior to the commencement date of a rate case hearing, with a copy of the notice to any person entitled to such notice by statute. The Department shall provide copies of the notice by first class mail to all parties to the last rate case in that line of insurance and to all persons who requested notice of the rate case, but failure to give notice to these parties or persons shall not invalidate the notice in the Register or be the basis for a continuance of the hearing or extension of any deadlines.

(b) In addition to those items required by statute, the notice shall include:

- (1) the style and docket number of the case,
- (2) an establishment of a deadline for intervention no sooner than the date set for the first pre-hearing conference,
- (3) the time, date and place set for a pre-hearing conference, no sooner than 15 days after publication of the notice in the Register;
- (4) a statement that the rate making data to be used in the rate case is currently available from the Department, and
- (5) such other matters deemed necessary by the Department to insure that all affected parties have a fair and reasonable opportunity to participate in the rate case hearing.

§1.1305. Pleadings. Regardless of an error in designation, a pleading shall be accorded its true status in the proceeding. No technical form of pleadings or motions are required, however, a pleading which sets forth a claim for relief shall contain a short and plain statement of the grounds and of the claim showing that the pleader is entitled to relief. Unless dictated into the record during a proceeding at which an actual record is made, a motion must be in writing and must state the request sought and the reasons for the motion. A copy of all pleadings must be served on all parties

§1.1306 Intervention. It is the policy of the Department to permit any interested party to intervene in a rate case, unless prohibited by law. The ALJ shall liberally permit interested parties to participate in rate cases. Participation by the Office of Public Insurance Counsel shall not preclude the participation of individual consumers or the representatives of individual consumers.

§1.1307. Filing and Service.

(a) Filing of any document filed in connection with a rate case may be accomplished by hand delivery, first class mail or by certified mail. Pursuant to §1.90(e) of this title (relating to Joint Memorandum of Understanding between Texas Department of Insurance and State office of Administrative Hearings, Concerning Procedures for Contested Cases before SOAH and Responsibilities of Each Agency), all documents must be filed both with SOAH and the Department of Insurance docket clerk. All filings shall include a certificate of service certifying that a copy of the filing has been served on all parties to the rate case or their representatives. Service of any document on the parties may be accomplished by hand delivery, first class service or by certified mail, or by facsimile if the original document is mailed or hand delivered on the same day as the service by facsimile.

(b) The Department shall maintain an indexed, central record of all documents filed in the case. All filings shall be open to public inspection unless stated otherwise in a protective order entered in the case.

§1.1308 Pre-hearing Conferences. At the time, date and place set for the pre-hearing conference in the notice of hearing, the ALJ shall rule on all Motions to Intervene and set the deadlines for filings of pleadings and pre-filed testimony, in accordance with this subchapter. The ALJ may call additional pre-hearing conferences as the ALJ deems necessary upon reasonable notice to all parties.

§1.1309 Pre-filed Testimony and Exhibits.

(a) The ALJ shall require parties to prepare their direct and rebuttal testimony in writing, in question and answer format, for incorporation into the record in lieu of live direct and rebuttal testimony at the hearing. Testimony shall be pre-filed for both fact and expert witnesses. All pre-filed testimony shall include an affidavit verifying the truth and accuracy of the testimony.

(b) The deadline for the filing of direct testimony shall be no later than 20 calendar days prior to the date of the hearing. The deadline for the filing of rebuttal testimony shall be no later than ten calendar

days prior to the date of the hearing. Pre-filed testimony shall include any exhibits referred to in the testimony or that will be offered by the party as part of its direct or rebuttal case. No late-filed or supplemental direct or rebuttal testimony shall be permitted without a showing good cause and a showing that the party will not gain an unfair advantage if the late-filed or supplemental testimony is permitted.

(c) Objections to pre-filed direct testimony shall be filed by the date set for the filing of rebuttal testimony. Objections to pre-filed rebuttal testimony shall be filed no later than two working days prior to the hearing.

(d) Parties who do not present direct or rebuttal testimony shall file a statement of position on the date pre-filed rebuttal testimony is due.

(e) Subject to any objections sustained by the ALJ, pre-filed testimony of fact witnesses shall be admitted without the necessity of having the witness present and subject to cross-examination unless a party files a written request at least two working days before the hearing to cross-examine the witness. If such a request is filed, the testimony shall not be admitted unless the witness appears at the hearing and all parties are given the opportunity to cross-examine the witness.

(f) The ALJ, upon good cause shown or upon agreement of all parties, may amend the deadlines set out in this rule.

§1.1310. Discovery.

(a) Permissible forms of discovery and discovery procedures shall be governed by the Texas Rules of Civil Procedure, except that the time for responses to written discovery requests shall be governed by this rule. Discovery requests may require the responding party to supply the responding party to supply the requested information on computer diskette in a format that can be translated into any Apple- or DOS-based computer spreadsheet or database, in addition to responses on paper. Unless otherwise limited by the Commissioner or the ALJ, the scope of discovery shall be the same as provided by the Texas Rules of Civil Procedure 166b, and shall be subject to such limitations as provided therein.

(b) Responses to written discovery requests shall be served no later than ten working days after receipt of service of the request. Objections to discovery shall be filed no later than five working days after service of the request. The ALJ is not required to rule on objections to discovery unless a motion to compel the discovery is filed by the party who propounded the discovery.

(c) In order to reduce the need for and expense of depositions, there shall be no limit on the number of sets or questions for interrogatories. Upon good cause shown, the ALJ may limit the number of interrogatories in the interests of justice.

(d) Workpapers shall be discoverable. Workpapers consist of all documents prepared by or for a witness in preparation or anticipation of the witness' testimony and evaluation of rates, including, but not limited to, the following: a list of articles, studies, transcripts, reports, law, and other documents reviewed by or relied upon by the witness; computer diskettes containing any data reviewed by or relied upon by the witness in a format that can be translated into any Apple- or DOS-based computer spreadsheet or database, and all notes, memos, data summaries, data analyses and other documents reviewed by or relied upon by the witness.

§1.1311 Agreements to be in Writing No agreement between parties or their representatives affecting any pending matter will be considered by the Department or the ALJ unless it is in writing, signed by the parties to the agreements and filed as a part of the record, or unless it is announced at the hearing and entered on the record. No settlement regarding an ultimate or underlying finding of fact or conclusion of law shall be considered by the ALJ or the Commissioner unless agreed to by all parties to the rate case. This rule does not prohibit the joint presentation of evidence or argument by two or more parties.

§1.1312 Pre-hearing Rulings All rulings made by the ALJ prior to the commencement of the hearing shall be made in writing or orally on the record. The ALJ may rule on motions without the necessity of a conference. Any ruling by the ALJ made prior to the commencement of the hearing may be appealed to the Commissioner if filed within five working days of the ruling. Responses to an appeal shall be filed within five working days of the filing of the appeal. An appeal shall not stay an ALJ's Order unless a stay is granted by the Commissioner pending the appeal.

§1.1313. Order of Presentation and Cross-examination

(a) The order of presentation of witnesses and order of cross-examination of witnesses shall be as follows.

(1) those parties who have no position on the rate level shall go first,

(2) those parties advocating an increase in rates shall go next, with the party who advocates the largest overall increase in rates going first, the party advocating the second largest overall increase in rates going second, and so on;

(3) those parties advocating no change in rates shall go next; and

(4) those parties advocating a decrease in rates shall go last, with the party who advocates the smallest overall decrease in rates going first, the party advocating the second smallest overall decrease in rates going second, and so on.

(b) Within each of the four groups specified in subsection (a)(1)-(4) of this section, parties who will not present a witness shall go before those parties who will present a witness. A party shall present all testimony, direct and rebuttal, at one time. The ALJ may allow, for good cause shown or upon agreement of all parties, witnesses to be called or cross-examined out of order.

§1.1314 Alignment of Participants Parties may be aligned according to the nature of the proceeding and their relationship to it. The ALJ may allow participants of an aligned class to select one or more persons to represent them in the proceeding. The Office of Public Insurance Counsel shall not be aligned with any other party.

§1.1315 Presentation of Evidence

(a) No live direct or rebuttal testimony shall be permitted, unless for good cause shown. A party offering a witness shall be permitted to allow the witness to identify himself or herself, identify the pre-filed direct and/or rebuttal testimony, and state that the answers to the questions are true. Objections to pre-filed testimony shall be ruled on at that time. The witness shall then be offered for cross-examination.

(b) Members of the public who are not parties or employees or agents of a party shall be allowed to present a statement either orally or in writing prior to the presentation of evidence by the parties or at any other time convenient for the member of the public, the parties and the ALJ. The purpose of a statement by a non-party shall be solely to raise issues for the ALJ and Commissioner. Non-party statements shall not be made part of the evidentiary record or used to form the basis of a finding of fact or conclusion of law.

§1.1316 Exhibits

(a) Exhibits must conform to the requirements outlined in the notice of hear-

ing or as otherwise prescribed by the Department. Exhibits of a documentary character should not exceed 8-1/2 by 11 inches unless they are folded to the required size. Maps and drawings which are offered as exhibits should be rolled or folded so as not to unduly encumber the record. Exhibits not conforming to this rule may be excluded.

(b) Each exhibit offered shall be tendered for identification and placed in the record. The original exhibit shall be provided to the ALJ. Copies shall also be provided to each of the parties.

(c) In the event an exhibit has been identified, objected to, and excluded, it may be withdrawn by the offering party. If withdrawn, the exhibit will be returned and the offering party waives all objections to the exclusion of the exhibit. If not withdrawn, the exhibit shall be included in the record for the purpose of preserving the objection to the exhibit or offer of proof.

§1.1317. Post-hearing Procedures. The ALJ shall set deadlines for post-hearing pleadings as follows.

(1) Parties shall be entitled to file initial post hearing briefs within ten working days after the hearing and reply briefs within five working days after the filing of the initial briefs.

(2) Parties shall be entitled to file exceptions to the proposal for decision within ten working days after receipt of the proposal and replies to exceptions within five working days after the filing of exceptions.

(3) The Commissioner shall consider the proposal for decision in an open meeting and permit parties to make oral argument. The Commissioner may place time limits on oral argument as the Commissioner deems necessary.

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

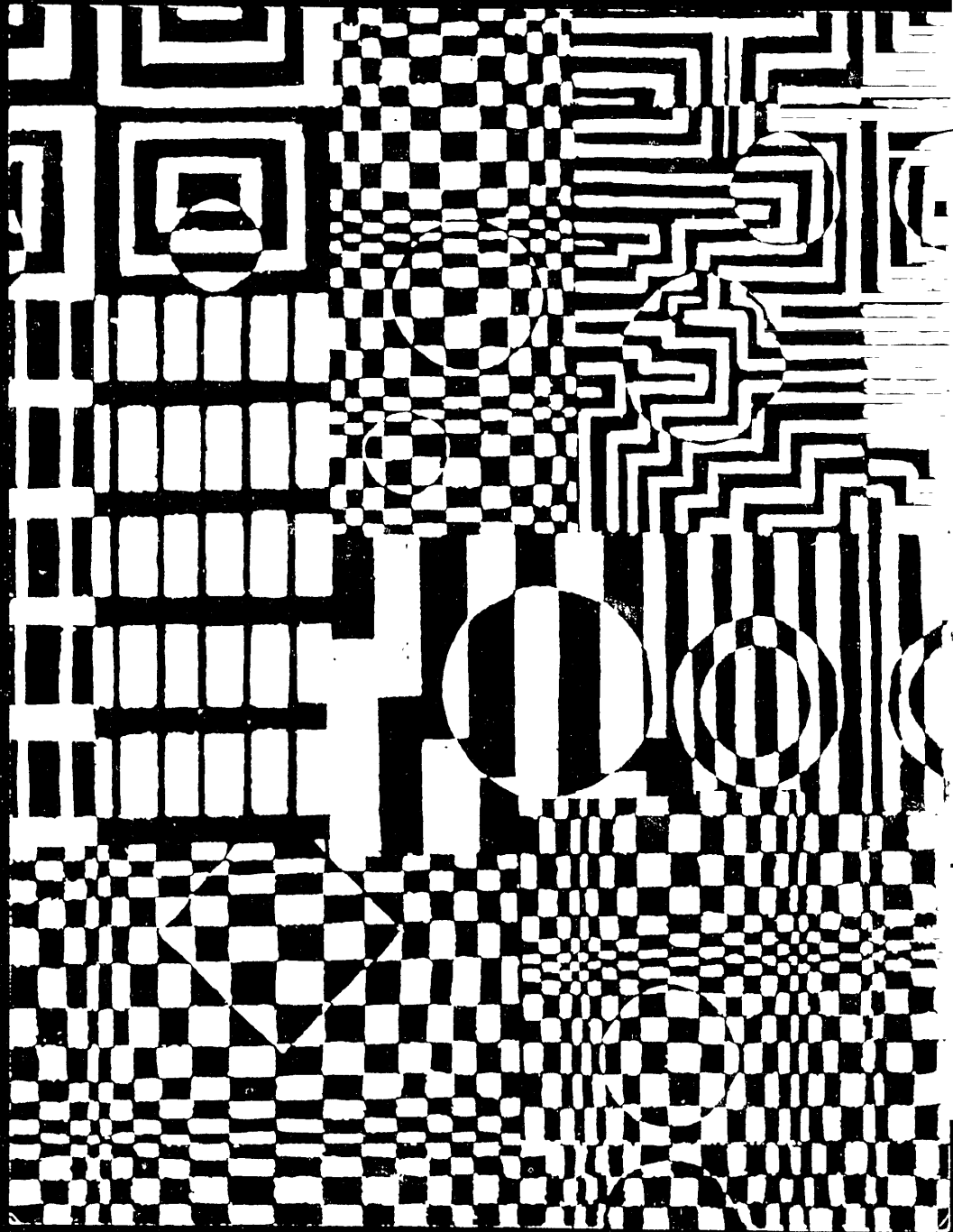
Issued in Austin, Texas, on April 26, 1994.

TRD-9439871

D. J. Powers
Counsel to the
Commissioner
Texas Department of
Insurance

Earliest possible date of adoption: June 3, 1994

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



WITHDRAWN RULES

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

TITLE 22. EXAMINING BOARDS

Part IX. Texas State Board of Medical Examiners

Chapter 161. General Provisions

• 22 TAC §161.1

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption a proposed amendment to §161.1, which appeared in the February 4, 1994, issue of the *Texas Register* (19 TexReg 756). The effective date of this withdrawal is April 25, 1994.

Issued in Austin, Texas, on April 25, 1994.

TRD-9439742 Pat Wood
Secretary to the Executive
Director/Director of
Permits
Texas State Board of
Medical Examiners

Effective date: April 25, 1994

For further information, please call: (512)
834-7728, Ext. 402



Chapter 183. Acupuncture

• 22 TAC §183.17

The Texas State Board of Medical Examiners has withdrawn from consideration for permanent adoption a proposed new §183.17, which appeared in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1762). The effective date of this withdrawal is April 25, 1994.

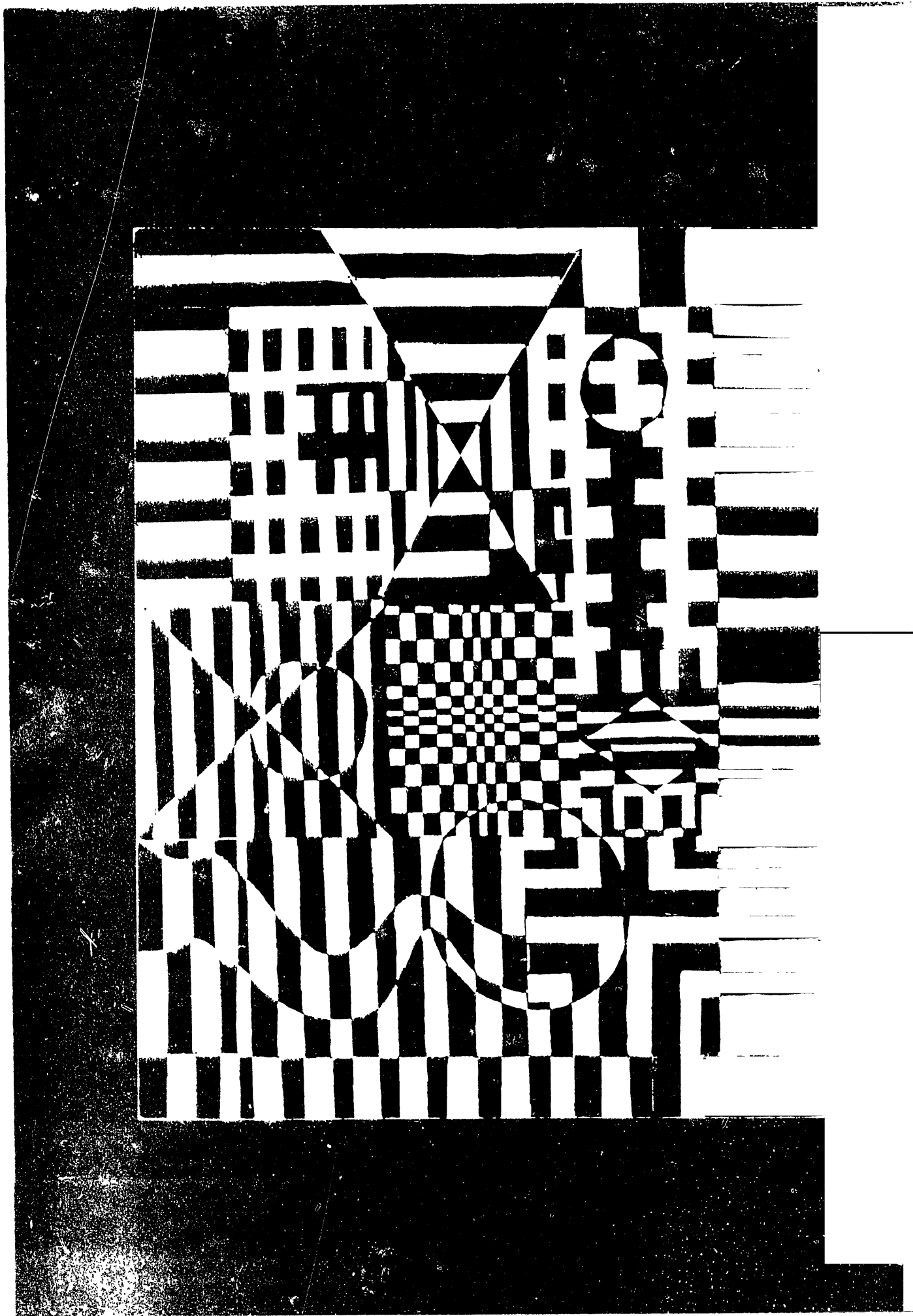
Issued in Austin, Texas, on April 25, 1994

TRD-9439751 Pat Wood
Secretary to the Executive
Director/Director of
Permits
Texas State Board of
Medical Examiners

Effective date: April 25, 1994

For further information, please call: (512)
834-7728, Ext. 402





ADOPTED RULES

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

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

TITLE 1. ADMINISTRATION

Part V. General Services Commission

Chapter 113. Central Purchasing Division

Purchasing

• 1 TAC §113.2, §113.20

The General Services Commission adopts an amendment to §113.2, concerning definitions, and new §113.20, concerning group purchasing programs. The amendments are adopted with changes to the proposed text as published in the March 4, 1994, issue of the *Texas Register* (19 TexReg 1509).

New §113.20 allows institutions of higher education to purchase through group purchasing programs that offer discount prices. The section also establishes procedures to be followed so that the commission may determine compliance with state laws and commission rules regarding purchasing with historically underutilized businesses (HUBs). In §113.2, the definition of group purchasing programs was amended to specify that the program offers discount prices to two or more institutions of higher education. In §113.20(a), the word "of" was deleted from "purchase of materials." In §113.20(c), the phrase "institution may utilize" was changed to "institution shall utilize." In §113.20(c) changes were made to explain the purchasing procedure if an institution does not receive, within 10 working days, notification from the commission of the availability of the item at a lower price.

The amendment to rule §113.2 defines the term "group purchasing program." New §113.20 allows institutions of higher education to purchase through group purchasing programs that offer discount prices. It also establishes procedures to be followed so that the commission may determine compliance with state laws and commission rules regarding purchasing with historically underutilized businesses (HUBs).

Two written comments were received. Both comments addressed basically the same issues: to specify that the definition of group purchasing programs included two or more institutions of higher education, and to expand the phrase "a particular purchase" in §113.20(b); and to explain, in §113.20(c), the purchasing procedure if the institution does not receive, within ten working days, notification

from the commission of the availability of the item at a lower price.

The University of Texas at Austin and Texas Tech University Health Sciences Center commented against adoption of the rule.

The agency agrees to amend the definition of group purchasing programs to specify that the purchasing program includes two or more institutions of higher education. The commission disagrees that there is a need to change "particular purchase" to "initial purchase." The agency agrees with the comment requesting authorization to proceed with a purchase if the commission has not given notice of its determination within ten days. Section 113.20(c) has been modified accordingly.

The amendments are adopted under Texas Civil statutes, Article 601b, §3.061, which provide the General Services Commission with the authority to promulgate rules necessary to accomplish the purposes of the sections.

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

Group purchasing program. A purchasing program that offers discount prices to two or more institutions of higher education.

§113.20 Group Purchasing Programs

(a) An institution of higher education, as defined by Education Code, §61.003, may purchase materials, supplies or equipment through group purchasing programs in accordance with this section.

(b) Before making a particular purchase through a group purchasing program, a requesting institution must notify the commission in writing that the purchase is being considered. The notification must be signed by the chief purchasing officer for the institution. The notification must include a complete description of the purchase, the vendor's name, quantity and price information, the terms and conditions of the contract, and any other information required by the commission.

(c) If the commission determines

that a lower price is available through the commission, it will so inform the requesting institution within ten working days after receipt of the notification. Upon receipt of information that a lower price is available, the institution shall utilize established purchasing procedures for the purchase. If the institution does not receive such notification within ten working days, it may proceed with the purchase.

(d) An institution that participates in a group purchasing program must maintain, and compile monthly, information relating to the institution's use, and the use by each operating division of the institution, of historically underutilized businesses, including information regarding subcontractors and suppliers. Institutions shall require a contractor or supplier to whom the institution has awarded a contract to report to the institution the identity and the amount paid to each historically underutilized business to whom the contractor or supplier has awarded a subcontract for the purchase of supplies, materials or equipment.

(e) An institution that participates in group purchasing programs must submit a report to the commission, not later than March 15 of each year regarding the previous six-month period and September 15 of each year regarding the preceding fiscal year, of purchases from historically underutilized businesses that are made through the group purchasing programs.

(f) An institution participating in group purchasing programs shall adhere to the same ethical standards required of commission employees as set forth in §111.4 of this title (relating to Ethical Standards).

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439831

Judith M. Porras
General Counsel
General Services
Commission

Effective date: May 17, 1994

Proposal publication date: March 4, 1994

For further information, please call: (512) 463-3583

◆ ◆ ◆
Chapter 121.

Telecommunications Services
Division

• 1 TAC §121.5, §121.9

The General Service Commission adopts amendments to §121.5 and §121.9, concerning retention of telephone records. Section 121.5 is adopted with changes to the proposed text as published in the March 4, 1994, issue of the *Texas Register* (19 TexReg 1510). Section 121.9 is adopted without changes to the proposed text and will not be republished.

The amendments are necessary to clarify telephone records retention and to allow for reduced costs to agencies for maintaining voluminous records. The change to §121.5(c)(1) deletes the sentence, "Agencies should destroy the copy of call detail records provided periodically for billing purposes after the agency has verified and paid its bill."

In accordance with §121.5(c)(1), the General Services Commission will retain long-distance telephone call detail for all TEX-AN-using agencies for a period of four years. The commission will provide each using agency its bill summary of centralized capitol complex telephone service without call detail records. Since local call detail is not needed for billing purposes, the commission does not maintain such records.

Two written comments concerning §121.5 were received from individuals. One comment expressed concern that the proposed rule directed agencies not to retain duplicate long-distance records and questioned the commission's power to authorize destruction of records by the agencies. One comment stated that the commission's commitment to retain TEX-AN long-distance call detail records for four years will serve to reduce records retention costs incurred by agencies. Alternative language was suggested addressing the retention of long distance call detail records by the agencies.

No groups or associations made comments for or against the rules.

The commission agrees with the comments that it should not direct other agencies' records retention or destruction, and has modified the §121.5 accordingly.

The sections are adopted pursuant to Texas Civil Statutes, Article 601b, which provide the General Services Commission with all the authority to promulgate rules necessary to accomplish the purpose of this Article.

§121.5. *TEX-AN Billing Process.*

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

(c) The Telecommunications Services Division will accumulate all charges for TEX-AN service and bill the using agencies on a monthly or other regular basis. The bill will include the following:

(1) charges for long-distance services based on a proration by each using agency of total network costs to provide each service. Prorations shall be based on the total usage of each service in minutes and the costs for circuits needed to access the services. An agency may install at its own expense automatic numbering equipment or similar function equipment to obtain amplified data for internal distribution of TEX-AN call usage for select locations. In any case, the actual billing for TEX-AN long-distance service by the commission and payment will be on the basis of usage and other costs which may be attributed to the provision of each service. Measures shall also be taken to assure that all costs associated with providing service to nonstate entities are recovered from each nonstate entity through the monthly billing system. All long-distance call detail records are maintained by the commission for all TEX-AN-using agencies for a period of four years.

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

(d)-(e) (No change.)

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439830

Judith Monaco Porras
General Counsel
General Services
Commission

Effective date May 17, 1994

Proposal publication date March 4, 1994

For further information, please call. (512) 463-3583

◆ ◆ ◆
TITLE 16. ECONOMIC
REGULATION

Part IV. Texas Department
of Licensing and
Regulation

Chapter 69. Manufactured
Housing

General Requirements

• 16 TAC §69.123

The Texas Department of Licensing and Regulation adopts an amendment to §69.123 concerning the selling of manufactured homes without changes to the text as published in the January 14, 1994, issue of the *Texas Register* (19 TexReg 256)

The amendment clarifies advertising restrictions

The department received 43 comments, 33 in favor and ten opposed. The main opposition concerned the prohibition of words such as "factory direct," "factory outlet," "buy direct from factory," etc. Some commentors claimed

that these words were contained in their corporate name. Others raised First Amendment issues or issues involving possible conflict with Article 9100, §14(c)(4), which prohibits the Commission from adopting a rule concerning advertising which restricts the use of a trade name. The department feels the rule as proposed does not violate Article 9100 or First Amendment issues and will reduce misleading advertising.

The amendment is adopted under Texas Civil Statutes, Article 5221f, which provide the Texas Department of Licensing and Regulation with the authority to promulgate and enforce a code of rules and take all action necessary to assure compliance with the intent of the Act.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439806

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date July 1, 1994

Proposal publication date January 14, 1994

For further information, please call (512) 463-7357

◆ ◆ ◆
Chapter 78. Talent Agencies

• 16 TAC §78.75

The Texas Department of Licensing and Regulation adopts the repeal of §78.75 in order to adopt a new §78.75, concerning talent agencies

The current §78.75 lists responsibilities of the registrant for a registration statement, and this subject is now covered in §78.74. The section numbers were confused when adopted in the February 15, 1994, issue of the *Texas Register* (19 TexReg 1102)

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5221a-9, which authorize the department to register and regulate talent agencies.

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439805

Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date May 17, 1994

Proposal publication date March 22, 1994

For further information, please call (512) 463-7357

The Texas Department of Licensing and Regulation adopts new §78.75, concerning talent agencies, without changes to the proposed text as published in the March 22, 1994, issue of the *Texas Register* (19 TexReg 2047).

The section concerns acts prohibited to the registrant and will provide protection for consumers.

No comments were received regarding adoption of the new section.

The new section is adopted under Texas Civil Statutes, Article 5221a-9, which authorize the department to register and regulate talent agencies.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439807 Jack W. Garrison
Executive Director
Texas Department of
Licensing and
Regulation

Effective date: May 17, 1994

Proposal publication date: March 22, 1994

For further information, please call: (512) 463-7357

TITLE 22. EXAMINING BOARDS

Part VI. State Board of Registration for Professional Engineers

Chapter 131. Practice and Procedure

Application for Registration

• 22 TAC §131.54

The State Board of Registration for Professional Engineers adopts an amendment to §131.54, concerning general application information, without changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1887).

The section provides clearer and more manageable provisions relative to the submission of applications for registration.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439801 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: May 17, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 440-7723

Education

• 22 TAC §131.92

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.92, concerning foreign degrees, without changes to the proposed text as published in the March 4, 1994, issue of the *Texas Register* (19 TexReg 1533).

The section establishes a more sound basis for evaluating educational qualifications for professional registration.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439802 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: May 17, 1994

Proposal publication date: March 4, 1994

For further information, please call: (512) 440-7723

Examinations

• 22 TAC §131.101

The Texas State Board of Registration for Professional Engineers adopts an amendment to §131.101, concerning engineering examinations required for registration as a professional engineer, without changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1887).

The section clarifies the engineering examinations required for registration as a professional engineer in Texas and the scheduling process for the principles and practice of engineering examination.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439803 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: May 17, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 440-7723

• 22 TAC §131.106

The Texas State Board of Registration for Professional Engineers adopts new §131.106, concerning examination irregularities, with changes to the proposed text as published in the March 18, 1994, issue of the *Texas Register* (19 TexReg 1888).

The section establishes the procedures and consequences the board will exercise when an examination has been compromised as a means of protecting the integrity of the examinations.

No comments were received regarding adoption of the amendment.

The new section is adopted under Texas Civil Statutes, Article 3271a, §8(a), which provide the board with the authority to make and enforce all rules and regulations necessary for the performance of its duties.

§131.106. Examination Irregularities.

(a) Cheating on examinations will not be tolerated. Examination proctors who conclusively observe that an examinee is giving or receiving assistance, compromising the integrity of the examination, or participating in any other form of cheating during an examination shall require the examinee to surrender all examination materials. The examinee involved shall leave the room and shall not be permitted to return. Evidence of cheating found after the examination shall also be a cause for action. The executive director shall be informed of such instances of suspected cheating at the earliest possible opportunity and will determine appropriate action. The results of all examinations where the executive director has determined that cheating has occurred will be disallowed.

(b) If the executive director determines that an examinee has cheated, the examinee will be barred from taking any examination in Texas for a period of two years. Any application for registration pend-

ing or approved for examination will be automatically proposed for rejection and will be evaluated or re-evaluated on that basis. Any examination taken and passed in another state during the two-year period will not be acceptable for registration purposes in Texas. Any subsequent examinations administered to the examinee will be given at the site and time determined by the executive director.

(c) A registered professional engineer suspected of cheating shall be charged with violating §131.156(a)(2) of this title (relating to Responsibility to the Engineering Profession) and will be subject to the associated processes and penalties.

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

Issued in Austin, Texas, on April 26, 1994

TRD-9439804 Charles E. Nemir, P.E.
Executive Director
Texas State Board of
Registration for
Professional Engineers

Effective date: May 17, 1994

Proposal publication date: March 18, 1994

For further information, please call: (512) 440-7723

Part IX. Texas State Board of Medical Examiners

Chapter 163. Licensure

• 22 TAC §§163.6, 163.7

The Texas State Board of Medical Examiners adopts amendments to §163.6 and §163.7, without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1734).

The amendments will create an orderly step-by-step system to phase-in the maximum number of failures allowed for licensure by examination as required under the new Medical Practice Act.

The section will function by clarifying the rules regarding the maximum number of failures allowed for physicians.

No comments were received regarding adoption of the rules.

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

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439743 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 16, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512) 834-7728, Ext. 402

Chapter 175. Schedule of Fees and Penalties

• 22 TAC §175.1

The Texas State Board of Medical Examiners adopts an amendment to §175.1, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 757).

The amendment specifies fees for the repeat of the United States Medical Licensing Examination and deletes fees for the Federation Licensing Examination, which is no longer in existence

The section will function through the collection of fees.

No comments were received regarding adoption of the rule

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

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

Issued in Austin, Texas, on April 25, 1994

TRD-9439744 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 16, 1994

Proposal publication date: February 4, 1994

For further information, please call (512) 834-7728, Ext. 402

Chapter 183. Acupuncturists

• 22 TAC §§183.1-183.4, 183.6-183.12

The Texas State Board of Medical Examiners adopts the repeal of §§183.1-183.4 and 183.6-183.12, without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1735)

The repeals were necessary as a result of extensive revision required to comply with

Senate Bill 1062, 73rd Legislature.

The sections will function by omission.

No comments were received regarding adoption of the repeals.

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

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439752 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 16, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512) 834-7728, Ext. 402

Chapter 183. Acupuncture

• 22 TAC §§183.1-183.16

The Texas State Board of Medical Examiners adopts new §§183.1-183.16, concerning Acupuncture. Section 183.5 is adopted with changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1736). Sections 183.1-183.4 and 183.6-183.16 are adopted without changes and will not be republished.

The new rules are promulgated pursuant to Senate Bill 1062, 73rd Legislature.

The sections will function by establishing procedures and standards for the training, education, licensing, and discipline of persons performing acupuncture in this state.

Comments were received from several individuals regarding the definition of acceptable acupuncture schools. The board made no changes as a result of the comments, but the comments will be researched and considered for future amendments to the section related to definitions.

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

§183.5. Annual Renewal of License.

(a) Acupuncturists licensed under the Act shall register annually and pay a fee. An acupuncturist may renew an unex-

pired license by submitting the required form and by paying the required renewal fee to the acupuncture board on or before November 30 of each year. The fee shall accompany a written application which legibly sets forth the licensee's name, mailing address, the place or places where the licensee is engaged in the practice of acupuncture, and other necessary information prescribed by the acupuncture board.

(b) Falsification of an affidavit or submission of false information to obtain renewal of a license shall subject an acupuncturist to denial of a license renewal or to discipline pursuant to the Act, §6.11.

(c) If the renewal fee and completed application form are not received on or before November 30 of each year, the following penalties will be imposed:

- (1) 1-90 days late-\$50 plus the required annual registration fee;
- (2) 90 days to one year late-\$100 plus the required annual registration fee;
- (3) over one year late-license will automatically be canceled.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439753 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 16, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512) 834-7728, Ext. 402

Chapter 187. Procedure

Subchapter B. Prehearing

• 22 TAC §187.19, §187.24

The Texas State Board of Medical Examiners adopts the repeal of §187.19 and §187.24, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 757).

Extensive rewrite of the sections was necessary; therefore, they have been repealed.

The repeals will function by deleting outdated rules.

No comments were received regarding adoption of the repeals.

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

the regulation of the practice of medicine in this state, and the enforcement of this act.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439745 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 16, 1994

Proposal publication date: February 4, 1994

For further information, please call: (512) 834-7728, Ext. 402

The Texas State Board of Medical Examiners adopts new §187.19 and §187.24, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 758).

The new sections will streamline the administrative process.

The new sections will function by establishing orderly procedures for the conducting of informal settlement conferences and show-compliance proceedings.

No comments were received regarding adoption of the rules.

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

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439746 Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 16, 1994

Proposal publication date: February 4, 1994

For further information, please call: (512) 834-7728, Ext. 402

Subchapter D. Posthearing

• 22 TAC §187.38

The Texas State Board of Medical Examiners adopts new §187.38, without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1763).

The new section will help streamline the administrative process related to modification/termination of agreed orders and disciplinary orders.

The new section will function by clarifying the procedure and framework for analysis in regard to the propriety of modifying or terminating agreed orders and other disciplinary orders imposed by the board.

One comment related to reinstatements being treated as contested cases was received from an attorney, and suggesting a clarification to confirm a distinction between reinstatement requests and modification or termination requests. The agency disagreed with the comment, which did not affect the proposed rule, and no changes were made as a result of the comment.

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

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439747 Bruce A. Levy, J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 17, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512) 834-7728, Ext. 402

Subchapter D. Posthearing

• 22 TAC §187.39

The Texas State Board of Medical Examiners adopts new §187.39, without changes to the proposed text as published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1763).

The new section is adopted in order to establish guidelines and procedures consistent with the Medical Practice Act, §4.125 and §4.02(h).

The new section will function through the imposition of administrative penalties through agreed dispositions and in contested disciplinary actions.

No comments were received regarding adoption of the rule.

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

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439748 Bruce A Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date: May 16, 1994

Proposal publication date: March 15, 1994

For further information, please call: (512)
834-7728, Ext. 402

Chapter 198. Unlicensed Practice

• 22 TAC §198.1

The Texas State Board of Medical Examiners adopts new §198.1, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 760)

The new section will assist the board in handling complaints regarding unlicensed practice of medicine in a more efficient and expeditious manner.

The new section formalizes the procedure for handling complaints made to the board regarding the unlicensed practice of medicine or the performance of any medical procedure without the required permit, registration, or license.

No comments were received regarding adoption of the rule.

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

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

Issued in Austin, Texas, on April 25, 1994

TRD-9439749 Bruce A Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date May 16, 1994

Proposal publication date February 4, 1994

For further information, please call: (512)
834-7728, Ext 402

Chapter 199. Public Information

• 22 TAC §§199.1-199.3

The Texas State Board of Medical Examiners adopts new §§199.1-199.3, without changes to the proposed text as published in the February 4, 1994, issue of the *Texas Register* (19 TexReg 761)

The new sections explain the duties of the Public Information Committee and outline the rules regarding requests to speak at board meetings and requests for written information

The new sections better inform the public of opportunities to speak at board meetings and to request information from the board, as well as to better identify the functions of the Public Information Committee.

No comments were received regarding adoption of the rules.

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

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

Issued in Austin, Texas, on April 25, 1994

TRD-9439750 Bruce A Levy, M.D., J.D.
Executive Director
Texas State Board of
Medical Examiners

Effective date May 16, 1994

Proposal publication date February 4, 1994

For further information, please call: (512)
834-7728, Ext 402

TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 1. Texas Board of Health

• 25 TAC §1.201

The Texas Department of Health (department) adopts new §1.201, concerning investigations of abuse, neglect, or exploitation, with changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8754) Section 1.201 concerns investigations of reports of abuse, neglect, or exploitation of children or elderly or disabled persons. The section is adopted pursuant to the Family Code, Chapter 34, relating to abuse or neglect of a child and the Human Resources Code, Chapter 48, relating to the abuse, exploitation, or neglect of an elderly or disabled person. In accordance with these laws, the department is required to investigate reports relating to abuse, neglect or exploitation in a facility operated, licensed, certified or registered by the department. Such facilities include the state chest hospitals, the department-operated public health clinics and the facilities licensed by the Health Facility Licensure and Certification Division.

No comments were received regarding the proposed new section. Changes to the pro-

posed section were made based on staff comments

Concerning subsection (k), staff asked for clarification of the language on release of the records. The language has been revised to state that records may be released to governmental agencies or in civil or criminal litigation as otherwise allowed by law or judicial rule.

Staff also asked whether the section expresses all of the procedures and responsibilities placed on the department by the Family Code, Chapter 34 or the Human Resources Code, Chapter 48. The department's response is that the rule does not restate all requirements in each law. Subsection (m) has been added to state that this section is in addition to requirements in the laws.

The new section is adopted under the Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health; the Family Code, §34.22, requiring rules relating to the abuse or neglect of a child, and the Human Resources Code, §48.037 requiring rules relating to the abuse, exploitation, or neglect of an elderly or disabled person. This section implements the Family Code, Chapter 34 and the Human Resources Code, Chapter 48.

§1.201. Investigations of abuse, neglect, or exploitation

(a) This section addresses investigations of reports received by the Texas Department of Health (department) relating to a facility operated, licensed, certified, or registered by the department concerning:

(1) the abuse, exploitation, or neglect of an elderly or disabled person under the Human Resources Code, Chapter 48; or

(2) the abuse or neglect of a child under the Family Code, Chapter 34.

(b) The department shall promptly notify the Department of Protective and Regulatory Services (DPRS) of:

(1) each complaint and investigative report it receives relating to abuse, neglect, or exploitation in a facility operated by the department, and

(2) each complaint relating to an investigation conducted by the department.

(c) The department will only investigate complaints when:

(1) the act is reported to have occurred in such a facility and the victim was a patient or resident of the facility;

(2) the act is reported to have occurred in such a facility and the perpetrator was an employee, contractor, volunteer, or otherwise affiliated with the facility;

(3) the facility was responsible for the supervision of the patient or resident (the victim) at the same time the act occurred; or

(4) the facility was responsible for the supervision of the perpetrator at the time the act occurred.

(d) Other complaints of abuse, neglect, or exploitation will be referred to the DPRS for appropriate investigation or action.

(e) The department shall make a thorough investigation promptly after receiving a complaint report.

(1) The primary purpose shall be the protection of the child or elderly or disabled person.

(2) The terminology and definitions used by the DPRS relating to abuse, neglect, or exploitation investigations shall also be used by the department.

(f) The department need not investigate a report which it determines is frivolous, not within the scope of this section, or clearly does not involve abuse, neglect or exploitation.

(g) An investigation shall include:

(1) an interview with the alleged victim;

(2) a visit to the place of residence of the elderly or disabled person or child unless the visit is not required under applicable law or necessary to the investigation;

(3) an interview with the alleged perpetrator unless the investigator has already determined that there was no abuse, neglect or exploitation or the risk of the same does not exist; and

(4) consultation with persons thought to have knowledge of the circumstances.

(h) An investigation shall address the issues set forth in:

(1) the Human Resources Code, §48.038(a), relating to elderly or disabled persons; or

(2) the Family Code, §34.05(b), relating to children.

(i) If the investigation concludes that no abuse, neglect, or exploitation has occurred or is likely to occur, no further investigation will be undertaken.

(j) If the department determines that the child or elderly or disabled person should be removed from the facility in order to protect the person from further abuse, neglect, or exploitation, the department shall promptly inform the DPRS.

(k) If the investigation reveals

abuse, neglect or exploitation, the written report of the investigation by the department, along with the department's recommendations and related documents, shall be submitted to the appropriate district or county attorney or law enforcement agency, as well as to the DPRS. The investigative report and related documents may be released to governmental agencies or in civil or criminal litigation as otherwise allowed by law or judicial rule. The investigative report and related documents may not be released to the public.

(l) The department has adopted by reference a memorandum of understanding in §3.21 of this title (relating to Memorandum of Understanding with Department of Protective and Regulatory Services concerning Elderly Abuse).

(m) The requirements in this section are in addition to any other requirements applicable to department investigations contained in the Family Code, Chapter 34 or the Human Resources Code, Chapter 48.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439782 Susan K Steeg
General Counsel
Texas Department of
Health

Effective date: May 17, 1994

Proposal publication date: November 26, 1993

For further information, please call: (512) 458-7236

Chapter 3. Memorandums of Understanding With Other State Agencies

• 25 TAC §3.21

The Texas Department of Health (department) adopts new §3.21, concerning Memorandum of Understanding, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8755).

Section 3.21 concerns a memorandum of understanding (MOU) between the department and the Texas Department of Protective and Regulatory Services adopted pursuant to the Human Resources Code, Chapter 48. The MOU concerns the responsibilities and procedures of each agency regarding investigations of reports of abuse, exploitation, and neglect of the elderly or disabled occurring in facilities operated, licensed, certified or registered by the department.

No comments were received regarding adoption of the new section.

The new section is adopted under the Human Resources Code, §48.022, which requires the Texas Department of Protective and Regulatory Services and the Texas Department of Health to enter into a memorandum of understanding to delegate responsibilities and procedures of each agency regarding investigations of reports of abuse, exploitation, and neglect occurring in certain facilities; and the Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health. The section implements the Human Resources Code, Chapter 48.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439783 Susan K Steeg
General Counsel
Texas Department of
Health

Effective date: May 17, 1994

Proposal publication date: November 26, 1993

For further information, please call: (512) 458-7236

Chapter 37. Maternal and Child Health

The Texas Department of Health (department) adopted amendments to §§37.52, 37.53, 37.56-37.59, 37.61-37.64, 37.66 and 37.67, and the repeal of §37.68 without changes to the proposed text as published in the February 8, 1994 issue of the *Texas Register* (19 TexReg 869) and will not be republished.

The amendments will clarify definitions, screening procedures, collection procedures, and recordkeeping procedures currently used in the program. The amendments to §§37.61-37.63 will require patients to obtain metabolic formula from routine sources of medical prescription items such as pharmacies and metabolic treatment centers rather than from the department. Obtaining formula items from normal prescription sources will assist to insure that payment for the formula product will be made from appropriate sources such as insurance companies, Medicaid or the Chronically Ill and Disabled Childrens Services Program. Problem cases or extraordinary situations will be handled on a case by case basis by the newborn screening staff.

No comments were received regarding the proposed sections.

Newborn Screening Program

• 25 TAC §§37.52, 37.53,
37.56-37.59, 37.61-37.64, 37.66,
37.67

The amendments are adopted under Chapter 33, Subchapter C, of the Health and Safety

Code, which provides the board with the authority to adopt rules for the Newborn Screening Program.

These sections affect Chapter 33 of the Health and Safety Code.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439757 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: May 16, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 458-7700

◆ ◆ ◆
• 25 TAC §37.68

The repeal is adopted under Chapter 33, Subchapter C, of the Health and Safety Code, which provides the board with the authority to adopt rules for the Newborn Screening Program. These sections affect Chapter 33 of the Health and Safety Code.

The repeal affects Chapter 33 of the Health and Safety Code.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439756 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: May 16, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 458-7700

◆ ◆ ◆
Chapter 97. Communicable
Diseases

Tuberculosis Screening for
Jails and Other Correctional
Facilities

• 25 TAC §§97.171-97.180, 97.190

The Texas Department of Health (the department) adopts new §§97.171-97.180, and 97.190, without changes to the proposed text as published in the February 8, 1994, issue of the *Texas Register* (19 TexReg 872)

These sections are required by Chapter 89 of the Texas Health and Safety Code which was added by Chapter 786 (Senate Bill 57) of the 73rd Legislature, Regular Session which require the department to adopt rules for the screening and treatment for tuberculosis (TB) in jails and other correctional facilities. The department expects these rules to reduce the

transmission and incidence of tuberculosis in correctional facilities of 100 beds or more, and indirectly among the general public who subsequently come in contact with these inmates, employees, and volunteers.

These sections establish screening and treatment procedures for tuberculosis of employees, volunteers, and inmates in county jails and other correctional facilities. These sections require specific types of tests, diagnostic evaluations, professional examinations to be used; categories of individuals to be screened; form of certificates; transfer of records, frequency of tests; and reporting. Jails are required to submit a plan with these and other elements to the Texas Department of Health Tuberculosis Elimination Division.

The following comments were received concerning the proposed rules.

Comment: Concerning §97.177, a commenter recommended that all references to evaluation of job assignment for persons "who do not take" or "do not accept preventive therapy" be deleted. There is no risk of transmission for persons only "infected." Why would reassignment be necessary? What work restrictions would apply? This section may send an inaccurate public health message concerning transmission. Counseling persons about risk of developing disease, however, is very important.

Response: The department developed rules to encompass a wide range of employment settings. It is a reasonable health care measure to recommend older, immune compromised or individuals with other health care problems to have their workplace role evaluated with regard to their TB test status. This is especially true for health care workers. Additionally, it is a good public health measure to be aware of the reasons for not taking or not completing preventive therapy and reinforcing the reasons to take the medication. Monitoring the person's health at the workplace may also be necessary.

Comment: Concerning §97.179, a commenter stated that Senate Bill (SB) 57 only requires a certificate signed by a physician stating: 1) the employee or volunteer has been tested for tuberculosis infection; and 2) the results indicate that the person does not have tuberculosis. Although, it is noted that the rules do allow for the recommended certificate or "a similar document," rules also state, "the certificate is part of a multipurpose form which shall be used for evaluation or treatment of an employee."

While a multipurpose form seems like a good idea, employees may object to providing employers with extensive clinical data (i.e. HIV test results, bacteriology, and sputum results) which goes beyond the law's requirements. Some minimal clinical information on the employee certificate such as the Mantoux test date and result would be helpful.

Because the purpose of the "Transfer Records" for inmates and "Certificates" for employees are entirely different, it is recommended that the TB400 continue to be used for reporting and for transferring inmate information; and that a separate form be designed for use as a certificate by employees

Response: The rules support the provision of information used by the physician to evaluate treatment recommendations. Any person provided access to this information is on a need to know basis and is legally obligated to maintain its confidentiality. Senate Bill 57 (§89.073(b)(1)) and the rules (§97.190(b)) provide for the adoption of local standards and forms. The department will evaluate each plan as it applies to the local community.

Comment: Concerning §97.179(b), a commenter suggested that the deadline for filing a certificate should be a period of time related to employment (i.e. "certificates must be presented by employees prior to employment" and "within one to two months of the annual recertification date."). To set a deadline after the certificate is completed and signed by a physician would leave the employer dependent upon the physician's schedule for signing certificates.

Response: It is anticipated that the certificate would be completed at the time of the medical evaluation. Provisions for a delay in treatment recommendations or completion of a certificate from the physician may be included in the locally adopted plan (§97.190(c) and (d)). The department will evaluate each plan as it applies to the local community.

The comments on the proposed rules received by the department were from the Texas Department of Criminal Justice. These comments were neither for nor against the rules in their entirety; however they raised questions, expressed concerns, offered comments for clarification, and made recommendations concerning specific provisions of the rules.

The new sections constitute the Texas Department of Health's recommendation to the Commission of Jail Standards and Texas Department of Criminal Justice required by §89.072 of the amended Texas Health and Safety Code, and the minimum standards for counties, judicial districts, and private entities required by §89.073. They also constitute the screening guidelines authorized by §89.011 and §89.073 of the Texas Health and Safety Code. Rules to prevent communicable disease are also authorized by §81.004 of the Texas Health and Safety Code; and §12.001, which provides the Texas Board of Health with the authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health, and the Commissioner of Health.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439758 Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: May 16, 1994

Proposal publication date: February 8, 1994

For further information, please call: (512) 458-7447

Chapter 111. Special Health Services

• 25 TAC §111.1

The Texas Department of Health (department) adopts the repeal of §111.1, concerning Memorandum of Understanding, without changes to the proposed text as published in the November 26, 1993, issue of the *Texas Register* (18 TexReg 8756). The section adopts by reference an MOU between the Texas Department of Human Services (TDHS) and the department concerning protective services for the elderly.

The section is being proposed for repeal because the MOU has been rewritten to reflect statutory changes in the Human Resources Code, Chapter 48, concerning responsibilities and procedures of each agency regarding investigations of reports of abuse, exploitation, and neglect of the elderly or disabled occurring in facilities licensed or operated by the department and the transfer of responsibilities from TDHS to the Texas Department of Protective and Regulatory Services. The updated MOU is being proposed for permanent adoption in §3.21 under 25 TAC, Chapter 3, concerning memoranda of understanding between the department and other state agencies.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Human Resources Code, §48.022, which requires the Texas Department of Protective and Regulatory Services and the Texas Department of Health to enter into a memorandum of understanding to delegate responsibilities and procedures of each agency regarding investigations of reports of abuse, exploitation, and neglect occurring in certain facilities, and the Health and Safety Code, §12.001, which provides the Board of Health with authority to adopt rules for the performance of every duty imposed by law on the Texas Board of Health, the Texas Department of Health and the Commissioner of Health.

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

Issued in Austin, Texas, on April 25, 1994.

TRD-9439781

Susan K. Steeg
General Counsel
Texas Department of
Health

Effective date: May 17, 1994

Proposal publication date: November 26, 1993

For further information, please call: (512) 458-7236

TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 1. General Administration

Subchapter B. Fees, Charges and Costs

• 28 TAC §§1.301-1.306

The Texas Department of Insurance adopts the repeal of §§1.301-1.306, without changes to the proposed text as published in the February 18, 1994, issue of the *Texas Register* (19 TexReg 1168). Section 1.301 relates to costs of copies and access to public records. Section 1.302 relates to charges for specified board publications. Section 1.303 relates to the charge for the Insurance Code and related laws. Section 1.304 relates to the charge for copies of insurance-related legislation published after each legislative session. Section 1.305 relates to the charge for the board's report to the Sunset Commission. Section 1.306 relates to certain publications distributed without charge.

The repeals are necessary because House Bill 1009, 73rd Legislature, required each state agency to review its procedures for providing access to and copies of public records and to analyze the charges the agency makes for providing copies. House Bill 1009 also mandated each state agency to promulgate rules specifying the charges the agency will establish for copies of public information. Additionally, House Bill 1009 required the General Services Commission (GSC) to con-

duct a study of the charges made by state agencies for copies of public records and to prepare a report of its findings under the study. Consequently, on March 29, 1994, GSC adopted rules to set out the methods and procedures that a state agency may use in determining the amounts the agency should charge. To comply with House Bill 1009 mandates, the department may consider the rules that the GSC has adopted in 1 TAC §§111.61 to 111.70. Because the department will have to follow new guidelines and charge new costs, and §§1.301-1.306 refer to obsolete or discontinued publications or procedures, or the three-member board which is no longer in existence, it is necessary to repeal these sections.

The repeals eliminate any reference to obsolete or discontinued publications or procedures and will also eliminate any reference to the three-member board, which is no longer in existence. The adopted repeal will facilitate the department's adherence to methods and procedures specified by GSC's rules and guidelines to determine amounts that should be charged by the department to recover the full cost of providing copies of public records.

No comments were received on the proposed repeals.

The repeals are adopted under House Bill 1009, 73rd Legislature and the Insurance Code, Article 1.03A. House Bill 1009 requires all state agencies to promulgate rules specifying the charges each agency will establish for copies of public information. Article 1.03A authorizes the Commissioner to adopt rules and regulations for the conduct and execution of the duties and functions by the department.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439870

D J Powers
Legal Counsel
Texas Department of
Insurance

Effective date: May 17, 1994

Proposal publication date: February 18, 1994

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

Texas Department of Insurance Exempt Filing

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L.

(Editor's Note: As required by the Insurance Code, Article 5.96 and 5.97, the Texas Register publishes notices of actions taken by the Department of Insurance pursuant to Chapter 5, Subchapter L, of the Code. Board action taken under these articles is not subject to the Administrative Procedure Act.)

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

The text of the material being adopted will not be published, but may be examined in the offices of the Department of Insurance, 333 Guadalupe, Austin.)

The Commissioner of Insurance, at a public meeting held at 8:30 a.m. on April 18, 1994, in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street, Austin, Texas, adopted the revised Texas Statistical Plan For Private Passenger Automobile (the "Plan") as proposed by staff of the Texas Department of Insurance except that County Mutual Insurance Companies were

exempted for the remainder of calendar year 1994 from the reporting requirement that County Mutuals convert all policies written to benchmark rates. The revised Plan implements the Insurance Code, Article 5.05(a), which requires that the Commissioner develop reasonable statistical plans to be used by each automobile insurer in the recording and reporting of its loss experience and other data in order that the total loss and expense experience of all such insurers may be made available annually. The Insurance Code, Article 21.69, authorizes the Commissioner to

contract with any qualified entity to collect historical premium and loss data as defined by the Commissioner and pursuant to statistical plans promulgated or approved by the Commissioner. Notice of a public meeting to receive public comment on the proposed revised Texas Statistical Plan for Private Passenger Automobile, was published in the March 15, 1994, issue of the *Texas Register* (19 TexReg 1859)

On May 6, 1993, the State Board of Insurance adopted the Texas Statistical Plan for Private Passenger Automobile by Board Order Number 60321. In the process of developing reporting instructions pursuant to the statistical plan adopted on May 6, 1993, staff, in consultation with insurers and the public identified numerous areas of the plan requiring revision including the addition of certain data elements, the deletion of certain data elements, the elimination of one report and the addition of specific reporting and record layout instructions. The Commissioner adopted the revised Texas Statistical Plan for Private Passenger Automobile on April 18, 1994, which incorporated the needed revisions and provided a more complete document for instructing insurers on their reporting responsibilities related to private passenger automobile experience in Texas.

The Commissioner has jurisdiction over this matter pursuant to the Insurance Code, Articles 5.05, 5.96, and 21.69.

The Plan as adopted by the Commissioner is filed with the Chief Clerk under Reference Number A-0394-051 and is incorporated by reference by Commissioner Order Number 94-0457.

This notification is made pursuant to the Texas Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure and Texas Register Act. (Administrative Procedure Act, 73rd Legislature, Regular Session, Chapter 268, §1, 1993 Texas General Laws 737 (codified Texas Government Code title 10, Chapter 2001)).

Consistent with the Texas Insurance Code, Article 5.96(h), prior to the effective date of this action, the Texas Department of Insurance will notify all insurers writing private passenger automobile insurance.

IT IS THEREFORE THE ORDER of the Commissioner of Insurance that the revised Texas Statistical Plan For Private Passenger Automobile, as described herein, except that

County Mutual Insurance Companies are exempt for the remainder of calendar year 1994 from the reporting requirement that County Mutuals convert all policies written to benchmark rates, be adopted to become effective for all insurers writing private passenger automobile insurance on and after 15 days following the date that notice of this action is published in the *Texas Register*.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439872

Linda K von Quintus-Dom
Chief Clerk
Texas Department of
Insurance

Effective date: May 18, 1994

For further information, please call: (512) 463-6328

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OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the **Texas Register**.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the **Texas Register**.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas Department of Agriculture

Tuesday, May 17, 1994, 10:00 a.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.172 by J. A. V. Ag., Inc., doing business as Van De Walle Vegetable, Inc. as petitioned by Delta Brokerage, Inc. doing business as Delta Produce Marketing.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: April 28, 1994, 9:20 a.m.

TRD-9439895

Tuesday, May 17, 1994, 1:00 p.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.172 by J. A. V. Ag., Inc., doing business as Van De Walle Vegetable, Inc. as petitioned by River City Produce Company.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

TRD-9439896

Tuesday, May 17, 1994, 2:30 p.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.172 by J. A. V. Ag. Inc., doing business as Van De Walle Vegetable, Inc. as petitioned by Grothues Brothers Farms.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: April 28, 1994, 9:21 a.m.

TRD-9439897

Wednesday, May 18, 1994, 10:00 a.m.

Texas Department of Agriculture, 8919 Tesoro Drive, Suite 120

San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §101.001-101.021 and/or §§102.001-102.172 by J. A. V. Ag. Inc., doing business as Van De Walle Vegetable, Inc. as petitioned by Broekhoeve Farms.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668.

Filed: April 28, 1994, 9:21 a.m.

TRD-9439898

Wednesday, May 18, 1994, 1:00 p.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.172 by J. A. V. Ag. Inc., doing business as Van De Walle Vegetable, Inc. as petitioned by Van Damme Farms.

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668

Filed: April 28, 1994, 9:21 a.m.

TRD-9439899

Wednesday, May 18, 1994, 2:30 p.m.

Texas Department of Agriculture, 8918 Tesoro Drive, Suite 120

San Antonio

According to the complete agenda, the Office of Hearings will hold an administrative hearing to review alleged violation of Texas Agriculture Code, §§101.001-101.021 and/or §§102.001-102.072 by J. A. V. Ag. Inc., doing business as Van De Walle Vegetable, Inc. as petitioned by Gary Aelvoet

Contact: Joyce Arnold, P.O. Box 12847, Austin, Texas 78711, (512) 475-1668

Filed: April 28, 1994, 9:22 a.m.

TRD-9439900

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Texas Commission for the Blind

Friday, May 6, 1994, 9:00 a.m.

Criss Cole Rehabilitation Center, 4800 North Lamar Boulevard

Austin

According to the complete agenda, the Board will discuss approval: minutes from February 18, 1994, executive session pursuant to Article 6252-17, §2(g), to discuss personnel and §2(e), to discuss pending legal matters with attorney; discussion and approval: executive director's report on agency activities; approval: capital outlay; discussion and approval: repeal of and proposed new rules of §163.30, order of selection, discussion resolution passed by the Business Enterprises Program Elected Committee of Managers; discussion and approval strategic plan, discussion and board direction: legislative appropriations request, and discussion and decision: date and location for next regular meeting

Contact: Diane Vivian, 4800 North Lamar Boulevard, Austin, Texas 78756, (512) 459-2601

Filed: April 26, 1994, 2:55 p.m.

TRD-9439816

Texas Commission on Children and Youth

Tuesday, May 3, 1994, 7:30 a.m.

1300 Lamar Street, Four Seasons Hotel, Dining Room

Houston

Emergency Meeting

According to the agenda summary, the Texas Commission on Children and Youth will meet for a work session-service delivery work group.

Reason for emergency: The unexpected need to discuss service delivery issues before the next commission meeting

Contact: Ginny McKay, P.O. Box 13106, Austin, Texas 78711, (512) 305-9056.

Filed: April 26, 1994, 4:00 p.m.

TRD-9439833

East Texas State University

Thursday, May 5, 1994, 10:00 a.m.

East Texas State University, McDowell Administration Building

Commerce

According to the complete agenda, the Board of Regents, Executive Committee will meet in executive session to consult with attorney, discuss personnel matters,

and receive reports from administrators; appointment of president of ETSU at Texarkana; agency strategic plan for ETSU-Commerce; agency strategic plan for ETSU-Texarkana; approval of policy and procedures manual, ETSU-Texarkana, awarding of honorary degree, ETSU-Texarkana; and Athletic Hall of Fame nominations.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: April 28, 1994, 8:22 a.m.

TRD-9439882

Thursday, May 5, 1994, 11:00 a.m.

East Texas State University, McDowell Administration Building

Commerce

According to the complete agenda, the Board of Regents, Campus Planning, Finance and Auditing Committee will discuss adjustments to fiscal year 1994 operating budget, ETSU-Commerce; adjustments to fiscal year 1994 operating budget, ETSU-Texarkana; adoption of fiscal year 1995 operating budget for ETSU-Commerce, adoption of fiscal year operating budget for ETSU-Texarkana; life insurance settlement, amendment of fee schedule for ETSU-Texarkana; Phase Two, Human Resources Plan; receive bids on sidewalk construction, and waiver of option to purchase.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: April 28, 1994, 8:22 a.m.

TRD-9439881

Thursday, May 5, 1994, 11:00 a.m.

East Texas State University, McDowell Administration Building

Commerce

According to the complete agenda, the Board of Regents, Academic Affairs Committee will discuss report of division activities; ETSU-Commerce faculty promotions; and tuition increase: Carswell Air Force Base Extension Program

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: April 28, 1994, 8:22 a.m.

TRD-9439880

Thursday, May 5, 1994, 11:00 a.m.

East Texas State University, McDowell Administration Building

Commerce

According to the complete agenda, the Board of Regents, Student and University

Advancement Committee will discuss report of division activities; and distinguished alumnus awards.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: April 28, 1994, 8:21 a.m.

TRD-9439879

Friday, May 6, 1994, 9:00 a.m.

East Texas State University, McDowell Administration Building

Commerce

According to the agenda summary, the Board of Regents will approve the minutes of the February 18, and March 3, 1994 meetings; they will receive and act on reports from the Student and University Advancement Committee, the Academic Affairs Committee, the Campus Planning, Finance, and Auditing Committee, and the Executive Committee; and the board will meet in executive session to consult with its attorney, consider personnel matter: and receive reports from administrators under §§551.071, 551.074, and 551.075, Texas Government Code.

Contact: Charles Turner, East Texas State University, Commerce, Texas 75429, (903) 886-5539.

Filed: April 28, 1994, 8:21 a.m.

TRD-9439878

Office of the Governor

Thursday, May 5, 1994, 10:00 a.m.

Room NB2.402-Simmons Biomedical Research Building, UTSMC, 6000 Harry Hines Boulevard, Executive Session: Room NB2.100A

Dallas

According to the agenda summary, the Advisory Committee on the Superconducting Super Collider (SSC) will meet to hear reports on the status of negotiations between the State of Texas and the U.S. Department of Energy related to the termination of the SSC project and on the use of funds allocated by the Department of Energy to assess future uses of the SSC assets. The Advisory Committee will also meet in Executive Session to consider possible litigation matters related to the Department of Energy and personnel matters relating to professional personnel needed to maximize the use of the assets associated with the SSC project.

Contact: Arthur H. Dilly, 201 West Seventh Street, Austin, 78701, (512) 499-4402.

Filed: April 26, 1994, 2:20 p.m.

TRD-9439809

Texas Department of Human Services

Thursday, May 5, 1994, 11:00 a.m.

701 West 51st Street, Fifth Floor, West Tower, Conference Room 5W

Austin

According to the complete agenda, the Client Self-Support Services Advisory Council will call to order, approval of minutes, chairman's comments; deputy commissioner's comments, EBT in the AFDC and Food Stamp programs, UT jobs evaluation; Senate Bill 714-Mandatory Participation in SFSP by qualifying schools, employment services contract administration rule; exclusion of disability payments from income and resources in AFDC and food stamp programs, increase in the standard shelter deduction in the food stamp program, exclusion of project QUEST income in the AFDC program, increase of JTPA allowances in the AFDC program, strategic plan, and adjourn

Contact: Toni Lemm, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4147

Filed: April 26, 1994, 2:58 p.m.

TRD-9439820

Friday, May 6, 1994, 10:00 a.m.

701 West 51st Street, Fifth Floor, West Tower, 5W Conference Room

Austin

According to the complete agenda, the Aged and Disabled Advisory Committee will consider, opening comments, deputy commissioner's comments; approval of the minutes; federal legislative update report, proceedings of the Subcommittee on Services to Persons with Disabilities report, nursing facility waiver/long term care assessment update report; changing the physician's order requirement for primary home care, changes to rules regarding pharmacy services in the LTC/NFR for Licensure and Medicaid Certification; proposed reimbursement rules for ICF-MR cost select level V children's class, revision to PASARR rules, broadening the 30-consecutive day requirement; exemption of home property placed for sale, open discussion by members; next meeting, and adjournment.

Contact: Anthony Venza, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4943.

Filed: April 28, 1994, 9:09 a.m.

TRD-9439893

General Land Office

Wednesday, May 4, 1994, 9:00 a.m.

S.F.A. Building, Room 831, 1700 North Congress Avenue, Room 831

Austin

According to the complete agenda, the School Land Board will discuss approval of previous board meeting minutes, pooling applications, Miss Mason (Second Massive), Goliad County, Wildcat Field, Jefferson County; and Taylor Lake, East (Lox B-2), Chambers County

Contact: Linda K. Fisher, 1700 North Congress Avenue, Room 836, Austin, Texas 78701, (512) 463-5016

Filed: April 26, 1994, 4:17 p.m.

TRD-9439834

Texas Department of Licensing and Regulation

Friday, May 20, 1994, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Inspections and Investigations, Manufactured Housing will hold an administrative hearing to consider the application for title to mobile home for Greentree Financial and John and Tammy Holmes according to the Texas Revised Civil Statutes, Article 5221f, §19(c), Article 9100, 16 TAC, §69.208, and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192.

TRD-9439811

Tuesday, May 24, 1994, 9:00 a.m.

920 Colorado, E. O. Thompson Building, Room 1012

Austin

According to the complete agenda, the Inspections and Investigations, Temporary Common Workers will hold an administrative hearing to consider the possible assessment of an administrative penalty and denial, suspension or revocation of the license for Pat Tammara doing business as Industrial Labor Service for violation of the Texas Revised Civil Statutes, Article 5221a-10, §6(d)(1), Article 9100, 16 TAC, §64.72(b), and the Texas Government Code, Chapter 2001.

Contact: Paula Hamje, 920 Colorado, E. O. Thompson Building, Austin, Texas 78701, (512) 463-3192

TRD-9439810

Texas State Board of Medical Examiners

Thursday, May 5, 1994, 9:00 a.m.

1812 Centre Creek Drive, Suite 300

Austin

According to the complete agenda, the Hearings Division will discuss probation appearance, James Michael Stanton, M.D., Houston, Texas, termination request, Tony William Baskin, M.D., Fayetteville, North Carolina, termination request, Richard L. Garrison, M.D., Houston, Texas; and executive session under authority of the Open Meetings Act, §551.071 of the Government Code, and Article 4495b §2.07(b) and §2.09(o), Texas Revised Civil Statutes, regarding pending or contemplated litigation.

Contact: Pat Wood, P.O. Box 149134, Austin, Texas 78714-9134, (512) 834-7728, Ext 402

Filed: April 26, 1994, 11:21 a.m.

TRD-9439797

Texas Council on Offenders with Mental Impairments

Monday, May 16, 1994, 3:00 p.m.

TDCJ-Pardons and Paroles Building, Board Room, 8610 Shoal Creek Boulevard

Austin

According to the complete agenda, the Planning Committee will call the meeting to order; hear introductions; approve minutes; discuss a memorandum of understanding between TDCJ, TDMJ/MR, and Community MH/MR Centers, Inc.; hear status report on pending issues; and adjourn.

Contact: Dee Kifowit, 8610 Shoal Creek Boulevard, Austin, Texas 78757, (512) 406-5406

Filed: April 26, 1994, 2:46 p.m.

TRD-9439814

Texas Natural Resource Conservation Commission

Wednesday, May 4, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will discuss addendum to contested agenda, proposal to repeal 30 TAC §114.1(b)(3)(A), Maintenance and Operation of Air Pollution Control Systems or Devices Used to Control Emissions from Motor Vehicles

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: April 26, 1994, 11:21 a.m.

TRD-9439795

Wednesday, May 4, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will discuss second addendum to contested agenda, briefing on enforcement against Exxon Refinery, Baytown.

Contact: Doug Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: April 26, 1994, 2:46 p.m.

TRD-9439813

Wednesday, May 4, 1994, 9:00 a.m.

1700 North Congress Avenue, Stephen F. Austin State Building, Room 118

Austin

According to the agenda summary, the Texas Natural Resource Conservation Commission will discuss consideration for approval of the publication in the *Texas Register* of the proposed repeal of 30 TAC §114.1(b)(3)(A), and of a new §114.1(b)(3)(A), relating to the maintenance and operation of air pollution control systems or devices used to control emissions from motor vehicles. The Commission shall also consider a related resolution concerning the enforcement of §114.1(b)(3)(A) pending its repeal.

Contact: Douglas A. Kitts, P.O. Box 13087, Austin, Texas 78711-3087, (512) 463-7905.

Filed: April 26, 1994, 3:55 p.m.

TRD-9439832

State Occupational Information Coordinating Committee

Wednesday, May 11, 1994, 10:00 a.m.

TEC Building, 15th and Congress Avenue, Room 644

Austin

According to the agenda summary, the State Occupational Information Coordinating Committee will discuss current projects, past and current operating budgets, and the fiscal year 1994 Basic Assistance Grant Program plan.

Contact: Richard C. Froeschle, 3520 Executive Center Drive, Suite 205, Austin, Texas 78731, (512) 502-3750.

Filed: April 28, 1994, 8:49 a.m.

TRD-9439884

Texas Board of Pardons and Paroles

Monday-Friday, May 9-13, 1994, 9:30 a.m.

1212 North Velasco, Suite 201

Angleton

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: April 28, 1994, 8:51 a.m.

TRD-9439889

Monday-Wednesday, May 9-11, 1994, 1:30 p.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

Filed: April 28, 1994, 8:49 a.m.

TRD-9439886

Monday-Friday, May 9-13, 1994, 1:30 p.m.

2503 Lake Road, Suite #2

Huntsville

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to

include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services'

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

Filed: April 28, 1994, 8:49 a.m.

TRD-9439885

Thursday-Friday, May 12-13, 1994, 9:30 a.m.

1550 East Palestine, Suite 100

Palestine

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407.

Filed: April 28, 1994, 8:50 a.m.

TRD-9439887

Thursday-Friday, May 12-13, 1994, 1:00 p.m. and 9:00 a.m. respectively.

Route 5, Box 258-A

Gatesville

According to the agenda summary, a panel(s) of the Texas Board of Pardons and Paroles composed of three board members will receive, review, and consider information and reports concerning prisoners/inmates and administrative releasees subject to the board's jurisdiction and initiate and carry through with appropriate actions to include decisions involving the withdrawal of warrants, issuing of subpoenas, the imposition of special conditions of parole, and requests for parole services.

Contact: Juanita Llamas, 8610 Shoal Creek Boulevard, Austin, Texas 78759, (512) 406-5407

Filed: April 28, 1994, 8:51 a.m.

TRD-9439888

Public Utility Commission of Texas

Monday, May 9, 1994, 10:00 a.m.

7800 Shoal Creek Boulevard

Austin

According to the complete agenda, the Hearings Division will hold a hearing on the merits in Docket Number 12552-application of Sam Rayburn G&T Electric Cooperative, Inc and Tex-La Electric Cooperative of Texas, Inc for authority to make their levelized billing riders permanent

Contact: John M Renfrow, 7800 Shoal Creek Boulevard, Austin, Texas 78757, (512) 458-0100

Filed: April 26, 1994, 2 46 p m

TRD-9439812

Teacher Retirement System of Texas

Tuesday, May 10, 1994, Noon

1000 Red River, Room 420E

Austin

According to the complete agenda, the Medical Board will discuss the files of members who are currently applying for disability retirement and the files of disability retirees who are due a re-examination report

Contact: Don Cadenhead, 1000 Red River, Austin, Texas 78701-2698, (512) 397-6400

Filed: April 28, 1994, 9 34 a m

TRD-9439901

Texas Workers' Compensation Research Center

Wednesday, May 4, 1994, 10:00 a.m.

105 West 15th Street, John H Reagan Building, Room 103

Austin

According to the complete agenda, the Board of Directors will meet to discuss and act on the following items call to order; approval of minutes of meeting of April 6, 1994; public participation, announcements, confirmation of board members to standing committees, inclusion of statewide functional goals in agency strategic plan and revised measurement, recommendations from Subcommittee on Workplace Health and Safety, research progress report, confirm meeting of June 1, 1994, executive session to consider personnel issues, and adjournment

Individuals who may require auxiliary aids or services for this meeting should contact Lavon Guerrero at (512) 469-7811 at least two days prior to the meeting so that appropriate arrangements can be made

Contact: Lavon Guerrero, 105 West Riverside Drive, Suite 100, Austin, Texas 78704, (512) 469-7811

Filed: April 26, 1994, 3 11 p m

TRD-9439824

Regional Meetings

Meetings Filed April 26, 1994

The Colorado River Municipal Water District Board of Directors will meet at 400 East 24th Street, Big Spring, May 5, 1994, at 9 00 a m Information may be obtained from O H Ivie, Box 869, Big Spring, Texas 79721, (915) 267-6341 TRD-9439826

The Denton Central Appraisal District Board of Directors will meet at 3911 Morse Street, Denton, May 12, 1994, at 3 00 p.m Information may be obtained from John Brown, 3911 Morse Street, Denton, Texas 76202, (817) 566-0904 TRD-9439798.

The Garza County Appraisal District Board of Directors held a meeting by telephone, May 2, 1994, at 2 00 p.m Information may be obtained from Billie Y Windham, P.O Drawer F, Post, Texas 79356, (806) 495-3518 TRD-9439799

The Middle Rio Grande Development Council Board of Directors met at the Holiday Inn, Sage Room, 920 East Main, Uvalde, April 27, 1994, at 1:00 p m Information may be obtained from Paul A. Edwards, P.O. Box 1199, Carrizo Springs, Texas 78834, (210) 876-3533 TRD-9439823

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee will meet in the MPO Conference Room, 434 South Main, Suite 205, San Antonio, May 3, 1994, at 10 00 a.m. Information may be obtained from Michael C Riojas, 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651 TRD-9439815

The West Central Texas Council of Governments Private Industry Council will meet at 1025 East North Tenth Street, Abilene, May 5, 1994, at 10 00 a m Information may be obtained from Brad Helbert, P.O Box 3195, Abilene, Texas 79604, (915) 672-8544 TRD-9439825

The West Central Texas Council of Governments, Area Agency on Aging Citizens Advisory Council on Aging will meet at 1025 East North Tenth Street, WCTCOG Administrative Office, Abilene, May 12, 1994, at 10 00 a m Information may be obtained from Nell Baldwin, P.O Box 3195, Abilene, Texas 79604, (915) 672-8544 TRD-9439796

Meetings Filed April 27, 1994

The Canyon Regional Water Authority Special Board met at the Guadalupe Fire Training Facility, Route 2, Lakeside Pass

Drive, New Braunfels, May 2, 1994, at 7:30 p.m Information may be obtained from Cathy C Talcott, Route 2, Box 654 W, New Braunfels, Texas 78130-9579, (210) 609-0543 TRD-9439876.

The Palo Pinto Appraisal District (Emergency Meeting.) Board of Directors met at the Palo Pinto County Courthouse, Palo Pinto, April 29, 1994, at 3:00 p.m. (Reason for emergency: Settlement offer to be received on April 27, 1994, in two pending lawsuits set for trial with deadlines, needed immediate attention.) Information may be obtained from Carol Holmes, P.O. Box 250, Palo Pinto, Texas 76484, (817) 659-1208, or Merrily Moore, (512) 255-6946. TRD-9439874.

The Upshur County Appraisal District Board of Directors will meet at the Upshur County Appraisal District Office, Warren and Trinity Streets, Gilmer, May 9, 1994, at 1:00 p.m Information may be obtained from Louise Stracener, P.O. Box 280, Gilmer, Texas 75644-0280, (903) 843-3041. TRD-9439875.

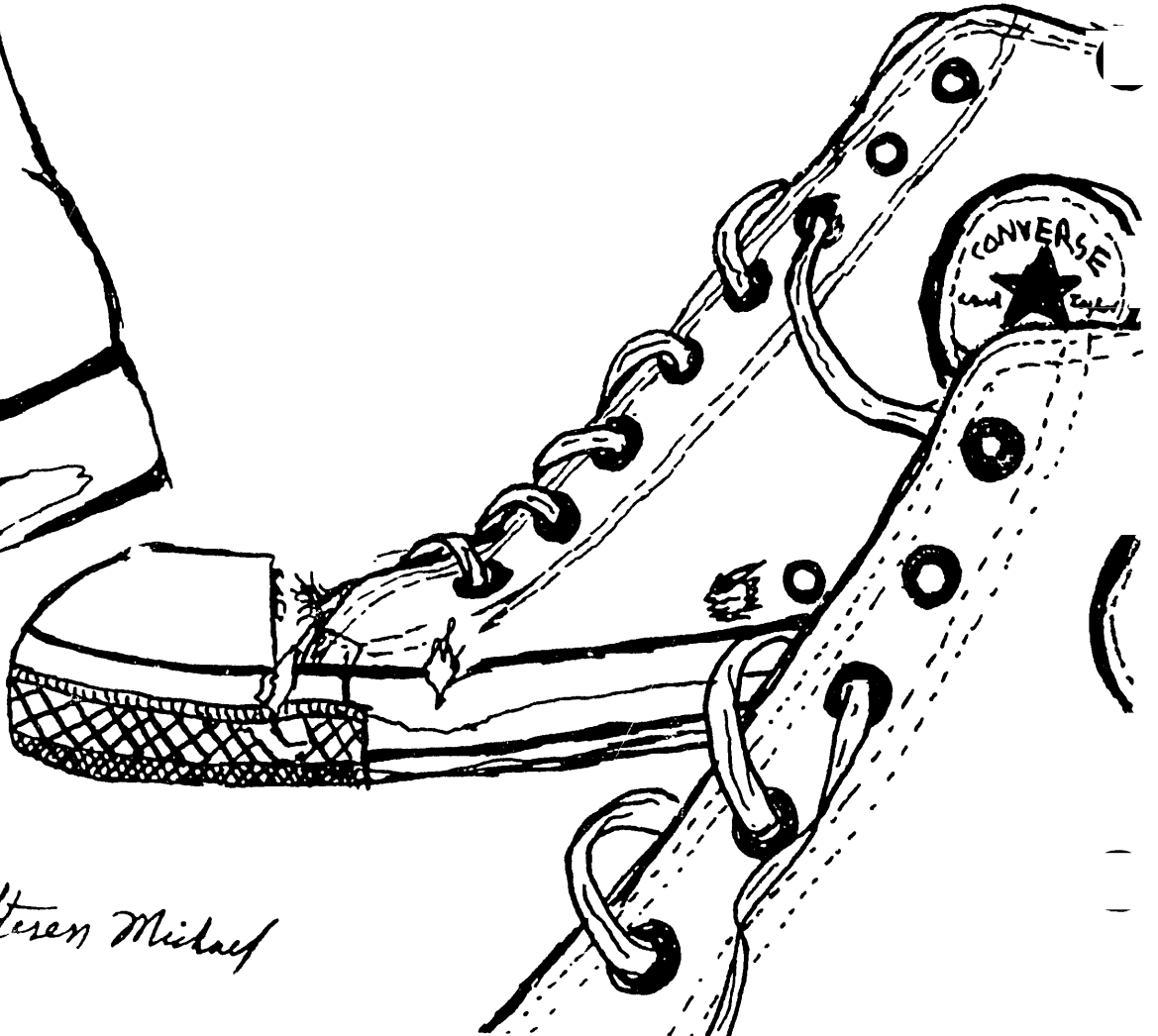
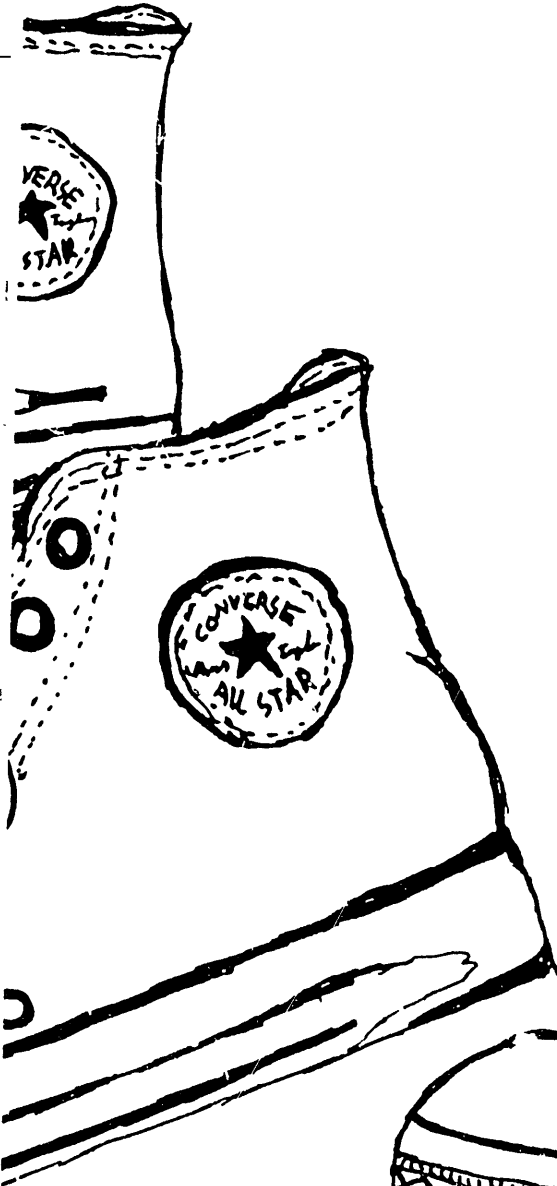
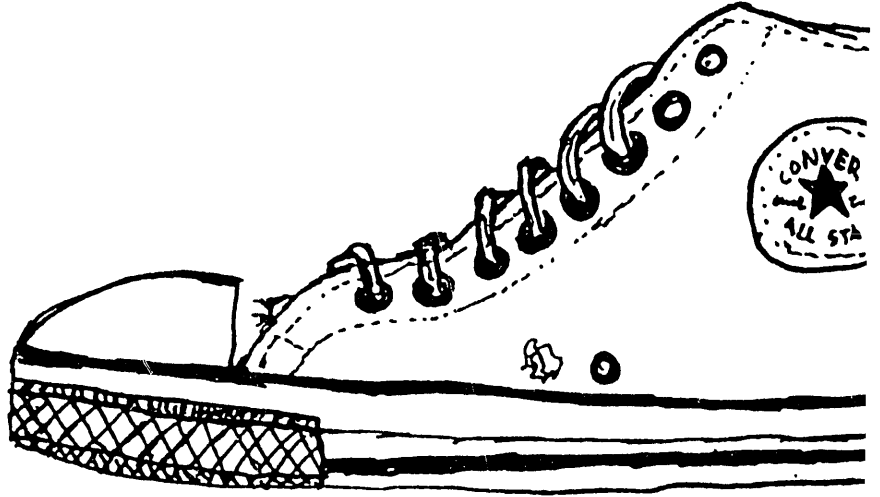
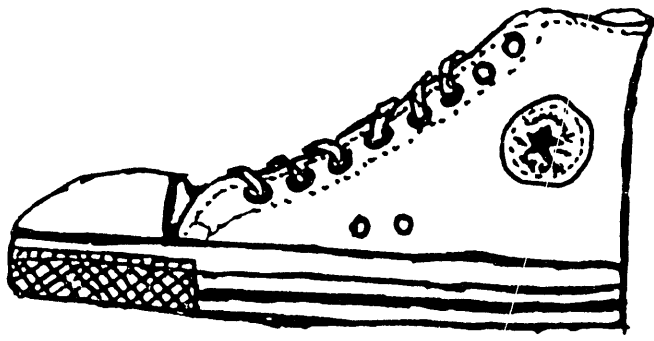
Meetings Filed April 28, 1994

The Dallas Central Appraisal District Board of Directors Regular Meeting will meet in the Second Floor Community Room, 2949 North Stemmons Freeway, Dallas, May 4, 1994, at 8:00 a.m. Information may be obtained from Rick L. Kuehler, 2949 North Stemmons, Dallas, Texas 75247, (214) 631-0520. TRD-9439883.

The Houston-Galveston Area Council Transportation Department will meet in Room A, Second Floor, 3555 Timmons, Houston, May 4, 1994, at 2:00 p.m. Information may be obtained from Kathy Lang, P.O Box 22777, Houston, Texas 77227, (713) 993-4501 TRD-9439890.

The Houston-Galveston Area Council Transportation Department will meet at 7222 Moody, Galveston, May 9, 1994, at 5 30 p.m. Information may be obtained from Kathy Lang, P.O. Box 22777, Houston, Texas 77227, (713) 993-4501. TRD-9439892

The San Antonio-Bexar County Metropolitan Planning Organization Technical Advisory Committee will meet in the MPO Conference Room, 434 South Main, Suite 205, San Antonio, May 10, 1994, 9:00 a.m. Information may be obtained from Michael C. Riojas, P.E., 434 South Main, Suite 205, San Antonio, Texas 78204, (210) 227-8651. TRD-9439891.



Steven Michael

IN ADDITION

The **Texas Register** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture Request for Proposals

The Texas Department of Agriculture (the department) requests proposals for administration of a biologically intensive integrated pest management grants program for fiscal year 1995. The selected organization will solicit grant proposals, participate in the review of the proposals, notify grantees of grant awards, keep accounts, disburse funds, and acquire and maintain prescribed documents.

Proposals must come from a statewide, producer-directed organization which has integrated pest management as a primary mission. This organization must have non-profit status, and demonstrate capability of identifying possible grantees for and conducting multi-county, multi-commodity and statewide integrated pest management projects. The organization should also have experience in administering a competitive grants program. The estimated cost of administering this program will be considered when the proposals are evaluated. Each proposal should include an estimated cost of administering the program, a history of the organization and a narrative on its experience in conducting multi-county, multi-commodity and statewide integrated pest management projects and competitive grants programs.

A draft of the contract to be used between the administering organization and the department, and additional information about the contract and preparation of the proposal, may be obtained by contacting John Sneed, Deputy Assistant Commissioner, Intergovernmental Affairs Division, at (512) 475-1625. The written request to be considered for contracting should be submitted no later than 5:00 p.m., May 17, 1994, to John Sneed, Deputy Assistant Commissioner, Intergovernmental Affairs Division, P.O. Box 12847, Austin, Texas 78711.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439835 Dolores Alvarado Hibbs
Chief Administrative Law Judge
Texas Department of Agriculture

Filed: April 26, 1994

Texas Bond Review Board Bi-Weekly Report on the 1994 Allocation of the State Ceiling on Certain Private Activity Bonds

The information that follows is a report of the allocation activity for the period of April 9-22, 1994.

Total amount of state ceiling remaining unreserved for \$252,434,000 subceiling for qualified mortgage bonds under the Act as of April 22, 1994: \$97,016,750.

Total amount of state ceiling remaining unreserved for the \$157,771,250 subceiling for state-voted issues under the Act as of April 22, 1994: \$32,771,250.

Total amount of state ceiling remaining unreserved for the \$67,616,250 subceiling for qualified small issues under the Act as of April 22, 1994: \$57,216,250.

Total amount of state ceiling remaining unreserved for the \$45,077,500 subceiling for residential rental project issues under the Act as of April 22, 1994: \$14,417,500.

Total amount of state ceiling remaining unreserved for the \$378,651,000 subceiling for all other bonds requiring an allocation under the Act as of April 22, 1994: \$23,651,000.

Total amount of the \$901,550,000 state ceiling remaining unreserved as of April 22, 1994: \$225,072,750.

Following is a comprehensive listing of applications which have received a reservation date pursuant to the Act from April 9-22, 1994: Texas Higher Education Coordinating Board, Eligible Borrowers, Student Loan Bonds, \$75,000, 000.

Following is a comprehensive listing of applications which have issued and delivered the bonds and received a Certificate of Allocation pursuant to the Act from April 9-22, 1994: Gulf Coast Waste Disposal Authority, Amoco Corporation, Solid Waste Disposal Facilities, \$50,000,000; Harris Company IDC, Deer Park Refining L.P., Solid Waste Disposal Facilities, \$50,000,000.

Following is a comprehensive listing of applications which were either withdrawn or canceled pursuant to the Act from April 9-22, 1994: Southeast Texas HFC, MAGI, Inc., Residential Rental First Line Apartments, \$2,000,000; Southeast Texas HFC, MAGI, Inc., Residential Rental Park Hollow Apartments, \$3,715,000.

Following is a comprehensive listing of applications which released a portion of their reserved amount pursuant to the Act from April 9-22, 1994: None.

Issued in Austin, Texas, on April 25, 1994.

TRD-9439839 Albert L. Bacarisse
Executive Director
Texas Bond Review Board

Filed: April 26, 1994

Comptroller of Public Accounts Notice of Consultant Contract Award

In accordance with the provisions of Chapter 2254, Subchapter B of the Texas Government Code, the Comptroller of Public Accounts announces this notice of consultant contract award.

The consultant proposal request was published in the March 1, 1994, issue of the *Texas Register* (19 TexReg 1478).

The consultant will assist the Comptroller in the development of a system architecture plan for the proposed Consolidate Tax System of Texas (CONTACT). Consultant will review existing Comptroller system hardware and software, CONTACT system requirements, and other computer system applications which will remain upon implementation of CONTACT, develop design alternatives for the proposed CONTACT system, and report on its findings. The successful proposer will be expected to begin performance of the contract May 2, 1994.

The contract is awarded to Gartner Group, Inc., 56 Top Gallant Road, Stamford, Connecticut 06904. The total dollar value of the contract is not to exceed \$420,000. The contract was executed April 26, 1994, and extends through September 30, 1994. Gartner Group is to present a final report on or about July 15, 1994, on conclusions reached from the services performed under said contract.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439821 Arthur F. Lorton
Senior Legal Counsel, General Law
Section
Comptroller of Public Accounts

Filed: April 26, 1994

Texas Department of Health Request for Proposals

All local health departments and public health districts are invited to submit proposals to the Texas Department of Health (department), Chronic Disease Prevention Division for funding of Put Prevention Into Practice (PIIP) Services. PIIP activities are intended to target disproportionately affected populations receiving primary care services through a local health department or health district. The goal is to compliment existing programs in an organization to avoid unnecessary duplication of services.

Seven to nine projects will be funded with a budget of \$40,000 to \$60,000 per project for a 12-month budget period. PIIP services are intended to improve the health of adults in Texas through risk reduction, education, early identification of chronic disease, and provision of medical evaluation and follow-up within a primary care clinic.

Contractors are expected to use a systems based approach in assuring that clients ages 19 and older receive the appropriate primary and secondary prevention services for their age and sex. In addition, contractors must assure that clients with abnormal findings receive appropriate diagnosis and treatment.

The department's Chronic Disease Prevention Division, Adult Health Program (program) will provide client health assessment and education materials, screening guidelines, and office systems materials. In addition, the program will

provide consultation and technical assistance in the implementation and evaluation of activities.

Emphasis for funding will be placed on the cost-effectiveness and the quality of the services provided. The specific dollar amount to be awarded to each program will depend on the merit and scope of the proposed program. Preference will be given to those agencies for which there is evidence of community assessment and involvement in the development of the application and which provide primary care services on site.

Copies of the complete request for proposal packet may be obtained by calling Merritt Schroeder, in the Chronic Disease Prevention Division, Adult Health Program at (512) 458-7534 or write to: Texas Department of Health, Chronic Disease Prevention Division, Adult Health Program, 1100 West 49th Street, Austin, Texas 78856.

Applications must be received by the department no later than 5:00 p.m. on Friday, May 27, 1994. Faxed copies will not be accepted. Applications received after this time will not be considered and will be returned to the applicant.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439817 Susan K. Steeg
General Counsel
Texas Department of Health

Filed: April 26, 1994

Texas Department of Housing and Community Affairs Notice of Public Hearing

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs at 811 Barton Springs Road, Suite 100, Austin, Texas 78704, at 10:00 a.m. on Monday, May 16, 1994, with respect to two issues of multi-family housing revenue refunding bonds (the Bonds) to be issued in a face amount of not more than \$12,580,000 with respect to the Series 1994A Bonds and not more than \$9,390,000 with respect to the Series 1994B Bonds by the Texas Department of Housing and Community Affairs (the Issuer). The proceeds of the Series 1994A Bonds will be loaned to Realco Meadows, Ltd., a Texas limited partnership (Realco Meadows), to refund the outstanding principal amount of the Texas Housing Agency Multi-Family Housing Revenue Refunding Bonds, Series 1988A (Summer Meadows Development) originally issued in the aggregate principal amount of \$12,905,000 (the Series 1988A Bonds). The proceeds of the Series 1994B Bonds will be loaned to Realco Crossing, Ltd., a Texas limited partnership (Realco Crossing), to refund the outstanding principal amount of the Texas Housing Agency Multi-Family Housing Revenue Refunding Bonds, Series 1988B (Summers' Crossing Development) originally issued in the aggregate principal amount of \$9,630,000 (the Series 1988B Bonds). The project financed with the proceeds of the Series 1988A Bonds and to be refinanced from the proceeds of the Bonds is a 389-unit apartment complex located at 6000 Ohio Drive, Plano, Texas (Summer Meadows). The project financed with the proceeds of the Series 1988B Bonds and to be refinanced with the proceeds of the Series 1994B Bonds is a 293-unit apartment complex located at 1500 Preston Road, Plano, Texas (Summers' Crossing). The initial owner and operator of Summer Meadows when the Series 1988A Bonds were issued was Summer Meadows,

Ltd., a Texas limited partnership. The current owner and operator of Summer Meadows is Realco Meadows. The initial owner and operator of Summer's Crossing when the Series 1988B Bonds were issued was Summers' Crossing, Ltd., a Texas limited partnership. The current owner of Summers' Crossing is Realco Crossing.

All interested persons are invited to attend such public hearing to express their views with respect to Summer Meadows and Summers' Crossing and the issuance of the Bonds. Questions or requests for additional information may be directed to Johanna McCully-Bonner at the Texas Department of Housing and Community Affairs, 811 Barton Springs Road, Austin, Texas 78704; (512) 475-3916.

Persons who intend to appear at the hearing and express their views are invited to contact Johanna McCully-Bonner in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Johanna McCully-Bonner prior to the date scheduled for the hearing.

This notice is published and the above-described hearing is to be held in satisfaction of the requirements of the Internal Revenue Code of 1986, §147(f), as amended, regarding the public approval prerequisite to the exemption from federal income taxation of the interest on the Bonds.

Individuals who require auxiliary aids for services for this meeting should contact Aurora Carvajal, ADA Responsible Employee, at (512) 475-3822, or Relay Texas at 1-800-735-2989 at least two days before the meeting so that appropriate arrangements can be made.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439837 Henry Flores
Executive Director
Texas Department of Housing and
Community Affairs

Filed: April 26, 1994

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Texas Department of Human Services Notice of Public Hearing

The Texas Department of Human Services (TDHS) will conduct a public hearing to receive comments on the department's Nursing Facility Waiver program proposed reimbursement rates for Assisted Living Services/Residential Care. The hearing is held in compliance with 40 TAC §24.102(j), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The public hearing will be held on May 17, 1994, at 1:00 p.m. in 4W (460 West) of the John H. Winters Center (701 West 51st Street, Austin, Texas, forth floor, West tower). If you are unable to attend the hearing, but wish to comment on the rates, written comments will be accepted if received by 5:00 p.m. of the day of the hearing. Please address written comments to the attention of Sherri Williams. Written comments may be mailed to the following address, delivered to the receptionist in the lobby in the John H. Winters Center, or faxed to (512) 450-3014. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed reimbursement rates on or after May 3, 1994, by contacting Sherri Williams, M/C W-425, P.O. Box 149030, Austin, Texas 78714-9030, (512) 450-4817.

Persons with disabilities planning to attend this hearing who may need auxiliary aids or services are asked to contact Sherri Williams (512) 450-4817 by May 10, 1994, so that appropriate arrangements can be made.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439836 Nancy Murphy
Section Manager, Policy and Document
Support
Texas Department of Human Services

Filed: April 26, 1994

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Texas Department of Insurance Company License Application

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application for name change in Texas for Minnesota Protective Life Insurance Company, a foreign life, accident and health company. The proposed new name is Guarantee Protective Life Company. The home office is in Omaha, Nebraska.

Application for name change in Texas for Financial Reinsurance Corporation, a domestic life, accident and health company. The proposed new name is Financial Savings Insurance Company. The home office is in Waco, Texas.

Application for certificate of authority in Texas for Health Industry Trust and Welfare Plan, a domestic multiple employer welfare arrangement. The home office is in Austin, Texas.

Application for name change in Texas for American Skandia Life Reinsurance Corporation, a foreign life, accident and health company. The proposed new name is IIT Hartford International Life Reassurance Corporation. The home office is in Westport, Connecticut.

Application for certificate of authority in Texas for Provider Medical Trust, a foreign multiple employer welfare arrangement. The home office is in Tulsa, Oklahoma.

Application for incorporation in Texas for USAA of New Jersey, a domestic fire and casualty company. The home office is in San Antonio, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Cindy Thurman, 333 Guadalupe Street, M/C 305-5A, Austin, Texas 78701.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439868 D. J. Powers
Legal Counsel
Texas Department of Insurance

Filed: April 26, 1994

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Notice of Hearing

The Commissioner of Insurance will hold a public hearing under Docket Number 2093, on May 16, 1994, at 9:00 a.m. in Room 100 of the Texas Department of Insurance Building, 333 Guadalupe Street in Austin, Texas to con-

sider comments on the proposed amendments to 28 TAC §§7.201-7.205, 7.209-7.211, and 7.213 concerning administrative regulation under the Insurance Code, Article 21.49-1, also known as the Insurance Holding Company System Regulatory Act (the Act). The amendments are necessary to provide technical corrections and clarifications and to implement amendments to Insurance Code, Article 21.49-1, enacted by passage of House Bill 1461, 73rd Legislature, 1993. The amendments to §7.201 adopt by reference the biographical affidavit form for use in accordance with §7.209(d) and (f). The amendments to §7.202 revise the definitions for "commissioner" and "insurer" and add definitions for "commercially domiciled insurer" and "domestic insurer;" renumber certain definitions; and permit exemption for commercially domiciled insurers in certain instances. The amendments to §7.203 provide that commercially domiciled insurers are not exempt from registration; provide clarification that a registration statement includes each annual amendment and the completely restated registration statement; provide an exemption in the total reinsurance of a mutual assessment company by a stipulated premium insurance company; provide that filing a disclaimer relieves the person filing the disclaimer of the duty to comply with the Act, §5(a)-(c), unless disallowed by the commissioner; require at least 10 days notice prior to payment of dividends and distributions to shareholders; provide that prepayment notices of dividends and distributions will be considered promptly, subject to the standards contained in the Act, §4(b); provide for annual review of dividends and distributions; and make dividends to shareholders subject to appropriate action as may be authorized by other provisions of the Insurance Code. The amendments to §7.204 broaden the scope for certain transactions requiring notice or approval; provide clarification of the applicable filing fee of an extraordinary dividend application and of when the application is complete; and set forth certain sanctions and administrative penalties which may be taken. The amendments to §7.205 provide that a change of ownership of a commercially domiciled insurer is subject to the Act, §5, and provide clarification that a restructuring is subject to the Act, §5(e)(3)(i). The amendments to §7.209 provide for the filing of biographical affidavit forms for individual applicants and the executive officers and directors of the applicant if the applicant is not an individual; remove a requirement of disclosing the criteria utilized in determining the purchase price; provide for the filing of biographical affidavit forms for proposed management; and provide for the filing of a business plan and for projections covering at least three years. The amendments to §7.210 require disclosure of certain additional transactions. The amendment to §7.211 removes an ambiguity in language. The amendments to §7.213 remove a requirement for disclosing the criteria utilized in determining the purchase price in the purchase of additional control, and require the filing of a business plan and projections covering at least two years.

The purpose of the hearing is to afford all interested persons an opportunity to appear and testify orally or in writing either in support of or in opposition to the proposed amendments.

The statutory authority for the proposed amendments is cited in the February 11, 1994, issue of the *Texas Register* (19 TexReg 1012).

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439866

D. J. Powers
Legal Counsel
Texas Department of Insurance

Filed: April 26, 1994

Policy Under Article 5.101

Texas Insurance Code, Article 5.101, §3(e), (f), and (g) require the prior approval of the Commissioner for the use of rates outside the flexibility bands set by the Commissioner or the use of a rating manual different from that promulgated by the Commissioner. Texas Insurance Code Article 1.33B, provides that hearings relating to the approval of rates or rating manuals for an individual insurer shall be conducted by the State Office of Administrative Hearings (SOAH) unless they are uncontested.

The Commissioner finds that a procedure should be adopted to determine which filings under the Texas Insurance Code, Article 5.101, §3(e), (f), and (g) are contested.

IT IS, THEREFORE, ORDERED that the following procedure is adopted for all individual insurance company prior approval filings under the Texas Insurance Code, Article 5.101, §3(e), (f), and (g):

As soon as practicable, the Department shall file notice of the request in the *Texas Register*. The notice in a case filed under the Texas Insurance Code, Article 5.101, §3(e) or (f), shall identify the name of the insurer, line of insurance, the percentage change in rates requested (per coverage), and the name, address, and telephone number of the Department staff person from whom the public may obtain a copy of the filing. The notice in a case filed under Texas Insurance Code, Article 5.101, §3(g), shall identify the name of the insurer, line of insurance, a description of the changes to the rating manual, and the name, address, and telephone number of the Department staff person from whom the public may obtain a copy of the filing.

The notice in cases under the Texas Insurance Code, Article 5.101, §3(e), (f), and (g), shall further state that the filing is subject to Department approval without a hearing unless an objection is filed with the Associate Commissioner of Policy and Research within 30 days after publication of the notice.

If an objection to the approval of the filing is filed, a notice of hearing shall be issued and the case shall be referred to SOAH.

If no objection to the filing is filed within 30 days after publication, the Associate Commissioner of Policy and Research or his designee may approve the filing. If the Associate Commissioner of Policy and Research or his designee determines that the filing should not be approved, a notice of hearing shall be issued and the case shall be referred to SOAH.

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

Issued in Austin, Texas, on April 26, 1994.

TRD-9439867

D. J. Powers
Legal Counsel
Texas Department of Insurance

Filed: April 26, 1994

Public Utility Commission of Texas
Notice of Intent to File Pursuant to
Public Utility Commission Substantive
Rule 23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Comal County, New Braunfels.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Comal County pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 12953.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Comal County. The geographic service market for this specific service is the New Braunfels, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 25, 1994.

TRD-9439829 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 26, 1994



Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to Public Utility Commission Substantive Rule 23.27 for approval of customer-specific PLEXAR-Custom Service for Webb County, Laredo.

Docket Title and Number. Application of Southwestern Bell Telephone Company for Approval of Plexar-Custom Service for Webb County pursuant to Public Utility Commission Substantive Rule 23.27. Docket Number 12952.

The Application. Southwestern Bell Telephone Company is requesting approval of Plexar-Custom Service for Webb County. The geographic service market for this specific service is the Laredo, Texas area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, at 7800 Shoal Creek Boulevard, Austin, Texas 78757, or call the Public Utility Commission Public Information Section at (512) 458-0256, or (512) 458-0221 for teletypewriter for the deaf.

Issued in Austin, Texas, on April 25, 1994.

TRD-9439828 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 26, 1994



Notice of Intervention Deadline

As scheduled, a prehearing conference in Docket Number 12700, styled Application of El Paso Electric Company for Extension of Time to File 1993 Earnings Report Required by Substantive Rule 23.12, convened on April 26, 1994. The intervention deadline in this case is May 12, 1994.

Persons wishing to intervene in the case must do so by filing a motion, in Docket Number 12700, with the Commission no later than May 12, 1994. The motion should be mailed to the Public Utility Commission of Texas, 7800 Shoal Creek Boulevard, Suite 400N, Austin, Texas 78757. Further information may also be obtained by calling the Public Utility Commission Public Information Office at (512) 458-0388, or (512) 458-0221 teletypewriter for the deaf.

Issued in Austin, Texas, on April 26, 1994.

TRD-9439827 John M. Renfrow
Secretary of the Commission
Public Utility Commission of Texas

Filed: April 26, 1994



1994 Publication Schedule for the *Texas Register*

Listed below are the deadline dates for the January-December 1994 issues of the *Texas Register*. Because of printing schedules, material received after the deadline for an issue cannot be published until the next issue. Generally, deadlines for a Tuesday edition of the *Texas Register* are Wednesday and Thursday of the week preceding publication, and deadlines for a Friday edition are Monday and Tuesday of the week of publication. No issues will be published on March 11, July 22, November 11, and November 29. An asterisk beside a publication date indicates that the deadlines have been moved because of state holidays.

FOR ISSUE PUBLISHED ON	ALL COPY EXCEPT NOTICES OF OPEN MEETINGS BY 10 A.M.	ALL NOTICES OF OPEN MEETINGS BY 10 A.M.
1 Tuesday, January 4	Wednesday, December 29	Thursday, December 30
2 Friday, January 7	Monday, January 3	Tuesday, January 4
3 Tuesday, January 11	Wednesday, January 5	Thursday, January 6
4 Friday, January 14	Monday, January 10	Tuesday, January 11
5 Tuesday, January 18	Wednesday, January 12	Thursday, January 13
Friday, January 21	1993 ANNUAL INDEX	
6 Tuesday, January 25	Wednesday, January 19	Thursday, January 20
7 Friday, January 28	Monday, January 24	Tuesday, January 25
8 Tuesday, February 1	Wednesday, January 26	Thursday, January 27
9 Friday, February 4	Monday, January 31	Tuesday, February 1
10 Tuesday, February 8	Wednesday, February 2	Thursday, February 3
11 Friday, February 11	Monday, February 7	Tuesday, February 8
12 Tuesday, February 15	Wednesday, February 9	Thursday, February 10
13 Friday, February 18	Monday, February 14	Tuesday, February 15
14 Tuesday, February 22	Wednesday, February 16	Thursday, February 17
15 *Friday, February 25	Friday, February 18	Tuesday, February 22
16 Tuesday, March 1	Wednesday, February 23	Thursday, February 24
17 Friday, March 4	Monday, February 28	Tuesday, March 1
18 Tuesday, March 8	Wednesday, March 2	Thursday, March 3
Friday, March 11	NO ISSUE PUBLISHED	
19 Tuesday, March 15	Wednesday, March 9	Thursday, March 10
20 Friday, March 18	Monday, March 14	Tuesday, March 15
21 Tuesday, March 23	Wednesday, March 16	Thursday, March 17
22 Friday, March 25	Monday, March 21	Tuesday, March 22
23 Tuesday, March 29	Wednesday, March 23	Thursday, March 24
24 Friday, April 1	Monday, March 28	Tuesday, March 29
25 Tuesday, April 5	Wednesday, March 30	Thursday, March 31
26 Friday, April 8	Monday, April 4	Tuesday, April 5
27 Tuesday, April 12	Wednesday, April 6	Thursday, April 7
Friday, April 15	FIRST QUARTERLY INDEX	
28 Tuesday, April 19	Wednesday, April 13	Thursday, April 14